

## **Dili Court increases pressure on Indonesia**

Judicial System Monitoring Programme (JSMP) Dili, 10 May 2001

The Special Panel for Serious Crimes yesterday decided that it has no jurisdiction over most cases of rape and murder committed by or against East Timorese in West Timor during 1999. The decision has important implications for the prosecution of human rights abuses taking place in West Timor after the popular consultation on 30 August 1999 in which nearly 80% of East Timorese voted for independence from Indonesia. Militias, organised and supported by the Indonesian military, forcibly removed up to 250,000 East Timorese into camps in West Timor after the ballot. Widespread and systematically violent reprisals were directed toward those suspected of having voted for independence.

Yesterday's judgment was rendered in the case against a former Laksaur militia member from Cova Lima district who was charged with rape of an East Timorese woman in West Timor on 10 September 1999. The defendant had already been released from detention but had been prevented from approaching the victim's home. Immediately after the judgment was given, the Court announced that such restrictions on the defendant no longer applied. The judges of the Special Panel did, however, state that the same charges may be raised before courts in Indonesia, or in East Timorese courts if the current regulations are later to be amended. The Court emphasised that it made no finding as to the defendant's innocence or guilt on the charge of rape.

According to the Court, the universal jurisdiction they have over the international crimes of genocide, war crimes, crimes against humanity and torture, does not extend to individual cases of murder and sexual offences, including rape. Universal jurisdiction means the court can try a case no matter where it was committed - in this case in Indonesian West Timor. The reasoning of the Court included a detailed analysis of both international and Indonesian law, as well as UNTAET regulations. Their four main arguments had in common that the issue of jurisdiction of Courts in East Timor, which is almost exclusively limited to crimes committed within the UN administered territory, already had been clearly decided by the Transitional Administration when it made the regulations about the Court's powers.

Although rape and murder committed between 1 January and 25 October 1999 are considered "serious crimes" by UNTAET, yesterday's decision means that no suspected perpetrators of such crimes, if committed in West Timor, can be tried by the Special Panel of the East Timorese courts unless the crimes can be categorised as any of the international crimes over which the court enjoys universal jurisdiction.

It is well known that a series of serious criminal acts have been, and are still being committed against East Timorese refugees currently held in West Timor. This clearly puts further pressure on Indonesia to investigate and also bring to justice those responsible for crimes committed within its territory.

The judgment may also have implications for the proposed reception, truth and reconciliation commission, which is currently under consideration by the National Council.