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## £EAST TIMOR @Unfair Political Trial of Xanana Gusmão

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**Xanana Gusmão**, the East Timorese resistance leader, was sentenced to life-imprisonment on 21 May 1993 after a blatantly unfair political trial. The District Court of Dili found him guilty of rebellion and illegal possession of firearms. Amnesty International deplored the outcome but said it came as no surprise since a guilty verdict is a foregone conclusion in political trials in Indonesia and East Timor.

In view of the fact that Indonesia's sovereignty over East Timor has not been recognized by the United Nations, the competence of Indonesian courts to try Xanana Gusmão, and other East Timorese, is open to question. It is especially doubtful whether an East Timorese can legitimately be charged with rebellion against the Government of Indonesia which occupies the territory illegally. Nevertheless, Amnesty International believes that, when such trials do take place, every effort must be made to ensure that they comply fully with international standards of fairness.

Following strong international criticism of its appalling human rights record in East Timor, the Indonesian Government made an unusual effort to make Xanana Gusmão's trial appear both open and fair. Selected foreign journalists, diplomats and some international human rights organizations - not including Amnesty International - were permitted to attend as observers. However, like all political trials in East Timor and Indonesia, this one failed to meet international standards of fairness, or even to comply with Indonesia's own Code of Criminal Procedure.

Even before proceedings began on 1 February, practices highly prejudicial to a fair trial were already evident. After his capture on 20 November 1992, Xanana Gusmão was held in secret military custody for 17 days before the International Committee of the Red Cross (ICRC) representatives were permitted to see him. Apart from being unlawful, this prolonged period of incommunicado detention gave rise to fears that he may have been psychologically or physically ill-treated. Such fears were heightened by the fact that, in violation of both domestic and international standards, he was denied access to a lawyer while

under interrogation. There were also doubts about whether he had been free to appoint legal counsel of his choice as required by Indonesian law.

Lawyers from the Indonesian Legal Aid Institute (LBH) were not permitted to visit him, despite having been given power of attorney by his relatives. A defence lawyer was finally appointed on 26 January 1993 just six days before the trial began. The trial itself was also marked by the violation of basic international and domestic standards. Prosecution witnesses, many of whom were themselves political detainees, appear to have been subjected to undue pressure from military authorities, making their testimony unreliable. Some who refused to comply were reportedly subjected to intimidation and sanctions. One witness, Saturnino da Costa Belo, who unexpectedly shouted "Long Live East Timor!" was removed from the court-room, placed in an isolation cell and declared unfit to testify. Fear of official reprisals also ensured that few witnesses could be found to testify for the defence. In some respects, the defence case also appeared to have been inadequately prepared. A further problem was that neither Xanana Gusmão nor many of the witnesses were fluent in Indonesian, the language used in the court, while translation services provided were neither complete nor accurate. Perhaps the most blatant contravention of fair trial standards came in one of the final sessions when Xanana Gusmão was due to read his final defence plea. After he had read two pages of a 29-page statement, the presiding judge ordered him to stop, claiming that his remarks were "irrelevant". Government officials have since repeated the judge's claim that Xanana Gusmão's remarks were "irrelevant". In fact, the statement addressed highly sensitive political issues, such as the question of Indonesia's sovereignty over East Timor. It appears likely that his statement was suppressed in order to prevent Xanana Gusmão from raising publicly such critical issues<sup>1</sup>.

In addition to these procedural concerns, Amnesty International believes that the general political atmosphere within which the trial took place - one of undisguised official hostility to the defendant, and repeated interference in the judicial proceedings by military and executive authorities - made a fair trial virtually impossible.

Since his arrest the organization has been, and remains, seriously concerned for Xanana Gusmão's health and safety. In his suppressed defence statement, Xanana Gusmão stated his intention to go on hunger strike, and there are fears that he may be in poor health as a result of carrying out his intention. There have also been disturbing reports that he has been beaten in recent weeks. The Indonesian Government has issued assurances that he is in good health and is not on hunger strike, but it has not been possible to verify this since neither his family nor the International Committee of the Red Cross (ICRC) have been permitted to visit him since he was taken out of court on 21 May 1993. Amnesty International urges that the ICRC and relatives be given immediate - and thereafter frequent and regular - access to him in detention.

The trial of Xanana Gusmão has justly attracted widespread international attention, but it is hardly unique. With this verdict, Xanana Gusmão joins thousands of political prisoners sentenced in blatantly unfair trials in East Timor and Indonesia since the New Order government of President Suharto came to power in the mid-1960s. Virtually unnoticed by the international community, similar political trials also continue today in the province of Aceh, where government forces have conducted a brutal counter-insurgency campaign since 1989. And despite government claims that the human rights situation in East Timor has improved in the past year, serious violations continue to occur while past violations remain unresolved. Scores of East Timorese arrested for their non-violent pro-independence activities in the past two years remain in custody, some of them not yet charged, others serving sentences up to life imprisonment. Meanwhile, the fate of more than 200 people who "disappeared" after the Santa Cruz Massacre in November 1991 remains unresolved.

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<sup>1</sup> An English translation of Xanana Gusmão's defence plea, which was smuggled out of prison, is included as **Appendix I** of this report.



**KEYWORDS:** TRIALS<sup>1</sup> / PRISONERS' TESTIMONIES<sup>1</sup> / POLITICAL PRISONERS / INCOMMUNICADO DETENTION / LONG-TERM IMPRISONMENT / DETENTION WITHOUT TRIAL / DISAPPEARANCES / WITNESSES / HARASSMENT / TORTURE/ILL-TREATMENT / HUNGER-STRIKE / OCCUPATION / PHOTOGRAPHS / ICRC /

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# **APPENDIX I**

## **DEFENCE STATEMENT OF XANANA GUSMÃO**

**May 1993**



I wish firstly to take this opportunity to express myself with complete freedom - without, that is, coercion of any kind.

