

## Justice for Timor-Leste Remains an Unfulfilled International Obligation

*A briefing paper from La'o Hamutuk. August 2009*

Indonesia's illegal invasion and occupation of Timor-Leste killed more than 150,000 people between 1975 and 1999. The United Nations General Assembly condemned the brutal military occupation eight times. However, military and political support from Australia, the USA, Britain and other countries made it possible. As documented in the *Chega!* report, it included countless Crimes Against Humanity, War Crimes and other crimes of universal jurisdiction.

Today, ten years after Timorese voters bravely and peacefully voted for independence, persistent impunity for those crimes continues to haunt our people and create problems for this nation's future. None of the principal perpetrators have been brought to trial, and the model of "big men" not being held accountable for criminal acts permeates Timor-Leste's society, often breaking out into violence and retaliation

facilitated and encouraged by the expectation of impunity.

Attention to "reconciliation," "amnesty" and "moving on" helped achieve important medium-term goals, including preventing cross-border and militia/TNI violence after 1999, bringing back refugees from Indonesia in 1999-2001, and the subsequent development of friendly diplomatic relations between the governments of Timor-Leste and Indonesia. Ten years after the occupation, Timor-Leste still depends economically on its western neighbor. Last year, for example, 42% of all imports to Timor-Leste came from Indonesia.

These efforts to cement relations with Indonesian leaders have prevented the peoples of Indonesia and Timor-Leste from understanding and coming to terms with the crimes that were committed in their



Ten year later, survivors of the 17 April 1999 massacre at the Carrascalao home in Dili still await justice.

names and against their families. They impede the development of human rights and democracy in Indonesia, and obstruct Timorese victims from overcoming their traumas and moving on with their lives.

Furthermore, it makes hypocrites out of leaders of the United Nations and some member states. They repeatedly told the people of Timor-Leste that they would not allow impunity to prevail, but have failed to implement effective mechanisms to achieve justice. This example – leaders’ promises not being followed up with action – is detrimental to our new democracy.

Over the past ten years, the governments of Indonesia and Timor-Leste have repeatedly demonstrated that they alone cannot or will not institute judicial processes strong enough to end impunity for high-level perpetrators of crimes against humanity. Their people need and deserve the support of humanity in securing justice: the United Nations must establish an international tribunal.

## **Respecting the past**

In October 1975, Indonesian soldiers assassinated five foreign journalists working for Australian media, and the soldiers murdered a sixth during the invasion two months later, along with tens of thousands of Timorese noncombatants. These crimes marked the start of a quarter-century of atrocities, mayhem, massacres and other human rights violations that enforced an illegal foreign military occupation. Not one of the political and military leaders who designed and ordered these crimes have been held to account, and many continue to hold positions of power and influence in Indonesia and elsewhere.

By April 1999, the international community was shocked by the overt brutality of massacres at the church in Liquiçá and the home of Manuel Carrascalão in Dili. Although the Indonesian military had killed thousands of times more people during the previous 23 years, these killings were witnessed by foreigners who had come to Timor-Leste to prepare for the upcoming referendum. They were part of a systematic campaign of terror, violence and intimidation by the Indonesian military and the militias they directed, intended to subvert and prevent the referendum. The campaign failed, but it took nearly 1,500 Timorese lives and destroyed three-fourths of the buildings and infrastructure in the entire country.

Ten years later, victims and survivors of these massacres gathered to remember, but received little recognition from international representatives or Timorese national leaders (although the President,

Prime Minister and UNMIT head had promised to attend), and none from Indonesia. Although much attention has been given to victims of the more recent 2006 Crisis, those who were victimized by Indonesian forces during the occupation have been largely forgotten, dubbed “heroes” even if they were children or civilians, and told that the only justice they need is national independence.

If Timor-Leste is to succeed as a peaceful, democratic nation governed by the rule of law, it needs continuing support from the international community, especially regarding justice. By itself, this new, small nation has neither the political nor the human capacity to prosecute criminals given sanctuary by our large neighbor.

