

INTERNATIONAL CRIMINAL COURT

AMNESTY
INTERNATIONAL



TIMOR-LESTE
JUSTICE IN THE SHADOW



CAMPAIGN FOR
INTERNATIONAL
JUSTICE

AMNESTY
INTERNATIONAL



Amnesty International is a global movement of 2.8 million supporters, members and activists in more than 150 countries and territories who campaign to end grave abuses of human rights.

Our vision is for every person to enjoy all the rights enshrined in the Universal Declaration of Human Rights and other international human rights standards.

We are independent of any government, political ideology, economic interest or religion and are funded mainly by our membership and public donations.

Amnesty International Publications

First published in 2010 by
Amnesty International Publications
International Secretariat
Peter Benenson House
1 Easton Street
London WC1X 0DW
United Kingdom
www.amnesty.org

© Amnesty International Publications 2010

Index: ASA 57/001/2010
Original language: English
Printed by Amnesty International,
International Secretariat, United Kingdom

All rights reserved. This publication is copyright, but may be reproduced by any method without fee for advocacy, campaigning and teaching purposes, but not for resale. The copyright holders request that all such use be registered with them for impact assessment purposes. For copying in any other circumstances, or for re-use in other publications, or for translation or adaptation, prior written permission must be obtained from the publishers, and a fee may be payable.

Cover photo: First national congress for victims of human rights violations between 1974 and 1999.
Dili, Timor-Leste, September 2009.

© International Center for Transitional Justice

CONTENTS

1. Introduction	3
1.1 Summary	4
1.2 Key Recommendations	5
2. Definitions of crimes.....	7
2.1 Article 6 of the Rome Statute: genocide	8
2.2 Article 7 of the Rome Statute: crimes against humanity	9
2.2.2 Acts constituting crimes against humanity	10
2.3 Article 8 of the Rome Statute: war crimes	13
2.3.1 Threshold	14
2.3.2 Grave breaches of the Geneva Conventions.....	14
2.3.3 Other war crimes in international armed conflict listed in the Rome Statute	15
2.3.4 War crimes in international armed conflict omitted from the Rome Statute but listed in treaties.....	16
2.3.5 Rules of customary international humanitarian law in international armed conflict	17
2.3.6 War crimes in non-international armed conflict	18
2.3.7 Gaps in the Rome Statute	19
3. Exercising universal jurisdiction in all cases of crimes under international law.....	23
4. Principles of criminal responsibility	24
4.1 Article 26 of the Rome Statute: exclusion of jurisdiction over persons under 18	24
4.2 Article 28 of the Rome Statute: responsibility of commanders and other superiors.....	24
4.3 Article 33 of the Rome Statute: superior orders and prescription of law	25
5. Elimination of bars to investigation and prosecution.....	27
5.1 National amnesties and pardons	27

5.2 Article 27 of the Rome Statute: irrelevance of official capacity	29
5.3 Ensuring fair trials without the death penalty.....	29
5.4 Ensuring that victims can have an effective right to reparations.....	30
6. Co-operation with the International Criminal Court.....	32
7. Recommendations.....	33
ANNEX 1 - Comparison between Rome Statute provisions and other international law obligations and the legislation of Timor-leste	36

1. INTRODUCTION

“The establishment of the Court is still a gift of hope to future generations, and a giant step forward in the march towards universal human rights and the rule of law.”

Kofi Annan, the seventh Secretary-General of the United Nations, 18 July 1998 at the signing of the Rome Statute of the International Criminal Court in Rome.

A few months before Timor-Leste’s accession to the Rome Statute of the International Criminal Court (thereafter called the Rome Statute) on 6 September 2002, Peace Laureate José Ramos-Horta, today’s Timor-Leste President, praised the role of the International Criminal Court (ICC), qualifying the new institution of “the sharpest expression of developments in international humanitarian and human rights laws”. He further added:

“It is crucial not only for East Timor to ratify this treaty at this time in history but for countries in Asia and elsewhere in the world that have witnessed and experienced first hand the atrocities committed by those in power and those who hold guns and use them against innocent civilians, most of whom are women and children... There is a need to prevent violence and allow the rule of law to take its due course in trying to bring to justice those responsible for such horrendous crimes... The ICC can be a rallying point for those who seek peace through the use of the rule of law.”¹

Timor-Leste’s accession to the Rome Statute constituted a significant step towards reaffirming the need to uphold the rule of law and condemning the most heinous crimes under international law, which occurred on a large scale in Timor-Leste during Indonesia’s occupation.² It stands in sharp contrast with the recent attitude of the Timorese government towards justice for past crimes against humanity and other serious human rights violations which occurred under Indonesian occupation between 1975 and 1999 and the prevailing culture of impunity.³

As stated in the Preamble of the Rome Statute, the States Parties to this Statute, recognize “that

¹ Delivered at the closing rites of the Workshop on the International Criminal Court, organized by NGO Forum and Forum Asia, 26-28 June, 2002, Dili, Timor-Leste. Weblink: <http://www.etan.org/et2002b/june/23-30/27horta.htm>, accessed on 23 February 2010.

² For details of the crimes against humanity and other serious human rights violations which occurred during Indonesian occupation, see the report of the Commission for Reception, Truth and Reconciliation. Weblink: <http://www.cavr-timorleste.org/en/chegaReport.htm>, accessed on 11 January 2010.

³ Amnesty International report *We cry for justice, Impunity persists 10 years on in Timor-Leste*, (Index: ASA 57/001/2009), 27 August 2009. Weblink: <http://www.amnesty.org/en/library/asset/ASA57/001/2009/en/68e037e2-b48a-4eec-a0c8-f108dca529co/asa570012009eng.pdf>, accessed on 23 February 2010.

such grave crimes [genocide, crimes against humanity and war crimes] threaten the peace, security and well-being of the world", affirm "that the most serious crimes of concern to the international community as a whole must not go unpunished and that their effective prosecution must be ensured by taking measures at the national level and by enhancing international cooperation", are determined "to put an end to impunity for the perpetrators of these crimes and thus to contribute to the prevention of such crimes", and recall "that it is the duty of every State to exercise its criminal jurisdiction over those responsible for international crimes."

1.1 SUMMARY

In this document, Amnesty International provides a legal analysis of the 2009 Penal Code and the extent to which it has incorporated so far provisions from the Rome Statute and implemented other international criminal law.⁴

There are a number of positive elements in the 2009 Penal Code with respect to crimes under international law. In particular, Amnesty International welcomes the inclusion of most crimes under the Rome Statute, as well as torture. The organization also welcomes Article 117 of the Penal Code, which states that criminal proceedings and the penalties for genocide, crimes against humanity and war crimes are not subject to statutes of limitations, as well as Article 8 (b) providing for the obligation to extradite or prosecute persons suspected or accused of having committed those crimes.

Amnesty International recognizes these first steps as important developments in the fight against impunity and implementation of Timor-Leste's complementarity obligations under the Rome Statute. However, Amnesty International is concerned that some aspects of the Penal Code are not consistent with the Rome Statute and other conventional, as well as customary international law.

As explained in Section 5 below, some provisions in the Penal Code do not sufficiently guarantee that in the future there will be no national amnesties, pardons or similar measures of impunity for crimes under international law, in violation of international human rights law.⁵

Of particular concern to Amnesty International are Article 120 of the Penal Code, which 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 of the Penal Code which, provides that the pardon (indulto) extinguishes the penalty, totally or partially, or replaces it by other provided in the legislation and more favourable to the convicted person.

Both articles should be amended as a matter of priority to rule out any possible amnesties or

⁴ This paper does not address other aspects of the Penal Code which may give rise to concern, such as the definitions of ordinary serious crimes of sexual violence in Articles 171 through 181.

⁵ See Office of the United Nations High Commissioner for Human Rights "Rule-of-Law-Tool for Post-Conflict states, Amnesties", 2009. Weblink: http://www.ohchr.org/Documents/Publications/Amnesties_en.pdf, accessed on 23 February 2010.

pardons pertaining to grave crimes under international law. Such a move is crucial given the current context of enduring impunity for crimes which were committed under Indonesia's occupation between 1975 and 1999 (see Box 1 below, "A culture of impunity persists in Timor-Leste"; and Box 2, p30, on the case of Martenus Bere).

Furthermore, as discussed below in Section 6, it is worrying that almost eight years after Timor-Leste acceded to the Rome Statute it has still not implemented its co-operation obligations under that instrument.

BOX 1: A CULTURE OF IMPUNITY PERSISTS IN TIMOR-LESTE

In a report published on 27 August 2009,⁶ Amnesty International highlighted the state of impunity in Timor-Leste ten years after the United Nations sponsored referendum that led to Timor-Leste's independence, and the great discrepancy between victims' demands for justice and reparations and the government's stance in favour of reconciliation, amnesties or pardons⁷ and 'forgiveness'. Amnesty International warned that the legacy of enduring impunity for past crimes was having long-lasting negative repercussions on the ability of the newly born country to develop strong deterrent to violence; an independent and trusted judiciary; and accountable members of the security forces.

The Timor-Leste government's discourse, which was aggravated by the release on the 10th year anniversary of the independence vote of Maternus Bere, a Timorese militia leader who has been indicted for crimes against humanity committed in 1999,⁸ (see box on the case of Martenus Bere, p30) comes in sharp contrast with earlier praise in favour of justice for these heinous crimes. Maternus Bere's transfer to Indonesia in October 2009 without facing judicial proceedings and following government's interference with the judiciary has set a dangerous precedent and has once more widened the gap between the legitimate quest of justice and the enduring impunity.

In September 2009, the first national congress for victims of human rights violations between 1974 and 1999 was organized in Dili, Timor-Leste (see photo p24). The survivors of massacres, torture and other serious crimes agreed that they would campaign for justice and lobby the United Nations for the setting up of an international tribunal.⁹

1.2 KEY RECOMMENDATIONS

Today, more than ever, Amnesty International urges the Timor-Leste's leadership to respect their initial commitment in favour of accountability for genocide, crimes against humanity, and war

⁶ See Supra No3.

⁷ See Amnesty International report, p16, Supra No3.

⁸ See Amnesty International, "Indonesia shelters indicted Timorese suspect", 3 November 2009, (Index: 21/020/2009) and "Timor-Leste: Failure to prosecute indicted militia leader reinforces urgent need for an international tribunal", 4 September 2009, (Index: ASA 57/002/2009).

⁹ See UNMIT Newsletter, 14 September 2009. Weblink:

<http://unmit.unmissions.org/LinkClick.aspx?fileticket=sg1TzrPPYqM%3D&tabid=221&mid=637>, accessed on 23 February 2010.

crimes wherever they occurred by ensuring that all those responsible for crimes against humanity and other human rights violations which were committed during Indonesia's occupation are brought to justice and that effective steps are taken to deter possible future heinous crimes.

In order to address the current culture of impunity, and to establish strong deterrent mechanisms, Amnesty International recommends that the Timorese authorities undertake the following as a matter of priority:

- Through public-wide consultation with civil society groups, amend the Penal Code as recommended in this paper to bring it into line with the Rome Statute and other international law obligations, including an explicit ban of amnesties, pardons and other forms of impunity for crimes under international law, as well as providing for co-operation obligations under the International Criminal Court;
- Through public discussion ensure that these additional measures are adopted and implemented;
- Publicly announce and take concrete steps so that all persons responsible for crimes against humanity and other human rights violations, wherever and whenever they occurred, including those which occurred during Indonesian occupation (1975-1999), will be brought to justice and victims will receive full reparations including restitution, rehabilitation, compensation, satisfaction and guarantees of non-repetition.

2. DEFINITIONS OF CRIMES



One of the five investigative teams of current Serious Crimes Investigation Team (SCIT) / UNMIT, interviewing a witness in 2008 © SCIT/UNMIT

Although some of the definitions in the Penal Code are consistent with those set out in the Rome Statute and other provisions in conventional and customary international law, there are instances whereby these definitions are not consistent with the strictest requirements of international law.

The Penal Code does not expressly state that a person suspected of responsibility for a crime under international law which is listed, but not defined, in the Penal Code could be prosecuted in Timor-Leste based on the definition of that crime in conventional and customary international law or not.

Prosecutions of crimes which are listed, but not defined in the Penal Code appear to be possible, at least where the crime under international law is listed in the Penal Code and a penalty is specified. According to Section 9 of the Timor-Leste Constitution, "*general or customary principles of international law*" are to be adopted in the legal system, "*[r]ules provided for in international conventions, treaties and agreements shall apply in the internal legal system of East Timor*" after ratification and publication in the gazette and "*[a]ll rules that are contrary to the provisions of international conventions, treaties and agreements applied in the internal legal system of Timor-Leste shall be invalid*".

