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Promoting human rights, peace and democracy in Indonesia

Suharto dies without being brought to justice

The following statement was issued by TAPOL after the death of Suharto on 27 January 2008:

It is hard to exaggerate the damage inflicted on Indonesia by the former dictator Suharto, who died today, during the 33 years when he ruled the country with a rod of iron until his downfall in May 1998.

Suharto rose to power on a wave of massacres that killed up to one million people, one of the twentieth century's worst crimes against humanity for which no one has been brought to justice. Tens of thousands more were incarcerated and held for more than a decade without charge or trial. 13,000 men were banished to the remote island of Buru, out of reach of their families and subject to a harsh physical environment and unrelenting hard labour, which caused hundreds of deaths. Hundreds of women political prisoners were similarly detained in a remote prison camp in Central Java.

TAPOL founder Carmel Budiardjo, herself a political prisoner (tapol) for three years, said: "Millions of Indonesians will regret, as I do, the fact that Suharto was never called to account for the terrible crimes perpetrated during his despotic rule. None of the presidents who have held office since 1998 was willing to recognise that the rule of law can only have meaning if those who flout it are brought to justice. Few present or former heads of state the world over have had so much blood on their hands as Suharto."

Following the establishment of Suharto's New Order under which the Indonesian military established a system of pervasive control over the whole population, the initial target of the repression was the Indonesian Communist Party, the PKI, and its associated mass organisations. These organisations with a combined membership of around fifteen million people were banned without any means of redress, while their members and families were subject to discrimination in every sphere of life.

Once the PKI had been destroyed and hundreds of thousands of its members or sympathisers were either dead, behind bars or purged from the state apparatus, Suharto turned his attention to the other political parties and mass organisations, forcing them to merge and swear allegiance to the state ideology, Pancasila. Under Suharto's New Order regime, the vibrant political traditions that had characterised the country up until the imposition of Guided Democracy by his predecessor Sukarno in 1959, were destroyed. In furtherance of the repressive purposes of the military regime installed under Suharto's command, the population was stripped of all its

political rights, the rule of law ceased to function and gross human rights violations occurred without end.

After Suharto was forced to resign when mass demonstrations swept Indonesia in 1998 in response to the financial crisis engulfing the country, the political constraints on the population were lifted. But the damaging impact of military impunity and the lack of

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respect for the rule of law have continued to prevail, while associates of Suharto still exert an influence in many parts of the country's body-politic. There has been no attempt by post-Suharto governments with the single exception of the 20-month presidency of Abdurrahman Wahid, to remove many of the influences of the Suharto regime. Furthermore, a number of the discriminatory laws and regulations are still on the statute book such as Decree No 25 adopted by the MPRS, the Supreme Legislative Assembly, in 1966, which bans the teaching of Marxism-Leninism and which has made it difficult for parties suspected of harbouring communist teachings to obtain recognition and to operate without being harassed.

It was under Suharto that Indonesia compelled the people of West Papua by force of arms to become a part of the Republic of Indonesia, following the fraudulent Act of Free Choice in 1969. Since then, the West Papuan people have suffered from massive human rights abuses, helpless to halt the unbridled plunder of their natural resources. While the West Papuan people live in abject poverty, the Indonesian state has reaped huge benefits from revenues, royalties and taxes from foreign enterprises such as Freeport which was granted a concession by Suharto to extract copper and gold in 1967, and it will soon start profiting massively from British Petroleum, now renamed Beyond Petroleum, as it starts to exploit West Papua's natural gas.

It was under Suharto that Indonesia launched an act of aggression against the people of East Timor (now Timor-Leste) in 1975 and occupied the country for over 23 years. Up to 200,000, a third of the population, died from killings or from conflict-related causes. During the occupation, the country's administration and economy were run by the Indonesian military, 100,000 Timorese were displaced from their homes and re-settled in 'strategic villages' while thousands were incarcerated on Atauro island or in prison camps throughout the territory.

It was under Suharto that the province of Aceh was also subject to military operations for nearly thirty years during which time an estimated 15,000 people lost their lives as rampant human rights violations occurred. This situation continued until August 2005 when a peace agreement was signed between the Indonesian government and the resistance movement, GAM.

Although Suharto was forced to resign in 1998, he never faced charges for the many crimes against humanity that were perpetrated under his New Order regime. The billions of dollars that were plundered by Suharto and his family have still not been accounted for and returned to the state while the former dictator and his offspring continue to control many of the businesses and facilities which they acquired by virtue of the privileges they enjoyed during the New Order. A few months before his death, the World Bank and the UN's Stolen Assets Recovery initiative named Suharto as the worst head-of-state embezzler in the world.

Now that the man who caused so much suffering, bereavement and death in Indonesia and Timor-Leste has died, it is beholden upon all of us to keep alive the memory of his crimes and to support the efforts of people in Indonesia to seek justice and redress for the immense damage he inflicted politically and economically on their country.

TAPOL which was set up in 1973 to campaign for the



A promise by president Yudhoyono to bring Suharto to justice was left unfulfilled (Source: Kompas)

release of the tens of thousands of political prisoners then being held, will to continue to campaign for human rights, peace and democracy in Indonesia until the legacy of Suharto has been completely erased.

Komnas HAM to investigate 1965 killings

The National Human Rights Commission, Komnas HAM, announced in February that it would initiate a special investigation into the 1965-1966 killings, to be undertaken by an ad hoc team. The team would be given three months for the work, with the option to extend the period if necessary. The aim would be to establish whether gross human rights violations occurred. Such a finding would mean that formal proceedings could take place against those alleged to have been responsible. [Kompas, 28 February 2008]

The current Komnas HAM was set up in September last year. This decision was welcomed by human rights activists, among others Usman Hamid, coordinator of KontraS, the Commission for the Disappeared and Victims of Violence.

The decision to revisit the 1965-66 tragedy is seen as a departure from the attitude of previous Commissions. It suggests that the new Komnas HAM will devote more serious attention to the tragic events in the early months of the establishment of Suharto's New Order, when an extremely violent crackdown took place against the leftwing movement, in particular against the Indonesian Communist Party.

The Commission also announced that it would set up another ad hoc team to examine the so-called 'mysterious killings' of 1983 and 1984 when several thousand people were killed in an alleged anti-crime campaign. In his autobiography, the former president, Suharto publicly acknowledged that he had issued the order for these killings.

These cases will be among the priorities for the new Komnas HAM, which also announced that it was confronted with a huge backlog of cases, inherited from the previous Commission.

Indonesia's mass murderer and kleptocrat

As Indonesia's former dictator lay dying in January, the country's great-and-good gathered at his bedside to pay their respects to a man responsible for deaths and suffering that put him on a par with Pol Pot in Cambodia. While President Yudhoyono and former President Abdurrahman Wahid paid tribute to a former head of state, many Indonesians regretted that with his passing, ten years after his fall from power in May 1998, he would never face justice for the countless crimes against humanity perpetrated during his 33-year reign of terror in Indonesia and the death and destruction inflicted on East Timor during the 24-year occupation of that country.

Since being forced to resign by the financial crisis that engulfed Indonesia in 1998, Suharto lived as a recluse in Cendana, the luxurious family home in the Menteng district of Jakarta, basking in the wealth which he, his late wife and his offspring plundered during the years when the military held a tight grip on the country. He even escaped justice for the unparalleled corruption which resulted in his being named the worst head-of-state embezzler in modern times by the Stolen Assets Recovery Initiative, a joint venture of the World Bank and the United Nations Office of Drugs and Crime.

A life of service to the army

Born on 8 June 1921 to a family of peasants in the village of Kemusu Argamulya in Central Java and having nothing more than lower secondary school education, Suharto turned at an early age to the military as his vocation. His rise in the ranks of the Indonesian Army occurred at a time when the country was still under civilian rule, following Indonesia's first democratic election held in 1955.

Suharto's military career began during the Japanese occupation of Indonesia (1942-1945) when he became a battalion commander in PETA, Defenders of the Fatherland, a Japanese-trained militia. After the Japanese surrender in August 1945, he joined the Indonesian army then known as ABRI but now called Tentara Nasional Indonesia (TNI), on the day it was founded on 5 October 1945. In 1957, he became a district commander in the Diponegoro Division (Central Java) with the rank of colonel.

In parallel with his military career, he also engaged in financial activities to fund his subordinates and provide the wherewithal for a system of patronage, which secured him loyalty from cronies. In the mid-1950s, he was implicated in a sugar-beet smuggling scandal and other corrupt practices. This earned him a reprimand and removal in disgrace from his Diponegoro post followed by a course at the Army Staff and Command School in Bandung. But this did not stand in the way of his subsequent promotion to brigadier-general in January 1960.

After a stint as commander of the unsuccessful Operation Mandala in 1960, aimed at driving the Dutch from West Papua, he was promoted to major-general and appointed commander of the Diponegoro Division. At the

height of Indonesia's confrontation with the newly-formed state of Malaysia in 1963, Suharto was appointed commander of KOSTRAD, the army's elite command. This later enabled him to play a strategic role in the physical annihilation of the Indonesian Communist Party, which by the mid-1960s had become the third largest communist party in the world.

Campaign of terror against the PKI

The incident on 1 October, 1965 by a group of army officers, who kidnapped and murdered six army generals and a lower-ranking officer, as part of a conflict within the Indonesian army, provided Suharto with the pretext to unleash nationwide reprisals against the Indonesian Communist Party which he blamed for the incident. As the White Terror spread throughout Central and East Java and then to other parts of Indonesia, hundreds of thousands of communists and alleged communists were killed, many together with their families. An estimated 200,000 people were arrested and held for years without charge. By the mid-1970s, some 70,000 were still in detention, of whom 13,000 men had been banished to the remote island of Buru where they were subject to harsh conditions. Hundreds of women prisoners were sent to a prison camp in Central Java called Plantungan. The remoteness of these camps made family visits and food supplies extremely difficult. Hundreds died while in these camps as a result of maltreatment and torture; medical facilities were virtually non-existent.

No one has ever been held to account for the killings and atrocities that occurred during Suharto's New Order, which enabled him to rule Indonesia without opposition for more than thirty years. It was not until after the dictator's downfall that surviving victims were able to speak publicly about the ordeals which they and their families had suffered.

As the anti-communist purge got into full swing in late 1965, Suharto's leading role in the armed forces was formalised with his appointment by President Sukarno as commander of the army on 16 October 1965. Abusing the powers given to him by Sukarno, Suharto issued an order for all PKI members or suspects to be purged from state positions. His grip on the country became further entrenched with the special powers granted to him on 11 March 1966, known as Supersemar. The PKI was banned along with associated mass organisations estimated to

have a following of some 15 million people.

The removal of Sukarno

Suharto acted cautiously in his handling of the popular President Sukarno. He showed himself to be the master of Javanese-style slow-but-sure tactics, described by one biographer as a 'protracted Wayang play'. It was not until 12 March 1967 that a heavily purged legislative assembly stripped Sukarno of all his powers and installed Suharto as acting president. Although he had been in control of the country for three years, it was not until a year later, on 21 March 1968, that Suharto was formally elected to his first five-year term as president by a heavily purged Consultative Assembly, MPRS. He was re-elected unopposed on six subsequent occasions in 1973, 1978, 1983, 1988, 1993 and 1998. However, it was his election in 1998, a time when Indonesia was in deep financial crisis, that triggered his downfall as mass protests swept the country and demonstrators called for his dismissal, making his position untenable.

Under Suharto's New Order, violence became a regular feature, while the fear of being accused as communists de-politicised all activists as well as the population as a whole, in the interests of security and order. Organisations were set up for each section of the population, which were obliged to declare their allegiance to the government and its Pancasila ideology. There were many clampdowns such as the Tanjung Priok affair in West Java in September 1984 when dozens of Muslims demonstrating outside a mosque were shot dead by the security forces and incidents in Lampung, South Sumatra in 1987 and later on against plantation workers in North Sumatra.

Brutalities in Timor-Leste, Aceh and Papua

On the 7th of December 1975, Indonesia invaded East Timor (later named Timor-Leste) in the wake of Portugal's withdrawal from the territory. During the 24 years of occupation, military operations against a well-organised resistance movement resulted in tens of thousand of deaths. According to the East Timorese church, an estimated 60,000 Timorese died during the first two months of the invasion. A special commission set up by the UN in 2002, the Commission for Reception, Truth and Reconciliation in East Timor, concluded that 18,600 Timorese were murdered or disappeared during the Indonesian occupation and between 84,000 and 183,000 more died as a direct result of Indonesia's policies.

From 1976, the people of Aceh, the western-most province of Indonesia, experienced the brutality of unrestrained killings when the region was designated a 'military operations region' (Daerah Operasi Militer) after the establishment of GAM (Gerakan Aceh Merdeka) in 1976, which sought to create a separate state. While some of the victims were killed during military conflicts, the vast majority of those who were struck down were unarmed civilians.

In 1965, after Indonesia had taken control of West Papua from the Dutch in 1963, crack troops of the military were sent to the region to crush an independence movement known as the OPM (Organisasi Papua Merdeka, Free Papua Organisation). This resulted in the deaths of tens of thousands of people in the following

decades, especially after the so-called Act of Free Choice in August 1969 when just over one thousand Papuans were compelled to take part in the fraudulent Act, sealing the territory's fate as a province of Indonesia. Here too, the territory was designated a special military area or DOM, giving the military free rein to capture, kill or maim people deemed to be in favour of independence.

The 'mysterious' killings

In 1983, death squads took to the streets in a so-called anti-crime operation. For six months, the squads went on the rampage, killing alleged criminals or bandits. This resulted in the deaths of an estimated three thousand people. The killings occurred in a number of cities and came to be known as *petrus* or 'mysterious killings'. The precise number of victims was never established because the Indonesian media was prohibited from reporting the killings. In September 1983, the Far Eastern Economic Review reported that the killings were 'set to continue until the authorities have reached their countrywide target reliably put at 4,000 extra-judicial killings'.

Suharto took personal responsibility for these killings in his autobiography, *Suharto: Pikiran, Ucapan dan Tindakan Saya* (Suharto: My Thoughts, Sayings and Deeds) in which he wrote: 'The newspapers were full of articles about the mysterious deaths of a number of people.... There was nothing mysterious about it at all. Was it right to do nothing? It had to be treated by violence. But this did not mean just going out and shooting people, bang, bang. No. But those who tried to resist, like it or not, had to be shot. Because they resisted, they were shot.'

These killings were a reminder to the population that the authorities had the weaponry and determination to deal with anyone daring to challenge the government.

The Family Firm

During the 33 years of the New Order, the Suharto family made good use of the special privileges they enjoyed to pursue a wide range of business ventures. First to set the pattern was Suharto's wife, Tien (Siti Hartinah) Suharto who became known as Madame Ten Percent, thanks to her involvement in a wide range of business ventures. Together with the tycoon and Suharto crony, Liem Sioe Liong, for instance, she took control of PT Bogasari Mills which was granted a state monopoly for the import, milling and distribution of flour.

She also became chief patron and beneficiary of Taman Mini Indonesia (Indonesia in Miniature) Project, a high-profile project covering a large area of land on the outskirts of Jakarta, where the traditions and artefacts of all the provinces of the country were put on display. Set up in 1971 at a cost of \$25 million, officials said at the time that these funds could have been better used to fund 52 small businesses or seven large universities.

As the wife of the president, she chaired Dharma Wanita, a compulsory civil servants' wives' association, which organised the Family Welfare Movement, a cultural movement whose aim was to promote the ideology of Suharto's New Order throughout the country, reaching down to the villages. Dharma Wanita set the pattern for a corporate system under which each section of the

community was required to organise themselves in organisations owing allegiance to the state.

Tien Suharto died suddenly on 28 April 1996, reportedly from shock, after witnessing a bitter row between two of her sons.

The six children of Suharto and his wife all became involved in a wide variety of business ventures, benefiting from the many privileges which they enjoyed by virtue of being the sons and daughters of the president. According to *TIME-Asia* (24 May 1999), the six Suharto children owned between them significant equity in at least 564 companies, covering a range of commodities and businesses from oil and cloves (used in the popular kretek cigarettes) to land, toll roads, airlines, hotels, TV stations and real estate. Foremost among these offspring was Tommy (Hutomo Mandala Putra) Suharto, the youngest of the brood and Suharto's favourite son who, like his five siblings, benefited from the system of patronage set up by Suharto during his 33-year rule. Himself a keen sports-car racer, his many companies included the Lamborghini sports car company and a 75 percent stake in an 18-hole golf course and 22 luxury apartments in Ascot, Britain.

In 2000, Tommy, became the first (and as yet the only) member of the Suharto family to be tried and convicted in a court of law. He was given a 15-year sentence for ordering the murder of a Supreme Court judge who had found him guilty of a land scam and given him an 18-month jail sentence. But in 2005, in an unprecedented decision, he was released from jail after serving only one third of his sentence. These days, reports about the far-flung riches of Tommy Suharto and the cases against him pending in courts around the world are hardly ever off the front pages of Indonesian newspapers.

The case against TIME

In the final years of his life, Suharto was troubled by the persistent references to his greed and corruption. Perhaps thinking that he could clear his name by taking on one of the world's most prestigious news magazines, he decided to sue *TIME* for an article about his accumulated wealth. He sued the Asian edition of the magazine for defamation for an article it published in May 1999 titled 'Suharto Inc' which reported that he and his family had amassed a fortune of \$15 billion.

After two lower courts rejected the complaint, Indonesia's Supreme Court reversed the verdict and ordered the magazine, its editor and five staff members to pay Suharto the sum of \$111 million. The Indonesian lawyer who acted for *TIME*, Todung Mulya Lubis, described the verdict as an affront to the principle of press freedom. He said: 'The supporters of Suharto are still within the government, within the parliament, within the judiciary within the business of society. They may not be as strong as in the past but they are still there.' He described the judgment of the Supreme Court as 'a blow for democracy, for the freedom of the press'.

While this charade was underway, an agency set up by the World Bank and the UN, the StAR (Stolen Assets Recovery) initiative, put Suharto at the very top of their list of corrupt former heads of state for stealing between \$15 billion and \$35 billion during his 33-year rule. The figures



Suharto from his army days to his deathbed

(Source: Kompas)

were based on investigations carried out by Transparency International.

Crimes against humanity ignored

Suharto departed this world on 20 January without facing justice for his multiple crimes against humanity or for the extremely brutal campaign carried out by his troops in their attempt to crush the resistance movement in East Timor.

Although Suharto was responsible for so many well-documented crimes of humanity, his crimes never gained the world attention accorded to other brutal leaders such as Pinochet or Pol Pot. Even when the massacres of 1965-66 were in full swing, world media coverage was meagre. Scanning British media coverage of those events, after I returned home to London, I found barely a mention of what was going on, and most of the reports described the killings as the consequence of a 'civil war'.

Shortly after returning home in November 1971 following three years of political imprisonment, I happened to be sitting near a group of Amnesty International officials who were discussing a report about torture. I asked them whether they would include Indonesia in their investigations but they appeared to be unaware that torture was a problem in Indonesia. Comparing the press reports I saw about the massacres in Chile when Pinochet took power and reports about the 1965-66 killings, I was shocked by the lack of coverage devoted to Indonesia.

Suharto could count his blessings that, perhaps apart from The Netherlands where Indonesia, a former colony, was a familiar topic, he could, and did, get away with blue murder without much of the world even noticing.

Suharto and the rape of West Papua

Among the scores of articles that flooded the world's media after Suharto died in January, there was hardly a mention of his devastating role in West Papua. Yet, within weeks of his assumption of power, Indonesia was already negotiating with a US multinational corporation to exploit West Papua's most sought after natural resources, providing Indonesia with a major source of revenue while depriving the Papuan people of a say in the exploitation of their natural resources.

In April 1967, two years before the fraudulent Act of Free Choice which led to West Papua's formal incorporation into the Indonesian Republic, Suharto acting then not as president but as General Suharto, a member of the cabinet, signed the unique and highly favourable First Generation contract of work with the New-Orleans based Freeport-McMoran company, the text of which was written by the company. This granted the company a 30-year concession to mine copper in West Papua within a 250,000-acre concession, free from land rent or royalties.¹ President Sukarno who was under house arrest before being formally removed from power in 1967 had firmly rejected foreign investment and foreign aid and a law on foreign investment was still two years down the road.

