

Reconciliation as State-building in East Timor*

Just as reconciliation and justice have entered the neo-liberal discourse on human rights that emerged in the post-Cold War period, so in post-conflict East Timor various forms of reconciliation and justice mechanisms have been institutionalized (Rae 2003: 158-59). In line with the growing globalization of human rights norms, East Timor joins a select group of countries where the United Nations has taken the lead role in rebuilding the justice sector and in setting the parameters for retribution through international actions. Besides the well-known case of South Africa, a range of African and Latin American countries have created truth commissions (Hayner 1994, 2002). As part of the burgeoning discussion on «transitional justice» around the world, the proliferation of truth commissions have raised more questions than provided answers to ways of settling accounts with the past. While some believe that truth-seeking and finding alone can help society move forward, others argue that some means of reconciliation between former enemies is crucial, and yet others claim that the best way to deal with the past is to bury it and go on (Hayner 2002).

East Timor's CAVR**, set up in March 2002, was the first «truth commission» established in an Asian country (although post-Suharto Indonesia had earlier drafted legislation for a truth commission in that country to deal with a range of human rights issues committed by the military against its own population). Established by the UNTAET, which assumed traditional notions of state sovereignty following international intervention to stem the violence in September 1999, we may well ask, why has CAVR attracted so much funding and local attention, alongside other justice mechanisms. This is all the more perplexing, especially given the failure of the Indonesian legal system to deliver justice on senior military elements charged with war crimes in East Timor, and especially given the lack of resources and empowerment offered East Timor's own hybrid legal system charged with trying serious crimes. Another question that perplexes students of this country's justice system, as much sections of the population,

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** See list of acronyms next page.

is why the retreat from seeking no impunity for war criminals and why the embrace by East Timorese leaders of individual and community reconciliation processes ?

Turning to an examination of the CAVR process, including its novel forms of community reconciliation processes, we ask the question, has this faith in traditional forms of reconciliation been vindicated, especially given the history of violence in this half-island state and threats of recurrence ? Indeed, as the CAVR process enters its final stage, we seek to inquire into the merits of this form of post-conflict management and determine what lessons can be derived from East Timor's specific Melanesian-Asian setting for other post-conflict situations.

Acknowledging that, alongside the formal justice sector, surprisingly little has been written on the reconciliation process in East Timor, at least outside the «official» literature of concerned UN agencies, this article seeks to enter the literature on transitional justice in general. Specifically, this article seeks to frame CAVR and the reconciliation process in East Timor within the broad parameters of political process and state-building such as promoted by UNTAET and its successor mission. To understand the process we first examine the political context of violence in East Timor.

List of acronyms

CAVR, *Comissão de Acolhimento, Verdade e Reconciliação*, Commission for Reception, Truth and Reconciliation
 CNRT, *Conselho Nacional da Resistência Timorese*, Timorese Council of the National Resistance
 CPD, *Comissão Popular de Defesa*, People's Commission for the Defense
 CRPs, Community Reconciliation Procedures
 ICTJ, International Center for Transitional Justice
 INTERFET, International Force for East Timor
 NGO, Non-Governmental Organization
 PNTL, *Policia Nacional de Timor-Leste*, National Police of East Timor
 RDTL, *República Democrática de Timor-Leste*, Democratic Republic of East Timor
 SCU, Serious Crimes Unit
 TNI, *Tentara Nasional Indonesia*, Indonesian armed forces
 UN, United Nations
 UNAMET, United Nations Assistance Mission to East Timor
 UNDP, United Nations Development Programme
 UNHCHR, United Nations High Commission for Humanitarian Relief
 UNMISSET, United Nations Support Mission
 UNTAET, United Nations Transitional Administration for East Timor

The Political Context of Violence in East Timor

Meeting on 5 May 1999 in New York at UN headquarters, the foreign ministers of Portugal (Jaime Gama) and Indonesia (Ali Alatas) signed a historic agreement on the question of East Timor, along with two protocols

pertaining to the modalities of a popular ballot slated for August 1999 as to whether or not the East Timorese would accept or reject autonomy within the Republic of Indonesia, and another pertaining to security arrangements during and after the vote. Annexed to the agreement was Indonesia's constitutional framework for a special autonomy for East Timor, otherwise known as the autonomy package. This agreement, endorsed by the Security Council on 7 May (Resolution 1236 [1999]), was widely portrayed as the triumph of 16 years of UN diplomacy on the question of Indonesia's illegal invasion and annexation of the former Portuguese colony in 1975-76 (Ramos-Horta 1987 ; Marker 2003).

As spelled out in the 5 May document, should the proposed constitutional framework for special autonomy be acceptable to the East Timorese people, then Portugal would initiate the procedures necessary to remove East Timor from the list of Non-Self-Governing Territories and Indonesia would make its constitutional adjustments in line with the autonomy package. On the contrary, should the autonomy proposals be rejected, then Indonesia would terminate its links with East Timor and the territory would revert to its pre 17 July 1976 status (a reference to the Indonesian parliament's incorporation of East Timor) and authority in East Timor would be transferred to the UN pending a transfer of power to an independent East Timor state. Fatally, such language masked the pact with Jakarta that required the new Indonesian parliament elected in June 1999 to actually vote to release East Timor from the illegal 1976 annexation.

To astute observers, it was clear that Jakarta was playing a wily dual diplomatic and military strategy over East Timor, on the one hand snaring the UN into mounting a flawed ballot with Portugal's acquiescence, and on the other hand, setting the trap masterminded by the TNI or Indonesian armed forces. The Foreign Ministry role was clearly to drag out the discussions to win time for a strategy aimed at routing out the pro-independence supporters, while TNI through its agents provoked terror and coercion to prepare a favorable outcome. Behind this strategy on the ground was the tactic to create the myth of equivalence between the militias and the resistance army Falintil (*Forças armadas de libertação nacional de Timor Leste*) otherwise represented as two warring parties. *Ipsa facto*, with this logic, disarmament of the so-called warring factions would involve not only the militias but also Falintil. TNI, the invader and tormentor of the Timorese people was, accordingly, elevated to the status of keeper of security, while Falintil, the protector of the Timorese people over 23 years, became the equivalent of the murderous TNI-sponsored militias of some three months (Gunn 2000: 271).

