

ARCHIVES AND TRANSITIONAL JUSTICE

Report on meetings in Switzerland, May 2013

Pat Walsh

This report has been prepared particularly for organizations in Timor-Leste and Indonesia that are dedicated to ending impunity and advancing the rights of victims through preservation of the truth.

I took the opportunity of visiting Switzerland also to visit the International Red Cross in Geneva to discuss their archives on Timor-Leste. My report on this visit is called *Red Cross Archives on Timor-Leste* and is available separately.

It is recommended that the forthcoming Swiss Peace guidelines on archiving best practice (*Archiving For a Peaceful Future*) be translated into Indonesian and made available to relevant organizations and government bodies in Timor-Leste and Indonesia.

I am indebted to Swiss Peace for the invitation to present the CAVR experience at their conference/workshop and for their hospitality.

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A. Swiss Peace conference and workshop on Archives of Transitional Justice Mechanisms, 16-17 May 2013, Bern.

1. Background

The conference was organised by Swiss Peace in collaboration with the Swiss Department of Foreign Affairs and Swiss Federal Archives. It was a further step in their joint project on archives and dealing with the past started in June 2011. The project aims to raise awareness about the importance of archives in dealing with past conflict and human rights violations and to support governments, NGOs and others through advising on peacebuilding, training, courses, design, evaluation, research and publications.

- Swiss Peace is a practice-oriented peace research institute. Inter alia, it is currently involved in training and other forms of support in the Great Lakes, Former Yugoslavia, Guatemala and the Philippines <www.swisspeace.ch> The foundation is currently preparing a set of guidelines on truth commission archives entitled *Archiving for a Peaceful Future*.
- Swiss Foreign Affairs, inter alia, is co-responsible for UN initiatives on the right to truth, the nomination of a UN special rapporteur on the promotion of truth, justice, reparation and guarantee of non-recurrence; and with Swiss National Archives has given technical support to documentation centres in the Balkans.
- Swiss National Archives stores copies of the Guatemalan Police Archives.

2. Participants

The conference was attended by 80-100 participants and heard inputs from the following 13 practitioners/experts:

- Elizabeth Baumgartner, Swiss Peace.

- Mo Bleeker, Swiss Foreign Affairs Special Envoy and Head of Task Force on Dealing with the Past
- Jean-Luc Blondel, Head of Archives and Information Management, ICRC
- Asmaa Falhi, National Human Rights Council, Morocco
- Trudy Huskamp Peterson, USA. President, Human Rights Working Group, International Council on Archives.
- Nerma Jelacic, spokesperson, International Criminal Tribunal for Former Yugoslavia (ICTY)
- Catherine Kennedy, Director, South African History Archive (SAHA).
- Mactar Ndoye, UN-Office of High Commissioner for Human Rights.
- Serge Rumin, Deputy Head of Swiss FA Task Force on Dealing with the Past.
- Yasmin Sooka, South Africa. Director, Foundation for Human Rights. Keynote speaker.
- Patricia Tappata de Valdez. Ministry of Foreign Affairs, Argentina. Former Director of Memoria Abierta.
- Vesna Terselic, Croatia. Head, Centre for Dealing with the Past, Documenta, Zagreb.
- Pat Walsh, Australia, former advisor to CAVR and Post-CAVR, Timor-Leste.

3. Some comments

- **Why archives**

Mactar Ndoye (OHCHR) said the UN is giving increasing attention to the right to truth as part of its central objective of combatting impunity. This requires that records be preserved and accessible. Victims have a right to the truth but also to privacy and security. He noted that the Togo truth commission report (2012) includes recommendations on archives and that the Burundi report has a whole chapter on archives. He also warned that final decisions on recommendations will be made by politicians (some for, others against) and that Governments will often be fearful and cautious. Others stressed that strong public support will be required to achieve positive results and better use should be made of professional stakeholders (academics, historians, lawyers) and relevant national institutions. Archives are historical and personal records, but can also contribute to reparations and judicial processes. Archives are critical to memorialisation. Much more is required than officials paying respect at a massacre memorial once a year.

