



'WE CRY FOR JUSTICE'

IMPUNITY PERSISTS
10 YEARS ON
IN TIMOR-LESTE

AMNESTY
INTERNATIONAL



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Cover photo: The 10th anniversary memorial at Manuel Carrascalao's house in Dili, Timor-Leste, where at least 12 people were killed by pro-Indonesian militias on 17 April 1999. At the time of the attack he was sheltering about 160 displaced people.

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CONTENTS

1. Introduction and Summary.....	5
2. Documenting, remembering, and ‘repairing’ the past: “No More!”	8
2.1 The Commission for Reception, Truth and Reconciliation (CAVR).....	8
2.2 The Joint Indonesia – Timor-Leste Truth and Friendship Commission	9
2.3 Towards a reparation programme?.....	10
3. Inadequate criminal proceedings into the 1999 crimes.....	12
3.1 In Indonesia.....	12
3.2 In Timor-Leste.....	13
4. Reconciliation efforts without justice	15
4.1 Commutations of sentences	15
4.2 An Amnesty Law for crimes under international law?	16
4.3 Calls for justice, yet unheard.....	16
5. Challenges ahead: the legacy of impunity	18
5.1 In Timor-Leste.....	18
5.2. In Indonesia.....	19
6. Towards the setting-up of an ad hoc International Criminal Tribunal?	20
7. Recommendations	22
7.1 To the Timor-Leste government:	22
Justice for past human rights violations	22
Reparations and Truth	23
Enhancing the rule of law.....	23
7.2 To the Indonesian Government:.....	23

Justice for past human rights violations.....	23
Reparations and Truth	24
Enhancing the rule of law	24
7.3 To the UN Security Council:	25
Justice for past human rights violations.....	25
Reparations and Truth	25
Enhancing the rule of law	26
7.4 To the Governments of other states:	26
Justice for past human rights violations.....	26
Reparations and Truth	26
Enhancing the rule of law	27

1. INTRODUCTION AND SUMMARY

‘We have sad hearts and difficult lives until today... when the clock marks ten years... no person... has come to tell us where [are] our wives, husbands, children, mothers or fathers, brothers and sisters or family who were massacred... until when can we truly say amen because fair justice and truth is served ... Maybe you have already forgotten, but there must be justice.’

Victims and their families as they commemorate the tenth anniversary of the Liquica massacre, 6 April 2009. According to the United Nations indictments, more than 100 persons were killed or injured during the attack launched by pro-Indonesian militias. All those who were initially charged for these crimes in Indonesia have been acquitted. ¹

In a few days, the Timorese people and the international community will be commemorating the 10 year anniversary of the United Nations sponsored referendum which paved the way for the independence of the Democratic Republic of Timor-Leste (Timor-Leste, formerly known as East Timor) in 2002.² Ten years on, this new country has witnessed much change. However, the violence of its troubled past is still haunting its population of about one million people.

The lead-up to the polls and its aftermath were marred by crimes against humanity, and other serious human rights violations at the hands of pro-Indonesian militias backed by the Indonesian military. These abuses have been well documented by human rights organizations and expert bodies.³ They included unlawful killings, enforced disappearances, sexual violence, arbitrary arrests, threats and intimidation of Timorese people, while the United Nations (UN) was overseeing the process. The overwhelming majority of the victims were supporters of independence for East Timor, and included local UN staff. These abuses were not new: they reflected gross human rights violations which had occurred throughout Indonesian occupation between 1975 and 1999.

Today, despite various national and internationally-sponsored justice initiatives over the last decade,⁴ most of those who were suspected of committing the 1999 crimes are still at large in Indonesia, and are 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.⁵ Only one remains imprisoned in Timor-Leste.⁶ Similarly, a comprehensive programme of justice and reparations are yet to be delivered for victims of the pre-1999 crimes, although the crimes against humanity and other human rights violations which occurred then have been thoroughly documented by the Commission for Reception, Truth and Reconciliation in East Timor (Comissão de Acolhimento, Verdade e Reconciliação, referred thereafter as CAVR).⁷

Instead of pursuing justice for the victims, the Timorese and Indonesian governments have adopted policies under the lens of 'reconciliation' including inadequate and controversial initiatives, such as the establishment of the joint Indonesia - Timor-Leste Truth and Friendship Commission in 2005. At the same time, the UN Security Council, which had previously been very vocal in demanding justice for the victims of the 1999 violence, has become increasingly silent. This stance runs counter to the principles stated by the then UN Secretary-General, Kofi Annan, who in his report on justice in Timor-Leste in 2006 said:

"Crimes against humanity, gross violations of human rights and grave breaches of humanitarian law were committed in East Timor in 1999. There can and should be no impunity regarding such acts. Establishing the truth and promoting reconciliation are necessary parts of the healing process for both countries and victims... It would be deeply regrettable, however, if the reconciliation process foreclosed the possibility of achieving accountability. The limited degree of accountability achieved so far for the serious human rights violations of 1999 continues to raise questions about how best the institutions in both countries can address this concern".⁸

During a visit to Timor-Leste between 27 June and 3 July 2009, Amnesty International spoke with various groups and individuals, including national and international non-governmental organizations, United Nations staff, parliamentarians, government officials, journalists, religious leaders and academics about the current situation in Timor-Leste and the lack of justice for past crimes.

Many of those Amnesty International met in Timor-Leste expressed their concern that accountability for past human rights violations has become a forgotten issue. They explained how despite providing testimonies time and time again, victims of past crimes were still awaiting justice.⁹ People in Timor-Leste said to Amnesty International that it was difficult for victims to understand, for instance, how General Wiranto, the Commander of the Indonesian Armed Forces during the 1999 events, remained at large and was even a vice-presidential candidate in the July 2009 presidential elections in Indonesia.¹⁰ General Wiranto had been indicted by the UN Serious Crimes Unit for crimes against humanity and has yet to be prosecuted by any court in Indonesia, Timor-Leste or elsewhere.¹¹ People in Timor-Leste also explained that the current attitude of the Timor-Leste government in favour of 'reconciliation' over justice for past crimes was very difficult to comprehend and demoralizing for victims. Given the government's position, many viewed international justice as the only hope for obtaining truth and justice.

Concerns were also expressed about the current cycle of impunity which may continue to act as a threat to the two countries' stability. On two separate occasions since independence, in 2006 and 2008, political violence erupted in Timor-Leste. Although there were complex reasons for each situation, the failure to rebuild the justice system effectively and to bring

those responsible for past human rights violations to justice, contributed to an environment where there was no strong deterrent to political violence and human rights violations.¹² 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.

In his 2004 report on “The rule of law and transitional justice in conflict and post-conflict societies”, the then UN Secretary-General, Kofi Annan, said:

*“Justice, peace and democracy are not mutually exclusive objectives, but rather mutually reinforcing imperatives...Our experience in the past decade has demonstrated clearly that the consolidation of peace in the immediate post-conflict period, as well as the maintenance of peace in the long term, cannot be achieved unless the population is confident that redress for grievances can be obtained through legitimate structures for the peaceful settlement of disputes and the fair administration of justice”.*¹³

The Indonesian and Timorese governments have the primary responsibility to investigate and prosecute all crimes committed between 1975 and 1999 and to ensure reparations to the victims. Amnesty International calls on both governments to develop comprehensive strategies that comply fully with their obligations under international criminal law and human rights law to end this impunity.

The UN Security Council in Resolution 1264 (1999) and in subsequent resolutions demanded that those responsible for the 1999 acts of violence be brought to justice. Given the continuing failures of the Timor-Leste and Indonesia authorities to investigate and prosecute the crimes over the last 10 years, Amnesty International calls on the UN Security Council to establish a long-term comprehensive plan to end impunity for these crimes and, as part of that plan, immediately set up an international criminal tribunal with jurisdiction over all crimes committed in Timor-Leste between 1975 and 1999. Such a tribunal should be able to intervene and ensure justice in some representative cases and act as a catalyst for national justice in others. Recent efforts and investments by the UN Security Council¹⁴ and UN member states to enhance the rule of law and to support reforms of the Timorese security sector do not conflict with demands for justice for past crimes and should continue.

