

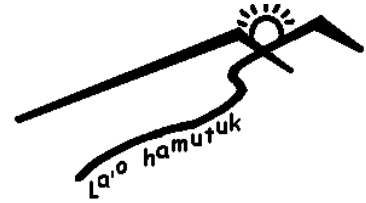
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Supplementing Secretary-General's Report S/2009/504 Regarding UNMIT for January-September 2009

20 October 2009

For the last nine years, La'o Hamutuk has observed developments in Timor-Leste in many areas, especially the activities of international institutions, including the United Nations. We offer these comments to fill out issues discussed in the Secretary-General's recent report on UNMIT (S/2009/504), which, perhaps due to political or diplomatic priorities, leaves out important information which the Security Council needs to make wise decisions. We believe that this tenth year of UN missions in Timor-Leste is an important opportunity to try to correct the past record and improve future strategy, especially given the current political crisis in Timor-Leste, recent personnel changes in UNMIT Political Affairs, and the impending new SRSG.

Today, La'o Hamutuk is sending a six-page letter to the Security Council on justice and impunity, so this supplement does not discuss these issues in depth. We continue to believe that they are the most important unfulfilled obligations the United Nations has to the people of Timor-Leste, and encourage the UN to review and expand its actions in this critical area.

This memo focuses on aspects of Rule of Law, Governance, Security, and Economic Stability. La'o Hamutuk cannot monitor everything in detail, so we write about the sectors we follow. If groups with other expertise were to read the report (unfortunately it is unavailable in Tetum or Bahasa Indonesia), they would have additional observations.

Several paragraphs (4, 5, 8 and others) in the Secretary-General's report focus on 2006 events, but the trauma, instability, violence and insecurity of Timor-Leste and its people stem from the quarter-century of Indonesian occupation and before. Until the UN (including UNMIT, the Secretary-General and the Security Council) recognizes and understands this, you will not be able to effectively support Timor-Leste's evolution into a peaceful, stable democracy under rule of law. Dialogue between 2006 factions and leaders may be useful, but is far from sufficient in addressing the underlying causes and finding durable solutions.

Paragraph 56 states that "security institutions" (i.e. police and soldiers) are the key to long-term security and stability. We hope that you have a broader understanding and realize that addressing the causes of disaffection, violence and insecurity is more effective (and more consistent with the ideals of the United Nations) than deploying men and women with guns, no matter how well-trained they are. Timor-Leste's people are still recovering from centuries of military-imposed occupation by Portugal, Japan and Indonesia, and we urge the UN to help change public and leader's thinking from "rule by force" to "rule of law", from "deter your potentially hostile next-door neighbor" to "live in mutual respect of each other's rights." Regrettably, UNMIT's mandate and orientation prioritizes short-term force of arms as the principal way to address security, without enough vision to look ahead to a Timor-Leste when foreign or domestic armed forces will not be required to keep the peace, where economic and social justice rather than enforced order will enable the development of Timorese society. This is not only about "public confidence," but about human rights.

Rule of Law and Democratic Governance

As discussed in our letter, the illegal release of mass-murderer Maternus Bere threatens the rule of law, and we will not repeat those points here. However, other recent developments also undermine public confidence in the quality and consistency of "rule of law" in Timor-Leste:

- Complex and important laws are often enacted without sufficient understanding of their content and implications, either by Parliament or by Government officials. For example, the law on Budget and Financial Management, which replaced the UNTAET regulation on the budget process while expanding Government's powers, was passed with insufficient time, discussion or comprehension.
- Laws, even when passed, often don't effectively address the issue they are intended for. For example, the Anti-Corruption Commission Law is very weak, does not define corruption, does not avoid the political and logistical bottleneck at the Prosecutor General's office, has not been implemented, and required immediate revision.
- Political interference in the judicial system, highlighted by the Maternus Bere case, occurs regularly, such as in the decision to terminate Judge Ivo Rosa, the premature release of Rogerio Lobato, the large backlog of anti-corruption cases, and the failure to renew the Provedor's mandate.

