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News, analysis and action in support of justice for East Timor

No.53 August 2001

Democratic milestone

On 30 August, precisely two years after the referendum on independence, the people of East Timor will go to the polls again to elect an 88-member Constituent Assembly. But with political violence on the rise in Dili, not all Timorese welcome this new opportunity to vote.

Thirteen of the Constituent Assembly's members will be directly elected by districts, and the remaining 75 by national political party lists. Their task is to draft a constitution for East Timor by the end of December 2001. The assembly will have the power to decide whether it will become the first government of East Timor, or whether fresh elections for a government will be held under the constitution it draws up.

Sixteen political parties have registered with the independent electoral commission to contest the election (see pages 6–7 for details of the parties). The National Council of Timorese Resistance (CNRT), the political umbrella of most of the parties which fought for independence, and later formed a representative coalition with the UN administration, dissolved itself on 9 June. On 8 July, 14 of the registered parties signed a pact of national unity calling for peace and stability, and a climate of mutual respect and confidence.

Some people, particularly in rural areas, do not understand the purpose of the election; they say that they already voted in 1999. There is also considerable apprehension. Given the violent aftermath to the independence ballot, many associate voting with extreme violence and disorder. Older people compare the current situation to the period between 1974 and 1975, before the Indonesian invasion, when political parties were last organising for the



Irene Siegt

Hope and anxiety: Memories of voting in the independence referendum, 1999, are coloured by the violence that followed

prospect of independence. Civil war between the two dominant political parties led to some 1,500 deaths.

The UN Transitional Administration in East Timor (UNTAET), non-governmental organisations and the Church are all conducting civic education programmes to ensure that voters understand the significance and procedures of the poll. It is disappointing that East Timor's consultative body, the National Council, has refused to hold national consultations on the constitution and has blocked proposals for a minimum quota for women candidates (see page 3).

For the election to go ahead successfully, CIIR calls for:

- A campaigning atmosphere free of coercion or intimidation of any kind.
- Freedom of speech and assembly, and freedom to campaign.
- Full and adequate voter/civic education programmes aimed at fully informing the people of the procedures to be followed.

- Full participation and inclusion of minority groups and of women.
- UNTAET and the East Timor Defence Force to prepare adequate contingency plans to deal effectively and decisively with violence of any kind.

Also in this issue

Decision time for refugees	2
Juliana dos Santos	3
Quotas ruled out	3
The church and politics	4
Political parties	6
Slow progress on prosecutions	8
Building a legal system	9
Truth Commission	10

Decision time for refugees

In June the Indonesian authorities asked East Timorese refugees in West Timor to state formally whether they wished to stay in Indonesia or to go home. RICARDO TOMAZ reports on a flawed registration process.

Jakarta has been under intense international pressure to accelerate the resettlement and repatriation of refugees, and increasingly views them as an unwelcome economic and political burden. To end the stalemate, the Indonesian authorities decided to give the refugees an opportunity to register themselves and their intentions on 6–7 June 2001.

The UN Security Council immediately welcomed the move. The UN High Commissioner on Refugees (UNHCR) funded almost half of the costs. It did not participate directly in the registration process, however, having categorised West Timor as a high security risk after three of its workers were murdered there in September 2000.

The registration process was supposed to allow refugees to choose freely: either to stay and resettle in Indonesia and become Indonesian citizens, or to return to East Timor. A further aim was to ensure that the process would be completed in time for returnees to take part in the 30 August election.

Militia control

The Indonesian government, however, planned and organised the registration in collaboration with Uni Timor Aswain (UNTAS — an umbrella organisation of the pro-Indonesian militias which control the refugee camps in West Timor). The process could not, therefore, claim to be neutral, free or fair. Several aid workers claimed that refugees had been threatened with kidnapping or even death if they were to choose repatriation.

UNTAS presented the exercise as a re-run of the 1999 independence referendum, giving the impression that a vote was also happening in East Timor. UNTAS appeared more concerned with perpetuating the refugees camps than it did with the living conditions and future prospects of the refugees. For the militias, the refugees represent bargaining leverage with the UN Transitional Administration in East Timor (UNTAET), the Indonesian authorities, and the international community. Without

them, the militias would become irrelevant. Clearly, many militia members fear the prospect of being brought to account for serious crimes committed in 1999 and are using the refugees as hostages to wrest concessions. Many have sought amnesty, but the authorities in East Timor have ruled out a blanket amnesty.

A particularly serious deficiency in the process was that only 'heads of the family' were allowed to register their intentions. Women's views were therefore considered irrelevant. It is a serious indictment of the United Nations that it condoned such blatant disregard for women's rights.

A further problem was the lack of international observers. Only 12 international observers (from the International Organisation on Migration, UNTAET, Malaysia, Thailand, Brunei, Philippines, China, Japan, Korea, Norway and Mozambique) came to monitor 507 registration stations in different parts of West Timor, 1,600 registration officials, 80 field supervisors and 4,500 police and military personnel.

Indonesia was responsible for ensuring security during the registration. For this purpose the border between East and West Timor was temporarily closed and police and armed soldiers were deployed to prevent disturbances. There were few violent incidents, but irregularities were reported, including vote-buying. Some people who were not refugees voted more than once.

Questionable results

The outcome of the registration was that an overwhelming majority of refugees indicated their desire to stay in Indonesia. Only 1.1 per cent opted to return to East Timor.

UN officials and non-governmental organisations have questioned these results, and the validity of the process. They argue that the voting was conducted in an atmosphere of intimidation, that the majority of the refugees lacked accurate and unbiased information, and that many did not fully comprehend the implications of their decision.

A month later, only about half of the 1,200 or so refugees who said they wanted to return to East Timor had actually done so. Some refugees say that they will return to East Timor when they feel it is safe — perhaps after the election.

It is clear that the United Nations, in endorsing the registration process in West Timor, has made large concessions of principle, and achieved very little. Few refugees have moved on either to resettlement in Indonesia or back to East Timor. The international community should continue to insist on the removal of the militias from the West Timorese refugee camps, and on international organisations conducting a new registration process where the refugees can state their preferences in fully neutral conditions.

Timorese NGOs call for long-term commitment

The East Timor National NGO Forum has called on international donors to make a long term commitment to supporting East Timorese civil society and a future Timorese government.

