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Special section on Decade of No Justice starts on page 12.

Land Justice in Timor-Leste

For definitions of underlined words see glossary page 5.

Land is a key building block in Timor-Leste's development process. Land provides daily needs such as shelter, food and fuel. Ten years after the popular referendum, Timor-Leste still has to decide on the fundamental principles and goals of its land system. Without this, there is limited vision to guide the land laws, regulations, services and bodies necessary to address confusion over land ownership. The land system develops *ad hoc* and without proper planning. Timor-Leste needs a more cohesive and inclusive process if we are to resolve current land issues and protect people's land rights.

Background

Portuguese colonialists and Indonesian occupiers stole land from Timorese people and communities. They pushed people off their land, gave it to cronies and supporters, and wrote rules to legitimize their actions. Even within this unjust system, corrupt officials issued many titles illegally. In 1999, TNI/militia violence forced people from their homes again, destroying land records and 70% of infrastructure nationwide. Development efforts then concentrated employment and other opportunities in urban areas, particularly Dili, which drew many people to move there. Unresolved land issues in Dili contributed to the 2006 crisis. Around 150,000 people fled their houses and tens of thousands have not yet returned. Across Timor-Leste, land disputes continue and ownership status is unclear. Uncertainty over land perpetuates and creates conflict.



Land & Development

Despite centuries of oppression, Timor-Leste has avoided the fate of many other former colonies where a small elite controls the vast majority of land. It must now address past land injustices, and create a fair and just land system that respects its people's unique story about land. As in many other sectors, Timor-Leste can learn from others' experiences and avoid repeating their mistakes.

A land system should address the following questions:

1. Who can own land?
2. Who has the power to make decisions about who does, and does not own land?
3. Do we recognize community/customary land governance, and how?
4. Do we need to help landless people acquire land?
5. How do foreigners access land?
6. What is the fundamental function of land in Timor-Leste?

In addition, Timor-Leste's land system must resolve confusion over current land ownership and identify who owns, or has the right to use, what land and where.

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Developing Timor-Leste's Land System – Possible Benefits and Risks

Possible Benefits	Possible Risks
Clear land laws and land titles can reduce conflict.	If land laws are not fair or just, they will create more conflict.
Vulnerable people can have clear rights to land.	Land laws will favor the elite, particularly large land holders.
People can use their land title as 'security' to borrow money (credit).	People will lose their land if they cannot repay the money they borrow.
Undisputed land titles will facilitate economic development and improve livelihoods.	A small number of people will buy up large areas of land. This will stifle economic development and negatively impact livelihoods.
Land values will increase.	Land prices will get so high that local people without land cannot buy any.
People can use their land to earn an income, and create local opportunities.	People will not have the training, experience or support to negotiate fair land leases or improve land-based livelihoods.
Customary land will support our way of life, spiritual and environmental beliefs.	Customary land management and ownership will not be well defined or protected.
People will feel safe, knowing that they cannot lose their land.	Land laws will not be respected or upheld.

Different nations address these questions in different ways. Some countries seek to address past land injustices by redistributing land; others start with a blank slate. These decisions should be based on clear principles, and in the best cases these are discussed and decided upon by a far-reaching national consultative process. This consultation can be aimed at developing a government's national land policy, a detailed national consultation and land summit, or facilitated by institutions such as a Land Commission. Adequate consultation should include vulnerable groups and allow sufficient time for people to understand, discuss and debate the impacts of different choices. Basing a land system on broadly understood and discussed principles will strengthen land rights by creating widespread popular acceptance of land decisions.

To date, the focus on land issues has been largely legalistic. Since the time of the UN Transitional Administration in East Timor (UNTAET), governing administrations have concentrated on technical training for land registration, land use agreements and conflict mediation. Significant attention is paid to the content of land laws, the definition of titles and processes of land registration. There is a failure to plan for non-legal processes and little discussion of the broader social impacts of land decisions.

Because Timor-Leste does not yet have a national land policy, two laws that will establish key dimensions of a land system are the transitional Land Law and the Civil Code. (These draft laws have yet to go to Parliament.) The transitional Land Law is a one-off law to resolve current confusion over land ownership. It will ultimately decide who owns what land and determine who has the strongest right when more than one person or group claims the same land. The Civil Code sets the rules for day-to-day land decisions, such as inheritance and the sale and lease of land. (See *Transitional Land Law*, page 6).

Land as a System

A "land system" includes many interlinked processes:

- ✓ Land administration: land titles, surveys, leases, sales, valuing land and recording land transactions
- ✓ Land use management and planning

- ✓ Dispute resolution: mediation, compensation and eviction processes
- ✓ Legal processes: including land laws, legal structures to recognize community and customary land governance, and rules on inheritance
- ✓ Independent institutions or services to support people to make informed decisions and/or negotiate agreements
- ✓ Financial dimensions: including mortgages, rents and taxes
- ✓ Support to landless people: such as land grants, public housing or legal occupations
- ✓ Monitoring and feedback: human rights groups, local communities, civil society and bodies such as a Land Ombudsman to monitor current processes, provide accountability, new ideas or improvements
- ✓ Cultural roles and practices around land.

Land also has far-reaching consequences for development. Land related decisions are key elements of:

- ✓ "Assets and liabilities" discussions with Indonesia and Portugal
- ✓ Zoning for where industrial and residential activities can take place
- ✓ Water rights
- ✓ Local culture and identity
- ✓ Internal migration
- ✓ Financial education
- ✓ Credit systems
- ✓ Environmental management
- ✓ Land-based livelihoods
- ✓ Social safeguards
- ✓ Social stability and peace.

Registering Land Claims & Ita Nia Rai (INR)

In October 2007, the United States Agency for International Development (USAID) launched the Ita Nia Rai, "Our Land" project. USAID funds the project, and sub-

2003-4 claim registration process

In 2003 the government began a process to allow foreigners to register pre-2002 land claims (before the Constitution forbid foreign land ownership), as well as allow Timorese people to claim areas that were administered as State land. Seventy-two percent of these claims came from foreigners. The Ita Nia Rai process supersedes this earlier process.

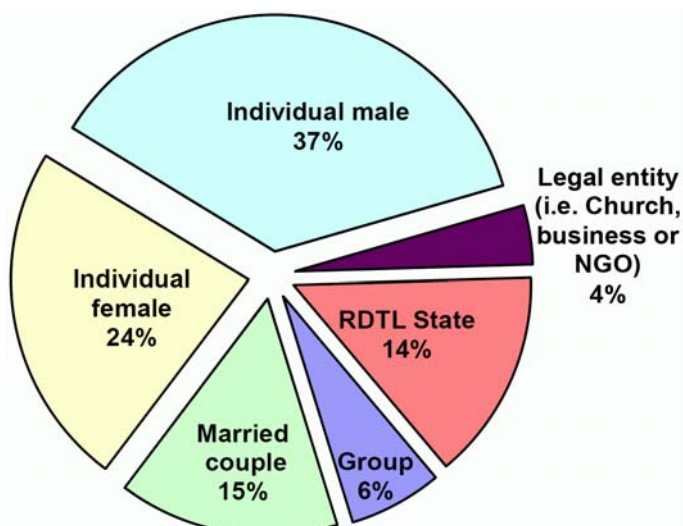
contracts Associates in Rural Development (ARD Inc.) to manage and implement it, together with other agencies. The INR project will run until 2012, and has five tasks:

1. Public information and awareness
2. Land policy laws and implementing regulations
3. Support to a National Land Commission (at present there is no NLC)
4. Land administration (cadastral, registration and land titling system)
5. Dispute resolution, mediation and processes for competing claims to land.

Ita Nia Rai's most visible activity has been registering land claims. This process allows individuals, groups (including married couples), organizations and the State to claim land within the project areas that they feel they have a right to. A person who wants to make a claim can provide documents or witness statements to prove their entitlement. INR then collates and displays a map of local land claims. People are free to make and challenge claims until the end of the display period, which is 30 working days. If there are multiple claims to the same land, disputants can take part in up to three mediation sessions, or go to court.

After the display period, no new claims can be registered for that area. However, people can update existing claim details, e.g. if land is sold or passed to others. In 2008 INR began pilot programs in Manatuto and Liquiçá. It has since registered claims in Baucau, Aileu, Bobonaro, Oecusse and Dili. INR plans to register 50,000 private land claims in district capitals by 2012.

Number of Ita Nia Rai claims through to 4 December 2009



This graph does not represent the reality of land claims so far. It shows the number of claims, the number of land parcels claimed is fewer (as more than one person or group may claim the same land).

The project has encouraged married couples to register joint claims, as a key strategy of promoting women's land rights. In Manatuto, culturally women are more likely to be landowners, and as Manatuto and Liquiçá have registered many more claims (as they were pilot projects) this also distorts figures. As the project extends from town centers, a higher percentage of individual male claims are registered, and land parcels increase in size. These parcels will increase in value as towns expand. Most of the "legal entity" claims in this graph are from the Catholic and other churches.

Land Registration in Timor-Leste

Claims registered under the Ita Nia Rai project (to 4 December 2009)	6,423 (7 districts)
Claims through the 2003-4 land claim process.	12,329
Titles issued by Indonesia (approx.)	47,000*
Titles issued by Portugal	2,843*

* These titles include ownership, as well as titles that provide rights to use land. These titles were issued to foreigners and Timorese people.

INR's public information process is more extensive than many other donor and government projects. It also records and presents information through maps, photos and oral statements. This makes it easier for people who have difficulty reading to participate, and others can learn from this model. The community also has a key role in making and verifying claims.

Its major flaw is its evaluation process. So far this has been weak and not systematic. It has not yet sufficiently harnessed community expertise in improving and strengthening the project. INR extended the claims process beyond the pilot areas even before community surveys of pilot projects began.