Crimes Against Humanity committed in Timor-Leste between 1975 and 1999 directly violated UN Security Council and General Assembly resolutions. Those committed after May 1999 also contravened a United Nations-brokered agreement which assigned responsibility for security to the Indonesian police during the referendum. United Nations staff were among the casualties, but all humanity has an obligation to prosecute such offenses to ensure that they will not happen again.

If the International Criminal Court had been established when these crimes were committed, high Indonesian officials would likely be in its dock. But since it was not, the United Nations and the international community have an obligation to victims in Timor-Leste, and to all humanity, to create a mechanism to achieve justice.

## **What has been done so far?**

Following Indonesia’s tumultuous withdrawal from Timor-Leste in late 1999, the United Nations established a Commission of Inquiry. As then UN Secretary-General Kofi Annan described, “The Commission stated that the evidence gathered clearly demonstrated a pattern of serious violations in Timor-Leste of fundamental human rights and humanitarian law. [These violations] were directed against a decision of the Security Council and were contrary to the agreements reached by Indonesia with the United Nations to carry out the decision of the Security Council. This fact reinforces the need to hold the perpetrators accountable for their actions.”

At the same time, Indonesia established the Commission for Human Rights Violations in Timor-Leste (KPP-HAM), which found widespread collaboration between Indonesian military and police and militias, and named more than 30 people suspected of involvement in crimes against humanity. KPP-HAM rec-



## **On 6 April 2009 the Liquiça survivors petitioned their leaders**

We who have lost our husbands, fathers, children and families, one more time would like, with open hearts and infinite patience, to share our thoughts with the men and women who lead our Nation, Timor-Leste, the United Nations, and national and international non-governmental organizations that ten years ago there was a major massacre in the Saint Brito Church Residence in Liquiça that wounded many civilians and killed powerless people only because they struggled for the principle of independence at that time. The terrible criminal actions and attitudes came from pro-Indonesia militias who were supported or together with the military (TNI) and police (POLRI) resulted in violations against the human rights of Timorese civilians by the thousands, who in their struggle for independence thus hid themselves in the residence. Many civilians were killed, wounded or tortured, although the final result was independence, and many women were widowed because their beloved were killed, children were made orphans because their fathers died, and many others became victims or were killed, or lost their parents, siblings, and children that they loved very much, giving their lives for independence.

We have sad hearts and difficult lives until today, 5-6 April 2009, when the clock marks ten years already passed, no person, group, national or international NGO, government or state has come to tell us where our wives, husbands, children, mothers or fathers, brothers and sisters or family who were massacred: Where were their bodies buried or discarded? Dumped in the river or Maubara Lagoon or in Karambala Sea for fish to eat??

The Criminal Militia Leaders who, together with the Criminal Military TNI and POLRI who assassinated our husbands, our fathers and our children until today have not been jailed or received any penalty, but have become political theatre for the leaders of the two countries who lack moral and political responsibility to provide reparations according to the recommendations of CAVR'S *Chega*. Afterwards, CVA (CTF) was created, comprised of Timorese who never dreamed of the principle of independence but used the Timorese people's money to go back and forth Dili-Denpasar and Denpasar-Dili, with great concern for the families of victims and others who were killed, who cry and pray for those killed because of independence, going and coming but never finding any work, and never receiving attention from most of the leaders who in the hard times lived in foreign countries or abroad.

Kofi Annan, former UN Secretary-General, came to visit the Massacre site in 2000, and Mary Robinson, High Commissioner for Human Rights, visited the same site in 2003 to show solidarity for us, the victims who continue to wait patiently for the process of justice and truth.