2. DOCUMENTING, REMEMBERING, AND ‘REPAIRING’ THE PAST: “NO MORE!”

2.1 THE COMMISSION FOR RECEPTION, TRUTH AND RECONCILIATION (CAVR)

THE SANTA CRUZ MASSACRE



Santa Cruz cemetery where over 100 people were killed at the hands of the Indonesian military in 1991 © Amnesty International

“Everyone in this country has their own story – by repeating my story I am hoping that the violence that happened here during the Indonesian occupation will not be repeated and I’m hoping that the next generation- our children - will be aware of these violations and justice will be done.”

Julinho, 4 September 2008.¹⁵ Julinho was 17 years old when he witnessed the Santa Cruz massacre during which over 100 people were killed by the Indonesian military in 1991.¹⁶ The vast majority of perpetrators have yet to face justice for these crimes.¹⁷

It is estimated that over 100,000 people were killed or starved to death¹⁸ between 1974 and 1999 (the period of reference of the CAVR report).¹⁹ Crimes against humanity and other human rights violations were most acute during the 24 years of Indonesian occupation (from 1975). They included 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. These crimes are well documented in the 2,800-page 2005 ‘Chega!’ (literally ‘no more, stop, enough’) report of the Commission for Reception, Truth and Reconciliation in East Timor (CAVR). The overwhelming majority of the past killings, enforced disappearances, sexual violence and torture cases of civilians, mostly at the hands of the Indonesian security forces and their auxiliaries, have yet to be addressed.²⁰

The 'Chega!' report comprises details of crimes committed by the Indonesian security forces and the Timorese armed opposition movement. It highlights violations by both Indonesian and East Timorese people who were serving in the Indonesian military and police. In their report, the CAVR Commissioners emphasize the need for justice for past crimes, and the role of the UN Security Council, and the Timor-Leste and Indonesian governments in ensuring that accountability for past crimes is upheld.²¹

Most perpetrators of past human rights violations in Timor-Leste under Indonesian occupation have never been brought to justice. On the contrary, suspected perpetrators within the Indonesian military were in some cases "rewarded with promotions shortly [after] they had played a prominent role in the events in Timor-Leste".²² Senior military officials who are suspected of having played a role still held key senior positions within the Indonesian military in recent years.²³

During their visit to Timor-Leste in June-July 2009, people expressed their disappointment to Amnesty International that the findings and recommendations of the 'Chega!' report have yet to be publicly discussed by the Timorese parliament. The report was officially transmitted to Parliament in November 2005 by the then Timorese President Xanana Gusmão.²⁴ Although Parliamentary Committee A (which is mandated to cover issues related to Constitutional issues, Justice, Public Administration, Local Power and Government legislation) expressed its firm intention to debate the report publicly in 2008, this debate has yet to take place.²⁵

2.2 THE JOINT INDONESIA – TIMOR-LESTE TRUTH AND FRIENDSHIP COMMISSION

The Governments of Indonesia and Timor-Leste set up the Truth and Friendship Commission (CTF) 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".²⁶ Local and international NGOs have strongly criticised the institution, partly due to provisions within its mandate allowing for amnesties for perpetrators of serious crimes, including crimes against humanity, which under international law cannot be subject to amnesties, and biased treatment of victims during hearings. The six hearings conducted by the CTF in 2007, during which UN officials did not testify,²⁷ were largely perceived as a platform for those accused of serious crimes to defend themselves without being seriously challenged. This was partly due to poorly designed hearing procedures and the commissioners' lack of experience. Also of concern were the limited number of victims (only 13 out of 56 individuals) who testified at the public hearings, and insufficient witness protection measures in place.²⁸

The 371-page CTF report entitled "Per Memoriam ad Spem" ("From Remembering Comes Hope") was published in July 2008.²⁹ It acknowledged that "gross human rights violations in the form of crimes against humanity" were committed in Timor-Leste in 1999. The violations included murder, rape and other forms of sexual violence, torture, illegal detention and forcible transfer or deportation of populations. The report highlighted the 'institutional' responsibility of pro-autonomy militias,³⁰ the Indonesian military, the Indonesian government, and the Indonesian police for these crimes against humanity and other gross human rights violations. It did not recommend amnesty for suspected perpetrators of past human rights violations, leaving room for possible future criminal proceedings.

The Timorese and Indonesian governments both publicly accepted the findings of the Commission. In a positive move, Susilo Bambang Yudhoyono, Indonesia's President expressed "remorse to all those who suffered the immeasurable pain of physical and psychological wounds when their human rights were violated in East Timor in 1999" when the CTF report was published in July 2008 but stopped short of offering an apology.³¹ To date, neither government has acted on the findings of the report to investigate and prosecute those responsible for the crimes.³²



Civil society demonstration outside the public hearing of the Indonesia-Timor-Leste Truth and Friendship Commission (CTF) in Dili, Timor-Leste on 25 September 2007 © Charles Scheiner

2.3 TOWARDS A REPARATION PROGRAMME?

For many years civil society groups and victims in Timor-Leste have called for reparations for victims of human rights violations. Both the CAVR and CTF reports recommend that reparations be provided for victims of past human rights violations and that concrete measures to identify those who were disappeared in the past be taken.³³ A joint working group on reparations comprising civil society groups, the office of the Ombudsman for Human Rights and Justice (Provedor de Direitos Humanos e Justiça, PDHJ) and the UN Human Rights and Transitional Justice Section submitted in July 2008 a 'Concept Paper on a National Reparations Program for Timor-Leste' to Committee A of the parliament. However, no discussions on reparations have taken place in parliament so far.³⁴

In a recent positive move, the Norwegian government organized a three-day National Consensus Dialogue on Truth, Justice and Reconciliation in mid-June 2009 in Dili, the capital. Various stakeholders participated in the conference, including Timorese government officials, parliamentarians, UN staff and representatives from Non Governmental Organizations (NGOs). Participants were asked to study the CAVR and CTF recommendations. The discussions covered a number of issues including "reparations", "memorialisation", and "justice". There were also discussions to set up an institution within Timor-Leste to follow up and take forward the recommendations of both the 'Chega!' and the CTF reports.³⁵

The June National Consensus Dialogue working group on reparations recommended that a comprehensive program of reparations for 'vulnerable' victims of past crimes be established, and revived the idea to have a joint international and national trust fund to support such an initiative.³⁶ However, there was little political support from government officials for such a measure. President Ramos-Horta raised concerns about the process of defining who is a victim while Prime Minister Xanana Gusmão made clear that he did not want a culture of victimhood developing in Timor-Leste.³⁷ The lack of compensation for victims of human rights violations during the Indonesian occupation is in contrast to major compensation given for victims of the 2006 violence and a generous program of assistance to veterans of the resistance movement.³⁸

In July 2009, the Timorese and Indonesian governments held a meeting to discuss the implementation of the CTF recommendations. According to local sources, although Timorese and Indonesian officials discussed the issue of separated children (Timorese children who were taken by Indonesian soldiers to live in Indonesia), they did not discuss the issue of disappeared persons due to the conflict.³⁹ At this meeting the two governments reached agreement that Indonesia would pay superannuation to former Indonesian civil servants in Timor-Leste, and provide more lenient visa requirements for East-Timorese studying in Indonesia.⁴⁰

3. INADEQUATE CRIMINAL PROCEEDINGS INTO THE 1999 CRIMES

“[B]etween early January and late October [1999] at least 1,200 civilians, and perhaps as many as 1,500, were killed [in East Timor]. Some were shot dead, while others were decapitated, disemboweled or hacked to death with machetes. Many were subjected to torture and ill-treatment. Women and girls suffered rape and other crimes of sexual violence. The systematic violence fueled the forcible displacement of the population on a massive scale.”⁴¹

The UN Security Council has repeatedly expressed their determination to hold to account those responsible for the violence in Timor-Leste in 1999.⁴² However, 10 years on, most perpetrators of the 1999 crimes, including those in command, have yet to be prosecuted before a competent, independent and impartial tribunal, either in Indonesia or Timor-Leste.