Speaking at the Donors' Meeting for East Timor in Canberra in June, Arsenio Bano, Executive Director of the NGO Forum, said: 'We want to see a culture of transparency and accountability and a culture of partnership built between government and civil society, to ensure that the future objectives of development, particularly poverty-reduction, are achieved.'

'This will need a more comprehensive mechanism for government-civil society relations to be established by both current and future administrations. It will also be important for donors to make a long term commitment to support a future Timorese Government and civil society partners.'

Bano praised the commitment shown by the donors, and welcomed the questions they raised with the UN Transitional Administration. The NGO Forum also called for consideration of an international tribunal for war crimes in East Timor, and for broad consultation in the constitution-making process.

Ms Ajiza Magno, speaking on social and economic issues, said, 'I hope that efforts will continue to strengthen the role of East Timorese women in the nation's development, and that essential investments in education and health will not be jeopardised when hard budget choices are being made. These are a long-term investment in our nation.'

The case of Juliana dos Santos

On 29 March 2001 CIIR and Kirsty Sword Gusmão presented a petition before the UN Commission on Human Rights on behalf of Juliana dos Santos. Unfortunately, the arrest of her captor Igidio Manek, on unrelated charges, has not led to her release.

Juliana, then aged 15, was kidnapped from Suai and taken across the border into Indonesian West Timor at the height of the militia violence which followed East Timor's independence vote in August 1999. Manek paraded her as a war prize before members of her community, saying: 'this is the child of the pro-independence scum; they crow like roosters and die like mice'.

Juliana has been held in captivity, without news from home and allowed to talk only to Manek's immediate circle of militia collaborators. She has now borne his child. Her case-worker from the UN High Commissioner on Refugees was one of the three murdered by militias in Atambua in September 2000. Manek is prime suspect in the murder of about 200

East Timorese in the Suai area, including Juliana's younger brother, Carlos.

With pressure on the Indonesian military mounting, following the campaign on Juliana's behalf, a meeting was arranged with her parents, just over the border from West Timor. However, in the presence of so many Indonesian police and militia, Juliana chose not to go home to Suai. Her parents feel that she was intimidated. Kirsty Gusmão also suspects that Juliana is suffering from 'Stockholm syndrome', identifying with her captor.

Manek was arrested in early July not for her abduction or even on charges relating to the Suai massacre, but because his Lakusaur militia is thought to be responsible for the death of an Indonesian soldier during a riot in the border town of Atambua.

CIIR's petition called for the prompt establishment of a war-crimes tribunal to prosecute perpetrators of violations of humanitarian law committed in East Timor, and for a substantial increase in the resources allocated to the UN Transitional Administration in East Timor (UNTAET)



Putting women in the picture: CIIR is supporting women's organisations in East Timor in their struggle for gender equity. The picture shows CIIR's Advocacy Officer for East Timor, Catherine Scott (centre), with Laura Abrantes (left) and Maria Dias, East Timorese representatives at the Assembly of the World Union of Catholic Women's Organisations in Rome in March 2001.

Serious Crimes Unit, so that its work can be completed in a timely and adequate fashion.

Quotas ruled out

In March 2001 the East Timorese Women's Network (REDE) lost an important campaign to secure quotas for women on party lists of candidates for the constituent assembly elections. They had aimed for a quota of a minimum 30 per cent of women candidates.

The National Council, the governing body composed of UN and East Timorese representatives, had itself put forward the proposal, following resolutions passed at the First East Timorese Women's Congress and the Congress of the National Council of Timorese Resistance (CNRT) last year. But during a few weeks in February and March, opponents in the United Nations and among East Timorese political parties, fearing the consequences of opening up access to women, organised against the clause. When the legislation for the Constituent Assembly election came up

for ratification in March, CNRT leader Xanana Gusmão was forced to reverse the recommendation when, one by one, the opponents of quotas for women called for the clause to be dropped. The campaign had been internationalised, and appeals had gone as high as UN Secretary-General Kofi Annan. The UN Electoral Affairs Department remained deeply opposed to quotas, although they had been used successfully elsewhere in the world.

The women's network was particularly disappointed that women National Council members, who owed their presence on the council to REDE's organising and lobbying, were prevailed upon to denounce quotas as vehemently as some of the male political leaders.

Many of the REDE women felt that their cause had been set back decades. The likelihood of women candidates being put forward anywhere near the top of the lists of most political parties seems remote. The women foresee an assembly

in which women and their concerns will have scant representation.

Despite this setback, women have developed a two-pronged strategy for strengthening their participation in the election. First, they are attempting to lobby the political parties to field women candidates. Second, they are educating women in communities to participate in the debate about the constitution and to participate in the election. The UN Transitional Administration's Gender Affairs Division has been supporting their efforts.

The UN Development Fund for Women (UNIFEM) organised a four-week workshop from mid-May to mid-June on political participation for women. More than 150 women from organisations all over the country took part. The gathering set up a caucus of 12 women to look in more depth at women's participation in politics. The Gender Affairs Division will provide training for those who decide to run in August's elections.

Pastoral exhortation on politics in East Timor

From Bishop Carlos Felipe Ximenes Belo

My Brothers and sisters in Christ

This year is another crucial moment for all of us. It will be a 'political year' because of the gradual transfer of UN power and authority to East Timorese leaders, the elections and the formulation of a constitution.

It is an important year because it offers us the historical opportunity to lay the foundation for a just, peaceful and sustainable society.

We need a vision of a new society, also a vision of Church of the future, a Church of true disciples, a true community, a participatory Church, a Church of the poor, committed to social transformation.

I wish to reiterate the Pope's message during the Jubilee year, that a 'complete change of perspective will be needed. It is no longer the well being of any one political, racial or cultural community that must prevail, but rather the good of humanity as a whole. The pursuit of the common good of a single political community cannot be in conflict with the common good of humanity'.

The situation in East Timor

It is the duty of the Church to scrutinize the signs of the times and to interpret them in the light of the Gospel. It is the awareness of her mission of 'service', a mission distinct from the function of the State.

What are the signs of the times in East Timor?

