

INTERNATIONAL FEDERATION FOR EAST TIMOR (IFET)

International Secretariat: Charles Scheiner
P.O. Box 1182 White Plains, New York 10602 USA
Tel. +1-914-831-1098
ifet@etan.org

U.N. Representative: John M. Miller
48 Duffield St., Brooklyn, NY 11201 USA
Tel. +1-718-596-7668 fax: +1-718-222-4097
john@etan.org

www.etan.org/ifet

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MEMBER ORGANIZATIONS

Australia-East Timor Association
Australians for a Free East Timor
Brisbane East Timor Office (Australia)
Campaign for an Independent East
Timor (South Australia)
East Timor Relief Association
(Australia)
Hobart East Timor Committee
(Australia)
Lismore Friends of East Timor
(Australia)
Canadian Action for Indonesia and
East Timor
East Timor Alert Network (Canada)
Pacific Concerns Resource Centre
(Fiji)
East Timor Group of Committee of 100
(Finland)
Agir Pour Timor (France)
Association Solidarité Timor-Oriental
(France)
Gesellschaft für Bedrohte Völker
(Germany)
Watch Indonesia! (Germany)
Greek Support Group for East Timor
East Timor Roundtable (Hong Kong)
Indian Society for Human Rights
Forum Solidaritas Untuk Rakyat Timor
Lorosae (FORTILOS, Indonesia)
East Timor Ireland Solidarity Campaign
Latin American and Mediterranean
Coalition for East Timor (Italy)
Free East Timor - Japan Coalition
East Timor Information Network
(Malaysia)
International Platform of Jurists for
East Timor (Netherlands)
Norwegian Cooperation Council for
East Timor and Indonesia
Asia-Pacific Coalition on East Timor
(Philippines)
Acção Jovem Para a Paz (Portugal)
Paz é Justiça para Timor Leste
(Portugal)
East Timor Scotland Support Group
Instituto de Estudios Políticos para
América Latina y África (Spain)
Östtimor Kommitten (Sweden)
TAPOL (U.K.)
British Coalition for East Timor
East Timor *Action* Network (USA)
International Secretariat, Parliamen-
tarians for East Timor

Commission of Experts to Review the Prosecutions of Serious
Violations of Human Rights in Timor-Leste
Justice Prafullachandra Bhagwati
Professor Yozo Yokota
Ms. Shaista Shameem

c/o Ms. Norul Rashid, Secretariat

Dear Excellencies,

The International Federation for East Timor (IFET) represents more than two dozen non-governmental organizations from all over the world. Our members have closely followed the situation in Timor-Leste for 13 years or more. We have advocated for human rights and self-determination for the people of Timor-Leste in United Nations and other fora, and sent the largest delegation of UNAMET-accredited international observers (125 people from more than 20 countries, living in every District) for the popular consultation in Timor-Leste on 30 August 1999.

IFET and one of our member groups, the East Timor Action Network, participated in your meeting with international human rights organizations in New York on 1 April, and we believe that the issues discussed in that meeting are critical to the successful fulfillment of your mandate. However, we would like to highlight and expand on a few important concerns to help focus your attention during the short time you have to accomplish a difficult task.

Justice for crimes committed in Timor-Leste remains an international responsibility

The international community bears the primary responsibility to end impunity for gross violations of human rights and humanitarian law committed in Timor-Leste by Indonesian security forces and militias they created. Events over the past few years have demonstrated that neither the Indonesian nor the Timor-Leste government has the capacity, political will or diplomatic courage to hold the perpetrators accountable.

As you know, crimes committed after the 5 May 1999 Agreements directly violated the Indonesian government's commitment to both the United Nations and Portugal, the legal administering authority for Timor-Leste until the Security Council transferred this responsibility to

UNTAET. Indonesia's occupation of Timor-Leste from December 1975 until October 1999 was rejected by the UN General Assembly eight times, and the Security Council twice.