In addition, the introduction to the Penal Code states that the General Part (Book I of the Penal Code, Articles 1 to 122) "*integrates the fundamental principles of criminal law enshrined in the Constitution of the Democratic Republic of Timor-Leste, with international conventions, treaties and agreements adopted by the Timorese domestic legal system*". There has been no attempt since the Penal Code was adopted to prosecute anyone for a crime under international law committed since it entered into force, so there has been no authoritative judicial determination whether a person suspected of a crime under international law could be prosecuted for such a crime when the crime has been listed in the Penal Code, but not defined in that Code.

2.1 ARTICLE 6 OF THE ROME STATUTE: GENOCIDE

The crime of genocide is defined in Article 123 of the Penal Code in a significantly different manner from the definition of genocide in Article II of the 1948 Convention for the Prevention and Punishment of the Crime of Genocide (Genocide Convention),¹⁰ which reflects customary international law, and which is virtually the same as the definition in Article 6 of the Rome Statute.¹¹ Although the definition in the Penal Code appears to be intended to include more conduct within the definition than in these two instruments, it is possible that the differences in the wording of the acts constituting genocide could inadvertently lead to gaps in protection.

There are two significant differences in the chapeau from the chapeaux of the other two instruments. First, Article 123 does not include the expression "as such", as in Article 6 of the Rome Statute and Article II of the Genocide Convention. As a leading expert has noted:

"[t]he term 'as such' has the effect of drawing a clear distinction between mass murder and crimes in which the perpetrator targets a specific group because of its nationality, race, ethnicity or religion. In other words, the term 'as such' clarifies the specific intent requirement. It does not prohibit a conviction for genocide in a case in which the perpetrator was also driven by other motivations that are legally irrelevant in this context".¹²

Therefore, it appears that the drafters intended that the prosecutor would not be required to prove that the accused specifically intended to destroy, in whole or in part, a protected group, thus broadening the scope of the crime under the Penal Code.

The list of acts constituting genocide in Article 123 is considerably different from the list of prohibited acts in Article II of the Genocide Convention and Article 6 of the Rome Statute. The Penal Code provision is broader in some respects than Article II of the Genocide Convention and Article 6 of the Rome Statute and more restrictive in others. There are several other acts listed, thus broadening the scope of protection and, to that extension, this expansion is to be welcomed. However, the failure to include expressly other acts that are specifically listed in these two international treaties means that there may be gaps in protection.

¹⁰ Article II of the Genocide Convention reads:

"In the present Convention, genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

- (a) Killing members of the group;
- (b) Causing serious bodily or mental harm to members of the group;
- (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- (d) Imposing measures intended to prevent births within the group;
- (e) Forcibly transferring children of the group to another group."

¹¹ Article 6 of the Rome Statute, except for the introductory phrase: "For the purpose of this Statute".

¹² William A. Schabas, "Article 6 (Genocide)", in Otto Triffterer, ed., *Commentary on the Rome Statute of the International Criminal Court: Observers' Notes, Article by Article*, C.H.Beck/Hart/Nomos, 2nd ed., 2008, p. 150 (citing the ICTR Appeals Chamber judgment in *Niyitegaka*).

For example, the act of "[i]mposing measures intended to prevent births within the group" in the Rome Statute and the Genocide Convention has been replaced with the following: "[b]y whatever means, acts that prevent members of the group from procreating or giving birth". Amnesty International welcomes clarification if this change broadens the scope of the crime. If not, the wording of the Rome Statute and the Genocide Convention should be used. The act of "[f]orcibly transferring children of the group to another group" has been expanded to include members of the group regardless of age: "[s]eparation of members of the group into another group by violent means", although the phrase "by violent means" may be narrower in scope than "[f]orcibly".

"Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part" in the Rome Statute and the Genocide Convention has been replaced by "[s]ubjection of the group to cruel, degrading or inhumane conditions of existence and treatment, which may cause its total or partial destruction" in the Timor-Leste Penal Code. The requirement that the conditions inflicted must be "cruel, degrading or inhumane" narrows the scope of this act and should be removed. It is to be welcomed that the conditions do not have to be deliberately inflicted and they do not have to be "calculated to bring about [the group's] physical destruction in whole or in part", but only conditions that "may cause its total or partial destruction".

2.2 ARTICLE 7 OF THE ROME STATUTE: CRIMES AGAINST HUMANITY

Crimes against humanity are listed and, in some instances, defined in Article 124 of the Penal Code.

2.2.1 Chapeau

According to the chapeau of Article 7 (1) of the Rome Statute:

"For the purpose of this Statute, 'crime against humanity' means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack".

The chapeau of Article 124 of the Penal Code sets a lower threshold than the chapeau of Article 7 (1) of the Rome Statute, which is further defined in Article 7 (2) (a).¹³

It does not include the expression "with knowledge of the attack", as in Article 7 (1) of the Rome Statute. Thus, it would appear to permit prosecutions for any of the acts listed in Article 124 even if the accused did not know that they were taking place in the context of a widespread or systematic attack on a civilian population.¹⁴

Article 7 (2) (a) of the Rome Statute (defining the phrase in the chapeau of Article 7 (1) "[a]ttack

¹³ Rodney Dixon, revised by Christopher K. Hall, "Article 7 (Crimes against humanity – para. 1 chapeau)", in Triffterer, *Supra* No12, p180.

¹⁴ Rodney Dixon, revised by Christopher K. Hall, "Article 7 (Crimes against humanity – para. 1 chapeau)", in Triffterer, *Supra* No 12, p182, "[i]t has long been settled that under customary international law the acts need not be committed with a discriminatory intent on any particular ground, except for persecution... Thus, the motive of the perpetrator is irrelevant, providing that it can be shown that the person acted with the required knowledge of the attack".

directed against any civilian population") does not have any corresponding provision in the Penal Code. If this omission was intended to broaden the scope of the crimes against humanity subject to prosecution in Timor-Leste, it is to be welcomed, but, if not, it would be advisable to ensure that all of the conduct constituting crimes against humanity under the Rome Statute is covered.

2.2.2 ACTS CONSTITUTING CRIMES AGAINST HUMANITY

The list of acts constituting crimes against humanity listed in Article 124 are modelled on the list in Article 7 (1) of the Rome Statute, but often with the definitions in Article 7 (2) included.

- **Murder.** "Murder" in Article 7 (1) (a) of the Rome Statute¹⁵ has been replaced by the broader concept of "[h]omicide".¹⁶
- **Extermination.** The crime of "[e]xtermination" in Article 7 (1) (b) and 7 (2) (b) of the Rome Statute¹⁷ appears to be covered by Article 124 (b) of the Penal Code, although the wording is slightly different.
- **Enslavement.** The crime against humanity of enslavement, listed in Article 7 (1) (c) of the Rome Statute and defined in Article 7 (2) (c)¹⁸ is not fully reflected in Article 124 (c) the Penal Code, which simply lists "[e]nslavement" without the definition in Rome Statute, which is intended to include all forms of contemporary slavery. Amnesty International recommends that the legislation of Timor-Leste includes a definition of the crime against humanity of enslavement in accordance with Article 7 (2) (c) of the Rome Statute.¹⁹
- **Deportation or forcible transfer of population.** The crime against humanity of deportation or forcible transfer of population listed in Article 7 (1) (d) of the Rome Statute and defined in Article 7 (2) (d)²⁰ is defined in somewhat broader terms in Article 124 (d) of the Penal Code. That provision

¹⁵ "Murder" is listed, but not defined in Article 7 (1) (a) of the Rome Statute. For the scope of this crime against humanity, see Christopher K. Hall, "Article 7 (Crimes Against Humanity – para. 1 (a))", in Triffterer, *supra*, note 12, p. 183.

¹⁶ If the term is intended to have the same meaning as homicide in Article 138 of the Penal Code, it covers the case of "[a]ny person who kills another person". Article 139 concerns aggravated homicide. However, it may be that the drafters of the Penal Code intended that courts would apply the customary international law meaning of this crime.

¹⁷ "Extermination" is listed as a crime against humanity in Articles 7 (1) (b) of the Rome Statute and defined in Article 7 (2) (b) as follows: " 'Extermination' includes the intentional infliction of conditions of life, inter alia the deprivation of access to food and medicine, calculated to bring about the destruction of part of a population[.]"

¹⁸ Article 7 (2) (c) of the Rome Statute defines enslavement as follows:

" 'Enslavement' means the exercise of any or all of the powers attaching to the right of ownership over a person and includes the exercise of such power in the course of trafficking in persons, in particular women and children."

¹⁹ The crime of enslavement is not restricted to traditional forms of slavery, but also includes contemporary forms of slavery. As the ICTY Trial Chamber and Appeals Chamber determined in *Kunarac*, "the mental element of the crime of enslavement 'consists of the intentional exercise of a power attaching to the right of ownership'". See Christopher K. Hall, "Article 7 (Crimes against humanity – para. 2 (c))" in Triffterer, *Supra* No12, pp191-194 and 244-245.

²⁰ Article 7 (2) (d) of the Rome Statute defines deportation or forcible transfer of population as follows:

" 'Deportation or forcible transfer of population' means forced displacement of the persons concerned by expulsion or other coercive acts

omits the requirement that the forced displacement be “*from the area in which they are lawfully present*”, which makes clear that forced displacement of persons who have fled to the place from which they are displaced, but who do not have residents, would be a crime against humanity under the Penal Code.

■ **Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law.** This crime against humanity listed in Article 7 (1) (e) of the Rome Statute in effect defines itself.²¹ It has been implemented in Article 124 (e) of the Penal Code, replacing the requirement that it be “*in violation of fundamental rules of international law*” by “*in violation of the standards and principles of international law*”, which appears to be broader.

■ **Torture.** The crime against humanity of torture listed in Article 7 (1) (f) of the Rome Statute and defined in Article 7 (2) (e)²² is implemented in Article 124 (f) of the Penal Code. The definition in the Penal Code does not include the word “*intentional*”, which is to be welcomed.

Article 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, as confirmed by the Elements of Crimes under the Rome Statute and the jurisprudence of the International Criminal Tribunal for the former Yugoslavia (ICTY) simply requires intent to do the act which caused the pain or suffering. However, it is not required that the perpetrator know that the pain or suffering will be severe.

The Penal Code definition does not include the exception that torture “*shall not include pain or suffering arising only from, inherent in or incidental to, lawful sanctions*”. This omission is to be welcomed as long as it broadens the scope of the crime. As one commentator has noted, “*the fact that a State authorizes certain treatment or punishment does not exclude criminal responsibility for torture under Article 7*” of the Rome Statute.²³

■ **Rape and other crimes of sexual violence.** Each of the crimes against humanity of sexual violence listed in Article 7 (1) (g) of the Rome Statute (rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization or any other form of sexual violence of similar gravity)²⁴ are included in Article 124 (g) of the Penal Code. Although the terms used in the Penal Code vary slightly, there does not appear to be any difference in meaning. Amnesty International notes that the definition of forced pregnancy in Article 7 (2) (f) of the Rome Statute has been omitted in Article 124 of the Penal Code. Amnesty International recommends that Article 124 (g) of the Penal Code be brought into line with Article 7 of the Rome Statute.

from the area in which they are lawfully present, without grounds permitted under international law.” For the scope of this crime against humanity, see Hall, *Supra* No12, pp194-200, and 247-251.

21 For the scope of this crime against humanity, see Hall, *Supra* No12, pp200-205.

22 Article 7 (1) (f) and (2) (e) of the Rome Statute defines torture as follows:

“‘Torture’ means the intentional infliction of severe pain or suffering, whether physical or mental, upon a person in the custody or under the control of the accused; except that torture shall not include pain or suffering arising only from, inherent in or incidental to, lawful sanctions”.

23 The scope of the crime against humanity of torture differs in some respects from torture as a war crime and from torture that is neither a crime against humanity nor a war crime. For the scope of this crime against humanity, see Hall, *Supra* No12, pp205-206 and 251-255.

24 For the scope of crimes against humanity of sexual violence, see Machteld Boot revised by Christopher K. Hall, *Supra* No12, pp206 – 216 and 255-256.

■ **Persecution.** The crime against humanity of persecution listed in Article 7 (1) (h) of the Rome Statute and defined in Article 7 (2) (g)²⁵ is implemented in Article 124 (h) of the Penal Code in similar terms, but it is not restricted, as it is in the Rome Statute, to persecution in connection with any other act constituting a crime against humanity, genocide or a war crime. In addition, the deprivation of rights need not be “intentional and severe”, which is to be welcomed.

