

## East Timor and Indonesia Action Network (ETAN) and West Papua Advocacy Team (WPAT)

### Comments on the U.S. Department of State Country reports on Human Rights Practices for 2008

The 2009 US Department of State Human Rights reports for [Indonesia](#) and [Timor-Leste](#) (East Timor) cover events during the calendar year 2008. The critique below largely focuses on questionable statements and omissions or areas where we feel the report should have gone into more depth. We do not necessarily highlight where the reports gets it right on the human rights records and problems confronting both countries.

#### **CTF and Impunity for Serious Crimes Committed in Timor-Leste in 1999 and before**

The [Indonesia](#) and [Timor-Leste](#) reports both state that Indonesias President Susilo Bambang Yudhoyono accepted all the recommendations of the bi-lateral Commission on Truth and Friendship (CTF). However, President Yudhoyono [refused to articulate the recommended apology](#) for Indonesian actions in Timor in 1999. (See page xx of CTFs final report which says, Commission recommends for official **acknowledgment** through expressions of regret and **apology** for the suffering caused by the violence in 1999 [emphasis in original])

Both governments declared that the CTF process would close the books on the serious crimes of 1999. [Given the importance placed on the CTF](#), the State Dept. should have devoted greater attention to the flawed process that produced the CTFs final report and the wide-ranging criticisms from human rights organizations in both countries and internationally. Ultimately, the CTF refused to recommend amnesties to any individuals. However, because its mandate allowed such recommendations prevented the UN from cooperating. The nature of the hearings, limited witness protection and the failure of the Indonesian military to open most of its files were all the sources of criticism. The State Dept. should also have noted that while the report was officially released, it has not been widely disseminated. The parliaments of the two countries have yet to address the CTF report.

The State Department report correctly notes that the CTF assigned institutional responsibility for such violations to the Indonesian Armed Forces. However, the CTF report also concluded that the Indonesian police and civilian government also bore institutional responsibility for these crimes.

Finally, the State Dept. report ignores the near-universal impunity for crimes committed during the Indonesian occupation from 1975-1999, as well as Indonesias unwillingness to acknowledge the need for accountability or to cooperate with any efforts at justice for these crimes. Efforts and processes to achieve accountability for serious crimes

committed in Timor-Leste from 2006 are addressed by the State Department. However, the continued failure of the governments of Indonesia and Timor-Leste and the international community to achieve accountability for the massive rights violations during the prolonged Indonesian state-sponsored illegal occupation is not mentioned. This de facto amnesty should have been discussed in the Amnesty section in 1(d) of the Timor-Leste chapter and such a section should have been included in the Indonesia chapter.

The Indonesia chapter describes the 2008 acquittal on appeal of militia commander (and current gubernatorial candidate) Eurico Guterres as based on new evidence that reportedly proved his innocence. The report could have explained that the Indonesian Supreme Court decision [relied heavily on the widely discredited militarys version](#) of events in 1999.

As in previous years, the State Department report fails to acknowledge that some of the Timor-Leste's [Commission for Reception, Truth and Reconciliation's](#) (known as the CAVR) recommendations are directed at the United States and Indonesia and that both governments have yet to formally respond to the report.

## **TIMOR-LESTE**

The [2009 US Department of State Human Rights Report for Timor-Leste](#) (for events in the calendar year 2008) covers a wide range of issues.

### **Judiciary**

The report describes the resource and other limitations of Timors court system, but should have addressed political interference with the functioning of the judiciary. The Government openly defied the ruling of the Court of Appeals regarding the State Budget and terminated the contract of the judge who authored it. The President of the Superior Judicial Magistrates Council (which manages the judicial system, including hiring and firing judges) is the Secretary-General of the Prime Ministers political party. The President, Prime Minister, and President of Parliament made comments intended to discredit the authority and competence of the judicial system. Prominent officials also regularly made comments during the year intended to influence who should and should not be prosecuted for, among other incidents, the attack on the President in 2008 and the events of 2006.

### **Property Ownership and Corruption and Transparency**

The way the national land law, intended to resolve property ownership, is being implemented (Section 1(f)) has raised fears that customary or community land ownership is not being properly taken into account. (USAID is funding the land titling

project *Ita Nia Rai*.) Also, although the Constitution prohibits non-Timorese from owning land, some Memoranda of Understanding (MOU) signed between the Government and foreign companies could violate that prohibition. While the report accurately notes that many Dili residents arrived as internal migrants after 1999 and occupied empty houses or built houses on empty lots, the cause of this - widespread, systematic TNI and militia terror and arson should have been included. Disputes over occupancy of property in Dili, are an ongoing consequence of Indonesia's illegal occupation and destructive exit from Timor-Leste.

