

JUSTICE AND ACCOUNTABILITY IN EASTTIMOR:

INTERNATIONAL TRIBUNALS AND OTHER OPTIONS

Report of a one-day seminar in Dili, East Timor

16 October 2001

Organized by:

The NGO Forum

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Judicial System Monitoring Programme

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Conference Agenda

16 October 2001

Opening statements: The Need for Justice

Introduction: History of crimes against East Timorese people since the Indonesian invasion and attempts to bring justice (Thomas Freitas, La'õ Hamutuk)

Why justice is important (Domingas Verdial, FOKUPERS and Novi Novi, survivor)

Prosecution in East Timor (Christian Ranheim and Nelson Belo, JSMP)

What is the scope of the prosecution of serious crime in East Timor?

Types of Crimes

Time period under investigation

Ability to indict persecutors

What are the major problems with the prosecution of serious crimes in East Timor?

Prosecutions

Trials

Some investigations

What are the chances of bringing perpetrators to justice within East Timor?

Prosecution in Indonesia (Nug Katjasungkana, FORTILOS and Yayasan HAK)

What are the possibilities for the prosecutions of crimes, committed in East Timor, in Indonesia?

Types of Crimes

Dates of jurisdiction

Establishment of an *ad hoc* Tribunal

What are the major problems facing prosecution of crimes in Indonesia to date?

What is the future of prosecution crimes in Indonesia?

Prosecution of Crimes under an International Justice Process (Joaquim Fonseca, Yayasan HAK)

What are the possibilities for prosecution under an international justice system? Tribunals, International Courts and alternative models

What is the scope of crimes under an International Criminal Tribunal?

What is the possibility in the future of establishing a Tribunal (problems and possibilities)?

Discussion: What are the possibilities for justice in East Timor?

NGOs give short presentations about what their organizations have done regarding justice initiatives, particularly an international tribunal;

Break up into working groups to discuss and report back on the following questions?

1. Is an International tribunal necessary? Why or why not?
2. if yes, what further things do we need to do?
3. if no, what are the better options?
4. if don't know, what further information do we need?

Facilitators will report back to the group

Press Release Issued By The Judicial System Monitoring Programme

United Timorese NGOs Call for an International Tribunal

Dili 17 October 2001

During a seminar on justice for East Timor, participating Timorese non-governmental organizations (NGOs) unanimously called for the establishment of an international ad hoc tribunal with the jurisdiction to try international crimes committed after the Indonesian invasion in 1975. The seminar named "Justice and Accountability in East Timor: International Tribunals and other options," gave the participants an introduction into the current developments of the East Timorese legal system, the establishment of an ad hoc human rights court in Indonesia as well as analysis of the different perspectives of an international ad hoc tribunal.

The conclusions of the working groups highlighted the necessity of bringing the perpetrators of international crimes to justice, and in particular to hold Indonesian military officers accountable. All NGOs emphasized the need to bring justice to the victims, to avoid further human rights violations in Indonesia and the responsibility of the international community to try crimes against humanity committed during an Indonesian occupation which was never legally recognized by the United Nations.

The organizations confirmed their commitment to conduct a coordinated campaign for justice and accountability both on a local, national and international level. Several groups were established to draft resolutions based upon the conclusions of the seminar.

Participants from international NGOs and international support groups expressed their continued support to representative views of the East Timorese civil society. They further highlighted the responsibility of Indonesia to cooperate with international efforts of bringing the perpetrators of crimes against humanity to justice.

All major Timorese NGOs working on justice related issues were present at the seminar. Similar views have earlier been expressed by the now dissolved National Council and by all political parties during the recent election campaign in East Timor.

Prosecuting Serious Crimes in East Timor

By Nelson Belo and Christian Ranheim, *Judicial System Monitoring Programme*

After hundreds of years of colonization and brutal occupation, East Timor is finally on its way towards nationhood. The struggle for self-determination and independence was painful, and you all know what sacrifices it required. Each family, every individual in East Timor was affected, either directly or indirectly from the massive human rights abuses carried out by foreign invaders. It is not hard to imagine the need you may feel to address the past, to seek justice, truth, vengeance and forgiveness in order to overcome a traumatic past and move forward. This short presentation will give you an insight into how the formalized East Timorese justice system approaches the issue of justice for past atrocities.

1. Brief overview of the Serious Crimes process

During 2000, UNTAET established a system for both investigations and prosecutions of so called "Serious Crimes." UNTAET Regulation 2000/15 defines these crimes as genocide, war crimes, crimes against humanity, torture, sexual offences and murder.

Investigative power has been allocated to the Serious Crimes Investigation Unit (SCIU), who is under supervision and directed by the Office of the Deputy General Prosecutor. When a case is ready for trial, it is transferred to the Special Panel for Serious Crimes at the Dili District Court.

The Special Panel can try all cases mentioned earlier - whenever they took place. An exception is sexual offences and murder, which must have been committed within the period of 1 January and 25 October 1999. The Panel consists of two international and one East Timorese judge. It may be of interest to you to hear that all proceedings are being translated into both Bahasa Indonesia and English, and that they are open to the public. There is in other words no excuse not to attend one or several sessions in order to get an idea of how things are proceeding in court.

2. What progress has been made so far?

Investigations

Investigating serious crimes is a time consuming and complicated task anywhere in the world. A number of issues have made it even more complicated in East Timor, most of which are related to the initial lack of basic resources necessary to perform modern, technical investigations. Exhuming graves, providing ballistic analysis, making DNA tests, forensic reports and so on are all resource demanding, and the Serious Crimes Investigation Unit has been lacking both the facilities, funding and human resources to perform their job satisfactorily. After the Security Council visit to Dili late 2000, the situation has improved somewhat as additional funding has been allocated to the Unit.

The Prosecutor's office and the Serious Crimes Investigation Unit have been criticised for their strategy, or what some have called lack of strategy, for prioritising and conducting investigations. It is, however, important to remember that when the SCIU was established, a number of people suspected of having committed serious crimes had already been detained. In order not to have to release those suspects from prison, the SCIU focused on investigating their cases first. They are now all finalised and the accused have either faced trial, or are awaiting trial.

The focus of the investigations have since been directed at ten so called "priority cases", out of which seven investigations already have been completed. The ten cases are :

- the Liquiça Church massacre (6 April 1999)
- the murders at the house of Manuel Carrascalão (17 April 1999)
- the Kailako killings (April 1999) and Maliana Police Station killings (2-8 September 1999)
- the Lospalos case (21 April-25 September 1999)
- the Lolotoe case (2 May-16 September 1999)
- the Suai Church massacre (6 September 1999)

- the attack on Bishop Belo's compound and the Dili Diocese (6 September 1999)
- the Passabe and Makaleb massacres (September-October 1999)
- cases of deportations, persecution, killing of UNAMET staff and atrocities carried out by TNI Battalion 745 (April-September 1999)
- sexual violence cases carried out in various districts (March-September 1999)

Even though the SCIU has limited resources for investigating atrocities committed prior to 1999, a unit within CivPol is investigating so called "historic crimes". No indictments have so far been produced, and we have been informed that their investigations are going slowly due to the technical problems of investigating crimes that happened so long ago.