An international tribunal remains the most likely avenue to secure justice

As we are sure you heard during your visit to Timor-Leste, the majority of citizens of Timor-Leste, as well as advocates for democracy and human rights in Indonesia, believe that an international tribunal established by the Security Council under Chapter VII of the Charter remains the best mechanism to achieve justice. We strongly agree.

This would be the clearest way for the international community to implement the Secretary-General's and the Security Council's calls for justice. Four years ago, at a churchyard in Liquiça where dozens of innocent civilians were murdered by Indonesian troops and their militia proxies two years earlier, Secretary-General called for "justice to prevail over impunity." Security Council Resolution 1272 in October 1999, among others, "demands that those responsible for such violence be brought to justice."

An international tribunal would also be the most forceful way for the international community to communicate to the Indonesian authorities that shielding perpetrators of crimes against humanity is unacceptable and that the UN continues to demand accountability for these and other gross violations of human rights and humanitarian law. Through a tribunal, the international community can also demonstrate its commitment to justice to the thousands upon thousands of victims, living and dead, of Timor-Leste. As the Indonesian government refused entry to your distinguished selves, it has repeatedly defied UN and Timor-Leste processes to investigate and prosecute serious crimes.

We recognize that the international community's attention span is short, and that atrocities too often fade in the memories of those who did not experience them. Promises to address atrocities also grow hazy in the minds of those who pronounced them.

If you conclude, as we have, that an international tribunal would be the best mechanism to ensure accountability, we urge you to recommend one, whatever the current obstacles. If you find that such a tribunal may not be "practically feasible" at this time, we urge you to explain why. But we encourage you not to discard this mechanism forever because it appears impractical at this time.

The limitation to 1999 is one of convenience, not principle

Your mandate is to review development regarding accountability for crimes committed in Timor-Leste during 1999. The Indonesian ad hoc courts were limited to two months during 1999. The Serious Crimes Unit's mandate is less well-defined, without temporal limits for some types of crimes and restricted to 1999 for others. For practical reasons, it limited its work to events in 1999.

These time limits are pragmatic compromises – limitations on justice to accommodate insufficient resources or commitment. The crimes of 1999 were about 1% of the killings committed during the 24-year Indonesian occupation, which cost approximately 200,000 East Timorese lives. The 1999 atrocities cannot be separated by an arbitrary date. None of them would have been happened but for Indonesia's invasion and occupation, condemned as violations of international law by the Security Council. Indeed, Indonesia-sponsored militia activity began in the latter part of 1998.

We urge you to address the arbitrary nature of the 1999 cutoff in your report. Events since 1975 are vital to understanding and addressing the crimes committed in 1999. Ignoring the prior 24 years continues the wrong done to the East Timorese, when the international community failed to take effective action to protect them from gross violations of human rights and humanitarian law. Justice is a matter of principle, not pragmatism, and there should not be any statute of limitations for crimes as horrendous as those inflicted on the people of Timor-Leste.

Although your mandate limits you to proposing measures and mechanisms to hold accountable "those responsible for serious violations international humanitarian law and human rights in East Timor in 1999," you can provide victims, perpetrators and the public at large with the recognition that crimes committed before 1999 are no more acceptable than those of 1999, and that those vested with governmental authority will not allow these atrocities to be forgotten.

If you believe that the 1999 violations continued patterns, policies or previous atrocities initiated before the stroke of midnight on New Year's 1999, we encourage you to say so in your report.

Commission of Truth and Friendship

You have been asked to "consider ways in which [your] analysis could be of assistance to the Commission of Truth and Friendship," and we hope you will do that. The first part of the mandate of the CTF is to "Reveal the factual truth of the nature, causes, and the extent of reported violations of human rights, that occurred in the period leading up to and immediately following the popular consultation in Timor-Leste in August 1999".