To all those who have approached me on the question of my statements, including the Indonesian ambassador to the UNO [United Nations Organization], Mr Nugroho, I have always affirmed that the circumstances under which my earlier statements in Jakarta were made were such that they could not be viewed as credible. This is the moment to make this clear. I hope that Indonesian intellectuals will understand my frame of mind as I enjoy this moment of freedom of expression, resulting from the rights I have, or have acquired.

It is my hope that the new generation in Indonesia, or rather, the youth of Indonesia, will appreciate the significance of law and of liberty, two fundamental components of human life today and of the society in which we live.

Finally I hope the international community will accept the validity of my declarations, bearing in mind the time and situation in which they were made.

Once again, your honour, I thank you for allowing me to speak in my own defence.

### **Competence and Jurisdiction**

I am Kay Rala Xanana Gusmão, leader of the Maubere Resistance against the shameful and cowardly invasion of 7 December 1975 and the criminal and illegal occupation of East Timor for the last 17 years<sup>2</sup>. On 22 December last year, in Denpasar, I signed a document in which I stated that in the eyes of international law I am still, like all Timorese, a Portuguese citizen and, in my own eyes, a citizen of East Timor. It is in these terms that I reject the competence of any Indonesian court to try me, and even less a court set up by criminal force of arms in my country, East Timor.

I believe that according to the theory of colonialism, this is a form of rule enforced by others through the occupation of their land and the imposition of force. Colonial rule is the imposition of the will and the laws of the dominating force and consequently... [original illegible]. The anti-colonial struggles and the expansionism of the former Soviet Union following the attempts by Hitler and the Japanese to dominate the world formed the basis of what we now know as the United Nations Organization.

I believe that the Charter of the United Nations in its essence epitomizes the theories which have arisen from the experience of peoples from all corners of the earth and the most different... [original illegible]. The principles enshrined in the Charter of the United Nations provide the necessary and the best reference point for the theories of people's liberation and the formation of nations. Today, with the advance of humankind, there is no part of the world that does not subscribe to these universal principles and standards of international law [original illegible]. The *a priori* reasoning of conservative theories which justified colonialism in terms of the advantages bestowed by civilization crumbled as peoples became aware of their own identity.

If national laws arose from the need to regulate the way of life between individuals in a given society, international law arose from the need to harmonise cooperation between peoples and nations. I believe that the laws of Indonesia, not being exclusively or explicitly based on traditional Indonesian law, apply to the standards of contractual law. It is thus necessary to mention that, as a member of the UN, Indonesia

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<sup>2</sup> Indonesian forces invaded East Timor on 7 December 1975, shortly after the declaration of East Timor's independence.

pledged itself before the international community to respect and contribute to respect for international law and to respect and contribute to [...original illegible].

I believe that this massive amount of political stage-managing will not go unheeded by the international press. But in case it does, let me bring to the attention of all the fact that I am a foreigner in my own land. In the POLWIL<sup>3</sup> prison I'm surrounded exclusively by Indonesians. The BAIS<sup>4</sup> officers and KOPASSUS<sup>5</sup> men are my guards. I requested a visit from the Bishop and they entrusted me to an Indian priest who is a supporter of integration. In the rooms of this building, which they call a court, I see only Indonesians, or rather Indonesian soldiers from KOPASSUS or BAIS. In Indonesian law trials of this kind are, or should be, held in public. But when I come into the room the only public I see are the military authorities, some of who were the very instigators of this trial. My compatriots, the Timorese, are out in the street under strict surveillance. This is the flagrant rule of an occupying force, in all its colonial insolence.

### **East Timor, The History of a Trial**

The case of East Timor is the responsibility of the international community, a question of international law. It is a case which puts universal principles at stake, a case in which the UN provisions on decolonisation have been manipulated, a case in which Indonesia has flaunted its disrespect for the resolutions of the UN and which therefore constitutes a flagrant violation by Indonesia of the principles of the Non-Aligned Movement and of the universal norms of law, peace and justice.

Every Indonesian is bound to their nation and with their government's policy and any view they may have of the situation of East Timor is a product of their government's view, unless they listen to their own conscience and commit themselves to the universal standards of justice, liberty and law. For 17 years the history of East Timor, the other side of the coin, has been that of a great Indonesian farce. For almost four months now I have been used as a chess piece in this shameful farce - with what intelligence or success is not for me to say. This court claims to be trying me for crimes committed against the Indonesian state and illegal possessions of arms. I know everything has been arranged for me to be acquitted ...[original illegible].

Those who should be standing before the international court are:

Firstly, the Indonesian Government for 17 years of crimes committed in East Timor.

Secondly, the United States administrations which gave the green light to the invasion on 7 December 1975 and have granted military aid to and political support for the genocide carried out by Indonesia in East Timor.

[Original illegible]... Australia and Western Europe for their policy of complicity with Indonesia.

Finally, the Portuguese Government for their seriously irresponsible handling of the decolonization of East Timor.

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<sup>3</sup> POLWIL (*Polisi Wilayah*) is the regional Indonesian police headquarters in Dili, East Timor.

<sup>4</sup> BAIS (*Badan Intelijen Strategis*) is the central Indonesian internal intelligence agency.

