

Timor-Leste: Reconciliation and Return from Indonesia

I. OVERVIEW

The unresolved status of thousands of former refugees who fled across the border following a 1999 vote for independence remains a challenge to Timor-Leste's long-term stability. Many were never well integrated into host communities and are being drawn back across the border in small but increasing numbers by relative economic and political stability in the new state. These returns should be encouraged by both countries as a good opportunity to promote reconciliation between the two communities divided by the border. Doing so will expose the costs of impunity for the violence that surrounded the 1999 referendum and highlight the failure to implement practical recommendations from its two truth commissions, the CAVR and the Commission on Truth and Friendship. Timor-Leste's leadership may yet decide that some form of amnesty is the best way forward, but the country cannot afford to further delay broad discussion on solutions.

A quarter of a million people fled the province of East Timor after the 1999 referendum, many forcibly displaced by Indonesian security forces and militia. Some of the thousands remaining in West Timor are there for economic reasons; many others because of pressure from family members and community leaders. This latter group are still poorly integrated into their host communities, refuse to leave old refugee camps, and are frustrated by the end of official assistance. Political stability in Timor-Leste and the promise of access to land are making the prospect of return more attractive. But misinformation, an unclear legal basis for leaving Indonesia, and fear that their access to property and basic political rights will not be upheld are holding them back.

A small minority of several hundred former militia and former pro-integration leaders have politicised the question of return. They seek assurances that they will not be prosecuted for standing charges of crimes against humanity and want recognition as "political victims" of Indonesia's withdrawal. The former militia no longer pose any security threat to Timor-Leste as they are unarmed and privately acknowledge independence as an irreversible truth. But the prospect of their return could be politically explosive for the country, particularly in the absence of prosecutions. Even though the Timorese political leadership has consistently underscored that the "door is always open" and police and

community leaders acknowledge the need to ensure the security of returnees, there are signs that it will be difficult to uphold the basic rights of former integration supporters.

Working with Indonesia to set up a formal process would be the best way to de-politicise the nature of return and lessen what political leverage the former militia and pro-autonomy leaders still hold. It would support longer-term reconciliation efforts even as implementation of the practical recommendations from Timor-Leste's two truth commissions have stalled. It will need to be accompanied by renewed efforts at community-level reconciliation and vigorous monitoring of returns, to ensure those involved in low-level violence or those whose absence may have engendered suspicion are able to reintegrate. It will also require a clear policy on how to handle prosecutions as well as incomplete investigations.

The Timorese government does not bear sole responsibility for the current impasse over justice and reconciliation. Indonesia has consistently blocked efforts to bring to justice its military figures and ex-Timorese militia living there by refusing to cooperate with Timorese courts. The UN failed to help ensure justice while it still had influence. It is Timor-Leste that bears the costs. With parliament, the government must work to develop policy on how to move forward with the standing indictments. An international tribunal remains a non-starter and weak domestic courts are the only possible venue for any future prosecutions. Any renewed efforts to push through an amnesty could move quite quickly; one option being discussed by the leading political parties is a "selective amnesty". If not based on clear legal criteria, this could prove the worst option on the table as it would not only close off the possibility of justice for many crimes but also further politicise the process. There remains a risk that a decision not to prosecute could lead to violent retribution against suspects. More certain is that it will further complicate efforts to build the rule of law and guarantee rights for all.

Political consensus on justice and reconciliation has been elusive but is urgently needed. The parliament and government of Timor-Leste should take the following steps:

- clarify with the Indonesian government through a memorandum of understanding the formal procedures for voluntary returns by those born in East Timor;

- ❑ develop an official policy supporting voluntary returns, including limited assistance to returnees, through food assistance and mediation support during a provisional period as well as strengthened welfare monitoring and elaborating their rights upon return;
- ❑ debate in parliament the CAVR report and draft laws on reparations for victims and the creation of a planned successor institution to the CAVR, whose mandate should include supporting community reconciliation processes;
- ❑ renew efforts to implement with Indonesia the recommendations of the Commission for Truth and Friendship; and
- ❑ publicly commit to the prosecution of existing indictments in the domestic courts.

II. BACKGROUND

Much of the violence in 1999 was carried out by East Timorese-born militia members, many of whom fled across the border into West Timor following the referendum and arrival of foreign troops.¹ By staying there, they have evaded prosecution as well as let Timor-Leste defer resolution of domestic political cleavages between pro-integration and pro-independence factions. Formal reconciliation efforts by Indonesia and Timor-Leste since its independence have focused on relations between the two capitals, rather than communities, and have allowed bilateral relations and cooperation to flourish at the expense of convictions for crimes committed in 1999. Many who fled almost twelve years ago view their presence in West

Timor as difficult to sustain in the long term for a range of reasons explored below and their return inevitable.²

A. THE LIMITS OF REPATRIATION

Post-referendum violence drove an estimated 250,000 across the border into West Timor in the days following the 4 September 1999 announcement of results. Some fled voluntarily out of fear or preference, but many were herded onto trucks and boats by Indonesian army and police with militia support.³ They left by land and by sea – naval ships left ports such as Beaçu, Com, and Suai Loro for Kupang. They included militia and pro-autonomy political leaders but also supporters of independence driven across the border as part of a campaign to try to reverse the results of the referendum. Initially, the emphasis was on returning as many people as possible. The objective, shared at the time by both the UN administration and the East Timorese leadership, was political as well as humanitarian: if they remained across the border, the refugees provided a challenge to the stability of the state then under formation.⁴

International support for repatriation was mobilised quickly and the first flight carrying refugees back to Dili departed in early October; others returned by simply walking home. Half had gone back by the end of 1999 but the rate of return slowed by late 2001.⁵ The UN High Commissioner for Refugees (UNHCR) encountered difficulties in ensuring continued support for returns, particularly as a result of intimidation in the camps. A spokesperson explained in late 1999: “The moment an East Timorese expresses a desire to

¹For earlier Crisis Group reporting on violence following East Timor’s 1999 referendum and early efforts to bring the perpetrators to justice, see Crisis Group reports, *East Timor Briefing*, 6 October 1999; Crisis Group Asia Report N°12, *Indonesia: Impunity Versus Accountability for Gross Human Rights Violations*, 2 February 2001; and Crisis Group Asia Briefing N°16, *Indonesia: Implications of the Timor Trials*, 8 May 2002. For reporting on the country since independence, see Crisis Group Asia Report N°120, *Resolving Timor-Leste’s Crisis*, 10 October 2006; Asia Report N°143, *Timor-Leste: Security Sector Reform*, 17 January 2008; Asia Report N°148, *Timor-Leste’s Displacement Crisis*, 31 March 2008; Asia Briefing N°87, *No Time for Complacency*, 9 February 2009; Asia Report N°180, *Handing Back Responsibility to Timor-Leste’s Police*, 3 December 2009; Asia Briefing N°104, *Timor-Leste: Oecusse and the Indonesian Border*, 20 May 2010; Asia Briefing N°110, *Managing Land Conflict in Timor-Leste*, 9 September 2010; and Asia Briefing N°116, *Timor-Leste: Time for the UN to Step Back*, 15 December 2010.

²West Timor is the name for the western half of Timor island, excluding the Timor-Leste enclave of Oecusse. The name has no political or administrative meaning. The area of West Timor along with the islands of Alor, Rote, Sabu, Sumbawa and Flores comprise the Indonesian province of Nusa Tenggara Timur (NTT). East Timor is used in this report to refer to the territory formerly under Portuguese administration, annexed under Indonesian law in 1976, and later placed under United Nations administration until its sovereignty was recognised on 20 May 2002. The independent state is referred to as Timor-Leste.

³See *Chega!*, “Report of the Commission on Reception, Truth and Reconciliation” (known by its acronym in Portuguese, CAVR), particularly Chapter 7.3, “Forced Displacement and Famine”.

⁴After the official end of Indonesian administration of East Timor on 25 October 1999, the territory was administered by the UN Transitional Administration in East Timor (UNTAET) until handover of sovereignty on 20 May 2002 to an elected East Timorese government.

⁵At the peak rate of return, in November 1999, as many as 6,000 people were returning each day. See Chris Dolan, Judith Large and Naoko Obi, “Evaluation of UNHCR’s Repatriation and Reintegration Programme in East Timor, 1999-2003”, United Nations High Commissioner for Refugees, February 2004.

leave the camps and go home, their life is in danger”.⁶ Challenges increased after the evacuation of all UN staff from West Timor in September 2000 after three UNHCR staff were killed by East Timorese militia in an attack on their Atambua office. Those remaining in the camps had little access to information and efforts to determine the number and needs of these refugees were consistently thwarted by militia members who, along with the local authorities, viewed international staff with hostility.

As part of the political imperative to bring home refugees, the UN administration, with the direct involvement of Xanana Gusmão, then president of the National Council of Timorese Resistance (CNRT), arranged “look and see” visits as well as negotiations at the border for some of the more notable militia figures, such as Joanico Belo and Cancio de Carvalho.⁷ The idea was that return by any of them would persuade large numbers of refugees to go back. These trips did not exempt these individuals from future prosecution and they were encouraged to think about turning themselves in. Few of the more influential leaders chose to come back at this point, but Nemesio de Carvalho, the former deputy commander of the Ainaro-based Mahidi militia, crossed the border in 2001 along with 800 villagers from the Cassa. He now says he came back “ready to face justice” but has not faced trial and since 2006 no longer reports to the courts.⁸ The response to other efforts by the Transitional Administration and the CNRT to engage others who had supported integration with Indonesia was limited, although it produced a small surge in returns just before independence.⁹

At the end of 2002, UNHCR issued a “cessation of status” declaration, ending the eligibility of East Timorese in Indonesia to be treated as refugees.¹⁰ Questions were raised at the time over whether the move was premature, driven too much by a desire to support the development of the new state despite concerns of insufficient protection for those

who returned.¹¹ This disquiet was based more on uncertainty and lack of proper monitoring; few cases of “revenge violence” were reported and safe houses set up for those who had returned were very rarely used.¹²

Estimates of the remaining population of “ex-refugees” vary widely. Accurate baseline figures were never established due to militia intimidation and local pressures to keep numbers high to justify greater state benefits – there was considerable double-counting, including the recycling of Indonesian identity cards by those who had been repatriated.¹³ At the close of its operations in 2002, UNHCR estimated that there were 28,000 former refugees remaining, a figure it had been given by the Indonesian disaster management agency Bakornas.¹⁴ The former East Timorese claim the population is closer to between 110,000 and 200,000,¹⁵ while the Nusa Tenggara Timur (NTT) provincial administration gave an estimate of just over 100,000 in 2010.¹⁶

B. STALLED JUSTICE EFFORTS

Human rights violations and crimes against humanity committed in 1999 have been extensively documented.¹⁷ Yet prosecutions have been limited. The greatest impediment has been that indictments produced by courts in Timor-Leste have no effect across the border, where the majority of the accused live. Indonesia has refused to recognise a memorandum of understanding it signed with the UN

⁶ Quoted in “East Timor: Forced Expulsions to West Timor and the Refugee Crisis”, Human Rights Watch, 1 December 1999, Section III.

