

# The Pursuit of Justice, Truth, and Peace: Reflections on Twenty Years of Imperfect Transitional Justice in Timor-Leste

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The transitional justice policies employed in Timor-Leste are among the most multifaceted and comprehensive ever attempted. However, what these mechanisms have collectively accomplished has not been adequately evaluated. The long-term effectiveness of transitional justice should be judged in terms of the multidimensional relationships between the many policies and programs relevant to redressing the legacy of the past. The impunity of those most responsible for human rights violations casts a sizable shadow over the transitional justice efforts; however, analysis of the establishment of the Chega! National Centre (CNC) shows that the gradual development of transitional justice in Timor-Leste has broken through a structural bottleneck. This is due to persistent calls for transitional justice from civil society and the slow but steady implementation of relevant programs.

**Keywords** transitional justice, Timor-Leste, Commission for Reception, Truth and Reconciliation (CAVR), Chega! National Centre (CNC), reparation

## Introduction

The transitional justice policies employed in Timor-Leste have been among the most multifaceted and comprehensive policies ever attempted, ranging from judicial and non-judicial programs to retributive and restorative justice utilizing local and global mechanisms. Furthermore, Timor-Leste is unique in that internationally driven transitional justice practices were deployed intensively during the relatively short period of the United Nations' strong presence, and these were followed by the initiatives of the government of Timor-Leste after independence.

However, what these mechanisms have collectively accomplished has not been adequately evaluated thus far, although the immediate achievement of individual mechanisms in a limited timeframe has been assessed. Nonetheless, these mechanisms should be regarded as parts of a whole as they were subject to

the positive and negative influences of other mechanisms, even though they were implemented in different periods during the last twenty years. In order to evaluate the long-term effectiveness of transitional justice, one needs to look at the multidimensional relationships between the many policies and programs relevant to redressing the legacy of the past. De Greiff characterized the context in which transitional justice is employed as a “very imperfect world,” such as a society emerging from conflict, where there is no spontaneous generalized compliance with even basic norms, and the impact of these efforts ought to be collectively assessed on the premise that transitional justice is deemed to be flawed, even though carefully planned and complementarily implemented (2012, 35).

This article reviews the trajectory of transitional justice in Timor-Leste leading up to the introduction of a new mechanism in 2016, namely, the *Chega!* National Centre—From Memory to Hope (CNC), a follow-up institution to the truth commissions, which is expected to revitalize the stalled transitional justice process two decades after the 1999 referendum on independence. This step is significant, not only in terms of paying attention to the neglected needs of victims, but also in showing the relevance of a pragmatic approach toward the pursuit of transitional justice in post-conflict settings. Indeed, the CNC aims to complete the unfinished work of the previous transitional justice programs while, at the same time, stepping back from the dominant justice approach and pursuing a more realistically attainable goal of delivering what the victims need.

This article examines the impact of the early transitional justice programs on subsequent ones and traces the development of the transitional justice measures implemented in the last twenty years in Timor-Leste. It analyzes how these imperfect measures were interrelated and how they impacted on the conflict-affected society. In essence, it aims to analyze the mid-term impact of transitional justice, as the process is still unfolding.

There is growing recognition of the need for empirical studies of the impacts of transitional justice (Thomas et al. 2010; Olsen et al. 2010; Salehi and Williams 2016). However, the existing literature focuses on the long-term final goals, such as peace, human rights, democracy, and reconciliation. The empirical studies are also limited to assessing the effectiveness of combinations of different mechanisms, such as trials and truth commissions; trials, amnesties and truth commissions; and so forth (Olsen et al. 2010). This research consists of a mid-term assessment of the holistic application of transitional justice mechanisms in Timorese society in terms of the “mediate goals.”

The article first discusses the relationship between transitional justice and peacebuilding and reviews the transitional justice programs carried out in Timor-Leste. The article then analyzes the background to the establishment of the CNC and examines what shaped its structure. Finally, it discusses the overall effect of transitional justice on the society of Timor-Leste.

## Transitional Justice and Peacebuilding

Particularly since the mid-1990s, the concept of transitional justice has been recognized as resonating with peacebuilding efforts. In the aftermath of civil wars, criminal justice has been recognized as being necessary to ensure durable peace. Behind this, there is a growing recognition that impunity for past human rights violations could fuel further conflicts. Hence, a legal mechanism is expected to work in a twofold way, in that it should be both backward- and forward-looking (Teitel 2000). In other words, rebuilding a legitimate and functional judiciary could demonstrate a commitment not to tolerate a recurrence of the same kind of violence in the present or future by establishing accountability for past crimes.

However, criminal justice alone, imperfect as it is in substance and procedure, hardly satisfies the complex needs of a post-conflict society. Thus, in the late 1990s, the activities of the Truth and Reconciliation Commission (TRC) of South Africa attracted attention as a new peacebuilding measure. The policy of the South African TRC to promote reconciliation through revealing the truth was highly praised as a third way to achieving sustainable peace, using neither criminal justice nor a blanket amnesty (Boraine 2000). It is claimed that establishing truth can counter denial of past injustices. Moreover, the characteristics of recent civil wars demand reconciliation, not only between the conflicting parties but also among the general population, as ordinary people are often either perpetrators or victims who must coexist alongside each other after the war is over.

