



American Model United Nations
Historical Commission of Inquiry of 2005

**Report from the Commission of Experts to
Review the Prosecution of Serious Violations of
Human Rights in Timor-Leste (then East Timor)
in 1999**

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1 Background on the Situation in Timor-Leste

Timor-Leste, officially known until 2002 as East Timor, is a small island nation in Southeast Asia situated on the eastern half of Timor Island. It has a long history spanning over four centuries as a Portuguese colony, where local kingdoms and Portuguese cultural and Catholic influences shaped its unique identity. Colonial authority on East Timor was limited beyond the main center of Dili and exercised minimal administrative control. When the Empire of Japan invaded the territory during the Second World War, almost all infrastructure that existed had been destroyed. The peaceful 1974 Carnation Revolution in Portugal yielded decolonization efforts in Portuguese colonies, including East Timor.

The colonial era ended in 1975, leading to a civil war and a declaration of independence by FRETILIN, only to be followed by the Indonesian invasion and subsequent formal annexation in 1976. This 24 year occupation was marked by massive human rights abuses, resistance from the Timorese guerrilla force Falintil, large-scale displacement, famine and an estimated 100,000-200,000 deaths. Throughout this period, the territory was recognized internationally as non-self-governing, fueling global solidarity movements demanding a resolution. In 1999, an election to decide East Timor's independence was held. After the result, a vote for independence was released and mass violence broke out.

It was a turning point in August 1999 when President B.J. Habibie of Indonesia permitted a UN-supervised referendum in which the Timorese voted for independence. This triggered a wave of brutal violence by pro-Indonesia militias, who were supported by the Indonesian military. The campaign was marked by mass killings, the forced displacement of nearly 250,000 people and extensive destruction of infrastructure. Order was eventually restored through the intervention of international forces INTERFET. From 1999 to 2002, East Timor entered a transitional phase under the United Nations Transitional Administration in East Timor (UNTAET), which oversaw the creation of new state institutions, organized elections and established judicial mechanisms such as the Serious Crimes Unit (SCU) to address the atrocities committed in 1999.

On 20 May 2002, East Timor attained full independence, with Xanana Gusmo inaugurated as its first president. Despite early challenges including fragile state institutions, political tensions, economic reliance on oil and gas and the need for reconciliation with Indonesia, the country has evolved into a stable semi-presidential republic characterized by peaceful and regular elections. Today, East Timor has a youthful population and a vibrant cultural heritage that blends Austronesian, Melanesian, Portuguese and Catholic traditions, with Tetun and Portuguese recognized as its official languages.

1.1 Mandate

On January 11th of 2005, Secretary-General Kofi Annan addressed the President of the Security Council in a letter establishing the independent Commission of Expert's Investigation into Timor-Leste (COE).

The mandate of this COE is to:

1. assess the progress made in bringing justice
2. determine whether full accountability has been achieved
3. recommend future actions regarding full accountability

2 Summary of Investigation

On February 24, 2005:

- United Nations Mission of Support in Timor-Leste extended until May 2006.
- COE requested information regarding court proceedings from an Indonesian Court Proceedings representative, Special Crimes Unit representative, a Dili Court (Including special panels) representative, local journalists around Indonesia and Timor-Leste and the Attorney General of Indonesia.
- COE interviewed UNAMET Representative Jeffrey Fischer over the establishment and aftermath of elections in Timor-Leste in 1999.
- COE sent a request to send staff to interview those affected by the violence in Timor-Leste.
- COE requested to travel to Dili, Timor-Leste.

On February 28, 2005:

- Human rights groups condemn the United States for continuing a military training group in Indonesia that was originally discontinued over human rights violations in Timor-Leste.
- A Special Representative of the Secretary General and head of the UN Special Mission of Support in Timor-Leste appeared before the Security Council. Progress has been made in rebuilding Timorese infrastructure.
- COE traveled to Dili, Timor-Leste.
- COE received a report from BBC Southeast Asia Desk Jonathan Best over Dili SCU Special Panels and the Indonesian Ad Hoc Human Rights Court regarding the discriminatory prosecution of Timorese military officials and the hostile treatment of witnesses.
- COE requested an interview with Indonesian Attorney General Abdul Rahman Saleh upon their arrival in Jakarta.
- COE interviewed Judge Phillip Rapooza over cooperation between Indonesian and Timorese courts, pressure between prosecutors and judges and the disproportionate ratio between Indonesian and Timorese judges.
- COE interviewed a Timorese journalist, who wished to remain anonymous, on Timorese civilian objectivity over the situation in Timor-Leste as well as the pressure the governments of Indonesia and Timor-Leste have placed on court proceedings.

