

PEACE BUILDING: TOWARD THE REHABILITATION OF EAST TIMOR AND AFGHANISTAN, JIIA and UNU, Tokyo, 24-25 February 2004

Panel: Support to East Timor from the International Community: Achievements and Challenges

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The subject of this short paper is the achievements of one East Timorese institution, the Commission for Reception, Truth and Reconciliation in East Timor (Comissao de Acolhimento, Verdade e Reconciliacao de Timor-Leste, or CAVR) and the challenges facing this body as it works to implement its sensitive and ambitious legal mandate. This is an appropriate subject for this symposium because Japan has invested significantly in the Commission. In resourcing the Commission, the Japanese Government, consistent with its Human Security doctrine, has demonstrated both its commitment to building peace and a culture of human rights at the grassroots in Timor-Leste, and its strengthening conviction that, to be sustainable, rehabilitation of any war-torn society involves much more than the reconstruction of physical infrastructure.

East Timor had a highly traumatic birth. Unlike some passages from colonialism to political independence, which were blessed with relative peace, the decolonisation of East Timor was a violent process characterised by armed conflict and violations of human rights which left deep social divisions in the community. Divisions in Timorese society which opened up during the civil war in 1975, following Portugal's decision to decolonise, were intensified during the long and bloody occupation by the Indonesian army and were the basis of the split into pro-independence supporters and pro-autonomy (within Indonesia) militias that surfaced so violently in 1999. Very few East Timorese families have not been scarred by this trauma. To give but one example of many that could be recounted. During a Public Hearing convened by CAVR in December 2003, East Timor's Minister for Internal Affairs, Rogerio Lobato, told the audience that he took responsibility for violations during the latter part of 1975. He then said, 'But I was also a victim', and broke down and wept. It emerged that no less than 17 of his direct family members, including his mother and father, were killed as a consequence of the civil war and subsequent Indonesian invasion.

It has been said that East Timor, like other societies in transition from acute repression to democracy, has three broad options in dealing with past human rights violations: criminal prosecution (retribution); amnesia (forgive and forget); and restorative justice mechanisms, which focus on repairing torn social relationships. East Timor has chosen an unprecedented model of a mix of the first and third options. This complementary model combines formal justice for serious crimes (through the Serious Crimes process) with the CAVR which provides a less expensive, reconciliation-focussed mechanism to deal with the large caseload of less serious crimes. Both processes were judged to be necessary: on the one hand, to meet a clear public demand for justice and rule of law over impunity,

and on the other hand, to contribute to sustainable peace through reconciliation at the local level by reintegrating and healing divided communities in practical ways and reducing the potential for renewed violence. The success to date of the CAVR programs demonstrates how creative and relevant this model has been for East Timor.

Structure and organisation

The Commission is an independent, statutory authority established by law during UNTAET. It is written into the RDTL Constitution and had its mandate endorsed and extended by the East Timorese parliament in 2003. Its principal functions can be deduced from its title. These are (a) to inquire into the truth about human rights violations committed on all sides in the context of the political conflict between 1974 (when Portugal decided to decolonise the territory) and October 1999 (when the United Nations temporarily assumed administration); (b) to facilitate community reconciliation; (c) to support victims; and (d) to report on its findings and recommendations to the President and people of Timor-Leste and to the UN Secretary-General. The word 'reception' in the title is widely perceived to refer to the repatriation of East Timorese refugees in Indonesian West Timor. In fact it has a wider connotation and was included to highlight the welcoming, inclusive, re-integrating ethos of CAVR towards perpetrators, whether in or outside East Timor, and is better translated by the Portuguese word 'acolhimento'.

The Commission is headed by seven East Timorese National Commissioners, who have sworn to be impartial, and are assisted in the discharge of their legal obligations by twenty-nine Regional Commissioners and a staff of approximately 260, including some 15 international advisors. The Commission has a strong local focus. Most personnel are in the field supported by five regional offices. Four of these offices and the national office (a former colonial prison) were rehabilitated with Japanese funding. The Commission commenced its core work in April 2002, will present its Final Report in October 2004 and will be dissolved no later than January 2005. The Commission is funded entirely by external donors of whom Japan is the largest.

