



**Economic and Social  
Council**

Distr.  
GENERAL

E/CN.4/2005/NGO/179  
10 March 2005

ENGLISH ONLY

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COMMISSION ON HUMAN RIGHTS  
Sixty-first session  
Items 9 and 17 of the provisional agenda

**QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL  
FREEDOMS IN ANY PART OF THE WORLD**

**PROMOTION AND PROTECTION OF HUMAN RIGHTS**

**Written statement\* submitted by the Asian Forum for Human Rights and Development  
(FORUM-ASIA), a non-governmental organization in special consultative status**

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[10 February 2005]

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\* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

TRANSITIONAL JUSTICE PROCESS FOR TIMOR-LESTE:  
THE PROPOSED TRUTH AND FRIENDSHIP COMMISSION: A COMMISSION  
FOR IMPUNITY

1. Asian Forum for Human Rights and Development (FORUM-ASIA), a non-governmental organization in special consultative status, together with its member organization in Timor-Leste, Perkumpulan HAK (HAK Association), wish to draw the attention of the 61<sup>st</sup> session (2005) of the Commission on Human Rights on the issue of transitional justice in Timor-Leste.
2. Since its establishment, the performances of the Indonesian Ad Hoc Tribunal in Jakarta and the Special Panel for Serious Crimes in Dili have indicated to the public that both the legal instruments are no longer effective in bringing justice to the victims of the 1999 crimes against humanity. The Jakarta trial has openly showcased to us all that it was no more than an act of “wiping off blood” for the prime perpetrators – an act we have predicted from the very beginning. Meanwhile, the Dili panel has also lately indicated its confusion in its work while receiving no attention whatsoever from the responsible authorities.
3. The Indonesian court had wound up last year after acquitting all but one of the 18 alleged perpetrators who appeared before it while the Special Crimes Unit jailed 74 Timorese culprits, but was powerless to extradite Indonesian commanders: more than 300 people wanted for trial have sanctuary in Indonesia.
4. At the 59<sup>th</sup> session of the Commission on Human Rights (2003), the Commission expressed its disappointment with the way in which the trial of the Ad Hoc Human Rights Tribunal was being carried out. The Chair statement specifically requested the Indonesia and Timor-Leste governments “to take the necessarily steps to improve the current legal process in a transparent way, in order to ensure that justice will be done.”
5. At the 60<sup>th</sup> session of the Commission on Human Rights (2004), the Commission emphasized “the need for continuing international assistance for strengthening the justice system in Timor-Leste and encourages the international community to maintain its engagement with the Government of Timor-Leste in its efforts to promote and protect human rights. The Commission asked the international community to continue to lend its support to the fight against impunity.”
6. Insufficient support and capacity to implement proper investigations, trial and incarceration of convicted persons, prompted the UN Secretary General to propose the establishment a Commission of Experts to assist in the process.
7. Nevertheless, when the UN proposed the establishment of the UN Commission of Experts on December 21, 2004, the Governments of Indonesia and Timor Leste have gone into bilateral agreement announcing the establishment of a bilateral *Truth and Friendship Commission* (TFC).
8. We express dismay with the recent bilateral declaration between the Governments of Indonesia and Timor Leste. Such kind of bilateral agreement between countries by trading off reconciliation, technically by passing the UN multilateralism process in

upholding truth and justice, is a regression from international community's quest in maintaining global standards in combating impunity. Other prominent leaders have also criticizing the proposals.