Prosecution and trials

As of today 11 people have been convicted by the Special Panel for Serious Crimes. Their prison sentences range from 4 to 16 years' imprisonment with an average sentence of just below 12 years. The maximum penalty in East Timor today is 25 years' imprisonment. No one has so far been found not guilty, but two cases have been dismissed on procedural grounds. The first major case to be tried before the court – the Los Palos case – is currently adjourned awaiting the closing statements of the prosecution and defence. It includes 10 accused, all charged with crimes against humanity.

Few of those convicted so far have had any command responsibility. There are, however, a number of Indonesian TNI officers among the approximately 40 who have been indicted but not yet faced trial. They are at the moment assumed to be residing in Indonesia, a factor which complicates the work of the Deputy General Prosecutor considerably. A memorandum of understanding (MOU) was signed between the Attorney General of Indonesia at the time, Marzuki Darusman, and Sergio Vieira de Mello on behalf of UNTAET regarding cooperation in investigation and prosecution related matters. Although UNTAET has issued a number of arrest warrants to INTERPOL and to Indonesia, no action have been taken. Not fulfilling their obligation to cooperate, Indonesia is obstructing the process of bringing the perpetrators to justice before East Timorese courts.

UNTAET is currently initiating a dialogue with the office of the new Attorney General in Indonesia and, although it is too early to tell, we do not expect any major positive outcomes of the discussions.

3. What are the chances of bringing the perpetrators to justice before East Timorese courts?

The answer to this question is crucial when evaluating whether the establishment of an international Ad Hoc tribunal will be necessary in order to bring justice to the people of East Timor, or whether other alternatives might be more effective. Trying crimes before domestic courts will in most cases be preferred due to a number of reasons, not least from the perspective that the perpetrators of crimes should be brought to justice in the country in which the crimes were committed. An Ad Hoc tribunal would be an expensive solution, and might drain the existing judicial system of East Timor of much needed resources.

Whether the current system in place will be sufficient to bring justice to the East Timorese depends, however, on three main factors; investigation strategies, compliance by Indonesia and/or voluntary returns and capacity within the East Timorese courts.

a) Investigation strategies

Investigations carried out by the Serious Crimes Investigation Unit have recently entered into a new phase. The first suspects to be investigated by the Serious Crimes Investigation Unit were already in detention in East Timorese prisons. Most were captured, either by FALINTIL or by INTERFET and handed over to the civilian authorities in January 2000. The first few indictments to be issued by the Deputy General Prosecutor were brought before the Special Panel as simple murder cases, and the ones found guilty were those who directly carried out the criminal act. The prosecutors claimed they lacked both resources and evidence necessary to prove that international criminal law had been violated. We have seen a tendency in the newer indictments that they cover crimes against humanity, and that a larger number of those indicted are presumed to be residing in Indonesia. Among those indicted are a number of people with a direct command responsibility. As far as we know, evidence is

being gathered also against higher ranking of-ficers. We do, however, fear that they are not prioritised and that they might not result in any indictments before the Serious Crimes Investigation Unit phases out of East Timor, something that most likely will happen late 2002.

b) Compliance by Indonesia and/or voluntary returns

Carrying out investigations and issuing indictments is one thing, actually having the accused present to face trial in East Timor is another. Without the accused present during the preliminary hearing of the trial, it can not proceed according to both UNTAET Regulation 2000/30 and international fair trial principles. As mentioned above, most of those being indicted today are presumed residents of Indonesia. It is highly unlikely that Indonesian authorities will comply with the MOU signed with UNTAET, and extradite Indonesian citizens unless they are pressured internationally to do so.

It is, however, likely that as part of the ongoing reconciliation process, some militia commanders and members might return to East Timor and face trials before the Special Panel for Serious Crimes. Even if these are brought to justice, the "masterminds" behind the atrocities will still remain in Indonesia.

c) Capacity within the East Timorese courts

Even with the cases pending before the Special Panel for Serious Crimes today, a heavy backlog has been created. Since the commencement of the Los Palos trial in early July, all other trials have been adjourned. We are at the moment experiencing a situation where there are far more indictments being filed than the court can keep up with. There are additional Panels being established, but we are doubtful this will increase trials substantially, unless additional resources are being allocated in order to support the judicial infrastructure.

For example, there are currently only twelve public defenders covering all cases in East Timor. Those defenders have responsibility both for civil cases, as well as ordinary crimes and serious crimes cases. Two of the defenders are in Portugal for legal training on a rotation basis, reducing the number of defenders to ten.

Another area where court capacity is too low to permit three Panels working simultaneously is court interpretation. Most hearings require translations into both English and Bahasa Indonesia, as most prosecutors are English speakers, while the defenders use Bahasa Indonesia. The entire Ministry of Justice has until now only had three translators working between those languages. They are supposed to cover both court interpretation, the department's correspondence and other documents such as judgments. None of the interpreters are legally trained. A Portuguese speaking Panel is being established, but there is at the moment a shortage of both prosecutors and public defenders with sufficient Portuguese language skills.

Even as of today, the court system lacks the necessary capacity to handle all serious crimes cases efficiently. If Indonesia, unexpectedly, were to comply with the signed MOU and start extraditing people to the East Timorese courts, we fear the system as we know it today would collapse.

d) Conclusion

So where does this leave us? Speakers later on today will give you some information on how an International Tribunal might be established, what it may cost and the likely outcome of judicial processes before such an institution. While a tribunal is still far away, the trials here in East Timor have started. The first few cases to be brought before the Special Panel for Serious Crimes involve mostly lower level militia members as a consequence of Indonesia's failure to comply with their obligation to cooperate with UNTAET in order to bring the higher level perpetrators to justice. What worries us the most is that this seems to happen without international diplomats raising eyebrows over what is turning into a farce.

Without taking any position on the issue of an Ad Hoc Tribunal, an alternative to a large scale campaign for a tribunal might be to focus on lobbying for Indonesian compliance with the already existing legal process in East Timor, and simultaneously ensure that sufficient resources are allocated to the fledgling judicial system.

Thank you.

The Justice Process in Indonesia Regarding the Prosecution of the Serious Crimes Cases of Human Rights Violation in East Timor in 1999

By Nug Katjasungkana, Solidarity Forum for East Timor in Indonesia (FORTILOS) and Yayasan HAK

The attention of the international community towards East Timor was very great after the immense violence in 1999. The United Nations, as a response to the pressure of the UN Human Rights Commission and the UN High Commission on Human Rights, established an international investigation commission that among other things recommended the establishment of an International Tribunal to bring to justice those responsible for the violence. Hence thereafter the international attention weakened and the Indonesian government was entrusted to prosecute the criminals by itself. Is Indonesia capable to hold a just prosecution of those responsible for crimes against humanity in East Timor?

