

EAST TIMOR

East Timor became the world's newest country on May 20 and was admitted as the 191st member of the United Nations by the General Assembly on September 27. East Timor's new constitution included important human rights protections and, with the support of the United Nations, the government took important steps forward in a number of areas including policing. Despite the historic changes, however, systemic problems remained in the criminal justice system, and several critical issues, including the scope of a much discussed amnesty for past abuses, remained unresolved. At this writing there were also still an estimated thirty thousand East Timorese refugees in camps in West Timor. (See Indonesia.)

HUMAN RIGHTS DEVELOPMENTS

2002 was a year of political milestones in East Timor. On March 22, 2002, the Constituent Assembly, elected in 2001, approved the country's first constitution. The constitution incorporated the protection of human rights as a state objective and enshrined several basic political and civil rights in the text. These included the right to a fair trial, criminal due process, freedom of expression, freedom of association, and freedom of religion. The constitution also expressly forbid the death penalty or life imprisonment, and included the rights to be free from torture, servitude, and cruel or degrading treatment.

However, the constitution remained unclear on the position of minorities, including non-citizens, and omitted some social and economic rights as well as the right to be free from discrimination based on one's sexual orientation.

On April 14, East Timor held its first presidential elections. The elections, generally held to be free and fair by both the East Timor Independent Electoral Commission and national and international observer groups, were contested by Francisco Xavier do Amaral, who captured 17.3 percent of the votes, and Independence leader Xanana Gusmao, who won with an overwhelming 82.7 percent of the votes.

Finally, at 12:01 a.m. on May 20, 2002, pursuant to Security Council Resolution 1392 (2002), East Timor declared its independence in a ceremony attended by over 120,000 East Timorese, foreign dignitaries, and U.N. Secretary-General Kofi Annan. Later that same day, East Timor swore in its first government and held an inaugural session of parliament. The date also signified the end of the U.N. Transitional Administration in East Timor (UNTAET) and the start of its successor mission, the U.N. Mission of Support in East Timor (UNMISSET).

Justice

Justice for atrocities committed under Indonesian rule and for continuing everyday crimes raised some of the most pressing rights issues for UNTAET, for the

East Timor Transitional Administration set up under its auspices, and for the independent East Timorese government after May 20. On December 11, 2001, the Special Panel for Serious Crimes of the Dili District Court (Special Panel) issued its verdict in the first case to be tried in East Timor alleging crimes against humanity.

The Special Panel, consisting of two international judges and one East Timorese judge, had been set up to hear cases from the Serious Crimes Investigations Unit (SCIU), a body established pursuant to Security Council Resolution 1272 to examine incidents of mass killings and forced deportation as well as individual offences of murder, rape, torture, and other crimes committed in East Timor between January 1, 1999 and October 25, 1999. It is estimated that at least one thousand civilians were directly targeted and killed prior to and after the August 30, 1999 referendum in East Timor. Approximately 250,000 East Timorese were also forcibly expelled to West Timor in September 1999. (The SCIU and the Special Panel continued to operate in East Timor after independence, under the auspices of UNMISSET.)

In its December 11, 2001 verdict, the Special Panel found ten militia members guilty of crimes against humanity on a number of different underlying charges, including torture, murder, and forced expulsion. The cases, which alleged systematic burning of homes and forced relocations of populations across the border into Indonesian territory, as well as murders by members of the Tim Alpha militia in Los Palos District in 1999, were significant in establishing that a state of armed conflict existed in East Timor in 1999; that the local militia had been used by the Indonesian army's Special Forces (Komando Pasukan Khusus, Kopassus) in pre-planned, systematic attacks on unarmed civilians following Indonesia's defeat in the referendum; and that Indonesian military and civil administrators were responsible for the violence and forced expulsions. The Special Panel further found that the defendants were aware of the systematic campaign against the population and must have known that their actions contributed to it.

By September 2002, the Office of the General Prosecutor had filed thirty-nine indictments involving 117 defendants, eight of them Indonesian nationals, for crimes against humanity committed in East Timor. However, Indonesia continued to refuse to cooperate with transfers of witnesses, suspects, and evidence, refusals interpreted by UNTAET as a violation of the Memorandum of Understanding between the Republic of Indonesia and UNTAET regarding co-operation in legal, judicial, and human rights matters.

