

Agir pour Timor

REPORT ON VARIOUS QUESTIONS RELATIVE TO HUMAN RIGHTS AND SECURITY IN EAST TIMOR

This document collects the observations, preoccupations and recommendations of Agir pour Timor on

- (1) Impunity and the process of trying crimes committed in East Timor since 1975, especially the crime of genocide, war crimes and crimes against humanity.
- (2) The situation in camps of displaced East Timorese in Indonesia, in particular in West Timor.
- (3) Security conditions inside East Timor and on the Indonesia/East Timor border.
- (4) The situation in East Timor.

It does not tackle issues of reconstruction and construction of the future independent State of Timor Loro Sa'e.

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1. IMPUNITY

1.1. International law. As a preliminary point, Agir pour Timor recalls that Indonesia invaded East Timor on December 7, 1975, thus interrupting the decolonisation process then in progress. This process only resumed after the departure of the last Indonesian troops, on October 31, 1999, with the deployment of the United Nations Transitional Administration for East Timor (UNTAET). Any human rights violations committed in the territory during the occupation period are therefore relevant to international law. Only an international criminal court is able to take such a question in charge.

1.2. Period of violations. Agir pour Timor is first and foremost concerned that no official UN document mentions any possibility of a judicial process for the crimes committed in East Timor between December 7, 1975 and December 31, 1998. Agir pour Timor must recall that the bulk of crimes committed under Indonesian occupation, among which the disappearance of at least one third of the 1975 population, took place during that period. The September 27, 1999 Resolution of the Special Session of the UN Commission of Human Rights (1999/S4/1), the December 10, 1999 report of the Joint Mission on East Timor (A/54/660) and the January 31, 2000 report of the International Commission of Inquiry on East Timor (S/2000/59) only consider a judicial process for those crimes committed in East Timor between January and October 1999.

1.3. Nature of the judicial process. Even limiting oneself to the period retained by the documents quoted in §1.2, no initiative has been taken for the creation of an international criminal tribunal. Such an initiative remains suspended to the evolution of Indonesia's judicial process. The report A/54/660 recommended the creation of an international tribunal if the Indonesian process was not completed "within months". The report S/2000/59 also recommends the creation of an international tribunal. These recommendations have had no effect, even though the Indonesian judicial process drags on and its results are particularly hypothetical (see §1.5). The various documents of the Security Council only state that the authors of atrocities committed in East Timor should be "brought to justice", with no more precision.

1.4. Collaboration between UNTAET and the Indonesian government. UNTAET and the Indonesian government signed on April 6, 2000 (the first anniversary of the Liquiça massacre) a Memorandum of Understanding of cooperation on legal, judicial and human rights issues. In this agreement, each party takes various commitments, notably: making detainees available for testimony or aid to enquiries, transmission of judicial documents, arrests, searches and seizures, transfer of persons from one jurisdiction to the other, participation of forensic experts to exhumations, participation of representatives of one of the parties to the judicial process of the other party, providing information and evidence. . .

While UNTAET has lived up to its commitments, notably by receiving in July 2000 for 10 days a team of 21 members from the Indonesian Attorney General's office, together with 5 journalists, in order to question witnesses and collect material evidence concerning 5 cases handled in priority by Jakarta, the converse has not been true. None of the few UNTAET extradition requests has been honoured par Jakarta, notably the one concerning Eurico Guterres, the (East Timorese) head of the Aitarak militia. (The latter is a member of PDI-P, the political party of vice-President Megawati Sukarnoputri, and is considered as a hero and a patriot by nationalist Indonesian politicians.) UNTAET investigators who went to Jakarta in December 2000 to question 5 military and police officers were unable to do so. The head of the Indonesian armed forces, Admiral Widodo, opposed it publicly, invoking national sovereignty, and he was supported by the Indonesian Parliament. That the Attorney general, Marzuki Darusman, took the opposite position was not sufficient to allow the questionings to take place.

Twice, in January and March 2001, news mentioned contacts in Jakarta between Eurico Guterres and the Dili judicial authorities. A 4 hour "meeting" reportedly took place on January 23 between Guterres and Mohamed Chande Othman, the Dili Attorney general for serious crimes, but according to the UN spokesperson in Jakarta, Elizabeth Morsey, this was not a questioning and that meeting did not take place in the MoU framework. On March 13, he was questioned by Dili investigators according to the Dow Jones Newswire, but he refused to be according to the Jakarta Post. This example illustrates the hot and cold that constantly blows in Indonesia, including on the information level.

1.5. Indonesia's judicial process. Let us first recall that an international criminal tribunal on crimes committed in East Timor has been conditioned by the international community to Indonesia's own judicial process. This measure, which has no equivalent in recent history (ex-Yugoslavia and Rwanda notably come to mind) is incompatible with the international

character of the East Timor conflict (see preliminary point above). It may have been understandable in October 1999, at the time of the democratic transition in Indonesia when Abdurrahman Wahid became the President of this country. This is not the case anymore.

The Indonesian judicial process started relatively well at the end of 1999, except for the fact that it was limited to the crimes committed in 1999, just like its “international” counterpart (see §1.6 for an explanation of the quotation marks). The Indonesian Human Rights Enquiry Commission (KPP HAM) succeeded to question a large number of suspected military in December/January, among whom General Wiranto, ex-head of the Armed Forces. Its 4,300 pages report, handed over to Marzuki Darusman on March 13, 2000, is an impressive document which implicates 33 civilian and military officials, among whom General Wiranto. It accuses them to have orchestrated war crimes and crimes against humanity on a large scale, including systematic murders, torture and ill-treatments, forced disappearances, sexual slavery and rapes, forced displacement of civilians and scorched earth policy. This courageous work must be saluted and recognised to its true value.

