

## Managing Tensions on the Timor-Leste/Indonesia Border

### I. OVERVIEW

The legacy of “losing” Timor-Leste (East Timor) continues to haunt Indonesia, affecting attitudes toward Aceh and Papua, heightening suspicions about foreign intervention, complicating relations with Australia and perpetuating fears for territorial integrity. Despite this legacy, the shared land border has been mostly peaceful: the policy focus there should be as much on establishing the infrastructure for legal trade as on improving security.

Along the border of Timor-Leste and Indonesian West Timor, the main impact of that legacy is a fear that each new spat between neighbours and each new sign of organising by ex-militias – and in particular by the former militia leader Eurico Guterres – heralds a new round of violence. Although Timor-Leste has other significant security problems – most recently demonstrated by the 28-29 April rioting in Dili – that particular fear is largely unfounded.

Indonesia and Timor-Leste have mostly managed to establish good bilateral relations. The one issue that has consistently provoked a nationalist uproar in Indonesia is accountability for past human rights violations. The outrage in Jakarta was immediate when President Xanana Gusmão submitted the 2,500-page report of the Timor-Leste Commission on Truth, Reconciliation, and Reception (CAVR) to the UN Secretary-General. It was also short-lived, as more pressing domestic issues arose, and Gusmão and other Timor-Leste officials emphatically reiterated their determination to look to the future. Both governments are trying to bury the issue through a Commission on Truth and Friendship, which appears aimed more at finding a mechanism for amnesties rather than justice.

Sporadic incidents of violence do occur on the border but they are rarer than one might expect. The day-to-day problems are illegal crossings and smuggling. Delineation and demarcation of the final disputed border sections remains a sensitive but thus far manageable issue. The militias that once worked with the Indonesian military to try to crush the independence movement are largely a spent force, causing more headaches for local government in West Timor – mostly regarding compensation claims, resettlement issues and criminality – than for Timor-Leste.

Destabilisation is far more likely to come from political forces inside the ex-province than outside.

The rioting in Dili on 28 April and in the early hours of 29 April helps to put the border incidents in perspective. It followed several days of protests by 591 soldiers sacked from the army and their supporters and left at least four dead, according to Timor-Leste Police Chief Paulo de Fatima Martins.<sup>1</sup> Thousands of others reportedly sought temporary refuge at sites around the city or returned to their home areas in Timor-Leste. Some of the violent incidents on the border have been serious, but the numbers killed and temporarily displaced in the Dili riots exceed the same figures for all border incidents in 2005 and 2006 combined.

One issue that really could cause a crisis in the long term may be Oecusse, the enclave surrounded on three sides by West Timor and separated by 60 kilometres from the rest of Timor-Leste. Isolated, neglected, and faced with higher prices for basic goods than villagers across the border, its people may eventually conclude that independence has brought them nothing but hardship.

The two countries should consider:

- ❑ instituting a soft-border regime as the easiest and best short-term step to reduce tensions and provide legal avenues for border trade;
- ❑ investing in road works near the border to open access to better transportation for villagers and improve the reach of overstretched security forces;
- ❑ deploying more police on the border;
- ❑ improving security cooperation to manage border incidents better as they arise;
- ❑ working with donors on livelihood and income-generating projects on both sides of the border;

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<sup>1</sup> Martins told the press two people were killed and 36 wounded in the rioting on 28 April, while a further two people were killed and 43 injured in the early hours of 29 April in sporadic clashes between rioters and security forces. “45 Anggota Petisioner Diamankan PNTL”, *Suara Timor Lorosae*, 2 May 2006. Some media reports stated five people were killed, but did not cite a source.

- ❑ ensuring that any decision to grant amnesty to perpetrators of serious crimes related to the 1999 violence is based on a full public hearing of individual cases; and
- ❑ devising a lasting solution for ex-refugees.

## II. EX-REFUGEES, EX-MILITIAS AND JUSTICE

Following the 30 August 1999 referendum in which East Timorese voted to separate from Indonesia, four broad groups crossed the border into West Timor: members of Indonesian army-sponsored militias, along with their families and supporters; Indonesian civil servants, both Timorese and non-Timorese; those forcibly deported by the militia or Indonesian military (TNI); and those independently fleeing the post-poll violence. Many of the some 250,000 swiftly returned, according to UNHCR figures, 126,000 in the first three months. Those who stayed longer were initially considered refugees but lost that status at the end of 2002 and are considered Indonesian citizens. These former refugees can still go back to Timor-Leste but the rate of returns is now modest. In 2005, only around 500 took part in the repatriation program, and a scheme that provided incentive funding for repatriations has now ended.<sup>2</sup>

Most of those who have elected to stay live in two districts: Belu, which borders Bobonaro and Covalima in Timor-Leste, and Timor Tengah Utara (TTU), which borders Oecusse. Precisely how many there are is a matter of debate. Before it wound up its operations in West Timor at the end of 2005, the office of the United Nations High Commissioner for Refugees (UNHCR) estimated that about 10,000 former refugees were “living in conditions of concern”, while 16,000 others had been resettled within West Timor. Other estimates are higher: a local NGO, CIS Timor, says 9,000 families (approximately 40,000 people) are in camps; the Belu district government lists 7,734 families still living in emergency housing in that district alone, while East Nusa Tenggara Governor Piet Tallo cited a figure of 104,436 individuals remaining in West Timor.<sup>3</sup>

<sup>2</sup> Crisis Group interview, UNHCR, Kupang, 12 December 2005.

<sup>3</sup> Crisis Group interviews, UNHCR, Kupang, 12 December 2005 and director of CIS Timor, 12 December 2005; “Xanana Beri Peluang Pengungsi Timor Kembali”, *Koran Tempo*, 28 December 2005, p.A9; “Pembkab Belu tolak politisasi jumlah eks pengungsi Timtim”, *Pos Kupang*, 15 March 2006. Governor Tallo’s figure makes no distinction between those receiving aid and those not.

Uncertainty over the figures can take on a political edge: critics of the lower estimates say they are intended to overstate the success of efforts to assist former refugees or designed to downplay the level of support for autonomy (as opposed to independence) in 1999.<sup>4</sup> Opponents of the higher figures say they have been inflated in an attempt to attract extra financial aid – a common practice in Indonesia.<sup>5</sup>

A key underlying problem for uprooted people is access to land. Many communities gave land to the newcomers in 1999 on the assumption their presence would be temporary; some are now asking for it back. Local NGOs have had some success in brokering deals with communities for ex-refugees to buy land at below market rates, particularly in Belu district. Access is likely to be a sensitive issue in West Timor for the foreseeable future, however.<sup>6</sup> Without it, many ex-refugees face difficulties earning a living, yet local communities complain of their own loss of access and environmental degradation as a result of increased population.

Tensions between local communities and ex-refugees rarely escalate into violence but they generate pressure on ex-refugees to return to Timor-Leste. A community leader in TTU told Crisis Group any problem involving ex-refugees tended to end in taunts: “This isn’t your land; go back where you came from”.<sup>7</sup> Ex-refugees acknowledge local resentment but the calls to return to Timor-Leste are particularly galling for many who see their support for Indonesia in the 1999 referendum as the source of their predicament.<sup>8</sup>

Even as the issue of the 1999 refugees drags on, Indonesians periodically raise the spectre of a new influx – not without a hint of schadenfreude that Timorese should be forced to flee to the country they rejected, thus

<sup>4</sup> Crisis Group interviews, West Timor, April, May, December 2005. Some pro-integration figures claim the UN rigged the 1999 referendum, and there was more support for autonomy than official results showed. They argue that large numbers of former refugees in West Timor would undermine the official result, thus creating the need to promote a lower figure. There is no evidence to support these claims.

<sup>5</sup> For discussion of such corruption related to humanitarian funds in another Indonesian post-conflict setting, see Crisis Group Asia Report N°103, *Weakening Indonesia’s Mujahidin Networks: Lessons from Maluku and Poso*, 13 October 2005, pp. 12-13.

