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link timor

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

No.54 January 2002

Peaceful elections pave way for independence

In East Timor's first free elections the Revolutionary Front for the Independence of East Timor (Fretilin) swept into power, winning 55 of the 88 seats in the Constituent Assembly. Women candidates from various parties did better than expected, winning 24 seats. The vote took place on 30 August, two years to the day after the historic 'Popular Consultation' when the East Timorese opted to separate from Indonesia. More than 91 per cent of registered voters turned out in the latest poll, which was overwhelmingly peaceful.

The Social Democratic Party and the Democratic Party gained half a dozen seats each. A Fretilin splinter group, the Timorese Social Democratic Association (ASDT), led by one of Fretilin's founders, also did well.

The Special Representative of the United Nations Secretary General has appointed a cabinet (see box on page 2). Prime Minister Mari Alkatiri will now oversee tricky negotiations on the constitution, which must be drafted by the end of the year in preparation for Independence Day, which has been set for 20 May 2002. The UN Security Council met in late October to finalise its plans for slimming down the UN administration in East Timor.

High on the agenda for non-governmental organisations and human rights activists, both East Timorese and international, is the quest for justice. The UN administration has failed to bring to



Election rally, August 2001

justice the top military perpetrators of the crimes against humanity committed by Indonesia in 1999 and during the 25-year occupation of East Timor. *Timor Link* has devoted much space to this debate in the past two years. For another perspective on the need for an international tribunal see the article by Jon Cina on page 6.

The campaign

The election campaign was well organised and went smoothly, despite allegations of intimidation by the largest party, Fretilin. In the capital, Dili, some prominence was given to women's issues: they were evident in some media, and the national women candidates seemed well-known. However, in the countryside, especially beyond the reach of the press and radio, awareness was

much less, and the women candidates were little-known.

Political debate in the run-up to the vote frequently referred to the political conflicts of 1975 that preceded the Indonesian invasion. Some parties — ASDT, the Timorese Nationalist Party (PNT), and

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Parentil — talked of defending the original Democratic Republic of East Timor, proclaimed by Fretilin on 28 November 1975, and symbolised by the national flag. PNT seemed to have been formed expressly to defend this position, and adopted a version of the national flag as its emblem. For many people, fidelity to the independence struggle, and to relatives who had died, lay in unquestioning allegiance to Fretilin.

There was widespread fear of a recurrence of the violence that characterised previous preparations for independence (in 1975) and the aftermath of the 1999 Popular Consultation. In the event, however, the elections were overwhelmingly peaceful.

Civic education

Many organisations devoted considerable time and resources to civic and voter education. However, CIIR's election observer mission (in the country from 22 August to 4 September, see page 4) found that awareness of the implications of the vote varied considerably, among women as well



At last, a chance to vote in peace

as among men. Some people had clearly benefitted from civic education programmes. One woman in Maubara said that democracy was about 'transparency'. Other women, especially in villages, complained that they did not really know anything about the political parties' programmes. The mission also discovered

that few people in the villages seemed to understand that the candidates elected to the constituent assembly would draft the constitution that would set out their rights and duties as citizens. The frequency of such comments calls into question the UN administration's claims of success in the voter education campaign.