As the security protocol of the 5 May agreement outlined, a prerequisite for the vote was a secure environment devoid of violence or other forms of intimidation. Such would be salutary for the East Timorese at the hands of the militias and TNI, although the major contradiction of the agreement was, as feared by independence supporters, that the maintenance of law and order rested with the Indonesian security authorities. Still the absolute neutrality of TNI was demanded. But this was a matter of faith. Meantime, on-the-ground preparation for the ballot came under the aegis of the UNAMET, backed by 600 international staff and unarmed civilian police. Having been twice postponed owing to deadly militia violence, the ballot was duly held on 30 August with over 98 percent of the 451,792 registered

actually voting. Despite the absence of a level playing field, as even UNAMET admitted, the result was an overwhelming victory for independence and rejection of «special autonomy». To be precise, 78,5 percent voted to break with Indonesia while 21,5 percent chose the Indonesian autonomy package (Gunn 2000: 276).

On 14 September, two weeks after the UN-sponsored ballot on East Timor's future, a beleaguered UNAMET evacuated to northern Australia with the notable exception of a group of staffers who set up office in the Australian consulate in Dili. Over the preceding two weeks, much of Dili had been systematically reduced to ashes, with most of its population forcibly removed. Decomposed bodies lay in the streets. Scarcely awaiting the announcement of the ballot result on 4 September, TNI and militia began the wholesale slaughter of Timorese in the capital and in isolated towns and hamlets across the half-island. Especially targeted were males and those who voted for independence. But the unthinkable in Timor also happened; the Church was attacked, sparing neither priests nor nuns, while the Bishop of Dili made a narrow escape. The numbers killed or disappeared in this wicked display of medievalism undoubtedly numbered thousands. Who, then, committed this atrocity, bordering upon genocide? Precisely, as later identified by the new UN-supported judicial system established in Dili, those entrusted by the UN to ensure the peaceful conduct of the ballot, the TNI, and their militias (Gunn 2000: 279; Martin 2001).

The UN Human Rights Commissioner, Mary Robinson, had just declared the necessity to create a commission leading to a Rwanda-style tribunal to prosecute crimes against humanity. The international community expressed outrage, as Jakarta went into denial mode and anti-foreign nationalism surged across Indonesia. With President B.J. Habibie increasingly captive to the military, the world entered a breathless week of diplomatic brinkmanship. Undoubtedly only the threat of a war crimes tribunal along with the imposition of economic and military sanctions on Jakarta by the US and EU countries, in tandem with the US President's evident conversion on the Timor horror, persuaded Indonesian military strongman General Wiranto and Habibie to agree on 12 September to invite the UN to dispatch an international force. Still with the sword of Damocles hanging over the heads of the Timorese, the UN procrastinated on the terms of its mission until 15 September. On this day, the Security Council unanimously passed resolution 1264 (1999) paving the way for the immediate entry into East Timor of a UN-mandated multinational peace-enforcement force pending the arrival of a full-fledged UN-commanded «blue helmet» or peacekeeping force in a later period. Mandated under Chapter VII of the UN charter, the Australian-led INTERFET was authorized to deploy force and to take in hand the humanitarian crisis.

At the same time, the clock was ticking on the lives of some 300,000 internal refugees who fled the torched and devastated urban centers of East Timor for the mountains as food supplies dwindled and vindictive militia and military closed in. The fate of an additional 250,000 terrorized East Timorese pushed out of the cities and towns across the border to concentration-style camps in west Timor raised many questions as to rebuilding East Timor, especially as militias and TNI special forces units began to retreat to west Timor and even to Jakarta. Such fears were also carried in the report by a Security Council mission that visited Jakarta and

Dili between 8 and 12 September. The report drew attention to the systematic implementation of a «scorched-earth» policy by the Indonesian military, selective executions of East Timorese students, intellectuals and others, massive population displacements to west Timor, and permanent displacements of East Timorese around Indonesia (S/1999/976 cited in Gunn 2000: 281).

While INTERFET was mandated to take charge of security and to coordinate humanitarian relief, the actual task of state-building was delegated UNTAET, headed by Brazilian diplomat, Sergio Vieira de Mello. As discussed below, the rebuilding of the justice sector along with other aspects of state-building fell under the UNTAET mandate down until the birth of the Democratic Republic of Timor-Leste (RDTL) on 20 May 2002 and continues to be supported by a vastly scaled down successor mission, UNMISSET.

International Justice ?

Responding to the appalling violence, in an unprecedented move, the UN dispatched three special rapporteurs to East Timor at the end of 1999 and issued a joint report implicating the TNI in the bloodshed while recommending the Secretary-General consider the establishment of an International Committee of Inquiry (A/54/660). In early 2000, the UN mounted its own Commission of Inquiry and concluded that the systematic and large-scale acts of violence merited an international human rights tribunal similar to those mechanisms established in the former Yugoslavia and Rwanda to try those responsible for atrocities (A/54/726, 5/2000/59). Nevertheless, in his accompanying report to the Security Council, the Secretary-General did not endorse the Commission's views but concluded that the Indonesian government should be first given the opportunity to try those responsible (S/2000/59). Evidently swayed by a decision of the UNHCHR meeting in Geneva on 27 September 1999, sanctioning an internal Indonesian inquiry, the Secretary-General announced that he would closely monitor Jakarta's *Ad hoc* Human Rights Court for East Timor, leaving the prospect of an international trial on the table in default of the Indonesian process.

