

The La'ó Hamutuk Bulletin

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Bilateral aid from donor countries continues to be critical for East Timor, and such aid is not always what it claims to be. In this issue, we look at **Portugal's contributions** and how they influence education and the choice of language here. We also re-examine the World Bank's **Community Empowerment Program (CEP)** to see how it has improved since *La'ó Hamutuk's* first report two years ago.

Our ongoing coverage of **East Timor's oil and gas resources** in the Timor Sea brings you *La'ó Hamutuk's* testimony to the Australian parliament, asking our southern neighbor to respect our sovereignty and territory. We close with two editorials on **international justice failures**: about the *ad hoc* human rights courts in Jakarta, and about an agreement that East Timor will not send U.S. employees to the International Criminal Court.

Portuguese Aid to East Timor

Globally, Portugal is not usually considered a large donor. In East Timor, however, the Portuguese government is visible and influential, being among the three largest donors to the country (with Japan and Australia).

Around the World

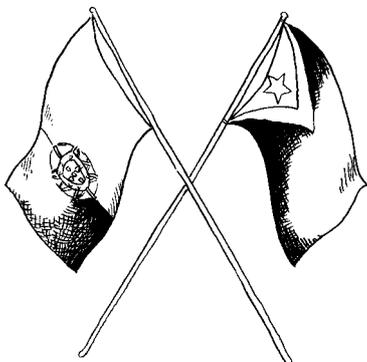
Portugal was one of the founding members of the OECD's Development Assistance Committee (DAC, a group of the world's 22 major donor governments) in 1961, but they left the group in 1974, seeking aid from other countries to help recover from years of fascist rule and the dismantling of its colonial empire. In 1986, Portugal joined the European Economic Community (now the European Union), receiving considerable assistance and strengthening its economy to the point that Portugal re-entered the DAC in 1991.

However, Portugal is still one of the weaker Western countries politically and economically, and has the lowest per capita GNP of the 22 DAC member nations. In 1999, Portugal gave US\$289 million in official development assistance (ODA). This was 0.26% of its GNP, well below the 0.39% average among DAC countries, but still more than three other major donors to East Timor: U.S., U.K. and Australia. The Portuguese government has been increasing this amount in

recent years, and has set its own goals to re-attain 0.36% of GNP, its all-time high from 1994, in the near future, and the UN goal of 0.7% (agreed to at the 1992 Rio Conference) by 2006.

Throughout the 1990s, Portuguese government assistance was given almost exclusively to former Portuguese colonies in Africa (Mozambique, Cape Verde, Angola, Guinea-Bissau, and São Tomé e Príncipe), with Mozambique as the principal recipient. Portugal gives multilateral assistance through UN agencies, the World Bank Group and regional development banks (African Development Bank and Inter-American Development Bank) and the European Union. Portugal joined the Asian Development Bank (ADB) in April 2002, to promote Portuguese business interests in Asia and be more involved with ADB activities in East Timor. In recent years, though, two-thirds to three fourths of Portugal's assistance has been bilateral. In 1999-2000, about 50% of Portuguese bilateral aid went to debt relief, compared to a DAC average of only 4%. This was mostly due to defaults on loans issued by the Portuguese government to former African colonies, and Portugal does not intend to issue many similar loans in the future. See Graph 1 for an overview of current Portuguese Assistance worldwide.

(Continued on page 2)



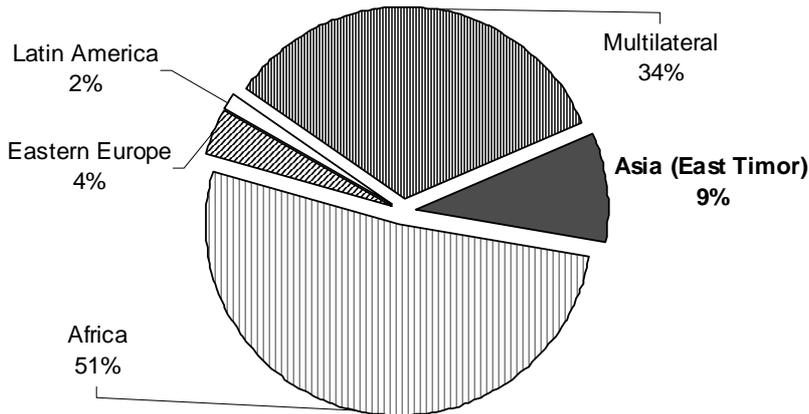
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Graph 1: Portuguese Assistance Worldwide, 2002

Total: US \$395 million



Eastern Europe: Macedonia and Bosnia
 Africa: Former Portuguese colonies, also Morocco, Algeria, Tunisia and Benin
 Asia: almost entirely East Timor

Source: Portuguese government

Other major areas of Portuguese assistance world-wide are education and health – not so much towards basic social services that benefit the poor, as towards tertiary education, scholarships and medical treatment in Portugal, services aimed at the elite of the recipient country. There is also a large emphasis on training and technical assistance for government administration, judicial and military affairs, as well as promoting and restructuring the private sector.

It is difficult to get a clear overall view of Portuguese assistance since it is distributed in a decentralized manner. Although the Portuguese Ministry of Foreign Affairs coordinates the overall aid program, in reality 17 government ministries, as well as agencies, universities, and city municipalities carry out various individual programs. In recent years, a Council of Ministers for Cooperation Affairs and an Inter-ministerial Committee for Cooperation were created to coordinate assistance from the different government departments. The three main assistance agencies are in the Ministry of Foreign Affairs:

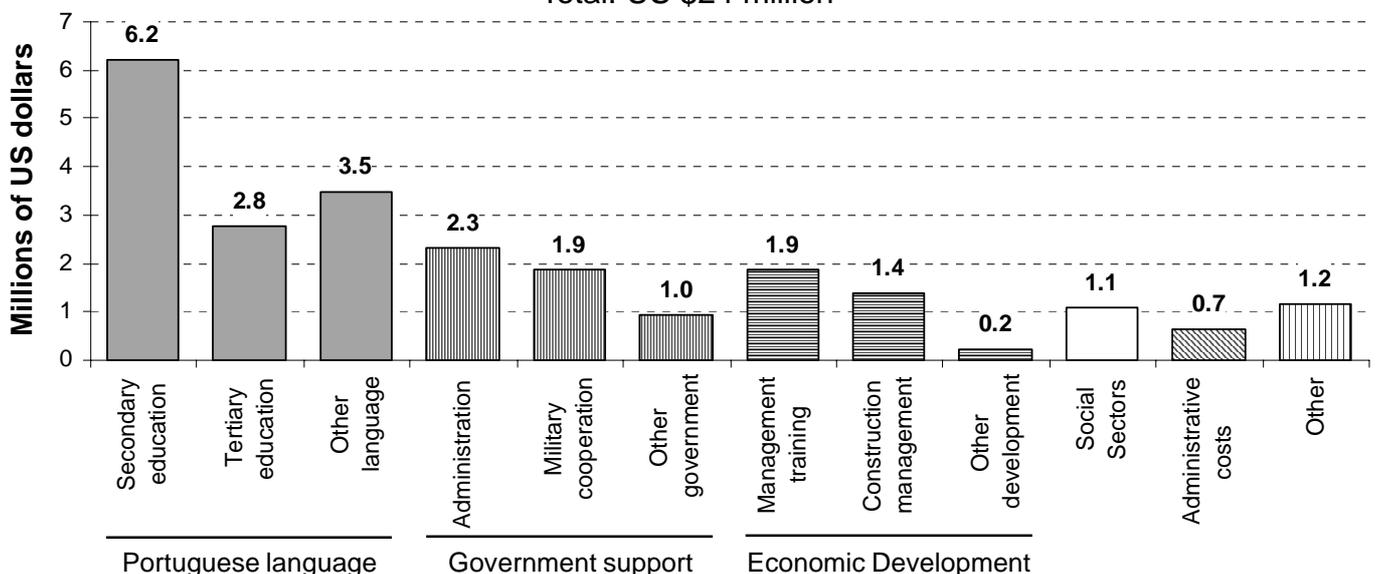
- √ Camões Institute, promoting Portuguese culture and language
- √ Portuguese Development Support Agency (APAD), focusing on Portuguese investment and the private sector;
- √ Portuguese Institute of Cooperation (ICP), coordinating overall development policy.

Portuguese Assistance to East Timor

From June 1999 until May 2002, there was the office of the Commissioner to Support the Transition in East Timor (CATTL), under the direction of Father Victor Melícias Lopes. CATTL was a temporary agency to “coordinate initiatives relating to the preparation and execution of support programs for the popular poll process and the transition process in relation to East Timor’s self-determination.” This agency was disbanded shortly after East Timor’s independence, and assistance to East Timor is now under the regular, decentralized structure.

Graph 2: Planned Portuguese Bilateral Aid to East Timor, 2002

Total: US \$24 million



TFET, budgetary support, and other multilateral donations not shown.

Source: Portuguese Embassy in Dili, document dated Sept. 2001

During the transitional period, CATTIL directed bilateral programs in various areas, as well as supporting international institutions. Portugal is the second largest donor to the World Bank's Trust Fund for East Timor (TFET), having already given over \$15 million and promising a further \$35 million. During 1999-2000, Portugal gave almost \$10 million to multilateral humanitarian relief efforts, as well as \$4.5 million to support InterFET. In addition to bilateral assistance, the Portuguese police and military have been a major component of the international peacekeeping forces under UNTAET, and continue to participate in the UN peacekeeping forces in East Timor.