On March 4, 2005:

- COE traveled to Jakarta, Indonesia.
- COE received an Indictment and Documentation report regarding evidence collection, court proceedings and witness treatment.

On March 7, 2005:

- COE began writing its findings report.
- COE received a report from the prosecutor's office regarding the likelihood of finding General Wiranto guilty and evidence for and against.
- COE received the Terms of Reference for the Commission of Truth and Friendship (CTF).
- COE interviewed Indonesian court translator Michael Vahassa over the allowing of arms into courtrooms, the intimidation of witnesses and the failure to use all available documents and witness statements.
- COE interviewed Indonesian Attorney General Abdul Rahman Saleh over the Indonesian government's efforts to maintain accountability, a lack of resources for court proceedings and the retention of state sovereignty.

On March 14, 2005:

- UN Secretary-General Kofi Annan reaffirmed how the COE's findings could be of interest to the CTF.
- COE received the Terms of Reference for the CTF regarding efforts by both governments of Indonesia and Timor-Leste to create a courteous, trade-friendly relationship.

On April 9, 2005:

- Dr. Alberto Ricardo da Silva of the Catholic Church of Timor-Leste wrote a letter to the COE insisting on the moral and legal accountability of both the Indonesian and Timorese governments concerning the CTF, a concern for the safety of the Timorese, an inability to maintain accountability and a focus on reconciliation by the CTF rather than justice.
- COE interviewed an Indonesian Commissioner for the CTF, Joko Wahid, regarding the Terms of Reference of the CTF and the negotiations between Indonesian and Timorese delegations.
- COE debated conclusions and recommendations regarding courses of action for the CTF and the international community.
- COE concluded there is a significant lack of accountability in Timor-Leste and Indonesia especially regarding the situation in Timor-Leste in 1999.
- COE submitted its final report to the Security Council regarding its investigation.

2.1 Actors

Major Actors Throughout the Situation in Timor-Leste

1. Timorese Pro-Independence Leaders
2. Indonesian military & Security Forces (TNI/POLRI)
3. Pro-Integration Militias
4. Local Communities and Victims
5. International Peacekeepers (INTERFET, UNTAET)

Role of the United Nations

1. United Nations Mission in East Timor (UNAMET) (1999): Organized and supervised the independence referendum, including voter registration, polling stations and dissemination of civic information.
2. United Nations Transitional Administration of East Timor (UNTAET) (1999-2002): Administered the territory after the violence, with full executive and legislative authority. UNTAET was responsible for rebuilding institutions, establishing courts, training local personnel and creating the SCU and Special Panels for Serious Crimes.
3. Peacekeeping & Security: Through INTERFET and subsequent UN missions, the UN restored security, supported the return of displaced persons and helped reconstruct infrastructure destroyed in 1999.
4. Human Rights & Justice Mechanisms: The UN documented crimes, supported truth-seeking processes and facilitated transnational initiatives, including cooperation with Indonesia where possible.
5. UNMISSET (May 20, 2002 - present): The United Nations Mission of Support in Timor-Leste began in May of 2002 at the conclusion of UNTAET. It has been extended as of now until May 2006.

2.2 Methods

INTERVIEWS

Interview of UNAMET Official

On February 24th, 2005, Mr. Jeffrey Fischer, a UNAMET representative, explained that the mission worked to ensure that the 1999 Timor-Leste elections were accessible to all eligible voters despite significant documentation challenges. At the time, East Timor did not accept Indonesian papers and many citizens did not possess documentation. Determining true Timorese citizenship often required relying on local pastors and catholic priests. UNAMET created credible procedures so that prisoners in Indonesia and individuals without identification could still vote.