But, Jakarta repeatedly failed to demonstrate its seriousness about trying its own citizens, and the UN, if it was in fact closely monitoring the process, did little to ameliorate Indonesia's dismal handling of alleged war criminals. The court held its final prosecution in August 2003 when it tried Major General Adam Damiri for crimes against humanity committed in East Timor in 1999. Damiri, the highest-ranking military officer to have been brought to the court, was sentenced to three years in prison. Of the 18 people tried by the court, 12 have been acquitted and the rest remain free pending appeal. Such outcomes in fact are not surprising given the very design of the *ad hoc* court that protected Indonesia from confronting most of its human rights abuses in East Timor. The court has jurisdiction over just three of East Timor's 13 districts, and over a mere two months (April and September 1999) of Indonesia's 24-year occupation of the territory. In addition, the court refused to extradite anyone to East Timor, including those accused by

the Serious Crimes Unit of Dili. Now that the Jakarta process has come to an end, perpetrators in Indonesia are likely to remain walking free.

Despite the obvious deficiencies of the Indonesian court, the international community turned a largely blind eye to the process. The reaction of the United States is an illuminating example. Since the onset of the «war» on terrorism in 2001, the administration of President George W. Bush has made clear its desire to resume military ties with Indonesia despite a law that prohibits military aid to the country until certain conditions have been met, including bringing to justice those members of the Indonesian military and militias involved in human rights violations. Soon after the September 11 terrorist attacks on the United States, Bush and Indonesian President Megawati Sukarnoputri agreed in a joint statement to resume regular meetings between their militaries. Soon after, Washington took a step toward normalization of military relations with Indonesia by lifting the embargo on sales of non-lethal military items and sending millions of dollars for «counter-terrorism» to Jakarta. With Indonesia being a majority Muslim partner of strategic interest for post-9/11 US foreign policy objectives, America sought to please a key ally by laying aside its concerns over human rights in Indonesia and justice for East Timor (Huang 2003). The UN has been equally mute on the Jakarta proceedings, and the UN Human Rights Commission in fact removed Indonesia's human rights violations off its agenda in April 2003.

The eagerness to placate Jakarta by abandoning the issue of Indonesian perpetrators has come not only from abroad, but also from within East Timor's top leadership. Foreign Minister José Ramos Horta in November 2003 clarified once and for all his take on the Jakarta court when he stated, «Indonesia has changed since 1999... [the president and government] cannot be blamed for what happened» (Williams 2003). Accordingly, he also expressed staunch opposition to the establishment of an international criminal tribunal. Despite continued activism on the part of international human rights advocates appealing for such a tribunal, the obvious lack of local and international political will to undergo such a process leaves a bleak prospect for major advances in the way justice is currently being handled in East Timor.

Rebuilding the Justice System in East Timor

Under UNTAET six different organs were involved with accountability for the 1999 crimes. These were Judicial Affairs, Human Rights, Political Affairs, Legal Affairs, UN Civilian Police and the newly created East Timor court system. UNTAET then created a Serious Crimes Unit (SCU) as provided by Security Council Resolution 1271 to investigate and prosecute cases in front of a Special Panel for Serious Crimes for the newly created Dili Court. It also comes under the mandate of UNMISSET, which commenced on 21 May 2002. Within the court structure of the Dili District court two Special Panels are mandated with exclusive and universal jurisdiction to try those charged with serious criminal offenses committed between 1 January 1999 and 25 October 1999. Based on both the Rome Statute of the International Criminal Court and the Indonesian Criminal Code (which UNTAET adopted, albeit with significant amendments), the legal definition of serious

criminal offenses included genocide, war crimes, crimes against humanity, murder, sexual offenses and torture. Funded under the peacekeeping mandate of UNMISSET, SCU comprises some 47 international staff. The Special Panels of the Dili District Court consists of two international judges and one Timorese judge.

This «hybrid» structure of the tribunal whereby international staff work alongside national staff, is in fact a recent innovation in transitional justice (Katzenstein 2003). In theory, the hybrid system enjoys several merits that are absent from such *ad hoc* tribunals as those in the former Yugoslavia and Rwanda. First, a sense of national sovereignty is preserved when domestic judges and prosecutors directly participate in the adjudication of crimes. For East Timor, after having voted for independence with much bloodshed, such local participation was an integral part of the state-building process. It also prevented the UN, the de facto interim administrative body, from creating the impression that it had become yet another foreign «colonizer.» Second, by working with experienced international legal experts, local staff, most of whom had little or no legal experience, could gain knowledge and build capacity. Third, the involvement of the UN in the tribunal bolsters the latter's legitimacy and credibility. The UN would ensure that international standards are applied to investigate and prosecute violators of international law. In contrast, Indonesia's domestic *ad hoc* human rights court was continually criticized for the lack of impartiality in its investigations and inadequate witness and victim protection, among other shortcomings. Lastly, prosecution and trial by experienced international staff would ensure objectivity and minimize tendencies for impartiality by local staff – an important point considering many Timorese staff are likely to be themselves victims.

In reality, however, the SCU has been fraught with numerous challenges stemming mainly from its dire lack of all forms of resources, from adequate infrastructure and equipment to general funding and competent domestic personnel (Linton 2001a ; 2001b ; 2002). As a result, less than qualified international «experts» have dominated the operation of the SCU, to the dissatisfaction of Timorese staff who felt excluded from the process and, as well, were not blind to the salary differences between themselves and the internationals. In turn, international staff often lamented the lack of incentives for local staff to work hard and learn, when there was an abundance of internationals receiving far higher salaries to rely on for the fulfillment of daily duties. The deep-seated financial problems of the SCU only compounded these relational difficulties. Indeed, the stark contrast between the inadequacy of donor support for SCU and the substantial funding and attention bestowed on CAVR is a point worth noting.

To date, at least 301 people have been indicted for trial by the Special Panels, and a number of the accused, albeit all Timorese, have been tried and prosecuted. Due to Jakarta's refusal to hand over indicted Indonesians to the Panel in Dili, 221 of those indicted remain at large in Indonesia (Amnesty International 2003).

