

Special Independence Issue!

East Timor after UNTAET -- See page 8.

With this issue of *La'o Hamutuk's Bulletin*, we look at some of the most important and difficult issues the newly-independent East Timor will have to deal with. In addition to our cover article and editorial on the Timor Sea oil and gas deposits, we summarize the tasks facing the new nation, with more detailed looks at refugees and justice, two areas which continue to be the responsibility of the international community. We also report on *La'o Hamutuk's* recent exchange with two Nicaraguan educators on gender, power and violence. Another article, part of our ongoing investigations into donors, looks at China's bilateral aid to East Timor. Finally, a back-page editorial explores some of the constraints donor countries are putting on East Timor's independent government, and questions whether the World Bank-managed financing facility will allow true independence.

With Independence, What Changes for the Timor Gap? Borders and Oil Deals between Australia and East Timor

Revenues from oil and natural gas currently represent East Timor's greatest hope for meeting the nation's basic needs in the future. Although a few small oil and natural gas deposits exist on East Timor's land, the current discussion focuses on much larger oil and gas deposits in the waters between East Timor and Australia. These deposits mean between US\$8 and US\$38 billion (thousand million) for East Timor over the next thirty years. (East Timor's government budget for the coming year is US\$77 million.)

Currently, East Timor and Australia are negotiating a treaty to jointly develop petroleum in the Timor Gap, an area previously subject to a treaty between Australia and

Indonesia. The question of whether East Timor's share is closer to US\$8 billion or to US\$38 billion depends largely on where boundary lines are drawn in the Timor Sea. Some experts state that if the maritime (seabed) boundary were established using current international legal principles, East Timor would stand to gain more than US\$30 billion. The issue of the maritime boundary between Australia and East Timor is not new, but East Timor's independence brings new questions and challenges.

Many expect that shortly after East Timor's official independence, new East Timorese Prime Minister Mari Alkatiri and Australia will sign the 'Timor Sea Arrange-

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ment' which was negotiated by the Australian government and UNTAET/East Timor in 2001. This agreement will then go to East Timor's new Parliament for ratification as a treaty on the Timor Sea reserves. Its proponents call the agreement the "best deal" that East Timor can get at this time with Australia, and are quick to explain that it is a temporary agreement "without prejudice to East Timor's maritime boundaries," which means that the agreement will not influence the determination of a future maritime boundary decision. Others, however, believe that this agreement will compromise East Timor's ability to claim broader boundaries and thus gain access to all the seabed deposits to which the country could be legally entitled.

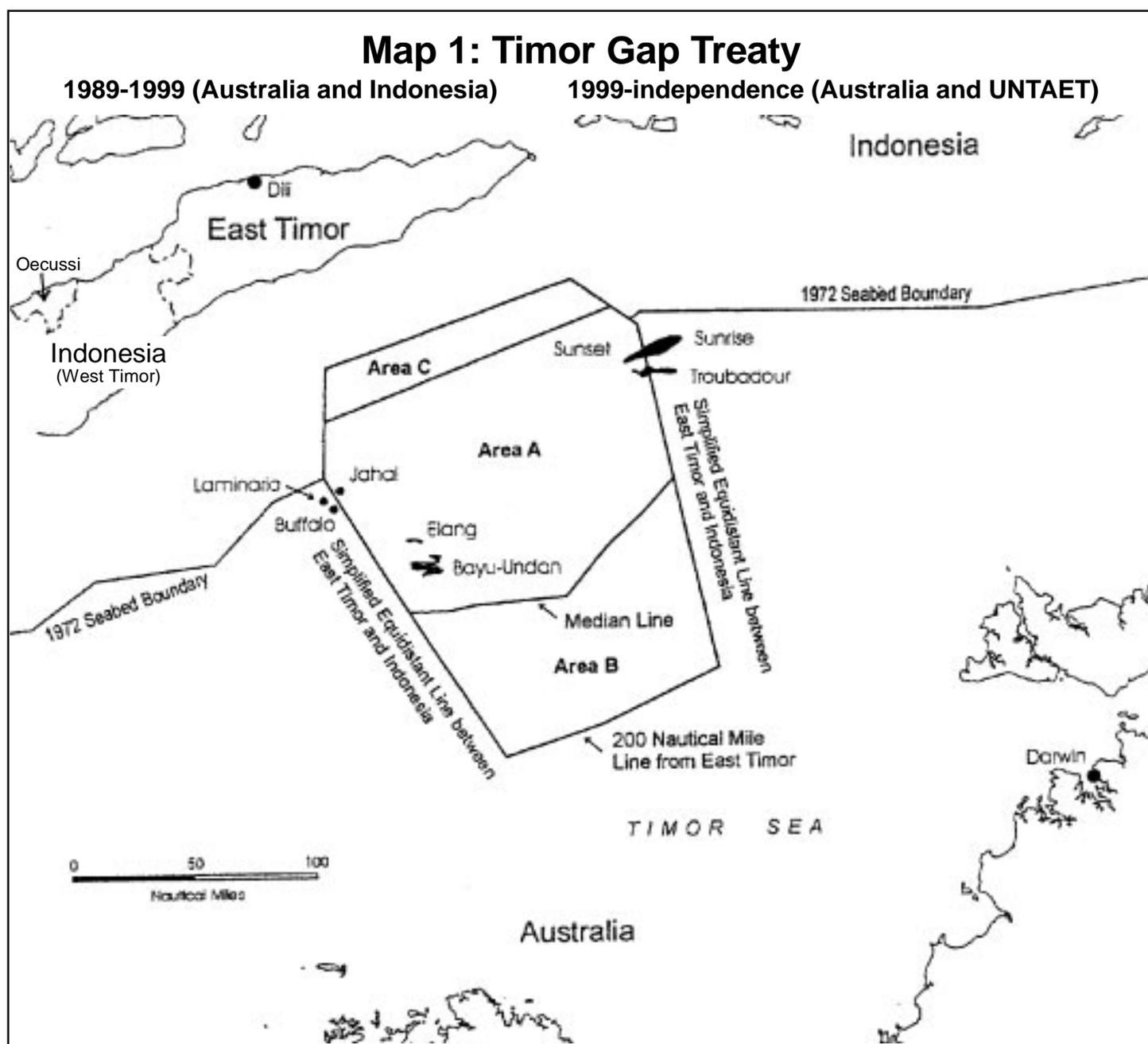
La'o Hamutuk has written two editorials on the Timor Gap negotiations (see *LH Bulletin* Vol. 1, No. 3 and Vol. 2, No. 5). In this article, we provide information regarding the question of maritime boundaries and the proposed treaty. We also hope to encourage more transparency and dialogue around this important issue, which is

little understood by most East Timorese. Future issues of the *La'o Hamutuk Bulletin* will look at other aspects of East Timor's oil and natural gas resources, including current exploration projects, oil companies' involvement, labor and environmental concerns, and the global context of oil and gas exploitation.

Maritime Boundary between East Timor and Australia

Upon independence, East Timor will have no definite maritime boundaries and will need to seek maritime boundary agreements with both Indonesia and Australia. Past maritime boundaries between Australia and Indonesia lay the foundation for the current division of oil and gas reserves in the Timor Sea as well as in the proposed treaty. To understand where East Timor currently stands, it is important to look at the history of the maritime boundary between the two countries.

In 1972, using the continental shelf argument (which argues that a seabed boundary should follow the deep-



est point on the ocean floor between the countries), Australia managed to negotiate with Indonesia a maritime boundary that gave Australia 85% of the ocean territory between the two countries. Portugal never accepted the continental shelf argument and unsuccessfully sought a boundary located mid-way between Australia's and East Timor's coastlines. The contested area became known as the "Timor Gap."

In 1975, with full knowledge of Indonesia's intention to invade East Timor, Australian Ambassador to Jakarta Richard Woolcott sent a confidential memo to his government, stating that "closing the present gap in the agreed sea border could be much more readily negotiated with Indonesia... than with Portugal or an independent Portuguese Timor." He noted in the memo that the Ministry of Mines and Energy might be interested in this.

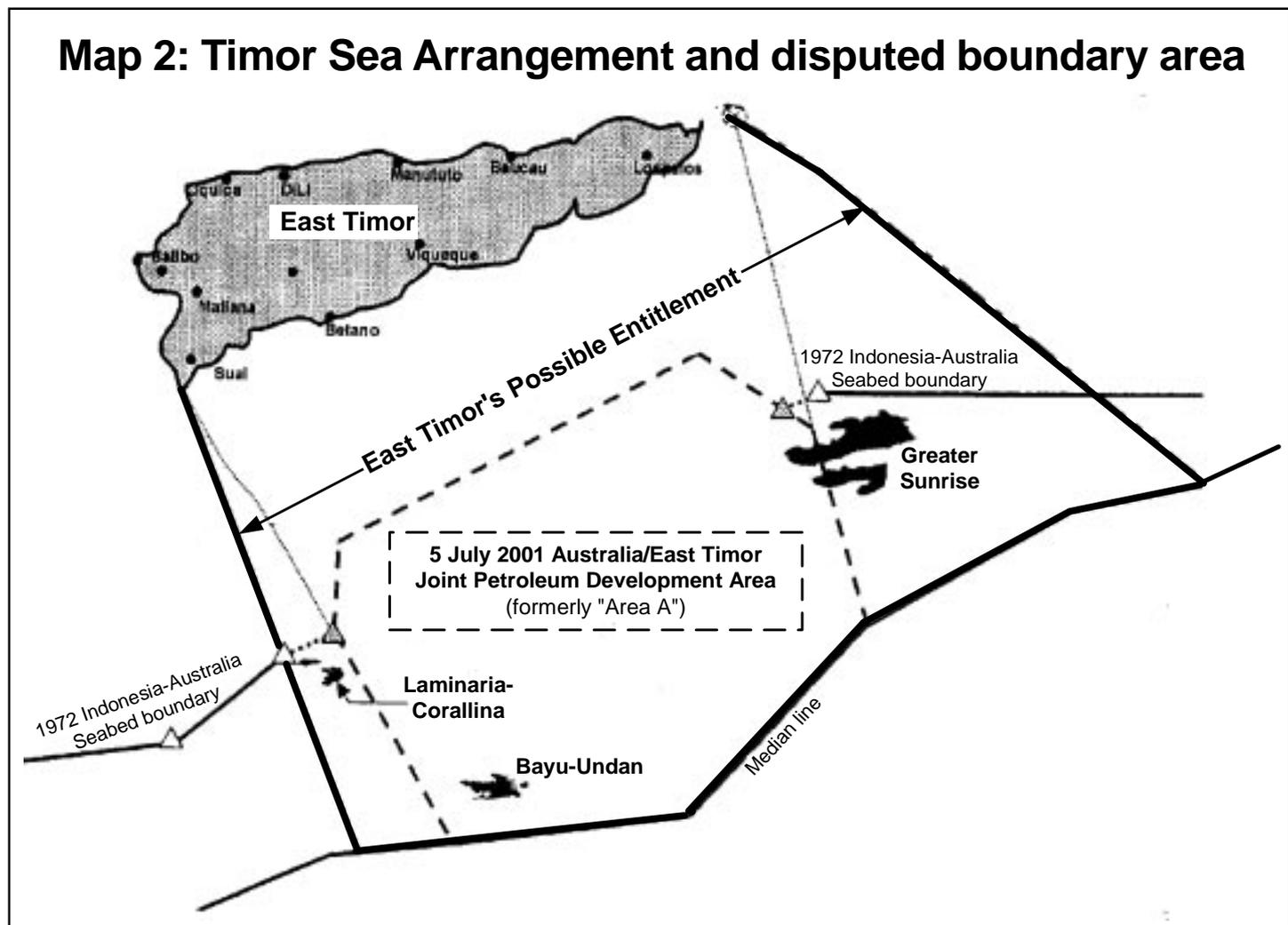
In 1979, after international outcry over Indonesia's brutal invasion and occupation of East Timor had subsided, Australia began to negotiate with Indonesia on the Timor Gap area. Unable to agree on permanent maritime boundaries, the two countries decided to create an agreement to jointly develop petroleum in the area between the median line to the south and the 1972 seabed boundary to the north. Only a few years later, in 1981, Australia and Indonesia agreed on a fishing boundary that ran along the median line. And in 1982, the United Nations Convention on the Law of the Sea (UNCLOS),

redefined international maritime law stating that for countries with less than 400 nautical miles of sea between them, the international boundary would be the mid-point.