According to the Portuguese government, their assistance to East Timor has three official priorities: "to consolidate the Timorese State, a market economy and the Portuguese language as the official language." Promoting the Portuguese language has been the principal activity, and is examined in the article below. "Consolidating the State" includes a variety of projects, focused on technical assistance for public administration, especially in areas such as legal and judicial affairs, statistics, professional training and military training. In 2001, \$2.2 million was budgeted for military training and equipment, the chief component being \$1.6 million for two

renovated small patrol launches and training 36 members of the defense forces to protect East Timor's waters. In the same year, \$139,000 was budgeted for supporting fire brigades (in cooperation with Australia) and civil protection services. From 2000-2001, approximately \$5.5 million was distributed for the other projects in governmental support.

From 1999-2001, Portugal distributed approximately \$8.9 million in assistance for economic development. The assistance is spread across several projects, focusing on areas such as infrastructure (especially water supply in Baucau and Aileu, electricity, and Comoro airport technical training), agriculture (including a coffee tree nursery in Ermera), fisheries, forestry, mining, tourism and urban development.

Last year, the Portuguese government budgeted over \$24 million in bilateral programs for the year 2002, with the breakdown illustrated Graph 2.

However, at the time of printing the Portuguese and East Timorese governments were negotiating the assistance and this breakdown is likely to change. At the last donors conference, Portugal did not discuss the existing bilateral projects, but pledged to also cover 10% of East Timor's estimated \$90 million budget shortfall over the next three years. ❖

Portuguese Support in the Education Sector

The largest beneficiary of Portuguese assistance over the past two years in East Timor has been education. The focus of Portugal's education programs has been to promote the Portuguese language, following decisions by East Timorese leaders to make Portuguese an official language. Priority has been given to primary and secondary education, mainly by sending teachers from Portugal across East Timor, and training East Timorese teachers in the Portuguese language. There have also been a variety of language training programs for other professions, as well as assistance in rebuilding educational infrastructure and for tertiary (university) education.

Primary Education

In primary education, Portuguese is currently the language of instruction for the first three years. Every year an additional year of Portuguese is added, so that in the next academic year, the first four years will be taught in Portuguese, and in three years (2005), all six years of primary education will be in taught in Portuguese. In order to facilitate this transition, Portugal is training East Timorese primary school teachers in Portuguese language as well as teaching pedagogy. In the past two years, almost 3500 of the 3600 enrolled teachers have completed the trainings.

La' o Hamutuk's limited research in this has found a mixed response from East Timorese primary school teachers. Some schools feel that they are benefiting from the Portuguese assistance, which in addition to training teachers, also provides schools with textbooks and other educational materials, and occasionally includes rebuilding physical infrastruc-

ture. A primary school in Farol, Dili, has had several buildings rebuilt by the Portuguese government, although some of the rooms were not completed, and the school has been given no indication of when the rest of the repairs promised by Portugal will begin.

However, other schools have had less positive experiences with the Portuguese government. Teachers at another primary school in the Dili area told *La' o Hamutuk* that they did not benefit from the training by the Portuguese teachers. They disagreed with the training methods used, finding an excess of negative criticism

and a lack of positive encouragement. They said that many other East Timorese teachers have dropped out of the classes. Although enrollment in the program has been voluntary basis for the past two school years, teachers at this school claimed the headmaster/principal forced them to attend, with the support of the Ministry of Education and Portuguese government.

Controversy over Língua Portuguesa

The decision to make Portuguese an official language has been very controversial, especially among the younger generations of the country. The thoughts expressed by one student at UNTL (Universidade Nasional Timor Lorosa'e) are representative of how many feel about the decision: "actually, I don't like having Portuguese as an official language for East Timor, for 24 years the East Timorese people struggled for independence, meaning we also have to have our own culture, our own distinct features, and our own language, Tetum. But why do we have to use Portuguese as an official language? This creates a big dilemma for young people these days, as if imposing one's will on others for outside political interests. For instance, in the primary schools Portuguese is already taught and I see that as a way in which East Timorese children are molded to learn and know the culture of another country instead of their own."

Secondary Education

In secondary education, 151 teachers from Portugal are currently teaching Portuguese as a second language to secondary school students across the country. The teachers are on one-year renewable contracts, beginning in September. Although the program has no exact timeframe, it is likely to continue at least for the next couple years. As with many aid programs, hiring international professionals such as teachers is expensive. The teachers, usually grouped in pairs, live in accommodation that is luxurious by local standards, complete with generators, air conditioning, and expensive appliances such as microwaves, washing machines, and large freezers. The Portuguese government considers the expenses in building the accommodations for these Portuguese citizens as part of their assistance to East Timor, as the buildings will be given to the East Timorese government when the program finishes. They teach Portuguese to secondary students, who usually are also studying Tetum, Indonesian and English. Since the vast majority of these students are accustomed to the Indonesian education system, it is not surprising that many of them are reluctant to learn Portuguese. Many complain that Portuguese is too difficult, and find English to be a more useful Western language.

Many of the teachers originally sent from Portugal had little or no experience in teaching Portuguese as a foreign language. However, the Portuguese government has recently changed the criteria used to select these teachers, to favor those who have been trained to teach Portuguese as a foreign language. In July 2002, several teachers already working in East Timor were unable to get their contracts renewed as they did not meet the new standards. Predictably, some of the teachers were upset at losing their jobs, feeling that the Portuguese Ministry of Education did not consider their previous experience in the country. However, it is encouraging to see these efforts to improve the quality of Portuguese participation in the education system.

Tertiary Education

Portugal supports tertiary education for East Timor in three ways: support for the national university (UNTL), sending East Timorese students to Portuguese universities, and supporting East Timorese students who are finishing their studies in Indonesia.

Portugal's support for the national university system is centered with the Foundation of Portuguese Universities (FUP - Fundação Universidade Portuguesa) which began operating in 2001 in the Liceu Francisco Machado in Dili.

FUP concentrates on four faculties:

- 1) Civil engineering, including electronics and information technology
- 2) Agriculture, including land registry, forestry, and social economy of agriculture
- 3) Economics, including management
- 4) Teaching the Portuguese language

Twelve to fifteen lecturers for the FUP are selected from Portuguese lecturers with Masters or PhD degrees and paid by the Portuguese government. The lecturers normally come for three month periods and then return to Portugal. The language of instruction is Portuguese. There is an obvious language difficulty for the students. Yet each faculty has two Portuguese-Indonesian interpreters so students can understand. Translation is also provided for examinations. From another point of view, the students have to learn Portuguese since the university requires that students learn the language of instruction. FUP also includes setting up a computer science laboratory and supplying teaching materials to UNTL.

According to one East Timorese professor at UNTL, "if a person knows a lot of languages then s/he is also rich with all the languages s/he has mastered. That which is more prioritized at UNTL campus is how students can obtain knowledge and implement it to civil society. After one year of the FUP program operating (2001-2001), we can already do an evaluation and without difficulty say it is operating normally."

Studying overseas

The Portuguese government has provided scholarships for 314 East Timorese students to study in Portugal. Studying in a country far away from home and in a different culture, it is not surprising that a few students have encountered difficulties. Eight students have already returned to East Timor and

others no longer attend their courses but remain in Europe to work. Students who returned from Portugal told *La' o Hamutuk* their main difficulties were:

√ In East Timor they only attend preparatory courses for six months and are not adequately prepared for their studies in Portugal, finding the realities of life in Portugal not matching what they were told while still in East Timor.

√ They have difficulties adapting to professors who teach at universities on much quicker schedules for people who already speak Portuguese. They follow the lectures very slowly

and find it difficult to interact in the course, to the point that they understand very little of the course content.

√ The courses are with Portuguese students who have different expectations and are used to different teaching processes, to the point that the East Timorese students cannot understand their courses.

√ Living in a different culture and among different people is difficult. The East Timorese students are placed in accommodations far away from each other, making it very difficult for them to offer each other mutual support and enhancing feelings of isolation.

With the encouragement of the East Timorese government, the Portuguese government plans to end the scholarship program for study in Portugal once the current students finish their scholarships, and support will be more focused on developing UNTL. *La' o Hamutuk* supports this decision, be-



cause UNTL needs considerable material and moral support to continue developing. It will also be better in promoting healthy bilateral relations between East Timor and Portugal, as the two governments work together to strengthen an institution that can provide great benefits for the nation as a whole. But such assistance should not intervene in current or future policies of the nation of East Timor, ensuring that East Timorese are the decision-makers in their own country.

Portugal does not only help East Timorese students studying in Portugal and East Timor. They are also supporting 100 East Timorese students who studied in Indonesian during the Indonesian occupation, but were unable to continue their studies.

A variety of international donors are supporting East Timorese studying in Indonesia (see table at right). Before the referendum, about 4,000 East Timorese were studying at universities in Indonesia, but only approximately 2,000 wanted to return to continue their studies after the referendum. As shown in the table, limited funds have been provided by eight countries and organizations.

The Portuguese government is funding 100 students to study in Indonesia, who have recently been selected. The Portuguese government has promised more than \$700,000 to fund three years of study, from September 2002 until August 2005, including round-trip airfare and living expenses of about \$60/month per student. The students supported have already completed five semesters of study but lacked the funds to finish their studies in Indonesia.