INR staff records a land claim in Liquiçá

Community and Rural Land

Many of Timor-Leste's high profile land conflicts are outside urban areas, and rural land hosts various private sector, state and community developments. Despite this, few land initiatives focus on rural needs. World Bank and Australian National University researchers estimate that over 90% of Timor-Leste's land is community land or customary land.

Decisions about community land are complex and must balance the need for safeguards for community land holders, (e.g. protections by the State), with strong community land rights (protection from the State). During the Indonesian occupation large areas of community land were taken and reclassified State land, with the intention of giving this land for private company use.

The INR project will influence community land in two key ways: through its support for the transitional Land Law and through its land claim registration process. The INR project plans to register land in district capitals (towns and areas near towns), which are less strongly governed by community and customary land systems. The benefit of this is that it does not apply inappropriate ownership structures to community land. While this acknowledgment of the difference between community/customary land needs and other land rights is important, it is only a first step. (The Civil Code drafted by the Ministry of Justice does not acknowledge community land at all).

However, we need a much deeper public discussion about how community/customary land interacts with the formal land system. In the absence of this discussion, community/customary land rights are overlooked or decided by a small number of policy-makers. This leaves no room for community and customary landholders to contemplate and contribute meaningfully to policies and processes that fundamentally affect their future. We cannot, and should not, expect to resolve questions about community and



Land Network training for district-based civil society members

Private Sector Investment

Many developing post-conflict countries, such as Cambodia, threaten people's land rights by prioritizing "get rich quick" large scale private sector schemes, often by foreign companies, over the rights of local people and businesses. These projects can lead to evictions, and are often based on contracts which communities do not fully understand. Investors often exaggerate the benefits of their projects.

Simply creating land rights will not attract private sector investment that supports Timorese people. In fact, it may attract irresponsible companies hoping to take advantage of people's unfamiliarity with the new system, or to exploit loopholes. Solidifying land rights sends a strong message that Timor-Leste only wants ethical investors who will support Timor-Leste's development. This focus on land rights can include assistance to landowners to make informed decisions about how and if they invite private sector investment onto their land. This assistance could include land rights education, legal safeguards, support with negotiations and access to independent advice such as information about the investor's previous activities.

Several RDTL Ministers have undermined land rights by offering large areas of land under local use to foreign companies such as GT Leste Biotech (2008) and Timor Global (2005). The government has also enforced evictions, often with insufficient notice or without support to ensure that evictees have alternative arrangements. The unbalanced Timor Sea negotiations with Australia deprived Timor-Leste of territorial waters that it is entitled to under international legal principles.

customary land immediately. However, we do need clear plans for a process to engage meaningfully with community and customary landowners and to initiate extensive and deep community discussions.

The Future?

Land policies will have long-lasting consequences, and impact on food security, economic development, the environment, women's rights and many other sectors (see Land as a System, page 2). However, there is little cooperation between the Ministry of Justice and other government departments to plan and coordinate activities and obtain input into land processes. If the Council of Ministers passes the draft Land Law it could reach Parliament in the first half of 2010. Yet there is little planning or preparation for implementing this far-reaching law. Activities that are needed include land rights education, intra-governmental planning processes, training in land-related sectors, monitoring processes, increased legal or para-legal support, and support for evictees – especially those who rely on land for daily needs.

Civil society analysis and advocacy on land issues is also weak and under-developed. Many NGOs, community groups, not-for-profit enterprises and justice advocates do not yet realize how land processes will affect their activities. These groups need to consider what they can

do to support people to understand and assert their land rights. In other countries support for land rights includes bringing land cases to court, protecting land-based livelihoods, fighting unfair evictions and influencing draft legislation. It is also important to help people avoid debt that forces them to sell their land. People must know all the consequences of land agreements before they sign, to ensure strong community and customary land rights.

In addition to USAID, other international agencies are involved in Timor-Leste's land policy. Foreign advisors under the Portuguese government bilateral support to the Ministry of Justice (MoJ) are centrally involved in developing future land rules and structures. The MoJ has asked the International Organization for Migration (IOM), as well as a Portuguese legal firm, to draft a decree law on the compensation mechanism. The MoJ is also investigating ways to undertake the land valuation for compensation. The World Bank's Justice for the Poor program is preparing to contribute policy advice on third party use of community/traditional land in order to promote private sector investment.

Recommendations

La' o Hamutuk recommends that land decisions should be approached holistically. This includes identifying key underlying principles for a land system, as well as greater cooperation and planning. Land decisions are not "one size fits all." Decisions about the land system should be inclusive. They should seek to find the "best workable solution," given that each person has their own unique circumstances and experience about land.

A National Consultation Process on Land Policy

A national consultation process should:

- ✓ Generate broad public discussion and input
- ✓ Reach the suco level
- ✓ Involve a range of stakeholders including government departments, small business, NGOs, academics, vulnerable people such as youth, women, veterans and IDPs, traditional authorities and people in both rural and urban areas.
- ✓ Form the basis for policy-making on land issues
- ✓ Identify guiding principles
- ✓ Discuss the benefits and risks of various options, such as on community land
- ✓ Identify a structure responsible for follow-up on decisions from the consultation. This could include a Land Summit and/or a Land Commission.

Think Ahead

Government and civil society should invest in education and preparation for the needs of a new land system. Government should also prepare to invest in more land-related institutions, e.g. a Land Commission or a Land Ombudsman, to monitor and provide recommendations on the new land system, and an independent information service for the public. ♦

Land Glossary

Civil Code: This law includes decisions on rules about how land is administered. It and the Penal Code are Timor-Leste's basic laws. The draft Civil Code had a six-week consultation in 2008-9. Its more than 500 pages have not been translated into Tetum.

Community Land: Land governed under a locally recognized system of rules and rights, or belonging to members of a group that may include people who do or do not have a traditional link with the land. Community land can include family or individual land plots, as well as common land (that everyone can use).

Customary Land: Land governed under a customary system for managing and administering land, or belonging to members of a group with a traditional link with the land.

Ita Nia Rai (our land): A project funded by USAID that works to strengthen private property rights through registering land claims, supporting the development of land laws and other processes. (See page 3).

Land Cadastre: A public record, survey or map of the value, extent and ownership of land.

Possession: Use of the land. This may include living on it, building fences, farming or managing natural resources. This use can be by individuals, groups, communities or the State.

Private State Land: Land that the State owns, and can manage in its interests, to the exclusion of the public. All profits from this land go to the State.

Public Land: Public land is land which no single person or entity owns – for example beaches. The State administers this land on behalf of the people.

Special Adverse Possession: The ability to gain land ownership because of continuous possession on someone else's land since December 1998. (Proposed under the transitional Land Law).

Title: An official government document that recognizes a person or group's ownership or right to use a particular area of land. Ownership titles issued by Portugal and Indonesia are *propriedade perfeita* and *hak milik*. Right to use titles include *aforamento*, *hak guna bangunan* and *hak guna usaha*.

Transitional Land Law: A one-off law to address past land issues. It decides who owns what land in Timor-Leste, and refers to related processes i.e. compensation and evictions. It links to the Civil Code by recognizing the types of rights to use or own land that exist. Currently in draft form. (See The Transitional Land Law, next page).

USAID: A United States of America government agency that works on overseas development and aid.

The Transitional Land Law

For definitions of underlined words see glossary page 5.

The transitional Land Law (Lei de Terras) is a one-off law to address past land issues by resolving the current confusion about land ownership. The proposed transitional Land Law will create a structure to decide who owns what land in Timor-Leste and the government will then use land claims information to issue land titles. It also impacts the future land system by recognizing the types of rights to use or own land that exist. The transitional Land Law also aims to set general principles for compensation, determine who decides disputed cases and outline processes for evictions resulting from this law. Ita Nia Rai is centrally involved in preparing the transitional Land Law for the Ministry of Justice.

An effective transitional Land Law will clarify who owns land, and help people to resolve uncertainty over land ownership. A poorly written law could create new conflicts and exacerbate existing land disputes.

Types of ownership and land use rights

The draft transitional Land Law specifies who can own land: individuals, legal entities (e.g. NGOs and companies) and recognizes two types of State land, public and private. Foreigners have the right to use land, but not to own it. The latest draft also recognizes two types of community land - community domain (which is a zone that allows certain protections, although property within this zone may be individual private land, State or community owned). There is also a community property land right registered in the community's name.

This type of law should establish the types of ownership and land use rights that are most appropriate for local circumstances. Countries have approached this issue in different ways. For example, in Mozambique only the State can own land. It gives rights of use to others, such as the community or a private company. In Vanuatu there is no private land ownership. Individuals can access land through the community, e.g. as community members, or through leases. In Timor-Leste there has been little public

discussion about the types of ownership or land use rights that are most appropriate.

While many countries use the types of categories listed in the transitional Land Law, they do not necessarily reflect a decision reached by Timor-Leste's people. (Significantly stronger rights for community landholders have been added to the draft transitional Land Law in response to community and civil society concerns.) This fundamental decision has been made by a small group of policy makers, rather than through a national dialogue.

Making laws reality

A well-developed law alone will not necessarily bring positive change. Institutions and support systems are also needed to ensure that this fundamental change in land structures does not lead to vulnerable people losing their land. More secure land titles will increase land prices and demand. This is one reason why safeguards should be in place before the transitional Land Law is implemented.

As of early February 2010, the Ministry of Justice is finalizing the text of the transitional Land Law. It will then go to the Council of Ministers and to Parliament.

