



REPÚBLICA DEMOCRÁTICA DE TIMOR-LESTE

MINISTÉRIO DOS NEGÓCIOS ESTRANGEIROS E COOPERAÇÃO

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Address by H.E. José Ramos-Horta

Senior Minister

Minister of Foreign Affairs and Cooperation

Nobel Peace Prize Laureate (1996)

Mr. President, Ambassador Makarim Wibisono,

I wish to extend to you my warmest congratulations on your election to preside over the work of the 61st session of the Commission on Human Rights at a time when the world is confronted with some urgent and complex challenges such as the situation in Darfur, Sudan.

This tragedy that has been unfolding in the Darfur region of Sudan puts to test our humanity and credibility as governments and peoples that are duty-bound to collectively summon moral courage and political will to end gross and systematic abuses of human rights, war crimes and crimes against humanity.

The task before you and all of us is great indeed, complex and urgent. Hence, Mr. President, you have my delegation's full support and we shall seek to cooperate with you in any way we can.

Mr. President,

At the outset I wish to brief the members of the Commission on the joint efforts of the governments of Timor-Leste and Indonesia to address some of the issues of our common past, in particular the issue of reported human rights violations that occurred in 1999 in the context of the May 5th Agreement between the United Nations, Indonesia and Portugal.

More than anyone else, the two governments are conscious of the need to deal with this burden of the past in a manner that both our two peoples may accept. Hence, a Commission of Truth and Friendship was established by decision of Presidents Susilo Bambang Yudhoyono, Xanana Gusmao and Prime Minister Alkatiri during a meeting of the three leaders held in Denpasar, Bali, on 14th December 2004.

I recall that following the events of 1999 both nations have taken actions within their respective jurisdictions to respond to the well-documented reports of human rights violations.

In Indonesia an Ad-Hoc Tribunal on Human Rights Violations in East Timor was established in 1999-2000. Its work has not ended. In the meantime, the Indonesian Parliament has passed the law establishing a truth and reconciliation commission to deal with their history of human rights violations that occurred under military dictatorship, including in Timor-Leste.

In Timor-Leste we have responded to the need for truth and the desire for reconciliation with the creation of the Commission on Reception, Truth and Reconciliation (CAVR).

At the same time, with the full legislative and executive powers vested on the UN Transitional Administrator of East Timor by the Security Council, the SRSG created the Serious Crimes Panel. As a result of the latter's investigation, 58 persons were tried, 55 guilty verdicts were delivered, 3 acquittals, and 279 persons were identified as alleged perpetrators, most living in Indonesia. I must emphasize the fact that the Serious Crimes Units and Panels were a UN creation.

Justice comes in a number of forms, criminal prosecutions being the most common. Retributive justice demands legal prosecution and punishment, whereby the victim is a witness for the state. It is adversarial and focused on the past.

Restorative justice, the main focus of Truth Commissions, is about people, where the victims are the primary concern not simply witnesses, and the perpetrator is compelled to tell the truth.

Our nascent nation requires the focus to be on restorative justice so that primary attention is given to people, participation, dialogue, needs and the future.

Our past is both tragic and rich, and if we are to reach back into the past in the search for the truth and justice, how far must we go? And shall we also dwell on the role of the numerous international actors who by their silence or active complicity with the Suharto regime enabled it to stay in power far too long and repress its own people and the people of Timor-Leste?

What we find to be quite ironic is that there are today much greater demands and pressure on the new democratic Indonesia as it attempts to redress the wrongs of the past by embarking on the complex democratic process than on the ancien regime.

Today we are free! This is justice, for there cannot be greater justice than our freedom!

Indonesia, too, is as free as it has never been before and is beginning to take steps to confront its own past in order to extricate itself from a very pervasive culture of violence, abuse and impunity. Tens of thousands of Indonesians were jailed, killed, tortured, branded as "communists" and stigmatized for most of their lives.

Timor-Leste and Indonesia have a long way to go towards consolidating democracy and rule of law. Indonesia is the largest Muslim country in the world, home to 230 million people, and now the third largest democracy, however imperfect.

In 2004, the multi-ethnic and multi-cultural nation went through two democratic elections regarded by all impartial observers as truly free and open. Radical Islamic parties failed to make any gains.

Yet, overall, the democratic experiment in Indonesia is still incipient and fragile, and there is no guarantee that these radical elements will not gain influence and ultimately power.

The East Timorese and the international community must understand the complex challenges faced by the elected civilian leaders in Indonesia in trying to consolidate their democratic experiment with prudent reforms.