<sup>5</sup> KOPASSUS (*Komando Pasukan Khusus*) is the special counter-insurgency force, whose members are notorious for their brutality in East Timor and elsewhere.



The UN recognises as legitimate all means of opposition to colonial regimes in any part of the world where a people's liberation struggle is being fought. My struggle and the resistance of my people and of *Falintil* is to be seen in this context, standing above Indonesian law.

Although in his demurrer Mr Sudjono<sup>7</sup> tried to adopt a more liberal stance in questioning the 'Declaration of Baliboi,' he did not deal with the fundamental problem: the illegal nature of the annexation, through force, of East Timor.

The key argument of this court is the so-called 'integration process of East Timor.'... [Original illegible]...that the declaration of the four parties, excluding *Fretilin*, is an acceptable representation of the genuine aspirations of the People of the former Portuguese colony?

The honourable prosecutor's records show that on 30 November 1975 the UDT, *Apodeti*, *Kota* and *Trabalhista* parties signed the declaration on the integration of East Timor with Indonesia. The same records affirm that: 'It is up to the people of East Timor to determine their own future.' How exactly does the honourable prosecutor imagine they will 'determine their own future', or in our words, 'determine their own destiny'? He will give the inevitable reply that he envisages this happening through a process carried out under conditions that would make it credible. Credible, I repeat, to whom? When it's a question of a process carried out by a people for 'determining their own future'?... [Original illegible].

The question of East Timor is not to be seen within the context of Indonesian law but in the context of international law, which stands above Indonesian laws. In attempting to minimize such an idea this court arrogantly states, and I quote: 'and to make matters worse, *Fretilin* dared to impose its will on the People, making a Declaration of Independence on 28 November.' I should remind the court that the RDTL<sup>8</sup> has been recognized by around 20 countries and would have been recognized by more had it not been for the economic interests which linked the United States, Australia, Japan, etc. to Jakarta.

The prosecutor continues with another quotation from the records: 'this unilaterally adopted position was not in conformity with the wishes of the People. The authentic will of the majority of the People was carried out on 30 November 1975 in a process... [original illegible]. The UDI which took part in that process have since shown up at the UN and at other international gatherings the farcical nature of such statements.

May I remind you that, in Denpasar, I was forced to make statements apologising to the TNI<sup>9</sup> for the massacre of Santa Cruz, which was carried out by the TNI, not by me. May I also remind you that in Jakarta I stated, in conformity with the specific instructions of Abilio Osorio, the puppet governor of East Timor, that I was prepared to surrender.

Would it have been credible to establish a provisional government in the new province of Kuwait? Kuwait, which has deeper and more direct ethnic, historical and religious ties with Iraq than any between

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<sup>6</sup> *Falintil* (*Forças Armadas de Libertação Nacional de Timor*), *Fretilin* armed forces.

[*Fretilin*, (*Frente Revolucionaria de Timor Leste*), was a party formed in May 1974 which declared independence of East Timor on 27 November 1975.]

<sup>7</sup> Mr Sudjono is an Indonesian lawyer who was appointed to serve as defence counsel for Xanana.

<sup>8</sup> RDTL (*Republica Democratica Timor Leste*), the Democratic Republic of East Timor.

<sup>9</sup> TNI (*Tentara Nasional Indonesia*), The Indonesian Army.

the population of East Timor and some islands of the NTT<sup>10</sup> that can be recalled from a stone age past? And if it was not credible to establish a provisional government in Kuwait, to whom was it credible? Would it have been credible in terms of the universal principles of self-determination, in terms of international law? [Original illegible]... Incidentally, I remember that Saddam Hussein reminded the international community that there was already a precedent for disregarding universal principles and violating international law by making specific reference to East Timor.

What value does Indonesia give to the resolutions of the Security Council and the General Assembly of the UN? A purely political one, or does it see them in the kind of authoritative legal context that allowed for Operation Desert Shield? What value does Indonesia give to the efforts of the UN and international community in solving the conflict in the former Yugoslavia? What value does Indonesia give to its own contribution to peacekeeping in Cambodia?

The 'legal context' invoked by the prosecutor has... [original illegible]. What political consideration and what legal concept underlie this presumptuous statement? This court's only reply can be that it is based on the fact that four of the parties are supposed to have signed the declaration known as the Declaration of Bali Beach. This being the case, and their answer could not be any other, I should like to know this: if *Golkar*<sup>11</sup> had won the elections with, say, 51 per cent of the votes, would the agreement between the PDI<sup>12</sup> and the PDP<sup>13</sup> automatically represent the will of the majority of the People of Indonesia? Evidently not, and even less in that you gentlemen all belong to *Golkar* and tell me that the result of the elections was in itself both a political and a legal [fact] which denies the possibility that the PDI and PDP together could represent the majority of the Indonesian People.

...[Original illegible] this court declares: '*Fretilin* dared impose its will on the People.' But when the four other parties apparently signed a declaration of integration, the court concludes: 'this was the genuine expression of the wishes of the People of East Timor!' Why then are legislative elections carried out in Indonesia? To express what? If they have never been held for any particular reason, then the '*pemili*' [general election] in Indonesia is a farce. If they have never been held for any particular reason the '*pemili*' in Indonesia has no political meaning and lacks any juridical context in an electoral sense. If the '*pemili*' in Indonesia has only [or always] been to prove that the Government [has] won the general elections Indonesia, assuming thus ...[original illegible].