Before and after the "Popular Consultation" on 30 August 1999, which was held to determine the political status of East Timor, violence inflicted upon civil citizens of East Timor increased immensely. The UN Commission on Human Rights held a *special session* on 23-27 September 1999, which was the fourth *special session* ever held, since its establishment 50 years ago. This special session on East Timor brought forth a resolution 1999/S-4/1 which requested the UN Secretary-General to form an international commission to investigate with experts from Asia as members, and to work together with the National Commission on Human Rights (Komnas HAM) in Indonesia, as well as to send a delegate to report to East Timor.

Prior to this, Komnas HAM in Indonesia had already produced a statement that included the following:

"... at that time the development of the situation of the lives of the people in East Timor reached a form of anarchy and the widely spread terrorist acts that were done by both individuals and groups, were witnessed by the security forces, and they did not intervene."

Following this, on 22 September Komnas HAM established a commission to investigate the human rights abuses in East Timor (abbreviated KPP-HAM). Its tasks were to gather facts regarding the human rights abuses in East Timor starting January 1999 until the date of the parliament regulation in October 1999, which verified the outcome of the Popular Consultation

on 30 August 1999. The investigation was given the special task to find out whether the following might have happened:

- genocide
- massacres
- lynching
- forced removal of population
- crimes against women and children
- scorched earth actions

KPP-HAM was also given the task to investigate the government authorities and/or other organizations. The legislation giving the KPP-HAM authority for this is law No. 39 year 1999 regarding Human Rights and the Government Regulation replacing the law No. 1 year 1999 regarding the jurisdiction of human rights. It gives authority to:

- Do an investigation and examination regarding the assumption that there have been human rights violations in East Timor
- Request explanation/information from victims
- Call and examine witnesses
- Collect evidence
- Examine various places including buildings that are of need for the investigation
- Examine and request documents of institutions that are needed
- Grant safety to witnesses and victims
- Process and analyse facts that are found that are important to the accusation and publication

According to KPP-HAM international standards are being used in implementing their work, specifically the *Manual on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions* and the *Guidelines for the Conduct of United Nations Inquiries into Allegation of Massacres*. KPP-HAM has visited West Timor six times (including once when they dug up a victim which involved the work of a forensic expert) and has visited East Timor three times. KPP-HAM have interviewed 55 victims, 23 witnesses, and examinations of 45 people "who are connected to the human rights abuses" including Major General Adam Damiri, Major General Zacky Makarim, and General Wiranto. KPP-HAM also has held three meetings with the International Investigation Commission on East Timor, which was established by the UN.

In the final report, released on 30 January 2001, KPP-HAM states that the facts and evidence they have gathered give a strong indication that "serious human rights abuses" took place, and that they were "planned, systematic, and done on a large and broad scale". The serious crimes referred to are:

- massacres,
- torture and lynching,
- forced disappearances,
- crimes against women and children (including rapes and sexual slavery),
- forced deportation/moving of population,
- Scorched earth actions, and the destruction of property.

According to KPP-HAM all these actions are "crimes against humanity" (paragraph 60).

The evidence they gathered shows that "the civil administration and military authorities, including the police cooperated with the militia, which created a situation and conditions that encouraged actions of crimes against humanity, that were executed by civilians, the military, police, and groups of militia". (paragraph 63) This report also gives the names of the civil administration and military officers who are alleged to be responsible, from militia commanders, district administrators, sub-district military office commanders, even to the district commander and the Governor of East Timor. It is also mentioned that General Wiranto as the Joint Chief of Staff of the Indonesian military has to be held accountable.

In the situation of prosecution, important recommendations of KPP-HAM are (1) the Attorney General do an investigation of the persons who are suspected to have been involved, firstly those whose names are mentioned in this report, but it is not restricted to these names only, and (2) that the parliament and government of Indonesia form a special Human Rights Court to "try the human rights cases and the cases of crimes against humanity threaten national and international law (*Human Rights and Humanitarian Law*). Moreover, KPP-HAM also requests Komnas HAM "to do an overall investigation of all the violations of human rights in East Timor since 1975 - for the sake of upholding truth and justice and for the importance of history."

These conclusions of the KPP-HAM are in accordance with the conclusions of the International Investigation Commission, which gave their report on 31 January 2000. This commission concluded that there were legal violations of human rights and international humanitar-

ian rights, that the Indonesian military and police and civil administration officers were involved in supporting and organizing the militia violence. Moreover the International Investigation Commission recommended that an independent international investigation body would be established with the task of further investigation and identifying responsible people regarding these violations "including those who held commanding responsibility." The commission also recommended *the establishment of an International Tribunal* to bring to trial those people who are alleged to be the implementers of these crimes. Even though there is the recommendation for the establishment of an International Tribunal, the international world - really: the UN Security Council, because it is this organization that has the authority to establish an International Tribunal - gave more trust to Indonesia to bring to trial those responsible for these crimes in East Timor.

With the completion of the work of KPP-HAM, and entrusted by the international world, the ongoing process lies in the hands of the Indonesian Attorney General. The Attorney General holds the authority to decide on which cases and whom to prosecute in court. Here lie several important issues. Firstly, the attorney General's Office doesn't have enough capability and knowledge to deal with cases previously unknown in Indonesia, such as "serious violations of human rights" and/or "violations of international humanitarian law." The foundational law determining the accusations in this case, is law number 26 year 2000 regarding the special human rights court states that "serious human rights violations" include: (a) genocide and (b) crimes against humanity. Whereas what is meant by crimes against humanity are actions "that are part of a broad attack or are systematic and it is known that this attack is targeted directly at civilians through (a) killings; (b) annihilation; (c) slavery; (d) explosions; (e) invasions; (f) torture; (g) rape; (h) lynchings of specific groups; (i) forced disappearances of people; and (j) crimes of segregation (apartheid)." This understanding/definition of "crimes against humanity" is taken from the Statute of Rome chapter 7 regarding the establishment of a "High Criminal International Court."

The Attorney General's office as the public prosecutor, has a difficult task to prove the "systematic", "planned", and "wide spread" nature of the crimes that happened in East Timor during 1999. It is of concern, that these

different crimes will become cases that will be handled by different teams of public prosecutors. In addition to that, their lack of knowledge of the general problems of the occupation of East Timor, will not show that the “systematic”, “planned”, and “wide spread” nature of the crimes will be the primary substance of the “crimes against humanity” in the accusation. This difficulty is increased by the problem of having the witnesses present to give their account in court, among other reason for the reason for safety.¹

The second important reason is, that so far the Attorney General has not been independent from the government, and especially not in relationship to the Indonesian National Military (ABRI/TNI). In the human rights violations in East Timor, as expressed in the KPP-HAM report, persons suspected to have executed the crimes and who are to be held responsible for them, other than the militia commanders, are civil officers in the government administration and military commanders, even including the TNI Joint Chief of Staff (at the time, General Wiranto). It is very likely that the Attorney General will find it difficult to bring to trial the civil administration officials and even more difficult the military officers, especially by proposing that they are some of the highly suspected. Especially in the New Order Regime, the Indonesian National Military (ABRI/TNI) is the national body with the highest power among all the other national bodies, except for the presidency. The third serious problem is the incompetence of the Attorney General and the corrupt nature of the public prosecution body in itself .²

With these existing problems, one can assume from the beginning of August 2000 on, that certain names will be deleted from the list to be investigated by the attorney General. Also the fact of the tardiness of the Attorney General in pulling together the case to be submitted to the court. The cases which have been completed by the KPP-HAM on the 31 January 2000, according to the Attorney General their investigation was completed December 2000, however not even one file has been handed in to the court. This is because the court doesn't yet exist.

