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## The Indonesia Human Rights Campaign

TAPOL Bulletin No. 164/165

December 2001/February 2002

# Papuan independence leader assassinated

*The man who was elected to head the Papuan Presidium Council (PDP) set up in 2000, was abducted shortly after leaving the base of Kopassus, the army's elite corps in Jayapura, late on 10 November. The body of Theys Hiyo Eluay, who had become a respected, high-profile community figure, was found dead on 11 November, the day after he had been abducted.*

The assassination plunged Papua into a deep political crisis. Few people doubt that elements within the Indonesian army, almost certainly within Kopassus, are responsible for the crime. There have been many calls, in Papua as well as from members of the US Congress and international human rights organisations, for an independent commission to be set up to investigate the crime. Four days after the abduction, the European Union expressed 'deep concern' about the death and called on the Indonesian authorities to conduct a full investigation.

Theys had been invited to dinner at the Kopassus headquarters in Hamadi, South Jayapura, the capital city of Papua, on the occasion of Indonesian Heroes' Day on 10 November. Colonel Hartono, commander of the Tribuana Kopassus unit had driven to the home of Theys that morning to escort him to the event. Minutes after leaving the base at around 10pm for the 45km drive home, his driver phoned his wife in a state of great agitation, to tell her that her husband had been abducted. The driver, Aristoteles Masuko, had apparently been forced out of the car. While they were talking, the line was cut and the family's attempts to ring the driver on his mobile were unsuccessful. Aris, as the driver is known to his friends, has since disappeared. The fact that he is the key witness to the crime makes his disappearance all the more alarming.

On the following day, the body of Theys was found by villagers in Skouw, not far from the border with Papua New Guinea, more than 50 kms from where he had been abducted. His car was found upturned on the edge of a ravine near a tree, positioned as if to suggest that there had been an accident. His face was black and his tongue was hanging out, suggesting that he had been strangled to death, though the perpetrators had taken every precaution not to leave any marks on the body. An autopsy later concluded that Theys had died of suffocation.

### Impartial inquiry needed

Human Rights Watch called for an impartial inquiry into what was 'clearly a well-planned assassination' while TAPOL, in a statement two days after the crime, strongly condemning this act of state terror called for a special

commission 'independent of military interference' to establish the facts of this 'political assassination'.

Members of the victim's family immediately blamed the military, referring to the fact that members of Kopassus were well aware of his precise whereabouts.

While members of Kopassus were quick to profess their innocence, the military commander of Trikora military commander, Major-General Mahidin Simbolon, defied all logic, saying that the PDP chair had 'probably died of a heart condition'. Simbolon is himself from Kopassus and served for years as military commander in East Timor during the mid 1990s and earned himself a reputation for great brutality.

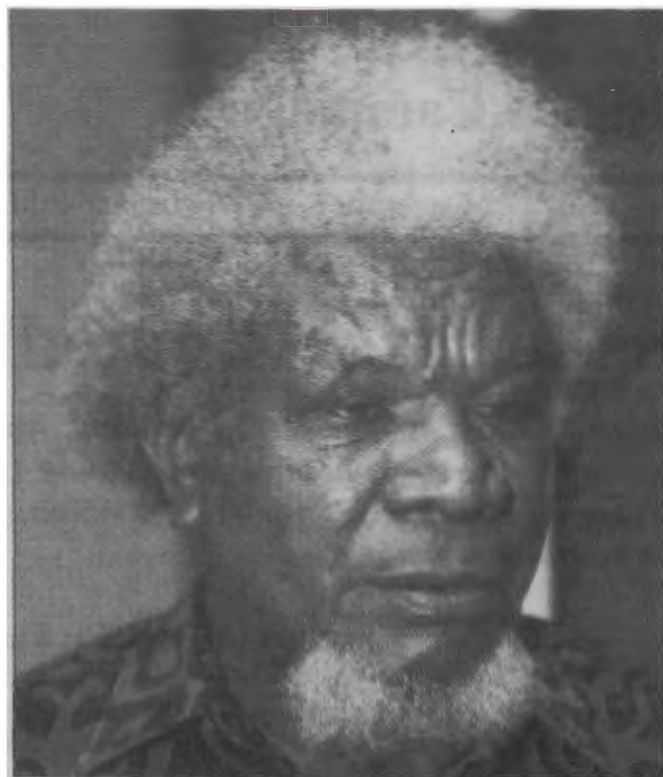
At the time he was killed, Theys Eluay, together with four other PDP leaders, was on trial for subversion. The others on trial with him were: Thaha Al Hamid, secretary-general of the PDP, the Rev. Herman Awom, Don Flossy and John Mambor. The trial appears to have been suspended.

News of the death resulted in some acts of violence in his home town of Sentani where angry crowds burnt several buildings and blocked the roads. However, apart from these outbursts, protests have taken the form of well-organised,

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peaceful demonstrations.

Theys was buried on 17 November, in the presence of a grief-stricken crowd of over ten thousand people, some of whom had trekked long distances. The Papuan kejora (Morning Star) flag fluttered half-mast in many places



throughout Papua. He was buried near his home in Sentani, in a sports field which has been transformed into the burial place for independence leaders.

Back in August 1969, Theys was one of more than a thousand Papuans who were coerced into becoming members of several hand-picked councils that were required to adopt a 'unanimous' decision in favour of integration with Indonesia. This so-called 'Act of Free Choice' organised by the Indonesian military became the basis for a resolution of the UN General Assembly on 19 November 1969, removing the question of West Papua from the UN agenda. In an interview with the Australian Broadcasting Corporation in May 2001, Theys said:

*'During those days, especially during the so-called Act of Free Choice, I myself for instance, I was taken from my home in the middle of the night without my wife and my children knowing about it, why I was taken and where I was being taken to. When I arrived to where the others were being interned, we were all drilled that the province of West Irian, which is what it was called at the time, belonged to the Republic of Indonesia, was an integral part of the Republic, and we were not allowed to say anything else. We had to go along with that, we had to give in to the intimidation.'* [Australian Broadcasting Corporation, 31 May 2001]

Theys also bore the title of Ondofolo, tribal leader, as chief of the Sentani tribe.

## Papuan Presidium Council

The Papuan Presidium Council (PDP) which Theys Eluay chaired was set up at a meeting in Jayapura in February 2000 when it was decided to convene the Second Papuan Congress in May-June 2000. This Congress was held as a sequel to the first Papuan Congress held in December 1961 when the territory was still under Dutch

rule. On that occasion, Papuan independence was proclaimed and national emblems including the flag and anthem were adopted.

The Second Congress was attended by hundreds of delegates with the enthusiastic support of many thousands of Papuans who gathered in Jayapura at the time of the event. [See TAPOL Bulletin, No 158, June 2000.] While adopting a firm position in support of independence for Papua, and rejecting the validity of the Act of Free Choice which was held in August 1969, the Congress decided to pursue the path of dialogue with Jakarta, eschewing violence as a means of struggle. Since its foundation, the PDP has projected a new image of Papua's independence struggle, dedicated to a peaceful solution. The OPM or Free Papua Movement which, with its armed wing, the TPN, has waged an armed struggle since 1965, still exists as a separate entity while having a place within the PDP.

The then president of Indonesia, Abdurrahman Wahid, gave his support to the Congress and initially promised to deliver the opening address. He later changed his mind, apparently under pressure from his vice-president, Megawati Sukarnoputri, and donated money instead. Wahid later showed his sympathy for Theys and the other PDP leaders when he urged the police in Jayapura not to keep the five men facing charges in custody. The police ignored his pleas. Wahid's efforts, aimed at encouraging Papuans to pursue the path of dialogue, did not find favour with the armed forces or with Megawati Sukarnoputri who later took over as president when Wahid was impeached in July 2001.

The Papua Presidium Council was soon acknowledged as a truly representative body supported by Papuans from all walks of life, with local representatives known as 'panels' in all parts of the territory. The political impact of the Congress and the PDP was not lost on the security forces and military intelligence who immediately saw the need for an operation to reverse the overwhelming support for independence.

## Secret intelligence operation

Less than a week after the Second Congress, the key Indonesian military and non-military intelligence agencies, thirteen in all, came together to discuss political developments in Papua. Alarmed by the fact that 'the social/political conditions in Papua following the Papuan Congress has become very volatile', they agreed on the need 'to take speedy, concrete actions to anticipate ever-growing support in Irian Jaya and more generally throughout Indonesia'. The record of the meeting, marked 'sangat rahasia' (top secret) and dated 8 June 2000, noted that the people of Papua 'right down to the villages, were in a state of euphoria over the question of Independence, that a conspiracy of those in favour of Independence was becoming very solid and that efforts were underway to spread the results of the Papuan Congress to all corners of the territory, to the whole of Indonesia and even to the wider world'.

[The record of this meeting which was held under the auspices of the Ministry of the Interior in Jakarta, was leaked to TAPOL earlier this year. A summary was posted on the Internet on 12 October 2001. See 'Secret Operation in West Papua to Undermine Pro-Independence Movement', on [www.gn.apc.org/tapol](http://www.gn.apc.org/tapol).]

The intelligence agencies decided to set up a special task force to create a 'more conducive' political situation in Papua; the strategic target of the task force was identified as



# **Torture Committee slams 'climate of impunity'**

*On 22 November, the Geneva-based Committee against Torture strongly criticised Indonesia's record on eradicating torture and ill treatment and published a series of recommendations aimed at encouraging the Government to address the 'climate of impunity' and other major concerns*

The Committee against Torture - a panel of human rights experts which sits at the UN in Geneva - oversees States' compliance with the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Having ratified the Convention in 1998, the Indonesian Government, in accordance with its obligations under the Convention, submitted its (belated) first periodic report for consideration by the Committee in February 2001.

## **Concerns and Recommendations**

While noting a few positive developments, the Committee expressed strong criticism of Indonesia's record in a long list of concerns. They included a large number of allegations of torture and ill treatment committed by the police, the police special forces Brimob, the army and paramilitary groups, especially in areas of conflict such as Aceh, Maluku and Papua, and allegations of excessive use of force against demonstrators or during investigations, of attacks against human rights defenders, of abuses committed by military personnel employed by businesses, and of the use of rape and sexual violence as forms of torture and ill treatment.

During the Committee's review of Indonesia's report, the Committee's rapporteur on Indonesia, Felice Gaer, expressed shock at the number of allegations of torture and at the fact that only one or two cases had come to trial. She also registered her disapproval of the limited nature of the Indonesian Government's report and the lack of attention it paid to the practical implementation of the Convention. The Committee expressed its concern at the absence in the report of disaggregated statistics and other information on torture.

Committee Chair, Peter Burns, professor of law, said the situation of Indonesia provided the most stark illustration of the difference between formal law and practice in relation to torture.

Addressing the 'climate of impunity', the Committee expressed concern at the lack of prompt, impartial and full investigations into allegations of torture and at the lack of progress in bringing to trial members of the military, police and state officials involved in torture and ill treatment, particularly those in senior positions. It recommended the establishment of an effective, reliable and independent complaint system to undertake prompt, impartial and effective investigations and to prosecute and punish the perpetrators, including senior officials and those involved directly or indirectly in paramilitary operations using torture.

The Committee also expressed concern about the lack of independence and impartiality of the National Commission on Human Rights (Komnas-HAM), about the fact that Komnas-HAM reports are not published in full and about Komnas HAM's inability to challenge decisions

by the Attorney General not to prosecute a case as recommended by the Commission. It recommended immediate measures to address these issues.

On the question of torture and other serious crimes committed in East Timor, the Committee expressed concern at the limited mandate of the proposed *ad hoc* human rights courts on East Timor, about the problems associated with the non-retroactivity principle introduced into the Indonesian Constitution and about Indonesia's inadequate co-operation with the serious crimes unit of UNTAET [see separate article on Justice]. It recommended extension of the jurisdiction of the *ad hoc* court, steps to ensure that torture and crimes against humanity committed in the past can be prosecuted, and full co-operation with UNTAET, including the transfer of suspects for trials in East Timor.

While it noted the formal separation of the police from the military as a positive development, the Committee expressed concern that the police continued to be associated with allegations of torture and recommended continued reforms to strengthen the police as an independent civilian law enforcement agency.

The Committee noted the lack of response to communications sent by the UN special rapporteur on torture. It recommended that Indonesia should respond to a request dating back to 1993 and invite the special rapporteur to visit the country.

Other issues dealt with by the Committee included the need to amend Indonesian criminal law so that torture and other cruel, inhuman or degrading treatment or punishment are strictly prohibited and that the penalties reflect the seriousness of the crime, the need to reduce the length of pre-trial detention and ensure access to legal counsel, relatives and medical assistance, the need to protect victims and witnesses and to exclude in any proceedings any statement made under torture, the need to ensure that no person can be removed to another State where that person is in danger of torture, the need to ensure protection for human rights defenders, the need to reinforce education and training for law-enforcement officials, judges and medical personnel and the need to provide rehabilitation for the victims of torture and ill-treatment.

Positive aspects noted by the Committee included a recognition by the Government that the eradication of torture is linked to overcoming a culture of violence within the army and police, the acknowledgement of a pressing need for a centralised register of detainees and interest expressed in the government co-operating with national NGOs in monitoring prisons and places of detention.

The Conclusions and Recommendations of the Torture Committee in full are available on the website of the UN High Commissioner for Human Rights at: [www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/CAT.C.XXVII.Concl.3.En?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/CAT.C.XXVII.Concl.3.En?Opendocument)

TAPOL attended the Committee sessions on Indonesia at the invitation of the World Organisation Against Torture (OMCT). A copy of the OMCT report to the Committee, prepared in collaboration with TAPOL, is also available on request. An alternative Indonesian NGO coalition report is also available on request.

## Torture of Bandung prisoners

The gravity of the situation of torture in Indonesia was underlined just a few days after the meeting of the Torture Committee with the publication on 29 November 2001 of a report by the Asian Human Rights Commission (AHRC) on torture and other human rights violations suffered by 19 activists in Bandung, Central Java.

The activists were arrested on 14 June 2001 during a protest against an increase in the price of fuels. They were charged with displaying signs that may cause humiliation to public authorities under Article 160 of the Penal Code and using violence against people or goods under Article 170 of the Penal Code. AHRC interviewed nine of the 19 defendants and attended the trials of ten of them. The report reveals clear evidence of torture and ill-treatment by the police for the purposes of punishment, intimidation and

obtaining confessions. Much of the police interrogation was apparently aimed at gathering intelligence information about the defendants' political activities and was unrelated to the charges against them.

The acts of torture included: beatings with fists; striking with weapons including guns, teargas guns, and bamboo poles; severe kicking, including to the head, groin, abdomen and sternum; stabbing with bayonets; burning with lighted cigarettes; denial of medical attention; and stitching without anaesthetics.

The injuries suffered included concussion and loss of consciousness; deep wounds and gashes, profuse bleeding, severe bruising, hearing loss, back injuries, headaches, and burns.

The authorities failed to investigate the allegations of torture or to exclude confessions made under torture from the proceedings against the defendants. The defendants also suffered other violations, such as incommunicado detention, and denial of their rights to legal assistance, to be tried without undue delay and to a fair hearing by an independent and impartial tribunal.

A copy of the full AHRC report is available at [www.ahrck.net](http://www.ahrck.net).

## TAPOL calls for cancellation of plans for new Aceh military command

*The following is the text of a letter sent by TAPOL on 17 January 2002 to British Foreign Office Minister, Ben Bradshaw, calling on Britain to press the Indonesian Government to cancel plans for a new military command in Aceh and to order the military commander to rescind a recently-issued 'shoot-on-sight' order.*

"Dear Mr Bradshaw,

"The Indonesian armed forces earlier this week announced that they would go ahead with a decision to create a military command in Aceh despite protests from a large number of civil society organisations in Aceh. These organisations pointed out that the establishment of this military command would further intensify the level of military operations in the territory. When the idea of setting up a military command in Aceh was first mooted in Jakarta, the Bukit Barisan military commander said that the views of the Acehnese people would be considered but it appears that the only voice in favour was that of the provincial governor, Mr Abdullah Puteh, and one or two members of the local assembly. All other views have been ignored.

"Human rights organisations and activists in Jakarta today called for the cancellation of the decision to set up the military command, warning that this could only further aggravate the level of human rights abuses in Aceh.

