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# Nobel: No change

**The Nobel peace prize awarded to Bishop Carlos Belo and José Ramos Horta in October 1996 gave rise to hopes that the genuine dialogue and respect for human rights required to bring peace to East Timor could at last be fostered. Such hopes have yet to be fulfilled on the ground and in the international arena.**

Inside East Timor, arbitrary arrests, torture and even extrajudicial executions persist. The office established in Dili by the Indonesian National Commission for Human Rights (KOMNAS HAM) has proven to be ineffective. The United Nations has not been allowed to deploy a human rights presence on the ground despite the commitments made to the international community at the UN Commission on Human Rights in April 1996. Although the Indonesian government responded cautiously to Bishop Belo's award, its indirect pressures and rumours of plots to assassinate the bishop have fuelled ongoing protests against the occupation in East Timor.

## Faltering response

The international community is having difficulties crafting a coherent response to this situation. The Tripartite Talks under UN auspices, scheduled for 21 December 1996, were postponed to allow the new UN secretary-general time to develop a strategy for narrowing the gap between the Portuguese and Indonesian positions. No date has been fixed for another round of the All-inclusive Intra-East Timorese Dialogue; the recommendations made by the Dialogue in March 1996 remain unfulfilled. Furthermore, there is no indication that the government of Indonesia is willing to negotiate with leaders of the Timorese resistance, despite recommendations to this effect by the Nobel laureates in Oslo. There is also uncertainty over how Jakarta can be persuaded to implement the agreement on a UN human rights presence,

reached at the UN Commission on Human Rights (UNCHR) in 1996.

## EU silence

The European Union has been silent on Indonesia's failure to comply with its commitments to the UN Commission on Human Rights, despite the provisions for an active EU role in promoting human rights spelt out in the 1996 EU Common Position on East Timor, and notwithstanding Portuguese and Irish pressure for a more outspoken approach. This silence is unacceptable. Unless the government of Indonesia implements the agreement for an on-site UN human rights presence and takes real steps to improve the situation on the ground (by releasing political prisoners, as Bishop Belo suggested in Oslo) before the UN Commission on Human Rights convenes in March 1997, the EU should acknowledge its strategy of engagement has failed and promote a strong resolution on East Timor in the 53rd session of the UNCHR.

There is also a need for more European diplomatic support for UN peacemaking. The new UN secretary-general will require the backing of friendly states in order to exercise his mandate more actively in this area. The European Union, the United States and key Asian governments should signal their willingness to join a UN support group on East Timor if the opportunity arises in 1997.

## Progress on EU aid?

The European Union is moving ahead on its pledge to develop an aid package for East Timor. In November, the Council of Ministers reiterated its request that the European Commission (EC) formulate proposals for assistance in the areas of public health, water and sanitation, and education. It is envisaged that this assistance will be channelled through European and East Timorese non-governmental organisations (NGOs), including the churches.

This initiative provides the European Union

with an unprecedented opportunity to use positive measures to foster development, human rights and peace inside East Timor. Yet it is essential that the EC formulate a strategy which sets out an appropriate multi-sectoral focus with a significant gender dimension, ensures that no EU assistance is channelled through Indonesian government institutions and ensures that the military agrees to respect the minimal conditions of confidentiality and access required for effective development work. It is also important for the EC and EU member states to broaden the dialogue with East Timorese NGOs and churches and with European NGOs working on East Timor to ensure that their rich experience is fully utilised during the European Union's planning process.

## Summary

Disappointment in the aftermath of the award of the Nobel peace prize and with the failure of the Irish government to effect any real change in European Union policy on East Timor while holding the presidency last year are examined in this issue of *Timor Link*. We look at the consequences of the Balibo killings, and at how Indonesia's involvement in the deaths remains overlooked. A leading academic lawyer details the arguments for a revision of the International Court of Justice's ruling that Portugal cannot take cases on behalf of East Timor. We also examine the four essential conditions for peace outlined by Bishop Belo; look at the European Union's options for action following the adoption of its Common Position last year; and round up news from Britain, the Nobel award ceremony, and international conferences, along with the latest statements from UK and Irish bishops.

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# Opportunity blocked?

**When Ireland took over the presidency of the European Union (EU) on 1 July 1996, hopes were high that it could initiate positive action on East Timor (see *Timor Link* 37). Yet, as EILIS WARD explains, those hopes were dashed, largely on the rocks of EU foreign policy positions.**

In the months prior to taking up the EU presidency, the Irish government made a commitment to give priority to East Timor when in office. In a personal article in a national newspaper, foreign affairs minister Dick Spring set out six goals, including a (selective) arms embargo against Indonesia, an end to the Indonesian occupation of East Timor, the release of resistance leader, Xanana Gusmão, and the establishment of full human rights for the East Timorese people.

These aims were later included in a briefing document which indicated the government's priorities while occupying the presidency. The East Timor Ireland Solidarity Campaign, and other groups throughout Europe, saw signs that a breakthrough might be at hand. It was hoped that Ireland, with support from Portugal, could use its position to build a strong pro-East Timor coalition within the EU, counteracting the interests of bigger powers. Specifically, local activists hoped that a UN human rights office could be established in Dili rather than in Jakarta, despite the April 1996 agreement between the UN Commission on Human Rights (UNCHR) and Indonesia.

Six months later, with the presidency in the hands of the Dutch government, none of those hopes have been realised. It seems that the framework established by the Common Position (CP) on East Timor, adopted by the Council of Foreign Ministers just before Ireland took up the presidency, set limits on what action could be contemplated. As far as any future EU action on Indonesia is concerned, the CP now appears to be the guiding rule.

Given the restrictions the CP placed on the Irish presidency, some questions need to be answered. First, was it naive to expect that a single small state could make any impact on the complex process of foreign policy making within the EU? Second, what were the constraints that prevented Ireland generating support for stronger action on East Timor? The answers may show how far other EU member states can take action in the future.

