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### **OPEN LETTER TO ALL MEMBERS OF THE SECURITY COUNCIL: FINAL SECURITY COUNCIL OPEN DEBATE ON TIMOR-LESTE**

As the Security Council meets in what is considered to be its last open debate on Timor-Leste since the setting-up of the first United Nations (UN) mission in the country in 1999,<sup>1</sup> we are writing to highlight our ongoing concerns about impunity for crimes against humanity and serious human rights violations during the period of Indonesian occupation and at the time of the UN-sponsored referendum in 1999. Despite repeated commitments made by the Security Council<sup>2</sup> to ensure accountability for the 1999 crimes, successive UN missions have so far failed to deliver justice and reparations for victims thirteen years on.

As members of the Security Council are about to engage in discussing the possibility of closing down its UN mission in the country, it is time to reflect, and ensure that addressing these past crimes does not become a forgotten issue, but remains central to any UN strategy in Timor-Leste after December 2012.

We express our sincere hope that members of the Security Council have undertaken and will continue to undertake full and open public consultation with a wide range of stakeholders in Timor-Leste, prior to taking any substantial decision regarding the need to tackle impunity for past crimes in the country. We urge the Security Council in particular to listen to the voices of Timorese civil society organizations and victims' groups, who continue to call for justice, truth and reparations for the crimes which were committed during Indonesian occupation.<sup>3</sup> These calls should be taken into consideration during the upcoming debate and in future meetings on Timor-Leste.

It is in this regard that Amnesty International submits to the Security Council information relating to justice, truth and reparations in Timor-Leste. Amnesty International delegates visited Timor-Leste in October 2012, during which time they met with a range of stakeholders – including victims and victims' groups, civil society organizations, UN representatives and government officials. The overwhelming message Amnesty International received was that much more needs to be done – in particular by the UN and the international community, including Indonesia – to end impunity for past crimes.

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<sup>1</sup> Resolution 1246 (1999) which established the United Nations Mission in East Timor (UNAMET), S/RES/1246 (1999).

<sup>2</sup> See Resolutions 1264 and 1272 and subsequent resolutions demanding, or reaffirming demands, that persons responsible for acts of violence in 1999 be brought to justice.

<sup>3</sup> Victims groups and Timorese civil society organizations have consistently raised their concerns regarding justice with the Security Council and the UN Secretary-General. See for example, La'o Hamutuk Letter to the UN Security Council, November 2012, weblink: <http://www.laohamutuk.org/Justice/LHUNSC4Nov2012en.pdf>, accessed 8 November 2012; Letter from the National Alliance for an International Tribunal to the Secretary-General, 14 August 2012, weblink: <http://www.laohamutuk.org/Justice/ANTI/ANTIBanKiMoonAug2012En.pdf>, accessed 8 November 2012. Letter from the National Alliance for an International Tribunal to the Security Council, 8 February 2011, weblink: <http://www.laohamutuk.org/Justice/ANTI/ANTIUNSC8Feb2011En.pdf>, last accessed 8 November 2012; and Timor-Leste NGO Letter to the UN Security Council on justice and accountability, 2 February 2010, weblink: <http://www.etan.org/news/2010/02securitycoun.htm>, accessed 8 November 2012.

## JUSTICE

Amnesty International has longstanding concerns about impunity for crimes against humanity and serious human rights violations committed largely by the Indonesian security forces and their auxiliaries. The organization has repeatedly expressed concerns about weaknesses of national and UN-sponsored initiatives both in Indonesia and in Timor-Leste to provide justice, truth and reparations to all those who suffered as a result of crimes against humanity and serious human rights violations committed during the Indonesian occupation (1975-1999), and in the context of the 1999 independence referendum.<sup>4</sup>

### ***The Serious Crimes Investigation Team***

Amnesty International is concerned that the Serious Crimes Investigation Team (SCIT) is threatened with closure at the end of 2012 before it can fully complete its investigations. The SCIT has been tasked since 2006<sup>5</sup> with completing investigations into serious crimes committed in 1999.<sup>6</sup> Although the SCIT has now completed 311 investigations,<sup>7</sup> Amnesty International understands that approximately 60 cases will remain uncompleted if the unit is closed in December 2012.

### ***UN failure to provide justice for 1999 crimes***

While the extension of the SCIT would be an immediate signal from the Security Council of its commitment to ending impunity for past crimes, much more is needed if the UN is to achieve the Security Council's "demand" that those responsible for human rights violations committed in 1999 be brought to justice.