The UN and other organizations now view transitional justice as an essential component of post-conflict peacebuilding. The UN defines transitional justice as “the full range of processes and mechanisms associated with a society’s attempts to come to terms with a legacy of large-scale past abuses, in order to ensure accountability, serve justice and achieve reconciliation” (UNSG 2004, 4). It also suggests that transitional justice needs to be conceived of holistically and complementarily, with its main components including, but not limited to, criminal justice, truth-telling, reparations, and institutional reforms. Increasingly today, these programs have been standardized and packaged as a toolkit for successful peacebuilding operations conducted by the UN and other organizations.

This holistic application of the transitional justice approach has become dominant in practice as well as in academia. However, assessing the impact of collective transitional justice measures is challenging due to the intervention of other factors aside from the effect of individual transitional justice programs as well as the diverse goals that peacebuilding practices encompass (Thomas et al. 2010). In fact, many transitional justice scholars argue that transitional justice may contribute to democracy (Gibson 2004; Olsen et al. 2010), although there is little evidence for that (Minow 1998). By the same token, transitional justice can, at best, make persons and institutions trustworthy, but it cannot make them

trusted. The realization of reconciliation in terms of winning institutional trust from a population depends upon the contribution of many other factors.

To meet these challenges, this article employs a multi-context qualitative method to assess the outcomes that collective transitional justice may bring about (Skaar et al. 2015). This approach attempts to measure the quality of multi-context transitional justice processes in terms of peacebuilding's goals; however, instead of attempting to evaluate the achievement of long-term final goals—such as peace, democracy, human rights, and reconciliation—this article examines the achievement of “mediate goals,” that is, recognition and civic trust. De Greiff explains “mediate” as proximity or distance, not in time, but in causal chains between the implementation of a measure and bringing about the outcome, and he proposes it as a useful theoretical framework for assessing the impact of collective transitional justice measures. Compared with long-term final goals, which are most likely influenced by other factors, these mediate goals are more appropriate for assessing transitional justice processes collectively, as they may require more transitional justice measures for their accomplishment, as well as being furthered by one transitional justice measure on its own. For instance, reparations may contribute to easing victims' suffering by providing material benefits, but on their own, they almost certainly cannot satisfy a victim's call for recognition. In order to rehabilitate themselves, victims need a sense of recognition, not only as victims but also as citizens and equal rights bearers, something which transitional justice can provide along with many other measures, such as criminal justice and truth-telling (de Greiff 2012, 41-44).

The other mediate aim, promotion of civic trust, is also attainable through various transitional measures. The term “civic trust” here does not mean a sense of full trust that is characteristic of relations between intimates, but the sort of disposition that can develop among citizens who are strangers to each other but happen to belong to the same political community and have a mutual sense of commitment to shared norms and values. People can develop trust in institutions as well if the constitutive values and norms are shared by their members or participants and are regarded by them as binding (de Greiff 2012, 45-46). In some sense, these two mediate goals can be regarded as prerequisites for the achievement of peacebuilding's long-term final goals.

The following section first reviews the existing literature on Timor-Leste's transitional justice attempts and then analyzes individual mechanisms employed over the last twenty years, focusing on the relationship between the programs and the outcomes.

## Transitional Justice Efforts in Timor-Leste

### *Evaluations of Transitional Justice in Timor-Leste*

Timor-Leste has endured a history of oppression and resistance, beginning with Portuguese colonization in the sixteenth century, through Japanese occupation during World War II, and occupation by Indonesia following the invasion in 1975. When the UN Transitional Administration for East Timor (UNTAET) took over the administration of Timor-Leste after the referendum in 1999, transitional justice was called for, both internationally and locally, to deal with the human rights violations that had occurred during the campaign of violence surrounding the 1999 referendum and the twenty-four years of Indonesian occupation. While the killing, torture, rape, and starvation caused by forcible displacement during the Indonesian occupation (with an estimated civilian death toll of over one hundred thousand) were “hidden” crimes, the militia’s scorched earth campaign after the referendum, which was actively supported by the Indonesian military, was conducted in plain sight of international eyes. It resulted in more than fourteen hundred deaths, massive destruction of the infrastructure, and a vast number of displacements (CAVR 2005).

Most studies on transitional justice in Timor-Leste focus on the initial phase and evaluate the performance of individual mechanisms in a limited time frame, mostly before the 2006 crisis and, at best, up to the completion of the UN Integrated Mission in Timor-Leste (UNMIT) in 2012. One of the most profound studies highlighting the dynamics of transitional justice and its impact on the society in the initial phase is by Kent (2012). Much of the literature takes a critical view of the judicial work (Hirst and Varney 2005; Reiger 2006; Stanley 2008). Pointing out that the existing studies fail to evaluate transitional justice practices holistically, Cohen and Lipscomb explore how all the mechanisms deployed in Timor-Leste worked together as part of a multipronged transitional justice strategy (2012). However, they assess the performance of individual institutions using the framework of immediate and individual institutional goals and then evaluate them collectively. They ultimately conclude that while, in theory, a holistic application of transitional justice measures is desirable, the Timor-Leste case only produced very unsatisfactory results since none of the individual institutions fully completed the tasks they initially set themselves (Cohen and Lipscomb 2012, 301).

