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Closed Book or Open Book on Indonesia and Timor-Leste? The Commission of Truth and Friendship Report on 1999 HR Violations

Geoffrey Gunn and Carmel Budiarjo

Officially received by Indonesian President Susilo Bambang Yudhoyono and Timor-Leste President Jose Ramos-Horta at a ceremony on the Indonesian island of Bali on 15 July, the long awaited report of the joint Timor Leste-Indonesian Commission of Truth and Friendship (CTF), set up in 2005, has received mixed reviews.

Ramos-Horta (left) and Yudhoyono, June 2007 in Jakarta

On the one hand, by offering words of remorse the Indonesian president (former platoon commander of the 305th Battalion in occupied East Timor) could seek to put the sordid history of 1999 behind him with no relief for the victims of Indonesian repression and murder. For the Timor-Leste president and, indeed, the entire government, the question remains: how will the report be received by East Timorese, and how will it affect relations with its giant neighbor? Will the damaging and incriminating 2005 findings of the UN-backed Truth Commission (CAVR) raking over the entire 24 year period of Indonesian occupation of the small half-island nation, simply be buried. [1]

Poster announcing popular consultation for the Truth Commission

It is not that the 300 page CTF report has ignored the institutional crimes committed in East Timor in 1999 – indeed, the admission is refreshing and sobering – but the failure to sheet home individual responsibility obviously subverts the course of international justice such as pursued in Rwanda, Bosnia, Cambodia and, with more immediacy, as with the case of Radovan Karadzic dispatched to the war crimes tribunal at the Hague after 13 years on the lam. Another feature of the "friendship" report is that it attempts to offer balance by also blaming the East Timor independence movement for various atrocities. But this was an unequal struggle of a mostly unarmed and pacific people against a militarized, internationally-backed and ruthless behemoth. It also replays the internal "civil war" propaganda of 1999 that Indonesian parlayed to justify its security presence, later turned rogue.

To be sure, if the CTF report actually leads to fundamental reform of the Indonesian military – such as endorsed by US Secretary of State Condoleezza Rice during a 25 July Jakarta stopover - then that is a good thing. Rice seemed to think that the two governments could work out the justice part but, obviously, without major international backing for an independent tribunal, and in the absence of any plans to prosecute major perpetrators or to compensate victims, it simply will not happen.

Justice is also the expectation of civil society groups inside both Timor-Leste and Indonesia. It is also the expectation of the international human rights community (London-based TAPOL is an exemplar of civil society concern in both East Timor and Indonesia over the decades). Inside Indonesia, for example,

Tapol. The Indonesia Human Rights Organization

Choirul Anam of the Indonesian Human Rights Working Group stated that [retired General] "Wiranto has our special attention because trying Wiranto would cut off the biggest impunity chain." [2] Inside East Timor, for example, the head of a Dili Diocese committee set up to evaluate the CTF report, Carmelite Father Anacleto Maia da Costa, states that it merely confirms what international bodies already surmised, it does not recommend punishing those responsible, and it "breaks the hearts" of those affected by the rape, torture and murder of 1999. The Catholic church stands behind justice. [3]

Notes

[1] The official CAVR report is available.

[2] cited in Olivia Rondonuwu, "Indonesia, Timor violence probe will not name names," 9 July 2008.

[3] "TIMOR-LESTE Truth Commission Report Ignores Justice, Church Says, " 29 July, 2008

The CTF Report on Timor-Leste: Indonesian Military Held Responsible for Massive 1999 Violations

Carmel Budiarjo

When the Commission of Truth and Friendship (CTF) was set up in August 2005 by the governments of Timor-Leste and Indonesia to 'establish the conclusive truth regarding the events prior to and immediately after the Popular Consultation in 1999', there was scepticism about what it would achieve.

1999 will go down in the annals of both countries as the year when the Timorese people voted overwhelmingly for independence from Indonesia, but also when the Indonesian army waged a final orgy of killing, rape and numerous other atrocities in revenge for the Timorese people's overwhelming rejection of Indonesian sovereignty. The estimated Timorese death toll was 1,400 while hundreds of thousands fled their homes in search of safety.

CTF co-chairs Benjamin Mangkudilaga (C) of Indonesia and Jacinto Alves (R) of East Timor at a press conference on March 29, 2008

Reconciliation and friendship

The Commission's mandate made it clear that its aim was to promote reconciliation and friendship between the two parties. Point 13 (c) of its Terms of Reference states: 'Based on the spirit of a forward-looking and reconciliatory approach, the CTF process will not lead to prosecution and will emphasize institutional responsibility', while point 13 (d) said that it would 'promote friendship and cooperation between the governments and peoples of the two countries and promote intra and inter-communal reconciliation to heal the wounds of the past'.