The Land Law will:

- ✓ **Recognize different types of existing land use and ownership rights** for Timorese citizens as individuals, groups, legal entities or the State. These include: Indonesian and Portuguese titles, Possession, Special Adverse Possession (continuous possession on someone else's land since 1998) and Public Land.
- ✓ **Create a structure to decide who gets land where there are two or more legitimate claims.** This structure rates the existing land claims from strongest to least strong. If there are two or more claims that have a recognized right to the land (see above) this structure determines who will get the land, who receives compensation and who doesn't.
- ✓ **Create a three-person Cadastral Commission** to decide land disputes, after which people can choose to go to court.
- ✓ **Describe the process for evictions.** Where the ownership right goes to someone other than the person/group currently using the land, they have 30 days to leave. However, if this use is as their family home and they do not have access to alternative housing, they can stay for up to 18 months.
- ✓ **Identify the need for future laws.** This includes decree laws on the mechanisms for compensation, a Cadastral Commission, public domain land and people occupying abandoned land formerly owned by foreigners. A parliamentary law will decide the financing and structure of the Property Fund.
- ✓ **Set key principles for the Property Fund**, a State managed fund to provide compensation for land loss to one person/group where there are two or more legitimate claims to the same land. Compensation will be based



Members of the Ermera Agricultural Workers Union analyze the draft Land Law. (Photo from KSI).

on the value of land at the time that the land was taken/ transferred to someone else. The State will provide most of the funds and make the initial payout. People who gain their land ownership through Special Adverse Possession will repay money to the Government. (Government can choose to waive this debt.) The Property Fund will also provide funds for additional housing and “other duties arising from this law.”

- ✓ **Describe arrangements for foreigners who owned land when the 2002 Constitution took effect.** Article 54.4 of the Timor-Leste Constitution forbids non-Timorese nationals from owning land. The law provides for no-cost arrangements for land access for the Church.
- ✓ **Replace** the transitional law about State land (2003) and transitional UNTAET regulation.
- ✓ **Create Community Protected Zones in community/ customary land areas.** These areas may include State owned land, individual and community private property. The State is responsible for ensuring that third party use of land in Community Protection Zones benefits the community; is environmentally, socially and culturally sustainable; and respects the community’s way



Bairro Pite residents face eviction by the Government with no provision for alternative housing.

of life. The community must be consulted before third parties can use land in the Community Protection Zone.

- ✓ **Create a community property right.** The community property right is in the name of the community, and the management of community property is according to custom and use. This land cannot be sold or seized.

Community Land

There have been various proposals for community/ customary land, which have improved significantly. Although early drafts integrated the community into existing individual or State land rights, which would leave communities in an especially vulnerable position, the latest draft creates clear and specific community land rights.

Although the law outlines several good protections, and recognizes that each community structure and needs are different it does not state how communities have a legal voice, i.e. who is or represents the “community” in decisions about community land, for example contracts. These details should be elaborated in future and arise from lengthy, inclusive, informed and far-reaching public discussion at the national and local level.

Recommendations: (See also Land Justice Recommendations, page 5.)

- ✓ Begin Government cooperation and planning on services and safeguards to support a future Land Law. A clear policy for how the draft Land Law will be supported by implementation activities should be developed and presented together with the draft Land Law when it goes to Parliament.
- ✓ Sufficient time should be allowed to enact these activities before the Land Law comes into effect.
- ✓ Place the mechanism for compensation and the Property Fund under a single parliamentary law.
- ✓ The Government should establish a clear planning process for state and other stakeholders.
- ✓ The Government should make plans for an inclusive and lengthy process to engage with communities to decide the future of community and customary land.
- ✓ The Land Law should recognize areas where there will be a legal vacuum and provide interim protections until there are further legal decisions to address this.
- ✓ Civil society and other groups should analyze how changes to land will affect their work.
- ✓ The Ministry of Justice should translate the draft Civil Code into Tetum and hold another public consultation. ❖

Who is La’o Hamutuk?

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Public Consultation on the Land Law

The initial public consultation on the draft Land Law took place between June and August 2009, then extended until 1 November. Later drafts incorporated some public feedback, further exploring community land issues and clearly stating that non-Timorese citizens, as individuals or groups, cannot own land. The process for public consultation was better than other laws, but this is a law with far-reaching implications and most people still do not know about it.

The civil society Land Network identified several shortcomings in the consultation process:

- ◆ Information was not provided at the suco and aldeia levels.
- ◆ Scheduled dates for meetings changed frequently, often not confirmed until the last minute.
- ◆ The vast majority of participants were unaware of key elements in the law before the meeting, and have complained that they were therefore not able to provide constructive input or represent community views.
- ◆ Few women spoke.
- ◆ Most meetings allowed only one hour for participants to talk.
- ◆ Vulnerable people such as widows, veterans, IDPs and young people's voices were rarely heard.
- ◆ Many Xefe Sucos and Aldeias explained that they are responsible for helping to mediate land disputes, and if people do not know about the draft law or trust its decisions it will create problems.
- ◆ Some information provided by Ita Nia Rai and the Ministry of Justice about the law was incorrect or misleading.
- ◆ The consultation did not establish fundamental principles to guide Timor-Leste's land and development process (that would be needed to make up for the lack of broad public dialogue on issues this law effects)

As a result, key questions were unexplored:

- ◆ Who has the legal right to make decisions about outsider use of community land and sign contracts on behalf of the community?
- ◆ How can we ensure that people in rural areas can access land arbitration and other services?
- ◆ Who is responsible for ensuring the accountability of the transitional Land Law's process?



Throughout the district consultations the Minister of Justice spoke out strongly for women's land rights.

The government consultation on the draft Land Law was held in 13 district capitals. About 20 more meetings were organized for sub-districts. This table is based on the Land Network's monitoring of 11 district meetings. It shows the number of minutes members of the public could speak, followed by the numbers of women and men who spoke.

<u>District</u>	<u>Minutes</u>	<u>Women</u>	<u>Men</u>
Manatuto	59	6	17
Baucau	90	2	23
Lautem	50	3	14
Viqueque	64	6	15
Manufahi	61	5	22
Ainaro	60	1	17
Aileu	61	5	15
Bobonaro	51	0	23
Covalima	33	3	16
Ermera	120	1	N/A
Liquiçá	73	1	27



NGO Forum Lautem District Liaison Officer Juliana de Jesus raises issues about women's participation in preparing the Land Law.

Timor-Leste Participates in Global Action against Climate Change

In order to strengthen Timor-Leste's involvement in global action on climate change, the Civil Society Working Group on Climate Change organized a public meeting on 19 October 2009 at the HAK Association in Dili.

The speakers were Dr. João Gonçalves (Minister of Economy and Development), Expedito Belo (United Nations Development Program (UNDP) Timor-Leste - Program Officer for Poverty Reduction and Environment Unit), and Maximus Tahu (*La'o Hamutuk* and Civil Society Working Group on Climate Change). Participants included government officials, members, international agencies, students, NGOs and others.

Minister João Gonçalves explained that at the UNFCCC conference in Copenhagen, Timor-Leste will support a mechanism that requires countries that have caused the most climate change to provide financial and technological support to countries facing the impacts of their actions which damaged the climate. The Timor-Leste government supports amending the Kyoto Protocol, rather than creating a new protocol, because a new protocol will require all the countries involved to sign and ratify a new agreement before it can enter into force.

According to Expedito Belo, UN support for climate change programs in Timor-Leste is directed at managing and supporting the implementation of the National Adaptation Program of Action (NAPA) and the Initial National Communication project which are funded by the Global Environment Facility (GEF). GEF was entrusted as a financial mechanism for both the UN Convention on Biological Diversity and the UNFCCC. The UN also manages other small grant funding for climate change programs.

Kyoto Protocol: A protocol under the United Nations Framework Convention on Climate Change (UNFCCC) that regulates global action on Climate Change from 2007 to 2012.

UNFCCC in Copenhagen, December 2009: Conference of governments who become parties to the UNFCCC that will decide new mechanism against climate change to take effect after 2012.

Climate: Climate is commonly defined as the weather averaged over a long period of time.

Maximus Tahu (*La'o Hamutuk* and Civil Society Working Group on Climate Change) focused on how Timor-Leste can contribute to global action against climate change. As a country in the process of establishing a lot of its infrastructure and services, Timor-Leste has a big opportunity to implement a sustainable development model that does not destroy the climate. Although Timor-Leste is not required to lower its emissions, we have a moral responsibility to contribute to repairing the climate. Timor-Leste can make a significant contribution by modeling sustainable development for other countries. Maximus also asked the Timor-Leste government to defend the principle of Climate Justice at Copenhagen – that countries which contribute more to destroying the climate have more responsibility to repair it. Action against climate change should also respect indigenous people, local cultural values, human rights, gender equality, democracy and biodiversity. ❖



Minister Gonçalves speaks at the public meeting. More details, including the presentations, are on *La'o Hamutuk's* website.

Two *La'o Hamutuk* staffers participated in the worldwide Climate Change conference in Copenhagen, and we will report on their findings in a future *Bulletin*.

Donor, oil and other money in Timor-Leste since 1999

Between mid-1999 and mid-2009, bilateral and multilateral agencies spent approximately \$5.2 billion U.S. dollars on programs related to Timor-Leste. Of this, only about one-tenth – \$550 million – entered into Timor-Leste's economy, as shown below and on the next page.

It is difficult to obtain consistent, complete or accurate data. Money goes through many channels, including trust funds, budgetary support for the RDTL government, UN missions, foreign military forces, and donor-managed projects inside and outside government agencies. Figures from donors and recipients differ, and the government has inconsistently reported aid received over the years. At least one-fifth of promised donations are never delivered, and budget/fund execution usually falls short of the amount planned. Nevertheless, we have tried to make accurate estimates when authoritative data is conflicting or unavailable.

Clearly, \$5.2 billion is a lot of money (coincidentally about as much as Timor-Leste has saved in its Petroleum Fund to date), one of the highest amounts of aid per capita in the world. At first glance, one might think that donors are paying unofficial “reparations” for their complicity in and blindness to the illegal Indonesian occupation. If it were shared equally among Timor-Leste's citizens, this would provide \$1.48 per person per day, enough to support a lifestyle slightly above the poverty line.