Functions

- *Truth-seeking*

The truth-seeking function is based on two imperatives: the imperative of the deep human need and right of victims to know the truth about what happened and why, and the imperative of historical clarification. A record that remains disputed will itself be a source of dissension and division into the future. Once addressed, both imperatives have potential to deliver personal and national healing. Credible historical analysis is also essential as the basis for lessons learned and policy change. CAVR believes it can make a contribution to the development of democracy in Indonesia, because its inquiry is the only opportunity for an in-depth study of the Indonesian military (TNI) which has been possible, or is likely to be possible in the foreseeable future.

CAVR's inquiry into human rights violations is focussed on 10 themes: famine and forced displacement; structure, policies and practices of the Indonesian military and police; structure, policies and practices of Fretilin and Falintil; political imprisonment,

torture and forced disappearances; massacres; death toll; children and youth; women and conflict, both as victims and activists; internal political conflict; the international community and self-determination. Methodologies employed in the search for the truth about these themes include statement-taking, public hearings, research and investigation, and submissions from outside sources. CAVR aims to collect 8000 statements by the end of March 2004. These include statements collected from East Timorese in West Timor. Coded and entered into the central data base all these statements, combined with input from researchers and the other sources referred to, will be the basis of CAVR findings on patterns of violations and their correlation to military policies. The extent of the violation of the right to life during the 24 year mandate period is a particularly important challenge as many, often strongly contested, claims have been made about the magnitude of the death toll and, by implication, the gravity of the Indonesian military's crime. Under international expert guidance, CAVR teams are collecting and correlating material from several independent sources, including an in-depth survey of a random sample of 1440 households, a counting of graves throughout Timor-Leste, review of existing literature, and information provided in statements. CAVR has considerable powers of search and seizure but has not had reason to exercise these.

Public Hearings are an important part of this process. In addition to contributing information under oath, they serve to honour victims, to educate the community about recent history and human rights, and to point up the importance of clear policies, mechanisms and practices to prevent recurrence of violations in the future. CAVR will hold seven major, national hearings in the course of its life. The most sensitive and successful of these was held in December 2003 on the theme of internal political conflict and was addressed by most of East Timor's leading political figures. For reports on this and other Hearings, visit the CAVR website: www.easttimor-reconciliation.org

- *Community reconciliation*

CAVR is tasked to facilitate community reconciliation hearings throughout the country. According to the procedures set out in Regulation 2001/10 any person who has committed past crimes which are not 'serious crimes' (e.g. murder, rape or torture cannot be dealt with by CAVR), may apply to have their offence handled by CAVR instead of the courts. According to this procedure, an applicant first supplies a statement in which he/she admits to particular actions. This statement is then sent to the General Prosecutor who determines whether to exercise jurisdiction over the case or refer it to CAVR. In the latter instance, CAVR organises a hearing in the community where the crimes occurred. At the hearing, the perpetrator or deponent, victims and community members all speak before a panel of respected community leaders headed by a CAVR Regional Commissioner who facilitates the process which, all being well, culminates in a community reconciliation agreement binding on the perpetrator. An agreement may comprise community service, such as contributing to the rebuilding of a school or a victim's house, a payment to a victim, public apology or other acts. The agreement is registered with the District Court and when completed the perpetrator receives a permanent stay of civil or criminal prosecution for the acts included in his statement.

CAVR set itself a target of 1000 cases. As of the end of January 2004, CAVR had received over 1500 applicants, exceeding its target by 50% and demonstrating the appeal of this process to both perpetrators and victims.

Why is it working so well? More study needs to be done and the first of three independent evaluations is currently being conducted. In general terms, however, its appeal seems to lie in two key factors: one, it addresses what is most important in a communal society, the restoration of relationships and a sense of community; and, two, it does this in a highly localised, familiar, participative, and culturally appropriate way, including a role for traditional leaders and indigenous adat practices.

