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The Special Panels for Serious Crimes – Justice for East Timor?

La'ο Hamutuk investigated the work of the Serious Crimes Unit (SCU) in October 2001 (see *La'ο Hamutuk Bulletin* Vol.2, Nos. 6 & 7). UNTAET had been in place for almost two years, but the SCU had not accomplished very much and faced many challenges. The United Nations Security Council has extended SCU's mandate until May 2005. Despite issuing indictments against senior Indonesian military figures the SCU has not been able to prosecute those most responsible for crimes against

humanity or call important witnesses, as they reside in Indonesia. In addition, serious doubts remain about the quality of the judicial process of the Special Panels for Serious Crimes (SPSC).

Letter from NGO Forum to the UN Security Council:

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

This article will assess the current process through evaluating the performance of the SCU, the Defense Lawyers Unit, the Special Panels and Appeals process to see if the system represents serious avenues for the

people of East Timor to see justice for the crimes against humanity committed during the Indonesian occupation and after the referendum in 1999.

Background

The United Nations established the SPSC in response to the huge numbers of horrific crimes committed by and under the direction of Indonesian military and political authorities

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in East Timor between 1975 and 1999, and due to the urgent need for justice that at the time (early 2000) was recognized by the East Timorese people, the Indonesian government, and the international community. Both the UN International Commission of Inquiry in East Timor on 30th of January 2000, and the Investigative Commission into Human Rights Violations in East Timor (*KPP HAM*) found evidence of systematic and widespread crimes against humanity. Although they recommended establishing an international tribunal, the United Nations deferred to Indonesian promises to prosecute their own nationals through the Ad Hoc Tribunal in Jakarta.

The United Nations established the Special Panels for Serious Crimes to investigate and prosecute crimes against humanity in East Timor. The Special Panels for Serious Crimes comprises SCU, the Defense Lawyers Unit to the Special Panels (DLU), and the judges in the SPSC. In addition, the Court of Appeal hears appeals from the Special Panels and the ordinary courts. UNTAET regulations require one East Timorese judge and two international judges to sit in the Special Panels and the Court of Appeal. The SCU consists entirely of international lawyers, although East Timorese lawyers, police, forensic scientists, translators, and other investigators are undergoing training. The DLU is made up of international lawyers and is not currently training any Timorese lawyers.

The SPSC uses UNTAET regulations, Indonesian laws, and international human rights standards and have exclusive jurisdiction to try alleged perpetrators of crimes against humanity, including genocide, war crimes, torture, murder, and sexual offences. The definitions of these crimes are taken from wording of the 1995 Rome Statute which established the International Criminal Court. The SPSC represents the first instance of the new international laws being applied in actual cases.

What is happening now?

Although progress has been made in various areas, significant deficiencies continue to hamper the effectiveness and credibility of the serious crimes process.

The SCU has undergone significant downsizing since August 2003. UNPOL investigators fell from 23 to eight and UN investigators from 13 to 9 in December 2003. This affects the number and quality of investigations. For example, although the SCU asserted its jurisdiction in 89 cases which had applied for CAVR community reconciliation processes, blocking CAVR from handling these cases. None of these

cases have been investigated. From May to July, SCU had no external liaison officer.

The trials at SPSCs have been progressing very slowly. Until mid-2003 only one panel was able to sit at a time as the UN were unable to recruit enough qualified international judges. The UN are currently looking for two more international judges and an East Timorese judge to add to the existing English-speaking and Portuguese-speaking panels. Lack of communication between judges and lawyers has also caused scheduling problems.

The SCU estimates that less than half of the 1400 or so murders committed in 1999 will have been investigated. In addition, cases of torture, rape, and other crimes have also not yet been investigated.

Some of the problems of the Special Panels have improved recently. In addition to more material resources, Judge Phillip Rapoza says that judge turnovers are now handled to minimise disruption to the trials. Previously, the departure of international judges resulted in several cases needing to be started over and impeded the progress of many trials.

The DLU was created at the end of 2002, separate from the Ministry of Justice. Previously, there was only one public defender for serious crimes. The DLU currently consists of nine international lawyers, seven in Dili and one each in Baucau and Oecusse. Although cases still move slowly, mainly due to difficulties contacting witnesses and time taken traveling to districts, the DLU is much better resourced than it was. Though still lacking sufficient support staff, all lawyers have vehicles, adequate office space, and supplies.

The situation at the Court of Appeal is quite different. The Court was non-functioning until July 2003, as apparently neither the UN nor the government appointed judges. This resulted in an enormous backlog of cases especially since the Court hears appeals concerning both serious and ordinary crime cases. In addition, the Court of Appeal does not translate or transcribe its trials. Proceedings are conducted in English and/or Portuguese, and have never been recorded. Additionally, many defendants have been denied the right of appeal, raising serious questions as to whether the Court meets international standards.

Capacity Building

One of the main purposes of the UN missions in East Timor is to transfer skills from international to local staff. International and East Timorese judges on the SPSC stress the importance of training, and acknowledge that efforts towards capacity building needs to be increased.

SPSCs Statistics

Number of Indictments filed: 82, Number of defendants charged: 373 (37 TNI commanders and officers, four Indonesian Police Officers, 60 Timorese TNI members indicted ordinary militias make up the remainder), Number of defendants outside East Timor: 279 (SCU and Special Panel believe those are outside East Timor/borders East Timor-Indonesia), Number of cases decided after trial: 58 defendants, Number of convictions: 55 defendants, Number of acquittals: 3 defendants, Number of cases pending of people already arrested: 11 indictments with 29 defendants, Number of appeals pending: 3



The SPSCs are intended to support East Timor's domestic capacity to try crimes against humanity. Sections of the Constitution provide for a judicial system which can prosecute such crimes.

It is clear that by May 2005, the national judicial system will not have the capacity to continue the serious crimes process. According to Nicholas Koumjian, Deputy General Prosecutor for Serious Crimes, the national staff of the SCU will not be prepared to continue investigations on their own. Koumjian says that the SCU itself is willing to train local staff, but the Ministry of Justice does not provide the SCU with enough people to train. There are similar problems in The Public Defenders Unit. Despite asking for East Timorese trainees the DLU states that the Ministry of Justice has not assigned it enough trainee lawyers.

Limitations to the Serious Crimes Process

Trials at SPSC do not consistently meet minimum international standards. Perhaps most conspicuous is the ambiguity of procedural law during trials. International judges and

lawyers come from a wide variety of backgrounds, including both common law and civil law disciplines. Procedural law varies greatly between these two disciplines, and even though there is a code of conduct that standardizes procedures for the Special Panels, judges do not follow it. The Special Panels follow UNTAET regulations, and if that is not sufficient, they turn to Indonesian law and international law, including jurisprudence from the international tribunals. As a result, there is significant inconsistency and confusion concerning procedure during trials. A lot of time is wasted at each trial deciding on what procedure to use, and depends on which judges are sitting on the panel. The Portuguese speaking panel tends to follow civil law procedures because the Portuguese-speaking countries use civil law, whereas the English speaking panel tends to favor common law procedures. In addition to slowing down trials, these procedural inconsistencies can result in unfair trials. There is the question of the legality of procedures being haphazardly decided while a trial is in progress as opposed to previously agreed upon. In addition, if defense lawyers are

Allegedly guilty of crimes against humanity

KPP HAM, the Indonesian Human Rights Commission

General Wiranto
 Maj.Gen Adam Damiri
 Lt.Col (Inf)Yayat Sudrajad
 Col. (Inf) FX Tono Suratman
 Col. (Inf) M Noer Muis
 Col. (Pol) Timbul Silaen
 Maj.Gen Zacky A Makarim
 Maj.Gen H R. Garnadi
 Lt.Gen Johny Lumintang
 Lt.Col Burhanudin Siagian
 Lt.Col (Inf) Sudrajat A.S.
 Maj. (Inf) Yakraman Y Agus
 Lt.Col (Inf) Jacob Joko Sarosa
 Col. (Inf) Herman Sedyono
 Lt.Col (Inf) Asep Kuswandi
 Lt.Col (Inf) Ahmad Masagus
 Capt. (Inf) Tatang Abilio Soares
 Dominggos Soares
 Guelherme dos Santos
 Edmundo Conceicao de Silva
 Suprpto Tarman

Geoffery Robinson 'East Timor 1999 Crimes against Humanity' commissioned by Office of High Commission for Human Rights – only Indonesian officers above the rank of Lt. Col included