The Court must surely agree with me that it exaggerated when it said that *Fretilin* 'dared to impose its will on the People' and that the above-mentioned Declaration of Bali Beach was the genuine expression of the will of the People of East Timor! The statements of this court lack the political element which would have conferred on it the legal validity which all of us demand: that it represents the will and majority of the People. This is a '*sine qua non*'!

The UN continues to this very moment to refuse to recognise Indonesian sovereignty over East Timor, a sovereignty won by the use of force, of violence and of systematic violation of the most fundamental human rights.

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<sup>10</sup> NTT (*Nusa Tenggara Timur*), East Nusa Tenggara, the Indonesian province closest to East Timor.

<sup>11</sup> GOLKAR (*Golongan Karya*) is the government political party which has won a majority in every election since the current regime came to power in a military coup in 1965.

<sup>12</sup> PDI (*Partai Demokrasi Indonesia*), Indonesian Democratic Party.

<sup>13</sup> PPP (*Partai Persatuan Pembangunan*), United Development Party.

## The truths of the trial

This Court refers to 17 December 1975 as the day when a provisional government and local assembly were formed. In case the Indonesians have forgotten I feel it my duty to remind them here, in this court, of the tragic day of 7 December of that year when Indonesian paratroopers were launched on Dili with the support of the marines. 7 December 1975 went down in history as the day of the shameful and treacherous invasion by Indonesia, the day on which Indonesian troops indiscriminately massacred the defenceless population of Dili, causing the death of thousands of old people, women and children, and also the death of an Australian journalist. If the Declaration of Balibo was signed with the blood of four Australian journalists, killed by Indonesian troops during the October attack on the village of Balibo, this so-called provisional government was set up on the corpses of the Timorese, massacred between 7 and 17 December of that year. By 17 December the Indonesian troops had still not taken the Aileu/Remexio crossing. Throughout December the invasion advanced on Aileu. By 31 December Maubisse had still not been taken.

A government which was established amidst the sound of shelling, by sea and by land, of a defenceless population - amidst the sound of advancing tanks and canon - can such a government claim to have any legal standing? In my opinion it has the same standing as the advance of the Iraqi troops into Kuwait, the advance of Russian tanks into Kabul and the Vietnamese invasion of Cambodia. A government which has hardly any control over the people in Dili, prevented from advancing into the mountains of their country, did this represent the will of the majority of the People of East Timor?

This court attaches considerable importance to the petition of 31 May 1975. It appears that this appeal was signed by Arnaldo Araujo and Guilherme Goncalves. On that day more than 80 per cent of the population of East Timor were in the mountains of their country, resisting the attempt by Indonesian troops to take further towns in the interior. The Indonesian strategists anticipated that they would take East Timor in 24 hours, descending to Dili by dawn and lurching in Baucau to spend the night in Tutala, but this was only a tempting dream of the expansionist generals. By that day Indonesian troops had occupied only a few villages on the main roads, most of them already totally abandoned.... [original illegible].

1. On that day the UN passed two resolutions, one from the General Assembly of the UN, affirming the right of the People of East Timor to self-determination and national independence, and another from the Security Council, condemning the invasion of 7 December 1975 and demanding that the Indonesian invasion forces withdraw immediately and in their entirety.

2. I can publicly confirm the change of mind in both Arnaldo Araujo and Guilherme Goncalves. I know that Arnaldo Araujo, looking back in the last years of his life, was ashamed about the process of annexation and how repentant he was at having been the docile propaganda instrument of the Indonesians. There are also cases like that of Abel Belo from Baucau, member of the presidium of *Apodeti*, who was assassinated, poisoned, after being divested of the privileges of integration, because he regretted having played a part in the invasion and occupation of his country and the massacre of his brothers. As for Guilhereme Goncalves, I can also testify to his change of mind because he was one of the... [original illegible].

After these three months of my own experience, I can vouch for the truth of Ximenes Belo's words when, in 1986, I was with him in Fantumana: 'in there we're all totally absorbed,' he said. I could confirm and continue to confirm that this is the truth of Indonesian political life.

But let me return to the process of annexation by force of East Timor. In its verdict the court affirmed that *Fretilin* was opposed to the referendum and that by this means the People of East Timor would choose integration. However, referring to that petition the court mentions that Arnaldo Araujo and

Guilherme Goncalves asked General Suharto 'to force parliament to quickly accept and bring integration about without a referendum! Who was it then who didn't want a referendum? *Fretilin* or Indonesia through the mouthpiece of its puppet government? In the name of what people was such a petition signed? Today the Indonesian government can present to the world an apparent physical, de facto control... [original illegible].

In this court the witness Oscar Lima said that he was in the mountains between December 1975 and 1978. If he had been able to tell the truth he would have said that he he would never have surrendered of his own free will but would have told the court about the big strategic operations carried out by the TNI from September 1977 to wipe out the pockets of popular resistance in East Timor. I know that the Indonesian public is still misinformed on these matters and I will give a brief description of the large-scale military operations unleashed a year after the so-called integration of East Timor with Indonesia... [original illegible] with, it must of course be stressed, the 'voluntary consent of the People'!

From September 1977 Indonesian battalions supported by Bronco OV aircraft and intense sea and air bombardment, surrounded the region which contained the districts of Suai, Boborano and Ainaro, called the Frontere-Sul sector. Thousands of people were killed by gunfire and... [original illegible] indiscriminately killed men, old people, women and children. They also slaughtered many herds of hundreds of cattle, buffalo stock and horses. They set fire to everything in their path; they destroyed everything.

