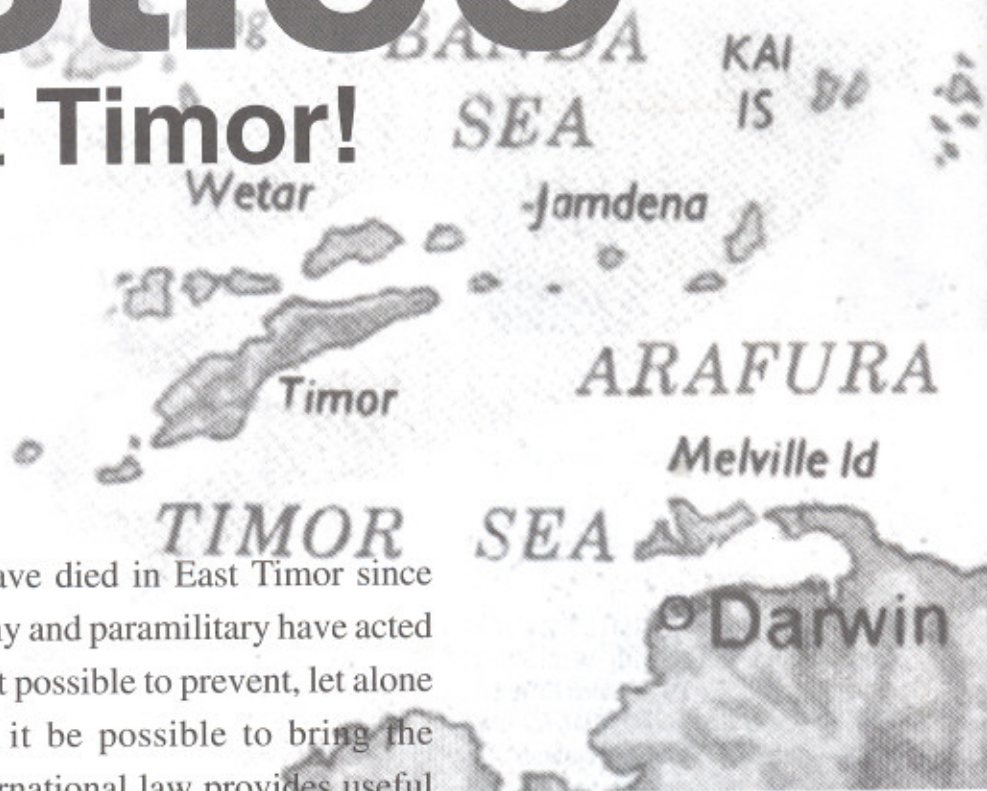


Justice For East Timor!



More Than 200 000 people have died in East Timor since 1975. So far the Indonesian army and paramilitary have acted with total impunity. If it was not possible to prevent, let alone react to such atrocities, will it be possible to bring the aggressors to justice? The international law provides useful instruments to do so, but will politics get in the way? In Australia, the International Commission of Jurists (ICJ), the Law Society of NSW and STARTTS are working together to take evidence of war crimes from refugees. **Olga Yoldi spoke to Dr Hillary Ray and Greg Davis, both lawyers, UNAMET observers and members of the ICJ.**

Have you started taking evidence from East Timorese refugees?

Hillary Ray: Not yet. We have had two orientation sessions for solicitors and barristers to make legal practitioners aware of some of the issues involved with taking statements from Timorese refugees. That is the reason why STARTTS has to be an integral part of the process. No legal statements have been taken yet, we don't want to start until we think we are ready, until we are adequately trained.

The international Commission of Jurists (ICJ) is coordinating the taking of evidence from refugees in the form of oral statements. The Law Society of

NSW has been keeping a roll and sending letters out to interested solicitors and barristers, who have volunteered their time to either take statements from refugees or to oversee their statements because a lot of technical expertise is needed. By technical expertise I mean legal expertise in terms of questions of evidence. We need practitioners who can volunteer their time, who may not have the experience taking statements from refugees who are traumatised, or from women and children, but who can oversee the process, read the statements taken by more junior practitioners and make sure that they are correct legally speaking. Lawyers

and refugees will need to be monitored. Lawyers need to be trained so that after they take the statements they don't let the person go without being brought back into an emotional state in which they can function. Also the demands placed upon interpreters is going to be high. A system of monitoring and debriefing needs to be in place. The ICJ does not want to pressure the Timorese into making statements.