Having invaded East Timor and occupied this nation for over 400 years, Portugal has a responsibility to help the nation develop, and to respect its hard-earned independence, both politically and culturally. For the past three years, Portugal has been a major donor despite its small size and limited global experience with bilateral assistance, and such generosity should continue. The Portuguese government has al-

Donors Supporting East Timorese Students Studying in Indonesia

Funder	Students
Caritas Norway and the Bishop Belo Scholarship Program (BBSP)	390
Japan	300
Ford Foundation	200
Indonesian government (only until 20 May 2002)	162
Portuguese government	100
WHO (World Health Organization)	68
German government	20
French government	6

ready identified problems within their education projects in East Timor, and has tried to improve their programs. *La' o Hamutuk* hopes the Portuguese government continues to be open to criticism, and we are glad they seem eager to improve their bilateral programs to benefit the East Timorese people as much as possible. ❖

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La' o Hamutuk thanks the government of Finland for supporting this publication.

Correction: U.S. Aid

In *La' o Hamutuk Bulletin* Volume 3, No. 6, page 11, we published a table summarizing the pledges at the May 2000 Donors' Conference. For the United States, the promised \$1.05 million in Foreign Military Financing and International Military Education and Training for East Timor's Defense Force is separate from, not included in, the \$25 million the United States pledged for development assistance. Thanks to the U.S. Embassy for pointing this out.

Clarification: Oil Exploration

La' o Hamutuk Bulletin Volume 3, No. 5, page 2, included a sidebar describing "The Process of Petroleum Exploration," which briefly listed steps in the process as followed in many places in the world. The Joint Petroleum Development Authority has informed *La' o Hamutuk* that the process at Bayu-Undan and other JPDA sites in the Timor Sea differs from the general scenario:

1. They do not use dynamite to generate shock waves for seismic exploration, but rely on explosions created by compressed air.
2. Drilling in the Timor Sea produces only sand, not stones. These "cuttings" are re-injected into the seabed.

The Community Empowerment Project Revisited

The Community Empowerment Project (CEP) is one of the largest and most visible of the World Bank administered development programs in East Timor (see *La' o Hamutuk Bulletin* Vol. 1, No. 4 for an early assessment of CEP). Its objectives are "to support poverty reduction" and "build accountable and participatory local institutions at the village and sub-village levels." Formally established in February 2000 with support from CNRT (National Council for Timorese Resistance) leaders, CEP has received US\$18.5 million from the multi-donor supported Trust Fund for East Timor (TFET). \$12 million of this money has already been spent, largely to fund community-based development projects which are decided upon and coordinated by elected village and sub-district councils made up of equal numbers of men and women. A small portion of the funds have also been used to support cultural heritage projects, local organizations, and community radio and television.

The World Bank office in East Timor touts CEP as one of its most successful projects, one which "has introduced and modeled the fundamental principles of democracy and accountability in over 400 villages." In many East Timorese villages, water facilities, community centers and clinics illustrate the success of the project. Many communities, however - even those that have seen the successful completion of CEP projects - are not convinced that the projects will have long-term benefits. While almost everyone agrees that the principles which the CEP seeks to promote - democracy, transparency, accountability, women's participation - are important and positive, many East Timorese question whether the design of the CEP can implement these principles.

Over the past four months, *La' o Hamutuk* has gathered information about the CEP in the districts of Lautem, Baucau, and Viqueque, as well as from the World Bank and CEP offices in Dili. Our findings raise serious concerns about the project, including insufficient coordination between CEP structures and traditional village leadership, a lack of community based assessments and community ownership of the project, and a lack of commitment to capacity building and genuine community empowerment. There is also a lack of transparency, both at the community level and at the highest policy levels. At the December 2001 Donors' Conference in Oslo, the World Bank reported strong support amongst East Timorese for the continuation of CEP in the post-independence period. CEP is now funded until June 2003, at which time the new East Timorese government will decide whether to continue the project. While the World Bank and CEP say that East Timorese generally support this continuation, many

East Timorese argue that the project has not fulfilled its worthy mission and actually undermines East Timor's independence.

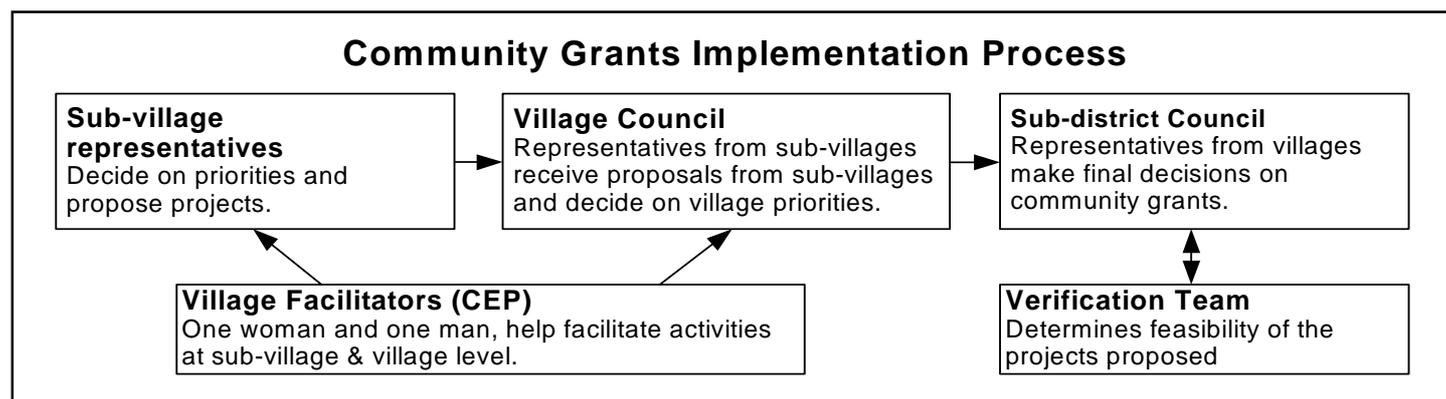
An Overview of CEP's Community Grant Component

Since CEP began, approximately 85% of its funds have been used for community grants. The first cycle of community grants began in April 2000 and focused on meeting emergency needs at the sub-village and village levels. These emergency needs included the rehabilitation and reconstruction of social infrastructure, such as public meeting halls (43%), roads and agricultural infrastructure (25%), restoring household and productive equipment (15%), water supplies (10%), and clinics and schools (7%).

The second cycle of funding continued these community grants with more project options open to communities (listed in an "open menu" with a short list of items that can not be purchased through CEP such as a guns, chainsaws, and salaries for government officials). In many villages, projects funded in the second cycle were described as more successful than the first cycle projects. It was explained that there were improvements in the distribution and control of funds, as well as with the planning of projects. This phase of support also introduced a pilot Vulnerable Groups' Assistance Program, which many working closely with CEP have criticized for being slow and ineffective.

The third cycle of funding has just begun and largely continues what came before, while working to further strengthen the decision-making structures which form the basis of the CEP, namely the village and sub-district councils. These councils were established based on UNTAET regulations issued just prior to the start of the project, despite initially strong opposition by many UNTAET officials. This legislation lays out the rules for electing council members, as well as their rights and responsibilities in relation to facilitating local development projects. The World Bank explains that the councils are thus part of the government structure, not particular to CEP. In practice, however, East Timorese identify the councils completely with CEP and the World Bank. And in fact, they are not part of East Timor's constitutional government structure.

The decision-making process for the community grants component has generally been as follows: First, for each new grant cycle, equal numbers of men and women are elected by their community to act as representatives for the sub-village. They consult with the people of their community about the community's needs. Next, the sub-village representatives



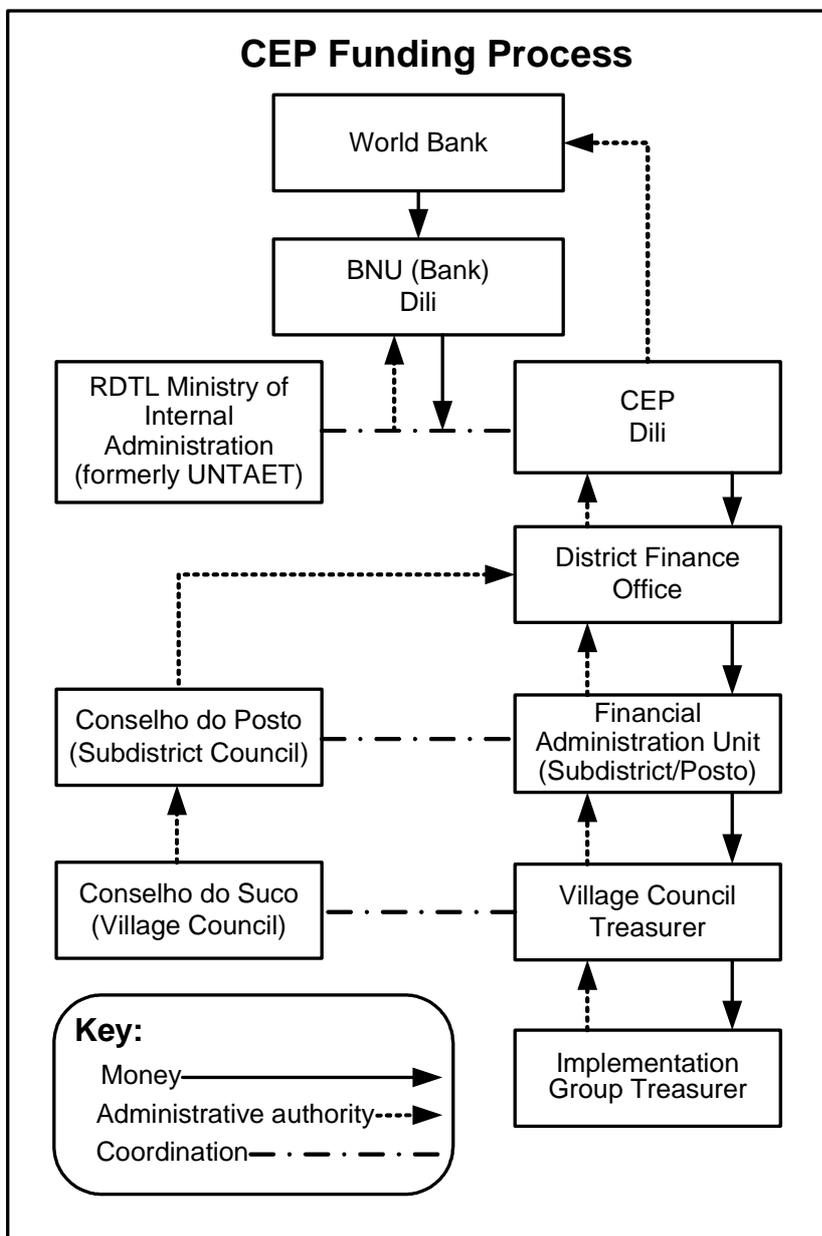
send their proposal to the village council for their assessment and analysis of the funding priorities for the various sub-villages it represents. The village council then forwards proposals to the sub-district council, which prioritizes all the proposals and then funds the top priority proposals only. Before making a final decision on any grant, the sub-district council is responsible for ensuring that the priority projects match the reality in the sub-district, a task which is actually carried out by an independent verification team generally made up of East Timorese with appropriate expertise to judge the feasibility of the community's request. Once the sub-district council decides on grants to be made, this information is passed to the CEP office in Dili, which is responsible for channeling the money to the District Finance Office. Following CEP's rules, only 50% of the money requested for each project is dispersed until there is clear accountability for the funds. Once accountability is demonstrated, another 40% of the requested funds are dispersed and then the final 10%. See diagram at right.