## Consensus

In retrospect, because the CP on East Timor was published before Ireland took up the presidency, the limits to any possible action were already established. Under the EU Common Foreign and Security Policy (CFSP)

agreement, CPs emerge after a protracted period of inter-governmental negotiations between member states which move forward only by consensus, as laid out in the Maastricht Treaty of 1992. This process having been completed, it would be difficult for any member state, even one holding the presidency, to open the debate again.

Indeed, the failure by Spring to mention East Timor in his opening address to the European Parliament on 17 July 1996 was recognition of this. And the rejection by several other members states (particularly Germany) of Ireland's attempt to congratulate Bishop Carlos Belo and José Ramos Horta on their Nobel peace prize in October, showed the Irish just how little room there was for manoeuvre.

This raises an important question about the power of the EU president in foreign policy matters. As part of the checks and balances within the EU, the power of the presidency is limited. The government in office can set an agenda but only one based on consensus. Thus, the agreement of all member states is required on proposals no matter how powerfully motivated or engaged any particular presidency may be.

Nevertheless, holding the presidency does give the government in that position many opportunities to raise issues and keep awareness alive. In this regard, the absence of any reference to East Timor in Spring's opening address must be seen as a missed opportunity. The CFSP is a constraint on individual actions, and is intended to be exactly that; yet holding the presidency does offer any state, regardless of its size and power, some room to keep up the pressure.

## Lip service?

It could be argued that Ireland's elected representatives were hypocritical in their pre-presidency comments. In fact, on a visit to Ireland last June, Ramos Horta said the country's support for East Timor was mere 'lip service'. And certainly, we must judge the sincerity of our politicians' words by their actions. In their defence, the government might argue that Ireland's position on East Timor is inseparable from that of the European Union.

But there were other institutional constraints. Diplomats are not best at dealing with situations where human rights abuses are an issue. This is not because they are heartless but because their training and practice inclines them to avoid conflict and keep communication lines open – maintaining the culture of international diplomacy is an end in itself. Within the EU, diplomats have become accustomed to cooperating with their counterparts in other member states.

This leads to another constraint – what has been called the 'fraternity of free trade' – in which human rights and other non-economic issues are secondary to the real concern of maintaining trade. It would be difficult to argue that Ireland's economic interests in

Indonesia dictated policy, but major economic powers within Europe are concerned to protect their trade with Indonesia. The European Union now views the members of the Association of South East Asian Nations (ASEAN) less as a threat than as providing important economic potential. As a small, economically weak power within the European Union, it is highly likely that Ireland considered the 'greater' economic interests of other EU member states as a valid constraint on political action.

## Naive?

Does the disappointment mean that activists were naive? I would suggest that it does not. The positions adopted by Ireland's elected leaders in advance of the presidency produced a sensitised electorate and a sensitised administration. This awareness is a powerful weapon. Politicians can be forced to account for their words and actions by lobby groups and a politicised public. Human rights work and solidarity work is as much about changing the wider culture within which decisions are made as it is about achieving specific policies.

Hence, lobbying groups must keep up the pressure on national governments. Although the CFSP involves, by definition, a loss of sovereignty for each member state, the process of foreign policy formation within the Union is still inter-governmental. Activists must increase cross-border interaction and collaboration to ensure that the same demands are emerging from all member states. The reality within Europe now is that national governments are unlikely to take major initiatives on their own, particularly when a CP has been reached. Lobbyists and human rights activists need to respond accordingly by adopting their own common positions. As the EU becomes an even bigger trading bloc, the role of civil groups in promoting human rights becomes ever more significant. ■

• **Eilis Ward** is a PhD candidate in Political Science at Trinity College, Dublin.

## HUMAN RIGHTS UPDATE

# Atmosphere of fear

On 16 October 1996 the Melbourne-based East Timor Human Rights Centre (ETHRC) published a report documenting continued arbitrary arrests and systematic torture by security forces. In *Continuing human rights violations in East Timor* the Centre also records the unfair trial and conviction of many of the people charged following protests in October 1995 and June 1996, extrajudicial executions and persistent impunity for human rights violators. The Centre states that there is 'an atmosphere of fear with people being regularly subjected to intimidation, beatings, rape and other acts



of repression by the Indonesian authorities'.

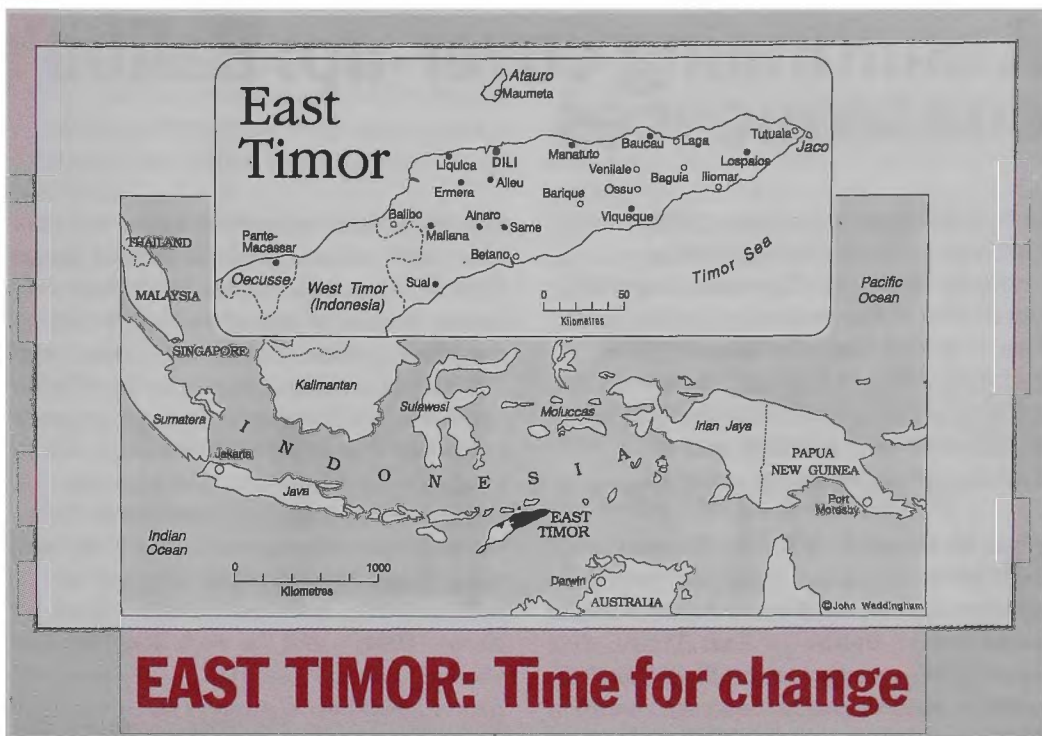
In January, the ETHRC also reported that Mariano Mendonca, aged 22, had allegedly been killed by an Indonesian intelligence agent on 4 November 1996. That killing brought to 13 the number of extrajudicial executions documented by the Centre in 1996.