Unfortunately, only a small fraction of this money came

into Timor-Leste to circulate in our local economy. Nearly 90% of it was spent on international salaries, foreign soldiers, overseas procurement, imported supplies, consultants, overseas administration, etc. We estimate that \$550 million entered Timor-Leste. When distributed to our people, this would be 15¢ per person per day – one-sixth of the estimated poverty line.

Basic economics

During the last ten years, Timor-Leste earned \$5.6 billion from selling oil and natural gas, as well as \$287 million from investing its Petroleum Fund. Since independence in May 2002, Timor-Leste's government has spent \$1.1 billion from petroleum revenues, as well as \$204 million in budgetary support from donors and \$304 million raised with domestic taxes and fees.

During the same decade, Timor-Leste's non-oil GDP totaled \$3.5 billion, less than the income from petroleum or the amount of foreign assistance. GDP per capita has grown from \$316 in 1999 to \$462 in 2008, overcoming falls when UNTAET left and during the 2006 crisis.

After petroleum money became available, state expenditures grew rapidly. Until 2005, they were \$70-\$90 million each year, increasing to around \$120 million/year in 2006 and 2007. During 2008, the RDTL government spent \$480 million, and it expects to spend \$681 million in 2009.

Table 1. Assistance allocated to Timor-Leste, July 1999 – June 2009

In most cases, the amount spent or received is listed, rather than what was promised or budgeted.
All dollar amounts in millions of U.S. dollars-of-the-day, without adjusting for inflation.

Form of assistance	Year	Amount	Entered TL economy
United Nations Missions (mostly for PKF soldiers, international staff, logistics, etc.)	1999-2009	\$2,353	6.4%
UNAMET	1999	\$92	5.0%
UNTAET	1999-2002	\$1,430	5.4%
UNMISSET	2002-2005	\$302	5.4%
UNOTIL	2005-2006	\$22	10.0%
UNMIT	2006-2009	\$507	10.0%
International military forces (Not including UN PKF, which is listed above)		\$750	0.7%
Interfet (paid by contributing countries and Japan)	1999-2000	\$250	
International Stabilisation Force (ISF, mostly paid by Australia)*	2006-2009	\$500	
TFET (Trust Fund for East Timor) (Donor money managed by World Bank and ADB)	2000-2005	\$170	20%
Donor budgetary support (Donor direct grants to TL government budget)	See Table 2	\$204	50%
Bilateral and multilateral donor projects	See Table 2	\$1,730	15%
Grand total		\$5,207	10.6%

* Australia values its ISF costs higher. We have tried to estimate the additional cost of deploying these soldiers to Timor-Leste rather than keeping them in Australia and New Zealand

The 2010 budget appropriates less (\$660 million), although the Government plans to increase it with a mid-year adjustment which will probably include borrowing from overseas sources. We are concerned that these loans will not result in enough lasting economic growth to enable them to be paid back, especially as oil income drops.

Officials and experts claim that Timor-Leste's domestic economy is growing rapidly, often parroting IMF estimates that non-oil GDP grew by 12.8% between 2007 and 2008. *La'o Hamutuk* sees this differently, as we explained in our submission to Parliament on the 2010 State Budget. During 2008, government expenditures grew by \$300 million, while the non-oil economy grew by only \$100 million. In other words, the part of the economy not fueled by government spending shrank during 2008.

Timor-Leste has a huge trade deficit. During the 5½ years since the beginning of 2004, the country imported \$926 million in merchandise, while non-oil exports totalled \$46 million. For the last three years, more than half of the entire non-oil GDP has paid for imports. During 2009, Timor-Leste imported \$280 million worth of merchandise while exporting about \$8 million (98% of which

was from selling coffee).

Timor-Leste's petroleum production and revenue from the Bayu-Undan field peaked at \$2.4 billion in 2008, dropping to \$1.6 billion in 2009, \$1.4 billion in 2010 and to zero by 2024. Sunrise and other fields could provide similar revenue levels for 25 years more. In total, Timor-Leste might receive as much as \$35 billion in oil revenues before the fields run dry in two generations. Shared among our population at that time, this is about \$10,000 per person, which can help improve our lives, but is not enough even to make us rich or even middle-class.

These revenues will cease during the lifetimes of most of today's children. What will we have to replace them?

Import dependency, rapid budget growth, non-sustainable government programs and unrepayable debt are classic symptoms of the "resource curse," where money which comes in easily is spent without much planning or thought. But when that money ends, poverty will increase and if we cannot grow our own food, we will go hungry.

If other sectors of the economy have not grown much larger by 2024, people will die. Donor assistance cannot save us from our own lack of foresight. ❖

**Table 2. Annual assistance, state budget and economy overview
July 1999 – June 2009**

Year*	Donor projects	Budget support	State expenditures	Non-oil domestic revenue#	Oil revenue spent	Oil revenue saved	Non-oil GDP+	Imports	Exports
1999	82	26	n.a.	2	0	0	126+	n.a.	n.a.
2000	152	32	n.a.	14	14	0	288	n.a.	n.a.
2001	197	23	n.a.	20	11	0	335	n.a.	n.a.
2002	202	33	69	19	29	0	313	n.a.	n.a.
2003	199	35	67	29	41	0	306	n.a.	n.a.
2004	189	34	71	34	64	205	309	114	7
2005	105	10	93	37	85	366	332	102	8
2006	150 (est.)	11	137	41	260	733	321	88	9
2007 (6 mo)*	99	0	56	20	40	633	398	199	8
2008	223	0	480	45	396	2004	499	258	13
2009 (6 mo)‡	132 (proj.)	0	181	43	200	817	295+	164	2
Total	\$1,730	\$204	\$1,154	\$304	\$1,140	\$4,758	\$3,523	\$925	\$46

* From 1999-2001, UNTAET and then from 2002-2007 Timor-Leste used a July-June fiscal year. Beginning in 2008, Timor-Leste budgets on a calendar year basis, with 2007 as a transitional half-year.

‡ This table covers the ten years from July 1999 through June 2009. Petroleum revenue, state expenditures and trade data for 2009 is actual for the first half of the year; other 2009 figures are estimates for that period. Data compiled by *La'o Hamutuk* from many sources, including UN General Assembly reports; OECD online database; RDTL budgets, execution reports, and papers for Development Partners' Conferences (RDTL Ministry of Finance); Petroleum Fund Quarterly Reports (BPA), *Review of Development Cooperation in Timor Leste* (NORAD, 2007), *Economic Impact of Peacekeeping* (Carnahan et. al., Peace Dividend Trust, 2005); *Independent Analysis of UN Contributions to Timor-Leste Economy* (Peace Dividend Trust, 2007).

Money earned by Timor-Leste from domestic taxes, user fees, customs, etc. This stopped growing in 2008 due to the tax cuts in the Tax Reform Law.

+ GDP and trade data are by calendar years (including the full year of 2007). For the half-calendar-years of 1999 and 2009, the annual GDP has been halved.

The rest of this *Bulletin* contains articles from several viewpoints about the continuing need to end impunity for crimes committed during 24 years of Indonesian military occupation. As Timor-Leste enters its second post-occupation decade, *La'o Hamutuk* hopes that these articles will help the Timorese people and the international community strengthen the sovereignty of this country to resist continuing political and diplomatic pressure from our neighbors.

Justice for Timor-Leste: An International Obligation Not Yet Met

Indonesia's illegal invasion and occupation of Timor-Leste killed between 100,000 and 200,000 people between 1975 and 1999. The United Nations General Assembly condemned the brutal military occupation eight times. However, military and political support from Australia, the USA, Britain and other countries made it possible. As documented in the *Chega!* report, it included countless Crimes Against Humanity, War Crimes and other crimes of universal jurisdiction.

Ten years after Timorese voters bravely and peacefully voted for independence, persistent impunity for those crimes continues to haunt our people and create problems for this nation's future. None of the principal perpetrators have been brought to trial, and the model of "big men" not being held accountable for criminal acts permeates Timor-Leste's society, often breaking out into violence and retaliation facilitated and encouraged by the expectation of impunity.

The effort to cement relations with Indonesian leaders have prevented the peoples of Indonesia and Timor-Leste from understanding and coming to terms with the crimes that were committed in their names and against their families. It impedes the development of human rights and democracy in Indonesia and obstructs Timorese victims from overcoming their traumas and moving on with their lives.

Furthermore, it makes hypocrites out of leaders of the United Nations and some member states. They repeatedly told the people of Timor-Leste that they would not allow impunity to prevail, but have failed to implement effective mechanisms to achieve justice. This example - leaders' promises not being followed up with action - is detrimental to our new democracy.

Respecting the past

In October 1975, Indonesian soldiers assassinated five foreign journalists working for Australian media, and the soldiers murdered a sixth during the invasion two months later, along with tens of thousands of Timorese noncombatants. These crimes marked the start of a quarter-century of atrocities, mayhem, massacres and other human rights violations that

enforced an illegal foreign military occupation. Not one of the political and military leaders who designed and ordered these crimes have been held to account, and many continue to hold positions of power and influence in Indonesia and elsewhere.

By April 1999, the international community was shocked by the overt brutality of massacres at the church in Liquiçá and the home of Manuel Carrascalão in Dili. Although the Indonesian military had killed thousands of times more people during the previous 23 years, these killings were witnessed by foreigners who had come to Timor-Leste to prepare for the upcoming referendum. They were part of a systematic campaign of terror, violence and intimidation by the Indonesian military and the militias they directed intended to subvert and prevent the vote.

Crimes against Humanity committed in Timor-Leste between 1975 and 1999 directly violated UN Security Council and General Assembly resolutions. Those committed after May 1999 also contravened a United Nations-brokered agreement which assigned responsibility for security to the Indonesian police during the referendum. United Nations staff were among the casualties, but all humanity has an obligation to prosecute such offenses to ensure that they will not happen again.



Survivors of the 17 April 1999 massacre at the Carrascalao home in Dili still await justice.