The United Nations never recognized East Timor as part of Indonesia. However, in 1989, despite ongoing human rights violations, Australia and Indonesia signed the Timor Gap Treaty. This treaty divided the Timor Gap region into three sections in which petroleum production in the largest area, Area A, was to be equally shared by the two countries. In Area C, closest to East Timor, 90% of the production would go to Indonesia and 10% to Australia. In Area B, Indonesia received 10% and Australia 90%. (See Map 1.)

Under this division, contracts were signed with multinational oil companies including U.S.-based Phillips Petroleum, British and Dutch owned Shell, and Australian-based Woodside and Broken Hill Propriety (BHP). Contracts were signed in December 1991 and first explorations began in 1992. For the Australian government and these companies, the prospect of money from oil was more important than East Timor's human and political rights.

As these explorations in the Timor Gap were beginning, Portugal brought a case against Australia and the Timor Gap Treaty to the International Court of Justice (ICJ), claiming that the Treaty violated the rights of both Portugal and the people of East Timor. In the end, the



PetroTimor: Ancient History?

Many of the experts who have recently raised questions around Timor Sea oil developments were brought here by PetroTimor, a U.S.-based company. PetroTimor was first involved in East Timor oil developments more than thirty years ago – and their involvement now could have far-reaching effects.

PetroTimor is part of Oceanic Exploration, Inc., a small oil company based in Denver, USA. Oceanic Exploration is owned by General Atomics, a large U.S. corporation involved in military contracting, nuclear power, and electronics. Oceanic Exploration has done oil exploration in Greece, Bolivia, Taiwan and other places.

According to PetroTimor, Portugal granted them concessions to explore for oil in the Timor Sea in December 1974, in return for East Timor's ownership of 20% of PetroTimor. East Timor, then a Portuguese colony, was expected to be independent in a few years. The company was given exclusive exploration and development rights for an area from East Timor's south coast to the Timor-Australia median line, with lateral boundaries approximately the same as the 1989 shared area (Areas A and C) now referred to as the Joint Petroleum Development Area (see Map 1). The company began to explore the area in 1975, identifying major features in what are now called Bayu-Undan and Greater Sunrise fields.

When Indonesia invaded later that year, PetroTimor's agreement became meaningless as Portugal no longer controlled the territory. The company evacuated from Dili, disappearing until June 2001 and playing no part in East Timor's struggle for independence. But as soon-to-be-independent East Timor was preparing to sign the Timor Sea Arrangement with Australia, PetroTimor reasserted its claim in an unsuccessful effort to spoil the negotiations.

In August 2001, PetroTimor filed a lawsuit against Phillips Petroleum and the Indonesian and Australian governments in Australian court, asking for up to US\$1.5 billion in compensation for their expropriated property rights. In the suit, which has yet to be decided, PetroTimor claims that Indonesia's removal from East Timor restores their concession, and that arrangements made with oil companies by Australia and Indonesia during the occupation are invalid. They say they are not trying to disrupt the current plans and contracts, but simply to be paid for their property.

PetroTimor is also lobbying the East Timorese government to reject the Timor Gap Treaty (JPDA) boundaries and to claim larger boundaries based on Law of the Sea principles. The company is also promoting the idea of a gas pipeline and LNG liquefaction plant in East Timor, instead of to Darwin or on a floating platform, which *La'o Hamutuk* will examine in a future Bulletin.

PetroTimor could gain a great deal by upsetting the currently proposed arrangements, and they have nothing to lose. They have offered to hire attorneys so that East Timor can bring its boundary claims to court. In return for giving up its 1974 concession, PetroTimor states that they "would expect to participate in the additional government revenues presently attributed to Australia which result from the extension of East Timor's seabed boundaries." The company would also be 20% owned by East Timor's government and promises to invest 20% of its profits in East Timorese businesses.

The PetroTimor presentations at the 23 March seminar in Dili skipped key facts such as PetroTimor's Australian lawsuit. The issues they raise, however, are critically important. And when East Timor's government decides to pursue the boundary question in court, they should consider PetroTimor – along with others – among the possible sources for legal assistance.

court was unable to rule on the case due to Indonesia's refusal to recognize the jurisdiction of the ICJ. Still, the case was significant in that it raised international public awareness of the Timor Gap Treaty, and reaffirmed East Timor's legal right to self-determination.

In 1998, the National Council of Timorese Resistance (CNRT) announced it would seek a revision of the Timor Gap Treaty. The CNRT was careful to reassure Australia that they wanted to continue joint development and the oil companies that their existing contracts would be respected.

After East Timor voted overwhelmingly for independence in the 1999 referendum, Indonesia was forced to withdraw from the territory. In December 1999, Mari Alkatiri, the CNRT's representative on oil affairs, again announced the CNRT's rejection of simply taking Indonesia's place in the Timor Gap Treaty and their desire to resolve the issue of the maritime boundaries. In February 2000, however, UNTAET agreed upon a temporary "Exchange of Notes" with Australia over the Timor Gap. This "Exchange of Notes" continued the terms of the 1989 Timor Gap Treaty, replacing Indonesia with East Timor to deal with current oil investments until East Timor's independence.

A New Timor Sea Treaty for East Timor?

For more than a year, UNTAET/East Timor and Australia negotiated how the joint development of petroleum would continue after independence, when the "Exchange of Notes" agreement expires. On 5 July 2001, a Memorandum of Understanding was signed by representatives of UNTAET and the Australian government formally proposing that on independence a new agreement, the "Timor Sea Arrangement," be considered for ratification.

East Timorese political leaders repeatedly stated that they expect East Timor's Cabinet and Parliament to approve the Timor Sea Arrangement (below referred to as the Arrangement) on or shortly after 20 May 2002. This may not happen, as East Timor and Australia

lia are still in discussions. Also, many questions have recently been raised about the proposed treaty and whether it is, as its proponents describe it, the best deal East Timor can achieve with Australia.

A key question is whether the Arrangement jeopardizes in any way the settlement of a fair maritime boundary following principles of international law.

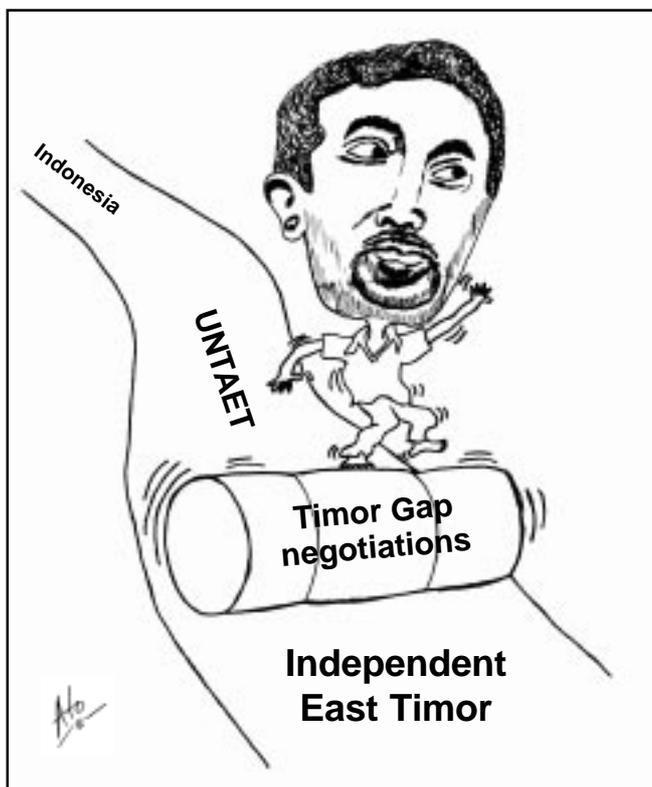
UNTAET's negotiating team for the Timor Sea talks included both internationals led by Peter Galbraith, then Cabinet Minister for Political Affairs and the Timor Sea, and East Timorese leaders led by the Economic Minister for the transitional government, Mari Alkatiri. By their own accounting, when the team began negotiations, they were intent on resolving the maritime boundary question first. Australia, however, refused to discuss boundaries, agreeing only to discussion of how production revenues in Area A of the old treaty (now referred to as the Joint Petroleum Development Area – JPDA) would be shared.

As both Galbraith and Alkatiri explain, East Timor's negotiating team then decided to proceed on two tracks: First, to enter into an interim arrangement regarding joint development of petroleum resources that would in no way decide future maritime boundaries, but would enable East Timor to benefit immediately from petroleum operations. Second, to set out East Timor's maritime claims upon independence and to enter into maritime boundary negotiations with both Indonesia and Australia. Deciding the maritime boundaries first, they explain, would have taken too long and meant a loss in immediate revenues to East Timor. The Arrangement that emerged is presented as a temporary treaty to facilitate the immediate development of petroleum while working out the issue of maritime boundaries.

A recent Dili seminar (23 March 2002) sponsored by PetroTimor (see page 4), presented different information, raising concerns about the proposed Arrangement and what it may cost East Timor in lost revenues. According to the oil industry experts who spoke at the seminar, signing this Arrangement would jeopardize the settlement of East Timor's maritime boundaries under principles of international law. In the seminar, experts argued that by signing the Arrangement, Australia will have a stronger claim to maintain the boundaries in the treaty as international maritime boundaries, thus ensuring Australian rights to some of the largest and most lucrative

oil and gas fields, namely the Greater Sunrise and Laminaria-Corallina fields with a potential revenue of up to US\$38 billion (see Map 2).

Two days after this seminar, the Australian government withdrew from the legal process of resolving maritime boundaries within the International Court of Justice (ICJ) and from dispute settlement under the U.N. Convention on the Law of the Sea (UNCLOS), stating that "Australia's strong view is that any maritime boundary dispute is best settled by negotiation rather than litigation."