Also, as discussed below, it was with the explicit support of UNTAET that East Timor opted to establish a South African style «truth and reconciliation» commission, namely the *Comissão de Acolhimento, Verdade e Reconciliação* or Commission for Reception, Truth and Reconciliation (CAVR). Unlike the Special Panels process that has only been able to handle

a portion of the violations committed during the 1999 period, CAVR is tasked with documenting past abuses, while seeking to reconstruct a structural analysis of violence reaching back 25 years. As discussed below, the CAVR process will handle up to 1,000 cases involving lower-level crime through community hearings held across the country. Also, as discussed, CAVR as an institution is much more embedded in East Timor society than the SCU. It not only employs a significant number of East Timorese staff, but its process necessarily engages civil society in multiple ways outside of the formal justice system. Consistent with our overarching argument, CAVR has emerged as a symbol of international commitment to state-building in East Timor, albeit an investment that has also deflected attention from the SCU process including support for extradition of indicted war criminals. By endorsing the CAVR process, as discussed below, East Timorese leaders appear to be suggesting that without community reconciliation the delicate process of state-building could easily become undone. *Ipsa facto*, in this argument, holding out for justice could antagonize recalcitrant militia and non-compromising elements among refugees in west Timor, thus sowing the seeds of further violence.

To understand the background to the violence in East Timor, as much its threatened recurrence, we next look to anthropology.

Political Violence in East Timor

In seeking to understand political violence in East Timor, we should also be cognizant that certain primordial elements, at least as defined as cultural elements persisting from the past, can be selectively reawakened. «Linguism», blood ties, race, and custom are cases in point and shared in many old societies (Geertz 1973: 255-310). But also, atavism, defined as the recurrence or reversion to a past style or approach (*Merriam-Websters*), can be manipulated with devastating consequences. While not seeking to minimize or exculpate the role of the TNI in the making of the East Timor tragedy, including the tragic events of September 1999, we seek in this section to examine the deeper cultural plays which continued to be played out against the backdrop of UNTAET/UNMISSET state-building in East Timor and which, in December 2002, even came to challenge the integrity of the newly independent state in the form of highly damaging urban riots.

In many situations of protracted conflict, discrimination towards one ethnic group is paramount. Rwanda was a case in point. Bosnia another. Often, this kind of understanding leads to a discussion of identity, or ethnicity, ethno-nationalism, ethnic-secessionism, etc. (Brown 1994). We are not convinced that ethnic identity *per se* has been of paramount salience in understanding conflict in East Timor. But how can we be sure? The reasons for making this assertion owes to the absence of tangible assertions of ethnic identity as opposed to national identity in East Timor. If so, this would bode well for civic consciousness or civic nationalism, as opposed to narrow claims of ethno-nationalism, primordialism, etc.

In East Timor, the blurring of ethnicity is in large part a product of centuries of creolization. Colonialism bequeathed its own distinctive *mestiço* or mixed race culture, including Sino-Timorese, Afro-Timorese, Goan-Timorese and Portuguese-Timorese. Additionally, the 24-year Indonesian

occupation has spawned Javanese, Macassan, and Balinese-Timorese mixtures. International marriages continue under the UNTAET interregnum. In a rare statement on the construction of East Timorese identity, José Ramos Horta has explained East Timor's heritage as: «Melanesian which binds us to brothers and sisters of the South Pacific region, Malay-Polynesian binding us to Southeast Asia and the Latin Catholic influence, a legacy of almost 500 years of Portuguese colonialization» (cited in Gunn 1999:14). Even so, substantial numbers of true indigenes stand outside the world of metropolitan influences. The prevalence of animist beliefs in a society in which conversion to Catholicism for most is a recent memory is a fact that cannot be ignored.

But just how deep are the anthropological schisms within East Timor society? One of the authors has described *funu* as the Timorese way of making war, sometimes with an anti-*malai* (foreigner) dimension (Gunn 1999: 279-86). Traditionally, war in Timor involved the collection of heads of enemies, ritually celebrated. Historically, such atavistic displays were sometimes played back by the Portuguese in the attempt to play off warring Timorese *liurai* (clan chiefs) against each other. Infamously, in 1975-76 and again in 1999, *funu* was manipulated by the Indonesian armed forces replete with blood oaths and other ceremonies goading, in many cases, west Timorese, to commit unspeakably diabolical acts of terror and cruelty against defenseless women and children and even the final taboo, the Catholic church.

It should not be forgotten, as well, that many debts remain unsettled in post-conflict East Timor, land claims a case in point. As discussed below, UNTAET efforts to recreate the legal system, courts, prisons, etc., much less to bring to justice the perpetrators of violence, has not been easy just, and much work remains to be done. As Hansjoerg Strohmeyer (2000), former deputy principal legal advisor to UNTAET, has written, the further one moves away from Dili into the countryside, the more traditional and customary law takes precedence over codified law. Moreover, in many regions of East Timor it is difficult to distinguish customary law from other more recent conflict resolution structures outside the court system, including that exercised by traditional leaders. Basically, he argues, traditional conflict resolution mechanisms cannot be ignored, but should, on the other hand, not be an excuse for covering up access to the formal justice system.

Brown (2001) has written that communitarian norms of Southeast Asian cultures often coexist with the personalization of political practice, and that even in those countries where forms of institutionalized democracy have become established, the patrimonial politics of patron-client linkages remain central. The point is that transplanting democracy, equality, rights, transparency, etc. in a society steeped in Catholicism-animism where literacy and education levels are woefully low, where communications are backward, where localism prevails, has its severe limits, notwithstanding UNTAET-World Bank triumphalism and the best intentions of the international actors.