⁷ Mark Dodd, “Talks with militia leaders focus on refugees’ return”, *Sydney Morning Herald*, 18 November 2000.

⁸ Crisis Group interview, Nemesio de Carvalho, Cassa, 16 February 2011.

⁹ The Secretary-General’s April 2002 report noted that returns in March were higher than any month since 2000. It suggested several factors: “the cessation of food aid [in the camps] by the Government of Indonesia, an increase in cross-border visits, interest generated by the presidential elections and plans for independence day”. “Report of the Secretary-General on the United Nations Transitional Administration in East Timor”, 17 April 2002, S/2002/432, para 31.

¹⁰ “Declaration of Cessation – Timor-Leste”, UN High Commissioner for Refugees, 22 December 2002, available at www.unhcr.org/refworld/docid/41657a7e4.html.

¹¹ Cessation was declared despite three of five protection benchmarks not having been met and despite major gaps in returnee monitoring. See Dolan, Large and Obi, *op. cit.*, pp. 53-56. “In the question of the timing of the cessation clause the political project of preparing for independence actually overrode protection consideration”, *ibid.*, p. 6.

¹² Dolan, Large and Obi, *op. cit.*

¹³ Crisis Group interviews, Januario Moreira, Atapupu, 21 September 2010; senior retired military official, 6 March 2011.

¹⁴ Crisis Group interview, UNHCR staff, Jakarta, 24 March 2005.

¹⁵ Crisis Group interviews, Sico Naruk, Atambua, 21 September 2010; Eurico Guterres, Kupang, 26 September 2010.

¹⁶ Data from “Penanganan Pengungsi Timor Timur di Provinsi Nusa Tenggara Timur sejak tahun 1999 s/d 2009”, briefing note prepared by NTT provincial government, September 2010. One factor that continues to obscure figures of the ex-refugees is that Indonesian figures include Indonesians from other provinces who were present in East Timor in 1999, generally working as civil servants. Many Indonesian civil servants are from outside the province in which they work.

¹⁷ See “Laporan Akhir Komisi Penyelidik Pelanggaran HAM di Timor Timur”, Indonesian Human Rights Commission, January 2000; *Chega!*, *op. cit.*; “Per Memoriam ad Spem: Final Report of the Commission on Truth and Friendship”, March 2008; Geoffrey Robinson, “East Timor 1999 Crimes Against Humanity”, report commissioned by the UN Office of the High Commissioner for Human Rights, July 2003; Richard Tanter, Desmond Ball and Gerry van Klinken (eds.), *Masters of Terror: Indonesia’s Military and Violence in East Timor* (Lanham, Maryland, 2006).

Transitional Administration in 2000 regarding cooperation over the investigations into these crimes, as it was never ratified by the Indonesian parliament.¹⁸

Indonesia's insistence that it could prosecute these crimes within its own legal system thwarted early efforts to set up an international tribunal that would have circumvented these jurisdictional problems.¹⁹ It rejected the findings of an initial UN Commission of Inquiry into human rights violations committed in 1999 that recommended such a tribunal.²⁰ This followed the established principle of giving preference to prosecutions in domestic courts and also was in step with resistance among UN Security Council members to setting up another costly international tribunal. An investigation by the Indonesian Human Rights Commission (Komnas HAM) named 32 civilian and military officials, as well as militia leaders, as responsible for crimes against humanity.²¹

The mandate of an ad hoc court set up to try these crimes however was sharply limited in both time and scope – it was only allowed to examine crimes committed in April, August and September 1999 in three of East Timor's thirteen districts (Dili, Liquiça and Suai).²² This made it difficult to present the breadth of evidence of state policy required to establish a case for crimes against humanity.²³ A greater challenge was the weakness of the prosecution; a UN Commission of Experts concluded in 2005 that the process "failed largely due to the incapacity of the prosecution to seriously and adequately prove its case".²⁴ Six defendants were initially convicted but all were later acquitted by the ad hoc court with the exception of Eurico Guterres, who later served two years of a ten-year sentence before

being acquitted by the Supreme Court.²⁵ While a truth and reconciliation commission is being discussed for Indonesia, prosecution of its citizens for these crimes is not.²⁶

Within East Timor, a Serious Crimes Unit was set up in 2000 to investigate crimes and issue indictments, and a hybrid court known as the Special Panels for Serious Crimes was established to hear the relevant cases.²⁷ The process initially suffered from a woeful lack of political support and resources.²⁸ There were numerous problems with both the quality of prosecution and the basic protections afforded defendants.²⁹ One study concluded that it only began to function at an acceptable level as it was about to close.³⁰ Nearly 400 people were indicted before the process ended in May 2005. The hybrid court delivered judgments in cases relating to 87 of the indicted, with many of the others evading arrest or trial by remaining in Indonesia. Few of the cases addressed crimes by pro-independence supporters against pro-integration supporters, a subject that has often been glossed over since independence.

The lack of commitment from both the government and the UN undermined the results of the Serious Crimes process.³¹ The court's hybrid nature meant neither party took full responsibility for its proceedings. Nowhere was this more evident than in the case of the indictment of General Wiranto, former head of the Indonesian armed forces and candidate in Indonesia's 2004 and 2009 presidential elections. After his 2003 indictment, the UN distanced itself

¹⁸ See "Summary of the Report to the Secretary-General of the Commission of Experts to Review the Prosecution of Serious Violations of Human Rights in Timor-Leste (then East Timor) in 1999", United Nations, 26 May 2005, provided in annex to S/2005/458, paragraph 80.

¹⁹ See also Crisis Group Briefing, *Indonesia: Implications of the Timor Trials*, op. cit.

²⁰ See "Report of the International Commission of Inquiry on East Timor to the Secretary-General", UN Office of the High Commissioner for Human Rights, 31 January 2000.

²¹ "Laporan Akhir Komisi Penyelidik Pelanggaran HAM di Timor Timur", op. cit.

²² See Presidential Decree No. 96/2001: Keputusan Presiden Republik Indonesia Nomor 96 Tahun 2001 tentang Perubahan atas Keputusan Presiden Nomor 53 Tahun 2001 tentang Pembentukan Pengadilan Hak Asasi Manusia Ad Hoc pada Pengadilan Negeri Jakarta Pusat.

²³ See Crisis Group Briefing, *Indonesia: Implications of the Timor Trials*, op. cit., Section I.A.

²⁴ See "Summary of the report to the Secretary-General of the Commission of Experts ...", United Nations, 26 May 2005, op. cit., paragraph 335.

²⁵ For analysis of Eurico Guterres's final acquittal, see "Indonesia: A case of impunity", International Center for Transitional Justice, 30 June 2008.

²⁶ "Disiapkan, RUU Komisi Kebenaran", *Kompas*, 26 July 2010.

²⁷ The Special Panels for Serious Crimes were set up by UNTAET Regulation No. 2000/15, 6 June 2000. Section 1.2 of this regulation gave them jurisdiction over the "serious criminal offences" of genocide, war crimes, crimes against humanity, murder, sexual offences and torture.

²⁸ It was also a very selective process in terms of the time period examined and other grounds, for example, in its failure to investigate and prosecute the massive and systematic sexual violence that characterised the conflict in many areas.

²⁹ These included a non-functioning Court of Appeal during a period of nineteen months. See David Cohen, "Indifference and Accountability: The United Nations and the Politics of International Justice in East Timor", East-West Center Special Report No. 9, June 2006.

³⁰ Ibid.

³¹ "Throughout the serious crimes experience, neither the UN nor the government of East Timor ever demonstrated a clear sense of ownership of the very process in which they were partners. Although both agreed with the need for an end to impunity, neither appeared ready to see that accomplished by an independent, fully resourced tribunal or prosecutor's office". Philip J. Rapoza, "Hybrid Criminal Tribunals and the Concept of Ownership: Who Owns the Process?", *American University International Law Review* 21, no. 4 (2006), pp. 525-540.

from the charges by calling them a product of the Timor-Leste courts.³² The then prime minister Mari Alkatiri criticised the UN for failing to push through the Serious Crimes cases as, given the inequality of Timor-Leste's relationship with Indonesia, this was something the government could not do alone.³³ Later, the then prosecutor-general Longuinhos Monteiro asked to review and amend the indictment, presumably under political pressure, but this was denied.³⁴ An arrest warrant was never forwarded to Interpol.

Since the closure of the Special Panels, only three Serious Crimes cases have been heard. In 2006, the UN Security Council mandated a new peacekeeping mission in Timor-Leste to continue investigation of the remaining Serious Crimes cases. Following the signing of an assistance agreement in 2008, the team began work on some 400 continuing investigations; unlike its predecessor, it has no direct prosecutorial powers.³⁵ A number of those imprisoned were offered commuted sentences by President Gusmão and later President José Ramos-Horta, demonstrating weak commitment to ensuring accountability.³⁶ These include figures such as Joni Marques, a member of the Team Alfa militia originally sentenced to 33 years for crimes against humanity but released in 2008. Only one person remains in prison as a result: Domingos "Mau Buti" Noronha, a former member of the Mahidi militia convicted by Timor-Leste courts in March 2010 for murder and rape committed in Zumalai.³⁷ The recent announcement that a fourth trial

is due to be heard in April 2011³⁸ may encourage some but the courts have almost no capacity to try these cases and the political leaders no interest in pursuing them.³⁹

C. TRUTH AND RECONCILIATION

Two forums for truth-telling have produced a wealth of practical recommendations to carry forward reconciliation domestically and with neighbouring communities in Indonesia, but few have been implemented. A Commission for Reception, Truth and Reconciliation (CAVR) was set up in 2001 with the goal of establishing the facts regarding the history of human rights violations in East Timor between 1974 and 1999.⁴⁰ The broader timeframe of the CAVR's mandate provided the historical context for violence that many critics saw as missing from judicial efforts focused on 1999. It also offered a voluntary forum for reintegration for perpetrators of "less serious" crimes through a community reconciliation program, in which wrongdoers confessed in community hearings and, upon deliberation of a panel, asked to provide some form of retribution in exchange for being accepted back.⁴¹ Some 1,300 such sessions were held.

The CAVR produced a 2,800-page report on the history of human rights violations by all parties, and a detailed set of recommendations. It was presented to President Gusmão in October 2005 and since then has never been discussed in parliament. Its recommendations included the creation of a successor institution that would carry on the commission's work, such as by continuing community reconciliation programs. No one anticipated that all activities undertaken by the commission would cease upon publication of the report. Inadvertently, the failure to discuss its recommendations in parliament has blocked further movement on the issue.

The Commission on Truth and Friendship (CTF) was jointly undertaken by Indonesia and Timor-Leste to es-

³² UN Mission in East Timor (UNMISSET), "Serious Crimes process in Timor-Leste", 25 February 2003.

³³ See Jill Jolliffe, "Timor PM slams UN on war criminals", Asia Times Online, 15 May 2003.