The sense of exclusion or not feeling 100% part of one's community sits heavily with an East Timorese. Life in East Timor is highly socially interactive and takes place outdoors and in groups, even in the towns. Many deponents contacted some weeks after their participation in a reconciliation hearing say that the change they appreciate most is that they can now leave their house and walk around without restriction, whereas previously they were reluctant to do this. Now they say (using the Tetun phrase): 'I can go up, I can go down'. Life is back to normal, there is peace. As already explained, most cases addressed by CAVR involve low-level perpetrators and even sometimes individuals who may not have committed a crime but have an association with the militia, e.g. as guards, or an association with Indonesia that works against full acceptance and needs to be put right. A school teacher in Metinaro, for example, supported continued association with Indonesia in 1999 out of personal conviction, but did nothing wrong. After the popular consultation in August 1999, which resulted in a 78% vote for independence, he went to West Timor but came back after 6 months because he missed East Timor and his community. He was not subjected to any threats or violence, but he was not permitted to teach again because of his previous pro-autonomy stance. He made use of the CAVR process to explain to two communities that he had changed his mind and wanted to apologise. CAVR interviewed him two months later and asked if there had been any change in his life since the CAVR Hearing. In response he said he felt like a new man: he had his teaching job back, he was attending church meetings, he felt proud and confident. 'CAVR', he said, 'was like the shade of a tree: a cool place where we can sit and resolve our differences'. The rebuilding of social capital which this example illustrates is clearly fundamental to social cohesion and progress.

- *Other programs*

Another important aspect of CAVR's work, sometimes under-reported, is the stress CAVR has placed on being victim friendly. The emphasis on restorative support work with victims can be seen in a number of different programs. These include training in trauma identification (both in victims and in themselves) for statement-takers; victim hearings in every sub-district at the conclusion of CAVR's 3-month cycle of work; and participation of victims in statement-giving, public hearings and community reconciliation processes. CAVR has conducted some 240 community profile workshops for victims focussed on the collective impact of human rights violations. It has also conducted 4 national healing workshops for seriously affected victims and has been

involved in a wider project to disburse funds from a World Bank ‘Urgent Reparation Scheme’ to several hundred particularly needed survivors of human rights violations.

Mention should also be made of CAVR’s outreach to East Timorese in Indonesia and particularly the refugee community in West Timor. Starting in 2001 after the adoption of the CAVR legislation, initiatives were taken to engage with East Timorese who voted pro-autonomy in 1999 and included holding several meetings in Indonesia with their political representatives, visits to West Timor and invitations to testify at public hearings in Dili. In 2003, CAVR – working with 18 members of West Timorese NGOs, and supported by both the Governments of Timor-Leste and Indonesia, conducted an intensive 6-month information program in refugee camps in West Timor. As mentioned, this included collecting statements to ensure that all sides were heard. CAVR also stationed staff at the Batugade Transit Centre to welcome and brief returnees.

- *Final Report*

CAVR is obligated in law to submit its Final Report by October 2004. This Report will be between 1000-1500 pages in length, plus an Executive Summary of some 150 pages, and will be the most comprehensive historical analysis of the incidence of human rights violations, their background and issues of responsibility, which has been possible to date. It is hoped that the Report will also contribute to the healing process for victims by providing official recognition of their experience and suffering and helping reduce residual anger and the potential for a recurrence of violence. The Report will also include recommendations to the Government of Timor-Leste and other stakeholders, including steps to be taken to ensure past violations are not repeated. The Report will be available in Indonesian, Portuguese and English and will also be produced in a popular Tetun print and video version.

Achievements

Reference has already been made to a number of significant achievements such as CAVR’s community reconciliation program, work with victims, national public hearings, fund-raising, high level political support and other initiatives. Here I wish to add four others.

1. The first is East Timorese ownership of the basic concept and process, which is fundamental to the success of the project.