It happened next in the Fronor sector which contained the districts of Ermera and Liquica. The population there got the same treatment. Similar operations were carried out in the Central North sector which comprised the districts of Dili, Aileu and part of Manatuto. Further thousands of victims fell to the TNI before the troops were able to gain control over the population. Then followed the Central South sector comprising the districts from Same to Soibada/Barique. In Jakarta, General [name illegible], the BAIS second-in-command, took pleasure in the thought of their heroism: '*Saya ambil Lachubar, saya ambil Soibada, saya ambil Barique,*' etc., etc. Militarily this means: I came, I saw, I conquered. That day, gentlemen, was almost two years after the 'voluntary' integration of the People who were still... [original illegible].

What and how was the *de facto* control of that puppet government exerted over the population? A population that was dying of hunger and disease through the war imposed by Indonesia? A population that was under attack by Indonesian troops, bombarded from air, land and sea by the TNI? Could it possibly have been this people who suffered in the bush, who saw their homes and possessions destroyed by the Indonesians, against whom they carried out a scorched earth policy, was it really this people who 'of their own free will' requested integration with Indonesia, without a referendum?

Many witnesses present here were prevented from telling the truth. Naturally all the... [original illegible] have to say that they surrendered of their own free will... [original illegible]. If he had been able Oscar Lima would have confirmed that the guerrillas of the Central North sector to whom he belonged killed many soldiers of the invasion forces and seized a lot of weapons... [original illegible] East Timor, which included the eastern part of the districts of Baucau/Viqueque. There were more TNI attacks, more thousands of victims enabling the puppet government in Dili to say that it had the population under its control. Finally, in October 1978, the TNI began to surround the PL [Ponte Leste] sector which included the whole of the eastern part of Baucau/Viqueque, forcing around 130,000 Timorese to go up and join... [original illegible] Matebian. Three weeks of intensive shelling from sea and air, ceaseless attacks, also from Sky Hawks and Bronco OV-10s and... [original illegible] won them control of the population.

In the indictment the prosecutor refers to a place called Uada Boro. Uada Boro is one of the areas in Matebian where, after capturing the population, Indonesian troops shot more than 50 men. Dead or

dying from hunger, disease, shelling, the population was forced to surrender... [original illegible]. It was this same population which, after capture, continued to die of hunger and disease and, above all, of murder. Thousands and thousands of the citizens of East Timor were slaughtered by the forces of occupation throughout virtually the entire territory. The only politics has been the law of terror, imposed to scare the Timorese into saying that they're happy about integration. The annexation of East Timor has been carried out at the cost of the resistance of the Maubere people. Over tens of thousands of lives have been lost in the war imposed by Indonesia. More than a third of the population of East Timor had to pay for its refusal, its repudiation of the new colonial presence, even more repressive when one thinks with a shudder of the principles of the UNO or the Non-Aligned Movement, of which Indonesia was a co-founder and of which it currently holds the presidency.

In 17 years of military occupation with the big INTEL<sup>14</sup> machine whose... [original illegible] KOPASSUS, searches and... [original illegible] continued, people were tortured with the most savage methods, were "disappeared", and whole massacres; all this is still a part of the policy of repression exerted over my People. Taking place before the eyes of the international community, this is the farce of the integration process which the government continues to justify, and this is the practice of terror carried out by the Indonesian occupation forces in East Timor.

### **The Untruths of Indonesian Propaganda**

I have heard a lot about the backwardness of Portuguese colonialism, as if I had not experienced it myself. They claim to show me the development of East Timor as if this were a matter of statistics that could be compared with the Portuguese colonial period. I wonder if colonialism can be classified as good or bad... [original illegible] claims to be developing the territory which it occupies while at the same time it condemns those who did not do what they have done, in other words, Portugal. But just because for 400 years Portugal failed to develop East Timor, does it mean that we Timorese must pay for the mistakes of one era of colonialism while also paying for the crimes of another?

Today all theories on colonialism or the fundamental reasons for and emergence of new nations must be seen in the light of universal principles and international law, enshrined in the Charter of the United Nations. It is in the light of these principles and of international law that Indonesia's position within the UN must be understood as regards the following instances:

a) as a member of the UN, and through a correct interpretation of the right to self-determination and national independence, Indonesia, with ASEAN, Australia and New Zealand, is jointly responsible for the re-inclusion of New Caledonia on the list of non-autonomous countries, 40 years after that same territory had been removed from the list;

b) as a member of the UN and the Committee on Decolonization, Indonesia has always supported... [original illegible];

c) showing a thorough understanding of universal principles, Indonesia condemned Vietnam's invasion of Cambodia, [the invasion] of Afghanistan by the former Soviet Union and of Kuwait by Iraq;

d) as a member of the UN Indonesia is taking part in the peacemaking process in Cambodia as Jakarta's contribution to the international community and out of respect for the UN Resolutions.

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<sup>14</sup> INTEL (Intelligence Service).

The facts as described by Mr Sudjono stem from his false reading as an Indonesian citizen who is bound to the policies of his Government. He was, in fact, appointed by the BAIS and therefore by the Indonesian Government. On 22 December last I was given a letter sent to me by the LBH. On 23 December I replied to them, accepting a lawyer. But I was forced to withdraw my acceptance, and on 30 December I had to write a letter to the LBH, rejecting their offer. My first letter, which had been intercepted, was returned to me.

Mr Sudjono claims that East Timor has always accepted that it is a part of Indonesian territory and he recalls the problem of Western Papua or... [original illegible]. What are the most important questions here? The question of the traditional, ethnic, linguistic and religious and other links or the historical question which creates the colonial link? If it is the former, why should Malaysia not integrate with Indonesia or Indonesia with Malaysia? Why should the island of Borneo be divided? If it's for the first reason, then why give so much importance to those traditional, ethnic, linguistic and religious links when they talk of East Timor and close their eyes to them when they talk of Irian Jaya in relation to Papua New Guinea?