East Timor's new cabinet

Marí Bim Amude Alkatiri,
Fretilin M

Chief minister and minister of economy and development

José Ramos Horta,
Independent M

Senior minister for foreign affairs and cooperation

Ana Maria Pessoa Pereira da Silva Pinto,
Fretilin F

Minister for justice

Fernanda Mesquita Borges,
Independent F

Minister for finance

Antoninho Bianco,
Fretilin M

Minister for internal administration

Rui Maria de Araújo,
Independent M

Minister for health

César Vital Moreira,
Fretilin M

Minister for water and public works

Ovídio de Jesus Amaral,
Fretilin M

Minister for transport and communications

Armindo Maia,
Independent M

Minister for education, culture and youth

Estanislau Aleixo da Silva,
Fretilin M

Minister for agriculture and fisheries

Arsénio Paixão Bano,
Independent M

Secretary of state for labour and solidarity

Fernando de Araújo,
Democratic Party M

Vice-minister for foreign affairs and cooperation

Jorge da Conceição Teme,
Fretilin M

Vice-minister for foreign affairs and cooperation

Domingos Maria Sarmiento,
Independent M

Vice-minister for justice

Arlindo Rangel da Cruz,
Fretilin M

Vice-minister for finance

Ilda Maria da Conceição,
Independent F

Vice-minister for internal administration

João Soares Martins,
Democratic Party M

Vice-minister for health

Roque Félix de Jesus Rodrigues,
Independent M

Vice-minister for education, culture and youth

Gregório José da Conceição Ferreira de Sousa,
Fretilin M

Secretary of state of the council of ministers

Egídio Jesus,
Fretilin

Secretary of state for natural and mineral resources

Mariano José Lopes da Cruz,
Independent

Inspector-general

Emília Maria Valéria Pires,
Independent F

Secretary of the commission on planning

Isabel da Costa Ferreira,
Independent F

Adviser on human rights

António da Conceição,
Democratic Party

Adviser on the development of the commission on planning

f=female m=male

Putting aside past bitterness

To ensure the security of its sea and land borders East Timor must negotiate security arrangements with Indonesia before the UN administration leaves. On 12 September East Timorese leaders met in Jakarta with Indonesian president Megawati Sukarnoputri, to discuss a new relationship. Ricardo Tomaz reports on the unresolved issues between the two neighbours.

In addition to the president, the East Timorese leaders met Indonesia's Coordinating Minister for Political and Security Affairs, General (retired) Bambang Yudhoyono and foreign minister Hassan Wirayuda. At the top of the agenda was the normalisation of ties and economic and trade co-operation. Other matters discussed included the refugees stranded in West Timor, access to the Oecusse enclave, and border delimitation. The two sides agreed to hold further talks soon.

A troubled relationship

As neighbours, the two countries will have to foster some sort of co-operation. This meeting aimed to reduce mistrust. The East Timorese viewed the appointment of Megawati with some apprehension, perceiving her as an ultra-nationalist who had never shown any understanding for East Timor's cause. Nor had they forgotten her opposition to the UN-sponsored ballot in 1999 and her refusal to meet East Timorese resistance leader Xanana Gusmão. Only recently, in her 16 August 'state of the nation' address before the legislature, did she acknowledge for the first time the 'secession' of East Timor.

The Indonesian president has failed to curb and disband the pro-Indonesian militias in East Timor and to bring to justice members of her armed forces implicated in the violence of September 1999.

After taking office, Megawati issued a presidential decree expanding the scope of an ad hoc tribunal for atrocities committed in East Timor. She also called on the military to leave politics. But most observers saw this as rhetoric intended to appease the international community.

The Indonesian military remains an indispensable partner in her coalition. Reform is often mentioned, but usually resisted. The 'Dual Function' ideology of a social and political, as well as security, role for the armed forces remains intact. The

constant ethnic and religious conflicts afflicting Indonesia's provinces increase the government's dependence on the military. One result is continuing impunity. The president cannot push for the indictment of senior military officers because that would endanger her government and her own political survival. The army had a direct role in the fall of the last two presidents, Habibie and Wahid — and in the fall of the president's father, Sukarno.

Security

With independence approaching, the newly elected East Timorese authorities must establish political, economic and social structures to ensure the viability of the new state. For this they need stable borders and the means to protect their territorial and maritime boundaries and assets (including the oil and gas resources in the Timor Sea). So far, the territory's peace and stability has been maintained by UN peacekeeping troops, with the East Timorese Defence Force deployed alongside them.

The border between East and West Timor is poorly demarcated, porous and easily crossed by militias. Dili will be anxious to see that the Indonesians are willing to disarm the militias, who will otherwise remain a source of insecurity for East Timor. The border also poses the problem of illegal migrants and smuggling.