During the closing decades of the Dutch colonisation of West Papua, the territory was used primarily as the destination for Indonesians who were banished for taking part in the anti-colonial struggle and there was little mention of the natural resources that were to bring such huge profits to Indonesia. However, as TAPOL wrote in 1983ⁱⁱ, important discoveries of oil and copper were made by multinational corporations in the 1920s and 1930s, and when Allied troops under General McArthur landed in West Papua in April 1944, a year ahead of the Allied assault that put an end to Japan's three-year occupation of Indonesia from 1942 to 1945, they brought with them geological teams to evaluate these discoveries and to conduct their own explorations. Besides the discovery of nickel and cobalt ore in the Cyclops Mountains, they confirmed the presence of a deposit of copper along the southern reaches of the Cartensz Range, later described as the world's largest outcrop of copper with a surprisingly high concentration of gold.

Sukarno forestalls Papuan independence

When sovereignty was formally transferred from The Netherlands to the Indonesian Republic in 1949, West Papua, then known as Netherlands New Guinea, was not included. This led to years of unsuccessful diplomatic lobbying by Indonesia at the United Nations and became a cause around which President Sukarno rallied the population with a slogan calling for the 'liberation' of West Papua and its 'return' to the fold of the Republic. Sukarno was in a hurry to assert Indonesia's claim to the territory, as a counterblast to Dutch efforts in support of West Papua's eventual independence by 1970. In 1961, a New Guinea Council had met and adopted a constitution consisting of 129 articles for the future state as well as a national flag, the Morning Star (Kejora), and a national anthem. The flag has since become a powerful symbol for the Papuan people of their separate identity and many Papuans have faced imprisonment or worse for the act of unfurling it.

The dispute between Indonesia and The Netherlands had raged on for years and came to a head with Sukarno's decision to mount an armed attack on the territory in 1962, thus placing the military in the forefront of the campaign. In early 1962, Suharto, who then held the rank of major-general, was given command of the Mandala campaign to capture West Papua from the Dutch. At the time, he was first deputy to the army chief of staff in charge of intelligence and also commander of the army's new Strategic Reserve force, which later became known as KOSTRAD. Suharto had gathered round him a clique of military officers who later became his close allies once he had gained power in late 1965. Among them was a commando officer, Benny Murdani, one of the soldiers parachuted into West Papua. Another was Ali Murtopo who was put in charge of testing the 'combat intelligence' unit attached to the Strategic Reserve. Murtopo later took charge of Opsus, the special operations unit notorious for political manipulations guided by Suharto after 1965.

During the early stages of the Mandala campaign, Indonesian troops carried out a series of small-scale air-drops from boats based in nearby islands but many became ensnared in the thick jungle or landed in swamps, unable to cope with the humid tropical atmosphere, while much of their equipment was damaged or lost. Although this was proclaimed as an act of liberation, the troops were not welcomed by the Papuans. Instead they were attacked, many were caught and handed over to the Dutch. According to figures available at the time, of the 1,419 troops who were dropped, 216 were killed or never found and 296 were captured. Mandala was a dismal failure both militarily and politically.

However, regardless of what the Papuans may have felt, their future status was to be decided by the competing interests of the Dutch, the USA and Indonesia.

At the heart of the contest was the knowledge, never publicly mentioned at the time, of the natural resources which existed in such great abundance in West Papua.

Initially, Washington sided with its Dutch NATO ally, but perhaps alarmed by the Dutch plan to grant West Papua's eventual independence, Washington switched sides. Washington was also concerned about Indonesia's ties with the Soviet Union with whom it was negotiating an arms deal. Under pressure from Washington, the Dutch government entered into negotiations with Sukarno brokered by the US. This led to the New York Agreement between The Netherlands and Indonesia and to the Indonesian takeover of West Papua after a six-month interregnum under a UN transitional executive authority, UNTEA.

Papuans were not represented in the negotiations regarding their future. With the departure of UNTEA in

1963, the Indonesian military took control and began a crackdown against Papuan resistance that led in 1965 to the creation of the OPM, the Free Papua Movement.

In 1969, the fraudulent Act of Free Choice resulted in West Papua's formal incorporation into the Indonesian Republic. Although the New York Agreement stated that the Act should take place 'in accordance with international practice', what happened was that 1,022 hand-picked Papuans, under intense pressure from the Indonesian military, voted unanimously to become part of Indonesia.

Freeport's entry into West Papua

Within two months of the 1965 coup that brought Suharto to power, the geologist Forbes Wilson, who had been involved years earlier in the geological investigations in West Papua, received a call from Freeport's CEO saying he had been privately approached by two oil executives and told that negotiations would immediately begin about mining Erstberg, the first copper outcrop. The Washington government supported Freeport's association with the new regime by guaranteeing a \$60 million loan to the company that enabled it to proceed with the extremely expensive initial stages of the project. The Erstberg mine was officially opened by Suharto in March 1973, on which occasion he announced that the territory would be called Irian Jaya. (Many years later, President Abdurrahman Wahid reversed this decision and named it Papua.)

Freeport needed to build the infrastructure for the copper and gold mine in Tembagapura at an elevation of 4,500 metres through what the company called 'inhospitable country', 68 miles from the coast. This meant installing a pipeline to carry the copper slurry down to the coast. Construction took five years to complete before production could begin and was described at the time as a 'stupendous engineering' feat. For Papuans living in the vicinity, the project violated and destroyed their mountain, which they regarded as their 'spiritual mother'. Their ancestral ties with the land were simply ignored and they were evicted from their homes, to be resettled in coastal hamlets, without a thought about the impact of the new environment, away from the cool, clear air around their mountain homes to the hot, malaria-infested coastal plain.

The leading Indonesian weekly *Tempo* wrote: It is logical for these mountain people not to feel at home. Besides the climate, the houses built for them by the local government are quite unsuitable. They are very basic, just bare huts with a roof and an earthen floor. In their native villages, these people had houses with wooden floors. 'We feel ill. We can't sleep,' said one woman living in one of these huts, pointing to the earthen floors on which they have to sleep.ⁱⁱⁱ

A Jayapura-based newspaper reported that an epidemic swept through their kampungs, killing 216 children, more than 20 percent of the infant population. A doctor complained of the lack of funds for medicines to fight the epidemic, only a stone's throw from Freeport which was by then already worth \$150 million a year.^{iv}

During its twenty-year life-span, Erstberg produced thirty-two million tonnes of copper, silver and gold and generated an annual income for the company of around

\$300 million.

Grasberg, a bottomless pit

But the Erstberg find was overshadowed by the discovery of Grasberg. This resulted in Freeport signing two new Contracts of Work with Jakarta in 1991 and 1994, gaining exploration rights to approximately nine million acres and the right to mine further discoveries in the area for another fifty years. By the end of the decade, Grasberg was annually producing more than double the ore recovered from Erstberg during its life. Grasberg is famed for having the world's largest deposit of gold, far in excess of the output of South Africa's largest mine. It holds the world's third largest open-pit copper reserves and at extraction rates of 10 cents per pound is the lowest-cost copper producer in the world. According to Denise Leith, 'Estimates of Grasberg's worth continue to increase so that despite all predictions the final worth of the mine is impossible to predict; it is classified as 'open at depth', which is a euphemism for a bottomless pit.'^v

Further exploration of more than six thousand sites had by 2001 identified about seventy potential mining sites with drilling commencing on about ten of these. Freeport's owner, Jim-Bob Moffett, a loud-mouthed tycoon from New Orleans, believes that the region will eventually produce other Grasbergs, eclipsing the riches of Panguna, Ok Tedi, Lihir and Porgera in Papua New Guinea.^{vi}

In May 1995, the British mining giant, Rio Tinto, became involved in Grasberg at a time when Freeport, with expenditures mounting, was forced to look for an experienced and well-capitalised partner. The contract with Rio Tinto gave it an interest of about 14 percent for an initial payment of \$1.7 billion. About half of this amount was in the form of a loan to be spent on future exploration and development in Freeport regarding contracts of work in West Papua. Under the deal, Rio Tinto's interest was limited to the Grasberg operation, entitling it to 40 percent of discoveries and expansions proven after December 1994 together with any output at Grasberg above 118,000 tonnes per day.

In 2004, Rio Tinto sold its shares in Grasberg for \$883 million while retaining its 40 percent joint venture interest in reserves as a consequence of expansions and developments at the Grasberg mine since 1998.

The Suharto-Moffett duo

Moffett's ties with Suharto and his inner circle are known to have been very close. Between 1991 and 1997, the company made at least \$673 million of loan guarantees to three Indonesians closely tied to Suharto. Suharto allies, including at least one cabinet minister, bought assets from the company such as housing and a hotel near the mine. Freeport not only helped to finance the deals but also guaranteed the buyers sizable annual profits. The company also agreed to subsidise interest payments for a Suharto family business partner, enabling him to purchase 4.7% of Freeport's Indonesian unit.

According to the New York Times, 'For years, to secure Freeport's domain, James R Moffett... the company's chairman, assiduously courted Indonesia's long-term dictator, President Suharto, and his cronies, having Freeport pay for their vacations and some of their

children's college education, and cutting them in on deals that made them rich, current and former employees said.^{vii}

In 1997, when Freeport wanted to more than double its Grasberg output, Moffett took the case directly to Suharto who scrawled his approval of the controversial expansion in the margins of Moffett's personal letter to him. But this was just one year before Suharto's fall from power. In an article published by the Wall Street Journal four months after the dictator's downfall, it was stated that in the mid-1990s, Moffett, through building a personal relation with one of Suharto's closest confidants, Bob Hassan, began spending time with the first family. He golfed with the president and became close friends with his second daughter, Siti Hedianti.

Shares in Freeport that were in the hands of the Bakrie family, not a close ally of the President, were liquidated on the orders of Suharto and were bought by PT Nusamba Mineral Industri, the parent company of which, Nusamba, was widely known to be controlled by the Suharto family. According to Bob Hasan, Nusamba was 80% owned by three Suharto-chaired foundations, 10% owned by his eldest son and 10% owned by Bob Hasan. (Suharto had set up a number of foundations or *yayasan* during his New Order, ostensibly for charitable purposes but which became the means by which he and his family gained control of a large number of businesses.)^{viii} One Freeport official described Bob Hasan as being 'part and parcel of the Suharto family'.

Resistance to Freeport

In 1977, attention was drawn to grave human rights problems around the Freeport mine when Amnesty International reported that the military who were guarding the project were using steel containers obtained from the Freeport mine as cells to incarcerate Papuans for long periods. These arrests followed in the wake of tension that erupted when local people cut the pipeline. The incident was documented by a church publication, *Berita Oeikumene* in April 1980.

'...the background to the conflict around Tembagapura ... is that the local inhabitants felt disadvantage by the presence of a foreign mining company whilst their complaints do not receive proper response, either from the company or from the government... The underground movement against the American company burst open at 6am on 18 June 1977... by attacking a police post... then blocking the Ilaga airstrip near Tembagapura with tree stakes. When the army launched a counter attack, they withdrew to the forest.... A pipe transporting copper slurry mixed with gold from the mine at a height of 11.5 thousand feet down to the Timika harbour on the Arafura Sea was blown up by guerrilla forces. A bridge was also blown up and some Freeport oil storage tanks were destroyed by fire. Over a period of several months, Freeport was sustaining losses of several million dollars a day.'

However, the Amungme people were to suffer greatly... 'At the end of August, two OV-10 Bronco bombers rained the region of Akimuga with bullets. Those who survived fled to the forests.... These counter-guerrilla attacks were not confined to air attacks; ground attacks went on for several months as well as arrests and

detentions.'

According to an Australian journalist, Denis Reinhardt,^{ix} 'Three Irianese villages associated with the mine, the shanty town at Tembagapura, and encampments at Waa, five kilometres from Tembagapura, and at Timika are reported to have been levelled by Indonesian troops in the days following the sabotage. One European who recently returned from the area alleges that Indonesian troops mortared Waa village for two days before moving in and burning the remnants.'^x

Another wave of protest against Freeport erupted in February 2006 when about four hundred local miners barricaded the road to the mine, protesting against their forced removal from the area because they had been sifting through the waste pumped from the Grasberg mine. Two days earlier, police and company security guards had approached a group of gold panners and told them to leave the area. One newspaper wrote: 'Many locals earn their living through retrieving and selling tiny amounts of copper and gold from tailings, or waste rock, dumped by the mine. The Freeport mine... has long had an uneasy relationship with locals, many of whom are poor.'

These activities led to the closure of the mine for two days. Meanwhile, reports which referred to the local miners as 'illegal' were angrily refuted.

The incidents in the vicinity of the mine led to a series of demonstrations in Jakarta in front of the head office of Freeport. The protesters said that the mining operations had not brought any benefits to local residents during its 40 years of operations. One of the protesters said: 'Freeport has to be closed because the environment has been damaged and many locals were massacred just because of its presence in Papua.'^{xi} This allegation goes back to the findings of two researchers. An Australian anthropologist, Chris Ballard who worked for Freeport, and Abigail Abrash, an American human rights campaigner, estimated that 160 people had been killed by the military between 1975 and 1997 in the mine area and its surroundings.^{xii}

Damning evidence about human rights abuses committed in the vicinity of Freeport was made public by Bishop Munninghoff in Jayapura in a 28-page report in August 1995. One of the many shocking incidents was an attack by Indonesian troops who opened fire on a group of villagers gathered together for an act of worship. Eleven people were shot dead, including four children. The villagers had spent several months in the forest, seeking refuge from the fighting between local guerrillas and the Indonesian army. As they gathered in Hoesa, trying to decide whether to remain in the forest or return to their village, they were discovered by a unit of soldiers on a mission to hunt down members of the OPM. The troops opened fire without warning and with horrifying consequences.^{xiii}

No action against environmental damage

It was not until 2000 that anyone in government in Jakarta criticised Freeport for the tremendous environmental damage it caused. The Environment Minister in the government of Abdurrahman Wahid, Sonny Keraf announced that the government was planning to revoke a permit allowing the company to dump tailings into rivers

near the mine. He accused the company of causing far too much pollution, 'which in turn had made life difficult for natives living nearby the mining areas'. A press report pointed out that the company processes 200,000 tonnes of ore every day, of which only about 3.5% yields copper and gold. The remaining crushed waste ore known as tailings form grey muck which is discarded in the Aghawagon-Otomona-Ajkya river system. More than 210,000 tons of tailings are deposited downstream as fine sand every day. 'Tailings have inflicted massive damage to forests located south of the mine, with some literally buried under the crushed waste ore.'^{xiv}

Environmentalists were not convinced that the minister's get-tough message would have any impact and they were right. The same press report said: 'Due to pressure on the government, no serious action was taken against Freeport, not even when it was revealed that 13,300 hectares of forest-land had been laid waste by the tailings.'

In 2006, WALHI, Indonesia's leading environmental watchdog, issued a report about Freeport which said that the company, along with its joint venture partner, Rio Tinto, had failed to comply with government orders to amend its dangerous waste management practices despite years of official findings that it was in breach of environmental regulations. The organisation said: 'The law is not enforced by the Ministry of Environment due to the joint venture's pervasive financial and political influence, to the degree that a Freeport-Rio Tinto proposal for circumventing water quality standards seems to be under consideration.' WALHI said the company had been polluting the river system and the estuarine environment in breach of regulatory water quality standards and that it was discharging acid rock drainage without a hazardous waste licence at levels breaching industrial effluent standards and has failed to establish mandatory monitoring points.^{xv}

Wealth and poverty, cheek by jowl

For nearly forty years, the operations of Freeport have provided the Indonesian state with substantial earnings in the form of royalties, dividends and taxes, becoming by far the country's largest taxpayer.

According to a statement by the company earlier this year, Freeport paid a total of \$1.8 billion (Rp 17 trillion) to the Indonesian government in 2007, including corporate income tax, employee income tax, regional tax and other taxes totalling \$1.4 billion, royalties of \$164 million and dividends worth \$216 million. This was higher than in 2006 when the figure was \$1.6 billion. These figures show a hefty increase from its payments to Jakarta in the previous five years when the total was \$6.9 billion.^{xvi}

Freeport chairman, Jim-Bob Moffett and the company's chief executive officer, Richard Adkherson, have pocketed huge earnings. According to a federal regulatory filing in June last year, Moffett's earnings totalled \$32.8 million in 2006, including \$2.6 million in salary, and \$27,400,000 in cash incentive payments. He also received \$234,864 in above-market or preferential earnings on deferred compensation and \$2,331,292 in perquisites and other compensation, including contributions to his retirement plans, \$278,644 in personal use of company aircraft, and \$92,532 in

insurance premiums.

The chief executive had to make do with a bit less, earning a salary of \$1.25 million, \$3,532,000 in cash incentives and stock awards with an estimated value of \$18,048,000, plus more than \$2 million in deferred compensation and contributions to his retirement plans.

As for Papuans whose resources these men have plundered for so many years, the vast majority are poor by any standards and still worse, they are becoming marginalized in their homeland with the arrival of hundreds of thousands of migrants from other parts of Indonesia. Poverty is the fate even of Papuans living in the vicinity of Freeport. According to the Mimika Statistics Agency, more than half the population in the regency, which is where Freeport is located, live below the poverty line. As many as 28,000 of the 45,000 families are poor and lack access to health care. Many of the houses in Timika as well as in Kwamki Lama villages, Karaka Island and Asmat village in East Mimika district are unsuitable for habitation. 'Mimika is one of the biggest mining areas in the world but its people are still categorised as poor.'

According to research carried out in 2002, health service care in Papua 'is below acceptable standards'. The investigation concluded that 36.1% of Papuans had no access to health facilities while 61.6% had no access to clean water. The percentage of undernourished children under five was 28.3%.^{xvii}

Following the political demise of Suharto, there were calls for the contract with Freeport to be renegotiated but these have led nowhere. One government minister said that pressure on Freeport might damage Indonesia's reputation in the eyes of other potential foreign investors.

Suharto's generous giveaway to a far-away US mining company was nothing less than the rape of Papua, assets stolen from the people of Papua that left them destitute and deprived them of the right to determine how, by whom or indeed whether their natural resources should be exploited.

ⁱ Denise Leith, *The Politics of Power: Freeport in Suharto's Indonesia*, 2003, p 60

ⁱⁱ West Papua: *The Obliteration of a People*, 1983.

ⁱⁱⁱ *Tempo*, 13 September, 1980.

^{iv} *Tifa Irian*, June 1980.

^v *Op.cit.*, note 1, p 63

^{vi} *Op.cit.*, note 1, page 69.

^{vii} *New York Times*, 'Below a Mountain of Wealth, A River of Waste', 29 December, 2005

^{viii} *Wall Street Journal*, 29 September 1998.

^{ix} *Nation Review*, 15-21 September 1977.

^x *Op. cit.* note 2.

^{xi} *Jakarta Post*, 23 February and 1 March 2006

^{xii} *New York Times*, 27 December 2005.

^{xiii} Quoted in *TAPOL Bulletin* No 131, October 1995.

^{xiv} *Indonesian Observer*, 'Environmental minister blasts Freeport', 17 June 2000.

^{xv} WALHI Report on Freeport-Rio Tinto, May 2006.

^{xvi} Antara News Agency, 6 February 2008

^{xvii} *Economic, Social and Cultural Rights in West-Papua*, published by The Evangelical Church in the Rhineland, 2005.

'A climate of fear'

'A climate of fear undeniably prevails in West Papua...' says the Special Representative of UN Secretary-General on Human Rights Defenders, Hina Jilani, in her report to the UN Human Rights Council, published in January. The situation of human rights defenders has not eased despite the adoption of the Special Autonomy Law in 2001, she concludes. As if to underline the gravity of the situation, a number of human rights defenders whom she met were specifically targeted during and after the end of her June 2007 mission.