"Matters have been made even worse by a 'shoot-to-kill' order issued on Monday by Brig.General Djali Yusuf, commander of military operations in Aceh. He was quoted in Tuesday's Jakarta Post as saying: 'I have ordered all security officers to shoot on sight those found intentionally disturbing public order or peace.' This is a grave threat to the safety of anyone deemed by the military to be acting

against their wishes. The threat is particularly ominous at present when Aceh is in the throes of a general strike to protest against the establishment of the military command.

"The situation in Aceh continues to deteriorate by the day. In the first three weeks of 2002, scores of people have already been killed. The government has effectively suspended peace talks with GAM. The Indonesian authorities are defying all logic by pursuing the path of military operations and continue to ignore pleas to halt human rights abuses and bring those responsible for past and present abuses to justice.

"TAPOL calls upon the British Government:

1. To press the Indonesian Government and military to cancel plans to create a military command in Aceh.
2. To call on the Indonesian authorities to order the commander of military operations in Aceh to rescind his 'shoot-on-sight' order, which is nothing short of a criminal act.
3. To press the Indonesian authorities to start the process of bringing to justice all those responsible for human rights abuses in Aceh, dating back to 1989 when DOM was first introduced.

"We also urge you to raise these matters with Britain's partners in the EU.

"Yours sincerely etc."



'community leaders, religious leaders, traditional leaders, youth and student leaders and the local media'. The document identifies by name a number of targeted persons, including Theys Hiyo Eluay and other PDP leaders, Tom Beanal, church figures such as the Rev Herman Awom and Karel Phil Erari, academics Dr Benny Giay and Agus Alua, Jakobus Pervidya Salossa (who is now governor of Papua), John Rumbiak and Yohanis Bonay of ELSHAM, the human rights NGO and student leaders Gerson Abrauw and Diaz Giwijangge.

As well as being the chair of the PDP, Theys Eluay was also one of Papua's foremost tribal leaders, so he was a 'strategic target' on two counts. Since his death, other leading PDP figures have complained of receiving life-threatening phone calls and believe that their lives too are in danger.

### 'Peace remains our method'

Tom Beanal, deputy chair of the PDP, has told the press that he holds Kopassus responsible for the death of Theys. Beanal is leader of the Amungme tribe, whose ancestral lands were seized and ravaged by the Freeport/McMoran copper and gold mine. Beanal has since taken the controversial decision to accept a position on the board of commissioners of the company.

In an interview with the Indonesian-language weekly, TEMPO, on 2 December, Beanal talked at length about the killing of Theys and the consequences for the PDP. 'According to our custom, if someone invites a person for a meal, they must take responsibility for what happens after they leave to return home.' He said that the killing of Theys was clearly a 'very professional job'. Theys' driver said when he phoned Theys' wife that the men who abducted Theys were 'orang amber', (non-Papuan) and he could not believe that Indonesian government employees, traders or transmigrants could have committed such a well-planned crime.

He said the Megawati government must ensure that the crime is properly investigated. 'If this doesn't happen, we will conclude that the government will go ahead and kill us all. We won't ask the government to come here anymore and we'll tell them we can stand alone. That will be the result.'

On 20 October, the PDP issued a statement strongly rejecting the 'special autonomy' law for Papua that was about to be adopted by the Indonesian parliament, saying that they had never been consulted on the matter and their pleas for dialogue about Papua's future status had been ignored.

The PDP leadership have stated that they will not proceed to elect a new chairperson until the investigations into Theys's death have reached a satisfactory conclusion. In the early days of the Papuan Presidium Council, Theys Hiyo Eluay was joint chair together with Ton Beanal.

### Evidence piles up

Initial investigations by the local police force have produced a great deal of evidence about the abduction of the PDP leader. However, they have made no secret of the fact that their investigations have come up against 'a blank wall'. This alludes to the fact that while the police have powers to undertake a criminal investigation, they are prevented from investigating members of the armed forces who are covered by a separate, military code of laws.

Among the more than forty witnesses questioned by the police are six men who were travelling in a mini-cab close to the place where Theys's car was ambushed. They told the police that they came across Aris, Theys's driver, in great

distress, with blood on his face. He asked the driver of the cab to give him a lift to the nearby Kopassus base. The driver did as he asked and left him just a few metres from the entrance to the base, as he was afraid to go any nearer. They left the location as Aris entered the base. Some people have asked why Aris would have wanted to return to the base. He may have thought that the commander, having just hosted his employer, would take action to find out what had happened to his guest, as required by Papuan tradition.

### ELSHAM's investigations

Papua's leading human rights organisation ELSHAM, the



*Papuans amidst BRIMOB, elite Police forces*

Institute for Human Rights Study and Advocacy, issued a Preliminary Report on 13 December, on the abduction and assassination which they described as being 'a pre-meditated and politically-motivated crime'.

The starting point for its analysis was the secret operations planned by thirteen intelligence agencies only days after the Papuan Congress was held in May-June 2000 (see above). ELSHAM drew a connection between this operation discussed at a meeting on 8 June 2000 and the sudden visit to Papua shortly beforehand by Megawati Sukarnoputri, then the vice-president. Her assessment of the situation in Papua was contained in a report to the caretaker governor of Papua who reported this to his bosses at the Ministry of the Interior, under whose aegis the secret operation meeting was held. ELSHAM accuses Megawati of having contributed to the subsequent loss of Papuan lives, culminating in the assassination of Theys Eluay.

ELSHAM investigators also discovered that the security forces created an atmosphere of fear in the days prior to the assassination. In one location, a virtual night curfew was imposed, warning people, especially young men, not to go out of doors at night in and around Jayapura. In late October, Kopassus troops also imposed a night curfew in Koya Timur, Tengah and Barat, close to the border with Papua New Guinea, until 'security conditions improved'. Joint patrols had effectively isolated the area. It was here that the body of Theys Eluay was found on 11 November.

On the morning of 10 November, two non-Papuan men describing themselves as 'intel', visited the Koya area, saying that they were looking for members of a Papuan taskforce. Later that night, a villager from Skouw (where Theys's body was found the next day) was roughly stopped by three Kopassus soldiers from going on an all-night hunting expedi-

tion. The villager returned home, but later told ELSHAM investigators that he felt something strange had been going on.

The ELSHAM report gives a detailed description of the many security posts located on the road along which the abductors would have had to drive the vehicle with Theys inside. An accompanying map shows the area, close to the border with PNG, to be heavily militarised. At at least three of the posts it is normal practice for non-military vehicles to be stopped for identification of the passengers.

Witnesses questioned by the ELSHAM team said they saw the vehicle in which Theys was being driven home being forced to stop by another vehicle that cut across in front. They saw two hefty non-Papuans alight from the vehicle and pull open the door of Theys's car. They had difficulty pulling out the driver because he was gripping the steering-wheel so tightly. After gaining control of the wheel, the abductors drove the car a short distance with the driver, Aris, hanging half out of the door. When he was pushed out, the witnesses who were in a mini truck recognised him as Theys's driver, with blood coming from his mouth. They took him on board and then at his request, drove him to the Kopassus base where Theys had had dinner.

Another witness who had been helping to receive the guests at the Kopassus base told the ELSHAM team that as he was cleaning the area where the guests had been received, he saw a man enter the base. The man was crying and saying: 'If anything happens, I will be blamed by Ibu (a reference to Theys's wife whom he would address with this word, meaning 'mother'). The car is lost. How could this have happened?' As he was speaking, the man was grabbed by two Kopassus soldiers and taken into the sleeping quarters. This was Aris, the driver. However, according to later reports, Kopassus soldiers strongly denied that Aris returned to the base and deny having any knowledge of his whereabouts.

ELSHAM also drew attention to the dangers faced by witnesses and the need for witness protection. The local police chief, also acutely aware of this problem, even asked ELSHAM to help protect the witnesses.

*[The English translation of ELSHAM's Preliminary Reports is available on TAPOL's website.]*

## Independent commission essential

Within days, calls were reverberating for the assassination to be investigated by an independent commission. The most powerful message came from the leaders of the Protestant and Catholic churches and of the Muslim Council, in a letter to Komnas HAM, the National Human Rights Commission. They declared that with the abduction and murder of the chair of the PDP, people's confidence in the government had fallen to an all-time low. People doubted whether 'the truth could be revealed if investigations were left to the police and/or the military police.' The religious leaders said that people who had come forward as witnesses were in fear for their lives because they had been receiving threats. They appealed to Komnas HAM to set up an independent commission composed of persons with the necessary expertise and of integrity and stressed that members of the police and the army should be excluded.

## Kopassus involvement undeniable

Since the start of the investigations, most people in Jayapura, including the police investigators, have come to the conclusion that officers at the Kopassus Tribuana base were involved in the killing. The police made no secret of the fact

that they had questioned seven Kopassus officers but also expressed frustration that their limited powers had confronted them with a 'blank wall'. Even the army chief of staff, General Endiartono Sutarto, while denying that orders to kill Theys had been given, admitted that 'rogue elements' might have been involved.

Following a visit to Papua by three members of Komnas HAM, the National Human Rights Commission, all of whom are known to have strong military connections, the Commission in Jakarta announced it would be pressing for the creation of an 'independent' commission, composed among others of personnel from the military, the police and the military police.

After a meeting with members of Komnas HAM, the central government then waded in with an announcement in mid December that it would set up an 'independent commission' by the end of the year. Minister-coordinator for security affairs, the retired general, Susilo Bambang Yudhoyono, said the commission would include figures from the government and the security forces and NGOs, and even suggested that an expert from overseas might be invited to join.

By the of the year and well into January, nothing had been heard of this 'independent commission'. Instead, the army announced that it was sending its own team to Jayapura to investigate the crime. This can only mean that news of Kopassus involvement had forced the army to take the matter over and deal with it in their own way. Meanwhile, Indonesia's new chief of police, Da'i Bachtiar came out with a stunning admission on 29 December that evidence so far collected 'points to members of Kopassus based in the Tribuana Kopassus base being responsible for the crime'. [Cendrawasih Pos, 30 December 2002] As the police were unable to investigate members of Kopassus, it was now for the military police to become involved, he said. According to the Jayapura police chief, Drs Made Mangku Pastika, this would mean that the role of the police in investigating the crime would end. Halfway through January, the police chief announced that their investigations had indeed 'reached a dead end' and they would now wait for the government's team to be set up. But he had no idea when this would be. [Jakarta Post online, 12 January 2002]

If, as now seems to be the case, the crime has become a matter for the army, this can only mean that the army will seek to handle the investigations and any possible indictment strictly within the limits of the army's own judicial mechanisms. This will block any investigation into the masterminding and planning of the assassination, and limit it to putting one or two 'oknum' (rogue elements) in the dock.

As all these machinations were underway, the three leading human rights organisations in Papua, ELSHAM, the LBH (Legal Aid Institute) and KontraS (Commission for the Disappeared and the Victims of Violence) stated their strong opposition to moves by the government and the military to investigate the assassination themselves. This would mean 'localising' the crime and treating it as an 'ordinary crime' instead of an extraordinary crime involving state institutions. They reiterated their conviction that the killing was politically motivated and could only be handled by an independent international team which should include major, world human rights NGOs. The team should also have powers to investigate the role of state institutions, including the President, the Supreme Congress, the parliament (DPR), the Interior Minister and the national intelligence agencies. \*



# Can 'special autonomy' work?

*Confronting by growing resistance to rule from Jakarta in Aceh and Papua, the Indonesian government is trying to mollify the people in these two territories by offering them 'special autonomy'. This is intended as a strategy to prevent the country's disintegration and to preserve NKRI, the Unitary State of the Republic of Indonesia. But can it work?*

During 2001, the DPR, the Indonesian parliament, adopted two laws on special autonomy for Aceh and Papua. Under these laws, Aceh is now called Nanggroe Aceh Darussalam or NAD for short, while Papua will shortly become the official name for what was formerly Irian Jaya. These laws were adopted as an additional



*Indonesian military in operation in Aceh*

incentive for the two 'troublesome' territories, only months after the law on regional autonomy, applicable to the whole country, was brought into force.

However, the problem is that the laws are being offered while there is no end in sight to the flagrant human rights abuses in both provinces, while military operations are still being conducted and demands for accountability for past human rights violations continue to be ignored.

## Way forward or dead end?

The process by which the special autonomy law for Papua was drafted is instructive. It shows how genuine efforts were made in Papua to draft a law that would take on board Papuan demands, but this draft was then drastically amended by parliament in Jakarta.

Yet regardless of these efforts, the very concept of 'autonomy' is unacceptable to most Papuans who continue to feel aggrieved that their right to self-determination was sabotaged in 1969 by a so-called Act of Free Choice conducted under tight military control, with the results being shamelessly accepted by the United Nations. Against such a background, it soon became clear that any move towards 'special autonomy' would be doomed to fail, and would only intensify calls on the government to acknowledge the need for dialogue with people's representatives on the question of

Papua's status as a part of the Republic of Indonesia. On 20 October, two days before parliament in Jakarta voted on the special autonomy law for Papua, the Papuan Presidium Council (PDP) issued a statement rejecting the law and repeating its call for dialogue. This statement was signed among others by the PDP chairperson, Theys Hiyo Eluay, who was assassinated three weeks later.

The Justice and Peace Secretariat of the Diocese of Jayapura has published an account and analysis of this process on which the following is based.

When the idea of autonomy for Papua was first mooted by Jakarta, the reasoning was twofold: that the problems in Papua were primarily economic, the failure of the development policy, and that Papua would for ever remain part of the Republic. The Province of Papua as it will now be called will be given a much greater share of the proceeds raised from the exploitation of its abundant natural resources.

As the regional assembly, the DPRD, offered no suggestions in response to the proposal being made by Jakarta, it was the governor, Jaap Salossa, who took the initiative, inviting scholars from Cendrawasih University (UNCEN) along with church leaders and NGOs to form a commission to draft a law. The process included visits to the districts to invite opinions from local communities.

The visits were disappointing as in many places, they only met civil servants. The final consultation took place at a three-day conference in late March in Jayapura attended by 28 delegates from each district but on the opening day, hundreds of protesters gathered outside. During the first session, students pushed their way in and expressed views that were opposed to autonomy. Outside, the police fired warning shots; one protester was trampled in the resulting clash and died the following day. Meanwhile, the students inside invited those who agreed with them to join them in a walk-out. A third of the delegates did so and boycotted the rest of the conference.

The Justice and Peace Secretariat concluded that although the UNCEN team had tried to incorporate many of the people's aspirations into their draft, far too little had been done to socialise the draft and it was rejected out of hand because the very concept of 'autonomy' had become so unpopular.

Later in the year, when the law was being discussed by the DPR, members of the drafting commission went to Jakarta and lobbied hard to defend their formulations, but on critically important matters, they were overruled.

## The drafts compared

Space permits us to focus on only a few of the many issues where the law adopted by the DPR differs significantly from the UNCEN draft. These relate to the deploy-



ment of the security forces, authority over the police, human rights and a reconsideration of Papua's history, particular with regard to its integration into the Republic of Indonesia.

While the UNCEN draft stated simply that the Province of Papua is granted 'special autonomy', the DPR Law adds the words 'within the Unitary State of the Republic of Indonesia'.

The UNCEN draft acknowledged that Papua would have its own flag, anthem and emblem as symbols of identity, but the Law, while allowing these special features, describes them as 'cultural symbols' adding that they 'may not be used as symbols of sovereignty'.

With regard to the deployment of the security forces, the UNCEN draft provided for a 'participating role for the provincial parliament and government', but the Law reduces this to 'coordination' between the governor and the central government.

The UNCEN draft provided for a Papua-based Commission on Human Rights set up at provincial level, but the Law stipulates that this Commission will be a 'branch' of the National (ie Indonesian) Human Rights Commission, set up by the central government.

While the UNCEN draft stipulated that compensation should be paid to victims of past human rights violations (going back to May 1963 when Indonesia took over from the UN temporary administration), this is altogether omitted in the Law.

The UNCEN draft's article provided for the setting up of a Truth and Reconciliation Commission under the authority of the government of Papua with the task of reaching an understanding on the 'history of Papua's integration within Indonesia' (thus opening up the question of the fraudulent 1969 Act of Free Choice) but the Law states that the Commission will 'strengthen national unity within the Unitary State of the Republic of Indonesia'.

