

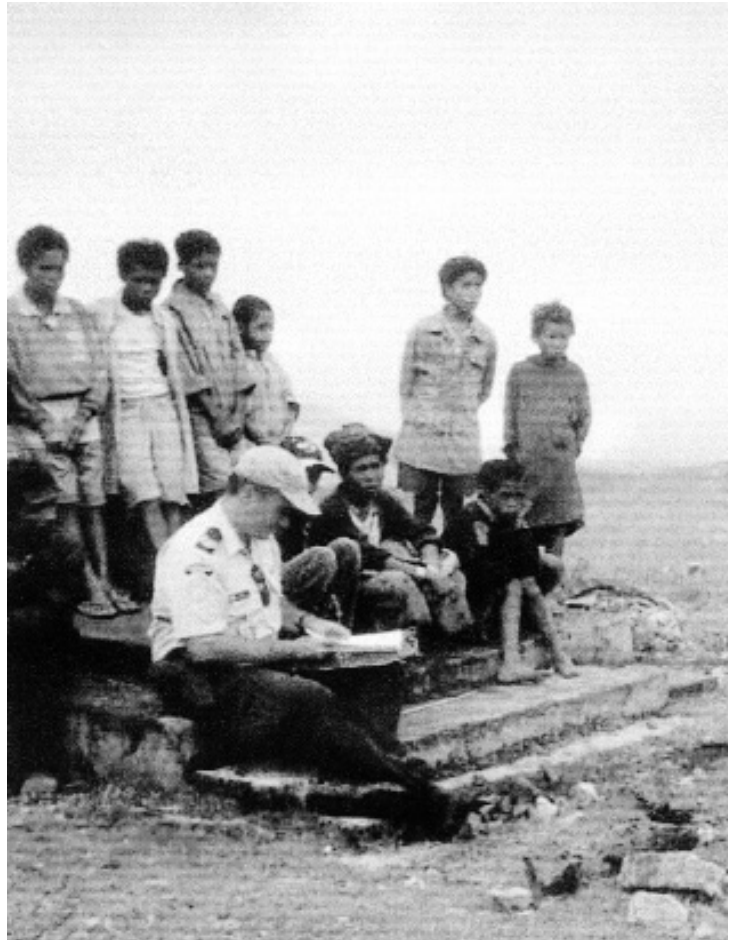
EAST TIMOR

In 2001 EAAF participated in forensic investigations into human rights abuses in East Timor under the auspices of the United Nations Serious Crimes Investigation Unit (SCIU). The SCIU has as its specific mandate the investigation of human rights abuses that occurred between January 1 and October 25 1999, in the period surrounding East Timor's referendum on independence from Indonesia. Because SCIU cases in East Timor are still under judicial investigation, this report offers only a general account of forensic work in East Timor and EAAF's role there.

HISTORICAL BACKGROUND

On September 3, 1999 the United Nations announced that the East Timorese people had voted overwhelmingly in favor of independence in a UN-organized referendum. East Timor thereby rejected the possibility of a new autonomous status within Indonesia. This possibility had been proposed by Indonesian President B.J. Habibie, who took office after former President Suharto was forced to resign in May 1998 and was succeeded by Abdurrahman Wahid in the October 1999 national election. The historic vote for East Timorese independence signaled a step towards the long-awaited realization of national independence following nearly a quarter century of Indonesian rule, and was achieved despite a widely reported intensification of violence and intimidation.

According to the UN, while a period of violence preceded the referendum, the vote itself and the announcement of its results set off waves of intimidation and killing by Indonesian troops and pro-Jakarta militias in East Timor.¹ This was accompanied by the widespread destruction of homes, public works and buildings, and communications systems in the capital of Dili and elsewhere. Indonesian assurances of its responsibility to maintain law and order before, during, and after the referendum, then, did not materialize on the ground. The period between the announcement of the results and their



East Timor. 2001. UN officer and local residents observe ar

formal acceptance by the Indonesian parliament in late October proved to be one of limbo, during which East Timor technically remained part of Indonesia, the authority responsible for maintaining law and order during this time. While the extent of human rights violations related to the referendum is still being determined, mass graves and other evidence of massacres surfaced in several parts of East Timor, for instance in the towns of Liquica, Suai, Maliana, and others.