As early as February, President Wahid has suspended General Wiranto from his position as Coordinating Minister for Security, then had put him on early retirement by a decree starting March 31, 2000, as well as two other generals and an admiral. Unfortunately, the process started grinding to a halt as soon as May 2000. In August, under pressure from the military faction which is still represented, the MPR (an equivalent of the French Parliament) adopted an amendment to the Indonesian constitution, article 28i, which introduces a non-retroactivity principle in the following terms: “The right not to be prosecuted on the basis of a retroactive law [is a fundamental human right] that can be diminished under no circumstance”.

This provision is different from article 15 of the International Covenant on Civil and Political Rights (ICCPR), which came into force on March 23, 1976. This article concerns the general principle of non-retroactivity, but its paragraph (2) adds:

Nothing in the present article shall be opposed to the trial or sentencing of any individual for acts or omissions that, when they were committed, were held as criminal, according to general legal principles recognised by the community of nations.

ICCPR has not to this day been ratified by Indonesia. The kind of crimes mentioned in the KPP HAM report are recognised as such by international criminal law but were not crimes according to Indonesian law when they were committed. Since then, the DPR (an equivalent of the French National Assembly) has adopted a law on human rights tribunals which fills in this “gap”. It is this law that allows such crimes to be tried by ad hoc tribunals, that can be set up by the President upon recommendation of the DPR. However, any attempt to try suspects of crimes committed in East Timor during the Indonesian occupation will conflict with the above-mentioned non retroactivity constitutional amendment, and its implementation appears highly doubtful.

Concretely, the Attorney General’s office reduced in September 2000 the number of suspects in the KPP HAM report from 33 to 19. It notably removed from the list the names of ex-General Wiranto and Eurico Guterres. The number of suspects afterwards went up to 22, but the names of Wiranto and Guterres did not come back on the list. A start of trials was subject to successive announcements, the latest one being the approval by the DPR of the set-up of an ad hoc tribunal on crimes committed in East Timor in 1999, on March 21, 2001. President Wahid has not acted on this approval at the moment of writing.

In a document released at the UN Commission of Human Rights in April 2001, a number of Indonesian NGOs, including PBHI and ELSHAM, state:

We have doubts on Indonesia’s commitment to act against people responsible of grave human rights violations in East Timor. Barring international pressure and constructive supervision and engagement, it seems impossible to create in Indonesia a human rights court that meets international standards.

No trial has been set up by Indonesia to this day.¹

¹Three trials are currently taking place in Jakarta, but they concern violence committed in West Timor in September 2000 (see §2.1) and the murder of a member of UNTAET’s peacekeeping forces in July 2000 (see §3). They don’t concern violence committed in East Timor in 1999. One of these trials is against six men for the murder of three members of the UNHCR in West Timor on September 6, 2000 (see §2.1). The initial charge of “murder” was replaced by “mob violence resulting in death”. Another one is against militia head Eurico Guterres. He was found guilty of incitation to violence, for having incited militiamen to take back weapons they had given away to the police in a ceremony in West Timor on September 24, 2000. The prosecutor

1.6. UNTAET's judicial process. UNTAET, in collaboration with the East Timorese legal apparatus currently under construction, has started a judicial process under the direction of the Serious Crimes Investigation Unit. To this day, its enquiries have concentrated on five cases, three of which have led to trials. These cases are:

- (i) The attack of the Liquiça church on April 6, 1999 by the Besi Merah Putih militia (at least 50 dead).
- (ii) The attack of Manuel Carrascalão's house on April 17, 1999 (12 dead).
- (iii) The attack of Maliana's police station on September 8, 1999 by the Dadurus Merah Putih militia (47 dead).
- (iv) A series of killings committed from April to September 1999 in Los Palos by the Tim Alfa militia (9 dead on September 25, 1999, including two catholic nuns), and the forced transfer of the population.
- (v) Sex-related crimes, including arbitrary arrests, illegal detentions and sexual violences committed in Lolatoe, Bononaro district, from April to October 1999 by members of the TNI (the Indonesian army) and the Kaer Metin Merah Putih militia.

On December 14, 2000, 49 suspects were under provisional detention for all these cases and 11 charges had been brought in the framework of (iv): the trial of 10 of them started on February 16. The 11th accused, Lieutenant Syaful Anwar of the Indonesian Special Forces (Kopassus), is charged to have led all the attacks and is still at large in Indonesia. An international arrest warrant has been issued against him, but Indonesia has so far refused to extradite him, violating once again the MoU mentioned in §1.4. A little earlier, on January 30, the militia member João Fernandes had received a 12 years sentence for murder in the framework of (iii); the other suspects in this case have taken refuge in West Timor². On February 6, 2001, charges for multiple rapes were brought in the framework of (v) against an Indonesian officer, Second Lieutenant Bambang Indra, and two East Timorese militiamen, Jhoni Franca and José Cardoso Ferreira. These three persons as well as a village head, Sabino Gouvía Leite, and an Indonesian official, Francisco Noronha, are also charged for other crimes against humanity among which murder, torture and abduction. While Franca, Ferreira and Gouvía Leite are in jail in East Timor, Indra and Noronha are at large, probably in Indonesia.

