



# ASIA-PACIFIC

## The Commission of Truth and Friendship and justice for East Timor

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In July 2008 the joint Indonesia-East Timor Commission of Truth and Friendship (CTF) released the final report on its inquiry into human rights violations committed in East Timor in 1999.<sup>1</sup> The report's publication signalled the conclusion of what is almost certain to be the last in a series of formal initiatives established to provide redress for the widespread human rights violations committed in East Timor from 1975 up to its referendum for independence in 1999 — violations which resulted in, among many other things, at least 102 800 deaths.<sup>2</sup> The CTF was the fourth institution established specifically to address these human rights violations. Its establishment in January 2005 came as East Timor's UN-assisted Special Panels for Serious Crimes (SPSC) and the Commission on Reconciliation, Truth and Reception (CAVR)<sup>3</sup> were approaching the end of their mandates and, following a series of trials at Jakarta's Ad Hoc Human Rights Court on East Timor, widely regarded as a sham.

These 'transitional justice' mechanisms had largely failed to satisfy the lofty expectations for justice which followed the devastation of East Timor in 1999 and fell far short of international commitments to deliver justice. By early 2005, as these initiatives were winding up and the United Nations was preparing to end its peacekeeping mission to East Timor, persistent calls for justice from within Timorese, Indonesian and international civil society were rising to a crescendo and becoming a festering sore in relations between East Timor and its all-important neighbour and erstwhile enemy. As then-Foreign Minister and Nobel Laureate Jose Ramos-Horta said at the time, '[w]e would hope and intend that [the CTF] would resolve once and for all the events of 1999.'<sup>4</sup>

By early 2004 it was recognised that there was little or no prospect of the SPSC trying senior Indonesian suspects and this prompted increasingly vocal domestic and international demands for an international tribunal. At the same time, however, the Timorese government was working to build a strong relationship with Indonesia, an alliance which is clearly critical to the fledgling nation's future.

The idea of establishing an international truth commission between Indonesia and East Timor was first discussed at a meeting between President Gusmao and President Soekarnoputri in May 2004. Subsequently, it was publicly raised, and then only in the broadest of terms, when a representative of East Timor's Ministry of Foreign Affairs discussed the concept at a conference on the serious crimes process which took place in Dili in September 2004. The proposal was to create, by UN resolution, an 'International Truth and Reconciliation Panel' whose composition would be international, but not necessarily

confined to Indonesian and Timorese citizens. It was widely understood that Ramos-Horta was a strong proponent of the proposal but as of September 2004 he had given no clear indication as to the specific structure and mandate that he envisaged for the 'Panel'.

On 21 December 2004 the governments of Indonesia and East Timor announced that they had agreed to jointly establish a bilateral 'commission on truth and friendship', despite neither government previously having made a firm commitment to an initiative along these lines. The timing of the creation of the CTF was noteworthy because it suggests that the CTF was created to pre-empt an international response to the perceived failure of the post-conflict justice process. For several months prior to the December announcement numerous local and international NGOs had been lobbying for greater support both for the SPSC and for the creation of an international tribunal. There had been some unofficial indications that the UN would form its own commission to review the adequacy of the 'serious crimes' process.

In February 2005 the UN officially announced that it was establishing an independent 'Commission of Experts' to review the prosecution of serious violations of human rights in Timor-Leste. Terms of Reference (ToR) for the CTF were finalised and signed on 9 March 2005 and in April 2005, the Commission of Experts visited East Timor to begin its investigations. The timing inevitably fuelled speculation that the CTF had been established as a political initiative designed, at least in part, to thwart the work of the Commission of Experts and any recommendations it might make — and ultimately did end up making in its report released in July 2005 — regarding the formation of an international tribunal.<sup>5</sup>

The CTF was roundly condemned as a political initiative aimed at shoring up bilateral relations by purporting to establish 'the conclusive truth' as to what occurred in Timor Leste in 1999 — somewhat redundant in light of the CAVR's comprehensive investigation and report on these same events — and to enable 'rehabilitation' for persons 'wrongly accused' of violations.<sup>6</sup> The latter was believed by many to be a reference to General Wiranto, the architect of the systematic devastation wrought upon East Timor in 1999 and a Presidential candidate in Indonesia's 2004 elections. The ToR confirmed as much, indicating that the work of the CTF would not lead to prosecutions and would in fact offer the possibility of amnesty for deponents to the truth.

Although there is an 'emerging custom of permitting amnesties while demanding some degree of

#### REFERENCES

1. The report is available online at <[http://socrates.berkeley.edu/~warcrime/Truth\\_commission.html](http://socrates.berkeley.edu/~warcrime/Truth_commission.html)>
2. *Chega! Final Report of the Commission for Reception, Truth and Reconciliation in East Timor*, available at <[etan.org/news/2006/cavr.htm](http://etan.org/news/2006/cavr.htm)> at 24 July 2009.
3. The official title of the Commission was (in Portuguese) 'Comissão de Acolhimento, Verdade e Reconciliação' (CAVR).
4. ETAN (East Timor Action Network) 2004, Indonesia, E Timor form Commission on Rights Violations, available at <[etan.org/et2004/december/20-25/21ietform.htm](http://etan.org/et2004/december/20-25/21ietform.htm)> at 24 July 2009.
5. Megan Hirst, 'Too Much Friendship, Too Little Truth: Monitoring Report on the Commission of Truth and Friendship in Indonesia and Timor Leste' (Occasional Paper Series, International Center for Transitional Justice, January 2008) 12.

