

Timor-Leste

Submission to the Universal Periodic Review
of the United Nations Human Rights Council
12th Session: October 2011

International Center for Transitional Justice (ICTJ)
March 21, 2011

Introduction

1. This submission examines Timor-Leste's progress in implementing human rights commitments relating to transitional justice. Timor-Leste is party to most human rights and humanitarian law treaties, including the Geneva Conventions and Additional Protocols I and II; International Covenant on Civil and Political Rights; International Covenant on the Elimination of all Forms of Discrimination Against Women; Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment; International Covenant on Economic, Social and Cultural Rights; Convention on the Rights of the Child; Optional Protocol to the Convention on the Rights of the Child on the involvement in of children in armed conflict; and the ICC Rome Statute. While Timor-Leste has taken some steps toward making progress to provide justice to victims of serious human rights violations, it needs to fully implement the recommendations of its two truth commissions as they relate to the following issues: the fate of the missing due to conflict; victims' reparations; memorialization; providing economic and social support for victims of gross human rights violations, particularly victims of sexual violence; and ensuring the trial of perpetrators of international crimes.

Historical Context

2. Between 1974 and 1999, an estimated 102,800 civilians died as a result of executions, massacres, and conflict-related hunger and illness in Timor-Leste (then known as East Timor). The Timorese suffered widespread violations including enforced disappearance, torture, rape, sexual slavery, the use of child soldiers, and deliberately targeting civilians during military operations. The legacy of the conflict—the breakdown of social trust, using violence to pursue political aims, and the militarization of Timorese youth—continue to undermine political stability in Timor-Leste today.

3. Timor-Leste has established two truth commissions: the Commission for Reception Truth and Reconciliation (known by its Portuguese acronym, CAVR) and the

Commission for Truth and Friendship (CTF), to investigate human rights violations committed during the conflict. Both commissions recommended that the Timor-Leste government investigate the fate of people missing because of the conflict and provide reparations to victims of gross human rights violations and serious breaches of international humanitarian law. The CAVR 2005 final report also recommended investigation of international crimes committed before 1999 and that the existing serious crimes prosecutions be continued.

4. The UN Transitional Administration in Timor-Leste (UNTAET) established the Special Panels for Serious Crimes (SPSC) within the Timorese courts to try individuals suspected of committing serious crimes between 1974 and 1999. A Serious Crimes Unit (SCU) was also established to investigate and prosecute suspects. The unit only investigated crimes committed in relation to the 1999 election violence. Of the 391 individuals indicted for serious crimes, only 89 faced trial. Almost all were low-level members of militia groups or the Indonesian armed forces. The majority of indictees remain outside the court's jurisdiction in Indonesia. In 2004 the UN Security Council resolved to close the SCU in 2005, effectively bringing an end to ongoing investigations and prosecutions of serious crimes.

5. In 2006 the UN Mission in Timor-Leste (UNMIT) established a Serious Crimes Investigation Team (SCIT) to finish investigations into 396 pending SCU cases. Unlike the SCU, the SCIT's mandate is limited to conducting investigations into crimes committed in 1999. The power to issue indictments remains with the Timor-Leste prosecutor general.

Substantive Concerns

6. Many Timorese remain unaware of the CAVR and CTF findings and recommendations. Dissemination programs have yet to effectively reach the public and policy makers. If dissemination efforts are not renewed, the two commissions' contributions to preventing the repetition of human rights violations will be minimal.

7. The CAVR and CTF recommendations related to victims' rights to justice, truth, and reparations remain unimplemented. Bilateral negotiations between the governments of Timor-Leste and Indonesia on implementing the CTF recommendations have failed to address the issues of missing people and reparations for victims. The debate within the Timor-Leste National Parliament on these issues has now stalled.

8. ICTJ research conducted from 2008 to 2009 revealed that many victims of the conflict remain socially vulnerable, unable to overcome the negative impact of the human rights violations they suffered. Trapped in a cycle of poverty caused by ill health, poor education, and/or the loss of productive family members, time is running out for many elderly and chronically ill victims.¹

9. In the absence of any systematic, state-sponsored program to search and identify people who disappeared during the conflict, families continue to seek information about

¹ ICTJ, *Unfulfilled Expectations: Victims' Perceptions of Justice and Reparations in Timor-Leste*, February 2010, http://www.ictj.org/static/Publications/ICTJ_TL_UnfulfilledExpectations_pb2010_Eng.pdf.

the fate of missing relatives. However, only those with sufficient financial resources and high-level political connections have any chance of success.

10. On September 22, 2010, the Timor-Leste National Parliament took an important step forward in addressing past human rights violations by approving, in principle, two bills; one proposed establishing an Institute for Memory, and the other laid the foundation for creating a national reparations program for conflict victims.² The Institute for Memory would oversee implementing key CAVR and CTF recommendations on victim reparations, the search for people missing because of the conflict, and human rights education and documentation. However, parliamentary debate on these two bills has now stalled due to sensitivities surrounding the past conflict. Of particular concern is the unwillingness of many parliamentarians to recognize victims of violations perpetrated by the Timorese resistance groups FALINTIL and FRETILIN.

11. Presently, victims' rights to truth and reparations are contingent upon parliamentary approval of these two bills. The delay in the debate of these two bills is unacceptable. Vulnerable victims cannot afford to wait another two to three years for the recognition and reparations to which they are entitled.