The Content of the 'Timor Sea Arrangement'

The Arrangement covers petroleum development in an area called the Joint Petroleum Development Area (JPDA), the same area referred to as Area A in the Timor Gap Treaty between Australia and Indonesia. The proposed treaty would allow East Timor to receive 90% of all oil and gas royalties from the JPDA, a clear improvement to the 50% split in the Timor Gap Treaty. ("Royalties" refers to the percentage of profit different parties receive. Oil companies take approximately 50% of all production profits; the other 50% is divided between East Timor

and Australia as specified by the Arrangement.) Because the Greater Sunrise field straddles the JPDA borderline, a special "unitization" agreement has been devised (unitization means viewing the field as a unit or a whole). Since approximately 20% of the field is within the JPDA, the Arrangement gives East Timor 90% of revenues from 20% of production (i.e. 18%) in Greater Sunrise.

In terms of employment issues, the Arrangement states that there will be "appropriate measures ...to ensure that preference is given in employment in the JPDA to nationals or permanent residents of East Timor." Labor advocates in both East Timor and Australia, however, fear that this is far too general to be implemented effectively.

In terms of contracts with oil companies, which are currently the same as they were under the 1989 Treaty (except that East Timor has replaced Indonesia), the Arrangement would allow East Timor to tax companies for its portion of the oil at East Timor's rates. This gives East Timor the power to gain more through enacting higher taxes, a power that Phillips Petroleum, among others, has strongly protested. Oil companies who begin activities under the terms of this Arrangement would

be able to begin work in Timor Sea oil and gas fields with the understanding that the conditions of their activities would not change. Both Alkatiri and Galbraith have noted the need for companies already operating in the Timor Sea to know that their investments are safe, regardless of future changes in boundaries. And while the Arrangement allows commercial aspects to be negotiated after the treaty is signed, there is currently pressure on East Timor from Australia to resolve certain detailed commercial issues before the signing.

In terms of the boundaries question, the proposed treaty states that “Nothing contained in this Arrangement...shall be interpreted as prejudicing or affecting East Timor’s or Australia’s position on or rights relating to a seabed delimitation or their respective seabed entitlements,” and “This Arrangement will be in force until there is a permanent seabed delimitation between East Timor and Australia or for thirty years.” Many observers fear that Australia will reject East Timor’s broader maritime boundary claims, and block or stall resolving the conflict for 30 years, during which time the gas and oil fields will be exhausted, with Australia getting the revenues from the richest fields.

The Arrangement also refers to a respect for “international law as reflected in the United Nations Convention on the Law of the Sea (UNCLOS).” Australia’s recent rejection of the ICJ and UNCLOS clauses on maritime boundaries contradicts, or at the very least complicates this part of the agreement. International lawyer Jeff Smith states that with its withdrawal, Australia has “effectively denied the working operation of the Arrangement.”

In a legal opinion commissioned by PetroTimor in April 2002, three internationally recognized legal experts state that despite these provisions, “in practice [the Arrangement] would undoubtedly compromise East Timor’s claims to areas outside the proposed JDPA.” According to their opinion, if the boundaries delimitation of the treaty “is considered an acceptable arrangement by Australia and East Timor when they enter into the treaty, it is not probable that any tribunal...would regard the boundary as inequitable.”

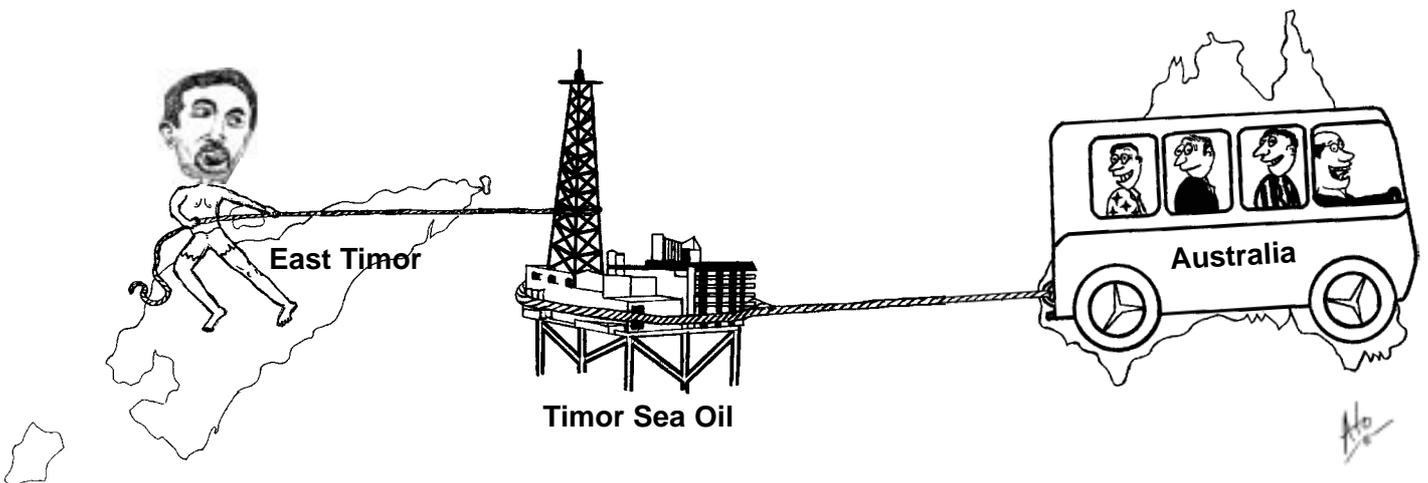
According to Alkatiri and others on UNTAET/East Timor’s negotiating team, this contradicts the advice of their leading legal experts who state that the Arrangement clearly states that it does not decide or impact where East Timor’s maritime boundaries will be. In an interview with *La’o Hamutuk*, Alkatiri expressed concern that PetroTimor is distributing disinformation for their own benefit. He explained that the negotiating team is very informed and aware of problems related to resolving the maritime boundaries through an international court process, and has thus prioritized negotiation. Like Indonesia, which never recognized the jurisdiction of the court, Australia has the right to withdraw their recognition of the court. Australia, he explained, “uses what will best defend their interests and we must use whatever will best defend our rights.”

The Australian government and oil companies operating in the Timor Sea are pushing East Timor to ratify the Arrangement immediately. Many members of East Timor’s future Parliament, however, do not feel that they have enough information to make this important decision. Once this treaty is signed, it can not be easily withdrawn.

Sensitive negotiations require some secrecy, but it is also critical that all information that would not compromise East Timor’s position in the negotiations be made public. Public information, at all stages of the process, must be translated into languages understood by most East Timorese (the text of the proposed Arrangement has been available only in English).

In negotiations, we strongly encourage the East Timorese government to obtain trusted advisors who bring proven expertise in multiple relevant fields. It is also critical for East Timorese to be included as much as possible in all parts of the process to build experience and capacity.

As East Timor celebrates independence, the new nation’s leaders must demonstrate their commitment to transparency, public information, dialogue and democratic process. The oil and gas resources in the Timor Sea belong to all East Timorese and are a symbol of East Timor’s potential for both self-sustainability and justice. ❖





Editorial

A number of factors will determine the success independent East Timor will have in building and maintaining a society that ensures a level of socio-economic development consistent with international human rights standards for all its people. One of the significant factors is undoubtedly the amount of income that the national economy generates. In this regard, the ongoing struggle between Australia and East Timor over control of oil and natural gas deposits in the Timor Sea is of critical importance.

Despite East Timor's pending independence, Australia is once again trying to rob the country of its rightful share of these resources just as Canberra shamefully did when it signed the Timor Gap Treaty with the country's Indonesian occupier in 1989. As was made clear in March at a seminar on the Timor Gap in Dili, the east-west boundaries of the Timor Gap were drawn in a manner that unjustly ensures Australian control of some of the wealthiest deposits, such as Greater Sunrise and Laminaria/Corralina. Were the boundaries to be redrawn in a manner consistent with international law, these deposits would most likely fall under East Timorese control.

While it is impossible to know with certainty how much East Timor stands to earn from revenues from the Gap given fluctuating international prices, it is estimated that \$8 billion will flow into the national treasury under the current agreement over the next few decades. Under an agreement consistent with international law, however, East Timor could stand to earn more than \$35 billion. While the loss for Australia would certainly be significant, for East Timor the gain could very well prove to be the difference between remaining a poverty-stricken country and one that it is able to satisfy the basic socio-economic needs of all its citizens.

In anticipation of a possible effort by Dili to renegotiate the boundaries, Canberra recently announced its withdrawal from participation in the International Court of Justice and the UN Convention on the Law of the Sea dispute resolution mechanisms in cases relating to maritime boundaries. This change in position directly contradicts the 5 July 2001 Timor Sea Arrangement between Australia and East Timor; it also demonstrates Australia's unwillingness to allow East Timor a fair division of oil and natural gas reserves in the Timor Sea. Using understated language, Chief Minister Mari Alkatiri called Canberra's move "a sign of a lack of confidence in us, and an unfriendly act."

Australia claims that it does not think that what it calls adversarial mechanisms such as the International Court of Justice are proper ones for resolving disagreements between neighbors. Instead, Canberra champions bilateral negotiations. But this is just a blatant ploy to strong-arm a much weaker East Timor into accepting an unjust agreement. Canberra is well aware that Dili is under tremendous pressure to ensure that revenues from the Timor Gap begin flowing into East Timor's poor treasury as soon as possible and to maintain good relations with its powerful and wealthy southern neighbor. Australia's hope is that East Timor will have little space to negotiate from a position based on the principles of international law.

The East Timorese Parliament is under a good deal of pressure to sign the Arrangement and convert into a treaty as soon as possible. It must resist such pressures. While Australia claims that signing the treaty would not deny the ability of the two countries to renegotiate the east-west boundaries at a later date, many international legal experts argue that it would. For such reasons, East Timor's political leaders must insist on ample time for public discussion and independent legal opinions surrounding these matters. At the same time, negotiations with Australia and/or with multinational oil companies must be as transparent and participatory as possible.

East Timorese leaders involved in negotiations over the past two years need to explain the negotiations process and make themselves accessible for public discussions. There are many questions that have not yet been clearly answered, and many matters insufficiently explained. A number of East Timor's leaders, for example, have long been aware of the unjust nature of the east-west boundaries of the Timor Gap. This begs the question why they only began to raise the issue publicly following the March seminar in Dili.

La'o Hamutuk calls upon the Australian government to demonstrate its commitment to the rule of law and to agree to maritime boundaries through internationally recognized legal channels. At the same time, we call upon the pro-East Timor sectors of Australian civil society and the international solidarity movement to be vigilant and active in defending East Timor's interests. The contest over the resources of the Timor Gap is a crucial battle in East Timor's ongoing struggle for self-determination. Canberra played a significant role in derailing East Timorese political independence from 1975 to 1999. As East Timor's independence is now imminent, Australia cannot be allowed to undermine the new country's future. ❖

East Timor Faces Post-UNTAET Challenges: What is to be done?

On 20 May, the people of East Timor begin an exciting and difficult phase of their journey. After nearly three years of United Nations administration, 24 years of Indonesian occupation, and four centuries of Portuguese colonial rule, East Timor will control its own destiny.

The handover of sovereignty will be glorious and historic, and *La'õ Hamutuk* joins in the spirit of the festivities. We especially celebrate the East Timorese people, including the FALINTIL resistance and the clandestine and diplomatic fronts, for their persistent and victorious struggle against a ruthless and brutal occupation. During that bloody quarter-century, East Timor had to fight not only the Indonesian military, but also the complicity and indifference of neighboring governments and global powers.