CAVR owes its origins to the resistance movement under the umbrella organisation led by Xanana (now President) Gusmao. The inclusive, unifying, participatory ethos he developed in CNRT, which brought former feuding and fractious ideologies and political opponents together on common ground, is the fundamental inspiration behind CAVR. This has then translated into high level support (including within the Government, Church and civil society), recognition of CAVR in the Constitution and by the current Timorese national parliament, and trust in the process. The most dramatic illustration of this trust occurred at the CAVR Public Hearing on internal political conflict held in December 2003 when the leaders of the five historic parties courageously testified about the tragic events of 1975. The result, to quote East Timor expert James Dunn, was ‘an

extraordinary demonstration of reconciliation, the outcome far exceeding expectations'. The leadership of the Commission is also fully East Timorese. Though the legislation provided for at least one international Commissioner, all seven Commissioners are East Timorese appointed on the basis of their integrity and competence after a national consultation by a representative panel of East Timorese organisations.

2. Second, CAVR's contribution to peace and stability in Timor-Leste should be highlighted. In 2000, when the basic concept of the Commission was being developed, international observers commonly predicted that if militia-related refugees associated with the violence of 1998-1999 returned from West Timor they would be met with widespread 'payback violence' by their communities. This has not happened. Instead there is a national acceptance of the principle of reconciliation and commitment to a peaceful future, rather than revenge for past wrongs. CAVR, which is the major systematic process put in place to address past division and conflict, must be given credit for a significant contribution to this national achievement, although other factors have contributed.

3. Third, CAVR's contribution to capacity-building should be noted. It has built a successfully functioning organisation involving some 300 persons, all of whom have been trained or learned on the job in a variety of areas, from management to human rights, human resources and financial management. This is a rich resource for future human rights organisations such as the Provedor (Ombudsman for human rights and corruption) due to be established in 2004.

4. Fourth, CAVR is making a contribution to the developing field of transitional justice, including through its linkages with other Commissions through initiatives such as the 'Managing Truth Commission's network being facilitated by the New York based ICTJ. CAVR was twice mentioned as a successful model for post-conflict situations during a recent discussion in the Security Council. A constant stream of researchers and academics, including from Japan, are monitoring or writing about the Commission, particularly its innovative grassroots work in community reconciliation. Other societies in conflict in the Asia-Pacific region have shown interest, including the Philippines, Burma, Solomon Islands, Sri Lanka and Indonesia.

Challenges

Following are some of the challenges faced or to be faced by CAVR, divided into four clusters.

1. Intellectual challenges

The very notion of reconciliation presents its own challenge, particularly to a society emerging from traumatic conflict and hungry for justice. For many, it conjures up religious overtones, for others notions of 'forgive and forget' or sometime 'amnesty' because some automatically associate the term 'Truth Commission' with South Africa's famous Commission which gave amnesty in certain instances. The word runs into particular trouble in Timor-Leste amongst those who are (rightly) committed to conventional, retributive justice – especially for serious crimes, and feel that work to date

in this area has not been satisfactory. In this context, CAVR has, in a sense, had to redefine 'reconciliation' and 'justice', emphasising that both are about what is most important to East Timorese, namely relationships, and the need for positive restoration of individuals, local indigenous processes, and social re-integration if peace at the community level is to be achieved. This concept is captured well in a statement by an East Timorese NGO made in December 2001. Appealing to an East Timorese leader who was visiting from West Timor, the NGO said: 'Please go and tell the East Timorese in West Timor that people are ready to forgive. People have received each other and embraced each other. The only missing piece is justice. Please ask them to come back and set things right. We must never be divided again'.

The obligation to be impartial and inclusive is also difficult to realise in practice. Reference has already been made to largely failed attempts to fully involve representatives of the pro-autonomy community outside Timor-Leste. CAVR is fully aware that its findings may be dismissed in some quarters as predictable and biased because they only represent the independence view. This can only be countered by professionalism – including the use of recognised independent international expertise, and on-going initiatives to include other perspectives, including from official circles in Indonesia.