Perceived excessive outside pressure on the elected civilian leaders to meet the expectations of the international community to have a credible prosecutorial/trial process, i. e., the jailing of senior military leaders, as desirable as that may be, would inevitably result in unrest within the armed forces; nationalist elements, Suharto loyalists, and radical Muslims would not hesitate to whip up nationalist sentiments against perceived Western or UN-led "campaign against Muslim Indonesia", undermining stability and the entire democratic experiment in the largest Muslim country in the world

Comfortably sheltered in offices in Geneva and New York, one can afford the luxury to lecture others about justice and the need to combat impunity as if those on the ground and in position of political leadership are not animated by the same concerns.

There are some vocal groups and individuals of the Church in my country that do not share our views on this and on many other issues. We are telling them that if they hold such strong views and feel that they, more than us, truly represent the wishes of the people (they invoke the name of the people at every corner), then they should run for public office when nation-wide elections are held in 2007. Once in office they should feel free and heroic in demanding an International Tribunal for East Timor.

Mr. President,

It is impossible to satisfy the needs of all victims and it is impossible to afford perfect justice. The cross jurisdictional nature of the conflict in question lends support to the argument that, in this case, a Commission for Truth and Friendship is best placed in a bi-national institutional context. It is equally self-evident that a domestic truth commission, even with a different mandate would not achieve the objective of obtaining a shared version of history with Indonesia.

It is time for Timor-Leste and Indonesia to deal with our shared and turbulent past, whilst securing our democratic futures. If we were to deal with at least part of it in collaboration with each other it would further demonstrate our political maturity as nations, and be testament to our democratic gains.

Allow me to share with you some excerpts from the Terms of Reference (TOR) of the Commission of Truth and Friendship.

The Commission shall work under the following principles:

The relevant principles contained in the Indonesian Law no.27/2004 on the Commission of Truth and Reconciliation and the Timor-Leste Law no.10/2001 on the Commission of Reception, Truth and Reconciliation (CAVR). does not prejudice against the ongoing judicial process with regard to reported cases of human rights violations in Timor-Leste in 1999, nor does it recommend the establishment of any other judicial body.

Mandate

The Commission shall have the mandate 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:

Review all the existing materials documented by the Indonesian National Commission of Inquiry on Human Rights Violations in East Timor in 1999 (KPP HAM) and the Ad-hoc Human Rights Court on East Timor, as well as the Special Panels for Serious Crimes, and the Commission of Reception, Truth and Reconciliation in Timor-Leste;

Examine and establish the truth concerning reported human rights violations including patterns of behavior...

Composition

The Commission shall comprise of 10 members (five from Indonesia and five from Timor-Leste) chosen among persons of high standing and competence drawn mainly from legal and human rights fields, academia, religious and community leaders.

Members of the Commission, in the exercise of their mandate, shall enjoy immunity from prosecution and civil liability for actions arising from their mandate.

The Commission shall be co-chaired by two members, one from Indonesia and one from Timor-Leste, chosen by all members.

Right to Free Access

In the conduct of its work, the Commission shall be guaranteed freedom of movement throughout Indonesia and Timor-Leste; free access, in accordance with the law, to all documents of the Indonesian National Commission of Inquiry on Human Rights Violations in East Timor in 1999 (KPP-HAM), the Ad-hoc Human Rights Court in Jakarta and the Special Panels for Serious Crime in Dili, and the CAVR final report; the right to interview all persons in possession of information considered relevant by the Commission, guaranteeing privacy and confidentiality if necessary.

Moreover, appropriate security arrangements shall be provided to both members and persons interviewed by the Commission and persons who provide information and documents to the Commission, and for documents obtained and retained by the Commission, without restricting their freedom of movement.

Mr. Chairman,

It is now time to consider the developments that have taken place in my own country in recent months. Again, as always, I have cause to reflect on the benevolence of our development partners. My country is slowly but steadily emerging from the ashes of 1999.

Timor-Leste remains a peaceful, politically dynamic and stable nation. We continue to make progress in economic and social development, strengthening law and order, and consolidating democracy. We believe that these elements, taken together with civil, political, economic, social and cultural rights promotion, provide the essential determinants of individual capability.

Timor-Leste has taken tangible steps forward in the important education and health sectors and has made progress in the formation of a national education curriculum and the recent launch of safe motherhood, HIV and extensive immunization programmes. Recognizing that women and children are particularly affected by the lack of economic and social services, the Prime Minister has recently announced the Government's intention to establish a National Council for Children, a forum in which attention can be focused to those specific issues affecting children.

Recognizing also the seriousness of the threat to women's lives posed by domestic violence, the Government has been considering the enactment of specialized domestic violence legislation and hopes in the near future to establish a regime which provides for women's protection and secured livelihood.