■ **Enforced disappearance.** The crime against humanity of enforced disappearance of persons listed in Article 7 (1) (i) of the Rome Statute and defined in Article 7 (2) (i) has been implemented in almost identical wording in Article 124 (i) of the Penal Code. However, the definition of enforced disappearance in Article 7 of the Rome Statute is too restrictive. First, that definition imposes a requirement that the perpetrator has intended to remove the victim from the protection of the law. In addition, it requires that the perpetrator has intended to remove the victim from such protection “for a prolonged period of time”. Neither requirement is found in the most recent internationally accepted definition of enforced disappearance in the International Convention for the Protection of All Persons from Enforced Disappearance (Disappearance Convention) which provides the strongest and most comprehensive protection for victims and their families.²⁶ As of March 2010, Timor-Leste had not yet signed or ratified the Disappearance Convention, in spite of President José Ramos Horta having publicly committed to do so.²⁷

Amnesty International recommends that both requirements be deleted from Article 124 (i) of the Penal Code at the earliest opportunity.

■ **The crime of apartheid.** The crime against humanity of apartheid listed in Article 7 (1) (j) of the Rome Statute and defined in Article 7 (2) (h)²⁸ is included in Article 124 (j) of the Penal Code in

²⁵ Article 7 (1) (h) of the Rome Statute reads:

“Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender as defined in paragraph 3, or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court[.]”

Article 7 (2) (g) defines persecution as follows:

“ ‘Persecution’ means the intentional and severe deprivation of fundamental rights contrary to international law by reason of the identity of the group or collectivity[.]”

For the scope of this crime against humanity, see Boot, Dixon and Hall, *Supra* No12, pp216-221 and 256-263.

²⁶ International Convention for the Protection of All Persons from Enforced Disappearance, art. 2 (“For the purposes of this Convention, ‘enforced disappearance’ is considered to be the arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law.”).

²⁷ “ ‘Every family in my country has someone disappeared. I myself have two brothers who disappeared.’ These were words of Nobel Peace Prize Laureate and Timor-Leste President Jose Ramos-Horta in a meeting yesterday with the Asian Federation Against Involuntary Disappearances [...]. The president made a clear commitment that he would undertake all efforts to sign and ratify the International Convention for the Protection of All Persons from Enforced Disappearance before the end of 2009. He noted that had he been alerted earlier, the government of Timor-Leste could have already been a state party.”, Asian Federation against Involuntary Disappearances, The East Timor and Indonesia Action Network, Latest ETAN News and Views, 25 November 2009, Dili, Timor-Leste. Weblink: <http://www.etan.org/news/2009/11disappear.htm> , accessed on 25 February 2010.

²⁸ Article 7 (2) (h) of the Rome Statute reads:

“ ‘The crime of apartheid’ means inhumane acts of a character similar to those referred to in paragraph 1, committed in the context of an

virtually identical terms. However, in contrast to the Rome Statute, it includes a broader range of inhumane acts, since there is no requirement that these acts be of a character similar to the other acts constituting crimes against humanity.

- **Other inhumane acts.** The crime against humanity of other inhumane acts listed in Article 7 (1) (k) of the Rome Statute²⁹ is incorporated without any change in Article 124 (k) of the Penal Code.

- **Definition of gender.** There does not appear to be any provision in the Penal Code corresponding to Article 7 (3) of the Rome Statute on the definition of gender. In the absence of a definition in the Penal Code, deprivations of fundamental rights on the grounds of gender, as in Article 124 (h) of the Penal Code, should be interpreted in accordance with the definition of gender recognized by the United Nations. That definition refers to the socially constructed roles played by men and women that are attributed to them based on their sex. The term “sex” refers to physical and biological characteristics of men and women. The term “gender” refers to the explanations for observed differences between men and women based on socially assigned roles.³⁰

2.3 ARTICLE 8 OF THE ROME STATUTE: WAR CRIMES

As explained below, there are a number of positive aspects in the Penal Code which go beyond the definitions of war crimes in Article 8 of the Rome Statute and other provisions in international law. It is to be particularly welcomed that war crimes listed in Articles 125 (1) and 126 to 130 in the Penal Code are defined to apply to both international and non-international armed conflict. However, the discussion of war crimes in the Penal Code which follows identifies a number of concerns. Regrettably, the Penal Code does not follow the structure of the Rome Statute or other conventional international humanitarian law,³¹ which makes comparisons difficult. Further the

institutionalized regime of systematic oppression and domination by one racial group over any other racial group or groups and committed with the intention of maintaining that regime[.]”

For the scope of this crime against humanity, see Hall, *Supra* No12, pp 227-229 and 263-266.

²⁹ For the scope of this crime against humanity, see Machteld Boot, revised by Christopher K. Hall, *Supra* No12, pp230-234.

³⁰ For more information about these terms as recognized in the United Nations, see Implementation of the outcome of the 4th World Conference on Women, Report of the Secretary-General, U.N. Doc. A/51/322 (1996), para. 9 (citing the Report of the Fourth World Conference on Women, U.N. Doc. A/CONF.177/20 (1995)). For the commentary on the definition of gender in the Rome Statute, see Machteld Boot, revised by Christopher K. Hall, *Supra* No12, p273, and ‘The Definition of “Gender” in the Rome Statute of the International Criminal Court: A Step Forward or Back for International Criminal Justice’ Valerie Oosterveld, *Harvard Human Rights Law Journal*, Volume 18, 2005, pp 55-84.

³¹ Protocol for the Prohibition of the Use of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare. Geneva, 17 June 1925; Convention for the Protection of Cultural Property in the Event of Armed Conflict. The Hague, 14 May 1954; Protocol for the Protection of Cultural Property in the Event of Armed Conflict. The Hague, 14 May 1954; Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction. Opened for Signature at London, Moscow and Washington. 10 April 1972; Convention on the prohibition of military or any hostile use of environmental modification techniques, 10 December 1976; Final Act of the United Nations Conference on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May be Deemed to be Excessively Injurious or to Have Indiscriminate Effects. Geneva, 10

wording is often significantly different from both the Rome Statute and other instruments, making it difficult to determine whether the intent of the drafters was to incorporate the international law definition, to expand it or to restrict it. It would have been better to have followed existing structures and wording, indicating expressly wherever a different meaning was intended. It also notes a number of conventional and customary international humanitarian law prohibitions which have been omitted from the Penal Code.

2.3.1 THRESHOLD

Article 8 (1) of the Rome Statute, which recommends priorities for the Prosecutor of the ICC³² and is not part of the definitions of the crimes, does not appear to have any corresponding provision in the 2009 Timor-Leste Penal Code. Amnesty International welcomes the decision to omit it as it would have led to impunity in national courts for war crimes that did not meet this high threshold.

2.3.2 GRAVE BREACHES OF THE GENEVA CONVENTIONS

Grave breaches of the Geneva Conventions of 12 August (Geneva Conventions) are incorporated in Article 125 (1) and 129 (a) of the Penal Code, but often the wording differs from that in Article 8 (2) (a) of the Rome Statute (which follows closely the wording of the Geneva Conventions).

Article 8 (2) (a) (vi) of the Rome Statute appears to have been implemented in Article 125 (i) of the Penal Code as rendering and executing sentences, "*without previous fair and impartial trial*". Although it appears that the provision of the Penal Code may, to a certain extent, expand the scope of the crime, by including rendering and execution of sentences, it does not appear to cover all the prohibited conduct set out in the provision of the Rome Statute. The Rome Statute provision prohibits the deprivation of a fair and regular trial by denying judicial guarantees to those being investigated and prosecuted in particular, those defined in the 3rd and 4th Geneva Conventions and

October 1980; Protocol on Non-Detectable Fragments (Protocol I). Geneva, 10 October 1980; Protocol on Prohibitions or Restrictions on the Use of Mines, Booby-Traps and Other Devices (Protocol II). Geneva, 10 October 1980; Protocol on Prohibitions or Restrictions on the Use of Incendiary Weapons (Protocol III). Geneva, 10 October 1980; Convention on the prohibition of the development, production, stockpiling and use of chemical weapons and on their destruction, Paris 13 January 1993; Protocol on Blinding Laser Weapons (Protocol IV to the 1980 Convention), 13 October 1995; Protocol on Prohibitions or Restrictions on the Use of Mines, Booby-Traps and Other Devices as amended on 3 May 1996 (Protocol II to the 1980 Convention as amended on 3 May 1996); Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction, 18 September 1997; Second Protocol to the Hague Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflict The Hague, 26 March 1999; Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, 25 May 2000; Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May be Deemed to be Excessively Injurious or to Have Indiscriminate Effects. Geneva, 10 October 1980 (Amendment article 1, 21 December 2001); Protocol on Explosive Remnants of War (Protocol V to the 1980 Convention), 28 November 2003; Convention on Cluster Munitions, 30 May 2008.

32 "Plan, policy and a large-scale commission are by no means required elements of war crimes. A single and isolated act, such as the rape or killing of a single person by a single perpetrator, can amount to a war crime. Article 8 para. 1 rather provides a practical guideline for the ICC and above all the Prosecutor on what type of war crimes they should primarily focus, given the limited resources of the ICC". Knut Dörmann "Article 8 (War crimes – para. 1)", in Triffterer, *Supra* No12, p299.

Article 75 of Protocol I to the Geneva Conventions of 12 August 1949 relating to the protection of victims of international armed conflicts (Protocol I). Amnesty International recommends the amendment of Article 125 (i) of the Penal Code, in accordance with treaty and customary international criminal law in order to guarantee that all judicial guarantees of a fair and regular trial apply to anyone being investigated or prosecuted in a Timor-Leste court.

2.3.3 OTHER WAR CRIMES IN INTERNATIONAL ARMED CONFLICT LISTED IN THE ROME STATUTE

As explained below in this subsection, there are a number of war crimes in international humanitarian law listed in the Rome Statute which are not defined consistently with that instrument or which are omitted from the Penal Code.

- Article 8 (2) (b) (v) of the Rome Statute is implemented in Article 126 (c) of the Penal Code. However, the provision in the Penal Code does not include "*or bombarding*". Amnesty International recommends that this provision be amended to include the missing word.
- Article 8 (2) (b) (vii), of the Rome Statute appears to be implemented in Article 126 (j) of the Penal Code which penalizes perfidy, but it does not expressly cover all of the conduct prohibit in Article 8 (2) (b) (vii). Amnesty International would welcome clarification whether the Penal Code provision is as broad as the definition in the Rome Statute and, if not, recommend its amendment according to international law.
- Article 8 (2) (b) (viii) is implemented in Article 125 (3) (a) of the Penal Code. However, the provision in the Penal Code does not include "*deportation*". Amnesty International recommends its inclusion in the provision of the Penal Code.
- Article 8 (2) (b) (xi) of the Rome Statute is implemented in Article 126 (h) of the Penal Code. However, the phrase "*individuals belonging to the hostile nation or army*" in the Rome Statute has been replaced in the Penal Code by "*hostile combatants*", which narrows the scope of the crime, at least with respect to "*individuals belonging to the hostile nation*". Amnesty International recommends that the legislation of Timor-Leste fully implements Article 8 (2) (b) (xi) of the Rome Statute.
- Article 8 (2) (b) (xii) of the Rome Statute is implemented in Article 126 (g) of the Penal Code. However, the provision in the Penal Code includes the requirement "*in the capacity of an officer*", which narrows the scope of the crime and leaves to impunity civilian superiors. Amnesty International recommends that the requirement of an official capacity be removed from Article 126 (g) of the Penal Code.
- Article 8 (2) (b) (xv) of the Rome Statute does not appear to have any corresponding provision in the Penal Code. Amnesty International takes note of Article 125 (e) of the Penal Code defining as a war crime "*compel[ling] a person to serve in a hostile army*" and Article 125 (3) (b) of the Penal Code defining as a war crime "*compel[ling] a prisoner of war or other protected person to serve in the armed forces of a hostile power*". These provisions are to be welcomed, as they broaden the scope of the crimes. However, compelling the nationals of a hostile party to take part in war operations against their own country has been constantly used as a war crime over the last centuries. This activity

should be expressly implemented in the Timor-Leste Penal Code to send a powerful message to all who would be perpetrators that this crime under international law will be investigated and prosecuted in a Timor-Leste court.

- Article 8 (2) (b) (xxv) of the Rome Statute is implemented in Article 126 (f) of the Penal Code. However, the provision in the Penal Code does not include the phrase "*including wilfully impeding relief supplies as provided for under the Geneva Conventions*". The impediment of relief supplies has been used as a means of warfare on several occasions. Amnesty International recommends that national legislation makes clear that impeding relief supplies is a war crime in the legislation of Timor-Leste.