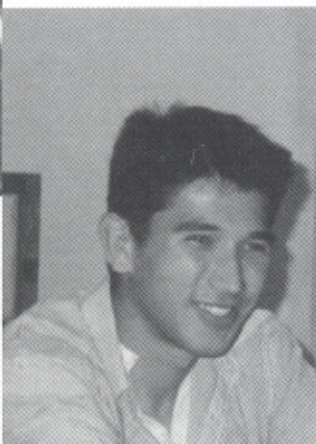
What are you going to do with the information obtained?

H.R. We don't want to do anything that will endanger people's lives. We have to remember that this is not just taking just an ordinary statement, civil or criminal. This whole process can have serious repercussions and we have to keep the issue of security and confidentiality as our priority.

It can be very intimidating for normal people to approach a lawyer. They don't need to approach us directly but can have a STARTTS worker, or a member of a church



Left:
Dr Hillary Ray
Below:
Greg Davis



organisation with them when they do so. There are all sorts of reasons for this: cultural

reasons, because of the fact that they are traumatised, that is why it is important to have people there with the experience in dealing with trauma. The ICJ appreciates all the time and resources that STARTTS has already given us and their cooperation. It has been a privilege working with STARTTS and learning from their experience.

Will the evidence be presented at the International War Tribunal if it is established?

HR If the tribunal gets set up their statements might go towards seeing that justice is done. The Human Rights Commission of the United Nations has recommended that a fact finding commission enquiry into the allegations of crimes against humanity since the 1st of January 1999 and the Head of the Human Rights Commission has been asked to carry out that task. The report that the Commission produces will be used as the basis for a recommendation for the Security Council to establish the Tribunal. The Security Council can either establish a tribunal under Chapter 7 of the UN Charter, or else the General Assembly can do so under Chapter 4 of the UN Charter. The Yugoslav and Rwanda tribunals were set up under Charter 7 by the Security Council.

There are other alternatives if the tribunal doesn't get up. East Timor can eventually apply to set up its own tribunal. Of course East Timor has other concerns right now, survival being one of them.

Greg Davis It will be a problem if East Timor sets up its own tribunal The chances of Indonesia helping East Timor with a tribunal are very slim. It will be more of a gesture. There will be very little chance of getting a hand on any of the criminals. It is an important message nevertheless! At this stage these statements probably will go towards the Human Rights Commission recommendation. If they do turn up evidence of war then the Human Rights Commission will make a

recommendation. In the face of that, politically, it might be difficult for some countries to vote against it because by the time it has gone by the recommendation stage, the evidence will have already been put out to some extent and that is important.

HR That is why the evidence is critical for the Commission to make a strong case. Even if no war tribunal is set up at least that evidence will be put out to the world. The world will know what has happened and if the tribunal does not go ahead in the face of compelling evidence, then everyone will know that it is apolitical cover up. For the evidence to be credible it is important to get it in an objective and impartial way and according to the rules of law, according to the rules of evidence and the correct procedures. All parties involved have to feel that they can go to the tribunal and have their case heard fairly.

Will the experience of Rwanda and The Hague War Crimes Tribunal be useful?

HR We are benefiting from past experience in Rwanda and Bosnia. We have been trying to attract legal practitioners with the international experience and with war crimes tribunal experience. STARTTS experience is helpful, people involved in legal processes has

been benefiting from it.

There has been an argument which implied that the West is imposing on Indonesia its own values, standards and its own definitions of good and evil.

HR This is the argument that Canberra has run for 23 years. It has been said that human rights are a luxury item, that once Indonesia develops economically they will be all right. That human rights will develop automatically. It is not true. There is no correlation between economic development and the development of a particular notion of human rights and the value of human life. You can be a relativist about certain aspects of a culture -customs, language, religion-but you cannot be a relativist about the value of human life.

Lawyers especially have to be brave enough to draw the line. We have to remember that the notion of the value human life and human rights is at the core of a civil society, of a democratic society. It is not a luxury, something that you tack on later. If a society is not founded on sound human rights it will not be a strong, sound and economically healthy society. That is why they are fundamental. You build on human rights, not the other way around.

GD I personally believe that the atmosphere of terror comes from people being scared to go out and preventing the information from getting out from not knowing what is happening. It is the feeling of isolation, the feeling that you are not part of the society, of the community. The taking of evidence is what counteracts this atmosphere of terror.

HR I agree, silence is one of the main tools of terror. The silence from Canberra. All the intelligence and documentation we have from the last 23 years of what has been going on. Silence has certainly played into the hands of the Indonesian military regime. Anyone who has worked with traumatised people will tell you that terror and isolation keep people powerless. We have to speak out and remind everyone that there are still people being killed, raped and tortured right now. We cannot forget about it. ■