After the long time from the Transition to the Restoration of Independence on 20 May 2002, we hoped that these cases could be processed in Court to achieve Accountability for those people who were involved in human rights violations on 5-6 April 1999, as is guaranteed in Article 160 of our own Constitution or Mother Law. In Indonesia, they created the Ad Hoc Human Rights Court to process cases of human rights violations which happened in Liquiça and other places of our beloved independent Timor-Leste before and after the 1999 referendum, but not one TNI or POLRI, high or low, has been held responsible, because the Ad Hoc Court was only another political theater to justify that they did no wrong. Timor-Leste itself had trials, conducted by the Special Panels, but their mandate already ended in 2004 according to the UN's mandate. The CAVR process also concluded its mandate to write a report and make recommendations under the name *Chega* in October 2005, but until today the National Parliament has not discussed this report or its recommendations. Victims and families of victims until today continue to suffer, until when can we truly say AMEN because fair justice and truth is served as the mother law requires.

Finally, we victims and victims' families are not satisfied with the members of CAVR who became Members of CVA, using our rights to politicize our suffering and contribution to the independence of RDTL, and they who contradict independence today, they play freely with the rights of Timorese, while not debating in Parliament to find any solution, and we victims and victims' families ask and are really concerned: are we who are still alive, and those who died, considered as thieves?

ommended that the Indonesian Attorney General investigate further. In April 2000, Indonesia and the United Nations Mission in Timor-Leste signed a cooperation agreement regarding exchange of evidence, witnesses and suspects, but Indonesia has never honored it.

In 2000, both the UN Commission and KPP-HAM recommended that an international tribunal be established if efforts by Indonesia, the United Nations, and Timor-Leste failed to end impunity. Nine years later, impunity still prevails and its consequences are manifest. Below is an overview of the mechanisms so far, none of which has provided accountability. It is time for the international community to carry out its long-overdue responsibility by establishing an international tribunal.

### **UN Serious Crimes Unit (SCU) and Special Panels in Timor-Leste**

The United Nations Security Council established the SCU and Special Panels in Timor-Leste in 2000. Collectively known as the serious crimes process, the SCU and Special Panels became a joint Timor-Leste-UN undertaking after independence in 2002. Investigations, prosecutions, and trials for crimes against humanity in Timor-Leste fell under the jurisdiction of the Serious Crimes process. Indonesia's refusal to cooperate with the SCU on evidence, witnesses, and extradition seriously limited the effectiveness of the process. Although the SCU initially looked into some crimes committed before 1999, it soon limited its scope to the occupation's final year.

The SCU indicted 391 people, including former Indonesian military chief General Wiranto, but brought only 87 to trial, of whom 84 were convicted. More than 75% of those indicted, including all non-Timorese, remain free in Indonesia, some in positions of power. Arrest warrants have been issued for 303 indicted people who remain at large. In August 2009, Martinus Bere, a militia leader indicted by the SCU for the Suai church massacre, was arrested by Timor-Leste police when he visited from West Timor, the first such arrest since 2003.

When the SCU process concluded on 20 May 2005, it identified 469 murders from 1999 that it had not been able to investigate at all. Materials from the Serious Crimes process are archived in New York and Timor-Leste, although a few investigations re-started after 2006 (see below).

During 2007 and 2008, President Jose Ramos-Horta freed many of those convicted by the Special Panels, using his Presidential power

to grant clemency and reduce sentences. Only one of these 84 convicted criminals is currently in prison.

### **Indonesia's Ad Hoc Human Rights Court**

Indonesia established its Ad-Hoc Human Rights Court on Timor-Leste to fend off calls for an international tribunal. Trials began in Jakarta in 2002. This process was widely denounced as a sham. Eighteen people were indicted for failing to prevent crimes against humanity in Timor-Leste during 1999 (rather than for giving orders to commit such crimes), with no attention to the first 23 years of the occupation. Twelve were acquitted in the first trial, and the remaining six convictions were overturned by Indonesia's Appeals Court. Militia commander Eurico Guterres, a Timor-Leste civilian, was the last to be freed; he ran for Parliament in the recent Indonesian election.

### **UN Commission of Experts (COE)**

In February 2005, Kofi Annan appointed the COE to evaluate existing judicial processes and propose next steps to hold accountable those responsible for serious crimes in Timor-Leste in 1999, as UN members did not have the political will to look into earlier crimes. The Commission, composed of three eminent international jurists, examined the two previous processes. The COE reported in May 2005, and the Security Council asked the Secretary-General to provide "practically feasible" recommendations, which he did more than a year later.