These realisations are positive, but one should keep in mind that the five cases above only represent a drop in the ocean of the violations committed in 1999 in East Timor, not even mentioning the previous period. Other more serious crimes, at least in terms of the number of victims, have not been handled, like the Suai massacre of September 6, 1999 where more than 200 personnes died, including three catholic priests.³

Optimistically, they will be considered as test cases for the East Timorese judicial system which, it must be said, is still in its infancy. More critically, one will put forward, like the East Timorese NGO Forum in a report of November 13, 2000, the serious lack of human and material resources of the Serious Crimes Investigation Unit. 60 persons had been in provisional detention for more than a year at the time of this report; some had to be released for lack of evidence. The report also stresses the delays for exhumations and the fact that the initial project to try the ten most serious crimes committed in 1999 had to be abandoned, as Attorney General Mohamed Othman stated on October 20, 2000. On March 22, 2001, the Unit had 4 judges (including one East Timorese), 6 prosecutors (including one East Timorese) and 12 lawyers (including 9 East Timorese).

This lack of resources was recognised by the UN High Commissioner for Human Rights, Mary Robinson, in her February 6, 2001 report (E/CN.4/2001/37, §13). But this report contains no recommendation on how to remedy this situation.

requested a 1 year sentence on March 22, minus the time spent in detention. Arrested on October 6, 2000 in Jakarta for this case, Mr Guterres was put in provisional release on February 20, in the middle of his trial. The last trial, against Yacobus Bere, commander of the Laksaur militia, concerns the murder of the New-Zealand soldier Leonard Manning in an ambush in East Timor on July 19, 2000. UNTAET requested his extradition on April 3, 2001, in the framework of the MoU mentioned in §1.4, but vehement statements from Indonesian Army and Police members shed doubts on whether this step will be successful.

²João Fernandes escaped from the Becora prison in Dili on March 3 with another prisonnier. He does not seem to have been found again at the time this report was completed. Another escape took place at the same time from the Gleno prison.

³A report of James Dunn, whose executive summary and recommendations are reproduced in Appendix B, assesses that the main massacres of 1999 took place in the Dili area (a total of at least 168 persons, including the massacre of (ii)), in the Oecussi enclave (at least 84 personnes, between September 8–10), in Suai/Cova Lima (notably the massacre mentioned), in Maliana (at least 87 persons, including more than 70 on September 8), Lautem/Lospalos (at least 22 persons, including the massacre of (iv)) and in Liquiça (at least 53 persons, including the massacre of (i)).

One issue that Agir pour Timor also wishes to raise is the ambiguity of UNTAET's judicial process. What is its nature? It has an international appearance inasmuch as East Timor is currently administered by the UN. But it will actually become national after Timor Loro Sa'e's becomes independent (something expected at the moment for the end of 2001 or the beginning of 2002). The bilateral nature of the MoU with Indonesia (see §1.4) is witness to this. What will this process, already under-financed, become after independence? To what extent will Indonesia consider it as "neutral"? How much chance is there to bring to justice those truly responsible for the exactions: the Indonesian military, through such a process, if this already does not happen under an international administration?

Agir pour Timor wants to stress that the current judicial process in East Timor is not of an international nature, and cannot be substituted to an international criminal tribunal.

1.7. Truth and reconciliation. In parallel to the judicial process described in §1.6, a "Reception, Truth and Reconciliation" Commission is being established, on the inspiration of similar commissions in South America and in South Africa in the 90es. On February 28, 2001, the East Timorese Transitional Cabinet (composed of East Timorese and international representatives) adopted a draft ruling about it. The work of this commission shall not substitute itself to that of the Serious Crimes Investigation Unit: its task should be to establish the truth on the extent and the organisation of human rights violations committed between April 25, 1974 (the date of the Carnation Revolution in Portugal) and October 25, 1999 (the date of Resolution 1272 of the Security Council, creating UNTAET), and to establish a community reconciliation process for "less serious" crimes which will not be prosecuted by the judicial system.

Contrary to the process of §1.6, this project (piloted by the UNTAET Human Rights Unit) receives the direct support of various UN agencies (cf. aforementioned report of Mary Robinson, §16).

While supporting such a reconciliation process, the East Timorese NGO Forum stresses that there can be no reconciliation without justice. Agir pour Timor must also point out the risk of a possible malicious exploitation of this project. Indonesian propaganda for justifying the invasion was centered on the fiction that Indonesia had stepped in to end a civil war between East Timorese. Then, in 1999, Indonesian propaganda was that any consultation of the East Timorese would trigger supposed "old demons" and would lead to a new civil war. The creation of pro-Indonesian militias in the beginning of 1999 aimed to give flesh to this argumentation, which was contradicted by the impressive calm and discipline with which the East Timorese voted on August 30, 1999.

It is undeniable that Indonesia succeeded in setting East Timorese against other East Timorese. There is also no doubt that Indonesia is not the only party responsible for violences committed by East Timorese against other East Timorese between December 7, 1975 and October 31, 1999. For example, members of Fretilin have been guilty of exactions against East Timorese between 1975 and 1979, as Xanana Gusmão explicitly writes in his partial autobiography. Nevertheless, the bulk of violations was indeniably committed by the Indonesian occupation forces, or on their instigation.

The reconciliation process must not be the tree that hides the forest of the Indonesian violations. This process cannot be a substitute for an international criminal tribunal either.

