

Foreword:

East Timor and the Global Transitional Justice Process

In line with the growing globalization of human rights norms, East Timor joined a select group of countries where the UN took the lead role in rebuilding the justice sector and in setting the parameters for retribution through international actions. In addition, besides the well-known case of South Africa, a range of African and Latin American countries have created truth commissions, often with the assistance of the international community. 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 truth and reconciliation must be accompanied by criminal proceedings for those deemed to have committed the gravest crimes. Some even claim that the best way to deal with the past is to bury it and go on. Transitional justice mechanisms take various forms, ranging from Sierra Leone where the truth commission works alongside a hybrid national-international criminal court system, to Rwanda where a “gacaca” court system seeks to merge prosecutorial goals with the pursuit of truth and community reconciliation. In other words, the trend in transitional justice is towards the integration and synthesis of different elements including such components as the initiation of trials, vetting programs, legal victim reparation, and restitution and reintegration measures. The East Timor

variant also offers novel features, such as in the facilitation of refugee return and community reconciliation, measures that, perhaps, will further expand the definition of transitional justice. Set up by the United Nations Transitional Administration in East Timor (UNTAET) and commencing work in March 2002, the Comissão de Acolhimento, Verdade e Reconciliação (CAVR) was the first “truth commission” established in an Asian country. Although going by various names and guises, CAVR joined some 25 such “truth commissions” around the world. Unlike the UN-backed judicial process in Dili (Serious Crimes Unit) that only sought to investigate violations committed during the 1999 period, CAVR was tasked with documenting past abuses while seeking to reconstruct a structural analysis of violence reaching back 25 years.

While truth and reconciliation commissions globally have won international endorsement, some analysts also ask 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,” were from outside society. Recovering the truth and undergoing a reconciliation process seems to have aided East Timor in its rebuilding process.

With respect to the broader goal of justice for the human rights atrocities of the past, some skepticism is in order. Because the prosecution of every perpetrator is impossible, CAVR did

relieve the work of the criminal tribunal by enabling it to deal solely with serious crimes.

Nevertheless, the inherent weaknesses of the Serious Crimes Unit in Dili and its now defunct counterpart court in Jakarta, together with the minimal prospect for an international tribunal, have greatly undermined the effort to bring to justice those responsible for major human rights violations in East Timor. If justice and reconciliation are complementary efforts, as they were designed to be in East Timor, the failure to prosecute the crimes deprives victims of a sense of closure even as the CAVR moves forward on the reconciliation front. It raises the question as to whether reconciliation without justice is possible, since the country may indeed be headed toward such an end-state. 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 courts.

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