General Wiranto
 Lt.Col (Inf) Yayat Sudrajad
 Col. (Inf) FX Tono Suratman
 Col. (Inf) Noer Muis
 Maj.Gen Zacky A Makarim
 Maj.Gen Adam Damiri
 Maj.Gen Kiki Syahnakri
 Maj.Gen Endriartono Sutarto
 Maj.Gen Sjafrie Sjamsuddin
 Gen. Subagyo Hadisiswoyo
 Lt.Gen Sugiono
 Lt.Gen Djamari Chaniago
 Maj.Gen Tyasno Sudarto
 Maj.Gen Syahrir
 Brig.Gen Arifuddin
 Brig.Gen Mahidin Simbolon
 Col. Mudjiono
 Col. Sunarko

Tried

Human Rights Ad Hoc Tribunal in Jakarta, Indonesia

Maj.Gen Adam Damiri
 Lt.Col (Inf) Yayat Sudrajad
 Col. (Inf) FX Tono Suratman
 Col. (Inf) Noer Muis
 Col. (Pol) Timbul Silaen
 Col. Herman Sedyono
 Lt.Col Liliek Koeshadianto
 Lt.Col Asep Kuswani
 Lt.Col Endar Priyanto
 Lt.Col Soejarwo
 Lt.Col (Pol) Adios Salova
 Lt.Col (Pol) Hulman Gultom
 Gatot Subyakto
 Ahmad Syamsudin
 Soegito
 Eurico Guterres
 Abilio Soares
 Leonito Martins

Indicted

The Special Panels for Serious Crimes, East Timor

General Wiranto
 Lt.Col (Inf) Yayat Sudrajad
 Col. (Inf) FX Tono Suratman
 Col. (Inf) Noer Muis
 Maj.Gen Zacky A Makarim
 Maj.Gen Adam Damiri
 Maj.Gen Kiki Syahnakri
 Abilio Soares

Safe Haven for Wiranto

Currently, the biggest controversy surrounding the Serious Crimes Unit is the indictment filed in February 2003 against General Wiranto and six other senior Indonesian military officials on 10th of May 2004. Afterwards the US Government put Wiranto on its visa watch list. The RDTL General Prosecutor is responsible for forwarding this warrant to Interpol for worldwide distribution, but he has so far refused to do so. If he did, Wiranto would risk arrest if he left Indonesia.

The efforts of the SCU to bring Wiranto to justice are commendable. However, the process is significantly limited by the SCU's pending closure in May 2005 as well as the Indonesian government's refusal to cooperate, and criticisms from East Timorese leaders.

East Timorese leaders have distanced themselves from the indictment saying it is important for the economy and security to have good relations with Indonesia. President Xanana Gusmao, Ramos Horta and other East Timorese leaders have negotiated directly with Wiranto and his defense lawyers to discuss the serious crimes process without the approval of Parliament and other government institutions. Several times East Timorese leaders have spoken and acted against an international tribunal contrary to the demands of survivors and civil society. This interference in the judicial process is contrary to the RDTL constitution.

Strong support from the international community and links between Indonesian and East Timorese are the only way to put pressure on a new Indonesian government to prosecute the masterminds of gross human rights violations and ending impunity in both countries.

The General Prosecutor should follow due process and issue the arrest warrants against Wiranto, Yayat Sudrajat and other perpetrators. The arrest and trial of Wiranto and the other Indonesian perpetrators is the only way to justice and reparation not only for East Timorese but also to remind human rights violators everywhere that they are not free or immune from prosecution.

unclear on procedure, it can and has resulted in lower-quality defense for the accused.

As well as procedural law issues, codified law is ambiguous in East Timor, particularly with regard to criminal law. According to some public defenders, the civil law is incoherent; there has never been a systematic evaluation of UNTAET regulations in relation to Indonesian law. Indonesian law is not systematically applied, as illustrated in the case of Armando dos Santos, which went to the Court of Appeal. Dos Santos was charged and convicted under an UNTAET regulation, but on Appeal judges decided that UNTAET regulations could not be applied to acts committed before they went into effect (in 2000), and that the underlying law was Portuguese (not Indonesian, as everyone else understood). This caused a huge controversy concerning which law should be applied in East Timor. The Indonesian/Portuguese issue was later clarified by an act of parliament. At the time it had been strongly inferred that the two Portuguese Appeals Court Judges were acting contrary to due process. Parliament subsequently reaffirmed that Indonesian Law should be used in cases where there are no UNTAET Regulations. According to the observations of the Judicial System Monitoring Program, the ambiguity of civil law in East Timor is not a large concern in cases of serious crimes because international law is overwhelmingly used and applicable.

Another concern is the inequality between prosecution and defense. The prosecution, under the SCU, has much more funding and support than the DLU. The DLU has no quality control mechanism or standards of practice. Although the quality of defense has improved significantly since the creation of the DLU, not all of the public defenders in the DLU have sufficient experience in criminal trials and international human rights law. It is a concern that there are no laws or standards concerning the practice of law in Timor Leste, except for a restriction on Indonesian nationals practicing in the country. This lack of regulation, combined with too few lawyers with too little practical experience, inevitably results in some defendants receiving poor representation in both ordinary and serious crimes.

On some occasions, busy trial schedules have forced assistant defense lawyers to represent suspects in court. The limited number of support staff can make it difficult for lawyers to find witnesses. Furthermore, many witnesses are in West Timor and refuse to come to East Timor. The courts require witnesses to come in person.

These difficulties, compounded by confusion about the laws and procedures they are to use, have caused some public defenders to express their frustration from not being able to represent their clients as well as they should. They also feel that, considering the disparity in funding, the DLU is a priority for the serious crimes process.

Problems of poor administration and court management in the SPSC have lessened since the early days. However, problems which remain make it hard for trials to run smoothly and in a timely manner. There is also a concern that international and national Special Panels judges, along with serious

crimes prosecutors and defenders, may not have sufficient experience in the relevant fields of criminal law, international law, including international humanitarian and human rights law.

Furthermore, poor and insufficient translation remains a major issue. Proceedings are conducted in at least four languages (Portuguese, English, Bahasa Indonesia, and Tetum), and frequently other local languages as well. Translation is not always available in all necessary languages, and there remains a shortage of professionally trained translators. Language barriers affect public awareness of court proceedings and the rights of the accused to interpretation. The method of consecutive translation currently used inevitably causes miscommunication and is time consuming. Courts have equipment enabling

simultaneous translation (using earphones) that hasn't been used. The Special Panels has requested four simultaneous translators.

The detention practices of the Special Panels are yet another serious issue. All suspects have the right to prompt judicial review of their detention and the right to a trial without delay. According to international standards, "pre-trial detention should be an exception and as short as possible". However, in many cases, the accused are being detained for prolonged periods of time, in some cases for years. Under the Transitional Rules of Criminal Procedure, detention of suspects should be reviewed by a judge every 30 days. Yet, at any given time over the last year, it was usual for between one third and one half of all detainees held in Becora prison to be held on detention orders that had expired. There is significant concern over the inadequate judicial review of detentions, as well as the mal-treatment of detainees while in police custody or prison.



The court's most serious limitation is the non-cooperation of Indonesia with the serious crimes process. Since the majority of those indicted have been given sanctuary by Indonesia, the only ones being prosecuted for crimes against humanity are low-level East Timorese former militia or TNI. Many of them are uneducated and illiterate, and many of them were coerced into joining the pro-integration militias.

Indonesia says that they will defy the SCU indictments because they claim that the UN has no mandate to try Indonesian citizens in East Timor. In August the Indonesian Government announced that it would refuse to cooperate with a UN Commission of Experts' assessment of the Ad Hoc Tribunal and SPSC recently proposed by the Secretary General. Indonesia will not agree to any kind of legal cooperation with the process in East Timor unless they feel significant pressure to do so.

However, it seems that all the major players in the serious crimes process are simultaneously skirting the responsibility of dealing with Indonesia.

The Special Panels for Serious Crimes is supposedly a hybrid national and international system. Although the UN provides funding and hires international staff, authority is officially with the Ministry of Justice and the Dili District Court (except the DLU). To be effective outside of East Timor arrest warrants issued by the SCU have to be forwarded to Interpol by the East Timorese General Prosecutor. Consequently, East Timor incurs the political costs of prosecuting high level Indonesian nationals.

Prosecutor General Longuinhos Monteiro told *La'ohamutuk* that it is the responsibility of the East Timorese Ministry of Foreign Affairs and Cooperation to pressure Indonesia, so that the burden does not all fall on his shoulders. However, the government has been reluctant to jeopardize their fragile relationship with Indonesia, and has distanced itself from the process. President Gusmao has been very vocal in his disagreement with the SCU indictments of top Indonesian military figures citing the importance of good relations with Indonesia. According to SRSG Hasegawa, it

is the responsibility of the UN member states to push for Indonesian cooperation.