12. In relation to justice, those most responsible for the mass violations committed around the independence ballot of 1999 still have not been brought to account 12 years after the crimes were committed. Ongoing impunity for these crimes, and also for the mass atrocities committed prior to 1999, continues to undermine efforts to reestablish the rule of law in both Indonesia and Timor-Leste, as demonstrated by the recurrence of violent conflict in Timor-Leste in 2006.³

13. Since the UN-supported Serious Crimes Unit closed in 2005, a small number of low-level militia members named in SCU indictments have been prosecuted. Analysis of these trials has revealed that national judicial actors have not yet fully developed the capacity to deal with cases involving complex international crimes. Insufficient resources and the lack of operational contact between SCIT investigators and national prosecutors have limited the team's success in building the capacity of local actors to date.⁴

14. The greatest barrier to achieving justice for past human rights violations is the lack of political will. The efforts of prosecutors and the judiciary to try people accused of committing international crimes in Timor-Leste have been undermined by the office of the president and the government. Successive presidents have repeatedly used their constitutional power to pardon those convicted of committing serious crimes. In one case, a militia leader sentenced to 33 years for crimes against humanity involving the killing of nine people, including two nuns, three priests, and a journalist, was released after serving only seven years of his sentence. In the infamous Maternus Bere case, a former militia leader awaiting trial in Dili was unlawfully released and returned to his residence in

² The preamble of Security Council Resolution 1912 of Feb. 26, 2010, welcomes the passing of the Timor-Leste parliamentary resolutions that authorized the drafting of the Institute for Memory and Reparations bills.

³ The March 2010 Guidance Note of the Secretary-General on the UN Approach to Transitional Justice highlights the importance of transitional justice approaches, including prosecutions, in strengthening the rule of law in countries emerging from conflict or repressive rule.

⁴ ICTJ, *Impunity in Timor-Leste: Can the Serious Crimes Investigation Team Make a Difference?*, June 2010, www.ictj.org/static/Publications/ICTJ-JSMP_TL_SCIT_pb2010_Eng.pdf.

Indonesia on the prime minister's order, bypassing the authorities responsible for enforcing sentences.⁵ At the time of writing, the prosecutor general has failed to act on any of the SCIT's recommendations to issue indictments against suspects of serious crimes. Even if successfully prosecuting many suspects ultimately requires cooperation and political will from Indonesian authorities, indictments offer a crucial first step by providing formal documentation of the crimes alleged.

Achievements

15. With UN assistance, Timor-Leste will conclude investigations into a large proportion of crimes committed in 1999. However, greater political will, more international support, and cooperation from Indonesia are required to bring indicted suspects to justice.

16. The Timor-Leste government should be congratulated on recent efforts to ascertain the identity of people killed during the conflict and Indonesian occupation. In 2010, the government funded a forensic survey of an area marked for development that led to the recovery of two graves containing nine bodies. Efforts to identify these bodies are now under way. Government support for such initiatives should continue and expand to a wider, more systematic search for missing people.

17. The Timor-Leste government's focus on assisting vulnerable groups should be applauded. However, social assistance programs—,although beneficial to vulnerable groups including some victims of human rights violations—do not replace victims' rights to adequate, effective, and prompt reparation. Many victims are ineligible for government social assistance programs. For the victims who are, the programs fail to respond to the specific needs of conflict survivors, such as ongoing psychological trauma, reproductive health complications, and chronic pain. The vital reparative element of state recognition for violations suffered is also absent from these programs.

18. The Timor-Leste government has embarked upon an ambitious benefits program for members of the resistance movement, which has also benefited some victims of human rights violations. However, this program is limited to those who supported Timorese independence and were members of formal organizational structures such as veterans of FALINTIL. Like the government's social assistance programs, this program cannot be equated with reparations.

Recommendations

19. The government of Timor-Leste should:

- Ratify the International Convention for the Protection of All Persons from Enforced Disappearances.
- Ensure a timely parliamentary debate and adoption of the pending Institute for Memory and National Reparations Framework bills, and allocate sufficient budgetary resources to support their implementation.
- Establish a Solidarity Fund, as recommended by the UN Secretary-General in his 2006 report on justice and reconciliation for Timor-Leste, which will accept

⁵ *Ibid.*

contributions from UN member states and Timor-Leste state revenues toward a victim reparations program.

- Develop interim economic and social support programs specifically for vulnerable victims of gross human rights violations, particularly victims of sexual violence.
- Support inclusive, victim-centered national memorialization initiatives that recognize all conflict victims, regardless of their former or current political affiliation.
- Ensure that efforts to improve the capacity of court actors to prosecute international crimes are included in professional training priorities and rule of law development programs.
- Limit the application of pardons by adopting transparent and consultative criteria that do not undermine existing judicial processes.

20. The judicial authorities of Timor-Leste should:

- Ensure prompt and thorough review of SCIT recommendations and proceed to issue indictments based on completed SCIT investigations.
- Register outstanding serious crimes indictments and arrest warrants with Interpol.
- Continue to seek cooperation from Indonesian authorities in securing the arrest of indictees who are suspected to be in Indonesian territory.

21. The international community should:

- Continue and expand support for developing national capacity to prosecute serious crimes.
- Enforce international arrest warrants against those suspected of committing serious crimes in Timor-Leste.
- Support the full implementation of CAVR and CTF recommendations, particularly in relation to establishing reparations programs for victims of human rights violations during the conflict.
- Pledge contributions toward a Solidarity Fund.