

Justice for Timor-Leste Remains an Unfulfilled International Obligation

A briefing paper for the Inter-Parliamentary Union

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Introduction

The international community has an unfulfilled obligation to the people of Timor-Leste, the newest and nearest independent nation to the site of the 116th Inter-Parliamentary Union Assembly. Between 1975 and 1999, more than 100,000 Timor-Leste people were killed as a result of Indonesia's illegal invasion and occupation of our country. The brutal military occupation, condemned eight times by the General Assembly of the United Nations, was carried out with countless Crimes Against Humanity and other crimes of universal jurisdiction.

Although Indonesian soldiers finally left our land seven years ago, and we have been self-governing since 2002, all of the major perpetrators of these crimes continue to enjoy impunity in your host nation, Indonesia. Indonesia's leaders continue to lie about what their government did to our country. Only last month, B. J. Habibie (President of Indonesia during the 1999 independence referendum in Timor-Leste and the terror campaign Indonesian military forces inflicted on Timor-Leste before and after 78% of the Timorese people voted for independence) publicly blamed the United Nations for the September 1999 devastation by Indonesian soldiers and their military proxies which killed 1,400 people, displaced $\frac{3}{4}$ of our population, destroyed 75% of the buildings in our country, and devastated almost all of our infrastructure. As serious as they were, the murders of 1999 amount to only about 1% of the major crimes committed during the 24-year occupation.

This week, the United States and Indonesia are conducting joint military exercises in West Java. The Indonesian co-director of "Garuda Shield" is General Noer Muis, who was convicted in Indonesia (overturned by a questionable appeals court) and indicted by United Nations prosecutors in Timor-Leste for Crimes Against Humanity. Colonel Noer Muis commanded Indonesian forces in Timor-Leste in August and September 1999. His subsequent promotion to general commanding the First Infantry Division of the Army Strategic Reserve (Kostrad) demonstrates the culture of impunity which prevails in Indonesia. Other Indonesian military and police officers who committed serious crimes in Timor-Leste went on to preside over similar crimes in Aceh and West Papua.

As discussed below, various international and domestic mechanisms over the past six years have failed to hold the perpetrators of war crimes and crimes against humanity during the Indonesian occupation accountable. This failure has serious consequences for both Indonesia and Timor-Leste. It creates a culture conducive to further human rights violations and obstructs the process of democratic change in Indonesia. In our nation, the security crisis which erupted last year has roots in the climate of impunity which prevails for crimes committed during the Indonesian occupation. New perpetrators expect to get away with their crimes, while victims see no option for justice other than taking it into their own hands. If Timor-Leste is to succeed in establishing a peaceful,

democratic nation governed by the rule of law, it needs continuing support from the international community, especially regarding justice. By itself, our new, small nation has neither the political nor the human capacity to prosecute criminals given sanctuary by our large neighbor.

Crimes Against Humanity committed between 1975 and 1999 in Timor-Leste directly violated UN Security Council and General Assembly resolutions. Those committed after May 1999 also contravened a United Nations-brokered agreement which assigned responsibility for security to the Indonesian police during the referendum in Timor-Leste. United Nations staff were among the casualties, but all humanity has an obligation to prosecute such offenses to ensure that they will not happen again.

If the International Criminal Court had been established when these crimes were committed, high officials of the government which is hosting you would now be in the dock. But since it was not, the United Nations and the international community have an unfulfilled promise and obligation to provide justice not only for victims in Timor-Leste, but for all humanity.

Following Indonesia's tumultuous withdrawal from Timor-Leste in late 1999, the United Nations established a Commission of Inquiry. As Kofi Annan described, "The Commission stated that the evidence gathered clearly demonstrated a pattern of serious violations in Timor-Leste of fundamental human rights and humanitarian law. [These violations] were directed against a decision of the Security Council and were contrary to the agreements reached by Indonesia with the United Nations to carry out the decision of the Security Council. This fact reinforces the need to hold the perpetrators accountable for their actions."

