

## East Timor

# When Remembering Isn't Enough

Valuing pragmatism over justice may jeopardise lasting reconciliation in East Timor, writes **DAMIAN GRENFELL**

On 28 October of this year, the Comissão de Acolhimento, Verdade e Reconciliação de Timor Leste (CAVR), known in English as the Commission for Reception, Truth and Reconciliation in East Timor, held a public ceremony as part of its closure. Based in the suburb of Balide at the foot of the dry red hills that rear up behind the capital, CAVR's headquarters have been housed in the former Comarca prison, a site of innumerable human rights abuses during the Indonesian occupation. The conversion of the former prison

approximately as 'no more, stop, enough'. The 2000-page report is a comprehensive historical record of the human rights abuses that occurred from 1974 until 1999 in Timor-Leste, including chapters on the civil war, gender violence, killings and forced resettlement. Account upon account details the most heinous violence perpetrated throughout the occupation. An initial version of the report was produced in three languages for the President's review, with a 'popular version' to be produced in Tetun.

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Over a thousand people, including many dignitaries, former clandestine activists and guerrilla fighters, attended CAVR's closing ceremony. They heard speeches, watched a CAVR-sponsored documentary projected onto a huge white sheet hung in the central courtyard and toured the former cells to see photographs and the graffiti of former inmates etched onto the walls.

CAVR's work has come to completion with its final report, entitled *Chega* — a Portuguese word that translates

Indonesian invasion and the abandonment of support by the international community. With independence celebrations occurring around the country, the President fronted Parliament of Timor-Leste and, in effect, refused to give the report the clear mandate that many in the community may have hoped.

The President failed to endorse the report, and was particularly concerned at several of CAVR's recommendations. These included the pursuit of justice for those Indonesians guilty of wartime human rights abuses, and the demand that foreign governments and corporations who supported the Indonesian occupation contribute towards reparations. Rather than making it public, aspects of the report have only been made available to Ministers and Members of

On 31 October, the report was taken from CAVR under police guard and presented at a formal ceremony in the hills above Dili to the President, who committed to reviewing it by 28 November. This date marked the thirtieth anniversary of the independence declaration made in 1975 in the face of an impending

Parliament. With leaks both locally and internationally, as well as pressure from donors and advocacy groups, it would only seem a matter of time before the full report is made public. However, it will enter that domain without the sanction or clear support of either the President or Foreign Minister Ramos-Horta.

The original impetus for a reconciliation commission in Timor-Leste stemmed from a range of people and organisations, including significantly the National Congress of the National Council of Timorese Resistance in 2000. The idea for a commission gathered further momentum, and in 2001 the United Nations Transitional Authority in East Timor (UNTAET) passed regulation 10/2001, which created the legal basis for CAVR to operate. This was further strengthened following independence by Section 162 of the constitution. A panel was formed to select seven national commissioners, sworn in by a transitional administrator on 21 January 2002. These commissioners, along with a team of international advisors, were the key decision makers in putting the UNTAET regulations into practice.

Initially, the CAVR was to last two years. This was extended due to the tremendous logistical challenges, particularly in the writing of a final report of such magnitude. For many people, the final report will be regarded as the key outcome of CAVR's work. However, much of the material for the final report was drawn from other activities that CAVR was mandated to undertake, such as 'Truth Seeking' and 'Community Reconciliation'.

Under its 'Truth Seeking' mandate, CAVR was responsible for establishing a factual account for human rights violations committed during the conflict in the period between 25 April 1974 (the date of the coup in Lisbon) and 25 October 1999 (the establishment of UNTAET).

Research and extensive interviews were undertaken in conjunction with a graveyard census and a retrospective mortality survey. In addition, there were seven public hearings on themes ranging from 'Famine and Forced Displacement' to 'Women and the Conflict' and 'Political Imprisonment'. The major undertaking within the mandate for Truth Seeking was, however, to collect detailed statements from people around the country in regard to human rights violations. In all, some 7740 statements were collected, with the vast majority taken from victims.

A second major role for CAVR was the co-ordination of the Community Reconciliation Hearings (PRKs). With virtually no legal infrastructure available for formal justice processes, these hearings were an attempt to reintegrate individuals (known as deponents) who had committed less-serious crimes — such as house burning, theft of property or livestock, destruction of property or minor assault — into the community.