** The Togo Commission for Truth, Justice and Reconciliation was established in 2009 and mandated to report on political violence 1958-2005, identify those responsible and propose measures for reparations for victims. It was chaired by Bishop Nicodemus Barringah and submitted its final report on 3 April 2013.*

** I think Mr Ndoye's reference to Burundi is to the UN international commission of inquiry which submitted its report in June 2002. Burundi is still debating the establishment of a truth and reconciliation commission.*

- **Access to records**

Yasmin Sooka commented on how difficult it was to access records of the old government and the ANC liberation movement and that TRC records are now with the Department of Justice but not well organised and a nightmare for victims to access (particularly when there is no ombudsman as in Ireland). She stressed that records affecting victims belong to the people and that ordinary citizens ought to be able to access their own records. Data bases should be simple to use and search.

- **Protection of witnesses**

Yasmin Sooka stressed the importance of being clear and honest with witnesses about their evidence, the risks involved and procedures (what will be done with the records, who will have access, who will care for them etc). If witnesses cannot be protected, the principle of 'do no harm' should be applied and their evidence should not be taken. In this context, Trudy Huskamp-Peterson expressed alarm that Guatemalan police records had been publicised on the University of Texas website.

- **Transfer of archives to another structure**

For example material from a truth commission might be transferred to a museum or library. Yasmin Sooka recommended that before this is done there should be a national dialogue of all major stakeholders and a task force established to advise of the issue.

- **Use of the term archives**

It was suggested that the term 'archives' could put off victims and ordinary people and that an alternative should be considered. Experts argued, however, that the term should be maintained for the sake of clarity and consistency and that, if necessary, it be better explained to the public.

- **Files from the ICTY**

Access to the voluminous records from the International Criminal Tribunal on the former Yugoslavia will be provided through the establishment of a number of information centres in key communities (Croatia, Bosnia etc).

- **Timor-Leste**

The CAVR archives have been preserved and partially organised and digitised. However, access and use on behalf of victims is limited. This is because the Parliament has not enacted proposed legislation to establish a follow-up institution, a program of reparations or national archival policy and because the General Prosecutor has not acted on CAVR recommendations regarding accountability. In addition, the recommendations of the draft CAVR access policy have not been converted into procedures or practical administrative arrangements. [See text of presentation at F. Appendix]

- **The Philippines**

References were made to human rights archival developments in the Philippines with which Swiss Peace, Trudy Huskamp-Peterson and others are involved. In 2011 the Philippines military declassified 30-year old intelligence files compiled by the Marcos regime when martial law was proclaimed in 1981. The files have been handed to the Human Rights Commission. In addition to research and memorialisation, the files will be useful in validating claims for compensation by victims of torture, imprisonment, killing and disappearance as part of the compensation package of \$244 million announced by President Aquino in February 2013 (using money retrieved from the dictator's Swiss bank accounts).

B. Swiss Peace workshop on archival guidelines, Bern, 17 May 2013

Three questions were discussed. Following are some questions and comments that I feel are particularly relevant to Timor-Leste. Full minutes are available on request.

1. What constitutes an archive

What is the purpose of an archive? To preserve for posterity, but for the active purpose of being used, particularly in the case of truth commission or human rights archives. Defining the purpose of an archive will help decide the content, organisation and future use of the archive.

How can the link between the source of the information and its future use be kept? How can archives create action?

Can an archive grow? Is it possible to add to or change an archive? Truth commission archives should be clearly identified as such and not mixed with new material. These archives must be able to be seen as it was. Amendment of testimony by a witness can be done by cross-reference.

Open archives create more demands on the gatekeeper, a fortiori when digitised.

Digitisation facilitates access but can put lives at risk.

Where should archives be located? As the responsibility of the state they should form part of the national archive but this does not mean they have to be in the same building. Accommodation in an NGO should be short-term only. But this should not exclude NGOs and the like. The state and NGOs should cooperate. There should also be a legal instrument to hold the state to its archival responsibilities.

Access policies can be reviewed as times change. For example, demands on archives are often less after political transformation but will increase with time. Stakeholders should make requests to test that particular archives are still there.

2. Access to archives of truth commissions

The absence or lack of proper archival access policy is a common problem with truth commissions. Truth commission legislation should emphasise the future importance of archives and archival policy and procedure should be addressed from the very beginning of a truth commission's life.