At the same time, Indonesia established the Commission for Human Rights Violations in Timor-Leste (KPP-HAM), which found widespread collaboration between Indonesian military and police and militias, and named more than 30 people suspected of involvement in crimes against humanity. KPP-HAM recommended that the Indonesian Attorney General investigate further. In April 2000, Indonesia and the United Nations Mission in Timor-Leste signed a cooperation agreement regarding exchange of evidence, witnesses and suspects, but Indonesia has never honored it.

In 2000, both the UN Commission and KPP-HAM recommended that an international tribunal be established if efforts by Indonesia, the United Nations, and Timor-Leste failed to end impunity. Seven years later, impunity still prevails and its consequences are manifest. Below is an overview of the mechanisms so far, none of which has provided accountability. It is time for the international community to carry out its long-overdue responsibility.

We ask each of you as parliamentarians in your own country, as well as the Inter-Parliamentary Union itself, to acknowledge the continuing responsibility of the international community to end impunity for serious crimes committed by Indonesian military and political officials in Timor-Leste, and to encourage all effective efforts toward accountability. We urge you to support and advocate for an international tribunal to hold the high-level perpetrators accountable.

Serious Crimes Unit (SCU) and Special Panels in Timor-Leste

The United Nations Security Council established the SCU and Special Panels in Timor-Leste in 2000. Collectively known as the serious crimes process, the SCU and Special Panels became a joint Timor-Leste and UN undertaking after independence in 2002. Investigations, prosecutions, and trials for crimes against humanity in Timor-Leste fell under the jurisdiction of the Serious Crimes process. Indonesia's refusal to cooperate with the SCU on evidence, witnesses, and extradition seriously limited the effectiveness of the process, which formally concluded on May 20, 2005.

The SCU indicted 392 people, including former Indonesian military chief General Wiranto. A total of 85 defendants were convicted and two were acquitted. More than 70% of those indicted, including all non-Timorese, remain free in Indonesia, some in positions of power. 469 murders from 1999 have not been investigated at all. Materials from the Serious Crimes process are archived in New York and Timor-Leste.

The UN Integrated Mission in Timor-Leste (UNMIT), created in August 2006, is mandated to help complete investigations of all serious crimes committed in 1999, but it has no authority to issue indictments or provide a venue for trials. Timor-Leste's already overburdened justice system is responsible for all prosecutions and trials, including of those previously indicted by the SCU. To date, political realities and resource limitations have made it impossible for Timor-Leste by itself to confront its huge neighbor.

Indonesia's Ad Hoc Human Rights Court

Indonesia established its Ad-Hoc Human Rights Court on Timor-Leste to fend off calls for an international tribunal. Trials began in Jakarta in 2002. This process has been widely denounced as a sham, including by the U.S. State Department. Eighteen people were indicted for failing to prevent crimes against humanity in Timor-Leste (rather than for actually committing such crimes themselves). Twelve were acquitted in the first trial, and five had their convictions overturned by Indonesia's Appeals Court, which completed its rulings in 2004. Militia commander Eurico Guterres, a Timor-Leste civilian, is the only remaining conviction, and he is serving five years in prison.

UN Commission of Experts (COE)

In February 2005, UN Secretary-General Kofi Annan appointed the COE to evaluate existing judicial processes and propose next steps to hold accountable those responsible for serious crimes in Timor-Leste in 1999. The Commission, composed of three eminent international jurists, examined the two previous processes. The COE reported in May 2005, and the Security Council asked the Secretary-General to provide "practically feasible" recommendations, which he did more than a year later.

The COE found that the trials of Indonesia's Ad-Hoc Human Rights Court were "manifestly inadequate," showing "scant respect for or conformity to relevant international standards." The report stated that the UN-backed SCU and Special Panels process had attained a "notable degree of accountability," but observed that it had been hampered by inadequate resources, insufficient support from the Timor-Leste government, and a lack of cooperation by Indonesia. The SCU was unable to bring to justice those who bore "greatest responsibility" for serious human rights violations in Timor-Leste in 1999, including senior Indonesian civilian and military personnel.