A major security issue involved Indonesians from Jakarta attempting to participate in the elections. On election day, after the limit of fifty observers from Portugal and Indonesia had been reached, a group of suspected gang members from Jakarta arrived by boat and were turned away.

Fischer noted that, although the elections were conducted successfully, the aftermath was devastating, with roughly 1,300 Timorese killed. He was unsure of the outcomes of subsequent prosecution attempts. The government assisted with prisoner voting and other processes; in hindsight, Fischer found the degree of Indonesian pre-election cooperation suspicious. Identifying the people from Jakarta posing as observers was straightforward, as their sudden arrival by vessel and later evidence of gang recruitment suggested malicious intent. Fischer believed the United Nations might hold a brief documenting their gang affiliations. Reflecting on the broader mission, he emphasized that his primary responsibility was ensuring the elections proceeded smoothly and inclusively, and he recalled that the period following the vote became so violent that UNAMET personnel could not leave their compound without risking their lives prior to evacuation.

Report from Journalist, Jonathan Best

The COE received a report from February 24, 2005 from journalist Jonathan Best of the Southeast Asia Desk for the BBC. He discussed both the Dili Special Panels and the Indonesian Ad Hoc Human Rights Court in his response. Starting with Dili, he mentioned that there is public approval of the trials with the convictions of low-level militias being a promising sign. However, he added that the trials have focused on Timorese militias and not Indonesia officers, with the Special Panels being viewed as an externalized national process with this new court system set up yet only trying Timorese militias. With regard to the Indonesia Ad Hoc Court, Mr. Best stated that the trials were flawed, putting the pressure of bringing about justice for the people of Timor-Leste. Furthermore, the acquittal of senior military officials, including the protection of General Wiranto from the process, made the trials appear more symbolic than legitimate. Finally, Mr. Best mentions the unfair treatment of Timorese witnesses testifying in Indonesia.

Interview of Judge, Phillip Rapoza

The Special Panels for Serious Crimes in Dili, composed of two international judges and one Timorese judge, were responsible for trying serious offenses stemming from the 1999 violence in Timor-Leste, including rape, genocide and war crimes. Although several courts played roles in post-conflict justice, the Dili District Court handled the majority of the most serious cases. Investigations were led by the Serious Crimes Unit (SCU), but political tensions and limited cooperation with Indonesia created challenges, especially in cases involving Indonesian military officers.

On February 28, 2005, Judge Rapoza emphasized that trial procedures were standardized, fair and conducted with integrity. Both prosecution and defense had formal access to resources, although personnel shortages and resource constraints sometimes slowed investigations. Cooperation with Indonesia was described as tense, with difficulties in securing Indonesian legal participation. Politically sensitive cases were especially challenging, and some prosecutions were quietly withdrawn by state-appointed prosecutors likely due to government pressure, diplomatic concerns or insufficient evidence.

Most completed cases focused on Timorese militia members, while cases involving high ranking Indonesian officials stalled due to jurisdictional limits and lack of cooperation. The Judge noted that once international judges depart, Timor-Leste may face shortages of adequately trained judicial personnel.

Regarding a 2004 decision declining to proceed with a warrant application for General Wiranto, the judge explained that his decision resulted from a lack of evidence and a desire not to be seen as politically biased as an international judge.

Interview of Clerk and Translator, Michael Vahassa

177 On March 7th, 2005, an interview with clerk and translator Michael Vahassa was conducted.
178 Vahassa explained that the court was established under Act No. 26/2000 with its specific mandate
179 for East Timor created by Presidential Decrees No. 53/2001 and No. 96/2001. The court's jurisdiction
180 covered gross human rights violations committed in areas such as Dili and Suai between January and
181 October of 1999. These violations include scorched-earth actions and violence against women and
182 children. Vahassa notes that cases were formed through both legislative and executive processes,
183 with evidence initially being gathered by investigative bodies and then to the Attorney General. Judges
184 were appointed by the President and the Chief Justice of the Supreme Court, though Vahassa said that
185 he could not speak to their expertise regarding international human rights law.

186 Vahassa observed that some valuable information that he translated, including witness testi-
187 monies, did not always make it to court.

