

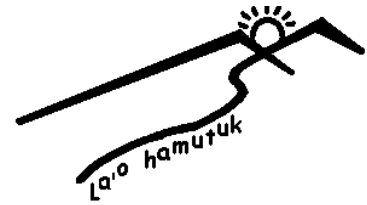
La'o Hamutuk

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22 February 2010

Members of the United Nations Security Council
New York, New York, USA

Dear Distinguished Members of the United Nations Security Council:

The Timor-Leste Institute for Development Monitoring and Analysis (La'o Hamutuk) is a local civil society organization which has monitored and analyzed the mandates and activities of the United Nations in Timor-Leste since 2000, during four UN Missions. We frequently meet with UN officials and write to the Security Council, especially about the still unfulfilled promise by the international community to end impunity for crimes against humanity committed during the illegal Indonesian occupation between 1975 and 1999.

We received the most recent Secretary-General's report on UNMIT (S/2010/85) only a few days ago and would like to share initial observations before your open debate tomorrow. We welcome the chance to discuss these issues.

La'o Hamutuk participated in two meetings with the UN Technical Assessment Mission (TAM) in January, and we are glad to see some of our comments and others from civil society reflected in the Secretary-General's report. We have not been allowed to see the TAM report, which we hope contains fewer reservations and qualifications than the S-G's report.

The Secretary-General's current report is more comprehensive and honest than the previous one (S/2009/504) which, as La'o Hamutuk wrote you last October, "left out essential facts, context and responsibilities." We appreciate that the current report includes facts, observations and recommendations which may be uncomfortable for the United Nations and/or Timor-Leste's Government. Unfortunately, the comfort of Indonesian officials remains undisturbed; the report's 40 pages do not contain a single reference to Indonesia's brutal, illegal, 24-year occupation which wreaked havoc on Timor-Leste.

This report includes less self-censorship, euphemisms, passive voice and third-party attribution than other S-G reports since 2007. We hope that this indicates that UNMIT's new leadership is ready to grapple with Timor-Leste's situation more effectively.

Historical amnesia pervades this report, as if Timor-Leste first appeared on the UN agenda in 2006 (for example, para. 33). In fact, many of the current problems in the police and military sectors stem from decisions made during UNTAET and from the way the UN trained the police and handed over responsibilities in 2000-2004. More fundamentally, the reason for UN involvement in Timor-Leste stems from the Indonesian invasion 35 years ago and the international failure to back up Security Council and General Assembly Resolutions. In a sense, UN responsibility for Timor-Leste since 1999 grows out of failures from 1975-1999; renewed attention since 2006 is an attempt to redress mistakes made in 1999-2005. If UNMIT and the Security Council do not learn from this history, the United Nations may lose Timor-Leste as a "poster child," but the people who live here will endure far more severe hardships.

The remainder of this letter discusses a few areas where the Secretary-General's report does not adequately address current context and future needs of Timor-Leste. Many of these areas, including public views on justice, the Maternus Bere case, the Justice System Needs Assessment,

CAVR and CoE recommendations for the international community, the inadequacy of dialogue to prevent conflict, democratic governance, and economic sustainability, are discussed in depth in the letter and addendum La'o Hamutuk provided to the Security Council on 20 October 2009,¹ and we encourage you to refer to those documents, as we will not reiterate their information.

Justice for past serious crimes

La'o Hamutuk has written at length about the continuing obligation of the United Nations and the international community to act, and not only preach, to end impunity for crimes against humanity and other serious crimes committed as part of Indonesia's occupation here.² We will not repeat those comments here, except to recall that many Indonesian, international and Timorese bodies, including the 2000 KPP-HAM and UN COI, 2005 CAVR, and 2005 Commission of Experts, recommended an international tribunal if other measures fail to end impunity (paras. 9 and 81).

Continuing impunity has grave implications not only for the justice sector, but also for future stability, accountability, peace, reconciliation, democracy and Constitutional rule of law in Timor-Leste; it is not only about addressing past crimes. As of now, impunity is a reality, not a "perception" (para. 24), and the UN commitment to prevent impunity cannot be implemented by reiteration (para. 29) or "good offices" (para. 25) solely within this country.

We appreciate the discussion (para. 11) of some recent events undercutting accountability, and encourage UNMIT to be more outspoken and effective in opposing actions which further propagate the climate of impunity (para 87) for domestic violence and other crimes, which will weaken the justice system in a vicious circle leading to lawlessness and anarchy.