East Timor's new government faces huge challenges of diverse origin. Some of the problems derive from four centuries of colonial rule — Portugal did little to develop East Timor's economy or social services. Other problems were created by Indonesia's brutal 24-year occupation, which decimated the population, destroyed local communities and society, and engendered a culture of dependency, corruption, non-cooperation and resistance. The 1999 post-referendum retaliation ruined much of East Timor's already inadequate infrastructure and housing stock, and displaced the majority of its people.

Further challenges result from the transitional period since 1999, during which systemic, cultural and human inefficiencies in the UN administration prevented many problems from being addressed effectively.

East Timor had been the poorest "province" of Indonesia, with one of the highest rates of child mortality in the world. After centuries of underdevelopment, poverty is endemic. According to the National Planning Commission, 41% of East Timorese live in poverty and 48% are illiterate. Poverty in rural areas is 46%, and in urban areas it is 26%.

Three years of UN rule

Although the United Nations was on record in support of East Timor's right to self-determination for many years, it wasn't until 5 May 1999 that the global powers displayed enough political will to take effective action. On that date, the UN, Indonesia and Portugal signed an agreement to hold a referendum, and to endorse Indonesian military control of East Timor during and just after the vote. In evaluating the UN's performance here, a case can be made to use this date as the reference, rather than the devastated conditions existing when InterFET and UNTAET arrived in late September.

The August 30 referendum succeeded because of the extraordinary courage and commitment of the East Timorese people, the UNAMET staff, and international observers who came to support them. The Indonesian-instigated violence that followed the overwhelmingly pro-independence vote was predicted, but the international community failed to act to prevent it. In the three weeks before InterFET and UNTAET arrived in East Timor, the Indonesian military and their militia proxies executed their carefully planned campaign of destruction and dislocation.

UNTAET came with a mandate from the Security Council. Although one definition of UNTAET's responsibilities can be derived from the wording of Resolution 1272, a less legalistic interpretation gives the mission three principal tasks:

1. Protect East Timor's security and handle the humanitarian emergency resulting from the Indonesian occupation and the devastation of 1999.
2. Prepare East Timor for self-government after the transitional period ends.
3. Govern East Timor during the transitional period.

These are all tremendously difficult tasks, and the latter two were brand new for the United Nations. In July 2001, the Transitional Administrator Sergio Vieira de Mello told the UN Security Council: "The mandate with which we were entrusted in East Timor was much more than a catalogue of problems to be solved. It was nothing less than to work with the traumatized and brutalized people of East Timor and together create an independent sovereign state." East Timor will soon be independent and sovereign, but much of the trauma and many of the problems in the catalogue will persist for a long time.

Up from "below ground zero"

The international community's first tasks after the referendum were ensuring East Timor's **security** and helping East Timor recover from the **emergency**. These were largely successful, despite the initially slow response to the crisis. Once the Security Council decided to act, it used diplomatic pressure to get the Indonesian government to agree for international military intervention, and to withdraw Jakarta's soldiers and police who instigated the violence. This enabled the International Force for East Timor (InterFET) and the Peacekeeping Force (PKF) to enter East Timor, secure the territory and restore order after the departure of Indonesian and militia forces.

The **forced relocation or flight** of 550,000 of East Timor's 800,000 people was the next big problem. By and large, international agencies and INGOs dealt with this effectively, avoiding significant starvation or prolonged internal displacement. See page 14 for a more extensive analysis about the many East Timorese abducted to Indonesia, nearly 60,000 of whom have not yet been able to come home.

Although the immediate crisis was managed relatively well, the crisis-response orientation of many UNTAET leaders, whose prior experience had been with the UN High Commission on Refugees or other organizations caring for largely powerless victims in an emergency situations, has caused problems for the mission. Instead of seeing the East Timorese people as winners of a long and difficult struggle, they are often seen as disempowered victims. Furthermore, many international staff and media perceive East Timor as a violent society, and some East Timorese have internalized this self-image taught by Indonesia for more than two decades. For example, UNTAET and the international press were amazed at the peacefulness of the August 2001 elections, although there was no reason to expect otherwise. They failed to understand that the violence in this country from 1975 through 1999 was almost entirely manipulated or imposed by Indonesian forces, and that those forces have left the country.

Another unfinished task is dealing with the **thousands of perpetrators of a quarter-century of crimes against humanity** who remain at large, mostly in Indonesia. Some justice-related issues have been addressed, but most remain unresolved (see page 12). The major criminals, policy-makers and ranking military officers in the Indonesian and other governments, have thus far enjoyed complete impunity. Unlike many of the challenges in this article, justice will be impossible for independent East Timor to achieve on its own, and continues to require an internationally-supported tribunal and the political will, lacking until now, to compel Indonesia's cooperation. Progress has been made in grassroots reconciliation and in establishing the Commission for Reception, Truth and Reconciliation, but we hope that the high visibility of the CRTR does not obscure the more fundamental need for justice.

Preparing for self-government

The legacy of UNTAET is mixed. Good progress was made in security, constitution-writing, and women's participation in government. The Constituent Assembly and Presidential elections were fair and peaceful, and the results reflect popular will.

However, **civic education** for these elections focused too narrowly on the voting process, and failed to create an understanding of representation and cooperation among elected officials. There was little discussion of how citizens can influence and/or cooperate with gov-

ernment, a highly necessary topic given a generation of popular resistance to an autocratic occupying force. Current debates around little popular consultation, personalized decision making, restricted access to information, and lack of inclusive government are legacies both of the occupation and of the failure to popularize these ideas during the transitional period.

One job which remains for East Timor is the development of an accurate **civil registry**, to be used as an electoral roll and for planning and delivery of social services, passports, and justice. Although UNTAET claims to have established a civil registry and registered 737,811 people, independent experts estimate that the data is 25% inaccurate, growing worse by the day. Although the registry was used for the 2001 elections (with many resulting problems), the Independent Electoral Commission decided not to use it during 2002. The UNTAET civil registry system uses Siemens computers, and was designed and implemented by internationals with no prior civil registry experience anywhere. It appears to be unsuitable for this society, and impossible to maintain without expensive foreign consultants. Some independent experts recommend that East Timor should scrap the entire system and start from scratch.

Although UNTAET preached **good governance, transparency, accountability, democracy and the rule of law** to the East Timorese, it showed little of these in itself. UNTAET is a government without a constitution, with all power residing in one man, the Transitional Administrator Sergio Vieira de Mello. As Special Representative of the UN Secretary-General (SRSG), de Mello answers to another man who is not here, relying on a mandate issued by foreign diplomats on the other side



of the world. Consultation with East Timorese leaders or anyone else is solely at the SRSG's discretion. Every law enacted during the Transitional Period begins "The SRSG ... promulgates the following...".

This temporary, benevolent autocracy follows decades and centuries of malevolent ones, and is a marked improvement. However, it failed to practice accountability, transparency or democracy, and gave East Timorese little chance to experience democratic society. UNTAET was characterized by centralized power, no freedom of information, opaque decision-making processes, and many unqualified foreign personnel. With five times as many military and police as civilian personnel, UNTAET is perhaps the most security-weighted government in the world. International staff, often here on short contracts with little relevant experience or understanding of East Timor's history and culture, owe their loyalty and careers to the UN and the mission, rather than any East Timorese constituency.

Other projects, such as those managed by the World Bank's Trust Fund (TFET) were rarely better. Most decision-makers failed to ask for public views, accepting input from civil or political society only in reaction to pressure. In East Timor, "consultation" has been redefined to mean "socialization," with little or no influence from the consultees on the decisions of the consulter.

Nearly two years into the mission, the SRSG told the Security Council "**Capacity building** has proved both frustrating and difficult in the past, and we in the UN have too often looked for managers rather than mentors, who have thus not seen the need to deliver in this vital area of skills transfer." Although this has improved slightly in the past year, one of the biggest challenges East Timor faces is the lack of trained, empowered people to manage the systems of government and social services. If more UNTAET international staff had understood from the beginning that they came here to help, not to do, East Timor would have a smaller hurdle to jump.

The international community recognizes the inability of East Timorese institutions to handle some areas – especially military, police and fiscal management – and will continue to provide international staff. We hope these experts will focus on developing East Timorese capacity, and we believe that there are many other areas where capacity is lacking. We also encourage them to give empowerment and training at least equal priority with task accomplishment. Unfortunately, the UN has decided not to provide extensive continuing support for areas including national planning, health care, infrastructure, communications, and the judicial system.

UNTAET imported much machinery for its own administration, spending tens of millions of dollars on new equipment, including: 1,350 new vehicles, 1,800 desktop computers, 1,500 printers, more than 500 laptops,

200 fax machines, 74 computer file servers, air conditioners, generators, Kobe buildings, and office furniture. Some of these assets will be transferred to the East Timorese administration, but many are being taken away – often to warehouses or scrap heaps. East Timor's new government will have to re-equip itself, without the deep pockets of the United Nations.

Governing during the transition

In addition to preparing East Timor for self-government, UNTAET was responsible for all the basic functions of government: education, health care, economic development, property law, civil service, public safety, defense, border control, justice, transportation, planning, and social welfare. Many of these areas were addressed as well as could be expected given what they were starting with, the inexperience of personnel and the systemic problems of the mission. They are however necessary ongoing functions, and East Timor's new government must pick up where UNTAET leaves off.

In **education**, UNTAET and the East Timorese leadership agreed that the best thing the UN could do is to stay out of this area. Many schools have been reconstructed, but equipment is lacking. Instructional materials and curricula need to be written and distributed, complicated by the multitude of languages used in East Timor. The biggest challenge is the lack of experienced teachers: under the Indonesian occupation, nearly all teachers were Indonesians. Since there were no jobs for East Timorese teachers, few people studied education. Now the Indonesians have left, and the vacuum will take many years to fill.

Based on advice from international agencies seeking to minimize East Timor's budget gap, **health care** services have been reduced significantly from the Indonesian period. Although we have no statistics, numerous anecdotes attest to life-threatening inadequacies of personnel and equipment, even in major cities. The 25 East Timorese who work *La'o Hamutuk's* building in Dili, for example, have had five babies in the past six months – four died within days of their birth. At the time of this writing, the Ermera hospital has been without electricity for two weeks, since there is no power in town and no fuel for the generator. Basic medicines are in short supply all over the country, and most rural communities have no access to doctors or nurses.

UNTAET did not significantly address the development of East Timor's **economy**. The Mission itself spent less than 1% of its budget on East Timorese staff, with the vast majority of the \$2 billion it received going out of East Timor to international staff's families, imported equipment, or tax-exempt foreign businesses. (See *LH Bulletin* Vol. 2, No. 1-2.)

The small commercial sector that has developed here – restaurants, car rental companies, hotels, supermarkets for expatriates – is usually foreign owned; many

will close up as soon as the overpaid, free-spending international staffers are gone. Regulations for investment, labor, property rights and other areas essential to the private sector economy were late or don't exist.

East Timorese anticipate money from Timor Sea oil and gas (see pages 1-7) in a few years, but in the meantime, there has been little economic development beyond the small coffee industry (see *LH Bulletin* Vol. 3, No. 2-3) and the local agriculture which provides food for East Timor's population. Unemployment is incredibly high; the Chief Minister told the UN it could be as much as 80%. The majority of paid jobs are with government and NGOs, and these will be slashed as donor money declines and international staff leave.