Victims told Amnesty International in October 2012 that they believe the UN has failed to adequately address past crimes. Many felt that the responsibility for resolving these crimes – crimes under international law – lies not just with Timor-Leste, but with the UN. They told Amnesty International that the *ad hoc* courts in Indonesia had also failed to deliver justice.

Attempts to bring to justice those responsible for crimes against humanity and serious human rights violations committed in Timor-Leste have been grossly inadequate. Most of those suspected of committing crimes against humanity and serious human rights violations are still at large in Indonesia, and yet to be brought before an independent court. To date no one is imprisoned – either in Indonesia or in Timor-Leste – for past crimes.

Over 300 people indicted for crimes against humanity and serious human rights violations continue to evade justice in Indonesia. The Indonesian authorities have refused to co-operate with the UN-sponsored justice system in Timor-Leste and to extradite their nationals suspected of crimes against humanity to stand trial in Timor-Leste. Of those who have been prosecuted in Indonesia, all have been acquitted in proceedings which have been severely criticized as fundamentally flawed.

Amnesty International notes that various UN bodies have expressed concern about impunity for past crimes.<sup>8</sup> In particular, the 2005 Commission of Experts' report found that the serious crimes processes in Indonesia and Timor-Leste had "not achieved accountability of those who bear the *greatest*

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<sup>4</sup> See *We cry for justice: 'We cry for justice': Impunity persists 10 years on in Timor-Leste* (Index: ASA 57/001/2009), 27 August 2009; *Justice Delayed, Justice Denied: Amnesty International Submission to the UN Universal Periodic Review, October 2011* (Index: ASA 57/003/2011, August 2011; Open Letter to all members of the Security Council regarding justice, truth and reparation in Timor-Leste (Index: ASA 57/003/2012), 20 February 2012; *Ban Ki-moon must address UN's failure to bring justice to Timor-Leste victims*, 14 August 2012.

<sup>5</sup> The Serious Crimes Investigation Team was officially established by Resolution 1704 (2006), S/RES/1704 (2006), however its work only effectively started in 2008.

<sup>6</sup> The Serious Crimes Investigation Team was charged with completing investigations which were left open when the Serious Crimes Unit was closed in 2005 - there remained an outstanding 186 murder cases which had been investigated but for which no one had been indicted, and over 400 murder cases which were yet to be investigated. See Report of the Secretary-General on justice and reconciliation for Timor-Leste, S/2006/580, para 9.

<sup>7</sup> Report of the Secretary-General on the United Nations Integrated Mission in Timor-Leste (for the period from 7 January through 20 September 2012), S/2012/765, para 44.

<sup>8</sup> See Report of the Working Group on Enforced or Involuntary Disappearances: Mission to Timor-Leste, A/HRC/19/58/Add.1; Report of the Special Rapporteur on extreme poverty and human rights, Magdalena Sepúlveda Carmona: Mission to Timor-Leste, A/HRC/20/25/Add.1, and Report of the Working Group on the Universal Periodic Review: Timor-Leste, A/HRC/19/17.

*responsibility* for serious violations of human rights in East Timor in 1999”.<sup>9</sup> The Commission of Experts recommended seven years ago that the Security Council adopt a resolution under Chapter VII of the UN Charter to create an *ad hoc* international criminal tribunal for Timor-Leste, if genuine steps had not been taken towards holding to account those responsible for crimes against humanity and war crimes in Timor-Leste.

## TRUTH

During their visit to Timor-Leste, Amnesty International delegates met with some of the family members of missing persons, including relatives of children who were taken during the conflict. Relatives spoke of their disappointment that nothing had been done to search for their loved ones. Some believed their family members might still be alive however they do not know where they are.

They called on the Governments of Indonesia and Timor-Leste to conduct a search to uncover the fate and whereabouts of their missing family members. One woman asked if it would be possible for the Indonesian authorities to at least publish her photo and story in the media so that her nephew, who she had looked after as a boy and who is believed to have been taken to Indonesia, may see and establish contact with her. For many families, even if their loved ones chose not to return to Timor-Leste, just knowing that they are alive and well would be enough. However, they told Amnesty International that if their family members have died, they would want to be able to bury them according to their traditions and culture.