This file mentioned above, which has supposedly already been compiled by the Attorney General, has to be submitted to *Ad Hoc Human Rights Court*. This court has to this date not been completely established. The legislation for its legitimisation was published on 8 October 1999 after President Habibie issued the government regula-

tion No. 1/1999. This regulation was rejected by all the factions in the Indonesian parliament on 13 March 2000. Six months later, on 13 September 2000, the parliament passed law No. 26/2000 regarding the Human Rights Court. Based on this law, the *Ad Hoc Human Rights Court* can be established, upon request of the parliament, and the new parliament did request its' establishment on 21 March 2001. Following this President Abdurrahman Wahid issued a presidential decree No. 53/2001 ordering the establishment of the intended court. Megawati Sukarnoputri who replaced Abdurrahman Wahid, who was overthrown by the parliament, issued a presidential decree No. 96/2001 on 1 August regarding the same issue, but that human rights violations in the jurisdiction of Liquiça, Dili, and Suai districts that happened during the months of April and September 1999 only would be investigated and prosecuted. This means that the only cases that will be prosecuted are the cases of the murders in the João Britto church in Liquiça, the killings in the house of Manuel Carrascalão (Dili), the attack on the residence of Bishop Mgr. Carlos Belo in Dili, the killing of the Dutch journalist Sander Thoenes in Dili, and the killings in the Ave Maria church in Suai. The killings in the police station in Maliana, the murders of the sister, friar, and Indonesian journalist Agus Mulyawan in Lospalos, many cases of forced deportations and killings, as well as other crimes will not fall under the jurisdiction of the *Ad Hoc Human Rights Court* .

Even though these laws have been passed in September 2000, up until now the establishment of this court is still in the process of selecting its judges. The establishment of this court is done by a team by the name of, Preparation Team for the Ad Hoc Human Rights Court, which was chaired by Benjamin Mangkoedilaga, a former judge known to be “clean”. This team has already received over 60 names to be selected from to become the *ad hoc* judges. They come from universities in Indonesia who have focused their studies on human rights. Once this team finishes the selection process, they will submit the names of the candidates of the *ad hoc* judges to the president to be nominated. Once installed, they will receive training regarding human rights and other issues that will be needed. According to the plans, this court will be established and begin its work in December, in about two months. The judges for the *ad hoc* court will be chosen from outside, in response to the concern that this court will not be *fair* because the judicial system so far is known to have no credibility and be corrupt.

Should the court for human right violations in East Timor be called, there remains the legal problem of non-retroactivity of laws. In criminal law the principle rules that a criminal act can not be prosecuted, if when the act took place it wasn't violating any laws. However, for the crimes that have been captured in the "crimes against humanity" principle, this (non-retroactivity) can not be implemented, remembering the seriousness of these deeds.³ The problem is that after the parliament amended the constitution, it added the principle of non-retroactivity into the constitution. Hence there is a legal discrepancy between the law on human rights and the constitution, which holds more authority, as it is the foundational law.

The largest difficulty is the political structure in Indonesia itself. The current regime is a "renewed" version of the New Order. Before the fall, the centres of power of the New Order lay with the Indonesian Military (ABRI/TNI), The Nation's Secretariat (with a bureaucratic backbone), and the Presidential Palace. Agencies and judicial bodies were under those central powers. When Suharto fell, a sort of broadening of the power-base happened. Now both bodies of parliament have become a centre of power, because it now has the authority to elect and exchange a president.⁴ Hence, the Presidential Palace has been "opened" politically, because it no longer is a closed centre of power.

Moreover the Golkar party, as an extension of the political bureaucratic hands of the New Order, now has become a political power by itself which plays an important role in the parliament, because many of its members still control the government bureaucracy and hold large sums of money for their political activities.⁵ TNI still remains one of the centres of power, that formerly bowed to the president, but now has become independent from the president, but has now rather increased its' political power. Especially because TNI still has a "representative" in the parliament who is not elected by the people and continues to keep territorial command at the province level (abbreviated as Kodam) down to the district level (abbreviated as Koramil) and has a representative (*Babinsa*) in each village. The political power of the military (TNI) has to be counted on, and in fact often times determines, as can be seen in the recent incident of overthrowing President Abdurrahman Wahid.

The largest obstacle for the Indonesian National Court of Justice is that the suspects of serious human rights crimes are Indonesian military (TNI) officers, who did their duty and fulfilled the TNI policy to succeed in winning the vote for autonomy. TNI is a very dominant element in the regime that is currently in power in Indonesia.⁶

Notes

- ¹ Another important reason is the 'traumatisation' of the victims, resulting from the violence imposed on them by members of the Indonesian National Military (TNI) and anti-independence militias.
- ² According to a prominent Indonesian attorney, Luhut Panjaitan, LL.M., the recruitment pattern of the Attorney General which is full of corruption, has caused the persons that have been chosen for the attorney General's position to be persons with low qualifications (because those qualified are all more inclined to choose their profession as attorneys) and the candidates mentioned above, take on corrupt cases to "get back" the money they already spent to bribe the selection process to become the Attorney General (taken from a private communication source).
- ³ Crimes against humanity refers a act which constitutes a crime against all of humanity, not against individual humans, also not only a violation of a national law. For crimes against humanity universal jurisdiction is valid, this means any nation in the entire world has the obligation to bring to justice once such a crime against humanity has taken place (See *Statute of Rome: International Criminal Court of Law*, Jakarta, ELSAM, 2000).
- ⁴ Although we now can not put our hope in the parliament, because the behaviour of the people's representatives has until now not prioritised the process of democratisation, but has prioritised the short lived agendas of individual political parties.
- ⁵ Cases involving money from government departments used for Golkar political needs are becoming more and more transparent. But the prosecution thereof is still difficult to be done.
- ⁶ The *Ad Hoc Human Rights Court* itself is seen in TNI circles, including by General Wiranto, as a step to avoid the establishment of an International Tribunal. This is the reason why they will try and manipulate this court so that it won't be effective - because should the court not be *fair* the international community would still have the obligation to bring to trial the crimes that have happened. The fact that they were able to do such acts, is seen by their efforts to produce a winning result for autonomy in the Popular Consultation in 1999. Especially because the international world continues to give them their trust. The USA have shown interest to restore their military cooperation with Indonesia, which was stopped due to the violence in East Timor in 1999. This attitude by the US can be interpreted by TNI as support for them, and the same is valid for the attitude of Australia and the US regarding the military invasion of Indonesia in East Timor in 1975.

Prosecution of Crimes under an International Justice Process

By Joaquim Fonseca, Yayasan HAK

Since the end of the Second World War, the perspective of humanity about humanitarianism and human rights has entered a new chapter. The enormous human suffering brought about during this war encouraged various countries to search for effective measures to prevent the use of violence in resolving conflicts¹, or at least minimize the impact of violence on citizens. These measures were instituted through a series of international agreements, beginning with the Geneva Convention of 1948 and made effective on 12 August 1949. Subsequently, certain actions have been declared to be war crimes and crimes against humanity.

