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Timor-Leste: Security Council inaction on justice for Timor-Leste leaves fight against impunity in limbo

Amnesty International is deeply concerned that the Security Council continues to delay consideration of a detailed United Nations (UN) report on the prosecution of serious violations of human rights committed in Timor-Leste in 1999.

The report, which was prepared by an independent Commission of Experts, was completed with admirable dispatch on 26 May 2005, transmitted to the Security Council on 24 June and published on 27 July. However, it has not yet been scheduled for substantive discussion by the Security Council. Amnesty International urges the Security Council to include overdue discussion of the important report in the Council's scheduled meeting on Timor-Leste on 29 August 2005 or to schedule a separate meeting as a matter of urgency, and to take action on the report's recommendations.

The need for immediate action was highlighted earlier late last month when Manuel Maia entered Timor-Leste from West Timor, was detained by members of the community and handed over to the national police. Manuel Maia is the subject of a Special Panels for Serious Crimes indictment for crimes against humanity, including murder, which were committed in Bobonara District in March and April of 1999. There are reports of other indictees returning to Timor-Leste in similar circumstances. Over 300 people indicted for serious crimes before the UN-sponsored Special Panels have not yet been tried because they could not be brought within the jurisdiction of the Special Panels before the UN prematurely withdrew its support in May this year.

Pursuant to Security Council resolutions 1543 (2004) and 1573 (2004) the activities of the Serious Crimes Unit and Special Panels for Serious Crimes in Timor-Leste have, in effect, been terminated. The new UN mission in Timor-Leste does not have a mandate to continue or to support the serious crimes process. Although the Commission of Experts in their report emphasized the need to ensure the continuity of the work begun by the Serious Crimes Unit and Special Panels for Serious Crimes, no clear arrangements have been put in place to deal with outstanding investigations, indictments or appeals. The result is legal uncertainty, potential instability and continuing impunity.

According to international human rights and humanitarian law, Manuel Maia and others arrested under the same circumstances must be brought to trial within a reasonable time before a competent, independent and impartial tribunal. At present, this cannot be guaranteed in Timor-Leste. Even if a court could be properly constituted in accordance with the existing law to try a serious crimes case, it has been widely recognized that there is insufficient capacity within the national judicial system to deal with a trial of that nature in a manner consistent with international law and standards for a fair trial. Moreover, it has been widely recognized, and frequently reiterated by the Government of Timor-Leste, that the Timorese authorities should not be left to bear the burden of the serious crimes process.

The current indictments for crimes against humanity were issued with the support of the UN. It will severely undermine the rule of law in Timor-Leste if the indictments are not enforced against persons within the jurisdiction. The fact that Manuel Maia was reportedly detained by members of the community and handed over to police demonstrates that the community expects that alleged perpetrators will be brought to trial. If those legitimate expectations are not met, there is a great risk that communities will take matters into their own hands in future.

Security Council ambivalence to the serious crimes process has allowed this uncertainty to arise. The dilemma presented by Manuel Maia's return and arrest demonstrates the danger of further Security Council inaction and the urgency of implementing the recommendations of the independent Commission of Experts.

Meanwhile, Amnesty International said that the Commission of Truth and Friendship, established jointly by the Governments of Timor-Leste and Indonesia, offers no solutions to these pressing questions, other than the promise of impunity for alleged perpetrators in contravention of international law. The Commission of Truth and Friendship cannot substitute for criminal investigations and prosecutions and therefore cannot fill the current void. For this reason, the Commission of Truth and Friendship lacks popular support and has been widely criticized by civil society in both Indonesia and Timor-Leste. As the Commission of Experts noted, 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."

Background

The Secretary General of Amnesty International wrote last month to the members of the Security Council urging them, as part of the UN's commitment to strengthening the rule of law, to take the necessary steps to implement its repeatedly stated commitment to ensuring justice for the serious crimes committed in Timor-Leste in 1999. Drawing on the the Commission of Experts' recommendations, Amnesty International advised that 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.

To read a copy of Amnesty International's letter to the UN Security Council, please see <http://web.amnesty.org/library/index/engasa570032005>