



## Timor-Leste

### Amnesty International submission to the UN Universal Periodic Review 12<sup>th</sup> session of the UPR Working Group, October 2011

#### **B. Normative and institutional framework of the State**

On 6 September 2002, Timor-Leste acceded to the Rome Statute of the International Criminal Court and in June 2009, a new Penal Code came into force which sought to implement its provisions. There are a number of positive elements in the 2009 Penal Code with respect to crimes under international law: it includes most crimes under the Rome Statute, as well as torture, and Article 117 states that criminal proceedings and the penalties for genocide, crimes against humanity and war crimes are not subject to statutes of limitations.

However, over eight years after acceding to the Rome Statute, Timor-Leste has still not enacted legislation providing for co-operation with the International Criminal Court. In addition, as it stands the Penal Code is insufficient to challenge impunity for past crimes, and some aspects are not consistent with the Rome Statute and other human rights treaties, as well as customary international law.<sup>1</sup>

#### **National amnesties and pardons**

The Penal Code appears to not sufficiently guarantee that amnesties, pardons and other measures of impunity will not be used in the future for crimes under international law. Article 120 states that “[a]mnesty extinguishes criminal prosecution and halts execution of a sentence yet to be served in whole or in part, as well as its effects and accessory penalties to the extent possible”, and Article 122 provides that the pardon (*indulto*) extinguishes the penalty, totally or partially, or replaces it by other penalties provided in the Penal Code that are more favourable to the convicted person.

#### **Universal jurisdiction in all cases of crimes under international law**

Article 8 (b) of the Penal Code provides for the exercise of universal jurisdiction for genocide, crimes against humanity and war crimes; however, its scope is limited to situations where “*the perpetrator is found in Timor-Leste and cannot be extradited or a decision has been made not to do so*”. Furthermore, the Penal Code appears to prevent the prosecution of persons who have been tried and acquitted abroad in processes that were not genuine.<sup>2</sup>

#### **Responsibility of commanders and other superiors**

Amnesty International notes that certain aspects of Article 136 of the Penal Code on responsibility of commanders and other superiors are inconsistent with international law. In particular, the omission of the term “*or, owing to the circumstances at the time, should have known*” contained in Article 28 (a) (i) of the Rome Statute for example, could preclude national courts from prosecuting negligent superiors.

<sup>1</sup> For more detailed analysis see Amnesty International’s report *Timor-Leste: International Criminal Court – Justice in the Shadow* (Index: ASA 57/001/2010), 28 June 2010.

<sup>2</sup> Article 9 (1) of the Penal Code states that “*the application of Timorese criminal law to acts perpetrated abroad only occurs when the perpetrator has not been tried*”.

## C. Promotion and protection of human rights on the ground

### Impunity for past human rights violations

Amnesty International is concerned about the persistent culture of impunity for crimes against humanity and other human rights violations that occurred during the Indonesian occupation of Timor-Leste (then East Timor) between 1975 and 1999. It is estimated that over 100,000 people were killed or starved to death between 1974 and 1999.<sup>3</sup> Crimes against humanity and other human rights violations were most acute during the Indonesian occupation, including unlawful killings, enforced disappearances, arbitrary detention, torture and other ill-treatment, war crimes, sexual violence, violations of the rights of the child, and violations of economic, social and cultural rights. The overwhelming majority of these violations, perpetrated mostly by the Indonesian security forces and their auxiliaries, have yet to be addressed.

At least 1,200 people died in the lead-up to and aftermath of Timor-Leste's independence referendum in 1999, overseen by the UN. The polls were marred by serious human rights violations, including crimes against humanity, at the hands of pro-Indonesian militias backed by the Indonesian military. These violations included unlawful killings, enforced disappearances, sexual violence, arbitrary arrests, threats and intimidation of the Timorese people. Despite various national and internationally-sponsored justice initiatives, most of those suspected of committing these crimes are still at large in Indonesia, and yet to be brought before an independent court. Of those who have been prosecuted in Indonesia, all have been acquitted in proceedings which have been severely criticized as fundamentally flawed.