The main principal guiding archival policy should be open access. This applies particularly to documents and material that is already public.

In preparing access policies, truth commissions should make use of existing archival standards and models. (See references below). Access policies should be reviewed as circumstances change and flexible (e.g. to allow access to victims/kin, declassification in changed conditions, priority access by prosecutors etc).

Who should make access policy? The truth commission itself, but within the broad policy framework of the state's national archival policy, including Freedom of Information provisions etc.

Who should manage access? The archivists themselves because they have good historical sense and will be less legalistic.

Archives will only be as good as archival staff.

Easy access will not be possible without a user-friendly listing of the contents of the archive.

Links and connections should be made to other relevant archives but collections should be kept separate.

Digitisation protects original material and makes access potentially easier. Digitisation should be undertaken professionally by experts after careful consideration of the most appropriate technology, equipment, and systems.

Truth commission archives should be located and managed separately. They should be part of the national archives but if they are physically integrated into the national archives there is a big danger they will be anonymised and lose their power.

Truth commission archives are not necessarily the last word. They are the records of the commission and what it was told. Access to these archives will allow the narrative to be challenged or expanded.

References

- ICA Guidelines: Principles of Access to Archives, adopted by the ICA Annual General Meeting <http://www.ica.org/13619/toolkits-guides-manuals-and-guidelines/principles-of-access-to-archives.html>
- ICA, Draft Principles for Archives and Records Legislation, <http://www.ica.org/12188/articles-papersreports-and-proceedings/draft-principles-for-archives-and-record-legislation-2004.html>

3. Archives and the legacies of truth commissions

Truth commission archives should not be passive. They are a resource to be used and brought to the people. Their use will counter the tendency to denial or diminishment of what happened.

The fate and use of truth commission archives is not just a matter for the truth commission. There is a role for other actors as well.

The use made of holocaust archives is an excellent example of best practice. The inaccessibility and lack of use of the archives of UN-run truth commissions is an example of bad practice (e.g. the archives of the Guatemalan and El Salvador truth commissions are stored in UN archives (New Jersey?) and not used.

Restrictions on access to South Africa's truth commission archives have made outreach difficult (e.g. via the publication of a popular version of the TRC report, educational activities).

The archives of the Argentinian National Commission on Forced Disappearances (CONADEP) have played a vital role in reparations. They are now part of the National Memory Archive and stored in a dedicated building.

Outreach (via radio, documentaries, school curriculum etc) is not per se the work of a truth commission. It can be done by a civil society organisation or other body.

Notes

1. *Swiss Peace will make the final version of Archiving for a Peaceful Future available on line in the near future.*
2. *I gave Guy Thomas the Indonesian summary and CD of Chega (Buku Panduan). Guy is Head of Archives and Library, Mission 21, University of Basel.*

C. Meeting with Swiss Department of Foreign Affairs, Bern, 17 May 2013

Present: Damiano Sguaitamati (Program Officer, Political Affairs); Georg Stein (Mediation Adviser, Political Affairs); Pat Walsh.

I briefed officials on follow-up to the CAVR report in the Timor-Leste Parliament, including expressions of interest by a number of European states during the 2011-12 Timor-Leste UPR in Geneva, and asked if Switzerland could assist the process politically and financially. Officials explained that Switzerland had not engaged with reconstruction in Timor-Leste because adequate assistance was available from other countries but the Swiss Embassy in Jakarta maintained a watching brief and had provided discretionary funds for a number of small projects in Timor-Leste. One or two had not been satisfactory but the option of small allocations for good projects remained and I was encouraged to meet with the Embassy in Jakarta to discuss options including funding for Chega Ba Ita. I also mentioned the possibility of future Swiss technical assistance for the proposed Institute of Memory. Officers also agreed to ask the Ambassador to inquire about the fate of the CAVR recommendations when he next visits Dili. Swiss mediation assistance with Papua has been discontinued. The officials noted recent exposés in Indonesia on 1965 but believe there is still a long way to go and that better coordination amongst NGOs would assist.