Future of the Serious Crimes Process

The Security Council has approved funding for the serious crimes process until May 2005. However, funding is not likely to be available beyond that date. Once the UN

leaves East Timor, along with all of its re-sources, the justice system that is left will not have the capacity to investigate or prosecute serious crimes. Cases could be transferred to the Ministry of Justice, or perhaps to an alternative justice system, such as an international tribunal.

Moreover, it is unclear what will happen to the cases from crimes that

occurred prior to 1999. After all, only about 1% of the killings during the Indonesian occupation occurred in 1999. General Pro-secutor Monteiro admits that the current justice system in East Timor is unable to handle pre-1999 cases. "Institutional enhancements", it is said, will have to be made if they are to tackle those cases.

Although the logistics of investigating and prosecuting pre-1999 cases will be difficult and complicated, it is the collective will of the people of East Timor that justice be carried out for crimes that were committed during the entire occupation. It is essential to the reconciliation process that these war crimes and criminals are not ignored as if they had never happened. Unfortunately, a lack of East Timorese and international political will to prosecute these criminals has created a "black hole" of cases that may never be investigated, much less prosecuted.

It is clear that the serious crimes process in its current form has not and will not bring about justice for the people of East Timor. In addition to the many limitations and deficiencies of the process that prevent it from meeting international standards, there is also a severe lack of capacity building that has taken place thus far. ❖



Another hope for justice

Durvalina Belo Magno, usually known as Durva, 35, mother of five children is one of the thousands of victims of the 1999 post referendum violence. She watched as her husband was abducted by the Ai-Tarak militia in September 1999. She never saw him again. This is how she feels about the United Nations and the Serious Crimes Unit (SCU). "The SCU do not provide justice for the families of the victims. Look around us and you can see the militia are still free, getting work and enjoying independence," She said in tears.

"Our lives are nothing if the Indonesian and East Timorese perpetrators of crimes against humanity are still free in Indonesia and not tried according to international law. We need real actions from the SCU and the international community. We need to get at the roots of evil and not just cut the branches."

Durva, a member of the Timor Leste National Alliance for an International Tribunal, had much hope for the SCU in the beginning, which she has now lost. "We still hope for justice through the establishment of an International Tribunal."

She and other victims will continue to struggle for justice. "Maybe we won't achieve justice today, but maybe in the future we will find peace in our lives and for our husbands, younger siblings, older siblings, children and friends we have lost."

Good relations between East Timor and Indonesia requires supporting the Indonesian people to end impunity for criminal TNI generals and supporting democratization

Good relations between East Timor and Indonesia have been cited as the principle reason for the East Timorese Government not to try to indict Indonesian Military Generals. *La'ó Hamutuk*, as an East Timorese non-governmental organization advocating justice for all East Timorese people and victims of crimes against humanity everywhere, believes that good relations between the two countries requires giving support to Indonesian demands to end impunity and support the democratization process in Indonesia, as well as the right to justice and reparations for victims of gross human rights violations in both countries.

Secretary General Kofi Annan to create a UN Commission of Experts, predicting that having a Commission conducting studies and investigating cases would have many negative effects. Arlindo Marcal also supported Ramos-Horta's opposition to trying human rights violations committed in East Timor in an international tribunal. Opposition to the creation of an international tribunal or a UN Commission of Experts is supposedly based on the two neighboring countries wanting to retain good relations. President Xanana Gusmão has supported this position. Meanwhile Prime Minister Mari Alkatiri has stated the Government does not yet have a formal



La'ó Hamutuk further supports the establishment of a UN Commission of Experts to evaluate the work of the Serious Crimes Unit, the Special Panels, and the Ad Hoc Human Rights Tribunal in Jakarta, and finally recommends that the Commission should push for the establishment of an International Tribunal.

On 16th August, Foreign Minister José Ramos-Horta and Indonesian Foreign Minister Hassan Wirayuda said that in the interest of maintaining good relations between the two countries, the Republic of Indonesia and the Democratic Republic of East Timor would agree not to bring the crimes committed in East Timor in 1999 before an international tribunal nor to lobby the UN to establish an international tribunal (Timor Post and Suara Timor Lorosae reports 17th August).

The Ambassador of East Timor to Indonesia Arlindo Marcal said that in the meeting of the two Foreign Ministers in Bali on 15 August, neither supported the wishes of UN

position on the establishment of a UN Commission of Experts and International Tribunal.

Recently the East Timor National Alliance for an International Tribunal refused an idea proposed by the Foreign Minister two years ago to establish an international truth commission, which was supported by the US Government; and a proposal to extend the mandates of the Timorese Commission of Reparation, Truth and Reconciliation to handle the rest of the serious crimes cases through community reconciliation.

The slow progress of the SCU and Special Panel as well as the failure of the Ad Hoc Human Rights Tribunal in Jakarta to fulfill international law have prompted the UN Secretary General to establish a UN Commission of Experts. The Secretary General has called on the international community to exercise its responsibility to set up a new judicial process that would bring justice for victims. The European Commission, New Zealand Government, international human

rights defenders and East Timorese civil society have supported the establishment of a UN Commission of Experts.

La'o Hamutuk, as a member of the National Alliance for an International Tribunal states that all victims of crimes against humanity committed in East Timor have a right to justice and the right to reparations through a free and fair legal system under the auspices of the international community.

The crimes committed in East Timor are an international responsibility and as such, the entire international community is responsible for ending the immunity from prosecution enjoyed by the perpetrators of crimes against humanity. The UN created the Serious Crimes Unit and the Special Panels which has the legal jurisdiction, but not the practical power to arrest perpetrators outside East Timor. The Serious Crimes Unit and the Special Panels have tried East Timorese citizens who are not ultimately responsible for the crimes against humanity committed in East Timor, though this is better than no process at all.

We believe that the UN plan to end the Serious Crimes Unit's investigations in November 2004 and trials of serious crimes before the Special Panels in May 2005 will have serious consequences in that cases will be left unfinished. One idea in relation to this arrangement is that the Special Panels should end, since it is only trying East Timorese defendants; they could be tried in the Dili court system though this suffers from lack of resources and capacity. On the other hand, taking such a decision would mean abandoning international responsibility and would leave the East Timorese people alone with the responsibility to pursue justice.

Prosecution through a fair and impartial international tribunal should be prioritized by the international community, with the support of the government of East Timor. Trying those responsible for the crimes against humanity committed in East Timor will lay strong foundations on which other countries can build - especially Indonesia - to end impunity and prevent military abuses against civilians.

The relationship between East Timor and Indonesia cannot be built solely on economic grounds. East Timor as a small nation needs the protection of the law and the international community to ensure an equitable redress of grievances against a much more powerful neighbor which has invaded and destabilized them in the past.

In addition to committing numerous crimes against humanity during 24 years of illegal occupation of East Timor, Indonesia has a long and dark history of gross human rights violations. Examples include the pogroms against members of the Indonesian Communist Party and its supporters in 1948 and 1965, abductions and forced disappearances of democracy and human rights activists during the Suharto dictatorship, ongoing military operations in Aceh and West Papua, the Haur Koneng massacre in Lampung, and the Universitas Tri Sakti students, murdered shortly before the downfall of Suharto.

Indonesian civil society, in their struggle for a return to democracy and the rule of law, is demanding that crimes from Suharto's New Order regime be brought to trial. This is the only way to break the chains of war criminals' immunity



from prosecution. The people of East Timor, as members of the international community, have a responsibility and duty to ensure that this is carried through. By extension, good relations between East Timor and Indonesia must be based on respect for universal human rights as supported by instruments of international law and Section 10 of East Timor's constitution:

1. The Democratic Republic of East Timor shall extend its solidarity to the struggle of all peoples for national liberation.
2. The Democratic Republic of East Timor shall grant political asylum, in accordance with the law, to foreigners persecuted as a result of their struggle for national and social liberation, defence of human rights, democracy and peace.

The procedures enacted in the Jakarta Ad-Hoc Human Rights Tribunal and convictions have failed to meet international standards. The Tribunal has demonstrated that the military enjoy institutionalized immunity from prosecution. The generals' involvement in crimes against humanity were presented merely as crimes by omission, since they were 'unable to prevent' their inferiors from committing the crimes. The Jakarta Ad-Hoc Tribunal has not fulfilled the principals of state and individual responsibility in bringing to justice perpetrators of crimes against humanity.