Attempts to bring perpetrators of past crimes to justice in Timor-Leste have been weak. In 2000, the UN established the Serious Crimes Unit (SCU) and Special Panels for Serious Crimes in Timor-Leste, mandated to work under the authority of the Timorese Prosecutor General to investigate and prosecute crimes against humanity and other gross human rights violations. In May 2005, the activities of the SCU and the Special Panels were effectively terminated, despite not having completed their work. There remained 186 murder cases which had been investigated but for which no one had been indicted, and over 400 murder cases yet to be investigated. Furthermore, over 300 individuals indicted by the Special Panels were believed to be living in Indonesia and therefore outside the territorial jurisdiction of Timor-Leste. The Indonesian authorities have refused to co-operate with the UN-sponsored justice system in Timor-Leste and to extradite their nationals suspected of crimes against humanity to stand trial in Timor-Leste.

In 2006, the UN established the Serious Crimes Investigation Team (SCIT), which effectively started in 2008. Unlike the preceding Serious Crimes Unit, SCIT is only mandated to complete investigations of serious crimes committed in 1999, and has no prosecutorial functions. The Timorese Prosecutor General's Office is now in charge of bringing new cases to the courts; however, since SCIT began submitting completed investigations only one indictment has been filed.<sup>4</sup>

On 20 May 2008, President Ramos-Horta commuted the sentences of more than half of Timor-Leste's prison population.<sup>5</sup> Nine of those who had their sentences commuted had been convicted by the Special Panels for murder,

<sup>3</sup> Section 6 Part 6: The Profile of Human Rights Violations in Timor-Leste, 1974 to 1999 in the Commission for Reception, Truth and Reconciliation (CAVR) report, *Chega!*, 2005, Weblink: <http://www.cavr-timorleste.org/cheqaFiles/finalReportEng/06-Profile-of-Violations.pdf>, accessed on 10 March 2011. The report of the CAVR covers the period from 1974 to 1999; however Indonesian invasion and subsequent occupation started in 1975.

<sup>4</sup> E-mail correspondence with Amnesty International, 17 March 2011.

<sup>5</sup> 94 of Timor-Leste's 179 prisoners received pardon or partial commutation of their sentence on 20 May 2008. In UNMIT, *Report on human rights developments in Timor-Leste- The security sector and access to justice 1 September 2007 – 30 June 2008*, p12. Weblink:

assault and sexual offences as crimes against humanity in the context of the 1999 referendum. This decision was upheld by the Court of Appeals in September 2008. At the time of writing, of the 86 people found guilty of serious crimes committed in 1999, only one remains imprisoned.<sup>6</sup>

The reluctance of the Timorese government to fulfill its obligations under international law to prosecute past crimes was clearly demonstrated in August 2009, when it released indicted militia leader Martenus Bere following a request from the Indonesian authorities. Bere had been charged by the SCU in 2003 with the extermination of civilians and other crimes against humanity, including torture, enforced disappearance, deportation and persecution in 1999 in the town of Suai. He was eventually transferred to West Timor in Indonesia, a safe haven from prosecution. Bere's release not only weakens the rule of law and independence of the judiciary in Timor-Leste, it confirms the need for the establishment of an international criminal tribunal by the UN Security Council to prosecute these crimes.

### **Reparations and truth**

Two mechanisms were established to uncover the truth about past human rights violations in Timor-Leste. In 2001, the Timorese government set up the Commission for Reception, Truth and Reconciliation in East Timor (*Comissão de Acolhimento, Verdade e Reconciliação*, CAVR), mandated to document crimes against humanity and other human rights violations which occurred between 1974 and 1999. The final report of the CAVR in 2005 estimated that around 18,600 unlawful killings and enforced disappearances had occurred.<sup>7</sup>

The Commission of Truth and Friendship (CTF) was set up by the governments of Indonesia and Timor-Leste in 2005 to “*establish the conclusive truth in regard to the events prior to and immediately after the popular consultation in 1999, with a view to further promoting reconciliation and friendship, and ensuring the non-recurrence of similar events*”.<sup>8</sup> Local and international NGOs have strongly criticized the CTF, in particular provisions in its mandate allowing for amnesties for perpetrators of serious crimes, including crimes against humanity, which under international law cannot be subject to amnesties. NGOs have also expressed concern at the treatment of victims and witnesses during hearings.

