



A.N.T.I.

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Recommendations to the Office of the United Nations High Commissioner for Human Rights (OHCHR)

regarding

UN Human Rights Presence in Timor-Leste after UNMIT

Dili, 5 October 2011

As the United Nations begins to consider the next phase of international support for human rights in Timor-Leste, we would like to share some observations and recommendations with the Office of the High Commissioner and others in the international Human Rights community. As members of Timor-Leste civil society who have long worked for justice and accountability, we hope that our thoughts are useful as the United Nations system grapples with how to achieve its unfulfilled promise that there can never be impunity for crimes against humanity. If Timor-Leste is to be considered a success story and continue its development as a peaceful, stable and democratic society, these unresolved atrocities must not be allowed to fester.

Timor-Leste's bloody history

Timor-Leste's history of independence is written with sweat and blood, our sovereign State is built with bodies and bones. The road to restoring Timor-Leste's independence as a new nation-state was full of suffering, sorrow and death, almost 200,000 lives extinguished. These sufferings, sorrows and deaths were enabled by the illegal and brutal Indonesian international military occupation which was directly supported by United States, United Kingdom, Australia and others, by the passivity of international community, particularly the United Nations where eight General Assembly and two Security Council resolutions condemned the occupation. Sadly, no effective action to prevent the violation of human rights was taken for more than 23 years, and the climate of impunity that prevailed during the occupation continues to prevail until today, even in the era of Timor-Leste's independence and Indonesia's emergence from military dictatorship.

Dominance of impunity and lack of political will

The road to end impunity is challenging and long, as was the road the Timorese travelled to struggle for the independence we proclaimed on 28 November 1975. The greatest challenge is "the lack of political will" by decision-makers who have fundamental responsibility to

achieve accountability for crimes against humanity – the international community, particularly the United Nations, as well as the Governments of Timor-Leste and Indonesia.

Events over the last few years have demonstrated that the continuing prevalence of impunity continues to undermine our nation's peace, stability and justice. The political and security problems and crises of 2005-2006 escalated because people did not have confidence that the justice system would hold major perpetrators accountable. Put simply, when powerful leaders lack political will and the legal system is not independent and effective, both perpetrators and victims take justice into their own hands. Impunity increased in August 2009, when Timor-Leste's President and Prime Minister gave into Indonesian pressure and intervened in the judicial process, unconstitutionally freeing militia leader Maternus Bere.

United Nations Missions and Concerns of Civil Society

As civil society organizations struggling for justice, we really appreciate the commitment of the United Nations to end impunity for crimes against humanity all over the world, particularly in Timor-Leste. However, we are saddened by the reality that impunity in Timor-Leste still prevails after a decade, with no end in sight. Unfortunately, the efforts of the United Nations, whom we expected to fight for justice, have been largely unsuccessful, and the targets and mandates have been frequently cut back, perhaps in an effort to conceal these failures.

Some feel that nearly everything the United Nations did between 1999 and 2011 to end impunity was primarily to divert public attention. Therefore, we hope that the post-UNMIT transition in 2013 will be an opportunity to open the window for justice, to take more effective action to end the climate of impunity in Timor-Leste and Indonesia. We are optimistic that the creation of a new office of the United Nations High Commission on Human Rights in Timor-Leste in 2013 will overcome past limitations of UN work here, and be able to advance the struggle to end impunity.

Reviewing the history of UN missions here, UNTAET in 2001 supported the establishment of the Commission of Friendship, Truth and Reconciliation (CAVR) with the mandate to investigate and human rights violations from 1974-1999. The CAVR produced a detailed 2,500-page report, accompanied by many recommendations to the Government of Timor-Leste, international community (UN), and other states, but there has been no discussion and implementation. In 2000, the Security Council established the Serious Crimes Unit (SCU) and Special Panels (SP), but their scope was quickly cut back to look only at serious crimes committed in 1999, ignoring the 99% of occupation-related killings that took place between 1975 and 1998. Under this restricted mandate, the SCU and SP indicted 391 people, including ex-military Indonesian commander General Wiranto, but only 87 people were brought to trial, of which 84 were convicted. They issued arrest warrants for 391 defendants, of whom 303 are still at; most of them live in Indonesia.

In February 2005, the United Nations Secretary-General appointed the Commission of Experts (CoE) to review the judicial process of the Indonesian Ad-Hoc Tribunal and SCU/SP serious crimes process in Dili. The COE reported a few months later, finding that processes to date had not achieved accountability even for the 1999 crimes. They made a number of recommendations, including the establishment of an International Tribunal; these have not been discussed or implemented by the Security Council for more than six years. In 2007 the United Nations established the Serious Crimes Investigation Team (SCIT), to complete the

case files on several hundred 1999 cases not finished by the SCU, but they had no mandate to bring them to indictment, prosecution or trial.