Partly related to the problems of urban crime is another atavistic or, perhaps, a more primordial schism, lost even upon many Timorese, much less UNTAET, as to the clash between the Firaku and the Kaladi. Essentially this is an imaginary divisioning of the half island between those peoples east of Manatuto district all the way to the eastern tip of the island, from those peoples to the west. It should be emphasized that these are not ethnic

designations, but regional labels. Manatuto people are in a somewhat ambiguous position. It is also true that this particular othering has played itself out in some particularly violent gang clashes in Dili in the post-1999 period. Certain of the gangland clashes in which Firaku lined up against Kaladi turned upon racketeering in the *mercado* or central market, at least until UNTAET temporarily solved the problem by physically removing this historical structure in mid-2001 (Gunn 2002).

The case of the *Sagrada Familia* (Holy Family) faction of Falintil or the East Timor armed resistance, bears some examination. Dramatically coming to the attention of UNTAET officials in May 2000 when a group of 30 ex-Falintil seized weapons in their cantonment zone in the eastern part of East Timor, Xanana Gusmão was pressed into an intermediary role in the standoff between the faction and UNTAET. The breakaway group threatened not only law and order but the delicate process of demobilization of the armed resistance faction pending the creation of a professional East Timor defense force. Yet, the group was linked with various disturbances in Dili and even a coup against Falintil. The potential for mischief by this armed faction was all the more evident in their ideology, a mix of Catholicism and *lulic* (lit. sacred object) or black magic. Led by the charismatic ex-Falintil Cornelio Gama, alias L-7, who once commanded allegiance from 50,000 supporters in the Baucau region, the rebellion took a nativistic form when L-7 claimed to have witnessed an apparition of San José in July 1989. Gama has since been «bought off» and offered an honorary position in government in Baucau.

The major locus of anti-UNTAET sentiment emerged in 2001 from the so-called CPD of the RDTL. The CPD-RDTL has also associated itself with various outbreaks of violence and acts of intimidation against East Timorese people. The CPD-RDTL is a mass movement led by a strong nationalistic sentiment and determination of those who still identify themselves with the unilateral declaration of independence by Fretilin (*Frente para Timor Leste independente*) on November 28, 1975, that put an end to the five-hundred years of the old and backward Portuguese colonial system. Defying UNTAET regulations, the CPD-RDTL insisted upon flying the Fretilin flag at its various strong points across the territory. Needless to say, such an audacious display of the Fretilin symbol threw down a challenge to the Fretilin mainstream, just as the CPD-RDTL propaganda confused and influenced many East Timorese. In essence, the party held that the UNTAET process was invalid, as the agreement of 5 May 1999 was in fact negotiated without the East Timorese leaders' participation. In the event, the CPD-RDTL did not contest the 30 August 2001 election and, for that matter, did not disrupt the election itself. CPD-RDTL potential for mischief has actually increased provoking, in September 2003, a threat on the part of the President and Prime Minister to eliminate them by force if they did not fall in line.

While UNTAET and the UN system was self-congratulatory as to bequeathing a stable functioning parliamentary democracy, and having supervised two mostly conflict-free elections – and there was some justification for this view – there is equal evidence to suggest that social conflict in East Timor is barely constrained and can easily be ignited. A case in point was the reported activities in late 2002 of the self-proclaimed Colimau 2000, a quasi-religious group bearing resemblance to the *Sagrada*

Familia, engaged in violent criminal activities including extortion in the border region. To the concern of UNMISSET, martial arts groups active in East Timor also pose a threat to security in a situation where the newly created *Polícia Nacional de Timor-Leste* (PNTL) (East Timor police) are ill-prepared for crowd control and many other policing functions.

But East Timor and the world community were shocked by the events of 4 December 2002 which saw urban mobs storming the new parliament, torching foreign-owned properties, burning the Prime Minister's residence and others belonging to his relatives, along with buildings within the precincts of the Dili mosque. Not only did the violence lead to the evacuation of large numbers of foreigners, but impacted negatively upon intending investors. The events also led the UN Security Council to reconsider the pace of disengagement from East Timor. While the violence had precedents in the attack by over 100 people on the Baucau police headquarters on 25 November in an apparent protest against police recruitment measures, the authorities were clearly not prepared for the scale of violence in Dili. But just as the name of L-7 was linked in some accounts with the Baucau protest, the root cause of the Dili violence remains obscure, notwithstanding official UN and RDTL inquiries, albeit unreleased.

Was this shocking event the work of student-protestors who had demanded an audience at the parliament in connection with the untoward arrest of a student colleague the day before by PNTL? Was this the work of agent provocateurs from across the border in Indonesian west Timor as some alleged? Was there any connection between these events and those in Baucau where even L-7 was implicated? Or was it the work of the faux Fretilin? Or, as some viewed the incident, was this a cocktail of high unemployment, deflated millenarian expectations, and the work of agitators? In any case, we can conclude from the above that the process of reconciliation in East Timor plays out in a milieu where old wounds fester, and where the potential for a recurrence of violence must be rated high.

The CAVR Process

Set up in March 2002, the Commission for Reception, Truth and Reconciliation (CAVR) was originally mandated on 13 July 2001 by the UNTAET Transitional Administrator, Sergio Vieira de Mello, with the issuance of Regulation N° 2001/10. CAVR is described as a national, independent, statutory body, although it continued to receive assistance from UNTAET and its successor mission following independence. According to timetable, CAVR was to operate for two years, with the possibility of a six months extension. In the event, the national parliament extended CAVR's mandate until 7 October 2004. At the end of this period, CAVR is obliged to present its findings in the form of a report to the government and people of East Timor (technically the President), which would include recommendations for further action on reconciliation and human rights.