The UNCEN draft contained an article stating that if the Commission (described as a Commission for the Rectification of History) 'shows that the process of Papua's integration into the Republic of Indonesia did not accord with international law in relation to exercising the right to self-determination, the central government and the Papuan people via their parliament will take steps towards a solution'. This is omitted in the Law.

The UNCEN draft provided for a police force to be set up under the regional authority, but the Law states that the provincial police force is part of the Indonesian Police Force.

The DPR Law stipulates that the Province of Papua shall receive 80 per cent of revenues from forestry, fisheries and mining, and 70 per cent from oil and gas exploration. The UNCEN draft said simply that revenues from resource exploitation would go to Papua without setting percentages.

With regard to the processing of Papuan raw materials, the UNCEN draft said that this should be done in Papua, while the DPR Law states that processing will be determined according to 'sound, efficient and competitive principles'.

The UNCEN draft provided for a halt to transmigration, the programme under which tens of thousands of Indonesian families are re-settled in Papua, but the Law provides for the continuation of transmigration 'in consultation with the governor'.

The Special Autonomy Law as adopted by the DPR is due to go into force at the beginning of 2002 but there was

confusion over whether it would come into force as planned, following the cancellation of a visit to Papua by President Megawati, during which she was due to ceremoniously hand over the Law.

## Fatal consequences

Some people see the assassination of the PDP chairperson Theys Eluay as having been motivated in part by a desire to thwart the introduction of special autonomy. The security forces in Papua are known to be unhappy about special autonomy even as drafted by Jakarta. In particular, the army is known to be strongly opposed to the decision to allow Papuans to have their own flag, even just as a cultural symbol, and dislikes the idea of any concessions being made to the Papuan people.

Many demonstrations took place in Papua in the wake of the Theys' assassination, calling for an independent investigation but also rejecting Jakarta's special autonomy law. President Megawati was scheduled to visit Jayapura on 22 December for two days, to hand over the new Law and to spend Christmas there, but at the last minute, the visit was cancelled. No explanation was given for the cancellation nor was there any hint that the visit might take place at a later date. The head of state had obviously been warned by her advisers to stay away.

## Sharia law for Aceh

At the commencement of the new year, it was announced that under the special autonomy law for Aceh, now called NAD, Islamic Sharia Law was going to be introduced. According to reports from Jakarta, the central government hoped this would 'dampen down calls for separation in the staunchly Muslim region'. It was also said that this was the first time 'in overwhelmingly Muslim Indonesia that the government had granted a province the right to practice Sharia'. [AP, 2 January 2002]

However, there was little enthusiasm in Aceh for this gesture. Yusuf Ismail Pase, a human rights lawyer, said it would not solve Aceh's problems. 'The Acehnese have been Muslims for generations. They have no need for Sharia.' Prosecuting members of the security forces for atrocities in Aceh would be a better way to win the hearts of the population, he said. As for GAM, the armed resistance movement, Tungku Agam Kateraja, a spokesman said: 'We are not fighting for an Islamic state but for one free from Indonesian rule.'

Perhaps even more indicative of the Acehnese response is the fact that HUDA, the Religious Scholars' Association which represents the head teachers and proprietors of about 600 religious schools in Aceh, with 80,000 students, has categorically rejected the law offered by Jakarta.

The idea of granting Aceh the right to introduce Sharia Law was first mooted by Abdurrahman Wahid shortly after he became president of Indonesia in late 1999. Having initially supported calls in Aceh for a referendum, he re-positioned himself after meeting with opposition from the political elite and came up with the idea of Sharia Law for Aceh. In those days, there was little enthusiasm for the idea and nothing has changed in the intervening twelve months.\*

# An economy in tatters

*If the Indonesian state were a corporation, it would have been declared bankrupt a few years ago. As the crisis enters its fifth year, the fundamentals of the Indonesian economy have gone from bad to worse. In a frank address to the MPR, the People's Congress, in early November, President Megawati admitted that the crisis had reached a point where the government was unable to provide basic services to the people. The economic and political collapse of Argentina hangs like the Sword of Damocles over Indonesia.*

There are many similarities with Argentina. Both have behaved like obedient clients of the IMF and World Bank. Argentina has privatised virtually its entire public sector, Indonesia is following suit and is busy dismantling many public companies. Both countries also became mega-borrowers and government debts rose to well over US\$100 billion. Despite IMF and World Bank 'remedies' the crisis continued without respite. None of their recipes have worked; on the contrary, the patients have no option but to default on their debts. Indonesia and Argentina possess the same fundamentals: a huge debt, a bankrupt financial system, soaring unemployment rate and spreading poverty.

Even before the tragic 11 September events, both domestic and foreign investments in Indonesia had virtually come to a halt because the country was perceived to be so unstable. The fragility of the situation incurred grave economic, political and security risks. Since 1997 the influx of capital has been negative. According to one conservative estimate, capital flight since 1997 has amounted to US\$80 billion, while others put the outflow at at least US\$100 billion, including US\$30 billion owned by Indonesian Chinese entrepreneurs. As long as the political and security uncertainty continues, large sums will remain 'parked' in places like Singapore and Hong Kong.

## US\$200 billion debt

After 1997, Indonesia had joined the top five in the league of highly indebted countries. As in Argentina, Peru, Brazil and Turkey, the crisis in these 'debt trap' countries, despite religiously following the IMF's stringent conditions, continued to worsen. Indonesia's foreign debt is around US\$140 billion (state debt US\$75 and private debt US\$65 billion). This foreign debt is roughly equal to Indonesia's Gross National Product and means that Indonesia has to pay between US\$8 and \$9 billion in interest annually.

The state's domestic debts have also grown massively. When the banking system collapsed in 1997, the IMF urged the central bank, Bank Indonesia to rescue and re-capitalise the banks. The blanket guarantee meant that the private debts were taken over by the government. A total of Rp 674 trillion or around US\$65 billion in the form of government bonds was issued by Bank Indonesia. In exchange, the banks had to provide IOUs and all their assets to a newly created body called IBRA (Indonesian Bank Restructuring Agency). The system of paying debts by assuming even more debts through the issue of bonds on a large scale has kept rate of the rupiah low and brought about double-digit inflation. A conservative estimate of the government domestic debt is US\$200 billion. Some government bonds issued in 1998 have reached maturity, thus adding to the

burden on the budget.

In the 2002 state budget, interest payments of Rp59.6 trillion (government bonds) and Rp27.4 trillion in foreign loan interests were included under routine expenditure, meaning that 44.6 per cent of routine expenditure is currently being swallowed up to repay debts while 30.5 per cent is used to pay the interest on government bonds. This leaves almost nothing for items like development projects or paying the wages of civil servants. It is obvious that rescheduling the debts is not an option.



*Indonesia in the Year 2001 seen by Jakarta Post cartoonist T. Sutanto*

Outstanding 'non-performing loan' (a euphemism for loans that cannot be repaid) in Asia has reached US\$2,000 billion. Here too Indonesia heads the league. According to Ernst & Young, a professional services firm, 60 per cent of the outstanding loans of the Indonesian banks are non-performing. Rescheduling debts is increasingly becoming an illusion. Debt default is becoming much more realistic.

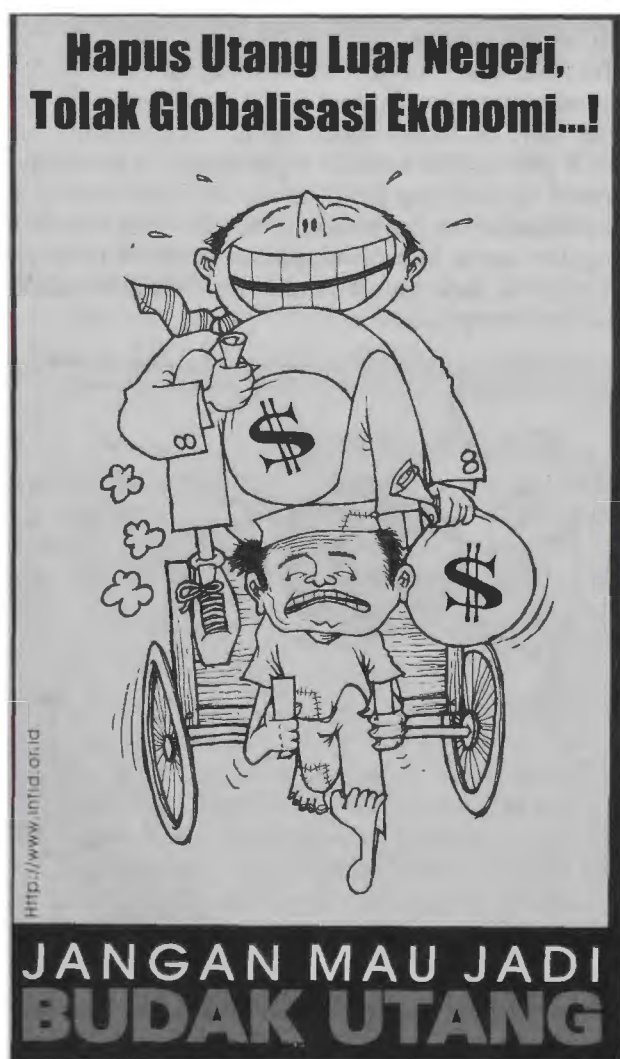
## The bubble bursts

The economic model of the East Asian economies, geared to neo-liberal principles, reached its peak in the eighties. Its proponents, first and foremost the IMF and the World Bank, propagated this model which meant basically an export-oriented economy based on cheap manufacturing products for the world market, privatisation of the state-owned sector, high foreign investments and high national savings.



After the crash in Bangkok in 1997, it became clear that this neo-liberal model was fundamentally flawed. Already in the early nineties, when the Japanese economy began its slide into a deep slump, the easy credit flow into East Asian economies like Indonesia, Philippines and Thailand had started to show signs of bubble economies that were about to burst. Huge investments were thrown into non-viable projects. The best example is the massive energy projects started in the final days of the Suharto era. The state electricity company PLN was ordered by Suharto to sign monopoly energy projects with 27 foreign energy corporations. PLN was forced to agree to buy electricity for a price twice as high as world market prices. These billion-dollar projects obliged Indonesia to a commitment of a total of US\$133 billion.

When the bubble finally burst, corporations and governments, often linked together through Suharto and his



*Anti-debt campaign poster, opposing economic globalisation and mounting debts*

The continuing crisis in the banking system is the result of the failure of IBRA. This body was set up immediately after the crisis to invigorate the banking system and revitalise the corporations through privatisation. All the ailing banks and corporations were placed under the IBRA. In theory IBRA was supposed to sell the juicy parts of the corporations to the private sector while re-capitalising the banks; the proceeds of IBRA would be used to cover the budget deficit. But IBRA has achieved none of its targets and has instead become a nesting ground for corruption for the old and new elite of the post-Suharto era. These so-called 'slaughter houses' strip off the juicy parts of the corporations, while the assets are pocketed by the elite. Corruption in the post-Suharto era has spread in all directions as the old vertical structure fractured into many factions. IBRA is also conducting a cheap sale of state corporations, one of the demands of the IMF, but global corporations continue to adopt a 'wait-and-see' attitude, preferring to wait for political conditions in Indonesia to improve.

## Social economic impact

Meanwhile social conditions have deteriorated drastically. The latest World Bank figures note that 60 per cent of the population now live around or under the poverty line of below US\$2 per day. Labour-intensive manufacturing industry, an important component in the export-oriented economy of Indonesia, is in a bad shape with a drop in exports of between 20 to 40 per cent being predicted.

Minister of Manpower and Transmigration Jacob Nuwa Wea recently admitted that the government is running out of ideas to create jobs for the three million new job seekers annually and the 40 million already jobless. He admitted that the government has no new strategies to tackle unemployment which rose to an astronomical 40 million people this year, apart from 'sending more maids overseas' and explore domestic job opportunities like agro-industry, fishery and tourism.

The official figure for Indonesians working abroad is 460,000, in countries like Malaysia, Singapore, Saudi Arabia and other Middle Eastern countries but this figure understates the situation. Due to their low skills and lack of foreign languages, they often end up working as domestic servants, often the prey of sexual and physical abuse. This official figure is very conservative. In Malaysia alone, the number of illegal migrants is above one million. Industries in Japan and Hong Kong have also absorbed an unknown number of illegal Indonesian workers.

Neo-liberal proponents still believe in this economic model, despite its disastrous impact on the lives of the common people.

## Declaring countries bankrupt

Numerous books were written about the wonders of the Japanese economy, the East Asia miracle and the infallibility of the global free market but since 1997 the tide has turned and many of those books are gathering dust on the bookshelves.

The negative side of globalisation has become more glaringly obvious in the last few years. Multilateral organisations like the IMF and the World Bank have become the focus of criticism not only from anti-globalisation campaigners but increasingly also from pro-active free marketeers.

The implosion of Argentina carries IMF's fingerprints all over it, said Mark Weisbrot, co-director of the Center for Economic and Policy Review in Washington. The IMF arranged huge loans - including US\$40 billion in 1990 - to support the peso. The fixed exchange rate of the peso to the

cronies, were dragged down simultaneously. Re-negotiation of these mega-projects is still underway.

At the peak of the economic upsurge in the late eighties, the Indonesian government followed the IMF/World Bank advice to liberalise the economy, which led to a mushrooming banking system. More than 200 banks were established in that period and all joined the get-rich-quick game through lending and speculation. Although it is nearly five years since the collapse of the banking system, the Indonesian government and the Bank Indonesia have made virtually no progress towards restructuring the banking system, which means that the banks are still unable to perform their primary duty as financial intermediaries.



dollar led to exorbitant interest rates that crippled the Argentine economy. IMF arm-twisted Argentina by making the loans conditional on a 'zero-deficit' policy, forcing a balanced budget during a period of serious recession. The Argentine budget was modest by any calculation and squeezing it further created a huge political crisis and the collapse of the De la Rúa government.

It has become more than clear that the IMF recipe for ailing countries simply doesn't function. On the contrary, as more countries are hit by mega financial crises, IMF bailouts have proven to be increasingly ineffective. The magnitude of the economic difficulties plaguing some countries defies the assumptions and solutions found in any economic text-book or IMF guideline.

### The Krueger plan

The economic collapse of Argentina has intensified the discussion about what kind of measures are left to deal with a financial crisis of such a magnitude. The global recession is a fact of life and the three main players: the US, Japan and Germany are definitely part of the crisis. In November Anne Krueger, the IMF's first deputy managing director announced the IMF management's backing for a radical plan for a new procedure for international bankruptcy. This would give the IMF the power to impose temporary standstills on debt payments while the ailing countries work out restructuring deals with their creditors.

If one looks at the Argentine debt default, it is clear that this radical plan didn't fall from the sky. Everything in their box of tricks has failed to heal the patient. The ineffectiveness of the IMF and the financial policy of the US, its leading shareholder, have come glaringly obvious.

Latin American governments have loudly criticised Washington for bungling its dealings with Argentina by adopting inconsistent policies. Argentina's implosion, the first basket case, is likely to be followed by other ailing countries like Indonesia, who are also rapidly sliding into default of their debts.

The radical Krueger scheme has faced opposition from private sector bondholders, fearing that their debts will never be repaid. But the plan has many supporters who realise that fundamental reform of the global financial system is urgently needed. There are no international instruments available on how to restructure or write off sovereign or government debts. The Krueger plan or a modification is bound to happen, sooner rather than later.

### Rampant corruption

While the IMF and World Bank are largely to blame for the woeful economic state of ailing countries, it needs to be said that corrupt administrations in Argentina and Indonesia have contributed to the crisis. So far only one important Suharto crony has been tried for corruption. Others are untouched and continue to abuse power with impunity. In the meantime new actors have emerged in the post-Suharto period, as ruthless and corrupt as their predecessors. President Wahid was dethroned after being embroiled in a Rp 35 billion corruption case and now, the chair of parliament, Akbar Tandjung, is under investigation for embezzling Rp 40 billion.

The Suharto pyramid was a steep one and all the major decisions were taken by the dictator himself, creating a more transparent structure of family and cronies who abused power and enriched themselves by grabbing juicy assets. That pyramid has collapsed and the power structures have fragmented into several dozen smaller pyramids.