Unfortunately, much of the rest of the CTF's Terms of Reference, as well as the motivations of the Indonesian and Timor-Leste governments in proposing it, appear to try to obfuscate the truth and eliminate the possibility of assigning responsibility for serious crimes. As you consider your recommendations for the CTF, we hope you will keep its responsibility to truth uppermost in your minds, and leave the compromises and cover-ups which flow from the unbalanced bilateral relationship of these two governments for them to deal with.

Truth and friendship are laudable goals, and it would be helpful for the United Nations to support the two governments in a genuine effort to achieve them. However, impunity, forgetting, and official or de facto amnesty promote neither truth nor friendship. Rather, they legitimize continuing and recurring crimes against humanity, and are obstacles toward the emergence of human rights in Indonesia and the principle of the rule of law in the new nation of Timor-Leste.

Your Commission's responsibility is first to the Secretary-General, second to the United Nations and its organs, and thirdly to the victims of crimes committed in Timor-Leste. The current leaders of Timor-Leste and Indonesia have their own motivations, often at odds with those your Commission was established to advance. Those leaders ignore loud declarations by their own citizens, especially the hundreds of thousands of victims of gross violations of human rights and humanitarian law. We encourage you to explore how you can help the Commission on Truth and Friendship arrive at truth, rather than achieve its unspoken objective of impunity and forgetting. If you feel that its terms of reference pose obstacles to justice or truth, we hope you will say so.

Indonesian ad hoc Human Rights Courts

The failures in mandate, intent and execution of this process is well-documented, and we will not reiterate them here. We hope that you will read Suzannah Linton's article *"Unravelling the First*

Three Trials at Indonesia's Ad Hoc Court for Human Rights Violations in East Timor" (Leiden Journal of International Law) which is on the IFET CD-ROM we gave you on 1 April. We would also like to share with you a translation of a short comment from the Indonesian newspaper *Suara Pembaruan* by Rudy Rizki, one of the judges who served on these tribunals, who described these courts as "the worst in the world." He went on to say that Kopassus soldiers attended the hearings in large numbers, some of whom were armed, and when the judge was about to deliver the verdict, started yelling words of warning and intimidation. He also complained that the layout of the court and provisions in the law did nothing to ensure the security of the judges, so the atmosphere of intimidation was acute. No way, he said, could these courts pass judgments satisfactory to public opinion or the international community.

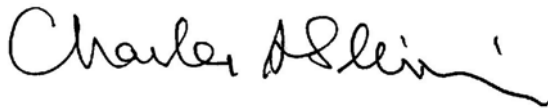
Conclusion

We hope you had a useful visit to Timor-Leste, and were able to hear from representatives of civil society from Indonesia and Timor-Leste, as well as a cross-section of victims. As you probably observed, the atrocities and devastation that were inflicted on Timor-Leste for 24 years are still fresh in people's memories. We share their concern that failure to provide effective justice for these crimes encourages their perpetrators and the protégés of their perpetrators to repeat such behavior in Aceh, West Papua and elsewhere.

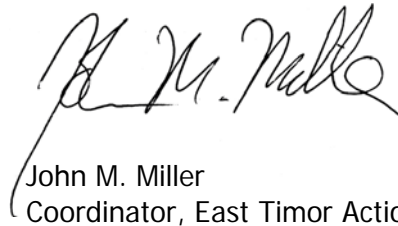
On 20 December 2004, IFET wrote to Secretary-General Kofi Annan urging him to appoint your Commission. We have appended that letter because we believe that the points it raises about the obligations of the international community and the limitations of justice processes to date are relevant to your deliberations.

If your Commission does not recommend continuing attention and action to fulfill the unachieved obligation for justice for serious crimes committed in Timor, it is likely that the perpetrators will enjoy permanent impunity, and this shameful era will be discarded from international agendas and awareness. Please do not let that happen.

Yours sincerely,



Charles A. Scheiner
International Secretariat, IFET



John M. Miller
Coordinator, East Timor Action Network

Enclosed: Letter from IFET to Secretary-General, 20 December 2004

cc: Secretary-General, UN Member States, NGOs, media