Paragraph 10 says that "all political parties continued to demonstrate respect for State institutions," but this is clearly not the case in relation to the Maternus Bere case. The members of Parliament from the governing AMP coalition, in rejecting the No Confidence vote, showed that their political loyalty to the Prime Minister overrode the fact that he transgressed the constitutional separation of powers and violated the integrity of the judiciary.

On August 30, three students were arrested and held for 72 hours when they held a peaceful impromptu press conference, even though all charges were dropped. More positively, a spontaneous peaceful vigil outside the Indonesian embassy on the 6 September anniversary of the Suai Church Massacre was allowed to proceed for several hours, even though it was in technical violation of the Demonstration Law (which itself transgresses Constitutional guarantees of free speech and assembly).

Paragraph 49 mentions several laws currently under consideration which relate to the security sector. As the SRSG told Timorese NGOs a few weeks ago, many of these laws raise serious concerns about human rights, corruption or potential abuse of power, and we encourage the Security Council to look more deeply.

Paragraph 12 discusses some actions taken with the goal of improving public administration. In spite of these events, there is widespread belief that corruption is pervasive and increasing. The Government's recent covert transfer of tens of millions of dollars from the problematic Heavy Oil Power Plant to the "referendum package" of non-specified projects awarded without competitive bidding exemplifies a lack of respect for Parliamentary budgetary processes.

We welcome the UN's work in support of the Provedor's office described in paragraph 29, but are concerned that the Government seems to want to weaken this critical institution. The mandate of the Provedor for corruption was taken away, leaving citizens with no safe avenue to bring complaints. The Provedor's term of office expired last June, but no new appointment has been made. When the Provedor issued findings which were uncomfortable for the Government, they attacked him publicly and personally. In addition, almost none of the cases referred by the Provedor to the Prosecutor General have been brought to court.

The State has done nothing to establish the High Administrative, Tax and Audit Court and the Supreme Court of Justice, both of which are mandated by the Constitution. With the continuing presence of an high official from the Prime Minister's political party on the Superior Council which oversees the judiciary, it appears that neither the UN nor the RDTL government has found a way to ensure an effective, independence, sovereign judicial system.

Public security

Paragraphs 24 and 25 discuss the role of the F-FDTL military, but this discussion (as well as Government and UN actions) seems to ignore the Constitutional purpose of this force, which is only for external security. Why did F-FDTL need to recruit 579 new soldiers? We encourage the UN to do more to help F-FDTL stick to its constitutional mandate, especially since the overblown size and activities of Timor-Leste's military have their roots in decisions taken by UNTAET. In addition to the SRSG attending a meeting, the UN needs to set better models. In particular, the International Stabilization Force (unfortunately not under UNMIT command, but hired by UNMIT to provide security for UN facilities) is a strong and ubiquitous example of confusing the functions of the military and the police, with soldiers dressed in camouflage and armed with machine guns patrolling through residential neighborhoods.

Just as F-FDTL wants to take on domestic policing responsibilities, it seems that PNTL wants to be perceived as a military force, for the population to fear. UN and other training and publicity materials for PNTL largely promote their role as "maintaining order" rather than "enforcing the law" or "protecting human rights." The new PNTL commander has brought paramilitary style, weapons and uniforms to his force, and his public image (including PNTL trainings shown on local television) portrays a uniformed force armed with heavy weapons fighting against an armed enemy.

Economic stability, sustainability and development

Economic fairness is key to the future. If people feel alienated, or believe that distribution of public resources unfairly benefits an elite few, this sows the seeds for future instability. The "resource curse" trap wherein oil-dependent countries like Timor-Leste squander temporary windfalls on short-term benefits and cash handouts, will result in massive problems, including economic and social insecurity, when the oil money runs out. Although the 2005 Petroleum Fund Law discusses intergenerational equity, current policies violate it.

Regarding paragraph 39, La'ó Hamutuk analyzed international assistance allocated to Timor-Leste through various channels over the last ten years (see www.laohamutuk.org/reports/09bgnd/HowMuchAidEn.pdf). We found that approximately \$5.2 billion had been spent, including \$2.3 billion on UN missions. However, we estimate that only about 11% of this money ever came into the Timor-Leste economy, which is one of the reasons for increasing poverty and the low level of economic development. As in other countries, many of the foreign assistance projects here are not well-matched to Timor-Leste's needs.