Although the truth mechanisms described above are essential to document what really happened, they should not act as a substitute for criminal proceedings which determine individual criminal responsibility, and civil proceedings which determine reparations owed for the crimes. Currently, no one is serving terms of imprisonment in Indonesia, and only one person⁴³ is still serving a prison sentence in Timor-Leste for past gross human rights violations in Timor-Leste in 1999.

3.1 IN INDONESIA

In Indonesia, an ad hoc Human Rights Court set up by the Indonesian government in response to the 1999 violence in Timor-Leste has been widely criticized as falling short of international fair trial law and standards by UN expert bodies, as well as national and international organizations.

The UN Commission of Experts that was commissioned by the then UN Secretary-General Kofi Annan to review the prosecution of crimes in both Indonesia and Timor-Leste concluded in May 2005 that *“the judicial process before the Ad Hoc Court was not effective in delivering justice for the victims of serious violations of human rights ... Many aspects of the ad hoc judicial process reveal scant respect for or conformity to relevant international standards”*.⁴⁴ Amnesty International and others have come to the same conclusions.⁴⁵ Among the issues of particular concern were witness selection; the failure to introduce well-documented evidence regarding the incidents that the prosecution were authorized to

investigate; and ineffective, incompetent and at times intimidating questioning of witnesses, especially victim-witnesses from Timor-Leste.⁴⁶

All 18 defendants originally tried for crimes committed in Timor-Leste during 1999 by the ad hoc Human Rights Court in Jakarta have now all been acquitted by the Human Rights Court or later on appeal.⁴⁷

3.2 IN TIMOR-LESTE

In 2000, the UN Transitional Administration in East Timor (UNTAET) set up the UN Special Panels within Dili District Court, with exclusive jurisdiction over genocide, crimes against humanity, war crimes wherever and whenever they occurred; and over murder, sexual offences and torture that occurred in Timor-Leste between 1 January and 25 October 1999.⁴⁸ The Serious Crimes Unit (SCU) was also set up to conduct investigations and prosecutions of these crimes. When Timor-Leste gained its independence on 20 May 2002, the SCU worked under the legal authority of the Prosecutor General of Timor-Leste.

Pursuant to Security Council resolutions 1543 (2004) and 1573 (2004) the activities of the SCU and the Special Panels for Serious Crimes in Timor-Leste were effectively terminated in May 2005 although they failed to complete their work.⁴⁹ There remained an outstanding 186 murder cases which had been investigated but for which no one had been indicted, and over 400 murder cases which were yet to be investigated.⁵⁰ Furthermore, over 300 individuals indicted by the UN Special Panels for serious crimes lived in Indonesia and were, therefore, outside the territorial jurisdiction of Timor-Leste. The Indonesian government refused to cooperate with the UN Special Panels on the basis that it did not recognize the UN Security Council mandate to try Indonesian citizens in Timor-Leste.

In 2006, while establishing another peacekeeping mission in Timor-Leste (the United Nations Integrated Mission in Timor-Leste, UNMIT), the Security Council decided to “resume [the] investigation functions of the former Serious Crimes Unit, with a view to completing investigations into outstanding cases of serious human rights violations committed in the country in 1999.”⁵¹ The work of this new investigative capacity effectively started in 2008. Although Amnesty International welcomed the revival of the investigative branch of the SCU, it expressed concerns that the SCU prosecutorial functions and the UN Special Panels were not re-established. To date, the Timorese Prosecution Office which is now in charge of bringing new cases to courts has yet to process outstanding 1999 cases.

Today, the lack of commitment by the Timorese government to prosecute the crimes between 1975 and 1999; the lack of cooperation by the Indonesian government to prosecute the crimes genuinely before its national courts or to extradite to Timor-Leste suspects who were indicted; and the notable lack of effective support by the UN Security Council to revive the UN-sponsored process or establish an independent international criminal tribunal has led to continuing impunity.

This situation was predictable. The UN Commission of Experts that was commissioned to review the prosecution of crimes in both Indonesia and Timor-Leste concluded in their August 2005 report that:

“[W]ithout the presence of an international component, it would be impractical to expect that the prosecutorial authorities, Special Panels and defence counsel of Timor-Leste would have the capacity, in the foreseeable future, to undertake the investigation, prosecution, adjudication and defence of serious crimes cases in accordance with international standards.”⁵²

Notwithstanding the lack of political will, which may explain resistance so far by the Timorese leadership to push for accountability for past crimes against humanity, the nascent Timorese justice system remains too weak to deal with the burden of serious crimes without effective international assistance. Despite various programs to support the development of the judicial system, it remains slow and ineffective in addressing crimes, due to a large backlog within the prosecution office (approximately 5,000 cases); language complications (Portuguese is the main legal language which most of the population does not understand); and a lack of adequate staffing and administrative resources.⁵³

4. RECONCILIATION EFFORTS WITHOUT JUSTICE

“My hope for Timor is to have a good future, but with peace and justice. I think if there is no justice for those criminals, especially for those generals who were here, the ones who are presenting themselves as candidates in the elections in Indonesia... What if they become leaders one day in Indonesia? They might attack us again in the future.”

Jose Nunes Serao, 8 September 2008.⁵⁴ Jose was severely injured in the head with a machete when pro-Indonesian militias attacked the Liquica church in April 1999. Jose was holding his four year old son in his arm when he was injured



Liquica Catholic church in Timor-Leste where over 100 persons were killed or injured by pro-Indonesian militia on 6 April 1999 © Amnesty International

“[O]rdinary citizens like us can only sit and look at the ground and ask: when will we get justice if the government lacks the good will?”

Victims' spokeswoman Anita Tilman dos Santos⁵⁵

4.1 COMMUTATIONS OF SENTENCES

Based on a spirit of reconciliation and forgiveness, on 20 May 2008 President Ramos-Horta commuted the sentence of more than half of Timor-Leste's total population of prisoners.⁵⁶ Nine of those who had their sentence commuted had been convicted for murder, assault and sexual offences as crimes against humanity by the UN Special Panels.⁵⁷ This decision, which was upheld by the Court of Appeals in September 2008,⁵⁸ paved the way for all but one of the remaining persons who remained jailed in Timor-Leste for having participated in the 1999 violence to be set free.⁵⁹ So far of the 85 people found guilty by the UN Special Panels, only one remains imprisoned.

4.2 AN AMNESTY LAW FOR CRIMES UNDER INTERNATIONAL LAW?

During its visit to Timor-Leste in June-July 2009, Amnesty International was told that President Ramos-Horta was campaigning in favour of introducing in Parliament a new amnesty law in order to counter possible criminal proceedings into past crimes. During the June 2009 National Consensus Dialogue, the President explicitly called for a separate meeting with some political party representatives where he discussed the possibility of an amnesty.⁶⁰ These moves seem to presage a recent interview given early July 2009 by President Ramos-Horta in which he clearly dismisses the need to hold perpetrators for past crimes to account, and calls for an amnesty law:

“My personal preference is to adopt a law that simply puts an end to the tragic chapters of the past. Let bygones be bygones. Let us not forget the victims and heroes, but let us forgive those who did harm, because God gave us a greater gift: our independence.”⁶¹

Such rhetoric appears consistent with previous positions held by the Timorese President and other senior officials, which are dismissive of calls for further accountability into past crimes.⁶² Friendship with neighbour Indonesia is given the utmost importance and justice for past crimes is seen as a potential threat for the development of a long-term cordial relationship and a ‘stable’ Timor-Leste.⁶³ The pursuit of justice for past crimes is perceived by some as potentially threatening to the country’s stability partly because human rights violations by East Timorese who were serving in the Indonesian security forces or the Timorese armed opposition movement have also been documented.⁶⁴

Amnesty International categorically opposes decisions which, in violation of international law, grant amnesties, to individuals who are responsible for war crimes and crimes against humanity. As expressed by the Office for the United Nations High Commissioner for Human Rights (OHCHR), in one its latest reports:

“[E]xperience has shown that amnesties that foreclose prosecution or civil remedies for atrocious crimes are unlikely to be sustainable, even when adopted in the hope of advancing national reconciliation rather than with the cynical aim of shielding depredations behind a fortress of impunity.”⁶⁵

4.3 CALLS FOR JUSTICE, YET UNHEARD

Throughout its 48 year history Amnesty International has heard many governments telling victims of human rights violations in their countries that the psychological trauma and suffering they experience can be simply legislated away. The reality is the opposite. Telling victims that they are obstructing progress and should put aside their need for justice regarding horrific crimes that have immeasurably changed their lives is unrealistic and exacerbates the harm they already experience.