This crisis developed during a lengthy history of rights violations and socio-economic dislocation in East Timor. Indonesia invaded this former Portuguese colony in 1975

under Suharto's leadership, and subsequently fought against pro-independence insurgencies as Indonesia and its Javanese majority sought to "Indonesianize" the territory and gain control of its resources such as coffee, sandalwood, marble, and oil. According to the East Timor Action Network, a human rights organization, some 200,000 East Timorese lives, approximately a third of the initial population, were lost in the early years of Indonesian occupation alone.²

As Indonesia's twenty-seventh province, East Timor was a closed colony of the military from 1975 until 1989. During that time, visitors, including foreign reporters and Indonesian civilians, were repeatedly denied access. After 1989, military tactics of violence and intimidation continued, despite an increasingly critical international community. The well-known 1991 "Dili Massacre" at Santa Cruz, for instance, entailed the military firing with automatic weapons into an unarmed pro-independence march and detaining participants.³ In 1996, the Nobel Peace prize was awarded to East Timorese Bishop Carlos Filipe Ximenes Belo and José Ramos-Horta. This award was widely regarded as an acknowledgement of the fight against oppression in East Timor.

UNITED NATIONS PEACEKEEPING OPERATIONS

The fall of President Suharto in 1998 created an opening for independence activists in East Timor and elsewhere. The United Nations also became more active in advocating a referendum for independence in East Timor. After President Habibie agreed to a referendum, the United Nations Security Council established the UN Mission to East Timor (UNAMET) in June 1999. The mandate was to organize and oversee the August 30 consultation, and to oversee a transition period pending implementation of the voting results. According to the UN, pro-integration forces - in practice anti-independ-



Archaeological excavation. Photo courtesy of Wayne Fee.

ence militias with the support of the Indonesian Army - perpetrated a high level of violence and "scorched earth" policies after the announcement of the results.⁴ Recent reports from Amnesty International suggest that approximately 1,000 people were unlawfully killed, allegedly by militias and Indonesian security forces.⁵ Hundreds of thousands of East Timorese have been displaced, with a large number fleeing or being forcibly relocated to Indonesian-controlled West Timor. Thus, the question of how large numbers of refugees would safely return to their homes - which may in any case have been destroyed - presented additional challenges.

On September 15, 1999 the Security Council authorized a multinational force under a unified command structure headed by Australia (INTERFET) to restore peace and security in East Timor, to protect and support UNAMET, and to facilitate humanitarian assistance operations. INTERFET, whose troops came from nineteen different nations, began to arrive on September 20. By October 6, UN Secretary General Kofi Annan announced that the UN would have to take control of East Timor during its transition to independence. In late October, it established UNTAET, a peacekeeping operation fully responsible for the administration of East Timor during this transitional period. The last Indonesian troops had withdrawn by October 29.

INTERFET began to withdraw from East Timor on February 4, 2000 and handed over security responsibilities to a United Nations force that was expected to grow to as much as 9,000. By late February, INTERFET security forces had been officially replaced by the UN. A UN civilian administration government took charge of East Timor during this transitional period. On March 1, 2000 former Indonesian President Abdurrahman Wahid apologized for past atrocities in East Timor during the first visit of an Indonesian leader to an independent East Timor. Wahid also reversed laws that had given the Indonesian military sweeping powers for decades.