In the PRKs, through a combination of ceremony, traditional practices and state sanction, the perpetrators and victims proceeded through a set of admissions, testimony, questions, and clarifications, all mediated by a panel of local and CAVR representatives. There were 217 hearings held across all districts for 1404 perpetrators, with an estimated 40,000 members of the community participating in the process. These hearings brought perpetrators into forums to face victims and other members of the community. In many cases, the

final act of reconciliation consisted of a simple sanction requiring an apology and a demand that such activity never be repeated. In some cases, the deponent had to pay a fine or help in the reconstruction of damaged property. Technically, if the deponent defaulted on an act of reconciliation they were liable for a year's imprisonment or a \$3000 fine.

CAVR has often been criticised on the grounds that there should not be 'reconciliation without justice'. There was particular concern that CAVR could be used to argue that justice has been served 'where and how possible' in Timor-Leste. It was believed that this would marginalise arguments for an international tribunal to try offenders who fled to Indonesia in 1999. La'ó Hamutuk, a local NGO in Dili that monitors international institutions, voiced such concerns at the end of 2003:

*Many people feel that the CAVR's minor-crimes reconciliation process is diverting attention from victims' demand for justice for crimes against humanity. Although restorative justice involving minor perpetrators is worthwhile, it does not end impunity for those who committed and directed major crimes, many of whom are repeating this criminal behaviour in Aceh, West Papua, and elsewhere in Indonesia.*

They continue:

*We are concerned that the United Nations, foreign governments and East Timorese political leaders have been and will use the CAVR as an excuse for not pushing for legal action against those that have committed serious crimes, even though serious crimes*

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*are outside the scope of the Commission. A new government, faced with budgetary concerns and other national and international pressures could be persuaded to downplay conventional justice, particularly due to limited resources and experience.*

These are justified concerns to which others could be added. For instance, without formal processes of justice for serious crimes, the reconciliation process puts the onus almost exclusively onto a community that has already suffered enormously to then utilise local resources in order to find reconciliation. Furthermore, there is no guarantee that people are in a better state of being for remembering past abuses without the necessary follow-up resources to support victims and even deponents. Whether the request for testimony and hearings should be made in the first instance is also open to question.

While it would have been far better to have reconciliation and formal justice processes working in tandem, to dismiss the value of CAVR outright would be to deny many local communities an opportunity to learn about how and why violence may have happened. It would also be to overlook CAVR's work in clarifying which members of the community may be in need of ongoing support.

The local PRK hearings have succeeded, by and large, in allowing for lower-level offenders to state their case and to be held to account for their actions within the community in which they lived and, often, at the site at which the crimes were committed. This was an important process

because in some instances the deponents were subjected to varying degrees of coercion to join pro-Indonesian militias or, alternatively, had been falsely accused of crimes simply by association.

Without CAVR, it is also unlikely that the kinds of testimony and documentation gathered would ever have been otherwise achieved. While the Report does not have direct legal value, it has public authority in that CAVR was a state-sanctioned institution. Moreover, CAVR's own resources, combined with community participation, enabled the recording of testimony from those who have been typically silenced in the nation-making process. If the report stands up adequately to scrutiny, it could well be one of the key foundational documents of East Timorese nationhood, embedding ideas of justice within communities at the point of national re-formation.

Moreover, in whatever form they finally enter the public domain, the recommendations of the report will, whether directly or indirectly, influence future debates on how best to approach demands for justice. The horrific testimony documented in the report should also give new momentum to the campaign to bring to justice those who are charged with being the perpetrators of the crimes.

More generally, in a world of empire, 'perpetual wars' can in part be sustained through ensuring an absence of any knowledge regarding the embodied consequences of violence. Helping to undermine expressions of such power, the

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relentless testimony contained in reports such as that issued by CAVR convey the extraordinary consequences of violence as perpetrated as part of contemporary colonial practices allowed for by centres of power within the international community. If the detail of the final report can be used to inform campaigns for justice generally, then not only does the Report represent a kind of public remembering within a national community, but it may also be used to help address the broader structures that allowed those injustices to occur and occur again.