In terms of public administration and participation, work is being done to devolve decision-making authority to district administrations. But it gives me even greater pleasure to inform you that the first-ever local elections organized by our authorities were carried out in Bobonaro and Oe-cussi late last year, with the remaining local elections to be carried out until June of this year.

Voter turnout in these first elections was very high, exceeding 90 percent in some areas. People voted in an orderly manner in an atmosphere free of intimidation or interference. Significantly also, women's participation in local level political life was recently augmented by a new electoral law, which provides for a minimum of three women to be elected to each village council.

Despite progress towards physical reconstruction and social development since Timor-Leste attained full sovereignty in May 2002, significant challenges remain. The country still has the lowest levels of human development in Asia, and continued efforts will be needed in the areas of health and education, as well as other aspects of human development.

Much has to be done to provide the conditions necessary to enable people to enjoy their rights to work, to quality education and to the highest attainable standard of physical and mental health. We must do this, alongside fostering participation and individual empowerment, to strengthen the fabric of social harmony, consolidate political stability and enable inclusive sustainable economic development.

A critical issue of concern for our country is the persistent fragility of the justice sector. Overall, access to justice including access to legal services and counsel remains weak. International civilian advisers have continued to perform line functions as judges, public defenders, prosecutors and court administrators in both the Court of Appeal and district courts.

Regrettably, Timorese judges have recently been found lacking sufficient expertise to continue exercising judicial functions; thus they have ceased performing these functions and have been pursuing intensive legal training, resulting in a reduction of the Courts ability to function. Although the provision of international judges may provide temporary relief to this critical situation, the future operation of these district courts remains sporadic and uneven, with little possibility of improvement given recent outcomes in judicial training.

The Office of the High Commissioner in its report to the 61st session of the Commission (E/CN.4/2005/115) has presented a misleading report on this issue alleging that it is the use of Portuguese language that hinders the capacity of the aspiring judges (p. 4). This is simply NOT

the case. The aspiring judges were able to choose any of the four languages, Tetum, Portuguese, Bahasa Indonesia and English for their examination, and all chose Tetum.

As is known to all, within the first year of Timor-Leste's accession to full sovereignty, our National Parliament ratified the seven core HR Conventions. In its 60th session, having considered the needs of my country in terms of our Treaty reporting obligations, a Chairman statement on technical cooperation and advisory services was adopted. Para. 7 asks the "High Commissioner to report to the Commission on its sixty-first session on technical cooperation in the field of human rights in Timor-Leste, under the same agenda item".

However, it seems that the Office of the High Commissioner or the UN Human Rights Unit in Timor-Leste believes that the mandate given by the 60th session of the Commission did not satisfy its desire and has decided on its own to create a unique new agenda item which reads: "Report of the United Nations High Commissioner for Human Rights on the situation of human rights in Timor-Leste". We are perplexed to say the least. We are a new country and most of us are naïve in the games played by the United Nations bureaucracy, *mais quand meme, nous ne sommes pas fou*.

As far as I know, no Chairman statement, let alone a resolution was adopted by the 60th session of the CHR inscribing an item entitled "Situation of Human Rights in Timor-Leste".

Rather than focusing on the progress or lack of the so-called technical cooperation, the report of the High Commissioner dwells on issues for which it did not have a specific mandate, making a confusing hodge-podge of technical cooperation issues with alleged human rights violations committed by my country's authorities.

My country has one of the most liberal immigration policies in the world. Any passport holder from anywhere in the world is granted a one-month visa on arrival. Even nosy Investigative reporters do not require a special visa. We would welcome any UN-mandated human rights investigator to my country. Only God knows how many field studies, evaluation missions, high-paid consultants, have visited our humble country. We don't mind. We are actually a very hospitable people. But we resent attempts at arbitrarily altering the nature of an agreement with the host government and turning it into something else.

The mandate of the UN HRU in Timor-Leste is to advise and assist our authorities in developing our capacity in the areas of human rights legislation and institutions, etc. Instead, the individuals

on the ground seem to be more interested in doing police work than in advising and helping our incipient agencies improve their performance in upholding our human rights obligations.

On page 7 of the report of our esteemed High Commissioner, there is an extraordinary allegation made against my Head of State. In it the authors without wasting their precious time in double-checking their facts, and without bothering to insert some useful notes identifying the source, allege that President Xanana Gusmao had said that "if needed" the police can "beat" suspects.

The office of President Xanana Gusmao was not contacted by the authors of the report to seek clarification or confirmation on the alleged statement.