Challenges in CEP's Implementation

La' o Hamutuk's December 2000 report on CEP identified many early shortcomings. These included tensions between CEP structures and traditional decision-making structures, undemocratic council elections, women's under-representation, complaints by local council members about the lack of monetary compensation for their time working on CEP-related activities, and insufficient communication between villages and districts and within localities. CEP continues to address these on-going challenges. A recent restructuring has established regional CEP offices to assist with communication and further decentralize the project.

Almost two years later, council elections and their functioning at the village and sub-district levels continue to be problematic. In many of the villages *La' o Hamutuk* visited, only a few villagers chose council members and thus community members do not consider the councils to represent them. Many villagers explained that they did not know about the voting process. Tensions between the councils and traditional structures also continue. Insufficient coordination between the CEP and village leaders has led to the stopping of projects in mid-process and divisions within communities. In several villages, community members criticized CEP for only coordinating their activities with village leaders after problems had already emerged. At the same time, they expressed their hope that CEP would be more proactive in coordinating with community leaders. Some of these problems can be explained as inherent to a post-conflict situation, where transportation and communication infrastructures are minimal and there may likely be already existing divisions within communities. Acknowledging these challenges, many working within CEP have stated that CEP's goals are unrealistic and have not given enough attention to genuine grassroots-based capacity building.

Changing long-standing societal roles of men and women is one of the objectives of CEP that some have called more theory than practice. *La' o Hamutuk's* investigations found



that in many places, there has been little to no education on gender equality. In most of the villages we visited, women's participation in discussions and decision-making was minimal. For example, in the village of Becorak, Viqueque district, women in the community experienced discrimination in that when community-use goods were received from CEP funds, such as a wheelbarrow or other tools, women were often not given the opportunity to use them. Many have criticized the World Bank and the CEP for trying to create rapid cultural change, mainly through the imposition of rules as opposed to systematic efforts aimed at consciousness raising and capacity building.

CEP Deputy Director Alvaro Ribeiro explains that the World Bank is only responsible for administering funds, and that problems related to tensions between traditional leaders and the CEP must be worked out by the communities themselves. "CEP only lays out the rules and facilitates the process. The community is actually responsible for the process." Many community members, however, including traditional leaders, are unable to explain the CEP rules and processes because they are extremely complicated and CEP has not clearly communicated them. Also, as these rules do not come from the community, there is a lack of ownership of the "process."

Many of the problems laid out above stem from a mistaken analysis of East Timorese society. Recognizing that CEP's success would depend on its ability to work with or around traditional structures, the World Bank sponsored an anthropological study on traditional power structures and the CEP in September 2001. The study, authored by two foreign anthropologists, characterizes traditional structures as undemocratic and top-down while presenting "modern" structures (i.e., CEP) as inherently democratic and bottom-up. The report also contends that the East Timorese people would be unable to develop these "modern" principles without the intervention of the international community. "In Timor's rural areas," the report states, "traditional political concepts...only start to be challenged by international influences and the introduction of modern ideas. One core difference between the local and modern paradigms is the hierarchy of the former compared with the idea of equality of the latter." World Bank and CEP staff have also expressed this view, citing the lack of democracy and accountability under Portuguese and Indonesian rule as evidence that East Timorese do not have the experience or know-how to steer themselves in the right direction.

Before they came to East Timor, the World Bank introduced similar projects in developing countries throughout Asia, Africa and Latin America. These projects claim to replace centralized, undemocratic traditional structures with equitable and accountable local government structures. But given that the World Bank is a large, bureaucratic, international institution whose decision-making structure is far from democratic and transparent (see *La'o Hamutuk Bulletin* Vol. 1, No. 4), analysts in various countries have characterized the Bank as arrogant and hypocritical.

The CEP's direct prototype is a project which the World Bank administers in Indonesia called the Kecamatan (sub-district) Development Project (KDP). When East Timorese voted for independence in August 1999, the KDP had already been running in East Timor for close to a year. The KDP focused on local control and transparency in the delivery of development monies. CEP's mandate, however, is much broader, adding the development of new local governance structures and community empowerment in local governance. Many of the key international consultants to CEP come from the KDP. This fact has raised concerns that the project has prioritized KDP's objectives - the fast and transparent delivery of development money - over CEP's other goals, such as local ownership and the development of sustainable models of democratic local governance.

While the World Bank and CEP repeatedly state their commitment to bottom-up decision-making, some East Timorese believe that the CEP's guidelines do not allow for genuine community-led initiatives that go beyond the project's parameters. For example, in the sub-district of Iliomar, Lautem district, when village council members carried out community consultations, people repeatedly expressed the need for a clean water system. Community members explained to *La'o Hamutuk* that CEP staff rejected the proposal for clean water explaining that the cost of the project - \$900 - was too small. CEP staff explained to the community that if there are many projects using small amounts of funding, it will be too difficult for the limited CEP staff to monitor. The more expensive project proposed was repair of the main road. The community, however, refused to work on the road project,

explaining that they walk to their church, school and fields and have no need for the road; what they need is clean water. Despite the opinion of the community, the CEP has already supplied materials for the road project. Today, the project stands stalled as the community waits for clean water. While CEP staff describe this case as one of poor facilitation by CEP staff, it appears to be indicative of larger problems.

A fundamental problem for the CEP, already noted above, is a lack of East Timorese ownership. From the village level to the national level, CEP is viewed as a World Bank project. One former CEP staff person said "instead of creating local institutions, they created a World Bank project." Local community members view the councils as CEP councils, not their own, and most East Timorese believe that the councils would dissolve without the community grant monies which now give them a purpose. At the national level, the project officially falls under the new East Timorese government. Several CEP staff, however, described limited communications between the CEP and the government structures. While the cultural heritage component of CEP has a national board made up of cultural performers, representatives of the church, youth and women's organizations and other relevant groups, the much larger community grants component has no such structure to provide for more East Timorese control and accountability.

A lack of transparency and planning has also led to conflicts and to projects that run counter to the principles of the project. In the village of Ailebere in Lautem district, for example, the second phase of CEP gave credit loans to two individuals using a mechanism that was not transparent and thus raised suspicions of collusion. Local community members further criticized the fact that the credit given was used to open a motorcycle repair shop in Dili rather than being used to support community development in Ailebere/Lautem itself. In the village of Fuat in the sub-district of Iliomar, Lautem, CEP funds supported the building of a water cistern with pipes, which were useless because the village is too high for the pipes to carry the water to the community without a pump. Unfortunately, many community members lack clear information about CEP processes and thus they are unable to hold the project accountable when problems such as those above arise.

Monitoring and Evaluation of CEP

In East Timor, there have been many reviews of the CEP, some funded by the World Bank and others by the project itself. Each of these reviews has found the implementation of the CEP to be generally satisfactory, citing the significant number of new roads, new water systems and health clinics funded by CEP. The most recent World Bank-sponsored review was in June 2002 and also found the project to be satisfactory. It also cited problems with transparency in community management and bookkeeping, and a general lack of motivation among CEP staff due to uncertainty about the future of the project.

One major criticism of these reviews is that most are primarily conducted by international consultants. The June 2002 "Supervision Mission Team," for example, was made up entirely of internationals who worked in coordination with government officials in carrying out the review. CEP's Eastern Regional Coordinator José Barros asks why more East

Timorese community workers have not been involved in these reviews. While acknowledging the benefit of World Bank assistance, he hopes to see more East Timorese participation in reviews, planning and at all of the higher levels of decision-making.

La'o Hamutuk found that many communities are concerned that CEP provides few effective mechanisms for local input. Part of the difficulty for East Timorese to participate in monitoring the project is language. The vast majority of national level project documents – such as the project appraisals and grant agreements – exist only in English. Documents in local languages generally relate to the community-level implementation of the project only. Several mid-level CEP staff who are interested in understanding the grant agreement process feel excluded from the process because they do not speak or understand English.