In the economy, we see mass poverty and unemployment especially among the young people. There is a danger of introducing an economic system that is purely market- and profit-making oriented, that encourages greed and selfishness. This is a false economy.

In the political arena, we see the emergence of elite politics: politics dominated by elite class, or influential families or business enterprises, politics that focuses on personalities rather than on issues.

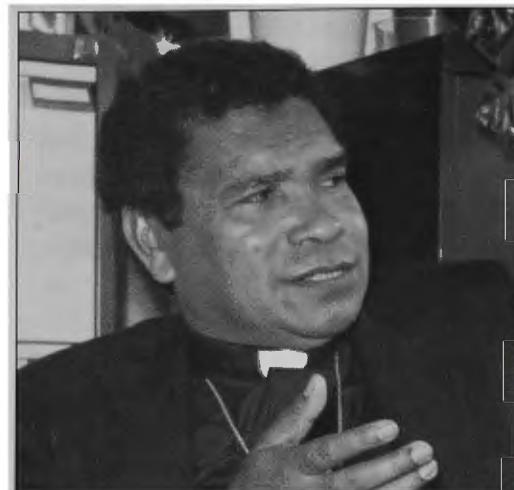
In the cultural field, we see the danger of foreign culture so alien to East Timorese way of life, consumerism, greed, individualism and escalating violence, especially violence directed against women.

The Church's role in political sphere

The Church in East Timor seeks its guidance in the Social Doctrine of the Church which contains a set of teachings that serve as principles of judgment, of reflection, and of action in the social order.

This exhortation summarises and applies the social doctrine to our political situation.

- a) Because of its very nature and mission as the proclaimer of the Gospel of Jesus, the Church has to play a major role in the political field. Its nature and mission is primarily spiritual; it is all about entering the kingdom of truth, of justice, peace and love. It is about total salvation: salvation of the individual and communities from everything that oppresses and dehumanises the human person.
- b) The Church's role is in the moral and religious area of political life and activity. Political activity is a human activity. A human activity has a moral or religious dimension. It may lead either to grace or to sin, to God or away from God. Examples would be graft and corruption, cheating in election.
- c) The Church provides guiding moral principles for the proper governance of the community and acts as a complement of the government in this role. The Church also acts as a moral conscience of government, because the competence of the Church is in the moral and religious dimension of political life. The proper role of the Church then in relation to any government is one of 'critical solidarity', critical when required, solidarity when necessary.
- d) The Church's role in partisan politics, or party politics must also be understood. The Church is the People of God. As people, it is made up of lay people, of clergy (Priests and Bishops) and religious (Sisters, Brothers, and Priests). Obviously lay people can participate in partisan politics; openly support a political party, run for public office. They can 'work to explicitly promote the election of leaders of true integrity to public office'.
- e) It is wise and prudent policy for priests and religious to refrain from partisan



Bishop Belo

involvement. The reason is simple: they are religious leaders of the community. If they were to involve themselves in party politics, they would divide the community. There are generally many different political choices and no political party or political programme can really claim to be the only option compatible with the Gospel.

- f) In these times of great but delicate nation building we need to remember that Church and State are working for the same common good, each in its own sphere of competence. The competence of the Church is with the moral and religious dimension of social, political, economic, and cultural life i.e., of human life. Deep understanding of the Church's primary role is needed on the part of all in order to avoid division and conflict. The common good is the common objective. Sacrifices for the common good, such as party loyalty and personal or family interests will have to be willingly and heroically made. The good of our new country is a moral value that everyone has to defend and promote.

I appeal to members and leaders of emerging political parties to exercise prudence in their discourse and to focus on issues, programmes and platforms rather than on personal attacks; on the future rather than the past; and if we need to reflect on the past let us all learn lessons from it and not dig up the old grudges and pains.

continued on page 5 →

The constitution-making process in Timor Lorosa'e: The Church's position

Earlier this year, the Catholic church in East Timor issued the following statement on the constitution.

Introduction

1. The new Independent Nation State of East Timor will require a permanent Constitution which is the highest law of the land, deriving its legitimacy from the people who enjoy sovereign power in the territory of East Timor. A permanent Constitution could then be amended only in the terms set down in the Constitution.

2. A Constitution is like the house of our dreams. You cannot build it overnight. You need to consult everyone who will live in it so that it is properly designed to suit the interests of everyone. The design takes a long time. It cannot be done in the heat of elections for the first democratically elected government in a new country. And it definitely cannot be done while 10 per cent of the voter population is still out of the country.

3. Most countries which undergo rapid change still take a long time to finalise the terms of their Constitution. South Africa is a good example. They had a simple interim Constitution to fill the gap until they were ready to adopt a permanent Constitution.

4. During the next year, we, the people of East Timor will need to elect a legislative body and a President who will be the legislature and executive of the government of East Timor. Political parties will be formed. Those parties will have different policies and will be seeking power for different political leaders. They may also have different views about an appropriate Constitution for East Timor.

It would be a mistake to confuse voters with the need to elect candidates with different policies about health, education, etc, as well as different views about the Constitution.

5. A Constitution is not satisfactory unless all major groups and political interests in the society are agreeable to the terms of the Constitution. The Constitution should be the document of the people. Such agreement only comes after a process which is truly inclusive, consultative and responsive to the different perspectives in the community.

At the moment, we the people of East Timor do not have yet the house of our dreams. We do not even have a constitutional shelter. It is time to erect a temporary constitutional house which can establish a legislature, judiciary and executive which can then supervise the task of drawing up a permanent Constitution. This task would take several years.

Proposal: An interim constitution and four-step process

1. In the meantime, there is a need for a simple, interim Constitution that has a guaranteed limited life span of three to five years. This Constitution should be finalised by an interim Constitutional Commission which reports to the National Council. The Commission should be served by constitutional experts. Its members should be representative of the different districts and the different sectoral groups (women, youth, farmers etc) in East Timor. The National Council would have power to amend the model proposed by the Constitutional Commission. But it would

not have the power to extend the life of the interim Constitution.

2. It is our view that there should be a distinct process for constitution-making and election. If the first democratically elected legislature were also the Constituent Assembly which would vote soon after the election to finalise the permanent Constitution, the elections for that Constituent Assembly would be very confusing for everyone. The people would be voting for too many things with one vote. No one would know what they were really voting for.