Although temporary, in line with its two year mandate, CAVR grew to become one of East Timor's largest institutions. Notwithstanding institutional support from UNTAET and its successor mission, the success of CAVR remained contingent upon donor support. Estimating expenditure of US\$ 3,8 million, CAVR competed for funds in a situation of waning donor

support. Matching its overall contributions to post-conflict rebuilding in East Timor, Japan emerged as the largest donor to CAVR, followed by the European Commission, Ireland, Denmark, Sweden, and Canada. Notably, the government of Japan contributed some US\$ 1 million mostly earmarked for the restoration and conversion to CAVR headquarters of the Comarca prison with its origins dating back to the Portuguese colonial era. Comarca, in turn, had served as a notorious prison and torture chamber during the Indonesian occupation.

As for origins, the concept of an East Timor commission was originally discussed in mid-2000 by the CNRT and endorsed at the CNRT Congress held in August 2000. This interest, it is understood, followed discussions with members or former members associated with the South African «Truth and Reconciliation Commission». The CNRT, then headed by Xanana Gusmão, was the umbrella East Timorese resistance group that served as the main interlocutor for the Timorese with the UN administration. Although the Congress itself was known for acrimonious exchanges between personalities and parties, the concept of a commission to mediate reconciliation evidently held firm.

UNTAET also solicited advice on establishing the commission from the New York-based ICTJ, and various UN agencies also played their part in planning the establishment of CAVR, notably in the formation of a steering committee comprising representatives of CNRT, six East Timorese NGOs, the UN High Commission for Refugees, and the UNTAET Human Rights Unit. Having received endorsement from the East Timor National Council and Cabinet, the parallel but subordinate appointed East Timor government, the steering committee conducted consultations on the concept in the districts. Following the issuance of Regulation 2001/10, a selection panel comprising representatives of political parties, NGOs, the Church, and two UN nominees sought consultation with the community to propose names of suitable commissioners. Once chosen, the commissioners (eventually seven) were sworn into office by the Transitional Administrator on 21 January 2002. Respected human rights lawyer and head of *Yayasan Hak*, Aniceto Guterres Lopes, was elected by the seven commissioners as chair with Father Jovito Araújo as vice-chair.

In January 2002, the Transitional Administrator Sergio Vieira de Mello described CAVR as:

«a vitally important initiative for the country. It will provide the East Timorese people with an official ear to listen to their grievances and acknowledge their past suffering. It will provide them with a historical record that is based on the experiences and stories of the people themselves. It will bring together those who have been in conflict in the past and give them a way forward, an opportunity for grievances and long-lasting reconciliation. It will further the cause of justice by offering a mechanism for dealing with many of the violations that were committed in this country during past conflicts, without burdening the court system that is already addressing the most serious cases».

Notwithstanding important differences of opinion on justice and reconciliation issues, all major political and religious figures in East Timor offered their endorsement, including Bishop Ximenes Belo, Xanana Gusmão, José Ramos Horta and even Prime Minister Mari Alkatiri, long a strong advocate on seeking justice (CAVR website).

According to the mandate, CAVR has three main functions. The first is «truth seeking,» or the investigation of human rights abuses that occurred in the context of political conflicts in East Timor within the timeframe of 25 April 1974 (Portugal's Carnation revolution) and 25 October 1999, the beginning of UNTAET). As observed, this time frame for investigation far exceeds the restricted period written into the SCU mandate. Within the «truth seeking» division, a statement-taking unit interviews victims and witnesses with a view to collecting some 8,000 statements around the following eleven investigative themes: mass slaughter; violations against women; violations against children; forced location and starvation; torture; international actors; party conflict; the TNI role; death rate; Fretilin party; and the role of the resistance army (Falintil).

The second is «community reconciliation.» In recognition that there are many individuals who have committed less serious offenses and who wish to be reconciled with their communities, the regulation gives CAVR the function of facilitating «Community Reconciliation Agreements» between the local community and the perpetrator of less serious crimes. In this sense, CAVR only compliments the formal justice system. CAVR can decide, in conjunction with the Office of the General Prosecutor, whether a case deemed serious, such as murder, rape, organizing or planning crimes and crimes against humanity, should be dealt with by the Prosecutor. Unlike the South African Commission, CAVR does not have the right to grant amnesties. The third main function of CAVR is the formulation of recommendations. In so doing it solicits the views of experts, the community, church, NGOs along with international opinion, including proposals for changes, reforms and actions needed to respond to the needs of victims and to promote and protect human rights and reconciliation in the future. Such recommendations can be made to the government, the parliament, other relevant person or body and even the international community.

Another feature of CAVR, as implied by the term «reception» in its title, is the acceptance or reception back into society of refugees or returnees from west Timor. Insofar as certain of these returnees joined the pro-integrationist camp and/or were associated with the 1999 violence, such an undertaking is both important and delicate at the community level. As explained below, refugee return was a major activity supported by UNTAET and other UN and NGO agencies.

CAVR is also briefed to conduct hearings on the role of international actors in the making of the East Timor tragedy. CAVR envisages that such hearings will be held in Washington, Canberra, Portugal, and Jakarta. Should this occur, and should the hearings attract international media attention, then the publicity could be highly damaging or compromising for the states and individuals that backed the Jakarta regime with weapons and other support, in full knowledge of their illegal use in East Timor.

Another activity conducted by CAVR is retrospective mortality analysis, using various techniques to arrive at plausible estimates of the demographic loss that occurred in East Timor between 1975 and 1999. Generally believed to have suffered a loss of between one quarter and one third of the population owing to death caused by Indonesian military actions, famine, disease, and forced displacement, the CAVR survey seeks to rectify the truth on this question once and for all. Also supported by UNDP, this work

involves census data analysis, a graveyard survey, and a head of household survey.

A less publicized activity of CAVR but consistent with its emphasis upon victims support has been to host so-called «healing workshops» for survivors of serious human rights violations from across East Timor. As witnessed by one of the authors on 23-27 June 2003, this workshop supported by East Timor women's human rights organization Fokupers, combined song, dance, prayer, and reflection. It concluded with a Catholic mass.