Three high-profile scandals have emerged in the recent past, known as Baligate, BLBIgate and Buloggate. Not a

single individual has been found guilty. The Bank Bali case involved top people in Golkar, the former ruling party. The money went to a special team in charge of the re-election of Habibie. Quite a number of public figures, including cabinet ministers, were involved but after Habibie failed to get re-elected, the case was shelved. The BLBI case involved the recapitalisation of banks between 1997 and 1999. Rp 145 trillion rupiahs was channelled through Bank Indonesia but the governor of the Bank, Syahril Sabirin, survived and the impeachment of President Wahid saved his skin. The Bulog case was also shelved after Wahid's impeachment. Civil society watchdogs like Indonesia Corruption Watch and Government Watch have uncovered many corruption cases involving highly-placed persons but so far impunity is still the name of the game.

### Growing disenchantment in Indonesia

The huge debt burden will keep the public sector in a straitjacket. In a period of severe economic recession and growing unemployment, this is like a powder-keg as Argentina has shown. Even mainstream economists who, a few years back, were almost slavishly pro-IMF are becoming anti IMF. Every IMF Letter of Intent tightens the straitjacket and the IMF recipe hasn't resolved anything. Many Indonesian economists have turned their backs on the developmental theories of the World Bank and the IMF. Revisond Baswir from Gadjah Mada University has called for the export-oriented approach to be abandoned and to focus on the agricultural sector. He has also appealed for serious law enforcement and the eradication of corruption and nepotist practices. He also stresses the importance of small enterprises; in this period of deep recession, small businesses can keep the economy going at grassroots level.

Drajat Wibowo, a researcher at INDEF, an Indonesian think-tank, has appealed for a non-conventional approach to the crisis. He has called for a reduction in debts to Japan, Indonesia's biggest creditor. He has abandoned the conventional wisdom of the IMF and the World Bank. Prof. Nico Kalangie who teaches at the University of Indonesia has lost hope and says that only an angel from heaven can drag Indonesia out of the crisis. He has attacked the moral crisis among those holding high office and top bureaucrats.

Political and economic crises are more than often intertwined. Indonesia wasted three Presidents in two years time and was surpassed by Argentina who wasted five Presidents in a matter of two weeks. Nobody can predict what will happen with the Megawati government if it starts to default on its debts. \*



## Peasants and the struggle for land reform

*The struggle for agrarian reform in Indonesia, spearheaded by mass-based organisations such as the Federation of Indonesian Peasant Unions (FSPI - Federasi Serikat Petani Indonesia) and its members, is the struggle for the future of Indonesia. By far the most abuses of human rights in Indonesia are related directly to access to land and the right to manage natural resources, many of which result in resort to state violence.*

With around 72 per cent of the population of Indonesia living in rural areas and 55 per cent being entirely dependent on agricultural resources for a living, access to land is clearly of enormous economic significance to the majority of Indonesians. But it also has great social, cultural, historical and even religious significance. In other words, for the majority of Indonesians, agriculture is not an industry, it is a way of life.

### Land seizures since Dutch times

The struggle for agrarian reform asserts that access to land and the right to manage natural resources is the basic right of the peasant, small scale and landless farmer. The steady erosion of land rights which began during the colonial period - the Dutch requiring that 20 per cent of cultivatable land be made over into state-run plantations - continued through Sukarno's rule, during which the nationalisation of Dutch interests such as plantations and forestry resulted in the assets being placed largely under the control of the military.

But the theft of land and natural resources, forced evacuations and withdrawal of access rights reached its peak during Suharto's New Order regime. The corrupt financial interests of Suharto's family and cronies in business, the military and bureaucracy coupled with the drive for foreign exchange revenue and loans witnessed an uncompromising and often bloody drive towards the complete control and commoditization of land. Millions of Indonesians lost ownership of and/or access to hundreds of thousands of hectares of land, with dire economic and social consequences.

It is undoubtedly true that by far the largest number of human rights violations perpetrated in Indonesia are directly related to access to land and the right to manage natural resources. This is particularly true of cases which involve the pre-meditated and systematic use of state violence. The use of violence against peasant farmers and indigenous peoples asserting their right to reclaim their land since reformasi has not decreased. This includes violence at the hands of the police, military, paramilitaries as well as hired thugs and private security forces in the pay of state and private companies, including a number of multinational corporations. In many cases, land rights issues are manipulated and described in terms of being solely about ethnic, religious and inter-communal conflict, armed separatism and the like. In addition, there is a growing trend to criminalise peaceful forms of peasant resistance, all of which somehow 'justifies' the use of repressive action.

### Recent peasant struggles

A recent example is the arrest and beating of 47 peasant farmers from Cibaliung village, Banten, by Brimob officers and employees of the state forestry company, Perhutani, on 11 November 2001. They were accused of illegally squatting on Perhutani land, despite having certificates of ownership, land titles, maps, tax returns and other documentation prov-



*Land occupation by peasants from land owned by former dictator Suharto*

ing that the land is theirs. With military assistance, Perhutani had forced the farmers off their land back in 1980. In 1999, organised under the Banten Peasant Union (SPB, a member of the FSPI), 150 families reoccupied 300 ha of their land. On 12 November, 38 of the detainees were released on condition that they move off the land immediately. Upon their return, they found that their homes and all their possessions, as well as their crops had been razed to the ground. The other nine men, eight of whom are SPB activists, were still being held in custody as of 15 December 2001.

The Sosa case of 18 August 2000, during which one villager died and six others sustained gunshot injuries when Brimob officers fired indiscriminately into a crowd, was one of the cases raised by the United Nations Committee Against Torture in Geneva on 16 November 2001. In this case, members of the North Sumatra Peasants Union (NSPU, a member of FSPI) and indigenous leaders were arrested and tortured on trumped-up charges of criminal damage relating to a land dispute with a privately-owned plantation company. One detainee was denied medical attention despite having been shot. Charges were brought

against 18 men who were sentenced to between one-and-a-half and two-and-a-half years imprisonment. Sadly, no Brimob officer has been held accountable for the death of 17-year old Febriadi Nasution. One year earlier, 25 Sosa farmers were arrested by Brimob, one of whom, Regar Botak, 60, died in custody (for details of the Sosa case see Down To Earth newsletter No. 47, or see website DTE: [www.gn.apc.org/dte/47olp.htm](http://www.gn.apc.org/dte/47olp.htm)).

Many land rights disputes in Indonesia have become campaign issues over the years, from indigenous rights in Kalimantan and West Papua, to mega-projects such as Kedung Ombo in Central Java and Indorayon in North Sumatra. These high profile cases which became famous either because of their 'scale', the involvement of foreign investment and aid or both, are but the tip of the iceberg. Yet cases such as Sosa and Banten are taking place on a daily basis in Indonesia. They involve pre-meditated and systematic use of repression, involving the collusion of local government, security forces, business interests and the courts of law.

## Genuine land reform needed

It is therefore clear that a well-thought-out response to the systematic and often violent denial of land rights in Indonesia is urgently needed. For peasant organisations such as the FSPI, NSPU and SPB, the solution is clear - the implementation of genuine agrarian reform. The goal of agrarian reform, as they see it, is to return land rights (including stolen land) which guarantee a sustainable livelihood and which see the empowerment of peasant farmers through direct participation in all political decisions which affect them. These demands have become more pressing still, as the success of the autonomy law depends on how far local communities take part in decision making about natural resources.

According to NSPU lawyer, Ifwardi SH, Indonesia already has the legal basis for this in Law No.5 of 1960 pertaining to Agricultural Renewal (UUPA No.5 1960). Enacted during the Sukarno period, and largely influenced by the Indonesian Communist Party (PKI), it is perhaps not surprising that UUPA 1960 contains many elements which are pro-peasant. One example is the provision of Land Reform Tribunals and Land Reform Committees, which directly involve peasants in the decision-making process (these provisions were revoked by President Suharto in 1970 and 1980 respectively). Ifwardi recognises the need for revision but the spirit of the original legislation is essentially sound.

However, the legislative assembly (MPR) passed a decree (TAP MPR No.IX/MPR/2001) on 9 November 2001 regarding Agrarian Renewal and the Management of Natural Resources which in effect calls for the re-examination of 23 items of related legislation. The NSPU's concern is that this will be a time-consuming process, leaving peasant farmers without effective legal protection. It is particularly concerned that any legislation enacted as a result of this decree will be largely determined by the demands and interests of the international agents of liberalisation, such as the World Bank, IMF, international corporations and the WTO.

Land rights disputes in Indonesia are a time bomb. With former corrupt practices still rampant, and the government's need to safeguard foreign exchange earnings along with its commitment to crippling debt-servicing policies, the strug-

gle for land looks set to intensify. Though it would be facile to explain the unfolding tragedies in Aceh and West Papua solely in these terms, the links are clear and serve as a grim warning to the Indonesian government and its investors. Unless concerted steps are taken to implement genuine agrarian reform which addresses the economic, social and cultural concerns of the majority of Indonesians, there can be no guarantee of human rights in Indonesia.

**You can contact:: North Sumatra Peasants Union (NSPU) - [putratan@indosat.net.id](mailto:putratan@indosat.net.id) and the Federation of Indonesian Peasant Unions - [petani@indosat.net.id](mailto:petani@indosat.net.id)**

## *continued from page 12*

Speaking at the volunteers' exhibition in Jakarta on his last trip to Indonesia, Herb said: 'So those of us who believe in solidarity with Asians and people in other third world countries still have an awful lot of battles to fight, but it is a happy thing that we have been empowered in relation to those battles by a lot of very valuable Indonesian friendships.' The depth and breadth of these friendships become movingly obvious in the hundreds of tributes to Herb by his Indonesian friends, the memorial gatherings held in so many places, saying farewell to a true friend of the Indonesian people and a much-loved man.

*Carmel Budiardjo*

## *continued from page 13*

police station. And they were about to have dinner. 'It was the children who reported their parents' murder to the neighbours the day after. The children were only six years old and three years old. Their mother apparently rushed them to a room. Can you imagine them hiding under the bed ... and then the older child covered the younger child's mouth with her hand so the murderer wouldn't hear them? Can you imagine the trauma they have gone through?'

On her award, she said she was 'surprised and touched ... no matter how little we do, there's someone who's paying attention. It makes me realise what a journey we've been through. It gives me new spirit.'

\*



## The passing of a much-loved man

*The news that Herb Feith had died in a tragic accident while cycling home in Melbourne came as a terrible shock to friends and colleagues around the world, above all to his numerous friends and students in Indonesia. For weeks the tributes flowed, in the Indonesian press and on the Internet. The sense of grief at his passing was palpable.*

As so many of his friends have said, the fact that Herb met his death on a bicycle, as he had lived his life always on a bike, was a mark of the utter simplicity of the way he lived, worked, studied and taught.

He died less than two weeks after his 71st birthday. The previous month, he had visited Indonesia to attend an exhibition to celebrate fifty years of Australian volunteers in Indonesia. It was his pioneering experience as a volunteer that led to the creation of Australian Volunteers International.

Herb spent most of the 1990s teaching at the politics department of Gadjah Mada University in Yogyakarta, once again as a volunteer, having come full circle. This was after he resigned as director of the Centre for Southeast Asia Studies at Monash University, where he had taught for thirty years. But after a brief stint as director, he decided that running a department was not the kind of thing he wanted to do. For most academics, this would have been the climax to a brilliant career but it was not for him. He preferred to spend his time among students and colleagues, teaching and learning in Indonesia, at a time of great turmoil and change. As it turns out, he was there to observe the downfall of Suharto, the stunning shift in East Timor's fortunes with the holding of a referendum and the new turmoil in the post-Suharto Indonesia.

Herb was born of Jewish parents in Vienna in 1930. When he was still a boy, the family fled from Nazi-occupied Austria and found sanctuary as refugees in Australia. During the Second World War, Herb became a peace activist working with Christian and Quaker groups. In 1950, he went to Indonesia as a volunteer, living on local wages and equipped only with his air ticket and a bike. The bike became his preferred means of transport throughout his life, until his luck ran out and he was run over, crossing a railway line.

While working as a volunteer, he took a job at the ministry of information in Jakarta and became friends with Molly Bondan, who introduced me to the Feiths. His years in Indonesia and the research he undertook, watching the tortuous political developments in the 1950s, led to his great academic achievement published in 1962, *The Decline of Constitutional Democracy in Indonesia* in which he analysed

Indonesia's failed attempt to establish a liberal democracy. I well remember being present at one of those grand state occasions at the presidential palace, and hearing President Sukarno fuming in front of a huge audience against this 'unfriendly' assault on Indonesia's political system.

As one of Herb's post-graduate students, now Rector of Gadjah Mada University, Professor Ichlasul Amal, said in a tribute at a memorial gathering in Yogya, the book has been essential reading for all students of Indonesian politics for the past thirty years, and is especially relevant today as Indonesia is once again struggling to build a liberal democracy.

After my husband and I were put behind bars following Suharto's rise to power, Herb took a close interest in our children, Tari and Anto. Tari described him to me as 'the kindest and sweetest man I have ever known. He came to see us frequently and supported us when we were in need.' After they moved to London, he was in regular contact and when, after my own release, I started campaigning for the release of the huge number of political prisoners still being held, Herb gave us his generous support. Every time we met, he would sit, legs outstretched, chin resting on his hands, asking carefully-phrased questions. He had a way of asking questions that forced you to think more deeply about what you were thinking and doing.

Visiting him and Betty at their home in Melbourne in the late 1980s, I was struck by the simplicity of their home, the warm atmosphere in their kitchen and sitting room. I remember seeing in his study carefully laid out cardboard files containing articles, covering the floor, with the minimum of furniture. Herb was a man who never stopped learning, always keeping abreast of developments in Indonesia. For him, as others have said, academic study was a moral as well as an intellectual endeavour.

Few would remember because he said so little about it that he, like so many others, was blacklisted by Suharto in the early 1980s for sponsoring a letter critical of Indonesia's occupation of East Timor. In 1999, he was in East Timor with an Indonesian student monitoring team for the referendum and gave sanctuary to several East Timorese whose lives were in danger from the army-sponsored militias.



*continued on page 11*

# Human rights activists honoured

*Two women human rights activists have been honoured with the Yap Thiam Hien award for 2001. One is honoured for her work against racism and the other is a well-known woman activist in Aceh. This award is named after one of Indonesia's foremost human rights lawyers.*

**Ester Yusuf Purba**, 30, founded Solidaritas Nusa Bangsa, (SNB) Solidarity for the Whole Nation, to focus in particular on the widespread discrimination against the ethnic Chinese in Indonesia. She told The Jakarta Post that the Indonesian people are basically racist, adding that the country's laws encourage discriminatory behaviour.

Ever since her senior year at the University of Indonesia's School of Law, the 30-year old Ester has worked on human rights violations involving people from disadvantaged groups. One of the cases she worked on related to a Tarumanagara University student who was tortured to death by members of the campus student regiment (Menwa). She also campaigned against the bloody takeover of the Indonesian Democratic Party (PDI) headquarters on July 27, 1996, which triggered mass rioting. The SNB was set up two years after that event.

Following the three-day May 1998 riots that struck major commercial centres in Jakarta and led to many hundreds of deaths and the raping of scores of ethnic Chinese women, Ester set up a shelter for the victims of lawlessness.

She described racial discrimination in Indonesia as a 'structural problem'. Dozens of racist laws are still in force, such as regulations about citizenship papers which are only obligatory for people of Chinese descent. Some say that the racist culture must be changed but Ester says this will take a very long time. 'First we have to change the laws because people think that the laws must be correct, whereas the idea that laws are made in the interest of the country's rulers or investors doesn't enter people's head, she said.

She also stresses the need for changes in the educational system as a way to promote the establishment of anti-discrimination institutions. The law against racial and ethnic discrimination is especially urgent now, as the problem exists not only between people of Chinese descent and 'native' Indonesians, but also between other ethnic groups. Ester believes it is incorrect to focus solely on anti-Chinese discrimination, but to promote instead 'universal values' that should be shared by all members of society.

Ester's perseverance in fighting discrimination has won her this year's Yap Thiam Hien human rights award. The committee chose her because of her success in raising public awareness of discrimination against ethnic Chinese both at home and abroad, after she spoke before the annual session of the United Nations' Human Rights Commission in April.