Urgent action bulletins recently released by other human rights organisations suggest that such grave violations persist:

- **28 November 1996:** Amnesty International (AI) issued a bulletin documenting the arrest of five East Timorese men in connection with the killing of Sergeant-Major Juliao Fraga. AI expressed serious concern for their safety, and reiterated its concern for the safety of Azito Freitas, who had been detained earlier in connection with the same incident. On 18 December AI released an update indicating that three other East Timorese men had been arrested in connection with the Fraga killing. Amnesty repeated its serious concern for the safety of these detainees, 'particularly in the light of reports that two had been tortured'.
- **4 December 1996:** The World Organisation Against Torture (OMCT) released a statement expressing concern about the detention of Pantaleao and Joao Pires, by security forces, for their alleged role in organising a peaceful demonstration on 25 November. OMCT expressed its fear that 'if they are in detention they may be subjected to torture and ill-treatment'.
- **8 January 1997:** Amnesty International issued a bulletin documenting the arrest of eight East Timorese men after violent incidents surrounding Bishop Belo's return to Dili. AI expressed its fear that the detainees might be tortured or ill-treated 'because of the routine use of torture and ill-treatment by the security forces in attempting to extract confessions for alleged crimes or information about others'.

### Indonesia ignores UNCHR 52

In addition to failing to put an end to such abuses, the government of Indonesia has not implemented the commitments it agreed to at the 52nd session of the UN Commission on Human Rights (UNCHR) in 1996. Despite efforts by the UN Centre for Human Rights, the memorandum of understanding enabling the establishment of an on-site UN human rights presence agreed to at UNCHR 52 has not yet been signed by Indonesia. Given Indonesia's failure to comply with its international obligations and persistent grave violations on the ground, it will be difficult for the international community to shirk its duty to exert more concerted pressure on Indonesia at UNCHR 53. ■



Timor, area 7,400 square miles, is one of the easternmost islands of the Indonesian archipelago and lies 300 miles north of Australia, its nearest neighbour. The western part of the island, formerly a Dutch colony, belongs to Indonesia, whereas East Timor was for more than 400 years a Portuguese colony.

In 1974 Portugal decolonised East Timor, whose newly formed political parties began discussing options for the future – federation with Portugal, independence, or integration with Indonesia. The Timorese Democratic Union (UDT) initially favoured the first option but then joined a coalition with the nationalist liberation movement, Fretilin, to demand independence. A small third party, Apodeti, was used as a vehicle for Indonesian propaganda in favour of integration.

On 11 August 1975 the UDT staged a coup to pre-empt Indonesian threats to intervene if Fretilin came to power. In the ensuing civil war, 1,500 people lost their lives. By September 1975, however, Fretilin was in control of virtually all of Portuguese Timor, following the defection of Timorese colonial troops to the liberation movement's side.

Indonesia, like the United States, was worried by the proximity of an independent state with radical policies and continued to threaten East Timor, despite previous assurances that Jakarta would respect the right of the East Timorese to independence. In September 1975 Indonesia closed West Timor to journalists and on 7 December it launched a full-scale invasion of East Timor with the knowledge of the United States and the encouragement of Australia. East Timor was proclaimed the '27th province' of Indonesia.

The invasion and annexation of East Timor has been brutal: up to 200,000 people, a third of the population, have died as a result of Indonesian rule. But the majority of Timorese have not accepted subjugation: Indonesia has been unable to eliminate the desire of the East Timorese for self-determi-

nation and an armed resistance movement still remains in the hills.

Although the invasion has been condemned by successive UN resolutions, the international community has done little or nothing to implement them, given the major economic and geopolitical interests of the United States, Japan and particularly Australia in the region. Indonesia's crucial strategic location and regional status – it has the world's fifth largest population, and large reserves of oil and other natural resources – have all encouraged the world to downplay East Timor's agony.

In recent years, however, several events have combined to break East Timor's isolation and bring its continued occupation to international attention. In 1989 the Pope visited the territory and in 1991 the planned visit of a parliamentary delegation from Portugal, still considered the administering authority of East Timor by the UN, created huge expectations of change. To great disappointment in East Timor, the delegation was forced in October 1991 to call off its visit.

On 12 November 1991 Indonesian troops shot and killed up to 300 East Timorese civilians during a funeral procession held at the Santa Cruz cemetery in Dili, the East Timorese capital, for a victim of repression. Witnessed by foreign journalists, the Santa Cruz massacre provided indisputable evidence of Indonesian atrocities.