Another security problem is the enclave of Oecusse, deep inside Indonesian West Timor, a legacy of colonial rivalry. It could easily become a bone of contention, and access agreements will have to be cemented and enforced.

Confidence-building measures and military dialogue will be needed between the Indonesian military and the new East Timorese armed forces. It was recently reported that the Indonesian forces offered to put aside past grievances and train the former guerrilla fighters of East

Timor. This may well be premature, given the history of conflict. Cooperation on border security and peace should be the first step.

East Timor's military chief, Taur Matan Ruak, recently proposed turning the border into a demilitarised zone, to be monitored by international observers.

What price stability?

The security and stability of an independent East Timor will depend to a large extent on its relationship with Jakarta, and on the political and social stability of the Indonesian Republic. It is also important that Australia normalises political and military ties and re-engages with Jakarta. After an Australian-led force entered Dili in September 1999, and Indonesian forces withdrew humiliated, the Indonesian-Australian military relationship hit rock bottom. However, long-term mutual hostility between the two states will threaten and destabilise not only East Timor, but the whole region.

José Ramos-Horta recently stated: 'We must put aside past bitterness in order to normalise ties with our neighbour.' It is to be hoped that the East Timorese will not attempt to appease Indonesia at all costs. Avoiding difficult issues could lead to an unequal relationship. Dili's leaders no doubt see insistence on an international criminal tribunal as politically risky, and are balancing this with the need for good relations with Indonesia. But accommodation could be a heavy price to pay for security.

For the sake of democracy in Indonesia, and the memory of the victims who died at the hands of the Indonesian military, the international community must push for the creation of an international criminal tribunal for the crimes committed in East Timor.

- Ricardo Tomaz is a student at Middlesex University, on placement with CIIR.

Success at the polls

Women candidates secured 24 of the 88 seats in the constituent assembly, more than 26 per cent of the whole. How did they do this? And what are the implications for the transitional government? CIIR's joint programme manager for Asia, Catherine Scott, reports.

In August CIIR sent a four-woman election observer team to East Timor to find out to what extent women were participating in the election, and how they had organised to secure adequate representation in the political parties' lists of candidates.

From the end of March, when East Timorese women lost a campaign to secure a minimum quota of 30 per cent for female candidates on party lists, they planned carefully.

With support from Xanana Gusmão, the president-in-waiting, and Sergio Vieira de Mello, the UN Secretary General's special representative in East Timor, the UN Transitional Administration in East Timor (UNTAET) Gender Affairs Unit was asked to organise leadership training workshops. Some 600 women were trained in May and June.

UNTAET's Gender Affairs Unit was established at the insistence of East Timorese women's activists, and five international and one local post were funded within it. Local women were subsequently recruited for training in preparation for UNTAET's withdrawal. The unit's personnel encounter little

understanding of gender mainstreaming among other sections of UNTAET or among East Timor's political leaders.

Independent candidates

Women's organisations and REDE, the women's network, lobbied the 16 political parties to include women candidates high on the party lists. REDE also chose three women to stand as independent candidates at a national level.

None of the independent women candidates was elected. The women's organisations could not make up for their lack of a party machine.

Political parties

The attitudes of the parties were mixed. Some placed women candidates in their top five. Others excluded women almost entirely. The Democratic Party (PD) had very few women candidates. Its leaders said that this was because the party was new, set up in a hurry, and had been unable to find sufficient female candidates to field. Of the Social Democratic Party (PSD) candidates, 28 per cent were women, with three in the top 10 listed. Thirty-five per cent of Fretilin's candidates were women, with four in the top 10 on the list. Women accounted for almost half (48 per cent) of the Timorese Nationalist Party (PNT) candidates.

Of the 24 women who won seats in the election, 18 are from the Revolutionary Front for the Independence of East Timor (Fretilin), three from the PSD, and one each from the PNT, the

Timorese Democratic Union (UDT) and the Socialist Party (PST).

