



Re.: UN/NYp/055/05
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15 July 2005

Open letter to all members of the Security Council

Dear Ambassador,

I am writing to urge you to act upon the recommendations of the Report to the Secretary General of the Commission of Experts to Review the Prosecution of Serious Violations of Human Rights in Timor-Leste (the then East Timor) in 1999.

As the Commission of Experts' report makes clear, full accountability is far from being achieved for the serious violations of international humanitarian and human rights law committed in Timor-Leste in the lead up to and aftermath of the UN-organized popular consultation. Very few individuals responsible for organizing, ordering or instigating the crimes under international law have been held criminally responsible or ordered to pay reparations. Victims and families of those who died in Timor-Leste continue to call for those responsible to be brought to justice through a credible judicial process. Since 1999, the Security Council has recognized the need to bring those responsible to justice. In acting upon the Commission of Experts' recommendations, the Council will facilitate the conduct of credible and effective investigations and trials within the shortest possible time.

Amnesty International believes that failure to act will send a dangerous message that the UN sanctions impunity and will undermine the rule of law in the region. The Commission of Experts' report chronicles, in sharp relief, the shortcomings of the processes to date and highlights the urgent need for Security Council action. Amnesty International wishes to underline the following important findings of the report:

- Despite assurances given to the Security Council in January 2000 by Indonesia's Foreign Minister that Indonesia would prosecute those within its jurisdiction, the judicial process before the Indonesian ad hoc Human Rights Court for Timor-Leste was "manifestly inadequate with respect to investigations, prosecutions and trials and failed to deliver justice." Further, "the atmosphere and context of the entire court proceedings were indicative of the lack of political will in Indonesia to seriously and credibly prosecute the defendants".
- The UN-sponsored serious crimes process in Timor-Leste has been hampered by inadequate resources and a lack of access to evidence and suspects in Indonesia. UN support for serious crimes investigations was withdrawn prematurely, and there remains a "pressing need for the SCU (Serious Crime Unit) to complete its investigations, particularly in relation to serious crimes such as rape, torture and murder".
- Without direct and substantial assistance from the international community, neither Indonesia nor Timor-Leste has the institutional capacity at a national level to undertake the investigation and

AMNESTY INTERNATIONAL

United Nations Office ~ 777 United Nations Plaza, 6th Floor ~ New York, NY 10017
United States of America ~ Tel: 1 (212) 867-8878 ~ Fax: 1 (212) 370-0183 ~ E-Mail: ai-un-ny@amnesty.org

Amnesty International, International Secretariat ~ 1 Easton Street, London WC1X 0DW, United Kingdom
Tel: Int. Code: 44 (20) 7413 5500. UK Code: 020 7413 5500. Fax: Int. Code 44 (20) 7956 1157. UK Code: 020 7956 1157
E-Mail: amnestvis@amnesty.org Web: <http://www.amnesty.org>

prosecution of serious crimes committed in 1999, in a manner which is consistent with international law and standards.

- The terms of reference of the Commission of Truth and Friendship (CTF) established by the Governments of Indonesia and Timor-Leste “contradict international standards on denial of impunity for serious crimes” and have other serious shortcomings. Even in the event that the terms of reference can be remedied, the Commission of Experts has advised that any credible reconciliation or truth-seeking process “would have to be designed and implemented in parallel with, or explicitly complementary to any justice initiative the Security Council decides to adopt”.

Amnesty International urges the Security Council, as part of the UN’s commitment to further strengthening the rule of law, to take the necessary steps to implement its repeatedly stated commitment of ensuring justice for the serious crimes committed in Timor-Leste in 1999. Taking into account the Commission of Experts’ recommendations, those steps should include:

- Undertake to provide sufficient support, resources and expertise either to the serious crimes process in its current form or an alternative justice mechanism within Timor-Leste. This support should be extended until such time as the investigations, indictments and prosecutions of those alleged to have committed serious crimes are completed.
- Support the appointment by the government of Indonesia, on the recommendation of the Secretary-General, of a team of international judicial and legal experts with a clear mandate to provide independent specialist legal advice to the Government on international criminal law, international humanitarian law and international human rights standards, including procedural and evidentiary standards, and thereby “strengthen its judicial and prosecutorial capacity”.
- Set strict benchmarks and deadlines within which the Indonesian authorities must: comprehensively review prosecutions before the ad hoc Human Rights Court and re-open prosecutions as appropriate on the basis of additional charges, new facts or evidence or other grounds available under Indonesian law; review all available evidence, particularly in relation to high-level suspects not previously indicted in Indonesia, including evidence collected by the Commission of Inquiry into Human Rights Violations in East Timor (KPP-HAM report) and by the Serious Crimes Unit, to determine whether proceedings should be commenced against suspects named therein; and report to the Secretary-General on the outcome of its investigation.
- Should the timely implementation of the recommendations above not materialize because of a lack of cooperation from the Governments of Indonesia or Timor-Leste, to adopt a resolution to establish an ad hoc international criminal tribunal for Timor-Leste.

As the Commission notes in the conclusion of its report, the extent and nature of the crimes committed in Timor-Leste in 1999 and before are well known to the international community. Likewise, the failure to hold the majority of perpetrators individually criminally responsible and to award reparations is well documented and widely acknowledged. The international community’s resolve to deliver justice and combat impunity is now being put to a crucial test. Amnesty International hopes that the Security Council will use the Commission of Experts’ pertinent recommendations, and act resolutely to secure justice for the victims and their families in Timor-Leste.

Thank you for your attention to this matter.

Yours sincerely,

Irene Khan
Secretary General