The UNMIT Serious Crimes Investigations Team (SCIT) has no prosecutorial or judicial component, and its scope is limited to the final 10 months of the 24-year illegal occupation. As of 15 January, SCIT had completed investigations of 110 of its list of 396 cases from 1999, up from 89 as of 31 August 2009.³ At this rate, it will take until October 2014 to get through the SCIT's list, and several centuries to investigate the great majority of crimes which occurred from 1975 to 1998.

In a 2 February 2010 letter to the Security Council,⁴ the Timor-Leste National Alliance for an International Tribunal and other organizations suggested additions to SCIT's activities, which must be accompanied by the necessary resources and political will. We hope that these will be incorporated into the revised UNMIT mandate. They would begin to reverse the direction from impunity toward accountability:

- Establish a mechanism during the UNMIT mission which will lay the groundwork for the eventual creation an International Tribunal.
- Expand the mandate of the Serious Crimes Investigation Team (SCIT) to include some of the most grievous crimes committed prior to 1999, such as the 1975 invasion, 1983 Kraras Massacre, 1991 Santa Cruz Massacre, and others.
- Give SCIT the authority and sufficient resources to prepare and publish formal indictments for cases they have investigated.

¹ This letter and annex are available at <http://www.laohamutuk.org/Justice/09LhtoUNSCJustice.htm>

² See, most recently, the several articles La'o Hamutuk's February 2010 *Bulletin*, available at <http://www.laohamutuk.org/Bulletin/2010/Feb/bulletiny11n1-2.html#justice> or downloadable from <http://www.laohamutuk.org/Bulletin/2010/Feb/LHBFeb10En.pdf>

³ Current figures from paragraphs 10 and 76 of S/2010/85; previous ones from paragraph 32 of S/2009/504.

⁴ Available at <http://www.laohamutuk.org/Justice/ANTI2Feb10.htm>.

Police and law enforcement

During the last few weeks, Timor-Leste officials and media have told citizens to be afraid of “ninjas” and their supporters who, according to police, military and political leaders, are spreading violence and terror among local communities. The Government is using this alleged danger, which appears wildly exaggerated,⁵ to justify escalating police and military operations in local communities, often accompanied by human rights violations and implications of “guilt by association” against groups critical of the government. This phenomenon, which emerged since the 20 January cut-off for the Secretary-General’s report, threatens to undermine the rule of law, human rights (see para. 9), and democratic processes, and we hope that UNMIT will work privately and publicly to make certain that the activities of security forces here do not exceed their constitutional mandates of ensuring democratic legality and defense against external threats.

The increasing militarization of PNTL (all partially described in paragraphs 9, 26, 46-49 and elsewhere) is partially due to the military models of security presented by PKF, ISF, GNR and others. The “perceptions of the ‘militarization’ of PNTL” (paragraph 26) are indeed a concern for the future. These perceptions result from a deliberate campaign in the media and elsewhere by the PNTL Commander and others to portray the police as soldiers combating an undefined enemy force, rather than enforcing the written law and pursuing law-breakers.

This message is reinforced when UNPOL’s commander describes the principal role of police “to assure and to maintain public order,”⁶ rather than to enforce the law. This perspective, which is an unfortunate reminder of the justifications given by authorities between 1975 and 1999 for human rights violations by Indonesian police and soldiers in Timor-Leste, is echoed when the S-G’s Report recommends training in riot control (para. 48) and a “nationwide crowd control response capability” (para. 68). While other parts of the Report appropriately emphasize human rights and respect for law, we believe that the United Nations and other international assistance must exemplify and teach police that their role is to support citizens’ rights under law (including the right not to be a victim of crime), rather than to intimidate people into quiescence .

We appreciate the Secretary-General’s honest discussion of problems relating to language, training and UNMIT police background (paras. 43-53), and we encourage the Security Council to find ways to deal with them, both for Timor-Leste and for other nations receiving UN police and peacekeepers. While PNTL should be more accountable (para. 51), the same applies to UNPOL, ISF and UN international staff. Although Timor-Leste’s Provedor can theoretically address human rights violations by PNTL, UN or ISF personnel are not accountable to Timor-Leste for their violations (including accidents or negligence). Indeed, the UN has never published UNMIT’s Status of Mission Agreement.⁷

Finally, we are heartened that the UN will finally provide Tetum introduction training for UNMIT police officers (para. 166) so that they can communicate with their PNTL counterparts and local residents.

