

## **Policy on Justice and Return Procedures in East Timor**

The United Nations, together with the Transitional Government of East Timor, is keen to promote the return of refugees as the current situation in East Timor is stable and safe. At present, a number of factors may influence whether or not a person decides to return, including: access to pensions, aid packages for returnees, the overall economic situation, and justice procedures for those suspected of committing crimes in 1999. This paper deals only with the last of these issues.

The leadership and people of East Timor are truly committed to peace and reconciliation, but this can only be fully achieved if those suspected of having committed a serious crime are brought to justice. All refugees are free to decide whether or not to return home. No matter why they chose to leave East Timor, they are welcome back. This includes people who committed crimes in 1999. Most refugees did not commit such crimes.

Any person who did commit a crime during 1999 will have to face one of two processes once they return to East Timor, depending on the seriousness of the crime. Parts A and B of this fact sheet clarify what these are, and how they work. Part C clarifies what will happen if someone suspected of committing serious crimes wishes to participate in a UNHCR-facilitated "Go and See" visit, Part D clarifies the same for those wishing to attend a UNHCR-facilitated Reconciliation Meeting at or near the border.

### **Part A Refugees who committed 'lesser crimes' during 1999 and who want to return to East Timor**

- If a person has committed a 'lesser crime' such as isolated incidents of looting, house-burning or minor assault prior to 25 October 1999, and returns to his/her village, he/she will be eligible to participate in the community-based reconciliation process facilitated by the Commission for Reception, Truth and Reconciliation.
- An individual who has committed a less serious offence and wishes to use the community reconciliation process should take the following steps: contact an office of the Commission, submit a written statement, participate in a hearing, and probably undertake an act of community reconciliation.
- In each case, a panel comprised of a Regional Commissioner and local community leaders will mediate between victims and perpetrators to reach agreement on an act of reconciliation to be carried out by the perpetrator.
- Such an act might include re-building the house of the victim or paying compensation for loss of livestock, for example.

### **Part B Refugees suspected of committing 'serious crimes' during 1999 and who want to return to East Timor for good**

- A 'serious crime', for these purposes, includes acts such as murder, torture, sexual offences and large-scale crimes (e.g. organised destruction of property) committed between 1 January and 25 October 1999 as well as other Crimes Against Humanity.
- Serious crimes will be dealt with by East Timor's criminal justice system, in particular the Serious Crimes Unit, which is charged with investigating and prosecuting serious crimes, and the Special Panels for Serious Crimes at the Dili District Court.
- There are several possible scenarios if a person is suspected of committing serious crimes in 1999 and decides to return to East Timor. These scenarios are outlined below.

### **Arrest process**

- This depends on the status of investigations against persons suspected of committing serious crimes.

#### ***(a) If an indictment has been filed and an arrest warrant obtained:***

Anyone against whom an indictment has been filed by the Serious Crimes Unit is liable to arrest if they return to East Timor (except in the case of a Reconciliation Meeting at or near the border, as noted below in Part D).<sup>1</sup>

#### ***(b) If there is no indictment, but an arrest warrant has been obtained***

In addition to the persons who have been indicted, the Serious Crimes Unit has obtained arrest warrants against some persons suspected of committing serious criminal offences, but against whom investigations are not yet completed.

#### ***(c) If there is no indictment or arrest warrant***

In the case of refugees returning to East Timor, it will be extremely rare that a suspect will be arrested without a warrant. In fact, such an arrest will only occur if there is a risk that a suspect may flee, tamper with evidence or endanger public safety.

- In conclusion: any person against whom there is either an indictment or an arrest warrant will be at risk of arrest if they enter the jurisdiction of East Timor in any circumstances. This includes participants in “Go & See” visits (see Part C). The only exception to this is for participants in a UNHCR-facilitated Reconciliation Meeting at or near the border (see Part D).
- If there is currently no indictment or arrest warrant against an individual who is nevertheless suspected of committing serious crimes, investigations by the SCU will continue until such time as enough evidence is compiled for an indictment to be filed. The arrest warrant would not usually be obtained until the investigation is complete. At that stage (which may be several months later) the suspect may be arrested.