The International Criminal Court has no jurisdiction over crimes committed before it was set up in 2002. If it had been established earlier, high Indonesian officials would likely be in its dock. But since it was not, the United Nations and the international community have an obligation to the people of Timor-Leste, and to humanity, to create a mechanism which can achieve justice.

What has been done so far?

Following Indonesia's tumultuous withdrawal from Timor-Leste in late 1999, the United Nations established a Commission of Inquiry and at the same time, Indonesia established the Commission for Human Rights Violations in Timor-Leste (KPP-HAM) which in 2000, both the UN Commission and KPP-HAM recommended that an international tribunal be established if efforts by Indonesia, the United Nations, and Timor-Leste failed to end impunity. A decade later, impunity still prevails and its consequences are manifest. Below is an overview of the mechanisms so far, none of which has provided accountability.

UNTAET/RDTL Serious Crimes process

The United Nations Security Council established the Serious Crimes Unit (SCU) and Special Panels in Timor-Leste in 2000. Collectively known as the serious crimes process, the SCU and Special Panels became a joint Timor-Leste-UN undertaking after independence in 2002. The SCU indicted 391 people, including former Indonesian military chief General Wiranto, but brought only 87 to trial, of whom 84 were convicted. More than 75% of those indicted, including all non-Timorese, remain free in Indonesia, some in positions of power. The UN and Timor-Leste have issued arrest warrants for 303 indicted people who remain at large.

When the SCU process concluded on 20 May 2005, it identified 469 murders from 1999 that it had not investigated at all. Materials from the Serious Crimes process are archived in New York and Timor-Leste. During 2007 and 2008, President Jose Ramos-Horta freed many of those convicted by the Special Panels, using his Presidential power to grant clemency and reduce sentences. Only one of these 84 convicted criminals is currently in prison.

In August 2009, Timor-Leste police arrested alleged mass murderer Maternus Bere after he came across the border from Indonesia. Bere, a militia leader who had been indicted by the SCU in 2003 for leading the September 1999 massacre at Suai Church, was imprisoned pending trial. However, Indonesian pressure coerced Timorese leaders to illegally return him to freedom in Indonesia, a dangerous erosion of justice, accountability and Constitutional rule of law (see editorial, back page).

Indonesian "Ad hoc" Human Rights Court

Indonesia established its Ad-Hoc Human Rights Court on Timor-Leste to fend off calls for an international tribunal. Trials began in Jakarta in 2002. This process was widely denounced as a sham. Eighteen people were indicted for failing to prevent crimes against humanity in Timor-Leste during 1999 (rather than for giving orders to commit such crimes), with no attention to the first 23 years



Timor-Leste President Xanana Gusmão meets Indonesian Presidential candidate former General Wiranto in Bali in May 2004. A Timor-Leste judge had issued an arrest warrant for Wiranto a few weeks earlier, based on the February 2003 SCU indictment of Wiranto for Crimes Against Humanity.

of the occupation. Twelve were acquitted in the first trial, and the remaining six convictions were overturned by Indonesia's Appeals Court. Militia commander Eurico Guterres, a Timor-Leste civilian, was the last to be freed; he ran for Parliament in the recent Indonesian election.

UN Commission of Experts

In February 2005, Kofi Annan appointed the Commission of Experts (COE) to evaluate existing judicial processes and propose next steps to hold accountable those responsible for serious crimes in Timor-Leste in 1999, as UN members did not have the political will to look into earlier crimes. The COE reported in May 2005, and the Security Council asked the Secretary-General to provide "practically feasible" recommendations, which he did more than a year later.

The COE found that the trials of Indonesia's Ad-Hoc Human Rights Court were "manifestly inadequate," showing "scant respect for or conformity to relevant international standards." The report stated that the UN-backed SCU and Special Panels process had attained a "notable degree of accountability," but observed that it had been hampered by inadequate resources, insufficient support from the Timor-Leste government, and a lack of cooperation by Indonesia.

The COE recommended that the Indonesian government be given six months to show it was serious about prosecuting high-level perpetrators. Should Indonesia fail to act, the COE urged the Security Council to consider establishing an international criminal tribunal. The COE also recommended that the UN revive the SCU and Special Panels for Serious Crimes temporarily to manage appeals and protect case files, with a clear strategy for the handover of their functions to local institutions.

In July 2006, the UN Secretary-General responded to the COE report by recommending reinstituting interna-

tional support for investigations and indictments of serious crimes committed in 1999, but not restoring the prosecutorial component of the SCU.

UNMIT Serious Crimes Investigating Team

The Security Council mandated UNMIT to help finish investigations of all serious crimes committed in 1999 (but not earlier), but did not give it authority to issue indictments or conduct trials. Timor-Leste's justice system is responsible for indictments, prosecutions and trials, including of alleged perpetrators previously indicted by the SCU. So far, the UNMIT Serious Crimes Investigating Team (SCIT) has completed about 100 investigations into the 396 outstanding cases, submitting reports to the Office of the Prosecutor-General for his consideration. With a 5,000 case backlog at the Prosecutor-General and no political will in Dili to bring these cases to court, this process is another empty promise.

Commission for Reception, Truth and Reconciliation

An independent body created and operated with the support of the United Nations, the Commission for Reception, Truth and Reconciliation (CAVR) has produced the most comprehensive documentation to date of the 1974 to 1999 period in Timor-Leste, covering the entire Indonesian occupation. Its 2,500-page final report *Chega!* (Portuguese for *Enough!*), urges increased attention to crimes from before 1999 (which include 99% of the killings).

The report strongly criticizes the role of the international community in supporting Indonesia's invasion and occupation of Timor-Leste, and calls on these governments and the UN to discuss the report in order to learn the lessons of the invasion and occupation. CAVR recommends that the UN Security Council "be prepared to institute an International Tribunal pursuant to Chapter VII of the UN Charter should other measures be deemed to have failed to deliver a sufficient measure of justice and Indonesia persists in the obstruction of justice." *Chega!* also recommends apologies and reparations from the governments of Indonesia, the U.S., Britain, Australia and others, as well as from Western arms manufacturers who supported Indonesia's actions.

Indonesia/TL Truth and Friendship Commission

In late 2004, the presidents of Indonesia and Timor-Leste proposed a bi-national Commission of Truth and Friendship (CVA/CTF) in an unsuccessful effort to dissuade the UN Secretary-General from appointing the Commission of Experts. The Commission was mandated to establish a "shared historical record" of human rights violations before and after Timor-Leste's 1999 referendum. It could recommend amnesty and propose people-to-people reconciliation efforts. However, it could not recommend prosecution or other judicial measures, and it had no power to compel testimony or cooperation.

The UN's COE found that the CTF's terms of reference contradicted international and domestic laws, and included no mechanisms for addressing serious crimes. The COE recommended that the governments revise the terms of

reference as a precondition to receiving international support. When that recommendation was ignored, the UN decided not to participate or testify in the CTF process.

In July 2008, the CTF gave its report to the Presidents of Timor-Leste and Indonesia, making it public soon afterwards. Given its highly-restricted mandate, the report was better than expected: it did not recommend amnesties (because no alleged perpetrators had fully cooperated), and found that the Indonesian government had institutional responsibility for crimes committed in Timor-Leste.

Post-crisis reconciliation

Since the 2006 crisis, it has become fashionable to address conflicts, traumas and culpability from past criminal violence with dialogues, community meetings, national fora and other ways which allow people to express their frustrations and disagreements, followed by some sort of "reconciliation." Although this may be useful in resolving local conflicts and addressing petty crimes, they ignore the fundamental truths of the 1975-1999 crimes against humanity: they were directed by a foreign government which illegally invaded and brutally occupied Timor-Leste. Indonesia has made progress since the darkest days of the Suharto dictatorship, but its government still shields perpetrators from justice, making closure or even fact-finding impossible.

Although Timor-Leste's President and others are reluctant to re-open the wounds of the past, most of Timor-Leste's people suffer from post-traumatic stress disorder, which hide under the surface calm, to emerge sporadically in unpredictable ways. Until this abscess is removed, they cannot live normal, stable peaceful lives.

Where to from here?

Some in Dili have been worn down by institutional and political resistance to genuine justice and have begun to accept "transitional justice" or "conflict resolution." Feeling pessimistic about the commitments of governments to keep their promises, they support short-term projects such as "reparations" for victims or a Parliamentary debate on the *Chega!* recommendations. Genuine "reparations" would not only reduce the victims' poverty or compensate them for suffering, but include admission of responsibility and payment from the perpetrators, as a form of restorative justice.

Although these would be beneficial, they do not address the ongoing impacts of impunity, the accountability of perpetrators, the trauma of the victims or the responsibility of the international community. It may take time, but *La'o Hamutuk* continues to support the goals expressed in April 2009 by the survivors of the massacre at the Carrascalão home ten years earlier:

- √ All the perpetrators of crimes against humanity must be brought to justice.
- √ The perpetrators should be extradited and be held accountable for the horrendous crimes they committed.
- √ An independent International Tribunal for the human rights violations in Timor-Leste. ❖

In April 2009, Liquiçá survivors petitioned their leaders

We who have lost our husbands, fathers, children and families, one more time would like, with open hearts and infinite patience, to share our thoughts with the men and women who lead our Nation, Timor-Leste, the United Nations, and national and international non-governmental organizations that ten years ago there was a major massacre in the Saint Brito Church Residence in Liquiçá that wounded many civilians and killed powerless people only because they struggled for the principle of independence at that time. The terrible criminal actions and attitudes came from pro-Indonesia militias who were supported or together with the military (TNI) and police (POLRI) resulted in violations against the human rights of Timorese civilians by the thousands, who in their struggle for independence thus hid themselves in the residence. Many civilians were killed, wounded or tortured, although the final result was independence, and many women were widowed because their beloved were killed, children were made orphans because their fathers died, and many others became victims or were killed, or lost their parents, siblings, and children that they loved very much, giving their lives for independence.