Ester suffered a deep personal tragedy this year when her husband, Arnold Purba, himself a human rights activist, died suddenly soon after she returned home from attending several human rights events abroad. She was pregnant at the time with their second child. [Jakarta Post, 30 December 2001]

**Suraiya Kamaruzzaman**, 33, has won acclaim for her years of activism on behalf of the women of Aceh, and is a leading activist in Flower, an organisation based in Banda

Aceh. She told The Jakarta Post that intimidation and terror has been part of her everyday experience for years. For the past three years her phone has frequently been tapped and she receives threats over the phone.

'I have received anonymous letters, direct threats and have also been picked up on the street.' She said that she and other Flower activists were quite used to their office being watched. 'Sometimes it's not clear who is carrying out all the terror. It could be either the Free Aceh Movement, GAM, or the Indonesian military, TNI,' she said. But the most difficult part was being stereotyped by both sides as the 'friends' of their enemies. 'And that comes with the ultimate risk, death.'



As a Muslim woman, Suraiya keeps her head well covered but insists that this is a matter of personal choice and strongly rejects attempts to impose dress requirements on women. She first became aware of the problems around her when she was a student at the School of Chemical Engineering at the University of Syiah Kuala in Banda Aceh and when Aceh was still a military operations zone (DOM). Women were subjected to sexual violence and when men were branded as rebels, their wives would be kidnapped, maltreated and investigated. Even after DOM was lifted in August 1998, these practices continued and women were used as pawns by both sides.

Flower initially helped women to set up small businesses and developed health programmes with traditional medicines to help people suffering from trauma but later turned to giving women political education and knowledge about women's rights. With her colleagues in Flower, mostly women in their twenties and thirties, Suraiya often visits remote villages having to walk long distances because there is no transport.

She spoke about a couple who were killed in their own house this year. The woman was a midwife while her husband was a plain-clothed member of staff at the local

*continued on page 11*



# Labour leader talks to TAPOL

*Dita Sari, Chairperson of the National Front for Indonesian Workers Struggle (FNPBI), toured the UK in November 2001, as a guest of the anti-sweatshop campaign, 'No Sweat'. She spoke to TAPOL about the current labour situation in Indonesia.*

Five years after the economic crisis, there are still some 30-40 million workers in Indonesia who have not regained their jobs. And for those who are in employment, the gap between the poorly paid and the well paid only widens. A worker earns the equivalent of £40 a month, a local manager gets about £700, and a foreign manager gets £4000.

Each agreement with the IMF and World Bank sees subsidies further reduced, and so workers' wages have to stretch even further. Things like higher education become even more out of reach. Multinational corporations in Indonesia say they treat their workers better than local companies, but it is not true. They claim to pay the minimum wage but this is not a living wage, which is almost nowhere to be found. Workers in export production may earn more, but only because there is more overtime available, not because the basic wage is better.

## Impact of the War in Afghanistan

There are two impacts from the war in Afghanistan. On the political front there is a lot of tension in Indonesia because some groups are using the banner of Islam. They say it is a war against Islam and are focusing on American and British people, and trying to confront 'western democracy'. They are not the mainstream but they are very aggressive. Even our office and demonstrations have been attacked, and some activists injured. So we now identify these groups as obstacles to democracy. They are very dangerous, and often harder to identify than when the military was openly active in suppressing us. Our response is to build a broad alliance with other pro-democracy forces such as women's groups, NGOs, etc.

On the economic front, not only are production orders slower as a result of the economic downturn, but investors from these countries are becoming more reluctant. So workers are losing their jobs.

The FNPBI programme focuses partly on the economic issues of wages and working time. We have been arguing that the minimum wage is based on wrong assumptions, for example that workers have the time to go to the cheapest market and then cook for themselves, when everyone knows that workers tend to buy cooked meals from the local stalls because they work such long hours. Also the minimum wage still only addresses the worker as a single person without children or parents who depend on them. It does not include any allowance for the purchases which women need to make.

## ILO conventions not being practised

At the political level, we continue to demand full union freedoms, that the old corrupt Orde Baru remnants, which remain in the unions, are expelled. The core ILO Conventions have been ratified but implementation is zero.

The government continues to deny trade union freedom because it is scared of frightening the investors. The government still has not changed politically from the old days.

Under the new Manpower Law being discussed, any plant-level union with ten members can register at the local level. This will open up the space for more unions outside the 'yellow' SPSI. We are still affected financially because we have less access to check-off systems and have to collect union dues manually by waiting for workers outside the factory gate and so on. But there will be more opportunity



*Demonstration in Jakarta of workers who recently lost their jobs*

to register formally.

At the regency (kabupaten) level, a federation which has at least 25 plant-level unions in that area is entitled to sit in the tripartite bodies with government and employers. At the provincial level it is 50 or 60, I am not sure which. At national level, 100. The FNPBI can therefore certainly sit in tripartite bodies at national level, and also in some districts of East Java, JABOTABEK (Greater Jakarta region) and South Sulawesi.

We expect the discussions will still be dominated by the 'yellow' SPSI because they are still powerful. It is interesting, however, that a number of the so-called 'reform' sectors of the SPSI-Reformasi, including those for garments/sportswear (TSK), pharmaceuticals/chemicals (Farkes), metalworkers and woodworkers, have broken away from the SPSI-Reformasi to stand alone as sector organisations,

*continued on page 24*



# Can things ever get better in Aceh?

*'Ringing in the New Year' for 2002 was laden with woeful remarks about the end of a terrible year. Few people anywhere in the world had better reason to say this than the Acehnese and for them, it had nothing to do with September 11. Since the late 1980s, the Acehnese have never had a good year but 2001 was certainly the worst since they became part of the Republic of Indonesia in 1945.*

The most conservative estimate of the number of people killed is 1,700, which is more than double the death toll in the previous year. The 2001 toll included casualties from a number of large-scale killings or massacres, assassinations of well-known figures and killings by 'OTK' or orang tak kenal' (unknown assailants). This was the year when hardly a day went by without at least one person being killed and on many days the death toll was upwards of five.

This was the year when Indonesia's first democratically elected president, Abdurrahman Wahid, bowed to pressure from the armed forces to issue 'Presidential Instruction IV/2001' in April, setting in motion new military operations and taking Aceh further and further away from the prospect of dialogue. Six months later, his successor, Megawati Sukarnoputri, issued her own 'Presidential Instruction VII/2001'. She needed no prompting from the armed forces to do this.

## Territorial integrity justifies abuses

Whereas in her state address on 16 August, less than a month after taking office as president, Megawati apologised to the people of Aceh and Papua for years of human rights abuses and acknowledged that 'past government policies in Aceh has been wrong and harmful to the people', by the end of the year, she had changed her tune completely. Shortly after issuing her own presidential instruction for Aceh, she told the troops, during an army parade in Jakarta on 29 December, to do everything in their power 'to hold the coun-

try together' and 'not to worry about whether you are violating human rights'.

This was the year, like so many previous years, in which not a single human rights violation was brought to account, no one was charged or tried even for killing high-profile personalities, regardless of the solemn promises by the police to conduct 'rigorous' investigations and bring the perpetrators to justice.

With Megawati now holding the reins of power in Jakarta, it is clear that the military are getting their way on all fronts in Aceh. Most commentators agree that this is the 'price' Megawati has had to pay in return for armed forces backing for her presidency. But this is not the whole story. Megawati is first and foremost a nationalist, for whom Indonesia's territorial integrity is sacred. Of course, there are other ways to persuade the Acehnese - and also the Papuans - to remain within the fold of the Indonesian Republic. Even if only a few armed forces officers who are known to have killed, tortured or persecuted Acehnese people, were to be brought to trial, this could work wonders for Indonesia's reputation with the Acehnese people.

In October, the Minister of Justice and Human Rights, Yusril Izha Mahendra proposed the establishment of an ad hoc court to try those responsible for three Acehnese cases of gross violation in 1999 that were identified two years ago by an independent investigation team set up under President Habibie.

The three cases in question are, firstly, abductions, torture and killings perpetrated in the last two years of the DOM (military operations zone) period at a torture

centre known as Rumoh Geudong in the district of Pidie. This building was the notorious headquarters of the army's elite commandos, Kopassus. The second relates to forced disappearances and killings in Idi Cut and Arakundoe, East Aceh on 2 May 1999, and the third is the shooting at Simpang Tiga KKA (the Kertas Kraf Aceh Pulp and Paper Plant crossroads), Krueng Geukeuh, North Aceh on 3 May 1999.

Since all these atrocities occurred before the enactment of the 1999 Human Rights Law identifying a number of crimes as gross human rights violations for the first time, they would have to be tried before an ad hoc court, with special retroactive powers. Such a court can only be set up by the President in consultation with the DPR, but will she do this, knowing full well

that in all three cases, army officers would be in the dock?



*Acehnese woman in the middle of Brimob forces*

## Military fully in charge

Defying all rational thought about how best to solve the prolonged conflict in Aceh, the military role is being greatly intensified. President Wahid's Instruction IV/2001 in April gave the army the power to set up a special command, Kolakops, to handle the security situation alongside the police. Although the instruction set in motion a six-point comprehensive programme, the only point put into practice was the 'security' angle. In September, Megawati renewed the policy by issuing her own Instruction VII/2001.

However this appears not to be adequate in the eyes of the military. In early January, they announced their intention to set up a new territorial military command for Aceh, Kodam Iskandar Muda, after obtaining the necessary backing from President Megawati. The idea was mooted back in 1999 by then armed forces commander-in-chief, General Wiranto, but was quickly dropped because of the fear widely expressed in Aceh that this would result in a return to the grim days of DOM from 1989 till 1998. In the event, even without a special Kodam, human rights abuses have continued to escalate in Aceh.

The military said this would be done only after securing the agreement of the Acehnese people. Many civil society organisations issued statements strongly opposing the move yet within days, it was announced that the new military command would go ahead.

The move to restore the separate military command for Aceh has several motivations. One is political, to serve the army's desire to assert a greater role in 'solving' the conflict in Aceh. According to human rights lawyer Bambang Widjojanto, Megawati appears to have been persuaded that a peaceful, diplomatic solution to the conflict would take a very long time so she has accepted the need for a 'short cut', the crush-them-with-the-military-way. [The Jakarta Post, 4 January 2002] Another motive is to eliminate the need to designate troops as 'non-organic' which has applied to troops from outside Aceh but within the Bukit Barisan command based in Medan, North Sumatra. And another is to localise the problems of Aceh and leave it to the local authorities to handle.

Human rights activist Hendaridi, who spent months investigating human rights abuses in Aceh in the late 1990s described the move as a 'backward step for democracy. It must be seen as a territorial power grab by the army, an extremely political move to reclaim power and reassert their political authority in the regions. In fact, what needs to happen in Aceh is a withdrawal of military forces, not a reinforcement.' [AFP, 4 January 2002]

One of the country's top officials who has been actively promoting the establishment of Kodam Iskandar Muda is the governor of Aceh, Abdullah Puteh, who has been present at all discussions in Jakarta on the subject. Abdullah Puteh is from GOLKAR and is known to be very close to the military. His appointment as governor was initially opposed by President Wahid. The Jakarta Post asked in an end-of-year assessment about Aceh: 'Why has Aceh accepted as its governor Abdullah Puteh, of GOLKAR, a party that was also responsible for the introduction of the deadly operations in the late 1980s?' [The Jakarta Post, 27 December 2001]

Until 1985, there were three separate military commands in North Sumatra, one of which was Kodam Iskandar Muda. They were then incorporated into a single Kodam Bukit Barisan based in Medan.

## No prospects for dialogue

The chances of dialogue with the armed resistance, GAM, have been struck a severe blow with the announcement by the government in Jakarta that talks are now a matter for the local government and that there will be no further role for a foreign mediator. This decision scales down the level of the talks and is intended to demote the status of GAM. Until now, the talks have been brokered by the Henri Dunant Centre - recently renamed the Humanitarian Dialogue Centre - which still has a presence in Banda Aceh. The central government now claims that using the services of a foreign mediator creates the impression that the talks are on a state-to-state basis.

The inevitable consequence of the change is that GAM is not likely to accept the change. In a statement issued by a spokesperson, Tgk Sofyan Dawod, on 4 January, GAM stated that a change of this nature cannot be made unilaterally and warned that the decision was 'very unwise'. A few days later, the armed resistance movement announced that it was calling a three-day strike in Aceh from 16 - 18 January, citing the decision to create the new command as one of the reasons.

Talks have come to a standstill since July 2001 when six GAM negotiators who were taking part in talks at a hotel in Banda Aceh were arrested by the police, in a serious breach of faith. Five of the men were subsequently released. The sixth man has since been charged and is currently on trial in Jakarta.

The Megawati government and the military are digging their heels in and opting for a undiluted 'military solution' with more troops, more operations and more human rights abuses, and with an agenda that now excludes all prospects for further talks. All in all, the prospects for 2002 are grim indeed.

## Judicial review sought by NGOs

A group of NGOs in Jakarta announced in December that they were filing for a judicial review of the president's decision to issue Presidential Instruction VII/2001, prolonging the presidential instruction issued six months earlier by her predecessor, Wahid Abdurrahman. The three NGOs involved are Kontras, the Commission for the Disappeared and the Victims of Violence, PBHI, the Legal Aid and Human Rights Institute, and ELSAM, the Institute for Social Studies and Advocacy. Spokesmen for the group said the earlier presidential instruction had done nothing to uphold human rights; on the contrary, it had given protection to those who were perpetrating abuses. The two instructions have legalised military repression and enabled the security forces to engage in acts of violence on a massive scale. They provided the military with the protection they needed to conduct operations to crush GAM and halt dialogue.

'What President Megawati should have done,' said Johnson Panjaitan of the PBHI, 'was to repeal presidential instruction IV/2001 and issue a president decree providing for human rights abuses to be brought to justice in an ad hoc court or the human rights court created under Law 26/2000 on Human Rights Court. [Kompas Cyber Media, 7 December 2001]

## Recent atrocities

With atrocities happening every day, no atrocities that we describe will do justice to the sufferings of the Acehnese. But for the record, we have chosen three incidents:

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# Dirty war in Central Sulawesi

*Many analysts say that the only hope for Indonesia's survival is religious tolerance. Unfortunately, there are places in this huge archipelago where this kind of tolerance has vanished. A vicious religious war, known as the 'Poso conflict', is being waged in Central Sulawesi. Both Christians and Muslims have used brutal violence against each other.*

More than 2,500 people are estimated to have been killed since the conflict began three years ago and 80,000 people have fled their homes, becoming internally displaced people. This makes it one of the bloodiest communal conflicts in Indonesia.

The Poso conflict has not been widely reported because of its remoteness from urban centres and because it has been confined to the locality without spreading to other areas. Reports only appear in the press when the fighting becomes particularly vicious or the when refugees start streaming into other districts.

But after the 11 September tragedy in the US, front page reports started to appear in the domestic and international press when Minister/Security Chief Hendropriyono made a sweeping but unsubstantiated claim that the Al Qaeda international terrorist network had set up a training camp in Poso. Other recent developments that grabbed the headlines included the vicious attack in late November and early December by Laskar Jihad forces on a series of Christian villages along the coast. The villages of Batelemba, Tangkura, Patiungga, Sangginora and Dewua were burnt to the ground.

Earlier reports indicated that the notorious Laskar Jihad militia had moved their eastern Indonesia headquarters from Ambon to Poso, apparently because of the crackdown on several Laskar Jihad centres in Ambon by the military. The death sentences passed against three Christian militia leaders, Fabianus Tibo, Dominggus da Silva and Marinus Ruwu who were found guilty of killing several hundred Muslims in the Walisongo boarding school in mid-May 2000, was also widely reported in the Indonesian press.

## Violence from both sides

As is so often the case, the protracted conflict started with a trivial incident in 1998 when in a drunken brawl between a Christian and a Muslim youth triggered a wave of violence. Since then, local community leaders have been unable to maintain a ceasefire for any length of time. Almost daily, Christian or Muslim villages have been attacked. Both sides use a wide variety of weapons: bombs, home-made weapons, knives together with more sophisticated weaponry. Following the arrival from Java of several thousand Laskar Jihad forces in the middle of 2001, the rather even balance between the Christian and Muslim militia shifted in favour of the Muslim forces. Christian villages have been heavily targeted and thousands of Christians were forced to flee their homes to the Tentena district, the stronghold of the Christians. The city of Poso, the capi-

tal of Poso district, is now the headquarters of the Muslims. Before the conflict erupted, Poso was a thriving city where both communities lived side by side at all levels.