Looking Ahead

In less than a year, the new East Timorese government will need to decide whether CEP – in part or in whole - continues, and if continued, from where the funding would come. Up to now, CEP has been funded entirely from TFET monies, but if CEP is continued, some or all of its costs will be paid out of the same money which funds the East Timor government budget, taking resources that would otherwise be spent on health care, education or other pressing needs. The government needs to decide if CEP is the best use of these limited funds, and if the CEP councils are a more effective way to make decisions than the parliament and the government. If so, CEP decisions must be coordinated with government agencies working in the same areas.

While senior CEP staff feel that the project should continue, others view the continuation of this project, still tied closely to World Bank rules and policies, as an infringement on East Timor's independence and a barrier to resolving the question of local governance in East Timor. They explain that CEP is outside of East Timor's Constitution and has no parliamentary mandate or oversight, and that the project focuses too narrowly on distribution of funds, despite goals that are far more broad.

CEP Deputy Director Alvaro Ribeiro feels that the village and sub-district councils must remain in place – with or without continuing funds - because they represent a more democratic model than traditional structures. According to East Timor's World Bank Country Manager Elizabeth Huybens, it is most important that the principles on which CEP is based continue. Both World Bank and CEP staff express their commitment to learn from mistakes made and to improve the

mechanics of the project. They cite recent restructuring in CEP – specifically the creation of regional offices – as a positive move towards decentralizing the project. Decentralization, however, does not in and of itself lead to greater levels of democracy. The World Bank and CEP promise to improve transparency and accountability in the distribution and use of CEP funds. Moreover, CEP has explained that they will review all projects that have not been completed and make efforts to continue them in the coming phase of funding.

CEP will continue until at least June 2003. East Timorese who were interviewed for this article made the following recommendations for improvements in CEP:

√ **CEP must ensure that community councils truly represent local communities and coordinate fully with local leadership structures.** CEP together with local communities must reexamine and clarify the roles of the community councils in relation to local leadership structures

and improve coordination between these bodies to avoid internal conflicts in villages. CEP together with local communities must review council election procedures to ensure that they are open, secret, and not based on the decisions of a small group. CEP must ensure that council members truly represent their communities in deciding on the use of CEP funds.

√ **The World Bank and the CEP must give local communities better information and control over the project's planning and implementation.** All documents related to the project, from the World Bank policy level to the local implementation level, must be available in a language and form that most East Timorese

can understand. There must be more flexibility in CEP procedures to allow local communities to make reasonable adjustments so that they can take into account the real local conditions and priorities. East Timorese must have more control of the project at the national level, perhaps through a board made up of various sectors of civil society and the government. CEP must improve mechanisms to ensure effective work of verification teams in the early stages of any proposed project.

√ **The World Bank and CEP must allow local communities to participate fully in project evaluations.** There must be a stronger commitment to involving East Timorese community members in CEP evaluations. CEP must be pro-active in seeking out the views of community members. Perhaps an independent team can be formed including CEP staff, village council members, NGOs and other people trusted by the local community. ❖

The Trust Fund for East Timor

CEP is funded from the Trust Fund for East Timor (TFET). TFET was started after the donors' meeting for East Timor in Tokyo, Japan in December 1999 as a means for donor countries to pool their money for East Timor's reconstruction needs. Approximately US\$173 million has been pledged to TFET to be used over a three year period. Since its inception, TFET has been administered jointly by the World Bank and the Asian Development Bank (ADB), with the ADB administering major infrastructure repairs (telecommunications, power, water, and roads) and microfinance, and the World Bank administering projects in health, education, agriculture, private sector development, community empowerment (CEP) and economic capacity building. All projects are now implemented by the Government of East Timor. No new projects are being funded by TFET, and it is expected that the funds donors have committed to TFET will be completely disbursed by the end of 2004. TFET funds are grants which do not need to be repaid.

***La'ó Hamutuk* Tells the Australian Parliament:**

The Timor Sea Treaty Should Not be Ratified in its Current Form

The Joint Standing Committee on Treaties (JSCT) of the parliament of Australia has been accepting submissions (testimony) and holding public hearings regarding the Timor Sea Treaty. The treaty, which has not yet be ratified in either country, specifies how the oil resources in the Joint Petroleum Development Area (See LH Bulletin Vol. 3, No. 4) will be managed.

More than 70 organizations and individuals sent submissions, including four from East Timor: LAIFET Labor Advocacy Institute, NGO Forum, CIITT (Independent Center for Timor Sea Information) and *La'ó Hamutuk*. People from the latter three organizations also traveled to Darwin on October 3 to give oral testimony at a JSCT hearing. The following is excerpted from *La'ó Hamutuk's* written testimony, submitted at the end of July by Adriano do Nascimento.

Dear Honourable Members of the Parliament of Australia,

The East Timor Institute for Reconstruction Monitoring and Analysis hereby submits information to your Committee for consideration as you discuss the Timor Sea Treaty between Australia and East Timor. We believe that this may be the most important issue for the future of our newly-independent country. We encourage the Australian Parliament to think about your new neighbour to the north, in addition to your own national interest, as you consider ratification of the treaty.

The treaty should not be ratified in its current form

We are encouraging both the Australian and the East Timorese parliaments not to ratify the treaty that was signed in Dili on 20 May 2002 by Prime Ministers John Howard and Mari Alkatiri. We believe that the treaty was negotiated too hastily, in an unbalanced environment, and that it contains serious flaws. For a variety of historical, moral, legal and pragmatic reasons explained below, we urge the Standing Committee to ask the Australian government to re-enter negotiations with the government of East Timor, with the goal of quickly arriving at a revised agreement which better protects the interests of both Australia and East Timor.

The Exchange of Notes from 20 May provides sufficient legal basis for development to continue without being interrupted or delayed even if renegotiating the treaty takes some time. This was also the situation during the transitional period. In any case, there are outstanding fiscal, tax and other issues which are not covered even by the currently proposed treaty. We are also concerned that there are no guarantees that East Timor will receive its share of employment, downstream benefits, and other income which will come from the oil and gas development. We do not want to rely forever on handouts and revenues from our resources, but also to develop the jobs, skills, workforce and infrastructure that will help us be truly independent and self-sufficient.

We hope that a renegotiated treaty, supplemental amendments, or another exchange of notes, will include adequate protection of East Timor's sovereignty, boundaries, environment, democracy and economic interests. The current document results from undue pressure by a large, established, developed nation against a small, brand-new, underdeveloped country. Frankly, we are shocked that a country with the democratic and legal traditions of Australia would abandon fairness and the rule of law to coerce our Prime Minister to sign an unfair agreement within hours of our becoming independent.

The revised treaty should encourage expeditious resolution of the seabed boundaries

Under the current proposed agreement, Australia has no incentive to enter negotiations to determine the seabed boundaries between Australia and East Timor. As you know, there has never been a boundary delimitation between our two countries. We believe that it is important for our relationship to define our economic zones expeditiously. Furthermore, we are concerned that the revenues from the gas and oil may be exhausted, with Australia receiving far more than its legal share, before the boundaries are resolved. Since the Treaty (Article 22) anticipates it could take more than 30 years to delimit the boundaries, our concern is well-founded.

Consequently, we are suggesting that revenues from oil and gas fields which are within East Timor's Exclusive Economic Zone under Law of the Sea principles (that is, which lie north of the median line between the two countries and within 200 nautical miles of East Timor's shoreline), but which are assigned to Australia by the interim JPDA boundaries in the 20 May treaty, be placed in escrow until the boundaries are determined.

The entire Joint Petroleum Development Area (JPDA) lies north of the median line, so all of its revenues belong to East Timor under international law. The 10% which would go to Australia under the proposed Timor Sea Treaty should go into trust. More importantly, the Laminaria-Corralina, Buffalo, Bluff, Buller and Greater Sunrise oil and gas fields are north of the median line and lie within East Timor's Exclusive Economic Zone under United Nations Convention on the Law of the Sea (UNCLOS) principles. Since settlement of the boundaries could award some or all of the revenues from this field to either of our countries, the revenues from these fields should also be put in trust. By safeguarding the revenues in this way, both countries can be assured that their rights are protected, and that both sides will make good-faith efforts to agree on maritime boundaries expeditiously.

We are also concerned that the unitisation agreement ("Annex E") for Greater Sunrise does not provide sufficient protection that the percentages will be changed, either for the future or retroactively, after the boundaries are decided. It divides the revenues 18.1% (90% of 20.1%) for our country and 81.9% for yours, which is approximately based on the portion of the gas field which lies inside the JPDA. The JPDA border is a historical artefact with no relevance for East Timor's maritime boundaries. When those boundaries are agreed, they will almost certainly be in a different place than the current JPDA. The agreement on Sunrise unitisation must ensure that the percentage division between our two coun-

tries will be adjusted to be consistent with the boundaries, and that revenues collected both before and after settling the boundaries are apportioned between our countries as the location of the boundary would dictate, regardless of the illegitimate history of the ZOCA and JPDA borders. The agreement should also state that settlement of the boundaries will take precedence over the current inherited JPDA borders.

Many people here see Australia's continued release of exploration permits in contested areas adjacent to the JPDA as an indication of Australia's true motives.

Australia's recent support for East Timor has not always been the case

Since 1999, the Australian government has supported East Timor's political and human rights, and we appreciate that. We are grateful to John Howard and Alexander Downer for encouraging Indonesian President Habibie to allow our people to vote on self-determination, and we are grateful for Australia's leadership of InterFET and your continuing military and economic aid to guarantee East Timor's transition to independence.