Such caution was the inevitable consequence of a commission set up by two governments keen to promote the ties of friendship between them; nor did it augur well for a thoroughgoing investigation. Under such circumstances, the CTF did not win international approval and the United Nations which had been involved in the situation in Timor-Leste since the Indonesian invasion in 1975 refused to support the Commission or allow its personnel to testify.

The terms of reference made it clear that the perpetrators of gross violations of human rights could sleep peacefully in their beds because they would not be named but would be shielded by the fiction of institutional responsibility. The CTF was clearly of a very different character than other investigations conducted previously, in particular that conducted in 2000 by the KPP-HAM set up by Indonesia's National Human Rights Commission whose members included highly respected human rights activists such as the late Munir Said Thalib. Moreover, the mandate was strictly limited to the events prior to and following the Popular Consultation in 1999 and would not encompass earlier atrocities which certainly had a great bearing on the events of 1999. This was to be, as is repeatedly stated in the report, a 'forward-looking' investigation.

Yet, although it was bound by these limitations, the CTF which was composed of five Timorese and five Indonesians was able to produce what is, in many places, a hard-hitting account of the violations that were visited upon the population of Timor-Leste, in particular after they voted so overwhelmingly to reject Indonesia's offer of autonomy and in favour of independence from Indonesia.

The chapter on Gross Human Rights Violations and Institutional Responsibility states: 'The Commission concluded that gross human rights violations in the form of crimes against humanity did occur in East Timor in 1999 and that these violations included murder, rape and other forms of sexual violence, torture, illegal detentions, and forcible transfer and deportation carried out against the civilian population.' It said that there was 'institutional responsibility for these violations'. With regard to crimes committed in support of the pro-autonomy movement, the Commission concluded that 'pro-autonomy militia groups, TNI, the Indonesian civilian government and Polri (the Indonesian police) must bear all responsibility for gross human rights violations targeted against civilians perceived as supporting the pro-independence cause. These crimes included murder, rape and other forms of sexual violence, torture, illegal detention and forcible transfer and deportation.'

As for crimes committed in support of the pro-independence movement, for judicial reasons this could not be conclusively determined, but the Commission said it was possible to conclude that 'pro-independence groups were responsible for gross human rights violations in the form of illegal detentions that targeted civilians who were perceived as pro-autonomy supporters'.

Institutional responsibility of the TNI and the militias

The Commission's findings about institutional responsibility were unequivocal: 'The evidence clearly proved that pro-autonomy militias were the primary direct perpetrators of gross human rights violations in East Timor in 1999.'

Regarding the extent to which Indonesian institutions also met the criteria for institutional responsibility, it concluded that 'the evidence was sufficiently clear and abundant to justify… that TNI personnel, police, and civilian authorities consistently and systematically cooperated with and supported the militias in a number of significant ways and contributed to the perpetration of the crimes enumerated above.' The evidence also demonstrated that 'TNI personnel sometimes directly participated in the operations that led to these crimes. Such participation included direct participation in the actual commission of the crimes by members of TNI units and the direction of militia operations by TNI officers who were present when the crimes were committed.' Moreover, it found that 'TNI commanders in East Timor controlled the supply, distribution and the use of weapons to the militia groups and did so in an organised manner'. The TNI's support for militias 'extended beyond the provision of weapons and included funding and other material resources…. Local TNI headquarters were used as facilities for illegal detention, where severe forms of mistreatment of civilians, including torture and sexual violence sometimes took place.'

The chapter devoted to widespread attacks (the word 'widespread' is given special emphasis) on the civilian population lists fourteen 'priority cases' which, the Commission stresses, were selected at random. Significantly, three of the incidents occurred around the time when the decision to hold a Popular Consultation was announced (on 6, 12 -13 and 17 April) while ten others all occurred in the immediate aftermath of the Consultation, (from 5 to 25 September). It pointed out, moreover, that many of these cases 'entail(ed) multiple and grave human rights violations'. For example, priority case No 11 is: 'Killing and forced disappearance by the troops of Battalion 745 on 10-21 September 1999 (spans Lautem, Baucau, Manatuto and Dili districts)'. Priority case No 12 is: 'Killing of nuns and priests in Lautem on 25 September 1999 (Lautem district).'

The results of the Popular Consultation, it should be recalled, were announced by the UN on 4 September, revealing that 78.5 per cent of the population had rejected autonomy and voted in favour of independence.