In conclusion, we call for:

- International pressure to build the political will to establish an international tribunal and support the creation of a Commission of Experts.
- The Government of East Timor to fully support the demands of the victims of crimes against humanity to respect their right to justice, right to know and right to reparations through a free and fair legal system.
- Strong support from the RDTL government to establish an international tribunal and support for a UN Commission of Experts to evaluate the work of the Serious Crimes Unit and the failures of the Jakarta Ad-Hoc Tribunal. This follows international wishes to bring to justice perpetrators of crimes against humanity, especially in East Timor, Indonesia as well as other countries.

'Cak' Munir: 1965 - 2004

We will no longer hear his strong criticisms of militarism, impunity of high military officials, and state violence in Indonesia. His figure will no longer accompany the families and victims of forced disappearances, mass murder and military violence which accompanied the civilian demand for the arrest and trial of Wiranto in front of the Presidential Palace and the TNI Headquarters. Munir, 38, who was fondly called 'Cak' Munir died above Hungary, 2 hours before his plane landed at Schipol Airport, Holland. At the time of writing Cak Munir's official cause of death has not been established. He had been planning to continue his doctorate studies in International Human Rights Protection at Utrecht University.

Cak Munir was a representative of the Indonesian Legal Aid Foundation, a founding member of KontraS (Commission for Missing People and Victims of Violence) and the Independent Journalist Alliance. He was also part of 12 other non-government organisations and an advocate for the victims of 1998. The struggle of the victims was inspired by his mother, a struggler for the Women's Group *Madres Plaza de Mayo* in Argentina, and his experiences when saving those who were forcibly disappeared in 1998. As the KontraS Coordinator, he was also involved in helping and organising those most closely affected by the mass murder directed by army factions loyal to Suharto in 1965; the massacre at Tanjung Priok in 1984; the Trisakti 1-11 student murders in 1997, as well as many cases in Aceh and West Papua; and numerous disappearances throughout the New Order period.

KontraS was first to uncover evidence of Kopassus involvement in the infamous 1998 disappearances cases. His bravery at stating the facts openly concerning military involvement in the case shook high-ranking military officials. He also did this when he became a member of the Human Rights Commission to East Timor in 1999. In 2003, he strongly opposed the Military Emergency Operation in Aceh and succeeded in disclosing a number of facts regarding Kopassus involvement in the murder of Theys Eluay, the West Papuan Independence Movement Leader.

Cak Munir completed his Bachelor Degree at the Law Faculty, Brawijaya University, Malang, East Java. He was active in the Islamic Students Association (HMI) and chosen to lead the Law Faculty Student Senate of Brawijaya University, 1987-1988. His anti-militarism started to become evident when he opposed the Student Regiment (*Menwa*) activities in the compound of Brawijaya University.

Beginnings in the Labour Movement

On completing his bachelor degree, Cak Munir provided his services to the Legal Aid Institute (LBH) *Surabaya Pos Malang* from 1989-1993. An admirer of Salvador Allende, Cak Munir began to be active in coordinating the Lawang, Pasuruan and Malang labourers in the 1990s. He and approximately 200 labourers won a civil claim case against the plastic factory PT Sido Bangun. This was the beginning of his shining career and LBH Surabaya appointed him as the Labour Division Coordinator. Every night he held discussions with labour groups of the Tandes, Rungkut, Sidoarjo, and Gresik areas at the office or at labourers' boarding houses.

The Marsinah female labourer murder case in 1993, made him aware of military involvement in labour cases. After the Marsinah case, together with the Solidarity Committee for Marsinah (KSUM) Cak Munir started the Anti-Military Involvement Campaign in labour conflicts. He became the defence lawyer for 22 labourers of PT Maspion, Sidoarjo in East Java, who had been accused of destroying company assets and illegally going on strike. Cak Munir himself was found 'guilty'

of meeting with his clients at the Pos Malang LBH Office and was instructed to report to the Sector Police Station in Blimbing, Malang. However, he refused to carry out the order of the Malang District Court.

Cak Munir did not limit his work time and activities just to labour. He was a lawyer and paralegal facilitator. He was a friend and helper in a number of cases including the shooting of citizens opposing the building of a reservoir in Nipah, Bangkalan, Madura; the farmers case in Jenggawah, Jember; the community opposition to the construction of high voltage power lines in Singosari, Gresik. He brought legal claims against 48 companies in Surabaya River. He helped Renetil colleagues like Jose 'Samalanrua' Neves in Surabaya and Malang. He helped East Timorese colleagues who were running from arrest after trying to jump into the Dutch and Russian Embassies in Jakarta.

Spreading Wings

In 1995 after becoming the Operational Head of LBH Surabaya, the Indonesian Legal Aid Foundation (YLBHI) invited him to become the Interim Director of LBH Semarang, Central Java for three months. Not long after,





Munir (right) and family of missing persons on the anniversary of International Human Rights Day last year.

YLBHI appointed him as the Operational Head, located in Jakarta and entrusted him with the position of KontraS Coordinator. KontraS was established in Dili in 1999 and also in Aceh. He was hospitalised and operated on after his hand was stamped on by a soldier when the army entered the YLBHI office at the time of the PDI-P headquarters attack on 27 July 1996.

The failure to democratise the YLBHI internally disappointed him and he resigned from the organisation that he was so proud of and established *Imparsial*, an Indonesian human rights monitoring group in 2002. He continued to give time to KontraS and he was still involved in organising the victims of serious human rights violations even though his health started to deteriorate.

He helped establish a number of organisations to fight against the impunity of military officials and to enforce human rights. With his wit and commitment, he was on the Advisory Board of IKOHI (Indonesian Families of Missing Persons' Organisation) and alternative radio programs Voice of Human Rights, Voice of the Voiceless. Although he was willing to be on the Advisory Board for the Commission for Reception, Truth and Reconciliation (CAVR) in East Timor, together with other Human Rights Organisations and victims,

he rejected the establishment of the Indonesian Truth and Reconciliation Commission. This contradicted decisions taken by a number of other non-government organisations who he had worked with.

For his dedication, a number of national and international institutions have bestowed honours on him. These include Man of the Year by Moslem UMMAT Magazine, One of 20 Young Asian Leaders for the New Millennium by Asia Week, Yap Thiam Hien Human Rights award for KontraS, UNESCO, the Right Livelihood Award—an Alternative Nobel Prize, by the Swedish Government, and the 'Figure of Youth Revolution' by Gatra Magazine.

Prayers have been sent since news of his death was received by KontraS staff on Tuesday 7th of September. His short life provided inspiration and energy to the pro-democracy movement and Human Rights in Indonesia and internationally. Rest in peace, comrade! ❖

La'ó Hamutuk needs you!

We are looking both East Timorese and International activists to join our staff collective.

National Researcher

- Justice and Human Rights
- International Financial Institutions

International Researcher

- Justice and Human Rights
- Natural Resources

Each staff member at *La'ó Hamutuk* works collaboratively with other staff to research and report on the activities of international institutions and foreign governments operating in East Timor. Staff members share responsibilities for administrative and program work, including our *Bulletin* and *Surat Popular* publications, radio programs, public meetings, advocacy, popular education, coalitions with other East Timorese organizations, and exchanges with people in other countries. Each staff member is responsible for coordinating at least one of *La'ó Hamutuk's* main activities.

For more information about *La'ó Hamutuk*, see back page of this *Bulletin* or our website at www.etan.org/lh.

Requirements

- √ Activist background, experience and orientation
- √ Strong commitment to making the development process in East Timor more democratic and transparent
- √ Commitment to share skills and help build other staffers' capacity
- √ Responsible, with a strong work ethic and willingness to work cooperatively and creatively in a multi-cultural setting
- √ Understanding of and willingness to work against gender discrimination
- √ Strong written and verbal communication skills
- √ Ability to present factual information from investigative reporting
- √ Sound physical and psychological health
- √ Experience in one of the areas cited above
- √ Work experience in international development, policy research, and/or international solidarity desirable

Additional requirements for internationals

- √ Fluency in written and spoken English (native speaker preferred)
- √ Strong organizational and computer skills
- √ Knowledge of East Timor's history and politics
- √ Experience living and working in a developing country; interest and capacity to live simply
- √ Fluency in or willingness to learn Tetum
- √ Indonesian and/or Portuguese language skills desirable

Additional requirements for East Timorese

- √ Fluent Tetum and Bahasa Indonesia, and ability to write and translate between these languages
- √ Basic organizational and computer skills, and willingness to expand those skills
- √ Investigating skills, with the ability to write factually and clearly, desirable
- √ English and/or Portuguese language skills desirable.