In the earlier stages of the conflict, the Christian militia under the leadership of brutal killers like Fabianus Tibo committed many atrocities against Muslims. Much to the relief of many Christians, Tibo was arrested, tried and sentenced to death, together with two others, Dominggus da Silva and Marinus Riwu, for their role in the massacre of hundreds of Muslim students in the Walisongo Boarding School. It was even claimed that Tibo gave the order for



*A former village in Poso, left in ruins*

Muslims who were seeking refuge to be killed.

Poso and Tentena have become virtual war zones. The military and the police have become the decisive factor. Christian civil servants can only travel to their offices in Poso under the protection of security officers, while Muslims can only enter the Christian towns of Tentena or Sepe under police or military escort.

## Communal conflicts in Indonesia

The Poso conflict is one of many communal conflicts that have erupted since the fall of the Suharto dictatorship. The mushrooming of communal conflicts is directly related to the fall of the authoritarian regime which created what many scholars call a security dilemma. The rigid vertical structure of law and order under Suharto collapsed and has been replaced by multi-layered patron-client relationships under Jakarta and local elites. Groups in a locality, in particular in trouble spots, intensify efforts to protect their own community by organising militias and stockpiling weapons.

It is also undeniably true that unscrupulous and ma-nipu-



lative power brokers, mainly politicians or senior military officers, want to gain leverage in the power struggle by encouraging communal rivalries. The emergence of groups like Laskar Jihad who have close ties to elements within the military is a good example. Neither the Gus Dur nor the Megawati governments have been able to stamp out the activities of this radical group despite its unpopularity in the eyes of the public.

Economic interests often play a determining role in communal conflicts. The economic meltdown of Indonesia since 1997 has only intensified the battle for limited natural resources. The region of Poso is very wealthy. The soil is very fertile and some 30 per cent of the land has been scheduled for use as cocoa plantations, an important cash crop. Poso also has palm oil, copra and clove plantations and it is one of the few remaining places in the archipelago where ebony is still being exported. The National Maritime Council revealed in 1998 that there were 32 sites of large untapped oil deposits in the northern Tomini Bay.

For all its good intentions, the autonomy law which came into force at the beginning of 2001 has also resulted in shifts in the power structure. Local district chiefs have become more important which in turn creates new layers of conflict between the district and provincial elites, or feuds with local military or police.

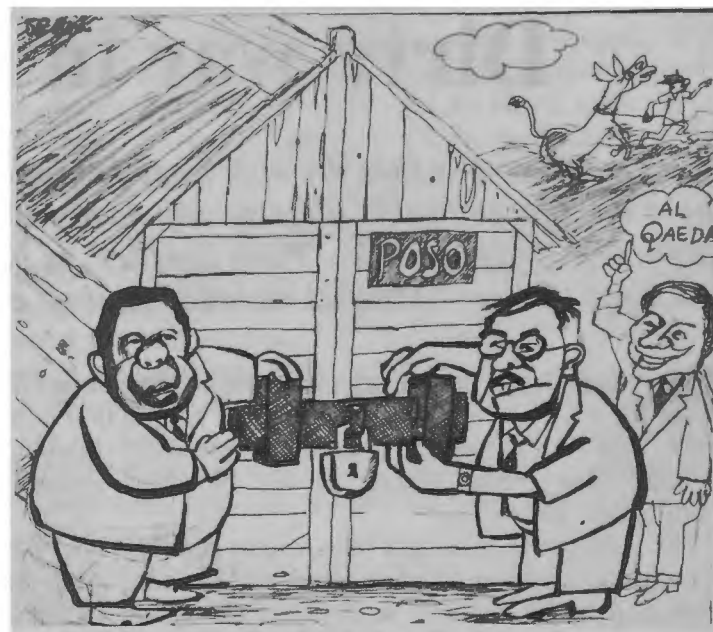
## Al Qaeda training ground?

It was to be expected that retired Lt. General Abdullah Hendropriyono, arguably the most influential military officer in the Megawati cabinet, would come out with a claim that Al Qaeda built a training camp in Poso two years ago. Jafar Umar Talib, the flamboyant leader of Laskar Jihad, vehemently denied the allegation. He admitted that he had been trained in Afghanistan in the eighties but denied that he had any ties with Al Qaeda.

Hendropriyono almost certainly made this claim so as to join the Washington 'coalition' in its war against international terrorism. It came within days of the generous offer by President Bush promising hundreds of millions of dollars to the governments of countries thought to be harbouring terrorists. So far there has been no evidence of any Al Qaeda presence in Poso and Hendropriyono's statement created quite a stir among commentators, forcing the security chief to retract his statement.

A similar controversy erupted in Washington when hard-liner Paul Wolfowitz, the deputy defence secretary (who was the US ambassador to Indonesia during the nine-ties) hinted at the possibility of Indonesia harbouring terrorists while the State Department has as yet failed to add any Indonesian organisation or movement to its list of terrorist organisations. A new version has now emerged in Washington according to which there is no connection between Laskar Jihad and Al Qaeda; according to this version, the training ground in Poso was set up by foreigners, for foreigners.

Be that as it may, the controversy has thrust the Poso conflict onto the front pages of the international press and the 11 September tragedy has given this local conflict an international dimension. But for the local people, Christians and Muslims alike, the controversy has had little bearing on their dire situation. The security situation has failed to improve; an ineffective government in Jakarta and allegations from Washington seem only to have prolonged the suffering of the people in Poso and Tentena.



*Indonesian authorities trying to isolate the Poso conflict*

After more news of Christians fleeing their homes in December, Megawati's minister-coordinator for security affairs Susilo Bambang Yudhoyono headed a large team of ministers and generals to the area. But since then, apart from occasional reports in the press about the possibility of declaring a state of emergency, nothing has happened to get to the root of the problem. No one has dared to mention the need to expel the Laskar Jihad thugs from the region for the obvious reason that they enjoy the backing of important elements within the military.

## Reconciliation efforts

The two major religious holidays, Idul Fitri and Christmas, occurred within days of each other in 2001. The opportunity was used by the authorities to bring leaders of the two feuding parties together. The Poso meeting took place in Malino, a historic venue where the Dutch and the Indonesians once held a meeting after the Second World War to discuss the future of the former Dutch East Indies.

Yusuf Kalla, the co-ordinating minister for people's welfare, chaired the meeting between the so-called 'White Group' (the Muslims) and the 'Red Group' (the Christians). On the first day each side voiced their grievances: the White Group had nine complaints while the Red Group had six, which only points to the depth of the cleavage between the two communities.

So far this kind of top-down approach to peace and reconciliation has achieved very little. Four previous meetings led nowhere for the simple reason that grassroots elements from the two communities were not involved.

The arrival of fresh troops, including both military and police units, seems to have halted the eruption of new violence for the moment. It remains to be seen whether this latest peace effort reflects a degree of war-weariness and a genuine feeling of reconciliation from both sides.

The huge death toll, the 80,000 people who are now internally displaced and the extensive destruction of property, houses, churches and mosques, gives some idea of the effort and time that will be needed before things in the area can get back to anything approaching normality.

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**Made in Indonesia, Dan La Botz, South End Press, 2001, Cambridge Massachusetts, ISBN 0-89608-642-9**

This is a valuable and timely book for anyone interested in the development of democracy in Indonesia. It is well written and easy to read and Dan La Botz is to be thoroughly congratulated for it.

Dan La Botz's focus is the new trade unionism and left-wing political movement in Indonesia in the context of global capitalism. Based on interviews and research in the country in mid-1999 and mid-2000, plus written sources available in English, he takes the reader through the major developments - the organisations and the key individuals - that have been at the heart of the Indonesian workers' movement, especially since the 1990s.

Virtually all the main players are covered in depth. They include Dita Sari and the FNPBI (National Front for Indonesian Workers' Struggle), Muchtar Pakpahan and the SBSI (Indonesian Workers' Welfare Union), and Rustam Aksam and the TSK textile, garment and leather workers' federation - the most successful of the break-away SPSI-Reformasi elements from the old, official labour organisations of Suharto's New Order.

Dan La Botz also does not miss out the important role of non-governmental organisations (NGOs). Some were very instrumental, by developing programmes of workers' education, mobilisation, and advocacy. They include the legal aid institutes (LBH), church-based bodies, and women's groups. Also covered are old organisations that have resurfaced after twenty-five years, such as SARBUMUSI.

Though the book is very comprehensive, not all interesting organisations are there. Those missing include some of the small yet most genuine and democratic workers' organisations. Also valuable might have been interviews with the old New Order cronies who still try to exercise some muscle to corrupt the workers' movement. There are also a few errors, such as the FBSI sometimes becoming FSBI.

Nevertheless it is a book which surely ought to be read by all those active in international support for Indonesian workers' rights - from the international trade union movement, to the labour-oriented NGOs, to the anti-sweatshop campaigners of Australia, Europe and North America. This is important because there is very little else around in English on the subject, certainly not in such a full and accessible form.

One of the greatest services of the book is the potted political history of Indonesia, going back into the early colonial period. I have never come across such a succinct, intelligible version in English, which can give today's solidarity supporters a sense of where the Indonesian democracy movement has come from. It would be good if at least this part of the book can be translated into Indonesian to make it available to Indonesia's workers who, as one labour activist put it to me, are largely "orphans from their history".

There is also a detailed chapter on the PRD (People's Democratic Party). As an international socialist, Dan La Botz makes it clear that he is impressed with this new political party, whose leaders he has interviewed at length. Here as in the rest of the book, he is honest in describing weaknesses as well as strengths. But he nevertheless admires the

PRD's consistent socialist stance. It is perhaps a pity, though, that he does not analyse in depth any of the other contemporary Indonesian political parties. In the end, Dan La Botz's book is a political statement rather than a detached analysis.

Perhaps the weakest part is the final chapter on international solidarity. This is a complex issue and he only really goes into depth on US support, for example through the American Center for International Labor Solidarity (ACILS) and the United Students Against Sweatshops (USAS). In that sense, this is very much an 'American's book', solidarity seen through the eyes of an American.

There is of course much more to say about this topic. He makes a very short, sweeping and dubious statement about the nature of the German union support. There is little else on bilateral union links, e.g. from Australia, Europe, Scandinavia or elsewhere.

He misses out entirely the role of the ILO office in Jakarta, whose trade union education programme has been funded with a million pounds from the UK Department for International Development (DFID). It has been criticised for being oriented towards the 'Reformasi' parts of the old official unions and much less supportive of other democratic workers' initiatives.

Nor does he analyse the support of the ten International Trade Secretariats (ITSSs), which are sector/industry-based international trade union federations. Some have affiliated the Reformasi-wing of the old unions; some have also affiliated a new union such as an SBSI sector; and some have deliberately not accepted any affiliate yet but focus instead on education programmes involving several organisations. So there is not a single approach even from the international trade union movement.

There are many more initiatives and debates on international workers' solidarity with Indonesia which are barely mentioned, if at all. So it might have been better not to embark on an ambitious chapter but to limit it to just US solidarity activities.

That said, the book as a whole is a must for all supporters of democracy in Indonesia. One of Dan La Botz's aims is to increase international understanding of Indonesia. As an American, he speaks of the prejudice that he finds among his fellow Americans against Asian people and Muslims as if they are 'not capable of democratic development'. How much more timely, then, is this book post 11 September.

*Celia Mather*



**Ian Martin, SELF-DETERMINATION IN EAST TIMOR, The United Nations, the Ballot, and International Intervention, Lynne Rienner Publishers, USA, 2001, 171 pp, ISBN 1-58826-033-X**

This is an important book by one of the key players in the dramatic events in East Timor in 1999. The author was the Special Representative of the UN Secretary General for the East Timor Popular Consultation. Ian Martin arrived in Dili on 1 June 1999 to lead UNAMET, the UN Mission in East Timor. When he left East Timor on 14 September, the country had been wrecked, as a result of destruction and killings by TNI, the Indonesian military and their proxy, the militia. Six days after UNAMET closed down, the International Force for East Timor arrived in Dili.

Ian Martin does not claim to give an objective account of events. As head of UNAMET he was responsible for overall assessments and recommendations, which gives his words added weight. He came to the job after years of experience in the UN, prior to which he was Amnesty International's general secretary in the mid-eighties. Therefore, he was not unfamiliar with the complexities of the East Timor issue. His team included several top-ranking UNAMET officials who were very knowledgeable about East Timor, greatly enhancing its effectiveness.

On the negative side, it has to be said that the author is often too cautious, inevitable perhaps from someone high up in the UN hierarchy. His assessments are worded with such care that he gives the impression that he is holding his punches.

1999 was indeed a turning point in the history of East Timor; after years of neglect, this tiny country finally became a focus of international attention. Ian Martin's account is both analytical and highly readable. It includes the unexpected decision of the Habibie government to agree to a ballot; the flawed 5 May UN agreement; the mounting wave of violence by TNI (the Indonesian armed forces), POLRI (the Indonesian Police) and militia gangs; the mounting international pressure on Jakarta; the referendum itself and the massive destruction in the first two weeks of September. It should be said that while many books have been written about this period of East Timor's history, Ian Martin's account will occupy a special place.

This review focuses on two very contentious issues: how and why the 5 May agreement was accepted and the background to the destruction that followed the vote.

## **Why the flawed modalities were agreed**

An understanding of how and why the 5 May agreement which established the modalities of the popular consultation in East Timor came into being, is sure to remain a matter of controversy. Even though it was widely acknowledged that the agreement was flawed, it was accepted as the basis for holding a ballot. Many within the international East Timor solidarity movement were very unhappy with the security arrangements. The author devotes twenty-two pages to this question and explains how ultimately, everyone, the East Timorese political factions, Portugal, Australia, USA and the international community decided to accept the modalities.

Indonesia was inflexible. It alone should be responsible for security during the vote; other options, such as the with-

drawal and/or disarming the paramilitary, as requested by the UN, the Timorese and other parties, were rejected out of hand by the Indonesian team. The only concession Foreign Minister Ali Alatas would accept was for a small contingent of CIVPOL (UN Civilian Police) to take part in an advisory role. Later some eighty military liaison officers (MLOs) were added to the UN contingent. In hindsight, it can be argued that giving the TNI/POLRI responsibility for security created the conditions for the destruction of East Timor. Martin gives a step-by-step account of this process.

The bottom line is the window of opportunity that gave the momentum to the 5 May Agreement. The pressure on the Jakarta government to find a solution for East Timor, including domestic pressure (not discussed by Martin) had become almost unbearable. President Habibie and his inner team of advisers opted for a swift and elegant solution: whatever the outcome of the vote, implementation should be immediate. The East Timorese leadership had been prepared to accept a transition of five or even ten years prior to independence but Habibie wanted to pack up and leave instantly if the vote went for independence, making the transition to independence much less complex.

On the other hand, there were serious political problems regarding the Indonesian presidency. The chances of Habibie being elected president the following year were remote. Megawati, the obvious front-runner, would be most unlikely to open the way for East Timor. The unspoken consensus in the international community was that the referendum should be wrapped up before the general elections in Indonesia. This helps to explain why the 5 May Agreement was so speedily adopted.



*Historic photo of Indonesian troops during the invasion of East Timor in December 1975*

The Portuguese, having consulted with the East Timorese leaders, decided to go for this option. Despite receiving daily reports about mounting violence by militia groups, the UN went along with this and by the last week of April the two other key players, the US and Australia, fell in line by not taking too strong a stand on the security provisions, as Martin convincingly explains. Any attempt to exert strong pressure on Jakarta regarding security might have delayed the ballot indefinitely.

## **UNAMET in action**

A large chunk of the book focuses on the preparation and holding of the ballot, an event that will go down in history as one of the better achievements of the UN. The many UN workers and the hoards of volunteers worked with great

dedication. There is no doubt that the ballot complied with international standards and, to crown it all, the participation of the East Timorese was overwhelming. No one could better describe the process than Martin, who was on top of everything. As militia violence increased by the day, the author's frustration and anger comes through powerfully, having to deal daily with the so-called representatives of the pro-integration Timorese. For the sake of 'neutrality', these obscure groups played a prominent role in the preparatory process. UNAMET had to play along with this game while everybody knew who had the support of the population.