The Santa Cruz massacre has forced governments around the world to criticise Indonesia's brutality, injecting new impetus into diplomatic efforts to bring about a solution to East Timor's suffering. Since 1983 the UN secretary-general has been entrusted with the achievement of a settlement to the dispute; and with the post-Cold War era providing a new international climate for negotiations, Indonesia faces increased pressure to reach a solution with Portugal and the East Timorese under the auspices of the UN.



# A continuing cover-up: Balibo's genocidal consequences

**Between February and June 1996, Australia's former National Crime Authority boss, Tom Sherman, examined the deaths of five journalists – the 'Balibo Five' – in East Timor in October 1975, and that of Roger East on 7 December the same year. HUGH DOWSON looks at the significance of the killings and at evidence of a continuing cover-up.**

On 16 October 1975, the International Court of Justice (ICJ) delivered an advisory opinion on Western Sahara. On the same day at Balibo in East Timor, five western TV newsmen were killed. The ICJ's decision was followed by Morocco's invasion of Western Sahara, which UN efforts have yet to reverse. Similarly, when western powers failed to protest about the Balibo killings their silence was seen by President Suharto of Indonesia as tacit permission to go ahead with an invasion on East Timor.

In his book *A Dangerous Place* (1978), Daniel Moynihan, the US ambassador to the UN in 1975, wrote: 'In both instances the United States wished things to turn out as they did, and worked to bring this about. The Department of State desired the United Nations to prove utterly ineffective in whatever measures it undertook. The task was given to me, and I carried it forward with no inconsiderable success.'

## Leaks

The Sherman report states that after they were killed by Indonesian-led troops, the bodies of some of the 'Balibo Five' were stripped, dressed in Fretilin military clothes and photographed beside machine guns before being incinerated.

Did the US administration know about the incident? Possibly. Leaks published in Australia in 1982 show that the CIA's confidential briefings, which reached US president Gerald Ford every morning in 1975, gave daily updates from Australian sources on Indonesia's covert destabilisation, and then invasion, of East Timor.

The fact that these leaks did not mention the 'Balibo Five' suggests either that the CIA decided to keep news of the killings from Ford, or that the Australian government itself withheld the news, from the British government as well as the US.

What is clear is that the Australian government obtained details of the Balibo killings on 16 October 1975 – as Suharto believed – although it claims that it first learned of the deaths on 20 October from an Indonesian newspaper. Nevertheless, similar information was passed to a Channel 9 executive by an Australian intelligence officer on 18 October 1975 (one of the two TV news teams killed was from Channel 9; it consisted of two British citizens, Malcolm Rennie and Brian Peters).

A much edited version of that information, or some other leak, reached Brian Peters's sister in Bristol, UK, on the same day. While there were at least three other leaks, Peters's sister did not grasp the significance of the information until 1994 – when the disinformation endured by the family since 1975 began to collapse in response to media coverage about Balibo generated by the journalist John Pilger. More surprising is that Peters's member of parliament in 1975 – the then secretary of state for energy Tony Benn – did not see through the misinformation.

Pilger's radio interview and film – *Death of a Nation* (1994) – and the work done by those who have assisted Peters's family since then were part of a build-up of pressure that forced the Australian government to set up Sherman's 'preliminary evaluation' of evidence late in 1995.

## Genocidal policies

Impressive though the full text is, the Sherman report is deeply flawed. For, although Australian media interest ensured its publication, had it so much as hinted at a cover-up it would have been published only after heavy editing. As expected, the Indonesian government announced that the report has exonerated it of any role in the killings, the Australian government declared that nothing further could be done and the British government did little more than notify the Indonesians of Britain's 'interest' in the issues raised. Continued inaction by the Australian and British governments inevitably gives Indonesia the impression that, once again, it has western permission for its genocidal policies.

So the Balibo killings, which almost caused the cancellation of Indonesia's invasion of East Timor, but which led instead to full scale genocide, remain both invisible and centre stage. In these grim circumstances it is a matter of great importance that the Australian Section of the International Commission of Jurists (ASICJ) has decided to set up its own inquiry into the killings and, crucially, into the actions and inactions of the journalists' governments.

To succeed, the ASICJ inquiry will need to obtain full details of *all* material released to the Australian government in 1975 by Indonesian intelligence, including precise details of the human remains claimed to be from four or five of the bodies, and the full text of the Australian government's official investigation, carried out in 1977 by Hogue and Rodgers.

On 3 December 1996, Nobel peace prize winner, José Ramos Horta, and Australian human rights activist, Jim Aubrey, released testimonies by people who claim to have witnessed the burning of some of the 'Balibo Five'. Ramos Horta's informant claims he was forced to act as an executioner, and that four of the five were burnt alive. This allegation conflicts with the numerous carefully cross-referenced

accounts of a photography session involving the dead bodies of at least two of the TV newsmen.

Whatever the truth, so central is the Balibo cover-up to the nightmare that engulfed East Timor that this new confusion only strengthens the case for a full judicial enquiry. ■

• **Hugh Dowson** is Western Region development officer for UNA-UK.



*The Jakarta burial service on 5 or 6 December 1975, of the single coffin allegedly containing the remains of four or five of the Balibo Five.*

## STOP PRESS

## Second bishop for East Timor

On 6 January 1997, Basilio do Nascimiento Martins was ordained as apostolic administrator of the new diocese of Baucau. Monsignor do Nascimiento will take up his post in March and is expected to ease the enormous workload currently shouldered by Bishop Belo.

After his appointment, Monsignor do Nascimiento said: 'The only way to get rid of that discontent [in East Timor] is through dialogue, which I intend to keep open always.' He echoed Bishop Belo's insistence that the Timorese people must be properly consulted, possibly through a referendum, in any effort to forge peace.

