

HAK

*Perkumpulan Hukum, hak Asasi & Keadilan
Klibur ba Lei, Direitus Humanus & Justisa
Association for Law, Human Rights & Justice*

3 March, 2003

Mr. Fred Eckhard
Spokesperson
United Nations
New York, New York
USA

Dear Sir,

I am the Executive Director of the Association for Law, Human Rights and Justice (Perkumpulan Hak), a civil-society organization working to promote the implementation of and respect for human rights in East Timor. My colleagues and I wish to forward our views about the indictment issued last week by the Serious Crimes Unit of UNMISSET against seven Indonesian military officers and the former Governor of East Timor for committing crimes against humanity in our country in 1999.

We warmly welcome the indictment signed by the Deputy General Prosecutor for Serious Crimes that was filed with the Special Panel for Serious Crimes at Dili District Court. This is the first attempt to hold the primary perpetrators responsible for crimes they committed in East Timor.

Over the past three years the victims and families of victims of the violence in 1999 have awaited this indictment. During this period, the Serious Crimes Unit has filed numerous indictments for crimes against humanity in Dili District Court. But East Timorese victims have complained that these indictments only charged lower-ranking Indonesian military and police personnel as well as militia members, but failed to address the primary perpetrators. The people of East Timor, who since 1975 have lived under Indonesian military occupation and suffered from repeated acts of violence and terror, are well aware that the violence in 1999 was part of an ongoing systematic and planned use of violence against our people. Many East Timorese greeted the indictment filed last week against the primary perpetrators as a first step in seeking justice and feel that acknowledgement of crimes committed in 1999 will help to alleviate the suffering of both victims and their families.

But our feelings of relief and hope for justice were suddenly shattered by the statement made by United Nations Spokesperson Fred Eckhard, who in a press briefing on 25 February 2003 said that the indictment was not issued by the United Nations. He claimed that the UN was merely providing "advisory assistance" to the Government of East Timor. According to the United Nations News Centre on the same day UNMISSET in Dili also stated that the indictment had been filed by the Government of East Timor.

It is necessary that we check the facts. The Serious Crimes Unit was established by the United Nations Transitional Administration in East Timor (UNTAET) in accordance with UN Security Council Resolution No. 1272 (25 October 1999). This resolution states that one of UNTAET's mandates is: "To provide security and maintain law and order throughout the territory of East Timor." This resolution also Condemns all violence and acts in support of violence in East Timor, calls for their immediate end, and demands that those responsible for such violence be brought to justice."

In order to carry out this mandate, UNTAET established the Serious Crimes Unit. The mandate of SCU is to investigate serious crimes that took place between January 1 1999 and October 25 1999 and prosecute those responsible for committing these crimes. Please recall that the International Commission of Inquiry -- formed by UN Commission on Human Rights Resolution 1999/S-4/1, dated 27 September 1999 -- categorized the violence in East Timor as violations of international humanitarian law and violations of international human rights law. The Indonesian Commission of Investigation for Human Rights Violations (KPP HAM) also found that "systematic and widespread attacks were carried out against civilians" and concluded that "crimes against humanity" had been committed. According to international law, the acts perpetrated in East Timor in 1999 violate the norms of *jus cogens*, norms of international law from which no derogation is permissible.

In order to prosecute those individuals who committed serious crimes in 1999, UNTAET passed Regulation 2000/15 forming the Special Panel at Dili District Court. This regulation stipulates that serious crimes include genocide, crimes against humanity, war crimes, torture, and sexual assault, and adopts the norms of international law as the basis on which these crimes are to be prosecuted.

When the UNTAET mission was completed, the UN Security Council passed Resolution No. 1410 (17 May 2002) establishing the United Nations Mission of Support in East Timor (UNMISSET). The Serious Crimes Unit then became a civilian component of UNMISSET. In his report to the Security Council on 17 April 2002, the Secretary General noted that the Serious Crimes Unit of UNMISSET will focus its investigations on those individuals who organized, ordered, instigated, or otherwise aided in the planning, preparation and execution of the crimes. East Timor gained independence on 20 May 2002, but the United Nations retained the authority to investigate and prosecute serious crimes committed in 1999. Furthermore, the United Nations remains responsible for the security and defense of East Timor at this time.

The legal format in which serious crimes committed in East Timor in 1999 are being tried is called a "mixed tribunal" or an "internationalized court." This involves both local East Timorese and international UN staff working in the court and a combination of national and international law.

For this reason one can not say that the indictment issued by the Serious Crimes Unit was issued by East Timor alone. This indictment was issued by the Government of East Timor and the United Nations.

Furthermore, this is not the first indictment issued by the Serious Crimes Unit. All previous indictments have been sent to the United Nations in New York and have not resulted in public denials of UN involvement. It is, therefore, curious that this particular indictment would elicit such a vociferous response.

After UN Spokesperson Fred Echhard's statement, General Wiranto, the former Commander of the Armed Forces of Indonesia – who is charged in the indictment, stated that the indictment did not have the legal backing of the United Nations. He claimed that the indictment was no more than a “release issued by the Serious Crimes Unit.” The Indonesian Foreign Minister Hassan Wirayuda was also dismissive of the indictment. After asking the Ambassador of East Timor in Jakarta for explanation, Hassan Wirayuda said that this was merely a “recommendation to the Government of East Timor,” not a legal indictment.

We conclude that the statement made by the United Nations spokesperson is not only factually incorrect, but has hindered efforts to seek justice.

In light of the above facts, we forward our strenuous objections to the statement made by the UN spokesperson and demand that this statement be publicly retracted.

We hope for justice for the victims of violence in East Timor and people throughout the world. We and the people of East Timor look forward to your prompt response.

Sincerely,

José Luís de Oliveira
Executive Director

CC:

1. UN Secretary-General Mr. Kofi Annan
2. SRSG UNMISET Mr. Kamallesh Sharma
3. UN Commission on Human Rights
4. UN High Commissioner on Human Rights Mr. Sergio de Mello
5. President of the Republic Democratic of East Timor Mr. Xanana Gusmão
6. President of the National Parliament of the RDTL Mr. Francisco Guterres
7. Prime Minister of RDTL Marí Alkatiri
8. Foreign Embassies in Dili