But we are not confident that support from our neighbour to the south will persist indefinitely. We have not forgotten Australia's abandonment of our people to Japanese occupation in 1942, your government's encouragement of Indonesia's invasion of our country in 1975, and your support for Indonesia's bloody occupation of East Timor for more than twenty years, as recently confirmed by releases of official documents and the Senate Inquiry.

We are particularly troubled when we recall Australia's negotiation, signature and ratification of the illegal 1989 Timor Gap Treaty with Indonesia, which implemented a bilateral agreement to steal resources which rightfully belonged to our people. When we recall the Australian government's 1975 claim that an independent East Timor would not be economically viable, which was used as a reason for Australia to support Indonesia's invasion of our country, our anxiety increases.

Australian humanitarian aid for East Timor since 1999 has been generous, amounting to nearly A\$200 million, and your contribution to InterFET and PKF may be as much as A\$2 billion. But this amount pales in comparison with the more than A\$40 billion in government revenues which will result from the oil and gas fields north of the median line between our two countries. Under the proposed treaty, more than half of these revenues – which belong to East Timor under international law – would be taken by Australia.

If this treaty is implemented but the boundaries are not resolved expeditiously, Australia will be stealing dozens of times as much from East Timor in oil and gas revenues than you have given us in aid and military support. In fact, from 1999 to 2001, Australia received revenues from the relatively small Laminaria-Corallina oil field (which is in East Timorese territory under international law) which are more than three times the cost of Australian humanitarian aid to East Timor during the same period. And since 1989, during the Indonesian occupation and the UN transition period, Australia received more than A\$1 billion additional from the JPDA alone.

Although East Timor is now politically independent, it appears that Australia is trying to achieve by one-sided negotiation and defiance of international law what Indonesia could not accomplish by brutal military occupation.

We are confident that the Australian people, through their elected Parliament and the Joint Standing Committee on Treaties, do not support this blatant grab of our new nation's heritage, and we urge your government to return to the law-abiding community of nations by reinstating cooperation with UNCLOS and ICJ processes for settling maritime boundary disputes. We encourage you to give East Timor confidence that Australia intends to negotiate these boundaries in good faith by placing the disputed revenues in escrow until they are resolved.

The rule of law should be practiced as well as preached

For more than four centuries, East Timor has been ruled by foreign powers, under autocratic, corrupt regimes that violated our human and political rights for their own political, economic and personal purposes. We struggled against Portuguese colonialism and Indonesian occupation so that we could govern ourselves in a fair, just and democratic manner. We strived to overcome corruption, collusion, nepotism, repression, arbitrary power, and the use of public resources for private gain.

Now that we have achieved our political freedom and independence, we are learning to follow constitutional, democratic procedures in the relationship between our government and our people. Primary among these is the rule of law – that government consistently applies certain principles which have been agreed upon by the society as a whole, through their elected representatives. No individual's greed is allowed to transgress these principles, regardless of how much power they have, where they were born, or who they are related to. Although we have long believed in the rule of law, we have never been able to practice it until now.

Throughout history, strong, powerful, rich countries have often used their power to unfairly exploit poor countries and steal their resources. We know this only too well from our own experience. But in recent years, with the rise of political freedom and the decline of colonial empires, nations have committed themselves to prevent such exploitation in the future. By relying on international conventions and treaties, all peoples should expect to be treated fairly. The same rules are supposed to apply to the large and the small, the rich and the poor, the white and the black. This legal protection is especially important to countries like East Timor, with little experience in self-government and almost no capability to influence our larger and more powerful neighbours. Although Australia and East Timor now sit at the negotiating table as two sovereign governments, there is still an imbalance of negotiating flexibility, economic power, financial expertise and diplomatic experience.

Australia and others in the international community consistently encourage East Timor's new government to implement democracy, the rule of law, transparency and safeguards against corruption as we develop our governmental structures and practices. We appreciate that encouragement. At the same time, Australia is not practicing what you are preaching. When your country withdrew from legal processes for resolving maritime boundary disputes, you taught us the opposite message – that when the booty is large enough, the legal principles go out the window.

Your government's National Interest Analysis on withdrawal from UNCLOS arbitration, given to this committee on 18 June, says the same thing in more polished language:

This action was not made public prior to it being taken to ensure the effectiveness of the declaration was maintained. Public knowledge of the proposed action could have led other countries to pre-empt the declaration by commencing an action against Australia in relation to sea boundary delimitation that could not be made once the declaration under article 298(1)(a) of UNCLOS was made.

In other words, your government acted secretly and urgently to prevent East Timor from utilizing our rights under international law.

The NIA goes on to say:

The Government's view is that maritime boundary disputes are best resolved through negotiation, not litigation. ... Compared to other countries, Australia, as an island continent, has some of the longest maritime boundaries in the world. It has maritime boundaries with many countries and the Government is concerned that every endeavour should be made to reach an agreed resolution of any maritime boundary disputes through peaceful negotiation.

In other words, the imbalance in negotiating power between Australia and East Timor should be exploited fully to advance Australia's economic interests. East Timor should have no recourse to the rule of law.

Australia's withdrawal from the compulsory dispute resolution mechanisms of UNCLOS and the ICJ may prevent us from receiving the guidance and rulings of internationally recognised avenues for reaching an arbitrated settlement if negotiations cannot reach agreement. This is the first time since 1975 that Australia has limited the jurisdiction you accept from the International Court of Justice. We encourage Australia to reinstate your willingness to accept all avenues which international law provides for countries to peacefully resolve boundary issues.

Australia's lesson in *realpolitik* will help East Timor learn that international relations is a cold, cruel world, where actions speak louder than words and greed is more important than principle. But the economic and political cost to our people is unacceptably high.

East Timor and Australia's future security depends on a fairer treaty

East Timor's future stability and survival as a democracy, as well as the ability of our people to achieve a tolerable standard of living and public services, depends on the money from the oil and gas resources. Although the Timor Sea disputed area contains virtually all of East Timor's potential exportable resources, Australia has four times as much oil and gas elsewhere, in territory which is unquestionably Australian under international law. Do you want to steal our future to fatten your wallet?

As you know, our new nation is just beginning to recover from a quarter-century of brutal Indonesian military occupation, climaxed by the massive destruction of "Black September" 1999 which ended when Australia and InterFET fi-

nally came to our support. We are creating our democratic institutions, our infrastructure, our social services and our economy from virtually zero. East Timor currently relies on international donors for survival, an unhealthy and short-term situation. We depend on our natural resources – particularly our oil and gas – to provide the means to build our nation and provide for our people.

Australia, working in concert with the oil companies, has exploited our current precarious situation to force East Timor to sign an treaty which jeopardizes our economic and territorial rights.

At present, 40% of the JPDA revenues that Australia accepts as belonging to East Timor are being held in escrow, effectively as ransom to pressure our country to ratify the 20 May Treaty. We see this as unjustifiable coercion, exacerbating the imbalance that already exists between our two countries. We ask Australia to release this money, so that East Timor will be less dependent on aid in this critical period. Both countries have agreed that East Timor is entitled to 90% (not only 50%) of the JPDA revenues, and this agreement should apply to revenues not only since 5 July 2001, but actually to all revenues from the JPDA since 1989. A reasonable compromise could be to begin the 90% share for East Timor as beginning when we voted for independence in August 1999, a process recognized by both Australia and Indonesia.

We believe that the era of empire and colonisation is over – and we encourage Australia to bring its conduct into line with 21st century ideas of national and human rights and ethical behaviour.

Around the world, the phenomenon of "failed states" is growing, with horrendous consequences for the citizens of these nations. Their neighbours also feel the impact, as they cope with floods of refugees, providing life-saving emergency assistance, and the need for humanitarian military intervention.

We are confident that the Australian Parliament does not want East Timor to fail – that you understand the disaster this would be for both our countries. But without economic security, and without the ability to rely on the rule of law both within our country and internationally, this is a serious risk.

East Timor is a new nation, developing our economy and democratic traditions. We have much to learn from Australia's long and rich heritage of freedom, democracy and economic development. But we also see, as both the 1989 Timor Gap Treaty and the 2002 Timor Sea Treaty demonstrate, that lust for money, especially when the prize is large enough, can override legal and democratic principles.

Please help East Timor enter the community of law-abiding nations, and return Australia to that community. And please help ensure our economic and democratic development, as well as the hard-won sovereignty of our boundaries. We place our trust in the people of Australia, and in this Joint Committee, and are confident that ethical practices and the rule of law will place limitations on greed and power. That is the best way to initiate a mutually prosperous and friendly relationship between two democratic nations on both sides of the Timor Sea. ❖

In Brief. . .

On 27 September, the **United Nations General Assembly unanimously welcomed East Timor as the 191st Member State** of the UN. Leaders from around the world congratulated the UN and the East Timorese delegation (which included Prime Minister Mari Alkatiri, Foreign Minister José Ramos-Horta, Bishop Carlos Ximenes Belo, and diplomats José Luis Guterres and Constâncio Pinto) for achieving East Timor's independence.

In his speech, President Xanana Gusmão said: "At the core of this success, were, above all, our People. By rejecting to embark on the path of violence, even when provoked, by exercising their rights in a democratic and civic manner, even if it meant risking their own lives, by looking towards the future hoping for the certainty of freedom, our people proved to the world to be worthy of the respect that we all owe and know, and thus gain the credibility and admiration of all."

Although most speakers welcomed East Timor to the community of independent nations, U.S. Ambassador James Cunningham stood alone in giving instructions: "we welcome their work towards a nation that enjoys open, inclusive democracy, a market economy, a just legal system, and harmonious relations with its neighbors."