³⁴ "Wiranto warrant in doubt", BBC News, 25 May 2004. The decision by the presiding judge in response to this motion notes: "It is not sufficient for the moving party to state, as he does here, that he has a 'feeling' that the indictment may be defective and that the defects have not yet been 'found'". "Decision on the Motion of the Prosecutor General to Review and Amend the Indictment", Dili District Court Special Panels for Serious Crimes, 17 May 2004.

³⁵ The Serious Crimes Investigation Team (SCIT) is a unit of the UN Integrated Mission in Timor-Leste and is not part of the Office of the Prosecutor-General. A review of the challenges facing the SCIT is available in "Impunity in Timor-Leste: Can the Serious Crimes Investigation Team Make a Difference?", International Center for Transitional Justice, June 2010.

³⁶ See Mark Harris, "Security Sector Reform Monitor: Timor-Leste", CIGI, January 2011, No. 4.

³⁷ "Former Mahidi militia sentenced to 16 years in prison", UNMIT/Serious Crimes Investigation Team newsletter issue 6, May 2010. Mau Buti had crossed the border illegally rather than with a visa, as Maternus Bere had, one reason his trial did not elicit the controversy that Bere's did. On Bere, see Section III.B below.

³⁸ Crisis Group personal communication, UNMIT official, 15 April 2011.

³⁹ The only reference to resolving 1999 cases in a 30-year strategic plan for the justice sector released in 2010 by the justice ministry is the need for further public consultation on the CAVR report. "Justice Sector Strategic Plan for Timor-Leste 2011-2030", Ministry of Justice of the Democratic Republic of Timor-Leste, approved by the Council of Ministers in February 2010.

⁴⁰ The acronym comes from the Portuguese name, Comissão de Acolhimento, Verdade e Reconciliação.

⁴¹ See Ben Larke, "... And the Truth Shall Set you Free: Confessional Trade-Offs and Community Reconciliation in East Timor", *Asian Journal of Social Science* 37, no. 4 (2009), pp. 646-676; and Patrick Burgess, "Justice and Reconciliation in East Timor: The Relationship between the Commission for Reception, Truth and Reconciliation and the Courts", *Criminal Law Forum*, 15, pp. 135-158, 2004.

establish a shared understanding of human rights violations committed by all sides in 1999 and then move beyond it. The terms of reference called for a “definitive closure of the issues of the past [that] would further promote bilateral relations”.⁴² Its work focused exclusively on institutional rather than individual responsibility and emphasised the importance of understanding events within the context of Indonesia’s pre-*reformasi* security sector.⁴³ The UN refused to cooperate as it objected to the inclusion of a consideration of amnesty as part of the body’s mandate. As a joint effort, the two governments saw it as having legitimacy in Indonesia that the CAVR had not enjoyed. The final report published in July 2008 explicitly stopped short of recommending amnesty, finding that the relevant criteria of full truth-telling and cooperation from alleged perpetrators had not been fulfilled and that amnesty was not suited to its goal of “restoring human dignity, creating the foundation of reconciliation between the two countries, and ensuring the non-recurrence of violence within a framework guaranteed by the rule of law”.⁴⁴

The report has been widely understood as a tacit declaration that, as a result of private discussions between the two governments, there would be no further prosecutions.⁴⁵ The report emphasised the importance of education and awareness campaigns to help prevent the future occurrence of such crimes but there appears to be very little understanding among many communities about the report’s content, particularly in West Timor. Among the strongest critics of the failure to properly “socialise” the CTF report are some of those militia leaders facing indictments.⁴⁶ They seem to think widespread distribution of the report would spread the message that there are to be no prosecutions.

The CTF report has helped provide the foundation of the solid working relationship that Jakarta and Dili now enjoy.⁴⁷

⁴² “Terms of Reference and Joint Declaration of the CTF”, Commission of Truth and Friendship Indonesia–Timor-Leste, December 2004.

⁴³ *Reformasi* or reform is the name used to refer to the period after the resignation of President Soeharto in May 1998.

⁴⁴ “Per Memoriam ad Spem”, op. cit., Section 9.1.1.a, pp. 296-297.

⁴⁵ Crisis Group interviews, senior Indonesian foreign ministry official, Jakarta, January 2011; Timor-Leste foreign ministry official, October 2010. The Indonesian foreign minister at the time, Hassan Wirajuda, explained there would be no future prosecutions, noting “the case is closed”. “TNI responsible for East Timor mayhem: chief”, *The Jakarta Post*, 18 July 2008.

⁴⁶ Crisis Group interviews, former militia members, Atambua and Kupang, March and September 2010.

⁴⁷ Recent testimony to this is the visit by Prime Minister Gusmão to Jakarta in March 2011 to witness the signing of five memoranda of understanding on decentralisation and local government, diplomatic education and training, public works infrastructure, education and training in the fields of transporta-

tion, and trade. Camelia Pasandaran, “Indonesia, East Timor go for ‘soft approach’ at border”, *The Jakarta Globe*, 23 March 2011.

There is a risk that positive high-level relations will cloud the lack of reconciliation efforts on the ground. Implementation of the report’s more practical recommendations has been slow or non-existent. These include the establishment of visa-free “peace zones” at the border for family meetings and cultural events, safe crossing for those who wish to make temporary or permanent cross-border visits, and “resolution of ... legal issues” surrounding the implications of such a policy for those indicted or under criminal investigation.⁴⁸ More broadly, the Commissioners concluded that “[r]estorative justice focuses on all parties involved in a conflict and seeks to reintegrate them into an inclusive society”. Realising this vision will require concrete support to those who wish to return.

III. THE UNSUSTAINABLE STATUS QUO

A. STATUS AND WELFARE

Those who chose not to participate in formal repatriation programs by the end of 2002 were registered as Indonesian citizens and continued for several years to be recognised as *pengungsi* (“displaced person” or “refugee”).⁴⁹ In 2005, the central government ended this status and officially closed the camps, although many either refused to leave or would later return.⁵⁰ This meant the former *pengungsi* were no longer eligible for specially targeted payments. A final payment of 5 million rupiah (\$525), designed to compensate *pengungsi*, never reached many in NTT and remains a source of frustration.⁵¹ The government said the

tion, and trade. Camelia Pasandaran, “Indonesia, East Timor go for ‘soft approach’ at border”, *The Jakarta Globe*, 23 March 2011.

⁴⁸ See “Per Memoriam ad Spem”, op. cit., Chapter IX, “Conclusions and Recommendations”. Visa-free crossings of course occur daily with varying degrees of informal sanction by border security forces on both sides. For more on the benefits of formalising cross-border arrangements, see Crisis Group Briefing, *Timor-Leste: Oecusse and the Indonesian Border*, op. cit.

⁴⁹ Indonesia has not yet signed the 1951 Refugee Convention. The word in Indonesian is used interchangeably to refer to either refugees or IDPs.

⁵⁰ “Penanganan Pengungsi Timor Timur di Provinsi Nusa Tenggara Timur sejak tahun 1999 s/d 2009”, op. cit.

⁵¹ Estimate provided using 2005 exchange rates. The funds were known as *dana terminasi* [termination funds]. *Eks-pengungsi* living in other provinces appear to have had more luck. “Eks Pengungsi Timtim di Papua Terima Batuan”, Antara, 18 May 2009. A separate payment of 2.5 million rupiah (roughly \$275) per family, known as *jaminan hidup* [life security funds], was also due to be distributed to the former refugees but many do not appear to have received this. Crisis Group interview, CIS-Timor staff, Kupang, 26 February 2011. It is unclear what role umbrella groups played in the distribution of such funds. Some suspect their leaders of having misappropriated the payments after registering families as well as taking

payment was intended for those who had not benefited from any previous assistance, including time in the camps, which rendered them ineligible.

Responsibility for their welfare shifted to the provincial administrations.⁵² This has had the greatest repercussions in NTT, which hosts the largest population of former refugees and is one of Indonesia's poorest provinces. It has an unemployment rate of 31 per cent and only 45 per cent of the population has completed primary education.⁵³ Its officials do not understand why a foreign policy problem has been converted into a provincial responsibility.⁵⁴ Confusion over eligibility for a range of government payments and weak systems for verification and distribution of those benefits has angered many former refugees.⁵⁵ Government officials often respond to questions about assistance to the former refugees by saying that they "no longer exist"; often they have been reclassified as poor persons (*orang miskin*).⁵⁶

The displaced have not integrated well into local communities.⁵⁷ Many refused to leave when the camps were officially closed as they saw conditions there as better than what was available elsewhere. Those resettled often do not own the land on which they now live. The housing in resettlement areas was built by the military, together with social services, but is often of substandard quality.⁵⁸ The land was not paid for and many remain in debt to local landowners.⁵⁹

"administration fees" they said would be used to collect and distribute the money.

⁵² "Penanganan Pengungsi Timor Timur di Provinsi Nusa Tenggara Timur sejak tahun 1999 s/d 2009", Nusa Tenggara Timur provincial government, September 2010. Since this policy change, the former refugees are more commonly referred to as *warga baru* (new citizens).

⁵³ "Nusa Tenggara Timur in Figures 2009", Central Statistics Agency of Nusa Tenggara Timur Province (BPS-NTT), July 2009, pp. 43-44.

⁵⁴ Crisis Group interview, provincial welfare officials, Kupang, 24 September 2010.

⁵⁵ Crisis Group interview, Januario Moreira, member of KOK-PIT (Komite Nasional Korban Politik Eks Timtim), Atapupu, 21 September 2010.

⁵⁶ Crisis Group interviews, provincial-level and district-level officials, Kupang, 24, 27 September 2010; deputy provincial governor, 25 February 2011.

⁵⁷ Crisis Group interview, Monsignor Dominikus Saku, Bishop of the Atamuba Diocese, 20 April 2010.

⁵⁸ The military built 11,000 such units up to 2009. 60 per cent were distributed to East Timorese and 40 per cent to locals in an effort to prevent jealousy. "2000 Rumah Bantuan Depsos Diserahkan", *Timor Express*, 9 January 2009. Construction crews used four or five sacks of cement rather than a standard six or seven for a 6m x 7m house, and banana or papaya tree trunks rather than timber. Crisis Group interview, Winston Rondo, Director CIS-Timor, Kupang, 27 September 2010.

