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OPEN LETTER TO ALL MEMBERS OF THE SECURITY COUNCIL REGARDING JUSTICE, TRUTH AND REPARATION IN TIMOR-LESTE

The Judicial System Monitoring Programme (JSMP), KontraS (the Commission for the Disappeared and Victims of Violence), and Amnesty International are writing to urge the Security Council to take immediate and effective steps to address the continuing impunity for crimes against humanity and gross human rights violations which occurred in Timor-Leste (then East Timor) under Indonesian occupation (1975-1999). This is a crucial time for such action, as the Security Council considers the renewal of the mandate of the United Nations Integrated Mission in Timor-Leste (UNMIT), due to expire on 26 February 2012, and begins to plan for a post-UNMIT UN engagement in Timor-Leste after 2012.

Our organizations – based in Timor-Leste, Indonesia and the United Kingdom respectively – are gravely concerned about the ongoing failure to bring to justice over 300 individuals accused or convicted of crimes against humanity and gross human rights violations in Timor-Leste during 1999. They are believed to be living in Indonesia, yet the authorities there have refused to co-operate with the UN-sponsored justice system in Timor-Leste and extradite their nationals suspected of crimes under international law.

SAFE HAVEN IN INDONESIA

In a recent case, Valentim Lavio, a former militia member, was found guilty of murder as a crime against humanity by the Dili District Court, but escaped to Indonesia in October 2011. Valentim Lavio, a former Besi Merah Putih (“Red and White Iron” or BMP) militia member, was sentenced to nine years’ imprisonment on 8 July 2011 for the murder of Patricio Sarmiento Viegas in Liquiçá District on 6 September 1999. Lavio was not detained during the pre-trial, trial or appeal stages, despite local non-governmental organizations and the victim’s family having expressed concern that he might flee. His appeal was rejected by the Court of Appeal on 26 September 2011 and a warrant for his arrest was issued by the Dili District Court on 17 October 2011 and transmitted to the Liquiçá District Police on 20 October 2011. However, the Timorese authorities have confirmed that police were unable to detain him because he had fled to Indonesia.

This case bears similarities to that of Martenus Bere, which has been the subject of at least two previous letters from Amnesty International to the Security Council (letters Ref:40/2011.139 of 8 August 2011; and 40/2010.040 of 22 February 2010). Bere had been charged by the UN Special Panels with the extermination of civilians and other crimes against humanity committed in 1999. However, he was released in August 2009 following a request by the Indonesian government and subsequently transferred to West Timor, East Nusa Tenggara province, Indonesia, a safe haven from prosecution.

ESTABLISHMENT OF AN INTERNATIONAL CRIMINAL TRIBUNAL

Valentim Lavio’s case is the only one submitted by the UNMIT Serious Crimes Investigation Team (SCIT) to the Timor-Leste Office of the Prosecutor-General which has been tried and prosecuted so far. Concerns have been raised about the relationship between SCIT and the Office of the Prosecutor-General, most recently in a

December 2011 report by the UN Working Group on Enforced or Involuntary Disappearances (WGEID) which observed “*a lack of communication and cooperation between the Serious Crimes Investigation Team and the Timor-Leste Office of the Prosecutor-General on cases that are being investigated and those handed over for prosecution*”.¹ Further, SCIT’s mandate is limited to investigating serious human rights violations committed in Timor-Leste in 1999.²

The ongoing failure to ensure justice for past crimes raises serious concerns about the ability and willingness of the Timorese and Indonesian authorities to deal with them. It confirms the need for the international community to step in and establish an international criminal tribunal to prosecute these crimes, as recommended by the 2005 UN Commission of Experts report.³ In the report, the Commission recommended 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.⁴ As the above cases demonstrate, over six years later, such steps have been grossly inadequate.

EFFECTIVE REPARATION FOR VICTIMS AND THEIR FAMILIES

JSMP, KontraS and Amnesty International are also concerned about the continued failure of the Indonesian and Timorese governments to provide full and effective reparation to victims and their families. The Government of Indonesia must take full responsibility for crimes against humanity and gross human rights violations committed by its agents during its occupation of Timor-Leste and in 1999.