If it's for the second reason, the historical factor linked to colonialism, which explains the division of the big island into two halves, then this shows contempt pure and simple for the question of the total dissimilarity of bonds, language and customs between the Javanese and the Irian Jayans. I wonder why it is denied that this same historical factor... [original illegible].

Sometimes Jakarta likes to maintain that colonialism's criteria for drawing up frontiers only applies to Africa, not to Asia. This is an absurd argument when we remember that Indonesia itself inherited a territory for this very reason, as a result of colonialism. What do we see now? The island of Borneo is partitioned, the North belonging to Malaysia, the South to Indonesia, and an independent enclave, Brunei, recently becoming independent. In Papua New Guinea the western part is called Irian Jaya and belongs to Indonesia, while the eastern part, Papua New Guinea, is an independent state. If an Irian Jayan believes himself to be of the same family as a Javanese, this has nothing to do with me because I'm no relation of the Irian Jayan, let alone of a Javanese. If there is a theory - Indonesian, of course - that in the NTT there are... [original illegible]. Colonialism is, in brief, the theory of expansionism.

### **Realism and Idealism**

I met Irian Jayan officers who spoke to me of the great Indonesian family and they disgusted me. I met a Sumatran, a BAIS translator who spoke Portuguese and had only praise and thanks for his Javanese brothers and I felt sick. I met Sulawesi officials who harangued me about Indonesian 'standards' and I felt an inner emptiness. 'Realpolitik' began to have a new meaning for me: political realism is political subservience, it is the negation of personal conscience and the death of a people's conscience.

I fully understand what scares, and indeed what used to scare Indonesia: the so-called ideological anachronism and orthodoxy of the ethnic groups which fuel the wars in Yugoslavia and in the republics of the former Soviet Union. It is not theories that prove history, but history which validates true theories and shows up false ones... [original illegible] in Europe today shows the anachronism or orthodoxy of Indonesia's theories, at least insofar as East Timor is concerned. The hecatomb of the former Soviet Union, the bloody dismemberment of the former Yugoslavia, co-founder of the Movement of Non-Aligned Countries, are highly topical examples of what happens when peoples are suppressed and they made subject to the will of dominating forces; what has happened in these countries provides highly topical evidence that patriotic and nationalistic awareness does not fade with time and cannot be smothered by repression.

I believe that humanity is naturally idealist. I don't know how to define idealism but I basically feel that idealism is a longing for freedom, for law and justice, and consequently that it means the intransigent defence of these standards. ...[Original illegible] because I believe that the formulation of the fundamental rights of humankind and of peoples is a product of that same idealism and the natural and logical reflection of the transcendental human condition. Humanity aspires to a great ideal: the fulfilment of both individuals and peoples within a wide framework of freedom, law, justice and peace.

Political realism is a theory imposed by the mighty, a conceit which subverted and subverts these standards. Political realism is a concept which grants rights only to the powerful and the strong so that they may act in their own interests, preventing the small and the defenceless from being able to defend themselves or from being able to refuse or act in any other way. When people speak of political realism they are implicitly speaking of an inequality of circumstance, an inequality of situation between two parties involved in whatever process. And it is this inequality which means that the small and weak shall appear to be the willing apprentices of political realism.

### **Political Inflexibility and Arrogance of the Indonesian Generals**

The same day as my arrest, in an interview with General Try Sutrisno<sup>15</sup>, I mentioned the question of dialogue with representatives of the people of East Timor. Of the 20 generals who were there, congratulating themselves on the imminence of their easy victory, one of them, in a fury, demanded: '*Rakyat mana* [people where]?' When I answered: 'Let's have a referendum,' the Indonesian generals were obliged to swallow their arrogance. The next day, 21 November, when I was already in Denpasar, the wife of the local *panglima* [military commander], surprised by the extent of the support I had, exclaimed, 'Well, I don't know, he seems to have a lot of support!' A high-ranking official replied, 'Perhaps it's support from outside.'

During my interrogation by the BAIS in Jakarta I became aware of the following:

1. The war in East Timor is essentially a matter for the BAIS, not a political issue for the government in Jakarta, as might have been supposed;

2. ...[Original illegible] or whether as a result of their operations against *Falintil* or the quantity of victims that were caused by the dismantling of the clandestine resistance movement, the BAIS themselves said it was well aware of the organisational amplitude and political capacity of resistance of the Maubere people that I represent;

3. The BAIS is a powerful Indonesian political police machine, whose sinister tentacles are the KOPASSUS;

4. The Indonesian military no longer accepts any policies other than those represented by 7 December 1975.

In my case both the BAIS and the Indonesian Government decided to take the least possible risks by manipulating the whole process of my trial. In order to be here in the court today and to speak as I am speaking I too had to take the risks necessary to my struggle. I always said to everyone, 'They're speaking to Xanana, not to his *anggota* [supporters]'...[original illegible].

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<sup>15</sup> Vice President of Indonesia.

My own situation, in which all my movements were strictly controlled, reminded me of the stringent measures which, following the cowardly massacre of Santa Cruz, were applied to the population of Dili and especially to the heroic youth of East Timor. In the POLWIL, where they try to flatter me with exaggerated attentions, the words inscribed on the prison walls by the prisoners who are my companions remind me constantly of the suffering of many of my compatriots, victims of all kinds of torture, and also serve as a constant reminder of that unforgettable day of 12 November 1991.