East Timor is plagued with countless complications of **land and property rights**, an issue that UNTAET wisely decided was too complex to handle. The East Timorese nation will have to address these disputes, and competing interests will be extremely difficult to sort out.

Although UNTAET organized or rebuilt some basic systems – radio, television (in Dili only), telephone (only in major cities), and limited water, roads and electricity, these services may not endure. According to the National Planning Commission, only 20% of East Timor's people have access to running water – although international UNTAET staff received plentiful supplies of imported bottled water (see *LH Bulletin* Vol. 2, No. 1-2). Minor upgrades and repairs have been made in Dili to get running water functioning again, but in the districts water is very limited, even in the city of Baucau.

Electricity, until 20 May, has been the responsibility of UNDP and the Asian Development Bank (ADB), funded through bilateral aid from Portugal and Japan and the Trust Fund for East Timor (TFET). In Dili, electric blackouts are daily occurrences; outside Dili, few places have electricity more than a few hours per day, and often not every day. The challenges for East Timor are: how to provide electricity when fuel is so expensive; how to upgrade or even maintain old, often damaged equipment; how to collect payments; how to manage and expand the system?

In **telecommunications**, Telstra was given an exclusive contract by UNTAET for mobile and fixed-line services. This legal monopoly charged inflated Australian prices and provided limited service. Telstra's contract expires at independence, and bids from new service providers (Telstra decided not to bid) can be submitted until May 14. Similarly, UNTAET and donors developed radio and television stations, and trained many East Timorese in electronic journalism and production. The future of these media is up in the air, as they are not commercially viable. East Timor's government cannot afford to sustain them, and the extent of Portuguese support is still being discussed.

Transport, according to one UNTAET official, is “a disaster.” Roads around East Timor are in poor condition, especially in the villages and in the wet season. The large number of UNTAET and PKF heavy vehicles has only worsened the situation, and many repairs are so poorly done that they deteriorate within weeks. UNTAET has relied on PKF engineers for road maintenance, and East Timor will need to develop its own, more extensive, capacity.

The isolation of the **Oecussi enclave** remains a significant problem (see *LH Bulletin*, Vol. 1, Nos. 2 and 3 and page 18 of this issue). Despite repeated promises for more than two years, there is still no boat transport between Oecussi and the rest of East Timor. UNTAET attempted to negotiate a land passage through Indonesia, but talks have broken down. As a temporary partial solution, UNTAET allowed a few East Timorese to travel on UN flights to the enclave, but these flights will cease on Independence Day. The unity of East Timor depends on an expeditious solution to this so-far intractable problem.

Many of the more difficult areas — **police-community relations, domestic violence, appropriate treatment of veterans** of the resistance, and other legacies of decades of conflict and occupation – will take years or generations to solve. Although East Timor's government and society will tackle these challenges, international support and expertise will also be needed, and will hopefully become more effective over time.

Conclusion

These are only some of the significant challenges facing an independent East Timor. Much work remains to be done in rehabilitating and reconstructing both public buildings and private homes.

The United Nations is the only institution which could have accompanied East Timor from occupied territory through devastation into transitional government and finally independence, and we celebrate UNTAET for the successful accomplishment of this near-impossible task. But just as significant problems existed when UNTAET arrived, many difficult challenges remain upon their departure. We hope, by this article, to put on the record a summary of East Timor's state on becoming independent. If things deteriorate over the next few years, the East Timorese government and people will share in the responsibility, but many things are not within their control (see back page editorial). In addition, they have inherited many unworkable or unfinished tasks from UNTAET, as well as its predecessors.

East Timor will rely on financial and technical support from the international community for some time to come, and we hope that lessons learned over the past three years will help both the government here and international agencies apply it more efficiently and effectively. ❖

To Be Done: Justice still delayed

By the Judicial System Monitoring Programme (JSMP)

A vital part of the Security Council's mandate to UNTAET to prepare the territory for independence was "the administration of justice" during the transition period. Furthermore, the Security Council demanded that those responsible for the violence in East Timor, particularly during 1999, be brought to justice. At the end of UNTAET's mission and the full handover to an independent East Timorese government, many questions remain.

In the latest of his reports to the Security Council, UN Secretary-General Kofi Annan acknowledged that East Timor is yet to build a justice system that is able to deal with violent crime, land disputes and the prosecution of serious human rights violations. He noted that "at a time when East Timorese confidence in the nascent judicial system is vital", a range of problems have impeded the effectiveness of the system that UNTAET has attempted to create.

You do not have to look far to see the deficiencies in the system. In February and March prisoners in Dili's Becora prison protested over the long periods they have spent in detention awaiting trials. In some cases, many of them have not even been charged with a criminal offence, nor have they had access to a lawyer. The Court of Appeal sits empty as there are not enough judges to hear a single appeal case. The cases before the Special Panels for Serious Crimes are regularly delayed due to poor administrative planning and shortage of interpreters and public defenders. The court in Baucau is once again beset by labor action by judicial staff over security and resource concerns. Many disputes are still handled by traditional village-level mechanisms, and a large proportion of the population does not have access to any information about the formal court system.

So what has been achieved in the justice sector and what exactly remains to be done? Furthermore, why has justice proved such a difficult task for UNTAET? Have sustainable foundations been laid for the future? In order to understand what has been achieved, it is important first to recall the base upon which UNTAET started in 1999. There were very few qualified East Timorese lawyers, the departure of the Indonesian regime had created a legal vacuum in terms of the applicable laws and enforcement mechanisms, and the physical infrastructure of a justice system – as in many other sectors – was entirely destroyed. In these circumstances, "administering justice" was an enormous challenge, as it involved essentially creating a new justice system from scratch.

What was to be done?

The self-declared tasks of the Justice Department are set out in a "Fact Sheet" issued by the Department in September 2001, as justice was being handed over to the Second

Transitional Administration. The Fact Sheet states that the Justice Department's mandate is to establish a judicial system in East Timor, comprising the following components:

- √ A two-tier court system, including District Courts and a Court of Appeal
- √ The Prosecution Service, including the prosecution of both ordinary and serious crimes
- √ A Public Defender and Legal Aid Service
- √ A Prison Service.

In addition, the fact sheet noted that the Justice Department is also responsible for the establishment of legal training capacity in East Timor and the training and mentoring of the East Timorese judges, prosecutors, public defenders, court clerks and prison staff.

These elements provide a useful measure for assessing whether UNTAET has discharged its responsibilities, as well

as an indication of the challenges facing the East Timorese government once it assumes full control over the process. It is important to recognize, however, that this handover has already begun in relation to justice issues and will remain a gradual process for some time to come. Although during the first transitional government an international UNTAET cabinet member was given responsibility for "Judicial Affairs," the justice portfolio was in fact handed over to the East

Timorese Justice Minister, Dr. Ana Pessoa, when the second transitional government was created in September 2001.

Justice will continue to receive substantial international assistance, including many of the posts in the UN successor mission, after independence. Nevertheless, with the 'rehabilitation' phase largely complete, it is timely to focus on the operation of the justice system itself in terms of qualitative outcomes and the transparency and clarity of processes. Only when the justice system delivers just outcomes following fair hearings and credible processes will the confidence of the East Timorese in their legal system be justified.

In terms of achievements, there are now courts, rehabilitated buildings and East Timorese judges and lawyers appointed. Prisons have been established in Becora, Gleno and Baucau, although conditions are basic and may be further reduced after independence. Most of the four District Courts are operating, but not smoothly and each court is at a different stage of evolution with widely differing caseloads. Insufficient resources have been provided to the courts, to the public prosecutors and to the public defenders for them to be able to handle their heavy caseloads. Significantly, an ongoing concern is that there appears to be a lack of overall co-ordination and lack of direction concerning developments within the system and management of the judicial system. In reality only Dili and Baucau District Courts can be said to be functioning. The Oecussi Court suffered first from the



lack of a trial judge, then the lack of an investigating judge when that judge was appointed to be the missing trial judge. Suai court has still been operating out of the Dili District Court as the court building in Suai has only recently been rebuilt. In Baucau there have been recurring security problems, including intimidation of judges and prosecutors.

The Court of Appeal has not been operational for several months as international judges' contracts have ended without adequate planning for the recruitment of replacements. Currently there is no President of the Court of Appeal. This is an extremely important role that is responsible for the overall administration of the entire court system.

In relation to prosecutions, East Timorese prosecutors have been appointed and there are many cases moving through the system. However, the number of cases far exceeds the capacity of the small prosecution service. This has led to many cases being settled informally or referred to "traditional" justice mechanisms. While UNTAET has been unwilling to grapple with the complexity of the widely varied informal dispute resolution procedures that exist within East Timor, significant human rights concerns have been raised over the referral of many cases, including those relating to violent crime and sexual offences. The continued lack of any guidelines for prosecutors and judges has meant that inconsistent and *ad hoc* practices have developed which undermine the very human rights standards that the UN promotes, including the right to a fair trial and equality before the law. For example, some trials seem to start and then get "lost" in the system, such as the domestic violence case against prominent doctor Sergio Lobo.

Serious Crimes

The prosecution of serious crimes has received considerable attention throughout UNTAET's mission. To date, the General Prosecutor has issued over 35 indictments against approximately 100 individuals. Although several have been indicted, no Indonesian troops are in custody even though UNTAET has filed a number of arrest warrants with INTERPOL and the Indonesian authorities. In the 15 cases that have been decided, the court has handed down 23 convictions, no full acquittals and dismissed 2 cases on procedural or jurisdictional grounds before trial.

This is indeed a significant achievement by any standard, especially when compared with the often-cited slow progress of the ICTY and ICTR. However, such comparisons are completely inappropriate when one considers the fundamental differences in the types of cases that have been heard. Almost all of Special Panel cases to date have been relatively simple matters, involving mostly single murder charges under the Indonesian Penal Code with one accused and a small number of prosecution witnesses. No defense witnesses have testified in any serious crimes cases. All the accused who have been tried have been East Timorese nationals, most of whom were low-level militia, often illiterate farmers, who admit their involvement in the events described but who generally claim that they were either forced or ordered to join the militia and participate in the crimes. Very often they are not the main perpetrators, who are still at large and presumed to be in Indonesia.

In addition to the serious administrative and resource related problems that affect the entire court system, probably the most significant challenge to the effectiveness of the

Special Panels is the inability of the prosecutors to bring before the court the main planners and perpetrators of the worst human rights violations, as this is dependent on Indonesia's cooperation. Although a Memorandum of Understanding (MOU) was signed by the Indonesian Attorney-General and UNTAET on 5 April 2000 on issues regarding cooperation in legal, judicial and human rights related matters, Indonesia has refused to comply with the numerous requests made by the Deputy General Prosecutor for Serious Crimes. UNTAET has been criticized for failing to bring sufficient political will to bear on Indonesia in this regard, and there is no doubt that an independent East Timorese government will have far less clout than the combined influence of the international community through the UN.