The Special Representative's concerns were previously highlighted in a statement issued following her visit.ⁱ The full report provides further details of the disturbing situation she encountered.

Incidents involving arbitrary detention, torture, and harassment through surveillance were reported. She expresses particular concern about allegations that when defenders expose abuse of authority or other forms of human rights violations committed by the security apparatus, they are labeled as separatists in order to undermine their credibility. This places them at greater risk and must be discouraged by the authorities, says the Special Representative.

Defenders 'working for the preservation of the environment and the right over land and natural resources (deforestation and illegal logging) frequently receive threats from private actors with powerful economic interests but are granted no protection by the police'. The Special Representative reminds the Government that it has a responsibility to protect its citizens against the harmful activities of non-State actors.

This climate of fear has reportedly worsened since the Abepura incident in March 2006, when five members of the security forces were killed after clashes with protesters demanding the closure of the Freeport mine, she says. Lawyers and human rights defenders involved with the trial received death threats. The harassment of these lawyers and defenders around the trial was interpreted as a warning to the community of human rights defenders, who have decreased their activities out of fear of harsh treatment.

Tight restrictions on freedom to monitor and investigate violations

Interference with freedom of movement and with defenders' efforts to monitor and investigate human rights violations was also reported. The Special Representative says that she was perturbed to hear the National Commission on Human Rights, Komnas HAM, is prevented by law enforcement authorities from carrying out its official duties. She was particularly disconcerted by reports that Albert Rumbekwan, Director of Komnas HAM in West Papua, was intimidated and threatened on several occasions by the police and unidentified persons in the course of his fact-finding activities. At one point his team were warned that if they continued with an investigation they would be killed.

The Special Representative was 'disturbed by reports that international human rights monitors and journalists entering West Papua are subject to tight restrictions and only a few are permitted to operate, resulting in a scarcity of information on the human rights situation in West

Papua, mostly with regard to allegations of human rights abuses occurring in remote areas. Despite guarantees given by Jakarta to allow visits to West Papua, local authorities often deny access.'

Defenders threatened and intimidated

The Special Representative draws attention to several cases of human rights defenders being threatened and intimidated during and after her visit. They included Federika Korain, Rev Perinus Koyoga, and Barthol Yomen of the Justice and Peace Commission of the Catholic Diocese of Jayapura (SKP Jayapura) whose vehicle was hit by a car driven by intelligence officers, Yan Christian Warinussy, Director of the Manokwari-based NGO, LP3BH, who the day after meeting the Special Representative and subsequently was subjected to surveillance from a vehicle used by intelligence agents and received threatening text messages linking his human rights work to the separatist movement, and Albert Rumbekwan, who received death threats on his mobile phone.ⁱⁱ

The case of Albert Rumbekwan was the most worrying, says the Special Representative. He was told: 'You who are reporting about the human rights situation in Papua are trying to destroy the people. You want evidence of people being killed, I will kill your tribe, your family and your children will become only bones to show that there is only a zone of peace in Papua'.

Despite Government assurances that Mr Rumbekwan was given police protection, the Special Representative

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Special Representative of UN Secretary General on Human Rights Defenders Hina Jilani

Congressman's visit highlights problems of access

A visit to West Papua in late November by US Congressman, Eni Faleomavaega, ended in a debacle when his time for meetings was reduced from five days to two hours and he was prevented from visiting the capital of Papua province, Jayapura. The curtailment of the visit and the restrictions on Faleomavaega's movements were imposed by the Indonesian military, TNI, citing security concerns and disregarding commitments made by the Indonesian Government. The events provide a stark reminder of the TNI's oppressive presence in West Papua and its ability to control access to, and movement within, the territory.

Eni Faleomavaega is the Representative to the US Congress of the Pacific-Island territory of American Samoa. He is a member of the House Committee on Foreign Affairs and a prominent supporter of self-determination for West Papua.

His visit was timed to coincide with the UN Climate Change Conference in Bali in December and followed the Government's refusal to allow a visit in July 2007 [see TAPOL Bulletin, No. 187, p. 8]. It was the Congressman's understanding that he would visit the towns of Biak and Manokwari and, most importantly, Jayapura.

In a letter to President Yudhoyono dated 13 December, he said:

'I was deeply disappointed that upon my arrival I was again denied entry into Jayapura and that my time was reduced from 5 days to only two hours of actual meetings with the leaders and people of Biak and Manokwari due to supposedly security concerns.'

'Such a decision...begs the question if all is well throughout the provinces of Papua and West Papua, why is security a problem at all?'

Overpowering military presence

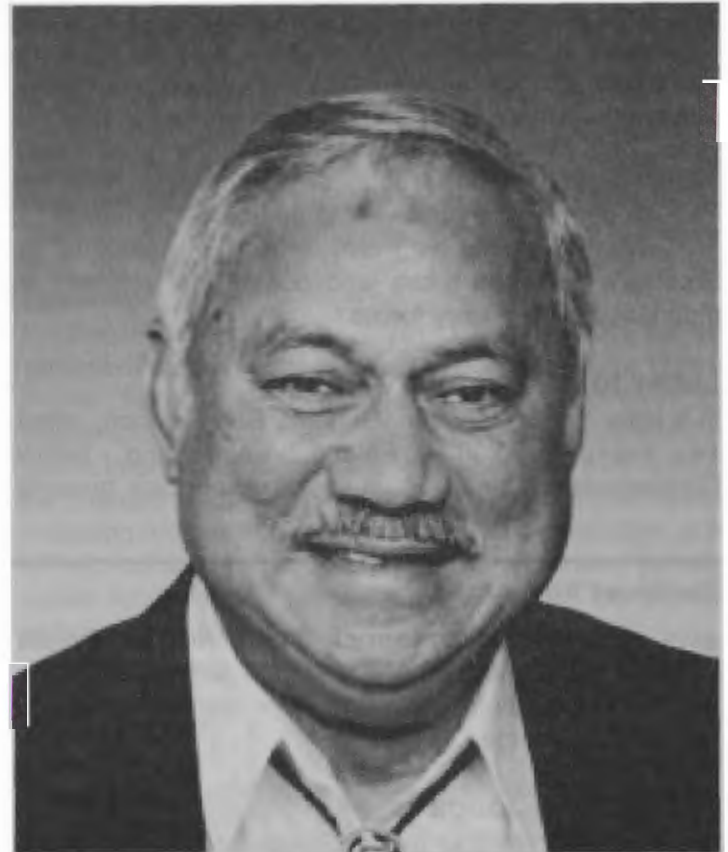
He described how, during a meeting in Biak, the highly respected tribal chief, Tom Beanal, was detained by the military. Papuans who had gathered in the streets in Biak 'were denied the opportunity to meet with us, and US Ambassador Cameron Hume and I had to force our way through a military barricade just to meet with the Papuan people who had to walk several miles from the airport and wait in the hot sun because Indonesian military forces (TNI) barred them from meeting with Ambassador Hume and me.'

'I was deeply disturbed by the overpowering military presence, which I felt was completely unnecessary,' Faleomavaega said.

It was even worse in Manokwari, he recalled. He was told that he would meet the Governor of West Papua province only to learn on his arrival that the Governor was in China.

'Nonetheless, Ambassador Hume and I were put in a car, without any escort and with only a single traffic police unit in front. While we do not require special privileges, we were very aware that our delegation was not given the necessary escort because the TNI was intent on deceiving the Papuans who had gathered on the streets waiting for us.'

'Arriving at the office of the Governor who was in



Congressman Eni F.H. Faleomavaega

China, and after meeting for less than 10 minutes with the Vice Governor, I was told that due to weather and security concerns, I would need to depart immediately. In no uncertain terms, I was told by the TNI military leaders that Ambassador Hume and I were not welcome in Manokwari.'

Faleomavaega and Ambassador Hume were driven back to the airport without official escort or accompaniment, meaning they were placed in unfavourable circumstances.

'While I felt no danger whatsoever from the Papuans who were unarmed and only wanted to meet with us, I was very uncomfortable that the TNI military was so bent on not allowing even a conversation to take place.'

'It was my hope and understanding that I would be able to meet with the people and leaders of both provinces but, when I saw how heavily armed that the TNI military was, I knew that the military had no intention of honoring the commitment that President SBY and I had made in Jakarta in July of this year.'

Papuans intimidated, harassed and abused

Referring to his promise to support President Yudhoyono in his efforts to implement special autonomy, Faleomavaega said:

'...as long as the TNI military forces of Indonesia continue to deny Members of Congress real access to the provinces of Papua and West Papua, especially Jayapura, it will be difficult for me to support the goals of Special Autonomy when clearly the Papuans in these two provinces are still being intimidated, harassed and abused by the TNI.'

'Likewise, I do not consider two hours in Biak and 10 minutes in Manokwari as access. Until I am allowed to visit Jayapura, as I have been promised, and until I am allowed to meet with the people of Papua, as President SBY and I agreed, I cannot in good conscience inform my colleagues in Congress that progress is being made to implement the Special Autonomy Law which has mostly remained dormant since 2001 and, since for the past 60 years, until President SBY's leadership, the government of Indonesia has done absolutely nothing to help the Papuan people who only want to be treated humanely.'

'...whether or not we move forward is entirely up to President SBY and those who control the activities of Indonesia's TNI military forces.'

Letter to UN Secretary-General

In a letter to UN Secretary-General, Ban Ki-Moon, dated 14 February 2008, Faleomavaega and fellow Congressman, Donald Payne, expressed their growing

concern about human rights violations and 'the tight restrictions placed upon journalists, human rights activists and diplomats trying to obtain access to West Papua'.

'As you know, nongovernmental organizations, the media and foreign officials can act as witnesses to and bulwarks against human rights abuses as well as agents of change. So, the failure of these individuals to gain unobstructed access to the country hinders Papuans' stories of human rights abuse, quashing of civil liberties and inability to express their right to self-determination from coming to the fore,' they said.

The two Congressmen called upon the UN Security Council to 'address the security concerns posed by human rights abuse in West Papua' and to appoint a senior official to pursue senior-level dialogue between the Indonesian Government and Papuan leaders to be mediated by a Security Council representative.

The concerns about unreasonable restrictions on international access were repeated by the two Congressmen in a letter to President Yudhoyono dated 10 March 2008. The letter also drew attention to the failure of special autonomy and the misuse of force by the military epitomised by Faleomavaega's experiences during his visit.

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says she 'remains concerned at reports that threats against Mr. Rumbekwan and his family persist, indicating that the measures taken by the police are ineffective and should be reinforced'.

Father John Jonga

A case not referred to by the Special Representative is that of Catholic priest, John Jonga, who has been living in the sub-district of Waris, district of Arso, on the border with PNG, for seven years. The Jakarta daily, Suara Pembaruan, reported on 20 September 2007 that he made a formal complaint to the MRP, the Papuan People's Assembly, that he had been subjected to threats and intimidation since August 2006.

'I described what happened to me and to the people of Waris.' He said he had sought protection from the local police because of the threats and intimidation he has experienced from the military. The threats began 'when I described the security situation in Waris where there is an army post located in every kampung' He had submitted a report (on the situation) to the Indonesian government in 2004 but there was no response.

During the seven years he has been in Waris, he has had many very bad experiences, he said, but following the arrival of Kopassus (the army's special forces command) the situation got even worse. 'They frequently ask very intimidating questions such as 'who is hiding guns?' or 'who is a member of the OPM?' or 'do you possess a Morning Star flag?'

The chief of police of the district admitted that the number of complaints had increased following the Special Representative's visit. He told Pastor Jonga there was little that the police could do and advised him to convey his concerns to the military commander of West Papua.

On 24 September, Amnesty International expressed fears for Father Jonga's safety, and said that 'he had been advised not to return to Waris for the time being'. The Kopassus commander had allegedly threatened to kill the priest and bury him in a 700-metre deep gorge. They accused him of spreading false allegations about conditions in Waris to local and international NGOs and of being a provocateur and betraying the Indonesian state.

Adverse political conditions to blame

In her conclusions, the Special Representative says she remains concerned about the situation of human rights defenders in West Papua and 'believes that their ability to defend human rights is adversely affected by the political conditions generated by the increased military presence in the province. The non-implementation of the Special Autonomy Law has heightened tensions that result in protest against repressive policies and targeting of human rights defenders who raise such issues.'

ⁱ See TAPOL Bulletin No 187, p. 12.

ⁱⁱ See TAPOL Bulletin, No 187, p. 13.

Papuans protest flag-flying ban

There have been a number of serious incidents in West Papua in the past few months. A ban on flying the Morning Star flag was reinforced by a presidential decree late last year as 1 December, the day regarded by Papuans as their national day, approached. More than a dozen Papuans were arrested in March this year following demonstrations in Manokwari. A Papua-based lawyer was arrested and is now on trial for forwarding an SMS message about possible dangers confronting Papuans.

The 1st of December is celebrated every year by Papuans at home and abroad. It marks the day in 1961 when Papuan representatives agreed a Constitution for a future independent state and adopted a national flag, the Morning Star flag, *Kejora*, and a national anthem for the first time. Their homeland was still a Dutch colony at the time and the Dutch authorities had indicated their support for Papua to become an independent state. Celebrations of the historic day always consist of unfurling the *Kejora*, as well as holding communal prayers and rallies in favour of peace and dialogue.

Raising the Papuan flag was a serious offence under Suharto. Of the four succeeding presidents, it was only Abdurrahman Wahid who adopted a more conciliatory approach and announced that the flag could be flown on condition that the Indonesian national flag was alongside. However, his successor, Megawati Sukarnoputri reversed this decision, declaring that flying the flag was illegal. This policy has continued to the present day.

On 1 December 2004, two Papuans defied the ban and have paid for their defiance with very heavy sentences. Filep Karma and Yusak Pakage were tried for the action five months later. Yusak Pakage was sentenced to ten years while Filep Karma was sentenced to fifteen years. Both men are still serving their sentences. [See TAPOL Bulletin, No 179, July 2005]

While these two men are serving heavy sentences for engaging in a peaceful action, security force officers continue to enjoy impunity for a host of crimes perpetrated over the years in West Papua.

More acts of defiance in 2007

Last year, the government of Susilo Bambang Yudhoyono reiterated the ban on flying the flag. The promulgation of Presidential Decree 77/2007 banning the use of unofficial local symbols has sparked a series of protest demonstrations and demands for a referendum on the territory's future.

A report from Front Pepera, the United Front of Struggle of the People of West Papua, announced on 1 December last year that the Morning Star flag was held aloft in Timika for two hours in the morning until a unit of Brimob police turned up and pulled it down. Fifteen people involved in the ceremony were arrested. The flag was raised in other places too. In Mimika a large crowd of people hoisted the flag at dawn on 1 December but within minutes, the police arrived and pulled the flag down; six people were arrested.

It remains to be seen whether those who were arrested on these occasions will go on trial and, if so, whether they too will be given harsh sentences.

Focus now on protesting against PP 77/2007

In a departure from normal practice, the latest demonstrations have been devoted to protesting against the presidential decree. Those participating have been enjoined not to fly the flag.

Two demonstrations were held in Manokwari in March this year for the specific purpose of protesting against presidential decree 77/2007. Taking the lead was an organisation called the West Papua National Assembly. Although some of those at the demonstration raised the flag, the organisers made a point of stressing that it should not have been unfurled. They stressed moreover that the demonstrations had been held with police permission.

Two Papuans who have taken responsibility for the protest demonstrations are now in police custody. One is Frans Kareth, an economist, arrested following a demonstration on 3 March and immediately subjected to police interrogation. He was informed that he was likely to be charged under several articles of the Criminal Code, including Articles 106, 107 and 110 which criminalise acts of separatism and subversion. The maximum penalty under Article 106 is life while the maximum penalty for subversion is fifteen years.



Protestors raise the Morning Star outside the Indonesian Embassy in Canberra

The other person arrested and now likely to face serious charges is Jack Wanggai. His arrest occurred following the second demonstration on 13 March. One of the organisers of this demonstration, Daviid Rumbiak of the Manokwari Law School, said that introducing PP77 would not help solve the problems in West Papua. Several leaders of the student council of the Law School involved in organising the demonstration said that it had not been held to unfurl the *Kejora* flag and they regretted



Sabar Iwanggin, on trial for sending a text message

that some of those present had done so. Nevertheless, they said that they would take responsibility for what had happened. All those demonstrators who had raised flag were immediately arrested, including a youngster aged 15 years.

One of the demands made during this second demonstration was for the Papuan People's Assembly, the MRP, to be disbanded, on the grounds that it had proven ineffective. The demonstrators also complained bitterly about the government's failure to implement Law No 21, 2001 on Special Autonomy for Papua. In both demonstrations, there were calls for a referendum.

When Jack Wanggai turned up at the second demonstration, he said he had already received two summonses from the police. He delivered a speech and then handed himself over to the police. His lawyer, Yan Christian Warinussy, said the police should be aware that the international community is watching what is happening in West Papua.

Lawyer on trial for sending SMS

A human rights lawyer based in Papua is now on trial for sending an SMS message to several friends and his brother. Iwanggin Sabar Olif, 43 years old, a volunteer lawyer with the human rights NGO, ELSHAM in Jayapura, was arrested on 18 October last year by troops of DENSUS 88, the Special Anti-Terror Detachment, and the Indonesian police. His arrest provoked many complaints from human rights groups.

The message he sent was as follows: 'The latest news is to beware (of the fact) that SBY (a term widely used for the Indonesian President) has issued an instruction to annihilate the Papuan people and to take control of their natural resources. The annihilation will happen by poisoning food, hiring doctors, taking over food stalls, hiring ojek (a means of transportation), using chauffeurs and ABRI. Circulate this before it's too late. Maya IPDN BNDUNG.'

The human rights organisation, ELSHAM said on 24 October that the lawyer had received the message from someone by the name of Marto Yowey and had forwarded it to five colleagues and his brother to urge them to take care and protect their families because the issue of

poisoning was becoming more widespread in Papua. (For several weeks late last year, there were alarming reports of Papuans falling ill and vomiting, and even dying from drinking an allegedly toxic alcoholic beverage.)

ELSHAM, acting on behalf of Iwanggin's legal counsel, questioned the involvement of DENSUS 88 in his arrest, which implied that he was involved a terrorist crime. When he was taken to Jakarta for further interrogation, fears for his safety intensified. ELSHAM also said he had been arrested without an arrest warrant as required by law.

DENSUS or to give it its full name, Detachment 88, is a 400-strong anti-terrorist police force that was set up to combat terrorism after the 2002 Bali bombings, which killed more than 200 people. It was originally formed from members of the notoriously brutal special police unit, Brimob.

Human rights activists were also concerned that the police were intercepting mobile phone messages and believe that recording devices have been set up in several parts of West Papua.

On trial for incitement

After spending several weeks with DENSUS 88 then in police custody in Jakarta, Iwanggin was taken to Jayapura and is now on trial facing the charge of incitement under Article 160 of the Criminal Code for which the maximum penalty is five years imprisonment. The charge sheet also alleges that his circulation of the SMS had incited the general public and caused widespread panic among people who believed the contents of the message must be true. Human rights activists say that similarly-worded SMS messages have been circulating in Papua for months.

After the prosecutor presented the charges, counsel for Iwanggin submitted a demurrer objecting to the way he was arrested for an apparently special crime whereas he was now facing normal criminal charges. They also took exception to the fact that during the interrogation which took place in Jakarta even though the alleged crime took place in Jayapura, he was accused of defaming the good name of the President. They urged the panel of judges to dismiss the case and release the defendant. However, the judges rejected the complaints and decided to continue with the trial.

At the time of writing, testimony from two witnesses, a husband and wife, has been heard; they were questioned about whether they had received or heard of the SMS sent by the accused. The husband said he had received the message and they had decided to send it on to the President's wife for her comment but she had only expressed her thanks for the message.

Police abuse widespread: UN torture expert

The problem of police abuse of detainees is sufficiently widespread as to warrant immediate attention by the Government according to the UN Special Rapporteur on Torture, Manfred Nowak. The lack of legal and institutional safeguards and structural impunity render persons deprived of their liberty extremely vulnerable to torture and ill-treatment, the Special Rapporteur said in a statement following his visit to Indonesia in November 2007.