accountability...<sup>7</sup> the validity and enforceability of an amnesty will depend to a large extent on whether or not it was granted conditionally and as a result of a comprehensive investigative and reconciliation process, or unconditionally and without proper investigation, that is, as a blanket amnesty.<sup>8</sup> It was quite clear that the amnesty process envisaged for the CTF was of the latter character. Furthermore, the CTF's ToR failed to comply with nearly all of the basic international standards for the formation of truth commissions, as enshrined in the *Updated set of principles for the protection and promotion of human rights through action to combat impunity*.<sup>9</sup> There was virtually no public participation in the design and establishment of the CTF, agreed as it was between politicians and diplomats working behind closed doors. Nor was it empowered to compel production of the archived records without which it would be impossible to establish any sort of a 'truth', much less a 'conclusive' one. Instead, its investigative function was largely limited to documentary review of existing materials produced by the SPSC, CAVR, Jakarta Tribunal and Indonesia's National Commission of Inquiry on Human Rights Violations in East Timor. Further, in light of its creation, it clearly did not have the independence and impartiality which are the essential foundations of an effective truth commission.

The dismissal of the CTF as a sham was largely confirmed by the series of public hearings it conducted from February to September 2007. In all, the CTF held five public hearings in Indonesia and one in East Timor. It is instructive to consider the testimony of the principal 'star' witnesses who, it was hoped, would be of the most assistance in helping the CTF to establish the conclusive truth behind events in East Timor in 1999. General Zacky Anwar Makarim, a senior military commander in East Timor in 1999, was one of the principal witnesses in the March hearings. The focus of his testimony was on blaming the UN Mission in East Timor ('UNAMET') for the violence which took place, an assertion which is not supported by the various high-level credible investigations into the referendum-related violence. Arguably the highlight of the hearings was the appearance of General Wiranto, the most senior military figure to have been indicted by the SPSC. Widely described as a well-rehearsed script before a cheering, sympathetic audience, General Wiranto denied that the military had any part in forming, funding or controlling militia groups. He also criticised UNAMET for, among other reasons, not taking responsibility or adopting appropriate measures for security in East Timor. In addition, General Wiranto asserted that Indonesia deserved appreciation and gratitude, not 'senseless and crazy' accusations, for what he said was a successfully-implemented referendum.<sup>10</sup>

In short, according to Megan Hirst, who monitored the hearings on behalf of the International Center for Transitional Justice, the hearings were characterised by:<sup>11</sup>

- poor witness representation and protection;
- an absence of genuine truth-telling;
- inept performance of some of the commissioners;
- lack of victim empowerment; and
- inappropriate choice of location.

Nevertheless, the CTF's final, 350 page-long report, *Per Memoriam Ad Spem* ('Through Memory to Hope'), was

unexpectedly credible and made a number of critical findings. Among other things, it concluded that: 'gross human rights violations' were committed throughout East Timor in 1999; the principal perpetrators of these violations were pro-integration militias acting with the indirect, systematic support of and, at times, directly in concert with, the Indonesian military, police and civilian authorities; and pro-independence groups were also responsible for human rights violations, although these were on a far smaller scale and primarily pertained to illegal detentions.<sup>12</sup> The report also made a number of recommendations to both Indonesia and East Timor relating principally to institutional reforms and public dissemination of the report.

The most significant outcome of the CTF process was clearly its direct imputation of primary responsibility for crimes against humanity committed in 1999 to the Indonesian authorities and the remarkable acknowledgment of this responsibility by President Yudhoyono when he formally accepted the report in July 2008. This represented the first official recognition by the Indonesian state of its role in atrocities committed in East Timor, nearly ten years after the referendum which gave rise to Timorese statehood. It might be argued that this outcome alone justifies the time, money and effort expended in establishing and carrying out the mandate of the CTF. An alternative view is that the creation of the CTF closed the door on all further official, formal investigation and prosecution of violations committed in 1999.

It must not be forgotten that the principal perpetrators of crimes against humanity in East Timor — not only in 1999, but also in the 24 years that followed the Indonesian invasion in 1975 — are unlikely to face justice. This was highlighted most recently in the government's decision to release from prison Martenus Bere, former leader of the Laksaur Militia which was responsible for the Suai Church massacre on 6 September 1999. Nevertheless, justice and the process of reconciliation which depends on it, are not discrete, fixed concepts to be determined exclusively through recourse to formalistic criteria in corridors of power by national elites. As Lia Kent points out, reconciliation is a vague and slippery concept and is 'less about arriving at closure or consensus than about making a space for politics within which the citizens of both countries can debate and contest its very terms'.<sup>13</sup> Hence, as the young nation continues along its difficult path of development, it is incumbent as much upon the people at the grass roots as it is on political elites to build bridges with their counterparts in Indonesia and to hold to account an increasingly authoritarian Timorese government to the spirit of the liberation for which East Timor paid such a heavy price.

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