⁵⁹ Many East Timorese did not seem to understand the terms of this arrangement and were confused when local villagers ar-

The resettlements are located far away from cities and inadequately served by public transport – one large area near Kefamemanu can not even be reached by *ojek*, the generally ubiquitous motorbike taxis.⁶⁰ Many lack water and electricity. There is real frustration among many who feel they were promised a great deal if they stayed in Indonesia but instead "our welfare has become just another *proyek* [money-maker] for the TNI".⁶¹

Integration has been most challenging in the areas around Kupang, where the bulk of ex-refugees are from the eastern part of Timor-Leste. They do not share the close cultural and linguistic ties common to local and displaced communities in the Belu or Timor Tengah Utara *kabupaten* (district).⁶² Small-scale violence between *warga lokal* (locals) and *warga baru* (new citizens) is still not uncommon. In December 2009, clashes in Oebelo, just outside Kupang, shut down all traffic between Kupang and Atambua. The clashes apparently grew out of a dispute between the two communities over rights to mine manganese, which has in recent years become a source of fast cash in West Timor.⁶³

Smaller incidents can escalate quickly. After the disappearance of one member of the East Timorese community in Camplong in March 2010, some 300 camp residents attacked the houses of locals and set alight four houses, a car and two motorbikes as well as stealing a large sum of money.⁶⁴ In another example, one camp resident who alleged he had been struck by a young local driving past on a motorbike mobilised friends and family to block local traffic and destroyed several houses.⁶⁵

The law of the state does not appear to be fully enforced in the camps. The state electricity company has been unable to collect payment from those living in the camps, but de-

rived asking for compensation. See Sutta Dharmasaputra and Frans Sarong, "Pro-NKRI seakan tak berarti", *Kompas*, 21 June 2010; and Kornelis Kewa Ama, "Menunggu saudara yang masih tercecer", *Kompas*, 24 June 2010.

⁶⁰ Crisis Group interviews, Oepkin resettlement, Kefamemanu, 22 September 2010.

⁶¹ Crisis Group interview, East Timorese resident, Atambua, September 2010.

⁶² There is also a history of waves of displacement from the western districts of East Timor into Belu, notably around the time of East Timor's civil conflict and the subsequent Indonesian invasion in 1975.

⁶³ As such, it is of particular attraction to those *eks-pengungsi* who are not formally employed, but informal mining activities are treacherous and there are long-term health risks from inhalation. The sleepy ports of Wini and Atapupu in Belu district have become export hubs for the mineral. See Yemris Fointuna, "Mines bring low yield with high damage, says official", *Jakarta Post*, 11 February 2011.

⁶⁴ "Lokasi kerusuhan masih mencekam", *Kompas*, 9 March 2010.

⁶⁵ Crisis Group interview, village official, Noelbaki, 29 September 2010.

spite being long in arrears it has not cut the power supply due to fears that the community would riot.⁶⁶ Ex-militia leaders play a leadership role in these displaced communities. Local officials and police say they do not like to enter the former camps and resettlement areas without first sending East Timorese-born staff.⁶⁷ Police in Kupang district say that any dispute or crime within the camps reported to them is immediately referred to one of three former militia leaders: Eurico Guterres, Joanico Belo or Cancio de Carvalho.⁶⁸

Residents and local authorities say that the welfare of the *warga baru* is caught between a weak provincial administration that has no authority to resolve their problems and a distant capital that is no longer seized of the matter.

B. JUSTICE: THE MATERNUS BERE CASE

The return of one East Timorese-born indictee in August 2009 threw into relief the unsustainability of the uneasy status quo on justice issues. Maternus Bere was indicted in 2003 for his alleged role in the Suai church massacre in September 1999.⁶⁹ He now works in the subdistrict administration in Kobalima Timur *kecamatan* [subdistrict] on Belu's south coast, directly adjoining the Suai border. He returned to Suai in August 2009 to attend a wedding and was granted a visa by immigration officials at the Salele border post.⁷⁰ Within days he was arrested after a local resident reported his presence to the Serious Crimes Investi-

gation Team in Dili and the UN police; this was after he had attended a local mass without incident.⁷¹

Bere was then released from prison, handed over to Indonesian diplomats, and repatriated on bogus medical grounds. These steps were all illegal as they bypassed the need for a court order and gravely violated the independence of the judiciary.⁷² An investigation was later initiated by the head of the appeals court, Judge Claudio Ximenes, and the justice minister was notified that in July 2010 that she was under investigation.⁷³ In comments on national television, the president defended the action by explaining "not all legal measures support the national interest, the interests of the state".⁷⁴ The prime minister assumed full responsibility for the release. After Fretilin opposition entered a no-confidence motion in parliament, Gusmão gave an impassioned defense ahead of a vote arguing it was in the "national interest" to put good relations with Indonesia ahead of due process and he questioned the record of Fretilin or any other party on matters of justice.

Some former militia suggest Bere's return to Suai in August 2009 was a "test case", to see how the government would treat the return of one of the indicted amid widespread belief that the CTF report had concluded there would be no prosecutions.⁷⁵ It underscored the impossibility of adhering to the rule of law while committing to a policy of not initiating prosecutions against the 391 people already indicted by the serious crimes process.⁷⁶ This state of affairs has created confusion among the accused about whether they can return and whether those with outstanding indictments will be arrested.⁷⁷ While Timor-Leste police were involved in the arrest of Bere, it was UN staff and police who put the process in motion. Following the formal handover of policing responsibilities from the UN police to the Polícia Nacional de Timor-Leste (PNTL) on 27 March

⁶⁶ "We go to them and we try to talk about economics and they talk to us in turn about politics. But the politics aren't our problem ... they need to pay for electricity like everyone else". Crisis Group interview, Perusahaan Listrik Negara (State Electricity Company) official, Kupang, 27 September 2010.

⁶⁷ Crisis Group interviews, subdistrict and police officials, Babau, Kupang, 25 February 2011.

⁶⁸ Crisis Group interview, Kupang district *polres* (district command), Babau, 25 February 2011.

⁶⁹ Bere was indicted along with other members of the Laksaur militia in Suai on counts of torture, enforced disappearance persecution and deportation, including in relation to the 6 September Suai church massacre. Estimates of the number killed in the attack on the church, where some 2,000 people had taken refuge, range from 27 to 200. Bere served as the Laksaur commander in Suai town and is charged with superior criminal responsibility. His indictment is available at www.laohamutuk.org/Justice/99/09-2003MaternusBereIndictment.pdf. An account of the massacre is available in Geoffrey Robinson, "East Timor 1999 Crimes Against Humanity", op. cit., Chapter 10.10.

⁷⁰ It is not clear how carefully immigration services in Timor-Leste consult the list of indictments. A facsimile of the visa is available at temposemanaltimor.blogspot.com/2009/09/temposemanal-edisaun-158-special-kazu.html.

⁷¹ Crisis Group interview, Suai, 18 February 2011. The Serious Crimes Investigation Team is a unit of the current UN peacekeeping mission in the country and was given a mandate in 2006 to complete investigations of the remaining Serious Crimes cases. Unlike its predecessor, the Serious Crimes Unit, it does not report to the prosecutor-general and can only issue recommendations.

⁷² "Estadu TL fo dalan ba milisia abuza justisa, deputadu garganta, UN fase liman, vitima motok" ["TL allows militia to abuse justice, MPs are all talk, UN washes its hands, victims hiccup"], *Tempo Semanal*, 28 September 2009.

⁷³ "Lucia Lobato sai 'tersangka' ba kaju Maternus" ["Lucia Lobato named suspect in Maternus case"], CJITL, 9 July 2010.

⁷⁴ Transcript of interview given by President Ramos-Horta to TVTL, 23 September 2009.

⁷⁵ Crisis Group interviews, Atambua, Kupang, September 2010.

⁷⁶ Crisis Group interviews, government officials, Kupang, 27 September 2010, Dili, 12 October 2010.

⁷⁷ Crisis Group interviews, indicted militia members, Wini, Kupang, Atambua, 2010.

2011, any future arrests will be solely at the discretion of national authorities.⁷⁸

IV. RETURNS: BOLSTERING RECONCILIATION

After slowing to a trickle in the years following large-scale repatriation in 1999-2001, returns since 2009 by those living in West Timor appear to have increased and are attracting greater media attention and public discussion.⁷⁹ While some have arranged their own return, others have come back with the help of a loose coalition of NGOs on both sides of the border that has provided limited financial and logistical support and, perhaps more importantly, contacted family members and community leaders to ensure they will be welcomed back.⁸⁰ The Timor-Leste government does not currently play such a role.

A. FACTORS PROMOTING AND INHIBITING RETURN

Many of the factors that drove this community to stay in West Timor long after the independence of Timor-Leste in 2002 remain. The most important for a small segment of the original refugee population and their direct dependents is state employment. Although wage scales for public employees are higher in Timor-Leste, the promise of a steady job has kept the bulk of those employed interested in staying in Indonesia at least until their retirement.⁸¹ These include a large number of mostly low-ranking police and military. One member of the traffic police in Atambua explained that despite the appeal of higher wages with the PNTL, “we can’t go back because there would not be enough

work for us. We would just become *preman* [thugs]. Better that we wait here until retirement”.⁸²

It is difficult to measure the role intimidation plays in keeping people in Indonesia. It appears to be a far less potent factor than it was in the early years following the referendum; even leaders such as Eurico Guterres now say everyone is free to return.⁸³ But local NGOs report coercion is still relevant, particularly in the camps. One *suco* (village) chief in Timor-Leste who has made several so far unsuccessful efforts to arrange the repatriation of hundreds of villagers says community leaders in West Timor spread misinformation about the situation at home, stoking fears of political instability, and convince vulnerable compatriots that it is better to wait.⁸⁴

Another community leader still living with a population of 3,000 who fled Cassa, Ainaro, says the people are free to return but that it is better to wait for a time when they can all go back at once, along with the livestock they have bought and reared in Indonesia.⁸⁵ Whether or not explicit intimidation is still occurring, the influence of family members and traditional leaders who retain their leverage is the determining factor for many would-be returnees.

The Indonesian military has remained in charge of overseeing and approving returns to Timor-Leste, even after the end of official repatriation efforts in 2005. There is no legal basis for this continued role, which is partly a product of administrative inertia, but it means the staff of the district military command (*Kodim*) exerts continued influence over who can return. Each *Kodim* absorbed large numbers of staff fleeing East Timor after 1999, which means that those handling repatriation requests often have ties to the former militia.⁸⁶ A lengthy administrative process is focused on ensuring that people explicitly give up their right to Indonesian citizenship and promise not to apply for further benefits.⁸⁷

The lack of a clear legal basis for processing returns causes confusion. In Timor Tengah Utara, a group of families who sought to return to Timor-Leste’s Oecusse district in 2009 approached the *Kodim* but were told that there was no longer a process for arranging repatriation. The immigration office

⁷⁸ “National police resume responsibility in Timor-Leste”, UNMIT press release, 27 March 2011. For more on the progressive handover of policing responsibilities from UN police to the PNTL, see Crisis Group Report, *Timor-Leste: Time for the UN to Step Back*, op. cit.

⁷⁹ “Mereka Pilih Timor Leste daripada Indonesia”, VIVAnews, 31 January 2011.

⁸⁰ A handful of NGO workers in Timor-Leste have come together to support the return of ex-refugees and monitoring as part of a network called Grupus Servisu Fila Hikas Knuu (Working Group for Returning Home). Originally called the Working Group on Repatriation, the network changed its name to avoid suspicions its work might be politically motivated. Crisis Group interview, Maleve Guerra, Lospalos, 2 February 2011.

⁸¹ There is currently no means for drawing a state pension outside the country, something that the Indonesian government might consider relaxing for former East Timorese who choose to return.

⁸² Crisis Group interview, police officer, Atambua, 2 October 2010.