Furthermore, internal management and resource problems plagued the Serious Crimes Unit (SCU) investigators and prosecutors in the crucial early days of their work. Many of these issues have been resolved in recent months, and if they had been addressed earlier the courts would have faced an even greater backlog of cases due to the administrative problems described above. However, the SCU continues to grapple with the loss of credibility caused by the early problems. In any event, the UN successor mission will include continued funding and staffing for the SCU until mid-2003 at least. Most of the ten "priority" cases that the SCU initially declared it would focus on are now proceeding to the indictment phase. The SCU has also dealt with cases relating to those already in detention, and will also examine other cases that relate to returnees from West Timor. The new Constitution also makes provision for the Special Panels for Serious Crimes to complete their work, although it is unclear how long this will be.

What remains to be done?

The public defenders office and a legal aid commission remain among the most obvious outstanding tasks in the justice sector. The small number of public defenders cannot address the needs of a growing number of people in detention, often on relatively minor charges. The result is not just unnecessarily long periods of pre-trial detention, but also violations of the rights of accused persons, most of whom have little knowledge about the legal process. The public defenders have received only minimal training and have been left in institutional limbo while the fate of their office is debated between the outgoing UNTAET and the East Timorese Justice Department.

What laws to apply is another major unresolved issue. UNTAET appropriately left to the future government of East Timor the difficult policy decisions about what the permanent legal regime will be. Instead, a transitional legal regime was instituted which continued Indonesian law, subject to international human rights standards and UNTAET regulations. While this has facilitated the transition of Indonesia-trained East Timorese judges and lawyers into their new professional roles, there has been a disturbing lack of action by the relevant transitional authorities in terms of ensuring that the Indonesian laws are reviewed for inconsistencies with the other sources of law. In addition, inadequate translation and distribution of UNTAET regulations has been a problem. Other important areas of law, including corporate regulation and land and property claims, are yet to be addressed at all. Legal uncertainty in such important areas

has the potential to not only exacerbate existing tensions within East Timor, but also to cause other economic and social problems, including corruption.

Although the new Constitution sets out a different court structure than the transitional one created by UNTAET, it will probably take several years before the new system is fully implemented. In the meantime, certain aspects of the court system are struggling to function at an administrative level. Capacity building of East Timorese staff has been hampered by the lack of appropriately experienced international staff recruited as mentors. In terms what remains to be done, the list is long. Some aspects could be easily addressed with the right support, others remain more complex and time-consuming to solve. While UNTAET has made some important corrective steps in recent months, there is no doubt that the justice system will be dependent on assistance for some time to come.

Of course, the idea of justice for East Timor goes beyond the developments in the formal justice system. Within East Timor, justice is an important part of the ongoing reconciliation process. The Commission for Reception, Truth and Reconciliation has now been established, although it has not yet received all the funding it needs. The Commission's success

will also depend on unpredictable factors, such as the number of refugees returning from West Timor, the extent to which communities are willing to participate, and whether the formal justice system is able to adequately process the most serious cases. Similarly, justice for the crimes committed in East Timor remains to be achieved outside of the country. Although a few trials have recently commenced before the Ad Hoc Human Rights Court in Jakarta, many question whether it will be able to achieve just outcomes, given the prevailing political climate and the limited jurisdiction of the court. (See In brief, page 18.)

Of greater concern is the declining international support for justice for East Timor, as demonstrated by the recent consensus statement by the Chair of the UN Human Rights Commission in Geneva that diplomatically applauded Indonesia's efforts. The senior planners and perpetrators of crimes against humanity in East Timor from 1975 through 1999 must be held fully accountable – either through an entirely international mechanism or through international cooperation with national attempts within East Timor. Impunity is not acceptable for the serious violations of human rights and the destruction that placed East Timor in such a precarious economic and social position at the dawn of its independence. ❖

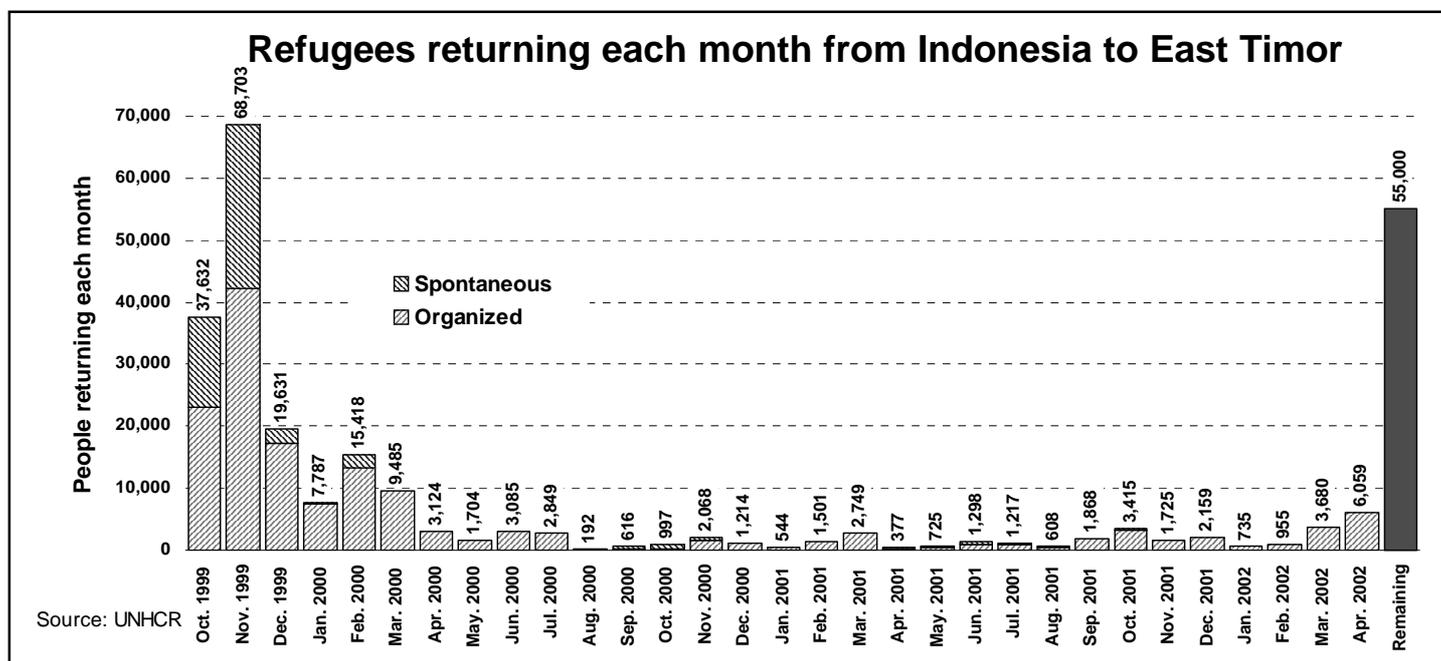
To Be Done: 55,000 East Timorese Still Stuck in Indonesia

One of the most devastating consequences of the post-ballot destruction in East Timor was the displacement of 2/3 of East Timor's people, many to Indonesia. Their safe and voluntary return has been one of UNTAET's highest priorities. This is appropriate, because their abductions and forced flight by the Indonesian military and militia was possible largely because the international community declined to act on information they had that such an operation would be executed if the people of East Timor voted for independence.

Approximately 300,000 people fled East Timor's cities into the mountains of their country, where they survived among difficult conditions for three weeks before international pressure and InterFET provided a safe environment for them to return to their now-destroyed communities. Ex-

cept for the delay, the United Nations and various relief agencies handled the internal displacement crisis fairly well, and the East Timorese people were resilient and resourceful enough to overcome the plethora of errors that always accompany a crisis response operation. With the exception of UNHCR's shelter program (see *LH Bulletin* Vol.1 No.2 and Vol.1 No.4; the problems we discussed in 2000 persist, and approximately 25% of the 35,000 shelters still lack walls), this is one of the areas where UNTAET has performed well.

Unfortunately, we cannot say the same for the people forcibly taken on ships and trucks to West Timor and other parts of Indonesia. Although UNTAET celebrated the return of the 200,000th "refugee" in April, more than 55,000 East Timorese remain involuntarily in Indonesia, many in the same



squalid refugee camps they have lived in for more than two years. Other East Timorese, including over 1,200 children separated from their parents, are detained or trapped in Java and other parts of Indonesia, with no effective UNTAET strategy for their return.

In July 2001, *La'ó Hamutuk* questioned UNTAET's approach of bargaining with militia leaders (many of whom have committed crimes against humanity) for the return of virtual hostages under their influence (*LH Bulletin*, Vol.2, No.4). The Transitional Administrator differed with our analysis, and we published his and our responses last October (*LH Bulletin* Vol. 2 No. 6-7). At that time, refugee returns from West Timor were averaging 1,000 per month, and it would have taken six years for everyone to return.

Toward the end of 2001, return rates doubled, as a result of the peaceful legislative elections and new government in East Timor, and of families wanting to be united for the Christmas holidays. A few hundred came back through negotiations with militia leader Nemezio de Carvalho but the net result of the militia-negotiation tactic was negative, as it increased the power of other militia leaders to keep refugees in West Timor against their will.

In mid-January, the UNTAET official in charge of the militia-bargaining strategy resigned, and UNTAET has since abandoned this tactic and is working more closely with com-

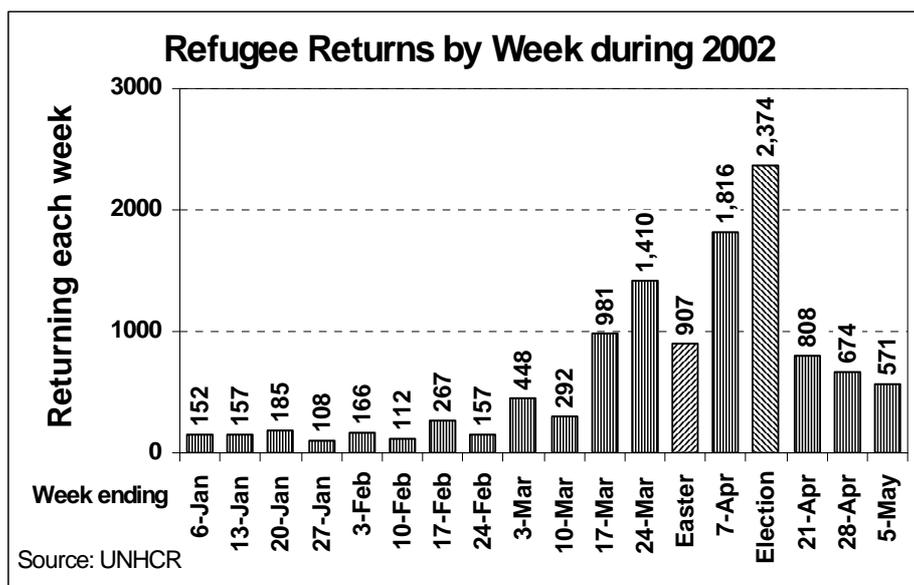
munity groups. In January and February returns dropped off, but many refugees returned to celebrate the March 31 Easter holiday with their families or participate in the April 14 Presidential election (see graph). This was accelerated by the end of aid in January; food stocks for many refugees ran out in March, around the end of the growing season.

The surge was helped by the continuing peaceful situation here and by East Timorese leaders, especially Xanana Gusmão, who are actively reaching out to grassroots refugees. Indonesian authorities, including TNI in West Timor, are helping people return, thereby decreasing the influence of militia leaders. In West Timor, many East Timorese believe if they aren't home before independence they won't be welcome later, and they have decided to return now. At the time of this writing, it is unclear how many refugees will come home right after independence, but we are wary of optimistic predictions which have been wrong too often in the past.