## EUROPEAN UNION

## Implementing the Common Position

The European Commission is considering public health, education and cultural aid projects for East Timor, to be implemented by Timorese institutions such as the Catholic church, and by European non-governmental organisations (NGOs). The options have arisen following a request from the European Union Council of Ministers in November 1996 for the EC to make progress on implementing the Common Position agreed the previous January.

This step towards implementing article 2.5 of the Common Position was taken after prompting by the government of Portugal, which tabled a number of constructive suggestions. The government of Ireland, as president of the EU, supported the Portuguese line of action, and, although initially opposed by one member state and by the Indonesian permanent representative in Brussels, the initiative is now going ahead with full EU backing. Consultation and cooperation with NGOs is essential for it to be fully effective.

However, a Portuguese-led initiative in October to send an EU statement supporting the Nobel peace laureates was opposed by some member states; and a joint Irish-Portuguese attempt in December to get the EU to put pressure on the government of Indonesia to comply with UN human rights measures was described as 'untimely' by some member states. It remains to be seen whether the EU sees this option as more timely in the run-up to the 53rd session of the UN Commission on Human Rights in March and April this year.

## UNITED KINGDOM

## New arms sales likely

Arms sales and bilateral development assistance to Indonesia have continued to attract controversy. On 29 November, the National Audit Office (NAO) published a long-awaited report on several mass communications, police training and other projects, which the Labour member of parliament Ann Clywd MP had asked about in the House of Commons in 1995. Although the Overseas Development Administration claimed the NAO report absolved it of any wrongdoing, Clywd said it strengthened her call for a judicial review of certain UK aid projects. Protests against UK arms sales to Indonesia during the anniversary of the invasion of East Timor also drew attention to Britain's aid and security links with the Suharto regime.

Nevertheless, Ian Lang, president of the Board of Trade, stated in the Commons on 21 November that he had authorised the export

of a further 16 Hawk fighter aircraft to Indonesia; and on 18 December 1996 *Jane's Defence Weekly* reported that Alvis Vehicles received an £80 million order for exporting Scorpion armoured fighting vehicles to Indonesia.

By December 1996 more than 70 MPs had signed an early day motion calling on the UK government to 'seek the unconditional release of East Timorese people detained by the Indonesian government for their political views, and the immediate cessation of arbitrary arrest, torture and other violations of human rights by security forces'. The motion also noted that a group of MPs 'supports human rights monitoring by the United Nations but believes that this can be effective only if conducted from an office located in East Timor [...] and regards the establishment of such systematic monitoring as urgent'.

## NOBEL AWARD

## Voice of the voiceless: Bishop Belo

On 10 December, in Oslo, Bishop Carlos Belo and José Ramos Horta accepted the Nobel peace prize for what the Nobel committee Chairman, Francis Sejersted, called 'their long-lasting efforts to achieve a just and peaceful solution to the 20 year-old conflict in East Timor'. Attended by more than 1,000 dignitaries, clerics and activists from around the world, the ceremony was boycotted by Indonesian officials.

Accepting the prize, Bishop Belo reiterated that it was his duty to defend the rights of his peoples: 'I firmly believe that I am here essentially as the voice of the voiceless peoples of East Timor,' he said. 'Let us start by making a sincere effort to change the serious human rights situation in East Timor. The church has played its part. We have formed a Justice and Peace Commission that is always ready to cooperate with the authorities to address problems [...] As a first step, the release of East Timorese political prisoners has to be given urgent attention [...] Such a step would help create an important opening on the road to peace.'

The bishop called for dialogue without delay, saying, 'Stop oppression. Stop violence. Stop conflict. Let us sit down around a table and understand each other.' Finally, he expressed his appreciation for the efforts of all those religious, secular, official and non-governmental organisations which have supported the search for peace.

## Ramos Horta

José Ramos Horta echoed these expressions and urged the government of Indonesia and the international community to return to the

peace plan he had tabled, on behalf of the National Council of Maubere Resistance (CNRM), in 1992 (see *Timor Link* 36). He called for immediate confidence-building measures, such as the release of political prisoners, and for genuine negotiations with the resistance. He called on the international community to push for 'democratic reforms and the rule of law in Indonesia and for a genuine act of self-determination in East Timor'.

## INTERNATIONAL CONFERENCES

## APCET forced to close

The Asia Pacific Conference on East Timor (APCET), in November 1996 in Kuala Lumpur, was broken up by gangs linked to Malaysia's governing party. Many of the 100 foreign participants were arrested. All were eventually released, but their treatment and the enforced closing of the conference represented grave assaults on the freedoms of association and speech.

## IPJET urges Europe to act

The general assembly of the International Platform of Jurists for East Timor (IPJET), meeting in Dublin on 8-9 November 1996, called on the European Union to take steps to promote human rights and peace in East Timor. IPJET members urged Irish officials to persuade the European Union to ensure ongoing monitoring and reporting of the situation, with the goal of securing the self-determination of the East Timorese people.

## Women profiled at Brussels conference

In Brussels the 21st anniversary of the Indonesian invasion of East Timor was marked by 'The Situation of Women in Occupied Territories', a conference organised by East Timor Permanent Representation to the European Union and SOS Timor at the European Parliament. Participants heard about the experiences of women from Western Sahara, Kurdistan, and West Papua, and there was a testimony from Odilia Viktor of East Timor. Odilia, currently living in Portugal after seeking asylum in the Australian embassy in Jakarta, told of her father's imprisonment and torture and how her sister was forced to be a virtual sex slave to Indonesian soldiers to save him. Participants noted that women are often excluded from the peace process (the UN-organised Intra-East Timorese Dialogue has only one woman among its 30 participants) and that their needs can therefore be overlooked in social reconstruction phases when peace is achieved. Testimonies and other interventions at the conference will be published.

• Many thanks to **Milena Pires** for contributing this report on the Brussels conference.