The concerns for justice and, in turn, the criticisms of CAVR, can be understood given the degree to which attempts to bring offenders of serious crimes — such as killing, rape, torture, serious assault and mass deportation — to justice have been abject failures. The record of the Serious Crimes Unit (SCU) — established by UNTAET in 2000 to bring to justice those responsible for Crimes Against Humanity and Serious Crimes in Timor — is a case in point. The SCU focused only on investigating human rights crimes of 1999. Those brought to trial faced a three-member Special Panel for Serious Crimes comprised of two international and one Timorese judge. By the time the Serious Crimes Unit closed in May 2005, it had made 95 indictments against 391 individuals. Given that most of the serious offenders had fled Timor-Leste in 1999 for Indonesia, and that Indonesia

had refused to extradite those indicted, the SCU could only secure 75 convictions. Most of these were lower-level militia who had remained in Timor-Leste. More than 300 of the individuals indicted remain in Indonesia and beyond the prosecutorial reach of the SCU.

Unlike the SCU, the second institutional attempt to bring those indicted to justice for human rights crimes committed during 1999 was based in Jakarta. Known as the Ad Hoc Human Rights Court, this was an attempt by the Indonesian state to absorb and deflect criticism — and particularly to undercut attempts to establish an international court — through a court mechanism where only a select few of those who should have been tried faced the court. Proceedings began in March 2002 and thus far have resulted in six convictions and twelve acquittals. Five of the six guilty have successfully appealed. Only Eurico Guterres, Timorese-born and leader of the infamous Aitarak militia, has been convicted. Currently, even Guterres remains free on appeal.

The inability of the SCU to indict accused from Indonesia, combined with critical failures of the Ad Hoc Courts in Jakarta, has not diminished the calls by those in Timor-Leste and also internationally for those accused of human rights crimes to be brought to account. The three-member Commission of Experts (CoE) was established in February 2005 by the UN Secretary General to evaluate the judicial processes concerning the human rights crimes of 1999 and to explore possible avenues for justice. The CoE's recommendations to the United Nations mid-year were scathing of Jakarta's attempts at justice and called again for the establishment of an international tribunal such as that instituted for the former Yugoslavia.

Moreover, the CoE was critical of the establishment of a new joint body between the governments of Timor-Leste and Indonesia, known as the

'The Commission of Truth and Friendship' (CTF).

Inaugurated in March 2005 in Jakarta, the CTF has established a ten commission with five representatives from each country. Again with a mandate limited to 1999, the CTF will write another report on the bloodshed with the aim of again establishing 'the truth'. Importantly, however, it will not seek prosecution, but will be able to recommend amnesty. As such, the CTF appears to be far more geared towards achieving normalised relations between the two countries than formal justice.

The emergence of the CTF is of great concern to many beyond the United Nations. As CAVR has moved towards the completion of its final report, three of the seven CAVR commissioners have also taken up positions with the CTF, including Aniceto Guterres, CAVR's chairperson and a renowned human rights activist. At a time when resources were pushed to the limit in order to complete the final report, the organisation of the CTF was seen by some as a distraction that drew key CAVR commissioners away from the immediate work at hand.

Further, the CTF's co-location with CAVR in the former prison in Balide has caused concern that it may have access to confidential CAVR documents. Moreover, even if the final drafts of the CAVR report remained absolutely free of bias, there is concern that the overlap between the two



institutions, with commissioners effectively serving both bodies at the same time, will leave sections of the CAVR report open to the charge of a conflict of interest.

It is not just that the CTF may threaten the reconciliation process within Timor-Leste. There is also the concern that this body, rather than CAVR, will mean that there is 'reconciliation without justice'. The extraordinary capacity for President Xanana Gusmão to express forgiveness towards former enemies does not appear matched by many within Timor-Leste itself, nor for many within the international community. The concern here is not only for justice in itself or for symbolic and material reparations. Neither is the concern limited to challenging the impunity from prosecution that the Indonesian military has all too often enjoyed. The broader concern is to ensure that the forms of reconciliation that do occur are genuine rather than ceremonial procedures motivated by a desire for stability. Adérito de Jesus Soares, a human rights lawyer in Dili, wrote in the *International Herald Tribune* in August that:

*The East Timorese government has been cautious not to offend its giant neighbour and former coloniser. Foreign Minister José Ramos-Horta has publicly rejected the recommendations of the commission of experts in a joint declaration with Indonesia. Instead, both governments have said that the Commission on Truth and Friendship, which held its first meeting last week, is meant to bring 'definitive closure' to the events of 1999. No one doubts that reconciliation between Indonesia and East Timor is extremely important. However, justice is indispensable to the success of true reconciliation.*

The CTF may serve as an opportunity for elites in both nations to seal off opportunities for justice and ensure impunity for senior members of the Indonesian military who may otherwise be found guilty of crimes against humanity. The timing of the CTF, coming as the CAVR has moved towards a completion of a report that will make recommendations on issues for future processes of justice, can well be considered less than a coincidence.