The nature of, and the background to, the violence throughout the year up to the arrival of the peacekeeping forces on 20 September is a red thread through the book. But there are inconsistencies in explaining this and analysing the violence as part of a grand scheme designed at military HQ in Jakarta. As head of UNAMET, the author was in constant contact with the responsible Indonesian officers, Colonel Tono Suratman and Colonel Noer Muis, the military commanders in East Timor during 1999, Major-General Zacky Anwar Makarim who was the key figure in the Indonesian Task Force for the East Timor Ballot, and Police Colonel Timbul Silaen, chief of police in East Timor. According to the modalities of the 5 May Agreement, these were the men in charge of security.

As UNAMET head, Martin, these men did little to conceal from him that violence was inevitable and that mass evacuation of the population to West Timor would occur. Together with the mounting violence by the militia in the form of daily acts of terror, it was crystal clear that the after-ballot violence was part of a grand scheme. Along with Geoff Robinson, political affairs officer of UNAMET, Martin has searched for evidence to prove beyond doubt that the destruction and mass evacuation of East Timor in September was part of a plan.

According to Robinson, the available documents 'do not provide definitive proof of direct high-level involvement in planning or carrying out specific acts of violence, either before or after the ballot'. Robinson's analysis includes two related possibilities. One is a breakdown in the chain of military command, leading to a loss of control at army headquarters over key elements in the armed forces. 'A second possibility is that the violence was not the product of an explicit plan or command, but was at least in part the result of a deeply embedded pattern of thinking and behaviour within the TNI.'

Martin is convinced that the post-ballot violence was directed by the TNI and that the co-ordination and planning must have happened 'at least as high as the provincial (KOREM) level, and very likely higher'. The lack of documentary proof compels Martin to include Robinson's more cautious views into his analysis of the events.

The lack of a 'smoking gun' is frequently the problem in analysing many tragic events in Indonesia. 'Operasi Komodo', the military intelligence operation that preceded the invasion of East Timor, has been widely discussed by analysts on East Timor but written evidence is missing. The stage-managed ballot in West Papua in 1969 where a few hundred hand-picked men voted in favour of Indonesia was another successful intelligence operation. None of these events have been properly investigated, nor can they be without the political will of the Indonesian authorities, which has been lacking for almost 35 years.

Organising the militia and the violence in East Timor since early 1999 was clearly part of a concerted plan, as

convincingly portrayed by the author. In the early months, the strategy was to create so much fear that the people would not dare to vote for independence. This position probably switched at least twice in the run-up to the ballot. Around the time Martin arrived in Dili, military intelligence in Jakarta may have concluded that the ballot could not be won, leaving them with two options: to make it impossible to hold the ballot or design a contingency plan of destruction and mass evacuation. Both options were put into practice with TNI officers being more and more openly involved in the escalating violence. Martin had the impossible task of making sure the ballot went ahead, while urging New York to exert pressure on Jakarta to stop the violence.

Military intelligence operations are by their very nature secret and leave no smoking guns. It is not too late to delve deeper into this sinister plot. An ad hoc human rights court on East Timor is due to start in Jakarta in January to hear cases against the perpetrators of this violence though it remains to be seen how effectively the court will function. If properly conducted, these trials could bring to light the 'secrets' of the violence in East Timor. \*

*Liem Soei Liong*

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are also looking at other ways of advancing their strategy, bearing in mind that the need to end impunity is also a major concern of colleagues in the Indonesian NGO movement who could use justice for East Timor as a precedent for justice in so many other cases.

The possibility of preparing legal cases against leading generals and using the courts of the US and European countries, which have shown a willingness to exercise universal jurisdiction, is an idea which was considered at a conference on Impunity in Indonesia in Amsterdam in early December.

Volunteers at the Amsterdam International Law Clinic are carrying out research into the possibility of bringing three generals to trial outside Indonesia. They are Wiranto for crimes committed in East Timor, Hendropriyono for his involvement in an attack on the village in Talangsari, Lampung in February 1989 when at least 200 were killed, and Djadja Suparman for his involvement in atrocities committed in Maluku. The results of the research should be available shortly. Indonesia House, a coalition of Dutch NGOs which hosted the Amsterdam conference is developing a plan of action for the campaign against impunity for the next three years. \*



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One observer who was in Aceh for several weeks in late 2001 confined herself to describing a series of incidents in Simpang Rambong, North Aceh. The village is accessible only by a very rough road and is located near an area known to be a GAM stronghold. In early December, according to the villagers, Indonesian soldiers arrived early in the evening, in Panther armoured vehicles, leaving a trail of destruction in their wake. Ten village houses were burnt in what the villagers insisted was an unprovoked attack. Several people were injured but with no clinic or doctor in the area, their wounds remained untreated.

A week later, the troops returned in greater numbers and carried out indiscriminate shooting. This time, a 13-year old boy, Ridwan was shot dead as he took cover inside the family home. Ridwan's mother said the soldiers shot through the window, smashing a mirror and killing the boy.



**Heavily armed police patrols along the main roads in Aceh**

Around the house lay the bullet castings. Many injuries sustained by the villagers were from bayonets. [Lesley McCulloch in *Asia Times*, 4 January 2002]

In a village in Central Aceh, not far from the district capital, Takengon, a woman who was seven months pregnant was set upon by a gang of ten men, some wearing army uniforms, the others in civvies. The woman who related her terrible experience in a state of great distress, insisted on being identified only by her initials. It happened on 14 December, in the middle of Ramadhan, the fasting month, when SN was alone at home, preparing drinks for people at the mosque. A group of men banged on her front door and insisted on entering even though she said her husband was not at home. The men who were armed with rifles barked: 'Where is your husband, where are the weapons, where is your money?' Finding nothing, they pushed the woman into a room and raped her in turn, as she screamed for help. Her neighbours guessed what was going on but were too afraid to leave their homes and come to her assistance. The woman later said she could not be sure that the men were Indonesian soldiers, but she and her husband decided to leave the area for fear of being attacked again. [*Waspada*, 3 January 2002]

The other atrocity occurred in West Aceh, on 9 January 2002. Four boys and men were sitting in a café in the village of Ujong Muloh, Jaya sub-district. At around 8pm, a group of soldiers from a nearby military command were out on patrol. As they drove past the café, they stopped and ordered

the four to come out. After interrogating them for a few minutes, the soldiers opened fire and shot them all dead. The victims have been named as: Muhammad bin Sakdan, 18 years old, Budiman bin Umar, 35, Zubir bin Hasan, 14, and Sabirin bin Jalil, 20. [*KAGEMPAR* Banda Aceh, Students and Youth Coalition in West Aceh, 11 January 2002]

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sory role. The main criticism has centred on the fact that the bill stipulates that the primary function of the police is to maintain security and order, while protecting and serving the public is placed within the context of that function. Critics insist that serving the public must be given pride of place.

Imagine the consternation when it was suddenly announced early in December that the draft had been voted into law without giving anyone the chance to present their criticisms to legislators. A demand from several regions that regional police chiefs should be chosen locally, in the same way that the central parliament approves the appointment of the national police chief, was completely ignored. Nursyahbani Katjasungkana of the Women's Association for Justice complained bitterly that the bill contained no mention of women who are so often the victims of crime. Bambang Widjajanto, chair of the NGO Coalition, said the police bill could 'become an entry point to the new authoritarian system, as the president could freely utilise the police who are now armed with such a suppressive mechanism'.

One member of the parliamentary commission in charge of deliberating the bill, a member of the PDI-P, gave a broad hint that money politics had played a part in securing the sudden enactment of the bill. [*The Jakarta Post*, 13 December 2001]

The only option now left to campaigners to undo the damage is to appeal to the president not to sign the bill into law. A signal step forward in the reform programme, separating the police from the armed forces, has suffered a major setback and the police look set to continue to pursue a security role which places them on a par with the army.\*

# Militias convicted of crimes against humanity

*In an important decision in December 2001, an East Timor court convicted ten militiamen of crimes against humanity committed in East Timor during 1999. Their Indonesian commander escaped justice, as Jakarta refused to extradite him. Earlier, in the first case in which an Indonesian officer has been called to account for the atrocities committed in East Timor in 1999, a United States court awarded US\$66 million against an officer responsible for systematic violations of human rights.*

## Los Palos case

On 11 December 2001, the Special Panel of the Dili District Court, which has jurisdiction over serious crimes, handed down its first convictions for crimes against humanity against ten members of Team Alpha militia based in the Los Palos area of eastern East Timor.

The ten men were found guilty of involvement in a series of crimes between April and September 1999, including torture, murder, deportation of the civilian population and persecution. The court found that a widespread and systematic attack against the civilian population of East Timor had taken place in 1999 supported by the Indonesian authorities. The accused were aware that their actions were part of this attack and those actions, therefore, amounted to crimes against humanity.

The victims included an independence supporter, Evaristo Lopes, who was tied up, kicked, beaten with an iron rod and stabbed to death at a base of the Indonesian special forces, Kopassus, on 21 April 1999, and a group of nuns, clergy and an Indonesian journalist ambushed and executed whilst travelling from Los Palos to Baucau on 25 September 1999.

The accused were sentenced to terms of imprisonment ranging from 4 years to 33 years 4 months, the maximum allowed under East Timorese law.

Evidence was adduced that Team Alpha was created by Kopassus in the mid-1980s. At the times of the crimes Team Alpha operated out of the same building as Kopassus in Laruara, Los Palos. They shared logistical support and were armed and trained by the Indonesian armed forces, TNI. According to the indictment, the co-operation between the militia and the TNI included joint operations and attacks in which members of Team Alpha unlawfully arrested and abducted civilians who were subsequently taken to and interrogated by TNI, particularly by the locally-based 745 Battalion.

Charges were also laid against Lt. Syaful Anwar, a local Kopassus commander, who, according to the indictment, had authority and control over members of Team Alpha and issued orders and instructions executed by the team. He allegedly supervised the abduction of Evaristo Lopes and slit his throat while he was being held down by two of the convicted militiamen. He is thought to be currently in Indonesia. The Indonesian authorities have refused to extradite him despite an agreement between UNTAET and Indonesia which provides for the transfer of suspects between the two jurisdictions.

The Special Panel comprised an East Timorese judge and two international judges, from Brazil and Burundi.

No charges relating to the Los Palos atrocities have been laid against Indonesian officers higher up the chain of command.

Other indictments for crimes against humanity have been issued, mainly against militia members, in relation to crimes committed in Bobonaro, Liquica, Same and Oecussi. These cases are awaiting trial or have been adjourned pending further hearings.

[For comments on the performance of the Serious Crimes Unit of UNTAET, which brought the Los Palos case to trial, see separate article 'Justice delayed yet again']



*East Timorese militia*

## Lumintang case

So far, only one Indonesian officer has been held to account in a court of law for the atrocities committed in East Timor in 1999. In September 2001, the US District Court in Washington DC awarded damages of US\$66 million in a civil claim against Major General Johnny Lumintang for his involvement in the campaign of violence. At the time, Lumintang was the Vice Chief of Staff of the Indonesian army.

In March 2000, East Timor activists in the US became aware that Lumintang would be visiting the US and instructed lawyers to prepare a claim against him alleging that, as a member of the Indonesian High Command, he designed, ordered, implemented and directed a program of systematic human rights violations in East Timor which resulted in the commission of crimes against humanity,



including torture, summary execution, assault, battery and intentional infliction of emotional distress.

The main evidence of Lumintang's involvement in the East Timor atrocities - apart from the fact of his position in the Indonesian High Command - were a telegram which ordered local commanders to plan a crackdown should the East Timorese vote in favour of independence, and an army manual signed by him which stated that Kopassus officers were to be trained in propaganda, kidnapping, terror, agitation, sabotage, infiltration, undercover operations, wiretapping, photographic intelligence and psychological operations.

The claim was brought by a mother whose son was killed, a man who was beaten and shot in the foot, which had to be amputated, and a man whose father was injured and brother killed. The plaintiffs also all had their properties destroyed or were forced from their homes in the aftermath of the August 1999 ballot.

The main bases for the claim were two US statutes, known as the Alien Tort Claims Act (ATCA) and the Torture Victim Protection Act. The ATCA allows non-citizens of the US to sue for acts, known as torts, committed outside the US in violation of the law of nations or a treaty of the US provided the defendant is served notice of the suit in the US. The Torture Victim Protection Act re-affirms the ATCA and gives US courts jurisdiction over claims by non-citizens involving torture and extra-judicial killing.

In the event, Lumintang failed to respond to the lawsuit, and judgement was entered against him. A trial was convened in his absence to hear evidence of the allegations against him. That evidence was accepted by the court as Lumintang presented no defence.

In awarding damages to the plaintiffs, the court considered three main issues: the question of whether the court had jurisdiction to hear the plaintiffs' claims, the question of Lumintang's liability and the question of damages.

On the question of jurisdiction, the court decided that it had jurisdiction under the ATCA since the torts alleged in the case - torture, summary execution, crimes against humanity and cruel, inhuman and degrading treatment - were acts which violate international law or the law of nations and were therefore the kind of acts which are actionable under the ATCA.

The Torture Victim Protection Act was also quite clearly relevant since it provides a cause of action for torture or execution committed anywhere in the world. The Act does require that all local remedies must be exhausted, but the court found that seeking redress against Lumintang in East Timor or Indonesia would have been futile or inadequate so the need to exhaust local remedies was not required.

On the question of Lumintang's liability, the court found that he was both directly liable and indirectly liable for the acts alleged by the plaintiffs.

He was directly liable in that as the army's vice chief of staff, he - along with other high-ranking members of the Indonesian military - planned, ordered and instigated acts of terror and repression carried out by subordinates which led to the plaintiffs' injuries. The evidence for this direct involvement was found in the telegram and army manual signed by him.

He was also indirectly liable under the principle of command responsibility, which is well established under US law for both crimes and civil wrongs. The court found that, as the army vice chief of staff and member of the TNI High Command, he (1) served as commander of subordinate members of the TNI in ET who perpetrated the acts of

violence which injured the plaintiffs, (2) he knew or should have known that subordinates in ET were committing, were about to commit or had committed widespread and systematic human rights violations, and (3) he failed to prevent or punish the violations.

The court decided to award the plaintiffs punitive damages of \$60 million as well as compensatory damages of \$6 million. This means that as well as being compensated for the mental and physical injuries they suffered, they were also awarded a large sum intended to punish Lumintang for his actions.

In awarding punitive damages, the court followed US legal authorities which said that punitive damages are an appropriate mechanism for upholding international norms against human rights abuses. The measure of punitive damages was determined by the nature and scope of the defendant's acts, his evil motive, and the need for deterrence. In particular his participation in a pattern of atrocities in East Timor throughout 1999 was taken into account.

It is unlikely that the plaintiffs will ever recover the money they have been awarded, but Lumintang is now restricted in where he can travel abroad, and others may well be reluctant to travel to the US for fear of similar lawsuits.

The Lumintang case follows many similar claims brought in the US under the ATCA. They included the 1994 case which resulted in an award of \$10 million punitive damages and \$4 million compensatory damages against Indonesian general Sintong Panjaitan for his involvement in the Nov. 12 1991 Santa Cruz cemetery massacre of over 270 East Timorese. The plaintiff in that case was the mother of a 19-year-old student who was among the victims. \*

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saying that even this seems not able to truly reform itself.

The unions vary greatly in quality. Growth is slow in a number of the unions; some are losing strength. Some, like the SPSI and SPSI-Reformasi unions, can claim large numbers, but their levels of activism are very low. They seem unwilling to take on the employers and government, or even the IMF. When the government announced that 20 February would be 'Workers Day' as it is the anniversary of the birth of the SPSI, we hoped to join in a big alliance in protest. Obviously we want to celebrate International Workers Day on 1 May like elsewhere in the world. The 'reformasi' unions said they would join in, but in the event mobilised no one to turn up. They only want to mobilise around economic issues, saying that other matters are 'not workers' issues'. So we regard them as having 'quantity' but not 'quality'.