We welcome the recommendation of the UN Secretary-General in his most recent report that the Timorese Parliament debate two draft laws establishing a national reparations programme and a “Public Memory Institute”.⁵ The enactment of these laws would be a positive step towards implementing key recommendations made in the report of the Commission for Reception, Truth and Reconciliation (Comissão de Acolhimento, Verdade e Reconciliação, CAVR) and the report of the Commission of Truth and Friendship (CTF). However, we are disappointed at the recent decision by the Timorese Parliament to postpone debate on these two draft laws for a third time since they were presented in June 2010.

COMPREHENSIVE PLAN TO ENSURE JUSTICE

We welcome ongoing efforts to plan for and map out a UN presence in Timor-Leste after the proposed end of UNMIT’s mandate in 2012. In particular we welcome identification of the need for a continued international human rights presence in Timor-Leste.⁶ We encourage the Security Council to instruct UNMIT and other relevant UN bodies to consult as widely as possible in determining the future nature and size of the engagement, including with stakeholders from civil society, religious and community leaders, victims and their families, as well as government and UN officials in Timor-Leste. As the Security Council considers UN engagement in Timor-Leste beyond 2012, we urge you to ensure that providing justice for the victims of crimes against humanity and gross human rights violations is central to the final decision on the nature and size of this engagement.

Victims, their families, Timorese and other non-governmental organizations continue to call for justice, truth and reparation for these past crimes. Pursuant to Security Council resolutions 1264 and 1272 and subsequent resolutions demanding that persons responsible for acts of violence in 1999 be brought to justice, JSMP, KontraS and Amnesty International urge the Security Council to establish a long-term comprehensive plan to end impunity and to provide victims with full and effective reparation. As part of that plan, the Council should establish an international criminal tribunal with jurisdiction over crimes committed in Timor-Leste during Indonesian occupation (1975-1999). Such a tribunal should be able to ensure justice in representative cases and, in doing so, act as a catalyst for national justice in others. Furthermore, the long-term and comprehensive plan should ensure that victims of human rights violations between 1975 and 1999 are provided with full and effective reparations.

¹ Report of the Working Group on Enforced or Involuntary Disappearances, Mission to Timor-Leste, A/HRC/19/58/Add.1, para 43.

² Security Council Resolution 1704 (2006), S/RES/1704, para 2(i).

³ 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.

⁴ Above n3 at Annex I, para 29.

⁵ 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.

⁶ Above n5, para 55.

At the upcoming Security Council session renewing UNMIT's mandate, JSMP, KontraS and Amnesty International urge the Security Council to state clearly:

- That there will be no impunity for crimes against humanity and gross human rights violations committed in 1999 and during the time of Indonesian occupation (1975-1999);
- That the broadest consultation possible is conducted involving all relevant stakeholders in order to plan the post-UNMIT UN presence in Timor-Leste; human rights monitoring should be integral to that presence after 2012;
- That UNMIT's Serious Crimes Investigation Team will complete all investigations with a view to proceeding with judicial prosecutions in the future, and that sufficient time and resources will be provided for this. The Council should further call on the governments of Timor-Leste and Indonesia to co-operate fully with the investigations;
- That the UN will support the development of 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;
- That the Timorese government should implement the recommendations of the report of the Commission for Reception, Truth and Reconciliation (CAVR) and the report of the Commission of Truth and Friendship (CTF), and encourage the Timorese Parliament to debate 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;
- That the Indonesian government should fully co-operate with an international criminal tribunal, the national courts of Timor-Leste or national courts in other countries in their efforts to investigate and prosecute persons suspected of crimes in Timor-Leste between 1975 and 1999, including by entering into extradition and mutual legal assistance agreements with Timor-Leste and other governments.

We hope that you will consider and express support for these recommendations.

Yours sincerely,

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