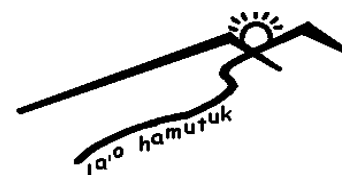


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12 February 2008

United Nations Security Council  
New York, New York, USA

Dear Members of the United Nations Security Council:

We drafted this letter to you before the assassination attempts on our President and Prime Minister yesterday morning, which led to the death of Alfredo Reinado. Those atrocities, as well as the lawlessness and violence which may come in their wake, further underscore the points of this letter. If the United Nations is effectively to support Timor-Leste as a democratic, calm, and secure nation, perpetrators of past, current, and future crimes must be held accountable.

Democracy, the rule of law, and an effective judicial system are essential to lasting peace and stability. Virtually all nations agree that perpetrators of crimes against humanity should not enjoy impunity anywhere. The United Nations has taken many steps over the last several years to implement these principles.

Unfortunately, those steps have stalled in Timor-Leste. Notwithstanding its mandate from the Security Council, UNMIT has done almost nothing to advance justice for serious crimes committed in Timor-Leste in 1999. As you discuss UNMIT's performance and future, we urge you to emphasize the importance of this part of its mandate.

For the past nine years, it has been clear that international support is necessary to achieve accountability for Crimes against Humanity and other serious crimes committed by and at the direction of Indonesian forces in Timor-Leste between 1975 and 1999. The UN has recognized this since 2000, and has prioritized those crimes committed during 1999, when the UN had assigned security responsibilities in the territory to Indonesian forces.

UN missions here since then – UNTAET, UNMISSET, UNOTIL and now UNMIT – have had decreasing mandates to support justice, notwithstanding the failure of parallel processes by Indonesia and Timor-Leste. In 2005, the UN Commission of Experts identified that processes to date have not ended impunity, and that additional mechanisms are necessary.

Unfortunately, years of compromises and the lack of international political will limited the UNMIT mandate to completing investigations for serious crimes committed in 1999, without authority for indictments or prosecution. This very limited task was far from what is needed, but during the past 18 months UNMIT has failed to pursue even this.

Last week, SRSG Atul Khare explained to Timorese NGOs that this was due to UNMIT's and the Timor-Leste Government's preoccupation with other tasks – security, elections, a new Timor-Leste's government, budgeting, etc. If UNMIT is intended to assist the Timor-Leste government in the many sectors every government is responsible for, it should be able to accomplish more than one thing at a time. And if Timor-Leste is to emerge from war, occupation, and post-conflict disorder into peace and stability, it needs not only to implement the rule of law, but for its people to be convinced that the rule of law will prevail.

International support is essential to achieve justice for international crimes – and if UNMIT does nothing except in response to an initiative from Timor-Leste, the international community had abdicated its moral, legal and historical responsibility to end impunity.

When you discuss UNMIT and decide on its future this Thursday, we urge you to consider strengthening the mandate for justice. Patterns of impunity are a cause of many of Timor-Leste's current urgent problems: the failure to bring Alfredo Reinado and his followers to justice, the widespread disregard for the law by disaffected youth, the difficulties UNPOL, ISF and PNTL encounter in enforcing the law, the lack of confidence in the judicial sector which causes people to take the law into their own hands.

At the very least, we hope you will encourage the SRSG to pursue this part of his mandate vigorously. If the United Nations declines to carry out its own minimal promise to investigate serious crimes, how can it hope to teach the Timor-Leste judicial and prosecutorial system to strengthen the rule of law?

Some background information follows. We also refer you to "Justice for Timor-Leste Remains an Unfulfilled International Obligation," a briefing paper we gave to the Interparliamentary Union last year, available at [www.laohamutuk.org/Justice/07JusticeBriefingIPU.pdf](http://www.laohamutuk.org/Justice/07JusticeBriefingIPU.pdf).

In May 2006, the legacy of impunity became visible to all, as Timor-Leste exploded in crisis and ineffective rule of law required the TL government to request international military assistance. The UN and the rest of the international community recognized that Timor-Leste's transition to nationhood required continuing support, and that some of the assistance thus far had been misguided or insufficient.