9. The new Bishop of Timor-Leste, Alberto Ricardo da Silva immediately said "What Kofi Annan says or not, what Timorese leaders want or not, the position of the church is the same, it's clear and firm. We need justice, justice must be done," The new bishop continues to assert that "all" Timorese people supported war crimes trials, and said he was dealing with constant complaints from his congregation over the issue.<sup>1</sup>
10. The United Nations has also refused to endorse the deal, proposing instead a Commission of Experts to assess why a 1999 Security Council resolution to try those accused of war crimes has failed.
11. UN Secretary General Kofi Annan has been consistently requesting for the transitional justice for Timor-Leste to be upheld. In the 59<sup>th</sup> session (2004) of UN General Assembly, Kofi Annan asserted again that "I continue to believe that the perpetrators of serious human rights violations committed in 1999 in Timor-Leste (then East Timor) **must** be brought to justice."<sup>2</sup>
12. We see the introduction of the proposal for the Truth and Friendship Commission (TFC) undermines ongoing processes to improve the work of the Ad hoc Court in Jakarta, the Serious Crimes Unit in Dili, as well as efforts by the Commission on Reception, Truth and Reconciliation in Timor-Leste. It aims to pre-empt the appointment of the Commission of Experts. It obfuscates, in the least, and diverts, at most, the issue of grave human rights violations. The fact that there had been no consultation with civil society, particularly with concerned human rights organizations, with regard to this proposal fuels perceptions that the proposal is aimed in securing the clean escape of perpetrators from criminal accountability.
13. Coercing leaders of both countries to promote "good neighborly relations" over the interests of justice, by proposing this TFC violates Security Council resolution 1272 (1999) which detailed that "the United Nations condemn all violence and acts in support of violence in Timor-Leste, and calls for its immediate end, and demands that all those responsible for such violence be brought to justice".
14. The proposed bilateral agreement disregards the interests of the Timor-Leste people. It opens the floodgates for similar impunity agreements among other Asian countries in transition, and encourages criminality in its worst form.
15. It violates Timor-Leste constitution: Article 160: "Acts committed between 25 April 1974 and 31 December 1999 that can be considered crimes against humanity, of genocide or of war shall be liable to criminal proceedings with the national or international courts."
16. Such betrayal of truth and justice will not only be made to the citizens of Timor Leste itself, but also to other nationalities. In the 1999 crimes against humanity in Timor Leste, the victims were not merely Timorese, but also other nationalities, including

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<sup>1</sup> February 7, 2005 Monday 8:59 AM GMT

<sup>2</sup> A/59/1

staff members of the United Nations mission at that time (UNAMET). The United Nations was not only a witness, but was also a victim in this case.

17. At the same time, we express our deep concerns on the unequal relationship between the Indonesia and Timor-Leste where Timor-Leste was not always treated as a sovereign nation according to the principle of UN Charter, and was often pressurized by Indonesia into sidelining its support to an international tribunal in the name of good relations between the two.
18. Once again, the United Nations must face this challenge. This problem does not belong only to Timor Leste and Indonesia, but is the collective responsibility of the international community. If the United Nations and the international community in general fail to resolve this dispute over a tribunal, then it would be a huge loss of investment for what has been spent in the international “pilot project” mission in Timor Leste. Furthermore, it would have also proved that the United Nations is not viable in keeping world peace, indicated by the failure to place sustaining justice and peace for such a small country like Timor Leste.
19. Considering the following important bases for upholding the Justice Process for Timor-Leste:
  - a. Collective responsibility of the international community to achieve justice for victims of crimes against humanity, which includes the right to obtain indemnification, reparation and rehabilitation
  - b. Strengthening of the values of justice and human rights in Indonesia, Timor-Leste and the region
  - c. Both countries as pioneer of this kind of mechanism in Asia, the implications are historic
  - d. Justice as fundamental ingredient for healing, reconciliation, and rebuilding of Timor-Leste, which is a vital requirement to establish the foundations of “dignified friendship” with Indonesia
  - e. Coinciding with the 60<sup>th</sup> anniversary of the UN Charter, it is high time to reaffirm the spirit of the UN charter, particularly its Article 1.2 which states that “To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace.”
20. We, therefore,
  - a. Reject the bilateral efforts of the Timor-Leste and Indonesian governments to exonerate crimes against humanity perpetrated in Timor-Leste and hence the Truth and Friendship Commission proposal
21. We strongly urge the 61<sup>st</sup> session (2005) of the Commission on Human Rights, in its chair statement:

- b. To adopt a resolution in providing moral and legal supports to the UN Secretary General to continue the creation of the Commission of Experts
- c. To ensure both governments uphold transparency in the judicial process, and
- d. To include strong recommendation that the whole truth and justice process should be program in consultation with civil society to obtain the broadest informed consent.

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