2.3.4 WAR CRIMES IN INTERNATIONAL ARMED CONFLICT OMITTED FROM THE ROME STATUTE BUT LISTED IN TREATIES

The Rome Statute leaves out certain war crimes listed in international humanitarian law treaties, including the grave breaches of Protocol I listed below, which are also omitted from the 2009 Penal Code:

- unjustifiable delay in the repatriation of civilians (Article 85 (4) (b) of Protocol I, as well as customary international humanitarian law);³³
- launching of an attack against works or installations containing dangerous forces in the knowledge that such attack will cause excessive loss of life, injury to civilians or damage to civilian objects (Article 85 (3) (c) and customary international humanitarian law).³⁴
- practices of apartheid and other inhuman or degrading practices involving outrages upon personal dignity, based on racial discrimination (Article 85 (4) (c) of Protocol I and customary international humanitarian law).³⁵

Amnesty International welcomes the inclusion in Article 125 (3) (c) of the Penal Code of the crime of unjustifiable delay in the repatriation of prisoners of war (Article 118 of the Third Geneva Convention and Article 85 (4) (b) of Protocol I, as well as customary international humanitarian law).³⁶ However, the organization seeks for clarification on the scope of the phrase "*without a justified reason*", which could lead to inappropriate delays, unless it is carefully circumscribed to the narrow set of circumstances envisaged in the Commentaries of the International Committee of the

³³ Jean-Marie Henckaerts and Louise Doswald-Beck, Customary International Humanitarian Law, Geneva, International Committee of the Red Cross and Cambridge University Press, 2005, Rule 156 (Serious violations of international humanitarian constitute war crimes)

³⁴ Ibid., Rule 156 (Serious violations of international humanitarian constitute war crimes).

³⁵ Ibid.

³⁶ Jean-Marie Henckaerts and Louise Doswald-Beck, Customary International Humanitarian Law, Geneva, International Committee of the Red Cross and Cambridge University Press, 2005, Rule 156 (Serious violations of international humanitarian constitute war crimes).

Red Cross to these provisions.

Further, there are a number of other international humanitarian law treaties applicable during international armed conflict imposing obligations which, if violated, may result in individual criminal responsibility. Some of the prohibitions in these treaties appear to have been omitted from the Penal Code.³⁷

Amnesty International welcomes the inclusion in the Penal Code in whole or in part of the prohibitions of a number of other international humanitarian law treaties.³⁸

2.3.5 RULES OF CUSTOMARY INTERNATIONAL HUMANITARIAN LAW IN INTERNATIONAL ARMED CONFLICT

There are numerous rules of customary international humanitarian law applicable to international armed conflict not expressly listed in the Rome Statute (in addition to the war crimes listed in Protocol I and in other treaties mentioned above) which, if violated, could lead to individual criminal responsibility, including:

- slavery;³⁹
- deportation to slave labour;⁴⁰

³⁷ These treaties, some of which contain penal provisions, include: Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction, Opened for Signature at London, Moscow and Washington, 10 April 1972; Convention on the prohibition of military or any hostile use of environmental modification techniques, 10 December 1976; Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction, 18 September 1997; Protocol on Explosive Remnants of War (Protocol V to the 1980 Convention), 28 November 2003; Convention on Cluster Munitions, 30 May 2008.

³⁸ Articles 125 (1) (e), 127 (1) and (2) and 129 (b) of the Penal Code include some of the prohibited conduct in the following treaties as crimes: Protocol for the Prohibition of the Use of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare. Geneva, 17 June 1925; Convention for the Protection of Cultural Property in the Event of Armed Conflict, The Hague, 14 May 1954; Protocol for the Protection of Cultural Property in the Event of Armed Conflict, The Hague, 14 May 1954; Protocol on Non-Detectable Fragments (Protocol I), Geneva, 10 October 1980; Protocol on Prohibitions or Restrictions on the Use of Mines, Booby-Traps and Other Devices (Protocol II), Geneva, 10 October 1980; Protocol on Prohibitions or Restrictions on the Use of Incendiary Weapons (Protocol III), Geneva, 10 October 1980; Final Act of the United Nations Conference on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May be Deemed to be Excessively Injurious or to Have Indiscriminate Effects, Geneva, 10 October 1980; Convention on the prohibition of the development, production, stockpiling and use of chemical weapons and on their destruction, Paris 13 January 1993; Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May be Deemed to be Excessively Injurious or to Have Indiscriminate Effects, Geneva, 10 October 1980 (Amendment article 1, 21 December 2001); Protocol on Blinding Laser Weapons (Protocol IV to the 1980 Convention), 13 October 1995; Protocol on Prohibitions or Restrictions on the Use of Mines, Booby-Traps and Other Devices as amended on 3 May 1996 (Protocol II to the 1980 Convention as amended on 3 May 1996); Second Protocol to the Hague Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflict The Hague, 26 March 1999; and Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, 25 May 2000.

³⁹ Ibid., Rule 94 (Slavery and the slave trade in all their forms are prohibited); Rule 156 (Serious violations of international humanitarian law constitute war crimes).

⁴⁰ Ibid., Rule 95 (Uncompensated or abusive forced labour is prohibited); Rule 156 (Serious violations of international humanitarian law

- collective punishments;⁴¹
- despoliation of the wounded, sick, shipwrecked or dead;⁴²
- attacking or ill-treating a *parlementaire* or bearer of the flag of truce;⁴³
- launching an indiscriminate attack resulting in loss of life or injury to civilians or damage to civilian objects;⁴⁴
- use of biological weapons;⁴⁵
- use of chemical weapons;⁴⁶
- use of non-detectable fragments;⁴⁷ and
- use of binding laser weapons.⁴⁸

Amnesty International welcomes the criminalization in whole or in part of launching an indiscriminate attack resulting in loss of life or injury to civilians or damage to civilian objects in Article 126 (d) of the Penal Code, the use of chemical weapons, the use of non-detectable fragments and the use of binding laser weapons in Article 127 (2) (e), (f) and (h) of the Penal Code.

However, the organization is disappointed that the following conduct appears to have been omitted from the Penal Code: slavery; deportation to slave labour; collective punishments; despoliation of the wounded, sick, shipwrecked or dead, attacking or ill-treating a *parlementaire* or bearer of the flag of truce; and the use of biological weapons.

2.3.6 WAR CRIMES IN NON-INTERNATIONAL ARMED CONFLICT

There are a number of war crimes in non-international armed conflicts listed in the Rome Statute which are not correctly defined in the Penal Code.

constitute war crimes).

41 Ibid., Rule 103 (Collective punishments are prohibited); Rule 156 (Serious violations of international humanitarian law constitute war crimes).

42 Ibid., Rule 156 (Serious violations of international humanitarian law constitute war crimes).

43 Ibid., Rule 67 (Parlementaires are inviolable); Rule 156 (Serious violations of international humanitarian law constitute war crimes).

44 Ibid., Rule 11 (Indiscriminate attacks are prohibited); Rule 156 (Serious violations of international humanitarian law constitute war crimes).

45 Ibid., Rule 73 (The use of biological weapons is prohibited).

46 Ibid., Rule 74 (The use of chemical weapons is prohibited).

47 Ibid., Rule 79 (The use of weapons the primary effect of which is to injure by fragments which are not detectable by X-rays in the human body is prohibited).

48 Ibid., Rule 86 (The use of laser weapons that are specifically designed, as their combat function or as one of their combat functions, to cause permanent blindness to unenhanced vision is prohibited).

- Article 8 (2) (c) (iv) of the Rome Statute appears to have been implemented in Article 125 (1) (i) of the Penal Code as rendering and executing sentences, “*without previous fair and impartial trial*”. However, it does not appear to cover all the prohibited conduct in the provision of the Rome Statute, which includes “*affording all judicial guarantees*”, in particular, those defined in the 3rd and 4th Geneva Conventions and Article 75 of Additional Protocol I. Amnesty International recommends the amendment of Article 125 (i) of the Penal Code, in accordance with treaty and customary international criminal law in order to guarantee that all judicial guarantees of a fair and regular trial apply to anyone being investigated or prosecuted in a Timor-Leste court.
- Article 8 (2) (e) (x) of the Rome Statute is implemented in Article 126 (g) of the Penal Code. However, the Penal Code includes the requirement “*in the capacity of an officer*”, which narrows the scope of the crime and could lead to impunity civilian superiors. Amnesty International recommends that the requirement of an official capacity be removed from Article 126 (g) of the Penal Code.
- Article 8 (2) (e) (xii) of the Rome Statute appears to be implemented in Article 129 (a) of the Penal Code. The definition of the Penal Code includes the phrase “*or in an arbitrary or illegal manner*”, which appears to expand the scope of the crime. However, this provision also includes the requirement of “*on a large scale or of high value*”, which restricts the application of the crime. Amnesty International recommends that this requirement be removed from Article 129 (a) of the Penal Code.

2.3.7 GAPS IN THE ROME STATUTE

Although serious violations of Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II) are listed as war crimes in the Statute of the International Criminal Tribunal for Rwanda, many of them are not expressly included in Article 8 of the Rome Statute. For example, intentionally starving the civilian population (Article 14 of Protocol II and customary international humanitarian law) is omitted. Amnesty International welcomes its criminalization in Article 126 (f) of the Penal Code.

In addition, there are a number of international humanitarian law treaties applicable during non-international armed conflict imposing obligations which, if violated, possibly may result in individual criminal responsibility, either under the conventions or because the prohibitions are recognized as part of customary international law.⁴⁹ Finally, there are a number of rules of

⁴⁹ These treaties, some of which contain penal provisions, include: Convention for the Protection of Cultural Property in the Event of Armed Conflict, The Hague, 14 May 1954; Protocol for the Protection of Cultural Property in the Event of Armed Conflict. The Hague, 14 May 1954; Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May be Deemed to be Excessively Injurious or to Have Indiscriminate Effects, Geneva, 10 October 1980; Protocol on Non-Detectable Fragments (Protocol I), Geneva, 10 October 1980; Protocol on Prohibitions or Restrictions on the Use of Mines, Booby-Traps and Other Devices (Protocol II), Geneva, 10 October 1980; Protocol on Prohibitions or Restrictions on the Use of Incendiary Weapons (Protocol III), Geneva, 10 October 1980; Convention on the prohibition of the development, production, stockpiling and use of chemical weapons and on their destruction, Paris 13 January 1993; Protocol on Blinding Laser Weapons (Protocol IV to the 1980 Convention), 13 October 1995; Protocol on Prohibitions or Restrictions on the Use of Mines, Booby-Traps and Other Devices as amended on 3 May 1996 (Protocol II to the 1980 Convention as amended on 3 May 1996); Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-

customary international law applicable to non-international armed conflict which, if violated, could lead to individual criminal responsibility for war crimes including:

- use of biological weapons;⁵⁰
- use of chemical weapons;⁵¹
- the use of non-detectable fragments;⁵²
- the use of binding laser weapons;⁵³
- launching an indiscriminate attack resulting in death or injury to civilians, or an attack in the knowledge that it will cause excessive incidental civilian loss, injury or damage;⁵⁴
- making non-defended localities and demilitarized zones the object of attack;⁵⁵
- using human shields;⁵⁶
- slavery;⁵⁷ and
- collective punishments.⁵⁸

Amnesty International notes the inclusion in whole or in part of the use of chemical weapons; the use of non-detectable fragments; the use of binding laser weapons; in Articles 127 (2) (e), (f) and (h) of the Penal Code; launching an indiscriminate attack resulting in death or injury to civilians, or an attack in the knowledge that it will cause excessive incidental civilian loss, injury or damage in

Personnel Mines and on their Destruction, 18 September 1997; Second Protocol to the Hague Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflict The Hague, 26 March 1999; Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, 25 May 2000; Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May be Deemed to be Excessively Injurious or to Have Indiscriminate Effects, Geneva, 10 October 1980 (Amendment article 1, 21 December 2001); Protocol on Explosive Remnants of War (Protocol V to the 1980 Convention), 28 November 2003; Convention on Cluster Munitions, 30 May 2008.

50 Henckaerts and Doswald-Beck, *supra*, note XXX, Rule 73 (The use of biological weapons is prohibited).

51 *Ibid.*, Rule 74 (The use of chemical weapons is prohibited).

52 *Ibid.*, Rule 79 (The use of weapons the primary effect of which is to injure by fragments which are not detectable by X-rays in the human body is prohibited).

53 *Ibid.*, Rule 86 (The use of laser weapons that are specifically designed, as their combat function or as one of their combat functions, to cause permanent blindness to unenhanced vision is prohibited).

54 *Ibid.*, Rule 11 (Indiscriminate attacks are prohibited); Rule 156 (Serious violations of international humanitarian constitute war crimes).

55 *Ibid.*, Rule 36 (Directing an attack against a demilitarized zone agreed upon between the parties to the conflict is prohibited); Rule 37 (Directing an attack against a non-defended locality is prohibited); Rule 156 (Serious violations of international humanitarian constitute war crimes).

