



Letter sent to the Permanent Representatives to the United Nations of Algeria, Argentina, Benin, Brazil, China, Denmark, France, Greece, Japan, the Philippines, Romania, the Russian Federation, Great Britain, Tanzania, and the United States of America.

August 22, 2005

Dear Ambassador:

We are writing to express concern that the report of the independent Commission of Experts appointed to review the prosecution of serious violations of human rights in Timor-Leste in 1999 has not yet been scheduled for discussion by the Security Council. The report, which was completed on May 26, 2005, transmitted to the Security Council on June 24 and published on July 27, requires urgent attention, particularly in view of recent developments within Timor-Leste. We therefore urge you to include discussion of the report in the Security Council's scheduled meeting on Timor-Leste on August 29, 2005, or to schedule a separate meeting as a matter of urgency.

There have been recent reports that persons indicted for crimes against humanity by the Serious Crimes Unit have returned to Timor-Leste from Indonesian West Timor. For example, one such indictee, Manuel Maia, was detained by members of his community and handed over to the national police. There exists considerable legal uncertainty within Timor-Leste about the ability of the national judicial system to deal with such cases, given the removal of the substantive international components of the Serious Crimes Unit and the Special Panels for Serious Crimes. As the Secretary-General noted in his report of May 12, 2005, at the end of UNMISSET's mandate, capacity in the justice sector remains weak and dependent on the support of international advisors to reduce the large backlog of ordinary cases,¹ a situation that has become more acute since the failure of all national judges and prosecutors to pass their examinations. These concerns are also reflected in the findings of the Commission of Experts, which found that the Special Panels and Serious Crimes Unit do not have the institutional capacity to hear and adjudicate serious crimes cases without an international component. International human rights law demands that persons indicted and taken into custody be brought to trial, without undue delay, before a competent court. The current indictments for crimes against humanity were issued under the authority of the United Nations, and if they are not enforced against persons within the jurisdiction of Timor-Leste it will set a dangerous precedent of impunity that may have destabilizing implications for Timor-Leste's security.

¹ S/2005/310, Para 13.



It is imperative that the Security Council address this situation by (1) endorsing the findings of the Commission of Experts and implementing its recommendations to extend and strengthen the Serious Crimes Unit and Special Panels for Serious Crimes; or (2) providing support and resources to an alternative hybrid justice mechanism to complete the outstanding work related to uninvestigated and partially investigated cases, outstanding international arrest warrants, as well as prosecutions and appeals of current crimes against humanity cases against the worst offenders. The government of Timor-Leste, as represented in the letters sent to the Secretary-General on June 22, by the President and Prime Minister of Timor-Leste, does not appear to oppose international involvement in this process. It has reiterated that it does not favor an outcome in which the burden of dealing with serious crimes is transferred to the national government. While this should be an immediate priority, we urge that the Security Council also endorses implementation of the other recommendations of the Commission of Experts, including the recommendation that if the government of Indonesia does not comprehensively review evidence and prosecutions to date and take the necessary action, an international criminal tribunal should be established for the prosecution of high level perpetrators.

For these reasons we have urged the Secretary-General to set a date for the commencement of the recommended six months within which Indonesia must implement the recommendations of the Commission of Experts as requested in its report. The Commission's report has now been made available to the governments of both Timor-Leste and Indonesia since June 24, 2005. For the pressing reasons detailed above, we encourage the Security Council to monitor credible progress in this regard over the next six months.

Furthermore, it is vital that such efforts not be undermined by the establishment of the Commission of Truth and Friendship, which by its current terms of reference lacks both legitimacy and popular support and has been widely criticized by civil society in both Indonesia and Timor-Leste. The form and mandate of the Commission of Truth and Friendship, in particular its power to recommend amnesties for even the most high level perpetrators of serious human rights violations, directly contravene international normative standards and the rule of law, which lie at the heart of the mission of the United Nations. As reiterated in the Secretary-General's Report on the Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies, issued in August 2004, United Nations engagement with transitional justice processes can never support promises of amnesties for crimes against humanity or gross violations of human rights.² The Secretary-General also recommended that transitional justice processes include specific measures for the participation and protection of victims. The current mandate of the Commission of Truth and Friendship allows it full access to the records of the Serious Crimes Unit and poses serious dangers for victims and witnesses who provided confidential information during the Unit's investigations, at considerable personal risk.

² S/2004/616, paras 10 and 64(c).



The victims of the atrocities committed in East Timor have waited long enough for genuine justice and for those responsible to be held accountable. The cumulative effect of the disbanding of the Serious Crimes Unit and the lack of progress in implementing the recommendations of the Commission of Experts, combined with the promise of amnesty by the Commission for Truth and Friendship, sends a message of effective impunity. We believe that only signals of strong and principled resolve will persuade Indonesia to punish the perpetrators and end impunity, and that bringing justice will in turn strengthen Indonesian democracy and the rule of law, foster genuine reconciliation with Timor-Leste, and build lasting security in the region.

Sincerely,

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CC: Mme Louise Arbour, United Nations High Commissioner for Human Rights.