We have sad hearts and difficult lives until today, 5-6 April 2009, when the clock marks ten years already passed, no person, group, national or international NGO, government or state has come to tell us where our wives, husbands, children, mothers or fathers, brothers and sisters or family who were massacred are: Where were their bodies buried or discarded? Dumped in the river or Maubara Lagoon or in Karambala Sea for fish to eat?

The Criminal Militia Leaders who, together with the Criminal Military TNI and POLRI who assassinated our husbands, our fathers and our children until today have not been jailed or received any penalty, but have become political theatre for the leaders of the two countries who lack moral and political responsibility to provide reparations according to the recommendations of CAVR'S *Chega*. Afterwards, CVA (CTF) was created, comprised of Timorese who never dreamed of the principle of independence but used the Timorese people's money to go back and forth Dili-Denpasar and Denpasar-Dili, with great concern for the families of victims and others who were killed, who cry and pray for those killed because of independence, going and coming but never finding any work, and never receiving attention from most of the leaders who in the hard times lived in foreign countries or abroad.

Kofi Annan, former UN Secretary-General, came to visit the Massacre site in 2000, and Mary Robinson, High Commissioner for Human Rights, visited the same site in 2003 to show solidarity for us, the victims who continue to wait patiently for the process of justice and truth.

After the long time from the Transition to the Restoration of Independence on 20 May 2002, we hoped that these cases could be processed in Court to achieve Accountability for those people who were involved in human rights violations on 5-6 April 1999, as is guaranteed in Article 160 of our own Constitution or Mother Law. In Indonesia, they created the Ad Hoc Human Rights Court to process cases of human rights violations which happened in Liquiçá and other places of our beloved independent Timor-Leste before and after the 1999 referendum, but not one TNI or POLRI, high or low, has been held responsible, because the Ad Hoc Court was only another political theater to justify that they did no wrong. Timor-Leste itself had trials, conducted by the Special Panels, but their mandate already ended in 2004 according to the UN's mandate. The CAVR process also concluded its mandate to write a report and make recommendations under the name *Chega* in October 2005, but until today the National Parliament has not discussed this report or its recommendations. Victims and families of victims until today continue to suffer, until when can we truly say AMEN because fair justice and truth is served as the mother law requires.

Finally, we victims and victims' families are not satisfied with the members of CAVR who became Members of CVA, using our rights to politicize our suffering and contribution to the independence of RDTL, and they who contradict independence today, they play freely with the rights of Timorese, while not debating in Parliament to find any solution, and we victims and victims' families ask and are really concerned: are we who are still alive, and those who died, considered as thieves?

Ten Years of Talking about Justice in the UN Security Council

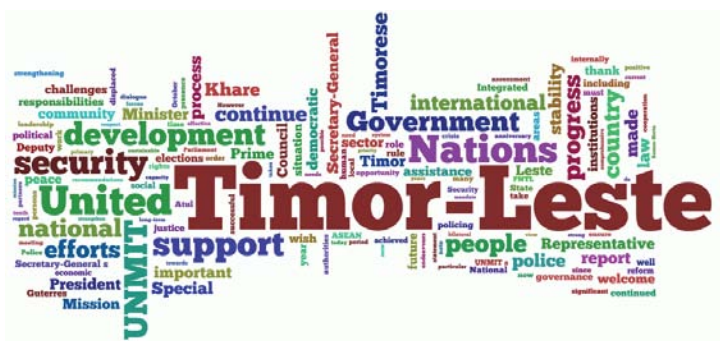
Since May 1999, the United Nations Security Council has held more than 55 meetings about Timor-Leste. *La'o Hamutuk* counted how often certain words – justice, impunity, accountability and rule of law – were used during this debate, showing what diplomats and U.N. officials want people to believe they care about.

The graphic at right shows what was said in the meeting on 23 October 2009. The size of the type indicates how often each word was spoken.

During 125 hours of Security Council meetings, diplomats mentioned *justice*¹ 816 times and *rule of law* 279 times (usually after 2006). Other concepts, such as *impunity* (131 times) and *accountability* (143 times), received little mention before 2004.

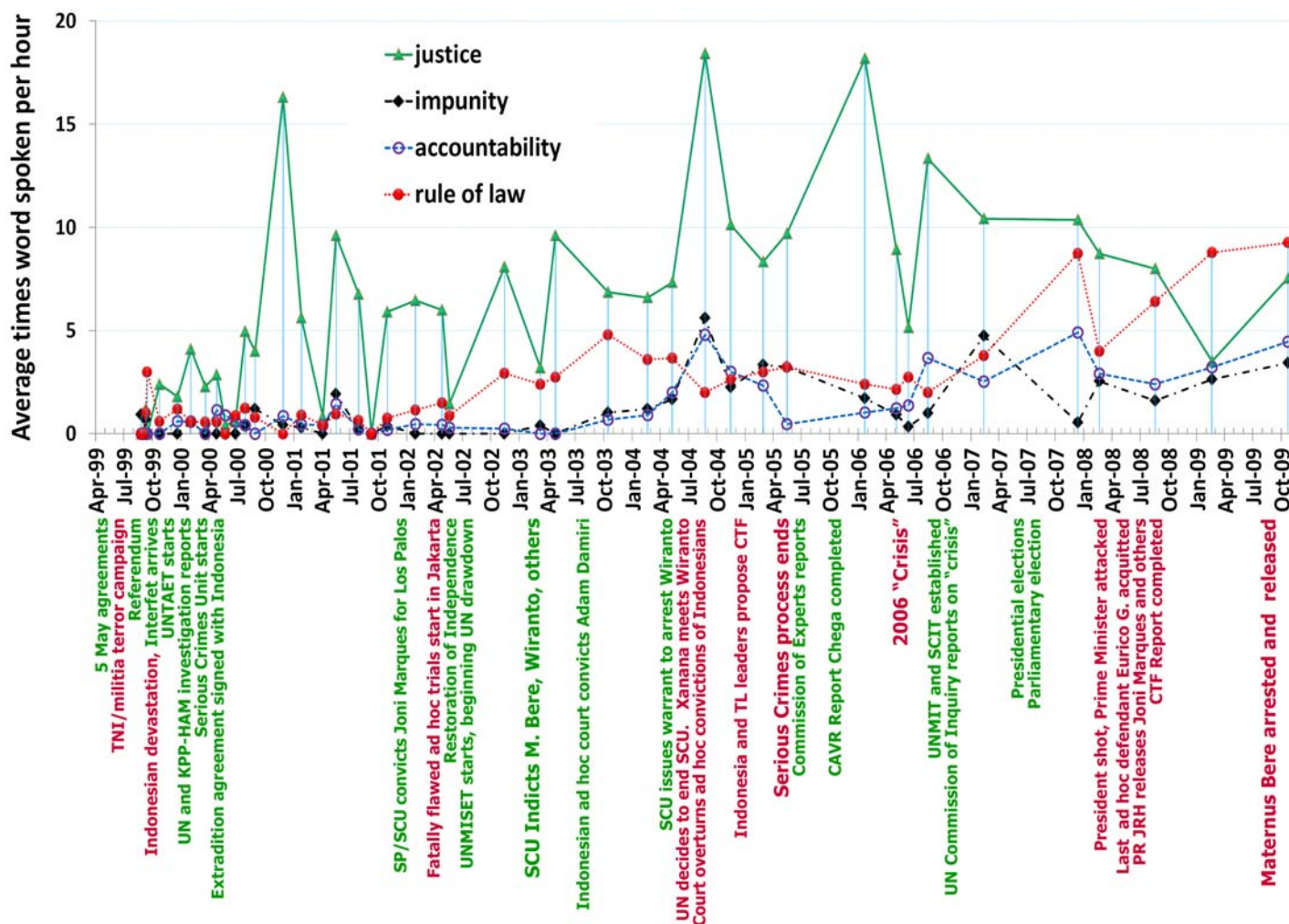
The graph below shows which justice-related words were said most often in each Security Council meeting and how this has changed over time.

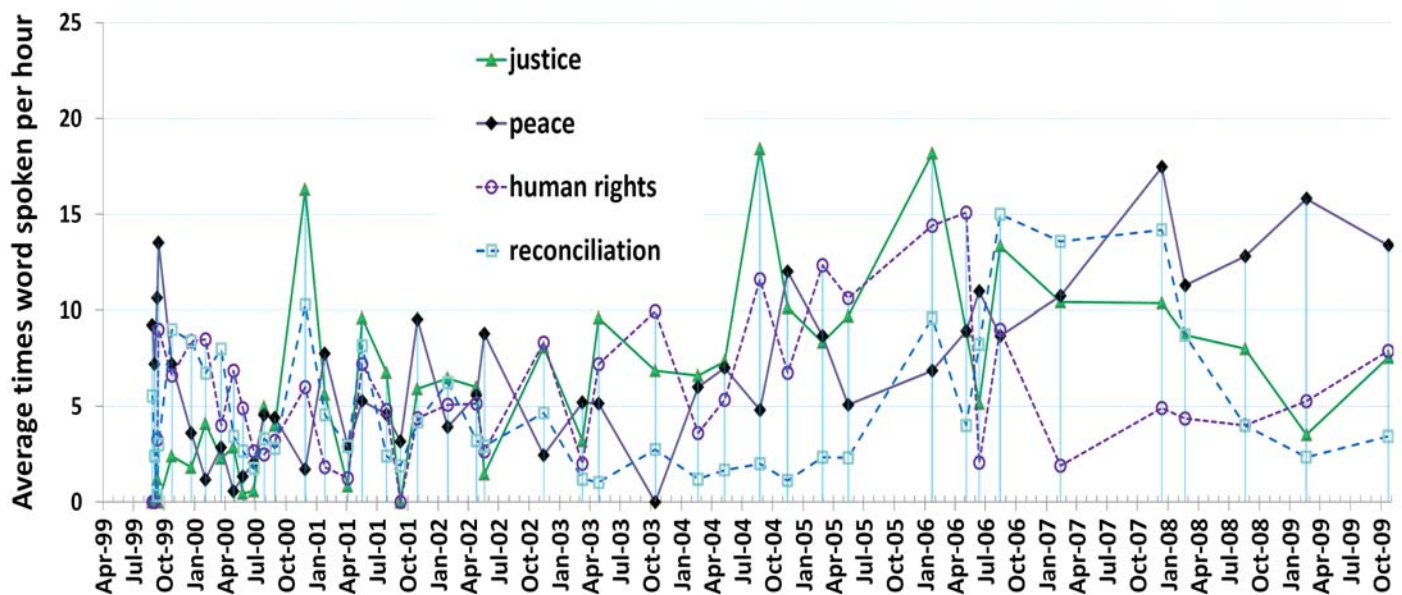
Justice dominates the Security Council debate at particular periods, especially in late 2000 (after UN international staff were killed in Atambua), August 2004 (after the UN decided to phase out the Serious Crimes Unit and Special Panels) and January 2006 (when President Gusmão told the Security Council about restorative justice). After the Independent Commission of Inquiry report on the 2006 Crisis, combating *impunity* (for 2006 crimes) was a popular topic. During the last three years, delegates have increasingly mentioned *rule of law* and *accountability*, perhaps because achieving them is increasingly unlikely.