Indicted generals take heart

As soon as it became known that the Commission was going no further than pointing to 'institutional responsibility' and that its findings would not lead to prosecutions, retired General Wiranto claimed that 'the case of disturbances in Timor-Leste has now been resolved'. Ignoring the results of several earlier investigations, he could now boast that: 'All generals who were considered to have been involved in human rights violations in Timor were found not guilty by a Special Military Tribunal.' [Kompas, 15 July 2008]

Wiranto woos voters in 2004

General Wiranto was commander-in-chief of ABRI (now known as TNI), the Indonesian Armed Forces, and Minister of Defence and Security at the time of these atrocities and therefore held command responsibility for what happened in 1999. In February 2003, he was indicted along with seven other high-ranking officers by the Special Panel for Serious Crimes in East Timor and a warrant for his arrest was issued on 10 May 2004 by an international judge of the Special Panel. The indictment was accompanied by over 15,000 pages of evidentiary material in support of the indictment.

Having enjoyed impunity for more than five years, retired General Wiranto, who is facing such serious charges, now heads a political party in Indonesia that will participate in next year's general elections and has put himself forward for election in the presidential election due to take place in September 2009. It beggars belief that an indicted general can become a candidate for the presidency of a country that prides itself on being one of the world's new democracies which upholds the rule of law.

Another retired Indonesian general who spent several tours of duty in Timor-Leste and is remembered for his many crimes against the population, Prabowo Subianto, has also put his name forward as a candidate in next year's presidential election.

Role of the US and the international community

Although the victims were primarily innocent Timorese civilians, they also included UN and other international organisation staff and non-Indonesian citizens who were assaulted and, in the case of journalists, beaten, abducted and killed. The human rights atrocities carried out by the Indonesian military and their militias were clearly also a crime against the international community. It therefore falls to the international community to demand justice for these human rights crimes.

However, the report errs in overlooking responsibility of other governments for the mayhem that transpired in 1999. In May of that year, at the insistence of the Indonesian military expressed through the Indonesian government, the international community agreed that the Indonesian military and police would be responsible for providing security in Timor-Leste during the run-up to the referendum. The US and other governments feared that to insist on an international security presence could lead the Indonesian government to pull back from the referendum. Moreover, there were no obvious or willing international sources for security personnel. Key international players, notably the US and Australian governments, believed that a strong UN civilian monitoring presence and, crucially, quiet pressure on the Indonesian military and the Indonesian government would be sufficient to ensure effective security in Timor-Leste.

Tragically, the US government failed to react to the growing violence and the clear evidence that the Indonesian military was orchestrating that violence through its militias. Rather than insist that the militias be disarmed and disbanded, the US accepted the Indonesian government's clearly false contention that the militias constituted a legitimate faction of the Timorese. The US ambassador

met with militia personnel and their representatives in Timor-Leste and even persuaded the visiting Secretary of State to meet with the militias' representatives in Jakarta, thereby according them a degree of respectability that ignored their ongoing attacks on Timorese civilians. While the State Department's Assistant Secretary of State for East Asia and the Pacific strongly protested the growing Indonesian military inspired violence, his strong message conveyed several times personally in Jakarta was crucially undermined by senior Pentagon and Pacific Command officials who took a far weaker line with their Indonesian counterparts. The unwelcome message offered by senior civilian US officials from Washington was ignored in preference for the much more pliant message presented by senior US military personnel and echoed by the US embassy's Defence Attache's Office and the US ambassador.

Even as the mayhem in Timor-Leste broke out following the referendum vote, the US embassy still sought to downplay the extent of the violence.

The CTF report should have acknowledged the critical failure of the international community, most especially the United States, to halt the escalating Indonesian military/militia and police violence before it was too late.

Conclusion

With responsibility for the crimes being so clearly apportioned to the Indonesian armed forces (TNI), it is now a question of taking forward these findings by bringing to justice those who are known to have been in control of the situation in Timor-Leste when these horrendous crimes were being perpetrated. As Usman Hamid, executive director of KontraS, Indonesia's Commission for the Disappeared and Victims of Violence, pointed out: 'Crimes against humanity are not subject to amnesty or a statute of limitations, and are retroactive. Therefore, the CTF's report can be used for future prosecution of those found most responsible.'

In the interests of justice and accountability for the crimes of humanity perpetrated in Timor-Leste, it falls to the international community to urge the two governments to publish the CTF report without delay and to undertake to support efforts to bring individual perpetrators to justice and ensure that persons accused of serious crimes are no longer eligible for public office or continued active service.

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With a contribution from Edmund McWilliams who was political counsellor at the US embassy in Jakarta at the time of these events.

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