188 Regarding witness protection, he brought up some concerns: trials were public, meaning "un-
189 savory" individuals, including armed attendees, were sometimes present. This may have contributed
190 to fear among the Timorese witnesses.

191 When questioned about the absence of indictments against high-ranking Indonesian officials,
192 he replied that the results speak for themselves, pointing to the structural limits of the system. He works
193 closely with the National Commission on Human Rights (INHRC) and considers its members competent.
194 Though, not all pieces of the materials they provide are ultimately used in court.

195 **Interview of Attorney General of Indonesia, Abdul Rahman Saleh**

196 On March 7, 2005, the COE conducted an interview with the Attorney General of Indonesia, Abdul
197 Rahman Saleh. When asked about his role in the ad hoc human rights court in Jakarta, Saleh explained
198 that he was responsible for overseeing it and allowing his staff to do what was required of them. Saleh
199 also provided information on the court process, stating that they operate within the limitations of pro-
200 cedure they are required to follow, though a lack of resources may be a limitation to the effectiveness
201 of their work.

202 Saleh continued, saying that crimes can only be prosecuted if they are in certain regions at a
203 specific time, with attacks being a large priority. The COE asked Saleh about the process of selecting
204 prosecutors, to which he stated that the prosecution were selected based on their eligibility and were
205 adequately staffed and trained. When asked about the process for selecting evidence used in court for
206 prosecution, Saleh claimed they used their professional judgment to determine this. The COE asked the
207 Attorney General to respond to the allegations around insufficient prosecution in the court, to which he
208 claimed that the Timorese people do not know how reconciliation works, as they are taking steps to ad-
209 dress the issues of the past, which proves Indonesia's goodwill towards this goal. Saleh also explained
210 any witness protection programs in place for those participating in these proceedings, stating that
211 Timorese are expected to testify in Jakarta. When asked if witnesses were experiencing hostility and
212 intimidation in the court room, he stated yes, if the truth is hostile. The COE asked the attorney general
213 to elaborate on the security process at the court room, but he was unable to provide specifics, saying
214 that there was a process, but he does not know how security is enforced. The attorney general was also
215 asked to explain how politics had influenced these proceedings, but he asserted that the process was
216 fair, however, the very nature of these proceedings is political. Additionally, the COE asked Saleh why a
217 mutual extradition treaty had not been signed with Timor Leste, with the attorney general responding
218 that he had already advised Indonesia's president's office on that matter, and they have determined
219 there is no benefit to sending their citizens to a foreign court when they are already handling it inter-
220 nally. Finally, the COE asked the attorney general about pushback received in regard to international
221 pressure put on the Indonesian government to deliver justice. The attorney general responded, saying
222 that if one country is subject to the whims of all others, it has not retained its sovereignty. The attorney
223 general believes the Indonesian government is doing all they can to bring all accountable parties to
224 justice.

225 **Interview with an Anonymous Timorese Journalist**

226 On March 7, 2005 the COE conducted an interview with a Timorese journalist who expressed a
227 wish to remain anonymous. The COE decided to respect his request. He was eager to speak and was
228 willing to answer inquiries to the best of his ability. He noted the restraints on free speech that still exist

229 in Timor-Leste, and that while not as severe as it was five or ten years ago the remnants of that senti-
230 ment still exist. When questioned about popular grievances towards the trials conducted so far in Dili,
231 he expressed that “we have been let down” and explained how the initial excitement surrounding the
232 establishment of the Court soon turned to disappointment when the parties responsible for violence
233 were not prosecuted. When asked his thoughts, as a journalist, of how the court system could be im-
234 proved he said that “the panel should be able to do what it was promised to do,” referring to justice for
235 perpetrators. Strikingly, he asserted that “everybody knows the Indonesian government is responsible,
236 even if they don’t admit it.”

237 **Interview with Commissioner of the CTF, Joko Wahid**

238 The CTF describes reconciliation primarily as a process of moving on. In their view, reconcil-
239 iation is about enabling both countries to turn the page and establish a stable relationship for the
240 future. When asked how justice fits into this process, the Commissioner explained that justice is largely
241 handled by the courts, which they consider to be outside the Commissioner’s direct purview.