Timor-Leste President Xanana Gusmão meets Indonesian Presidential candidate former General Wiranto in Bali on 29 May 2004. A Timor-Leste judge had issued an arrest warrant for Wiranto a few weeks earlier, based on the February 2003 Serious Crimes Unit indictment of Wiranto for Crimes Against Humanity.

The COE found that the trials of Indonesia's Ad-Hoc Human Rights Court were "manifestly inadequate," showing "scant respect for or conformity to relevant international standards." The report stated that the UN-backed SCU and Special Panels process had attained a "notable degree of accountability," but observed that it had been hampered by inadequate resources, insufficient support from the Timor-Leste government, and a lack of cooperation by Indonesia. The SCU was unable to bring to justice those who bore "greatest responsibility" for serious human rights violations in Timor-Leste in 1999, including senior Indonesian civilian and military personnel.

The COE recommended that the Indonesian government be given six months to show it was serious about prosecuting high-level perpetrators. Should Indonesia fail to act, the COE urged the Security Council to consider establishing an international criminal tribunal. The COE also recommended that the SCU and Special Panels for Serious Crimes be revived temporarily to manage appeals and protect case files, with a clear strategy for the handover of their functions to local institutions.

#### **Timor-Leste Commission for Reception, Truth and Reconciliation (CAVR)**

An independent body created and operated with the support of the United Nations, the Commission is known by its Portuguese acronym, CAVR. It has produced the most comprehensive documentation to date of the 1974 to 1999 period in Timor-Leste, covering the entire Indonesian occupation. Its 2,500-page report results from three years of intensive research, including interviews with thousands of victims and witnesses. *Chega!* (Portuguese for *Enough!*), the Final Report of the CAVR, urges increased attention to crimes committed before 1999 (which include 99% of the killings), including the use of starvation, torture, forced disappearance, extrajudicial detention and killings, and systematic sexual torture and enslavement as weapons of war.

Among its many findings and recommendations, the report strongly criticizes the role of the international community in supporting Indonesia's invasion and occupation of Timor-Leste, and calls on these governments and the UN to discuss the report in order to learn the lessons of the invasion and occupation. CAVR recommends that the UN Security Council "be prepared to institute an International Tribunal pursuant to Chapter VII of the UN Charter should other measures be deemed to have failed to deliver a sufficient measure of justice and Indonesia persists in the obstruction of justice." *Chega!* also recommends apologies and reparations from the governments of Indonesia, the U.S., Britain, Australia

and others, as well as from Western arms manufacturers who supported Indonesia's actions.

No government, including those of Timor-Leste and Indonesia, has formally acknowledged *Chega!* or its recommendations. They have not yet been discussed in Timor-Leste's Parliament.

#### **Indonesia/Timor-Leste Commission of Truth and Friendship (CVA/CTF)**

In late 2004, the presidents of Indonesia and Timor-Leste proposed a bi-national Commission of Truth and Friendship in an unsuccessful effort to dissuade the UN Secretary-General from appointing the Commission of Experts. The CTF was formed in March 2005 over the objections of Timor-Leste's Catholic bishops and civil society organizations in both countries. The Commission, with five commissioners from each country, was mandated to establish a "shared historical record" of human rights violations before and after Timor-Leste's 1999 referendum. It could recommend amnesty and propose people-to-people reconciliation efforts. However, it could not recommend prosecution or other judicial measures, and it had no power to compel testimony or cooperation.

The UN's COE found that the CTF's terms of reference contradicted international and domestic laws, and included no mechanisms for addressing serious crimes. The COE recommended that the governments revise the terms of reference as a precondition to receiving international support. When that recommendation was ignored, the UN decided not to participate or testify in the CTF process.

The CTF held public hearings in Indonesia and Timor-Leste during 2007. High-level Indonesian officials gave self-serving testimony contradicting the well-established historical record, and Timorese witnesses were intimidated by TNI in the audience.