It goes against what victims in Timor-Leste are calling for today. Survivors and families of the victims are calling for more justice but no amnesties. In April 2009, during the

commemoration of the violent attack by pro-Indonesia militias 10 years ago on the house in Dili of the political leader, Manuel Carrascalao, which killed his son and at least 11 others,⁶⁶ families and victims issued the following statement:

*"Ten years onwards and we stand firm on our demand for justice.... The feeling of distrust will continue to linger since the criminals are not being brought to justice but given amnesty. Hence, this will only give the impression that crimes can go unpunished."*⁶⁷

The lack of any response from the international community to this situation is shameful. After years of demanding justice, the United Nations, which organized the 1999 referendum and whose own staff were attacked, has fallen silent. Security Council members seem to believe that they should not act if neither Timor-Leste nor Indonesia is committed to justice regarding the events of 1999. The Security Council's latest resolution on Timor-Leste, while reaffirming generally the need for accountability and justice, seems to forget the victims of 1999 and focuses solely on the violent events of 2006 and the need for the government of Timor-Leste to implement the recommendations of the United Nations Special Commission of Inquiry report of 2006.⁶⁸ Although this report does not address the acts of violence committed around the referendum that led to Timor-Leste's independence, its conclusions are telling:

*"It is vital to Timor-Leste that justice be done and seen to be done. A culture of impunity will threaten the foundations of the State. The Commission is of the view that justice, peace and democracy are mutually reinforcing imperatives. If peace and democracy are to be advanced, justice must be effective and visible."*⁶⁹

This is as valid for the events of 1999 and the 23 years of human rights violations in Timor-Leste preceding them as the 2006 violence. The Security Council should not forget the victims of these crimes; it should not apply different standards of justice depending on who the victims are, or who the perpetrators were. These heinous crimes, whenever they are committed and whatever the circumstances represent crimes against the whole of humanity and as such there is a universal obligation to ensure justice.

5. CHALLENGES AHEAD: THE LEGACY OF IMPUNITY

“[T]he crisis which occurred in Timor-Leste can be explained largely by the fragility of State institutions and the weakness of the rule of law. Governance structures and existing chains of command broke down or were bypassed; roles and responsibilities became blurred; solutions were sought outside the existing legal framework.”⁷⁰

The UN Special Independent Commission of Inquiry established to review the origins of the 2006 crisis in Timor-Leste, 2 October 2006.

“The issue of justice is important because only through justice can we stop impunity in East Timor. Victims see that perpetrators have not been held responsible for their crimes and this makes them lose confidence in the state and its legal system. Perpetrators feel that they are untouchable and people don’t fear the law, leading to violent crime, abuse of power and corruption”.

Fernanda Borges, Timor-Leste Member of Parliament, Chair of Committee A, June 2009.⁷¹

The impact of impunity for past crimes between 1975 and 1999 on present day Indonesia and Timor-Leste should not be underestimated. In addition to the large number of victims and their families who are denied justice and reparation, both countries are still struggling to build effective criminal justice systems and respect for the rule of law. All too often, current human rights violations by members of the security forces are not effectively investigated and those suspected are not prosecuted before an independent court of law. For history not to repeat itself, particular attention should be paid in strengthening the judiciary, and developing accountability mechanisms within the police and the military.

5.1 IN TIMOR-LESTE

Amnesty International welcomes the ratification by the Timor-Leste government of many international human rights treaties, including the Rome Statute of the International Criminal Court (Rome Statute). These international human rights treaties and their incorporation into national legislation are a first step towards putting in place strong deterrents to prevent future crimes, such as crimes against humanity and war crimes. It is particularly welcome that Rome Statute provisions have been incorporated within the recently passed Penal Code, but the provisions are not yet sufficient to effectively rule out possible impunity for serious crimes.⁷²

Despite these positive moves, the criminal justice system remains weak and unable to act as an effective deterrent to future crimes (see Chapter 3.2). There is currently an ongoing cycle of impunity in addressing recent crimes. Despite the establishment of a UN Special Independent Commission of Inquiry to establish the facts and circumstances relevant to the 2006 crisis, and clarify responsibility and recommend measures of accountability, justice for

these crimes has so far been very slow in coming. Delayed prosecutions mean that many of those who were responsible for the violence have not been held accountable. The Timor-Leste leadership has shown support in favour of “reconciliation” and amnesties, rather than accountability for past crimes, including human rights violations between 1975 and 1999.⁷³

Moreover, internal accountability mechanisms to deal with abuses by members of the security forces remain weak in Timor-Leste. Despite reports of human rights violations including torture and other ill-treatment by the police and military in recent years,⁷⁴ very few have been prosecuted for these abuses.⁷⁵ A vetting and certification process of members of the security forces following the 2006 crisis was conducted for police officers only (not for the armed forces). Although it is now almost complete, it has not yet resulted in any dismissals based on past human rights violations or criminal conduct within the police force, thus sparking doubts as to the efficacy of the process.⁷⁶

5.2. IN INDONESIA

Although Indonesia has now ratified many of the key international human rights treaties such as the International Covenant on Civil and Political Rights (ICCPR) and the UN Convention on Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT), many of the national laws still fall short of fully protecting Indonesians. In particular the Criminal Code has yet to include a comprehensive definition of torture and the Law on Human Rights Court is not fully consistent with the strictest standards of international law, including the Rome Statute, which Indonesia has yet to ratify, despite its intent to do so by the end of 2008.⁷⁷ For example war crimes are not included in the Law on Human Rights Court.⁷⁸

In practice, Indonesia has yet to address entrenched impunity for crimes under international law and past gross human rights violations under the leadership of President Suharto and thereafter in Papua or during martial law in Aceh. Most past crimes and gross human rights violations have yet to be fully investigated and prosecuted, and victims are denied justice and reparations. Human Rights Courts have proved unable to address human rights violations by members of the security forces, and the National Human Rights Commission (Komnas HAM) has so far been unable to take forward cases of past crimes.⁷⁹

The weaknesses of the criminal justice system together with weak accountability mechanisms to address ongoing human rights violations by members of the Indonesian security forces are at the heart of some of the country’s most pressing challenges. Amnesty International and other human rights organizations continue to document abuses by members of the security forces in various parts of the archipelago. They include unlawful killings and torture. In many cases these incidents are not speedily and independently investigated. As a consequence, those responsible are rarely brought to justice, and victims usually do not receive reparations.⁸⁰

6. TOWARDS THE SETTING-UP OF AN AD HOC INTERNATIONAL CRIMINAL TRIBUNAL?

“It is highly unlikely that any government in Indonesia in the foreseeable future (would) feel strong enough to bring to trial surviving Indonesian military officers who perpetrated barbarities in East Timor.” President Jose Ramos-Horta, 24 July 2009.⁸¹

“Justice should be upheld by a court that is open to the public. There is no reason to have good relations with a nation that has committed serious human rights violations if they don’t want to reveal the truth before a court. Why should our country be afraid of them?”

Maubara resident and 1999 victim, Filomena de Jesus Santa, December 2008.⁸²

The idea of an ad hoc International Criminal Tribunal first emerged in 1999 when the international community was assessing the various options in order to hold to account those who perpetrated the most serious crimes in Timor-Leste before and after the UN sponsored referendum. That year the International Commission of Inquiry on East Timor (ICIET) and three UN Special Rapporteurs recommended that an international criminal tribunal be set up unless the Indonesian government initiated criminal proceedings into human rights violations perpetrated by military officials.⁸³ The UN opted for allowing the Indonesian government to conduct its own judicial processes and the Security Council decided to set up a system of hybrid courts - the Special Panels - composed of international and Timorese judges to prosecute the 1999 crimes in Timor-Leste.