The final report of the Commission for Reception, Truth and Reconciliation in East Timor (Comissão de Acolhimento, Verdade e Reconciliação, CAVR), the truth seeking mechanism established by the Timorese authorities,<sup>10</sup> estimated that around 18,600 unlawful killings and enforced disappearances had occurred from 1974-1999.<sup>11</sup> It recommended that the Timorese and Indonesian governments establish a register of missing persons and those killed and undertake jointly a systematic inquiry to establish the fate and whereabouts of those who were disappeared and children who were separated from their families.<sup>12</sup> This recommendation was echoed in the final report of the bilateral Indonesia-Timor-Leste Commission of Truth and Reception (CTF).<sup>13</sup> To date, neither government has taken concrete steps to implement these recommendations.

In Timor-Leste, a draft law establishing a “Public Memory Institute”, currently before Parliament, offers an avenue to undertake a search for the disappeared and missing persons. Although not a commission of inquiry, the “Public Memory Institute” would assume similar roles particularly in relation to searching for the missing.<sup>14</sup> However, debate and enactment of the law has faced continued delays in Parliament.<sup>15</sup>

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<sup>9</sup> Report to the Secretary-General of the Commission of Experts to Review the Prosecution of Serious Violations of Human Rights in Timor-Leste (then East Timor) in 1999, S/2005/458, para 359.

<sup>10</sup> In 2001, the Timorese government set up the Commission for Reception, Truth and Reconciliation in East Timor (Comissão de Acolhimento, Verdade e Reconciliação, CAVR), mandated to document crimes against humanity and other human rights violations which occurred between 1974 and 1999. Its 2005 report *Chega!* comprises details of crimes committed by the Indonesian security forces and the Timorese armed opposition movement. It highlights violations by both Indonesian and East Timorese people who were serving in the Indonesian military and police.

<sup>11</sup> The ‘Chega!’ report covers the period from 1974 until 1999; however Indonesian invasion and subsequent occupation started in 1975. See Section 7.2 Unlawful Killings and Enforced Disappearances in the CAVR report, *Chega!*, 2005, Web link: <http://www.cavr-timorleste.org/cheqaFiles/finalReportEng/07.2-Unlawful-Killings-and-Enforced-Disappearances.pdf>, last accessed 8 November 2012.

<sup>12</sup> The International Committee of the Red Cross has a register of about 400 children who were disappeared. According to the Working Group on Enforced or Involuntary Disappearances, these disappearances could also qualify as enforced disappearances.

<sup>13</sup> The bilateral Indonesia-Timor-Leste Commission of Truth and Friendship (CTF) was set up in 2005 by the governments of Indonesia and Timor-Leste to “establish the conclusive truth in regard to the events prior to and immediately after the popular consultation in 1999, with a view to further promoting reconciliation and friendship, and ensuring the nonrecurrence of similar events”.

<sup>14</sup> The draft law defines the functions of the Public Memory Institute, which includes: “[t]o support the Government in matters relating to disappearances and missing persons” and “[t]o establish, manage and update a central database on disappearances and missing” (Article 5), unofficial translation of Draft Law No. /II Establishing the Public Memory Institute, on file with Amnesty International.

<sup>15</sup> See Amnesty International and the Judicial System Monitoring Programme (JSMP), *Timor-Leste: Parliament must stop ignoring victims’ rights* (Index: ASA 57/002/2012, 3 February 2012; and Amnesty International, *Timor-Leste: Parliament missed opportunity to provide justice for past violations* (Index: ASA 57/001/2011), 17 February 2011.

Amnesty International's interviews in October 2012 indicate that the issue of finding the missing and disappeared has been sidelined in bilateral discussions between Indonesia and Timor-Leste. Further, a Memorandum of Understanding between the Provedoria dos Direitos Humanos e Justiça (PDHJ, the national human rights institution) and Komnas HAM (the Indonesian Human Rights Commission) aimed at undertaking a search for children who went missing in 1999, is due to lapse at the end of November 2012 with no progress reported.

A 2011 report by the UN Working Group on Enforced or Involuntary Disappearance (WGEID) found that "much remains to be done to achieve the rights to truth, justice and reparation for those who disappeared and their families".<sup>16</sup> Among other things, the WGEID recommended that the governments of Timor-Leste and Indonesia implement CTF recommendations to establish the fate and whereabouts of the disappeared, stating that "the process needs to demonstrate concrete and positive results for victims".<sup>17</sup>

## REPARATION

Amnesty International is concerned about the continued failure of the Indonesian and Timor-Leste governments to provide full and effective reparation to victims and their families. Interviews in October 2012 confirmed that victims continue to suffer as a result of the violations they experienced, either directly or as family members of those who suffered harm. In particular, survivors of rape and other crimes of sexual violence have yet to receive adequate medical, psycho-social, sexual and reproductive and mental health services, exacerbating their suffering.