To apply, please bring the following documents to our office in Farol (next to Perkumpulan HAK and the Sa'he Institute for Liberation) or email them to laohamutuk@easttimor.minihub.org

1. Cover letter explaining your reasons for wanting to work with *La'ó Hamutuk*
2. Curriculum vitae (CV)
3. Two professional references from previous employers or organizations
4. Writing sample about the development process (one or more pages).

Applications will be considered as we receive them.

East Timor Exchange Visit

A Nigerian Perspective from Oilwatch Africa

As part of a South-South exchange, seven Timorese activists representing organizations focused on environmental issues, human rights, development, labor rights, women's rights and other areas, traveled to Nigeria between January 16 and 28, 2004 to observe and learn about the effects of petroleum activities and development and how communities and local people respond to them. The group visited Lagos, Port Harcourt and several Niger Delta communities and petroleum facilities and met with local activists, environmental experts, government officials, community leaders and journalists.

- ✓ To see impact of oil exploration activities on local communities and people.
- ✓ To become more aware of what needs to be avoided and prevented.
- ✓ To learn how local people resist the actions of multinational corporations.
- ✓ To learn how local people organize themselves and form links with people who are in the same situations they find themselves in (i.e. hosts to oil companies).

The delegation arrived in Port Harcourt, the capital of Riv-



The South-South Exchange visit was initiated and implemented by the East Timor Institute for Reconstruction Monitoring and Analysis (La'o Hamutuk) and was hosted by Environmental Rights Action, an environmental human rights group at the forefront of the defending human ecosystems and the empowerment of local communities to defend their environmental human rights in law, and Oilwatch Africa, a decentralized regional network of NGOs coordinated from a regional office in Port Harcourt, Nigeria, hosted by ERA.

The group's visit was aimed at enabling them to witness first-hand the effects of the oil industry in Nigeria. In particular the group hoped:

ers State on January 17, 2004. The team held an introductory session at the ERA/Oilwatch Africa office where the itinerary and program of the visit were discussed.

As part of the program, the host organizations, ERA and Oilwatch regional office took the East Timorese activists on a tour of the rural communities in the Niger Delta region of Nigeria, affected by oil and gas productions.

In each of the communities, interactive sessions were held with the youths, women, community activists and traditional rulers of the community. After the discussion in each community, a tour was undertaken to see oil fields, oil wells, gas flare sites and oil spill sites, especially the ones closer to hu-

man settlement areas.

The East Timor delegation was taken by local activists from one community to another to examine the negative impact of oil and gas production activities on the fragile rural environment and people. The places visited were:

RUKPOKWU COMMUNITY: This community near the oil city of Port Harcourt is where Shell's facilities were installed in 1963 and intense oil and gas activities have continued to date. On December 3, 2003, a huge explosion occurred at the Rukpokwu-Rumuekpe trunk line, a large pipeline that crisscrosses community settlements, forests, farmlands and wetlands. At the time of the visit, East Timor activists were shown the raging inferno which was the result of the explosion and which continued to rage until February 24, 2004 when it was put out after wreaking unprecedented havoc. The community belongs to the Ikwerre ethnic group. Rukpokwu is in the Obio Akpor Local Government area of Rivers State.

EREMA AND OBAGI COMMUNITIES, ONELGA, Rivers State: The delegation visited Erema and Obagi communities in the Egi clan of the Ogba ethnic group' in Rivers State. At Erema community, the delegation had an interesting session with the rural people on the impacts of oil and gas activities on their environment and livelihood sources. The community has been a flashpoint of agitations led by Women for a Better Environment against the giant French group, TotalFinaElf.

After that, the delegation visited Obagi, a nearby community. TotalfinaElf discovered its first oil well (code named OB58) in Nigeria in 1962. Since then, it has ceaselessly explored the area, producing crude oil. The policies and oil-field practices of the company have demonstrated scant regard for the environmental impact of oil exploration and production. The visiting East Timorese group was shown raging gas flares burning near residential areas for days and nights on end. The youth and women of the Obagi community during the visit told the team of the demeaning experience of hosting TotalfinaElf.

AKALA-OLU COMMUNITY Ahoada West LGA, Rivers State: The team also visited this rural community in Ahoada West Local Government Area of Rivers State. Here, apart from holding discussions with the rural people who lamented their plight, the team also saw devastating impacts of oil and gas activities on the environment and livelihood. The group was startled by the atmospheric pollution and heating or thermal pollution of air, land and water, of the flaring facilities located within the poor rural community. The Italian Agip Oil Company (NAOC), the Transnational dragon, is the sole operator of oil and gas in Akala-olu community.

OGONI: The East Timorese activists also visited some sites of significance in Ogoni land. They visited K-Dere community where huge Shell facilities have devastated the environment. They also visited Finimale Nwika Hall in Bori where a monument depicting the Late Ken Saro Wiwa was built by his followers to evoke his image and struggle. Ogoni is a closely-knit rural community of hitherto prosperous farmers and fishermen but had its prosperity, environment and life disrupted by Shell Petroleum Development Company (SPDC) in 1958 when it discovered oil in commercial quantity in the area.

Angered by the devastation and desecration of its environment and people, in the early 90s, Ken Saro Wiwa, a famous Ogoni writer and activist, mobilized his Ogoni people and

stopped oil operation in the area. Though Saro Wiwa was hanged with his other compatriots, SPDC has not returned to resume operations in the area.

BONNY, Rivers State: The East Timor Exchange group also visited the Finima Community. The team traveled in an engine powered boat through the creeks and rivers to Bonny Island, home of Nigeria's Liquefied Natural Gas (NLNG). Finima is a community in the Bonny Kingdom, which is of the Ijaw ethnic group of the Niger Delta. It is located in an island off the Atlantic coast in Rivers State.

Finima in Bonny Island is significant because the community was resettled because of the NLNG plant. The Finima people lamented their sad experiences of losing their ancestral homes, livelihoods, and ecology to oil and gas interests.

AKASSA COMMUNITY, Bayelsa State: Akassa, a community noted for its peculiar fishing business, was also visited. Indigenous fishermen and women whose community is close to the shore use dugout canoes (powered by wind or oar), and boats made from wood to do their fishing. But Texaco Overseas, the major oil company operating in the Akassa waterways (or what can be called offshore operation) had also destroyed the rural fishing industry as incessant oil pollution and toxication of the waterways has not helped matters.

KOLO CREEK, Bayelsa State: The team also visited Kolo Creek in Otuasegha Community in the Yenagoa Local Government Area of Bayelsa State, in the central Niger Delta, where two mountain-like flares from Shell's pipes had ravaged the community forests, streams and farmlands. Other sites had been devastated from Shell's actions in the area and the company refused to clean were visited in and outside Kolo Creek.

RUMUEKPE COMMUNITY, Emohua LGA, Rivers State: The team also visited Rumuekpe Community and saw oil facilities belonging to Elf, Agip, and Shell. The team spent some time in the community listening to the bitterly recounted tales of local people. After that they visited a big horizontal flare pit in the community with houses close to it. Rumuekpe community hosts a lot of oil facilities and serves as a transport route via underground through which crude and gas are transported to Forcados and of late, Bonny Island.

On the last day of the tour of the Niger Delta, a round table was held in the Port Harcourt office and participants talked about their experiences, impressions and how they expect to disseminate information acquired on their return to East Timor.

To create awareness of the exchange visit, publicity was generated through local and international media. Journalists representing The Guardian Newspaper, Beacon Newspaper and others were part of the delegation during the tour of the Niger Delta. To further facilitate and increase awareness of the program, a press briefing was held in Lagos with several media representatives in attendance. There was also a discussion session that was aired live on a popular national television programme on Africa Independent Television (AIT) Lagos. ❖

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Learning from Nigeria's Experience: Another Paradox of Plenty?

Timor-Leste is rich in oil and natural gas resources. The people of Timor Leste are hoping that income from the oil and gas in the Timor Sea can be used to build roads, schools, hospitals and funding the development of the country. This much was what the people of Nigeria, West Africa also thought. Nigeria, with some of the most plentiful oil and natural gas reserves in the world, is still one of the poorest countries.

La'o Hamutuk, in cooperation with Oilwatch International and Environmental Rights (ERA)/Friends of the Earth Nigeria, organized an exchange trip for delegates from Perkumpulan HAK, NGO Forum, Kdalak Sulimutuk Institutu (KSI), Centro Feto in Oecusse, and ETADEP to study Nigeria's situation. It was funded by HIVOS (Holland) and CAFOD (United Kingdom).

