



Open Letter to United Nations Security Council

26 November 2007

Dear Security Council member,

As your delegation prepares to leave for Timor-Leste, we write to urge you to pay careful attention to the transitional justice process for that country. As you will be aware, the people of Timor-Leste suffered countless war crimes and crimes against humanity during the Indonesian invasion and 24-year occupation of their homeland, in violation of numerous United Nations resolutions and human rights treaties. We remind you of the Security Council's earlier commitments, expressed more than seven years ago in Resolutions 1264 and 1272, to bring those responsible to justice.

Indonesia's Ad Hoc Human Rights Court and the bilateral Commission for Truth and Friendship (CTF) have proven manifestly unsuitable in both design and implementation to the task of delivering justice in accordance with international law. We applaud the Secretary-General's decision not to give legitimacy to the CTF unless its terms of reference are substantially changed.

The Serious Crimes process (which only dealt with crimes committed in 1999) was terminated by the Security Council in May 2005 although its work was far from complete. Since then the United Nations Integrated Mission in Timor-Leste (UNMIT) has re-established the Serious Crimes Investigation Team to complete investigations into outstanding cases from 1999. What will happen to the results of these investigations? A total of 290 individuals already indicted under the serious crimes process remain at large in Indonesia, outside the jurisdiction of Timor-Leste. No formal investigations or proceedings are underway for the many serious crimes committed prior to 1999, with the exception of an Australian coronial inquest which recently concluded that the killings of journalists in October 1975 a war crime.

UNMIT's recent "Report on human rights developments in Timor-Leste August 2006 - August 2007," highlighted the role that the report of the Commission for Reception, Truth and Reconciliation Commission (CAVR) can play within Timor-Leste in both "unifying" Timorese society and helping to "foster a democratic culture based on the rule of law." We believe that the unhealed mass trauma experienced by the East Timorese between 1975 and 1999 contributed to the crisis of 2006. The shortcomings of the local and international justice processes have helped create a culture of impunity in which many believe they can, in effect, get away with murder and other crimes. A genuine justice process can help further reconciliation both within Timor-Leste and between the Timorese and Indonesian peoples.

The CAVR report's recommendations were also addressed to the international community, specifically including the Security Council and its permanent members, as well as Indonesia,

a current member. The Security Council should have an open debate that includes representatives of civil society to discuss implementing the report's recommendations.

Both the CAVR and the UN Commission of Experts recommended the creation of "an ad hoc international criminal tribunal for Timor-Leste" should Indonesia, under a strict time frame, continue to fail to credibly prosecute senior officials responsible for the devastation in 1999. If this is not feasible, we urge you to fully reconstitute the Serious Crimes process, providing it with sufficient resources and backing. This should be done in accordance with recommendations 7.1.1 and 7.1.2 of the CAVR Report - namely, the UN itself should provide the resources and judicial expertise, not Timor-Leste's court system. The Serious Crimes process must investigate war crimes and crimes against humanity committed from 1975 onwards, not just those committed in 1999. Indonesia, which is currently a member of both the Security Council and UN Human Rights Council, must extradite for trial those charged by the Serious Crimes process.

This call for substantive justice for past crimes is widely supported within Timor-Leste, especially by the Church and civil society. However, the leaders of Timor-Leste have favored the flawed CTF, because of concerns about standing up to Indonesia, its larger neighbor and former ruler, and especially its still largely unreformed military.

However, in his inauguration speech as Prime Minister in 2006, now President Jose Ramos-Horta acknowledged the "great teachings" of the CAVR report. Prime Minister Xanana Gusmao, in his speech at the swearing in of members of his government in August this year, called for the consideration of the CAVR report. "We cannot ignore the lessons of the past in order to understand the current crisis, and protect the future," he said.

East Timor's diplomatic position means that it cannot take the lead on the matter of justice in the face of opposition from its powerful neighbor. The international community, as embodied in the United Nations, must be involved in addressing these crimes which violated international criminal law, the UN charter and Security Council resolutions. If the Security Council is truly interested in upholding its international human rights responsibilities, we urge the council as a body and its individual members to implement the relevant recommendations of the CAVR and to act forcefully for justice for the people of Timor-Leste.

Yours sincerely,

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