The Timor-Leste and Indonesian governments have prioritized their current and future diplomatic relationships, ignoring (and hoping people will forget) past crimes against humanity, even as many of the perpetrators continue in positions of power in Indonesia. When they established the Commission of Truth and Friendship (CVA), they expected friendship to overcome truth and accountability. The illegal freeing of Maternus Bere in 2009 and the visits of former Indonesian military commander General Tri Sutrisno and Indonesian Special Forces commander (KOPASSUS) to Timor-Leste just this year also ignored justice and overrode the CAVR recommendations and international principles. Although we appreciate the efforts by the High Commissioner for Human Rights on the Bere case, we are sad that the United Nations system did not take effective action to prevent these humiliating events, preserving the dignity of international community and Timor-Leste, particularly the survivors of human rights violations.

Although we do not agree with them, we understand the view of some Timor-Leste leaders that Timor-Leste alone cannot carry the torch for justice. We are a small, new state with a large neighbor who has shown their willingness to oppress us – and last time we waited 23 years for help from the international community. This pragmatic mind-set puts all the more responsibility on the United Nations – not only to make up for past failures but because, as the existence of the ICC verifies, there are some situations where an international process is the only way to achieve accountability.

Recommendations

Based on the facts and reasons discussed above, and to anticipate what will take place after UNMIT ends at the end of next year, specifically on the struggle to end impunity for 1975-1999 crimes against humanity, Civil Society, including national and international nongovernmental organizations, individual activists and student movements that are under the umbrella of the Timor-Leste National Alliance for an International Tribunal (ANTI), would like to make the following recommendations:

1. To enable the effective and independent work of the United Nations High Commission on Human Rights (OHCHR), ANTI recommends *to establish a separate and independent Human Rights office in Timor-Leste in 2013;*
2. To realize justice for crimes against humanity committed during 24 years of international illegal and brutal Indonesian military occupation, ANTI recommends that the OHCHR *concentrate and work effectively and efficiently on past crimes against humanity, and the OHCHR not end its presence here until justice has been implemented and the principal criminal actors have been held accountable for their crimes;*
3. To guarantee that the OHCHR functions effectively and independently, ANTI recommends to the OHCHR *not to rely on the diplomatic policies of Timor-Leste and Indonesian government leaders to ignore and forget justice for past crimes, but should follow universal principles of human rights and justice that are spelled out in the United Nations Charter and International Humanitarian Law;*

4. Achieving justice for past crimes against humanity requires the cooperation and involvement of Timor-Leste and Indonesian governments to be able to take the criminal actors to be accountable for their actions, so that, ANTI recommends to the OHCHR *to encourage both governments, Timor-Leste and Indonesia, to accept their responsibilities to cooperate with justice process to hold individual perpetrators accountable, , and the Indonesian government itself should also accept its institutional responsibility;*
5. Justice for crimes against humanity should not be limited to the cases currently being investigated by SCIT, and ANTI recommends to OHCHR *to establish a division with a broader mandate and longer time to investigate, prosecute and try the major human rights violations from 1975-1999, not only the 1999 cases, and including command responsibility;*
6. To strengthen human rights and social justice in the democratic state of Timor-Leste, ANTI recommends to OHCHR *to establish and promote good and effective cooperation with Timor-Leste Civil Society, now and after 2013, to improve capacity of Timorese citizens through internships, professional training, scholarship, and other means;*
7. To achieve success in the struggle to end impunity, especially for crimes against humanity committed during the Indonesian occupation of Timor-Leste, ANTI recommends to OHCHR *to deeply examine United Nations mechanisms and systems to find a way to end impunity, perhaps through the establishment of an International Tribunal as recommended by Komnas HAM, CAVR, CoE and several Special Rapporteurs, and to advocate for the United Nations, especially the Security Council, to discuss and implement those recommendations.*

Closing Words

Crimes against humanity are a concern for all nations and people, so to fight against the dominance of impunity for these crimes, it is necessary to have cooperation and efforts from all nations in the world. We believe that with the good and effective cooperation between the Timor-Leste Civil Society, particularly the Timor-Leste National Alliance for an International Tribunal network, and the United Nations, specifically the United Nations High Commissioner for Human Rights, and with the cooperation of the Timor-Leste and Indonesian governments, we will be able to move quicker down the road to ending impunity today and tomorrow.

On behalf of ANTI, we thank you very much for your attention and consideration to our concerns, and are happy to discuss them further with you or anyone else who is interested.

Celestino Gusmão

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Secretariat of ANTI

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