<sup>6</sup> Crisis Group interviews, West Timor, April, May, December 2005. Residents of one border village told Crisis Group that as only three families had bought land, they assumed the other some 60 families who were “borrowing” it would go back to Timor-Leste.

<sup>7</sup> Crisis Group interview, TTU, May 2005.

<sup>8</sup> Crisis Group interviews, former refugees, April, May, December 2005.

implying that their choice of independence was folly. The most recent example followed unrest in Dili in mid-March 2006, after the sacking of 591 members of the Timor-Leste military for desertion. The Indonesian media ran stories for days, warning of a mass exodus from Timor-Leste. The Kupang military commander described TNI preparations for the new arrivals, ex-refugees were interviewed about their reaction and a former pro-integration figure suggested that Timor-Leste might become a burden for Indonesia “again”.<sup>9</sup> Even in the immediate aftermath of rioting linked to the protests in Dili on 28-29 April in which at least four people were killed, only a small number of people – mostly Indonesian citizens living in Timor-Leste – crossed the border.<sup>10</sup> While a major further deterioration of security in Timor-Leste could produce a refugee flow in the future, fears thus far have proven groundless.

## A. FORMER MILITIA

Of the four groups of ex-refugees, it is the former militia whose presence near the border is often considered self-evidently sinister, but their position in West Timor is weak. Like others who came in 1999, they periodically cross illegally into Timor-Leste, and some have been involved in recent border violence. However, it is important not to make the conceptual leap, as some observers have done, between their involvement in these incidents and a continuation of the 1999 campaign of violence. They are not politically united, they lack at least the public support of the Indonesian military and police and they are certainly not receiving logistical aid. They are not an organised threat to Timor-Leste, and they are acutely conscious of the international scrutiny of their every move. Militia leaders from 1999 are generally well off, but many of their followers are now farmers, drive motorcycle taxis or have no regular job. While they may ridicule independent Timor-Leste, many say they would return if granted a general amnesty.

Two developments in 2005 help depict the situation of former militia living in West Timor. The first was a remembrance mass (*misa requiem*) in July 2005 to commemorate the deaths of “pro-integration fighters” –

those who supported Indonesia’s incorporation of East Timor – over the last 30 years.<sup>11</sup> The plan had initially been to hold it at or near the border and invite delegates from each “refugee camp”.<sup>12</sup> After strong objections from the regional military command and provincial police to the political symbolism of a large event near the border on the anniversary of East Timor’s integration into Indonesia, organisers moved the mass to Kupang, the provincial capital.<sup>13</sup> Even there, the bishop opposed use of the cathedral, forcing organisers to move it at the last minute to a sports hall, where Justinus Phoa, a pastor with no particular ties to militia, presided.<sup>14</sup> Only a moderate-sized crowd attended – around 1,000 by one eyewitness estimate, far fewer than anticipated.<sup>15</sup>

Former militia and pro-integration figures said they had not wanted to incur the international pressure that would have been generated by holding the event in Atambua, the main town in the border district of Belu. “Any time East Timorese gather, people think we’re up to something”, said Moko Soares, the former deputy commander of the Sakunar militia, which operated in the Oecusse enclave.<sup>16</sup> “Before the event had even happened, there was already an outcry from *bule* [a mildly derogatory term for foreigners]”, another East Timorese in Belu complained.<sup>17</sup>

Awareness of sometimes disproportionate international scrutiny also contributes to the former militias’ exaggerated sense of their own significance. For example, Fransisco Soares, generally recognised as one of the most prominent pro-integration leaders in Atambua, said he believed that “as long as I have not returned [to Timor-Leste], the UN will not leave”.<sup>18</sup>

The second illustrative development was the registration of Pro-Integration Fighters (Pejuang Pro-Integrasi, PPI, the militia umbrella organisation active in 1999) that began in December 2005. It arose out of a meeting the previous month in Kupang at which Eurico Guterres, second-in-command of PPI in 1999, compared unfavourably

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<sup>9</sup> See “Kerusuhan di Timor-Leste, beban bagi Indonesia”, *Kompas*, 3 April 2006, p. 6.

<sup>10</sup> According to media reports, 81 people crossed by land to Atambua in West Timor on 28-29 April, and three on 30 April, as well as 43 Indonesians on 1 May. The particularly low number on Sunday may have been due to road blocks in Liquica district. “Warga Asing Tinggalkan Dili”, *Media Indonesia*, 30 April 2006, p. 12; “Dili Rusuh, Dua Orang Tewas”, *Pos Kupang*, 29 April 2006; “Rusuh Timor-Leste, 43 WNI Lolos ke Atambua”, *detik.com*, 1 May 2006 and; “Dili Pulih Kembali”, *Koran Tempo*, 2 May 2006.

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<sup>11</sup> Indonesian statistics list 2,277 soldiers and police and 1,527 East Timorese irregulars (militia) killed in combat between 1975 and 1999. Gerry van Klinken, “Indonesian Casualties in East Timor, 1975-1999: Analysis of an Official List”, *Indonesia*, October 2005, p. 111.

<sup>12</sup> Crisis group phone interviews, June 2005.

<sup>13</sup> “Silaturahmi orang Timtim agar dibatalkan”, *Pos Kupang*, 7 July 2005.

<sup>14</sup> Crisis Group phone interview, February 2006.

<sup>15</sup> Crisis Group interview, Timorese journalist, 21 July 2005.

<sup>16</sup> Crisis Group interview, Moko Soares, Napan, 16 December 2005.

<sup>17</sup> Crisis Group interview, pro-integration figure, Belu, December 2005.

<sup>18</sup> Crisis Group interview, Fransisco Soares (Sico Naru), Atambua, 22 December 2005.

assistance given to the Free Aceh Movement (GAM) and what he perceived as neglect of former militia.<sup>19</sup> “Rebels are treated like heroes while defenders of the state go unheeded”, he said, echoing a common complaint of former militia.<sup>20</sup> He announced a new organisation, the Front for Ex-East Timorese Fighters, and handed out forms to those in attendance to register former militia in Indonesia so that they, too, could get aid.

Although they were unwilling to provide a copy to Crisis Group, several former militia members said the forms asked for name, date of birth, current address, date of joining a PPI member organisation and a photograph. Each former militia commander was responsible for registering his own members.<sup>21</sup>

By mid-December, registration had started in both districts where most former militia live as well as in at least two camps in Kupang district.<sup>22</sup> In mid-February 2006, Guterres stated that around 10,000 had registered throughout Indonesia, approximately 8,000 of them in West Timor. He said the data would be submitted to the government via the Indonesian parliament (DPR) in March 2006 - this timetable has since been delayed until at least July 2006.<sup>23</sup>

The forms could be a double-edged sword for former militia. While they provide detailed information for anyone wanting to consolidate members into a new organisation, they could be a valuable resource for human rights

campaigners if leaked or made public. If no government assistance is forthcoming, they could diminish the standing of the militia leaders involved in the registration. Most ex-refugees have already been registered several times by different groups, and the issue of “selling their names” is sensitive. The registration by Eurico’s front followed not long after another interest group, the National Committee of Ex-East Timorese Political Victims (Komite Nasional Korban Politik Eks Timtim, KOKPIT), tried to register all ex-refugees, not just militia. While Eurico’s front did not charge for registration, ex-militia would still have had to pay for transport to meet their former commander and obtaining a photograph.<sup>24</sup> The costs and the uncertainty of assistance to follow led one community leader to complain that this latest registration had left him confused:

If I tell people to register and there turns out to be no money, they’ll be angry at me. But then if I tell them not to register, and it turns out that this time there is money, they’ll also be angry.<sup>25</sup>