242 Regarding the role of courts or international tribunals in holding perpetrators accountable, the
243 Commissioner responded that they believe judicial bodies ultimately have the final say in such matters.
244 On the question of victims, they emphasized that victims will be treated with trust and respect, which
245 they framed as the foundation for building a lasting friendship and future partnership between the two
246 nations.

247 When asked about what the negotiations within the CTF will look like, the representative replied
248 that both parties are “waiting for the COE,” offering no additional detail. Similarly, when asked about
249 accountability and justice, the representative stated they could not offer a personal opinion. As for
250 what is required from both parties for the agreement to succeed, the response was simply that “every-
251 one should do their job.” Finally, when asked whether the CTF is intended to involve the international
252 community, the representative confirmed that it is.

253 **REPORTS FROM EXTERNAL ACTORS**

254 **Indictment and Documentation Information Request**

255 As of February 28, 2005, the COE was presented with some background, documentation and ev-
256 idence on the creation of the Ad Hoc Human Rights Court in East Timor. The document first outlines the
257 purpose in the creation of the Court, saying that the UN Secretary-General allowed Indonesia to carry
258 out domestic trials that would bring justice for the victims in East Timor. This, however, was undermined
259 by the failure of that court to sentence defendants for their crimes as of the 18 total defendants, 12 were
260 acquitted, 4 appealed sentences and the final two were East Timorese defendants, one of which had
261 their case overturned, presenting a clear inability to bring about justice and accountability. Amidst
262 calls for an international tribunal to ameliorate the situation, Indonesia rejected this proposal, saying
263 they could bring about justice credibly. After this promise, there were 12 verdicts sent down by that
264 court, 2 against East Timorese people who have been “convicted and received light sentences” and 10
265 acquittals. The document argues that there is “considerable evidence” against those ultimately ac-
266 quitted, with the report further arguing that this is evidence of Indonesia’s inability to provide a “credible
267 response”.

268 This evidence led to mounting international pressure, causing the creation of the Ad Hoc Court
269 for East Timor with 18 non-career judges appointed by the president and 24 prosecutors. The court
270 handled 7 cases, and charged the former Governor of East Timor, Abilio Soares and the former Police
271 Chief, General Timbul Silaen with crimes against humanity. These verdicts received international and
272 domestic criticism and continued calls for an international tribunal on the basis of weak trials. Regard-
273 ing witnesses and their treatment, the report argues that witness protection on behalf of the Ad Hoc
274 Court has been inadequate due to the people allowed in the courtroom and the lack of security.

275 **Indonesian Ad Hoc Human Rights Court**

276 On February 28, 2005, The Indonesian Ad Hoc Human Rights Court on Timor-Leste, established
277 in 2001, was mandated to try individuals responsible for serious human rights violations committed
278 around the 1999 referendum period. The court focused on crimes such as murder, torture and forced
279 displacement. Although it indicted several Indonesian military officers, police officials and pro-integration

280 militia leaders, the process was widely criticized for its limited scope, weak investigations and over-
281 whelmingly acquittal-heavy outcomes.

282 **Special Panel in Dili and SCU Prosecutions/Investigations:**

283 On February 28, 2005, alongside the Indonesian process, the Special Panels for Serious Crimes is
284 a hybrid tribunal composed of international and Timorese judges that was established in Dili under the
285 United Nations Transitional Administration in East Timor (UNTAET). These panels possessed jurisdiction
286 over genocide, war crimes, crimes against humanity, murder and sexual offences related to the 1999
287 violence, outlined in Regulations no. 2000/11 and 2000/15.

288 Supporting this judicial mechanism was the Serious Crimes Unit (SCU), responsible for inves-
289 tigating and prosecuting those suspected of orchestrating or participating in the violence. The SCU
290 conducted extensive field investigations, collected testimonies from victims and witnesses and issued
291 indictments against militia members, Timorese collaborators and high-ranking Indonesian military of-
292 ficers. While the Special Panels secured dozens of convictions primarily of low and mid level Timorese
293 militia members, the inability to extradite Indonesian suspects severely limited accountability for se-
294 nior perpetrators. Despite resource constraints and political challenges, the SCU and Special Panels
295 contributed significantly to establishing the factual record of 1999 atrocities.