Abuses include 'beatings by fists, rattan or wooden sticks, cable, iron bars and hammers'. In some cases, 'police officers had shot detainees in their legs from close range, or electrocuted them'. Some detainees alleged 'to have had heavy implements (chairs, desks, and car jacks) placed on their feet'.

In most instances, it appears that the purpose of this violence was to extract confessions, the Special Rapporteur concluded.

In his opinion, detainees are more vulnerable to abuse while in police custody than in prison. In several instances he arrived at police stations as beatings were taking place.

His findings confirm a worrying trend towards increasing abuses by the police. This was also highlighted in a Human Rights Watch report on violations in West Papua's central highlands published last July.¹

The Government's decision to invite the Special Rapporteur was in itself an encouraging sign that Indonesia intends to improve its co-operation with UN human rights mechanisms. Previous administrations had refused requests for a visit dating back to 1993. However, its response to the Special Rapporteur's report will be the real test of its commitment to upholding human rights.

The full report will be submitted to the UN Human Rights Council at its 7th session in March 2008.

Problem must be confronted head on

Acknowledging Indonesia's progress in overcoming the legacy of the Suharto era and noting that no country in the world is immune to the crimes of torture and ill-treatment, the Special Rapporteur said that 'the key element in effectively combating this problem is for each and every State to recognize this reality and confront the problem head on'.

The Special Rapporteur expressed regret that the crime of torture has not yet been included in Indonesia's Penal Code despite many recommendations by national and international observers urging such a move.

He further regretted that Government officials could not cite one instance in which a public official was sentenced by a criminal court for committing torture or ill-treatment, observing that bringing perpetrators to justice is the strongest signal that torture and ill-treatment is absolutely unacceptable.

Legal safeguards for detainees, in particular at the pre-trial stage, are virtually non-existent, in violation of applicable international norms and standards to which Indonesia has subscribed. Of particular concern is the prolonged period of police custody allowed under the law,

at times up to several months. During this time many detainees have no or very restricted access to courts.

Furthermore, corruption in the criminal justice system is reported as widespread and only very few detainees appear to have access to a defense lawyer. There are apparently no effective mechanisms by which the legality of detention can be reviewed by an impartial body or by which a detainee might file a complaint about ill-treatment or torture.

In this context, the application of the death penalty continued to be inappropriate said the Special Rapporteur.

Conditions of detention

The Special Rapporteur found that many of the prisons he visited were spacious, clean, well-maintained, and relatively open to visits by relatives and friends. However, some prisons, such as Pondok Bambu and Cipinang in Jakarta were seriously overcrowded. This has repercussions in terms of hygiene and security. There were numerous complaints about the lack of food and in Cipinang corruption 'appears so endemic that money must be handed over for virtually every basic amenity'. Serious medical conditions can be left untreated if the detainee cannot afford to pay for treatment.

Detention facilities and prisons also have 'orientation programmes' that are incompatible with international standards. Newly arrived inmates are placed in conditions of 'quarantine' – often several days in small, dark and dirty cells as observed in Wamena prison in West Papua.

Conditions are generally worse in police custody facilities where there is often limited ventilation, no natural daylight and no possibility to exercise. The fact that many detainees are held there for up to several months exacerbates the situation.

Women and children

The Special Rapporteur said he was extremely concerned that criminal responsibility starts at the age of eight and that therefore small children are put in detention facilities and prisons, very often mixed with much older children and adults. Children are at greater risk of corporal punishment and ill-treatment in detention.

The Special Rapporteur welcomed the adoption of a 2004 law banning violence in the household and establishing complaints channels. However, he was informed that many obstacles still hamper the implementation of this law, such as the lack of awareness

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Human Rights Council to review Indonesia

A new mechanism has been established by the Geneva-based UN Human Rights Council to review member states' fulfilment of their human rights obligations and commitments. Indonesia will be considered as part of the first review session in April 2008. The process allows for the active engagement of NGOs. The following submission was made by TAPOL to the Office of the High Commissioner for Human Rights (OHCHR) in November 2007.

1. This submission is made to the OHCHR by TAPOL, a UK-based NGO, formed in 1973, which promotes human rights, peace and democracy in Indonesia. TAPOL is a relevant stakeholder under Human Rights Council Resolution 5/1 of 18 June 2007.

Priority issue: Impunity

2. The submission highlights the issue of impunity and recommends that the Human Rights Council (HRC) addresses four particular concerns in its review of Indonesia:

- a) the normative and institutional problems associated with the investigation, prosecution, and delivery of justice in relation to cases of past violations of human rights;
- b) the need for dissemination and implementation in Indonesia of the report of Timor-Leste's Commission for Reception, Truth and Reconciliation (CAVR);
- c) the inadequacies of the Indonesia/Timor-Leste Commission of Truth and Friendship; and
- d) the need for national and regional truth and reconciliation mechanisms to be established.

Recommendations to the OHCHR/HRC

3. General

The Indonesian government should be encouraged to: implement in full the International Covenants on Civil and Political Rights and Economic, Social and Cultural Rights and all other human rights treaties it has ratified;

fulfill the commitment it has made to sign and ratify the International Convention for the Protection of All Persons from Enforced Disappearance; and

improve its co-operation with the UN special procedure mechanisms and treaty monitoring bodies and its record of implementing their recommendations.

4. Accountability for past violations

The HRC should explore with the Indonesian government ways in which problems relating to the involvement of the President and Parliament in proceedings under Law 26/2000 on Human Rights Courts, and the failure of the Attorney General to pursue cases vigorously, can be addressed, possibly by enhancing the involvement of the National Commission on Human Rights, Komnas HAM.

The HRC should encourage Indonesia to review Law 26/2000 and related legislation to ensure that the human rights courts have comprehensive jurisdiction over serious human rights crimes that do not amount to crimes against humanity or genocide.

The HRC should consider ways of enhancing

technical co-operation for the training of judges and other judicial personnel involved in human rights cases.

5. CAVR report

The HRC should propose that the Indonesian government and parliament formally consider the CAVR report and act on its recommendations without further delay;

The HRC should consider how it can support Indonesian civil society efforts to disseminate the report and raise awareness about its findings.

6. Commission of Truth and Friendship (CTF)

The HRC should make clear its disapproval of outcomes of the CTF process that contravene international standards concerning the denial of impunity for serious crimes. It should urge Indonesia to co-operate with Timorese and international efforts to secure accountability for serious crimes committed in Timor-Leste. In particular, given Indonesia's failure to deliver credible justice, the HRC should consider lending its support to recommendations by the UN Commission of Experts and CAVR concerning the creation of an international criminal tribunal for Timor Leste.

7. Truth and Reconciliation mechanisms

The HRC should consider providing technical and other support to the Indonesian government and civil society groups for their efforts to establish national and regional TRC mechanisms based on public consultation and international standards.

Background: International human rights commitments and compliance

8. Indonesia has made significant progress in its transition to democracy since the downfall of the authoritarian Suharto regime in May 1998, notably with the holding of multi-party elections in 2004 and the achievement of peace in Aceh. However, much more remains to be achieved. In particular, the country's record on human rights, the rule of law and impunity falls short of the standards expected of a fully-functioning democracy. Little progress has been made in investigating and prosecuting those responsible for Suharto-era and subsequent atrocities – most notably the slaughter of hundreds of thousands of left-wing suspects following the rise to power of Suharto in 1965, the widespread killings in Timor-Leste, Aceh and West Papua, and the murder of the leading human rights defender and critic of impunity, Munir, in 2004. One means of addressing past abuses, Indonesia's Truth and Reconciliation Commission, has been declared unconstitutional by the Constitutional

Court.

9. The government has demonstrated an intention to uphold international human rights norms by its ratification of the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights in May 2006. **It should be pressed by the HRC and the treaty monitoring bodies to implement in full these and other treaties it has ratified.** On 12 March 2007, Indonesia's Minister of Law and Human Rights, Hamid Awaluddin, made a commitment to the HRC to sign and ratify the International Convention for the Protection of All Persons from Enforced Disappearance. **The government should be encouraged to fulfil that commitment as soon as possible.**

10. The government has improved its outward co-operation with the UN special procedure mechanisms. The Special Rapporteur on Torture is visiting in November 2007 following requests dating back to 1993. The Special Representative of the Secretary-General on Human Rights Defenders visited in June 2007 and the Special Rapporteur on the Human Rights of Migrants visited in December 2006. However, the government has failed to respond to requests to visit by the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, the Special Rapporteur on Freedom of Religion, and the Working Group on Arbitrary Detentions and its record of acting on the recommendations and communications of the special mechanisms and treaty monitoring bodies is unsatisfactory. The situation of human rights defenders in West Papua, for example, has deteriorated significantly since the visit of the Secretary-General's special representative. **The Government should be pressed to improve its substantive co-operation with the UN special procedure mechanisms and treaty monitoring bodies and its record of implementing the recommendations of those bodies.**

11. The Special Representative on Human Rights Defenders noted several positive steps that had been taken to strengthen the legal and institutional framework for the promotion of human rights. She referred in particular to the establishment of the Ad hoc Human Rights Courts, the National Human Rights Commission (Komnas HAM), the National Commission on Violence Against Women (Komnas Perempuan) and the adoption of the National Plan of Action. However, she also observed 'serious constraints on the functioning of many of these organizations [sic.] and their ability to fulfil their mandates effectively'. She concluded that 'there is a resistance to changing attitudes and institutional culture which has made it difficult for these institutions to make a full commitment to eliminate impunity for human rights violations' and 'even less commitment to removing impunity for past abuses'

Accountability for past violations

12. TAPOL wishes to provide further information about some of the systemic problems that have precluded the successful resolution of past cases of abuse and consequently prevented the ending of impunity. The practice of impunity has serious implications for Indonesia's transition to democracy. It encourages the expectation that human rights violations will go

unpunished and creates the risk that patterns of abuse will be repeated, especially in conflict areas such as West Papua where alleged perpetrators of gross human rights violations in Timor-Leste have emerged in key positions of responsibility (see for example the case of Col. Burhanuddin Siagian indicted on crimes against humanity charges in Timor-Leste, TAPOL press release, 28 June 2007, at <http://tapol.gn.apc.org/press/files/pr070628.htm>).

13. The information in this submission is prefaced by the observation that at the heart of the problem of impunity lies a lack of political will to ensure accountability and address adequately some of the root causes, such as judicial corruption and the need for effective military reform. The lack of political will is related to the ongoing political influence of the Indonesian military and its ability to ensure that military personnel are effectively beyond the law. Cases of gross violations of human rights are often politically sensitive, but that cannot be used as a reason to avoid the fair and effective prosecution of alleged perpetrators. The government, with the assistance of the UN human rights mechanisms, must find ways of neutralising the political dimension of such cases so that justice and the rule of law can prevail.

14. A number of substantive and procedural problems have arisen from the implementation of a key piece of legislation, Law 26/2000 on Human Rights Courts, many of which were identified at the drafting stage. The law was passed in 2000 in response to international pressure for accountability for serious crimes committed in Timor-Leste. It establishes ad hoc and permanent human rights courts with jurisdiction over gross violations of human rights amounting to genocide or crimes against humanity. It provides that initial inquiries (*penyelidikan*) into cases of gross violations should be conducted by Komnas HAM. If there is sufficient preliminary evidence of a gross violation, the case is referred to the Attorney General, whose office is required to conduct an investigation (*penyidikan*). Violations occurring after the law came into force are then heard by a permanent human rights court. Violations occurring before the law are heard by an ad hoc human rights court. An ad hoc court can be set up only by a Presidential decree following a recommendation by parliament (this is supposed to address concerns that the prosecution of crimes that pre-date the law may offend the principle against retroactivity).

15. A number of cases have been dealt with under Law 26/2000. Some have resulted in unsuccessful prosecutions (notably those relating to the Timor-Leste, Tanjung Priok and Abepura 2000 cases), partly because the indictments and prosecutions did not make use of the findings of the associated Komnas HAM inquiry; others have not proceeded beyond the inquiry or investigation phase (including the Trisakti and Semanggi I and II shooting of students in 1998 and 1999; the May 1998 riots that accompanied Suharto's fall from power; the forced disappearance of 13 pro-democracy activists prior to Suharto's downfall, which all pre-dated the law; and the Wasior (2001) and Wamena (2003) killings in West Papua, which took place after the law was passed). There is concern that certain cases have been halted or become dormant since being passed to the Attorney-General's office. Victims' groups and Komnas HAM have expressed dissatisfaction with the handling of the cases. Although the main fault does not lie with Komnas HAM itself, its

new chairman Ildhal Kasim, appointed in September 2007, has acknowledged decreasing trust in Komnas HAM's ability to perform because of its failure to meet public expectations concerning the delivery of justice (see 'Komnas HAM must be realistic in setting targets: Chairman', The Jakarta Post, 12 November 2007).

16. The proceedings of the ad hoc human rights court for Timor-Leste have been examined at length by numerous observers and experts and widely regarded by them as a failure. In particular, a UN Commission of Experts concluded in May 2005 that the prosecutions were 'manifestly inadequate' and showed 'scant respect for relevant international standards'. They were 'undertaken at a time when there was an evident lack of political will to prosecute'. The prosecuting authorities were described as lacking commitment, expertise, experience and training and were accused of conducting 'deficient investigations' and of 'inadequate presentation of inculpatory material at trial'.

17. More generally, there is uncertainty about the parliamentary mechanism for addressing ad hoc cases (the practice has developed whereby cases are considered initially by a parliamentary commission, but some commission recommendations have been rejected by the full house) and the stage at which parliament should become involved. According to Law 26/2000 (Art 43), parliament's only role is to provide a recommendation that an ad hoc human rights court be established. This suggests that Parliament should not intervene until the Attorney General's office has completed its investigation and decided there is sufficient evidence to prosecute. However, in some cases, the Attorney General's office appears reluctant even to start an investigation without Parliament's approval. The Attorney General has also resorted to seeking parliamentary approval for the prosecution of violations that occurred after the law came into force in 2000 (e.g. the Wasior and Wamena cases in West Papua), which is not a legal requirement.

18. The involvement of Parliament and the President at any stage is controversial since it allows for political interference in a judicial process. The fact that the Attorney General is deferring to Parliament at an earlier stage than necessary and in cases in which Parliament is not a legitimate interlocutor heightens concern about the politicisation of such cases. **The HRC is encouraged to explore with the Indonesian government ways in which this problem can be addressed.** There may, for example, be scope for greater involvement of Komnas HAM as a non-political body. It may be appropriate to consider allowing Komnas HAM to undertake prosecutions in the same way as Indonesia's Corruption Eradication Commission (KPK). Certainly, Komnas HAM's ability to conduct inquiries could be strengthened by enabling it to subpoena witnesses without court approval.

19. The limited substantive jurisdiction of Law 26/2000 is also problematic in that it extends only to gross violations amounting to genocide and crimes against humanity. 'Lesser' human rights crimes are not included.

The current right of military and police personnel to be tried before a military tribunal for 'lesser' crimes even if they are of a non-military nature is a further source of impunity. The limitations of Law 26/2000 may have contributed to the prosecution's failure to secure a

conviction in the Abepura 2000 case. This concerned the killing of three students and the torture of dozens more in Abepura, West Papua in December 2000. Two senior officers were indicted under the crimes against humanity provisions of Law 26/2000. They were charged with command responsibility for abuses committed by their subordinates. The court found that there was evidence of abuse and torture, but that it was not systematic and could not support a conviction under Law 26/2000. The court pointed out that the abuse should have given rise to charges under Indonesia's ordinary criminal law.

20. This outcome was predicted by the then head of Komnas HAM, Abdul Hakim Nusantara, who said many serious crimes would go unpunished because of the need to prove they were part of a 'systematic and widespread' attack on the civilian population, a key element of crimes against humanity: 'I think such an extraordinary standard should be reviewed as it is too demanding a requirement to meet,' he said. 'Torture and rape and extrajudicial killings are serious offences and should be heard in a human rights court even though they may not be systematic and widespread.' ['General to Face Indonesia's Rights Court', Sydney Morning Herald, 8 May 2004.] **The HRC should encourage Indonesia to review law 26/2000 and related legislation to ensure that the human rights courts have comprehensive jurisdiction over serious human rights crimes that do not amount to crimes against humanity or genocide.** The court's jurisdiction should in particular include the crime of torture, which is not currently an offence in Indonesia despite a recommendation in November 2001 by the Committee against Torture that it should be prohibited under criminal law.

21. The understandable lack of expertise of judges, prosecutors and investigators in such cases is also an obstacle to the delivery of fair and credible justice. Judges, for example, who have been brought up in a corrupt system with little or no training in international human rights law are expected to suddenly handle complicated crimes against humanity cases which are beyond their competence. **The HRC and OHCHR should consider ways of enhancing technical co-operation for the training of judges and other judicial personnel.**

CAVR report

22. The report of Timor-Leste's UN-established Commission for Reception, Truth and Reconciliation (CAVR), completed in October 2005, provides the most detailed and comprehensive documentation of the human rights abuses committed by the Indonesian military and police and their militia proxies in Timor-Leste. The Commission recommended that the Indonesian government tables the report in the Indonesian Parliament, contributes to a reparations fund for the victims, and takes a number of other steps to foster reconciliation between the two countries. To date, the government has publicly ignored the report and President Susilo Bambang Yudhoyono has dismissed it as a domestic matter for Timor-Leste. **The HRC should propose that the Indonesian government and Parliament formally consider the CAVR report and act on its recommendations without further delay.**

23. Part of the process of addressing impunity is educating the Indonesian public about the truth of Indonesia's record of abuse in Timor-Leste. Indonesian civil society groups have taken steps to disseminate the report and raise awareness about its findings, but more needs to be done. **The HRC should consider how it can support their efforts in this regard.**

Commission of Truth and Friendship

24. The CTF, set up by the governments of Indonesia and Timor-Leste in March 2005 (without the involvement of either parliament), is widely perceived as a mechanism established to avoid international justice for those accused of serious crimes in Timor-Leste. The UN Commission of Experts expressed concern that it does not enjoy public support in Timor-Leste and that its terms of reference include provisions that contradict international standards on the denial of impunity for serious crimes. The CTF cannot recommend prosecution or other judicial measures and amnesty provisions allow alleged perpetrators to avoid accountability. The CTF hearings have been used by the perpetrators to wrongly blame the UN and other actors for the violence in Timor-Leste.

25. The CTF is supposed to operate under the principles of Indonesia's Truth and Reconciliation Commission (TRC) and doubt has been cast on its legal basis by a decision of Indonesia's Constitutional Court to declare the TRC unconstitutional because of its amnesty provisions (see below). However, the CTF appears to be proceeding to a conclusion. Its final report may be available to the HRC at the time of its 1st session review.

The HRC should make clear its disapproval of outcomes of the CTF process that contravene international standards concerning the denial of impunity for serious crimes. It should urge Indonesia

to co-operate with Timorese and international efforts to secure accountability for serious crimes committed in Timor-Leste. In particular, given Indonesia's failure to deliver credible justice, it should consider lending its support to recommendations by the UN Commission of Experts and CAVR concerning the creation of an international criminal tribunal for Timor Leste.

Truth and Reconciliation mechanisms

26. In December 2006, Indonesia's Constitutional Court ruled that a 2004 law establishing the Indonesian TRC was unconstitutional because it empowered the President to grant amnesties to perpetrators of gross human rights violations and made compensation and rehabilitation for victims dependent on the granting of amnesties. The TRC now has no legal basis and cannot be set up until new legislation is passed. The Court's decision to annul the law in its entirety, rather than just the offending amnesty provisions, has left the victims without an important means of restitution and redress. The ruling has implications for truth and reconciliation in Aceh since Article 229 of Law 11/2006 on the Governance of Aceh provides for an Aceh TRC to be established as part of the national TRC. There are also provisions in Law 21/2001 on special autonomy for West Papua for the establishment of a West Papuan TRC.