Following the General Assembly meeting, East Timor's flag was raised to join 190 others in front of UN Headquarters. President Xanana and UN Secretary-General Kofi Annan spoke briefly.

La'o Hamutuk comment: *We join the chorus welcoming East Timor to UN membership, and hope that East Timor's representatives there will draw on this new country's history of overcoming war, oppression, occupation, and human rights violations to emerge as a peaceful, democratic, independent nation. Although the brief record since independence is not hopeful, we encourage East Timor's diplomats to use their voice and vote for peace, justice, human rights, and self-determination for all peoples, even as powerful countries pressure this small nation in other directions. The RDTL delegation should follow Article 8 of East Timor's Constitution, which spells out the principles of RDTL's international relations:*

"...national independence, the right of the peoples to self-determination and independence, the permanent sovereignty of the peoples over their wealth and natural resources, the protection of human rights, the mutual respect for sovereignty, territorial integrity and equality among States and the non-interference in domestic affairs of other States."

On 6 August, about 300 university students clashed with local and international police guarding a university building in Dili. **The students were protesting reports of a significant increase in annual fees.** Students threw plastic bottles and rocks at police, but no one was hurt. Later, the students demonstrated outside the office of Prime Minister Mari Alkatiri, demanding that he rescind the fee increase. The demonstration was the second in two days over high unemployment and high costs for basic goods. At press time, the Council of Ministers is considering significant reductions in student fees.

On 29 August, the **Independent Center for Timor Sea Information (CIITT, an NGO coalition) met with the president of East Timor's National Parliament, Francisco "Lu Olu" Guterres.** In the meeting, Mr. Guterres said that the issues of maritime boundaries and Exclusive Economic Zone must be settled based on national law which has been established and international law as stated in the UN Convention on the Law of the Sea (UNCLOS). He also stated that "based on the map, natural resources in the Timor Gap belong to East Timor. This is based on international law."

On 17 August, the **Australian Council of Trade Unions (ACTU) held a seminar on Timor Sea issues** in Darwin, Australia. This seminar was attended by representatives from East Timorese civil society including José Conceição da Costa (President, KSTL - East Timorese Union Confederation), Humberto José Alves (LAIFET - Labor Advocacy Institute for East Timor) and Adriano do Nascimento (CIITT - Independent Center for the Timor Sea Information). This seminar recommended that Australian trade unions:

- Demand that the East Timor and Australian governments review the treaty signed by Mari Alkatiri and John Howard
- Establish networking with the East Timor Union Confederation
- Provide basic training for East Timorese workers
- Ask Phillips Petroleum to make an agreement on recruitment of Australia workers.

On 9 September, East Timor Prime Minister **Mari Alkatiri visited the Bayu-Undan** oil and natural gas exploration project in the Timor Sea, which is managed by Phillips Petroleum. Alkatiri was accompanied by Ovidio de Jesus Amaral (Minister of Transportation, Telecommunication and Public Works) and Madalena Boavida (Minister of Finance). Returning from his visit, Alkatiri said "When I arrived there, I was happy and satisfied. I saw the RDTL flag fluttering in the middle of the sea. ..."

Oxfam International released a report on 18 September stating that **millions of people in 45 coffee-producing countries are facing "economic ruin,"** and that many of them suffer from hunger. The report asserts that this is due to the significant drop in world coffee prices over the last several years, and to the growing disparity between the huge profits of the largest global coffee companies and the shrinking share of income received by coffee farmers. The report also criticizes the "stunning policy failure" of the World Bank and the International Monetary Fund for encouraging countries to produce greater amounts of export commodities like coffee, but failing to warn them of the profound dangers of price drops on the world market. Oxfam calls upon producer countries to destroy excess supplies of coffee to help raise the price, and exhorts the major coffee firms to pay better prices to coffee growers. With important implications for East Timor, the report also warns of the limits of trying to pursue a "niche market" strategy of producing specialty coffee, as many countries are doing so. The Oxfam report is available online at www.maketradefair.com. ❖

Editorial: Indonesia Fails to Provide Justice for 1999

Indonesia is once again exhibiting the flaws in its judicial system – its inability to find justice and end impunity for those who committed human rights violations in East Timor in 1999, and even back to 1975. If the international community still refuses to exert necessary pressure, the injustice will continue. The international community has the responsibility to fight for justice for crimes of international jurisdiction, which includes the crimes against humanity carried out in East Timor by Indonesian armed forces, government officials and others following their orders.

Now, an international demand to establish an international tribunal for East Timor has become the last hope. However, that hope appears distant, as the Indonesian government has now shown the political will to hold its high-ranking military and police accountable for the campaign of violence before and after the UN-supervised referendum in 1999.

On the contrary, the government in Jakarta is using all possible means to protect high-ranking officials, including manipulating domestic legal processes. The Indonesian government had also repeatedly delayed setting up a court to try perpetrators of crimes against humanity.

This situation is now exacerbated by the lack of international pressure, which Jakarta reads as a license to continue activities outside the law, such as not holding perpetrators of crimes against humanity accountable.

The *ad hoc* Human Rights Court also has very limited experience in international law – as shown by the unprofessional way it issued indictments, missing crucial elements of crimes against humanity. The impartiality of lawyers and judges is also questionable – their recruitment was not transparent. In their questioning and cross-examination, they were ineffective and did not touch the essence of human rights violations.

In addition, the court has very limited jurisdiction (only for April and October 1999, and only covering three districts: Dili, Liquiça and Covalima). The indictments are very limited, and do not reflect the widespread and systematic campaigns of violence in East Timor during 1999. The indictments by the *ad hoc* prosecutors described the violence as social unrest among pro-independence and pro-integration factions, and failed to incorporate direct involvement of Indonesian armed forces in founding and financing East Timorese militia groups.

In mid-August, the court issued its first verdicts, acquitting six Indonesian military and police officials, and sentencing one East Timorese (former Jakarta-appointed governor Abilio José Osório Soares) to three years in prison for failing to “manage his subordinates effectively.” The United States and the European Union issued weak statements of disappointment, but criticism was strong within East Timor and from many international organizations.

The only charge against the defendants was their inability to exercise their responsibility in managing their subordinates. Governor Soares, for instance, obviously misused his authority in channeling Indonesian Social Safety Network (JPS) funds to finance militia activities, but this was not raised in court. As a result, the indictment is only effective against East Timorese perpetrators who were directly involved in the field, and it obscures and limits Indonesian military command responsibility for the crimes against humanity.

Most of the evidence of direct involvement of Indonesian armed forces was not shown in the court, despite the fact that this evidence had already been gathered by the investigations in 1999-2000 by credible authorities including the UN International Commission of Inquiry and the Indonesian National Commission of Inquiry to Human Rights Violation in East Timor (KPP-HAM), as

well as some findings by the Dili-based UNTAET Serious Crimes Unit. The UN Commission of Inquiry found widespread, systematic and planned human rights violations in East Timor and then recommended the establishment of an international tribunal to bring the perpetrators to justice.

The *ad hoc* court also has fundamental administrative problems related to public access to the documents used during the trial. There is no way for the public to get access to public documents such as indictments, reply of the defendants and so forth.

And until April 2002, none of the victims’ witnesses were called to testify, although the Indonesian penal code (KUHP no. 160.1b) clearly states that these witnesses should be first to testify before the court. On the other hand, the witnesses called so far are those who should be listed as violators of human rights in East Timor. Furthermore, a number of main witnesses were not provided proper security. Many East Timorese witnesses declined to testify as their safety was not assured.

Given these shortcomings in the *ad hoc* court, we are not surprised that six high-ranking Indonesian military officers involved in the campaign of violence were found not guilty for lack of evidence. Following the acquittals, national and international NGOs in East Timor formed the National Alliance for an International Tribunal, which staged a series of protests. The Alliance sees that the verdicts do not bring any sense of justice for the people of East Timor, and they urged that it is the right time to establish an international tribunal for East Timor.

On 17 August, dozens of East Timorese activists demonstrated outside the Dili celebration of Indonesia’s national day, demanding an international tribunal, while many of East Timor’s political leaders were inside. Eight days later, Rede Feto, the East Timorese Women’s Network, gave a letter to UN High Commissioner for Human Rights Mary Robinson rejecting “the existence and entire process of the *Ad Hoc* Human Rights Tribunal” and asking Robinson to work for an international tribunal. Shortly thereafter, Bishop Belo said that the entire international community has an obligation to set up such a tribunal. Because what transpired in East Timor involved crimes against humanity, “no part of the human race whatsoever, may nullify these crimes unilaterally,” wrote the Bishop.

From inside Indonesia there were also strong criticisms against the decision of the *ad hoc* court. Ihdhal Kasim, Jakarta-based ELSAM Executive Director, said that the acquittals of Police Chief Timbul Silaen and Suai district administrator Col. Herman Sedyono were a serious failure of the *ad hoc* public prosecutor. “The verdict to free (the defendants) will cause the international community to doubt the capacity of the judges and prosecutors in dealing with the first such crimes ever tried under Indonesian judicial systems,” he said.

Similar criticisms came from international NGOs including Amnesty International, the Catholic Institute for International Relations (CIIR), Tapol, ETAN, APCET, the International Crisis Group and many other organizations. Amnesty International and the Dili-based Judicial System Monitoring Program concluded that now is “the moment for the UN to review its decision not to pursue the recommendations of its own International Commission of Inquiry on East Timor to establish an international criminal tribunal.”