2. Logistical and organisational challenges

The logistical and organisational challenges faced by CAVR have been awesome. This is the first Commission of its kind in Timor-Leste, indeed the Asia-Pacific region. Though it benefitted much from the experience of other Commissions, it is still a pioneering enterprise which filled Commissioners and staff alike with trepidation. Further, it had to be established in a vandalised country of extreme poverty where most buildings had been destroyed and, to this point, communications remain extremely basic. Until very recently, the only reliable means of contact between the national office and CAVR's approximately 200 staff in the field was by road, many of which are in poor condition. No government funding was possible. The Commission has therefore had to raise all of its US\$5.1 million budget from international donors, a task of considerable magnitude. Language has also presented particular challenges. Leaving aside the 30 or so local languages which victims may or may not use, e.g. in giving a statement to CAVR, CAVR employs four languages on a daily basis: Tetun, Indonesian, Portuguese and English. The time and cost factors this involves are clear from the reference above to the multi-lingual production of the Final Report.

3. Scope of the work and timetable

The 25 year time period 1974-1999 is a complex minefield, replete with sensitive and controversial challenges. Trying to establish the truth on such issues over this length of time is ambitious. It has also placed considerable pressure on CAVR. Adding to the challenge is the deadline prescribed in the CAVR legislation which requires it to submit its report by October 2004, a short 2 and a half years after CAVR commenced its work. To meet this deadline, CAVR will complete its field work and significantly downsize by the end of March 2004, whether or not it has been able to respond to all community requests. The current consensus that truth commissions should start their work and

achieve a substantial measure of closure soon after the conflict period may have to be re-examined in the light of CAVR's experience.

4. Future

CAVR will address a number of challenges in formulating recommendations for its Final Report. Amongst them will be what to do regarding uncompleted reconciliation cases, the related issue of disposal of assets, serious crimes identified in CAVR's inquiry but outside the current mandate of East Timor's Serious Crimes process, memorialisation, victim needs, and the long-term preservation of the records and documentation CAVR has generated and collected for access by future generations.

Support from the international community

Timor-Leste has been an international project for many years and, hopefully - at least in some respects - will remain so. Though proudly independent, and rightly so, there is very little in contemporary Timor-Leste that does not owe something to the international community – banks, currency, donors, petroleum, language, consumer economy, legislation, the Catholic Church, to name just some. CAVR is no exception.

The policy basis for the involvement of the international community in support of CAVR can be found in two key documents: the Brahimi Report and the Japan inspired and resourced Human Security project. In practical terms, this support has been significant and variegated and, in financial resource terms, essential. The United Nations for its part has played an active role in CAVR from its design phase till now, particularly through its Human Rights Office which currently contributes two international staff to the Commission. Given the fundamental importance of reconciliation to the stability and security which the UN is committed to ensuring in Timor-Leste, it is to be hoped that this support continues during the likely follow-up mission to UNMISSET. This support has been very generously supplemented by UNDP, which under Mr Sukehiro Hasegawa's leadership, has been an excellent friend of CAVR. UNHCR has also collaborated with CAVR from its inception. As mentioned, CAVR has received all its funding from external donors.

As stated above, Japan has been the largest donor to CAVR so far contributing US\$1 million in funds. This funding has been used both to provide essential infrastructure and to resource CAVR's core program. The Japanese Government has also shown its support for CAVR through official visits by successive Vice-Ministers for Foreign Affairs and through the personal interest shown in the work of the Commission by successive Heads of Mission, including Japan's current Ambassador to Timor-Leste, Mr Hideaki Asahi. Japanese academia is also taking an interest in the work of the Commission through visits and internet contact. In this regard, CAVR is most indebted to Dr Akihisa Matsuno, Associate Professor, Indonesian Studies, Osaka University of Foreign Studies, who has provided excellent service to the Commission for many months as senior advisor in the demanding area of historical research.

CAVR is recognised for making a creative contribution to peace and stability in Timor-Leste. This would not have been possible without Japanese assistance. Together CAVR

and Japan may have created something new in development policy and practice that will benefit other societies emerging from conflict where Japan is contributing to reconstruction, including the troubled people of Afghanistan.

Tokyo symposium