3. When the first Legislative body is democratically elected under the terms of the interim Constitution, the legislative body should then pass a law for the establishment of a permanent Constitutional Commission which would have the task of proposing a permanent Constitution for adoption by the people either by popular referendum or by a super-majority of the elected Legislative body.

4. An interim Constitution approved by the appointed National Council will not be perfect; it will not have democratic legitimacy; it will not have a long life span. It will be a pragmatic interim measure which allows the people to elect the leaders and to vote for the political parties they want to govern them. Then comes the difficult task of setting up an inclusive process for drafting a permanent Constitution reflecting the aspirations of all Timorese groups and not just the preferences of the winners at the election. Such a constitution would then have democratic legitimacy and a long life span because the different groups could own the process and the outcome.

continued from page 4

g) The Church will conduct its own moral and religious programme regarding politics. This programme aims to educate the people, provide guidelines on choosing political officials, prepare young people in Catholic schools or parishes for political leadership, and to work for conversion to new values as against

the values of the politics of greed, violence and corruption.

The Diocese is circulating the detailed guidelines on politics as a reflection paper. We encourage our religious and political leaders to discuss, study and reflect on this document. It will be important to include this in your homilies. Study the document in your meetings and gatherings.

For this purpose, God's grace is

absolutely necessary, the Church would therefore urge that everyone of good will, men and women of different faiths, offer fervent, sincere and unceasing prayer to God, while actively working toward building a new, transformed Timor Lorosa'e in accord with the Kingdom of God.

Msgr. Carlos F X Belo
Bishop of Dili
January 2001

Political parties participating in the Constituent Assembly elections

Party	Leader	Date founded	Membership and support	Ideology
Apodeti (Timorese Popular Democratic Association) ProReferendo	Frederico Almeida Santos Costa	27 July 1974	Formerly Pro-Indonesian, but accepted the 1999 ballot result and is re-launching itself	Liberal democracy
Associação Social Democrata de Timor (ASDT)	Francisco Xavier do Amaral	2001	New party using original name, and president, of Fretilin Appears to have links with the CPD-RDTL, which is not contesting the election, but has been behind many recent incidents of political violence	Left-wing
Partai Democratic Maubere	Paulo Pinto, Gregorio Sebastiao Lobo, Armando Sanches	October 2000	New party, linked with Apodeti	
Fretilin (Revolutionary Front for the Independence of East Timor)	Lu Olo	1974	Major party with large rural following Membership estimated at 150,000	Left-wing, founded by social democrats and Marxist-Leninists
KOTA (Sons of the Mountain Warriors)	Clementino dos Reis Amaral	1974	Formerly a pro-integration party, now supports independence	Originally monarchist and pro-Indonesian, it rejected the offer of autonomy within Indonesia in 1998 and joined CNRT
Partido Democrata Cristão (Christian Democratic Party)	Antonio Ximenes	2000	Small party based on Christian social justice values	Seen as left-wing
Partido Nacionalista Timorese (Timorese Nationalist Party)	Abilio Araujo	1999	Small party, leader has a controversial past	Believed to support CPD-RDTL
PPT (Timorese People's Party)	Dr Jacob Xavier and Herminio da Silva da Costa	2000	Founded by anti-independence supporters based in West Timor, and has exerted some control over the return of refugees	
Partido Social Democrata Timor Lorosae (Social Democratic Party of East Timor)	Mario Carrascalão	2000	New party, could draw off some of the Fretilin/UDT vote	Centre ground, moderate
Partido Socialista de Timor (Socialist Party of Timor)	Avelino Coelo da Silva	1990s	Split from Fretilin, links with student and worker movements, strong youth element	Marxist-Leninist
Trabalhista (Timor Labour Party)	Paulo Freitas da Silva	1974	Previously linked to Indonesia, but now pro-independence/ democracy	Democratic socialist party
União Democrata-Crista de Timor (Christian Democratic Union)	Vicente da Silva Guterres	1998, in Portugal	1500 members throughout East Timor's 13 districts Also has Christian Democratic organisations for women, youth and workers Members are mostly Catholics, pro-Christian outlook, but no longer linked with PDC	Linked with Partido Popular in Portugal; member of the International Union of Christian Democrats
Partido Democratico	Fernando de Araujo, President	2001	New party formed by students' and women's organisations.	Moderate alternative to Fretilin
Partai Liberal	Armando José Dolvado de Silva	2001	No information available	
Parentil	Flaviano Pereira Lopez	2001	No information available	
União Democrata Timorese (UDT – Timorese Democratic Union)	João Viegas Carrascalão	1974	One of the first East Timorese political parties, wanted federation with Portugal, had coalition with Fretilin in 1974. It backed independence, but later mounted a failed coup which led to civil war and 1500 deaths. Joined CNRT in 1998, but withdrew in 2000	Conservative

With acknowledgement to Pat Walsh, *East Timor's political parties and groupings*, ACFOA, March 2001