## Bishop Belo: the essentials for peace

Since becoming apostolic administrator of the diocese of Dili in 1983, Bishop Belo has tried to promote peace in East Timor. Here, Reverend PAT SMYTHE summarises his basic demands.

**B**ishop Belo maintains that there are four essential conditions for establishing a just and lasting peace: withdrawal of the Indonesian military forces; an authentic referendum of the people's political will; a development programme that is truly human; and the cessation of transmigration to East Timor. He has based his appeals not only on the Christian gospel and the social teaching of the Catholic church, but on the principles of 'Pancasila' (the ideology of the Indonesian Republic) which he sees being disregarded by the government agencies in the territory.

### The demands

Military forces must be withdrawn because they are guilty of persistent and gross human rights abuses such as extrajudicial execution, torture, rape, arbitrary arrests, unlawful imprisonment, and 'disappearances'. Every visitor to East Timor who has the opportunity to listen to the experiences of the ordinary people hears of these ongoing violations. The people are intimidated, humiliated and degraded. The military also exercises tight control over them – they are not free to meet or move around without constant checks and supervision. And their right to enter and leave East Timor is restricted. Many of the thousands of military personnel supposedly engaged in 'development work' in the region usurp the task which rightly belongs to the Timorese themselves. What is more, the military presence is seen by the people as a means of intelligence gathering. Military personnel are also responsible for extensive theft from the East Timorese of personal belongings and national resources. For all these reasons the military presence creates fear and resentment: it is a major obstacle to a peaceful settlement.

The fundamental right to self-determination has not yet been afforded to the East Timorese people and while a genuine referendum of the people's political will is denied there will continue to be unrest. The vote of the so-called People's Assembly on 31 May 1976 did not fulfil UN criteria for an authentic plebiscite, and the continuing resistance to Indonesian sovereignty by the great majority of the population reflects widespread dissatisfaction with the repressive rule. Even those who once favoured 'integration' have become disillusioned by the oppression and exploitation that has characterised the regime.

East Timor needs a development programme that is truly human – one that engages the people both in the decision-making process and in the necessary practical tasks. The Indonesian government has allocated substantial funds to the 'development' of East Timor but the people do not benefit from the projects and remain

impoverished. It is crucial that East Timorese people occupy executive positions in the local administration. The country is being run by outsiders and local people who comply with Indonesian objectives. The ill-feeling and frustration that this generates prevents the growth of a peaceful society.

The arrival of thousands of economic migrants and government-sponsored transmigrants from other islands of the Indonesian archipelago is creating social problems. Migrants and transmigrants now represent nearly a quarter of the territory's population. These incomers receive favoured treatment from the authorities, and create competition for jobs. As a consequence, resentment is stirred up among the indigenous people, leading to public disorder. The great majority of these new arrivals are western Indonesians and Muslims, which means that their very presence inevitably affects the cultural character of local society. The East Timorese feel their identity as a nation is threatened. Such insecurities are the seeds of continuing social conflict. The tensions are not to do with religious intolerance but with social injustice. Until this injustice is remedied there will be no peace in East Timor.

### Appeal to principles of Pancasila

Bishop Belo has been vilified in the Indonesian media for insisting that these matters be addressed honestly by the Indonesian government. But accusations that he is 'disloyal' are misplaced. In the 13 years he has been in office, Belo has frequently appealed to Indonesia's own constitution in support of his criticisms. He maintains that the principles of 'Pancasila' – which include humanitarianism, democracy through consultation, and social justice – have been violated in East Timor by the very authorities that should be upholding them. He has also called for the fine balance expressed in the national motto 'Bhinneka tunggal ika' (Unity in diversity) to be honoured through proper respect for Timorese cultural and religious identity. If the regime itself betrays the ideals of the Indonesian republic, any possible progress towards real peace in the region is undermined.



*Bishop Carlos Belo: The principles of 'Pancasila' have been violated in East Timor by the very authorities that should be upholding them.*

## UK and Ireland Bishops speak out

On 15 November 1996, the Catholic Bishops of England and Wales issued the following statement on East Timor:

'The Catholic Bishops of England and Wales warmly welcome the award of the Nobel Peace Prize to Bishop Carlos Ximenes Belo, Apostolic Administrator of Dili, as a recognition of his vital efforts to promote peace in East Timor. Yet we are concerned about ongoing human rights violations and increasing inter-religious tensions in East Timor, about the lack of real progress in the Tripartite Talks and in the All-inclusive Intra-East Timorese Dialogue under United Nations auspices.

'We urge the government of Indonesia to respect its obligations under international law and take significant steps towards peace. We also call on the United Kingdom, its European Union (EU) partners and the United Nations (UN) to press for the establishment of an effective UN human rights presence in East Timor, and to encourage the parties to make real progress in the talks aimed at forging a just, comprehensive, internationally acceptable solution to the conflict, which fully respects the legitimate aspirations of the Timorese people. The Conference encourages the Catholic community to pray for Bishop Belo and all those working for these goals.'

In December, the Bishops of Ireland issued their own message. Here are excerpts from their statement.

'Today, 10 December 1996, the Nobel Peace Prize is awarded to the Roman Catholic Bishop of East Timor, Carlos Filipe Ximenes Belo for his unstinting commitment to peace, justice and the defence of human rights in East Timor. On this occasion, the members of the Irish Conference of Catholic Bishops wish to welcome the recognition given to the work of Bishop Belo and José Ramos Horta and to express their solidarity and their support to the people of East Timor.