The peaceful demonstration of 12 November, what purpose did it serve? To remind Jakarta and remind the world of the necessity of dialogue, to remind the world that there's a lot that is wrong in East Timor. Without pity or mercy they massacred more than a hundred young people who were protesting against the illegal annexation of East Timor by force of arms and protesting against the regime of terror, the policy of intimidation and persecution that has been pursued since September 1991 by the Indonesian military who pride themselves on having brutally suffocated a rebellion in this way.

This court pronounced judgement on the victims; in the POLWIL the prisoners were brutally maltreated. It suffices to look at the witnesses present in the court today and that they are prisoners. They are extremely thin.

Perhaps those responsible for the massacre should answer for their crime before this Court? What procedure, what values in law allow the Court to close its eyes on the horrible crime of 12 November? What moral values, what standards of justice does the Indonesian government possess that it can make heroes of the criminals and pass judgement on their victims? ...[Original illegible].

Mr Pieter Kooijmans was the UN rapporteur sent with the agreement of Jakarta to East Timor to investigate *'in loco'* violations of human rights in the territory, violations which had always been denied by Indonesia at the UN. During his mission of investigation a massacre was perpetrated in cold blood. The bodies of the victims were dragged like sandbags into vehicles. In the military hospital where the victims were taken, more young people were killed than remained alive. To this very day the bodies are disappeared, or rather they were thrown into mass graves. Where, only the authorities of the occupation know. Many of the murderers are here in this room, men from the KOPASSUS, men from INTEL, the men of terror, the men on whom the whole political life of East Timor, apart from all Indonesia, depend!

After the crime East Timor was again shut to the world and INTEL's activities intensified. The witness Martinho Serrandon... [original illegible]. Of what or who are the military authorities of the occupation afraid? Are they afraid of a population which you, gentlemen, maintain are satisfied with integration? Who is it that you want to terrorize?

### **Prospects of a solution**

As in the UN, Jakarta cannot avoid the fact that Portugal is an interested party to a solution of the problem. Jakarta must never forget that the idea, the goal for which the Maubere people have struggled and resisted to this day is imperishable. Men die but the seed of the idea lives on, like all ideals consecrated by the hardships borne, the sacrifices made... [original illegible]. This is the heart of the matter. If the Indonesian government does not know it the BAIS knows it very well. The witness Saturnino da Costa Belo is a crystal clear example of the heroism of this people. The farce of the hastily drafted medical document stating that Saturnino was ill should make you gentlemen ashamed because you know full well that the question resides here with you... [original illegible]. This whole business of my trial is a matter for the BAIS, whose officers fill this place, watching everything and everyone.

Jakarta has much to be ashamed of with regard to its criminal practices in East Timor, much to admit it lost in East Timor. The Indonesian generals should be made to realise that they were defeated in



East Timor. Here and now, as Commander of *Falintil*, the most glorious Armed Forces of National Liberation of East Timor, I acknowledge military defeat on the ground. I am not ashamed to say it; on the contrary, I am proud of the fact that a small guerrilla army was able to resist a big nation like Indonesia, a regional power which treacherously invaded and sought to subjugate us through terror and crime, through the rule of violence, persecution, prison, torture and assassination.

The moment has come for Jakarta to recognise its political defeat on the ground. I don't know if it is to impress me that they station armed *tentaras* [soldiers] on the route between POLWIL and the court. I am certain that this is not the case because... [original illegible] the real will, genuine aspiration of the people.

It is a historical necessity to break with the present state of affairs. If this is not done today the future will be witness to irreversible change. What is irreversible is not what is imposed on us at present, whether in the short or the long term. What is irreversible is the way in which history rectifies the mistakes of the ambitious, the crimes of dictators, the atrocities of colonial regimes.

The mass slaughter in the empire of the former Soviet Union demonstrated that policies that triumph through force of arms do not withstand time. The great wheel of history has confirmed, confirms now and will confirm the truth of this observation. The wheel of history crushed European colonialism and did not allow for new forms of dominion over the [European] peoples. The wheel of history crushed oppressive regimes and expansionist states. Owing to this fact humankind can now pronounce the slogan... [original illegible] notion of liberty, justice, rights and peace.

On the first day, and the following days, they asked me if I saw myself as an Indonesian, and I always replied that if I said yes, the *bapaks* wouldn't believe me. At first they laughed, but then they gritted their teeth. The Indonesian generals are not concerned with the spirit or the conscience of a people. They are satisfied immediately when we do as they want. I don't know if this can be attributed to naivety or to the culture of their military training.

I know that the BAIS made the arrangements necessary to spare me the death penalty and that if I were to praise integration I would be acquitted. I remember that in Jakarta, to make a change from the daily monitoring of all my movements in the prison cell, they took me in handcuffs to the city centre and showed me the gold of Monas, the national monument of Indonesia. I felt like crying to my gaolers that never would I sell my soul for the gold on the top of the Monas, and still less would I ever sell my people. I cannot betray the hope of my people that one day they will be free and independent. Never could I recognise the criminal annexation of East Timor, just so as to be able to live a few more years of life. My struggle is of greater value than my own life. The People of East Timor have sacrificed their lives and continue to suffer.

I never cease to be aware of the need for dialogue, with the participation of the Timorese. To any who cared to listen I have always said that the Maubere people don't have any appreciation for the word *pembangunan* [development]. The problem is that it's not free. Freedom is what my people value and it is the aim of their struggle. D. Ximenes Belo expressed this with great clarity when he wrote to the UN Secretary General: 'We are dying as a People and as a Nation.'