296 **Report from SCU on Proceedings in Timor-Leste**

297 On March 7, 2005 the Serious Crimes Unit (SCU) in Dili reported that the evidence against Gen-
298 eral Wiranto includes 34 binders of material, 13,000 pages of documentation and roughly 1,500 witness
299 statements. This has testimony from survivors, eyewitnesses and individuals describing TNI-militia co-
300 ordination. An international judge issued a 20 page arrest warrant in 2004, finding reasonable grounds
301 to proceed with prosecution. The SCU considers a conviction reasonably likely if the case ever reaches
302 trial, since the evidence supports command responsibility consistent with international criminal ju-
303 risprudence.

304 However, the warrant was never forwarded to Interpol. Additionally, Wiranto's political standing
305 also contributed to the lack of enforcement; at the time, he was running for president. The Indone-
306 sian government has been non-compliant and refuses to cooperate with the Serious Crimes process,
307 forcibly rejecting Timor-Leste's jurisdiction. They also continue to deny consistent access to evidence
308 or personnel. There is no extradition treaty or a legal assistance mechanism to help compel coopera-
309 tion.

310 The SCU defines a just trial as one conducted before impartial and independent judges with
311 the following: independent prosecution free of political interference, the ability to secure the accused's
312 physical presence and full admission and consideration of testimonial and documentary evidence.
313 This judgement is consistent with international humanitarian law and criminal law.

314 **2.3 Pertinent Evidence Reviewed and Collected from the Amnesty International Re-** 315 **port**

316 In a report published on April 14, 2003, Amnesty International detailed the following concerns
317 regarding the process of transnational justice addressing possible crimes against humanity in Timor-
318 Leste (Paraphrased):

- 319 • Regarding the proceedings of the Ad Hoc Human Rights Court in Indonesia, Amnesty International
320 has monitored the trials taking place under the Ad Hoc Human Rights Court and does not con-
321 sider the prosecutions undertaken through these proceedings to be truthful, honest or fair. They
322 are doubtful the Indonesian authorities have the capacity to or carry out substantial legal and
323 institutional reforms necessary to make for fair and credible trials.
- 324 – The Law on Human Rights Courts (law 26/2000) under which the Ad Hoc Human Rights Court
325 on Timor-Leste was established is not fully consistent with international law. Definitions of
326 crimes in the law differ from definitions in the Rome Statute of the ICC, with many of the in-
327 vestigations to prove these crimes and determine their perpetrators being conducted under
328 unreasonably short and rigid time limits that have degraded the quality and capacity of these
329 investigations.