La'ó Hamutuk celebrates the recent increase in returnees, and encourages the East Timorese leaders, international agencies and Indonesian government to continue their work. Experts estimate that at least 40,000 of the remaining 55,000 want to come home, and that half of these are families waiting for Indonesian government pensions (attempts to raise money for this have foundered on the Indonesian

government's lack of commitment). April's peak will not last, but even if the last half of April's rate (about 2,800/month) continues, it will take more than a year for the remaining refugees to come home. We are also concerned about declining international pressure on Indonesia, as foreshadowed by the recent toothless statement by the U.N. Human Rights Commission, about planned reductions in UNHCR and IOM presence here in mid-2002, and about Indonesian threats to close the camps and disperse the remaining refugees.

The "refugee problem" is preventing about 7% of East Timor's people from becoming independent on 20 May. It remains the responsibility of the international community, as one of the unfinished tasks of the Transitional Administration. ❖



Who is La'ó Hamutuk?

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What's Behind China's Support for East Timor?

China, the country with the world's largest population, has become a significant bilateral donor to East Timor during the past two years and, according to UNTAET's Donor Co-ordination Unit, may be the 12th largest. So far China has donated approximately US\$10 million, far behind Japan (\$116 million) and Portugal (\$85 million), but close to some other leading donors such as the United Kingdom and some Scandinavian countries.

China's assistance to East Timor has centered around the supply of agricultural and fisheries equipment, training for economists, and an agreement to construct a new building for East Timor's Ministry of Foreign Affairs and Co-operation.

According to China's chief diplomatic representative in East Timor, Shao Guanfu, China has supported East Timor's right to self-determination in the United Nations since Indonesia invaded in 1975. China sees the independence process as "a continuation of the decolonization of East Timor." China supported the decolonization of other Portuguese colonies and has always supported UN General Assembly resolutions on East Timor. China contributed towards the costs of the Peacekeeping Force and in 1999 made two small donations of emergency humanitarian assistance. China, said Shao, is seeking to establish bilateral relations with East Timor "in politics, economics and trade."

In January 2000, East Timorese leader Xanana Gusmão and Foreign Minister José Ramos-Horta visited Beijing, which resulted in an agreement on economic and technical co-operation in July 2000 for agricultural and fisheries equipment valued at \$6 million, including:

- √ 67 shipping containers of over 200 agricultural machines: tractors, excavators, ploughs, seeders (machines for sowing seeds) and trailers.
- √ 72 containers of fishing equipment including 300 boat engines, 15 containers of power hoses, 1,500 panels of fishing net, three tons of fishing line, insulated ice-boxes, and lifejackets, which mostly arrived in July 2001.
- √ 100,000 nylon mosquito nets.
- √ China also sent five technicians to help assemble some of the farming equipment and trainers to teach the East Timorese how to maintain the equipment.

China has not given cash donations to East Timor, but UNTAET's Donor Co-ordination Unit considers them the largest donor of equipment only. The first shipments were sent to the National Council of Timorese Resistance (CNRT), but were later integrated into the Department of Agriculture's distribution plan and sent out to the districts.

China's second largest contribution has been a pledge, signed in March 2001, of approximately \$4 million to construct the headquarters for East Timor's Ministry of Foreign Affairs and Co-operation. Shao said that a feasibility study has been completed and a design is underway, but the site has not yet been finalized and there is "no exact timeframe" for completion. China will invite bids from Chinese contractors, and will provide whatever materials and technical personnel that East Timor lacks, but Shao said the construction work would "use mainly local workforce and material".

The Department of Economic Affairs and Development is also a recipient of China's aid. From June to August 2001, fourteen East Timorese economists went to Beijing for training, and another group will go this year. But an UNTAET employee expressed general concern that there is no central clearinghouse for overseas training opportunities, and that China's training was not linked to the Capacity Development Co-ordination Unit.

China is also planning to send of a team of medical special-

ists to work in the Dili National Hospital. This might include a specialist in traditional Chinese medicine. China has provided similar medical teams to Mozambique in the past.

In addition to its assistance program, China has opened a five-person diplomatic mission in Dili, located in a spacious compound in Farol. Chinese Foreign Minister Tang Jiaxuan will lead China's delegation at the independence ceremony on 20 May. Shao said that China will continue to help East Timor, especially in agriculture, health and education, "within our capacity."

China's interest in East Timor has prompted considerable speculation as to China's motivation. The Donor Co-ordination Unit does not regard China as a "traditional" donor, and China is itself a recipient of international aid. Among developing countries, China is the largest donor to East Timor.

There are several possible reasons for China's interest in East Timor. Firstly, China is generally pursuing a policy of increased regional and international engagement, seeking to raise China's profile and influence, including in regional security and co-operation. In addition, China has a specific interest in discouraging East Timor from having close relations with Taiwan (whose government still claims to be the government of mainland China, in spite of having fled more than 50 years ago), although Foreign Minister José Ramos-Horta has had personal friendships with leading Taiwanese independence politicians. It would appear that China has obtained East Timor's co-operation. An East Timorese Foreign Ministry spokesman told *La'o Hamutuk* that Taiwan has no representation in East Timor whatsoever, because East Timor will adopt the "one China policy."

According to Shao, a "one China policy" has three components: recognition that there is only one China, that the People's Republic of China is the sole, legitimate representative of China, and that Taiwan is an inseparable part of China. Most countries have adopted this policy. However, many governments with this policy also maintain informal contacts and trade with Taiwan, and some have trade representatives in Taiwan, without formal diplomatic ties.

Shao says China regards it as their "duty" to help the East Timorese people. "China and East Timor are both Asian countries and close neighbors. We are both developing countries. Our interest is to develop and co-operate together," he said. In addition, ensuring East Timor's national unity and stability is "conducive to everybody." Ensuring East Timor's support for China's policy on Taiwan is not a specific motivation, Shao said, but rather a natural outcome of relations. "All countries that have diplomatic relations with China have a one China policy. We respect East Timor's sovereignty and territorial integrity. At the same time... any country which would like to establish diplomatic relations with China, they must respect China's sovereignty and territorial integrity." It should be noted, however, that China stands accused of serious human rights violations in Tibet, as well as denial of Tibet's right to self-determination. Tibet lacks the same UN status as East Timor, but there are similarities between the way China treats Tibetan nationalists and the way Indonesia treated the East Timorese during its occupation. In the past, some East Timorese leaders have shown solidarity with Tibetans.

Questions will continue to be asked: why is China providing such assistance? Why does it have such a large mission? What does China hope to gain from its presence in East Timor? How much influence will China have on the East Timorese government? Only time will tell. ❖

Gender, Power, Empowerment and Social Change

An Exchange with Activists from Nicaragua

During March and April 2002, *La' o Hamutuk* worked with other East Timorese organizations to carry out an "intercambio" or exchange with two Nicaraguan activists: Madlyn West Centeno from the Nicaraguan Women's Network Against Violence and Ruben Reyes from the Nicaraguan Association of Men Against Violence.

As *La' o Hamutuk* monitors and analyses the role of international institutions in East Timor's development process, we also recognize the need for alternative development models. International exchanges are a way to build strong ties of international solidarity and together explore new and innovative grassroots initiatives. In 2001, *La' o Hamutuk* organized an exchange between East Timorese and Brazilian organizations involved in popular education work. This year, our exchange focused on gender, examining how gender is socially constructed and based in unequal power relations, and how this relates to patriarchal systems, violence against women, and a lack of development options for women.

Traditional patriarchal culture is extremely strong in East Timor. Women have had little public voice and discussions of women's rights and power issues around gender have largely been limited to small groups of women. Twenty-four years of an extremely repressive Indonesian military occupation, during which violence against women was systematic and thorough, have left a deep scar on the nation. Hundreds of years of Portuguese colonialism and a conservative Catholic Church also contributed to a culture of male domination and female subservience. Today, as East Timor rebuilds and develops itself as a new and independent nation, there is a sharp increase in the number of reports of violence against women.

Many East Timorese activists and organizations have already started the work of deepening analysis of gender roles, patriarchy, and feminism/women's liberation. Since early 1975, under the leadership of Rosa Muki Bonaparte, the Popular Organization of East Timorese Women (OPMT) carried out programs for women "to eliminate discrimination and violence against women." Early on, they involved men in the popular youth movement to help run child-care centers. While these initiatives did not last long because of the Indonesian military occupation, they have not been forgotten and are now being revived. The OPMT and many other organizations were eager to develop new tools for empowering women at the grassroots and involving men in the struggle for gender justice.

Nicaragua is a small country in Central America which, like East Timor, endured centuries of colonialism and recently achieved freedom after decades of war against an internationally supported military dictatorship. In 1979, the Sandinista popular movement toppled the corrupt Somoza dictatorship, and the new Sandinista government led grassroots national campaigns focusing on literacy, health

care, and promoting domestic agricultural crops. By the end of 1980, however, U.S.-supported militias (contras) were waging a war against the Sandinista government. Ten years of war obliterated most gains in education, health care and agricultural development, and left communities torn and battered. The Sandinistas have been voted out of power, though they still remain a political player in the country.

Over the past 25 years, the women's movement has been an active and powerful force in Nicaragua. During the Sandinista Revolution, the women's movement was active in many projects of the Revolution, such as literacy campaigns, free education for adults, national campaigns for the immunization of children, and organizing volunteers for harvesting coffee and cotton. Over the past ten years the women's movement has led extremely progressive national campaigns

for gender equality and an end to violence against women.

In 1993, a national Association of Men Against Violence was formed to support the women's movement and to involve men in opposing violence against women. As perpetrators of most violence, it is critical for men to examine their own beliefs and practices and to work against gender-based violence. The Association of Men Against Violence works to raise men's awareness and to effect changes in patriarchal attitudes and behaviors.

La' o Hamutuk's exchange brought two activists from these Nicaraguan

movements to East Timor. It was organized around three week-long workshops in Dili, Baucau and Oecusse which led participants to examine gender as a complex power dynamic in which men are in a position of power. Only by viewing gender in terms of social power dynamics can we see violence against women as the social problem it is. The workshops, which included over 20 organizations from 8 districts, utilized creative techniques based in popular education methodology.

Participants in the workshops, both men and women, shared experiences and beliefs about gender based oppression. Through dialogue and reflection, participants uncovered new perspectives and common commitments. By the end of the exchange, a group of close to 40 activists from 15 organizations planned a five-year National Campaign Against Gender-Based Violence. Women participants decided there is a critical need for research about domestic violence in East Timor, data which will support the national campaign. Male participants plan to involve more men in this critical work for gender justice, and are developing campaign materials that target men as perpetrators of violence. By strengthening women's networks, developing men's responsibility and involvement in gender justice work, and carrying out a clear plan as partners, we can ensure women's full human rights and participation in the new and independent East Timor. ❖



In Brief. . .

