



Peace or Justice? East Timor's Troubled Road

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By Jeff Kingston

East Timor's 924,000 citizens are finding that the truth does not set them free and that justice and reconciliation are elusive. A recent report published by East Timor's Commission of Reception, Truth and Reconciliation (CAVR is the commonly used Portuguese acronym), estimates that the tiny island nation suffered a minimum of 102,800 conflict-related deaths during Indonesia's brutal occupation between 1975 and 1999. Responsibility for this carnage is laid largely with the Indonesian military. But the report offers a telling critique of many others including the United States, Britain, France, Australia, the United Nations and the Vatican.



East Timor map

For twenty-five years the world largely ignored the struggle for independence waged against a determined Indonesian military. Finally in 1999, when a referendum on independence was held under UN auspices, the world paid attention. Despite widespread intimidation and violence, almost all East Timorese showed the courage to vote and overwhelmingly chose independence from Indonesia. As promised in the event of such an outcome, Indonesian controlled militia razed towns, villages and churches, while brutalizing the population and forcibly relocating some 250,000 Timorese to Indonesian controlled West Timor. The CAVR report, entitled *Chega! (Enough!)*, concludes that there is credible and extensive evidence that planning for and knowledge of this scorched earth campaign extended to the highest echelons of the Indonesian military.



Violence in the wake of the election

Bringing these high-ranking officers and their goons to justice confronts the fact that there has been little political will in Indonesia to hold them accountable. An Ad Hoc Tribunal established by Jakarta did conduct trials and even handed down some convictions and meted out sentences, but all but one of these convictions have been overturned on appeal and the remaining defendant remains free while his appeal is pending. In a May 2005 report submitted to UN Secretary General Kofi Annan, a panel of experts criticized this fundamentally flawed judicial process. Not only did the big fish get away, even the designated scapegoats have walked.

On Dec 20, 2005 the CAVR dissolved amidst controversy and recriminations after issuing its report. The President has not yet made the report public generating widespread dismay within East Timor and the international community. Last week he explained to me, "I accept the report from A to Z and will not change anything. I believe that the public has the right to be informed. We must disseminate it in the proper way, we

are not a human rights organization. Everything will be done in the right way in the right time. At the end of January I will present the report to the secretary general in New York and will stop in Tokyo on my return to request financial assistance for a series of workshops aimed at disseminating and socializing it in 2006."

The following excerpts are from the 215 page executive summary.

On the function of history: our nation chose to pursue accountability for past human rights violations, to do this comprehensively for both serious and less serious crimes and to demonstrate the immense damage done to individuals and communities when power is used with impunity; our mission was to establish accountability in order to deepen and strengthen the prospects for peace, democracy, the rule of law and human rights in our new nation. Central to this was the recognition that victims not only had a right to justice and the truth but that justice, truth and mutual understanding are essential for the healing and reconciliation of individuals and the nation. The CAVR was required to focus on the past for the sake of the future.

Indonesia's responsibility rests primarily with President Soeharto, but is shared by the Indonesian armed forces, intelligence agencies and the Centre for Strategic and International Studies, which were principally responsible for its planning and implementation.

On the possibility that rogue elements in the military were acting on their own initiative without the knowledge of superiors in Jakarta: Throughout the occupation Indonesian military commanders ordered, supported and condoned systematic and widespread unlawful killings and enforced disappearances of thousands of civilians ...The sheer number of these fatalities, the evidence that many of them occurred during coordinated operations and the efforts of domestic and international non-government [organizations] to inform the military and civilian authorities in Jakarta that these atrocities were happening rule out the possibility that the highest reaches of the Indonesian military, police and civil administration were ignorant of what was going on.

Sexual violence committed by the Indonesian military was widespread and systematic in which members of the Indonesian security forces openly engaged in rape, sexual torture, sexual slavery and other forms of sexual violence throughout the entire period of the invasion and occupation.

On the role of militias in the 1999 violence: In 1999 Indonesian security forces and their auxiliaries conducted a coordinated and sustained campaign of violence designed to intimidate the pro-independence movement. Military bases were openly used as militia headquarters, and military equipment, including firearms were distributed to militia groups.