'We further urge that the Irish government:

- work with their EU partners to immediately implement the EU Common Position on East Timor with concrete actions [...]
- encourage the parties to initiate genuine talks aimed at forging a just, comprehensive and internationally accepted solution to the conflict which fully respects the legitimate aspirations of self-determination of the East Timorese people
- direct aid via non-governmental organisations working in development and human rights inside the territory in absence of any legitimate authority in East Timor
- work to strengthen the capacity for human rights monitoring and advocacy inside East Timor through the establishment of a UN Human Rights office in Dili answerable to the UN Commission in Geneva.
- demand the withdrawal of the Indonesian military from East Timor's territory. ■



# Reason for a retrial?

**An International Court of Justice (ICJ) ruling on 30 June 1995 effectively denied Portugal the right to raise international claims on behalf of East Timor. Although this appears to rule out any possibility of an international legal decision to support and advance East Timor's cause, as Dr IAIN SCOBIE argues, a revision of the ICJ judgement may be possible if swift action is taken.**

East Timor is not a state and so cannot appear before the Court on its own accord. And, in the wake of the ICJ decision, there appears to be no state that can speak on its behalf. Yet there might be grounds for re-opening the case.

Portugal's opportunity to raise a case came after the Timor Gap Treaty between Australia and Indonesia in 1989. Portugal complained that Australia had breached East Timor's right to sovereignty over its natural resources by concluding the treaty, and also that it had breached rights owed to Portugal. It argued that, because it had been appointed by the United Nations (UN) as administering power over East Timor, Portugal had the right and responsibility to be involved in the conduct of East Timor's foreign affairs, something which Australia had unlawfully ignored.

The argument for revising the ICJ decision rests on Australia's view of Portugal's legal capacity as the administering power. Australia said at the ICJ that Portugal was empowered merely to cooperate with the UN on self-determination for East Timor, but that it did not have the right to organise and conduct a self-determination exercise, and possessed no legal right or interest in East Timor's affairs. During the oral hearing of 8 February 1995 Henry Burmester, counsel for Australia, stated:

As soon as Indonesia appeared on the horizon, Portugal scurried away. It left the people of East Timor to determine their future by themselves. Portugal says it never relinquished its powers as administering power. But the facts show that it did so. [It] cannot restore legal rights previously abandoned [...]

Further, Australia argued that Portugal sought to defend the self-determination 'of a people over whom it has no form of control whatsoever and who themselves rejected any such role at the time Portugal voluntarily left'.

However, shortly after the oral proceeding, but before the ICJ delivered judgement on 30 June 1995, the Australian Refugee Review Tribunal decided that in certain circumstances indigenous East Timorese people are entitled to Portuguese nationality and, therefore, are not entitled to refugee status in Australia. The Refugee Review

Tribunal effectively said that Portugal was responsible for the protection of an indigenous East Timorese person, and could do so, for instance, by taking international legal action.

However, at the ICJ, Australia argued that Portugal was not entitled to protect the rights of the East Timorese people as a whole – for instance, by acting to defend their rights to sovereignty over natural resources. Under international law, both statements are attributable to the Australian government, but they are completely contradictory.

## Tribunal cases

The earliest relevant case in which the Refugee Review Tribunal ruled that East Timorese people were entitled to Portuguese nationality (and thus ineligible for refugee status in Australia) was V93/01000, delivered on 29 May 1995 by MW Gerkens. Eleven days before, in award V93/00971, Gerkens had upheld a plea from five East Timorese people to be recognised as refugees without considering whether they were entitled to Portuguese nationality. In making the award V93/01000, Gerkens stated:

The Tribunal is obliged [...] to investigate and determine all reasonably foreseeable issues relevant to the determination of a claimant's application. In the present application, the claimed places of birth (ie East Timor and Macao) plus the fact that, in his original application for refugee status, applicant 1 actually claims to have been a Portuguese citizen at birth, raises the issue whether persons coming from East Timor who are applicants for protection visas [...] and who claim a real chance of persecution by the Indonesian authorities in East Timor are citizens of Portugal and therefore ineligible under Article 1A(2) of the [Refugees] Convention for the protection of Australia unless they have a well-founded fear of Convention based persecution in [Portugal]

It is not clear why the question of the applicants' nationality was not an equally 'reasonably foreseeable issue' 11 days earlier in V93/00971. It might be that the reference to Portuguese citizenship at birth in V93/01000 was sufficient to alert Gerkens to its importance.

However, in the proceedings leading up to award N93/00952 (made on 7 February 1996), a tribunal member, P Fergus, had raised the question of nationality. Similarly, in case N93/00294, oral hearings which dwelt on nationality had been held on 14 October 1994, 15 December 1994 and 28 March 1995. Indeed, in his decision in N93/00952, Fergus noted that in late 1993 he and another tribunal member, 'who was dealing with a similar matter', had actively sought the guidance of an expert, Professor Moura Ramos of the University of Coimbra, on the entitlement of East Timorese people to Portuguese nationality. Fergus also noted that he had been asked to refer another case

involving East Timorese nationality to the Administrative Appeals Tribunal, on the grounds that it was an important principle or an issue of general application. In mid 1995, the Australian department of immigration and ethnic affairs asked the tribunal to defer the East Timorese decisions because it wanted to make a submission on nationality issues, which it did on 11 October 1995.

The change in Gerkens's attitude may have been a result of advice given by the Australian government to the tribunal. Burmester delivered two legal opinions setting out the views of the department of immigration and ethnic affairs, on 27 April 1995 and on 20 September 1995. In subsequent cases, V94/01545 (3 May 1996) and V94/02118 (15 May 1996), a tribunal member, Vrachnas, stated:

The position of the Department is set out by Mr Burmester in his opinions of 27 April and 20 September 1995. He concludes that East Timorese are nationals of both [Indonesia and Portugal]

## Nationality

International law does not regulate nationality directly; the principles on which states grant nationality to individuals is regulated by domestic law. Yet international law does impose limitations on a state's power to confer nationality. In the *Nottebohm* case in 1955, the International Court classified nationality as:

a legal bond having as its basis a social fact of attachment, a genuine connection of existence, interests and sentiments, together with the existence of reciprocal rights and duties. It may be said to constitute a juridical expression of the fact that the individual upon whom it is conferred, either directly by the law or as the result of an act of the authorities, is in fact more closely connected with the population of the State conferring nationality than with that of any other State. Before the ICJ, the Australian government argued that Portugal had 'abandoned its last link with' East Timor in 1975 but, before the Court had ruled on this it argued before its Refugee Review Tribunal that Portugal was 'the State which assumes defence [of East Timorese] by means of protection as against other States'. These views are inconsistent.