Perhaps the most significant aspect of Guterres’s initiative is that he needed to conduct a registration at all to lobby the Indonesian government, another indication that the latter no longer sponsors or supports the former militia.<sup>26</sup> It also exposes how much of a problem welfare has become for many former militia, particularly those who were only rank-and-file members in 1999. By contrast, many former leaders have established livelihoods:

- Joao Tavares, head of PPI in 1999, completed construction of a large new house in Atambua in 2005, after a plan to encourage him to move to Yogyakarta by buying his old house failed.
- Eurico Guterres heads the NTT branch of the National Mandate Party (PAN) and has reportedly bought several properties in Kupang, although his re-instated prison sentence for human rights violations may endanger his position.<sup>27</sup>
- Simao Lopes, head of the Sakunar militia in 1999, is retired from the civil service but owns a beachside guesthouse in Wini, near the border with Oecusse.<sup>28</sup>

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<sup>19</sup> Eurico Guterres commanded the Aitarak militia in 1999. Indonesia’s Supreme Court in March 2006 re-instated his ten-year prison sentence for human rights violations, which had been reduced to five years on appeal. He is free pending execution of the sentence and plans to request judicial review. In 2006, he was elected head of the National Mandate Party’s East Nusa Tenggara office. For details on reintegration aid provided to GAM, see Crisis Group Asia Briefing N°44, *Aceh: So Far, So Good*, 13 December 2005.

<sup>20</sup> “Tuntutan Serupa Konflik Berbeda”, *Gatra*, 10 December 2005, p. 38.

<sup>21</sup> Crisis Group interviews, former militia, TTU, Belu, December 2005.

<sup>22</sup> In TTU, the overall responsibility is with Simao Lopes, former Sakunar commander who lives in the coastal border village of Wini. Moko Soares, his former deputy, appears to have been more active, however. He attended the meeting in Kupang and told Crisis Group he had received 300 forms from Eurico to register former Sakunar members, but this was more than needed. A former Sakunar member living in Oeolo, near the border with Passabe, said members were asked to go to Moko’s house in Napan to register. From the five villages near Oeolo, he said, 26 people went to register. Crisis Group interview, Moko Soares, Napan, West Timor, 16 December 2005. Crisis Group interview, Julio da Costa, Oeolo, West Timor, 18 December 2005.

<sup>23</sup> Crisis Group phone interviews, Eurico Guterres, February 2006, May 2006.

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<sup>24</sup> KOKPIT charged each family an administration fee of Rp 25,000 (approximately \$2.50). Figures denoted in dollars (\$) in this report refer to U.S. dollars.

<sup>25</sup> Crisis Group interview, community leader in Belu, West Timor, December 2005.

<sup>26</sup> Some observers suggested the registration was a first step in Guterres’s successful campaign to become head of PAN in NTT.

<sup>27</sup> Crisis Group interviews, Kupang man, December 2005. The party’s central committee indicated in April that it would not suspend Guterres; see “PAN Tak Akan Pecat Eurico Guterres”, *tempointeraktif.com*, 17 April 2006.

<sup>28</sup> Crisis Group interview, Simao Lopes, May 2005.

- Moko Soares, Lopes's deputy, lives in a masonry house near the Oecusse border in Napan and owns several cars. He remains a civil servant but admits he rarely goes to work.<sup>29</sup>

## B. AMNESTY

Communities in Timor-Leste see the presence of ex-militia across the border as a threat and would prefer that they return, provided those guilty of murder in 1999 face justice.<sup>30</sup> But justice for past human rights violations appears to be an ever scarcer commodity.

The 14 December 2004 decision of the governments of Indonesia and Timor-Leste to establish a bilateral Commission of Truth and Friendship (CTF) as the primary vehicle for dealing with the past brings the question of amnesties for human rights violators to centre stage. Only one of the eighteen Indonesian military officers, Timorese officials and former militia tried in Jakarta since 2002 has been convicted of serious human rights violations linked to the 1999 referendum. The establishment of the CTF further reduces the chance that many of those responsible for the violence will ever be prosecuted.<sup>31</sup> It is not empowered to recommend new judicial processes but it can recommend amnesty for human rights violators who "cooperate fully in revealing the truth".<sup>32</sup> It is not clear what full cooperation entails or how the commissioners will decide if the truth has been told. If the amnesty provision is applied broadly, there could be hundreds of amnesties: at the conclusion of Serious Crimes Unit investigations in May 2005, 303 accused individuals remained outside Timor-Leste (mostly in Indonesia) and around half of the 1,402 confirmed murders in 1999 had not been investigated.<sup>33</sup>

Proponents use two arguments for amnesties. One is to facilitate truth-telling – the context in which the CTF will consider making recommendations.<sup>34</sup> Timor-Leste's ambassador to Indonesia, for example, stated that it was not sufficient for groups to acknowledge collectively that violations had occurred: before reconciliation could take place, people would need to know on an individual level what had happened to family members who had died during Indonesian rule. He said he hoped the CTF might achieve what the independent Commission on Truth, Reconciliation and Reception (CAVR) set up in Dili in 2002 had not.<sup>35</sup> (In fact, the 2,500-page CAVR report to the Timor-Leste government in late 2005 has almost certainly gone further than the CTF will.)

The CTF has not yet summoned anyone to testify and indeed has not even produced a clear work plan, so it is too early to guess its results. But there are several problems with the way the commission's terms of reference set out the relation between amnesties and truth-telling. Unlike the South African Truth and Reconciliation Commission, widely seen as an exemplar, there is no threat of prosecution for those who refuse to cooperate or tell only partial truths. Acknowledging this weakness, a CTF member said there would be no incentive for people who have already been acquitted to cooperate.<sup>36</sup> The commission can provide privacy or confidentiality to anyone who testifies – although it will issue a public final report, its terms of reference do not require that individual testimony be made public.

A second argument, expressed by various West Timorese academics, religious figures and NGO activists, is that amnesties may convince many former East Timorese refugees to return home. Militia and pro-integration figures also promote this argument: for example, Simao Lopes said that while he would not return if granted an amnesty,

<sup>29</sup> Crisis Group interview, Moko Soares, 16 December 2005.

<sup>30</sup> Crisis Group interviews, border communities, December 2005.

<sup>31</sup> Six individuals were convicted in the initial instance but all except Eurico Guterres won appeals. See Megan Hirst and Howard Varney, "Justice Abandoned? An Assessment of the Serious Crimes Process in East Timor", ICTJ, June 2005, pp. 11-12. Guterres has announced he intends to request judicial review; if unsuccessful, the only further avenue open to him would be a plea for presidential pardon.

<sup>32</sup> Article 14 c. (i), Terms of Reference for The Commission of Truth and Friendship established by The Republic of Indonesia and The Democratic Republic of Timor-Leste. The impact of this amnesty provision is unclear: the number of recommendations for amnesties depends upon how the commission interprets the provision in its terms of reference that states the CTF does not prejudice ongoing judicial processes for the crimes of 1999.

<sup>33</sup> Executive Summary, Report to the Secretary-General of the Commission of Experts to Review the Prosecution of Serious

Violations of Human Rights in Timor-Leste (the then East Timor) in 1999.

<sup>34</sup> So far, the CTF has agreed on fourteen priority cases: the attack and killing at the Suai church on 6 September 1999, the attack on the Liquica church on 6 April 1999, the Cailaco killing on 12 April 1999, the attack on a police post in Maliana on 8 September 1999, the killing of a nun near Lauten on 25 September 1999, the killings at Passabe in Oecusse from 8-10 September 1999, the attack and killing at Manuel Carrascalao's house on 17 April 1999, the violence in Dili from 5-6 September 1999, the killing and rape of Ana Lemos in Ermera on 13 September 1999, the killing by Battalion 745 of Sander Thoenes on 21 September 1999, the disappearance of Mau Hudu at the end of 1999, the forced exodus of 4-9 September 1999, rape and sexual slavery after the attack in Suai, and gender violence in Atabae, Bobonaro and refugee camps in West Timor.