After Maternus Bere was freed in early November, the U.N. Secretary-General's spokesperson told journalists: "The United Nations position that there should be no impunity, especially for serious crimes, including crimes against humanity, war crimes and genocide, is well known." A month earlier, the Secretary-General told the Security Council of his "hope that the Governments of both Timor-Leste and Indonesia will ensure that Martenus (sic) Bere is brought to justice..."

The governments of Timor-Leste and Indonesia have repeatedly shown that they will not or cannot end impunity for Indonesian perpetrators of Crimes against Humanity in Timor-Leste during 24 years of Indonesian occupation. People all over the world who believe in justice and accountability urge the international community to put action behind their words by establishing an international tribunal.





Some other aspects of these meetings are interesting, as shown above. Diplomats talked about *peace* 853 times, *reconciliation*² 581 times and *human rights* 279 times. Many delegates mentioned *reconciliation* (often together with *justice*) after the 2006 Crisis and the Secretary-General's report on *Justice and Reconciliation*. *Peace* was popular in December 2007, hopefully to be *consolidated* (along with *stability*) by the newly-elected government. *Human rights* was popular from 2004 until it fell during the Crisis, but it has been slowly moving up since the beginning of 2007.

During this decade the Security Council enacted 25 resolutions on Timor-Leste, although some of them were very

brief. The graph below tabulates how often these words were used in the text of the resolutions.

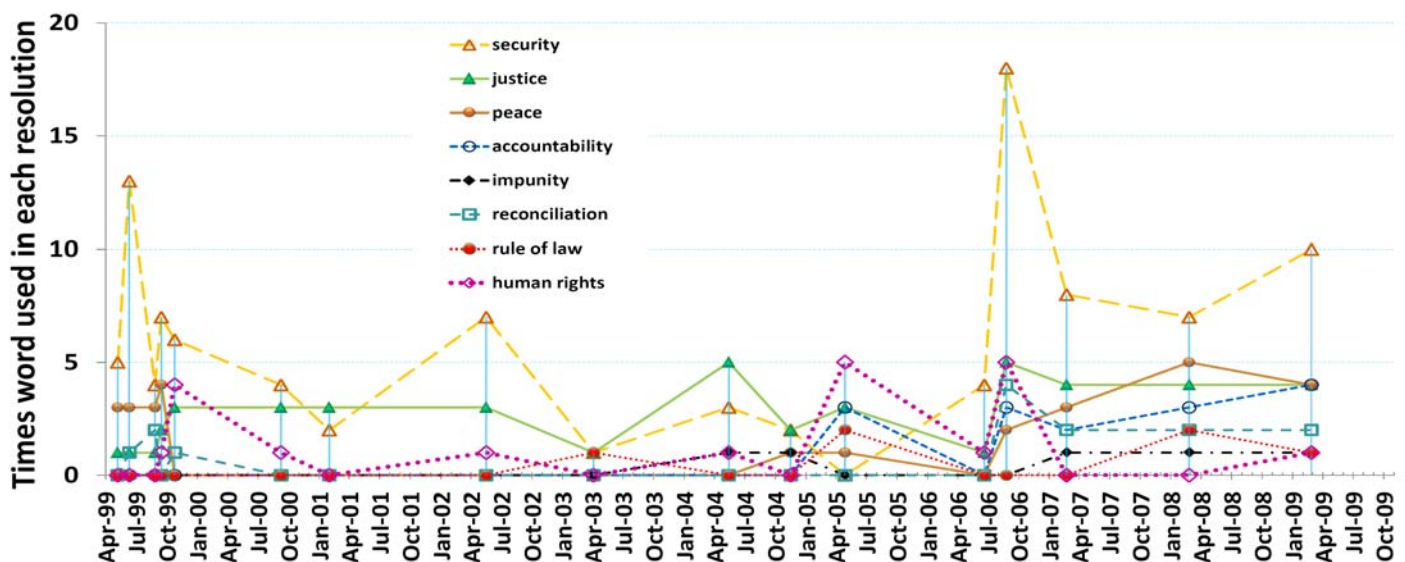
La'o Hamutuk encourages others to use our data to further explore the words and resolutions used in the UN Security Council, and their implications for Timor-Leste, and we have made it available on our website. As we explained in our recent letter to the Security Council (see next page), we feel that it important for the diplomats to have as complete information as possible. We also believe that the public, especially the citizens of Timor-Leste and the countries which are members of the Security Council, should know what is being said by and about their Governments. ❖

¹ We do not count the phrase *justice sector* when tabulating the word *justice*.

² *Reconciliation* does not include *Commission on Truth, Reception and Reconciliation* or similar phrases.

³ *Security* does not include *Security Council*.

Ten Years of Resolutions about Timor-Leste in the Security Council



Excerpts from letter from La'o Hamutuk to the UN Security Council.

20 October 2009

Dear Distinguished Members of the United Nations Security Council:

La'o Hamutuk has written to you many times about the situation in Timor-Leste, to help improve your discussions and ensure that you have current and comprehensive information.

When you meet this week on Timor-Leste, your discussions will include people who have traveled from Timor-Leste to represent the RDTL government and the UNMIT mission. Inevitably, their political and diplomatic presentations are likely to include distortions, omissions and missing context regarding the situation in this country and the views of its citizens. To make wise decisions, you require complete and accurate information, as the UN's deliberations will have significant impacts on the people of our country, as well as for the credibility and effectiveness of the United Nations system.

In particular, recent actions and statements of the Prime Minister and the President of the Republic regarding justice, impunity and the release of Maternus Bere are out of step with the wishes of the large majority of Timorese people, who believe, consistent with Timor-Leste's constitution and international legal principles, that people who commit serious crimes must be brought to trial in a legitimate judicial process. This week, several dozen Timorese citizens have written to you that our leaders' support for impunity does not represent their views and has grave implications for the future.

When Timor-Leste politicians tell you that our people don't want justice, do not believe them. In 2008, The Asia Foundation conducted more than a thousand interviews across Timor-Leste for their report *Law and Justice in Timor-Leste: A Survey of Citizen Awareness and Attitudes*. When asked if a person who commits murder should sometimes 'avoid punishment' or be free from 'compensating' the victim, 90% of the respondents said no and only 6% said there might be cases when a murderer should not be punished.

In late August, La'o Hamutuk published *Justice for Timor-Leste Remains an Unfulfilled International Obligation*, discussing ten years of ineffective justice processes, and Amnesty International published *We Cry for Justice: Impunity Persists 10 Years on in Timor-Leste*. These reports are a useful reminder that the past decade has seen numerous false starts, unkept promises and political compromises which followed 24 years of crimes against humanity: the Indonesian invasion and illegal occupation which killed more than 100,000 Timorese people, predominantly civilian noncombatants.

Like you, we closely read the Secretary-General's recent report on UNMIT's activities from January to September of this year. We are concerned that diplomacy and self-censorship (as well as the pervasive use of passive voice) limit the information in this report, leaving out essential facts, context and responsibilities.

Regarding the recent illegal release of indicted mass murderer Maternus Bere to Indonesian diplomats, the Secretary-General's report leaves out crucial facts, apparently to hide international responsibility for justice. Although the UN High Commissioner for Human Rights was more active than UNMIT and the Secretary-General in responding to this violation of separation of powers and rule of law, her actions have had little concrete result. Like others in the UN system, she puts the entire responsibility for this impunity on Timor-Leste's leaders. Although the President and Prime Minister of this country sprung Bere from jail (in response to Indonesian threats), Indonesia itself provided sanctuary for him for the past six years, and the United Nations has failed to take any steps to assist service of the indictment against him and the 300 other SCU indictees protected by Indonesia.

The S-G's report understates the broad societal debate on the Bere release and consequent legal issues, which includes church, civil society, victims groups, media, human rights groups, and others. On 12 October, Parliament debated the issue for ten hours with the Prime Minister's participation, rejecting the no confidence motion on party lines. The issue has grave implications not only for the future of the Serious Crimes process for past crimes, but for current and future rule of law, public confidence in governmental institutions, and public security in Timor-Leste.

Discussion of the four-year-old CAVR recommendations in Parliament and elsewhere could be useful, and implementing those recommendations would be even better. But selective attention to the easy ones – and ignoring those which require political courage and/or international involvement – is hypocritical and ineffective. In addition to recommendations for Timor-Leste and Indonesia, the CAVR report recommends many actions by the UN and international community.