56 *Ibid.*, Rule 97 (The use of human shields is prohibited); Rule 156 (Serious violations of international humanitarian constitute war crimes).

57 *Ibid.*, Rule 94 (Slavery and the slave trade in all their forms are prohibited); Rule 156 (Serious violations of international humanitarian constitute war crimes).

58 *Ibid.*, Rule 103 (Collective punishments are prohibited); Rule 156 (Serious violations of international humanitarian constitute war crimes).

Article 126 (d); making non-defended localities and demilitarized zones the object of attack in Article 126 (c); and using human shields in Articles 126 (e) of the Penal Code.

However, the organization is concerned that the following conduct was omitted from the Penal Code: use of biological weapons; slavery; and collective punishments.

In addition, there are three weapons (poison, toxic gases and bullets that expand or flatten easily in the human body) whose use in international armed conflict is a war crime under Article 8 of the Rome Statute, but not if the use is in a non-international armed conflict.⁵⁹ However, it is increasingly considered that the use of these weapons in non-international armed conflict is a crime.⁶⁰ Amnesty International welcomes the inclusion of these crimes, in whole or in part, in Article 127 (2) (a), (b) and (c) of the Penal Code.



In September 2009 took place in Dili, Timor-Leste, the first national congress for victims of human rights violations between 1974 and 1999 © International Center for Transitional Justice

⁵⁹ Rome Statute, art. 8 (2) (b) (xvii), (xviii) and (xix).

⁶⁰ Belgium, Draft Amendments to the Rome Statute on War Crimes, Assembly of States Parties to the Rome Statute, 29 September 2009 (<http://www.icc-cpi.int/NR/rdonlyres/3798777A-F998-4B22-9F3D-5B25940CD299/0/BelgiumCN733EN.pdf>) (proposing to amend Article 8 (2) (e) to make the use of these three weapons in non-international armed conflict war crimes).

3. EXERCISING UNIVERSAL JURISDICTION IN ALL CASES OF CRIMES UNDER INTERNATIONAL LAW

Amnesty International welcomes Article 8 (b) of the Penal Code providing for the exercise of universal jurisdiction for genocide, crimes against humanity and war crimes included in the Penal Code "*as long as the perpetrator is found in Timor-Leste and cannot be extradited or a decision has been made not to do so*".

Amnesty International recommends that Article 8 (b) of the Penal Code be amended 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.

According to Article 9 (1) of the Penal Code, "[t]he application of Timorese criminal law to acts perpetrated abroad only occurs when the perpetrator has not been tried ...". It does not appear that the Penal Code includes a *ne bis in idem* prohibition of retrial if the foreign trial was a sham. Amnesty International recommends that the legislation of Timor-Leste ensure that perpetrators of genocide, crimes against humanity and war crimes can be retried in a Timorese court if the trial in a foreign court was a sham which permitted the perpetrator escape from justice.

4. PRINCIPLES OF CRIMINAL RESPONSIBILITY

4.1 ARTICLE 26 OF THE ROME STATUTE: EXCLUSION OF JURISDICTION OVER PERSONS UNDER 18

Amnesty International notes Article 20 (1) of the Penal Code providing that persons under the age of 16 are not criminally responsible.

Given the wide range of ages of criminal responsibility in more than 192 national legal systems around the world, states could not agree at the Rome Diplomatic Conference on an age of criminal responsibility for crimes under international law. As a result of this impasse, at the initiative of the United Kingdom, a compromise was reached which avoided answering this difficult question. They simply provided that the ICC would not have jurisdiction over crimes under international law committed by persons under the age of 18, leaving the question of the age of criminal responsibility of minors for such crimes to individual states. Thus, it was envisaged that states would be free to investigate and prosecute crimes by persons under the age of 18 who were over the age of criminal responsibility under national law. States parties should ensure that national law governing criminal responsibility of persons who have committed crimes under international law when under the age of 18 is consistent with their rights under the Convention on the Rights of the Child to which Timor-Leste acceded on 16 April 2003.

In addition, states should ensure that the rights of victims and their families to reparations for crimes under international law committed by persons under the age of 18 are fully respected. When persons are convicted of crimes under international law committed when they were under the age of 18 or otherwise are found responsible for such crimes, they should make reparations to the victims and their families. To the extent that they are unable to do so, their state of nationality should ensure, in a manner consistent with the rules of state responsibility, that victims and their families obtain reparations (see Section 5.4 below).

4.2 ARTICLE 28 OF THE ROME STATUTE: RESPONSIBILITY OF COMMANDERS AND OTHER SUPERIORS

In some aspects, the Rome Statute falls short of implementing some provisions which are part of other international law. For example, principles of criminal responsibility with regard to civilians in Article 28 (b) of the Rome Statute are not as strict as required by customary international law, as reflected in the 1996 International Law Commission's Draft Codes of Crimes against the Peace and Security of Mankind, as well as conventional international law, such as Protocol I, both of which hold civilian superiors to the same strict standards as military commanders.

Amnesty International notes Article 136 of the Penal Code on responsibility of commanders and other superiors. However, the organization is seriously concerned about certain aspects of this provision. In particular, the expressions “*or, owing to the circumstances at the time, should have known*” and “*about to commit such crimes*” in Article 28 (a) (i) of the Rome Statute are missing, which restricts the scope of superior responsibility. These omissions would restrict the scope of criminal responsibility and could lead to impunity in a Timor-Leste court for conduct that would result in a conviction if the case were tried in the ICC. The expression “*within his or her power*” in Article 28 (a) (ii) of the Rome Statute, regarding the taking of measures to prevent or repress the commission of the crimes is also missing. Amnesty International recommends that Article 136 of the Penal Code be amended to include the missing expressions referred to above.

In addition, Amnesty International is also concerned that Article 136 does not provide for equal standards of criminal responsibility for military commanders and other superiors. Article 136 (2) narrows the scope of responsibility of other superiors by only referring to “in connection with control of subordinates under is or her effective authority and control”, in contrast to Article 136 (1) that also includes “or effective responsibility or control”. Amnesty International recommends that Article 136 (2) of the Penal Code be amended in order to provide for civilian superiors the same standards of criminal responsibility for military commanders.

One other difference between Article 136 of the Penal Code and Article 28 (a) of the Rome Statute is that Article 136 omits the expression “*as a result of his or her failure to exercise control properly over such forces*”, but this omission appears to broaden the scope of the superior’s responsibility.

4.3 ARTICLE 33 OF THE ROME STATUTE: SUPERIOR ORDERS AND PRESCRIPTION OF LAW

Defences in national law should not be any broader than in the Rome Statute and, in some cases, should be narrower to be consistent with customary international law.

Article 33 of the Rome Statute permits a defence of superior orders in certain limited situations which are not permitted under customary international law. Indeed, this defence has been contrary to international law since Nuremberg, although it may properly be taken into account in mitigation of punishment.⁶¹ This defence has been excluded in numerous international instruments for more than half a century, including the Nuremberg Charter, Allied Control Council Law No. 10, the ICTY Statute, the Statute of the International Criminal Tribunal for Rwanda, the Regulation establishing the Special Panels for East Timor, the Statute of the Special Court for Sierra Leone and the Cambodian Law establishing the Extraordinary Chambers in the Courts of Cambodia.⁶²

⁶¹ Amnesty International, *The international criminal court: Making the right choices – Part I: Defining the crimes and permissible defences* (Index: IOR 40/001/1997) 1 January 1997, Sect. VI.E.6.

⁶² Charter of the International Military Tribunal, annexed to the London Agreement (Nuremberg Charter), 8 Aug. 1945, Art. 8 (“The fact that the Defendant acted pursuant to order of his Government or of a superior shall not free him from responsibility, but may be considered in mitigation of punishment if the Tribunal determines that justice so requires.”); Allied Control Council Law No. 10, Punishment of persons guilty of war crimes, crimes against peace and against humanity (Allied Control Council Law No. 10), 20 Dec. 1945,

Amnesty International welcomes that Article 46 (2) of the Penal Code explicitly states that the obligation of hierarchical obedience ceases to exist when it leads to the commission of a crime, assuming that this provision also applies to genocide, crimes against humanity, war crimes and other crimes under international law. Amnesty International however recommends that the legislation of Timor-Leste expressly states that superior orders are not permitted as a defence, under any circumstances, for any crimes under international law, in accordance with international customary and conventional criminal law.

Art. II (4) (b) ("The fact that any person acted pursuant to the order of his Government or of a superior does not free him from responsibility for a crime, but may be considered in mitigation."), (published in the Official Gazette of the Control Council for Germany, No. 3, Berlin, 31 Jan. 1946); Charter of the International Military Tribunal for the Far East (Tokyo Charter), art. 6 ("Responsibility of Accused. Neither the official position, at any time, of an accused, nor the fact that an accused acted pursuant to order of his government or of a superior shall, of itself, be sufficient to free such accused from responsibility for any crime with which he is charged, but such circumstances may be considered in mitigation of punishment if the Tribunal determines that justice so requires."); ICTY Statute, Art. 7 (4) ("The fact that an accused person acted pursuant to an order of a Government or of a superior shall not relieve him of criminal responsibility, but may be considered in mitigation of punishment if the International Tribunal determines that justice so requires."); ICTR Statute, Art. 6 (4) ("The fact that an accused person acted pursuant to an order of a Government or of a superior shall not relieve him of criminal responsibility, but may be considered in mitigation of punishment if the International Tribunal determines that justice so requires."); Draft Code of Crimes against the Peace and Security of Mankind, Art. 5; UNTAET Regulation 2000/15 (establishing the Special Panels for Serious Crimes, Dili, East Timor), 6 June 2000, Sect. 21; Statute of the Special Court for Sierra Leone (Sierra Leone Statute), Art. 6 (4); Cambodian Law on the Establishment of the Extraordinary Chambers, with inclusion of amendments as promulgated on 27 Oct. 2004 (NS/RKM/1004/006), Art. 29. Article 33 of the Rome Statute permits the defence of superior orders to war crimes, but it is narrowly circumscribed, applicable only to trials in the International Criminal Court and contrary to every other international instrument adopted concerning crimes under international law, including instruments subsequently adopted, such as the Statute of the Special Court for Sierra Leone and the Cambodian Extraordinary Chambers Law.

5. ELIMINATION OF BARS TO INVESTIGATION AND PROSECUTION

“Affirming that the most serious crimes of concern to the international community as a whole must not go unpunished and that their effective prosecution must be ensured by taking measures at the national level and by enhancing international cooperation”.

Rome Statute of the International Criminal Court, Preamble.

“There can be no amnesty or impunity for serious crimes such as war crimes, crimes against humanity and genocide”

Nanvenethem Pillar in a letter to President José Ramos-Horta in September 2009 following the release without trial of militia leader Martenus Bere who has been indicted for crimes against humanity committed in 1999.⁶³

5.1 NATIONAL AMNESTIES AND PARDONS

National amnesties, pardons or similar measures of impunity for crimes under international law, are contrary to international law.⁶⁴

Amnesty International notes Article 120 of the Penal Code stating that an amnesty extinguishes criminal proceedings and precludes execution of any penalty not yet enforced totally or partially, as well as its effects and accessory penalties. The organization also notes Article 122 of the Penal Code providing that the pardon (*indulto*) extinguishes the penalty, totally or partially, or replaces it by other provided in the legislation and more favourable to the convicted person.

Amnesty International is concerned that the Penal Code does not appear to include any provision

⁶³ For a full copy of the letter, see: <http://www.laohamutuk.org/Justice/99/bere/OCHCHRtoRDTL2Sep09En.pdf>, accessed on 23 February 2010.

⁶⁴ See, for example, Amnesty International, *Sierra Leone: Special Court for Sierra Leone: denial of right to appeal and prohibition of amnesties for crimes under international law* (Index: AFR/012/2003), 31 October 2003.

prohibiting the application of such measures for crimes under international law and recommends that the legislation of Timor-Leste expressly states that amnesties and pardons (indultos) shall not apply to genocide, crimes against humanity, war crimes, genocide, torture and enforced disappearances, and all crimes included in Protocol I. Such an amendment is essential in particular in light of recent government statements and measures favouring impunity for past crimes against humanity and other human rights violations (see Box 1 on "A culture of impunity persists in Timor-Leste", p7, and Box 2 below on the case of Martenus Bere).

BOX 2: THE CASE OF MARTENUS BERE

Amidst the celebrations of the 10-year anniversary of the independence vote, the Timor-Leste government released an indicted militia leader, Martenus Bere, who was charged by the United Nations Serious Crimes Unit in 2003 with the extermination of civilians in the town of Suai and other crimes against humanity in 1999, including torture, enforced disappearance, deportation and persecution.