UN Secretary-General Kofi Annan and UN High Commissioner of Human Rights Mary Robinson reacted strongly against the acquittals. Annan also denied the accusation that the UN caused the violence in East Timor after the popular consultation, as the UN itself was a victim of orchestrated violence of Indonesian armed

forces, police and pro-Jakarta militias. The UN, therefore, has the legal and moral duty to provide justice not only for its staff who were killed during the turbulence, but also for the people of East Timor. Ian Martin advocated an international tribunal in *The Washington Post*, calling “dead” the UN’s hope that Indonesia would achieve justice for the 1999 crimes in East Timor.

Inside East Timor, government officials had various reactions to the verdicts. Attorney General Longuinhos Monteiro, S.H., said that the people of East Timor were obviously disappointed with the judgments of the *ad hoc* court which he called very controversial. Agio Pereira, Chief of Staff of RDTL President Xanana Gusmão, stated that the *ad hoc* process was not objective, as it does not include command responsibility.

At the same time, outgoing UN High Commissioner of Human Rights Mary Robinson made her last visit to East Timor. Due to pressure from the wider community for the government to take a stand, the Council of Ministers through José Ramos-Horta stated that it would determine its position in the near future. However the issue appears to have been lost among other pressing issues; to date the government has no clear position. This is odd, in that after meeting Mary Robinson, President Xanana proposed a war crimes tribunal to try the Indonesian generals implicated in the crimes

against humanity here.

Since the 11 September 2001 attack against the United States, and with targeting Iraq as part of the retaliation, the international priority of justice for East Timor has been overshadowed by the so-called war against terrorism. But the crimes committed in East Timor were crimes against humanity, and establishing an international tribunal for East Timor is still relevant. Justice for East Timor will also advance democratization in Indonesia. If there is no justice, the cycle of impunity will continue in Indonesia and other areas.

So, the effort to achieve accountability for crimes against humanity in East Timor rests upon the UN Security Council and the international community.

We regret that the government of East Timor has not spoken more loudly in reaction to Jakarta’s *ad hoc* decisions. The government of East Timor, along with East Timorese civil society, needs to have a clear stand on Jakarta’s court to encourage the international community to support the establishment of international tribunal for East Timor. The people of East Timor continue to actively demand an international tribunal, and their government should support them and international human rights groups in pushing the international community of governments to provide justice. ❖

Independence and Impunity *(continued from back page)*

soldiers a higher priority for East Timor than writing the laws that define how our government functions?

If Parliament ratifies the impunity agreement with the United States, it will be violating East Timor’s laws. These agreements directly contradict the intent of the Rome Statute, a treaty which is now part of East Timor’s legal system. Under Article 9 of East Timor’s Constitution, “all rules that are contrary to the provisions of international conventions, treaties and agreements applied in the internal legal system of East Timor shall be invalid.”

The wording of the impunity agreements says that the U.S. will prosecute its personnel “where appropriate,” with the decision up to the United States; furthermore, some acts which are crimes under the Rome Statute are not crimes under U.S. law. These loopholes violate the basic purpose of the Rome Statute: that the ICC will prosecute when governments are unwilling or unable to do so. The Rome Statute also gives the ICC, not national governments, the authority to decide whom to arrest or to request testimony from.

The U.S. claims these impunity agreements are covered by Article 98(2) of the Rome Statute, which was written to resolve conflicts between the new ICC and existing extradition treaties and Status of Forces Agreements. A Status of Forces Agreement (SOFA) is an agreement which defines how and where crimes committed in one country by soldiers from the other country will be prosecuted. The United States has signed SOFAs with more than 100 countries.

When the impunity agreement was signed in August, East Timor had not signed any SOFA or extradition agreements. Therefore Article 98 is irrelevant to us, and the impunity agreement is illegal. If East Timor ratifies the impunity agreement, we will have more difficulty negotiating extradition and SOFA treaties, as we will have given up (to the United States) some of the authority which is usually apportioned by such treaties.

The ICC has jurisdiction only over the “most serious crimes of international concern” (genocide, crimes against humanity and war crimes), which are unlikely to be repeated in East Timor. But the pressure the U.S. has put on East Timor over this ide-

logical issue is especially worrisome because the two countries were simultaneously negotiating a SOFA to specify how U.S. military personnel who commit non-systematic or individual crimes (such as rape, murder, assault, and robbery) in East Timor will be held accountable. U.S. soldiers who commit such crimes in Japan, Korea, the Philippines and other countries are usually removed to the U.S., where they often escape serious prosecution or penalties. East Timor and the U.S. signed the SOFA on 1 October, but the text has not been made public.

We hope that East Timor is able to withstand U.S. pressure for impunity for these crimes, which are more likely to occur than those covered by the Rome Statute. SOFAs are meant to allocate responsibility for prosecution rather than enable impunity, but we understand that the SOFA between the U.S. and East Timor could allow U.S. criminals to escape responsibility. Any SOFA must be consistent with East Timorese law (including the Rome Statute) – a requirement which is likely to be incompatible with U.S. demands. If the SOFA is presented for parliamentary ratification, as it should be, we encourage Parliament to consider these issues carefully.

The United States has threatened to cut off military aid and training for countries which ratify the Rome Statute and refuse to sign impunity agreements. But if the price of that aid is East Timor’s independence and this country’s ability to follow the principles of justice and rule of law that the UN, the U.S., and other countries have preached to us over the past three years, it is too high. Parliament should protect East Timor’s hard-won independence. No nation, especially not East Timor, should join the United States conspiracy to undermine international justice.

East Timor joined the United Nations on 27 September, and President Xanana Gusmão addressed the General Assembly in New York. He told the world’s delegates: “Timor-Leste shall never be a sanctuary for those who terrorize innocent civilians, be it on behalf of religion, ideology or any other disguise.” We hope the President will keep his promise and refuse to sign the impunity agreement if Parliament sends it to his desk. ❖

Editorial: Independence and Impunity

The world's most powerful nation could hardly wait to enforce its control over one of the tiniest, weakest, and least experienced. On 23 August, the Foreign Minister in East Timor's three-month-old Government agreed for East Timor to be a safe haven for any United States officials who might commit crimes against humanity. East Timor bowed to U.S. demands never to turn over a current or former U.S. employee, official or soldier to the new International Criminal Court.

Fortunately, the Government in Dili has decided that this agreement must be ratified by Parliament and signed by the President before it becomes effective. We urge Parliament to reject this surrender of East Timor's hard-won independence to U.S. demands for impunity.

But even more importantly, *La'o Hamutuk* joins many East Timorese citizens and others from around the world in denouncing the campaign by the United States to subvert international justice. At this time, when President Bush has told the international community that the U.S. is prepared to invade Iraq without the support of the United Nations, we are especially outraged that Washington is demanding that East Timor grant pre-emptive impunity to the planners and executioners of its illegal and immoral war-making policies.

On 1 July 2002, the International Criminal Court (ICC) came into being, following years of difficult negotiations and over the strong objection of the United States. East Timor was the third Asian nation to ratify the Rome Statute which establishes the court; 80 other nations have also ratified, and 50 more have signed. The Rome Statute was the very first treaty ratified by East Timor, a clear statement that this new country supports the fundamental principle of the ICC: that no one is above the law.

Given East Timor's experience as a victim of crimes against humanity, and our people's frustration at the failures of Indonesia and the international community to hold the perpetrators accountable, we would expect no less. Although the ICC cannot try crimes committed before July 2002, its creation and East Timor's participation will help deter and punish such crimes in the future.

The United States has been trying to destroy the International Criminal Court for many years. Throughout the negotiations leading to the Rome Statute, delegates made numerous concessions to the U.S., weakening the court's power and its ability to pursue perpetrators. Although President Clinton reluctantly signed the treaty in December 2000 (just before he left office), President Bush revoked the signature last May, and has promised that the U.S. will do everything it can to prevent Americans from facing the court.

The first U.S. tactic was to thwart UN peacekeeping missions which included American soldiers. Last June, the U.S. vetoed continuation of the UN Peacekeeping Mission in Bosnia and withdrew its military observers (UNMOs) from East Timor. In July, the United Nations Security Council caved in and adopted Resolution 1422. This resolution bars the ICC from investigating or prosecuting any cases "involving current or former officials or personnel" from the United States and other countries which refuse to sign the Rome Statute for crimes "relating to a UN established or authorized operation." It has a one-year duration, but is expected to be renewed. In adopting Resolution 1422, the Security

Council violated the UN's own Charter – it invoked Chapter VII powers designed to counter specific "threats to international peace and security" when the ICC poses no such threat.

Another U.S. tactic is to pressure each of the more than 100 countries where U.S. personnel might be stationed to promise that they will never allow U.S. officials or employees in their country to be sent to the court without U.S. permission. Since the U.S. will not give permission, such agreements assure impunity. The agreement would also cover any East Timorese and other nationals who ever worked for the U.S. government or its contractors (such as Internews, the Asia Foundation or DynCorp, see *LH Bulletin* Vol.3 No.2-3, p.8).

Many countries have refused to sign such agreements, while others are procrastinating. Only Israel and Romania signed before East Timor. Israel illegally occupies another territory, and Romania executed its deposed dictator and his wife 13 years ago without a legal trial. In the month after East Timor signed, nine others (Tajikistan, Dominican Republic, Uzbekistan, Marshall Islands, Palau, Mauritania, Honduras, Micronesia and Afghanistan) have also signed, although many require ratification before the agreement takes effect. All these countries depend on U.S. military and economic support; most have little experience of genuine justice; most are small and weak nations.

In East Timor's case, the U.S. action is particularly outrageous. This country has not even had time to develop its legal system, to write its criminal laws, to develop its diplomatic skills and relationships. Is providing impunity for U.S.

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What is La'o Hamutuk?

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

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