The Indonesian ambassador to the UN came to ask me to collaborate. He asked me to be consistent in my declarations. I observed that the Indonesians had completely forgotten the fact that I had been fighting for 17 years and to be consistent I would have to be consistent towards my people, never to their assassins, the invaders of my homeland. The minister Ali Alatas, in a speech he made last January, said that: 'If we don't accept... [original illegible], if Jakarta doesn't accept a referendum it is not because we are afraid to lose it but because many people have already suffered enough!' Then the ambassador to the

UN said to me: 'The problem is that dialogue as it is conceived by us (and therefore by Jakarta) has its own parameters. We do not accept a referendum!' In 1983, during the period of the ceasefire, the then Majors [... original illegible] told us straight, 'We don't accept the idea of a referendum because we know that the whole people is with *Fretilin!*'

Two or three times the BAIS asked me questions such as: 'You were waiting for the Portuguese parliamentary delegation... [original illegible]. In international law, in the Resolutions of the UN, East Timor is still under Portuguese administration. With the new Indonesian ambassador to the UN, Mr Nugroho, I discussed the question of East Timor in this context... [original illegible].

I have been getting all sorts of flattering treatment, aimed at making me into a 'docile Indonesian' and as such I had to appear, just as the witnesses brought to this court had to appear that way. I am aware that behind my back the men of the BAIS and KOPASSUS are grinding their teeth in anger. They should be grinding them in shame for their part in the murder of the Maubere people... [original illegible].

Why did Jakarta at the last minute prevent the visit of the parliamentary mission? Who is afraid of a referendum? Why be afraid of a referendum? I'm not afraid of a referendum and if this very day the Maubere people opted for integration I would make a genuine appeal to my companions in the bush to lay down their arms and I would offer my head for a public decapitation. Those who fear a referendum fear the truth! Elections in East Timor were only the continuity of the farce of occupation, intimidation, trials, where the finger of INTEL or KOPASSUS marks the presence of the Golkar.

Why all the military apparatus outside this shameful court; why are armed soldiers posted along the route with their arms at the ready? [Original illegible] ...reason does not come from force. Reason is on my side, the side of my People.

I appeal to the Indonesian people to understand that in conformity with universal principles and international law East Timor should be considered a non-autonomous territory in accordance with the provisions governing the process of decolonization. To understand that East Timor is not the spectre that haunts the minds of the Indonesian generals, the spectre of East Timor as a source of threat, an unstabilizing factor for Indonesia. The tale that East Timor is communist is too old. The problem is not that we want to dismember Indonesia; the problem is that East Timor was never Indonesian in the first place.

From a juridical point of view the annexation by force of East Timor... [original illegible] illegal. Politically so-called integration lacks a... [original illegible] which can prove that the popular verdict is... [original illegible] in complete freedom. Economically it is false to think that East Timor does not have guarantees for its own development. The agreement on the East Timor Gap only showed that Indonesia and Australia were pursuing a policy of plunder, motivated by expansionism on one side and complicity on the other.

East Timor, which is pledged to be a state without weapons, ie. without an army, will never be so much as even a potential threat to a big and mighty nation like Indonesia, equipped with a military... [original illegible]. East Timor cannot be separated from the large nation of Indonesia because it was never a part of Indonesia. International law does not make exceptions for size nor to other conditions which this... [original illegible] territory possesses. My People rejects the annexation and is opposed to this situation of brutality, control and oppression.

I appeal to the new generation of Indonesians to understand that the People of East Timor attach much more value to freedom, justice and peace than to the so-called development that has been carried out

here with the help of Australia and the United States and with European countries who maintain close economic ties with Jakarta.

I appeal to the international community to consider that the time has arrived for showing that we really are witnessing a new world order. This presupposes actions that will break with situations inherited from the past. I appeal to the European Community to be consistent with their own resolutions regarding East Timor. I appeal to all the friends of East Timor, European, American, Japanese and Australian parliamentarians, to persist in pressing their own governments to abandon the double standards applied to similar cases of blatant violation of UN resolutions, as in the case of East Timor. I appeal to President Bill Clinton to reconsider the problem of East Timor and to press Jakarta to enter into dialogue with the Portuguese and the Timorese in the quest for an internationally acceptable solution. I appeal to the Portuguese Government never to abandon its responsibilities towards East Timor. I appeal to the Secretary-General of the UN to ensure that the solution he seeks for East Timor is based on universal principles and international law. Finally, I appeal to the Government of Indonesia to change its attitude and to accept that the time has come to understand the essence of the struggle in East Timor.

As from today I am starting a hunger strike as a practical way of appealing to the EC and the governments of the United States and Australia. No agreement can be reached between a prisoner and his gaoler... [original illegible]. To the Secretary General of the UN I wish to say that I am ready, at any time and in any place, to take part in the negotiating process. However, I shall never accept to become a part of the Indonesian side because I am not willing to participate in the farce of integration and in the criminal repression of my People.

As a political prisoner in the hands of occupiers of my country it is no consequence to me whatever if I am sentenced to death today by this court. They have killed more than a third of the defenceless population of East Timor; they are killing my people and I am worth no more than the heroic struggle of my People. Small and weak, they have always been subjected to foreign rule.

Dili, 27 March 1993

[Signed] X. Gusmao

Member of the CNRM<sup>16</sup>

Commander of FALINTIL

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<sup>16</sup> CNRM (*Conselho Nacional Da Resistencia Maubere*), National Council of Maubere Resistance.