27. Civil society groups in Aceh are drafting a model for an Aceh TRC and new enabling legislation since this process is seen as integral to the sustainability of peace in Aceh. **The HRC should consider providing technical and other support to the Indonesian government and civil society groups for their efforts to establish national and regional TRC mechanisms based on public consultation and international standards.**

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about the need to address domestic violence and the insufficient number of appropriate police units to deal with such complaints.

Recommendations

The Special Rapporteur recommended that the Government take a number of measures to comply with its obligations under both the Indonesian Constitution and international law. They included criminalising torture in accordance with the Convention against Torture; introducing complaints mechanisms within places of detention; reducing the time limits for police custody; supporting the National Commission on Human Rights, Komnas HAM, in 'becoming an effective player in the fight against torture, in terms of their monitoring role as well as addressing impunity'; and acceding to the Optional Protocol to the Convention against Torture, which provides for unannounced visits to places of detention.

Committee against Torture

Many of these issues will be addressed also by the Committee against Torture (CAT) at its fortieth session in May 2008. The CAT is a separate body of experts, based at the UN in Geneva, that monitors States' compliance

with the Convention against Torture.

Responding to Indonesia's second periodic report dated September 2005 (State parties to the Convention are obliged to report to CAT every four years), the Committee has published a list of issues it will consider including: the incorporation of the Convention into Indonesian domestic law; the implementation of basic safeguards for detained persons; the jurisdiction of the morality or religious police; the incidence of alleged cases of torture being prosecuted as disciplinary or ordinary criminal cases; and problems relating to trafficking, sexual violence in conflict areas, Indonesian migrant workers, human rights defenders and religious minorities.ⁱⁱ

Indonesia's initial report to CAT was considered in 2001 and CAT's Conclusions and Recommendations published on 22 November 2001.

ⁱ See TAPOL Bulletin, No. 187, p11.

ⁱⁱ Periodic report and list of issues available at <http://www2.ohchr.org/english/bodies/cat/cats40.htm>

Munir: Unravelling the role of BIN

After more than a year of stagnation, investigations into the murder of human rights activist Munir gathered momentum when the Attorney-General filed for a Judicial Review in July last year to challenge the Supreme Court's decision to acquit Garuda pilot Polycarpus Prihari Priyanto of murder. Then, the former president-director of Garuda was indicted on charges of involvement in the murder. As the facts begin to unravel, the role of the intelligence agency, BIN, may soon be within reach.

Munir Said Thalib was widely acknowledged to be Indonesia's leading human rights activist. He was murdered while on a flight from Jakarta to Amsterdam on 7 September, 2004. He collapsed in agony during the flight and was pronounced dead by a doctor on board, several hours before the plane landed at Schiphol airport. Forensic evidence later established that he had ingested a lethal dose of arsenic during the flight.

Munir, 39, devoted most of his professional life to exposing injustices in Indonesia and East Timor that occurred during the Suharto era and following the dictator's downfall in May 1998. He played a key role in investigating atrocities in occupied East Timor and in West Papua and Aceh, and his fearless pursuit of crimes against humanity made him many enemies among the military.

In late 1997, he co-founded Kontras, the Commission for the Disappeared and Victims of Violence and later set up Imparsial, the Indonesian Human Rights Monitor. He was named Man of the Year by an Indonesian Muslim journal, UMMAT, as well as being named a Young Leader of the Millennium by Asiaweek in 2000. That same year, he was the recipient in Sweden of the Right Livelihood Award, which is regarded as the alternative Nobel Peace Prize, 'for his courage and dedication in fighting for human rights and the civilian control of the military in Indonesia'.

In the months before his death, Munir received many threats warning him of dire consequences if he continued with his activities. Friends urged him to stop using his motorbike in Jakarta, as he could more easily be targeted by those wanting to get rid of him.

National and international outrage at his death forced President Susilo Bambang Yudhoyono to agree to a thorough investigation. An independent Fact-Finding Team established by presidential decision reached the conclusion that Munir died at the hands of a conspiracy involving high-ranking state officials. However, the Team's report has never been published.

Two UN human rights rapporteurs who have visited Indonesia in the past year urged the Indonesian government not to allow the Munir case to slide. The UN Special Rapporteur for Extrajudicial Executions, Philip Alston, also drew attention to the murder at the 4th Human Rights Council meeting last year. Members of the US Congress wrote to President Yudhoyono calling for the murder to be solved and there has been unrelenting pressure from Suciwati, Munir's widow, and her lawyer, Usman Hamid, in many countries not to let the matter rest until justice is done.

Judicial Review reverses Polycarpus acquittal

The case gathered momentum when the Attorney-General's office announced in July last year that it would be filing for a Judicial Review. Attorney-General Hendarman Supandji explained that new evidence had made it possible to take the unprecedented step of re-opening the case which had been foreclosed by the Supreme Court in 2006. The aim of the Judicial Review was to reverse the Supreme Court's ruling acquitting the off-duty Garuda pilot Polycarpus of murder.

Police investigations in 2004 had led to Polycarpus's conviction for murder. He was travelling on the Garuda flight along with Munir and gave up his business class seat to Munir. But he was later acquitted of the murder in a highly contentious Supreme Court decision, and left with a two-year sentence for using a false document assigning him to travel on Garuda Flight 974. The question of why he was using a false document which allowed him to travel on the Garuda flight together with Munir was left unanswered despite the obvious connection between the false document and the murder.

However, two months after the Supreme Court had completed its Judicial Review hearings, it was announced that the Supreme Court had reversed its verdict on Polycarpus with a decision to sentence him to twenty years for his part in the murder.

In a statement following the announcement of the decision, Kontras expressed its appreciation of the Supreme Court's efforts to address the involvement of Polycarpus. 'We hope (this) will be followed by additional steps to find the masterminds behind Munir's murder. Polycarpus was merely the weapon used by others to kill Munir,' it said.

A key factor in the Judicial Review related to the nature and provenance of the fake document used by the Garuda pilot to travel on Garuda Flight 974. According to Usman Hamid, the lawyer acting for Munir's widow, Suciwati, who was given access to the dossier drawn up in preparation for the Judicial Review, the prosecutors wanted to know why the Supreme Court which ruled that Polycarpus was guilty of using a fake document did not insist on finding out why he needed the document, why he swapped his business seat with Munir who was travelling economy class, and why he had called Munir a number of times by phone prior to the flight, even though the two men were not acquainted.

One witness, a well-known Indonesian musician Raymond Latuimahalo was also a passenger on the flight. He initially testified that he saw Polycarpus give Munir a drink at the Coffee Bean Café during a stopover at Singapore's Changi Airport but later withdrew the statement, saying he had made it under duress. However,

another passenger on the flight, a young Indonesian student, testified that she saw Pollycarpus giving Munir a drink at the Coffee Bean Café and several other witnesses also testified to the same effect.

Evidence produced during the Judicial Review indicated that the poison ingested by Munir was contained in a drink he was given during the stopover in Changi Airport and not on board the flight, as was previously thought.

Ex-Garuda chief sentenced

In April 2007, Garuda's former president-director, Indra Setiawan and another senior airline official, Rohaini Aini, the chief secretary of the Garuda pilots, were arrested in connection with the letter instructing Pollycarpus to fly on Garuda Flight 974 'for reasons of security'.

Six months later, on 9 October, the two former Garuda officials were indicted. Indra Setiawan was charged with being an accessory to the murder on the grounds that he had assigned the pilot Pollycarpus to join Flight 974 on which Munir was travelling. The indictment accused him of being 'an accessory to the intentional and premeditated murder of Munir' and stated that he 'admitted that he issued the letter of assignment on the orders of the State Intelligence Agency (BIN) because Garuda was considered to be a strategic industry that needs to be protected by the agency'.

In February this year, Indra Setiawan was found guilty by the Central Jakarta district court of 'assisting in a pre-meditated murder' and sentenced to one year imprisonment. The other Garuda official taken into custody has since been released.

The prosecutors told the court they had new evidence linking the pilot Pollycarpus to Munir's death. This included the taped recording of telephone conversations between Pollycarpus and Indra Setiawan, during the course of which they discussed a letter from a BIN official, M. As'ad asking the Garuda chief to assign Pollycarpus as aviation security officer on Flight 974. Pollycarpus also assured Indra Setiawan that 'our people' were well established within the state apparatus. Using coded names, they talked about several high-ranking BIN officials, including an official, M As'ad, retired lieutenant-general Hendropriyono who was head of the agency at the time of Munir's murder and Muchdi PR who was Hendropriyono's deputy and subsequently took over as the chief of BIN.

During the trial of Pollycarpus in 2005, it was established that he had had no fewer than 41 telephone conversations with Muchdi PR.

Commenting on the Supreme Court's decision to sentence Pollycarpus to 20 years for his role in the murder, a member of the Fact-Finding Team, Asmara Nababan said this verdict should pave the way for a probe into intelligence officials in connection with the case. 'Now that the ruling is out, the police can no longer stall the investigation into BIN officials like Muchdi and As'ad. The verdict has set an ideal momentum for the police to proceed and step up their investigation,' Asmara told the Jakarta Post.

Unravelling the role of BIN

It is widely believed that the case will not be satisfactorily

resolved until the person or persons behind the conspiracy are brought to justice.

That may well have been facilitated by evidence produced during the Judicial Review regarding the role of BIN. Five witnesses testified about the link between senior Garuda officials and BIN agents. One witness, a low-ranking BIN agent, Raden Mohammad Patma Anwar, told investigators that he had been ordered by a superior to kill Munir before the presidential election in Indonesia in October 2004.

Throughout the earlier and the more recent investigations, efforts to interrogate officials of BIN have been repeatedly thwarted. The only crack in the agency's blocking tactics came from Raden Anwar who also admitted during a court hearing that the agency did indeed plan to kill Munir. He confirmed that Pollycarpus was a BIN agent, which has been consistently denied by senior BIN officials.

In February this year, the police announced that they were preparing to name new suspects. Usman Hamid, the former secretary of the Fact-Finding Team, told the press after a closed meeting with the national police crime investigation division, that the police have promised they will investigate everyone linked to the murder.

Bringing the real culprits to justice

On the third anniversary of Munir's death, KontraS, the human rights organisation set up by Munir in 1997, published a 75-page report 'Three Years Since the Murder of Munir, 2004 – 2007'. It concludes with a twenty-page chronology of events surrounding the murder investigations.

The most striking feature in the chronology is the refusal of BIN officials to respond to requests to meet the Fact-Finding Team set up by the President in December 2004.

At the trial of Pollycarpus in 2005, it was established that he had been in frequent contact by phone with present and former top officials of BIN, in the weeks before Munir's fateful journey to Amsterdam.

The chronology reveals that the chief of BIN in 2005, Syamsir Siregar, repeatedly denied that Pollycarpus was a BIN agent and rejected allegations that BIN was involved in the murder. The former chief secretary of the agency, Nurhadi Djazuli, refused to meet the Fact Finding Team on three occasions and issued a press release alleging that the team had no legal basis. Soon afterwards, he was asked by President Susilo Bambang Yudhoyono to cooperate with the team but persisted in refusing to do so.

Ultimately, Nurhadi did have a two-hour session with the team which concluded that BIN was involved in the murder. Another BIN official, Colonel Sumarno was contacted by the team at his office, after which they described his attitude as 'uncooperative'.

The team then tried to meet Muchdi PR, the former deputy of BIN with whom Pollycarpus had had numerous phone conversations. Then came efforts by the team to meet retired Lieutenant-General Hendropriyono, the head of BIN at the time of the murder. He refused three requests for a meeting and even filed libel charges against two members of the team, Usman Hamid and Rachland Nashidik.

After Muchdi and Hendropriyono refused to meet the team three times, it decided to make no further attempts to meet them. It should be noted that all senior-ranking BIN officials are active or retired army officers and BIN stands out as an institution which has proven to be untouchable. With so much evidence against BIN now in the public domain, it remains to be seen whether those handling the Munir murder case will ultimately succeed in bringing the real conspirators to justice.

Demonstration at BIN headquarters

On 7 September last year, the third anniversary of Munir's death, a crowd of about one thousand people gathered outside the head office of BIN in Jakarta. They held aloft many posters. One carried the slogan, 'Justice for Munir' while other posters displayed photos of the present head of BIN, Syamsir Siregar, his deputy, M. As'ad, A.M. Hendropriyono and his deputy Muchdi Purwoprandjono.

Speaking to the crowd from the top of a vehicle, Suciwati said: 'We have not come here for confrontation but to press for this agency to be cleansed. The person responsible (for the murder) must be brought to justice.' [Forum, 16 September 2007]

In view of the verdicts passed by the Supreme Court in response to the Judicial Review, there is more reason to hope that the person or persons who were responsible for the criminal conspiracy to kill Munir will finally be identified and the guilty men brought to justice.

Memorial lecture

A Memorial Lecture to commemorate Munir's courageous work and reflect upon the difficult position of human rights defenders (HRDs) in Indonesia was given at the University of Utrecht, the Netherlands, on 13 September 2007. It followed a similar Munir Memorial Lecture organised by the Solidarity Committee for Munir (KASUM) in Jakarta on 7 September.

Munir was travelling to Utrecht to undertake a course of study at the university when he was murdered.

The event was attended by Suciwati and Usman Hamid who provided an update on the case. The keynote speech was given by Asmara Nababan, executive director of DEMOS, the Center for Democracy and Human Rights Studies, Chairman of KASUM and former Secretary-General of Indonesia's National Commission on Human Rights, Komnas HAM.

The opinion of the UN Secretary-General's Special Representative on Human Rights Defenders, Hina Jilani, following her visit to Indonesia in June 2007, that the prospects for the promotion of human rights had improved in the recent past provided the starting point for Asmara Nababan's address.

Changes in state power structure needed

While sharing the Special Representative's opinion about certain institutional and legislative developments, Nababan made the important point that '...until now there remains a lack of fundamental change in the power structure of the state that can provide real promotion, protection and fulfilment of human rights'.

'If the reform and democratisation process in Indonesia fail to alter [the] state power structure into a more democratic one, the potential developments that Ms

Jilani has listed after her visit will remain unfulfilled.' The transformation of military power, or the lack of it, will be a key factor, he suggested.

Without the necessary changes which should involve the establishment of the rule of law and the subjugation of the military to civilian supremacy, meaningful democracy will not be possible, he concluded.

Nababan said violence against HRDs occurs in various forms, such as arbitrary arrests, assaults, forced disappearances, arbitrary killings, the dissolution of meetings, harassment, and criminalisation. He described the current situation of HRDs according to five categories of violations identified by the human rights NGO, Imparsial:

- The limitation or suspension of rights, such as freedom of expression and association, crucial to the work of HRDs;
- The misuse of the criminal law to prevent HRDs exercising their rights;
- Violations of the right to life and physical and/or mental integrity;
- Intimidation, slander and stigmatisation; and
- The lack of response to violations against HRDs resulting in impunity for the perpetrators.

Nababan went on to identify the kinds of national and international instruments and mechanisms available for the protection of HRDs.

He expressed reservations about the draft of Indonesia's new Criminal Code, which 'still contains various stipulations that can be misappropriated by the power holders to suppress freedom'.

He noted that until now, Komnas HAM had played a negligible role in protecting HRDs. He urged HRDs to press Komnas HAM by continuously reporting cases of violations against HRDs and raising public awareness about its duties to protect them. A new body of commissioners, the fourth since the body's inception in 1993, started work at the beginning of September 2007.

The decision of the Constitutional Court to strike down the law establishing a Truth and Reconciliation Commission [see *TAPOL Bulletin*, No. 185, p. 15] was a disappointment, but the ability of the Court to judicially review laws considered to be against the Constitution can be seen as progress, said Nababan. The Court has recently declared a number of repressive Articles in the Criminal Code unconstitutional: Articles 134, 136, and 137 relating to the crime of insulting the head of state [see *TAPOL Bulletin*, No. 185, p. 21] and Articles 154 and 155, the notorious 'hate-sowing laws' [see *TAPOL press release*, 'Continued detention of prisoners unconstitutional: Papuan activists must be released', 20 July 2007].

Nababan urged the development of networking between national and international NGOs 'to guarantee exposure and extensive pressure in relation to human rights violation cases, especially those related to human rights defenders'.

He concluded by reminding the audience that President Susilo Bambang Yudhoyono had stated the Munir murder was a test case for Indonesia:

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Burying the past in impunity

TAPOL backgrounder on the Indonesia/Timor-Leste Commission of Truth and Friendship, published February 2008

1. This backgrounder provides a brief summary of the work of the controversial Indonesia/Timor-Leste Commission of Truth and Friendship (CTF), which is due to report in February/March 2008.

2. On 14 December 2004, the governments of Indonesia and Timor-Leste agreed to set up a Commission whose objective, according to terms of reference subsequently concluded on 9 March 2005, is:

"To establish the conclusive truth in regard to the events prior to and immediately after the [Timor-Leste] popular consultation in 1999, with a view to further promoting reconciliation and friendship, and ensuring the non-recurrence of similar events."

The two governments said that they had opted "...to seek truth and promote friendship as a new and unique approach rather than the prosecutorial process."

3. The CTF's membership, comprising five members each from both Indonesia and Timor-Leste, was announced on 1 August 2005:

From Indonesia: Mr Benjamin Mangkudilaga (co-chair), a former Supreme Court Justice; Mr Achmad Ali, a legal expert; Wisber Loeis, former director general of international economic relations at the Ministry of Foreign Affairs; Mgr Petrus Turang, a West Timor bishop; and Mr Agus Widjojo, a military expert.

From Timor-Leste: Mr Dionisio Babo Soares (co-chair); Mr Jacinto Alves; Mr Aniceto Guterres; Ms Felicidade Guterres; and Mr Cirilo Cristovao.

4. The Commission was mandated to review all materials documented by the Indonesian National Commission of Inquiry on Human Rights Violations in East Timor in 1999 (KPP HAM); the Ad-hoc Human Rights Court on East Timor; the Special Panels for Serious Crimes in Timor-Leste, and the Commission for Reception, Truth and Reconciliation in Timor-Leste (CAVR).

5. Based in Denpasar, Bali, the CTF began work in August 2005, but did not conduct any public hearings until 2007. Five hearings were then held in Indonesia (Denpasar, 19-20 February 2007; Jakarta, March 26-30 2007; Jakarta 2-5 May 2007; Denpasar, 23-24 July 2007; and Jakarta, 24 October 2007) and one in Timor-Leste (Dili, 24-28 September).

6. Testimony was provided by a mixture of military personnel, militia leaders, public officials and victims. However, a disproportionate number of witnesses were alleged perpetrators and senior officials; victims were poorly represented.ⁱ A few high-profile witnesses including former Indonesian President, BJ Habibie, and Timor-Leste Prime Minister, Xanana Gusmao, gave testimony in closed sessions, drawing criticism from human rights NGOs who accused the CTF of violating the victims' right to transparency.

7. The CTF was supposed to complete its work within one year, but following two extensions of its mandate, it is expected to submit its report in February or March 2008.

Mission, mandate and performance deeply flawed

8. From the outset, the CTF was widely perceived as a mechanism designed to avoid international justice for gross violations of human rights perpetrated in Timor-Leste. It was hastily conceived by the two governments when it became clear that the UN Secretary-General was intent on setting up a Commission of Experts (CoE) to review the progress made by serious crimes processes in Indonesia and Timor-Leste. The Timor-Leste government's agreement to participate in the CTF process because of its desire to foster good relations with its former occupier was strongly criticised by civil society and the Catholic Church in Timor-Leste. The CTF was set up without the approval of either Parliament or significant consultation with civil society. Human rights groups in Indonesia condemned it for perpetuating impunity and undermining Indonesia's commitment to uphold human rights.

9. The CTF has since been severely criticised for major flaws in its mission, mandate, formation and performance. The strongest criticism has related to provisions in its terms of reference (ToR)ⁱⁱ which prevent the CTF from instigating prosecutions for serious crimes, but empower it to recommend amnesties for perpetrators who cooperate in revealing the truth. One of the CTF's stated purposes, to provide 'definitive closure of the issues of the past', in reality appears to be aimed at burying the past.