Policies	Gender	Language policy
<ul style="list-style-type: none"> • Timorisation of the administration • Multi-party democracy • Dialogue and reconciliation • Human rights for men and women • Free market economics, foreign and local investment • Universal free health system 		Provisional use of Portuguese as the official language while Tetum is developed. English as a second language to be compulsory in schools
<ul style="list-style-type: none"> • Campaigning for the Restoration of the original Democratic Republic of East Timor proclaimed on 28 November 1975 • Affirms the original priorities: economy, education, health, employment, equality, environment • Favours presidential/parliamentary system, directly elected president 		Tetum as national language, English, Portuguese and Indonesian as interim official languages until new parliament rules on the issue
<ul style="list-style-type: none"> • Supports democracy, pluralism, tolerance, dialogue and peace • East Timor to join UN and to sign up to key treaties • Development of agriculture, fishing, cooperatives, literacy, tourism, natural resources and foreign investment. 	East Timor should sign the Convention for the Elimination of all forms of Discrimination Against Women	Portuguese for official language, Tetum for national language
<ul style="list-style-type: none"> • Supports the Universal Declaration of Human Rights • Promotes Timorese culture, especially the traditional kings — the <i>liurai</i> • Multi-party system, with executive presidency • Poverty reduction through development of agriculture, fishing, livestock, tourism and coffee 		Schools should teach three foreign languages: Portuguese, Indonesian and English Tetun should be developed and become the national language
<ul style="list-style-type: none"> • Multi-party democracy • President as head of state, not head of government • People-oriented economy 	Strong emphasis on the rights of women and minorities	
<ul style="list-style-type: none"> • 'Third way' between CNRT 'dictatorship' and integration with Indonesia • Recognises 1999 ballot result, respects the UN Transitional Administration • Supports regional integration through membership of the Association of South East Asian Nations (ASEAN) 		Bahasa Indonesia as the official language alongside Portuguese
Xanana Gusmão for president		
Support for the Universal Declaration of Human Rights, pluralism, participation, social justice, minimum wage, rights for women, children and minorities		
<ul style="list-style-type: none"> • Multi-party democracy • Human rights and equality • Reconciliation • Workers' rights • Free education and health services • Land reform • Prohibition of death penalty 	Supports equality between men and women Vociferously opposed quotas, but is fielding women candidates in first, third and fifth place on party lists Favours legalisation of divorce and banning of prostitution and polygamy	English and Portuguese should be the official languages for the transition period Tetun should be developed
<ul style="list-style-type: none"> • Equality and re-distribution of political and economic power • Pro-trade union • Equal opportunities and higher standards in education • Protection of customs and traditions • Human rights-based culture • Regional disarmament 	Claims 45 per cent of members are women Supports equal opportunities and choice for women	Tetun and English should be the two principal languages
<ul style="list-style-type: none"> • A secure transition to democracy • Multi-party system with directly elected president, division of powers between president and prime minister • Parliamentary system reflecting ethno-linguistic diversity • Market economy • Free education and health services • Preservation of Timorese culture 	The rights of women and minorities should be defended	Portuguese should be the official language, Tetun should be the national language, and English taught as the first foreign language
<ul style="list-style-type: none"> • Participatory democracy • Respect for human rights • Market economy/selective intervention • Equality in education system • Social welfare/solidarity • Reliable security/defence system 		
<ul style="list-style-type: none"> • Presidential system with options for a second term • Centralised system of government • Election of district administrators by the local community • Role for elders to solve village-level problems using customary law • Pensions for all ex-Portuguese and Indonesian public servants • Pensions for retired Falintil members, their widows and orphans 		

Slow progress to prosecutions

Crimes against humanity and other serious crimes committed by Indonesian security forces and pro-Indonesian militia in East Timor during 1999 have yet to be addressed. Although Indonesia has relinquished its claim to the territory and authority currently rests with the UN Transitional Administration in East Timor (UNTAET), Indonesia's human rights legacy will remain a matter for international concern until perpetrators are brought to justice. LUCIA WITHERS, Researcher at the Indonesia and East Timor Desk of Amnesty International, reports.

The human rights situation in East Timor was once again on the agenda of the UN Commission on Human Rights (CHR) when it met for its 57th session in Geneva from 19 March to 27 April. Discussion focussed primarily on the past and, in particular, on events in 1999, when pro-Indonesian militia groups, backed by the Indonesian security forces, tortured, raped and murdered hundreds of independence supporters, forcibly expelled tens of thousands to Indonesia and systematically destroyed much of the country's infrastructure.

A statement by the Chairperson of the CHR addressed the responsibility of both the Indonesian government and UNTAET to investigate crimes against humanity and other serious crimes in East Timor during 1999, and to bring the perpetrators to justice. It welcomed the first measures taken by UNTAET and strongly supported the continuation of its investigations. It also welcomed steps taken by the Indonesian government, including efforts by the Attorney General to investigate crimes and the recommendation by Indonesia's parliament to establish an *ad hoc* Human Rights Court on East Timor. The CHR urged Indonesia to set up such a court without delay.

Acknowledging the responsibility of the international community, the CHR also promised to monitor developments closely and to consider further action.

An act of faith

However, the Chairperson's statement lacked any mention of an international criminal tribunal on East Timor. This

reflects the preference of most governments to place their trust in the Indonesian authorities' ability and willingness to investigate and prosecute their own military, police and government officials. As the months go by without trials being held, it is becoming increasingly apparent that this is a considerable act of faith.

In September 1999, immediately after the independence ballot, when the violence in East Timor was at its height, a special session of the CHR was called. It condemned the actions of the Indonesian security forces and militia and called for a International Commission of Inquiry on East Timor (ICIET). A UN Security Council resolution called for those responsible to be brought to justice.

Following a visit to East Timor in late 1999, the ICIET recommended further investigations and an international court to bring suspects to trial. Three UN Special Rapporteurs also concluded, after a visit to East Timor in November 1999, that if, after a matter of months, Indonesian efforts had failed to yield results, an international criminal tribunal on East Timor should be established.

It is now a matter of 20 months and there is little sign that Indonesia plans to put suspects on trial for actions in East Timor. One obstacle after another has been thrown into the path of justice. Criminal investigations have been slow and of questionable quality. The Indonesian parliament took months to adopt new legislation to establish human rights courts to try gross violations of human rights. The final legislation was enacted in November 2000 but, although an improvement on earlier drafts, does not fully conform to international standards of independence and impartiality.

Protecting the perpetrators

In the meantime, a debate raged over whether this new legislation could be applied to crimes which occurred before its adoption: in August 2000 a constitutional amendment had prohibited the retroactive application of law. This move was widely seen as an attempt to protect senior military and government officials from prosecution. However, the crimes that come under the jurisdiction of the human rights courts are crimes under international law. Even if they were not

codified in national law at the time they were committed, the state has an international responsibility to act.

Given the intensity of the debate, the announcement on 21 March 2001 that Indonesia's parliament would recommend the establishment of an *ad hoc* court on East Timor was something of a surprise. However, on 23 April, just days after the CHR had adopted its statement recommending that perpetrators be brought to trial without further delay, a Presidential Decision (Keppres 53/2001) limited the court's jurisdiction to the post-ballot period only. This would deny justice to the hundreds of victims of violations which occurred in the months preceding the vote, including two major cases which had already been investigated by the Indonesian Attorney General's office.