In July 2008, the CTF gave its report to the Presidents of Timor-Leste and Indonesia, and it has been made public. Given its highly-restricted mandate, the report was better than expected: it did not recommend amnesties (saying that no alleged perpetrators had fully cooperated), and found that the Indonesian government had institutional responsibility for crimes committed in Timor-Leste. However, the report contained negligible new information and its recommendations are very limited. It has not been widely accepted or socialized in Indonesia, where most people have virtually no knowledge of what their military did in Timor-Leste, and the only recommendations implemented are normal diplomatic agreements, such as a less difficult visa process for Timorese students in Indonesia. Although both Presi-



dents have expressed remorse for the suffering of 1999, neither has taken any action to identify or prosecute the perpetrators.

### **UNMIT Human Rights and Justice Unit**

In July 2006, the UN Secretary-General responded to the COE report by recommending reinstating international support for investigations and indictments of serious crimes committed in 1999, but not restoring the prosecutorial component of the SCU. His report called for the Security Council to endorse the findings of the COE, but failed to address most of its recommendations and those of the CAVR (see below). The following month, the Security Council created the UN Integrated Mission in Timor-Leste (UNMIT). The Council took note of the findings of the COE, but only one of its dozens of recommendations.

The Security Council instructed UNMIT to help complete investigations of all serious crimes committed in 1999 (but not earlier), but did not give it authority to issue indictments or conduct trials. Timor-Leste's justice system is responsible for indictments, prosecutions and trials, including of alleged perpetrators previously indicted by the SCU. So far, the UNMIT Serious Crimes Investigating Team (SCIT) has completed 86 investigations into the 396 outstanding cases, submitting reports to the Office of the Prosecutor-General for his consideration. With a 5,000 case backlog at the Prosecutor-General and no political will in Dili to bring these cases to court, this process is another empty promise.

### **Dialogues and reconciliation processes**

In recent years, especially after the 2006 crisis, it has become fashionable to address conflicts, traumas and culpability from past criminal violence with dialogues, community meetings, national fora and other ways which allow people to express their frustrations and disagreements, followed by some sort of "reconciliation." Although this may be useful in resolving local conflicts and addressing petty crimes, they ignore the fundamental truths of the 1975-1999

crimes against humanity: they were directed by a foreign government which illegally invaded and brutally occupied Timor-Leste. Indonesia has made progress since the darkest days of the Suharto dictatorship, but its government still shields perpetrators from justice, making closure or even fact-finding impossible.

Although Timor-Leste's President and others are reluctant to re-open the wounds of the past, most of Timor-Leste's people suffer from post-traumatic stress disorder, which hide under the surface calm, to emerge sporadically in unpredictable ways. Until this abscess is removed, they cannot live normal, stable peaceful lives.

### **Where to from here?**

Some in Dili have been worn down by institutional and political resistance to genuine justice and have begun to accept "transitional justice" or "conflict resolution." Feeling pessimistic about the commitments of governments to keep their promises, they support short-term projects such as "reparations" for victims (social welfare to be paid by the Timor-Leste government) or a Parliamentary debate on the *Chega!* recommendations.

Although these would be beneficial, they do not address the ongoing impacts of impunity, the accountability of perpetrators, the trauma of the victims or the responsibility of the international community. It may take time, but La'o Hamutuk continues to support the goals expressed on 17 April 2009 by the victims and families of the massacre at the Carrascalão home ten years earlier:

- ✓ **All the perpetrators of crimes against humanity must be brought to justice.**
- ✓ **The perpetrators should be extradited and be held accountable for the horrendous crimes they committed.**
- ✓ **An independent International Tribunal for the human rights violations in Timor-Leste.**

**On 7 December 2008, the 33rd anniversary of the Indonesian invasion, the Timor-Leste National Alliance for an International Tribunal wrote:**

- ◆ **Justice means that a person cannot commit the same crimes in the future,**
- ◆ **Justice also means that no other person can do these things in the future,**
- ◆ **Justice will enable people to respect each other,**
- ◆ **If there is no justice, our beloved Timor-Leste will fall into daily injustice and never find lasting peace.**