10. The section of the ToR that deals with reconciliation and rehabilitation empowers the CTF to 'recommend rehabilitation measures for those wrongly accused of human rights violations'. By contrast, the rights of victims are virtually ignored since there is no similar provision for the rehabilitation for victims. Victims are not specifically mentioned throughout the whole ToR.

International standards violated

11. Notwithstanding the establishment of the CTF and statements by the two governments that the CoE was no longer necessary, the CoE was set up according to plan by the UN Secretary-General on 18 February 2005. Its report, published in July 2005, found that certain provisions in the CTF's ToR 'contradict international standards of denial of impunity for crimes against humanity'. It stated categorically that 'The Governments of Indonesia and Timor-Leste must realise that the United Nations do not condone amnesties regarding war crimes, crimes against humanity and genocide'. The UN subsequently refused to testify at the CTF or take other steps to support its work unless the ToR were revised to comply with international standards.ⁱⁱⁱ

12. The CoE also raised questions about whether the CTF complies with relevant national legislation on reconciliation in the two countries.^{iv}

13. Numerous problems have arisen in relation to the procedures and performance of the CTF. They were

summarised in an open letter dated 23 May 2007 to the presidents of Indonesia and Timor-Leste by a worldwide coalition of three dozen human rights groups, including TAPOL:

a) *A lack of legitimacy attributable to three main factors: the perception that the CTF was established to avoid calls for an international criminal tribunal to try those accused of crimes against humanity in Timor-Leste in 1999; the failure to address crimes committed before 1999; and the amnesty provision, which would allow perpetrators of serious crimes to avoid accountability.*

b) *The absence of any clear procedure for reviewing existing evidence about the violence in 1999 in order to arrive at a consensus about the truth, especially since key Indonesian government institutions have failed to provide relevant records.*

c) *Serious deficiencies in the public hearings, including obvious biases on the part of some commissioners; the introduction of testimony irrelevant to the Commission's mandate; the absence of any means for cross-checking testimonies against facts established by previous processes or actual evidence; conflict between Indonesian and Timor-Leste Commissioners; lack of assistance and protection for victims who testify; the ad hoc nature of witness testimonies; an imbalance of representation between victims and perpetrators; and the use of the public hearings as a forum for perpetrators to continue to blame the United Nations and other actors for the violence.*

d) *Lack of transparency, clarity and a clear timetable for the Commission's work.*

No transitional justice benefits

14. A detailed report on the CTF by the International Center for Transitional Justice, *Too Much Friendship, Too Little Truth*,^v published in January 2008 further elucidates the problems and concludes: 'The CTF has not yet delivered substantial transitional-justice benefits, and its public hearings have seriously compromised the goals of truth and reconciliation. Many of the Commission's failings to date have their origins in the motivation and methods of the CTF's creators, as well as fundamental weaknesses in the Commission's Terms of Reference. These pre-existing problems were compounded by the poor design and inadequate preparation of the public hearing process.'

15. Ironically, the CTF may not be in a position to exercise its controversial mandate to recommend amnesties because there have been no admissions of responsibility or efforts to cooperate in revealing the truth by Indonesian military personnel. Most testimonies have been self-serving attempts by alleged perpetrators to portray a false historical narrative of the violence by laying the blame on the United Nations and conflicting Timorese factions. Some testimony by militia leaders at the Dili hearings has, however, blamed the military and implicated generals in the supply of weapons and financial aid to pro-Indonesia Timorese.^{vi}

16. The prospects for a report that ascertains the truth about the destruction of Timor-Leste, and the violence that in 1999 alone resulted in over 1,400 people being

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UN urged to carry out Timor-Leste justice mandate

TAPOL has called upon the UN to play a part in ending the lawlessness that culminated in the attempted assassinations of Timor-Leste's President José Ramos Horta and Prime Minister Xanana Gusmao [see separate article] by acting on its mandate to further the cause of justice for serious crimes.

It has questioned why the UN Security Council's mission to Timor-Leste, known as UNMIT, has failed to carry out its mandate to investigate serious crimes committed in 1999 when Timor-Leste voted for independence from Indonesia.

"The Security Council's commitment to peace, democracy and the rule of law has been seriously undermined by UNMIT's failure to meet its responsibilities regarding justice and accountability" said TAPOL in a joint letter with the Catholic development agency, Progressio sent to UK Foreign Office Minister, Meg Munn on 13 February [available at <http://tinyurl.com/2qzrc6>].

"This had led to diminished respect for the rule of law and an expectation that violence of the kind witnessed this week will go unpunished," the organisations said in a statement.

They asked why it has taken nearly 18 months for UNMIT to start preparing plans for investigations and negotiate an agreement with the Timor-Leste government.

According to the Security Council resolution that established UNMIT in August 2006, a team of experienced personnel was supposed to resume the investigative functions of the former Serious Crimes Unit (SCU) which ceased to function in May 2005.

TAPOL and Progressio point out that the UNMIT mandate was itself a minimal commitment. It did not include support for prosecutions and trials despite the fact that more than 70 per cent of those indicted by the SCU have not been prosecuted and remain free in Indonesia.

The mandate also ignored recommendations by the UN's own Commission of Experts (CoE), and the UN-established Commission for Reception, Truth and Reconciliation in Timor-Leste (CAVR).

"The complete lack of progress by UNMIT demonstrates that justice and accountability cannot be achieved by less than half-hearted commitments and efforts," the letter said.

The UN Secretary-General's latest report on UNMIT was considered by the Security Council on 21 February. It agreed to extend UNMIT's mandate by a further 12 months. Several speakers drew attention to the need for accountability for past crimes. TAPOL urges the Security Council to consider how it can fulfil its responsibility for justice by re-visiting the recommendations of the CoE and holding a debate on the findings and recommendations of the CAVR as a matter of urgency.

Balibo Five deliberately killed, says coroner

An inquest into the deaths in October 1975 of five journalists including two Britons who died in Balibo, a village on the border between East Timor and Indonesia's West Timor has ruled that the killings were deliberate and should be considered for possible war crimes prosecution. The inquest was held at the request of the sister of one of the journalists. Meanwhile, more has come to light about the British cover-up of the journalists' deaths

The five journalists from Australia, Great Britain and New Zealand had travelled from Dili to the border village of Balibo to record the activities of Indonesian troops who were thought to be preparing for an act of aggression against East Timor (now Timor-Leste). This was two months before Indonesia launched its invasion on 7 December 1975 of what was then Portuguese Timor.

The inquest was conducted at the Glebe Coroner's Court in New South Wales by Dorelle Pinch after it had been established that such an inquest could be held there, because one of the victims, Brian Peters, was a resident in the State of New South Wales.

The five journalists were Malcolm Rennie and Brian Peters of the UK, Greg Shackleton and Tony Stewart of Australia and Gary Cunningham of New Zealand. Malcolm Rennie and Brian Peters were working for Australia's Channel Nine, while the other three were working for Australia's Channel Seven.

Ever since the tragedy, Indonesia has insisted that the men died 'in crossfire'. The coroner's efforts to seek the co-operation of Indonesia during the course of the inquest were ignored.

In the words of the coroner: 'The Balibo Five died in Timor-Leste on 16 October 1975, from wounds sustained when (they) were shot and or stabbed deliberately, and not in the heat of battle, by members of the Indonesian special forces, including (Commander) Christoforus da Silva and Captain Yunus Yosfiah on the orders of Captain Yunus Yosfiah to prevent (them) from revealing that Indonesian special forces had participated in the attack on Balibo.'

Although she was bound by law not to name particular persons who had committed criminal offences, the coroner said: 'There is strong circumstantial evidence that those orders emanated from the head of the Indonesian Special Forces, Major-General Benny Murdani to Colonel Dading Kalbuadi, Special Forces Group Commander in Timor and then to Captain Yosfiah

While both Murdani and Kalbuadi are now dead, Yunus Yosfiah is still alive. He was the minister of information in the Habibie government in 1998 and is now living in retirement in Indonesia. The other named officer, Christoforus da Silva, is also still alive

The coroner also recommended that the Australian and Indonesian authorities work together to find the remains of the five men for repatriation. (After the men were killed, their bodies were apparently burned and buried in a single grave in a cemetery on the outskirts of Jakarta.)

Brushing aside the findings when they were made public last November, a spokesperson of the Indonesian Foreign Ministry said that for Indonesia, it was a 'closed case'. 'We are still in the position that they were killed because of crossfire between conflicting sides at the

time.'

Maureen Tollfree, the sister of Brian Peters, said the outcome of the inquest was 'absolutely wonderful. They were killed in cold blood. It was just a matter of getting someone to listen and help us. The families of the victims are feeling like me. I am shell-shocked.' John Milkins, the son of Gary Cunningham described the findings as 'immensely important and courageous. I think it is the first step in what has been a very long journey. And the words "war crimes" are going to echo in Australian history for quite some time.'

The coroner said that she had referred the case to the federal authorities for possible war crimes prosecutions.

An act of aggression

Indonesian journalist Aboeprijadi Santoso wrote that while little new had emerged from the inquest, 'it established a much stronger case based on detailed evidence and witness testimony. The Indonesian government needs to respond to this seriously.'

The coroner heard evidence from eleven key witnesses, including former Australian Prime Minister, Gough Whitlam as well as testimony heard behind closed doors from an Australian intelligence officer who intercepted messages between Canberra and Jakarta

Santoso wrote that Balibo 'really marked the very start of Indonesia's bloody adventure in East Timor.... At stake was that the outside world would be fully aware of Indonesia's interest in intervening in East Timor, i.e. to wage a secret war that would turn the short-lived local civil war into a prolonged one as a result of infiltration and attack which began in Balibo on the fateful day of Oct. 16 1975.'

The President of Timor-Leste, Jose Ramos-Horta urged the Indonesian government to apologise and take responsibility for the killing of six journalists, including an Australian, Roger East, who was killed in Dili on 7 December 1975, the day of the invasion. He expressed the hope that the government of Susilo Bambang Yudhoyono would acknowledge the misconduct of members of the Indonesian army.

A 'disgraceful cover-up' by the UK

Although two British journalists were among the five journalists killed in East Timor on 16 October 1975, the British government has failed as yet to show any intention of taking up the issue with the Indonesian authorities by calling for the extradition of the man named in the coroner's verdict as being responsible for the deaths. Its response has been to leave the matter to the Australian Attorney-General.

On 27 February this year, an adjournment debate took place in the House of Commons on the initiative of Don

Foster MP, seeking an explanation of the British government's 'disgraceful cover-up of the murder of the Balibo Five'.

'When Britons die abroad we anticipate our Government doing all they can to help the relatives. We expect the Government to seek as much information as possible and to share it with the relatives. Sadly, in this case, the opposite happened. From 1975 until 1995, there was almost complete inaction. The Government were involved in a disgraceful cover-up.'

The MP quoted at length from the coroner's findings regarding the way the two British journalists had been deliberately killed by Indonesian forces. According to Mr Foster, such an inquest could have been held long ago 'had our Foreign Office told the British families in 1975 and 1976 what it really knew from its own sources and from Ramos-Horta about the deaths at Balibo'.

He referred to the coroner's conclusion that an international conflict was under way once Indonesian forces seized territory in East Timor on 7 October 1975. This meant that thereafter, the Fourth Geneva Convention (Protection of Civilian Persons in Time of War, 1949) protected journalists and that under the Convention, the killings were 'grave breaches under Article 147 and may be prosecuted as war crimes'.

Stressing that the coroner's finding 'helps us to have a better understanding of the role of others, including the British and Australian governments at the time', it went on to state that 'in 1975, despite the Balibo murders, the Australian Government continued the charade required to sustain the myth that there were no Indonesian troops in East Timor.'

'Britain had a key role in that myth,' he went on. 'On 15 September 1975, a month before the deaths of the Balibo Five, John Ford, our ambassador to Jakarta reported to the FCO that Indonesia's generals planned to step up clandestine intervention designed to look like popular uprisings. The only limitation to clandestine activity now appears to be fear of its exposure.'

According to Mr Foster, the FCO had advised the Australians on 2 October 1975 'that the UK Government would not protest over the subsequent Indonesian action in East Timor. Two days later, in a telegram from the ambassador to the FCO and the Ministry of Defence, Mr Ford described the military forces ready to invade East Timor. He added that Indonesia's Defence Ministry awaited 'incidents in the next few days that would persuade Indonesia's President to authorise "early overt action"' In other words, 'Britain did nothing to prevent the planned invasion and went further by recommending that it be kept covert. Keeping something covert means keeping journalists out of the way.'

According to the coroner, 'from early October 1975, the Indonesians were 'highly sensitive to the presence of any journalists ... in the border area.'

Posing the question: 'What did the British Government do to uncover the truth' the MP recalled that during a 2006 debate in the House, the then Minister implied that the Government were not aware of the deaths until the embassy's report on 24 October 1975. He said that comments were being made that reduced any need for further investigation, 'but worse, it seems that we did not want to know any more'. Our own ambassador suggested that 'we should ourselves avoid representations to the

Indonesians about them to which the FCO replied, "We agree."

A policy that 'paid off handsomely'

A later dispatch from the ambassador to the FCO regarding East Timor said that Britain's policy 'has so far paid off handsomely. The lack of involvement has largely kept Timor out of the British and US headlines and away from becoming a major public issue.'

After describing the events leading up to the deaths and pointing out that Yunus Yosfiah, then a captain in the Indonesian army was promoted to the rank of general after undergoing diplomatic training in Britain, Don Foster asked whether the Foreign Minister would endorse the coroner's report and invite the Indonesian government to endorse it. He asked whether the Minister would accept that Brian Peters' sister had beat a Foreign Office smokescreen to obtain an inquest and whether the Government would institute a fundamental review of the FCO's conduct on this case.^{iv}

Government's response

Foreign Minister Meg Munn said that the British Government was 'following closely the Australian inquest and had remained in close contact with the relatives of Brian Peters. She said that FCO files from the period indicate that 'our Government's policy was not to intervene directly in the controversy surrounding the future of East but to engage the Indonesian Government on the need for democratic outcomes.'

When Don Foster asked whether it was the Minister's intention to urge the Director of Public Prosecutions to bring prosecutions, the Minister said: 'It is not for the United Kingdom Government to take forward the findings of the coroner's proceedings in Australia or to comment on their accuracy.'

She drew attention to Britain's policy of not recognising the Indonesian annexation of East Timor, but failed to record that investigations many years later by a UN commission concluded that as many as 183,000 Timorese had died during the Indonesian occupation

ⁱ Sydney Morning Herald, 16 November 2007.

ⁱⁱ The Jakarta Post, 29 November 2007

ⁱⁱⁱ Tempo magazine, 3 December 2007

^{iv} Hansard, 27 February 2008.

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'Indeed it is true, the case and how it is handled is a barometer to gauge whether Indonesia has truly reformed in terms of eradicating serious crimes that involve misappropriation of state powers. This is a test that shall show to what extent is the willingness and ability of Indonesia to finally sever the chain of impunity. It is my hope and I am sure it is a hope shared by anyone concerned with the promotion and protection of human rights, wherever they are, that Indonesia shall finally pass the test.'

[A copy of Asmara Nababan's speech is available from TAPOL]

The continuing crisis in Timor-Leste

The attack on President José Ramos-Horta on 11 February represented a low point in a series of disruptions that have engulfed Timor-Leste. Seriously injured, Ramos-Horta, Nobel Peace Laureate, was flown to Darwin and underwent four operations to remove several bullets from his body. On the day of the attack, the leader of the rebels, Major Alfredo Reinado was shot dead by members of the presidential guard. Other rebels had succeeded in ambushing the President on his way home from a morning jog.

Another group of rebels under Lieutenant Gastao Salsinha attempted to ambush Prime Minister Xanana Gusmao. He escaped unscathed but his car was riddled with bullets. His private residence was also attacked. Later that day, he declared a state of emergency.

Analysts and Timor experts believe that the 24-year occupation by the Indonesian military has created a culture of violence and impunity. Since 2006 when the latest round of violence first began, the country, especially the capital Dili, has been engulfed in many eruptions of violence. There have been clashes between street gangs supported by police or military elements, or clashes between the police and the military. Violence has played a major part in the attempts to solve the political crisis.

The attack on Xanana and Ramos-Horta was more than just a failed coup. It was a manifestation of the failure of the several governments in Timor-Leste since 1999 to create a country whose citizens feel secure and where peace and stability prevail. Successive administrations - under the UN from 1999 and, post-independence, under Prime Ministers Mari Alkatiri and Ramos-Horta from 2002 - must share responsibility for failing to meet the population's basic economic and political needs.

The military rebellion

The military rebellion in 2006 was just the tip of the iceberg and certainly not the most important part of the political crisis. However, the rebellion has been symptomatic of the crisis because political leaders without exception have been unable to handle it.

The roots of the rebellion go back to early 2006 when 404 soldiers of the small defence force (FDTL) started complaining about discriminatory practices against members of the force who originate from the western areas of the half-island. Roque Rodrigues, a man with little influence who was then minister of defence, was unable to deal with the rebellion. However, the FDTL commander, Brig. General Taur Matan Ruak favoured strong measures. Eventually it was Prime Minister Mari Alkatiri who decided to take firm action against the rebellion.

The conflict escalated when 177 more soldiers joined the rebellion. This reduced the FDTL force to 1,500 men. Although there were several rebel leaders, it was Lt. Gastao Salsinha who emerged as the strongest voice against the government. The response of Prime Minister Alkatiri was to dismiss the 581 soldiers, who had refused to return to barracks. These men then fled to the mountains, taking their guns and ammunition with them. This rebellion marked the commencement of a major upheaval in Dili and in other major towns.

It was also the moment when there was an upsurge of general dissatisfaction among the population about rising

prices of basic goods and burgeoning unemployment among the youth. A number of demonstrations crippled the government and rendered government departments and other government institutions virtually ineffective. In May 2006, members of the military police under Major Alfredo Reinado joined the military rebels and emerged as their leading voice.

The then president Xanana Gusmao publicly voiced his disagreement with the decision by the Alkatiri/Fretilin government and the army commander Brig. General Matan Ruak to sack members of the army; he waged a high-profile campaign against the government, thus drawing attention to the deep rift that had emerged between Xanana and Mari Alkatiri.

Popularity of the rebel movement

Major Alfredo Reinado, the rebel leader, became very popular among the Timorese. To a large degree this was because his experiences were typical of the tribulations endured by the Timorese for the past three decades.

In 1975, when he was eleven years old, his family joined the resistance forces and witnessed the suffering, hunger and violence caused by the military occupation. Reinado's uncle, Vitor Alves, was a Fretilin leader. During the many re-locations of the resistance, Alfredo became separated from his mother and was captured. He was used as a TBO (Tenaga Bantuan Operasi, auxiliary force) and became a porter for the military. He was taken to Sulawesi by an Indonesian army sergeant as his house boy but managed to escape. He went back to Timor, was reunited with his mother and became active in the resistance movement with his uncle.

In 1995 Reinado was able to leave Timor-Leste by boat and became a popular figure among the Timorese refugees in Australia. He lived in Perth for four years, married and had several children. In 1999 he returned to Timor where his previous shipping experience put him in a favourable position to command the country's two patrol-boats which represented the entire fleet of the Timorese navy. He was then sent to Australia for training at the Australian Defence Force Academy in Canberra. He later became one of officers to lead the country's new military police within the FDTL.

On 16 March 2006 the Alkatiri government dismissed 591 members of the military (known as the petitioners because of the petition they wrote complaining about discrimination and other grievances). But by that time, it was clear that the crisis had become too deep to contain. In April the conflict escalated when petitioners, street gangs and unemployed youngsters started burning cars and houses and looting shops.

On 3 May Major Reinado, who still held an official position, was instructed to hunt down the petitioners.

Instead he abandoned his post and joined them, together with other military police and some police officers. During this first period of the rebellion the general impression was that Reinado was siding with the Xanana camp in the political conflict.

He had become a symbol of the disenfranchised, including those who organised themselves in street gangs in the poorer neighbourhoods. After his death in Dili in February, his funeral was attended by a large and highly emotional crowd of some 2,000 people. His death may well have turned him into a martyr.