I left a copy of the Chega! Buku Panduan

D. Meeting with UN Office of the High Commissioner for Human Rights (OHCHR), 48 Avenue Giuseppe Motta, Geneva, 21 May 2013

Present: Ajith Sungay, Desk Officer for Timor-Leste, Indonesia, Thailand, Asia-Pacific Section, Pat Walsh. I also met briefly with Rory Mungoven, Chief, Asia-Pacific Section.

OHCHR has a regional office in Bangkok.

The new head of the UN team in Dili (UNDP Resident Coordinator – RC) is Knut Ostby (Norwegian, formerly in Fiji). The team will engage in capacity building and technical cooperation only. At Dili's request, there will be no monitoring or reporting.

The OHCHR will have a small (4 member) human rights advisory team in Dili (rear of Odrigado Barracks) headed by Anjet Lanting, supported by 2 national staff and 1 support staff. Geneva OHCHR can advocate. The Serious Crimes Investigation Team (SCIT) will continue for 9 months (due, it is believed, to pressure from the US).

Discussed lack of progress on CAVR follow-up draft legislation. Also Timor-Leste's UPR 2011/12 (OHCHR provided hard copies of both reports).

All documents from human rights and peace missions, including Timor-Leste, will now be stored in Geneva

under UNOG (UN Office at Geneva – Palais des Nations).
Left copy of CAVR report (buku panduan with cdrom).

**E. Informal visit to Permanent Mission of the Democratic Republic of Timor-Leste,
Rua Pestalozzi 7 (off Avenue Giuseppe Motta), Geneva, 21 May 2013**

In the absence of the Charge d’Affaires, Ms Sebastiana Barros, I met with the Secretary, Ms Paola Maresca. The position of Ambassador has been vacant since February.

I agreed to provide the Chega! Buku Panduan (including cdrom), At the Scene of the Crime, and information on the availability of *Alias Ruby Blade*.

F. Appendix: The archives of the Timor-Leste truth commission (CAVR) – a case study.

Pat Walsh, Bern, May 2013

Given the time available and the practical nature of this conference, I will focus this presentation on answering the three specific questions put to me by the conference organisers about the CAVR archives. These questions are:

1. How have the CAVR archives been preserved?
2. How have the CAVR archives been used?
3. Are the CAVR archives currently accessible?

CAVR is the Portuguese acronym for the Timor-Leste Commission for Reception, Truth and Reconciliation. The CAVR was established to heal divisions within East Timorese society and restore the dignity of victims following 24 years of war with Indonesia and associated human rights violations. It functioned 2001-2005. It was tasked with establishing the truth about human rights violations committed on all sides in Timor-Leste between 1974 (when Portugal opted to leave Timor-Leste after several centuries) and 1999 (when Indonesia left following a UN supervised referendum that resulted in a majority vote for independence). The CAVR did this by taking-statements from several thousand East Timorese victims, conducting numerous public hearings, interviewing key leaders, and research. The CAVR was also tasked with facilitating intra-East Timorese community reconciliation between victims and low-level perpetrators. This involved statement-giving by perpetrators. The materials collected from both these processes form the core of the CAVR archives.

The importance of this archive to the new nation of Timor-Leste is hard to underestimate. The CAVR archive

- provides an objective hard-copy of recent history and reduces Timor-Leste’s traditional dependence on the oral retention, interpretation and transmission of information;
- memorialises the sacrifices of many ordinary Timorese and is a means of recognition and healing;
- is a rich resource of educational material and lessons learned that can be passed on to future generations through the teaching of history, civic education, human rights, non-violence, rule of law and the terrible harm that results from impunity;
- is a record of evidence that is critical to the search for accountability, justice, peace and reconciliation;
- complements the narrative held in Timor-Leste’s Resistance archive and constitutes an important reality check for all those involved in the sorry Timor saga, whether Timorese or members of the international community.

It should be stressed, however, that the CAVR archive is only a start. It contains the accounts of only a small percentage of both East Timorese survivors and East Timorese perpetrators and is almost completely devoid of accounts from the Indonesian side. It also contains only a small percentage of relevant documentation on the period held by institutions, governments, and individuals outside Timor-Leste and

none of the external holders of material has been officially approached by Timor-Leste to make their material available. It should also be noted that, following some good work after the dissolution of CAVR in 2005, the development of this important archive is currently at a standstill. Maximisation of its potential and its contribution to nation-building will depend on the establishment of the follow-up institution recommended by CAVR referred to in draft legislation before Parliament as an Institute of Memory. This initiative is still in the pipeline but will, it is hoped, attract international support when it is established.