1.8. Another judicial process. From March 27 au 29, 2001, the Washington District Court (USA) tried in absentia General Johnny Lumintang, in the framework of a US law that gives the US judicial system an authority on acts of torture, even if they were committed outside the country. General Lumintang, currently Secretary General of the Indonesian Defence Ministry, was charged during a visit to the United States in March 2000. He is accused to have participated the planification and the supervision of the violences committed by pro-Indonesian militias in 1999, while he was Army Chief of Staff. All East Timorese testifying at this trial did it under anonymity, on their express request. The verdict is awaited.

This is a civil suit, where Mr. Lumintang risks compensatory and punitive damages for the victims and/or their legal claimants. A precedent took place in 1994, when General Sintong Panjaitan was sentenced to compensatory damages of US\$4 millions and punitive damages of US\$10 millions (that he never payed) for Helen Todd, the mother of Kamal Bamadhaj, the only non-East Timorese to have been killed during the massacre of November 12, 1991 in Dili.

Such a process does not permit the effective realisation of the sentence, as culprits cannot be compelled to its execution if they are not present on US territory. Still, we feel it has a triple interest:

- The feeling of justice for the victims, especially important in the "healing process".

- The fact that the culprits are prevented to go to the United States (lest they are imprisoned for debt upon their arrival), which is for them a genuine inconvenience.
- The breach thus realised in the feeling of impunity of the culprits.

The elements gathered for this trial are a manual for the Kopassus (the Indonesian élite troops, that could be assimilated to the Nazi Gestapo) and a telegram dated May 5, 1999, a few hours before the conclusion in the UN of the agreement leading to the August 30, 1999 referendum, each signed by him. The telegram, marked “secret”, orders to:

- (1) *Always be ready to face possible consequences of the options chosen by the people of Tim Tim.*
- (2) *Prepare a security plan in the framework of avoiding the appearance of a civil war, including: preventive measures, creation of conditions, police actions, repressive coercive actions and a plan of putting in the rear; evacuation if the second option [independence] is chosen.*⁴

Will these elements be usable for a trial in the framework of a still hypothetical international criminal tribunal?

1.9. What mandate for an international tribunal? It is not up to a solidarity group to give an advice on the exact scope of competence that an international criminal tribunal on East Timor should have. To discuss this issue precisely would demand a knowledge of international law that Agir pour Timor does not have. At most, Agir pour Timor can point out on the one hand what it feels should be the minimum, and on the other hand the issues that it feels this question raises, in the hope that its reflections can be useful to experts.

As indicated in §1.1, it seems clear to us that an international tribunal should be at least competent to try crimes that were committed in the framework of a violation of international law. A clear period when such a violation took place is the military occupation by Indonesia, from December 7, 1975 to October 31, 1999: more than 250,000 East Timorese died during this period, according to figures from the Catholic church. This is the period that we highlighted in §1.1. An international tribunal on East Timor should at least be competent on all crimes committed in East Timor during this period and relevant to international criminal law, whether they were committed by Indonesian troops, pro-Indonesian East Timorese, East Timorese from the resistance (see end of §1.7), or other persons. These are essentially the crime of genocide, war crimes and crimes against humanity.

Should the competence of such a tribunal respect these historical and geographical limitations? To hint at the complexity of the question, recall that the Indonesian infiltrations on the border started as soon as September 17, 1975, almost three months before the actual invasion. It is notably during that period that the capture of Balibo took place, when five journalists of the Australian television were murdered. This period, we feel, should also be considered as relevant to violations of international law.

Going back in the past a little more, what should be said of the period of the “civil war”, from August 10 to September 24, 1975, during which Fretilin and UDT confronted each other? The number of deaths during this period is evaluated between 1,500 and 3,000. It has at least two elements of an international nature (actually related in ways that would have to be clarified): the influence of Indonesian intelligence on triggering the civil war (the destabilisation operation, *Operasi Komodo*, is then in full swing), and the (non-)rôle of Portugal, that takes refuge on Ataúro island as early as August 10 instead of stepping in to stop the conflict, and will never come back to Dili until its evacuation on December 7, 1975, thus abandoning the people of East Timor in spite of its responsibility within the decolonisation process then in progress. Should an international tribunal also cover this period, and Portugal be a defendant just as Indonesia? Agir pour Timor thinks so.

Let us now move forward in time and pass to the period after the evacuation of Indonesian troops. Tens of thousands of East Timorese are still displaced in Indonesia, mainly in camps in West Timor (see §2). Everything points that the great majority of them is held against its will, and is a victim of crimes against humanity on a large scale, of which the Indonesian army is directly responsible. Should this issue, which stands out of the previous framework historically and geographically, also enter the competence of an international tribunal? Agir pour Timor also thinks so.

Let us go back to the past and consider now the Portuguese colonial period. The *erga omnes* character of the right of the East Timor people to self-determination, reaffirmed by the International Court of Justice of the Hague in its judgement

⁴Free translation from Indonesian. A copy of this telegram, as well as other documents, can be consulted on the Web at the URL <http://etan.org/news/2000a/11suit.htm>.

on the Timor Gap case in 1995, tells that this period is also relevant to international law. Crimes against humanity were also committed during this period. By the Portuguese coloniser, notably in the early 20-th century, in the aftermath of the dom Boãventura rebellion (2,000 people massacred), and also after another rebellion in the 1950es. But imperial Japanese troops committed much more serious violations during their occupation, from 1943 to 1945. These crimes are of the same nature as those committed by the Indonesian occupation forces. From 40,000 to 60,000 East Timorese are estimated to have died during this period.

It is of course hardly imaginable to push the competences of an international tribunal back to the first times of Portuguese colonisation, that goes back to the 17th century. What rule should be fixed? Agir pour Timor does not offer an opinion on this question.

