



JSMP Position Paper: An International Tribunal for East Timor

Summary:

East Timorese NGO the Judicial System Monitoring Programme supports the establishment of an international tribunal for East Timor that is fair and effective, as part of its wider support for mechanisms that will deliver justice for the East Timorese people.

JSMP calls for the establishment of an international tribunal to

- **fulfil the international community's responsibility to prosecute as crimes against all humanity, not just against the Timorese, the violations committed in East Timor during the Republic of Indonesia's rule;**
- **increase the possibility of bringing to account individuals who committed crimes against humanity in East Timor that have so far escaped proper investigation, prosecution and trial.**

JSMP notes that it is the responsibility of the international community not merely to establish a tribunal for East Timor, but to create an *effective* tribunal - one that has

- **enough resources to carry out its role, including enough sufficiently skilled and experienced staff;**
- **the real capacity to bring suspects to trial, through such mechanisms as effective arrest and transfer processes;**
- **characteristics that maintain considerable Timorese involvement, such as the capacity for Timorese to contribute to the tribunal's work, perhaps as judges or other staff, and a community outreach program that keeps the Timorese community informed of its progress.**

Issues:

Having closely monitored all trials before the Special Panels for Serious Crimes in the Dili District Court, as well as having had an observer present during the first three trials held before the Ad Hoc Human Rights Court in Jakarta, the Judicial Systems Monitoring Programme (JSMP) is seriously concerned by the prospect that many serious crimes committed in East Timor during the period of Indonesian occupation will not be investigated and that the perpetrators will not be held accountable for their crimes before a court of law.

JSMP is committed to the process of ensuring criminal responsibility for these crimes.

JSMP believes that the establishment of an international tribunal for East Timor is one important mechanism for providing justice for these crimes. An international tribunal would provide unequivocal recognition that crimes committed during the Indonesian occupation

were so serious as to constitute crimes against the dignity of humankind. Equally importantly, an international tribunal could increase the possibility that individuals who have been indicted before the Special Panels for Serious Crimes or who are suspected of committing war crimes or crimes against humanity, and who effectively enjoy the protection of Indonesian authorities, may be tried.

JSMP believes that an international tribunal in and of itself will not guarantee justice. The experiences of the International Criminal Tribunal for the former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR) have shown that the capacity of any international tribunal to effectively deliver justice is determined by issues such as the tribunal's structure, its resources and its ability to attain custody over indictees. Such issues are so central to a tribunal that it would be a mistake to simply call for an international tribunal for East Timor and work out these details later. Instead it is important to lobby for an international tribunal at the same time as formulate policy on the eventual structure of an international tribunal for East Timor.

Firstly, it is important that the international tribunal for East Timor should be sufficiently resourced. The financial commitment from the international community will have to be considerable.¹ Attempts to construct an international tribunal "on the cheap" would seriously compromise the integrity of the process. By way of example, the experience of the Serious Crimes Unit within East Timor is that financial constraints have severely curtailed the investigative capacity of the Unit. As a result, large numbers of serious crimes committed within the period for which the Special Panel for Serious Crimes has jurisdiction will not be investigated, let alone prosecuted.

It is important not only to highlight the need for sufficient economic resources, but also human resources. The international community must be committed to staff the tribunal with highly experienced judges, prosecutors, defence lawyers, investigators and administrative support personnel. Again by way of example, the experience of the Special Panel for Serious Crimes indicates that the overall quality of justice suffers if there are too few personnel with enough experience in the processes of international criminal law and international human rights standards.

Secondly, in order to be successful an international tribunal for East Timor must have capacity to acquire custody over indictees. The majority of those who would be indicted by an international tribunal for East Timor currently reside in Indonesia and enjoy political and military support within that country. The Memorandum of Understanding signed by UNTAET and the Attorney General of Indonesia in April 2000 was intended to facilitate cooperation from Indonesian authorities with Serious Crimes processes in East Timor with respect to investigations and the transfer of persons. However it did not lead to any actual cooperation by the Indonesian authorities. Clearly an international tribunal for East Timor will require a more robust and effective mechanism for attaining custody over indictees. Should an international tribunal for East Timor be established by a resolution of the UN Security Council, the resolution must clearly state the legal obligation on states to cooperate with the tribunal in issues such as the collection of evidence and the arrest, detention and transfer of indictees.² In practice, the establishment by the Security Council of such a legal obligation

¹ The budget for the ICTY for 2001 was US\$96 million dollars, while the budget for 2002-2003 is US\$223 million dollars. The budget for the ICTR for 2002-2003 is US\$177 million.

² It is important to distinguish a state's obligation under international law to *surrender* to an international criminal tribunal a person suspected of a crime under international law from the *extradition* of a person from one

does not guarantee cooperation between States and the international tribunal.³ Compliance with this obligation must be assured by diplomatic pressure from the international community as well as national legislation passed by the states most involved which would expressly provide for cooperation with the tribunal.

Thirdly, it should be acknowledged that an international tribunal for East Timor would involve an international court, whose location may not be in East Timor, staffed by international judges, lawyers and legal professionals. As mentioned, the tribunal will be dependant on international support to successfully carry out its mandate. For reasons such as these, it should be recognised that an international tribunal is precisely that – *international* – and the establishment of an international tribunal for East Timor would result in the Timorese “losing ownership” of this element of the justice process. Given this concern, JSMP believes that it is important to look for mechanisms to ensure that the East Timorese are not excluded and alienated from the process of international justice. One possibility is that a commitment should be made to appoint East Timorese as professionals within the international tribunal, as judges, defence lawyers, prosecutors, court clerks and translators. A second suggestion is that the establishment of an international tribunal for East Timor should include an Outreach programme, perhaps based on the outreach programme recently established by the ICTY.⁴ In general, an outreach programme should be tasked with ensuring that the processes of the tribunal are transparent and accessible to East Timorese. It could distribute information about the trials throughout East Timor, using national and local television, radio and printed press.

JSMP offers these comments with the aim of developing detailed and informed discussion regarding the nature of an international tribunal for East Timor.

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state to another. Legally, states cannot refuse to comply with a request to arrest and transfer individuals who are sought by tribunals such as the ICTR and ICTY and the International Criminal Court. The extradition of a person sought for crimes committed in another country is dependent largely on the existence of an extradition agreement between the two states.

³ By way of example, the ICTY was unable to attain custody over many prominent indictees – particularly during the earlier years of its operation – because of non-cooperation by the states involved with requests from the Office of the Prosecutor.

⁴ See <http://www.un.org/icty/bhs/outreach/opintro.htm>