It is important for international supporters to take notice of these issues and make sure that internal reforms in the unions are being implemented. This is true not only at national level, but also at plant- and regional-level. There too we can still see the conservatism when it comes to dealing with the companies, with the masses, and so on. It will take time for such organisations to break from the traditions of the past. The leaders are so used to acting in undemocratic ways. This is why pressure from our type of organisation is useful. \*



# Justice delayed yet again

*The long delayed trials of crimes against humanity in East Timor have been delayed yet again because of the foot-dragging by President Megawati. The investigations were completed in January 2000 but nothing happened for fifteen months. After two presidential decisions to set up an ad hoc court, the date was set for December, then postponed till 15 January. But Megawati did not appoint the judges till the day before the court was due to open, causing further delay. In any event, the highest-ranking officers originally named are not on the list of suspects likely to face trial.*

The process almost descended to the level of farce when Chief Justice Bagir Manan announced that the ad hoc court for East Timor would be postponed from December 2001 because the authorities had failed to 'foresee' the long holidays in December involving Idul Fitri, Christmas and New Year. Megawati's delay in appointing the judges from a list of 30 nominated by the Supreme Court had everyone suspecting that the President was under pressure from the military.

As Todung Mulya Lubis, one of Indonesia's leading human rights lawyers, has said: '(T)he Megawati government cares more about its good relations with the military and the police because it worries that bringing the human rights violators from the military and the police to justice will weaken the country. The Megawati government will have to pay very dearly for this erroneous political calculation and assessment.' [*The Jakarta Post*, 28 December 2001]



*Indonesian military increasingly calling the shots in Indonesia*

## Unsafe procedures

Indonesian NGOs have already complained that the process by which the judges were nominated was completely lacking in transparency. Most of the judges are believed to have little understanding or experience of human rights. Their training is inadequate, largely because the UN High Commissioner for Human Rights withdrew her offer of training assistance after understandably objecting to the severe restrictions on the court's jurisdiction. (Megawati's decree setting up the court limited its work to crimes committed in April and September 1999 in Dili, Liquica and Suai).

There is no effective witness protection programme and no attempt has been made to address the problem of the constitutional prohibition on retroactive prosecutions [see *TAPOL Bulletin* No. 160, p. 16]. Indonesian human rights experts believe that if, as is likely, the non-retroactivity principle is used as a defence to crimes against humanity charges, the court will simply reduce the charges to ordinary crimes under the Indonesian Penal Code, rendering the whole process meaningless.

No indictments have yet been issued, but it is known that the defendants will not include the former armed forces commander-in-chief, General Wiranto, and intelligence chief, Lieutenant-General Zacky Anwar Makarim. Both were named in the January 2000 report of the Indonesian Commission for Human Rights Violations in East Timor (KPP-HAM), which confirmed military involvement in and responsibility for crimes against humanity. Albert Hasibuan, the chair of the KPP-HAM, told a seminar

recently in Jakarta that the principle of command responsibility is firmly established within the military. 'During the Second World War, General Yamashita was held responsible for the Pacific War. So my question is, why is Wiranto who was named as the man responsible in the KPP-HAM report not named as a suspect by the attorney-general?'

Furthermore, the attorney general's office appears to have quietly dropped from its list of suspects the militia leader, Eurico Guterres, head of the notorious Aitarak militia who is implicated in one of the worst atrocities, the attack on the home of independence leader, Manuel Carrascalao in Dili on 17 April 1999 when at least 12 people were killed. Guterres who was named in the KPP-HAM report, was for years a trusted member of Megawati's party, the PDI-P holding a post in its security department, and has recently placed himself at the head of the 'Anti-Communist League' in Jakarta.

## Political obstacles

There are many political obstacles in the way of trials of high-ranking officers, related to the consolidation of the military's power since Megawati became president. Megawati's political dependence on the military has forced her into a delicate balancing act which involves her attempting to retain the support of the military while satisfying international demands for justice. She is also under pressure to expedite the judicial process in order to clear the way for the resumption of military ties with the United States.



Under US law, full bilateral military co-operation cannot be resumed until those responsible for the East Timor violence are held to account for their crimes [see *TAPOL Bulletin No. 163*, p. 12].

Wiranto has added to the pressure on Megawati by embarking on a cynical public relations campaign aimed at arousing sympathy for his men and accusing the criminal investigation of being biased because of its reliance on foreign sources, such as UNTAET and Australia, for its evidence.

The outcome of Megawati's balancing act will not satisfy demands for justice. In order to protect those at the top who planned and directed the campaign of violence, she has apparently allowed a few selected senior-ranking officers, such as Adam Damiri, now a lieutenant-general, who headed the Bali-based Undayana military command overseeing East Timor in 1999, to take the blame. Damiri was in operational control of the military in East Timor and to have excluded him would have made the whole exercise meaningless. It remains to be seen how he will wriggle out of punishment. In any case, he is currently operations deputy chief of staff of the army and saving him will likely be a key part of the defence strategy.

## Defence lawyer makes his case

The lawyer who has been appointed to head the defence team of the military who will face charges in the forthcoming ad hoc trials is Adnan Buyung Nasution. Nasution made his reputation in the human rights community as the founder in 1980 of the country's first legal aid institute, the LBH in Jakarta. While no one will deny that all defendants are fully entitled to defence counsel, many eyebrows were raised when it was reported that such a renowned human rights lawyer would lend his name to defending the perpetrators of crimes against humanity. The military clearly took a strategic decision in appointing him.

In a paper delivered to a seminar in Jakarta in January this year, Nasution warned that in the conduct of the forthcoming trials, there would be three major impediments to securing a fair trial:

Powerful psychological pressure from domestic public opinion which is already predisposed to believing that grave human rights abuses were committed.

The danger that the judges will not have the courage to stand up to public opinion by passing verdicts that might be seen as unresponsive to the 'demand of the times' and will therefore 'compete with each other to become human rights heroes in the eyes of the public'.

Psychological pressure from international public opinion which is firmly convinced that the Indonesian nation, specifically its government and security forces, are guilty of grave human rights abuses in East Timor.

Under the pressure of such powerful public opinion, the trials will be 'very dramatic, while there is a minimum of material to provide lawful evidence'. [Paper delivered at a seminar organised by Solidamor, on the theme: 'Can the human rights trials satisfy our sense of justice?' Jakarta, 10 January 2002]

These comments suggest that the defence will argue that public opinion about the substance of the trials will render it impossible for the defendants to get a fair trial. This suggests a lack of faith in the capacity of the Indonesian judiciary to handle such trials. So, would an international tribunal be the preferred alternative? Not at all! Nasution argued that turning the cases over to an international tribunal would undermine the principle of the sovereignty

of Indonesia's legal system and its 57 years of experience since independence.

## World community lacks commitment

While the Los Palos and Lumintang cases reported elsewhere in this Bulletin represent important developments in the search for justice for East Timor, they also illustrate the ad hoc and unsatisfactory nature of the international community's approach to this vital issue. It is clear that the international community does not have a coherent and credible strategy to ensure that those officers in the Indonesian military with the highest level of responsibility are brought to justice. Proceedings against the highest-ranking officers are vital to establish the truth of what happened, to help bring an end to impunity and to establish respect for the rule of law in Indonesia and East Timor.

The UN's decision to give the Indonesian authorities the chance to bring the Indonesian perpetrators to justice is misguided and almost certainly doomed to failure. At the same time, its support for the serious crimes process in East Timor has been wholly inadequate.

There have been persistent reports that the work of UNTAET's Serious Crimes Unit (SCU) has been severely hampered by problems relating to lack of resources, management conflicts, poor communications, the lack of clear policy guidelines and a reluctance to expose the systematic nature of the 1999 atrocities. There have also been allegations of political interference in the judicial process and of deals being struck in talks with militia leaders at the border with West Timor. Several investigators and prosecutors have resigned after feeling frustrated with the SCU.

The problems are now being addressed with a change of personnel, the appointment in August 2001 of a new deputy head of UNTAET, Dennis McNamara, whose mandate includes improving the performance of the SCU, and the recruitment of additional investigators and prosecutors. However, it will still be extremely difficult for the embryonic justice system of East Timor, which lacks experienced personnel and a fully-developed legal infrastructure, to bring the major perpetrators to justice. Lower-level militias will continue to be prosecuted and convicted, giving revisionists the opportunity to assert that the blame for the violence lay primarily with the East Timorese themselves. Indonesia's refusal to comply with its obligations under a memorandum of understanding on legal co-operation signed with UNTAET in April 2000 and allow the questioning and transfer of suspects makes a difficult task almost impossible.

It is worth repeating that crimes against humanity are crimes of universal jurisdiction and the international community has a special responsibility to ensure that the perpetrators are brought to justice. It has an additional moral responsibility in relation to the 1999 crimes in East Timor since many of them were committed while the United Nations was administering the 'popular consultation' or after it had abandoned the territory despite promises that it would remain after the vote.

## International solidarity campaign

While the East Timor international solidarity movement and the broadly-based NGO community in East Timor continues to push hard for an international criminal tribunal as the most appropriate means of achieving justice, activists

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# Civilian rule, military power

*Speaking to an army parade in late December, President Megawati Sukarnoputri told the officers and men that it was their duty to do everything 'to hold the country together'. They should not hold back out of a fear they might be violating human rights, as long as they acted 'within the law' and upheld the soldiers' oath, she said.*

This extraordinary statement came at the end of a year in which the reform programme endorsed by all three presidents who have been in office since President Suharto was forced from power in May 1998 has come to a halt. Four months earlier, in her state address on 16 August, she had struck a different tone. On that occasion, she told the country's legislators: 'Whenever there is convincing evidence of severe violations of human rights outside the battlefield, those found guilty should be held responsible and legal action must be taken against them.'



*Megawati inspecting the troops during the parade*

In a press release, TAPOL said that Megawati's carte blanche to the Indonesian military was 'an alarming setback for human rights in Indonesia. Megawati has shown an utter disregard for human rights principles which are integral to the building of democracy in Indonesia.' [Statement by TAPOL, 30 December 2001.

Her words were directed particularly at troops who are on operations to quell the people of Aceh and Papua where alienation from Jakarta has deepened over the past year primarily because of the brutality they have experienced at the hands of Indonesian security forces and the failure of the government to punish past abusers of human rights. 'Suddenly we are aware of the need for a force to protect our ... motherland from breaking up,' she said.

## Carte blanche for the military

When Suharto fell from power, the military were weak and disoriented. They were suddenly confronted with a torrent of complaints about the human rights abuses that had been the hallmark of the previous regime. For the first time in decades, they were on the defensive because groups of victims came together to demand that the cases from which they had suffered be thoroughly investigated and the guilty men brought to account. In virtually every case, officers and

soldiers would be the ones who must face justice, should the case eventually come to court. This is what has made the spectre of 'violating human rights' a nightmare for the military, those still on active service as well as those now retired.

In the early post-Suharto period, two laws were enacted to provide the framework for these actions. The first was the Human Rights Law of 1999 which incorporated into law a whole range of violations and crimes against humanity that do not appear in Indonesia's penal code. The law also codified the practice and procedures of Komnas HAM, the National Human Rights Commission. The second was the Human Rights Court Law of 2000, providing for the establishment of four permanent human rights courts and the creation of ad hoc courts to try crimes against humanity retroactively.

Armed with these laws, Komnas HAM pressed ahead with the creation of several special investigation commissions known by the initials KPP HAM. Behind the scenes there have been efforts by the military men in the firing line, especially high-ranking officers, to bribe the survivors and the families of the victims into agreeing to deals so as to avoid prosecution. This has been most successful with regard to the massacre of peasants in Talangsari, Lampung, South Sumatra in 1989, which happened under the command of Hendropriyono, who is now in charge of all the nation's intelligence agencies and has a seat in the cabinet.

A few days before President Megawati issued her carte blanche to the military, General Endriartono Sutarto, the army chief of staff, felt the need to admit that committing human rights abuses was 'still' a weak point for his men. 'I am aware there are one or two cases still occurring,' he said, but added that generals 'could not be held responsible for the mistakes of their troops'. Of course this is in contravention of one of the key principles of international human rights law, the principle of 'command responsibility'.

## Civilian rule, military power

For a time during the first months of Wahid Abdurrahman's presidency, the military were faced with the threat of a major overhaul and scurried around to produce their own plans for a 'new paradigm' for reform, even hinting that they would cut back their territorial command structure under regional military commands known as Kodam. But gradually, the former president's reform measures came to a halt while the military succeeded in rallying their forces. In April last year, they used their muscle to force Wahid to issue Presidential Instruction IV/2000 for a so-called comprehensive solution to the crisis in Aceh. This amounted



to nothing less than the resumption at a more intensive level of military operations in Aceh which has led to a massive increase in the death toll and grave abuses in Aceh (see separate article). This was a major turning point in the balance of power between the civilian-led government and the military, marking a significant political victory for the armed forces, the TNI. We had long predicted that the crisis in Aceh would lead to such a showdown.

Two months later, Wahid was impeached and the army gave full, though largely behind-the-scenes, backing to Megawati who has never shown any inclination to stand up to the military and roll back their power and influence. Being a dyed-in-the-wool nationalist, dedicated at all costs to 'holding the country together', a view also held by Wahid (but without the tolerance of the Muslim leader), Megawati's prime concern is to destroy every 'separatist' movement that rears its head and she freely accepts the military's view that this can only be achieved through military operations. As the conflict intensifies in Aceh and in Papua, following the assassination of Theys Hiyo Eluay, and communal or religious conflicts spread ominously to other parts of the archipelago, the military have come into their own again, gaining ground through deals and negotiations with the political parties.

People often ask whether, as social and economic conditions in Indonesia continue to deteriorate, the military will try to seize power again. As things stand at present, they have no need to do such a thing. Under civilian rule, they have managed to secure for themselves a position of formidable power. They also know that military rule would provoke new political and economic problems for Indonesia internationally, and anyway, the country's economy is in such dire straits (see separate article) that they would be foolish to put themselves in a position where they would have to take responsibility for what may soon be a very grave crisis.

What we have today in Indonesia is a situation in which military power is cloaked by a civilian government.

## Weakness of civil society

Only four years after the fall of the dictator Suharto, there has been a distinct weakening of civil society, particularly at the centre of government, in Jakarta. The stagnation of the reform programme has resulted from this decline. Most political activity is being played out within parliament, the DPR, where rivalries between the parties is fierce and each one battles to win the favour of the military. Thus for instance, when the Bush administration launched its war in Afghanistan, anti-US street demonstrations were organised by fundamentalist Muslim groups with hardly any demonstrations raising the anti-war banner.

Towards the end of 2001, the human rights community in Jakarta came under threat with moves to undermine the leading legal aid institute, the YLBHI, forcing several of Indonesia's foremost human rights activists, including its chair and vice-chair, Bambang Widjojanto and Munir, to resign. A fierce battle also erupted within Komnas HAM over the appointment of members who all came up for re-appointment in late 2001, at the end of their two-year term. The faction composed of retired military and bureaucrats is likely to outnumber the genuine human rights experts in the re-constituted Commission. The conflict led to the bizarre situation in which the results of the Commission's investigations into an incident of police brutality in Abepura, Papua, was submitted to the attorney-general's office with two conflicting

recommendations: one confirming that the police had committed a crime against humanity and should go before the newly-established (but as yet never convened) human rights court, and the other insisting that it was just a case of an 'ordinary crime'. Inevitably, this has undermined the public's confidence in the independence of Komnas HAM.

## Police Bill strongly criticised

The decision two years ago to separate the police force from the armed forces was welcomed at the time as a big step forward, enabling the force to become a civilian-led force and discard decades of militaristic training and practices.

In February 2001, the DPR began to discuss a draft Police Bill and soon found itself under pressure from many NGOs, calling for major amendments to the draft. An NGO Coalition on the Police Bill was formed and secured a promise from legislators in late October that enactment of the bill would be postponed to enable parliament to consider the many complaints about the bill.

The criticisms relate in particular to the fact that the police force will be answerable only to the president, giving the force and the head of state unlimited powers and opening the possibility of the president using the police in pursuance of her/his interests, without any checks and balances. A National Police Commission is provided for to perform the role of watchdog but the members will be presidential appointees and in any case, will only have an advisory

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