There was no guarantee that the order in the lists would be respected after the election. Some parties said that they would respect the list, but others, notably PNT, did not guarantee this. Aliança Araujo, sister of the party leader, and first on the party list, was not sure that she would take up her seat. She said it would depend on her family duties. She also explained that many of the party's women candidates would drop out, and hand their places down to the next in line.

Apodeti Pro-Referendum, one of the smaller parties, had clearly encountered difficulties signing up male candidates at all, owing to the party's suspect past (it had previously supported union with Indonesia). Its leaders frankly admitted that this was why they had many female candidates. However, none of its candidates was elected.

The Socialist Party leader, Avelino Coelo, who had vehemently opposed quotas for women when they were discussed in East Timor's National Council in March, proclaimed his strong support of women, and insisted that half of the constituent assembly members should be women. However he brooked no compromise on tactics. Women would have to get there on merit, and on popular demand, if it took the next four decades. Avelino thought that the push for women's equal participation in politics would have to come more strongly from the grassroots if it was to succeed.

Women's organisations and networks

CIIR met with a number of women's organisations and networks, including REDE – the East Timorese Women's Network, the Organização Mulher Timorese (OMT – Timorese Women's Organisation), the Organização Popular das Mulheres Timores (OPMT – linked to Fretilin), members of the East Timorese Women's Caucus, the non-governmental organisation Fokupers, the East Timorese Women's Communications Forum and professionals from UNIFEM and UNTAET's Gender Affairs Unit.

OMT was set up in 1974 as a non-party political forum for women's concerns, but provided practical support to Fretilin's armed wing and supported the Council of Timorese National Resistance in the 1999 ballot. CIIR met the group in the town of Baucau. The group is a member of REDE. The OMT women

were frustrated that information flowed only one way, and that news of opportunities and resources on offer in Dili did not percolate down to the districts. They were also concerned that the platform of action agreed at the Women's Congress in 2000 was not receiving the follow-up it needed.

OPMT seemed very well organised. Its structure mirrors that of the Fretilin party and its allegiance is to the party first and to women's issues second. Fretilin's women candidates will not always be free to support progressive changes in favour of women, unless these are supported by the party.

OPMT seemed frustrated at the way posts in the Gender Affairs Unit were being allocated, and suspected its own cadres had been marginalised because of their political allegiances.

REDE, a relatively new umbrella group of 15 women's organisations, resulted from the Women's Congress held in 2000. Despite assistance from UNIFEM and international NGOs (Oxfam, CIIR, etc) it remains weak. A significant constraint is that key members of its steering committee have too many responsibilities. Many have stood for political office, others are involved with numerous other NGOs. None appear to have the time which REDE needs if it is to work effectively.

Overall, the CIIR mission uncovered rivalries and frustrations within the East Timorese women's movement, which we felt detracted from an overall sense of common strategy and shared goals. Nevertheless, the fact that 24 women have been elected to the Constituent Assembly is big step forward for East Timorese women.

Policies

When CIIR interviewed male political leaders about their policies on women, few were fully conversant with them, and referred us to female party representatives. Some seemed to treat the subject as something of a joke. We were keen to know what they intended to do with the UNTAET Gender Affairs Unit. Experience elsewhere has shown that unless gender affairs is placed in the office of the prime minister, and given adequate resources, it is usually ineffectual.

Fretilin, the party that won the election, has pledged to place the unit in the prime minister's office. Generally, Fretilin's policies on women are progressive. But what the party will do in practice, when budgets are tight and other interests at stake, remains to be seen.