- Many of the judges and prosecutors involved in these proceedings also have little experience with, or expertise in, international law or human rights law. This calls into question the efficacy of these proceedings and the ability of those appointed to conduct them to do so responsibly and in accordance with international law.
- * Many prosecutors have failed to effectively challenge witnesses or asked probing questions to prove their case. Many questions in the courtroom have appeared designed to assert the innocence of the accused.
- Members of the Indonesian military and police forces have also been involved in many of the investigations conducted throughout these proceedings. This indicates a clear conflict of interest as many of the accused or possible suspects in these investigations are members of the Indonesian military or police
- Thus far, the Indonesian Attorney General has only selected five cases for investigation. This has limited the ability of the court to determine whether patterns of violence were widespread and systemic in nature, a requirement to demonstrate crimes against humanity.
- In many cases, documentary and other well-attested evidence of suspects' role in organizing or directly participating in committing serious crimes have not been presented to the court. Key witnesses who could have strengthened the prosecution's case have also not been summoned.
- The indictments produced through this process were weak and often carelessly drafted with many contradictory facts. These failed to adequately address the systemic nature of the events in Timor-Leste and the role of the Indonesian security forces in setting up and supporting the militia.
- Regarding the investigations and proceedings of the SCU and Special Panels in Timor-Leste, Amnesty International has determined that there is significant promise in these proceedings. However, under resourcing, downsizing and difficulties in collaborating with Indonesia on these matters have complicated this process.
 - Pursuant to its mandate, the SCU has filed numerous indictments charging hundreds of individuals with crimes against humanity including murder, sexual offenses, torture, inhuman acts, persecution, deportation and unlawful imprisonment.
 - In late February 2003, the SCU filed nine indictments that charged fifty individuals with crimes against humanity. This included a number of high ranking Indonesian officials, of which only some have been put on trial in Indonesia, and many of these cases acquitted. These indictments directly address the institutional responsibility of Indonesian security forces for the violence in Timor-Leste, as they are accused of having had effective control of militia groups in Timor-Leste and responsibility for crimes they committed. They also failed to put in place measures to prevent these crimes from taking place and punishing the perpetrators.
 - According to Amnesty International's analysis, the investigations carried out by the SCU account for under half the killings estimated to have taken place in Timor-Leste in 1999. Many cases yet to be investigated will be neglected if the SCU withdraws at the conclusion of UN-MISET's mandate in May 2004. Force reduction leading up to that withdrawal will exacerbate the issue.
 - Additionally, there is a severe lack of capacity within the Special Panels in Dili among prosecutors and case managers to effectively complete the amount of trials necessary to hold all those responsible accountable. While Timorese lawyers and staff have served admirably in support of these objectives, increased international resourcing and support appear to be vital to effectively completing this work, per Amnesty International.
 - The majority of the individuals indicted by the SCU remain at large in Indonesia with the Indonesian government refusing to extradite them or support the objectives of the SCU and Special Panels in Dili. Throughout this process, Indonesia has refused to cooperate with these investigations and appears poised to continue that.

380 3 Conclusions

381 It has thus far seemed clear to the COE that there are inconsistencies between the courts in
382 Dili and in Jakarta, as well as inconsistencies between third party reports that investigate the perpe-
383 trators of crimes, and what they should be tried for, versus what they actually were tried for in the ad
384 hoc human rights court. We have gathered evidence from multiple reports, including from the The
385 International Center for Transnational Justice and former UNAMET staffer Geoffrey Robinson.

386 The COE would like to note several concerning patterns uncovered in the course of investigation
387 that point towards the ineffectiveness of these courts. In Jakarta, witness statements about intimidat-
388 ion, both from government sources and people present in court rooms, present a concerning pattern
389 of biased court proceedings. Allegations that important evidence is not always presented in court and
390 a general lack of accountability from the chain of command are disconcerting as well. In Dili, courts
391 are severely under-staffed and face imminent collapse once international judges leave. In addition,
392 the COE is concerned by witness testimony suggesting that cases are encouraged to be dismissed
393 both by government sources and social pressures.

394 In addition to these observations, empirical evidence suggests that there is a significant lack
395 of accountability for Indonesian officials. They are disproportionately left out of proceedings in Dili,
396 and no convictions have been made in Jakarta despite the trial of multiple cases. One especially
397 concerning example is the failure to prosecute General Wiranto, despite mounting evidence pointing to
398 his culpability in severe international crimes. Worse still, General Wiranto seems to be headed towards
399 another governmental position. Justice cannot be carried out if perpetrators are not properly held
400 accountable.

401 It is clear that as they stand, neither the Special Panels in Dili nor the Ad Hoc Court in Jakarta
402 are carrying out justice effectively for the victims of the crisis in former East Timor.

403 3.1 Recommendation for Future Actions

404 The COE reiterates the previous recommendations of previous commissions on the matter of
405 the need for an International Tribunal for all people who played a role in the violence of 1999, regardless
406 of nationality. The COE recommends the Security Council, with due input from Indonesia and Timor-
407 Leste, determine the constitution of this tribunal, appointing international legal experts to develop court
408 proceedings and procedures. This tribunal should take into account the perspectives of the govern-
409 ments of Indonesia and Timor-Leste, as well as the desires of their populations for both justice and
410 reconciliation.

