

Rights Groups Fault Indonesian Tribunal

Most Acquitted So Far for East Timor Atrocities; Higher-Ups Avoid Prosecution

By Ellen Nakashima
Washington Post Foreign Service
Sunday, April 6, 2003; Page A16

JAKARTA, Indonesia -- On a recent day in a weathered courthouse in Jakarta sat defendant Tono Suratman, an army brigadier general accused of failing to prevent two massacres in East Timor during its bloody breakaway from Indonesia in 1999.

Beside him were eight defense attorneys.

Opposite them was the prosecution: two lawyers called out of retirement.

In the audience were more than a dozen members of the military, including soldiers with the army special forces, their signature red berets tucked into their epaulets, there to provide moral support to their accused comrade.

And in the witness chair was Gen. Wiranto, once the head of Indonesia's armed forces, who human rights advocates said should also have been in the dock.

The scene captured much of what human rights advocates and international observers say is wrong with Indonesia's first-ever human rights tribunal. Created last year, the tribunal was an opportunity, they say, for the emerging democracy to show its commitment to human rights. Instead, they argue, it is a sham, with disengaged prosecutors outgunned by well-prepared defense attorneys, witness intimidation, weak evidence and charges that fail to capture the gravity of the crimes and name those ultimately responsible.

Most of the defendants have been charged with acts of omission, the failure to prevent atrocities. But court observers and rights activists say they also should have been charged with acts of commission, to reflect allegations that they played active roles in planning and perpetrating the violence, which killed more than 1,000 civilians in East Timor.

"The violence was not a spontaneous act, but the result of careful planning by members of the armed forces together with the members of the militias, who acted as their proxy," said Helmy Fauzi, an investigator with the National Commission of Inquiry on East Timor Human Rights Violations.

Of 18 people indicted by the tribunal, 11 have been acquitted -- 10 of whom are military or police officers. Five have been convicted, including two military commanders and one civilian governor. Suratman and one other high-ranking military officer have not received verdicts.

The two convicted military commanders were sentenced to five years in prison, half the minimum required by Indonesian law. All five of the convicted men are free, pending appeal.

Indonesia had assured the United Nations that it could handle a tribunal on its own, forestalling the establishment of an international human rights court similar to those created for Rwanda and the former Yugoslavia.

The Indonesian government asks for patience. "We would be the first to acknowledge that there are, no doubt, shortcomings in the trial, but they are owing more to technical deficiencies, not by any intentional and deliberate miscarriage of justice," said Marty Natalegawa, a spokesman for Indonesia's Foreign Ministry. "It may not be perfect, but even our most harshest critics would have to acknowledge that we are trying to do the right thing."

But East Timor's foreign minister, Jose Ramos-Horta, said in a recent interview that the trials are threatening to do a "disservice to the good image" of Indonesia.

"The entire process has been fatally flawed, lacking in integrity and credibility," said Ramos-Horta, who shared the 1996 Nobel Peace Prize with East Timor's Bishop Carlos Ximenes Belo.

The United States banned military assistance to Indonesia for its use of lethal force in response to the 1999 violence and has not made any effort to restore the aid, nor will it "absent further progress in human rights," a senior U.S. official said.

"On balance, I'd have to say the trials are disappointing," the official said. But he added that a recent conviction was "a noteworthy development and reminds us that we need to suspend definitive assessments until the process is over. Moreover, we hope that the trials will not be the last work in the country's effort to address that problem."

Indonesian human rights officials who investigated the violence said there was overwhelming evidence linking the Indonesian military to the militias that carried out the killings but that prosecutors failed to use it.

"We found dozens of cartridges similar to those used by the Indonesian armed forces in a church compound where killings had taken place," Fauzi said. "But there was no follow-up by the attorney general's office to investigate the case."

Officials in the attorney general's office said the criticism is too harsh: Prosecutors were given two months' training before they started. The 40-member investigation team probed for eight months before charges were brought based on Indonesia's 2000 human rights law, which requires that evidence be corroborated by at least two people.

Prosecutors said they followed up on the national commission's report, which recommended that Wiranto and Gen. Zacky Anwar Makarim be investigated, but did not

find evidence to charge the top commanders, according to Bachtiar Pangaribuan, head of the human rights division at the attorney general's office. He said that in some cases, witnesses recanted their testimony or refused to testify. In other cases, militia members identified by witnesses had disappeared. Moreover, he said, the law specifies that a commander can be tried only if his subordinates carried out the crime. In many instances, witnesses accused the militiamen of carrying out the killings.

"Honestly, we as prosecutors were disappointed," Pangaribuan said, stressing that they would appeal the acquittals.

Of more than 40 witnesses from East Timor called to the tribunal, no more than 10 have agreed to travel to Jakarta to testify despite assurances that they would be protected, Pangaribuan said. Rights workers said the witnesses were uncomfortable being approached by government officials, staying in government housing and facing courtrooms full of soldiers and militia members who support the Indonesian government.

By the end of last year, some witnesses were allowed to testify by video link. But critics said that was too little, too late.

Part of the problem is the tribunal's structure, said David Cohen, director of the War Crimes Studies Center at the University of California at Berkeley. Indonesian government lawyers are the prosecutors. Indonesian military and police officers are the defendants. Indonesian military and police officials, and some civilian experts, form the majority of the prosecution's witnesses.

"It's one thing when you hold a war crimes tribunal after you have a change of regimes," Cohen said. "But when you have a power structure that is essentially investigating itself, that's the problem."

The judges are often inexperienced, said one judge who has participated in five of the trials. A minority have experience in international or criminal law, he said.

Last month, in a proceeding separate from the trials in Jakarta, East Timor's serious crimes unit indicted Wiranto, Suratman, Makarim and four other military commanders -- among 58 indicted -- for their roles in perpetrating the violence. Makarim and Suratman were charged with forming, financing and directing the militias that attacked pro-independence East Timorese.

Wiranto has said he sought to keep the peace, not promote violence. "I am not a criminal against humanity," he told reporters.

When Wiranto was testifying in Jakarta, he brought a videotape he had narrated, showing how he had tried to reconcile the warring factions. He also gave each judge a copy of his book, "Farewell to East Timor: The Struggle to Uncover the Truth -- The Way it Was, According to a Man named Wiranto."

Suratman, a trained member of the elite Kopassus army special forces, was promoted to armed forces deputy spokesman in August 1999, four months after attacks at a church in Liquica and at independence leader Manuel Carrascalao's house in which at least 70 people are estimated to have died.

Ines Soares, 32, a housewife in Dili, East Timor's capital, said two of her relatives were killed in the violence. When the trials began, she had hope they would bring a measure of justice. But now, she said, "I don't believe in the court anymore."

Special correspondent Natasha Tampubolon contributed to this report.

© 2003 The Washington Post Company