The COE recommended that the Indonesian government be given six months to show it was serious about prosecuting high-level perpetrators. Should Indonesia fail to act, the COE urged the Security Council to consider establishing an international criminal tribunal. The COE also recommended that the SCU and Special Panels for Serious Crimes be revived temporarily to manage appeals and protect case files, with a clear strategy for the handover of their functions to local institutions.

In July 2006, the Secretary-General recommended reinstating international support for investigations and indictments of serious crimes committed in 1999, but not restoring the prosecutorial component of the SCU. His report called for the Security Council to endorse the findings of the COE, but failed to address most of its recommendations and those of the CAVR (see below). The following month, the Security Council created the new UNMIT Mission in Timor-

Leste, and mandated it to resume investigation of 1999 crimes. The Council took note of the findings of the COE, but only one of its dozens of recommendations.

Timor-Leste Commission for Reception, Truth and Reconciliation (CAVR)

An independent body created and operated with the support of the United Nations, the Commission is known by its Portuguese acronym, CAVR. It has produced the most comprehensive documentation to date of the 1974 to 1999 period in Timor-Leste, covering the entire Indonesian occupation. Its 2,500-page report results from three years of intensive research, including interviews with thousands of victims and witnesses. *Chega!* (Portuguese for *Enough!*), the Final Report of the CAVR, urges increased attention to crimes committed before 1999 (which include 99% of the killings), including the use of starvation, torture, forced disappearance, extrajudicial detention and killings, and systematic sexual torture and enslavement as weapons of war.

Among its many findings and recommendations, the report strongly criticizes the role of the international community in supporting Indonesia's invasion and occupation of Timor-Leste, and calls on these governments and the UN to discuss the report in order to learn the lessons of the invasion and occupation. CAVR recommends that the UN Security Council "be prepared to institute an International Tribunal pursuant to Chapter VII of the UN Charter should other measures be deemed to have failed to deliver a sufficient measure of justice and Indonesia persists in the obstruction of justice." *Chega!* also recommends apologies and reparations from the governments of Indonesia, the U.S., Britain, Australia and others, as well as from Western arms manufacturers who supported Indonesia's actions.

Indonesia/Timor-Leste Commission of Truth and Friendship (CTF)

In late 2004, the presidents of Indonesia and Timor-Leste proposed a bi-national Commission of Truth and Friendship in an unsuccessful effort to dissuade then UN Secretary-General Kofi Annan from appointing the Commission of Experts. The CTF was formed in March 2005 over the objections of Timor-Leste's Catholic bishops and civil society organizations in both countries. The Commission, which is composed of five commissioners from each country, is mandated to establish a "shared historical record" of human rights violations before and after Timor-Leste's 1999 referendum. It can recommend amnesty for those who "cooperate fully" and can also propose people-to-people reconciliation efforts. However, it cannot recommend prosecution or other judicial measures, and it has no power to compel testimony or cooperation.

The UN's COE found that the CTF's terms of reference contradict international and domestic laws, and include no mechanisms for addressing serious crimes. The COE recommended that the governments revise the terms of reference as a precondition to receiving international support. Indonesia's Constitutional Court has cast further doubt on the CTF's legal basis. The CTF is supposed to operate under the principles of Indonesia's Truth and Reconciliation Commission, but the Court recently declared the Indonesian TRC unconstitutional, citing provisions allowing for amnesty for serious crimes and conditioning reparations on victims forgiving their tormentors. Early in 2007, several commissioners made known their plans to recommend amnesties.

After operating for nearly two years with little public activity, the CTF began to hold public hearings in Bali and Jakarta in February 2007. Several high-level Indonesian military and civilian officials have testified, but their statements are self-serving and contradict the well-established historical record. Rather than establishing truth and friendship, the CTF's main purposes seem to be to clear the reputations of former and current Indonesian leaders, and to cast aspersions on the United Nations and other international institutions and legal processes.