The idea of an international criminal tribunal re-emerged in 2003 in a report commissioned by the UN Office of the High Commissioner for Human Rights,⁸⁴ and again in 2005 in the CAVR report⁸⁵ and finally in the UN Commission of Experts’ report.⁸⁶

The Commission of Experts recommended that the Security Council adopt a resolution under Chapter VII of the UN Charter to create an ad hoc international criminal tribunal for Timor-Leste, to be located in a third state, should a series of other recommendations not be implemented. These recommendations pertained to ensuring that prosecutions and criminal proceedings be reviewed and reopened in Indonesia and that the work of the Serious Crimes Process in Timor-Leste be continued “until such time as the investigations, indictments and prosecutions of those who are alleged to have committed serious crimes are completed.”⁸⁷

Four years on, the recommendations of the UN Commission of Experts are yet to be implemented. The Indonesian government has not taken any genuine steps towards holding to account those responsible for crimes against humanity and war crimes in Timor-Leste. At the same time, Timor-Leste continues to refuse to pursue justice in its national courts. Unless there is international intervention, impunity in violation of international law will

continue.

Amnesty International, therefore, calls on the United Nations Security Council, in accordance with its previous resolutions demanding justice for crimes in Timor-Leste, to now take immediate steps to establish a long-term comprehensive plan to end impunity for these crimes and, as part of that plan, immediately set up an international criminal tribunal with jurisdiction over all crimes committed in Timor-Leste between 1975 and 1999. Such a plan should include effective action by Indonesia, Timor-Leste and other countries around the world using universal jurisdiction, extradition and mutual legal assistance to ensure that no perpetrator of crimes under international law escapes international justice or avoids providing reparations. Further, Indonesia, Timor-Leste and all other states should cooperate fully with the work of the international criminal tribunal.

7. RECOMMENDATIONS

“We, the family members, will be very upset if our demands are not realised and if our own government does not listen to us. It is like we are being killed all over again, not in a direct sense like the victims of 1999, but maybe this type of suffering is even worse because it is enduring and we will think about it forever.”

Rita Pereira dos Santos, who lost several family members during militia attacks on Liquica in 1999.⁸⁸

Amnesty International makes the following recommendations, which, if implemented would help to end widespread impunity and provide justice and reparations to the victims in Timor-Leste:

7.1 TO THE TIMOR-LESTE GOVERNMENT:

JUSTICE FOR PAST HUMAN RIGHTS VIOLATIONS

- Publicly commit to ending impunity for past human rights violations to ensure justice for victims;
- Request that the UN Security Council establish a long-term comprehensive plan to end impunity at the international and national level and, as part of that plan, immediately set up an international criminal tribunal with jurisdiction over all crimes committed in Timor-Leste between 1975 and 1999;
- Request international assistance to strengthen the national justice system to investigate and prosecute all crimes under international law committed between 1975 and 1999 (excluding cases that are prosecuted by the proposed international criminal tribunal) before Timor-Leste courts;
- Urge other states to enter into effective extradition and mutual legal assistance agreements with Timor-Leste to enable individuals against whom indictments have been issued to be extradited to Timor-Leste for trial;
- Urge other states to exercise universal jurisdiction over such crimes in fair trials that exclude the death penalty or extradite persons suspected or accused of such crimes to Timor-Leste for prosecution;
- Make a public commitment not to enact amnesties for crimes under international law, including war crimes and crimes against humanity, which are prohibited under international law.

REPARATIONS AND TRUTH

- Discuss publicly in Parliament and in other public institutions the recommendations and findings of the CAVR and CTF reports. Ensure that the CAVR and CTF findings and recommendations are disseminated throughout Timor-Leste to ensure that the population of both Indonesia and Timor-Leste have the same understanding of past history;
- Establish a follow-up mechanism tasked 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;
- Call on Indonesia to provide full and effective reparations to victims of human rights violations committed in Timor-Leste between 1975 and 1999 for which it bears responsibility, including contributing to and cooperating with the work of the above reparations mechanism;
- Establish a public register of missing persons and those killed between 1975 and 1999 and undertake jointly with the Indonesian government a systematic inquiry to establish the whereabouts and fate of those who went missing.

ENHANCING THE RULE OF LAW

- Amend the Penal Code to ensure that it respects international human rights law and standards. In particular, the Penal Code should be brought in line with the strictest requirements of international law, including those in the Rome Statute of the International Criminal Court to ensure that impunity will not be permitted;⁸⁹
- Strengthen internal and external accountability mechanisms to deal with suspected human rights violations by members of the security forces;
- Debate, ratify and implement effectively the International Convention for the Protection of All Persons from Enforced Disappearance.

7.2 TO THE INDONESIAN GOVERNMENT:

JUSTICE FOR PAST HUMAN RIGHTS VIOLATIONS

- Investigate all crimes alleged to have been committed by Indonesian forces and pro-Indonesian militias in Timor-Leste between 1975 and 1999, including those crimes identified in (1) the KPP-HAM (Komisi Penyelidik Pelanggaran Hak Asasi Manusia di Timor Timur, Commission of investigation into human rights violations in East Timor), (2) the

CAVR, (3) the CTF and (4) the SCU indictments. Prosecute, whenever there is sufficient admissible evidence, those suspected of the crimes before national courts which meet international standards of fairness and which do not impose the death penalty. Alternatively extradite them to Timor-Leste or other countries that are willing to prosecute the cases in accordance with international standards and without the death penalty;

- Indonesia should cooperate fully with investigations and prosecutions of persons accused of crimes in Timor-Leste between 1975 and 1999 conducted by an international criminal tribunal, the national courts of Timor-Leste or other national courts, including entering into extradition and mutual legal assistance agreements with Timor-Leste and other governments;
- All military or police officers who have been indicted by the Serious Crimes Unit in Timor-Leste should be suspended from active duty pending the outcome of criminal proceedings to determine whether or not they are guilty of the charges.

REPARATIONS AND TRUTH

- Provide full and effective reparations to victims of human rights violations committed in Timor-Leste between 1975 and 1999 for which it bears responsibility;
- Establish a public register of missing persons and those killed between 1975 and 1999 and undertake jointly with the Timor-Leste government a systematic inquiry to establish the whereabouts and fate of those who went missing;
- Discuss publicly in Parliament and in other public institutions the recommendations and findings of the CAVR and CTF reports. Ensure that the CAVR and CTF findings and recommendations are disseminated throughout the provinces of Indonesia to ensure that the population of both Indonesia and Timor-Leste have the same understanding of past history;
- Support through donation the establishment of a trust fund to provide a comprehensive reparation programme for victims of past crimes (1975-1999).

ENHANCING THE RULE OF LAW

- Amend the Criminal Code and Criminal Procedure Code to ensure that they respect international human rights law and standards;
- Amend the Law on Human Rights Courts to ensure that it is brought in line with provisions set out in the Rome Statute of the International Criminal Court;
- Strengthen internal and external accountability mechanisms to deal with suspected human rights violations by members of the security forces;

- Ratify the Optional Protocol to the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment;
- Ratify the International Convention for the Protection of All Persons from Enforced Disappearance;
- Ratify the Rome Statute of the International Criminal Court.

7.3 TO THE UN SECURITY COUNCIL:

JUSTICE FOR PAST HUMAN RIGHTS VIOLATIONS

- Establish a long-term comprehensive plan to end impunity for past crimes and, as part of that plan, immediately set up an international criminal tribunal with jurisdiction over all crimes committed in Timor-Leste between 1975 and 1999. Such a tribunal should require Indonesia, Timor-Leste and all other states to cooperate fully with its work;
- At the same time, call upon the government of Timor-Leste to take the necessary steps to reform its national justice system and establish a comprehensive strategy so that its national courts can investigate and prosecute all other crimes that the tribunal is unable to prosecute;
- At the same time, call upon the government of Indonesia to take the necessary steps to reform its national justice system and establish a comprehensive strategy to investigate and prosecute persons located on its territory (with the exception of those who are charged by the tribunal, who must be transferred to it) before its national courts or to extradite them to Timor-Leste or other states that are willing to prosecute.

