

EAST TIMOR

Since coming under the administration of the United Nations following twenty-four years of Indonesian rule, East Timor has made modest but significant strides towards achieving a functioning and independent judiciary. The new judicial system however remained fragile and in need of a substantial infusion of resources, both human and material.

On 5 May 1999, the Foreign Ministers of Indonesia and Portugal signed an agreement according to which a poll would be held in East Timor so that the population of the former Portuguese colony could choose between an Indonesian autonomy package and independence. The Security Council, by resolution 1246, established the United Nations Assessment Mission in East Timor (UNAMET) on 11 June 1999 to carry out the consultation. The 5 May agreement provided that UNAMET was to oversee a transition period after the vote pending the implementation of the decision reached by the people of East Timor.

On 30 August 1999, 98.6 per cent of the 435,000 registered voters participated in the ballot. The overwhelming majority of the voters, some 78.5 per cent, chose independence, as opposed to 21.5 per cent endorsing autonomy within Indonesia. In the weeks leading up to the vote, hundreds of persons were killed and injured and thousands driven from their homes by militia attacks. The Indonesian military (TNI) received wide condemnation for cooperating with or failing to stop the militia. After the poll, violence erupted again, personnel of the UNAMET were evacuated and its compound was burned by the militia. Many East Timorese were killed or fled the region, including priests and nuns who tried to protect the refugees.

A delegation of the UN Security Council visited Indonesia on 7 September 1999, and two days later Indonesian President Habibie gave his approval for a multinational peacekeeping force, which arrived in Dili on 20 September 1999. The International Force East Timor (INTERFET) was headed by Peter Cosgrove of Australia. The mandate of INTERFET was to restore peace and security in East Timor, to protect and support UNAMET in carrying out its tasks, and to assist humanitarian assistance operations. Fierce attacks on journalists, UN workers and local people by the militia followed.

The MPR voted in October 1999 in favour of revocation of the 1978 decree that had provided for the annexation of East Timor to Indonesia. On 25 October 1999, the UN Security Council adopted resolution 1272, which established the UN Transitional Administration in East Timor (UNTAET). UNTAET was established as an integrated, multidimensional peacekeeping operation, fully responsible for the administration of East Timor during its transition to independence. UNTAET's mandate is to provide security and maintain law and order throughout the territory of East Timor; to establish an effective administration; to assist in the development of civil and social services; to ensure the coordination and delivery of humanitarian, rehabilitation and development assistance; to support capacity-building for self-government; and to assist in the establishment of conditions for sustainable development. UN Under-Secretary-General for Humanitarian Affairs, Sergio Viera de Mello, was appointed as transitional administrator in charge of rebuilding the infrastructure of East Timor.

INTERFET was replaced with a UN force of military personnel and police to support the establishment of UNTAET. The handover of command of military operations from INTERFET to UNTAET was completed on 28 February 2000.

The 13-member National Consultative Council (NCC) was established to make policy recommendations to the UNTAET. The NCC included seven members of the National Council of Timorese Resistance (CNRT), a Catholic priest, UN officials and a former pro-Indonesia leader of the East Timorese People's Front. On 12 July 2000 the NCC announced the composition of a new provisional government for East Timor. Four posts within the cabinet were held by East Timorese and four by UNTAET.

José Xanana Gusmao, the president of the CNRT, was elected president of a new UN-appointed 36-member legislature, the East Timorese National Council (ETNC). When Mr. Gusmao resigned from this post on 28 March 2001, he was replaced by East Timor's Foreign Minister José Ramos Horta on 31 March 2001. On 9 April 2001, the ETNC elected Manuel Carrascaló as its new president. On 31 January 2001 the UN Security Council adopted resolution 1338, which extended the mandate of UNTAET until 31 January 2002.

On 30 August 2001, the second anniversary of the referendum on independence, the election of a constituent assembly that will write the country's new constitution took place. The turnout, involving 93 per cent of voters, was an exceptional success. Fretilin (Revolutionary Front for an independent East Timor), the party that spearheaded East Timor's 24-year armed resistance against Indonesia won 57.3 per cent of the vote and thereby won 55 seats in the 88-seat body. The second largest party was the Democratic Party with 8.7 per cent for seven seats. International observers commended the success of the elections after thousands of people had voted peacefully.

On 20 September 2001 a new cabinet (Council of Ministers) was sworn in. The Council of Ministers is composed of 10 ministers, three secretaries of state and seven vice ministers. It consists of nine representatives from Fretilin, two members of the Democratic Party, and nine independents and experts not affiliated with any party. Mari Alkatiri, the leader of Fretilin, was nominated as chief minister. He will head the transitional government, which remains under the ultimate authority of the UN, pending the assumption of full independence, expected for mid-2002.

HUMAN RIGHTS BACKGROUND

On 31 January 2001, two reports on the violent outbreaks that followed the 1999 referendum on independence were published. The Indonesian Commission to Investigate Human Rights Violations in East Timor (KPP-HAM) concluded in its report that the Indonesian military and civilian authorities, including the police, had cooperated with pro-Indonesian militias to create an atmosphere supportive of crimes against humanity, including mass murder, mass deportation, kidnapping, rape and destruction of property. The report listed the names of 33 suspects for further investigations and possible criminal trial. Among these 33 persons were the then-Governor of East Timor, militia leaders, and six Indonesian army generals.

The International Commission of Inquiry, mandated by the resolution adopted at the special session of the UN Commission on Human Rights in September 1999, delivered its report to the UN General Assembly on 31 January 2000. The report also concluded that "ultimately the Indonesian army was responsible for the intimidation, terror, killings and other acts of violence experienced by the people of East Timor before and after the popular consultation. Further, the evidence collected to date indicates that particular individuals were directly involved in violations of human rights." The report called for the establishment of an international tribunal to prosecute those responsible for the abuses.