Fretilin's manifesto states that *'for centuries, even millennia, women, as mothers, have played a key role in the development of our younger generation's character and personality. Fretilin believes that women share the same rights as men; such rights give them the capacity to participate more actively in the organisation of our society, in political life, and in social and economic development. This administration will defend the universal values of human rights, the rights of women, of children, of workers, of the elderly, and of the physically handicapped. It will prioritise the ratification of existing International Conventions on each of the afore-mentioned rights.'*

CIIR asked the party's leader, Mari Alkatiri, how Fretilin would honour these commitments in practice. He said that Fretilin would accord the office on the status of women a high priority, and situate it in the Prime Minister's office. He claimed he would form an all-women government if he could find enough women 'with the capacity' to serve (implying that there were few). The women candidates fear that female Fretilin assembly members will be forced to put the party first and women's interests second.

Culture

Fretilin has also stressed the maintenance of traditional family structures. In such a traditional and patriarchal society, this could be a euphemism for excluding women from decision-making.

The CIIR mission found that politicians and voters frequently cited culture as a reason why women could not or should not participate in politics. It was



Women candidates from different parties enter the debate

also cited to explain the difficulty of pressing for women's rights in East Timor. Men used it to justify the status quo, as did some women. Others railed against it, and wondered how it could be changed. Older politicians claimed that they respected women 'even more than men' and that was why women had to be protected from unsuitable environments such as the world of politics.

Most seemed to think that it would take a long time to effect cultural change. However, many women candidates firmly believed that recourse to cultural relativism could not be tolerated in the new East Timor. Cultural change, they felt, could be brought about by education.

Some East Timorese priests have criticised women's organisations such as Fokupers, which has encouraged women to prosecute violent husbands in the law courts, rather than rely on traditional conflict-resolution methods. Women counter that these customs, with their compensation rates measured in head of cattle or buffalo, reinforce the image of women as men's property.

Women's capacity to take on public roles was constantly questioned, by women as well as men. When the CIIR mission broached the idea of women standing for office, we were frequently told that it would be acceptable provided the women had the 'capacity' to stand. When asked who is the judge of this capacity, and whether men's capacities receive the same scrutiny, the answers were rather less ready.

CIIR commonly came across the view, especially among men but also among women, that the only women who could participate in politics were single, or had

no family responsibilities. Nonetheless, the women candidates *did* have responsibilities – either children or elderly parents – and had come to creative arrangements with other family members to facilitate their candidacies. Many people thought that the 'single' candidates would be unable to understand the concerns of ordinary women voters because of their unusual circumstances.

One woman candidate said that people did not see them as willing to serve others, but accused them of looking for 'jobs for the girls'.

Signing up to women's rights

A key indicator of women's prospects will be whether or not the new government signs up to the UN Convention on the Elimination of All Forms of Discrimination Against Women. It has pledged to do so, and the reporting mechanism built into the convention provides the opportunity for women. Once it has ratified the convention, the government will be required to make regular reports to the United Nations on how it is implementing the treaty. This will provide an opportunity for East Timorese women's organisations to measure progress and lobby for improvements at an international level.

East Timorese women do not deceive themselves that equal rights with men will be easily won. The 24 newly elected women MPs need moral, practical and financial support. Getting elected is only the beginning of the battle.

- Read the observer mission's full report on www.ciir.org

International tribunals on trial

For the past two years CIIR and others have called for an international tribunal to investigate and try perpetrators of crimes committed during the Indonesian occupation of East Timor. Widespread dissatisfaction with UN and Indonesian prosecutions has led to renewed calls for such a court. Jon Cina argues that this may not be the best way forward.

What is an international tribunal?

An international tribunal is a court of judges and prosecution and defence lawyers, established in response to crimes considered so serious that they are of concern to the international community as a whole. These courts investigate crimes and conduct trials outside national judicial systems. The UN Security Council may use special powers to create such a court, and may grant the resulting tribunal legal authority to order countries to assist it. The United Nations appoints international judges and prosecutors to staff the court.

A more recent variant is for the United Nations to enter into an agreement with the government of a country to create a special court, like those the United Nations is negotiating with Sierra Leone and Cambodia. Unlike courts created directly by the Security Council, these institutions include some local judges.

Why an international tribunal?