<sup>35</sup> Crisis Group interview, Timor-Leste ambassador to Indonesia, 7 March 2006.

<sup>36</sup> Crisis Group interview, Agus Widjojo, 19 March 2006.

most ex-refugees would, while Fransisco Soares said he would most likely go home if there were no threat of prosecutions.<sup>37</sup> Another former militia leader, Moko Soares, said: "If they gave an amnesty, there wouldn't be any refugees here. Even with as good a house as this, I'd go back".<sup>38</sup>

Many in Timor would view it as positive if amnesties did secure the return of former refugees but there are several problems with the premise. It assumes that the threat of prosecutions is the sole or main factor preventing returns and that unless "big fish" are pardoned, others will not go back. Neither is necessarily the case. Other factors that contribute to reluctance to return include better economic conditions in West Timor, personal decisions to become Indonesians and uncertainty over the reception they might expect in home communities.<sup>39</sup>

While some assume prominent ex-militia are influencing others not to go back, this influence has waned significantly since 1999. Ex-militia, however, still promote the idea that if leaders are free to return, others will follow: "If Moko Soares goes back, a lot of people will go back,"<sup>40</sup>

It is not clear that the return of former refugees would be the silver bullet for welfare and security problems that some imagine. For example, one advocate of returns also worried they could trigger renewed conflict in Timor-Leste if returnees were visibly better off than people who had stayed.<sup>41</sup> There is also no guarantee that returns would end petty criminality on the border, such as smuggling and illegal crossings. An increase in vigilantism is also possible.

One factor that will influence whether vigilantism occurs will be how amnesties affect local perceptions of justice. The problem is that amnesty proponents use the same term to refer to different things. Former militia want a blanket amnesty prior to return. This is unlikely: an Indonesian CTF member told Crisis Group he believed a credible amnesty would have to list individual names.<sup>42</sup> Some militia even say that an amnesty granted by Timor-Leste

would be insufficient. They perceive prosecutions for the 1999 crimes as UN-driven and so want UN involvement in an amnesty. "If the UN doesn't sign, I'm not going home", a former militia leader said.<sup>43</sup>

Other proponents, particularly in Timor-Leste, take issue with this approach. "The problem is that they want an amnesty before they admit their crimes. But before they return, they're already asking for an amnesty".<sup>44</sup> NGO activists, community figures and government officials in Timor-Leste also said an amnesty would have to distinguish between crimes: looting and arson could be forgiven, but murder would have to be prosecuted.<sup>45</sup>

Apart from the uncertain benefits of an amnesty, there is the cost to justice of closing the door on future prosecutions. However grave the shortcomings of the trials for the 1999 crimes have been, in both Jakarta and Dili, and however slim the chances that Indonesians indicted in Dili but resident in Indonesia will ever face trial, a few wanted men are still crossing into Timor-Leste.<sup>46</sup>

Non-government and international bodies continue to push for prosecutions, although without serious support from the Timor-Leste government, let alone other states, this is unlikely to carry much weight. The Security Council responded to the May 2005 recommendation of the UN-appointed Commission of Experts that prosecutions continue in Timor-Leste and Indonesia only by requesting the Secretary General to compile a report suggesting a "practically feasible" approach on justice and reconciliation.<sup>47</sup> Timor-Leste President Xanana Gusmão in

<sup>37</sup> Crisis Group interview, Simao Lopes, May 2005. Crisis Group interview, Fransisco Soares, December 2005.

<sup>38</sup> Crisis Group interview, Moko Soares, December 2005.

<sup>39</sup> Crisis Group interviews, April, May, December 2005. One pro-integration figure emphasised the economic argument, saying that now that ex-refugees were receiving the Rp 100,000 monthly subsidy granted to Indonesia's poorest 15.5 million families after fuel prices were raised in October 2005, they would be even less motivated to return to Timor-Leste. Crisis Group interview, December 2005.

<sup>40</sup> Crisis Group interview, Moko Soares, December 2005.

<sup>41</sup> Crisis Group interview, member of Oecusse administration, December 2005.

<sup>42</sup> Crisis Group interview, Agus Widjojo, 19 March 2006.

<sup>43</sup> Crisis Group interview, Dominggus Ompong, Atambua, December 2005.

<sup>44</sup> Crisis Group interview, member of Oecusse administration, December 2005.

<sup>45</sup> Crisis Group interviews, Timor-Leste, December 2005. The Community Reconciliation Process run as part of the CAVR also made this distinction. Perpetrators of less serious crimes were able to participate, while those suspected of serious crimes such as murder were excluded and referred to the Serious Crimes Unit. It is not clear that any of those excluded were put on trial. Piers Pigou, "The Community Reconciliation Process of the Commission for Reception, Truth and Reconciliation", UNDP Timor-Leste, April 2004, p. 52.

<sup>46</sup> For instance, see "Serious Crimes Suspects Continue to be Arrested", JSMP Press Release, 6 February 2006; "Satu Lagi Pelaku Kejahatan Berat Ditangkap", JSMP Press release, 3 February 2006; "War Crimes Suspect Returns to Timor-Leste", JSMP Press release, 8 August 2005.

<sup>47</sup> Letter dated 28 September 2005 from the President of the Security Council to the Secretary-General. At the January 2006 meeting of the Security Council to discuss Timor-Leste, support for pursuing these practical measures varied. France, Slovakia, Denmark and Austria, representing the EU, stated concern over amnesties and impunity; others were more non-committal.

January 2006 publicly rejected the CAVR recommendations that the investigation of crimes against humanity in Timor-Leste continue and the UN take full responsibility for a reconstituted Serious Crimes Unit that would widen its investigations to cover 1974-1999.<sup>48</sup> Gusmão stated that a widened program of prosecutions could take years, cause violence in Timor-Leste and set back democratic consolidation in both Timor-Leste and Indonesia.<sup>49</sup>

While great weight must obviously be given to the views of the country's democratically elected leadership on the whole transitional justice issue, it is not clear that they reflect overall popular sentiment. The objective case for amnesties – particularly any given for serious crimes without a full public hearing of individual cases – is not strong. The framework for truth-telling is not sufficiently rigorous, it is not certain amnesties would spur returns, and without community acceptance, they would be unlikely to promote reconciliation.

### III. BORDER SECURITY

Smuggling and illegal crossings, rather than militia incursions, have emerged as the two main security issues on the Indonesia-Timor-Leste border. The current approach to border security contributes to these problems through a combination of insufficient policing capacity and the lack of a workable framework for informal border crossings and trade. These deficiencies have played a part in some of the sporadic violence, and they create economic difficulties for many communities. Nevertheless, the cost of inaction will not be large in the immediate future, except in Oecusse, where far more serious problems could develop in the longer term if these issues are left unaddressed.

#### A. THE BORDER SECURITY REGIME

Indonesia and Timor-Leste are still in the process of negotiating the legal framework for the security regime on their shared border and implementing the agreements already reached. Perhaps the single most important step will be to implement a "soft-border" regime, so that legal crossings are not confined to only a handful of checkpoints.

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Provisional Record of 5351<sup>st</sup> meeting of UN Security Council, 23 January 2006.

<sup>48</sup> CAVR also specifically recommended that crimes against humanity and war crimes involving sexual violence against women and girls be excluded from any amnesty. See Part 11, Recommendations, Section 4.1.3, Final Report of the Commission for Reception, Truth and Reconciliation in East Timor.

<sup>49</sup> Provisional Record, Security Council, op. cit.

There are only four official crossing points on the shared 316-kilometre land border. These are the junction points at Salele/Metamauk (Timor-Leste/Indonesia) in the south of the island, Batugade/Motain on the north coast, Sakato/Wini on the north coast at the eastern extreme of the Oecusse enclave, and Bobometo/Napan on the southern border of the Oecusse enclave near the Indonesian town of Kefamenanu. On Timor-Leste's side, these are manned by two officials each from immigration (police) and customs (Ministry of Finance) and a small detachment of Border Patrol Unit (Unido Patruolomento Fronteira, UPF) officers.<sup>50</sup> On the Indonesian side, immigration (Department of Law and Human Rights), police and TNI each maintain posts.