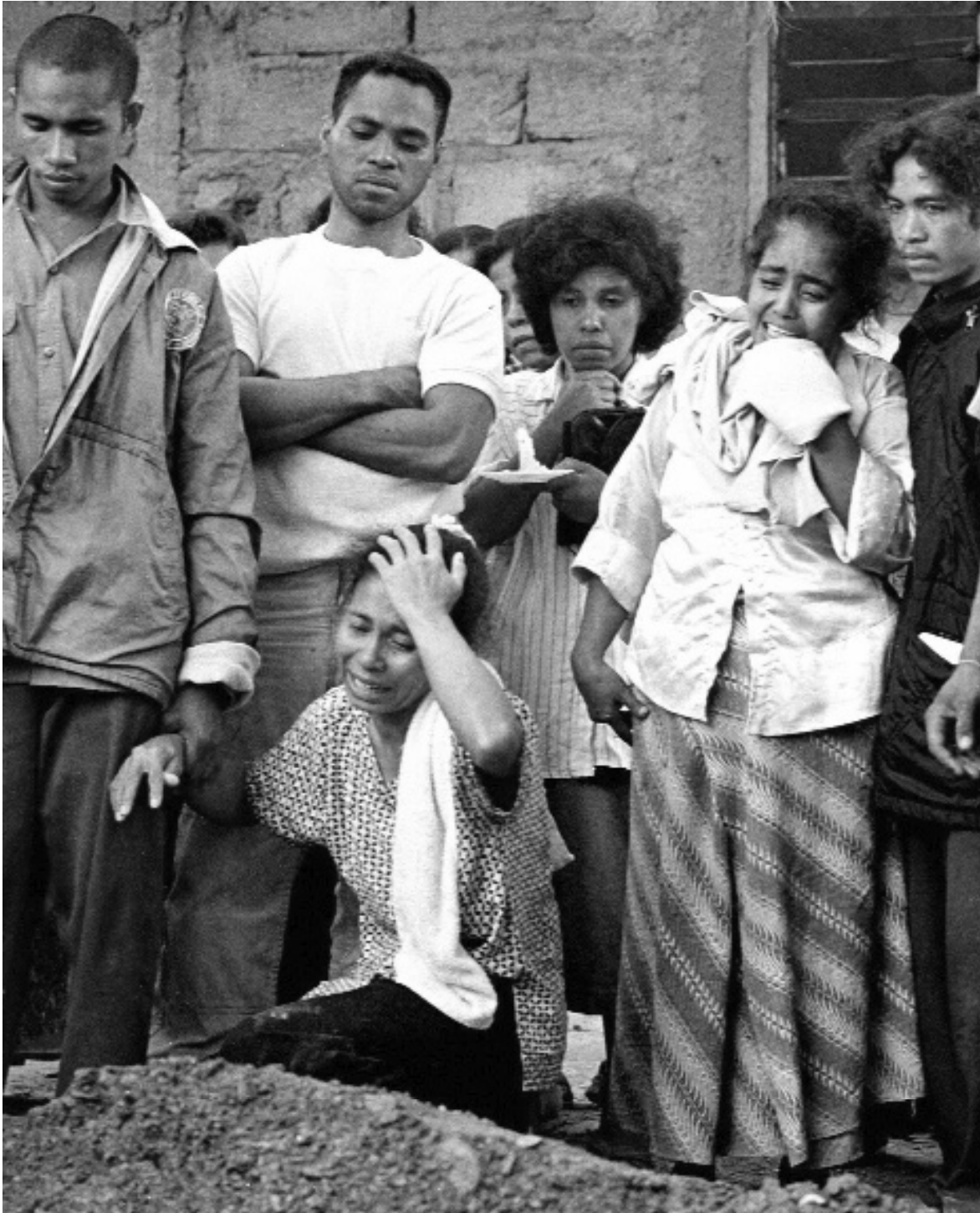
INVESTIGATIONS INTO HUMAN RIGHTS VIOLATIONS

The Report of the UN High Commissioner for Human Rights presented during the September 23-24, 1999 conference on Human Rights outlined the situation of human rights abuses in East Timor. After sending an envoy to the territory in May and then visiting it herself from September 10-13, the UN High Commissioner, Ms. Mary Robinson, conveyed numerous reports of the breakdown of law and order, wanton killings, forcible expulsions, sexual assaults against women, forced disappearances, and destruction of property. She concluded that "overwhelming evidence" suggested that East Timor had seen a deliberate, vicious, and systematic campaign of gross violations of human rights.⁶ She reiterated Indonesia's responsibility to maintain law, order, and access for aid agencies providing relief, and urged Indonesian authorities to cooperate in the establishment of an International Commission of Inquiry into the violations so that the responsible parties would be brought to justice.

On September 27, 1999, the UN Commission on Human Rights adopted a resolution condemning the widespread, systematic and gross violations of human rights which had occurred. UN Secretary-General Kofi Annan established an International Commission to gather information relevant to future recommendations for action. Its mandate included gathering information on possible rights violations, providing the Secretary-General with conclusions that would enable him to make recommendations on future actions. According to their subsequent report, the testimonies of many East Timorese people suggested rights violations that were more severe and widespread than the Commission had anticipated.