My President, a nationally revered personality, was a resistance fighter, a prisoner, recipient of numerous international awards, including the Sakarov Human Rights Prize of the European Parliament and the UNESCO Houphouet-Boigny Peace Prize. My President is a passionate advocate of human rights and rule of law and a strong critic of police abuse. Yet the authors of the report, mostly a bunch of obscure academics, behave like school-teachers in dispensing a patronizing sermon about how the political leadership of Timor-Leste should behave.

Having said this, I shall now continue. Reported incidents of abuse of power by our incipient security forces continue to cause significant concern, calling into question the professionalism of these forces.

A major development this year – and in a step towards addressing this – the Government has strengthened the legislative framework for the police through the adoption of the Organic Law and disciplinary regulation for police. We have also created an inspectorate within the Ministry of Interior to handle complaints of misconduct by police and – with UNMISSET assistance, are attempting to strengthen the internal police accountability mechanism.

We are grateful to Australia, the United Kingdom, Malaysia, and the United States for their generous support in developing the operational competence of our security forces.

Before concluding my comments on our domestic experience in human rights implementation, I wish briefly to turn your attention to our significant steps in human rights reporting.

Timor-Leste has agreed to pilot a new and streamlined structure for reports conceived as a Common Core Document to be submitted alongside Treaty Specific Documents.

Significant progress has been made in Timor-Leste's difficult task of developing each of its core initial human rights reports in accordance with this reformed structure. We are well advanced in a participatory process of data collation of the treaties. We expect to begin submission of the Common Core and Treaty Specific Documents around July of this year¹.

Our preliminary view is that, once complete, the reformed structure should provide renewed impetus to the fundamental principles of universality, interrelatedness and interdependence that we have long agreed underscore human rights.

Before I close today, I feel compelled to touch upon some issues of concern to my government.

My Prime Minister, addressing the UN General Assembly in 2003, and myself in 2004, have elaborated in detail on our views on United Nations reform.

I start by confessing my failure in understanding the rationale for universal membership of the Commission on Human Rights. We would rather see the General Assembly taking on a greater role in the field of human rights than seeing the CHR expanded to 191 members, becoming maybe more representative but not necessarily democratic and operational.

In relation to suggestions for an expanded authority of the Office of the High Commissioner, we would offer some caution. If the High Commissioner is to have an expanded mandate it might be necessary to review the appointment process. It might require that the position be subjected to a 2/3 majority vote in the General Assembly.

In any event, Timor-Leste is of the view that annual sessions of ECOSOC, CHR and other human rights bodies should be held in developing countries in order to maximize contact and access by the peoples in need. Furthermore, my government holds the view that UN agencies like UNHCR, UNICEF, UNDP and WHO should be relocated to developing countries where services rival with those in the West and in many cases are even far better and more economical.

The other issue my Government is most concerned about is the status of the Draft Declaration on the Rights of Indigenous Peoples. In Res. 1995/32, the Commission established an open-ended intercessional working group for the purpose of finalizing the draft declaration adopted in 1994 by the Sub-Commission entitled "Draft United Nations Declaration on the Rights of Indigenous Peoples".

¹ Note: It is expected that the initial report on the Convention on the Rights of the Child will be submitted first, followed by CEDAW and the others in the many months thereafter.

I am particularly dismayed that even after an extension was provided by the Commission in Res. 2004/59, the Working Group did not complete its assigned task. Timor-Leste is convinced that the original Draft Declaration elaborated over a decade of work by the Sub-Commission and which has the unanimous support of the world's indigenous peoples, requires adoption now as it stands.

The single most dismal failure of the Decade for the World's Indigenous Peoples is the failure to adopt the Draft Declaration.

The indigenous peoples of the world who bore the brunt of the worst of Western invasions, colonization and evangelization, in many instances leading to their virtual decimation, expect more from those who walked into their ancestral lands uninvited.

And finally, let us not abandon those most desperately in need in Darfur. Yes we have acted, but what we have done is not enough. Thousands of victims, ravaged women and bloodied children, are today suffering an unimaginable grief borne of senseless and brutal acts of aggression. Let us never again ignore acts of barbarity akin to those we witnessed in Rwanda. We must heed the cries from Sudan and act to save their people. As a global community, we have the might and we know that this is right.

The rich in Asia, Europe and North America and the poorest of the poor in my own country came together and displayed their heartfelt solidarity with the countries and peoples affected by the 26th December 2004 earthquake and the tsunami. The outpouring of generosity from millions around the world was humanity at its best. The women, children and elderly of Darfur deserve no less.

May God the Almighty and the Merciful Bless You All.

Thank you.