Martenus Bere was released from Becora prison on around 30 August before his case had even been prosecuted. He was handed over to the Indonesian embassy following a request made by the Indonesian government who reportedly warned that they would not attend the independence vote's celebrations otherwise. Martenus Bere was eventually transferred in October to West Timor in Indonesia, a safe haven for prosecution.⁶⁵

Martenus Bere was arrested in early August 2009 after he crossed the West Timor border to meet his family in Suai, Timor-Leste. He is accused of being the commander of the Suai Laksaur militia group which along with the Mahidi militia group was involved in the 6 September 1999 attack on the Ave Maria Church compound, in Suai, Covalima District when between 27 and 200 civilians were killed. At the time, around 1,500 people, including women and children, had sought refuge in the compound from a series of attacks in Covalima District.

The transfer without trial of Maternus Bere to Indonesia remains a matter of grave concern to Amnesty International as it weakens the rule of law and independence of the judiciary in a new country like Timor-Leste. Amnesty International is concerned that this case might never see justice.

Martenus Bere is among more than 300 people indicted by the UN Serious Crime Unit in Timor-Leste who have to date escaped prosecution, as they have yet to be brought before a credible, independent and impartial tribunal. The Indonesian authorities have refused to co-operate with the UN-sponsored justice system in Timor-Leste in the past and extradite their citizens who are suspected of crimes against humanity.

⁶⁵ See Amnesty International Public Statement, 4 September 2009, ASA 57/002/2009. Weblink: <http://www.amnesty.org/en/library/asset/ASA57/002/2009/en/d6cc8045-7d47-4c30-b4f3-61bb577d7b15/asa570022009en.pdf>, accessed on 23 February 2010 and Amnesty International Public Statement, 3 November 2009, "Indonesia shelters indicted Timorese suspect", ASA 21/020/2009. Weblink: <http://www.amnesty.org/library/asset/ASA21/020/2009/en/1f251ee7-4640-49a3-9832-79aa6d17a8a8/asa210202009en.pdf>, accessed on 23 February 2010.

5.2 ARTICLE 27 OF THE ROME STATUTE: IRRELEVANCE OF OFFICIAL CAPACITY

Article 27 (1) of the Rome Statute provides that the Statute “*shall apply equally to all persons without any distinction based on official capacity*” and that official capacity, whether as a head of state or any other capacity “*shall in no case exempt a person from criminal responsibility under this Statute, nor shall it, in and of itself, constitute a ground for reduction of sentence*”.

The Penal Code does not include any provision stating that immunities shall not prevent the investigation or prosecution of anyone suspected or accused of having committed a crime under international law. In addition, the Constitution of Timor-Leste states certain conditions for the investigation, prosecution and co-operation or extra-judicial assistance with regard to the President of the Republic (Article 79), members of parliament (Article 94) and members of the government (Article 114) to proceed. Amnesty International recommends that the legislation of Timor-Leste expressly states that immunities, including heads of state, members of parliament or governmental officials, shall not apply to crimes under international law.

5.3 ENSURING FAIR TRIALS WITHOUT THE DEATH PENALTY

Trials in national courts of persons suspected of crimes under international law must be consistent at all stages of the proceedings with international fair trial standards, such as Articles 9, 14 and 15 of the International Covenant on Civil and Political Rights to which Timor-Leste acceded on 18 September 2003 and Articles 55 and 62 to 68 of the Rome Statute, which reflect general principles of law recognized by the international community.

Amnesty International has long campaigned for the abolition of the death penalty worldwide and welcomes that Article 29 (3) of the Constitution of Timor-Leste specifically states that there shall no be death penalty in Timor-Leste.



Serious Crimes Trial. Case 8/2004 the Prosecutor Vs. Domingos Noronha a.ka. Domingos Mau Buti. Trial is still ongoing (picture was taken on 8 February 2010 in Suai court, where the panel moved for one day to hear witnesses who could not travel to Dili) © SCIT/UNMIT

5.4 ENSURING THAT VICTIMS CAN HAVE AN EFFECTIVE RIGHT TO REPARATIONS

With regard to the obligation of ensuring effective reparations to victims, Article 104 of the Penal Code provides that compensation for losses and damages resulting from the crime is compulsory and determined by the court, unless the victim declares that he or she intends to submit the request in a separate process.

According to Article 284 of the Criminal Procedure Code,

- "1. A sentence of acquittal may also punish the defendant with the payment of compensation where losses and the liability of the defendant have been ascertained and assessed.*
- 2. Where the amount of the compensation cannot be assessed or other relevant elements cannot be ascertained, the court shall refer the matter to a civil court for a decision thereon, even though in part".*

This provision is flawed because it is limited to compensation, omitting the other four forms of reparations. States parties should provide in national law for all forms of reparations for victims of crimes under international law in accordance with international standards, including the principles established in Article 75 of the Rome Statute, not only so that their courts can enforce awards by the ICC, but also that Timor-Leste courts can award reparations. These forms of reparation include

restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition. In addition, states parties must enforce judgments and decisions of the ICC, concerning reparations for victims. Amnesty International recommends that the legislation of Timor-Leste provides for all forms of reparations mentioned above, as well as enforcement of ICC decisions on reparations.

Article 75 (1) of the Rome Statute provides that the Court shall "*establish principles relating to reparations to, or in respect of, victims*" and, based on these principles, the Court may "*determine the scope and extent of any damage, loss and injury to, or in respect of, victims*". Further, paragraph (2) authorizes the Court either to "*make an order directly against a convicted person specifying appropriate reparations to, or in respect of, victims, including restitution, compensation and rehabilitation*" or, where appropriate, to "*order that the award for reparations be made through the Trust Fund provided for in article 79*".

To assist the Court in providing reparations to victims, Amnesty International recommends that states parties:

- provide all relevant information to the Court concerning implementation of orders of reparations in their jurisdictions, both with regard to national procedures and the particular case, without waiting for an invitation pursuant to Article 75 (3) of the Rome Statute;
- ensure that national procedures are available which will enable them to provide prompt and effective measures of co-operation specified in Article 93 (1) and Article 109 in implementing an order under Article 75 of the Rome Statute;
- ensure that national law and procedures permit victims to exercise all their rights under national and international law.
- contribute to the Trust Fund established pursuant to Article 79 of the Rome Statute, but should also establish similar trust funds at the national level.

6. CO-OPERATION WITH THE INTERNATIONAL CRIMINAL COURT

Amnesty International is disappointed that Timor-Leste has not enacted legislation providing for the co-operation with the ICC, in accordance with Part 9 of the Rome Statute. Amnesty International is calling on the United Nations Security Council to set up an international criminal tribunal with jurisdiction over all crimes committed in Timor-Leste between 1975 and 1999 and the co-operation of Timor-Leste and all other states to co-operate fully with the work of such tribunal.⁶⁶

The obligation of states parties to co-operate with the ICC includes the obligation to ensure that the Prosecutor and the defence can conduct effective investigations in their jurisdictions, that their national courts and authorities provide full assistance in obtaining documents, locating and seizing assets of the accused, conducting searches and seizures of evidence, locating and protecting witnesses and arresting and surrendering persons accused of crimes by the ICC. In addition, states parties should co-operate with the ICC in enforcing sentences by making detention facilities available for convicted persons and develop a program of public education and training of officials on the principles of the Rome Statute and the functioning of the ICC, among other obligations.

The Rome Statute includes a provision on offences against the administration of justice by the ICC (Article 70). All offences defined in Article 70 (1) of the Rome Statute, as well as provisions included in Article 70 (4) of the Rome Statute, should be implemented in national legislation. Each state party is required under Article 70 (4) (a) to "*extend its criminal laws penalizing offences against the integrity of its own investigative or judicial process to offences against the administration of justice referred to in this article, committed on its territory, or by one of its nationals*". In addition, under Article 70 (4) (b), "*[u]pon request by the Court, whenever it deems it proper, the State Party shall submit the case to its competent authorities for the purpose of prosecution*". Amnesty International would welcome clarification whether Articles 278 to 291 of the Penal Code can be applied to offences against the administration of justice by the ICC and, if not, recommend that the legislation of Timor-Leste provides for the effective implementation of Article 70 (4) of the Rome Statute.

Amnesty International recommends that Timor-Leste begin drafting effective legislation implementing its co-operation obligations under the Rome Statute promptly and in a transparent process involving broad consultation with civil society.⁶⁷

⁶⁶ See Amnesty International report "We cry for justice", Supra No3, p20.

⁶⁷ Amnesty International has published a checklist for states parties to the Rome Statute which explains what they must and should do to implement that treaty effectively. International criminal court: Checklist for Effective Implementation, IOR 40/011/2000, 31 July 2000 (<http://www.amnesty.org/en/library/info/IO40/011/2000/en>).

7. RECOMMENDATIONS

In order to address the current culture of impunity, and set strong deterrent mechanisms, Amnesty International recommends that the Timorese authorities undertake the following as a matter of priority:

- Through public wide spread consultation with civil society groups, amend the Penal Code to bring it into line with the Rome Statute and other international law obligations, including an explicit ban of amnesties, pardons and other forms of impunity for crimes under international law, as well as providing for co-operation obligations under the International Criminal Court;
- Ensure that these additional measures are adopted and implemented after through public discussion;
- Publicly announce and take concrete steps so that all persons responsible for crimes against humanity and other human rights violations, wherever and whenever they occurred, including those which occurred during Indonesian occupation (1975-1999), will be brought to justice and victims will receive reparations.

Although some of the definitions in the Penal Code are consistent with those set out in the Rome Statute and other provisions in conventional and customary international law, there are instances whereby these definitions are not consistent with the strictest requirements of international law. In order to address these concerns, Amnesty International recommends that:

- The requirement that the conditions inflicted must be "cruel, degrading or inhumane" in Article 123 (1) (f) of the Penal Code be removed;
- The inclusion of a definition of the crime against humanity of enslavement in accordance with Article 7 (2) (c) of the Rome Statute;
- Article 124 (g) of the Penal Code be brought into line with Article 7 of the Rome Statute;
- The requirements that the perpetrator has intended to remove the victim from the protection of the law and that the perpetrator has intended to remove the victim from such protection "*for a prolonged period of time*" be deleted from Article 124 (i) of the Penal Code, in line with the definition of enforced disappearance in the International Convention for the Protection of All Persons from Enforced Disappearance;
- The amendment of Article 125 (i) of the Penal Code, in accordance with treaty and customary international criminal law in order to guarantee that all judicial guarantees of a fair and regular trial apply to anyone being investigated or prosecuted in a Timor-Leste court;
- The amendment of Article 126 (c) of the Penal Code to include the word "*or bombarding*";
- The amendment of Article 125 (3) (a) of the Penal Code to include "*deportation*";
- The amendment of Article 126 (h) of the Penal Code, to include "*individuals belonging to the hostile nation*";

- The inclusion in the Penal Code as a war crime of the conduct of compelling the nationals of a hostile party to take part in war operations against their own country;
- The amendment of Article 126 (f) of the Penal Code to include the phrase "*including wilfully impending relief supplies as provided for under the Geneva Conventions*";
- The inclusion in the Penal Code of the following war crimes listed in international humanitarian law treaties:
 - unjustifiable delay in the repatriation of civilians (Article 85 (4) (b) of Protocol I, as well as customary international humanitarian law);
 - launching of an attack against works or installations containing dangerous forces in the knowledge that such attack will cause excessive loss of life, injury to civilians or damage to civilian objects (Article 85 (3) (c) and customary international humanitarian law);
 - practices of apartheid and other inhuman or degrading practices involving outrages upon personal dignity, based on racial discrimination (Article 85 (4) (c) of Protocol I and customary international humanitarian law).
- The inclusion in the Penal Code of the following criminal prohibitions under the rules of customary international humanitarian law applicable to international armed conflict: slavery; deportation to slave labour; collective punishments; despoliation of the wounded, sick, shipwrecked or dead, attacking or ill-treating a *parlementaire* or bearer of the flag of truce; and the use of biological weapons;
- The requirement that a declaration or threat to give no quarter be given by someone acting in the capacity of an officer be removed from Article 126 (g) of the Penal Code;
- The requirement of "*on a large scale or of high value*" be removed from Article 129 (a) of the Penal Code;
- The inclusion in the Penal Code of the following rules of customary international law applicable to non-international armed conflict: use of biological weapons; slavery; and collective punishments.

In addition, wherever the Penal Code incorporates definitions of war crimes under conventional or customary international law only in part or inconsistent with the definitions in international law, those provisions should be amended to bring them into line with international law.