## A matter of urgency

Article 61 of the Court's statute says:

An application for revision of a judgement may be made only when it is based upon the discovery of some fact of such a nature as to be a decisive factor, which fact was, when the judgement was given, unknown to the Court and also to the party claiming revision, always provided that such ignorance was not due to negligence.

An application for revision must be made within six months of the discovery of the new fact and within 10 years of the date of the judgement.

Australia's recognition of the Portuguese



nationality of East Timorese people is a decisive fact because it undermines the basis of its own arguments before the ICJ. Only once before has a state tried to have a judgement revised, and in that case the fact relied on was not decisive. But these circumstances are different. It has not been possible to determine whether Burmester's opinion of 27 April 1995 was in the public domain when it was delivered to the tribunal, for V93/01000 was delivered only a month before the ICJ gave its judgement, and reports of judicial cases and awards are not usually issued immediately to the public. Therefore, the important question is whether Portugal should have known of it immediately and approached the ICJ before judgement to point out the inconsistency in Australia's legal position.

Other considerations must be taken into account before the value of revision proceedings can be fully assessed. But this should occur as a matter of urgency. Under Article 61, time is running out. ■

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Note: texts of all the awards of the Australian Refugee Review Tribunal referred to in this paper have been drawn from the Australian Legal Information Institute website – <http://www.austlii.edu.au/>

## NEW PUBLICATIONS

### Australian agenda for action

In October 1996 Community Aid Abroad (CAA), a member of Oxfam International, released a lobby document titled *East Timor: An Agenda for Action*. The paper aims to get the Australian government more actively involved in promoting peace. It includes an analysis of the situation inside East Timor, the broader picture in Indonesia, responses by the international community, the promise of conflict resolution and policy options for Australia. CAA recommends that the government of Australia:

1. Step up diplomatic support for UN involvement at all levels, with particular emphasis on achieving the recommendations made by the UN High Commissioner for Human Rights.
2. Develop and co-ordinate an international forum of like-minded countries to mobilise for a peaceful solution in East Timor.
3. Advocate a gradual but sustained and monitored reduction of Indonesian troops from East Timor and urge the East Timorese resistance leadership to cease military activity in response.

4. Urge and offer training in international human rights standards to all military and police stationed in East Timor.
5. Advocate and offer support for the development of an economic decentralisation strategy to address the economic and social problems troubling East Timor.
6. Review the policy of the Australian government to include a reference to the right of the East Timorese people to self-determination.

For copies of *East Timor: An Agenda for Action* contact Christine Wheeler at CAA, GPO Box 1000, Sydney 1043, Australia. Tel: +612 264 1169. Fax: +612 264 1476.

### The continuing betrayal

The policy recommendations are complementary to those made by CIIR in the *Comment* it published on East Timor in September 1996. Reader's will recall CIIR's recommendations for the international community to:

1. Call for the unconditional release of prisoners detained for their political views and for the immediate cessation of arbitrary arrest, torture and other violations of international human rights law by security forces in East Timor.
2. Encourage the Indonesian government to launch a proper, impartial inquiry into past human rights violations, especially the Santa Cruz massacre, in order to resolve the circumstances surrounding extrajudicial executions and disappearances. Compensation should be accorded to families of victims.
3. Support rigorous, impartial on-site human rights monitoring by the United Nations and press for regular, unhindered access to East Timor by non-governmental human rights organisations.
4. Press for an immediate reduction of Indonesian troops deployed in East Timor, and their eventual withdrawal in the context of a comprehensive settlement.
5. Support the Tripartite Talks under the aegis of the UN secretary-general, while pressing for substantial progress towards a just, and comprehensive settlement, in line with international law and the will of the Timorese people.
6. Encourage the parties seriously to consider the peace plan put forward by the National Council of Maubere Resistance (CNRM) as a framework for resolving the conflict.
7. Support the continuation of the All-inclusive Intra-East Timorese Dialogue under UN auspices, while pressing for the inclusion of all recognised East Timorese leaders, including Xanana Gusmão, in the talks.
8. Provide development assistance to East Timor through local church and non-governmental organisations, rather than

through governmental agencies.

9. Restrict arms sales to Indonesia and review broader aid, trade, investment and military cooperation relations if there is no meaningful movement forward by the government of Indonesia on the question of East Timor.

*East Timor – The continuing betrayal* is available from CIIR's Publications section, priced £2.50 plus packing and postage. ISBN 185287 1512.

### Indonesian forums

The Australian Council for Overseas Aid has recently released several publications which will be of interest to Indonesia-watchers. *Freeport in Indonesia: Reconciling development and indigenous rights* and *Workers in Indonesia: Prisoners of progress* are reports on public forums held in Canberra in April 1996. The July-September 1996 issue of *Inside Indonesia* contains a set of shorter papers presented at the 10th conference of the International NGO Forum on Indonesia (INFID), also in April 1996.

Copies can be obtained from ACFOA, 124 Napier St, Fitzroy VIC, 3065, Australia. Tel 639 417 7505. Fax 639 416 2746.

Peter Carey's monograph, *East Timor: Third World Colonialism and the Struggle for National Identity*, was published as a special issue of *Conflict Studies* in October-November 1996. It can be ordered from the Research Institute for the Study on Conflict and Terrorism (RISCT), 136 Baker Street, London W1M 1FH, UK. Tel +44 171 224 2659. Fax +44 171 486 3064. ■

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