Crimes against Humanity

This term was first used following the massacre of Armenian people by Turks in 1915 during the First World War. However the concept beyond this term only became defined after the Second World War with the establishment of the International Military Tribunal in Nuremberg to try the even more horrendous mass killings of Jews by Nazis. According to Article 2 of the Geneva Convention concerning Protection of Civilians during wartime, Crimes against Humanity include but are not limited to the following offences:

- Wilful killing.
- Torture and inhuman treatment, including biological experimentation.
- Wilful cause of serious suffering or injury to health.
- Widespread, illegitimate and arbitrary destruction or looting of property without military justification.
- Forcing of prisoners of war or civilians to join enemy forces.
- Deliberate breach of detainees' rights to a fair trial and due process.
- Forced relocation or reduction of civilian population without legal justification.
- Holding civilians hostage.

According to Article 3 of the Geneva Convention, concerning Protection of Victims of War, together with its Supplementary Protocol of 8 June 1977, Crimes against Humanity include but are not limited to the following offences:

- Offences against life, health and physical and mental wellbeing, above all killing and

sadistic acts such as torture or any forms of physical punishment

- Collective punishment
- Hostage taking
- Acts of terrorism
- Degradation of personal dignity, especially offensive and humiliating actions, rape, forced prostitution and any other obscene actions
- Plunder
- Punishment without judicial due process that guarantees the fundamental rights of civilians to legal remedies
- Threats to carry out any of the above offences.

War Crimes

These are crimes in breach of conventions on the protection of civilians and prisoners of war during wartime.

Genocide

The Geneva Convention of 9 December 1948 concerning the Prevention and Punishment of Genocide defines Genocide as actions that are carried out with the aim of eradicating all or part of those people identified as belonging to a national grouping, ethnicity, race or religion in the following ways:

- killing members of a particular group
- causing serious physical or mental injury to members of a group
- deliberately bringing about living conditions that are injurious to the health of all or part of a group
- taking measures intended to reduce the fertility of the group concerned
- forced transfer of children from one group to another.

The first International Tribunals

Although the above actions have been classified as crimes against humanity and war crimes, initially there were no mechanisms for bring those who commit such crimes to account. However a number of international mechanisms with special jurisdictions have since been established to uphold various international conventions, making those who commit such offences accountable for their actions. Based on Chapter VII of the United Nations Charter, the Security Council is able to establish tribunals

to try those who commit crimes against humanity. The character of these tribunals varies, based on the context in which they were set up, but essentially all these tribunals are formed with the aim of accountability for crimes committed during wartime. These tribunals have also led to broadening of what constitutes such criminal acts.

1. Nuremberg

The International Military Tribunal in Nuremberg was formed in order to prosecute crimes committed by German soldiers and officials during the Second World War. The Tribunal was founded on the basis of the Nuremberg Charter when the recently formed United Nations still lacked resources. Consequently, the Nuremberg Tribunal was established and conducted by the allied powers. Although this tribunal appears to have served as an instrument of the war's victors to punish the vanquished, the stated aim of its formation was to set the historical record straight, to assist in the formulation of determinations of international law and to prevent future leaders from committing similar offences.

The Nuremberg Tribunal was followed by the establishment of an International Military Tribunal in Tokyo, also to handle crimes committed during World War Two. These two tribunals lay the foundation for crimes for which individuals can be brought to account. These tribunals established that: 1) the most senior leaders of a state are not immune from prosecution; 2) the plea of following orders is not an effective means of avoiding prosecution, even though it can become a mitigating circumstance in sentencing; 3) conspiring parties can be considered to have been involved in certain kinds of crimes.

The decisions handed down by these two tribunals lay the foundation of command responsibility for crimes against humanity and war crimes.

2. Yugoslavia and Rwanda

Almost half a century after the formation of the International Military Tribunal in Nuremberg and Tokyo, mass and systematic violence, killing of civilians including genocide were committed against people in Kosovo and Rwanda. The so-called ethnic cleansing perpetuated in these places was a repetition of similar actions carried out by Nazis against Jews. Two separate tribunals were formed under UN auspices to prosecute genocide and crimes against humanity in these two territories. The statute to establish an International Tribunal for crimes committed in the territories of the former Yugoslavia was brought into effect on 25 May 1993 and amended on 13 May 1998.

Whereas the tribunal applying to Rwanda to prosecute perpetrators of genocide and other breaches of international law committed between 1 January and 31 December 1994 was mandated by UN Security Council Resolution 955 (1994) of 8 November 1994, which applied not only to crimes committed in Rwanda itself but also in the adjacent territories of neighbouring countries. This tribunal was formed to underpin the reconciliation process in Rwanda and to provide the basis for regional peace. Security Council Resolution 978 (1995) established this Tribunal in Arusha, Tanzania.

3. Other mechanisms

Crimes against humanity are not restricted to the crimes described above. A number of conflicts resulting in the loss of many lives have not been resolved through international means. The Khmer Rouge's killing of one million people in Cambodia, the crimes committed in Sierra Leone, and the destruction of East Timor at the hands of the Indonesian Armed Forces and pro-Indonesian militia are three such examples.

In Cambodia and Sierra Leone, what some people refer to as a semi-international judicial process is currently being introduced. Such a mechanism can work in these territories, since most of the perpetrators of the crimes concerned remain within those countries' borders, and there are other special circumstances conducive to such a process. However, this variation may not be suitable in other contexts.

4. Accountability for Crimes in Timor Lorosae?

Almost all the crimes perpetrated by the Indonesian Armed Forces and the pro-Indonesian militia in 1999 up until the intervention of the multinational force, and subsequently perpetrated in West Timor, constitute criminal acts in contravention of international norms. Soon after the destruction carried out in 1999, calls came from many quarters demanding the establishment of an International Tribunal to try those responsible for planning, organising and carrying out this destruction. In addition to calls from various NGOs and groups in solidarity with East Timor overseas, the report of the International Investigating Commission set up by the United Nations also recommended the same course of action, based on the conclusion that the crimes committed in East Timor in 1999 can be categorised as genocide and widespread and systematic crimes against humanity.

Furthermore, an investigating commission set up by the National Human Rights Commission of Indonesia also came to the same conclusion. Meanwhile, in the midst of strident condemnation and calls for an International Tribunal, the Indonesian government decided to form an ad hoc Tribunal to prosecute people responsible for these crimes. Even though the Indonesian legislature has confirmed the government's decision and passed legislation to establish this court, the ad hoc Tribunal is still yet to be formed. Because corruption in Indonesian judicial institutions is endemic, there are difficulties in recruiting judges and prosecutors able to lend credibility to this tribunal. At present there is an attempt to recruit prosecutors and judges from among credible circles in NGOs and academe. Meanwhile, even before the judges and prosecutors have been recruited, the jurisdiction of the tribunal has been constricted, both in terms of time period and locations covered. Given these circumstances, there seems little hope that the perpetrators will be brought to account or that justice will be served for the victims of the crimes committed against them and their families through due process in Indonesia.