With its December 11, 2001 verdict, the Special Panel was believed to have become the first court worldwide to apply laws originally formulated for the International Criminal Court (ICC). (The ICC language had been incorporated into East Timor's criminal code.) On September 6, 2002, East Timor acceded to the ICC.

Although the verdict and indictments were important steps forward in East Timor's quest for justice, serious concerns remained about the work of the Special Panel and the SCIU. The Los Palos case itself raised concerns regarding due process. While prosecutors included experienced international criminal lawyers from the SCIU, the defense was provided by staff members from East Timor's drastically under-resourced and inexperienced Public Defenders' Office. In all, three international lawyers and three East Timorese lawyers defended the ten accused, thereby denying them access to separate defense counsel and raising potential conflicts of

interest. Neither the East Timorese nor the international defenders had any previous experience in crimes against humanity trials. There were additional problems of continuity of representation: four of the accused had their final statements read by someone who had not represented them at trial.

Systematic problems remained in other parts of the justice system. These included a backlog of cases, inadequate and inexperienced defense counsel, lack of resources, and unfilled vacancies for public defenders and judges. Judicial vacancies slowed both trials and appeals. A lack of qualified interpreters exacerbated the problem, contributing to delays, interruptions, and disputes over testimony during proceedings.

There was also administrative mismanagement. On May 20, the contracts of a number of judges and prosecutors expired. Renewals of appointment were originally intended to be conditioned on satisfactory performance reviews, but those reviews could not take place as there was neither a functioning review body nor had relevant criteria been established to guide the reviews. A further complicating factor was that the new constitution called for a judicial council to take over responsibility for appointment of judges, but the council was not established until mid-July. While the government argued that judges still had the authority to hear cases, a number of judges argued that they lacked official jurisdiction, and the system effectively ground to a halt from late May until mid-July. The matter was finally resolved by a presidential decree stipulating the continuation of judicial appointments.

In early June, the entire court system shut down when all judges, prosecutors, and public defenders were required to attend compulsory legal training on the constitution and civil law issues. No personnel were available to review detentions. Between ten and thirty suspects were released from Caicoli police station in Dili alone, because they had been held beyond the seventy-two hour legal limit.

Concerns with the prison system also continued in 2002. Although physical conditions for detainees were generally adequate, lengthy pre-trial detentions, illegal detentions due to expired warrants, and overcrowding remained important concerns. Civil society groups also expressed concern about government failure to monitor individuals on conditional release to ensure that they were adhering to the terms of their release.

Detained children continued to be housed with adults but had their own cell blocks. There were complaints that children were at times held for lengthy periods without justification. At this writing, one child reportedly had been held in pre-trial detention since October 2001 for a traffic accident in which a young child was accidentally killed.

Other serious crimes, including rape and domestic violence, consistently were referred to traditional customary law mechanisms rather than to the courts. Such mechanisms lacked basic due process protections and were criticized by a number of East Timorese groups for failing to provide justice for victims, especially victims of sexual violence.

The East Timorese Commission for Reception, Truth and Reconciliation (CRTR) was established on January 21, 2002 when seven national commissioners were sworn in. The commission was to work for two years to document human rights violations committed between April 1974 and October 1999 in East Timor,

and to facilitate community reconciliation. In April, thirty regional commissioners were sworn in. A pilot project to take victim statements was undertaken on Atauro Island and commissioners collected thirty-three statements from victims of murder, torture, rape, and forced displacement. At the end of August, the CRTR carried out its first community reconciliation program in Maumeta.

In July, a draft amnesty law for perpetrators of the 1999 violence was presented to the parliament for debate. There was confusion over provisions defining who would be eligible for amnesty and whether the law would treat members of the East Timorese resistance more leniently than pro-Indonesia East Timorese, thereby undermining the principle of equal protection under the law. At this writing, the bill was stalled in parliament after much external and internal criticism of the draft.