⁸³ Crisis Group interview, Eurico Guterres, Kupang, 25 February 2011.

⁸⁴ Crisis Group interview, Timor-Leste *suco* chief, Atambua, 4 October 2010.

⁸⁵ Crisis Group interview, Herminio Lopes de Carvalho, desa “Cassa”, Betun, NTT, 2 October 2010.

⁸⁶ In Belu district for example, the military staff member approving these requests is a former member of the Lospalos-based 745 infantry battalion, now disbanded.

⁸⁷ Crisis Group interview, Januario Moreira, KOKPITT, Atapupu, 21 September 2010.

also did not know how to deal with their request. Eventually, a local pastor facilitated an illegal crossing at night after first checking with the Oecusse district administrator that they would be received by their home community.⁸⁸

The Timor-Leste consulate in Kupang recently stopped issuing temporary travelling papers for those born in East Timor who wish to return to the country with the intention of applying for Timor-Leste citizenship unless they can provide a letter of recommendation from the Indonesian justice ministry. After inquiring with the ministry, a Kupang NGO was told that these letters would require a \$20 fee and six months to process.⁸⁹ This is far beyond the means of most of those who consider returning and the NGO has stopped asking for letters from the consulate.

Several factors may be now be accelerating returns:

Access to land for farming. Many of those living in West Timor are unemployed and have limited access to land. They have borrowed farmland from local communities who are now asking for it back.⁹⁰ Most of these people would have somewhere to grow crops and raise livestock in their home villages. In some places in Timor-Leste where significant numbers of people remain in Indonesia, there is also demand for returns in order to help work the land. A former CAVR staffer in Dilor, Viqueque district, explained the population in the surrounding area had declined dramatically over the course of the Indonesian occupation. It had served as a support base for pro-independence fighters in the late 1970s following the invasion and suffered from ensuing retaliation by the military. “Now we need as many people as possible to return to tend the fields”.⁹¹

Exercising property rights. For a minority of those living in West Timor who own private land, particularly in Dili, a permanent return to Timor-Leste brings the hope of once more exercising property rights over increasingly valuable land.⁹² “You can get 3,000 dollars a month for renting land for a petrol station in Dili these days. That is why peo-

ple are coming back”.⁹³ Efforts to pass legislation regarding property ownership may remain stalled until after the next parliamentary election in 2012 but a recent land claims registration process in Timor-Leste may have added some urgency to the issue. Efforts to obtain compensation from the Indonesian government have gone nowhere.⁹⁴

Fewer economic incentives for staying. In 2010-2011, many crops failed across the island due to unusually heavy year-round rains. This may make the economic prospects of return seem more attractive as it becomes clear that state benefits in Indonesia for the *warga baru* are no longer forthcoming. This is especially true for those over 60, who are eligible for monthly old-age payments from the Timor-Leste government.⁹⁵

Age. Many of those returning in recent years have been older men and women. One older woman who returned to Dilor in July 2010 brought with her the remains of her two deceased parents. After the second had died, she thought it was time to go home.⁹⁶ Many also wish to be buried in their home communities.

Cultural ties. Many are also drawn back by the pull of traditional community structures. Those still living in West Timor include the heads of many *uma lulik* (sacred houses) and other customary leaders. Their return is viewed as important to the social order of many communities.

Lack of progress on implementing CTF recommendations. Many of the more basic recommendations from the CTF report on improving the ease of cross-border movements in the interests of peaceful exchange and ensuring safe passage for citizens of both countries to visit families and burial sites have not been implemented. A border pass system, which would facilitate legal border crossings without a passport and visa, is still only in a pilot phase and limited to one offi-

⁸⁸ Crisis Group interview, pastor, Kefamemanu, 1 October 2010.

⁸⁹ Crisis Group interview, CIS-Timor staff, Kupang, 26 February 2011.

⁹⁰ Crisis Group interviews, CIS-Timor staff, Kupang, 26 February 2011; and Noelbaki village chief, Noelbaki, 25 February 2011.

⁹¹ Crisis Group interview, former CAVR staffer, Dilor, Viqueque, February 2011.

⁹² One of the more controversial inheritance cases under consideration by the Dili district court at present is the estate of Abílio Osório Soares, the last governor of Indonesian East Timor who died in 2007. The case has been under consideration by the court for over a year. Crisis Group interview, court clerk, Dili, 8 March 2011. For more on the case see “Eis anti independensia fila, Manuel lakon rai” [“Former anti-independence supporters return, Manuel loses his land”], *Tempo Semanal*, 31 March 2010.

⁹³ Crisis Group interview, government official, Dili, 10 February 2011.

⁹⁴ See Crisis Group Briefing, *Managing Land Conflict in Timor-Leste*, op. cit. Consistent efforts by Indonesian citizens to lobby for compensation for their assets in Timor-Leste have so far been unresolved. “Ganti rugi asset WNI di Timor Leste, WNI tagih janji Xanana Gusmao”, *Timor Express*, 11 October 2010; and “Tim advokasi beri dead line, serahkan data kepemilikan aset di Timtim”, *Timor Express*, 2 November 2008.

⁹⁵ According to Decree-Law no. 19/2008, which established the current pensions, applicants must be resident in Timor-Leste for two years prior to receiving the benefit. See Article 5b.

⁹⁶ Crisis Group interview, returnee, Dilor, Viqueque, February 2011. There are apparently no cross-border restrictions on the movement of dead bodies, though those who assisted the woman’s return said it was deemed wise to wait a sufficient length of time after death so as to minimise the health risks posed by the corpse. Crisis Group interview, CIS-Timor staff, Kupang, 26 February 2011.

cial border crossing at Batugade.⁹⁷ Significant progress on this and other schemes might dampen demand for returns.

Votes. There are some indications that there is an extra push for returns in advance of the 2012 legislative elections in Timor-Leste. The prime minister's party, CNRT, is seen as the party most likely to benefit from such movements, chiefly due to his outspoken support for returns. Business leaders in West Timor with links to CNRT have also played a role in trying to facilitate returns.⁹⁸ Gusmão has denied that there is any such strategy to bring home returnees before the election, explaining "we have enough votes already".⁹⁹

B. IMPLICATIONS OF RETURNS

Those who have returned in recent years have done so without any formal program of support from the Timor-Leste government. Many have been older men and women less likely to have had any active role in violence in 1999. The limited difficulties they have experienced will likely grow larger if the number returning continues to increase.

Immediate livelihood needs. Most returnees have no income beyond what they can grow. They are dependent on handouts in the initial months after returning to farming until at least their first harvest. There is no formal government food assistance; although in some areas money has been found in the Ministry of Social Solidarity budget to aid vulnerable persons. While no such allocation has yet been made, there is hope that similar funds might be set aside from the record breaking 2011 budget. One *suco* chief canvassed for support and obtained a personal donation towards the costs of instant noodles from a member of parliament.¹⁰⁰ Others have relied upon the generosity of extended family. Many suggest that three months of

assistance should be enough to tide people over until they are able to produce their own crops.¹⁰¹

Land. A large number of returns in the future will likely exacerbate land disputes. In many areas, the houses and agricultural plots known to be owned by those living in Indonesia have been left empty in anticipation of their return, or placed under the care of family members. This will facilitate the easy return of many to the land they formerly held, though it probably leaves open the door to intrafamilial disputes over inheritance.

Under a 2003 law, assets claimed by those abroad were due to be taken under state administration until further resolution. This has rarely been adhered to. As the Suai district chief of the land and property office explained: "the law is there – it just hasn't been implemented".¹⁰²

In the absence of regulation or implementation, local leaders have begun to make their own arrangements. In one *suco* known for being the birthplace of a large part of Ainaro's Mahidi militia, the land of those still living in West Timor has until now been left empty – without exception. The *suco* chief has begun to issue ultimatums and directives. To those who cannot yet return because they have *liman foer* (dirty hands), he will allow them to continue holding empty land. The sizeable group who live in Belu across the border and return annually to pick coffee on their old land will no longer be able to reclaim old assets. Instead, he will send them to live and work on empty land held by the community.¹⁰³

In other instances, local community members have taken over existing housing left empty by those who fled. This is particularly an issue in the *perumahan* (Indonesian-era public housing estates) that dot Dili and surround most large district towns. A *suco* chief in Suai explained that those families occupying the homes of families who fled to West Timor were happy to leave when their neighbours returned. They generally hold their own land elsewhere but have not yet built homes. But they are now asking for compensation of up to \$1,000.¹⁰⁴ The chief says most of the cases have been resolved already through mediation and the others will likely follow. Many expect government assistance as such payments are unaffordable.¹⁰⁵ Eurico Guterres said

⁹⁷ Under the proposed scheme, only those living in subdistricts adjoining the border between the two countries will be eligible for a border pass. This means no improvement for most on both sides of the border including, for example, the many former refugees from Ermera and Ainaro districts who cross over from Belu district to their home villages during the peak coffee-picking months. Under existing arrangements, they often cross illegally but with semi-formal recognition by border police and village officials in exchange for a small fee. Crisis Group interview, Manutasi *suco* chief, Ainaro, 19 March 2011. For more on Indonesia–Timor-Leste border arrangements, see Crisis Group Briefing, *Timor-Leste: Oecusse and the Indonesian Border*, op. cit.

⁹⁸ Crisis Group interview, Kupang, 24 February 2011.

⁹⁹ "PM Xanana: Ema ne'bee fahe dokumentus falsu konaba UNTAS laran ladun mos" ["PM Xanana: the one who published false documents regarding UNTAS does not have a clear conscience"], Forum Haksasuk, 16 March 2011.

¹⁰⁰ Crisis Group interview, Lalawa *suco* chief, Tilomar, Suai, 18 February 2011.

¹⁰¹ Crisis Group interviews, *suco* chiefs, Lalawa and Maudemo, Suai and CIS-Timor staff, Atambua, Kupang, February 2011.

¹⁰² Crisis Group interview, Suai DNTP office director, Suai, 16 February 2011.

¹⁰³ Crisis Group interview, Manutasi *suco* chief, Ainaro, 19 February 2011.

¹⁰⁴ Crisis Group interview, Maudemo *suco* chief, Salele, Suai, 17 February 2011.

¹⁰⁵ Ibid.

one home he left under the care of neighbours in Dili's Delta neighbourhood had been occupied by another family.¹⁰⁶

Security. Police and community leaders in Timor-Leste no longer view the militia as a direct threat to internal security. Instead, they see the greatest need as providing security to returnees and protecting them from potential harassment. The police district commander in Viqueque explained it was the first message he delivered to a group of recent returnees – that they should report anyone who harassed them for political reasons, who would be subject to arrest.¹⁰⁷ In Suai, local *sucu* chiefs and other leaders say they have played a similar role, barring local communities from using such language. One former CAVR commissioner said he made a point of visiting recent returnees on a weekly basis in order to hear of any problems and also to help iron out any disagreements that may arise with their neighbours. So far, he reported, there have been none.¹⁰⁸ The repatriated would nonetheless benefit from vigorous monitoring by local police and civil society.