Proponents of an international tribunal argue that a court established in the name of the world community would have greater legitimacy and authority than domestic courts in East Timor and Indonesia. The tribunal could be given the power to order states to provide evidence and to hand over accused persons residing in their territory.

An international court is viewed as the correct judicial response to the systemic, savage and sustained crimes committed in East Timor, and to the attack on the UN Assistance Mission in East Timor, that challenged UN authority.

The Report of the UN International Commission of Inquiry on East Timor recommended such a tribunal in January 2000, but the United Nations favoured a dual approach using domestic legal systems. Indonesia was urged to investigate and prosecute individuals

under its jurisdiction, while the UN Transitional Authority in East Timor (UNTAET) established the Serious Crimes Unit (SCU) to conduct parallel prosecutions.

How effective is an international tribunal?

Critics point to the SCU's failure to prosecute a single senior perpetrator as a sign of its ineffectiveness, believing that an international tribunal would enjoy greater success. However, the SCU's recent indictment of the chief Indonesian military and civilian officials stationed in Liquica in 1999, all of whom are currently sheltered by an uncooperative Indonesian state and military, highlights the fundamental problem. Obtaining custody of the accused depends more on the political context in which the court operates than on the character of court.

East Timor's situation is close to that of the former Yugoslavia, where some countries provided refuge to individuals charged with atrocities by the international tribunal. Although the tribunal's UN mandate enables it to order governments to assist it, and an independent military force capable of arresting suspects exists in the Balkans, it was years before intransigent governments (of Serbia and Croatia, for example) were induced to surrender senior accused.

Given Indonesia's size and importance, it is difficult to see the international community applying sufficient pressure to make an international tribunal more effective. Those most culpable for crimes in East Timor will continue to enjoy impunity for the foreseeable future.

The experience of other international tribunals also suggests that a tribunal for East Timor would be limited to a particular period of time or set of cases. Delays, possibly of years, are likely as interested parties negotiate the complex mandate and powers, and secure funding and competent personnel. Although the courts for former Yugoslavia and Rwanda have established a workable, if limited, system of international criminal justice, their expense (their combined budgets over their short lives total over US\$700 million) and duration (the ex-Yugoslavia tribunal expects to continue until 2016) have led the international community to pursue

more limited models of accountability, as in Cambodia and Sierra Leone.

An international tribunal may exacerbate existing tensions over who should be held accountable and how. It will be necessary to decide which cases would be heard by an international court, how other cases would be tried, and how an international tribunal would relate to the SCU, domestic courts and the Commission for Reception, Truth and Reconciliation (CRTR).

Are there alternatives?

All these obstacles can be overcome. However, supporters of an international tribunal have yet to make a persuasive case that an international tribunal is a more suitable judicial mechanism in the longer term than existing courts.

Certainly, the Indonesian and UNTAET systems are deeply flawed; much of the support for an international tribunal is based on their perceived failure and the assumption that no more can be done to improve their efficacy. This may be true generally for Indonesia; it is reasonable to expect that Jakarta will continue to avoid a judicial examination of the role of senior officials, or to transfer them to an alternative jurisdiction. A reformed SCU, on the other hand, could achieve much that supporters of an international tribunal seek, and could be equally effective in tackling non-cooperation.

A history of weak management, a narrow perception of its mandate and inadequate political and financial backing has left the SCU with little credibility among East Timorese or international actors. Yet there are good reasons for continuing to support it. Acting in conjunction with panels of judges (the Special Panels for Serious Crimes), it is a Security Council-mandated process to investigate and prosecute perpetrators. It therefore has much of the authority and legitimacy that an international court would provide. A more creative approach could see it using this to increase pressure on Indonesia through the United Nations and through more vigorous bilateral discussions.

Moreover, the SCU and Special Panels are already established in East Timor and are required to involve East Timorese fully in their work. International tribunals have at best a mixed record of engaging

The path to freedom

On 28 August 2001 East Timor's Bishop Carlos Belo made an appeal for justice to the international community.