In June 2006, our organization sent some suggestions to the Security Council (available at <http://www.laohamutuk.org/reports//UN/06LHSuggestUN.html> ). At that time, we wrote:

It is widely recognized that the government of Indonesia, the international community, and the government of Timor-Leste have failed to secure justice for crimes against humanity and other serious crimes committed during the 24-year illegal occupation of Timor-Leste by Indonesia, or even the small percentage of those crimes committed during the UN presence in 1999. This memo will not describe the prevailing impunity or the deep frustration felt by victims of these crimes over the lack of accountability. This has been well documented by many qualified observers, including in the reports of the UN Commission of Experts and Timor-Leste's Commission for Truth, Reception and Reconciliation (CAVR). The CAVR's Final Report describes the legacy of the lack of justice for years of human rights violations: "Impunity has become entrenched" and "Respect for the rule of law and the organs of the state responsible for its administration, a fundamental pillar of ... nation building in Timor-Leste, will always be extremely fragile in this context."

We concur and add that the repeated advocacy of "reconciliation" and "amnesty" by President Xanana Gusmão and other Timor-Leste leaders exacerbates this situation. However, most Timor-Leste leaders remember 24 years of serious crimes committed against their people, when the international community turned a deaf ear to their cries for help. We should not be surprised that Timor-Leste feels unable to single-handedly take up the burden for prosecuting crimes against humanity committed by Indonesian nationals acting on behalf of the Indonesian government. The international community has an unfinished obligation, and the primary responsibility should rest with the United Nations and not be left to RDTL's government. These were, after all, crimes against *humanity*.

Over the last few months, two consequences of the failure to provide justice have become manifest: perpetrators anticipate impunity for serious crimes, and victims, lacking confidence that the justice system will do its job, take matters into their own hands. The frequent inability of Timor-Leste's court system to deal with recent crimes is an obstacle, but the abandonment of

justice responsibilities by UNTAET and its successors is the larger problem, and both should be addressed by the next UN Mission. Reconstructing the police force will deal with only part of Timor-Leste's security deficit. Until there is widespread confidence in the judicial system and the rule of law, Timor-Leste's peaceful and constitutional government will remain in danger, as some will resort to illegal or extra-constitutional processes to gain property or power.

When the Security Council established UNMIT with Resolution 1704 in August 2006, you *Reaffirm[ed]* the need for credible accountability for the serious human rights violations committed in East Timor in 1999, and *welcom[ed]* the report of the Secretary-General on Justice and Reconciliation for Timor-Leste of 26 July 2006 (S/2006/580), ... UNMIT will have the following mandate:

... (i) To assist in the implementation of the relevant recommendations in the Secretary-General's report on Justice and Reconciliation, including to assist the Office of the Prosecutor-General of Timor-Leste, through the provision of a team of experienced investigative personnel, to resume investigative functions of the former Serious Crimes Unit, with a view to completing investigations into outstanding cases of serious human rights violations committed in the country in 1999;

The Secretary-General's Report to the Security Council of 17 January 2008 (S/2008/26) acknowledges (para. 42) that UNMIT has done very little to carry out its extremely limited responsibility for justice, which is to complete investigations for Serious Crimes committed in 1999 only, but not to issue indictments or conduct trials. The report says that UNMIT will "soon sign an agreement" with the Government of Timor-Leste to access files from the former Serious Crimes Unit and that they have "started preparing plans to conduct investigations."

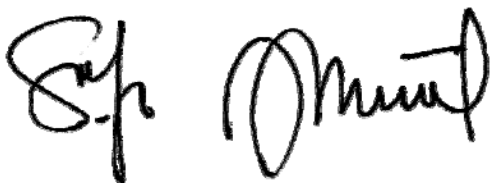
At a meeting with Timorese NGOs last week, SRSG Atul Khare was asked about accountability for crimes committed between 1975 and 1999, given that he had stressed the rule of law in his presentation, and that the UN has repeatedly said that impunity should not prevail. Why has it taken UNMIT 18 months to reach such an agreement?

The following is a paraphrase of his answer:

Regarding the 1999 crimes, we have to remember the situation when I arrived in December 2006. There was violence every day, no electoral laws had been written, etc. Our priorities were peaceful elections, stability and security. If UNMIT had focused on 1999, it would have been a force for instability. During the electoral process, we did not focus on the Serious Crimes Unit because it would have become a political issue. Then the new government was formed. It was only feasible to reach a new agreement after the adoption of the (2008) budget, so it was actually negotiated in six weeks. I'll tell you a secret; the new agreement will be signed on 11 February. The SCU team is already in place, so they can start right away.

When you meet in a few days, we encourage you to "emphasize the importance of ongoing efforts to reach accountability and justice for the events of 1999" as you did a year ago. We also hope you will stress not only to UNMIT, but also to the governments of Timor-Leste and Indonesia, that justice is an essential foundation for the future stability of this country.

Thank you.



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