One incident among many others described in their report was conveyed as follows:

"On 8 September 1999, over 100 militia entered the police station in Maliana, where about 600 people had sought shelter against the attacks of the military and militia. The police station was entirely surrounded...The people inside the police station were first attacked with



East Timor. May 11, 1999. The mother of Elizor dos Res, 17, weeps at the grave family members dug for him in the front yard of their home in the Kintal Boot district of Dili, East Timor. Dos Res was the son of Manuel dos Res, a member of the National Council of Timorese Resistance. The teen was shot in the head during an attack on the neighborhood by pro-Indonesian militia. Photo by Weda/AFP.

machetes. When they fell down, they were hacked into pieces. This was done in front of the people, who were forced to watch. The witnesses identified by name members of the militia and Indonesian Army (TNI) who were responsible for this massacre...”⁷

The commission’s report concluded that after the announcement of the results of the vote, a forced evacuation planned by the Indonesian Army and local militias started. This forced deportation and displacement of East Timorese people to Indonesian West Timor was undertaken by sea and road. Approximately 200,000 people were relocated in this way, and as of January 2000 more than half remained in West Timor. And the commission found that there were patterns of gross violations of human rights and breaches of humanitarian law which varied over time and took the form of systematic and widespread killing, humiliation and terror, destruction of property, violence against women and displacement of people. Patterns were also found relating to the destruction of evidence and the involvement of the Indonesian Army and the militias in the violations.

The commission’s recommendations included the establishment of an international human rights tribunal to bring to justice those who were responsible for the violations committed since January 1999. The tribunal was to consist of judges appointed by the UN, preferably with participation by members from both East Timor and Indonesia. They also recommended that the UN continue an international investigation and establish a prosecution body, and emphasized the importance of facilitating a rapid return of displaced persons and the disarming of Indonesian militias. They urged that the UN has a special responsibility in its trusteeship of East Timor to bring those responsible to justice. Kofi Annan, UN Secretary General, reiterated that these violations were directed against a decision of the Security Council and were contrary to the agreements reached by Indonesia with the UN to carry out the decision of the Security Council, and that this fact reinforced the need to hold the perpetrators accountable for their actions.

THE RECONSTRUCTION OF EAST TIMOR AND INVESTIGATION OF PAST ABUSES

The years since 1999 have seen significant movement in East Timor towards the constitution of a democratic government, and somewhat smaller steps in the investigation of human rights abuses that followed the referendum in favor of independence.⁸ In August 2001 the East Timorese voted in a Constituent Assembly of eighty-eight elected officials that will serve as the government of East Timor when the new nation becomes self-governing in May 2002. The elections were supervised by UNTAET, and according to Human Rights Watch were “widely praised...Nearly the entire eligible voting population registered and participated, with almost none of the political violence that had been widely predicted.”⁹ On April 14, 2002, East Timor held its first presidential election – also widely praised – which was won by former resistance leader Jose Alexandre “Xanana” Gusmao with a landslide 82% of the popular vote. East Timor celebrated its first independence day on May 20, 2002. Indonesian President Megawati Sukarnoputri was among those who attended the celebration.

Although UNTAET, the East Timorese provisional government, East Timorese NGOs and the Indonesian government have been in constant negotiation over the prosecution of human rights violations committed in East Timor, few trials have taken place. UNTAET established a Special Crimes Investigation Unit (SCIU) dedicated to investigating and prosecuting human rights violations in 1999.¹⁰ But one of the major problems in prosecuting these violations is the fact that many of the perpetrators were members of pro-Indonesian militias or Indonesian Army officers who now reside outside of East Timor. There were convictions in 2001 in East Timor for militia leaders involved in the post-referendum violence, but, according to Human Rights Watch, “some senior East Timorese officials... questioned whether prosecuting East Timorese served the interests of justice when the Indonesian architects of the 1999 violence were not even indicted.”¹¹

The idea of a UN International Commission of Inquiry for crimes committed in East Timor seems to have been displaced in favor of supporting Indonesia's efforts to use its own resources. However, efforts to bring perpetrators of human rights violations to justice in Indonesia have met with very limited success. In November 2000, Indonesia's Parliament agreed to establish courts dedicated to prosecuting human rights violations, but few of those responsible for violence in East Timor were brought to justice. On April 23, 2001 following a recommendation by Indonesia's parliament, former President Wahid established an ad hoc Human Rights Court on East Timor and other cases. The decree came only days after the UN Commission on Human Rights adopted a statement recommending that those responsible for human rights violations in East Timor be brought to justice without further delay.¹²