Finally, one cannot forget the massive complicity of most Western States, but also other States, with the Indonesian invasion and occupation: diplomatic, logistical, military, economic. . . supports, on which one would have to come back in detail. France is not exempt from this complicity. It is the opinion of Agir pour Timor that these States will have to be brought before such an international tribunal.

2. DISPLACED EAST TIMORESE

2.1. In West Timor. In September 1999, an unknown number of East Timorese was forced to go to Indonesia, either voluntarily, to escape the organised violence of pro-Indonesian militia, or under constraint. To this day, about 180,000 have been repatriated - among whom 100,000 before November 25, 1999.

The first repatriations date back to October 9, 1999. From October 9 to November 25, a flow of displaced people returns to East Timor, either with the help of international organisations or spontaneously. This process stops brutally at the end of November, paradoxically just after a visit of the US special envoy Richard Holbrooke, who helps setting up an agreement between the Indonesian forces and INTERFET (the international force then present in East Timor) to accelerate the returns. The number of daily returns, that reached a peak of 7,000 on November 22, 1999, falls back to at most a few hundreds, or a few dozens.

A simple computation places the average daily returns at 2,000 during October 9 and November 25, 1999 and at 150 between November 25, 1999 and the end of April 2001. On April 3, the spokesman of the International Organisation of Migrations (IOM), Jean-Philippe Chauzy, stated that 2,640 refugees had returned to East Timor in March 2001, the highest monthly number since the UN withdrawal from West Timor in September 2000 (see below). This represents an average of 85 returns per day.

The number of East Timorese still displaced in Indonesia remains unknown: evaluations vary, according to sources and periods, between 60,000 and 160,000. The range given in Mary Robinson's February 6, 2001 report (E/CN.4/2001/37) is from 80,000 to 100,000 displaced. On the Indonesian side, the figure varies widely. The West Timor governor, Piet Tallo, told the Indonesian Observer (30-10-2000) that he "did not know why the number of refugees increases when there is a distribution of rice": he mentions a variation from 67,000 to more than 250,000 in the Belu district.

An evaluation of the number of East Timorese wishing to go back home is just as problematic. On the one hand, it seems likely that an important proportion of the remaining displaced East Timorese is made of familles or members of clans of pro-Indonesian militias. On the other hand, all testimonies mention a massive intimidation in the camps, that remain under the control of militias.

The pressure on international and non-governmental humanitarian organisations increased up to breaking point on September 6, 2000, the anniversary date of the Suai massacre, when three international employees of the UNHCR were murdered in Atambua, West Timor. The Indonesian police and army witnessed the violence without stepping in. This crime provoked the withdrawal of all international presence from the camps, as well as the adoption of a resolution of the UN Security Council on September 8, 2000 (Resolution S/RS/1319 (2000)).

This development did not contribute to improve the humanitarian situation, already very precarious in the camps: according to the Refugee Jesuit Service, up to March 22, 2001 no food had been distributed since January and 10 refugees had died of hunger during that month in the Noelbaki camp near Kupang. According to Winston Wirondo, the Secretary General of the Centre for Internally Displaced People (sic) - Service for West Timor, in an April 10, 2001 interview to the Australian radio ABC, 5 children die daily of malaria, diarrhoea and malnutrition in these camps.

The withdrawal of international organisations did not accelerate the return of displaced East Timorese to East Timor either. It still takes place parcimoniously (see above), under the careful monitoring of militia chiefs. On March 7, during a repatriation organised in Kupang by IOM, such a chief, Elizariou Pereira, close to Eurico Guterres, was standing near the boat's gangway, with a list of deported people that had been given to him by Indonesian officials. The intimidation was such that out of 220 planned departures, only 107 deportees came. Indonesian officials said that Mr. Pereira was a member of military intelligence. This case far from being isolated.

The fact that the High Commission for Refugees (UNHCR) and IOM consider the new head of the Udayana area regional command, Major-General Williem da Costa, as an interlocutor "generating more confidence" than his predecessor Kiki Syahnakri because "he was born in Timor" (Sydney Morning Herald, March 22, 2001), while being unaware of his rôle as head of intelligence in East Timor in the beginning of the eighties⁵ spectacularly shows the deep lack of knowledge of the military history of the East Timor conflict by international institutions.

This situation is worrying not only for obvious humanitarian and human rights reasons (displaced East Timorese who came back to East Timor testified of endemic human rights violations in the camps), but also as far as the registration process of voters for elections planned on August 30 in East Timor has begun. Thousands of East Timorese may be excluded from this process.

2.2. East Timorese children in West Timor and Java.

2.2.1. *In West Timor.* It is believed that dozens of East Timorese young girls and women are used sexually by militias in West Timor. Kirsty Sword Gusmão, Xanana Gusmão's wife, went to Geneva on March 23, 2001 with Mrs Domingas Sanza Mouzinho to plead for her niece Juliana dos Santos, a 15 year old girl who was kidnapped under her eyes in the day of the Suai massacre (September 6, 1999) by Igidio Manek, the Vice-Commander of the Laksaur militia, as he had just murdered her brother. Juliana was reportedly taken to West Timor, shown around as a war trophy, raped repeatedly and fell pregnant. Juliana gave an interview on April 20, 2001 in Atambua (West Timor), in the presence de Manek, who has three other "wives". Appearing with adhesive plaster under her right eye, she denied having been kidnapped and said she was sentimentally attached to Manek. The latter said he wanted to marry her.