Even at these crossing points, the border is not open around the clock. At Bobometo/Napan, for example, immigration officials travel approximately 40 kilometres each morning from the coastal capital of Oecusse to their post and return in the late afternoon; on the Indonesian side, police and military man their posts from the early morning but crossing is possible only after the immigration official arrives.<sup>51</sup>

Only passport holders may cross at each junction point. To enter Indonesia, non-Indonesian citizens must also possess a visa before arrival at the border; upon arrival in Timor-Leste, the border post is able to issue a short-term visa for \$30. The cost of crossing is prohibitive for most of the local population, and the volume of traffic is low. On both sides of the border, local communities and government officials are keen for a non-passport border pass system, like that on Indonesia's land border with Malaysia.<sup>52</sup> Members of both central and local government in Indonesia say they are ready to implement the system; Timor-Leste's ambassador to Indonesia confirmed that Timor-Leste is not.<sup>53</sup> Its absence, combined with lax security, encourages illegal crossings.

Management of security on the Timor-Leste side has been the sole responsibility of the UPF since a final handover from the UN Peace Keeping Force on 20 May 2005.<sup>54</sup>

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<sup>50</sup> The Border Patrol Unit (Unido Patruolomento Fronteira, UPF) of the National Timor-Leste Police (PNTL) has some 292 officers but must cover three shifts to maintain a permanent presence on the border. Crisis Group interview, Lino Solanha, 20 July 2005.

<sup>51</sup> Crisis Group observations crossing the border.

<sup>52</sup> On the border between Indonesia and Malaysia, citizens can cross into the sub-district adjacent to the border using only a border pass. See "RI-Malaysia Capai Kesepakatan Baru Lintas Batas", *Tempo interaktif*, 15 December 2005.

<sup>53</sup> Crisis Group interviews, Indonesian foreign affairs officials, February 2006, Timor-Leste ambassador to Indonesia, 7 March 2006, Belu assistant district head, April 2005.

<sup>54</sup> The UN has retained fifteen military and twenty police advisers to assist the UPF with border management training and facilitate

With only some 300 personnel, the UPF is spread so thinly that it can make only a symbolic effort to control the border.<sup>55</sup> Its small size is compounded by inadequate transport and communications equipment and the remote terrain. The result is that some posts are isolated for hours or even days at a time during the wet season, when flooding closes roads to parts of the border.<sup>56</sup>

On the Indonesian side, the TNI deploys a Border Security Task Force under an army lieutenant-colonel based in Atambua, typically consisting in large part of Army Strategic Reserve (Kostrad) field artillery troops. It is planned that this will eventually be replaced by the 744 battalion, permanently stationed in West Timor, which will be increased to 1,039 personnel for border duties.<sup>57</sup> The 744 battalion took responsibility for the north section between Belu District (Indonesia) and Bobonaro (Timor-Leste) on 27 January 2006 but the remainder of the border is still patrolled by two “non-organic” battalions.<sup>58</sup> There are far fewer police on the border. The deployment of military rather than police accords with Indonesian law but seems inappropriate given the petty nature of most security incidents. This is unlikely to be reviewed in the short term, however: the regional military command reacted coolly to a suggestion by a visiting UN team in 2004 that border security be handed to the police.<sup>59</sup>

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cooperation between Timorese units and the TNI Border Security Task Force. They play no direct role in managing border security.

<sup>55</sup> The commander of the Timor-Leste police (PNTL), Paulo Martins, has acknowledged this shortcoming and stated in late 2005 that the PNTL would begin recruiting additional border personnel in January 2006. See UN Office in Timor-Leste (UNOTIL) Media Summary, 2 December 2005, 22 December 2005.

<sup>56</sup> For example, to reach the Passabe and Quibiselo posts from Oecusse town, it is necessary to drive along a river bed for several kilometres. On any afternoon that it rains, the river floods and cuts off the post. The posts are responsible for the region of the border where clashes over demarcation and farm land took place in September-October 2005.

<sup>57</sup> During Indonesian rule of East Timor, 744 was one of two battalions stationed in the territory. The other, 745, was disbanded in 2000. The Udayana Military Command in Bali, responsible for troops permanently stationed in West Timor, announced in May 2005 that the expanded 744 battalion will have five companies rather than the standard three. “Batalion Khusus utk perbatasan”, *Koran Tempo*, 10 May 2005.

<sup>58</sup> “Yonif 744/SYB Pelajari Pilar Batas Darat RI-Timtim”, *Antara news*, 31 January 2006. The southern section of the border with Belu district is patrolled by the Air Defence Artillery Battalion, while the border with Oecusse is patrolled by Field Artillery 13/Kostrad Battalion. “Non-organic” refers to troops temporarily deployed in an area as back-up for the local territorial troops.

<sup>59</sup> “Pangdam Udayana Tolak usul PBB”, *Pos Kupang*, 14 May 2004.

There is no formal agreement between the TNI and the UPF on procedures to handle illegal crossings, smuggling and security disturbances.<sup>60</sup> Indonesia submitted a final draft of a memorandum of understanding on force cooperation in October 2005 but Timor-Leste is still considering it.<sup>61</sup>

## B. SMUGGLING AND “JALAN TIKUS”

The dysfunctional border regime has led to the proliferation of illegal crossings and smuggling. Much of this takes place via “jalan tikus” (literally “mouse tracks”), referring to the maze of foot-tracks that intersect the border. When conducted on a petty-scale by local residents, smuggling is considered a more or less respectable way to supplement an otherwise meagre income in border villages.

Trade runs in both directions but significantly more goods pass from Indonesia into Timor-Leste. Rice from Timor-Leste is sometimes sold to Indonesian border villagers: a 50-kilogram sack of milled rice sold for \$12 in late 2005, when the going price in Indonesia was about Rp 150,000 (\$15).<sup>62</sup> Subsidised petrol and kerosene are frequently taken from Indonesia into Timor-Leste. Explaining the economics of the trade for the Oecusse enclave, an official in an Indonesian border village said that twenty litres of kerosene could be bought in Kefamenanu, the main Indonesian town in the area, for Rp 60,000 (\$6). After paying Rp. 10,000 (\$1) for transport to and from Kefamenanu, it could be sold at the border for Rp 100,000 (\$10) – a \$3 profit for each jerry-can.<sup>63</sup> Higher transport costs and limits on kerosene purchases have made fuel smuggling less profitable on the other section of the border separating Belu district from Timor-Leste, where it has greatly decreased since Indonesia raised fuel prices in October 2005.<sup>64</sup>

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<sup>60</sup> The previous memorandum of understanding on force cooperation between the TNI and the UN peacekeeping force no longer applies.

<sup>61</sup> Crisis Group interviews, Indonesian foreign affairs officials, February 2006, Timor-Leste ambassador to Indonesia, 7 March 2006.

<sup>62</sup> Crisis Group interview, villager in Indonesian border village, Timor Tengah Utara district, December 2005.

<sup>63</sup> Crisis Group interview, Indonesian village official, Timor Tengah Utara district, December 2005.