The Indonesian government opened its *ad hoc* human rights tribunal on 14 March to prosecute cases related to atrocities committed by the Indonesian military (TNI) and its militia groups in East Timor. The jurisdiction of the Jakarta tribunal is limited to April and September 1999 and to only three of East Timor's 13 districts. While various governments on friendly terms with Jakarta applauded the long-stalled beginning of the court, human rights advocates have been far more critical. "There are too many loopholes that could prevent the effectiveness of the trial, such as the skill of the judges, the law, as well as the independency of judges from elements of power," said Hendaridi, chairman of the Indonesian Legal Aid and Human Rights Association. Thus far, numerous indictees and witnesses have failed to appear at the court. Meanwhile, the presence of militia members and high-ranking military officers has created an intimidating presence in the courtroom. Army officers have taken advantage of the proceedings to blame the United Nations and Indonesia's Habibie government for the 1999 terror campaign. They have argued that the TNI endeavored to make peace between pro-independence and pro-Indonesia forces within East Timor, and actually saved the lives of thousands of UN personnel.

On 3 April, East Timor's Vice Minister for Health, João Martins, and UNTAET head, Sergio Vieira de Mello launched a national education campaign on HIV/AIDS. According to Martins, the HIV infection in East Timor is 0.64 percent of people of reproductive age, compared with more than 1 percent in nearby countries such as Cambodia and Thailand. Martins warned that massive social dislocation, cross-border migration, high unemployment, rural illiteracy, and low awareness about HIV and other sexually transmitted disease could worsen the prevalence of the disease. East Timor's health ministry reported the territory's first three documented cases of HIV/AIDS infection on 26 December 2001. The presence of PKF soldiers and other internationals has led to a rise in the sex industry in East Timor, thus contributing to the spreading of the disease.

The United States and Indonesia held talks in Jakarta on 24-25 April with the goal of rebuilding military ties cut off in the context of the TNI-militia terror campaign of September 1999. The talks reportedly focused on counter-terrorism, sea piracy, and civilian control over the TNI. The Bush Administration, along with the Pentagon and some allies in the U.S. Congress, are eager to re-establish ties, including arms sales and military training. Both Washington and Jakarta have used the so-called war on terrorism as a reason to renew full military relations. The Bush administration has asked Congress to

provide \$8 million to train a civilian-led counter-terrorism unit that will include Indonesian soldiers and another \$8 million to train Indonesian soldiers to better respond to communal violence. Many in Congress, however, are resisting such pressure, while insisting the Indonesia ensure accountability for its crimes in East Timor. Human rights and East Timor solidarity groups in the United States are working to block the resumption of military ties with Indonesia.

Mid-April negotiations between East Timor/UNTAET and Indonesia failed to establish a land transportation link from the Oecusse enclave to Dili because of Jakarta's obstructionism. TNI commander Col. Moeswarno Moesanip stated that the military had rejected UNTAET's proposal because the TNI could not guarantee the safety of East Timorese traveling overland because of the ongoing presence of pro-integration militia in the Kefamenanu and Atambua regions of West Timor. In addition, the long-promised ferry service between the enclave and the rest of East Timor has yet to begin, and the limited air service provided on UNTAET flights will end on 20 May.

On 22 April, **the United Nations Human Rights Commission issued a very weak statement regarding Indonesia's conduct toward East Timor.** Refraining from any criticism of Jakarta, a Chairman's statement "welcomed the important steps taken by the Government of Indonesia to bring to justice perpetrators of cases of gross human rights violations in East Timor in the period leading up to and immediately following the popular consultations in East Timor in August 1999." According to Amnesty International, the resolution "will not put the Indonesian authorities under any pressure to take the measures necessary to ensure that justice is delivered or that all alleged perpetrators, including those with command responsibility, are brought to justice." The East Timor *Action* Network of the United States called the UNCHR statement "a rotten birthday present for the soon-to-be independent nation" and argued that it "essentially abandons any pretense that those most responsible for war crimes, crimes against humanity and genocide committed in East Timor should be brought to justice." In her report to the Commission, UN High Commissioner for Human Rights Mary Robinson severely criticized the Indonesian process and called upon the international community to "reconsider the recommendations of the [United Nations] International Commission of Inquiry on East Timor, including that concerning the establishment by the United Nations of an international human rights tribunal."

On 22 April **Fernanda Borges, Finance Minister in the Second Transitional Government of East Timor, resigned from office.** She explained her resignation “predicated solely on the failure of the government to implement principles for good governance, lack of transparency in the development of policy and on the personalized decision-making process in government.” Before leaving office, Borges worked to complete a new government budget that she describes as “realistically targeted to the key sectors that impact on poverty reduction, namely, agriculture, education and health.” But she warned that “the success of budget execution and the implementation of the programs are reliant on the commitment and the will of each Minister and the Council of Ministers to establish governance arrangements that are needed to have true accountability.” Borges, who is not affiliated with a political party, was replaced by Maria

Madalena Brites Boavista, a Fretilin party member since 1974 who has been working on Timor Gap oil issues.

A 25 April study from **the United Nations Children’s Fund (UNICEF) reports that child abuse and commercial sexual exploitation of children is an emerging problem in East Timor.** UNICEF calls for a coordinated response from civil society leaders and law enforcement to combat the problem. The Program for Psychosocial Recovery and Development in East Timor (PRADET) documented 103 cases of child abuse over a one-month period in only five of East Timor’s 13 districts. Sixty percent of the cases involved the sexual assault of children, physical violence or commercial sexual exploitation. Eighty-five per cent of the sexual assault victims were girls, with the majority of offenders being young male family members, or young males known to the victim. ❖

Editorial: Financial Independence *(continued from back page)*

wealthy countries. PRSPs are a sequel to the controversial Structural Adjustment Programs (SAPs) that exacerbated economic crises in many countries. Demands from the IMF and the Bank played a significant role in the 1997 financial crisis that devastated Indonesia (and East Timor). The Structural Adjustment Review Initiative, an extensive review of such programs carried out by civil society organizations and the World Bank itself, found that SAPs have not only failed to benefit the people of the countries affected, but have actually increased poverty. Although the Bank participated in outlining the methodology and conducting the research for the study, it did not like the findings and officially pulled out of the project before a preliminary summary was published last November.

Since East Timor had no independent government during the transitional period, the country was ineligible for loans. Grants funded reconstruction and development projects. However, international financial institutions such as the World Bank and IMF rarely give grants to independent countries, instead encouraging them to borrow money from the institutions. Programs such as PRSPs force governments to prioritize repaying loans over providing adequate basic social services, or to abandon the services altogether.

East Timorese leaders have repeatedly said that they do not want to borrow money from the World Bank or other sources, and we agree that the new nation must not start off burdened with debt.

However, there are fears that the Bank will use its control over the managing facility to force the government to borrow from the Bank. But even without loans, the World Bank will have enormous influence if it controls the facility. The government is right to be wary of the World Bank and other international financial institutions,

and limiting involvement with such agencies is the best strategy to avoid the damage these groups have done to the people of many other nations.

East Timor is finally achieving its independence – this independence should not be compromised by outside control or excessive influence over the government’s budget. We agree with East Timorese officials, donors, and international financial institutions that corruption and mismanagement should be kept to an absolute minimum, and that monitoring and safeguards should be in place to see that tax revenues and donor contributions are used for their intended purposes.

However, like any other country, the new government will make its share of mistakes. As an independent nation, East Timor should be allowed to learn from its mistakes, rather than be punished for them. Such macro-capacity-building is unlikely with a strict World Bank master that implicitly or openly threatens to withhold donor funds if East Timor implements programs that the Bank doesn’t like.

For the past two years, the international community has generously supported internationally-administered projects in East Timor. Now it is time to help the East Timorese continue these tasks, and take on the many and unique challenges history has given this country. The international community is responsible to ensure that the government has adequate funds to operate, especially since international complicity and neglect enabled many of the tragedies that have stricken this country. The contributions needed to cover the budget shortfall would be a symbolic acknowledgement of what governments on the UN Security Council, East Timor’s neighbors, and the former colonial and military rulers of East Timor would be assessed as reparations in a just international order. ❖

Editorial: Financial Independence

After centuries of struggle, East Timor will finally become an independent state on 20 May 2002. But how genuine will that independence be if outside powers have control over a third of the nation's finances? East Timor is being coerced to accept a system that will give the World Bank power to manipulate the new government's policies.

During the transitional administration, UNTAET managed the Consolidated Fund for East Timor (CFET), which pooled donor contributions and government revenues to finance the embryonic national government (ETTA/ETPA). But CFET dissolves upon independence, and international governmental donors are requesting a new financing facility, a mechanism to pool and coordinate their contributions.

Most donor governments are reluctant to give fiscal support directly to the government of East Timor. Instead, they would prefer an internationally controlled facility to collect their contributions and periodically release the funds to the new government. The World Bank would control the proposed fund. East Timorese officials have been reluctant to accept this structure, and asked the UN to manage the fund – in essence, continuing its current role as the caretaker of CFET. Unfortunately, the UN has declined, and the donor community is uncomfortable with any manager other than the World Bank.

The new government already faces several challenges: despite billions of dollars pumped into UNTAET, multilateral institutions, and international NGOs, the country has yet to recover from 24 years of Indonesian occupation, capped by the military and militia violence of 1999. The emerging government's plans are modest, but with the economy in ruins, it cannot collect enough tax revenue to cover even a very slim budget. The government predicts a little over \$40 million in total revenues for the coming financial year of 2002-2003, and with about \$5 million left from CFET, there is not enough to cover the \$77 million budget. The government is asking donors to cover the \$30 million shortfall, and an additional \$60 million from 2003-2005. Afterwards, the government expects oil and gas revenues to cover the revenue gap. This shortfall has already been drastically reduced since the Oslo Donors Conference in December 2001, with the government increasing projected revenues by more than \$5 million and cutting \$20 million in proposed spending.

For the last two years, the World Bank has managed TFET (the Trust Fund for East Timor), in which it collected and disbursed around \$150 million for specific projects controlled by the World Bank and the ADB. The proposed new financing facility is different, in that the government will manage the expenditures, rather than the Bank. However, the Bank's previous projects in East Timor and their record in other countries gives cause for concern.

La'o Hamutuk has investigated several of the World Bank's projects in East Timor, and found problems in planning and execution. The Emergency School Readiness Program employed expensive outside services when local alternatives were available, generating profits for foreign companies instead of local employment and building local capacity (see *LH Bulletin* Vol. 2 No. 4). World Bank agriculture projects are based on 'free market' ideas that risk hurting the people they are supposed to help (see *LH Bulletins* Vol. 1 No. 4 and Vol. 3 No. 1). Others, such as their Community Empowerment Program (CEP) have dealt poorly with local societal and political structures, imposing their own processes and agenda instead.

When the World Bank and its partner institution, the International Monetary Fund (IMF), influence other countries' development strategies through similar budgetary funds, so-called Poverty Reduction Strategy Papers (PRSPs), or other means, the process often hurts the majority of the population. Instead of improving conditions for the poor, the Bank's policies improve conditions for transnational corporations, investors and banks based in

(Continued on page 19)

What is La'o Hamutuk?

La'o Hamutuk (*Walking Together* in English) is a joint East Timorese-international organization that monitors, analyzes, and reports on the principal international institutions present in Timor Lorosa'e as they relate to the physical, economic, and social reconstruction and development of the country. *La'o Hamutuk* believes that the people of East Timor must be the ultimate decision-makers in the reconstruction/development process and that this process should be 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.