The path travelled by new nations is never smooth. Throughout Africa and Asia the people's dreams for independence, of the 1960s and '70s, remain almost entirely unfulfilled. Those dreams were for freedom and the pursuit of happiness, but violence, poverty and dictatorship too often became the reality.[...]

Two years ago East Timor was burning. Two-thirds of the population were fleeing for their lives. Militia and army thugs were let loose in a deliberate, organised act of destruction. Today Dili is thriving. We are opening schools and health clinics, markets and shops. To a visitor this rapid progress appears to be popular and widespread. It would be a mistake, however, to believe in the permanence of these material goods, because this rapid growth is only skin deep. Travel beyond Dili, or a few of the main towns, and you

will see no more expensive cars, refrigerators or restaurants. Outside the main towns life has changed very little. Unemployment is high and the young people are disillusioned. The inner life of the people of East Timor continues to be clouded by the events of 1999 as well as by doubts about the future. The path to independence is not only a material phenomenon. It has a spiritual dimension. It is as much a product of ideas as of things.

Old habits die hard

[...] Most new nations find the transition to democracy difficult. It will be difficult in East Timor as well because we need to break down old habits of suspicion and coercion in order to allow democracy to flourish. It is our dream that we can build a society founded on the values enshrined in the Universal Declaration of Human Rights; they are the values that guided and inspired our struggle for independence. Democracy needs openness and trust. It requires an ability to place our immediate needs behind the common good, to open our minds to those who might represent a larger community than our own family or selves. It requires our minds to look forward rather than backwards.

To do that we need to overcome the legacy of the past. The international community should cast its mind back to the 24 years of Indonesian occupation. In particular it is important to remember the defiance of UN Security Council resolutions in 1975 and in 1999, the 'scorched earth' withdrawal of Indonesian troops from East Timor during September and October of 1999, as well as the organised opposition to the UN ballot.

Up to 3000 people died in 1999, untold numbers of women were raped and 500,000 people displaced. About 100,000 are yet to return. Those events live on in the minds of Timorese despite the material progress of the past two years. The survivors of crimes require more than material progress. They need justice, and only justice will lead to reconciliation. Justice cannot be provided simply or easily. One thing is certain, however, and that is that the future of East Timor depends on it. Only through overcoming the pain and loss of the past 24 years of repression can our country truly walk the path to independence.

Justice for the people of East Timor requires that the perpetrators of the most serious crimes be identified, and prosecuted in the same manner as a common criminal. This means a legal process is needed.

[...] Where there are mitigating circumstances these need to be kept in mind. Some militia members were themselves subject to threats against their families; some were drugged.

To date there is no definitive account of the crimes committed by the Indonesian army and the militias during 1999. [...] Prosecuting the crimes of 1999 is essential for East Timor, but also for Indonesia. Democracy there is fragile and the military continue to intrude on both government and civil society.

Much remains to be done. We call on the international community to:

- Push for an international legal process for the generals and top militia leaders whose crimes are not only against the people of East Timor but against the international community itself for breaches of international criminal law. This requires the international community to call them to account before an international criminal tribunal.
- Ensure a genuine Indonesian legal process that conforms with modern legal standards and brings the large numbers of military officers directly engaged in crimes against humanity in East Timor and in Indonesia to account.[...]
- Provide adequate resources and expertise to East Timor's own legal process to deal with the hundreds of militia who remain in the country.
- Support the recently established Truth, Reception and Reconciliation Commission in East Timor to enable people to overcome the legacy of the past and move forward on the path to independence.

[...] Long-term development is just as unlikely to occur in East Timor as in the other post-colonial nations of Africa and Asia, without a comprehensive process that enables people to heal and overcome the past.

The path to independence follows the road of justice and reconciliation.

→ continued from previous page

meaningfully with the communities most concerned with their work.

