

Ref: IOR 40/2009.177
AI Index: ASA 57/002/2010

H.E. the Permanent Representative

23 February 2010

**AMNESTY
INTERNATIONAL**



AMNESTY INTERNATIONAL
United Nations Office
777 UN Plaza, 6th Floor,
New York, NY 10017, USA
T: +1 212 867 8878 F: +1 212 370 0183
E: aiunnn@amnesty.org W: www.amnesty.org

OPEN LETTER

To all members of the Security Council: the situation of justice in Timor-Leste

Dear Ambassador,

As the Security Council considers the renewal of the mandate of the United Nations Integrated Mission in Timor-Leste (UNMIT), due to expire on 26 February 2010, I am writing to urge the Security Council to take immediate steps to address the continuing lack of accountability for crimes against humanity and other grave human rights violations which occurred in Timor-Leste (then East Timor) under Indonesia's occupation (1975-1999).

In his report to the Security Council of October 2009 (S/2009/504) on the UNMIT, Secretary-General Ban Ki-moon highlighted his concerns over the enduring impunity for past crimes and the need to address accountability: "...victims and their families are still seeking justice and reparations for criminal acts committed from 1974 to 1999. The prolonged delay in delivering justice and providing reparations may further adversely affect public confidence in the rule of law." This month, in his new report on UNMIT (S/2010/85), the Secretary-General added: "[w]hile recognizing the difficulties involved in establishing accountability for past crimes, especially for a young nation still striving for stability and national unity, I remain concerned, as conveyed in my previous report... that the prolonged delay in delivering justice and providing reparations to victims and their families may further adversely affect public confidence in the rule of law."

The Secretary-General's concerns echo the findings of both the October 2009 report of an independent comprehensive needs assessment of the East Timorese justice sector composed of a team of legal and judicial experts, and the assessment of the UN Technical Assessment Mission (TAM) which was sent to Timor-Leste in January 2010 to assess the future role that UNMIT should play during the 2010-2012 period. Both reports identified deficiencies and challenges regarding the rule of law, judicial independence, and confronting impunity, inter alia. The report of the TAM, as quoted in the latest Secretary-General report on UNMIT, found that the Timorese formal justice system was "*characterised by a lack of public confidence underpinned by perceived impunity. Furthermore the principle of separation of powers has not always been respected.*" This report further stated that "*recent Presidential pardons and commutations of sentences involving a number of cases from 2006 and other cases have further contributed to perceptions of impunity.*"

The TAM report strongly advised that there was a need to continue investigations into past abuses, including the crimes committed in 1999: "*the completion of all investigations by the Serious Crimes Investigation Team remains important and will keep open the possibility of prosecution. Perpetrators can only be brought to justice in the future if sufficient evidence is collected and preserved now.*"

The report also emphasised the need for the United Nations to reiterate “*its firm position that there can be no amnesty or impunity for serious crimes such as war crimes, crimes against humanity and genocide.*”

In Amnesty International’s most recent report, “We Cry for Justice – Impunity persists ten years on” (AI Index: ASA: 57/001/2009), the organization warned the Security Council that persistent impunity may continue to act as a threat to the country’s stability. On two separate occasions since independence, in 2006 and again in 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 abuses.

As expressed in our previous letter to the Council on the situation in Timor-Leste, the release by the Timor-Leste government, following a request by the Indonesia government, of indicted militia leader, Martenus Bere, who was charged by the United Nations Serious Crimes Unit in 2003 with the extermination of civilians and other crimes against humanity in 1999 in the town of Suai, illustrates clearly that the governments of Timor-Leste and Indonesia are unwilling to fulfil their obligations under international law to prosecute past crimes despite victims’ demands. Bere’s release also confirms the need for the international community to step in and establish an international criminal tribunal to prosecute these crimes.

Pursuant to Security Council resolutions 1264 and 1272 and subsequent resolutions demanding that persons responsible for acts of violence in 1999 be brought to justice, and in line with the views and recommendations adopted by the victims’ congress held in Dili in September 2009, ANTI (the Timor-Leste National Alliance for an International Tribunal), a coalition of Timorese non governmental organizations, UN expert bodies and others, Amnesty International urges the Security Council to establish a long-term comprehensive plan to end impunity. As part of that plan, the Council should establish an international criminal tribunal with jurisdiction over crimes committed in Timor-Leste during Indonesian occupation (1975-1999). Such a tribunal should be able to ensure justice in representative cases and, in doing so, act as a catalyst for national justice in others. Furthermore, the comprehensive plan to end impunity should ensure that victims of human rights violations between 1975 and 1999 are provided with full and effective reparations.

Further, in accordance with the recommendations contained in the most recent Secretary-General’s report on UNMIT and the October 2009 independent comprehensive needs assessment of the Timor-Leste justice sector, the Security Council should state clearly in its upcoming resolution renewing UNMIT’s mandate:

- that there will be no impunity for crimes against humanity and other grave human rights violations committed in 1999 and during the time of Indonesian occupation (1975-1999);
- that UNMIT’s Serious Crimes Investigation Team will complete all investigations with a view to proceeding with judicial prosecutions in the future and calling on the governments of Timor-Leste and Indonesia to cooperate fully with the investigations;
- that UNMIT will support the development of a strategy for arresting and prosecuting those charged with crimes between 1975 and 1999 including in situations where suspects return to Timor-Leste, to make sure that those defendants are taken into custody and are brought before the courts promptly;
- that UNMIT will support the development of a transparent process for granting pardons and commutation of sentences that will include input from affected parties;
- that UNMIT will support efforts to establish a follow-up institution to implement the recommendations of the report of the Commission for Reception, Truth and Reconciliation and the report of the Commission for Truth and Friendship;
- that the Timor-Leste and Indonesian governments should cease political interference with the Timorese

judiciary that clearly undermines the separation of powers and the independence of the judiciary.

We hope that your country will consider and express support for these recommendations.

Yours sincerely,

Renzo Pomi
Amnesty International Representative at the United Nations