Many recent returnees are older with few known links to 1999 violence. As the returns continue, the likelihood that those returning were directly implicated in those crimes will increase. Some left in NTT fear being deemed guilty by association after spending more than a decade away. Governments and communities should give consideration to organising local reconciliation efforts in the future that will smooth the reintegration process. This should be a task for the Public Memory Institute due to be established under draft legislation to oversee implementation of the recommendations of both the CAVR and the CTF.¹⁰⁹ Coordinating local-level reconciliation efforts with existing conflict prevention networks and monitoring of returns would be one way to help ensure they respond to local needs.¹¹⁰

¹⁰⁶ Crisis Group interview, Kupang, 25 February 2011.

¹⁰⁷ Crisis Group interview, district police commander, Viqueque, 4 February 2011.

¹⁰⁸ Crisis Group interview, former CAVR regional commissioner, Suai, 18 February 2011.

¹⁰⁹ Two draft laws, on the creation of a public memory institute (Instituto da Memória) and of a limited reparations scheme, were presented to parliament in July 2010. They were approved in general in September 2010 but discussion on the specifics of the laws has been delayed. The institute will serve as the much-delayed successor body to the CAVR.

¹¹⁰ There is some scepticism regarding the value of large-scale organised reconciliation processes and whether they are an efficient use of funds. The *bupati* [district administrator] of Belu district cited the recent marriage of a child of the former Viqueque *bupati*, who is among those indicted for 1999 crimes, to the child of an Atambua businessman as an example of a kind of reconciliation more effective than any coordinated effort because it helped strengthen existing family and cultural links. He asked that the marriage of Indonesian pop music star Krisdayanti to East Timorese businessman Raul Lemos be cele-

V. RETURNS AND THE CHALLENGE OF UPHOLDING JUSTICE

Only a small fraction of the *warga baru* in West Timor are reluctant to go back out of fear of prosecution or because of direct involvement with militias or pro-integration political fronts. Their eventual return will pose more complex challenges. More than 200 have never returned to protect themselves from prosecution under one of the many standing indictments for serious crimes committed in 1999. Along with other former militia who were not indicted and those from members of the political fronts of the pro-autonomy cause, their return is subject to ideological considerations as well. It is not that they do not openly express the desire to return – one leading former East Timorese police officer in Atambua explains “anyone who tells you he does not want to return is a liar” – but they attach conditions to their return.¹¹¹ These include assurances about how the indictments will be treated, their security, respect for their property rights, and some form of recognition of their plight as “political victims”.

A. THE RE-EMERGENCE OF UNTAS

Uni Timor Aswain (“Union of Timorese Heroes”, know by its acronym UNTAS) is the leading political grouping of East Timorese Indonesians.¹¹² It was originally set up in January 2000 as the political wing of militia and pro-integration political figures who had fled East Timor. It initially sought to reject the results of the referendum and block the former province's independence. It lost momentum after the country's independence in May 2002 rendered this goal futile. It was handed over to a “caretaker”, Armindo Mariano Soares, who was speaker of the NTT provincial parliament, the highest serving elected official within Indonesia born in East Timor.

UNTAS was resurrected in November 2010 after Eurico Guterres and Filomeno Hornay wrested control from Soares, claiming he had done little to support the *warga baru* and that it was time to renew the organisation's role as a collective voice for those of East Timorese origin in Indone-

brated in both countries to further strengthen relations. The risk is that this form of reconciliation extends only to members of the elite. “Lopes: Rekonsiliasaun entre Belu ho TL *la presija rekayasa*” [“Lopes: Reconciliation between Belu and TL does not need to be engineered”], *Suara Timor Lorosae*, 24 January 2011.
¹¹¹ Crisis Group interview, senior police official, Atambua, 2 October 2010.

¹¹² The name is an Indonesian-Tetum hybrid that means “Union of Timorese heroes”. A series of press releases and a manifesto are available on the organisation's website, www.untas.org. It does not appear to have been updated in recent years.

sia.¹¹³ It was in part a generational succession – Soares is in his sixties, while Guterres is just 37. It was also an effort to develop a unified forum for requesting support and assistance from Jakarta. A succession of different interest groups has claimed to do this but generally failed to produce results, often hobbled by leadership battles.¹¹⁴ Even UNTAS has not escaped such splits as Soares says he continues to head his own version of the group, with the same name.¹¹⁵ The mainstream UNTAS claims a broader following of 100,000 – this is likely considerably inflated, but in the absence of clear figures it gives the appearance of being an impressive bloc of potential voters.¹¹⁶

As an organisation, it takes an odd stance on the independence of Timor-Leste. Its leaders speak of their future return to the country and explain “there was never anyone who didn’t want independence”. In an exercise in revisionism, they say the only difference was with regard to how and how quickly it should have been realised. These days, they distance themselves from the “more radical” positions of the immediate post-referendum period.¹¹⁷ Yet despite indications that it might recognise independence at its November 2010 congress, UNTAS did not formally do so – likely a reflection of reticence of some more hardline members – and the old 2000 manifesto remains valid.¹¹⁸

Two primary barriers to return exist for many UNTAS members. The first are the 211 indictments issued by the Serious Crimes process that apply to East Timorese-born suspects. Many of these have some connection to UNTAS and those who are not indicted see the fight to “erase” the list as partly their own cause.¹¹⁹ The second barrier to return is more ideological. They want official recognition of the pro-integration movement, including presentation of the official results of the 1999 referendum for them to sign

and formal recognition of their right to return, even though this already exists in law.¹²⁰ One leader suggested this would best be achieved through an act of parliament.¹²¹

More than ten years after the referendum, the central government in Indonesia is no longer as interested in the welfare of this very small subset of its more than 240 million citizens. Calls for special attention have largely gone unheeded since the 2005 decision to end their status as *pengungsi*. A reinvigorated UNTAS may be of more interest to political parties courting this local constituency. Attempts to mobilise this bloc of votes have been ineffective. After the decision to cut them off from further aid, it is unclear whether there are now any other ways to skim benefits targeted at the *warga baru*, who are treated much like other citizens.

Small but increasingly wealthy Timor-Leste now has magnetism not present since the post-referendum disarray for those with connections and influence. The annual state budget doubled in 2011 to \$1.3 billion and the government commitment to cash transfers and moving construction contracts to small businesses outside the capital present attractive opportunities for those with influence. Former political troublemakers are perceived to have been rewarded with government contracts, and the ex-militia and former pro-integration political figures may be seeking to follow their lead.¹²² While the passage of a land law before the 2012 election is now becoming unlikely, the prospect of a deadline for returning and claiming private holdings before the new state issues land titles is also a draw.

News of UNTAS’s resurrection has understandably caused alarm in some quarters in Timor-Leste, and has prompted rumours that “operatives” are working on its behalf inside the country.¹²³ Helping drive such rumours is a document of dubious origin allegedly produced at the organisation’s first congress in January 2000 that lists a number of “soft” strategies for reversing the results of the referen-

¹¹³ Crisis Group interview, Filomeno Hornay, Kupang, 26 February 2011.

¹¹⁴ Examples include the Committee for Political Victims of ex-Timor Timur (KOKPITT), the Indonesian Citizens Humanitarian Forum (FKWNI), and the Front for ex-East Timorese Fighters.

¹¹⁵ Crisis Group interview, Armindo Mariano Soares, Kupang, 25 February 2011.

¹¹⁶ Guterres serves as a party vice president of Indonesia’s PAN (Partai Amanat Nasional or National Mandate Party). His bid for a national assembly seat in the 2009 elections was unsuccessful. Soares was formerly a Golkar member but in 2009 ran instead on the ticket of the Gerindra party, headed by Prabowo Subianto, a former Kopassus and Kostrad commander who was instrumental in fostering the development of many East Timorese militia and was several times directly engaged in East Timor operations, including the Kraras massacre of 1983.

¹¹⁷ Crisis Group interview, Eurico Guterres, Kupang, 25 February 2011.

¹¹⁸ Crisis Group interviews, Eurico Guterres, Filomeno Hornay, Kupang, 25-26 February 2011.

¹¹⁹ “Daftar 401 nama SCU PBB – berjuang hapus pelanggaran HAM”, *Timor Express*, 2 June 2010.

¹²⁰ The results were announced by the United Nations Secretary-General in New York on the evening of 3 September 1999 (4 September in Dili). Eurico Guterres explains that the pro-integration leaders believe they should have been presented with the results and given a chance to acknowledge them. Crisis Group interview, Eurico Guterres, Kupang, 25 February 2011.

¹²¹ Crisis Group interview, Filomeno Hornay, Kupang, 26 February 2011.

¹²² A recent press article explored how rice distribution contracts granted in 2011 and originally designated by the prime minister to be given solely to veterans of the resistance allegedly ended up in the hands of those linked to the former Indonesian administration, including the family of the last provincial governor, Abílio Osório Soares. See “Into whose hands is the money going?”, *Tempo Semanal* online, 18 February 2011.

¹²³ See for example “Fretilin alleges CNRT’s professional union is full of UNTAS”, *Diario Nacional*, 14 October 2010.

dum, including promotion of Indonesian language and business within Timor-Leste and political representatives in government.¹²⁴ The inclusion in government in Dili of a number of notable former pro-integration figures was lauded by some as a positive step towards reconciliation, but others may see it as a suggestion of this alleged plan being put in place.

While UNTAS members claim considerable support inside Timor-Leste from friends and family, they were unable to provide details. Rumours of cross-border “operations” are more likely scaremongering and one member said there could be no UNTAS colleagues in Timor-Leste because their presence would constitute recognition of the country’s independence.¹²⁵ The recent publication by a student group in Dili of falsified documents claiming a number of current AMP figures remained members of the organisation sparked alarm in the local media. Timor-Leste’s leaders quickly moved to silence the claims, while local NGOs suggested that more discussion of the issue should be welcome.¹²⁶ In a sign that the leadership may be out of step with popular opinion on the issue, the president only two weeks later began a public address to the police force by welcoming Indonesian military and police in Indonesian.¹²⁷

The potential return of any of the political leadership from the younger generation of UNTAS leaders could still prove explosive and it is unclear how it would be handled. The spokesperson of the CNRT party explained that “this is 100 per cent a democracy, and everyone has the right to return”.¹²⁸ There have already been rumours of renewed involvement in Timorese politics by Eurico Guterres – Armindo Soares says that during a visit to Atambua in August 2010, Gusmão asked him whether it was true that Eurico was building a party inside Timor-Leste.¹²⁹ Eurico said that while he has not yet made any such effort, he could not imagine a future in the country without entering politics.¹³⁰

This political elite is also interested in some form of recognition. They view themselves as *korban politik* (political victims) who were forced to flee East Timor not because

of fears of prosecution or attacks by international forces, but because they were persecuted for their beliefs.¹³¹ They now want to come back on some kind of equal footing with the pro-independence leaders they fought. “There is not a single person in East Timor who is not guilty for some deaths” is a common refrain and they want a broad-based reckoning for all political violence in the country since Portuguese decolonisation began (or before).¹³² While over the years there has been some acknowledgement from pro-independence leaders that some among their ranks may have also committed crimes, since independence there has never been any comprehensive move to investigate those responsible.¹³³

That so much of the ex-militia’s anger is caught up in the civil conflict that accompanied the hastily arranged decolonisation efforts that followed Portugal’s 1974 Carnation Revolution and the civil conflict that preceded the Indonesian invasion in December 1975 is in part an opportunistic effort to deflect attention from the magnitude of the crimes they committed in 1999. It is also evidence of the corrosive impact of this violence more than 35 years later. The former pro-integration elite and the current East Timorese leadership alike consistently cite the lack of accountability for crimes committed prior to 1999 as an indication of the inability to ensure accountability in the present.