2.2.2. *In Java.* Besides, it seems that hundreds of East Timorese children are held in orphanages in Java. This is not only a human rights violation (constituent of the crime of genocide), but also a violation of the Convention on Children Rights, signed by Indonesia. From March 9 to 16, a mission of UNHCR went to Jakarta and Central Java to arrange the reunification of 16 East Timorese children "recruited" in camps of West Timor by Octavio Soares (the nephew of Osorio Soares, the ex-governor of Dili under Indonesia) and representatives of the organisation Yayasan Hati. All parents of these children have returned to East Timor and have specifically requested the UNHCR to arrange the return of their children.

According to a source that does not wish to be divulged, these children are only the first arrivals of a group of 124 East Timorese children who live in precarious conditions in 4 orphanages of Central Java, and are held for essentially political reasons by a powerful group of pro-Indonesian East Timorese. The total number of East Timorese children living in Indonesian orphanages, religious institutions and by arrangement with various tutors was estimated to 1,103 at the end of March 2001. If Yayasan Hati succeeds in blocking the reunification of these children, others will know the same fate. Already in March, Octavio Soares had said that he would return to West Timor in April to "recruit" other children.

While the members of the UNHCR delegation had obtained the support of the government and the church and Yayasan Hati's agreement to meet the children and give them the informations they had obtained from their parents, Yayasan Hati reneged on the agreement, spending the night in the orphanage, intimidating the children and not letting the UNHCR talk with them alone. During the interviews, the children looked angry, frightened and initially not cooperative. Yayasan Hati made threats against the members of the delegation, who were placed under high security. After which, the sisters running the orphanage asked the members not to come back anymore because they had received threats from Yayasan Hati.

⁵He notably signed 6 secret instruction manuals, dated from the end of 1982 and revealed by Fretilin in 1983.

3. SECURITY

On April 11, 2000, the TNI (the Indonesian army) and UNTAET's military component concluded a Memorandum of Understanding on the control of the East Timor/Indonesia border. This MoU did not prevent various incidents to take place, among which several skirmishes between the Peacekeeping forces and infiltrated militias, which caused the death of two soldiers, New Zealand's Leonard Manning on July 19, 2000 and a Nepalese (whose name we could not obtain) on August 10, 2000. The most recent incidents date back to February 24 and April 3, 2001.

Especially, dozens of militias or former members of the Indonesian army succeeded in infiltrating into East Timor since August, penetrating as far as Same and Alas in the centre of the territory where they hid in the mountains, creating a psychosis in the local population. It does not seem that these individuals committed exactions. The UNTAET Administrator, Sergio Vieira de Mello, stated however on October 23, 2000 in Sydney that certain militias were still present in the region.

On March 23, 2001, the chief of the Combat Lafaek militia, Cêncio Lopes de Carvalho, gave an interview to the Associated Press in Kupang, the capital of West Timor. Inter alia, he said: "For the moment, we are in a cooling down period. We shall wait for the UN's departure before we come back".

4. IN EAST TIMOR

Various elements are evidence that certain sectors (?) of the Indonesian army have not given up influencing, or even destabilising East Timor's domestic politics.

4.1. Threats against Xanana Gusmão. On March 6, 2001, a debate organised in Dili by the East Timorese Students Solidarity Council with the participation of Xanana Gusmão, the President of the National Council of Timorese Resistance, was disrupted by three individuals. Forewarned, the civilian police (CivPol) was there and observed them position themselves with the apparent intent to prevent Xanana Gusmão to leave the building. Among the three individuals, Gil Fernandes, Américo and Júlio Gueguer, the first one threatened CivPol officers, claiming that they would not be able to control the forthcoming situation, because the number of people involved would be too large. Wanted for burning a vehicle on February 1st, ignoring an order from an officer and walking towards the tribune where Xanana Gusmão was standing with unknown intentions, he was arrested by this officer. The second troublemaker, Américo, then attacked the latter with two chairs. An arrest warrant was also pendant against Américo, who was also arrested, as well as the third troublemaker. The people mentioned by Gil Fernandes then started insulting the police officers and held a demonstration of about a hundred people, which dispersed after two hours.

Américo had already thrown a handgrenade in Dili's stadium, during an incident in April 2000. He had not been arrested at the time by CivPol, nor in January 2001 when he burned two UNTAET vehicles. The three individuals and the other members of the group of demonstrators claimed to follow the political party CDP-RDTL. This party, which places itself away from the East Timorese political process, states that it supports the declaration of independence made by Fretilin on November 28, 1975. However, a photo of Américo taken on January 16, 1994 shows him together with two members of the Kopassus. One of the two other agitators was also recognised as a member of Intel (Indonesian intelligence).

The three troublemakers are currently detained in Dili, and are suspected of having intended to murder Xanana Gusmão and the head of the Timor-Loro-Sa'e Defence Forces (ex-Falintil), Taur Matan Ruak.

Previous information indicated that CDP-RDTL is manipulated, or even organised, by senior Indonesian officers, among whom ex-General Wiranto and Major-General Zacky Anwar Makarim, the military liaison officer with UNAMET during the pre-referendum period, who is currently "detached" from TNI. According to these informations, they are helped by two well-known ex-pro-independence East Timorese: Cristiano da Costa and Abilio Araújo, Fretilin's ex-representative for the exterior. As for Fretilin, it has distanced itself from CDP-RDTL.