Officers from the East Timorese Police Service (ETPS) gradually took over responsibilities from U.N. Police (UNPOL) officers throughout the year, but continued to be under-resourced. A growing number of complaints over the course of the year against members of ETPS highlighted the urgent need for a mechanism to investigate allegations of human rights violations by police officers and to impose disciplinary measures where appropriate. At this writing, allegations of misconduct continued to be investigated on an ad hoc basis by the UNPOL Professional Standards Unit; recommendations regarding disciplinary action were the responsibility of ETPS.

In January, East Timor Defense Force (FALINTIL-ETDF) troops replaced U.N. peacekeepers in Lautem district. The transition appeared to go smoothly although concerns remained about the lack of an internal disciplinary measure for soldiers committing abuses. Several cases of alleged rape by newly deployed ETDF officers were reported during the year.

At year's end there were still approximately thirty thousand East Timorese refugees in Indonesia, including approximately 1,500 reported missing and separated children. (See Indonesia.)

The uncertain legal status of habitual residents (ethnically non-Timorese residents who had lived in East Timor for five or more years directly preceding the popular consultation) became an issue several times during the year following threats to returnee Indonesian families, who had fled or been forcibly removed from East Timor to Indonesian territory following the referendum in 1999. Such individuals received no legal status from the constitution, although a draft citizenship bill contained provisions that would enable long-term non-Timorese residents to stay in the country. Ethnic Timorese who returned from Indonesia in 2002 were generally well received with lower than expected levels of intimidation and violence toward them.

During the year dozens of foreign nationals applied for asylum in East Timor. At this writing, none had been granted refugee status by UNHCR in Dili. In the largest case a group of fifty-eight Sri Lankans arrived in East Timor by boat on July 28. Although they initially applied for asylum, all eventually decided to be repatriated back to Sri Lanka by the International Organization of Migration (IOM). Most rejected asylum claimants remained in East Timor with the status of undocumented migrants. Although IOM offered assistance to those wishing to return to their country of origin, some refused to do so, maintaining it was unsafe. With East

Timor's immigration services understaffed and under-resourced, it appeared that such individuals, including at least six Russians, tens of Indonesians, and several Vietnamese were destined to remain in legal limbo indefinitely.

DEFENDING HUMAN RIGHTS

This year there were no attacks on human rights defenders in East Timor. Human rights organizations and activists operated freely and continued to play an active role in lobbying UNTAET, UNMISSET, the Constituent Assembly, government institutions, and the new parliament.

THE ROLE OF THE INTERNATIONAL COMMUNITY

United Nations

Following East Timor's independence on May 20, the U.N. General Assembly removed East Timor from its list of non-self-governing territories. U.N. Secretary-General Kofi Annan named Kamalesh Sharma as the new special representative (SRSG), and Sukehiro Hasegawa as deputy SRSG.

In August, U.N. High Commissioner for Human Rights Mary Robinson made her last official visit to East Timor. She announced plans for a two-year technical coordination and cooperation program between the OHCHR and the East Timorese government and signed a joint communiqué on human rights with Senior Minister for Foreign Affairs and Cooperation, José Ramos-Horta, and the chairperson of the NGO Forum, Cecilio Caminha Freitas.

During her stay she also publicly denounced the verdicts in the first East Timor trials from the Jakarta ad hoc tribunal and called for an international tribunal to be set up to provide justice for the East Timorese.

The first act of East Timor's new parliament was to reaffirm the U.N. Universal Declaration of Human Rights. On September 27 East Timor became an official member of the U.N.

On September 6, 2002, East Timor acceded to the Rome Statute of the ICC. In response to U.S. pressure (which included withdrawal of three U.S. military observers from UNMISSET in July), however, foreign minister Ramos-Horta agreed not to turn over U.S. government employees or nationals to the ICC. East Timor was only the third nation to sign such a "Article 98" agreement with the U.S. At this writing, the agreement had not yet been ratified by parliament.

World Bank

In May, a World Bank-sponsored donors meeting in Dili resulted in U.S.\$360 million in foreign aid pledges from more than twenty-five participating countries. Speaking at the conference, bank country director Klaus Rohland urged donors to continue support for the next two to three years.