B. OPTIONS FOR RESOLVING THE INDICTMENTS

Efforts to develop a consensus among political parties or within government on how to move forward with justice and reconciliation have so far failed. Parliament has so far not proved to be an adequate forum to discuss the issue. A “national consensus dialogue” mediated by a former Norwegian bishop, Gunnar Stalsett, in 2008-2010 produced no agreement. It is unclear how policies on the issue will be created and after the Maternus Bere case, it is not even clear whether the constitution will be followed. The danger is that the ambiguity on justice for crimes committed in 1999 rests on a series of contradictory premises. Eventually these contradictions will have to be resolved

¹²⁴ Crisis Group interview, Fretilin MP, Dili, 22 July 2010.

¹²⁵ Crisis Group interview, Basílio de Araújo, Jakarta, 28 March 2011.

¹²⁶ “UNTAS rekonese independensia, Fretilin eziji fiskaliza inteljenisa” [“UNTAS recognise independence, Fretilin call for more attention to intelligence”], *Timor Post*, 16 March 2011.

¹²⁷ Speech given by President José Ramos-Horta on the eleventh anniversary of the PNTL, 27 March 2011.

¹²⁸ Crisis Group interview, Aderito Hugo da Costa, CNRT spokesperson, Dili, 14 October 2010.

¹²⁹ Crisis Group interview, Armindo Soares, Kupang, 25 September 2010.

¹³⁰ Crisis Group interview, Eurico Guterres, Kupang, 26 September 2010.

¹³¹ International forces began to arrive in East Timor on 20 September 1999 under UN mandate and were replaced by a UN peacekeeping force in February 2000.

¹³² Crisis Group interviews, Martinho Fernandes, Joanico Belo, Eurico Guterres, Kupang, March 2010; Simão Lopes, Wini, 18 March 2010; and Sico Naruk, Atambua, 21 September 2010.

¹³³ See Chapter 6, *Chega!*, op. cit. for an analysis of those human rights violations reported to the commission. Some crimes committed by independence supporters were investigated under the Serious Crimes process. For an account of some of the extra challenges involved in effective trials of such cases, see the trial of Victor Manuel Alves in David Cohen, “Indifference and Accountability”, op. cit., pp. 63-64.

and there is a risk, as seen in the Bere case, that decisions may be made quickly, without consultation, and in violation of existing laws. A number of possible scenarios are outlined below along with some of their implications.

International tribunal. Twice recommended by independent UN reviews in 2000 and 2005 as the only way to achieve full justice for 1999 crimes, an international tribunal is at present politically unfeasible. The president and the prime minister have consistently opposed the idea as they say it will harm relations with Indonesia, previous tribunals have been costly and ineffective, and it does not fit with Timorese notions of “justice”. It is also unclear if such a body would be supported by the UN Security Council. Domestic pressure for it still exists within civil society through forums such as the National Alliance for an International Tribunal, which claims that it is the only way to recognise international obligations to uphold justice and move beyond impunity.¹³⁴ Elsewhere support is limited, as the larger political parties have looked for ways to either develop amnesty provisions or limit prosecutions to the gravest crimes.

Full prosecution within domestic courts. From many perspectives, this would be an optimal outcome – recognising the right of East Timorese who fled in 1999 to return and accept charges of criminal responsibility within the domestic legal system. It would also offer a real challenge to perceived impunity. The Serious Crimes indictments all remain valid within Timor-Leste’s legal system; a committed, well-resourced prosecutor-general has the opportunity to push these cases through where suspects return to the country. There are doubts about the capacity of the legal system to handle any significant arrival of the indicted as its courts currently have less than one Serious Crimes case per year. Government officials cite the importance of respecting Indonesian sovereignty as a reason for not trying its citizens, but if the more than 200 East Timorese-born indicted want to return permanently, they will have to do so as Timorese citizens and will be subject to local laws. The inequity of trying only Timor-Leste citizens when those in Indonesia will likely never face prosecution also makes this difficult.

Full prosecution – with extensive use of pardons. One scenario for drawing back many of the indicted while pursuing prosecutions would be the offer to return with private assurances of a pardon or commuted sentence. This would follow a now-established pattern of granting

pardons for political violence, often as a foregone conclusion such as in the trial for the February 2008 attacks on the president and prime minister.¹³⁵ Of those tried in the courts since 2000, 23 of 85 convicted for crimes from 1999 have been released through presidential pardons and commutations. The most notable was the pardon of Joni Marques in May 2008, who had been originally sentenced in 2003 to 33 years in prison.¹³⁶ His release caused outrage among civil society groups but he has now gone home to a rural village in Lautem district where community members and local police say his release has posed no problems.¹³⁷ Some parliamentarians are open to negotiating the terms of a future judicial process.¹³⁸ The challenge would be developing consensus on the terms of such an arrangement, given parliament’s reluctance to formally debate this issue.

Selective amnesty. Another possibility is agreement on what one senior party official called a “selective amnesty” that would allow some to return and receive absolution while the door would be unofficially closed to others. The criteria for such an amnesty have not yet been determined but would likely classify the crimes according to their gravity. One proponent explained this would offer a means for separating those who were caught up in the violence of 1999 from “real political corruptors”. Again, in view of the difficulties in establishing a consensus so far, there are dangers that if the terms of such an amnesty were decided by only a few leaders it would again politicise judicial process in Timor-Leste. Such decisions may also not last if a new government takes power and seeks different terms. This would likely allow rifts between parties over the 1999 violence to fester rather than heal.

¹³⁵ Long before the trial began the president explained that he had forgiven the man who shot him and in December 2009, several months before the end of the trial, he promised that all convicted would be pardoned. “PR Horta promote fo indulto ba Salsinha Cs” [“President Horta promises to pardon Salsinha’s group”], *Suara Timor Lorosae*, 30 December 2009.

¹³⁶ Marques was found guilty of crimes against humanity for acts including the execution-style killing of five nuns and priests and four others in Lautem in September 1999. An account of these murders is available in Geoffrey Robinson, “East Timor 1999 Crimes Against Humanity”, op. cit., Chapter 10.15. Marques received a first commutation in 2004 from President Xanana Gusmao, and again in May 2008 from President Jose Ramos-Horta. In the second instance, Marques had his sentence further reduced along with those who had been serving time for more than eight years. See Presidential Decrees 21/2004, 19 May 2004, and 53/2008, 19 May 2008.

¹³⁷ Crisis Group interviews, Luturula *aldeia* chief, Leur, 2 February 2011; Lautem district police chief, Lospalos, 1 February 2011.

¹³⁸ Crisis Group interview, MP and parliamentary bench chair, Dili, 18 March 2011.

¹³⁴ See for example, the February 2010 letter of the National Alliance for an International Tribunal to the UN Security Council, available at www.laohamutuk.org/Justice/ANTI2Feb10.htm or the letter of La’o Hamutuk, member of ANTI, to the UN Security Council dated 22 February 2010 and available at www.laohamutuk.org/Justice/10LHtoUNSC22Feb.htm.

Amnesty. A full amnesty would eliminate the prospect of current or future prosecutions for 1999 violence. It would also violate the country's obligations to try crimes against humanity. The president has been its greatest public proponent, pushing as recently as 2009 for an amnesty for all crimes committed between 1974 and 2008.¹³⁹ An amnesty may be a more dangerous prospect than its proponents admit. "Revenge violence", enacted by victims or their families against the unpunished criminals of 1999, has been exceedingly rare to date, but even if the results of formal justice have so far proved elusive, they have remained feasible. Successful prosecutions have remained a future possibility. A full amnesty would eliminate this legal avenue. Any amnesty that foreclosed the possibility of domestic prosecutions of crimes against humanity would also violate Timor-Leste's responsibilities under international law.¹⁴⁰

Status quo. Maintaining the current ambiguity over the status of the indictments and future state policy on the subject is undesirable if the government is committed to upholding the rule of law. It is also likely to prove unsustainable. Prohibiting the entry of those who are indicted by not granting them visas would buy some time. Their only recourse for visiting the country would then be to return permanently and accept Timorese citizenship or to cross illegally. For now, the indicted appear to accept that this will render them susceptible to prosecution. This will be a difficult situation to maintain should anyone choose to act as a "test case" in the future. Any high-profile prosecution would likely agitate the ex-militia in West Timor.

A broader question is the nature of "demand" for justice for crimes committed in 1999 and the implications of a failure to achieve it. The issue is complex because crimes from before 1999 have never been investigated and many

are uneasy about prosecuting East Timorese suspects for actions taken under the influence of Indonesian military figures who are unlikely to ever face prosecution. The president argues there is little popular demand for justice, and thus little justification for incurring the costs such efforts would entail. He says that in trips around the country no one raises the issue of justice, instead asking for better roads, jobs and food.¹⁴¹ But if asked, some Timorese have given widespread support for holding perpetrators to account.¹⁴² It is difficult to assess what significance this apparent silence carries, given how little public discussion of the violence there has been since the close of the CAVR community reconciliation programs and how foreign a concept an international tribunal must seem to many.

For many, the importance of recognising those who died in support of independence may be more important than judicial punishment of the individuals responsible for their deaths. Still, the sentiment is difficult to reconcile with the return of ex-militia from Indonesia, especially if they go unpunished. One Lospalos resident who lost two brothers at the hands of a militia member who has escaped judgment noted the difference between making a personal decision to accept the return to the community of a man who is a distant family member and long-time neighbour and accepting a political decision to grant amnesty.¹⁴³ The apparent forgiveness and the striking lack of "revenge violence" directed at those implicated in 1999 crimes to date is not necessarily an indicator of what might follow future decisions on amnesty.

VI. NEW MOMENTUM

A public commitment to prosecuting 1999 crimes for which indictments are outstanding or investigations continuing would be an important step towards upholding the rule of law in Timor-Leste and managing the threat of instability posed by the return of the former militia leaders. At this point such a commitment is unfortunately unlikely. It would

¹³⁹ The last big push was made directly after the Maternus Bere arrest in the hopes of announcing an initiative at the ten-year anniversary of the referendum on 30 August 2009. Consensus was not reached.