Regarding the 1999 referendum: When the result of the ballot was announced, the Indonesian military and its militia allies carried out its threatened retaliation, to devastating effect, but this time governments were unable to ignore the contrast between the extraordinary courage and quiet dignity displayed by the voters of Timor-Leste and the terrible retribution wreaked by the TNI and its East Timorese partners.

Regarding the international community: In reality key member states did little to challenge Indonesia's annexation of Timor-Leste or the violent means used to enforce it. Most nations were prepared to appease Indonesia as a major power in the South-East Asian region.

On Japanese complicity: Japan was Indonesia's major investor and aid donor and had more capacity than other Asian nations to influence policymaking in Jakarta, but it did not use this leverage.

On US responsibility: As a Permanent Member of the Security Council and superpower, the U.S. had the power and influence to prevent Indonesia's military intervention but declined to do so. It consented to the invasion and allowed Indonesia to use its military equipment in the knowledge that this violated US law and would be used to suppress the right of self-determination.

The Vatican, despite pleas for support, was, concerned to protect the Catholic Church in Muslim Indonesia, maintained public silence on the matter and discouraged others in the Church from promoting the issue.

France and the UK: increased their aid, trade and military cooperation with Indonesia during the occupation.

Australia: did not use its international influence to try to block the invasion and spare Timor-Leste its predictable humanitarian consequences. Australia acknowledged the right of self-determination, but undermined it in practice by accommodating Indonesia's designs on the territory and opposing independence.

The report suggests that reparations and judicial proceedings are in order. It calls for setting up a reparations program for victims of the conflict, to be funded not only by Indonesia, but also by the foreign governments, and weapons dealers, who were complicit in the invasion.

President Gusmao opposes reparations, asking, "How can we go to the world community, one that was indifferent to our plight for too long, when it did finally help us achieve independence and made enormous contributions exceeding \$1 billion to help us cope with our emergency situation? We still need their help and should not be ungrateful for what they have contributed. They are making amends for their mistakes." This conflation of development aid and reparations does not sit well with critics who say that this allows donors to sidestep their responsibility.

The President believes that there is no support within the Security Council for an International Tribunal and thus East Timor needs to seek another way forward to sustain the process of reconciliation. He told me that there is nothing new or untrue about the CAVR findings. However, this begs the question, what could possibly be the harm of releasing a report based on public hearings that presents nothing new? As a Timorese he sympathizes with the conclusions regarding responsibility, but as a leader he argues that the national interest is not well served by remaining fixated on the suffering Timorese endured during their long struggle for independence. In his view, "We can best honor that struggle and these sacrifices by building a better democracy here, improving governance and providing better services to the people. We also must respect the courage of the Indonesians in accepting our independence and not disrupt their progress towards democratization by demanding formal justice. The political situation remains fragile in Indonesia and there is a risk that we could help unite forces opposed to SBYs (President Susilo Bambang Yudhoyono) reform agenda. It is absolutely in our interest to see our huge neighbor succeed in these reforms; this is our best protection." He also expressed concern that, "Going down the path of prosecuting Timorese for their past actions during our struggle for independence will open old wounds, divide people at a time when we need unity and lead to chaos. This is dangerous because it could become a policy of political persecution."



Gusmao: Outrage

President Xanana Gusmao

Foreign Minister Jose Ramos-Horta, a Nobel laureate, rhetorically asked me, "Why didn't the UN establish a tribunal here back in 1999 when they had 7,000 PKO here who could have arrested the culprits in West Timor? There is not much we can do to bring Indonesians to trial by ourselves. This isn't only pragmatism. I sincerely believe that Indonesia is making progress on democratic reforms and strengthening the rule of law. However this takes a long time and the situation is fragile. SBY (President Susilo Bambang Yudhoyono) is weak and does not fully control the military and can't challenge them in this way without risking that his opponents would gang up on him. It is important that we do not destabilize the slow process of democratization in Indonesia because it is our best guarantee. They have shown the courage to accept our independence. Knowing that the situation is so difficult and that the UN Security Council doesn't want an International Tribunal it doesn't make sense for us to pursue it."



Foreign Minister Jose Ramos-Horta

Left unsaid, but undoubtedly on the minds of the leadership, is the recent resumption of military cooperation between the US and Indonesia.