During the period of transition new human rights problems emerged. East Timor's lack of resources, facilities, and trained police and judicial personnel led to activities by vigilante groups. Many of those allegedly linked to militia groups or to the Indonesian army faced mob violence. Refugees returning to East Timor and members of minorities, such as Muslims or ethnic Chinese, were reportedly at particular risk of harassment.

JUDICIARY

UNTAET exercises all legislative and executive authority in East Timor, including the administration of justice. A goal of UNTAET is to "establish a functional system of administration of justice which is fair, effective, independent and impartial, securing the rule of law and providing equal access to justice for people throughout East Timor".

One of the first efforts of UNTAET has been to establish the Judicial Department. The Judicial Department is composed of five divisions: courts, prosecution, public defenders, administration and logistics, and prison service. The administration is responsible for the budget and organisation of the whole department. At the time of writing the Judicial Department employed approximately 90 international and 2000 East Timorese staff.

Structure

East Timor's judiciary is a modified version of the Indonesian system (See Chapter on Indonesia). The decision to retain elements of such a structure was taken because those East Timorese with legal backgrounds had all trained under the Indonesian system.

The judiciary of East Timor consists of four District Courts that function as courts of first instance, one Court of Appeal, the office of the Public Prosecutor and the office of the Public Defenders. The four District Courts are situated in Dili, Baucau, Suai and Oecussi and are presided over by 25 East Timorese judges. The Court of Appeal in Dili is composed of two international judges and one East Timorese judge. At the time of writing there were approximately 45 East Timorese administrative staff assigned to support the judiciary. There are two separate offices for the Public Prosecution. One office is for serious crimes, with seven Public Prosecutors, legal advisers, case managers and investigators, all of whom are international staff. The other office of the Public Prosecution is for ordinary crimes and has 13 East Timorese Prosecutors and local staff. There are also 12 East Timorese Public Defenders, who work with four international lawyers.

Applicable law

The applicable law in East Timor consists of UNTAET regulations and directives, applicable treaties and recognised principles and norms of international law. Another source of law is that applied in East Timor prior to 25 October 1999, i.e. Indonesian law, in as far it is in conformity with international standards and until replaced by UNTAET regulations or subsequent legislation.

Special Panel for Serious Crimes

A special crimes unit was established to exercise jurisdiction over the offences of genocide, war crimes, crimes against humanity, murder, sexual offences and torture committed between 1 January

1999 and 25 October 1999. The Special Panel for Serious Crimes was established within the Dili District Court as a section of the domestic tribunal. The Special Panel is composed of two international judges and one East Timorese judge.

The Special Panel identified ten incidents of major human rights violations which it prioritised for investigation. In addition, it is pursuing individual cases of murder and other offences of already detained suspects. During its first seven months, 26 indictments were submitted to the Special Panel for Serious Crimes. The first indictment was submitted to the Court on 15 November 2000. The Special Panel held 60 preliminary hearings in 21 cases (beginning on 10 January 2001), 23 trial hearings with 9 judgements, and 39 hearings to rule on 34 pre-trial detentions. The first judgement on an individual case was delivered on 25 January 2001. The first indictment for crimes against humanity was filed on 11 December 2000 and the trial began in July 2001.

The Special Panel faces problems similar to that of East Timor's judiciary as a whole. Many factors contribute to the slow progress. The lack of resources is considerable. The Special Panel is in dire need of staff, including interpreters, investigators and prosecutors. The existing staff is partly young and inexperienced. Basic equipment is lacking, including vehicles for transportation, tape recorders, audio equipment, laptop computers, printers, photocopiers and mobile and satellite phones. In order to cope with the enormity of the task UNTAET intends to establish a second panel. However, the realisation of this plan depends on the provision of funds from international sources.

Difficulties confronting the judiciary of East Timor

The new judicial system of East Timor remains fragile. It is in need of a substantial infusion of resources. The four District Courts were not all fully operational at the time of this writing. Although the salaries of the judicial officials are high by local standards, they still barely cover the cost of living in East Timor. Low salaries create the risk of corruption. The scarce resources also result in lack of adequate accommodation, a shortage of vehicles for transportation and a lack of basic facilities for the courts. Until summer 2001 all public defenders had to share a single office, which gave them little or no space for private consultations with their clients. As the judges, prosecutors and public defenders were drawn from a small group of law graduates and experienced legal professionals, they are mainly very young and inexperienced and lacking of necessary support and training.

The shortcomings of the criminal justice system have adversely affected the rights of suspects to a fair trial. Some detainees do not have access to legal counsel for weeks or, sometimes, even months. In some cases, detainees have been held beyond the expiry of their detention orders. Due to the slow progress of the courts, the right to trial without undue delay is threatened.

A number of judicial officials have reportedly been subjected to threats and intimidation and have expressed concern about their personal security. On 30 April 2001, a group of youths threatened to kidnap the President of Baucau District Court, an investigating judge and a prosecutor if a suspect was not released. On 8 May 2001 a group of 12 men armed with knives and machetes reportedly shouted threats outside Dili District Court.

All of these shortcomings demonstrate that although the East Timorese judiciary has made progress towards establishing a fair and independent judiciary, it is still in need of the support of the international community with regard to resources, both material and human. When UNTAET's

mandate comes to an end, the continued presence and cooperation of the UN to assist the East Timorese Government will therefore be necessary.