The exchange had three main objectives:

1. To understand how the exploration and exploitation of natural resources had impacted on environmental and social issues as well as its effects on the grass roots communities.
2. To learn more about the links between oil companies and the Nigerian government and military.
3. To develop relationships and solidarity between East Timorese and Nigerian people.

The delegates visited areas affected by the exploitation of oil and natural gas resources. They included Lagos, Port Harcourt, Erema, Obadi, Akassa, Yenagoa, Bekeriri, Imiringi, Ogoni, and Bonny Island. The delegates found that the communities in these areas experienced very similar problems as a result of the oil industry.

Corrupt Government

Since its independence from the United Kingdom in 1960, Nigeria has been characterized by political instability and repressive military government. The Nigerian Government supported the operation of multinational companies by sacrificing the lives of its people. Multinational companies including Shell (United Kingdom and Holland), Agip (Italy), ChevronTexaco (USA), Con Oil (Nigeria) and TotalFinaELF (France) were encouraged by the Nigerian Government, which promised to open job opportunities, protect and sustain the environment, and develop electricity, clean water, main roads, health and other public facilities. In reality, the level of violence increased due to higher unemployment, economic decline, social imbalance, as well as corruption amongst police and politicians. On the other hand, only about 30% of the people gained access to clean water, while babies continued to die from curable disease like malaria, bleeding cough, diarrhea, and pneumonia.

The Niger Delta community has protested repeatedly, but the national government and other authorities have not listened. According to the community, the government closed

its ears and eyes to all the complaints and demands, and is not helpful because the multinational companies have chosen the government officials, including politicians, judges, prosecutors, and police, and even journalists.

Aside from no effort by the Government to pressure these multinational companies, the Government also does not openly explain the use of income from oil and gas. For years, the Government has let the companies process oil and gas, causing environmental pollution due to burst pipes that have not been replaced for 40 years, and resulting in burning around populated areas, as well as dumping liquid waste into the sea.

| | Nigeria | Timor-Leste |
|--|-----------|-------------|
| Population (millions of people) | 120.9 | 0.8 |
| Year oil production started | 1960 | 1998 |
| Year of achieving independence | 1960 | 2002 |
| Income from oil and gas to date (million USD) | \$300,000 | \$90 |
| Human Development rank among 177 countries in the world (1 = best, 177 = worst) | 151 | 158 |
| Life expectancy at birth (years) | 51.6 | 49.3 |
| Probability at birth of dying before age 40 | 35% | 33% |
| Infant mortality rate (per 1,000 live births) | 110 | 89 |
| Under-five mortality rate (per 1,000 live births) | 183 | 126 |

Source for most figures: 2004 UNDP Human Development Report

Military Support for Foreign Companies

The military apparatus responds to Community protests with violence. Nigeria has lived for a long time under a repressive and corrupt military regime. The development of the oil and gas industry should have provided income for the government and welfare for the Nigerian people, but instead it has only built a haven for multinational companies. To protect the companies' income, the Nigerian military have behaved like guard dogs in protecting their facilities. The Nigerian navy works with the company security guards, while the police and other members of the military have total freedom to act as they wish in the streets.

Community demands for the Nigerian Government to stop the companies' violations of economic and social rights, along with the freedom of expression, have never stopped. A decade ago, a military kangaroo court in Port Harcourt decided to execute Ken Saro Wiwa, a prominent Ogoni writer and environmental activist, and eight of his colleagues. Shell's alleged involvement in these killings proves that the Nigerian military and Government have been co-opted by the multinational companies.

Environmental Genocide

The community of Nigeria certainly is continually reminded of the leakage and explosion of the oil pipes in a number of oil and gas industrial areas in Port Harcourt. On 3 December 2003, for instance, there was an explosion of a 40-year-old oil pipeline, devastating around 400 hectares of commu-

nity farmland.

The burning and explosion occurred in a village where 200 people lived, left huge impacts on the environment such as air pollution, poisoning the rivers close to it, killing fish and making it difficult for fishermen to work. Upto January 2004, the pipe's explosion still caused mountains of thick smoke that pollutes the region of Port Harcourt. To date, Shell has refused to fix the damage resulting from the explosion.

We also visited Rumuepke, a community 20 km from Port Harcourt where there was a gas pipe explosion. While in Akala Olu, there is a fire raging in the air approximately 100 meters high — every day flashes of fire are witnessed and felt by the local community. In Imiringi, 20 km from Yenagoa, two giant gas pipes exploded and expelled an outpouring of fire to the dry and wet fields of the population. The heat was even felt from 50 meters away.

Non-government organizations who observe the oil and gas industry as well as the local community believe that the development of the oil and gas industry in Nigeria has really destroyed their environment. It is exacerbated by the explosions of the oil and gas pipelines and the heavy metals leaked into the rivers, sea and on land. There is no more fertile soil or productive forests, the farmers have difficulties working their wet and dry fields, even the fishermen have difficulties catching fish, and the mangrove forests which are the breeding place for certain species of fish are nearly extinct. In the eyes of Ken Saro Wiwa, the environmental degradation of the land amounted to direct environmental genocide on a wide and systematic scale.

Change in the Social Life of the Community

An activist from the Erema Trade Union said that for more than 40 years, the multinational oil and gas companies have made the Nigerian people slaves in their own motherland. In other words, he said that before oil and gas was found in Nigeria there were many fish and other natural resources for the people to make their lives, but now many people have to bring their plates to beg for food from Shell, Agip, and ELF.

In the 1980s, around 50 percent of the Nigerian population worked in the farming industry but now there is only 3 percent and the rest move in the sectors of service and industry, especially the mining industry. The land is no longer fertile and does not give life because it is polluted. The farmers find it hard to work on wet and dry fields, the fishermen find it hard to make a living from the rivers because of rips in their nets due to oil in the sea and a lack of fish along with the loss of a variety of productive forests. In the region of Akassa, the community pays high prices for nets and fish.

In many areas, including Akala Olu and the Finima people on Bonny Island, people have been evicted to make space for oil and gas operations.

The community of Akala Olu has experienced that Agip's oil and gas developments cause illness, including rheumatism and pneumonia. The general population also often suffers tuberculosis. Access to medicine is very expensive. For example, anti-malarial pills cost nearly \$20. The high level of poverty prevents the community from obtaining good health access.

Lessons for Timor-Leste

The revenue from oil and gas in the Timor Sea is expected to provide money to develop our country and eradicate poverty. However there are a few points we can learn from the Nigerian people in relation to the oil and gas industries.

Firstly, for the majority of the Nigerian people oil and gas has become a source of curses and tragedies. The destruction of the environment has resulted in worsening social conditions. To stem social unrest associated with these worsening conditions the violence inflicted upon the local communities by the state apparatus has become more brutal.

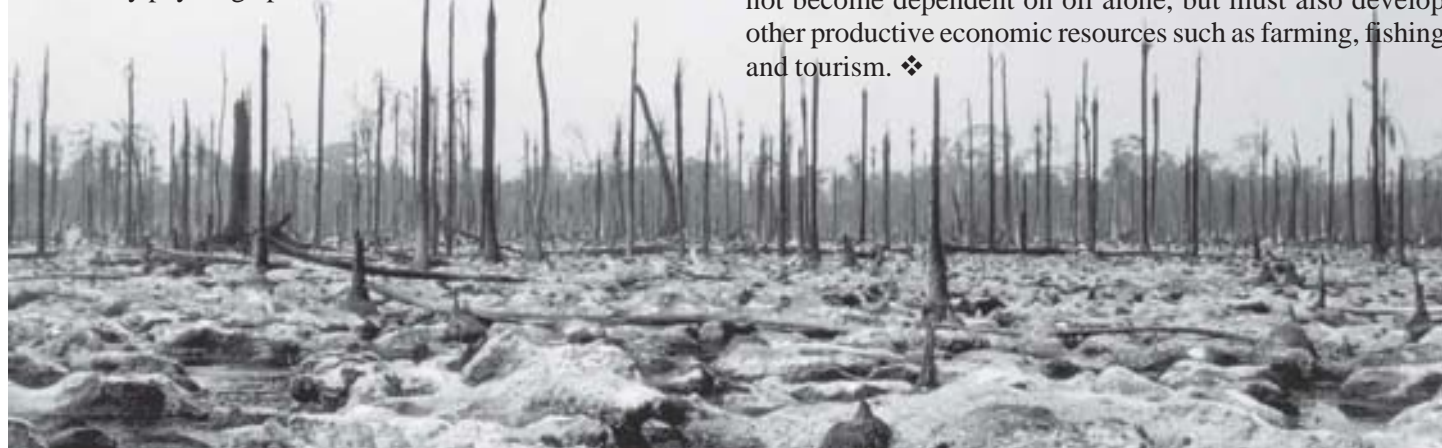
Secondly, since the discovery of oil and gas, the country has become even poorer than before. The development of the oil and gas industry has benefited a few officials and a corrupt Government, but not the people in general.