While officials have acknowledged some corruption, the extent is far wider than they admit. No anti-corruption law clearly defines what is permissible; as a result, conflicts of interest abound, and contracts are often given to companies headed by relatives of public officials. Many questions have been raised about the transparency and fairness of tender processes, among them the nearly \$400 million contract for heavy oil power plants signed in October with a Chinese company. Secret agreements with Malaysian and Korean petroleum companies and MOUs with Indonesian and Australian agrofuels companies may unconstitutionally promise to sell land to foreigners.

Since the State Department report was completed the government announced it will replace the Ombudsmans anti-corruption mandate with a new Anti-Corruption Commission of unknown utility. None of the 16 cases referred by the Ombudsman to the Prosecutor-General last year have been brought to court.

While the law may stipulate that decisions by the Court of Appeals (which serves as the Supreme Court until one is established) are to be published in the official Gazette, it has not happened. The Gazette is not currently available online, although parts of it have been from time to time. In general, the internet availability and timeliness of government information has declined over the last few years, making broad engagement in policy discussions difficult. As the report implies, the failure of the Gazette to be widely and cheaply available in both required languages (Tetum and Portuguese) hampers the rule of law and public participation.

## **Defamation**

The UN executive order decriminalizing defamation was ruled invalid (on legislative hierarchy grounds) by the Court of Appeals in 2004. The defamation charges against [journalist Jose Belo](#) were filed on a complaint from the Minister, not the Ministry, of Justice.

## **Other Issues**

There is pervasive bias against homosexuals, keeping nearly all closeted. People with HIV/AIDS are largely unidentified due to lack of public information and testing. HIV

may be far more widespread than public health officials admit, according to some experts. AIDS casualties are listed as dying from tuberculosis or other opportunistic diseases. The lack of access for HIV-positive people to information, testing and health care, combined with common extramarital sexual relations, will likely kill many people in coming years.

A very large portion of the work force is part-time or informal, and do not receive wages on a monthly basis. In addition, the Government employs large numbers of local workers to clean streets and neighborhoods for \$2/day (\$3/day in cities), less than the \$85/month cited by the State Dept/, assuming 20 workdays per month.

In opening paragraph: President Ramos-Horta was wounded by a single gunman, not in "an exchange of gunfire."

## **INDONESIA**

The [2009 US Department of State Human Rights report for Indonesia](#) (for events in the calendar year 2008) is relatively comprehensive and generally lends credibility to the various sources cited in the report. In this regard, the current report for Indonesia is more candid and more persuasive than previous Indonesia reports.

The report candidly and in some detail identifies Indonesian military (TNI) misconduct and lack of accountability. The State Department details TNI "complicity" in people trafficking, its brutal treatment of peaceful dissenters, and TNI torture and killing of citizens. The TNI's corrupting influence on the Indonesian judiciary and the lack of transparency in military judicial proceedings reveal the TNI's pernicious impact on Indonesian democracy. TNI officers refuse to cooperate with Indonesias official National Human Rights Commission (Komnas HAM) in addressing past TNI human rights crimes. Coincidentally, just days before the release of the State Department report, [a Komnas-HAM commissioner blamed](#) the Attorney-Generals office and President Susilo Bambang Yudhoyono for problems establishing justice for human rights victims. The commissioner suggested that the former general had helped shelter TNI officials accused of human rights violations, according to the Jakarta Post.

The report's summary conclusions, however, fall short of the reality described in the report. The report's claim that "civilian authority maintained effective control of the military although the fact that the Indonesian Armed Forces continued to be partially self financed weakened this control" fails to appropriately characterize the rogue conduct and impunity of the TNI. The report also fails to acknowledge in any detail the extent of the TNI's "self financing" which includes illegal logging, extortion and drug dealing. It also fails to note the patron role the elements of the TNI exercises over militia and other groups such as the Islamic Defenders' Front (FPI), which the report accurately describes as physically attacking those it disagrees with. The report's failure to highlight

the absence of reform of the Indonesian military, especially its continued unaccountability before the judiciary is a long-standing problem in the State Department's human rights reporting regarding Indonesia.

Confusingly, the report says The government or its agents did not commit any politically motivated killings; however, there were reports of killings by security force personnel. The report then documents killings by security personnel at political demonstrations.

## **Munir**

The failure to effectively prosecute retired General Muchdi (Deputy Chief of the Intelligence Agency BIN) in the case of the 2004 murder of leading human rights advocate Munir Said Thalib is not sufficiently explored or documented in the report. An investigative team, appointed by the President, found evidence that strongly pointed to Muchdi as the intellectual author of the killing. The 2008 collapse of his prosecution, including the sudden recantation of sworn testimony damaging to Muchdi by witnesses and the inexplicable call by prosecutors for a light sentence, raise concerns of prosecutorial incompetence or malfeasance. This miscarriage of justice puts others on the front lines in defense of fundamental human rights at risk. Human rights defenders in the provinces of Papua and West Papua remain particularly exposed to threats and violence.