The establishment of the court was well received by human rights organizations, but limitations on its mandate raised serious concerns.¹³ Amnesty International (AI) called for the Law on Human Rights Courts (Law 26/2000) to be amended so that it is fully consistent with the international standard. Among AI's concerns was "the

is governed by the Rome Statute for the International Criminal Court. The Rome Statute only considered crimes that rose to the level of "serious human rights violations" tantamount to crimes of universal jurisdiction, such as genocide and crimes against humanity. Under this mandate, an individual human rights violation, such as a single massacre, might not rise to the threshold of "serious human rights violation," and would therefore be tried in a military court (with military judges, if suspects were members of Indonesia's armed forces) or in the so-called *koneksitas* courts (with both military and civilian judges, if civilians were included in the ranks of those charged).¹⁴ Finally, the court's mandate determined that only the events after August 30, 1999 (the day after the referendum) could be tried, although in fact serious human rights violations also happened earlier.¹⁵

A change in administration did not greatly affect Indonesian policy towards crimes in East Timor: although new President Megawati Sukarnoputri ordered the prosecution of crimes from April as well as September 1999, according to Human Rights Watch the decree "excludes hundreds of other [crimes] of unlawful killing, torture,

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scope this legislation allows for political interference, including the role of the executive branch of the government in selecting judges and prosecutors and in deciding which cases can be prosecuted;" similar concerns were also raised by Indonesians NGO's and legal experts in Indonesia, according to AI. Human Rights Watch/Asia Division argued that the law's mandate was "well-intentioned but deeply flawed", among other reasons because it

rape, and other serious crimes committed from January to October 1999 throughout the territory." At the same time, according to Amnesty International, Indonesia has yet to take certain steps – such as establishing a witness and victim protection program – provided for under the initial terms of the Court's mandate. Without such protection, witnesses and victims from East Timor are unlikely to travel to testify in Indonesia. Human Rights Watch



Jakarta. April 22, 2002. Brig. Gen. M. Noer Muis (left), former chief of the Wiradharma Military Subdistrict (Korem) in East Timor, and Brig. Gen. Timbul Silaen (right) walk in front of the Central Jakarta District Court's panel of judges during the ad hoc trial on human rights violations in East Timor. Photo by P.J. Leo.

has argued that Sukarnoputri's decree "weakened the possibility of examining the whole pattern of state policy that would be critical to establishing a crimes against humanity case."¹⁶

Recently, the Indonesian government initiated the first trial of military defendants accused of serious human rights abuses in East Timor. Five defendants – four military officers and a policeman – are accused of failing to prevent the massacre of 27 people killed by pro-Indonesian militia forces in the East Timor village of Suai in September 1999. The trials themselves represent progress in the prosecution of human rights abuses. Nevertheless, some human rights groups have expressed concern over the trials as well as the broader restrictions on the court mentioned above.¹⁷ For instance, on March 14 2002, Amnesty International "expressed alarm that trials of suspects involved in serious crimes in East Timor in 1999 began in Indonesia today, before basic guarantees for fair trials had been put in place."¹⁸

THE 2001 MISSIONS

In 2001, two EAAF members worked in the forensic division of the UN's Serious Crimes Investigation Unit as part of the ongoing investigations of human rights abuses in East Timor. Anahí Ginarte worked as a forensic anthropologist in East Timor from January 28 to March 31 2001, and Patricia Bernardi did the same from April 23 to July 27 2001. In addition, Sofía Egaña, a member of EAAF's volunteer staff, was contracted by United Nations Volunteers (UNV) to serve as anthropologist's assistant in East Timor, a job that has run from March 1, 2001 through the writing of this report.

The Serious Crimes Investigation Unit (SCIU) works in tandem with the Office of the General Prosecutor of East Timor. The two units share a mandate to analyze "crimes against humanity, war crimes and other serious violations of International Humanitarian Law committed in the territory of

East Timor and other such violations committed in the territory of neighboring states [ie, against East Timorese in places like West Timor] between January 1 and October 25 1999.” The SCIU, which operates under the direction of Mr. Oyvind Olsen, includes a forensic team consisting of three crime scene experts, one forensic pathologist, one forensic anthropologist, a forensic anthropologist’s assistant, and three Timorese assistants, a medical student and two nurses. Because the pathologists and anthropologists are not able to stay for long stretches of time, they are rotated periodically. The other professionals remain in East Timor on longer-term contracts.