Amnesty International is also recommending:

- The amendment of 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;
- The legislation of Timor-Leste ensures that perpetrators of genocide, crimes against humanity and war crimes can be retried in a Timorese court if the trial in a foreign court was a sham which permitted the perpetrator escape from justice;
- The amendment of Article 136 of the Penal Code to include the following expressions: "*or, owing to the circumstances at the time, should have known*", "*about to commit such crimes*" and

“within his or her power”;

- The amendment of Article 136 (2) of the Penal Code in order to provide for civilian superiors the same standards of criminal responsibility for military commanders;
- The legislation of Timor-Leste expressly states that superior orders are not permitted as a defence, under any circumstances, for any crimes under international law, in accordance with international customary and conventional criminal law;
- The legislation of Timor-Leste expressly states that amnesties and pardons (*indultos*) shall not apply to genocide, crimes against humanity, war crimes, genocide, torture and enforced disappearances, and all crimes included in Protocol I;
- The legislation of Timor-Leste expressly states that immunities, including heads of state, members of parliament or governmental officials, shall not apply to crimes under international law;
- The legislation of Timor-Leste provides for all forms of reparations for victims of crimes under international law in accordance with international standards, including the principles established in Article 75 of the Rome Statute, which include restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition, as well as enforcement of ICC decisions on reparations.

To assist the Court in providing reparations to victims, Amnesty International recommends that states parties:

- Provide all relevant information to the Court concerning implementation of orders of reparations in their jurisdictions, both with regard to national procedures and the particular case, without waiting for an invitation pursuant to Article 75 (3);
- Ensure that national procedures are available which will enable them to provide prompt and effective measures of co-operation specified in Article 93 (1) and Article 109 in implementing an order under Article 75 of the Rome Statute;
- Ensure that national law and procedures permit victims to exercise all their rights under national and international law;
- Contribute to the Trust Fund established pursuant to Article 79 of the Rome Statute, but should also establish similar trust funds at the national level.

In addition, Amnesty International recommends that Timor-Leste begin drafting effective legislation implementing its co-operation obligations under the Rome Statute promptly and in a transparent process involving broad consultation with civil society.

ANNEX 1 - COMPARISON BETWEEN ROME STATUTE PROVISIONS AND OTHER INTERNATIONAL LAW OBLIGATIONS AND THE LEGISLATION OF TIMOR-LESTE

Introductory note: The first column lists all articles of the Rome Statute and conventional and customary international law obligations concerning genocide, crimes against humanity and war crimes. Not all provisions of the Rome Statute require implementation. Where the provision of the Rome Statute listed in first column is not relevant to implementation, such as Article 2, regarding the relationship of the ICC to the United Nations, the chart indicates this with the term "N/A". Similarly, where only one or two paragraphs of a particular article of the Rome Statute require implementation, only those paragraphs are listed. However, where the provision in the Rome Statute listed in the first column does not require implementation, but is a model which states should follow, such as Article 42 (g), requiring the Prosecutor to appoint advisers with legal expertise on specific issues, including, but not limited to, sexual and gender violence and violence against children, then the second column indicates that this provision should be considered as a model for national legislation..

In addition, there are a number of articles of the Rome Statute that involve issues that states parties must address, but in a different manner from the way the ICC must address them, such as Article 24, which limits the temporal jurisdiction of the ICC.

Whether and, if so, to what extent the national law provisions cited the second column of the chart actually implement the corresponding provisions of the Rome Statute or other international law obligations or do so effectively are discussed in the main text of this paper.

Rome Statute articles and other international law obligations	National legislation
PART 1 - ESTABLISHMENT OF THE COURT	
Article 1 (The Court)	N/A
Article 2 (Relationship of the Court to the United Nations)	N/A

Rome Statute articles and other international law obligations	National legislation
Article 3 (Seat of the Court) (3)	Omitted
Article 4 (Legal status and powers of the Court) (1)	Omitted
PART 2 - JURISDICTION, ADMISSIBILITY AND APPLICABLE LAW	
Article 5 (Crimes within the jurisdiction of the Court)	
Article 6 (Genocide)	Penal Code, Article 123
Article 7 (Crimes against humanity)	Penal Code, Article 124
Article 7 (1) (chapeau)	Penal Code, Article 124
Article 7 (1) (a) (murder)	Penal Code, Article 124 (a)
Article 7 (1) (b) (extermination)	Penal Code, Article 124 (b)
Article 7 (1) (c) (enslavement)	Penal Code, Article 124 (c)
Article 7 (1) (d) (deportation and forcible transfer)	Penal Code, Article 124 (d)
Article 7 (1) (e) (imprisonment and deprivation of liberty)	Penal Code, Article 124 (e)
Article 7 (1) (f) (torture)	Penal Code, Article 124 (f)
Article 7 (1) (g) (rape and other crimes of sexual violence)	Penal Code, Article 124 (g)
Article 7 (1) (h) (persecution)	Penal Code, Article 124 (h)
Article 7 (1) (i) (enforced disappearance)	Penal Code, Article 124 (i)
Article 7 (1) (j) (apartheid)	Penal Code, Article 124 (j)
Article 7 (1) (k) (other inhumane acts)	Penal Code, Article 124 (k)
Article 7 (2) (a) (definition of attack)	Omitted

Rome Statute articles and other international law obligations	National legislation
Article 7 (2) (b) (definition of extermination)	Penal Code, Article 124 (b)
Article 7 (2) (c) (definition of enslavement)	It does not appear to have any corresponding provision
Article 7 (2) (d) (definition of deportation and forcible transfer)	Penal Code, Article 124 (d)
Article 7 (2) (e) (definition of torture)	Penal Code, Article 124 (f)
Other obligations – Convention against Torture, Articles 1 and 4 (definition of forms of torture)	Penal Code, Article 167
Article 7 (2) (f) (definition of forced pregnancy)	It does not appear to have any corresponding provision
Article 7 (2) (g) (definition of persecution)	Penal Code, Article 124 (h)
Article 7 (2) (h) (definition of apartheid)	Penal Code, Article 124 (j)
Article 7 (2) (i) (definition of enforced disappearances)	Penal Code, Article 124 (i)
Other obligations – International Convention for the Protection of All Persons from Enforced Disappearance (when ratified) (Article 1) (definition of enforced disappearance)	Penal Code, Article 124 (i) (only when part of a widespread or systematic attack on a civilian population)
Article 7 (3) (definition of gender)	Omitted
Article 8 (1) (advisory threshold for Prosecutor of the International Criminal Court)	N/A
Article 8 (2) (a) (Grave breaches of Geneva Conventions in international armed conflict)	Penal Code, Article 125 (1)
Article 8 (2) (a) (i) (wilful killing)	Penal Code, Article 125 (1) (a) (homicide)
Article 8 (2) (a) (ii) (torture or inhuman treatment)	Penal Code, Article 125 (1) (b)
Article 8 (2) (a) (iii) (wilfully causing grave suffering)	Penal Code, Article 125 (1) (c)

Rome Statute articles and other international law obligations	National legislation
Article 8 (2) (a) (iv) (destruction of property)	Penal Code, Article 129 (a)
Article 8 (2) (a) (v) (compulsion to serve in hostile foreign armed forces)	Penal Code, Article 125 (3) (b)
Article 8 (2) (a) (vi) (denial of fair trial)	Penal Code, Article 125 (1) (i)
Article 8 (2) (a) (vii) (unlawful deportation or transfer or unlawful confinement)	Penal Code, Article 125 (1) (g)
Article 8 (2) (a) (viii) (taking of hostages)	Penal Code, Article 125 (1) (d)
Article 8 (2) (b) (other serious violations of laws and customs in international armed conflict)	
Article 8 (2) (b) (i) (intentional attacks on the civilian population)	Penal Code, Article 126 (a)
Article 8 (2) (b) (ii) (intentional attacks on civilian objects)	Penal Code, Article 126 (b)
Article 8 (2) (b) (iii) (attacks on humanitarian or peacekeeping operations)	Penal Code, Article 128 (a)
Article 8 (2) (b) (iv) (attacks causing excessive incidental loss of civilian life or objects)	Penal Code, Article 126 (d) and (i)
Article 8 (2) (b) (v) (attacks on undefended locations)	Penal Code, Article 126 (c)
Article 8 (2) (b) (vi) (killing or wounding persons <i>hors de combat</i>)	Penal Code, Article 125 (k)
Article 8 (2) (b) (vii) (improper use of truce flag, emblems of enemy or United Nations or Red Cross)	Penal Code, Article 126 (j)
Article 8 (2) (b) (viii) (transfer of population into occupied territory and deportation from it)	Penal Code, Article 125 (3) (a)
Article 8 (2) (b) (ix) (intentional attacks on protected cultural or humanitarian buildings)	Penal Code, Article 129 (b)

Rome Statute articles and other international law obligations	National legislation
Article 8 (2) (b) (x) (mutilation and medical and scientific experiments)	Penal Code, Article 125 (1) (m)
Article 8 (2) (b) (xi) (treacherous killing or wounding)	Penal Code, Article 126 (h)
Article 8 (2) (b) (xii) (declaring no quarter)	Penal Code, Article 126 (g)
Article 8 (2) (b) (xiii) (destruction or seizing of enemy property)	Penal Code, Article 125 (1) (h)
Article 8 (2) (b) (xiv) (abolition or suspension of rights)	Penal Code, Article 130
Article 8 (2) (b) (xv) (compelling nationals of hostile party to attack their own country)	It does not appear to have any corresponding provision
Article 8 (2) (b) (xvi) (pillaging)	Penal Code, Article 129 (c)
Article 8 (2) (b) (xvii) (employing poison or poisoned weapons)	Penal Code, Article 127 (2) (a)
Article 8 (2) (b) (xviii) (using asphyxiating or poison gases or liquids)	Penal Code, Article 127 (2) (b)
Article 8 (2) (b) (xix) (using expanding bullets)	Penal Code, Article 127 (2) (c)
Article 8 (2) (b) (xx) (use of prohibited weapons)	Penal Code, Article 127 (1)
Article 8 (2) (b) (xxi) (outrages upon personal dignity)	Penal Code, Article 125 (1) (j)
Article 8 (2) (b) (xxii) (rape and other crimes of sexual violence)	Penal Code, Article 125 (1) (l)
Article 8 (2) (b) (xxiii) (human shields)	Penal Code, Article 126 (e)
Article 8 (2) (b) (xxiv) (intentional attacks on buildings and persons protected by Geneva Convention emblems)	Penal Code, Article 128 (b)
Article 8 (2) (b) (xxv) (starvation as a weapon)	Penal Code, Article 126 (f)

Rome Statute articles and other international law obligations	National legislation
Article 8 (2) (b) (xxvi) (child soldiers)	Penal Code, Article 125 (e)
Article 8 (2) (c) (violations of common Article 3)	Penal Code, Article 125 (1) (a), (b), (d), (i), (j) and (m)
Article 8 (2) (d) (exclusion of internal disturbances and tensions)	Omitted
Article 8 (2) (e) (other serious violations in non-international armed conflict)	
Article 8 (2) (e) (i) (intentionally attacking civilian population)	Penal Code, Article 126 (a)
Article 8 (2) (e) (ii) (attacking buildings and persons protected by Geneva Convention emblems)	Penal Code, Article 128 (b)
Article 8 (2) (e) (iii) (attacking humanitarian assistance and peacekeeping operations)	Penal Code, Article 128 (a)
Article 8 (2) (e) (iv) (attacking cultural or humanitarian buildings)	Penal Code, Article 129 (b)
Article 8 (2) (e) (v) (pillaging)	Penal Code, Article 129 (c)
Article 8 (2) (e) (vi) (rape and other crimes of sexual violence)	Penal Code, Article 125 (1) (l)
Article 8 (2) (e) (vii) (child soldiers)	Penal Code, Article 125 (1) (e)
Article 8 (2) (e) (viii) (forced displacement of the civilian population)	It does not appear to have any corresponding provision
Article 8 (2) (e) (ix) (treacherous killing or wounding)	Penal Code, Article 126 (h)
Article 8 (2) (e) (x) (declaring no quarter)	Penal Code, Article 126 (g)
Article 8 (2) (e) (xi) (mutilation and medical and scientific experiments)	Penal Code, Article 125 (1) (m)
Article 8 (2) (e) (xii) (destruction and seizure of	Penal Code, Article 129 (a)

Rome Statute articles and other international law obligations	National legislation
property of adversary)	
Article 8 (2) (f) (exclusion of internal disturbances and tensions)	N/A
Article 8 (3) (general provision on law and order)	N/A
Article 9 (Elements of crimes)	
Article 10	N/A
Article 11 (Jurisdiction <i>ratione temporis</i>)	Constitution, Article 31 (2); Penal Code, Article 1 (1)
Article 12 (Preconditions to the exercise of jurisdiction)	N/A
Article 13 (Exercise of jurisdiction)	N/A
Article 14 (Referral of a situation by a State Party)	N/A
Article 15 (Prosecutor)	N/A
Article 16 (Deferral of investigation or prosecution)	N/A
Article 17 (Issues of admissibility)	N/A
Article 18 (Preliminary rulings regarding admissibility) (5) (obligation to respond promptly to Prosecutor requests for updates)	Omitted
Article 19 (Challenges to the jurisdiction of the Court or the admissibility of a case)(8) (obligation to co-operate with certain Prosecutor actions)	Omitted
Article 20 (<i>Ne bis in idem</i>) (2) (no state prosecution if a Court acquittal or conviction)	Constitution, Article 31 (4)
Article 21 (Applicable law)	Constitution, Article 9 (International Law)

