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His Excellency Ban Ki-Moon
Secretary-General
The United Nations
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Your Excellency,

The recent release of former militia leader Eurico Guterres by the Indonesian Supreme Court brings Indonesia's farcical process to an end. Meaningful justice to the long-suffering people of Timor-Leste is long overdue. We urge you to work to uphold the rule of law and strengthen the democratic transition in both countries. It time for the United Nations and the international community to fulfill their long-standing commitment to see that justice is done for crimes against humanity committed in Timor-Leste.

As you know, Eurico Guterres was tried by Indonesia's Ad Hoc Court on charges of murder and persecution as crimes against humanity along with 17 other defendants. All have now walked free. Indonesia created this court to deflect demands for an international tribunal. The UN's Commission of Experts (COE) conducted a thorough analysis of the Ad Hoc Court, describing it as "manifestly inadequate." The COE identified such major flaws as a lack of commitment on the part of the prosecution, deficient investigations, inadequate presentation of evidence, a courtroom atmosphere that did not inspire confidence in the public mind, inconsistent verdicts, and an unwillingness to utilize sound jurisprudence. The COE concluded that the Ad Hoc Court "was not effective in delivering justice", and revealed "scant respect for or conformity to relevant international standards". Even one of the judges in the Ad Hoc Court conceded that it had "not made any significant contribution to strengthening the rule of law in Indonesia". In this context, Guterres' acquittal only highlights the flawed nature of that process.

The "Updated Set of principles for the protection and promotion of human rights through action to combat impunity" [E/CN.4/2005/102/Add.1], states:

"The fact that an individual has previously been tried in connection with a serious crime under international law shall not prevent his or her prosecution with respect to the same conduct if the purpose of the previous proceedings was to shield the person concerned from criminal responsibility, or if those proceedings otherwise were not conducted independently or impartially in accordance with the norms of due process recognized by international law and were conducted in a manner that, in the circumstances, was inconsistent with an intent to bring the person concerned to justice."

We submit that both exceptions apply to the Ad Hoc Court, meaning that those acquitted are still able to face a credible court. We urge you to work to establish a meaningful legal process to try those responsible for crimes against humanity, war crimes and other serious crimes committed by Indonesian forces during the occupation of Timor-Leste.

The upcoming report of the flawed, bilateral Commission on Truth and Friendship (CTF) must not stand as the last word on these issues. We applaud your predecessor's decision - reiterated by

you - not to confer legitimacy on the CTF. The right to know (the truth) and the right to justice are inalienable, and are a bulwark against the culture of impunity represented by the Ad Hoc Court and the CTF.

The independent Commission for Reception, Truth and Reconciliation (CAVR) and the UN's Commission of Experts both recommended the creation of "an ad hoc international criminal tribunal for Timor-Leste" should Indonesia, under a strict time frame, continue to fail to credibly prosecute senior officials responsible for the devastation in 1999. The Guterres acquittal confirms that the Indonesian government is unable to deliver justice. We therefore call upon you to work towards the creation of an ad hoc international criminal tribunal for those who bear greatest responsibility for war crimes and crimes against humanity committed from 1975 onwards, not just in 1999. If this is not feasible, we urge you to fully reconstitute the Serious Crimes process, providing it with sufficient resources and backing. This should be done in accordance with recommendations 7.1.1 and 7.1.2 of the CAVR Report - namely, the UN itself should provide the resources and judicial expertise, not Timor-Leste's court system. Indonesia, which is currently a member of both the Security Council and UN Human Rights Council, must extradite for trial those charged by the Serious Crimes process.

There is overwhelming support for justice for past crimes within Timor-Leste, especially by the Church, civil society and victims' associations. Indonesian civil society groups are also emphatic in their support of the justice agenda, seeing it as vital to their nation's democratic transition. We remind you of the Security Council's earlier commitments, expressed more than seven years ago in Resolutions 1264 and 1272, to bring those responsible to justice. Timor-Leste faces tremendous difficulties in taking the lead on the matter of justice in the face of opposition from its powerful neighbor. The international community, as embodied in the United Nations, must be involved in addressing these crimes which violated international criminal law, the UN charter and Security Council resolutions.

Yours sincerely,

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