For many years civil society groups, victims and relatives in Timor-Leste have called for reparations for past human rights violations. Both the CAVR and the CTF have recommended that reparations be provided for victims and relatives of victims of past human rights violations, including effective measures to identify those who were disappeared and children who were separated from their families.<sup>9</sup>

In July 2010, two draft laws establishing a national reparations programme and an “Institute for Memory”, mandated to implement the recommendations of the CTF and the CAVR, were presented for public consultation. The laws were due to be debated in Parliament in September 2010; however, the debate was delayed until February 2011. On 14 February 2011, Parliament again postponed the debate.<sup>10</sup>

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<http://unmit.unmissions.org/Portals/UNMIT/Human%20Rights/UNMIT%20Human%20Rights%20Report%2020%20August%202008.pdf>, accessed on 11 March 2011.

<sup>6</sup> E-mail correspondence with Amnesty International, 17 March 2011. See also Amnesty International report *'We cry for justice': Impunity persists 10 years on in Timor-Leste* (Index: ASA 57/001/2009), 27 August 2009, p15. On 26 March 2010, Domingos Noronha (aka Mau Buti), a former Mahidi Militia member, was sentenced to 16 years' imprisonment for serious crimes committed in 1999. He was found guilty on three counts of murder.

<sup>7</sup> See Section 7.2 Unlawful Killings and Enforced Disappearances in the CAVR report, *Chega!*, 2005, Weblink: <http://www.cavr-timorleste.org/cheqaFiles/finalReportEng/07.2-Unlawful-Killings-and-Enforced-Disappearances.pdf>, accessed on 10 March 2011.

<sup>8</sup> Article 12, Terms of Reference for the Commission of Truth and Friendship.

<sup>9</sup> The International Committee of the Red Cross has a register of about 400 children who were disappeared. According to the Working Group on Enforced or Involuntary Disappearances, these disappearances could also qualify as enforced disappearances.

<sup>10</sup> See Amnesty International public statement *Timor-Leste: Parliament missed opportunity to provide justice for past violations* (Index: ASA 57/001/2011), 17 February 2011.

## **Rule of law**

Despite various programmes to strengthen the judicial system, it remains slow and ineffective in addressing crimes due to a large backlog within the prosecution office and a lack of adequate staffing and administrative resources. Language complications further slow down the judicial process as interpretation and translation services are often required in court proceedings. Although Tetum and Portuguese are the two official languages of Timor-Leste, Portuguese is the main legal language, which most of the population does not speak.<sup>11</sup>

The failure to rebuild the justice system and to bring to justice those responsible for past human rights violations has contributed to an environment where there is no strong deterrent to political violence and human rights violations. The denial of justice through effective criminal proceedings has eroded key pillars of the new state: the rule of law and a strong and independent judiciary. Civil society organizations have expressed concern about the credibility of the justice system after a series of presidential pardons by President José Ramos-Horta, most recently in August 2010 when he pardoned 23 people who had been convicted of involvement in the political violence of February 2008.<sup>12</sup>

Allegations of human rights violations by the police and military continue, including ill-treatment and excessive use of force. Despite efforts to strengthen internal accountability mechanisms to deal with abuses by members of the security forces, very few have been prosecuted for these abuses. Following the 2006 violence, which erupted after the dismissal of one third of the country's military, a vetting and certification process was introduced for police officers, but not for members of the armed forces. Although now almost complete, the vetting process has not yet resulted in any dismissals based on past human rights violations or criminal conduct within the police force.