Rome Statute articles and other international law obligations	National legislation
PART 3 – GENERAL PRINCIPLES OF CRIMINAL LAW	
Article 22 (<i>Nullum crimen sine lege</i>)	(model) Penal Code, Articles 1 and 2
Article 23 (<i>Nulla poena sine lege</i>)	(model) Constitution, Article 31 (3)
Article 24 (Non-retroactivity <i>ratione personae</i>)	(model) Constitution, Article 31 (5); Penal Code, Article 3 (3)
Article 25 (Individual criminal responsibility) (1)	Penal Code, Article 12 (1)
Article 25 (Individual criminal responsibility) (3) (a) (commission individually, jointly or through another person)	Penal Code, Articles 29 and 30
Article 25 (Individual criminal responsibility) (3) (b) (ordering, soliciting or inducing)	Penal Code, Articles 29 and 31
Article 25 (Individual criminal responsibility) (3) (c) (aiding, abetting or otherwise assisting)	Penal Code, Article 32
Article 25 (Individual criminal responsibility) (3) (d) (commission or attempted commission by a group with a common purpose)	
Article 25 (Individual criminal responsibility) (3)(e) (direct and public incitement of genocide)	Penal Code, Article 123 (2)
Article 25 (Individual criminal responsibility) (3) (f) (attempt)	Penal Code, Article 23
Article 26 (Exclusion of jurisdiction over persons under eighteen)	Penal Code, Article 20
Article 27 (Irrelevance of official capacity)	It does not appear to have any corresponding provision
Article 28 (Responsibility of commanders and other superiors)	Penal Code, Article 136
Article 29 (Non-applicability of statute of limitations)	Penal Code, Article 117

Rome Statute articles and other international law obligations	National legislation
Article 30 (Mental element)	Penal Code, Articles 14 and 15
Article 31 (Grounds for excluding criminal responsibility) (1) (a) (mental disease or defect)	Penal Code, Article 21
Article 31 (Grounds for excluding criminal responsibility) (1) (b) (involuntary intoxication)	It does not appear to have any corresponding provision
Article 31 (Grounds for excluding criminal responsibility) (1) (c) (self-defence, defence of others and defence of property)	Penal Code, Article 43 (2) Criminal Procedure Code, Article 60
Article 31 (Grounds for excluding criminal responsibility) (3)	It does not appear to have any corresponding provision
Article 32 (Mistake of fact or law)	Penal Code, Articles 17 and 18
Article 33 (Superior orders and prescription of law)	Penal Code, Article 46 (2)
PART 4 – COMPOSITION AND ADMINISTRATION OF THE COURT	
Article 34 (Organs of the Court)	N/A
Article 35 (Service of judges)	N/A
Article 36 (Qualifications, nomination and election of judges) (1) to (3)	N/A
Article 36 (Qualifications, nomination and election of judges) (4) (Nomination procedure at the national level) to (7)	It does not appear to have any corresponding provision
Article 36 (Qualifications, nomination and election of judges) (8) (need for experts, including on violence against women and children)	(model) It does not appear to have any corresponding provision
Article 36 (Qualifications, nomination and election of judges) (5) to (10)	N/A
Article 37 (Judicial vacancies)	N/A

Rome Statute articles and other international law obligations	National legislation
Article 38 (Presidency)	N/A
Article 39 (Chambers)	N/A
Article 40 (Independence of the judges)	N/A
Article 41 (Excusing and disqualification of judges)	N/A
Article 42 (The Office of the Prosecutor) (1) to (8)	N/A
Article 42 (The Office of the Prosecutor) (9) (appointment of legal experts on sexual and gender violence and violence against children)	(model) It does not appear to have any corresponding provision
Article 43 (The Registry) (6) (Victims and Witnesses Unit)	(model) It does not appear to have any corresponding provision
Article 44 (Staff)	N/A
Article 45 (Solemn undertaking)	N/A
Article 46 (Removal from office)	N/A
Article 47 (Disciplinary measures)	N/A
Article 48 (Privileges and immunities)	Timor-Leste has not ratified the Agreement on Privileges and Immunities of the Court
Article 49 (Salaries, allowances and expenses)	N/A
Article 50 (Official and working languages)	N/A
Article 51 (Rules of Procedure and Evidence)	N/A
Article 52 (Regulations of the Court)	N/A
Part 5 – INVESTIGATION AND PROSECUTION	
Article 53 (Initiation of an investigation)	N/A
Article 54 (Duties and powers of the Prosecutor)	N/A

Rome Statute articles and other international law obligations	National legislation
with respect to investigations)	
Article 55 (Rights of persons during an investigation)	(model for national investigations; mandatory for state assistance for Court investigations) Constitution, Article 34
Article 56 (Role of the Pre-Trial Chamber in relation to a unique investigative opportunity)	N/A
Article 57 (Functions and powers of the Pre-Trial Chamber)	N/A
Article 58 (Issuance by the Pre-Trial Chamber of a warrant of arrest or a summons to appear)	N/A
Article 59 (Arrest proceedings in the custodial State)	
Article 60 (Initial proceedings before the Court)	N/A
Article 61 (Confirmation of the charges before trial)	N/A
PART 6 –THE TRIAL	
Article 62 (Place of trial)	N/A
Article 63 (Trial in the absence of the accused)	(model) Criminal Procedure Code, Articles 256 and 258
Article 64 (Functions and powers of the Trial Chamber) (1) to (6) (a)	N/A
Article 64 (Functions and powers of the Trial Chamber) (1) to (6) (b) (obtaining assistance of states to require attendance and testimony of witnesses and production of documents)	
Article 64 (Functions and powers of the Trial Chamber) ((6) (c) to (10)	N/A
Article 65 (Proceedings on an admission of guilt)	(model) Criminal Procedure Code, Article 268 (4)
Article 66 (Presumption on innocence)	(model) Constitution, Article 34 (1)

Rome Statute articles and other international law obligations	National legislation
Article 67 (Rights of the accused)	(model) Constitution, Article 34 Criminal Procedure Code, Article 60
Article 68 (Protection of the victims and witnesses and their participation in the proceedings)	(model)
Article 69 (Evidence)	(model)
Article 70 (Offences against the administration of justice)	Penal Code, Articles 278 to 291
Article 71 (Sanction for misconduct before the Court)	
Article 72 (Protection of national security information)	It does not appear to have any corresponding provision
Article 73 (Third-party information or documents)	It does not appear to have any corresponding provision
Article 74 (Requirements for the decision)	Criminal Procedure Code, Article 278
Article 75 (Reparations to victims)	Criminal Procedure Code, Article 284
Article 76 (Sentencing)	Criminal Procedure Code, Articles 281 to 286
Part 7 - PENALTIES	
Article 77 (Applicable penalties)	(model) Penal Code, Articles 59, 66, and 75
Article 78 (Determination of the sentence)	(model)
Article 79 (Trust Fund) (model for states)	It does not appear to have any corresponding provision
Article 80 (Non-prejudice to national application of penalties and national laws)	
Part 8 – APPEAL AND REVISION	Criminal Procedure Code, Article 287 to 323
Article 81 (Appeal against decision of acquittal or conviction or against sentence)	

Rome Statute articles and other international law obligations	National legislation
Article 82 (Appeal against other decisions)	
Article 83 (Proceedings on appeal)	
Article 84 (Revision of conviction or sentence)	Criminal Procedure Code, Articles 315 to 320
Article 85 (Compensation to an accused or convicted person)	(model) Constitution, Article 31 (6)
PART 9 – INTERNATIONAL CO-OPERATION AND JUDICIAL ASSISTANCE	Obligations of co-operation with the ICC have not been implemented
Article 86 (General obligation to co-operate)	
Article 87 (Requests for co-operation: general provisions)	
Article 88 (Availability of procedures under national law)	
Article 89 (Surrender of persons to the Court)	
Article 90 (Competing requests)	
Article 91 (Contents of request for arrest and surrender)	
Article 92 (Provisional arrest)	
Article 93 (Other forms of co-operation)	
Article 94 (Postponement of execution of a request in respect of on-going investigation or prosecution)	
Article 95 (Postponement of execution of a request in respect of an admissibility challenge)	
Article 96 (Contents of request for other forms of assistance under article 93)	
Article 97 (Consultations)	

Rome Statute articles and other international law obligations	National legislation
Article 98 (Co-operation with respect to waiver of immunity and consent to surrender)	
Article 99 (Execution of requests under articles 93 and 96)	
Article 100 (Costs)	
Article 101 (Rule of speciality)	
Article 102 (Use of terms)	
PART 10 - ENFORCEMENT	
Article 103 (Role of States in enforcement of sentences and judgment)	
Article 104 (Change in designation of State of enforcement)	
Article 105 (Enforcement of the sentence)	
Article 106 (Supervision of enforcement of sentences and conditions of imprisonment)	
Article 107 (Transfer of the person upon completion of sentence)	
Article 108 (Limitation on the prosecution of other offences)	
Article 109 (Enforcement of fines and enforcement measures)	
Article 110 (Review by the Court concerning reduction of sentence)	
Article 111 (Escape)	
PART 11 – ASSEMBLY OF STATES PARTIES	
Article 112 (Assembly of States Parties)	N/A

Rome Statute articles and other international law obligations	National legislation
PART 12 – FINANCING	
Article 113 (Financial Regulations)	N/A
Article 114 (Payment of expenses)	N/A
Article 115 (Funds of the Court and of the Assembly of States Parties)	N/A
Article 116 (Voluntary contributions)	
Article 117 (Assessment of contributions)	
Article 118 (Annual audits)	N/A
PART 13 – FINAL CLAUSES	
Article 119 (Settlement of disputes)	N/A
Article 120 (Reservations)	
Article 121 (Amendments)	N/A
Article 122 (Amendments to provisions of an institutional nature)	N/A
Article 123 (Review of the Statute)	N/A
Article 124 (Transitional Provision)	N/A
Article 125 (Signature, ratification, acceptance, approval or accession)	N/A
Article 126 (Entry into force)	N/A
Article 127 (Withdrawal)	N/A
Article 128 (Authentic texts)	N/A



**I WANT
TO HELP**

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

WHAT CAN YOU DO?

Activists around the world have shown that it is possible to resist the dangerous forces that are undermining human rights. Be part of this movement. Combat those who peddle fear and hate.

- Join Amnesty International and become part of a worldwide movement campaigning for an end to human rights violations. Help us make a difference.
- Make a donation to support Amnesty International's work.

Together we can make our voices heard.

I am interested in receiving further information on becoming a member of Amnesty International

name

address

country

email

I wish to make a donation to Amnesty International (donations will be taken in UK£, US\$ or €)

amount

please debit my

Visa

Mastercard

number

expiry date

signature

www.amnesty.org

Please return this form to the Amnesty International office in your country.
For Amnesty International offices worldwide: www.amnesty.org/en/worldwide-sites

If there is not an Amnesty International office in your country, please return this form to:
Amnesty International, International Secretariat, Peter Benenson House,
1 Easton Street, London WC1X 0DW, United Kingdom



INTERNATIONAL CRIMINAL COURT TIMOR-LESTE JUSTICE IN THE SHADOW

On 6 September 2002, Timor-Leste acceded to the Rome Statute of the International Criminal Court (Rome Statute). Nearly seven years after becoming a state party, Timor-Leste implemented into its 2009 Penal Code its complementarity obligations under the Rome Statute.

Amnesty International recognizes these first steps as important developments in the fight against impunity. However, some aspects of the Penal Code are not consistent with the Rome Statute and other conventional and customary international law. In addition, there is a lack of provisions on co-operation with the International Criminal Court.

In this report, Amnesty International provides a legal analysis of Timor-Leste's 2009 Penal Code and the extent to which it has incorporated complementarity provisions under the Rome Statute and implemented other international criminal law, or failed to do so.

The report also includes recommendations for effective implementation, by amending the Penal Code to bring it into line with the Rome Statute and other international law obligations, including an explicit ban on amnesties, pardons and other forms of impunity for crimes under international law, as well as providing for co-operation obligations under the Rome Statute.

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

www.amnesty.org

Index: ASA 57/001/2010
June 2010

AMNESTY
INTERNATIONAL