Thirdly, the negative impact on the environment should be studied and avoided, so that farming and other sources of livelihood remain possible.

Fourthly, some of the oil and gas companies operating in Nigeria are also operating in the Timor Sea. We can learn from the patterns of human rights violations that were committed by them in a number of other countries rich in oil, and find a strategy to keep our rights.

To prevent the terrible things above, it is important for the people of Timor-Leste to participate in the process of developing our petroleum resources. La'o Hamutuk urges the monitoring of every step taken by the RDTL Government, the Australian Government and multinational companies above in order to continue to preserve the sovereignty of RDTL, consistent with the maintenance of environmental sustainability along with transparency in the agreement process and the amount of revenues received by all parties.

The community should also insist that all parties sign international environmental instruments related to sea pollution, disposal of poisonous waste in the sea, and other legislation to preserve the environment. Furthermore, our country should not become dependent on oil alone, but must also develop other productive economic resources such as farming, fishing and tourism. ❖



We Thought it was Oil. But it was Blood.

By Nnimmo Bassey, Oilwatch Nigeria

The other day
We danced in the street
Joy in our hearts
We thought we were free
Three young folks fell to our right
Countless more fell to our left
Looking up,
Far from the crowd
We beheld
Red-hot guns

We thought it was oil
But it was blood

We thought it was oil
But this was blood

Heart jumping
Into our mouths
Floating on
Emotion's dry wells
We leapt in fury
Knowing it wasn't funny
Then we beheld
Bright red pools

We thought it was oil
But it was blood

We thought it was oil
But this was blood

Tears don't flow
When you are scarred
First it was the Ogoni
Today it is Ijaws
Who will be slain this next day?
We see open mouths
But hear no screams
Standing in a pool
Up to our knees

We thought it was oil
But it was blood

We thought it was oil
But this was blood

Dried tear bags
Polluted streams
Things are real
When found in dreams
We see their Shells
Behind military shields
Evil, horrible, gallows called oilrigs
Drilling our souls

We thought it was oil
But it was blood

We thought it was oil
But this was blood

The heavens are open
Above our heads
Toasted dreams in a flared
And scrambled sky
A million black holes
In a burnt up sky
Their pipes may burst
But our dreams won't burst

We thought it was oil
But this was blood

We thought it was oil
But this was blood

This we tell you
They may kill all
But the blood will speak
They may gain all
But the soil will RISE
We may die but stay alive
Placed on the slab
Slaughtered by the day
We are the living
Long sacrificed

We thought it was oil
But it was blood

We thought it was oil
But this was blood

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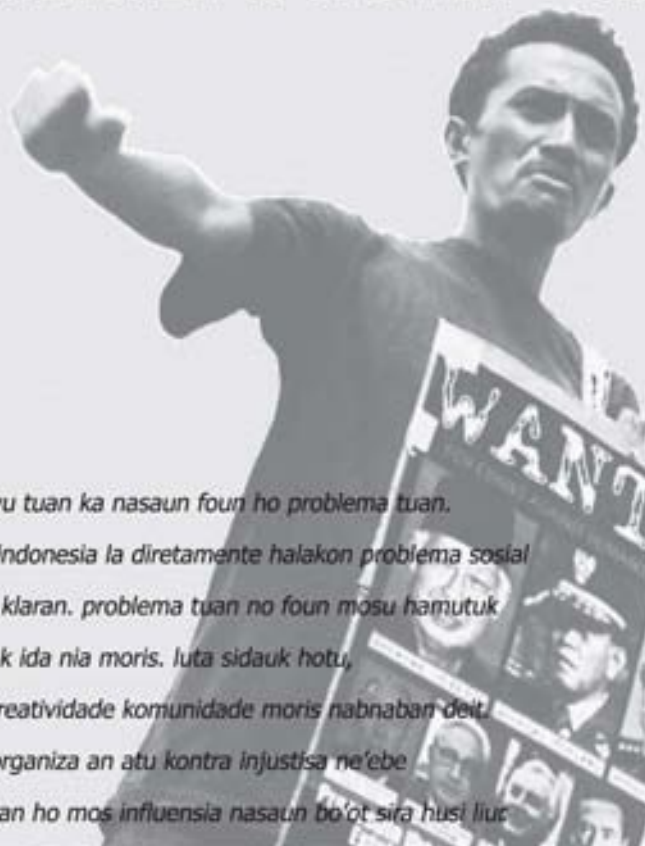
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Who is La'ó Hamutuk?

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Photographs for this Bulletin: Samep (8,17), Selma Hayati (5,6,9), IKOHI (10)

Drawings for this Bulletin: Cipriano Daus

Indonesia's invasion of East Timor was to get access to Timor Sea oil. More recently, one of the principal reasons for the United States-led invasion of Iraq last year was Washington's desire to better control global oil supplies.

In Indonesia, Aceh is rich in oil and gas, but the benefits are not shared by the local population. When people resist the Indonesian military responds with violence, partly to keep ExxonMobil's facilities secure so that oil money continues to flow to Jakarta. In Malaysia, Niger Delta, the Ecuadorian Amazon and around the world, military forces repress local people to protect oil and gas facilities.

⊗ Economic and social consequences

The unstable price of oil, combined with its huge revenues, causes even non-corrupt governments to make development decisions against their people's long-term interests. Other sectors of the economy, such as agriculture, are often neglected because policy-makers see oil as an easier and larger source of revenue. Imported food and other items may be preferred over local products, reducing self-sufficiency.

When oil prices and revenues are high, governments undertake major development and infrastructure projects, or embark on expensive programs. When the revenues later decline, they have to borrow from the World Bank or other international institutions. In many oil-rich countries, debt payments are now larger than oil revenues; total debt is larger than remaining petroleum reserves.

Petroleum is a non-renewable resource. The deposits under the Timor Sea will be exhausted in 50 years, and East Timor will have to rely on other sources of revenue. But oil revenues can be addictive, and very few countries have succeeded in using petroleum money to build a strong economic base in other sectors. A similar problem exists globally — petroleum is so profitable that alternative energy sources are not developed or prioritized, leading to climate change and major crises when the petroleum flow is disrupted or used up.

Because of the specialized nature of oil facilities, the expensive infrastructure they require is rarely made available to nearby communities. Although some local workers will be hired during construction, the operation of petroleum facilities is very technical, and the few dozen jobs are highly technical, requiring particular skills. It will be difficult for many East Timorese people to obtain this work.

East Timor's reality may bring the curse

⊗ No history of democracy or self-government

Because this nation is newly independent, we have no tradition of constructive public involvement in policy making. For most people, their relationship with government before 1999 was only to resist. Government officials tend to be protective of information and reluctant to trust civil society, which is still developing its ability to analyze and advocate on complex technical issues. When officials do engage with civil society, socialization often substitutes for

consultation, where the government tells the people what it plans to do rather than asking what the people want or need. This pattern was set by Indonesia and the United Nations, and will be hard to break.

⊗ Few good examples to learn from

The Portuguese colonial bureaucracy was famous for inefficiency and arbitrariness, and the Indonesian military and civil service here raised corruption and brutality to record levels. East Timor is trying hard not to continue those traditions. Many international agencies currently here teach about transparency and accountability, but often do not practice what they preach.

⊗ Inexperienced officials and civil service

Because of the newness of East Timor's government, few laws and regulations are yet in effect, and both the citizens and the civil servants are just learning them. We lack a solid understanding of what is acceptable and what is not. Without a professional, experienced civil service, possibilities for corruption or inconsistent application of law are widespread, but it will take time to establish a tradition of honesty, transparency and accountability.

Because East Timor has so few experienced managers or public officials, and because our government structure has not had time to learn from its mistakes, there are a number of potential conflicts of interest and people serving dual roles, which could reduce East Timor's chances of making the best decisions possible. These are structural concerns, with no implication that any currently serving individuals are not honest, capable and well intentioned.