- 411 • This COE further recommends that if the Security Council, with consent from both Indonesia and
412 Timor-Leste, forms an International Tribunal, that the tribunal be used to try perpetrators accused
413 of the most serious, systemic offenses, as well as higher ranking military and civilian officials in
414 both Indonesia and Timor-Leste suspected of committing crimes against humanity.
- 415 • Both the court proceedings in Indonesia trying these crimes, as well as the proceedings in Timor-
416 Leste have encountered a number of challenges in effectively resourcing and conducting fair trials
417 for all those accused. The use of an International Tribunal will not only unify and centralize these
418 processes to avoid conducting multiple trials for the same individuals regarding the same crimes,
419 but will also ensure fairness and proper resourcing for these trials as international judges, prose-
420 cutors and observers will provide due process and fair treatment for defendants and witnesses.

421 The COE recommends to the Security Council the establishment of a judicial oversight com-
422 mittee. The purpose of the committee would be to act as an external monitoring mechanism for the
423 Ad Hoc Human Rights Court in Jakarta and the Special Panels for Serious Crimes in Dili. The Committee
424 should be a single mechanism divided into two groups that monitor the courts separately but maintain
425 communication to ensure that all perpetrators are being brought to justice, regardless of the court in
426 which they are tried. The duties of the committee should include:

- 427 1. To consistently monitor and report on the proceedings of both courts;
- 428 2. To promote compliance with international legal standards for crimes against humanity and hu-
429 man rights violations;

430 3. To report instances of violations of established procedure or internationally accepted principles
431 of justice.

432 The COE has concluded that a judicial oversight committee will be an excellent compromise
433 between respecting the sovereignty of Indonesia and its judicial system while applying pressure to In-
434 donesia to quickly prosecute responsible parties and ensure effectiveness. Additionally, the committee
435 would offer credibility to the Indonesian Court system so long as it performs in the way that it should.
436 For Timor-Leste, it would also provide transparency in the processes of that Court, dissuading political
437 interference.

438 The COE recommends that the Special Panels for Serious Crimes (Special Panels) and the Se-
439 rious Crimes Unit (SCU) continue to operate beyond the previously scheduled date of May 20, 2005.
440 Downsizing the operation at this critical point would risk undermining ongoing investigations and pros-
441 ecutions. The panels should be restored to full operational capacity, with additional resources and
442 personnel provided to ensure effectiveness.

443 Given the volume and complexity of remaining cases, the COE suggests an initial extension of
444 one year, accompanied by a detailed report at the end of this period, however to provide sufficient
445 continuity, security and judicial capacity the mandate should be allowed further extensions as neces-
446 sary. This ensures that ongoing indictments can continue, cases can be completed properly and new
447 investigations can be pursued without interruption. This extension will provide assurance to the people
448 of Timor-Leste and provide more time to the courts to fix their shortcomings and meet international
449 standards, as well as bring in additional personnel and resources. The courts shall continue serving
450 indictments and conducting trials during this period.

451 The presence of a UN-supported operational structure remains important for maintaining se-
452 curity, supporting witness protection and upholding the credibility of the judicial process. Any extension
453 should include clear benchmarks for case completion and resources to prevent operational gaps and
454 ensure that panels can fulfill their mandate effectively.

455 Finally, the COE recommends that the Security Council refer key figures involved in the situation
456 in 1999 in East Timor whose cases have substantial evidence that has not been adequately presented
457 in trial, such as leaders of the Indonesian military and militias to the International Criminal Court (ICC)
458 for their crimes. The investigation did not focus on culpability of specific individuals, but is concerned
459 at reports of significant evidence against officials being dismissed, and encourage more investigation
460 into these crimes with possible referral to the ICC. It is clear from the investigation of the COE that
461 domestic mechanisms for holding alleged perpetrators accountable is insufficient and ineffective, thus
462 an international venue is most appropriate for serving justice and accountability. Evidence supporting
463 this claim comes first from a report by Amnesty International entitled International Responsibility for
464 Justice. The report outlines some of the shortcomings in the creation of the Ad Hoc Human Rights Court
465 in Jakarta by Presidential Decision 26/2000, specifically stating that in the Legal Framework, definitions
466 of crimes between the domestic court and international courts are incongruent. Trying individuals at a
467 different level for alleged crimes shows that the Ad Hoc Court is not adequately bringing about justice
468 in regards to international standards.