On 2 March it was announced in Dili that one of the seventeen people suspected of involvement in the shooting of Ramos-Horta had surrendered to the authorities. Amaro da Costa turned himself in, saying that he wanted to help restore stability in the country. It is too early to assess the consequences of this defection.

Dwifungsi emerges in Timor Leste

Some of the characteristics of the Reinado rebellion can be compared to the dissatisfaction of the Indonesian military in the fifties and sixties. Many officers saw themselves as the main force that won independence for Indonesia and began to feel frustrated when civilian politicians proved unable to create economic wellbeing. Army officers at the centre and also in the regions staged a series of rebellions and established a tradition of military involvement in state and political affairs. In the early sixties this became part of a military doctrine known as Dwifungsi (Dual Function) legitimising military involvement in politics. It culminated in General Suharto's seizure of power from President Sukarno.

A similar situation is developing in Timor-Leste. The petitioners may well have had every justification for filing a petition of grievances. It was when negotiations with the government broke down that the rebellion started and it became increasingly political when the government refused to engage in meaningful dialogue.

The attack on Ramos-Horta and Xanana, the most senior members of the government, could have been seen by the rebels as a shortcut to achieve their political demands and as such could be regarded as an attempted coup d'état.

The situation had previously deteriorated because the camps of Alkatiri and Xanana had their favourites within the army and police force. Both sides would appear to have been compromised, thereby losing the legitimacy to maintain law and order.

A few unanswered questions remain. It is a fact that both Xanana and Ramos-Horta established friendly contacts with the rebels; Major Alfredo Reinado had several encounters with them both of them. However, during Xanana's premiership, relations turned sour as it became clear that he could not or would not give in to the demands of the petitioners.

Ramos-Horta's position was quite different. He persisted in trying to find a solution through dialogue. It seems that, in his final encounter with Reinado, they reached some form of agreement. As yet, Ramos-Horta, still under treatment in Australia, has not been able to give his version of what happened.



José Ramos-Horta and Alfredo Reinado together one month before the attack

A short account of the rift

As early as 1987 the rift between Alkatiri and Xanana became apparent when the latter declared the creation of a national union in the mountains. Xanana was at the time leader of the Fretilin resistance as well as commander-in-chief of Falintil, its armed wing. The new umbrella was called CNRM, later renamed CNRT (National Council for the Timorese Resistance). It managed to bring the Catholic Church and the new generation of Timorese, who had grown up during the Indonesian occupation, under the CNRT umbrella. Falintil then became independent. However, these developments led to a number of grievances because Fretilin had lost its vanguard role.

Xanana went a step further when he left Fretilin and proclaimed that he was as the sole leader of the resistance. The Fretilin rank-and-file were unhappy with this although they were well aware of the importance of the CNRT nationally and internationally. Xanana became a figure above all parties, often to be compared with Nelson Mandela. Several Fretilin members including Ramos-Horta, one of its founders who was then living in Sydney, joined forces with Xanana and became his spokesperson abroad.

In November 1992, Xanana was arrested by Indonesia and sentenced to 20 years in jail. He was able to resume his leadership from behind prison bars, assisted by many young Timorese, by sympathetic Indonesians and a network of international solidarity workers. An Australian woman, Kirsty Sword, who later became his wife, also helped him during his incarceration.

As the issue of Timor-Leste became a major international campaign, it was clear that a political solution was the only acceptable means to end the occupation of Timor-Leste.

Referendum and independence

Events escalated quickly after the fall of Suharto in May 1998. In January 1999, Acting President, B.J. Habibie announced a decision to give the East Timorese the option of autonomy within the Indonesian republic or independence. When the referendum was held in August 1999, 78 per cent of the Timorese opted for

independence.

In the years before independence, the Indonesian army had recruited and trained local pro-Indonesia groups. In 1998 and 1999, several of these militia groups created an atmosphere of terror through acts of intimidation and violence. After the vote in favour of independence, the Indonesian military had no option but to retreat, but nursing a strong feeling of revenge, they, together with the militia, went on the rampage. A scorched-earth campaign was launched during which some 70 per cent of houses and infrastructure in the country was destroyed and up to 1,500 people were killed.

Timor-Leste then became the first country to be directly administered by the UN (UNTAET, the UN Transitional Administration in East Timor) which governed the territory from 1999 till 2002. In 2002 Timor-Leste became the first country to gain independence in the 21st century.

Before this, general elections had been held under UN auspices in August 2001. As expected Fretilin won 57 percent of the votes, partly because of its name recognition but more so because of its structural base among the population. Other parties that had existed since Portuguese times such as UDT and APODETI were virtually eliminated. Several new parties, including the PSD (Social Democratic Party) and the PD (Democratic Party) emerged as parties enjoying support from the younger generation.

Meanwhile, the position of Xanana became rather controversial. Although he had been the resistance leader, he had no political vehicle of his own and was therefore unable to stand in the elections. But the April 2002 presidential elections gave him the opportunity he needed and he achieved a landslide victory with 82 per cent of the votes. But under the ministerial system in force, the Prime Minister became the head of government while the President was largely a ceremonial head. Hence, although Xanana's political ambitions were considerable, his powers were very limited.

From the very, the new Fretilin government faced difficulties, not least because of the eruption of events on the streets. In December 2002, there were a number of riots in Dili during which Alkatiri's private home was burnt down. Later, in 2005, the Catholic Church organised a two-week demonstration protesting against government policies. Its main grievance was the government's decision to reduce the role of religion in the educational system.

The fall of the Alkatiri government in 2006 was another low point. The problems confronting the country had mounted. In addition to a number of riots, the government came under strong pressure from Xanana. Alongside the poor performance of government institutions was the fact that the rebels were still active in the mountains. These mounting problems forced Alkatiri to step down as the head of government. A country that a few years earlier had been hailed as the UN's poster child of nation-building, joined the ranks of the many unstable, developing nations where a legitimate elected government had been toppled. It was also clear that Xanana had actively supported the overthrow of the Fretilin government.

The 2006 elections displayed all the hallmarks of a

country in crisis. Timorese political leaders lost a lot of political clout because the vast majority of the people blamed them for the appalling economic conditions. "They haven't delivered" was the common complaint. The four political leaders, Xanana and Ramos Horta who were outside Fretilin and Alkatiri and Francisco Guterres (Lu Olo) as the two Fretilin leaders had all lost legitimacy. However, no new leaders had emerged to take their places. It may well take several years before a younger generation of politicians such as Fernando Araujo of the PD, or Arsenio Bano and Aniceto Guterres of Fretilin can emerge from beneath the shadows of the older generation.

With Xanana determined to seize power, but realising that he could no longer continue as an above-party figure, he set up a new political vehicle called CNRT (resuscitating the old initials) which is less a party than a group of loyal supporters from the ranks of anti-Fretilin figures.

Fretilin was by now much weaker, partly because of its poor performance during its time in government from 2002 till 2006, but also because of the strong opposition of the Catholic Church. Furthermore, an internal group emerged within the party called Fretilin Mudanca under the leadership of José Luis Guterres who wanted to find accommodation with Xanana and Ramos-Horta.

Although weakened, Fretilin emerged from the general elections as the party with the largest number of seats in parliament with Xanana's CNRT taking second place. Although this was a political defeat for Xanana, he was able to cobble together a coalition called AMP (Majority Alliance) with a small majority of seats and was therefore able to form a new government. AMP has now been in power for over a year but seems to have been as ineffective as the previous governments.

Squalid conditions

Recent reports from Timor-Leste all describe woeful economic conditions. Unemployment remains very high while little has been done to help the population enjoy the fruits of independence.

Since 1975, large numbers of Timorese have left the country in search of work or have become internally displaced. With each major upheaval, in 1975 and 1998/99 but more so in the 2006 crisis, tens of thousands of people living in Dili have abandoned their homes. As a result, the capital is little more than a small undeveloped town and is now overwhelmed by squalid, refugee camps covering every patch of previously uninhabited space.

Because the 2006 riots took the form of conflicts between easterners and westerners, Dili is now divided into segregated neighbourhoods, making the refugee problem more difficult to solve. In the first years after 1999 many Timorese survived from handouts from international organisations or UN agencies. The 2006 crisis led to a similar situation, this time with the World Food Programme introducing a large-scale programme reinforcing the negative tendency of dependency on handouts.

Although the Fretilin government placed strong emphasis on education and health care, it failed to bring greater prosperity and employment. The present

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The peace process in Aceh

It is widely accepted that democracy is in a good shape in Aceh. The level of violence is low, the economy gives cause for optimism and post-tsunami development is generally on track. However, in a region devastated by three decades of conflict and the 2004 tsunami disaster, many things are not yet running well. It is instructive to see how its new political leaders have performed and how the reintegration of ex-GAM combatants is proceeding.

Political analysts agree that democracy in Aceh is flourishing and is far ahead of other parts of Indonesia including Jakarta. Politically, Aceh underwent a kind of revolution: a speedy peace process resulting in the Helsinki Peace Agreement (Memorandum of Understanding, MoU), the implementation of the MoU and the UUPA (Law on the Governance of Aceh) adopted by the Indonesian Parliament, the DPR, in Jakarta, and successful local elections. As a result, Aceh is now well ahead in political reform in the post-Suharto era.

On paper at least, the MoU created plenty of democratic space, ending authoritarian and centralist rule from Jakarta. This can be described as the most far-reaching regional autonomy experiment in Indonesia. If well implemented, it could set an example for other regions.

The victory of independent candidates at the local elections (pilkada) represented a dramatic break with New Order politics under Suharto. None of the candidates of the Jakarta political parties won posts of any significance, while independent candidates who were either associated or sympathised with GAM (Free Aceh Movement) secured the posts of governor, vice-governor and the majority of the district chief positions.

Division of labour

On paper the two top administrators, Governor Irwandi Yusuf and Vice-Governor Muhammad Nazar are inexperienced men. Irwandi studied veterinarian science in the US and was for several years GAM's underground representative in Jakarta. Nazar was chair of SIRA, the organisation that successfully campaigned for a referendum on the political future of Aceh from the late 1990s till the time of the MoU.

Both were arrested and given long sentences. Irwandi made a spectacular escape from prison during the tsunami in Banda Aceh while Nazar was released from prison in Malang, East Java as part of the MoU agreement. The two men scored convincing victories in the local elections, signalling the preferred choices of the electorate.

The economy of Aceh was in bad shape, after three decades of war and the tsunami disaster which ravaged practically all parts of Aceh. Although the peace process was well underway, it was the tsunami that was the turning point and made Aceh headline news globally. Money came pouring in from all corners of the world for rehabilitation and reconstruction.

Having been in opposition for years, both Irwandi and Nazar were well aware of the many challenges ahead. Their landslide victories raised the expectations of the Aceh electorate. For the first time since Indonesian independence in 1945, the Acehnese were able to

choose independent candidates. After taking office, the two men needed to identify the most urgent tasks: creating new opportunities in the economy and continuing political reform.

Irwandi has focused on the economy while Nazar deals with Jakarta ministers and their departments. He has also focused on justice and human rights, including the establishment of a truth and reconciliation commission and a human rights court. The important issue of reintegration has been taken on by both men as it is an issue that will be crucial in judging whether their administration has successfully coped with the peace process.

Economy, the key issue

Governor Irwandi has placed the economy at the top of his agenda. He realises more than anyone that the political changes in Aceh should have a positive impact on the economy. Acehnese should feel the difference in their pockets, an increase in purchasing power and more opportunities for their families.

Since taking office, Irwandi has made several overseas trips, to the US, India, Malaysia, Germany and Turkey to find potential investors. While he has been criticised for going abroad too often, his purpose was clearly to 'sell' Aceh to foreign investors. Irwandi made the front pages when he met billionaire George Soros who expressed an interest in investing in Aceh.

Several initiatives have been taken by the Irwandi administration to strengthen the grassroots economy. Most ambitious is the plan to clear large areas of land for small holder palm oil production. Each family will be allocated four hectares while plans have also been initiated to end the isolation of inland villages by building roads to the coast. These efforts will boost the export of agricultural products to neighbouring countries. Several harbours will be built or repaired. The main ports of Sabang and Krueng Geukuh will be turned into container ports while Kuala Langsa, Krueng Geukuh, Krueng Raya and Labuhan Haji will also be developed for export trade.

Among the many challenges is the rampant corruption which cannot be stamped out overnight. The Governor's efforts pose a threat to the Acehnese elite. Political opposition and even sabotage could occur if his policies threaten their economic privileges. To overcome bureaucratic red tape, he has himself taken many decisions about projects involving former GAM compatriots as well Acehnese in the diaspora.

But Irwandi cannot simply ignore the bureaucracy at a time when the budget for Aceh has increased by more than 600 per cent. Unless the money is handled properly, the consequences could be very damaging. He inherited a damaged war economy which cannot be transformed

overnight. The clearest example is illegal logging. Despite the moratorium on logging in Aceh announced last year, it is still going on, especially in South Aceh.

The tsunami undoubtedly gave Aceh an economic boost. Around US\$8 billion has so far been made available for reconstruction by the Indonesian government and foreign donors. Another US\$6 billion will arrive in the next two years. Any visitor to Banda Aceh or Lhok Seumawe or the harbour of Sabang will be struck by the boomtown atmosphere.

The Rehabilitation and Reconstruction of Aceh agency (BRR) announced that, by the end of October, over 100,000 houses had been rebuilt, although still short of the 120,000 target. Half of the 3,000 kilometres of destroyed roads have been re-surfaced, most administrative buildings in the districts and districts have been reconstructed, seven airstrips have been upgraded and three new ones built.

Aceh has all the ingredients for a successful economy. It possesses oil and gas fields and because of the UUPA (regional autonomy) law, much of the revenues will go to the province. Rural Aceh is very fertile. In the central highlands some of the world's best Arabica coffee is grown while elsewhere, cocoa, rubber and palm oil plantations need to be revitalised. The Acehnese have a strong entrepreneurial tradition, and have made good use of their trading skills with neighbouring countries on the Malacca Straits.

The thirty-year conflict devastated the economy. Around 169,000 people lost their lives during the tsunami in December 2004 and the infrastructure was badly damaged during the conflict and the tsunami. Aceh still lacks expertise in many sectors, which is why the new leaders are putting emphasis on education and allocating to it around one-third of the budget.

Reintegration, a gigantic task

Alongside the economy is the complex issue of reintegration. To safeguard any peace process, the reintegration of ex-combatants is critically important. This helps ex-combatants to return to normal social and economic life and means creating good jobs so that all the ex-combatants and the victims can return to their communities. Experience of post-conflict management has taught that failure of reintegration is a recipe for renewed conflict. Timor-Leste is one example.

The Helsinki MoU made provision for reintegration, providing 'economic facilitation' for ex-combatants, amnesty for political prisoners and compensation for the victims. The emphasis on reintegration was one of the major achievements of the Helsinki-based CMI which brokered the peace process and also of AMM, the monitoring body composed of people from the EU and the ASEAN countries. From the start, the regional AMM offices have focused on handling the reintegration process.

The BRR (Reintegration Fund) was set up in February 2006 but from the outset, it faced virtually impossible tasks. In the first 18 months, it had two chairpersons. The present chair is Nur Djuli, a seasoned pro-independence campaigner who was a member of the GAM delegation in Helsinki. For many years, he was active in the Acehnese diaspora, particularly in Malaysia.

While the BRR is under the governor, the BRA is the responsibility of the government in Jakarta, a measure of its weakness but sometimes also its strength. Unlike other post-conflict situations, a pledge was made to give relatively large sums of money to several categories of those involved in the conflict. From an initial sum of US\$150 million, GAM combatants were to be allocated \$3,500 each while GAM non-combatants and ex-political prisoners got \$US1,400; \$700 was given to GAM members who surrendered before the peace agreement and \$1,400 to former militia group members, the ones who sided with Jakarta and fought against GAM. Other projects provide housing assistance for those who lost their homes, medical assistance for the injured and compensation for families who lost relatives in the conflict. One of the major flaws of BRA is that it only provides financial compensation and does not deal with psychological needs. Research undertaken by the Harvard Medical School revealed high levels of trauma.

The programme was greatly in excess of the agency's capacity. When about 600,000 people submitted 50,000 requests, the agency's reputation suffered. Although it had been set up to compensate individuals, the GAM leadership (renamed KPA) insisted that the funds should be allocated by its local leadership.

Complications also emerged within GAM. During the Helsinki talks, it was agreed that there were 3,000 combatants but everybody knew this was a conservative figure. Many GAM guerrillas were villagers who participated in armed resistance on a part-time basis, returning home to work in their gardens. Moreover, when Indonesian troops launched major operations, GAM members sought refuge across the Malacca Straits.

Some analysts said that there were just a few hundred combatants but the on-and-off armed wing was at least three times that. For obvious reasons GAM did not keep a membership list. The GAM leadership produced the figure of 3,000 for several reasons. As the movement was decentralised, they themselves did not know the exact figure. The decommissioning of weapons also meant that, by giving a lower figure, GAM would need to hand in fewer weapons. Till now, it is not clear whether local GAM units still possess a large stock of arms but with the restoration of peace, armed resistance has been rendered meaningless.

There were lengthy discussions on reintegration not only among the Acehnese organisations but also among international organisations such as the International Organisation for Migration, the World Bank, foreign embassies and the EU delegation in Aceh. Everybody was aware of the importance of reintegration in guaranteeing the peace process. Schemes were devised to combine individual handouts with efforts to use cash to set up cooperatives or small businesses.

The BRA remains arguably the most sensitive part of the process; the appointment of Nur Djuli as the third person to head the agency was a political decision taken by the Governor. When cash runs short, other sources, usually foreign donors, have been asked to help. The Rp 1.5 trillion allocated to mark the second anniversary of the MoU, was re-directed for use by the BRA.

The achievements of the BRA are nonetheless impressive. Cash has been given to 3,000 ex-combatants, 6,200 non-combatants and 3,204 people

who surrendered. Of the 2,035 ex-political prisoners, almost three-quarters have received compensation while 6,500 registered ex-militia (PETA, Motherland Defenders), some 62 per cent of the total, have received money. Victims whose houses were burned, who were seriously injured or who needed medical treatment have also benefited from BRA activities.

Housing construction has been less satisfactory. Of the 39,926 destroyed houses only 5,228 have been rebuilt, a mere 13 per cent. With BRA projects being so crucial, it cannot afford to fail but nor can it satisfy everybody.

Political reform and new tensions

Political changes have occurred at breathtaking pace, making it difficult to keep track. A new government with a new political agenda, the emergence of at least seven new local political parties, the changed political relationship between Jakarta and Banda Aceh, the big internal changes within GAM and lastly a rejuvenated civil society in Aceh all point to big changes of the political map of Aceh.

The government with its new governor, many new district chiefs, mayors and deputies represents a break with the old Jakarta politics. Some analysts believe that not much has changed: the wine jugs are new but the contents haven't changed. Or, despite the change of leadership, nepotism and favouritism still persist. But the fact is that the new real politik in Aceh does differ starkly from the old politics from Jakarta. The emergence of new economic and political interest groups has created a transformed political and economic landscape.

The old Aceh elite, strongly aligned to the political elite in Jakarta, have lost much of their economic and political clout. This has created new political tensions and the battle to preserve the old established forces continues to be a part of the political scene. The new power groups are often linked to GAM stalwarts, arguably a predictable phenomenon since political power is bound to shift as the economy expands. Most GAM leaders have started up businesses which can provide jobs for unemployed ex-combatants.

The GAM organisational structure was largely decentralised with the leadership coming mostly from the Pidie region. The elections that catapulted Irwandi and Nazar to power have undermined this hierarchy and the mushrooming of new businesses has created new alliances. It is doubtful whether the old GAM leadership from Pidie can retain their position of dominance.

New phenomenon, the birth of local parties

The ability to form local political parties is something new; elsewhere in Indonesia, parties are required to have branches in a number of provinces. So far thirteen local parties have been set up, some Muslim and some secular.