### **Lists of indictments and arrest warrants**

- The SCU will maintain a list of all persons against whom there is an indictment, and a separate list of persons against whom an arrest warrant is currently outstanding. These lists will be made available to UNHCR.
- UNHCR may inform all people who are on these two lists of their status, in case concerned refugees want to have access to this information prior to making a decision on whether or not to voluntarily repatriate.
- UNTAET will arrange for appropriate circulation of the indictment list.

### **Location of arrest**

- For repatriating refugees, an arrest will usually be made in the suspect’s home community, and not on the border or at the transit camp. In making the arrest, Civpol/ETPS and the Serious Crimes Unit will take into account the sensitivities of the situation and the local conditions.
- Upon arrest, the suspect’s rights will be fully respected and explained to him/her by the Civpol/ETPS. These include, the right:
  - To be presumed innocent;
  - To remain silent and not to admit guilt;
  - To contact a relative or close friend and be visited;
  - To have a lawyer appointed and paid for.

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<sup>1</sup> An indictment is a formal document written by the Prosecutor, charging a person with specific crime(s). Indictments are public documents and therefore the accused may be informed of the existence of the charges and the arrest warrant against them. Arrest warrants contain information about the alleged crime and the victim’s identity, and are issued by an Investigating Judge. Arrest warrants are not usually public documents.

### **The Review Hearing**

- Within 72 hours of the arrest there must be a Review Hearing with an Investigating Judge. The Review Hearing takes place at the court in Dili, and is usually closed to the public. At the Hearing, the suspect will be represented by a lawyer, and the Investigating Judge will again inform the suspect of his/her rights.
- The purpose of the Review Hearing is for the Investigating Judge to decide if the suspect will be detained, released or released under substitute restrictive measures (bail with conditions).

### **Detention or release on bail**

- The Serious Crimes Unit anticipates that in most cases, the prosecutor will ask for suspects to be released under conditional bail whilst investigations continue and they await their trial..
- Examples of conditions of release include: an order not to leave the jurisdiction, to report to Civpol/ETPS on a regular basis and to surrender travel documents; an order not to contact witnesses; an order not to go to specified locations; and order to provide monetary bond.
- However, if there is a real risk that the suspect will flee the jurisdiction, interfere with witnesses or evidence, or endanger public safety then the prosecutor may ask the judge to detain the suspect.
- If a suspect is detained, the Investigating Judge must review the detention every 30 days. After 6 months a suspect must be released unless the Dili District Court accepts that there are proper grounds under international standards to continue the detention.
- Following the Review Hearing and the probable release under conditional bail, the suspect will return to his/her community while investigations are completed. The suspect will remain at large until the commencement of the trial at the Special Panel for Serious Crimes in Dili District Court.
- If, whilst a suspect is released on conditions, he/she breaches those conditions, the prosecutor may bring the matter back to the court and ask for additional conditions or detention.

### **Part C Refugees suspected of committing ‘serious crimes’ during 1999 and who want to participate in an organised “Go & See” visit**

- Refugees participating in a UNHCR-facilitated “Go & See” visit face all the scenarios outlined in Part B, with one exception. Namely, no one attending an official “Go & See” visit will be arrested during the visit if there is no indictment or arrest warrant already issued against them. Such persons will not, however, be exempt from arrest in the future should they choose to return for good.
- For this purpose, a “Go & See” visit must have been arranged and facilitated by UNHCR. UNHCR must provide to all relevant UN and Government agencies 48 hours notice of the visit (including date and time of the visit, addresses of the visitors for the duration of their stay, and a list of visit participants).

### **Part D Refugees suspected of committing ‘serious crimes’ during 1999 and who want to participate in an organised Reconciliation Meeting**

- No one suspected of committing serious crimes will be arrested whilst traveling to, attending or traveling from a reconciliation meeting at or near the border, provided the reconciliation meeting is facilitated by UNHCR and takes place within a secure and defined venue, on a weekday during daylight hours. UNHCR must provide 48 hours

notice of the meeting, including the list of participants, to all relevant agencies (including PKF, Civpol/ETPS and SCU).<sup>2</sup>

- Furthermore, any refugee intending to travel to such a meeting must carry some means of identification, and must remain at all times within the venue notified for the meeting. Any refugee against whom an arrest warrant has been obtained, who departs the notified venue within East Timorese jurisdiction, may be liable to arrest.

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<sup>2</sup> Memo of 7 December 2001 from the Transitional Administrator, regarding UNTAET's position on