

The Wiranto Warrant Political Interference in the Serious Crimes Process

JSMP Press Release: 22 June 2004

The serious crimes process has received yet another setback it can ill afford. Given the precarious economic situation in Timor-Leste, the President and Government consider maintaining good relations with Indonesia far more important than their people's calls for justice. One powerful image speaks a thousand words: the smiling embrace of two former enemies in Bali, President Xanana Gusmao and former General Wiranto. Throughout Timor-Leste, however, victims are far less willing to embrace their former enemies. Tension remains in communities as perpetrators live side by side with victims, and people continue to wait for the justice promised to them by the United Nations (UN). Many also fear the return of former-militia from Indonesia given the scaled down presence and imminent withdrawal of UN troops.

There can be no meaningful reconciliation with Indonesia and within Timor-Leste until justice is served. Until such time, public displays of affection for Wiranto may ensure the short-term economic viability of Timor-Leste, but it also sows the seeds for future tension and endangers the creation of future, potentially more effective, judicial processes. President Xanana's actions come at a crucial time. The UN Secretary-General is holding off on the establishment of a Commission of Experts to analyse the trials of both the ad hoc Human Rights Court in Jakarta and the Special Panels for Serious Crimes in Dili. If this body finds both sets of trials have not held the perpetrators accountable, there is a possibility of increased international support for justice initiatives. But given the 'forgive and forget' attitude of the Timor-Leste Government and deep-seated reluctance by countries such as the United States to offend Indonesia, the international community has every reason to let Timor-Leste slide off the international criminal justice radar.

The national arrest warrant for Wiranto illustrates the complexity of the situation. The warrant was issued by a UN-funded international judge on 10 May 2004 acting under the authority of the Timor-Leste judiciary. The next day, the Prosecutor-General sought permission to amend the Wiranto indictment, which has been perceived as an attempt to have the arrest warrant revoked. There is a strong suggestion that the Prosecutor-General's actions arose due to intense political pressure. Over a year ago he supported the indictment of Wiranto and his change of position was no doubt influenced by statements from the President criticizing the warrant. At present, however, the warrant against Wiranto still stands as the court refused the Prosecutor-General's application.

This warrant will not have international implications unless the Prosecutor-General decides to forward it to Interpol. At present, the Prosecutor-General has stated

that he will not do this. It is of little consequence, however, as INTERPOL is primarily a communication network that works on cooperation between state signatories. It has no authority to coerce a country into handing over suspects. But other avenues exist to try Wiranto if he travels abroad, such as trial in a third country, possibly on the basis of universal jurisdiction under international law.

The attempt to have Wiranto's arrest warrant revoked is understandable, although it is not justifiable. Wiranto is a high-profile candidate in the upcoming Indonesian presidential elections, and the warrant undoubtedly places the Timor-Leste Government in a difficult position. It appears, however, that the President and Government have gone too far to please, rather than appease Indonesia. Instead of minimizing the impact of the Wiranto situation, the Government is now ignoring people's demand for justice, completely undermining the serious crimes process and potentially jeopardising future international support for trials.

Perhaps the best hope for effective trials lies in a dramatic shift in Indonesian policy to cooperate with the handover of suspects. This may take ten years or more. Unless the Timor-Leste Government supports in principle the trial of Indonesians, the chance of ending impunity is greatly diminished.

Alarmingly, the Wiranto situation has created perhaps an irreparable breakdown in relations between UN prosecutors and their head, the Prosecutor-General. JSMP believes at least one prosecutor has resigned over the issue. JSMP acknowledges the complex political situation at present, however it is vital for current and future crimes against humanity trials that both parties work together. At the very least, both parties need to develop a system to maintain evidence and an effective exit strategy for the end of international involvement in May 2005.

JSMP is concerned about political interference in the Wiranto situation. The decision to issue a warrant for Wiranto is not a matter of government policy but a matter to be determined by a court of law. Any time government interferes in the court process, the rule of law and Timor-Leste's democracy is diminished. Timor-Leste's prosecutors, whether UN funded or not, must be free from political interference to carry out their role according to the applicable law. If not, this breaches provisions in the Constitution related to the independence of the judiciary, the adoption of international legal principles and state's role to guarantee fundamental rights of citizens. Accordingly, JSMP encourages victims to seek redress through the courts to ensure their constitutional rights are upheld.

It is difficult to underestimate the importance of Indonesia for Timor-Leste's future. However, only with an effective judicial process for the crimes committed during and after Indonesian occupation can true reconciliation occur. Anything less will result in widespread dissatisfaction and community tension.

end