⁵ As paragraph 6 of S/2010/85 describes, violent crime is actually decreasing here. The “ninja” issue is discussed in a new HAK Association report at <http://www.laohamutuk.org/Justice/10HAKNinjas.htm>.

⁶ UNPOL Commander Luis Carrilho’s 12 January 2010 speech, available at <http://unmit.unmissions.org/Default.aspx?tabid=156&ctl=Details&mid=2149&ItemID=7401>

⁷ La’o Hamutuk posted a leaked copy of this 2002 document at <http://www.laohamutuk.org/reports/UN/02UNMISSETSOMA.htm>; we do not know if it has been revised.

Lasting security requires sustainable, equitable development

People feel secure when they can live without fear of crime, civil disorder, repression, starvation, disease, and other major disruptions to the lives of their families. Although some of these concerns can be addressed with "security forces," the more difficult and fundamental ones require inclusive, equitable service delivery and economic development. Indeed, if significant numbers of people remain impoverished and alienated -- while a few enjoy the benefits of affluence and power -- no amount of bullying by men and women with guns can provide security.

Although UNMIT is called an "integrated mission," to date it has prioritized security through intimidation, rather than through social and economic justice. The recent Secretary-General's report contains more information on the latter challenges than previous reports do, and we encourage further motion in that direction. If poverty, population growth and economic disparities are not effectively addressed, growing social jealousy and class conflict will undermine the work of dialogue groups and reconciliation programs, further diminishing the security of people's lives (see para. 28).

Timor-Leste suffers an unfortunate coincidence of circumstances which makes it difficult to provide genuine security. It is a young, post-conflict, post-colonial, impoverished, traumatized, non-renewable-resource-dependent nation. UNMIT and UN agencies have experience with each of these conditions, but that expertise has not been used effectively in Timor-Leste. If the underlying goal of UN engagement here for the past decade, including UNMIT, has been to prevent this country from "failing" or relapsing into violent conflict, this wider range of issues needs more attention, particular those which have an impact on long-range social and economic development.

More specifically, the Secretary-General's report does not mention that 98% of Timor-Leste's state revenues come from extracting and selling oil and gas, and that these revenues could cease in less than 15 years. This dependency on non-renewable resources is the highest in the world, made more dangerous by the lack of effective efforts by government or international agencies to develop the non-oil economy. During 2009, Timor-Leste imported \$280 million worth of merchandise while exporting about \$8 million (98% of which was from selling coffee), a mammoth trade deficit enabled by transient oil revenues.⁸

Oil revenues may have bought peace in the short term (paras. 14, 118 and 127), but what will happen when the money runs out? We urge UNMIT and UN agencies to provide increased assistance and advocacy in areas such as sustainable development, intergenerational equity, macroeconomic analysis and long-term planning. In particular, the Government and international financial institutions exaggerate the strength of the minuscule non-oil economy,⁹ and the UN could help policy-makers understand the real situation.

In the same way that the UN encourages improved policies on gender equality, human rights, public communication and police practices (e.g. para. 91), it should help strengthen Timor-Leste's manifestly weak capacity for long-term economic planning and generating sustainable development. Unfortunately, the UN has not done this effectively to date. Although the current report indicates awareness of this need (paras. 118, 130, 151, 172), more attention should be paid to solutions.

⁸ La'o Hamutuk has compiled an overview of the last decade's budgetary, aid, oil revenue and trade statistics at <http://www.laohamutuk.org/Bulletin/2010/Feb/bulletinv11n1-2.html#donor>.

⁹ See, for example, La'o Hamutuk's submission on the 2010 State Budget, available at <http://www.laohamutuk.org/econ/OGE10/sub/09LHSubOJE10En.htm#growth>

During the reporting period, the government overspent the Estimated Sustainable Income from the Petroleum Fund for the first time in the country's history. The government plans a budget rectification in a few months which will spend even more, and is likely to authorize loans which will have to be repaid after oil revenues have declined. Although the S-G's report correctly identifies the pending revision of the Petroleum Fund Law (incorrectly called the "Oil Law" in para. 118) as requiring sound advice, many other pending legislative actions¹⁰ involve decisions which could facilitate or endanger long-term economic development and stability.

We sadly concur with the Secretary-General's pessimistic assessment of primary and secondary education (paras. 125-126) and its criticality to Timor-Leste's future development, especially as oil revenues decline. We hope that the proposed actions (para. 133) will be effective in helping the government and donors to address this crucial need.