REPARATIONS AND TRUTH

- Support through donation the establishment of a trust fund to provide a comprehensive reparation programme for victims of past crimes (1975-1999);
- Call on the government of Indonesia to provide full and effective reparations to victims of human rights violations committed in Timor-Leste between 1975 and 1999 for which it bears responsibility.

ENHANCING THE RULE OF LAW

- Continue to take measures to support reforms of the security sector and the criminal justice systems in Timor-Leste in accordance with international human rights standards.

7.4 TO THE GOVERNMENTS OF OTHER STATES:

JUSTICE FOR PAST HUMAN RIGHTS VIOLATIONS

- Support the establishment of the proposed international criminal tribunal;
- Once the tribunal is established, provide it with full cooperation and support, including funding, technical assistance and expert personnel;
- Enact and exercise universal jurisdiction laws so that their national courts can investigate and prosecute persons accused of crimes against humanity, war crimes, torture, extrajudicial killings and enforced disappearances before their national courts on behalf of the international community;
- Enter into effective extradition and mutual legal assistance agreements with Timor-Leste and Indonesia to facilitate the prosecutions and trials, in accordance with international fair trial standards, of all suspected perpetrators of crimes against humanity and other serious crimes under international law;
- Provide technical and other assistance to strengthen the criminal justice systems of Indonesia and Timor-Leste.

REPARATIONS AND TRUTH

- Contribute to any funds established to provide reparations to the victims of crimes committed in Timor-Leste between 1975 and 1999;
- Enact and exercise universal civil jurisdiction laws so that their national courts can consider reparations claims by victims of crimes against humanity, war crimes, torture, extrajudicial killings and enforced disappearance in Timor-Leste against those responsible for the crimes, including individual perpetrators and the government of Indonesia.

ENHANCING THE RULE OF LAW

- Donor countries should take measures to support reforms of the Security Sector and the Criminal Justice Systems in Indonesia and Timor-Leste.

1 See Amnesty International and Judicial System Monitoring Programme (JSMP), "Justice for Timor-Leste: the way forward", AI Index: ASA 21/006/2004, April 2004, p 26. Weblink: <http://www.amnesty.org/en/library/asset/ASA21/006/2004/en/c3533267-d62b-11dd-ab95-a13b602c0642/asa210062004en.html>, accessed on 27 July 2009. Figures given for the number of deaths resulting from the attack vary between the UN indictment and the Jakarta indictments. They are much lower in the Jakarta indictment.

2 An overwhelming majority of the East Timorese population voted for independence (78.5%).

3 See for example, Amnesty International reports and documents from this period. Available on: www.amnesty.org.

4 See Amnesty International and JSMP. Supra No1.

5 See "Report to the Secretary-General of the Commission of Experts to Review the Prosecution of Serious Violations of Human Rights in Timor-Leste (then East Timor) in 1999", 26 May 2005, S/2005/458, p6.

6 One person convicted by the UN Special Panels is still serving a sentence. In addition, one person indicted by the Serious Crimes Unit was detained in December 2008 and is in pre-trial detention. Email correspondence with Amnesty International, 3 August 2009.

7 The CAVR resulted from discussions at a meeting in June 2000 with representatives of East Timorese civil society, the Catholic Church and community leaders on transitional justice mechanisms, supported by the UNTAET Human Rights Unit. It was set up in 2001 through UNTAET Regulation 2001/10. See the CAVR report, 'Chega!' 2005, Weblink: <http://www.cavr-timorleste.org/en/index.htm>, accessed on 27 July 2009.

8 "Timor-Leste: Annan calls for steps to ensure justice for 1999 rights violations", 4 August 2006. Weblink: <http://www.un.org/apps/news/story.asp?NewsID=19415&Cr=timor&Cr1=leste>, accessed on 5 August 2009.

9 These concerns echo the findings of the CAVR report, which concludes in its recommendations on justice and truth that based on nearly 8,000 individual statements, "the demand for justice and accountability remains a fundamental issue in the lives of many East Timorese people and a potential obstacle to building a democratic society based upon respect for the rule of law and authentic reconciliation between individuals, families, communities and nations". In Part 11 Recommendations, Chapter 7 "Justice and Truth", in 'Chega!' Report, 2005, Supra No7. Also one of the findings of a recent process of victim consultation undertaken by civil society groups was that victims who gave statements to the CAVR or the Serious Crimes Unit are still waiting for justice, acknowledgement or assistance. A total of 372 victims (146 women and 226 men) participated in the consultation, across 13 districts. Victims' views were sought in focus group discussions and through individual survey forms. See "Concept Paper on a National Reparations Program for Timor-Leste" submitted to Parliamentary Committee A in July 2008 by the joint working group on reparations comprising Fokupers, Hak Association, ICTJ, the office of the Ombudsman for Human Rights and Justice (Provedor de Direitos Humanos e Justiça, PDHJ), Post-CAVR Technical Secretariat and UNMIT's Human Rights and Transitional Justice Section, p3.

10 General Wiranto lost the elections (July 2009).

11 The Serious Crimes Unit indictment against Wiranto was issued in February 2003. See UN Wire, "U.N. Indicts Indonesian Ex-Defense Chief Wiranto, Others", http://www.unwire.org/unwire/20030225/32219_story.asp.

12 See for example Amnesty International Press Release, "Timor-Leste: End culture of impunity", 12 February 2008.

13 UN Secretary General, "The rule of law and transitional justice in conflict and post-conflict societies" (UN document S/2004/616), August 2004, p1 and p3. Weblink: <http://daccessdds.un.org/doc/UNDOC/GEN/N04/395/29/PDF/N0439529.pdf?OpenElement>, accessed on 24 July 2009.

14 See the United Nations Integrated Mission In Timor-Leste (UNMIT) website. Weblink: <http://unmit.unmissions.org/Default.aspx?tabid=739>, accessed on 4 August 2009.

15 Interview with international NGO Progressio, 4 September 2008.

16 See Amnesty International report "East Timor: The Santa Cruz Massacre", AI Index: ASA 21/23/1991. See also Amnesty International "East Timor: after the massacre" (AI ASA 21/24/91), Weblink: <http://www.amnesty.org/ar/library/asset/ASA21/024/1991/ar/60ecf6a7-ee41-11dd-99b6-630c5239b672/asa210241991en.pdf>, accessed on 3 August 2009.

17 In 1994, Indonesian General Sintong Panjaitan was found liable by a US court following a damage claim in a civil suit launched by the mother of Kamal Bamadhaj, the New Zealand student killed in the 1992 Santa Cruz massacre in Dili. He did not appear in court and has yet to pay the fine. In "Masters of Terror", Gerry Van Klinken, Weblink: <http://www.yayasanhak.minihub.org/mot/Sintong%20Panjaitan.htmwww.google.com>, accessed on 7 August 2009.

18 As pointed out by the 'Chega!' report, it is very difficult to establish definite statistics of the number of people who died as a result of the conflict. The Commission estimates that "the minimum-bound for the number of conflict-related deaths during the Commission's reference period, 1974 to 1999, is 102,800 (+/- 12,000). This estimate is derived from (i) an estimate of 18,600 total killings (+/- 1000) ... and (ii) an estimate of 84,200 (+/- 11,000) deaths due to hunger and illness which exceed the total that would be expected if the death rate due to hunger and illness had continued as it was in the pre-invasion peacetime period". In Part 6: The Profile of Human Rights Violations in Timor-Leste, 1974 to 1999, Supra No7.

19 The 'Chega!' report covers the period from 1974 until 1999; however Indonesian invasion and subsequent occupation started in 1975. For the purpose of this report, Amnesty International focuses on human rights violations between 1975 and 1999.

20 See CAVR report, Chapter 7.2 on "Unlawful Killings and Enforced Disappearances"; Chapter 7.4 on "Detention, Torture and Ill-treatment " and Chapter 7.7 on Sexual Violence . Supra No7.