<sup>64</sup> On this section of the border, the rise in petrol prices in Indonesia from Rp 2,400 to Rp 4,500 in October 2005 largely ended major fuel smuggling. Smuggled petrol there sells for 70 cents a litre on the Timor-Leste side of the border, before being sold in Dili for 90 cents. When transport costs are taken into account, the margins are too narrow for profitable trade. A local said kerosene was still attractive for smuggling, as it sold for Rp 2,000 (approximately 30 cents) in Atambua and in Timor-Leste



The extent to which security forces and local officials on each side of the border are complicit in smuggling is an open question. While many suspect the security forces provide “backing” to larger-scale smugglers, there is little hard evidence. The TNI and UPF have periodically intervened to disrupt petty smuggling: each patrols *jalan tikus* and arrests smugglers from time to time. Three TNI soldiers were wounded in two separate incidents on the border in 2005 while reportedly seeking to prevent smuggling.<sup>65</sup>

When security forces do intervene, their actions are extremely unpopular with local communities and even some local officials. Local residents and NGOs complain that security forces often attempt to profit from the border trade, alleging that they demand a cut of profits, or seize goods and demand extortionate amounts for their return.<sup>66</sup> Participants in a series of cross-border dialogues called on the governments of both countries to pursue a more comprehensive approach to reduce smuggling by creating viable border economies through measures such as reopening legal markets.<sup>67</sup> “The government should be embarrassed about *jalan tikus*, not us”, a participant reportedly said.<sup>68</sup> Commenting on the arrest of three Indonesians in Timor-Leste in late 2005, an Indonesian official in the local village said he felt it was inappropriate to enforce the law in border areas.<sup>69</sup>

### C. OECUSSE ENCLAVE

Smuggling problems are particularly significant for Oecusse. The absence of a soft-border regime compounds its isolation from the rest of Timor-Leste and makes it particularly reliant on illegal trade via *jalan tikus* for otherwise scarce food and petrol. In the long term, continued inaction on border issues could raise questions over the enclave’s viability.

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for 80 cents. “But its sale is controlled, only five litres per person per week. That’s only just enough for people’s needs here”. Crisis Group interview, Belu district resident, Atambua, 21 December 2005.

<sup>65</sup> On 21 April 2005, Timor-Leste border police shot Tedy Setiawan, a post commander in the TNI Border Patrol Task Force in the vicinity of smuggling activity. Smugglers stabbed two TNI soldiers who pursued them near the border on 27 July 2005.

<sup>66</sup> Crisis Group interviews, NGO activists, local residents, Timor, December 2005.

<sup>67</sup> The border markets were shut after the UPF shot and killed former Halilintar militia member Viegas Biliatu near the border between Bobonaro and Belu in September 2003.

<sup>68</sup> Crisis Group interview, Father Vincent Wun, Kefamenanu, West Timor, 14 December 2005.

<sup>69</sup> Crisis Group interview, Indonesian village official, Timor Tengah Utara district, December 2005.

The contrast with West Timor is stark when entering Oecusse. Some infrastructure damaged during the 1999 violence is still unrepaired. One passes the burnt out prison on the way into town, and even within the coastal capital, there are fire-gutted, empty buildings. Roads are in poor repair; the capital has electricity only at night, and even then only when there is fuel for the generators. The mobile phone signal drops in and out, while few buildings have fixed telephone lines. With re-establishment of the international border, communications between Oecusse and the main nearby West Timor town of Kefamenanu – less than 50 kilometres apart as the crow flies – are in many ways more difficult than between Kefamenanu and Jakarta, 2,000 kilometres away.

Independence has also further isolated Oecusse from Dili, to which it is linked only by a twice-weekly ferry service. When this failed in February-March 2004, Oecusse residents were stranded in Dili, and the enclave experienced severe rice shortages.<sup>70</sup> A Dili-Oecusse land link using buses to carry passengers through Indonesian territory without a visa has long been planned, but is not operating.<sup>71</sup>

Although Timor-Leste’s constitution specifies a special administrative and economic status for the enclave, and there is now a secretary of state for it, Oecusse officials lack authority to act on soft-border measures such as passes and markets they consider urgent.<sup>72</sup> Authority to negotiate these with Indonesia is still in Dili. Officials and members of parliament from there frequently visit, Oecusse residents said, but nothing changes.<sup>73</sup> “When rice is needed, [the central government] sends asphalt”.<sup>74</sup>

A member of the Oecusse district administration underlined the enclave’s dependence on smuggling, saying

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<sup>70</sup> Laura Suzanne Meitzner Yoder, “Custom, Codification, Collaboration: Integrating the Legacies of Land and Forest Authorities in Oecusse Enclave, East Timor”, Ph.D. dissertation, Yale University, May 2005, p. 2.

<sup>71</sup> Crisis Group interview, Indonesian foreign affairs officials, February 2006. The service was agreed to in the “Provisional technical arrangement between the Government of the Republic of Indonesia and the United Nations Transitional Administration in East Timor on the coordination of measures to facilitate the movement of people and their personal effects between the Enclave of Oecussi and other parts of East Timor”, 2002.

<sup>72</sup> A travel permit (*surat jalan*) system designed by the district administration in cooperation with Indonesian authorities operated in 2001-2002, allowing Oecusse residents to travel to West Timor for 72 hours without passport or visa. It was discontinued in 2003. Around 1200 people used the system each month.

<sup>73</sup> Crisis Group interviews, Oecusse community members, May, June, July 2004; Crisis Group interview, member of district administration, December 2005.

<sup>74</sup> Crisis Group interview, member of Oecusse district administration, December 2005.

shutting down the *jalan tikus* would be tantamount to starving itself. He called any police arrests of Timor-Leste citizens in Oecusse for bringing in cheap goods illegally deplorable.<sup>75</sup>

The neglect of Oecusse has not yet caused security problems but unless Timor-Leste acts now to make the enclave viable – through further investment or allowing more direct economic links with West Timor – some residents could decide returning to Indonesia would be a better future. There are no signs of that now but the discontent is real. Addressing it could head off a more serious crisis in the longer term.

#### IV. RECENT BORDER INCIDENTS

In the past twelve months at least six serious security incidents have taken place along the border. While some involved former militia, they do not appear to have been part of any militia campaign to undermine Timor-Leste's sovereignty. The main causes of much of the violence were smuggling, land disputes and illegal border crossings. Two incidents that received significant international attention are discussed below: the 6 January 2006 shooting of three former militia just inside Timor-Leste, and the September-October 2005 clashes along an as yet undelineated stretch of the border between West Timor and the Oecusse enclave. Each temporarily focused international attention on Timor and caused tension as each country advanced different versions of what had occurred. In both cases, the problem was managed as much by letting matters cool of their own accord as by implementing the agreed solution.

##### A. THE MALIBACA INCIDENT

On 6 January, members of the UPF shot dead three Indonesian former refugees – Jose Mausorte, Candidos Mariano and Stanis Maubere – in Bobonaro district, just inside Timor-Leste.<sup>76</sup> The media and officials from both countries immediately promoted substantially different versions. To Timor-Leste, the dead men were former militia who had frequently crossed illegally from West Timor and this time attacked a border patrol.<sup>77</sup> Indonesia

did not deny the men were former militia but maintained that they were merely fishing and had been shot without warning.<sup>78</sup> The shootings sparked large protests in West Timor, particularly in Atambua but also in Kupang, with former pro-integration figures calling for the border to be closed temporarily, Timor-Leste's consulates in Indonesia to be shut and even for Indonesia to revoke recognition of Timor-Leste's independence.<sup>79</sup> Jakarta did none of this. The foreign minister instead conveyed a stern protest through Indonesia's ambassador in Timor-Leste. The shootings did become a national issue, however. The head of the parliament, Agung Laksono, called them a national insult and told the media, "if it happens again, [Timor-Leste] should feel the consequences".<sup>80</sup>

The incident occurred near the bank of the Malibaca River, which divides Belu district in Indonesia from Bobonaro district in Timor-Leste. According to the version in the Indonesian press, based on interviews with two teenage members of the group, the men decided to fish (using poison) 50 metres within Timor-Leste because their normal spot near the TNI post about a kilometre away was flooded.<sup>81</sup> Before they started, three police (PNTL) approached, two carrying automatic weapons, one a pistol. After a confrontation, the teenagers heard eight shots and fled across the river, learning the next day of the deaths.<sup>82</sup>

The Timorese government and press placed the shooting within the context of previous border incidents, focusing on Jose Mausorte, who, prior to his death, had been accused of involvement in several: a 13 August 2005 attack on a local man in Mausorte's home district of Cailaco, the 18 January 2005 infiltration of former militia into Timor-Leste territory that resulted in the capture of Daniel Mendes and a 2002 "bus hold-up" in Atsabe.<sup>83</sup>

After the shootings, the Timor-Leste press reported claims from village officials in Bobonaro district that

<sup>75</sup> Crisis Group interview, Oecusse district official, Timor-Leste, December 2005.