- ◆ The same person is both Executive Director of the Timor Sea Designated Authority (TSDA) and a Commissioner who oversees the TSDA, and is therefore his own supervisor.
- ◆ The Secretary of State for Environment, Tourism and Investment must balance environmental responsibilities against attracting investors to East Timor. He also serves as a Commissioner of the TSDA and interim head of the East Timor's petroleum operations.
- ◆ The Prime Minister is also Minister of Development and Environment, personally directing negotiations with Australia and development of oil revenue policies. Although the permanent Ministry for Petroleum is not yet established, he is expected to have a significant role. This is a lot of responsibility for one person.

⊗ No effective checks and balances to guarantee accountability

Up to now, East Timor has not established effective mechanisms for combating secrecy or corruption. Two years after independence, the Constitutionally-mandated Office of the Provedor has not yet been established, and draft regulations for this office do not guarantee sufficient independence. East Timor's legal system has little experience and many problems, both in the functioning of the courts and in the laws and

procedures themselves.

At present, one political party has a large majority in Parliament, which reduces the ability of Parliament to counter-balance Government activities. Furthermore, the minority parties have little expertise or political experience, and have not yet developed the ability to constructively analyze and offer alternatives to Government policies.

In many democratic societies, the media can be a check on government corruption or misguided policies. In East Timor, journalists are largely inexperienced, with little tradition of independent investigation, or of checking statements by public officials against alternate sources or prior records.

East Timor has some features which could reduce the oil curse risk

Because East Timor is just starting to exploit its petroleum resources, we can learn from failures and successes in other countries. (See report on Nigeria, page XX.) Also, because most of our known resources are under the sea, disruption of local communities and environment may be less dangerous.

The people of East Timor are fiercely committed to this country's independence, and will continue to struggle for its sovereignty and rights, and to demand that our government serves the people's interest. Perhaps more than any other factor, this may help keep the government in line. In addition, East Timor's small size and effective rumor communications system make it harder for illegal activities or corruption to be conducted without exposure.

Also, the use of the United States dollar as East Timor's currency frees the country from managing inflation or foreign exchange problems caused by oil money. In return, East Timor loses the tools of financial control which could be exercised through appropriate, timely exchange rate adjustments, and has its economy linked in with that of the United States.

Saving for future generations

Another major decision area, still to be made, is how East Timor will spend or invest revenues received from oil and gas, which will be used up within many of our lifetimes. One option is to use them for each year's government budget expenses, which could include "investment" in East Timor itself, such as education, health, infrastructure and economic development.

The International Monetary Fund (IMF) is providing a Norwegian advisor to work with the Ministry of Planning and Finance to design a "petroleum fund," which will help East Timor's people and government keep track of how much money comes in from petroleum, and whether it is spent or saved. But the proposed fund will not limit the amount of oil revenues spent each year, guard against unpredictable, global oil price fluctuations, or protect against bad economic decisions.

La' o Hamutuk will examine this "Norway Plus" fund

model in more detail in the future, but we are worried that it will not adequately protect East Timor from having its major natural resource squandered over the next few decades, with nothing left for future generations.

According to the government's projected budget for the three years 2005-2008, 65% (\$139 million of \$215 million) of non-donor government revenues will come from oil, plus \$86 million additional oil money which will be saved in the petroleum fund. This will increase in following years, as Bayu-Undan Phase II and Greater Sunrise come online, and the temptation to spend will be great.

La' o Hamutuk is concerned about the government's lack of transparency on this issue so far. Last year, the IMF prepared a report discussing options in a petroleum fund designed for East Timor, but the government has refused to make it public. We are even more bothered by Banking and Payments Authority (BPA) and government secrecy about oil money already received. So far, the government has received approximately \$15 million in oil royalties (FTP), which was deposited in the BPA to be transferred to the petroleum fund when the fund is established next year. But repeated questions from media and civil society about where the money is currently invested have gone unanswered.

Conclusion

East Timor has many of the pre-conditions which have cursed other oil-rich, newly-independent countries, and it will take tremendous effort to ensure that our petroleum is a net benefit to our people. But decisions have already been taken which might not be best for East Timor. There is momentum to extract the oil and gas as quickly as technically feasible, before maritime boundaries, a strong civil service and well-established regulations are in place

However, East Timor may still be able to avoid repeating the bad experiences of other countries. The following steps are essential:

- ✓ Revenue and petroleum management must be transparent, accountable and protected.
- ✓ Checks and balances and independent oversight mechanisms within and outside the government must be implemented quickly and carefully .
- ✓ Civil society must engage with and closely supervise law-making, operational and financial decisions. This needs to happen more quickly and more actively than it has so far.
- ✓ Laws requiring public disclosure of government officials assets and income, as well as oil and gas revenues, investments and payments, should be implemented.
- ✓ Australia must comply with international law on maritime boundaries.

It will not be easy to ensure that East Timor's oil and gas benefits East Timor's people, in both the long and short term. But it is not impossible. ❖

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Editorial: Can East Timor Avoid the Resource Curse?

Around the world, many countries, including East Timor, have oil and gas under their territory. These can provide tremendous wealth for some citizens of the country, and for the companies which extract and sell the oil and gas (petroleum). But in most nations, the wealth does not benefit most of the people, and developing the petroleum resources can cause more harm than good. This is especially true for nations which did not have a well-established government, long democratic traditions, and a strong and diverse economy before they began to sell their petroleum. (*See LH Bulletin Vol. 5, No. 1 "Oil Money Requires Good Management", and LH Bulletin Vol. 3, No. 5*).

If East Timor is to be the exception to this pattern, we must first understand why many people around the world, from Venezuela to Nigeria to Aceh, believe that they would be better off if oil had never been discovered in their territory.

In rich, industrialized countries, the comfortable lifestyles of most people depend on oil and gas — for electricity, for transportation, for industry, and for petrochemical products. International oil companies are among the largest corporations in the world. This industry, based on complex technology which requires huge investments and employs few workers, is one of the most profitable on the planet. For example, Shell's annual revenues are nearly twice those of the Australian government; ConocoPhillips receives three times as much as Indonesia each year.

What harm can oil development do?

More often than not, oil development does not benefit most of the people of the country, especially if the country does not have a well-established government with strong traditions of professional civil service, responsiveness to the voters, and accountability of officials. Instead, the money goes to a few people or leads to misguided or unsustainable economic policies. The oil industry can damage the environment, and often leads to war or human rights violations. This takes place in many ways:

⊗ **Corruption of public and industry officials**

Oil profits are so large that they tempt both public and corporate officials, and can lead to fraud or bribery. From Suharto to Saddam Hussein, dictators have taken power to obtain oil's huge profits, and used them for personal gain, to maintain control, and to finance repression. But even in rich, democratic countries, corruption is widespread in the oil industry. For example, the heads of Statoil (Norway's state oil company) and Royal Dutch Shell were implicated in paying bribes and false reporting last year, and forced to resign. Norway is being used as a model for East Timor, and Shell had a reputation of being one of the most conservative companies in the industry. In another example, three major oil companies, now known as ExxonMobil, BP, and ConocoPhillips, systematically lied to the government of Alaska state, USA, for many years. After more than 141 legal cases, Alaska forced the companies to pay it more than \$10.6 billion.

⊗ **Environmental destruction**

Wherever petroleum is extracted, processed and used, on land or in the sea, the natural environment is at risk. Catastrophic accidents — fires, explosions, spills or pipeline breaks — are an ever-present danger to workers, nearby communities, and the local environment. But even during normal operation, low-level leakage, pollution and small spills can injure marine and land environments, affecting water, fishing, biological diversity, agriculture and daily life.

On-shore oil extraction and processing uses land for factories, pipelines, roads, security buffer zones, wells and other facilities, displacing local people.

And globally, processing and burning petroleum and other fossil fuels adds carbon to the atmosphere, causing global warming, rising sea levels and extreme weather conditions, which will drastically change our planet over the next century.

⊗ **War, militarization and repression**

Oil is so valuable that governments go to war to obtain it. We know that one of the main reasons Australia supported

(Continued on page 18)

What is La'o Hamutuk?

La'o Hamutuk (*Walking Together* in English) is an East Timorese non-governmental organization that monitors, analyzes, and reports on the principal international institutions present in Timor 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 this process and that this process should be democratic and transparent. *La'o Hamutuk* is an independent organization and works to facilitate effective East Timorese participation. In addition, *La'o Hamutuk* works to improve communication between the international community and East Timorese society. *La'o Hamutuk's* East Timorese and international staff have equal responsibilities, and receive equal pay. Finally, *La'o Hamutuk* is a resource center, providing literature on development models, experiences, and practices, as well as facilitating solidarity links between East Timorese groups and groups abroad with the aim of creating alternative development models.

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

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