The forensic investigation in East Timor involves a range of tasks related to the criminal investigations underway by the SCIU, most notably: archaeological analysis of grave sites, exhumations of cadavers and skeletal remains, laboratory forensic analysis of those remains to determine cause and manner of death, and identification of remains. The division of labor between forensic pathologists and forensic anthropologists follows standards similar to those established in previous investigations undertaken by the International Criminal Tribunal for Former Yugoslavia (ICTY): when dealing with skeletal remains or decomposed cadavers, the pathologist is charged with determining cause and manner of death and the anthropologist determines the sex, age, height, odontology and identification of the victim. In the case of complete cadavers the pathologist is in charge of autopsies and collaborates with the anthropologist when appropriate. In every case forensic anthropologists direct the archaeological exhumation of human remains. Evidence recovered from each case becomes part of a growing database of rights violations in East Timor, and all information obtained on specific cases is turned over to the head of the SCIU, who then relays material evidence to the Office of the General Prosecutor.

The forensic investigation team performs other duties in addition to its work on human rights violations in 1999. Because the SCIU works in the only functioning morgue in East Timor, and the forensic investigators who work with the SCIU are the only such specialists in the country, the SCIU also performs autopsies of various criminal cases under investigation by CIVPOL, the Civil Police branch of UNTAET, unrelated to the events of 1999. The investigation team also participates in the training of the local nurses and medical

students who work at the morgue, and offers classes on the analysis of evidence and forensic techniques to students at the Police Academy of UNTAET.

While in East Timor, EAAF member Ginarte helped develop a computer database to coordinate investigative findings from pathologists, anthropologists, and crime scene investigators in the SCIU. This database continues to be used by the professionals who work on the mission in East Timor.

In East Timor EAAF worked with an international team of pathologists and forensic anthropologists from Argentina, Australia, Canada, the Philippines, and the United Kingdom, including the pathologists Malcolm J. Dodd, Christopher Lawrence, and Michael Pollanen and the anthropologist Kathy Gruspier.

Because the cases on which EAAF members worked in East Timor remain under investigation, this report cannot publicize any specific findings of the mission there. EAAF members who worked on this mission may be called to testify in East Timor in connection with any of the cases that they investigated. Decisions regarding the publication of findings will be made by the SCIU and the relevant members of UNTAET.

FOOTNOTES

1. Report for the High Commissioner for Human Rights, United Nations Economic and Social Council, Commission on Human Rights. Fourth Special Session September 23-24 1999.
2. *East Timor and U.S. Foreign Policy*, East Timor Action Network/US, October 1998.
3. Amnesty International “East Timor: The September and October 1995 riots: Arbitrary detention and torture.” January 15, 1996
4. *The United Nations and East Timor*. United Nations, October 26, 1999. <http://www.un.org/peace/etimor/gnaoct.htm>
5. Amnesty International, Feb 21, 2002: First Indictments, but will justice be delivered?
6. Report for the High Commissioner for Human Rights, United Nations Economic and Social Council, Commission on Human Rights. Fourth Special Session September 23-24 1999.
7. Source: Report of the International Commission of Inquiry on East Timor to the Secretary General, January 2000, Section III:6:88. The number of people killed in Maliana is still under dispute, but conservative estimates give 47 as a minimum.
8. On the human rights situation in 2001, see Human Rights Watch, “East Timor” in Annual Report 2001; see also Amnesty International, “East Timor” in Annual Report 2000.
9. East Timor, p.217.
10. See Amnesty International, “East Timor.”
11. Human Rights Watch, “East Timor,” p. 218.
12. Amnesty International April 25,2001
13. Amnesty International, April 25, 2001: Indonesia: struggle against impunity-one step forward, two steps back”.
14. HRW/Asia Division.March 2002, Accountability for Human Rights Violations in Aceh. p.3-4.
15. See Human Rights Watch, “Indonesia,” in *World Report 2002* p.235.
16. *ibid.*
17. New York Times, “Indonesia Begins Trials of Military in East Timor Abuses,” Jane Perlez, March 20, 2002.
18. See Amnesty International, “Indonesia: Absence of basic fair trial guarantees for East Timor cases cause for alarm.” Press Release, March 14, 2002.