## **West Papua**

The current report better depicts the stark reality of repression and discrimination in West Papua. The report notes that "at least 30" Papuans, including a 16-year-old boy, are incarcerated for peaceful dissent, specifically, for raising the morning star flag. The report notes repeated incidents in which Papuans suffered beatings and were even murdered at the hands of Indonesian military and police in retaliation for peaceful protest. The report cites the UN conclusion that torture is systematic in Indonesian prisons.

The report also describes extensive illegal activity by security forces in West Papua: "military and police were often complicit in trafficking (of persons) and in protecting brothels." The report notes that NGOs and human rights advocates suffered monitoring of their activities and threats and intimidation. Restrictions on access by foreign journalists, NGOs, and parliamentarians continues.

The report also clearly describes the threat to indigenous land rights in West Papua from multinational corporations and others, but neglects to mention the environmental devastation from multinational mining activities.

The section dealing with "Elections and Political Participation" in the report fails to address the underlying issue that has for decades generated popular protest in West Papua. Several generations of Papuans have consistently demanded their right to self-determination which they assert was denied them when Indonesia annexed West Papua. In 1969, Indonesia reneged on a commitment to the UN to conduct a free and fair plebiscite to determine the will of the Papuan people. Instead Indonesia organized the so-called "Act of Free Choice" which UN officials charged with overseeing the process and subsequent scholarship have called blatantly fraudulent. More than 30 Papuans were detained last year for peaceful political protest; the report fails to note that their protest was directly related to the denial of Papuans right to self-determination. Ongoing Papuan demands for a referendum on their political future, the demilitarization of West Papua, and for a dialogue with Jakarta about these and other issues similarly are ignored in the report.

The report does not adequately address the human rights consequences of the extensive and expanding destructive exploitation of West Papua's natural resources. Logging, mining and other resource extraction, often illegal and frequently undertaken by or under the protection of the Indonesian security forces, have devastated the natural environment on which many Papuan communities depend for their livelihood. The Freeport-McMoran copper and gold mine has destroyed an entire river system (the Aijkwa). Logging operations and the establishment of palm oil plantations have destroyed pristine forest which constituted traditional hunting grounds and contained traditional gardens. The consequent displacement of thousands of Papuans, and the failure to compensate them for their losses has deepened the impoverishment of many.

The report does not address the failure of the Indonesian government to provide the fundamental rights cited in Articles 22, 25 and 26 of the Universal Declaration of Human Rights, including the rights to health, education and to other fundamental services "adequate for the health and well-being." Over the past four decades, the lack of adequate employment and medical, educational services and other social services has led to extreme marginalization in West Papua. Policies which deprive Papuans of these fundamental services, along with the government's "transmigration" of non-Papuans into West Papua, are reinforced by military repression targeting Papuans. The demographic impact of these policies has been called genocidal.

### **Political Rights**

The report fails to note persistent and worsening intimidation of political parties by armed thugs, often operating with the support of the security forces. Activists associated with political parties, especially smaller parties and those more critical of the government, face harassment at their rallies and party personnel endure individual threats.

The report inadequately addresses security force targeting of former members of the Free Aceh Movement (GAM) who under terms of the 2005 Aceh peace agreement have sought to advance their goals peacefully and politically.

The report briefly notes the sentencing of [Malukan Johan Teterisa to life in prison](#) for peaceful political dissent. He had organized a display of the pro-independence Malukan flag in the presence of President Yudhoyono in Ambon. Nineteen others were also convicted and sentenced to between 10 and 20 years for their role in the flag-waving demonstration. The Report's failure to comment on the extraordinarily harsh sentences - for acts of peaceful dissent - is simply inexplicable. The lengths of the prison terms seem linked to the embarrassment experienced by the President. In a country where military personnel typically receive minimal sentences for the murder of civilians, a life sentence for peaceful political protest is clearly intended to intimidate others who would exercise free speech.

## **Impunity**

The Indonesian government continues to demonstrate a lack of political will to uncover and prosecute past human rights violations, among them the killings and unlawful incarcerations of 1965-66 and the discriminatory laws that followed. The report describes a number of these instances involving events such as Wamena-Wasior, Trisakti, and Semanggi I and II, but does not note the failure to follow up on commitments to create truth and reconciliation commissions. This is part of Indonesian law in the case of the commission for human rights violations committed in the Suharto era. While noting the failure to establish the promised human rights court for Aceh, the binding [Memorandum of Understanding between GAM and the Indonesian government](#) which ended the hostilities in Aceh also calls for a Commission of Truth and Reconciliation to be established (Section 2.3).