A prominent feature of CAVR's work has been the hosting in its Dili headquarters of a number of thematic public «hearings» around the major themes under investigation by the truth-seeking division. Such was the 28-29 July 2003 hearing on «famine and forced displacement,» drawing upon the public testimony of eleven survivors and focusing on conditions during the late 1970s and early 1980s. As little primary data exists on many of these cases, CAVR's reconstruction will, according to one observer, «be able to assemble a relatively sophisticated account of Timor's violent past that integrates a structural analysis of what occurred with the consciousness of those who lived through it» (Pigou 2003).

Community Reconciliation Procedures

Part IV of UNTAET Regulation 2001/10 provided for the establishment of CRPs. Central to this procedure is the concept of a community-based hearing in which an admission and an apology is offered by a perpetrator (deponent), followed by an agreement by the perpetrator to undertake community service or other acts of reconciliation. The agreement is then registered with the nearest district court. The regulation also stipulates that there can be no further civil or criminal liability for those perpetrators who complete their community reconciliation obligations. Even so, close cooperation is required between the Commission and the Office of the General Prosecutor (SCU), who will decide if a case merits prosecution or whether it could be appropriately dealt with in a community hearing. In this process the SCU checks the statements from deponents received from CAVR against its database of suspects believed to have participated in serious crimes in 1999.

According to Patrick Burgess (2003: 13), Principal Legal Counsel of CAVR, the concept emerged out of earlier discussions between the steering committee and communities where it emerged that a majority of East Timorese wanted a lenient, community-based mechanism to deal with perpetrators of less serious crimes, alongside strict legal punishments for perpetrators of serious crimes. In this way, elements of traditional justice would be combined with the formal justice system.

Mediated by Dili-based officials and coordinated by local representatives, the CRPs are a combination of town hall meetings and traditional village gatherings where anthropology (language, dialect, and localism) counts in a traditional setting far removed from the courtroom or formal setting of Dili. For example, such traditional ceremonial practices as the chewing of betel nut and the spilling of chicken blood could be used to settle the agreement. Such meetings could also engage former militia members, such as that held

in Hera in Dili district on 28-29 November 2003, involving 16 former members of Aitarak militia.

It is also the case, as Burgess (2003) has pointed out, that in East Timor the majority of perpetrators came from the same villages as the victims. Unlike the situations faced by the «Truth Commission» in South Africa, the perpetrators and victims often knew each other and were not separated by long distance. This is true but a large number of perpetrators of violence in East Timor also entered the ranks of the TNI who have used geography and nationality to evade extradition warrants. As CAVR well understands, unlike many other truth commissions around the world, it faces a serious problem of dealing with perpetrators who are outside of national jurisdiction.

According to the UNDP office in Dili, which has stepped in with special funding in support of CRP statement taking, the CRP process is a new initiative for truth commissions worldwide, although certain precedent was established by «gacaca» courts established in Rwanda where survivors confront their tormentors face to face (Powers 2003: 48). UNDP also holds up the CRP process as a potential model for other post-conflict situations. Attracting widespread community interest, up to the end of July 2003, more than fifty reconciliation meetings had been held. As of June 2003 over 650 statements from perpetrators wishing to participate in CRP have been received. Of these, the SCU has exercised its exclusive jurisdiction in 46 cases (*Cf. Serious Crimes Update*).

National in name but hybrid in employment, CAVR as an institution seeks to invent itself, adapting to local circumstances, and grasping at foreign models. As with other government departments, mentoring of locals is uneven, although CAVR has undoubtedly excelled in the way of recruiting a small pool of Tetum and bahasa Indonesia speaking international staff. There is a sense, however, that day-to-day management of CAVR is in the hands of international staff, leaving the national commissioners to play a more symbolic or consultative role. International staff run the gamut from unpaid volunteers, interns, UNVs, short-term consultants on commission, to UNDP «list of 200» staff, mandated to mentor local partners. As a new institution CAVR also faced the usual problems of recruitment of local staff and building capacity. Despite the heavy demands CAVR faced, it devoted time to workshops and training sessions to build local capacity. The high turnover rate among international staff seems to be another concern; one international staff remarked that the dire lack of institutional memory in CAVR was a challenge to individual and institutional capacity building. Hiring qualified locals to staff the Dili and district offices proved no less daunting, especially given the restricted talent pool in East Timor and the fact that most qualified East Timorese had already been recruited into the civil service. Nevertheless, by offering salaries higher than the civil service, CAVR forged ahead, in its time becoming the third largest employer in the country after the civil service and the UN system.

Other Dimensions of the Reconciliation Process

Understanding the reconciliation process in East Timor would be incomplete without some sense of the geo-political environment in which it plays out. Stated another way, the dynamics of reconciliation at the inter-personal or community level (Hayner 2002), should not be confounded with political and even international reconciliation. As mentioned, a special feature of the violence in East Timor was the act on the part of the militias and their TNI patrons in herding some 250,000 people or around 40 percent of the population across the border into west Timor. Refugee return has been one of the most intractable issues confronting the concerned UN agencies, especially as the Jakarta government long showed little inclination to disarm hard core militia elements effectively leaving innocent families hostage. Infamously, in September 2000, the UN was obliged to withdraw its workers from west Timor following the slaying by militia of three UNHCHR workers.

Until his resignation in January 2002 claiming «interference», the UNTAET chief of staff, sometimes in close cooperation with Xanana Gusmão, stepped up efforts to persuade key militia elements and their followers to return to East Timor. But this process was controversial, especially as it has involved cutting deals with hard core militia leaders and was opposed by SCU prosecutors on the grounds that it undermined and contradicted their own efforts to pursue investigations (International Policy Institute 2003). Rumors of amnesties for perpetrators of violence also rankled victims just as the reception of certain refugees, especially those suspected of complicity in crimes, has been highly problematical at the community level, obviously adding to the case load of the CRPs. Another anxiety, not entirely unfounded in the light of the December 2002 riots, is that former militia members returning to East Timor could sow trouble. Nevertheless owing to the indefatigable work of UNHCHR, the International Organization for Migration and various NGOs, all but 25,000 refugees have been repatriated by late 2003.