4.2. Suspicions of spying. A leaked UN internal security report dated March 3-10 warns against a subversion campaign planned by the same CDP-RDTL, and against possible sabotage of the forthcoming elections. The report says that CDP-RDTL supporters confronted with Fretilin members on February 22 on Ataúro island, off Dili. The same day, seven Indonesians describing themselves as fishermen landed on that island, claiming that they had been wrecked. UNTAET's

suspicion was arisen when they were seen entering the grounds of the Indonesian mission in Dili. Suspicion of espionage, given the closeness of the beginning of the voters registration campaign that started four days later, on February 26. The report says that the Ataúro-Dili route is not monitored closely enough and deserves more attention.

Following vigorous protests from Indonesia, UNTAET denied the accusations of spying against the 7 Indonesians. It may seem unusual to make public comments on the contents of an internal security report, even though it was leaked.

CONCLUSIONS AND RECOMMENDATIONS

Agir pour Timor can only note that the situation is far from being satisfactory on most of the points raised above. The Association is especially worried by the continuing appeasement policy from the international community towards the Indonesian army, which was the rule under President Suharto's dictatorship. It is of concern to see that several parliamentary democracies, including France, eventually not to criticise Indonesia "to avoid destabilising President Wahid and endangering the democratisation process", while Mr Wahid has been considerably weakened and has become a virtual hostage of the army.

It is paradoxical to see that the arguments used before to support the army: Indonesia's stability, economic success, are now used a contrario with the same effect. Does the international community really want the emergence of an independent and sovereign Timor Loro Sa'e, not threatened by its big neighbour? In view of the feeble political will it is showing, one is entitled to ask the question. May this behaviour be related to the long-standing complicity of most Western countries with Indonesian occupation, and to their economic interests?

Less than a week was needed, in September 1999, for the Indonesian army to yield to combined pressure from FMI, the World Bank, the United States and other Western countries while it was in the middle of a campaign of destruction, forces displacements and massacres; for this army to accept the arrival of an international force in East Timor, and then to withdraw in good order from the territory. The nature and the scale of this pressure have no common measure with those of sanctions still in force towards other countries ostracized from the international community: in the case of Indonesia, they were limited to the suspension of military cooperations, loans and bank facilities. Any comparison between these two types of pressure participates either of a lack of information, or of bad faith.

The TNI's economic and military dependence towards international institutions and Western countries has not diminished since September 1999. On the contrary, it has increased. Very little would be necessary to deflect in a decisive way a policy that can only be described as more and more threatening towards East Timor. A genuine struggle against impunity of the Indonesian military would be an especially important factor, and would go a long way towards a genuine democratic transition in Indonesia and a stabilisation of that country (a subject that only concerns Agir pour Timor inasmuch as a truly democratic and stable Indonesia is a sine qua non condition to the viability of an independent Timor Loro Sa'e).

Agir pour Timor recommends:

- (1) *The immediate set-up* of an ad hoc international criminal tribunal on East Timor. The mandate of such a tribunal should at least cover the crimes committed in East Timor since the August 1975 "civil war", including the period of Indonesian infiltrations in the fall of 1975 and the whole period of the military occupation (December 7, 1975–October 31, 1999). It should also cover human rights violations committed against East Timorese displaced in Indonesia and considered as offences according to international law.
If need be, such a tribunal could be created under the auspices of an already existing ad hoc tribunal, for instance the ad hoc international criminal tribunal on ex-Yugoslavia.
- (2) *An appropriate increase, material and human,* of the means of UNTAET's Serious Crimes Investigation Unit. In particular, a funding of this Unit independent from UNTAET's global budget.
- (3) *Pressures on Indonesia* relative to military and economic cooperation until the militias in West Timor are genuinely dismantled, they have withdrawn from the camps of displaced East Timorese, these camps have been put under international control and those East Timorese who wish so have been repatriated to East Timor, following an enquiry without pressure conducted by relevant international humanitarian organisations.
- (4) *An extension of the international military presence* in East Timor for an indefinite period. This presence should be maintained until the government of an independent Timor Loro Sa'e deems it not necessary anymore.

Done in Paris, April 21, 2001.

APPENDIX A. CHAIRMAN'S STATEMENT IN THE COMMISSION OF HUMAN RIGHTS

On April 20, 2001, the UN Commission of Human Rights adopted in Geneva a "declaration by consensus" on East Timor. Given the recent character of this adoption, we only have an English summary from the UN's press service. Nevertheless, we found it useful to annex it to this report.

Chairman's statement on East Timor

In a Chairman's statement, the Commission welcomed the encouraging improvements in the judicial system in East Timor and the first measures that had been taken against suspects accused of crimes against humanity and other serious crimes committed during the violence of 1999; emphasized the importance of continuing international assistance for the strengthening of the justice system in East Timor and the importance of the ongoing reconciliation process; welcomed the forthcoming establishment of a Truth, Reception and Reconciliation Commission; welcomed concrete steps taken by the Government of Indonesia to investigate fully the violations of human rights perpetrated in East Timor in the period leading up to and immediately following the popular consultation of August 1999; urged the Government of Indonesia to establish the proposed ad hoc human rights court to bring to justice the suspects of such violations; welcomed the cooperation between the Government and the Office of the High Commissioner for Human Rights with a view to enhancing the capacity of the judicial system and in particular the functioning of the ad hoc human rights court.