21 See the 'Chega!' report, Chapter on recommendations, Part 11 on Recommendations, pp 23-26. Supra No7.

22 See the 'Chega!' report, Part 8 on Responsibility and Accountability, pp110-11, Supra No7.

23 Colonel Burhanuddin Siagian was serving as military commander in the city of Jayapura, Papua province in 2007 until mid-2008. See ETAN, "Indicted officer removed from West Papua", 21 August 2008. Weblink: <http://www.etan.org/news/2008/08siagian.htm>, accessed on 7 August 2009. Although he has been indicted twice for crimes against humanity in Timor-Leste, and was named as a suspect in Indonesia's own commission of investigation into the human rights violations which occurred in Timor at the time, he has never faced trial. For details about the two indictments which

were issued respectively in February and July 2003, see JSMP website. Weblink: <http://jsmp.minihub.org/Trialsnew.htm>, accessed on 7 August 2009.

24 See Amnesty International, "Denial of Justice", AI Index: ASA 57/005/2005, November 2005, Weblink: <http://asiapacific.amnesty.org/library/Index/ENGASA570052005?open&of=ENG-TMP>, accessed on 27 July 2009.

25 See Weblink: <http://www.cavr-timorleste.org/updateFiles/english/Draft%20Resolution%20CAVR%20080515%20English%20Final.PDF>.

26 Article 12, Terms of Reference for the Commission of Truth and Friendship.

27 See "Secretary General says UN officials will not testify at Timor-Leste commission", 26 July 2007. Weblink: <http://www.un.org/News/Press/docs/2007/sgsm11101.doc.htm>, accessed on 7 August 2009.

28 See in particular the International Centre for Transitional Justice (ICTJ), "Too Much Truth, Too Little Justice: Monitoring Report on the Commission of Truth and Friendship in Indonesia and Timor-Leste", January 2008, and "An Unfinished Truth: An Analysis of the Commission of Truth and Friendship's Final Report on the 1999 Atrocities in East Timor", March 2009. Weblink: <http://www.ictj.org/images/content/9/7/972.pdf> and <http://www.ictj.org/static/Asia/Timor/UnfinishedTruthHirst.pdf>, accessed on 28 July 2009.

29 See Weblink: http://socrates.berkeley.edu/~warcrime/East_Timor_and_Indonesia/Reports/PER%20MEMORIAM%20AD%20SPEM%20Eng_ver.pdf, accessed on 28 July 2009.

30 Local militias supporting the autonomy of East Timor within Indonesia, and campaigning against independence, at the time of the UN sponsored referendum.

31 See statement by Susilo Bambang Yudhoyono at the presentation of the CTF report, 15 July 2008, p3. Weblink: http://www.amb-indonesie.fr/~upload/50CAE6A7-EA15-43FB-A9F8-E0634F42C5D8/docs/news/759_01.pdf, accessed on 18 August 2009.

32 It must be noted that both the Terms of Reference and Recommendations of the CTF did not call for prosecution of those responsible.

33 The CTF report recommends the setting-up of a Commission for the Disappeared to gather data and provide information. The Commission should also be tasked with identifying the children who were separated from their families and notify them of their whereabouts. The CAVR reports recommends the need to establish a public register of the disappeared and, undertake jointly a systematic inquiry to establish the whereabouts and fate of those on the list.

34 Email from confidential source to Amnesty International, 12 August 2009. See for instance the "Concept Paper on a National Reparations Program for Timor-Leste" Supra No9.

35 Interviews with Amnesty International, Timor-Leste, 30 June and 2 July.

36 See Section 25, UNTAET Regulation 2000/15. See also the UN Security Council "Report of the Secretary-General on Timor-Leste pursuant to Security Council resolution 1690 (2006)", (UN document S/2006/628), 8 August 2006, Weblink: <http://daccessdds.un.org/doc/UNDOC/GEN/N06/448/33/PDF/N0644833.pdf?OpenElement>, accessed on 29 July 2009. In this report, the UN Secretary-General recommended that a solidarity fund be established by the United Nations to accept voluntary contributions from Member States for the purpose of funding a community restoration program and a justice program in Timor-Leste. Such a community restoration program was aimed at supporting 'collective restorative measures', 'individual restorative measures', and 'reconciliatory measures'.

37 Email from confidential source to Amnesty International, 3 August 2009.

38 See the "Concept paper on a National Reparations Program for Timor-Leste" Supra No9.

39 Email from confidential source, Supra No33. The discussion on disappeared persons due to the conflict was deferred until this had been cleared with officials in Jakarta.

40 See Supra No29. See also the Jakarta Globe, "Government to ease Visa Limits for East Timor Students, Give Civil Servants Pensions", 14 July 2009.

41 "East Timor 1999 Crimes against Humanity", A report commissioned by the United Nations Office of the High Commissioner for Human Rights (OHCHR), By Geoffrey Robinson, University of California Los Angeles, July 2003, p1.

42 See for instance UN Security Council resolutions 1264(1999) and 1272(1999).

43 See Supra No6.

44 See the UN Commission of Experts report, "Report to the Secretary-General of the Commission of Experts to Review the Prosecution of Serious Violations of Human Rights in Timor-Leste (the then East Timor) in 1999" (UN Document S/2005/458), 26 May 2005, Weblink: <http://daccess-ods.un.org/access.nsf/Get?OpenAgent&DS=S/2005/458&Lang=E&Area=UNDOC>, accessed on 11 August 2009.

45 See Amnesty International and JSMP, Supra No1. See also the report of the Truth and Friendship Commission, pp93-105, Supra No29.

46 See Amnesty International and JSMP, Chapter 5, Supra No1.

47 In April 2008, Eurico Guterres, a Timorese militiaman, who had been convicted of crimes against humanity by the Human Rights Court was set free following his acquittal by the Indonesian Supreme Court. He was the only person who was still serving a term of imprisonment in Indonesia for the 1999 violence.

48 See UNTAET Regulation 2000/15 on the Establishment of Panels with Jurisdiction over Serious Criminal Offences, (UN Doc. UNTAET/REG/2000/15), 6 June 2000 (Henceforth, UNTAET Regulation 2000/15).

49 See Amnesty International "Timor-Leste: Security Council inaction on justice for Timor-Leste leaves fight against impunity in limbo", AI Index: 57/007/2005, Weblink: <http://www.amnesty.org/en/library/info/ASA57/004/2005/en>, accessed on 27 July 2009.

50 See "Report of the Secretary-General on justice and reconciliation for Timor-Leste", S/2006/580, 26 July 2006, p3. Weblink: <http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/TL%20S2006580.pdf>, accessed on 5 August 2009.

51 Security Council Resolution 1704 (2006).

52 See the UN Commission of Experts report, para21 in recommendations and paras34, 136, 137, 138 and 150, Supra No44.

53 Amnesty International interviews, Timor-Leste, 29 and 30 July 2009. See also ICTJ, "Security Sector Reform", p14. See also JSMP "Ministry of Justice strategic planning: a positive step towards developing the justice sector", April 2009.

54 Interview with international NGO Progressio, 8 September 2008.

55 In JSMP, "Timor-Leste justice not well served", 31 December 2008. Weblink: <http://1999horrorsfeasttimor.blogspot.com/2008/12/timor-leste-justice-not-well-served.html>, accessed on 7 August 2009.