The first party to emerge long before the law on local parties was adopted was PRA (*Partai Rakyat Aceh*, Aceh People's Party), set up by a young generation of activists which has attracted peasants, professionals, businessmen and NGO activists. The PRA opposes the introduction of sharia law and supports the principle of federalism in Indonesia. After a long period of preparation,

the PRA drew up a programme covering all sectors and is expected to perform well in the 2009 elections. Key pro-democracy persons such as Nanda Thamrin, Raihana Diani and Aguswandi are members of the PRA.

Soon after the PRA, other parties emerged. *Partai Gab That*, (*Generasi Aceh Beusaboh Thaah dan Taqwa*) a local Muslim party with a local Acehnese name in the tradition of the days of the Aceh Sultanate. Several groups were involved, students from Muslim schools, members of HUDA, the organisation of Muslim clergy, former GAM members and former SIRA members. A local GAM leader Abu Samalanga is its chair. Its political agenda is focused on Muslim ideals, including the introduction of shariah law.

The next party to emerge was set up last March by women. Although the agenda is focused on the advancement of women, PARA (*Partai Aliansi Rakyat Aceh Peduli Perempuan*, the Aceh People's Party Alliance Concerned with Women), is chaired by Zulhafah Luthfi, a well-known woman activist, and Nurjanah, both academics. While PARA does not exclude men, most members of the board are women.

PAAS (*Partai Aceh Aman Sejahtera*, the Acehnese Party for Peace and Welfare) came into being in June 2007 initiated by intellectuals, politicians, professionals and activists from youth and women's organisations. One of the key organisers of PAAS is Ghazali Abas, an Acehnese politician, formerly a member of the MPR, the Indonesian Peoples' Congress. Ghazali Abas spoke out courageously about the many human rights abuses during the Suharto days. PAAS is likely to attract non-GAM voters.

Partai Serambi Persada Nusantara Serikat (PSPNS) was set up in June 2007 and uses the word *serikat* (federal) in its name, a word that unacceptable for centralists in Jakarta. Its chair is Muhammad Salihun and Alhadi Fuadi is the secretary-general.

A few local parties about which there is not much information are *Partai Darussalam*, *Partai Aceh Meudalat* (PAM), *Partai Lokal Aceh* (PLA), *Partai Daulat Aceh* (PDA) and *Partai Pemersatu Moslim Aceh* (PPMA, Aceh Moslem Unifying Party). These parties hope to win support from Muslim voters, especially from people who may have voted in the past for Indonesian Muslim parties. They all registered in the last four months of 2007.

Partai Bersatu Aceh (Unified Acehnese Party) is an interesting local party because its chair is Farhan Hamid, a national MP in Jakarta representing PAN, a non-exclusive Muslim party. He appears to have concluded that he could lose his parliamentary seat if he were nominated by a national party. The secretary-general is Muhammad Saleh.

Partai SIRA registered in February this year although it has existed since the early reform days after the fall of Suharto in 1998. SIRA was able to mobilise tens of thousands of people on the streets and politically it was often seen as the younger, non-violent sibling of GAM. This combination is reflected in the present power structure where Irwandi Yusuf became governor and Muh. Nazar became vice-governor both well known GAM and SIRA stalwarts. The chair of this party is Taufiq Abda and Arhama is the secretary-general.

Partai GAM

The most important local party is undoubtedly *Partai GAM*, the political party that transforms GAM into a political party within the Indonesian state. It was set up on 27 July 2007 in Banda Aceh. The people in charge explain this as a logical consequence of the peace process; whereas GAM formerly had a strong armed wing, it now will focus exclusively on political forms of struggle. The party has also said that it will continue to use the same flag and symbol as before. This explanation led to some dismay among decision makers in Jakarta.

TNI officers rejected this decision while many politicians in Jakarta fear that the new party will win very substantial support in the forthcoming elections, leading to the demise of the national parties which have their headquarters in Jakarta.

The existence of many local parties in Aceh has created a situation in which national parties have become rather meaningless. People in other provinces, especially Papua, are closely watching these developments while the political elite in Jakarta is far from happy. It may be some time before *Partai GAM* is acceptable to the authorities in Jakarta.

Many politicians in Jakarta distrust GAM and fear it could resume the armed struggle but this has become increasingly unlikely. Most Acehnese are more than happy with the absence of violence and fear. The transformation of many GAM leaders into businessmen is a mark of the rapid switch from armed struggle to business.

Internally, *Partai GAM* is encountering problems. It was set up primarily by the Pidie group, who consist of the older generation who were part of the exiled GAM government in Sweden. But the political map of GAM in Aceh has changed enormously. Since the local elections, most rank-and-file GAM members support the younger generation, represented by Irwandi and Nazar while the old generation retains legitimacy because they were the ones who signed the MoU. However, the real power is clearly in the hands of Irwandi and his group.

There are several scenarios for a political way out: the different wings could agree to remain together in a single party or the younger generation could set up their own party, while other GAM parties emerge, or the SIRA group, which paved the way for the peaceful solution through a referendum in 1998 could emerge as a new political party.

GAM Party changes its name

After difficult negotiations with the Department of Law and Human Rights in Jakarta, GAM leaders agreed to change their name and symbol. Previously GAM was the abbreviation of *Gerakan Aceh Merdeka*, the Free Aceh Movement. After the Helsinki Peace Agreement, the leaders decided to keep GAM as their name but no longer as an abbreviation. It would simply be a way of recognition for the electorate. When officials in Jakarta rejected the idea, GAM leaders agreed that its name would once again be an abbreviation. The M now stands not for 'merdeka' (freedom) but for 'mandiri' which means self-reliant.

Previously, Malik Mahmud the former prime minister in exile in Sweden was named as their vote-getter but when

the party made its application for recognition, Muzakkir Manaf, the last commander-in-chief of TNA, the armed wing of GAM, was named as the chair. The former flag with a crescent and star now contains the letters GAM, writ large, alongside *Gerakan Aceh Mandiri*. Now that these adjustments have been made, the local office of the Department of Law and Human Rights is more likely to endorse its registration.

The new political landscape in Aceh provides many new features but a few certainties will remain. The GAM party(ies) will definitely win many votes, most likely a substantial majority. Pluralism is also a certainty: the variety of local party initiatives will guarantee that the many views among the Acehnese are represented.

A soft version of shariah law?

The introduction of shariah law a few years ago is a contentious issue but is unlikely to create major problems during the elections. The division between secular and religious parties in Aceh differs somewhat from conditions in Java. The more secular parties, including *Partai GAM*, will not take a strong position against shariah law. The intention is not to make a big issue of shariah law but to gradually turn it into a moral and educational issue, instead of being part of the judicial system.

The new rulers of Aceh will make sure that shariah law will be used in moderation. Resistance against shariah law is quite strong in Aceh but if one starts to attack it frontally, it will create deep divisions in society. Throughout the history of Aceh, even during the Aceh Sultanate of the 17th century, shariah law was never needed. Islamic law and customary law were used to run the country. As yet, shariah law punishments such as caning have been applied in very few cases, for so-called indecency, adultery, thieving and petty gambling. Bigger cases such as corruption are handled by the criminal courts, meaning that shariah law is only used for petty crime. Some women activists have complained that the shariah police, a special unit of the Shariah Department, have intruded into their private lives by making judgments on whether women are 'properly' dressed.

Pressing human rights issues

While the peace process has proceeded relatively well, three human rights issues have not been properly dealt with. At a student seminar last August to mark the second anniversary of the MoU peace agreement, Vice-Governor Muhammad Nazar drew attention to the establishment of a Truth and Reconciliation Commission (TRC) and the creation of a Human Rights Court. He said that they had asked the central government in Jakarta to quickly draft regulations for a TRC, which should have been set up within one year, and also for the establishment of a human rights court.

There is a tendency in post-conflict situations for nothing to be done about these matters. There is always the likelihood of strong pressure from former perpetrators of acts of violence to disrupt the peace process, as exemplified in Indonesia. In post-Suharto Indonesia, efforts to set up a human rights court and a TRC were bogged down by disagreements in parliament. This has also happened in Aceh. While the MoU agreement

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Banning beggars won't solve Jakarta's problems

The decision by the Jakarta Municipal Administration to enact a bylaw banning beggars and street vendors from the city will do nothing to solve the problems facing the country's capital and will only intensify the scourge of poverty. It criminalizes the capital's 600,000 poor people and even makes it an offence for people to give money to beggars and street children.

An announcement last September by Jakarta's outgoing governor, retired general Sutiyoso, that he was introducing a bylaw banning beggars and street vendors and making an offence of giving money to beggars has angered many organisations who argue that the law will only intensify poverty, already a huge problem in the city. The governor said the justification for the new law was to clean up the streets of the nation's capital and end disturbances to public order. Such remarks have led many who will be targeted to conclude that the governor does not care one bit about them.

Street vendors, beggars and street children are a common sight everywhere in the capital, in a country where there are no unemployment benefits available from the state. People who are unable to find a job have to eke out a living with anything that will bring them something to keep body and soul together. In the absence of a social security system, hundreds of thousands of unemployed or semi-employed men and women must fend for themselves by using their own wiles on the streets.

Research has shown that street vendors in Jakarta are very successful at doing this, earning a total of Rp. 35 million (roughly \$35) a day, according to the Institute for Ecosoc Rights.ⁱ The calculation is based on data from the city's development planning agency in 2006 that concluded there are 141,071 registered street vendors. Many others make a small living as 'jockeys'. These are people who become 'passengers' in cars to help motorists conform with a regulation which requires cars using the toll roads to carry a minimum of three persons.

The city bylaw will prohibit people from setting up businesses along the streets, sidewalks, pedestrian bridges and other communal areas, and will prohibit people from giving money to beggars, buskers and street children. Anyone giving money to beggars could be fined between Rp 100,000 and Rp 20 million or sentenced to two months in jail.

Those also affected by the ban include so-called 'Pak Ogah' who help to direct the traffic at intersections in exchange for a tip from motorists stuck in the traffic. This highlights the absence of police who should be doing the job.

The Poor People's Alliance strongly opposes the new bylaw because it would block the urban poor's ability to make a living for themselves and their families.

A former busker who now works at the Jakarta Centre for Street Children, interviewed by Jakarta Post, said: 'No one wants to go begging for the rest of their lives. I will support the bylaw if the government can find people a job.'ⁱⁱ

Nurcholis Hidayat of the Jakarta Legal Aid Institute said the law was a violation of citizens' rights. 'Public order officials often use violence to organise street

vendors, beggars, buskers and sex workers. But these people are only trying to look for money,' he said.

Other Indonesian cities record a very similar situation. In Surakarta, Central Java, for example, some 20 per cent of the city's population of 550,00 live in poverty. According to data from the city's Sidewalk Vendors' Management Agency, at least 30,000 people or 25 per cent of the city's poor, rely on 5,617 sidewalk stalls for their living.

M. Ridha Saleh, deputy chairman of the newly-installed Komnas HAM, the National Human Rights Commission, which has received many complaints about the Jakarta bylaw, said the Commission would summon the city administration to ask why they were trying to undermine people's rights to live in the city and would set up an evaluation team to assess the performance of city officials.

The Department of the Interior could step in and ask the Jakarta administration to revise the bylaw if it contradicts a law passed by a higher body or violates the country's Constitution. However, according to the Straits Times (9 October 2007), Interior Minister Mardiyanto has indicated that the bylaw does not violate other laws, setting the stage for its implementation.

Wardah Hafidz of the Urban Poor Consortium was angry with such an attitude. 'High-handed approaches like this in order to cover up poverty in the city just do not work. It only shows that our system only serves those with money and power and neglects the rights of the poor.'ⁱⁱⁱ

The scourge of poverty

While the Indonesian economy has been recording a level of growth that has won the commendation of the World Bank and domestic and foreign investors are showing greater interest in the economy as compared to



A woman begs amongst the traffic in Jakarta

the late 1990s when the Asian financial crisis struck, little attention is drawn to the fact that, alongside a prosperous middle class, there are many millions of very poor people in Indonesia.

According to a national survey by the Central Statistics Agency in September 2006, almost 40 million people were living below the poverty line and almost 100 million were on the verge of absolute poverty.^{iv}

Travelling along the highways of Jakarta, one is struck by the striking contrast between gleaming skyscrapers accommodating offices, hotels and restaurants and the hovels and kiosks, and the many people living and sleeping on the sidewalks. Everywhere, there are hawkers carrying their wares dangling from shoulder poles who throng the pavements. With traffic moving at snail's pace along the congested lanes for most of the day, there is plenty of time for street hawkers and newspaper boys to offer their wares to people sitting comfortably in air-conditioned cars.

Adding to the chaos are numerous motorcyclists weaving their way through the traffic, producing fumes that make Jakarta one of the most polluted cities in Asia, if not in the world.

WHO: Alarming rise in suicides

According to press reports, many Indonesians are so despondent about their lives of hardship that they commit suicide. The Jakarta Post^v reported that tens of suicides had been reported in the media in the previous months. A sociologist from the University of Indonesia, Imam B. Prasodjo, said. '[The] traditional support system is no longer effective or it even no longer exists in an urban society like Jakarta. It makes life become harder for the poor.'

The World Health Organisation recently published very alarming figures about the number of suicides in Indonesia. A study conducted in October by Trisakti University in Jakarta revealed that an estimated 1,500 people on average commit suicide every day in Indonesia. Professor Ahmad Prayitno from the mental health department of the University said that the economic crisis 'is the main reason ... followed by those suffering from mental illnesses.' Another factor was the socio-economic gap between wealthy families and those living in need.

The study came to the conclusion that no fewer than 100,000 Jakartans committed suicide in 2006. It said that the figure may be even higher as some suicides were reported as accidents.^{vi}

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government has won plaudits for allegedly being the only debt-free government in the world, but the lack of projects to repair the woeful infrastructure is puzzling. Xanana's criticisms of the previous government are partly correct but his own government's record is no better.

The most puzzling question concerns the country's oil and gas revenues. While other oil-producing countries are enjoying bumper years due to the high oil prices, it is not clear what is happening with the more than US\$2 billion dollars held in a government trust fund in the US, and earning interest. Much of the money could surely be used for the benefit of the Timor-Leste population.

A way out?

In May 2005, during a period of relative calm, the Special Representative of the UN Secretary-General delivered a speech in Dili to mark the end of the UN peace-keeping operation and stated that the international community now recognised Timor-Leste as a safe and peaceful country and that the time had now arrived for security to be left to the domestic police and military forces. However, a year later, an international force consisting mostly of Australian military and police had to step in again, following a decision of the UN Security Council. The reputation of Timor-Leste had become tarnished.

While UN-bashing is easy, the reality of the Timor crisis is much more complex. The political and economic crisis is grave and needs to be addressed swiftly. The oil and gas revenues should be utilised for a variety of programmes, including repairing the dreadful state of the infrastructure. Making road-building a top priority, for example, would have the knock-on effect of reducing the level of unemployment. Unless and until the economy is properly handled, the population of Timor-Leste will continue to feel that their independence in 2002 has brought them nothing.

Efforts to find a compromise between the two political blocks should continue. A few days before the attack on Ramos-Horta, a meeting took place at his house when he, Xanana, and a delegation of Fretilin stalwarts met to discuss the deadlock. Fretilin suggested that a general election should be held soon bearing in mind the unsatisfactory performance of the government but this was rejected by Xanana who insisted that his government would be able to solve all the problems.

The recent crisis in Kenya provides an instructive comparison. In that country with both political forces being almost equal, mediation from the outside was needed in order to find a compromise. A similar solution is badly needed in Timor-Leste. Since Fretilin emerged as the strongest political force in the country with the most seats in parliament, it cannot be excluded from government.

However, recent developments do not give grounds for optimism. Many basic problems remain. Economically, by contrast with most countries of South-East Asia, Timor-Leste lacks an entrepreneurial class of street hawkers and shopkeepers. The lack of security casts doubt on the legitimacy of the government institutions. The culture of violence and impunity only makes things worse. Perhaps, the ending of the military rebellion, which now seems to be underway, can be the starting point for the building of a new Timor-Leste.

ⁱ The Jakarta Post, 15 September 2007.

ⁱⁱ Op.cit

ⁱⁱⁱ The Straits Times, 9 October 2007

^{iv} The Jakarta Post, 30 July, 2007.

^v The Jakarta Post, 7 June 2007

^{vi} The Jakarta Post, 9 October 2007.

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killed and 250,000 people being forcibly displaced to West Timor are not good. Furthermore, the report is unlikely to contribute to sustainable friendship between the peoples of Indonesia and Timor-Leste given its apparent aim to bury the past, undermine the search for justice and sanction impunity.

17. In the words of a member of an Indonesia-based NGO cited by the CoE: 'There are no problems at all between Indonesians and East Timorese, so a reconciliation between peoples of the two countries is not needed. The problem of human rights violations in East Timor does not lie in people-to-people relations, but lies instead with the TNI and its militias as the alleged perpetrators of the violence against the East Timorese'.

18. The CAVR report already provides a detailed historical record of the human rights violations committed in Timor-Leste and the CAVR has undertaken important grassroots reconciliation initiatives. The cause of justice, truth, reconciliation and friendship would be better served by the wider dissemination of the CAVR report and

implementation of its recommendations by both governments and the international community. This should start with the renewal by the UN of the Serious Crimes Process and the provision of sufficient resources to enable it to continue to investigate and try cases arising from the period 1975-1999.^{vii}

i See Too Much Friendship, Too Little Truth, International Center for Transitional Justice, January 2008, p. 24 and Annex for an analysis of witnesses and table of those who appeared before the CTF: <http://www.ictj.org/images/content/7/7/772.pdf>

ii Available at <http://www.etan.org/etanpdf/pdf3/N0542617.pdf>.

iii Statement of the Spokesperson for UN Secretary-General Ban Ki-moon, 26 July 2007, SG/SM/11101

iv It has also been suggested that the ToR may violate the Constitutions of both countries. See Too Much Friendship, Too Little Truth, op. cit., note i.

v Op. cit., note i.

vii See 'Indonesian military must take responsibility for 1999 violence: witness, AFP, 26 Sept 2007 (concerning testimony of Fransisco de Carvalho Lopes); and 'CTF hears of offers of 'cash, weapons', Jakarta Post, 26 Sept 2007 (concerning testimony of Tomas A Goncalves).

vii See CAVR recommendations 7.1.1 and 7.1.2.

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provided for the creation of these bodies, the Law on Aceh Governance was watered down when it was finally adopted.

The demand for justice is strong

Ill feelings towards Jakarta remain high in Aceh, as clearly expressed in the local elections. Many Acehnese still demand justice for many gross human rights violations: extrajudicial killings, forced disappearances, torture, rape and other forms of violence. Responsibility for the creation of an ad hoc human rights court rests with national parliament but it is doubtful whether they have the courage to set it up.

The third issue is the release of the remaining political prisoners. The Indonesian government certainly made an important gesture by releasing the vast majority of the political prisoners after the MoU was signed. Quite a number of GAM prisoners had been found guilty of criminal actions, and in a display of political will the majority of the 2,000 prisoners were freed. At the last count seven political prisoners are still in custody, including three in Cipinang Prison, Jakarta (Tengku Ismuhadi, Irwan Ilyas and Ibrahim Hasan) and one in Sukamiskin Prison in Bandung (Dinan Sabardiman).

While awaiting a decision to release the men, NGOs have demanded that they should serve the remainder of their sentences in Aceh, to be closer to their families.

Serious incident kills five people

On 1 March this year, a crowd of around one hundred people attacked and set fire to the KPA (the Aceh Transitional Commission) office, the office of former GAM rebels. Four people were burned to death inside while the fifth was thrown down a well. The attack occurred in the remote Atu Lintang area of Central Aceh.

This is by far the most serious incident since the Helsinki peace agreement was signed in August 2005. Several militia groups are known to have been active in the region and there is a history of conflicts between militia groups and pro-independence villagers. During an

earlier peace agreement in 2003, there was an incident in the same region when a member of the Joint Security Committee was beaten up. As a result, peace talks that were then in progress were abandoned.

Nine NGOs in Aceh have called on the local administration to set up an independent team of inquiry into the incident and have suggested that the National Commission of Human Rights should be included in the team.

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