¹⁴⁰ Timor-Leste became a State Party to the Rome Statute in September 2002. This has no direct impact on the subject of 1999 violence as it predates the statute's entry into force, but the document includes an affirmation "that the most serious crimes of concern to the international community as a whole must not go unpunished and that their effective prosecution must be ensured by taking measures at the national level and by enhancing international cooperation" (Preamble). Indonesia is not a signatory of the Rome Statute. Failure to prosecute would also likely violate the terms of the International Covenant on Civil and Political Rights, of which both Indonesia and Timor-Leste are signatories, though it does not mention crimes against humanity explicitly. An analysis of how amnesties may be illegal under international law is contained in "Rule-of-Law Tools for Post-Conflict States: Amnesties", Office of the UN High Commissioner for Human Rights, 2009.

¹⁴¹ In comments after Bere's release, he explained: "If the people's number one concern is 1999, I've never heard about it during my trips to every district, speaking with thousands of people I've never heard one word about 1999 or 1975. Clearly there are victims, victims who we respect, but they want to receive recognition from the state, for the state to undertake some kind of recognition. The victims want support for those who haven't found work and that is the state's obligation, but I've never heard victims say they want an international tribunal, I've never heard that". Transcript of interview given by President Ramos-Horta to TVTL, 23 September 2009.

¹⁴² "Crying Without Tears: In Pursuit of Justice and Reconciliation in Timor-Leste: Community Perspectives and Expectations", International Center for Transitional Justice, August 2003.

¹⁴³ Crisis Group interview, Lospalos, 2 February 2010.

also be imperfect, given the difficulty in achieving an equal application of justice due to Indonesia's unwillingness to prosecute the indicted military generals, Timor-Leste's unwillingness (or even inability) to prosecute crimes committed by supporters of pro-independence, and the presidential pardons already meted out for some of the most serious violations.

Comprehensive discussion in parliament on prosecutions and reconciliation between supporters of independence and integration is clearly needed but may yet be far off. A discussion looks unlikely before the parliamentary elections in 2012 as parties seek to avoid controversial issues. The re-emergence of UNTAS could push reconciliation into the campaign spotlight which, if handled responsibly by the political parties, would be a positive step in allowing voters to express their thoughts on this neglected subject. So far, however, the official response has been to silence debate.

A number of steps could be taken now to ensure that returns from West Timor strengthen reconciliation efforts rather than destabilising the situation further. The priority should be for Indonesia and Timor-Leste to institute a clear process for returns, likely through a memorandum of understanding between the two states. This would minimise red tape and allow a far larger number of people to make their own decision regarding return. The influence of customary leaders and ex-militia that keeps some communities in West Timor could be countered with clear information about the procedures for return and more structured assistance. While providing limited transportation and rations to returnees costs money, it would move reconciliation forward, build confidence on both sides of the border, and lessen the threat of future instability. Most importantly for Timor-Leste, it would weaken the leverage still held by a small group who committed crimes against humanity in 1999.

A challenge for the prime minister will be to transform the issue of returns from one perceived to be under his personal remit into a broader government policy backed by all parties. Gusmão still commands a great deal of personal influence over the subject – even Eurico Guterres admits, “it is all up to Xanana”.¹⁴⁴ He has reportedly encouraged returns in his personal capacity but not yet as a matter of formal government policy.¹⁴⁵

Thinking about how to promote reconciliation at community level should begin immediately. Ideally this would happen following further debate and passage of bills proposing

the establishment of a Public Memory Institute and a reparations scheme currently before parliament. If discussion of these laws is further deferred, other existing forums, including the conflict prevention directorate of the Secretariat of State for Security and the peacebuilding unit within the Ministry of Social Solidarity, should plan to support the right of all those born in East Timor to return without fear.

Much more needs to be done to open up political space within Timor-Leste for those who supported integration with Indonesia. There is broad awareness of the need to protect the physical safety of future returnees but not necessarily their constitutional rights to property and political expression. Former UNTAS members and other pro-integration sympathisers have sometimes had trouble claiming land, and their constitutional right to gain Timorese citizenship is even challenged.¹⁴⁶ This is a consequence of failing to prosecute the Serious Crimes cases. Instead, unresolved frustrations are directed at former political opponents who were not involved in violence. Some have suggested banning the public use of terms such as “opportunist” and “pro-autonomy” as discussed above, but the legal basis is questionable; nor would it eliminate unresolved tensions. It is more important to enforce clearly the law so as to guarantee the rights of returnees. This will be especially important in property ownership matters.

Another related issue is the need to finalise state policy on the benefits and recognition afforded to veterans of the independence struggle. There is a widespread perception, acknowledged by the government, that it remains unresolved and that veterans of the independence struggle need greater financial and symbolic recognition. Veterans have refused to allow discussion of the draft laws on the Public Memory Institute and reparations to proceed before settling of their payments.¹⁴⁷ Tensions among victims are

¹⁴⁶ See the discussion of the recent land claim by Norberta Belo, former UNTAS member and now health ministry civil servant, in Crisis Group Briefing, *Managing Land Conflict in Timor-Leste*, op. cit.

¹⁴⁷ The matter of how to give effect to Article 11 of the Constitution (“Valorisation of Resistance”) remains unsolved despite a 2006 law establishing pensions for veterans and several subsequent revisions to the law. The primary challenge lies in determining eligibility for pension payments, especially in verifying claims for those who were part of the clandestine front. In March 2011, the prime minister suspended publication of a comprehensive list of veterans pending the creation of a veterans council. “Xanana suspende publikasaun lista veteranus” [“Xanana suspends publication of the veterans’ list”], *Timor Post*, 25 March 2011. The process has seen several delays; a March 2010 government press release described a decision to extend the registration period as following “difficulties found in the process, namely in regards to the inexistence of valid documentation from the part of ex-combatants” and introduced new forms of identification. See “Meeting of Council of Minis-

¹⁴⁴ Crisis Group interview, Eurico Guterres, Kupang, 25 February 2011.

¹⁴⁵ As prime minister, he did approve a small grant request in 2010 for Grupu Fila Hikas Knua, the group of NGOs working to support returns.

also likely to rise if there are large numbers of returns without further movement on reparations.

VII. CONCLUSION

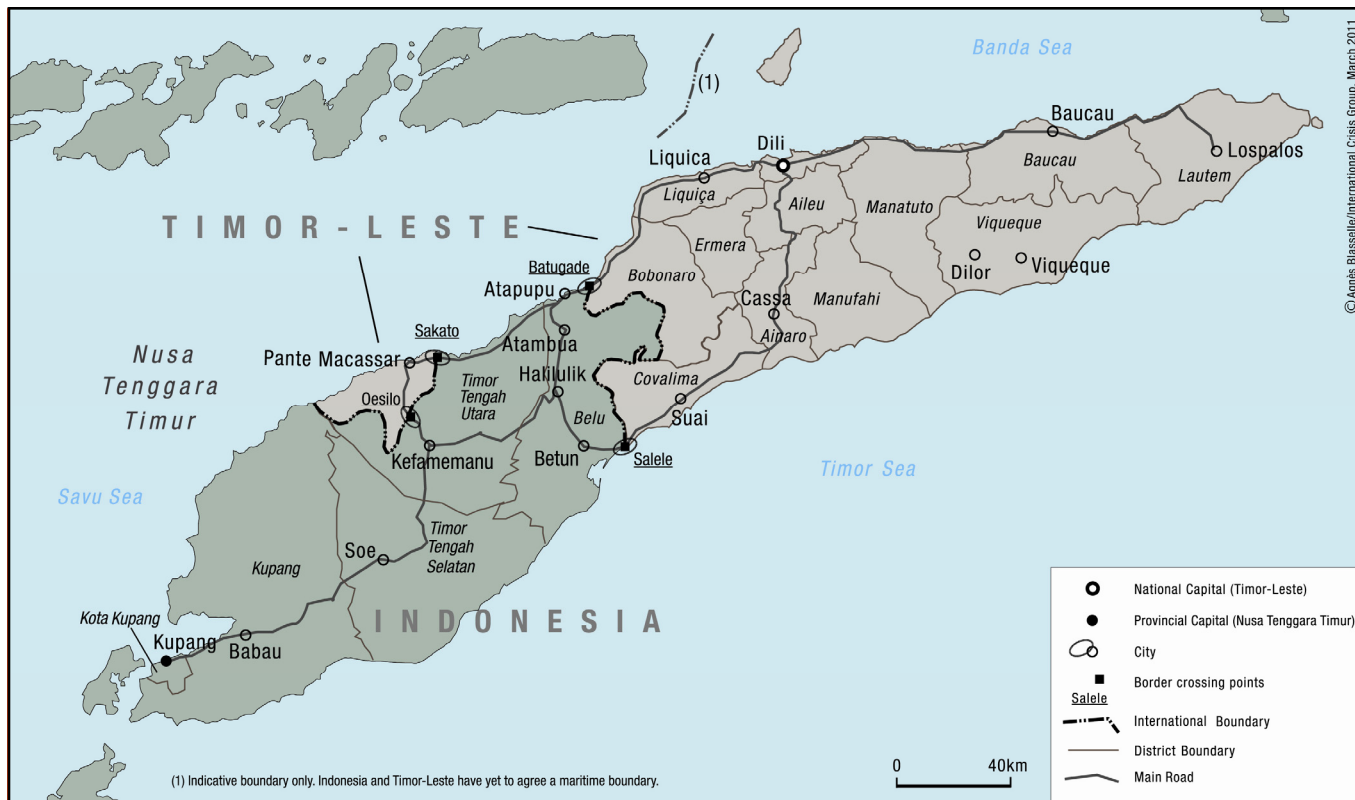
For Timor-Leste, deciding what it will actually mean to work towards or achieve justice and reconciliation will not be easy as there are often wide gaps between the perspectives of its leaders and citizens as well as between perpetrators and victims. Such difficult questions will need to be answered by taking into account a web of competing interests bequeathed by decades of conflict. Timor-Leste wants good relations with its biggest neighbour, but also stable domestic politics. While the international nature of crimes committed in 1999 cannot be forgotten, the two states directly implicated have decided not to prosecute each other's citizens. There is little Timor-Leste can do to influence Indonesia's position. It must now examine the unresolved impact of the civil nature of this conflict, which has been frozen in recent years by the displacement of many of those who supported integration across the border. Their eventual return could upset an already fragile political situation. The country must now take steps to prepare for this eventuality by resolving the ambiguities left behind by a violent history.

In the long term, a commitment to upholding existing legal and constitutional obligations provides the best way forward. This involves prosecuting existing indictments, respecting the right of those considering return to citizenship, and guaranteeing the rights of those who have returned to political expression and property. The former refugees living in West Timor must recognise that their right to full enjoyment of the privileges of Timor-Leste citizenship hinges upon accepting the attendant responsibilities, including submission to a judicial process for alleged past crimes for pending or possible future indictments. Anything less than full prosecution of standing indictments must be the product of parliamentary debate rather than bargaining by those looking to return. Determinations of the "national interest" should be made after broad-based discussion rather than be led by political decisions by prominent leaders such as the president or the prime minister.

Dili/Brussels, 18 April 2011

APPENDIX A

MAP OF TIMOR-LESTE



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