<sup>76</sup> Mausorte was listed as a militia member by the Serious Crimes Unit but was not indicted. Another of the deceased was mentioned in an SCU indictment but not charged.

<sup>77</sup> A press release by Timor-Leste's ministry of foreign affairs and cooperation the day after the shootings said the dead men had tried to take away the policemen's weapons. "Border Incident Being Investigated", press release, 7 January 2006.

<sup>78</sup> The UN Secretary-General largely adopted Timor-Leste's version, describing the deceased as "infiltrators" in his report to the Security Council. "Progress report of the Secretary-General on the United Nations Office in Timor-Leste", UN Security Council, 17 January 2006.

<sup>79</sup> "PNTL tidak hormati HAM", *Pos Kupang*, 10 January 2006.

<sup>80</sup> "DPR Kecam Penembakan WNI", *Republika*, 12 January 2006.

<sup>81</sup> A man experienced with fishing with poison told Crisis Group this story was illogical: very still water is needed.

<sup>82</sup> "Terkapar di Tapal Batas", *Tempo*, 22 January 2006, pp. 28-29.

<sup>83</sup> See <http://www.etan.org/et2005/13/19aleged.htm>. Mendes was sentenced under Indonesian law at the Suai District Court to four years in prison on 8 August 2005, for seeking to destabilise the government. "Conviction of an Ex-Militia Member for Plan to Attack Timor-Leste". JSMP Press Release, 8 August 2005.

Mausorte had frequently crossed the border illegally to visit his family since its return to Timor-Leste in 2003. The *Suara Timor Lorosae* newspaper suggested he had been warned as early as five months before his death, quoting a village official as saying in August 2005: "If they (Mausorte's group) don't want to obey the letters we have sent them, they'd better stop infiltrating or they will be shot dead by the PNTL".<sup>84</sup>

Indonesia and Timor-Leste announced a joint investigation. Teams initially acted separately, then went to Maliana to conduct a joint crime scene investigation. They then met on 27 January at the Timorese border police post at Batugade/Motaain to present findings. Comments afterwards suggested they had little common ground. Timor-Leste Prosecutor General Longinhos Monteiro, who led one team, was quoted as saying Indonesia based its finding only on information from the two Indonesians who escaped, 90 per cent of which was not based on reality.<sup>85</sup> Police Commissioner Mochamad Iriawan attacked Timor-Leste's reconstruction of events, disagreed with the conclusion on the direction of gunfire and said witnesses, suspects and evidence should have been brought to the crime scene.<sup>86</sup> In future, he recommended, Indonesian authorities should have direct access to Timor-Leste detainees.<sup>87</sup> Nevertheless, a joint agreement was signed at the end of the investigation. It was not made public but established that the incident was in Timor-Leste territory, and the border police used excessive force.<sup>88</sup>

The Malibaca incident provides several insights:

- It underlines the limited nature of any militia threat to Timor-Leste. Even if the worst government fears were true and Mausorte and his companions were involved in a campaign to produce instability, their alleged actions caused no deaths, let alone a breakdown in security. It is more likely they entered Timor-Leste to visit their families or engage in criminal activity.

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<sup>84</sup> The official, Carilino Freitas Mau, was one of two men who received six-month suspended sentences for giving Mausorte five kilograms of rice in the Mendes case. "Insiden Penembakan tiga WNI di Malibaka: RI Minta Investigasi Bersama", *Suara Timor Lorosae*, 9 January 2006, but also "Conviction of an Ex-Militia Member for Plan to Attack Timor-Leste". JSMP Press Release, 8 August 2005.

<sup>85</sup> UNOTIL Daily Media Review, 27 January 2006.

<sup>86</sup> This is common practice in Indonesian criminal investigations.

<sup>87</sup> "Insiden Malibaca Diharapkan Jadi Pelajaran bagi Timtim", Media Indonesia Online, 28 January 2006.

<sup>88</sup> Crisis Group interview, Timor-Leste ambassador to Indonesia, 7 March 2006; "Tim Investigasi RI-Timor-Leste Tetapkan Seorang Tersangka", *KCM*, 24 February 2006; "'M' Jadi tersangka Penembakan WNI di Perbatasan Timor-Leste", *Antara News*, 21 February 2006.

- It shows that for specific issues only, large numbers of ex-refugees will quickly gather near the border. The return of the bodies of ex-refugees killed in Timor-Leste has consistently proven to be one of these issues. Prior to the January shootings, a large crowd gathered near the border in February 2005 to receive the bodies of Emilia Baritu and Agusta de Jesus, high school girls murdered in Timor-Leste. These gatherings do present some security risk: ex-refugees reportedly tried to block passage of fuel into Timor-Leste and searched for Timor-Leste citizens after the Malibaca shootings. The protests quickly subsided, however, essentially without a guarantee that any of their demands had been met.
- It shows need for better security cooperation between the two countries; the "joint" investigation did little to address differences.

## B. THE PASSABE-MIOMAFFE CLASHES

In September-October 2005, villagers armed with rocks and air rifles clashed several times along a short stretch of Indonesia's border with the Oecusse enclave, one of the final three sections of the Timor-Leste border that have not been demarcated.<sup>89</sup> No one was killed, but several people were badly wounded, and each side claimed crops and property were destroyed or damaged. The TNI, UPF and local government met several times, and the clashes diminished after the disputed border areas were declared "sterile". Amid opposition from Timor-Leste villagers in particular, the agreement to establish "sterile" areas has not always been enforced, and minor clashes and harassment have continued.

The dispute centres on conflicting claims to farming land, which will be affected by the final position of the border. It arose not long after the visit of a joint survey team in late August 2005 to delineate the last 4 per cent of the border. After the team had surveyed a short stretch, a local crowd prevented it from proceeding beyond the Indonesian village of Sungkain. It then skipped a section of the border and resumed further west, only to be again blocked. Working in this way, the team left several sections of the border unsurveyed (those that eventually became the "sterile" areas).<sup>90</sup> By December, villagers on both sides were complaining about the team; some in Timor-Leste

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<sup>89</sup> The other two disputed areas are the "Citrana triangle" at the north-western extreme of Oecusse and the Memo area on the border between Belu district in Indonesia and Bobonaro in Timor-Leste.

<sup>90</sup> Crisis Group interviews, border villagers, Timor-Leste and Indonesia, December 2005, Indonesian foreign affairs officials, February 2006.

said it had walked down the wrong line, while Indonesians said it had included an *adat* (customary) representative from Timor-Leste but not Indonesia. When asked about the dispute, villagers on both sides recited long lists of local landmarks they felt should constitute the points of the border.<sup>91</sup>

The claims of villagers in Oecusse and Indonesia regarding where the border should be vary from 500 metres to approximately four kilometres. In Oecusse, villagers base their claim on pillars marking the 1904 Portuguese-Dutch boundaries. They say they have habitually tended gardens in the areas Indonesia now disputes, and blame Jakarta's claims on ex-refugees from Passabe now living in West Timor who want renewed access to gardens they tended before 1999.<sup>92</sup> Indonesian villagers counter that the 1904 markers are not appropriate, because the border had been shifted by a local customary (*adat*) settlement.<sup>93</sup> They say any solution must rest on *adat* to avoid protracted conflict.<sup>94</sup> They also claim they have customarily tended gardens on the disputed land, and villagers from Passabe have cut tree crops.