Although two draft laws establishing a national reparations programme and a "Public Memory Institute" were submitted to the Parliament of Timor-Leste in June 2010, debate of the two laws has faced continued delays. In February 2012, Parliament finally started debating the two bills; however the discussion was once again postponed and no date has been set for its resumption.

Both the CAVR and CTF reports recommended that reparations be provided for victims and relatives of victims of human rights violations. Further, the UN Secretary-General has also recommended that the Timorese Parliament debate two draft laws establishing a national reparations programme and a "Public Memory Institute".<sup>18</sup> The WGEID has also recommended the debate and enactment of the two laws.<sup>19</sup>

The continued failure to debate, amend and pass these laws contributes to impunity and injustice in Timor-Leste. It raises further serious questions about the willingness of the Timorese authorities to ensure justice, truth and reparation for past crimes. The laws must be properly debated and amended to comply with international law and standards and enacted at the earliest opportunity.<sup>20</sup>

## RECOMMENDATIONS

The withdrawal of the UN Mission will mark a crucial test – not just of Timor-Leste and progress made over the last 13 years, but of the UN and its legacy in the country. The failure to adequately address justice, truth and reparation for past crimes will not only further entrench a culture of impunity, it will undermine the UN's work in Timor-Leste, and leave a dark stain on its record in the country. We therefore urge that the Security Council at the upcoming session on Timor-Leste:

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<sup>16</sup> Report of the Working Group on Enforced or Involuntary Disappearances, Mission to Timor-Leste, A/HRC/19/58/Add.1, summary.

<sup>17</sup> Report of the Working Group on Enforced or Involuntary Disappearances: Mission to Timor-Leste, A/HRC/19/58/Add.1 para 79.

<sup>18</sup> Report of the Secretary-General on the United Nations Integrated Mission in Timor-Leste (for the period from 20 September 2011 to 6 January 2012), S/2012/43, para 62.

<sup>19</sup> Report of the Working Group on Enforced or Involuntary Disappearances, Mission to Timor-Leste, A/HRC/19/58/Add.1, para 69.

<sup>20</sup> As they stand, the draft laws do not comply with international law and standards, and Amnesty International has made a series of recommendations to strengthen the laws and ensure the success of efforts to address the suffering of the victims. See *Timor-Leste: Remembering the past: Recommendations to effectively establish the "National Reparations Programme" and "Public Memory Institute"* (Index: ASA 57/001/2012), 24 February 2012.

- Reaffirm previous demands that persons responsible for acts of violence in 1999 be brought to justice and state clearly that there will be no impunity for crimes against humanity and serious human rights violations committed at the time of the UN-sponsored referendum in 1999 and during the time of Indonesian occupation (1975-1999).
- Take effective measures to ensure that justice for the victims of crimes against humanity and serious human rights violations is central to the final decision on the nature and size of the UN's engagement in Timor-Leste after 2012.
- Ensure that the Serious Crimes Investigation Team (SCIT) is able to complete all investigations with a view to proceeding to judicial prosecutions in the future, and that sufficient time and resources will be provided for this. The Security Council should call on the Governments of Indonesia and Timor-Leste to co-operate fully with the investigations.
- Call on and support the Timorese and Indonesian governments to develop a strategy for arresting and prosecuting those charged with crimes committed between 1975 and 1999, including in situations where suspects return to Timor-Leste, to make sure that those defendants are taken into custody and are brought before the courts promptly.
- Undertake a thorough review of the 2005 Commission of Experts' report with a view to establishing a long-term comprehensive plan to end impunity and provide victims with full and effective reparation.
- Call on the Timorese and Indonesian governments to take effective measures to implement the recommendations of the Commission of Truth and Friendship. In particular, both governments should establish a register of missing persons and those killed between 1975 and 1999 and undertake jointly a systematic inquiry to establish the fate and whereabouts of those who went missing.
- Support the establishment of a trust fund to provide a comprehensive reparations programme for victims of past crimes and call for all states to consider making contributions to the fund. Further, call on the Timorese Parliament to debate, amend and enact at the earliest opportunity two draft laws providing for a national reparations programme and a "Public Memory Institute" in accordance with international law and standards.

Yours sincerely,

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 Amnesty International Representative at the United Nations