56 94 of Timor-Leste's 179 prisoners received pardon or commutation of their sentence on 20 May 2008. In "Report on human rights developments in

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- Timor-Leste- The security sector and access to justice 1 September 2007 – 30 June 2008”, UNMIT, p12. Weblink: <http://unmit.unmissions.org/Portals/UNMIT/Human%20Rights/UNMIT%20Human%20Rights%20Report%2020%20August%202008.pdf>, accessed on 6 August 2009.
- 57 See OCHR report, “Report on Human Rights Development in Timor-Leste”, p12. Weblink: <http://www.ohchr.org/Documents/Countries/UNMIT200808.pdf>, accessed on 11 August 2009.
- 58 International Crisis Group report, “Timor-Leste: No time for Complacency”, 9 February 2009, p11.
- 59 For example, militia leader Joni Marques’ sentence was halved to 12 years by President Ramos-Horta in May 2008. Originally set at 33 years, for crimes against humanity, his term had already been reduced by nine years in 2004. Joni Marques was eventually set free on court orders in June 2008.
- 60 Interviews with Amnesty International, Timor-Leste, 30 June 2009.
- 61 Foreign Policy, Simon Roughneen, “Seven Questions: José Ramos-Horta. East Timor’s Nobel Prize-winning president asks, just who is the failed state here?”, 9 July 2009, Weblink: http://www.foreignpolicy.com/articles/2009/07/09/seven_questions_jose_ramos_horta?, accessed on 27 July 2009.
- 62 The then Timor-Leste President, Xanana Gusmão, described in January 2006 the CAVR recommendations on justice for past crimes and reparations for victims “grandiose idealism”. In CAVR Secretariat, “Report on the Post-CAVR Technical Secretariat Dissemination Program”, January 2007, pp3-4. Weblink: <http://www.cavr-timorleste.org/updateFiles/english/Dissemination/Disseminating%20Chega.PDF>, accessed on 27 July 2009.
- 63 Interviews with Amnesty International, Timor-Leste, 29-30 June and 2 July 2009. See also for example paras90-91 in the UN Commission of Experts Report, p27, Supra No45 and a recent interview with President Ramos-Horta, Supra No61.
- 64 Interviews with Amnesty International, Timor-Leste, 2 July 2009.
- 65 “Rule of Law tools for post conflict states - Amnesties”, United Nations, New York and Geneva, 2009. HR/PUB/09/1, p1, Supra No1. [p1]
- 66 See Amnesty International, “Indonesia: Struggle against impunity -- one step forward, two steps back”, AI Index: ASA 21/008/2001. See also, ‘Chega!’ report, Chapter 7.2 on “Unlawful Killings and Enforced Disappearances”, p255, Supra No7.
- 67 The full text is available on <http://www.laohamutuk.org/Justice/99/09CarrascalaoMassacre.htm>, accessed on 5 August 2009.
- 68 Report of the United Nations Independent Special Commission of Inquiry for Timor-Leste, p3, S/2006/822, Weblink: <http://www.ohchr.org/Documents/Countries/COITimorLeste.pdf>, accessed on 5 August 2009.
- 69 See Report of the Independent UN Special Commission of Inquiry for Timor-Leste, Supra No68.
- 70 See Report of the Independent UN Special Commission of Inquiry for Timor-Leste, p2, Supra No68.
- 71 Presentation by Fernanda Borges, President of the National Union Party (Partido Unidade Nacional, PUN), National Consensus Dialogue, 17-19 June 2009.
- 72 Amnesty International will publish separate comments on the incorporation of the Rome Statute provisions within the Timor-Leste Penal Code.
- 73 See “Report of the Secretary-General on the United Nations Integrated Mission in Timor-Leste (for the period from 9 July 2008 to 20 January

2009)", para 39. See also ICTJ, "Security Sector Reform in Timor-Leste", p14. Weblink: http://ictj.org/static/Publications/ICTJ_TLS_SSR_pb2009.pdf, accessed on 27 July 2009.

74 See for example Human Rights Watch "Tortured beginnings - Police Violence and the Beginnings of Impunity in East Timor", April 2006, Weblink: <http://www.hrw.org/en/reports/2006/04/19/tortured-beginnings>, accessed on 28 July 2009.

75 In October 2008, the Baucau District Court sentenced a national police officer to six years' imprisonment for killing a man during an election rally in Viqueque District in 2007. However no member of the security forces had been brought to justice for human rights violations which were committed during the 2008 states of exception by January 2009, in the Report of the Secretary-General on the United Nations Integrated Mission in Timor-Leste (for the period from 9 July 2008 to 20 January 2009), 4 February 2009, S/2009/72. Weblink: http://unmit.unmissions.org/Portals/UNMIT/latest_docs/SG_Report_20090204-En.pdf, accessed on 28 July 2009.

76 Interviews with Amnesty International, Timor-Leste, 30 June and 2 July. See also "Report on Human Rights Developments in Timor-Leste" Supra56 and ICTJ, "Security Sector Reform in Timor Leste", June 2009. Weblink: http://ictj.org/static/Publications/ICTJ_TLS_SSR_pb2009.pdf, accessed on 14 August 2009. Abilio Mesquita, who is currently facing serious charges in connection with the 2006 crisis, was dismissed, but he did not register for certification.

77 See Indonesian Human Rights National Action Plan 2004- 2009, Presidential decree No40/2004.

78 For further analysis of Law 26/2000 see Amnesty International "Indonesia: Comments on the Law on Human Rights Courts (Law 26/2000)", February 2001, AI Index: ASA 21/005/2001. Weblink: <http://www.amnesty.org/en/library/asset/ASA21/005/2001/en/5cf4a521-dc3f-11dd-a4f4-6f07ed3e68c6/asa210052001en.pdf>, accessed on 5 August 2009.

79 For further information, see for example, Amnesty International, "Briefing to the UN Committee against Torture", AI Index: ASA 21/003/2008, April 2008. Weblink: <http://www.amnesty.org/en/library/info/ASA21/003/2008>, accessed on 28 July 2009.

80 See for example, Amnesty International "Jailed for raising a flag", AI Index: ASA 21/008/2009, March 2009, Weblink: <http://www.amnesty.org/en/library/info/ASA21/008/2009/en>, accessed on 28 July 2009; Amnesty International "Unfinished business – Police Accountability in Indonesia", AI Index: 21/013/2009, June 2009, Weblink: <http://www.amnesty.org/en/library/info/ASA21/013/2009/en>, accessed on 28 July 2009; and "Briefing to the UN Committee against Torture", Supra No80.

81 Australian Associated Press (AAP), "Horta hopes Balibo inspires policy change from Australia", 24 July 2009.

82 In JSMP, Supra No55.

83 See JSMP and Amnesty International report, pp8 and 9, Supra No1.

84 See "East Timor 1999 Crimes against Humanity", Chapter 12, "International Responsibility", pp264-279, Supra No7.

85 "The United Nations and its relevant organs, in particular the Security Council, remains seized of the matter of justice for crimes against humanity in Timor-Leste for as long as necessary, and be prepared to institute an International Tribunal pursuant to Chapter VII of the UN Charter should other measures be deemed to have failed to deliver a sufficient measure of justice and Indonesia persists in the obstruction of justice", Recommendation 7.2.1, 'Chega!' report.

86 See the UN Commission of Experts Report, Supra No44.

87 See the UN Commission of Experts Report, p7, para22, Supra No44.

88 In JSMP, Supra No55.

89 See Supra No72.



WHETHER IN A HIGH-PROFILE CONFLICT OR A FORGOTTEN CORNER OF THE GLOBE, **AMNESTY INTERNATIONAL** CAMPAIGNS FOR JUSTICE, FREEDOM AND DIGNITY FOR ALL AND SEEKS TO GALVANIZE PUBLIC SUPPORT TO BUILD A BETTER WORLD

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'WE CRY FOR JUSTICE'

IMPUNITY PERSISTS 10 YEARS ON IN TIMOR-LESTE

On 30 August 1999, the Timorese people voted overwhelmingly in favour of independence from Indonesia in a UN-sponsored referendum. The lead-up to the polls and its aftermath were marred by crimes against humanity and other serious human rights violations committed by pro-Indonesian militias backed by the Indonesian military, claiming at least 1,200 lives.

Ten years on, calls for justice for the victims of human rights violations committed during that period have yet to be fulfilled. Despite various national and internationally sponsored justice initiatives over the last decade, most of those suspected of having committed crimes against humanity in 1999 are still at large in Indonesia, and have not been brought before an independent court.

In this report, Amnesty International sets out its recommendations to the governments of Timor-Leste and Indonesia, calling on them to develop and implement strategies that fully address the legacy of impunity for such crimes. Both the Timorese and the Indonesian governments have embraced "reconciliation" at the expense of justice. This path sets a dangerous precedent for the development of the rule of law in both countries.

Amnesty International urges the UN Security Council, previously a vocal proponent of justice for the crimes committed in 1999, to redouble its efforts by establishing a long-term comprehensive plan to end impunity. As part of the plan, it should immediately set up an international criminal tribunal with jurisdiction over all crimes under international law committed in Timor-Leste between 1975 and 1999.

Amnesty International
International Secretariat
Peter Benenson House
1 Easton Street
London WC1X 0DW
United Kingdom

www.amnesty.org

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