After an outcry from national and international human rights groups and the international community, Indonesia's justice minister promised that the Presidential Decision would be redrafted. By mid-July 2001 this had not been done and the Chief Justice of the Supreme Court announced that trials would be delayed further because judges had yet to be appointed and trained. In the meantime, the leadership crisis in Jakarta has virtually immobilised the government. The new government of Megawati Sukarnoputri will depend heavily on the support of the military, and may be unable or unwilling to pursue the East Timor cases.

Investigations in East Timor

UNTAET's investigations and prosecutions have progressed much more slowly than expected. The UNTAET Serious Crimes Unit has set itself a target of completing by the end of the year investigations into 10 cases which it has identified as priorities. However, even this modest target seems unlikely to be fulfilled, owing to a lack of experienced investigators, prosecutors, and interpreters, poor management and insufficient political support.

A panel of judges, one East Timorese and two international, has been established to try the 1999 cases. It has made decisions on some murder cases and the first, long-awaited trial for crimes against humanity began on 10 July.

However, trials have been delayed repeatedly for reasons including insufficient court capacity, poorly drafted indictments and the failure to translate evidence into Bahasa Indonesia, the working language of the East Timorese judiciary and defence lawyers. In the meantime, the right of suspects to a fair trial within a reasonable time is being infringed and victims are being denied their right to justice. (See article below on the problems of the justice system.)

Of equal concern is the lack of an agreed plan for pursuing investigations of serious crimes in East Timor after UNTAET's mandate expires on 31 January 2002. There has been little capacity-building to prepare East Timorese to continue the work. There is only one East Timorese prosecutor and no East Timorese investigator in UNTAET's Serious Crimes Unit. Nor is there a clear commitment from the United Nations to provide continued support for the investigations and prosecutions in East Timor.

The United Nations is currently in the process of deciding the shape and size of the UN presence in East Timor after independence. Investigating the 1999 events is a large and complex task which takes time and will require continued financial and other support for the coming years. If the problems experienced by the Serious Crimes Unit are to be overcome and its task completed, the United Nations must commit adequate resources to it now. It must also use its influence to persuade Indonesia to cooperate with UNTAET. This means, among other things, transferring evidence, witnesses and suspects, in accordance with the agreement signed by UNTAET and Indonesia in April 2000 which Indonesia has not fulfilled.

The investigations in East Timor are only one side of the story. The international community must also consider how it will achieve its other goals:

- bringing to justice perpetrators of crimes against humanity and other serious crimes committed in East Timor who are resident in Indonesia;

- strengthening the Indonesian justice system to make it sufficiently robust and independent to try all human rights cases, whether they took place in East Timor or in Indonesia itself.

Successful prosecutions in Indonesia would be the best option. But if the country continues to display reluctance to fulfil its international obligations, demands for an international criminal tribunal will become even more insistent. Moreover, it should not be forgotten that states have an obligation to prosecute and punish crimes against humanity, war crimes and other crimes subject to universal jurisdiction, whether the crimes were committed by their own nationals or those of other states. If persons suspected of committing such crimes in East Timor travel to states outside Indonesia, those states have a duty to try them, or extradite them to a state which can do so.

The views expressed are those of Lucia Withers, and not necessarily of Amnesty International.

Building a legal system

The UN Transitional Administration has failed to build East Timorese capacity to run an effective justice system, according to the East Timorese NGO Forum. This is jeopardising defendants' rights to a fair trial and public confidence in the new system. A document prepared by the forum for the World Bank Donors' Meeting on East Timor, held in Canberra in mid-June, made the following criticisms:

Court administration and basic resources

The present approach appears to be that a judicial system simply requires judges, without a specialised judicial administration. Judges and lawyers are not necessarily equipped for an administrative role. The legal system needs staff with experience in court administration.

The Special Panel for Serious Crimes has no means of recording trials — for example tape recording or detailed minute-taking. The Court clerk, who is not always present in Court, takes some notes but this is no substitute for professional transcription. The judges therefore lack an accurate record of the

evidence presented during the trial when they prepare a judgment. This seriously compromises the ability of either party to conduct an adequate appeal. The judges rely on their own notes, taken on a laptop computer in court.

The registry of the court is often unable to perform its basic functions, including publicising court hearings and maintaining court files. Cases are listed in an *ad hoc* manner, with no centralised, easily accessible source of information about cases. Until recently it was rare for a list of even the current day's cases to be posted outside the court. The prosecution and defence have little notice of forthcoming cases, while the public receives no information at all. In cases of significant public interest, where family members and local communities must travel long distances to come to court, this is clearly inadequate.

Similarly, access to public court records, an important aspect of the human right to a fair trial, is virtually impossible. The registry does not even have a photocopier, and the nearby police office will make copies only if the registry brings its own paper. The judges and

prosecutors have little confidence in the court registry and therefore hesitate to relinquish original documents to it for fear that they will be misplaced.

Strong management and basic training in the importance and operation of court administration are desperately needed.

Language

The Special Panel for Serious Crimes of the Dili District Court has four working languages: English, Portuguese, Bahasa Indonesia and Tetum. However, in practice its working languages are English and Bahasa Indonesia. The international prosecutors, the international mentors of the defenders and the two international judges use English. The East Timorese defenders and the East Timorese judge use Bahasa Indonesia, or Tetum when addressing a defendant or witness who speaks only Tetum.

There is a shortage of qualified interpreters. There is only one English/Tetum interpreter, so that at times a Bahasa Indonesia/Tetum interpreter has been used for defendants. The result is an

continued on page 10

continued from page 9

awkward combination of the judges speaking in English, one interpreter translating from English to Indonesian, and a second translating from Indonesian to Tetum. On occasion, the East Timorese judge has to translate, or one of the international judges has to ask a question first in English and then in Portuguese.

Defendants with little or no formal education already find it difficult to understand legal terminology in court proceedings. The problem is compounded by the language difficulties. Defendants in several cases have clearly found it difficult to understand the judges' questions. The questions which pose the greatest difficulties appear to be whether the defendants have had access to pre-trial rights and whether they understand the indictments against them.

It is understood that the US Agency for International Development (USAID) has provided simultaneous translation equipment for the courts, but no one appears to have been trained to use the technology and it has not been installed. In any case, the Dili District Court has an intermittent electricity supply and no generator of its own to keep the equipment running. The Court of Appeal is currently being equipped with the latest audio visual technology, but again, the NGO Forum is unaware of anyone being trained to use it.