The Commission also reiterated the need for enhanced cooperation between UNTAET and the Government of Indonesia; condemned the brutal murders last September of three international staff members of the United Nations High Commissioner for Refugees in West Timor as well as attacks on the United Nations presence in East Timor, and expected that the ongoing Indonesian trials of the suspects would be conducted in conformity with international standards; urged the Government of Indonesia to continue to disarm and disband the militia, to restore security in the refugee camps of West Timor and to take measures to ensure that refugees could make a free and informed choice whether to return to East Timor or resettle in Indonesia; encouraged it to strengthen its endeavours to resolve the problem of large numbers of refugees still in camps in West Timor; and said all efforts should be made to complete the refugee repatriation programme in accordance with international standards including the need for an impartial and transparent registration of refugees in order to enable them to register to vote in the East Timor general elections to be held on 30 August.

APPENDIX B. EXTRACTS FROM JAMES DUNN'S REPORT

On February 14, 2001, James Dunn, a former Australian consul in Dili and a keen expert of the East Timor question, handed to the Dili General Prosecutor Mohamed Othman a report that the latter had commissioned from him on crimes against humanity committed in East Timor. This report, which has not so far been made public by UNTAET, was nevertheless obtained on April 20 by the Sydney Morning Herald. We reproduce below its executive summary and its recommendations.

**Crimes Against Humanity in East Timor, January to October 1999
Their Nature and Causes**

B.1. Executive Summary.

- (1) The wave of so-called militia violence which swept over East Timor in 1999, culminating in massive deportations and destruction in September, was not the spontaneous response of those who favoured integration, but the outcome of a decision by TNI generals to counter the surge of popular support in East Timor for independence, by means of intimidation and violence, and to prevent the loss of the province to the Republic of Indonesia. The campaign of massive destruction, deportation and killings in September was essentially an operation planned and carried out by the TNI, with militia participation, to punish the people of East Timor for their vote against integration.
- (2) While some of the pro-integrationists, in particular leaders such as Governor Abilio Soares, Joao Tavares and Eurico Guterres, may have enthusiastically welcomed the formation of the militia, and its operational agenda, most of the minority who favoured staying with Indonesia would not have resorted to violence in pursuit of their preference.
- (3) Several of the senior TNI officers mentioned in this report not only sponsored the setting up of the militia, provided training, arms, money and in some cases drugs, they also encouraged its campaign of violence, and organised the wave of destruction and deportation which occurred between 5 and 20 September. I share with the authors of Indonesia's KPP HAM report the view that it is inconceivable that General Wiranto, then head of Indonesia's armed forces, was not aware of the massive operation mounted by subordinate generals. The magnitude of the operation and the resources needed to conduct it, would have required at least his condonement, for it to have been carried out.
- (4) The wave of violence led to very serious crimes against humanity. They include: killings, including mass murder, torture, abduction, sexual assault and assault against children, as well as mass deportation, and forced dislocation. The crimes against humanity also include the massive destruction of shelter, and of services essential to the upholding of the basic rights of the East Timorese to healthcare and education. In addition there was a massive theft of the property of the people of East Timor.
- (5) As the result of these crimes East Timor was left without an infrastructure, with its towns and villages in ruins. Its development was in effect set back more than a generation.
- (6) With the continued forced detention of those East Timorese in refugee camps in West Timor who wish to return to their homeland, one of the most serious crimes against humanity being considered in this report, is in fact still being perpetrated.
- (7) The failure so far of the Government of Indonesia to bring before a tribunal those responsible for the crimes committed in East Timor in 1999 is a matter of considerable disappointment. On the other hand, the efforts of those who compiled the KPP HAM report are to be congratulated for their commitment, their candor and their impartiality.

B.2. Recommendations.

- (1) Efforts should be stepped up to establish the guilt of those ultimately responsible, or with shared responsibility, for the crimes committed in 1999, and to commence action to have them brought to justice. Particular attention needs to be given to investigating the roles played by TNI commanders, with a view to laying charges against those responsible for the events of 1999. To meet these challenges, which carry sensitive political and diplomatic

implications, structural changes should be made to the sections presently dealing with these matters, namely the Office of the General Prosecutor and the Serious Crimes Investigation Unit.

- (2) The trials of those East Timorese militia at present in detention in Dili should be expedited. In judging their cases careful consideration needs to be given to the impact of the militia/TNI command structure on their actions, and to the factor of shared guilt.
- (3) In the event that no progress is made in Indonesia towards bringing to justice those responsible for the crimes committed in East Timor in 1999, immediate steps should be taken to negotiate the setting up of an international tribunal for this purpose.
- (4) The question of reparations, or some form of compensation, in relation to the massive destruction of shelter and buildings functioning for the well-being of the people, as well as the extensive and organised theft of property, should be placed prominently on the agenda, in relation to negotiations with the Government of Indonesia.
- (5) A solution to the position of East Timorese refugees in West Timor is a matter of considerable importance, since those detained against their will remain victims of a serious crime. Therefore, the efforts of UNTAET's Transitional Administrator and UNHCR to resolve this issue deserve stronger support from the international community.
- (6) While this report focuses on events in 1999, in the course of my enquiries persistent allegations of very serious crimes against humanity, involving mass murder, since East Timor was invaded in 1975 have been brought to my attention. I join with the KPP HAM report (recommendation 27) in calling for a thorough investigation of what transpired and of who was responsible. The most serious crimes, such as the Creras and Santa Cruz massacres, are crimes of such magnitude that they must be considered of concern to the international community as a whole.
- (7) Action in relation to these matters is important both to the fulfillment of UNTAET's mandate in East Timor, and to the development of an appropriately harmonious relationship between the new nation and Indonesia.

James Dunn, Dili

14 February 2001

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