Meanwhile, UNTAET has established a special panel of judges in the Dili District Court to hear cases of serious crime under the special jurisdiction to try those people present in East Timor who are charged with committing serious crimes in 1999. The extent to which this special panel provides justice is a matter for debate, but one thing a court in Dili cannot do, no matter how 'special' its jurisdiction, is to make the architects of the destruction of East Timor accountable.

An International Tribunal for East Timor?

This question is often rather sarcastically treated by people who disregard the people of East Timor's sense of fairness and calls for justice. A great many excuses for why an international tribunal cannot or should not be established are thrown up, beginning with financial limitations to fund such a tribunal right through to paternalistic claims that the people of East Timor only want peace and the reconciliation of a handshake.

Such excuses as these are a true reflection of the current political environment, where other interests are being given greater priority than the interests of justice for the people of East Timor. Consequently, any discussions undertaken about establishing an international tribunal for East Timor necessarily imply the

hard work ahead of public campaigning, along with preparing strong arguments to refute the various excuses given for not holding an international tribunal, namely the economic arguments and those dealing with the politics of peace and artificial reconciliation.

There are several compelling reasons for demanding an International Tribunal for East Timor:

1. It is only an International Tribunal that has jurisdiction over the senior Indonesian military officers who designed the destruction of East Timor in 1999.
2. The prosecution of these senior Indonesian military officers and other perpetrators will put the Hidden and Forgotten War that Indonesia waged against the people of East Timor on the historical record for Indonesia and East Timor.
3. An International Tribunal would promote reconciliation among East Timorese. At present villagers are only able to identify rank and file militia people who may have committed a number of crimes in following the orders of their superiors. The people's concentration is thus being focused upon other East Timorese people, to whom their anger and possibly their desire for vengeance is also being directed. In other words, conflicts inherited from Indonesia have been quarantined in East Timor where they are gnawing at the social fabric and sense of solidarity among East Timorese. People are unable to perceive the events of 1999 as anything more than the actions of the rank and file militia. An International Tribunal that demands accountability of senior Indonesian officers would assist the people to appreciate the reality that it is actually a criminal organisation called TNI, the Indonesian Armed Forces, who had the primary responsibility for the destruction wrought upon East Timor.
4. An International Tribunal would prevent the same kind of actions occurring in the future. An independent East Timor is not going to change the geographical reality of it being adjacent to Indonesia. For this reason, senior Indonesian military officers need to be subject to the force of international law, so that they will never again impose themselves upon this tiny country to fulfil their territorial ambitions through the use of force.

Note

- ¹ This greatly contrasts with the approach taken by the United States towards Afghanistan half a century later.

NGO Reports on Activities

The following organizations presented information regarding their activities in the area of justice and in particular an international tribunal:

- **Yayasan HAK:** Collection of evidence, campaign, organization of survivors, monitoring returning militia, monitoring Indonesian process, research, working with ETAN.
- **Dewan Solidaritas (Student Solidarity Council):** Have a program regarding international tribunal, view recent reconciliation with militia as just diplomacy.
- **FOKUPERS (Communications Forum for East Timorese Women):** Have been collecting data from districts, e.g. Novi Novi in Maliana, and distribute information regarding human rights violations.
- **KSI (Kdadalak Sulimutuk Institute):** Completed research regarding reconciliation and conflict resolution, one of the outcomes being that there must be justice.
- **KKPP (Kelompok Kerja Pendidikan Pemilu - Working Group for Electoral Education):** Strong emphasis on including "victims" in the process.
- **NGO Forum:** Networking and strengthening this process and distributing information.
- **The Bishop Belo Centre for Justice and Peace:** Research into strengths and weaknesses of the different options
- **APCET (Asia-Pacific Coalition for East Timor):** Support a people's tribunal alongside a campaign for an international tribunal.
- **Caritas Australia:** Will support an information and awareness campaign in East Timor, campaign in Australia and help generate support in international catholic networks.
- **ETAN (East Timor Action Network / U.S.):** Priority is perpetrators from 75-99, international communities must also take responsibility for the crimes, involvement in civil cases in the U.S.
- **IFET (International Federation for East Timor):** Large international network of organizations campaigning for an international tribunal, wish to work with and seek direction from the East Timorese people.
- **La' o Hamutuk (East Timor Institute for Reconstruction Monitoring and Analysis):** Monitoring, networking and next *Bulletin* will be on justice.
- **JSMP (Judicial System Monitoring Programme):** Monitoring and dissemination information on the progress of the Special Panel for Serious Crimes.

This is a brief outline. For further information, please contact organizations directly.

Reports back from working groups

Notes from group 1

Notes from group 2

Question 1) Is an International Tribunal necessary? Why?

Yes, because:

- » it is very important in order to uphold humanitarian values
- » in order to uphold the dignity and values of humanity
- » every person has the right to justice
- » it will form a unified common struggle without differentiating ethnicity, religion or race as well as economic or political affiliations.
- » it could be an education/learning to other nations, in order not to commit similar crimes
- » it can serve as a protection for minorities (and to build a movement to prevent future annihilation).

Yes, is necessary

- » Because it guarantees a better life for people with a prospect of justice
- » Ensure law and justice in East Timor
- » Protection of values of humanity
- » Collect data

Question 2) If yes, what further things do we need to do?

Build the participation of the people

- » Raise consciousness of the people regarding the importance of justice, by means of a campaign
- » Role of NGOs to influence government policies
- » Collect proof/documentation of the crimes
- » Build a network with other organizations (regional & international)
- » Work towards getting the issue of an International Tribunal included in the constitution
- » Build a strong protection system (e.g. establishing an organization)
- » Take advantage of upcoming events to build a campaign around this issue, such as:
 - UN Security Council Meetings
 - Donors' Conference
 - International Human Rights Day (10 Dec.)

- » Initiate a campaign focussing on an international tribunal
- » Raise awareness/knowledge of victims of the importance of an international tribunal; also for the general public
- » Campaign and lobby at international level (31/10, 10/12 and 7/12 solidarity days for East Timor)
- » Influence members of the Constituent Assembly to include an international tribunal into the constitution as a national obligation
- » Hold dialogue between the victims and the autonomy leaders

Question 3) If no, what are the better options?

- » A 'People's Tribunal, only if an International Tribunal doesn't materialize.
- » To support the Commission on reception, Truth and Reconciliation
- » To hold a people's Tribunal
- » To collect data, which should be systematised and secured
- » To keep the UN Commission on human rights in East Timor post UNTAET

Notes from group 3 (internationals)

1. That Indonesian military and officials must be held accountable.
2. Some ideas in relation to this are:
 - a. Demand accountability from the Indonesian Government and cooperate with Indonesian human rights groups regarding continuing human rights abuses, now in Aceh and West Papua.
 - b. Campaign similar to "Who is your neighbour?" i.e. identifying the high ranking perpetrators, where they are now, what positions they hold etc and publicising it.
 - c. Collation, archiving and publication of evidence and stories, by supporting local NGO's already collecting and collating information. (discussed the collection of stories/evidence in Guatemala)
 - d. Form resolutions from this seminar and commence lobbying, eg with the SRSR and Deputy SRSR.
 - e. Supporting the call for an International Tribunal by local NGO's.
 - f. At UN Security Council meeting 31st October, issue a statement of solidarity
 - g. Learn from the mistakes of previous Tribunals and make sure they are not repeated in East Timor.

