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Timor-Leste: Failure to prosecute indicted militia leader reinforces urgent need for an international tribunal

The decision by the Timor-Leste government last weekend to release an indicted militia leader, who is charged with crimes against humanity, confirms the unwillingness of the governments of Timor-Leste and Indonesia to prosecute past human rights violations and affirms the urgent need for the United Nations Security Council to step in and establish an international criminal tribunal.

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, was released from Becora prison on 30 August before his case had even been prosecuted. He was reportedly handed over to the Indonesian embassy in Dili. Amnesty International fears that he will now not be prosecuted and will soon be assisted to return to Indonesia, a safe haven from prosecution.

His release took place on the 10th anniversary of the referendum which led to Timor-Leste's independence, amidst calls by victims and Timor-Leste's civil society to address the impunity for serious human rights violations that took place around the referendum and during the 24 years of Indonesian occupation that preceded the vote. In response, both the Timor-Leste and the Indonesian governments have firmly rejected the calls for justice.

On the day of his release protesters held a peaceful press conference in Dili condemning the government's decision. During the conference, three student activists, Sisto dos Santos, Gaudensio and Helio were arrested. The students were later released on 2 September. Nevertheless, their arrest and three-day detention in Caicoli Police cell, Dili raises concerns that the authorities are attempting to silence peaceful campaigning for justice for past crimes.

The decision to release militia leader Martenus Bere violates Timor-Leste's obligations under international law to ensure that such serious human rights violations are investigated and those suspected of committing the crimes are prosecuted.

Justice for past crimes should not be sacrificed for other pressing needs, such as economic development. The two are not conflicting aims and should be addressed together in the process of nation building to ensure that Timor-Leste develops with the rule of law in place to deliver justice to the victims and prevent future human rights violations.

Amnesty International reiterates again its calls on the Timor-Leste and Indonesian governments to develop comprehensive strategies that comply fully with their obligations under international criminal law and human rights law to bring to justice all those responsible for crimes under international law between 1975 and 1999 in Timor-Leste and to ensure reparations to the victims.

While there is a clear absence of such a commitment by either government, the United Nations Security Council should step in immediately and establish an international criminal tribunal to prosecute the crimes.

Background

On 30 August 1999, the Timorese people voted overwhelmingly in favour of independence. At least 1,200 people died in the lead-up to the polls and its aftermath, victims of crimes against humanity and other serious human rights violations at the hands of pro-Indonesian militias backed by the Indonesian military. They included unlawful killings, enforced disappearances, sexual violence, arbitrary arrests, threats and intimidation of Timorese people.

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. This Sunday, the victims will mark the 10th anniversary of the attack.

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 cooperate with the UN-sponsored justice system in Timor-Leste in the past and extradite its citizens who are suspected of crimes against humanity. With the closure of the UN-sponsored process in 2005, the Timor-Leste judiciary has failed to prosecute any other 1999 cases.

Martenus Bere's release is contrary to the obligation recognised by all state parties to the Rome Statute of the International Criminal Court which states in its preamble 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". Timor-Leste acceded to the Rome Statute on 6 September 2002.

In a report released last week, "We Cry for Justice – Impunity persists ten years on", Amnesty International called for the UN Security Council to establish a long-term comprehensive plan to end impunity for past human rights violations in Timor-Leste, and in particular set up an international criminal tribunal with jurisdiction over all crimes committed in Timor-Leste between 1975 and 1999. Such a tribunal should be able to intervene and ensure justice in some representative cases and act as a catalyst for national justice in others, given the refusal to date of the Indonesian and Timor-Leste authorities to support individual criminal prosecutions.