The 12.8% increase in "non-oil GDP" during 2008 is almost entirely composed of government spending oil revenues. In that year, Government expenditures were \$480 million (of which \$396 million was from oil), up from an annual rate of \$112 million (\$80 million from oil) during the last half of 2007. This spending spree went largely to cash distributions – salaries and benefits for government workers, and payments to IDPs, fired soldiers, veterans and widows. These unsustainable payments give the message that people who make trouble get money, further undermining public confidence and security.

Neither Timor-Leste, Indonesia nor the United Nations has paid any reparations or compensation to victims of 1975-1999 crimes as restorative justice or even to help them overcome poverty and trauma. The survivors are understandably angry that both perpetrators and victims of the 2006 domestic crisis received thousands of dollars per family (paragraphs 46, 47, 53). We do not understand why the government and UN focus exclusively on the 2006 crisis (which took about 200 lives and displaced fewer than 100,000 people), while largely ignoring the far more serious 1975-1999 international occupation (which took more than 100,000 lives and displaced virtually the entire population, most more than once).

Paragraph 42 discusses government efforts to improve local food production, but understates the impact of the approximately \$85 million the Government spent during the last twelve months to subsidize imports of more than 100 million tons of rice, more than half the country's total consumption. In this archetypal example of "resource curse" policy, a short-term cash windfall paid for overseas purchases which, in the medium and long term, hurt local agricultural producers and increase food dependency and insecurity.

La'o Hamutuk and others have been critical of the Government's plan to spend \$392 million to buy used heavy oil electric generating plants from China, but the Government allocated the money and Chinese Nuclear Industry Construction Company No. 22 began the work in February. However, work on the project has stopped, and it will not achieve the Prime Minister's optimistic promise to electrifying every district capital by the end of 2009. The Government hastily improvised, reallocating around \$30 million to small infrastructure projects which will be done by local companies without planning, specifications or competitive bidding.

Paragraph 60 commending efforts "to ensure responsible management of State resources" is factually incorrect. Recent government policies – massive budget increases, spending on short-term subsidies rather than long-term development, cash handouts, not considering long-term plans, squandering transient oil revenues – are the exact opposite. According to the IMF, petroleum revenues were 98.2% of Timor-Leste's government income in 2008 (and 83% of GDP), making this the most oil-dependent country in the world.

High petroleum revenues in 2008, fuelled by high oil market prices and the all-time peak of production from Bayu-Undan (Timor-Leste's only current source of oil and gas revenues), provided money for the government to spend without much thought. Although some of these tendencies have been slightly curbed in the proposed 2010 State Budget, the probability of Timor-Leste of falling into the "resource curse" is still high. The budget re-estimates the sustainable level of Petroleum Fund spending at 25% higher than last year, and plans to spend all of it in 2010.

Bayu-Undan will be exhausted in 13 years, and very little is being done to develop the non-oil economy. If current trends continue, Timor-Leste will have two million citizens in 2023, mostly poor, struggling to live in an import-dependent economy, They will be sad and resentful that their nonrenewable resource birthright was squandered while UNMIT's limited vision did nothing to help them avoid the predictable "resource curse."

In late September, Timor-Leste enacted a Financial Management and Budget law which allows the Minister of Finance to borrow from other governments, companies or institutions without public discussion or parliamentary approval of the conditions, interest or repayment of the loan. The Government has already signed an MOU with Portugal for a line of credit, and is negotiating with China and others, hoping to borrow about \$3 billion for infrastructure projects. Neither the budget nor the law explains how a future government will be able to repay the loans after the oil revenues run out in less than two decades.

What will the UNTANGLE Mission (United Nations-Timor Attempt to Narrowly Grasp the Latest Emergency) be able to do in 2023 to support the resolve of the Timor-Leste's people "to build a democratic, peaceful and stable society" (paragraph 61)? What lessons will have been learned too late to benefit Timor-Leste? Why is it necessary to wait?