1. How have the CAVR archives been preserved?

CAVR was required by its legislation to preserve its archives and records for future reference. Commissioners and staff were also required to surrender official material on conclusion of their contracts. These records are now stored in two rooms of the former colonial prison that served as CAVR's headquarters and are cared for by a Post-CAVR Secretariat (P-CAVR) funded by the Timor-Leste government. The paper archives are filed in boxes, cabinets and shelves and comprise statements given to CAVR by thousands of victims, perpetrators and political leaders, records of over 200 public hearings, research materials, submissions and administrative files such as the proceedings of Commissioner meetings. Recently documentation collected by the Commission for Truth and Friendship (CTF), a bi-lateral process that followed CAVR and was conducted jointly with Indonesia, has been moved from Bali to the CAVR archives. Audio-visual archives are stored in a separate room. Both spaces have basic forms of security and climate control in place. Sections of the paper archives have been digitised and copied to the British Library in London with funding provided by a Swiss philanthropy. However, parts of the collection have not been digitised and are vulnerable. This includes the CTF archive, the audio-visual archive and CAVR victim-statements. Note that the CAVR and CTF archives are not the only official archives for this period held in Timor-Leste. The UN Serious Crimes process, which commenced in 2000 and is still operational in a modified form, also generated much complementary evidence on the same period.

2. How have the CAVR archives been used?

Prior to the current arrangements, the material in the CAVR archives was used to produce the monumental CAVR report, entitled *Chega!*, and a range of resources in multiple languages in poster, book and audio-visual formats, including a comic book version of *Chega!* These have been widely distributed in Timor-Leste and provided to the ministry of education for curriculum development and teaching purposes. In addition, the material has been used to develop a standing and mobile exhibition of the CAVR report. The archive was also utilised by the Commission for Truth and Friendship (CTF) and has been occasionally drawn on by media and researchers. The British Library also plans to make publicly available those digital archives which P-CAVR has provided and has agreed can be accessed. However, the archives have not served the interests of justice or reparations. These records have not been used in alleged criminal cases because the Timor-Leste Prosecutor has not yet acted on cases referred to it by CAVR. The archives have also not contributed to assessing reparations for victims because the Parliament has not yet completed debate on a draft reparations framework.

3. Are the CAVR archives currently accessible?

Currently access to the CAVR archives is strictly controlled and only granted with the express permission of the P-CAVR Executive Director on a case-by-case basis. CAVR drafted an access policy paper but its recommendations have not been converted into procedures or practical administrative arrangements. Some of the confidential material in the archives requires that access is restricted and case-by-case, depending on the applicant and purpose. Other material is public but cannot be easily accessed because it is accommodated in the same space as the confidential material. Diversification would facilitate greater access. This is not likely, however, until the Parliament approves the proposed Institute of Memory (which will take over administration of the archives) and a national archival law.

Conclusion

East Timor's leaders recognise that the CAVR archive is a unique and irreplaceable collection from a period of fundamental and extraordinary historical change in Timor-Leste's long history and are committed to its maintenance. However, nearly 8 years after the formation of the archive, the Timor-Leste Parliament has not yet decided on its long-term future or enacted legislation to guide policy and procedure on archives in Timor-Leste generally. As a consequence, the management, preservation, development, and use of the archive is stagnant and the archive is not currently serving nation-building or the rights and interests of victims and accountability.

I will conclude by dedicating this short presentation to my colleagues in East Timor, Indonesia and the international community who are committed to long-term justice for East Timor's victims and also to those from my part of the world who contributed significantly to the defeat of relativist notions of human rights at the World Conference on Human Rights held in Vienna 20 years ago next month.

I look forward very much, during or after this session, to discussing with any of you ways in which your organisation or government might contribute - politically, materially, technically or financially - to the future of the CAVR archive and other important East Timor-related archives. Thank you.

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[ENDS]