

# INTERNATIONAL FEDERATION FOR EAST TIMOR (IFET)

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February 18, 2009

President  
Security Council  
The United Nations  
1 United Nations Plaza  
New York, New York 10017

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Your Excellency

We are writing on behalf of organizations long concerned with the justice process in Timor-Leste.

As you meet this week to discuss renewing the UN mission in Timor-Leste, we urge you to look at the unfulfilled UN pledges concerning human rights and accountability for serious human rights crimes committed in Timor-Leste between 1975 and 1999.

We urge the Security Council to seriously examine the recommendations of the 2005 Commission of Experts (CoE) report and *Chega! (Enough!)*, the final report of the Timor-Leste's Reception, Truth and Reconciliation Commission (CAVR), as guides to establishing a process that can contribute to genuine justice and reconciliation. Such a process will support democracy and accountability in both Indonesia and Timor-Leste.

These, as well as reports from independent bodies, all concluded that the right of the people of Timor-Leste and the international community to achieve justice for war crimes and crimes against humanity committed between 1975 and 1999 was not served by the serious crimes process in Timor-Leste and Indonesia's Ad Hoc Human Rights Court, which in the end convicted no one.

The Security Council ended the serious crimes process in May 2005, although UNMIT has resumed investigating murders committed in 1999, but without a mandate or mechanism for issuing indictments or bringing perpetrators to trial. In addition to its too-restrictive mandate, the Serious Crimes Investigative Team's (SCIT) investigative process is appallingly slow. With 396 cases from 1999 identified as "outstanding" (the actual number is likely closer to 1,000), only 35 have been investigated to date, with another 38 in process. At this rate, it will take another ten years to complete even this limited work. We encourage the Council to increase the resources and priority allocated to this task, as well as broadening its scope.

Last year, the flawed joint Indonesia and Timor-Leste Commission for Truth and Friendship acknowledged the institutional responsibility of the Indonesian state and its security forces for crimes committed in 1999. Its terms of reference barred the commission from recommending a mechanism to hold those responsible accountable, naming names, or considering crimes committed during the first 23 years of the Indonesian occupation. We agree with the Secretary-General's decision that the UN not participate in this process, which risked violating international standards against impunity.

Events between 1975 and 1999 continue to have an impact on the people of Timor-Leste. One of the underlying causes of the 2006 crisis in Dili was that its people continue to suffer from largely-unhealed mass trauma. The manifest failures of local and international justice processes are creating a culture of impunity, in which

perpetrators believe they will not be held accountable for murder and other crimes, and where victims often feel that the only justice possible is what they do with their own hands. This attitude contributed to the attempted assassinations of Timor-Leste's President and Prime Minister just one year ago.

The Secretary-General's Representative on Human Rights of Internally Displaced Persons understands this. When he visited Timor-Leste just two months ago, he reported that "... meaningful and enduring reconciliation [for the 2006 crisis] will remain elusive unless impunity for crimes is addressed. At present, the lack of justice for serious crimes undermines the IDPs' confidence in the state and may pave the way for future violence and displacement." The UN Special Commission of Inquiry for Timor-Leste reached similar conclusions in 2006: "It is vital to Timor-Leste that justice be done and seen to be done. A culture of impunity will threaten the foundations of the State. The Commission is of the view that justice, peace and democracy are mutually reinforcing imperatives. If peace and democracy are to be advanced, justice must be effective and visible."

Cambodia has finally begun to try alleged perpetrators of serious crimes going back to 1975. These trials would not be taking place but for the intervention and persistence of the international community, especially the UN. The international community, which so often failed to defend the rights of the Timorese people during the Indonesian occupation, has a responsibility to support justice for crimes committed against all *humanity*.

We urge you to clarify, and if necessary amend, the role of the SCIT. A full reconstitution of the serious crimes processes is required, in line with recommendations the CAVR's *Chega!*. This requires at a minimum: a Serious Crimes Unit working within the Office of the Prosecutor-General, a commitment of sufficient resources, and a mandate to investigate prosecute all crimes committed during the Indonesian occupation. Timor-Leste's judicial system is new and weak. It has no ability to reach perpetrators outside the country, and the small, new nation must maintain good relations with its larger neighbor, this should be a direct UN responsibility.

This would enable prosecution of the more than 300 people already indicted, but who remain at large in Indonesia, and would help provide accountability for serious crimes committed in 1999, as well as those between 1975 and 1998, which constitute the great majority of the killings.

A decade has passed since Indonesia's violent exit from Timor-Leste, and Indonesia has repeatedly demonstrated that it cannot or will not credibly try or extradite perpetrators of crimes connected with Indonesia's occupation of Timor-Leste. Interpol should issue arrest warrants for the 312 indictees enjoying sanctuary in Indonesia, thereby preventing these suspects from traveling internationally. Other sanctions should be considered as well.

The best alternative to a revived and strengthened serious crimes process would be for the Security Council to implement the recommendation of the CoE report - to create an ad hoc international criminal tribunal for Timor-Leste, to be located in a third State.

We urge you to use this moment of UNMIT's mandate renewal to advance justice for the people of Timor-Leste in line with the Security Council's earlier commitment, expressed nearly ten years ago in Resolutions 1264 and 1272. Failure to do so demonstrates to the people of Timor-Leste and the world that the UN supports a double standard of justice, undermining the rule of law and respect for human rights in Timor-Leste, Indonesia and internationally

This position is widely supported by Timor-Leste's citizens, especially by the Church, several political parties and civil society. In the past, some leaders of Timor-Leste have expressed ambivalence about international justice mechanisms, believing that their new and poor nation could not take the heat of standing up to its powerful neighbor and former occupier. However, in his 2007 inauguration speech President José Ramos-Horta acknowledged the great teachings of the CAVR report, while at the press conference after the swearing in of the new government, Prime Minister Xanana Gusmão said that reconciliation cannot be achieved without the truth and the truth would be meaningless without justice.

In his report to the Council this month on UNMIT, the Secretary General "encourage(d) the two Governments [of Indonesia and Timor-Leste] to take concrete steps to ensure full accountability, to end impunity and to provide reparations to victims, in accordance with international human rights standards and principles." We believe that these Governments have repeatedly demonstrated that they cannot do this alone. The international community must now implement the UN's repeated promises by allocating the necessary political, financial and legal resources to end impunity for these crimes against humanity.

Yours sincerely,

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