The sensitivities of the team's activities were compounded by their timing. By coincidence, the team arrived in late August-early September, as people were starting to clear land in preparation for planting in November, when the rains begin. When villagers from Oecusse entered the disputed areas to clear land, Indonesians challenged them, and the groups began to throw rocks. Over the next two months, similar disputes and associated tensions resulted in incidents at a number of border villages, including Hamueniana, Pistana, Nilulat, Manusasi, Tubu, Cruz and Quibiselo (in Oesilo district, not Passabe). The situation improved in November, but as late as December, villagers reported mutual harassment around Tubu village in Indonesia. In addition to fighting with rocks and air rifles, villagers on both sides claim fires have been set to destroy huts and endanger villages. Since the clashes, villagers have begun to tie up cattle rather than letting them roam, and tensions have closed down the *jalan tikus*: "No one would dare come across. If they come over here we'll kill them. And if we went in there, they would murder us".<sup>95</sup>

Former militia have undeniably participated in the attacks but did not lead them, according to West Timorese in the

border villages.<sup>96</sup> Villagers in Timor-Leste have lists of Indonesian Timorese – some militia members in 1999 – whom they say frequently cross the border. They did not explicitly accuse the former militia of leading the attacks, however. The question of militia involvement rose to international prominence when a UN cable on several incidents, dated 12 October, was leaked to the press. It stated that film recorded by Timorese police had "identified uncontrolled people in the area, including a militia by the name of Okto".<sup>97</sup> "Okto" is Oktavianus Anunat, a low-level member of the Sakunar militia in 1999, who operates a motorcycle taxi (*ojek*) in the border village of Haumeniana.<sup>98</sup> The journalist who quoted the leaked cable, however, referred to Okto as an organisation, not a person, and this mistake was repeated in other media outlets.

The UN cable also reportedly stated that the TNI were "condoning, if not actively encouraging" the incursions, based on the presence of seven soldiers at the rear of the crowd during an incident at Manusasi village. Eyewitnesses on the Indonesian side confirmed the TNI has generally gone no further than the border.<sup>99</sup> But Indonesians also criticised the UPF, saying the Timorese police unit acted provocatively and took no action against Timorese citizens involved in border disputes and thefts.<sup>100</sup>

After the initial clashes, a meeting was held at the TNI post in Haumeniana on 11 October to seek an interim solution. It was proposed that several areas along the border where claims differed would be declared "sterile", meaning no activity could take place in them. Villagers, local officials and police from Oecusse said they rejected

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<sup>91</sup> Crisis Group interviews, border villages in Indonesia and Timor-Leste, December 2005.

<sup>92</sup> Crisis Group interviews, border villagers, Timor-Leste, December 2005.

<sup>93</sup> Crisis Group interviews, Indonesian border village, December 2005; "Titik-titik Batas Timor Bisa Jadi Bom", *Kompas*, 10 October 2005.

<sup>94</sup> Crisis Group interview, local villager, Indonesian side of disputed area, December 2005.

<sup>95</sup> *Ibid.*

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<sup>96</sup> Crisis Group interview, villager, Haumeniana, 18 December 2005. When asked about the clashes, Moko Soares, who lives at a different point of the TTU-Oecusse border near the Napan junction point, said he told those who had reported the incident to him that "any [ex-militia who took part] on the front line would be in trouble with me", because it would generate international pressure. Crisis Group interview, 16 December 2005.

<sup>97</sup> UN cable as directly quoted in Mark Dodd, "Feared E Timor militia rears head", *The Australian*, 19 October 2005.

<sup>98</sup> Crisis Group interviews, Haumeniana, Passabe, December 2005. In a skirmish in the disputed area, he was wounded on the left side of the chest by a shot from an air rifle, leaving a small scar.

<sup>99</sup> Crisis Group interviews, Kefamenanu, 17 December 2005, Indonesian border villages, December 2005. The TNI unit guarding the border during the clashes, Yon Armed 12/ KOSTRAD (Malang), has been rotated back to Jawa, replaced by Yon Armed 13/ KOSTRAD Sukabumi. A local military officer from the new troops insisted the TNI was not backing militia, although he said several former militiamen lived locally. Crisis Group interview, December 2005.

<sup>99</sup> Crisis Group interviews, December 2005.

<sup>100</sup> Crisis Group interviews, Indonesian border villages, December 2005.

the offer: "Indonesia calls the areas 'disputed land', we just call it Timor-Leste territory".<sup>101</sup> But on 25 October the UPF and TNI signed an agreement to keep disputed areas (detailed on a map) "sterile", conduct joint patrols and not fire their weapons there.<sup>102</sup> Each security force has set up additional security posts in the area.

The agreement helped reduce clashes but several provisions have not been consistently enforced. On Indonesia's side of the border, villagers complain they have lost access to gardens, while people from Oecusse continue to tend theirs. "Does the disputed [status] only apply to Indonesia and not to Timor-Leste?"<sup>103</sup> In Oecusse, villagers acknowledge they continue to enter the disputed areas but say this is because they never agreed to declare them sterile or they had already cleared land for crops before the agreement. The TNI unit present during the clashes was replaced by a different battalion in November, disrupting joint patrols. TNI and UPF members stationed near the disputed areas express low regard for their counterparts across the border.

It is unclear what steps either country will now take to resolve the dispute. The planned visit of a bilateral survey team to the border in March or April 2006 has been delayed. It would have avoided the disputed area and surveyed only the other two unresolved sections, in Citrana and Memo.<sup>104</sup> In any case, a lasting solution is unlikely to involve simply demarcating the border. Flexibility will be needed to allow villagers to manage fields across the border. In the short term, both countries may also need to increase police capabilities on the border and provide police with training and equipment for crowd control. But as long as there is no border pass system or even a provision for border markets, the scope for such flexibility is greatly reduced.

ex-refugees have been killed in Timor-Leste have dispersed once the bodies have been buried. The pro-Indonesia militia who helped conduct the campaign of violence in 1999 do not appear to have the intention or capacity to resume the fight. And despite the continuing legacy of Timor-Leste's independence in Indonesian domestic politics, the two governments appear determined to pursue good relations.

Border issues could become more serious in the longer term, particularly in Oecusse, but escalation into wider conflict would require a change in circumstances caused by an external factor: deterioration in relations, the uncertainties that would surround a sudden, large return of amnestied ex-refugees, or a new refugee flow precipitated by drastic worsening of security in Timor-Leste.

There are several steps each country could take to ameliorate tensions, short of a large commitment of resources to generate livelihoods and a lasting resolution of the ex-refugee situation. Some of these have long been planned but implementation is overdue. A soft-border regime is perhaps the most pressing measure. Road works to link border areas and connect them with larger population centres are also important. Each country could also deploy more police to the border, although this would only help if police were trained for specific border duties and adequate mechanisms were in place to monitor their behaviour. A concerted effort to improve cooperation of security forces would also be important to assist in the management of future border incidents.

**Jakarta/Brussels, 4 May 2006**

## V. CONCLUSION

Memory of the 1999 violence contributes to fears that each new border incident will signal a return to wider conflict. In the short term, however, incidents of the present kind are unlikely to escalate. Disputes over the position of the border, such as the Passabe-Miomaffe clashes and tensions in Citrana, have largely been viewed as specific to the local areas; the crowds that have gathered in West Timor when

<sup>101</sup> Crisis Group interviews, Oecusse, 20 December 2005.

<sup>102</sup> Copy of agreement signed by UPF Vice Commander Jaimito Hei and Dansatgas Yon Armed-12, shown to Crisis Group by Oecusse villager.

<sup>103</sup> Crisis Group interview, villager in Nilulat, 17 December 2005.

<sup>104</sup> Crisis Group interview, Indonesian foreign affairs officials, February 2006; Crisis Group phone interview, Indonesian foreign affairs official, April 2006.

**APPENDIX A**  
**MAP OF TIMOR**