Summary of the Presentations by the Working Groups

By Joaquim Fonseca

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

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

To act upon this consensus, we have discussed some short term and some long term goals.

In the long term (this list is not in any order of priority) we need to:

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

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

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

Seminar participants

Natercia Coelho	DFA	Francisco de Jesus	JRS
Deng Giguento	CRS	Augusto de Rosa fa Guintio	
Maria Afonso	Caritas Australia	Joao da Silva Sarmento	DSMTT
Angelina De Jesus	Caritas Australia	Noemio Alves	CDHTL
Paulo Anuno	FOSEO	Joann Kingsley	Interim Office, CRTR
Lily Amaral	CRS	Kendelle Clark	Interim Office, CRTR
Seiara Ikili	MSF	Samuel Belo	AOG
Inge Lempp	NGO Forum	Manuela L. Perriera	FOKUPERS
Jose Antonio Rai	FOSEO	Domingas Verdial	Novi Novi (FOKUPERS)
Salvador Silva	USAID/OTI	Ubalda Alves	FOKUPERS
Orlando Edo	IKIPPA	Baque Senge	HI
Zulmira C.	NGO Forum	Titi Irawati	Yayasan HAK
Adao Da Coast	ALIZN/EDCTC	Teresa Barros	APSC
Yhocchces Epf	Enomiri	Jude Conway	APSC
Ruth Hugo	Human Rights Unit UNTAET	Andrew de Sousa	La'ο Hamutuk
Charles Scheiner	La'ο Hamutuk, IFET	Joanita Madeira	Caritas Australia
Frank Elvey	Oxfam	Fernando Pires	Caritas Australia
Johnny Viegas	Oxfam	Nug Katjasungkana	Yayasan HAK, Fortilos
Mouzinho D.A.	Lorosae Star	Abilio Belo	Student
Adelio Tilman	Caritas Australia	Imaculadia da Eruz	FOSEO
Tonette Velasco	CIIR	Zeca S. Exposto	Radio Rakentoia
Jill Sternberg	Peace and Democ- racy Foundation	Lindo Miranda Ponto	Radio Rakentoia
Maria Z. A. Soares	Caritas Australia	Takahashi Shigehito	Catholic Bishops Conf. of Japan
Rosentina Da Costa	Caritas Australia	Bala	SLINO
Sr. Bernadita, SPC	Centre for Peace and Development	Solange Rosa	Oxfam
Carla Ferreira	OIKOS	Seineke Martin	Caritas Australia
Lita Guterres	OIKOS	Jenny Newton	Caritas Australia
Lito Exposto	Yayasan HAK	Christian Ranheim	JSMP
Tone Sair	PARO	Nelson Belo	JSMP
Cecilio	Bia Hula	Hannah McCaughey	Yayasan HAK
Sidomio Freitas	IRI	Joaquim Fonseca	Yayasan HAK
Jesuina Moniz	IRI	Thomas Freitas	La'ο Hamutuk
Vasco Da Gama	FDM	Henrique Osolio	UNTIL
Joao Pesoinho	Human Rights UNTAET	Sabino G. Fhun	Aksi Penplitian Mahasiswa
Sr. Afania Jose	Yayasan Canossa	Guilermine Dos Santos	SAHE
Kerry Brogan	Human Rights Unit UNTAET	Abel Santos	SAHE
Pamela Sexton	La'ο Hamutuk	Jorge N.	Lian Maubere
Natalino F.D.C	KKPP	Josephine Dyer	ICMC
Vernasio Geralta Lopo	Jesuit Refugee Service(JRS)	Janet Gunter	Care/Independent

Letter to UNTAET Deputy Transitional Administrator

17 October 2001

TO: Mr. Dennis McNamara
Deputy Special Representative of the Secretary-General,
United Nations Transition Administration in East Timor

RE: **Meeting on Justice for East Timor**

Dear Dennis,

We write to you in relation to your planned visit to Indonesia to discuss various issues with the Indonesian Government, in particular, the issue of justice for East Timor, with the Indonesian new Attorney General.

Two years after initial steps were taken by the Indonesian government to prosecute those responsible for serious violation of humanitarian law in East Timor, very little progress has been made. Furthermore, recent developments in Indonesia show little prospect of any further measures being taken within the Indonesia system for such necessary prosecution to take place.

The international community continues to have faith that the Indonesian Government will put its commitment into practice. However, at this point, faith is not enough and the Indonesia government must be questioned by the international community as to when it will honour the process it set out to establish and follow it through to its end.

Therefore, we would ask you to question the new Attorney-General as to what concrete steps will be taken on this matter in the near future, and what are the benchmarks and time periods for determining whether such steps have been effectively carried out. At the same time, Indonesian Government needs to be reminded that its inaction on this matter, is not only undermining the process of justice in Indonesia itself, it is also significantly hampering the justice process within East Timor.

The East Timorese leadership have expressed their views on how, in the aftermath of the Indonesian occupation, the country should deal with its past and those views have been taken by the international community as representative of the feelings of the East Timorese community. However, little space has been provided for the broader East Timorese community to voice their opinions and feelings on this crucial issue. In response to this situation, and the current stalemate in both the Indonesian and East Timor formal justice processes, NGOs and community groups felt that it was imperative to consolidate actions already underway to hold those responsible to account.

On Tuesday 16 October 2001, concerned NGOs and community groups held a joint meeting in Dili to discuss ways to ensure that there be justice for East Timor. One of the outcomes of this meeting was a resolution that it is an International Tribunal that would be the most viable means of holding those senior government and military officials to account. Being aware of your planned visit to Indonesia, another outcome of the meeting was the resolution to bring to your attention our strong views and lasting commitment to ensure that those known Indonesia figures who have documented involvement the attempted genocide of the East Timorese will face justice.

This letter will be followed by a more detailed report of content and resolution of the meeting. All those NGOs and community groups who participated in the meeting would be very interested to hear from you after you return from Indonesia to share your impressions on the meeting and future development.

We wish you the best in all your endeavours.

Yours sincerely,

Ubalda Alves
FOKUPERS

Joaquím Fonseca
Yayasan HAK

Tomás Freitas
La'ó Hamutuk

(Representatives from the 16 October meeting)

Letter to United Nations Security Council from NGOs

Contact:

russo@minihub.org
Fax: + 670 390 313324
Dili, Timor Lorosa'e

24 October 2001

TO: The Members of the Security Council of the United Nations
United Nations Headquarters, New York.

RE: **Urgent Steps to Establish Justice for Crimes Against Humanity in East Timor**

Dear Members of the Security Council,

We are writing to you in relation to the serious plight of the entire justice process surrounding the prosecution of those responsible for the gross and systematic violation of international humanitarian law in East Timor.