The UN should be ashamed of the information given about the Serious Crimes Investigations Team. After more than three years, only 89 of 396 cases from 1999 have been investigated, and only 21 more are in process. When will the other 286 be done, or the tens of thousands of cases from before 1999? Furthermore, the extremely limited mandate of SCIT results from an unacceptable series of compromises that has eroded justice to mere symbolism. There is no mechanism for indictments, extradition from Indonesia, arrests or trials.

Timor-Leste authorities have repeatedly demonstrated that they are too afraid of their larger neighbor to support any processes for justice. In fact, only one of the 84 Timorese militia convicted by the Serious Crimes Process remains in prison. The issue is not capacity – but legality, courage and responsibility. If RDTL cannot meet its national and international legal obligations to end impunity, the UN must.

Thank you for your attention and concern, and we hope that you can put some action behind the eloquent words that are often spoken in the Security Council's chambers.

Editorial: Moving from impunity toward justice *(continued from back page)*

On 30 August, Timor-Leste celebrated the tenth anniversary of its independence referendum, but the Indonesian Foreign Minister refused to attend the party while Bere remained in prison. That morning, Prime Minister Xanana Gusmão illegally ordered prison authorities to release Maternus Bere to the Indonesian Ambassador to Timor-Leste. After two months in the Ambassador's residence, Timor-Leste authorities escorted Bere to Indonesia, where he is a free man.

The decision by Timor-Leste's President and Prime Minister to comply with Indonesia's demand for Bere's release violates Timor-Leste's laws, Constitution, national sovereignty and international human rights treaties signed by Timor-Leste. Only a judge can legally order the release of an indicted criminal from prison, and no judge would issue such an order. Under Separation of Powers, the judicial system is protected from the wishes of political leaders, so that it can enforce the law impartially.

UNMIT and the UN Secretary-General expressed discomfort with Bere's release, and the UN High Commissioner for Human Rights wrote President José Ramos Horta of her "deep concern" that the decision to release Maternus Bere "is extremely regrettable as it has grave consequences for the prospects of accountability for the serious crimes ..." As in the past, the UN failed to take further action.

Members of Parliament protested, as did the President of the Court of Appeals, Timor-Leste citizens, and human rights organizations. Local and international journalists and opinion leaders spoke out, exposing the predominant impunity for a quarter-century of Indonesian-directed Crimes Against Humanity in Timor-Leste.

In mid-September, members of Parliament introduced a No Confidence motion which concluded: "as no Court gave the order to free Mr. Bere, therefore the decision to free Mr. Bere is illegal, it violates our Constitution, Penal Code, and Criminal Procedure Law. When a Government commits an act which disrespects Parliament, disrespects the Court, violates the Constitution and violates Laws in force in our country, that Government no longer has the conditions to direct the destiny of our nation, and therefore deserves censure."

Parliament debated the motion for more than ten hours on 12 October. Prime Minister Xanana Gusmão took responsibility for Bere's release, asserting that his interpretation of the national interest is more important than the Constitution. The animated debate was covered live on television. Late that night, Parliament voted along party lines to support the Prime Minister, with 25 in favor of censure and 39 against.

After Bere was returned to Indonesia in late October, the New York spokeswoman for the Secretary-General explained: "The United Nations position that there should be no impunity, especially for serious crimes, including crimes against humanity, war crimes and genocide, is well known. ... the Secretary-General hopes that the Govern-

ments of both Timor-Leste and Indonesia will ensure that Maternus Bere is brought to justice."

Events surrounding this indicted mass-murderer's release demonstrate that Timor-Leste is not yet a stable democracy under the rule of law. We are in a phase where politics may override our Constitution, where a neighbor can get our state to violate its fundamental principles, where leaders can implement their personal views regardless of legal structures and processes. Some leaders agree to surrender Timor-Leste's independence, for which so many sacrificed so much, to Indonesian wishes and threats.

However, the debate has been a valuable lesson about the importance of the rule of law and defending the Constitution. The Timor-Leste National Alliance for an International Tribunal (ANTI) is re-energized, building on the International Solidarity Conference here last August, strengthening links with like-minded citizens of Indonesia and other countries to demand accountability. Advocates for justice have been reminded that, left to themselves, Timorese, Indonesian and international politicians will not implement the people's right to justice.

The struggle is not over. In recent months, Timor-Leste has seen an unsettling trend to address problems with "security forces" or "security sector reform," as if armed police and soldiers can bully people into forgetting their grievances without the consistent legal principles and human rights protections promised by our Constitution and judicial system.

True security – citizens being able to live without fear of violence, hunger, illiteracy, crime and disease – is replaced by the illusion of security through intimidation. True social justice comes through inclusiveness – respecting the entitlement of all citizens to human rights, democratic power, and an equal share of resources and services. It will never be achieved by coercing angry, alienated, impoverished or disenfranchised people into submission.

Although human rights violations in Timor-Leste today are far less severe than during the Indonesian occupation, this approach is uncomfortably reminiscent of the Suharto era. For 24 years, military and police forces could not achieve security for Timor-Leste's people, and they cannot do it today. *La'o Hamutuk* urges Timor-Leste citizens and others who care about this country to speak and act against the growing trend toward impunity and rule by force. We are dismayed by increasing gaps between rich and poor, between a few powerful families and the vast majority of Timorese citizens.

In early February, as the UN was discussing revising the UNMIT mandate, the Timor-Leste National Alliance for an International Tribunal wrote to the Security Council. ANTI urged that UNMIT start the process of creating an International Tribunal, investigate crimes from before 1999, and publish indictments. Although these are small steps, they would reverse the momentum toward impunity which has grown over the past decade, and begin moving in the direction of accountability and justice. ❖

Editorial: Rejecting Impunity, Moving Toward Justice

Ten years ago, the Indonesian military stopped murdering, torturing and starving people in Timor-Leste, and since then people here have lived in relative peace, independence and self-government. For a decade, we have worked to create a Constitution, develop the rule of law, enact statutes, establish courts, improve capacity and strengthen the organs of our democratic state.

We have made progress. It is hard to make the transitions from war to peace, from occupation to independence, from dictatorship to democracy, from resistance to coalition-building. We still have a long way to go.

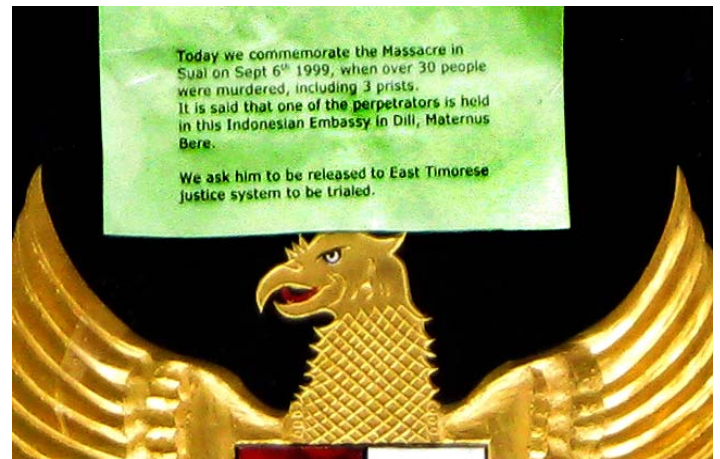
The gap between principles and practice is perhaps widest when it comes to accountability for crimes against humanity. As other articles in this *Bulletin* describe (see page 12), the responsible institutions – the United Nations and the states of Timor-Leste and Indonesia – have failed to end impunity for thousands of crimes against humanity committed at the direction of Indonesian authorities from 1975 to 1999. They have not listened to cries for justice from Timorese survivors, Indonesian victims of ongoing violations, and human rights advocates from across the world. They fail to keep the world's commitment after the Nazi Holocaust to "Never Again" allow crimes against humanity to go unpunished.

In many countries, achieving justice has taken decades, but it does happen. Dictators Augusto Pinochet (Chile) and Slobodan Milosevic (Serbia) died in prison, and Alberto Fujimori (Peru) is serving a 25-year jail sentence. In Argentina, where the "dirty war" in the 1970s killed tens of thousands, torturers are finally being extradited and put on trial.

Justice becomes a reality only when all of us – victims, survivors, families who lost loved ones, people who endured oppression, citizens of conscience around the world – struggle for it. This struggle is continuing in Timor-Leste, and *La'o Hamutuk* hopes that their calls will grow longer and louder until they are heard, until they persuade or overrule those who would sacrifice long-term accountability for short-term personal, political or perceived diplomatic benefits. Ending impunity may take years, but it can be achieved.

The liberation of mass-murderer Maternus Bere last year shows that impunity still prevails in Indonesia and Timor-Leste. But the outcry about his release shows that the thirst for justice is also strong.

During 1999, Maternus Bere was the Suai Commander of the Laksaur Militia which terrorized the people of Covalima District, killing more than 40 unarmed civilians (including three priests) in Suai Church on 6 September 1999. In February 2003, the UN/RDTL Serious Crimes Unit indicted Bere and others for "crimes against humanity: murder, extermination, enforced disappearance, torture, inhumane acts, rape, deportation and persecution." Timor-Leste judges issued warrants for their arrest, which were sent to Indonesia and circulated internationally by



Interpol. Bere lived openly in West Timor, one of more than 300 indictees whom Indonesia provides sanctuary for.

In August 2009, Timor-Leste authorities issued a visa to Maternus Bere, but soon after he entered this country he was recognized by Suai residents. The Timor-Leste National Police arrested him on 8 August, and he was transferred to Becora prison to await trial.

(Continued on page 19)

What is La'o Hamutuk?

La'o Hamutuk (*Walking Together* in English) is a Timor-Leste 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 Timorese participation. In addition, *La'o Hamutuk* works to improve communication between the international community and Timor-Leste society. *La'o Hamutuk's* 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 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 Timorese people and the international community.