The complexity of the situation is captured by the visit of President Xanana Gusmão to the border with west Timor on 24 August 2003 where he held the first of a series of projected reconciliation talks with former militia leaders. On this occasion he persuaded four ex-militia leaders to cross the border for talks by offering «temporary immunity» from prosecution, while enticing a number of refugees to return. Still, four die-hard anti-independence militia leaders could not be persuaded. More so than the Fretilin-dominated parliament, the popular and charismatic president has taken the lead in preaching the language of reconciliation. Through an «open government» campaign launched in 2003, the president personally broadcast his message in the remotest villages and traditional settings.

It is clear then that the repatriation process has been conducted at various levels, not only engaging UNTAET but the Catholic church, the CNRT, and, in turn, the RDTL foreign ministry. Needless to say, as diplomatic ties with Jakarta warmed, as symbolized by the attendance of Indonesian President Megawati Sukarnoputri at East Timor's independence ceremony, so the pace of repatriation accelerated. But it is also true that elements within the TNI still find the militia useful allies to keep up pressure on the newly independent state. But just as ties warm with Jakarta, so it would appear

that calls for justice on the part of the RDTL leadership have become more muted. The major test was response to the indictment by the SCU on 24 February 2003 of eight high-ranking Indonesian military officials, including General Wiranto, for crimes against humanity. Writs for their arrest and extradition were subsequently served to Interpol. Not only did East Timor leaders distance themselves from the judgment so as to save face with Jakarta, but official UN spokespersons in New York shifted the onus back to the RDTL, decrying responsibility.

* * *

As viewed, CAVR has been deliberately configured as a high-profile institution integral with the UNTAET/UNMISSET state-building project. But has international attention upon CAVR been redeemed, especially as so much needs to be done to strengthen the formal justice sector? In a sense, full judgment cannot be passed on CAVR until it completes its mandate and until it presents its report to the public. It may or may not be conflictual. One concern we share, as entered by La'o Hamutuk, is whether or not the report will be watered down so as not to offend the international donors and agencies that are making CAVR's work possible, especially as some were complicit in Indonesia's occupation of East Timor. La'o Hamutuk also argues that because such perpetrators as the TNI are bound to reject the findings, it is important that this report be as accurate as possible to serve the victim's needs for justice and recognition¹. In other words, while state-building around community and political reconciliation has its merits, it should not be at the expense of justice, even if total justice is not attainable.

In the introduction, we asked the question as to whether faith in traditional justice has been vindicated by the CAVR process. Ascertaining true sentiments of East Timor people on the efficacy of the justice process in East Timor as largely mediated by albeit well-meaning internationals may be problematical, especially given problems of language and cultural distance. One attempt to establish community perspectives on the justice process is a survey conducted by the ICTJ. In this survey the ICTJ set up «focus group» discussions across East Timor's 13 districts in an attempt to assay expectations, concerns and opinions regarding truth recovery, justice, accountability, reconciliation and forgiveness. Predictability, the survey tapped into a deep vein of community concerns as to the overall direction of the justice process and especially the seeming inability of the government to explain this direction to the population (Pigou 2003). But has the government failed the people by not delivering on justice, by playing soft on perpetrators while sidelining the needs of victims? To a certain extent, such as exemplified by the President's «open government» campaign, the government has grasped the need for better communication with the districts and the utterly remote villages that make up rural communities. Still, we wonder whether the government has been convincing in its explanation to the people as to the farcical Jakarta judicial process, and the waning prospect of an international trial.

1. *La'o Hamutuk Bulletin*, Nov. 2003.

While truth and reconciliation commissions globally have won international endorsement, Hayner (2002: 8) also asks whether it is necessary to know the truth in order to advance reconciliation. The answer may vary from case to case, but in East Timor we do not find the truth-seeking component of CAVR a totally sterile exercise because even a semblance of the truth was always veiled from the people by the Indonesian system of censorship and propaganda. Even the complicity of foreign governments in the tragedy would come as a revelation to most East Timorese. Arguably, to have left the past alone would have condemned the East Timorese to ignorance. In any case, unlike the case of Mozambique which has eschewed a truth and reconciliation process, the major perpetrators of violence in East Timor, the so-called «masters of terror» (McDonald *et al.* 2002), were from outside society.

Undeniably, dealing with the past is an important part of the state-building process of any post-conflict society. How it is done will depend on the type of and context surrounding the conflict. In East Timor, CAVR determined that the past ought to be remembered, retold, and confessed so that people can find out about the truth and then, hopefully, move on to rebuild their lives and their new democratic state. Additionally, the existence of CAVR helped ease the workload of the SCU by dealing with lower-level crimes. There is thus a moral and practical dimension to CAVR's function. With regard to the former, it is difficult to imagine the counterfactual in which CAVR was non-existent and East Timor was left to «bury the past» or live in ignorance of it. The hundreds of perpetrators who willingly applied to participate in the CRPs would not have had a channel for truth-telling, and victims would have been left with unsettled accounts of the past even as they tried to build a future. Recovering the truth and undergoing a reconciliation process therefore seems to have aided East Timor in its rebuilding process.

With regard to the practical dimension, however, this paper has been far more critical. Because the prosecution of every perpetrator is impossible, CAVR did relieve the work of the criminal tribunal by enabling the latter to deal solely with serious crimes. Nevertheless, the inherent weaknesses of the SCU and its now defunct counterpart court in Jakarta, together with the minimal prospect for an international tribunal, have undermined the effort to bring justice for East Timor's victims of human rights abuses. The international community has arguably focused on CAVR and ensured its success in order to deflect criticism of the lack of commitment to bringing the major perpetrators to justice. Any impact of reconciliation on state-building in East Timor may therefore be set back by the country's inability to attain any real justice through its court.

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