After the conclusion of the national election process in East Timor, many refugees, as predicted, are returning to East Timorese soil. Present amongst those returning are known and recognized militia members. The East Timorese stand ready and willing to enter the process of reconciliation with one another, to join arms to face the difficult task of building their new nation together. As ready as the East Timor are to embark on this process of nation building and reconciliation, they acutely aware that any such process is built on a rule of law, and is founded in justice.

The East Timorese belief in justice and the rule of law, however, has not been met by the measures taken thus far, both under UNTAET in the form of the Serious Crimes Unit and the process in Indonesia itself.

The Serious Crimes Unit, firstly, lacks jurisdiction over those perpetrators who remain outside its territorial reach, particularly those with higher command responsibility for the planned execution of the widespread murder, rape, displacement of population, destruction of infrastructure and property. Notwithstanding the limitation the Serious Crimes Unit faces in terms of territorial jurisdiction, it has failed to prosecute even those within its jurisdiction who were widely known to hold command positions, and has actively pursued only those lower ranking individuals. This has created the anomalous result of those lower-ranking individuals pleading guilty on the basis that they were instructed to carry out the crime by their militia commanders, while those very commanders, walk freely back into communities, often into positions of influence, without charge. The East Timorese people's patience and expectation with this avenue of justice is understandably wearing thin. Meanwhile, the rule of law seems as hard to find at this stage of the process as it was under colonial rule.

Where the Serious Crimes Unit lacked jurisdiction to prosecute those Indonesia military and government officials implicated in the serious violation of humanitarian law occurring in East Timor, faith was placed by the international community in the justice process within Indonesia itself. At this point, we all must face the reality that, likewise, this process is not capable of holding those responsible to account. After initial glim-

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mers of hope, subsequent political turmoil and instability, and ensuing continual revisions to the mandate and scope of any Ad Hoc Tribunal which is to be established, has clearly demonstrated that Indonesia is both incapable and unwilling to take responsibility for prosecuting those culpable for the crimes against humanity in East Timor.

In the face of this dire situation, East Timorese NGOs came together on the 16 October 2001, and unanimously concluded that an international mechanism of accountability for those responsible for the death, violence and humiliation in East Timor must be urgently established. The same conclusion was reached by the International Commission of Inquiry on East Timor established by the United Nations in January 2000. However, with 2002 close at hand, neither process has brought us nearer to realizing this objective. The situation is made even more critical by the coming end of the UNTAET mission. Under the stewardship of UNTAET was the time when the impunity of the past was needed to be replaced by the rule of law and justice, necessary for the nation building process of and reconciliation for East Timor. Instead, we are facing the dark reality of such impunity characterizing our future.

We urge the United Nations not to leave East Timor alone with the consequences of the crimes so terrible that they are characterized as against all humanity. It is time to take immediate steps to establish an International Tribunal for East Timor. This is the only mechanism that could address the current need for justice, the missing element so far, in the process of nation building for East Timor and worldwide respect for human dignity.

Thank you for your considerations of our concerns.

Sincerely yours,

Yayasan HAK

La' o Hamutuk

FOKUPERS

Bishop Belo's Centre for Peace and Development

Kdadalak Sulimutu Institute (KSI)

Working Group for Electoral Education (KKPP)

Judicial System Monitoring Programme (JSMP)

East Timor Student Solidarity Council (ETSC)

Student Solidarity Council of Oe-Cusse

Yayasan Timor Nabilan

Nove-Nove Survivors Group (Maliana)

NGO Forum

Letter to United Nations Security Council from Internationals

P.O. Box 196
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Via Darwin, Australia
Fax: +670(390)313274
Email: cscheiner@igc.org

24 October 2001

To Members of the United Nations Security Council:

Dear Excellencies:

We are writing as citizens of many countries who currently reside in East Timor (Timor Lorosa'e), working with a variety of organizations. Through our work and our friendships, we have developed close contacts with many people and organizations in this soon-to-be independent nation. We understand and share their feeling that justice has not been served for the crimes against humanity committed here between 1975 and 1999.

On 16 October, we attended a conference in Dili entitled "Justice and Accountability in East Timor," where more than 60 East Timorese from more than 15 organizations came together and unanimously voiced their demand for an International Tribunal to provide justice for East Timor. After evaluating the current UNTAET serious crimes process and the state of justice in Indonesia, the attendees concluded that neither of these venues could lead to meaningful justice, especially as to the higher levels of culpability. They are asking, as are we, for the international community to take responsibility to end impunity for those who occupied and devastated this country.

This is not a new request. In early 2000, both the UNCHR-established International Commission of Inquiry and the Indonesian government's KPP-HAM investigation recommended that high-level Indonesian military commanders be prosecuted, and that an international court would be the only practical way to accomplish this. In the last few months, all 16 East Timorese political parties, as well as the National Council which was East Timor's legislature until June, have also expressed their support for an international tribunal. As time goes on, it is increasingly clear to everyone that Jakarta cannot or will not prosecute high-ranking military officers, and that UNTAET's Serious Crimes Unit does not have the leverage to obtain Indonesian cooperation. The Unit also has limited resources, time, and capabilities. Since the atrocities committed in East Timor were of such huge magnitude that impunity is not an option, we are asking the Security Council, as representatives of the people of the world, to establish an effective mechanism to investigate, prosecute and punish those who committed crimes against humanity here.

Since 1999, three Indonesian presidents and the military structures that govern with them have effectively blocked all efforts to hold TNI commanders responsible for the planned, systematic terror and devastation that was inflicted on the East Timorese

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people. In addition, as the United Nations Security Council and General Assembly repeatedly resolved, Indonesia's 1975 invasion and 24-year occupation of East Timor were flagrant violations of international law. These crimes were ordered and committed by human beings who should be held accountable, both to prevent their repetition and to send a signal not only to the people of East Timor, but to all humanity, that such behaviour is unacceptable in a civilized world. The international community must focus its energy to compel Indonesian authorities to cooperate with justice.

After two years, the United Nations Transitional Administration in East Timor is winding down. East Timor will be independent soon. It would compound the crimes already committed here if this tiny, poor nation which has endured so much terror is left on its own to cope with criminals who still hold positions of power in its huge neighbour. The period of U.N. responsibility for East Timor must leave a legacy of justice and accountability if East Timor is to succeed as a member of the world community.

As East Timor writes its Constitution and establishes its own governmental processes, the community of nations expects it to follow the rule of law for its own citizens. The Security Council can set an example, and establish a base for security and justice which will endure.

Sincerely yours,

Jude Conway (Asia-Pacific Support Collective)

Sr. Bernardita (Bishop Belo's Centre for Peace and Development)

Janet Gunter

Carla Ferreira e Freire (Oikos)

Mayumi Hachisuka (La' o Hamutuk)

Titi Irawati (Forum Solidarity for East Timorese-Indonesia (FORTILOS))

Vijaya Joshi (La' o Hamutuk)

Nugroho Katjasungkana (Forum Solidarity for East Timorese-Indonesia (FORTILOS))

Inge Lempp

Jenny Newton (Caritas Australia)

Sienike Martin (Caritas Australia)

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