Training local UN staff in resume-writing (para. 166) will only help if there are jobs after UNMIT leaves. In a similar way, youth employment programs (paras. 101, 115, 121-122) serve a short-term need, but if they later become unemployed adults with children of their own, poverty and insecurity will increase.

We support the report's finding (para. 129) that "The socio-economic challenges facing Timor-Leste make a case for expanded United Nations activities to help the Government address long-term development challenges," although the details (paras. 130-137) focus more on short-term emergency response than long-term development.

Democratic governance

The S-G's report fails to convey the seriousness of current risks to democratic, Constitutional governance and separation of powers. For example, the vote on the motion to censure the Government over the Maternus Bere case (para. 4) fell strictly along party lines, even though some AMP deputies privately believed that the Prime Minister should not have transgressed the Constitution. Similarly, the Parliament rejected the critical recommendations of Committee C on the 2010 State Budget (para. 4), approving it in a vote also defined by party allegiances.

In several places (paras. 23, 58, 139) the report discusses the importance and current inadequacy of media and civil society in ensuring governmental accountability and encouraging democratically-based policies. We agree, and hope that UNMIT can find more effective ways to strengthen the capability and magnify the voices of ordinary citizens, including Dili-based NGOs and people throughout the country. The media suffers from structural flaws which prevent effective, independent, investigative journalism. Many years of training by development partners (para. 141) have failed to improve this situation, and we encourage the UN to explore these issues more deeply, helping to strengthen media and civil society to bring information to and pressure on Timorese and international institutions, in addition to conveying institutional messages to the public (para. 100).

We share the Secretary-General's wish that the Provedor be important in strengthening human rights (para. 86), enhancing accountability (para. 99) and other areas, and we appreciate the support that the UN has given to this office over the past five years. However, the unpleasant reality is that the Provedor is not taken seriously by other state institutions. The term of office of the Provedor expired in June 2009, and Parliament has not chosen a successor, even though the law requires that one be elected within 30 days.

¹⁰ The RDTL Council of Ministers recently circulated its Legislative Action Plan for February-July 2010, available at <http://laohamutuk.blogspot.com/2010/02/council-of-ministers-legislative-agenda.html>

As the report acknowledges (para. 102) corruption is a real and growing problem in Timor-Leste, and we are proud that La'ó Hamutuk board member Adérito de Jesus Soares was sworn in today as Timor-Leste's first Anti-Corruption Commissioner. Nevertheless, preventing opportunities for corruption, especially by strengthening laws, oversight and accountability within and between institutions entrusted with state power and resources, is more effective in the long run than punishing corruptors (para. 102).

We agree that the High Tax and Audit Court should be appointed (para. 103).

We urge UNMIT to practice more transparency and local content in procurement and hiring to set a good example for Timor-Leste. In addition, efforts should be made to increase the 9.7% of the UNMIT budget (paras. 137 and 170) which enters the local economy.¹¹ During the past decade, many international consultants, advisors, "volunteers" and staff have advanced their careers and bank accounts while working "on" Timor-Leste; it is only fair that Timor-Leste's people also benefit from this money.

As the integrated UN presence in Timor-Leste reduces its focus on police and "security" over the next two years, we encourage you to help Timor-Leste's people and government overcome the historical and economic handicaps inflicted on this nation at birth, and to find ways to use its human and natural resources to benefit current and future generations. UNMIT will probably end in 2012, but 60,000 Timorese children will be born between now and then. Oil revenues from Bayu-Undan will end while they are still in secondary school, and they should not have to live in poverty and violence because the current generation of institutions and individuals failed to think about their future.

Thank you for your attention to our letter and our country, and we are more than willing to discuss these issues further.

Sincerely,

The image shows four handwritten signatures in black ink. From left to right: the first signature is 'Ines Martins' (Ims), the second is 'Mariano Ferreira' (Midi), the third is 'Juvinal Dias' (JD), and the fourth is 'Charles Scheiner' (CS).

Ines Martins, Mariano Ferreira, Juvinal Dias, Charles Scheiner
La'ó Hamutuk Justice Team

Cc: SRSG Ameerah Haq and others at UNMIT, media, RDTL officials, others.

¹¹ La'ó Hamutuk estimates that only \$550 million of the \$ 5,200 million in international assistance allocated to Timor-Leste from mid-1999 to mid-2009 entered the local economy; see <http://www.laohamutuk.org/Bulletin/2010/Feb/bulletinv11n1-2.html#donor>.