## **D. Recommendations for action by the State under review**

### **Amnesty International calls on the government:**

#### *Amendment of national legislation regarding international justice*

- To amend the Penal Code or pass new legislation, through transparent and broad consultation with civil society groups, to ensure that national law is brought into line with the Rome Statute and other international law obligations, in particular:
  - To explicitly ban amnesties, pardons and other forms of impunity for crimes under international law;
  - To amend Article 8 (b) of the Penal Code to permit the opening of a criminal investigation and the requesting of extradition of suspects even if they have never been in Timor-Leste so that the authorities can act quickly when they learn that a suspect is likely to visit Timor-Leste;
  - To ensure that perpetrators of genocide, crimes against humanity and war crimes can be re-tried in a Timorese court if the trial in a foreign court was not genuine and permitted the perpetrator to escape from justice;
  - To enact legislation providing for co-operation with the International Criminal Court, in accordance with Part 9 of the Rome Statute.

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<sup>11</sup> See Independent Comprehensive Needs Assessment (ICNA) *The Justice System of Timor-Leste: An Independent Comprehensive Needs Assessment*, 13 October 2009; and Judicial System Monitoring Programme (JSMP) *JSMP's Observations on Progress Achieved to date and Challenges facing the legal system in Timor Leste*, 3 September 2010.

<sup>12</sup> On 11 February 2008, President José Ramos-Horta was shot three times during a raid on his home led by rebel soldier Major Alfredo Reinado. Major Reinado and the President's bodyguard were killed in the ensuing gun battle. The President made a full recovery. In a co-ordinated attack, the car in which Prime Minister Xanana Gusmão was travelling and his home were also attacked; however, he escaped unharmed.

### *Justice for past human rights violations*

- To publicly announce and take concrete steps to bring to justice all persons responsible for crimes against humanity and other human rights violations, wherever and whenever they occurred, including those which occurred during the Indonesian occupation (1975-1999), and to ensure that victims receive full reparations including restitution, rehabilitation, compensation, satisfaction and guarantees of non-repetition;
- To establish a long-term comprehensive plan to end impunity and, as part of that plan, to request the UN Security Council to immediately set up an international criminal tribunal with jurisdiction over all crimes committed in Timor-Leste between 1975 and 1999;
- To establish effective extradition and mutual legal assistance agreements with other states (including Indonesia) to ensure that individuals charged with crimes under international law can be extradited to Timor-Leste to stand trial in proceedings that meet international standards of fairness.

### *Disappearances and missing persons*

- To ratify and implement effectively the International Convention for the Protection of All Persons from Enforced Disappearance;
- To establish a public register of missing persons and those killed between 1975 and 1999 and to undertake jointly with the Indonesian government a systematic inquiry to establish the whereabouts and fate of those who went missing.

### *Reparations and truth*

- To disseminate throughout Timor-Leste the findings and recommendations of the Commission for Reception, Truth and Reconciliation in East Timor and the Commission of Truth and Friendship to raise awareness and promote a common understanding between the populations of Timor-Leste and Indonesia;
- To discuss publicly in Parliament and in other public institutions the recommendations and findings of the Commission for Reception, Truth and Reconciliation in East Timor and the Commission of Truth and Friendship reports;
- To debate and pass legislation establishing a follow-up mechanism to implement the recommendations of the CAVR and CTF reports, in particular to devise and implement a comprehensive program to provide full and effective reparations to victims of past crimes and their relatives.

### *Enhancing the rule of law*

- To strengthen accountability mechanisms to deal with suspected human rights violations by members of the security forces promptly, impartially and effectively, to bring to justice all those found responsible in fair trials and to ensure the victims receive reparations;
- To enact a law which explicitly prohibits the use of pardons, amnesties, and other measures of impunity for crimes under international law;
- To ensure that all legislation, draft legislation and other legal documents are widely available in both Portuguese and Tetum.