The potential in the current system should therefore be tested before turning to alternatives. UNTAET's reform of the SCU and related offices makes this possible, although further improvements are necessary. These should focus on recruiting additional prosecutors, defenders and investigators; increasing participation by East Timorese personnel; and putting greater emphasis on crimes committed before 1999. Finally, to address community concerns about the justice system, UNTAET should formally undertake a comprehensive public education programme about all aspects of the accountability process; the SCU and Special Panels should also consider sitting outside Dili where possible; and commit to meaningful consultation with local and other interest groups.

- Jon Cina was, until recently, a Legal Adviser to UNTAET's Serious Crimes Unit in Dili. He has also documented war crimes in Kosovo and worked for three years at the International Criminal Tribunal for the former Yugoslavia.

Repatriation gains momentum

The peaceful conduct of the election on 30 August seems to have given confidence to the thousands of East Timorese in refugee camps in Indonesian West Timor. Ricardo Tomaz reports.

The UN High Commission for Refugees (UNHCR) reports that in the month of October 2001 more than 3,200 refugees returned home from West Timor. UNHCR predicts that the influx will increase significantly by the end of the year.

An estimated quarter of a million people fled into West Timor in the wake of the violent aftermath of the 1999 Popular Consultation. Pro-Jakarta militias have kept a firm grip on the border camps, preventing the return of many refugees. Independence leader Xanana Gusmão and other East Timorese leaders, the Catholic Church and UN officials have done their utmost to encourage repatriation.

According to UN sources, since October 1999 more than 188,000 refugees have returned voluntarily to East Timor. However, many remain apprehensive. UN agencies estimate that about 60-80,000 East Timorese remain in the militia-controlled border camps.

For Dili, the issue is a top priority. Until the border camps are disbanded, the militias will remain a security threat and a source of tension between Dili and Jakarta.

The refugee camps are unsanitary and have created health problems for their residents. There are reports of malnutrition, intimidation and domestic violence. For the past two years the Indonesian government has been providing the refugees with 400 grams of rice a person a day and a small sum of money (Rp 1,500). The militias have prevented many refugees from returning. Many fear reprisals, political instability and violence. Some insist that they will return only if granted amnesty.

East Timorese representatives and militia leaders have met several times to discuss the problem. Dili has said that all refugees are more than welcome to return, but any person who is found to have committed crimes against humanity would face justice.

Meanwhile, the deputy commander of the anti-independence Mahidi ('Live or Die') militia, Cancio Lopes de Carvalho, stated that he was ready to face trial for his role in the violence of 1999. He said he would take responsibility for the actions of Mahidi although he had previously denied involvement, blaming the Indonesian army for inciting violence. He also said that he accepted the results of the 1999 vote and that his struggle was over.

Unwanted guests

It is clear that Jakarta wants to close the camps as soon as possible: they are a financial burden and source of social unrest, and they invite international criticism. The results of the flawed refugee registration process in June this year (see *Timor Link* 53) in which 98 per cent said that they wanted to remain in Indonesia, alarmed Jakarta.

At the end of October Indonesia's welfare minister Yusuf Kalla stated that by 31 December the government would halt all humanitarian assistance to the refugees and disband the camps. It was reported in mid-November that the aid supplies had indeed dried up. The minister said that the refugees must choose between return to East Timor or resettlement in Indonesia. The refugees said that this was tantamount to forcing them to go back to East Timor and threatened to cause trouble.

Reconciliation

The recent influx of refugees is the culmination of several reconciliation initiatives and meetings between militia leaders and the East Timorese authorities. More meetings are planned for the near future. Xanana Gusmão has been deeply involved in encouraging militia leaders and their supporters to return and in giving them assurances. He has maintained Dili's open door policy to all who wish to come home. But while repatriation depends on the success of reconciliation efforts, reconciliation in turn depends on justice. Trials must be held for militia members involved in the 1999 violence. Recently, Prime Minister Marí Alkatiri stated that 'without the judicial process, reconciliation and amnesty would be meaningless'.

CIIR reports

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The report can be downloaded from CIIR's website: www.ciir.org

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