Research facilities

No provision has been made for the research facilities required by judges and defence lawyers. As there is no functioning court library, internet access is a minimum requirement for research. Judges and lawyers need to consult the comparative and international jurisprudence relevant to their decisions. Yet neither the judges nor the public defenders have internet access. They are reduced to using UN internet cafés.

Capacity building

East Timor has a shortage of lawyers. There has been some training and a mentor system operates at the court, but international consultants have been rotating in and out and the public defenders are so busy that they can rarely find time for training.

There are only three assisting international public defenders, some of whom have never practised criminal law, and none of whom speaks Indonesian or Tetum. The nine East Timorese defenders who have been formally appointed to cover the whole country have little, if any, practical legal experience and have received insufficient training in such areas as international human rights law. Lawyers working privately and in local legal organisations face even greater difficulties.

Most of the Serious Crimes prosecutors, however, are international staff with extensive experience.

Threat to defendants' rights

The problems outlined above have serious implications for the rights of defendants to a fair trial. Areas of concern include:

- equality before the law without discrimination;
- access to effective legal representation;
- the right to a trial within a reasonable time;
- the right of defendants to understand the nature of the charges against them and the conduct of the proceedings;
- proper right of appeal, in the absence of a transcript of proceedings.

Vulnerable groups within the community, including women, illiterate people and youth are at particular risk. It is essential to give higher priority to resource provision and capacity building for administration of the Special Panel, if defendants are to receive a fair trial.

Lack of monitoring and accountability

The only independent reporting of the Special Panel hearings comes from the Judicial System Monitoring Programme, an as yet unfunded project implemented by the East Timorese Jurists' Association (ANMEFTIL) and the East Timorese Institute for Reconstruction Monitoring and Analysis (La'o Hamutuk). Monitoring and reporting are absolutely necessary to promote the observance of international human rights standards, and to identify where further reform is needed.

The Truth, Reception and Reconciliation Commission

On 19 June East Timor's governing body, the National Council, passed legislation to establish a Truth, Reception and Reconciliation Commission (TRRC) to foster processes of community reconciliation and truth-telling about human rights violations. CATHERINE SCOTT looks at the implications.

The purpose of the TRRC is to establish the truth about human rights violations that occurred in East Timor between 1974 and 1999. It is also intended to encourage the refugees now in West Timor to return to East Timor in time to vote in August's elections for the Constituent Assembly. Many refugees are afraid to return because they fear

revenge attacks from neighbours against whom they committed crimes during the Indonesian occupation.

According to the steering committee tasked with setting up the commission, the TRRC will:

Send a clear message that an independent East Timor will not permit impunity or allow bad precedents to be set. [...] It will advance reconciliation by deterring acts of revenge and promoting restorative justice. Its processes will be rooted in East Timor's religious and traditional dispute resolution practices. But it will ensure that they comply with human rights norms, respect the humanity of both victims

and perpetrators and are administered independently, transparently and in an even-handed way throughout East Timor. The Commission process will allow East Timor's new justice system to concentrate its limited resources in serious crimes and spare East Timor massive expense and on-going conflict and litigation.

The TRRC will deal only with less serious crimes such as theft, assault, arson, the destruction of animals or crops, and so on. There will be no amnesty for serious crimes such as murder and rape, which will be dealt with by the courts.

The commission, to be set up in September, will be led by from five to seven national commissioners nominated

by the people and is intended to operate for two and a half years before reporting to the government. It will record and document personal stories which will be consolidated with other research into a final authoritative report.

People who committed less serious crimes will be free to approach the commission. Local leaders, chaired by a regional commissioner, will convene a meeting of perpetrators, victims and local community members to discuss the crime and an appropriate form of reparation, such as community work, financial reimbursement, or public apology. If these agreements are honoured, the perpetrator will be spared future prosecution. Perpetrators who do not use the commission process, however, will not be able to avail themselves of such exemptions from legal prosecution.

Statements will be examined by a Community Reconciliation Process Committee which will decide whether cases should be referred to the community process or to the General Prosecutor. A great deal will depend on the clarity of the criteria used to make these decisions.

Models

Truth commissions have become popular in the past 20 years as a mechanism for shedding light on history and addressing human rights violations. The South African TRC, which worked from 1996 to 2001, is one of the best known. It was the first to offer a reprieve after truth-telling as a compromise between the demand for blanket amnesty and that for judicial prosecutions. However, many victims who testified felt that justice had not been served as perpetrators were freed in exchange for giving an account of their actions, without even having to express remorse.

Since the beginning of last year, the steering committee in East Timor has explored several different reconciliation models, and a succession of experts from other countries have visited to give advice.

Two experts, Paul Van Zyl and Priscilla Hayner, have given advice on establishing the East Timorese commission to the Human Rights Unit of the UN Transitional Administration in East Timor (UNTAET). Van Zyl is the former chief Executive Officer of the South African Truth and Reconciliation Commission, and is now based at the International Centre for Transitional Justice in New York; Hayner is an independent writer and consultant at the same centre and has recently

published a book comparing 20 truth and reconciliation processes around the world.

A visit to East Timor by two members of the Guatemalan Recovery of Historical Memory Project (Remhi) in February this year, facilitated by CIIR, created enthusiasm among the Timorese who met them for a Guatemalan-style story-collecting process. This could be mainstreamed throughout the East Timorese parishes, provided the Church leadership is enthusiastic enough to take it up. Such a process could be built into the TRRC's methodology.

Justice: how?

The clamour for justice for the severe human rights abuses in 1999 and throughout the Indonesian occupation has been growing steadily. The question is how to obtain it. A key concern will be the TRRC's relationship with the other existing and potential institutions for investigating and trying cases of human rights violation in East Timor. These mechanisms are the UN Serious Crimes Unit, which is investigating 10 serious incidents that took place in 1999; the fledgling East Timorese judicial system; and the international tribunal which many people inside and outside the country have called for.

The dangers of incoherence

Whatever the model or combination of models used to achieve justice, it is essential to have a properly coordinated national strategy for administration of justice, with clear procedures for all to follow. Events in Suai early in the year showed the harm that could be done by an incoherent approach.