The CAVR report is also inconvenient because it opens old wounds between domestic political groups which fought a civil war and engaged in violent internecine reprisals. The president conveyed to me in no uncertain terms that he is most concerned about the frank discussion concerning these internal conflicts. In his view, prosecuting those who committed such crimes carries significant potential for reviving dormant antagonisms and a descent into renewed chaos.

Clearly, the past resonates loudly in contemporary East Timor and people are finding that the truth is not setting them free. At issue is how to achieve accountability, justice and healing. The President believes that the way forward is based on getting at the truth of what happened, granting amnesty where appropriate and turning the page on this dark chapter while the Church, civil society organizations and many victims emphasize breaking the cycle of impunity and prosecuting those responsible for committing crimes.

The President defends an ongoing bilateral initiative with Indonesia called the Commission for Truth and Friendship (CTF) despite criticism that it emphasizes reaching closure, has no judicial mandate and only ensures impunity for ranking perpetrators. The Catholic Church in East Timor held a workshop on December 10, 2005 that pilloried the CTF because it was established without public consultation and offers scant prospects of truth or justice for the victims. One organizer of the workshop told me that the CTF is a doomed effort to promote collective amnesia. In the court of public opinion, the CTF lacks credibility and seems more likely to fan antagonisms than improve bilateral relations or promote reconciliation. Three commissioners from the CAVR agreed to serve on the CTF, apparently with varying degrees of reluctance and misgiving. Their concurrent tenure on both commissions has raised concerns about a conflict of interest given that they began serving on the CTF precisely when the final CAVR report was being written up. Some NGO activists have raised concerns that the final report thus may have been softened in line with the objectives of the CTF. However, having seen the report and spoken with various people involved with the CAVR, including a commissioner, it is hard to conclude that any such meddling took place.

What are the prospects for the CTF? In the court of public opinion, the CTF has little credibility. It is seen as a deeply flawed process aimed at burying the past before it is fully examined and heading off recourse to justice. I was told that only the Indonesian generals who committed crimes welcome the CTF.

The President counters that Indonesia should be given another chance to come clean, doubts that amnesty will be granted and emphasizes that the CTF does not prejudice any future judicial initiatives. He takes a long-term view, arguing that progress in seeking justice and accountability for crimes committed by Germany and Japan is an ongoing process and not yet fully resolved. In his view, the time is not yet ripe for formal legal justice, but this could change depending on the international community. In the meantime, he says that it is his duty to promote reconciliation and devote scarce resources to the more pressing needs of the Timorese that are all too evident. As a leader he stresses that, "we have to see what we can do, not what we wish to do."

But Father Martinho Gusmao, the Director of the Justice and Peace Commission in the Catholic diocese of Bacau told me, "There is no need for reconciliation between Indonesian and Timorese people, we have no problems. The problem is that Indonesian security forces committed crimes here and they need to be held accountable. This is also part of the process of building democracy here. We need to see that nobody is above the law, and the victims in our country need to see that the victimizers, whoever they are, are prosecuted. Amnesty is meaningless and will not promote reconciliation, only resentment. Victims want their day in court."

The opposition leader Mario Carrascalao agrees, terming the government quarantine of the report "a grave mistake," and adding, "The government is worried about the impact on foreign relations. This is normal. But the report presents the voices of victims and their demand for justice and the government should respect this by releasing it."

Responding to criticism leveled by international human rights organizations, Ramos-Horta says, "It's great for the human rights activists to be heroic in Geneva and New York where they don't have to live with the consequences of their heroism. They say we don't care about the victims? We care, the president and I have lost relatives, friends and comrades over the years. We know the cost of war, the value of peace and the necessity of reconciliation. Following our interview he caused a stir in publicly asserting that civil society organizations in East Timor have no moral authority to criticize the president's efforts to promote reconciliation with Indonesia through the CTF."

In 2006 we will learn whether the CTF can deliver the truth. Even so, there appears to be little chance that public demands for justice will fade. Timorese know very well that memory, justice and reconciliation can be divisive. The wounds are too fresh and the pain remains poignant for the victims and survivors. There seems to be no enthusiasm for closure or rushing the healing process.

Jeff Kingston is Director of Asian Studies, Temple University Japan. He wrote this article for Japan Focus. Posted on December 21, 2005.