No doubt the Timorese President and the Foreign Minister have substantial security concerns on their minds when they seek to normalise relations with Indonesia. The recent violence along the border of Oecusse, a district of Timor-Leste otherwise surrounded by Indonesian West Timor, only

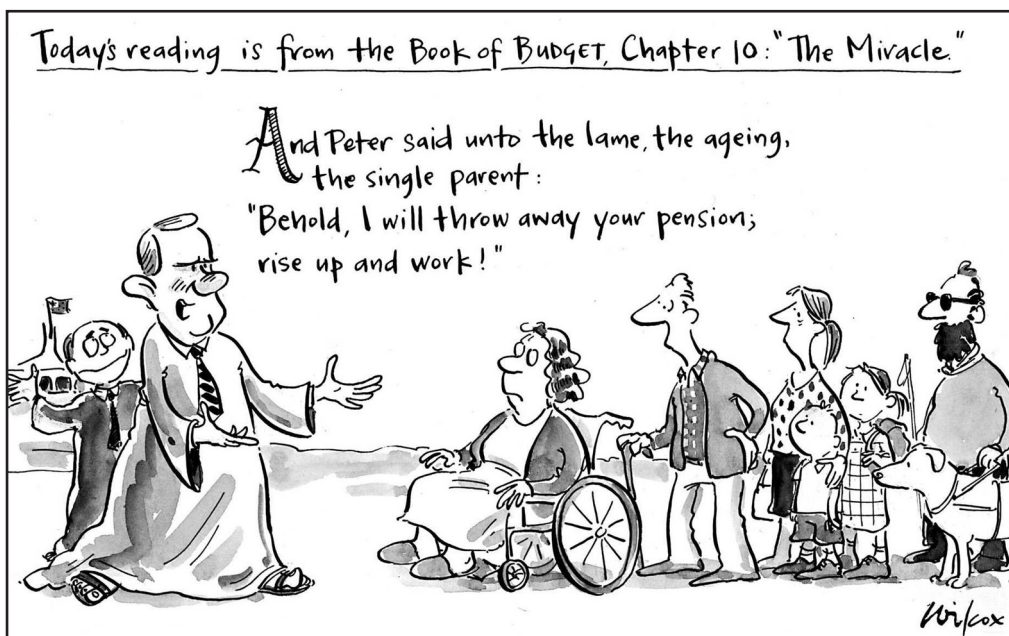
confirms the concerns for future instability and violence. One of the arguments in favour of the CTF is that it could play a transformative role in bringing together former antagonists, along with victims and perpetrators, even if that is at a senior state level or far estranged from the community in which the violence actually took place. In doing so, a body such as the CTF may work to ameliorate future tensions and normalise relations in a way that would not be possible through either diplomatic or commercial channels.

In addition, if the CTF process were also to help educate the population of Indonesia more generally about the consequences of the military occupation of Timor-Leste, it may help in undermining future risks to the security of Timor-Leste as well as building better economic links between the two countries.

The risks, however, are enormous. Given the previous attempts to bring to justice those in Indonesia responsible for human rights violations, the CTF may well result in institutionalising the impunity that members of the Indonesian military have long enjoyed, without any guarantees of securing peaceful relations between the two nations. Moreover, if senior Timorese elites are seen to be operating in collusion with Indonesia in stymieing calls for justice from their own population, there could well be reverberations locally in regard to the perceived legitimacy of a political system that is gradually coming to be consolidated.

It is always difficult to predict outcomes in such a complex affair, but the simple fact cannot be ignored that many people in Timor-Leste, while wanting good relations with Indonesia, want more than reconciliation with low-level offenders. Many want to see those who are responsible for the death, torture, rape, and assault of hundreds of thousands of people brought to trial as has been possible elsewhere internationally. If some degree of justice is not the outcome, then so much of the political potential of CAVR's work will be contained; and for those in Timor-Leste the final report will be, as much as anything, only for the remembering.

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