The local community had arranged for a prominent militia leader to return from West Timor, promising that no harm would come to him. The agreement was that if his return went well, he would subsequently bring across many more refugees whom the militias had prevented from returning until then. However, once he arrived in East Timor, the Serious Crimes Unit arrested him, thereby compromising both the strategy of the local leaders and the trust which was building between the parties. There was a further setback to negotiations when misinformation about conditions in the jail where the militia leader was being held travelled back to West Timor.

The existence of the TRRC should not become an excuse for failure to proceed

with an international tribunal for crimes against humanity. It has become increasingly obvious that Indonesia is neither willing nor able to prosecute the perpetrators of gross violations of humanitarian law either in East Timor or elsewhere (see article on page 8). On 19 June, the East Timorese National Council called for an international tribunal to be established.

The justice system

The Serious Crimes Unit has suffered from lack of resources and is now in danger of failing to complete the rather limited programme of work it set itself before the UN Transitional Administration's mandate expires at the beginning of 2002. The few perpetrators brought to account so far have committed less serious crimes.

The commission's activities will probably add to the burdens on the judicial system, which is already struggling to fulfil its functions (see article on page 9). The East Timorese NGO Forum supports the basic concept of the TRRC. It is concerned, however, that given the popularity of truth and reconciliation processes, funding and resources will be disproportionately allocated in the commission's favour, and away from the justice system.

An additional problem is that if the commission starts work quickly, it could produce more serious criminal cases than the justice system can cope with. There is also a need for witness protection for serious crimes.

The commission is more likely to succeed if the judicial system on which it depends has the resources and expertise to do its job properly. The international community must find the political will to provide adequate resources for the East Timorese criminal justice system so that the population of East Timor can move forward to independence more confidently.

Above all, it is important to remember the people the process is supposed to be for. Some South African observers, after reflecting on their own truth recovery system, observe that often these processes can feed elite political and economic agendas at the expense of the victims they claim to serve (see article on page 12). The East Timorese have a right to hear the truth about what has happened to them. But for the process to be constructive, it is best to have all the essential elements in place first.

A word to the wise

In *Timor Link* No. 48 of December 1999, PIERS PIGOU supported the idea of setting up an East Timorese truth commission. As a former staff member of the investigation unit of the South African Truth and Reconciliation Commission (TRC) and one of the few vocal critics of some aspects of the process there, he has retained a close interest in other TRC processes. Here, he reflects on plans for a Truth, Reception and Reconciliation Commission in East Timor.

I am very concerned that some of the primary architects of the South African TRC are so involved in advising on other countries' processes, especially because no evaluation seems to have taken place of the South African experience. Despite the tremendous achievements of the South African process, there has been very little honest criticism of where it went wrong.

Those setting up the East Timorese Commission must avoid raising unrealistic expectations of what the Commission can do. In South Africa, those who testified before commissioners were often promised things that never materialised — in particular, that their cases would be followed up. Actual achievements fell well short of potential ones. There were many false promises and wasted opportunities. Despite this, much was achieved, and there is a natural tendency to hide behind this.

Because I have criticised the Commission I have been labelled as opposed to it. This is not the case, and I support certain aspects of its work. Indeed, I raised many issues relating to the TRC with a range of people in East Timor during the tense period in the run-up to the 1999 independence vote. I discovered that leaders on all sides (including religious leaders) opposed a TRC process. Nonetheless, there was a general acknowledgement that 'truth telling' could be of some use, but the notion of investigations and subpoenas was unpopular. Some people favoured a general amnesty! In contrast, people on the ground, especially those in local offices of the Council of Timorese National Resistance (CNRT), favoured a detailed review of the past, and opposed amnesty.

Who benefits?

Avoiding amnesty is almost certainly a wise decision. In South Africa, that has been a big failure in most respects. Perhaps as a consequence of failing to set any real guidelines and having too many committees operating at the same time, many of the cases in which amnesty was granted look questionable on closer scrutiny. In most cases the stories presented by perpetrators were not investigated, so in effect, amnesty was granted on the basis of an untested version of events. In many instances, what was touted as a victim-friendly process seems to have benefitted only perpetrators. Many have been cheated, not only of an opportunity for justice, but also of an opportunity to find the truth.

The truth commission must provide for adequate time to complete its work. Much depends on the size of the operation and the processes to be followed. The public hearings of the South African TRC consumed enormous amounts of time and resources. The result was an unrealistic schedule that harmed other components of the TRC's work. It is to be hoped that in East Timor the commission will be a roving entity, getting out to the rural areas, and in a position to extend the time period for operations if required. The East Timorese commission has wisely allotted time to setting itself up. This is something we failed to do in South Africa and later regretted.

Another crucial aspect of the work is to secure usable and relevant information. This requires a major investment in the process of taking statements, which is a skill that takes practice. In South Africa many of the 20,000 statements collected were of little use. Victims do not simply deliver nicely packaged testimonies: it often takes hours to tease out full chronological details of a particular violation. If the East Timorese Commission intends to pass on material for the purpose of criminal investigations, its documentation will need to be both coherent and relatively comprehensive. The TRRC should therefore invest heavily in this part of the process. Even when its work is over, the submissions will provide an invaluable archive that can be used for years to come for a whole range of processes.

South Africa's TRC failed adequately to probe the structural issues of abuse, either

in the apartheid regime or within the liberation movements. This meant that the TRC report shed little or no light on the structural relationships within the security forces and between them and other agencies in the state and civil society. South Africans do not even have a clear explanation of the responsibilities of the numerous security police sections. In the end, we were left with limited knowledge of how the system actually worked.

Political will

The East Timorese non-governmental organisations (NGOs) are rightly concerned that the UN Transitional Administration and the world community will see the TRRC as a satisfactory alternative to effective and comprehensive investigations and prosecutions. This is not simply a matter of reluctance to allocate resources, but one of political will and the overwhelming desire of certain powers to appease Indonesia. The commission should also examine the role and complicity of foreign powers in the period under review. We should be alive to the possibility that these 'transitional justice' mechanisms can feed elite agendas, and that what is touted as a human rights-friendly process can actually develop into quite the opposite.

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