On August 28, a donor conference took place in Dili to assess the needs of East Timor's security forces, which were due to take over from U.N. peacekeepers in 2004. Australia, the U.S., New Zealand, South Korea, and Portugal had been the main donors to the East Timor Defense Force.

Australia

True to Prime Minister Howard's affirmation of the two nations as "partners in this part of the world," one of East Timor's first acts as an independent nation was the signing of a treaty with Australia to divide oil and gas revenues. Because income from the deal, 90 percent of which will go to East Timor, was not due to begin to flow until 2005, Australia together with other major foreign donors continued to provide financial support for the new state. It allocated \$19.75 million (Aus\$36 million) for the 2002-2003 fiscal year for poverty reduction and capacity-building programs for government and public administration. Australians also constituted roughly 25 percent of the United Nations peacekeeping force.

United States

The Bush administration gave strong financial backing to independent East Timor but the administration did little to promote accountability by Indonesian security forces for abuses in East Timor.

With strong bipartisan support from Congress, USAID funding for fiscal year 2002 totaled \$25 million for economic and democracy programs; it requested \$19 million for 2003.

Europe

The E.U. took the lead in negotiating a chairman's consensus statement on East Timor at the U.N. Commission on Human Rights in Geneva in April. The statement was congratulatory of the steps East Timor had taken to establish human rights protections, including incorporating rights in line with the Universal Declaration into the new constitution, and it encouraged further progress, notably efforts to bring to justice perpetrators of the 1999 violence and cooperation between East Timor and Indonesia.

The European Commission promised €9 million (roughly U.S.\$8.8 million) in reconstruction assistance for 2002, as part of a three-year, 290 million euro contribution to the World Bank-administered trust fund for East Timor. Additional allocations totaled €27 million (roughly U.S.\$26.6 million) for the health system and food aid. In late May, the commission adopted a five-year strategy for financial aid to East Timor, prioritizing support of the health sector and rural development, with €46 million (roughly U.S.\$45.4 million) in grants earmarked for the 2002-2004 period.

Portugal independently promised in December 2001 aid totaling €100 million (U.S.\$98.7 million) to its former colony.

Indonesia

Reconciliation began slowly with the former occupier. Despite opposition from some members of parliament, President Megawati traveled to Dili for the May independence ceremony, in a clear symbolic gesture of support for normalized relations between Jakarta and East Timor. After visiting the graves of Indonesian soldiers killed during the occupation, Megawati briefly attended the independence ceremony and, despite cheers from the crowd, looked uncomfortable as President Xanana held her hand in the air. The presence of Indonesian naval vessels off shore during the ceremony undercut the message of solidarity.

Japan

Japan continued to provide economic support to East Timor and pledged in February to send 690 peacekeepers to East Timor to work primarily on engineering and construction projects. Japan's ambassador to the U.N. noted his country was the largest direct assistance donor, with U.S.\$120 million for development and humanitarian aid, and a promise of \$190 million over the next three years. Japan also vowed to contribute \$1 million to the new Commission for Reception, Truth and Reconciliation, \$19 million in emergency aid through the United Nations Development Program's Community Development and Rehabilitation (CDR) projects, and \$5.3 million to help East Timorese refugees in West Timor.

INDIA

In 2002, India witnessed its worst episode of communal violence in over a decade, demonstrating the increasingly volatile consequences of a broad and government-supported Hindu nationalist agenda in the country. In February and March state-supported anti-Muslim violence in the northwestern state of Gujarat claimed at least two thousand lives. As in Gujarat, attacks against historically discriminated groups in other parts of the country, including Christians, Dalits (or so-called untouchables), and tribals, were carried out with virtual impunity. Attacks by militants continued to claim many civilian lives in the disputed region of Kashmir and in the northeast.

The conflict in Kashmir persisted throughout 2002, as the safety of civilians and political leaders came under regular attack by militant groups. Hundreds were killed during, and in the weeks preceding, state assembly elections in September and October. Moreover, heightened tensions between India and Pakistan once again raised concerns of armed conflict, especially as both countries rapidly deployed troops and refused diplomatic negotiation. Elections in Kashmir offered some hope for a resolution to the crisis in the state. The new coalition government's action plan included a commitment to investigate allegations of human rights vio-