This paper does not intend to refute that assessment. It does not deny that transitional justice in Timor-Leste has indeed failed to accomplish its individual goals. For instance, no members of the Indonesian military, who were the most responsible for massive human rights abuses, have ever been convicted. As for the truth commission, the Commission for Reception, Truth and Reconciliation (Comissão de Acolhimento, Verdade e Reconciliação: CAVR), despite its highly

praised work (Burgess 2006; Lundry 2007), its transitional justice efforts have come to a standstill, with its recommendations being mostly ignored since it submitted its report. Based on an assessment of the existing literature, this article aims to analyze the mid-term impact of transitional justice to see if it is possible to tentatively evaluate the achievement of any mediate goals, as Timor-Leste's effort to deal with the past is still ongoing.

### *Transitional Justice Institutions and Programs*

Following the UN-sponsored referendum in 1999, the UN was heavily involved in the peace- and state-building process in Timor-Leste through a succession of UN missions. UNTAET acted as a sovereign from 1999 until the independence of Timor-Leste in 2002, with a mandate to assist in establishing an efficient state infrastructure, including government institutions and public administration. After the departure of UNTAET, a smaller peacekeeping operation (PKO), the United Nations Mission of Support to East Timor (UNMISET), was deployed until 2005, after which it was replaced by the United Nations Office in Timor-Leste (UNOTIL). Both UNMISET and UNOTIL continued to assist with governance while they gradually reduced the size of their operations. However, a violent clash between the military and the police took place in 2006, which was triggered by the dismissal of a group of soldiers called "petitioners." This crisis revealed a critical weakness in the security sector as well as deep divisions among the political leadership. In response, the UN renewed its mission and established UNMIT with a new mandate to support the consolidation of stability and assist in security sector reform.

During its thirteen-year intervention in Timor-Leste, the UN played a pivotal role in promoting and implementing the transitional justice processes, especially in the early period of the UNTAET administration. It prioritized programs concerning criminal justice and accountability. After independence, these processes were taken on by the national governments (Timor-Leste and Indonesia) with assistance from the UN and other donors. Below, the article discusses the key programs of transitional justice implemented in Timor-Leste, focusing on criminal prosecutions, truth commissions, institutional reforms, and reparations.

**Criminal Prosecutions:** In general, criminal prosecutions are one of the main components of transitional justice and a key demand of victims. Trials have multiple goals, including truth, deterrence, punishment, reconciliation, and promotion of the rule of law (Thomas et al. 2010). In Timor-Leste, the UN undertook a parallel domestic prosecution policy, which was sought through the establishment of an ad hoc Human Rights Court in Jakarta, Indonesia, and a hybrid or internationalized tribunal, comprised of both Timor-Leste and international judges, known as the Special Panels for Serious Crimes (SPSC), the Serious Crimes Unit (SCU), and the Defense Lawyers Unit, collectively referred

to as the Serious Crimes Process in Timor-Leste. This policy was a reflection of the failures of and lessons learned from two ad hoc international tribunals (the International Criminal Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda), but the UN also wanted to avoid destabilizing Indonesia's fragile democracy, which was still subject to the strong influence of their powerful military, and thus accepted Indonesia's proposal to conduct its own trial (Cohen and Lipscomb 2012, 263). Initially, it was thought that the court in Jakarta would focus on Indonesian perpetrators, while the UN-sponsored Serious Crimes Process would target the Timorese (Hirst and Varney 2005, 4).

The Jakarta Human Rights Court was established in 2000 to prosecute individuals responsible for serious crimes committed in Timor-Leste during 1999. Eventually, however, the scope of its jurisdiction was limited to certain cases, and the court tried only twelve cases and achieved only six individual convictions. One of these was a member of the Timorese militia, who was the only defendant to serve part of a prison sentence (Nathalia 2008). All of the other Indonesian defendants remained free during their appeals, and their convictions were eventually overturned (Hirst and Varney 2005, 11). This flawed process was partly due to the incompetence of the prosecutors and judges, but it also manifested a lack of political will on the part of the Indonesian government (Hirst and Varney 2005, 12).

The SCU was set up in 2000 by the UN to prosecute those individuals allegedly responsible for serious crimes, namely genocide, war crimes, and crimes against humanity during any period, as well as murder, sexual offences, and torture perpetrated in 1999. The SCU issued 440 indictments for individuals and had convicted eighty-four defendants at the time of its conclusion in 2005 (Cohen and Lipscomb 2012, 284). However, of those indicted, 339 were believed to have remained in Indonesia, including a senior member of the military. Despite the conclusion of the Memorandum of Understanding between UNTAET and Indonesia regarding cooperation in legal, judicial, and human rights matters in 2000, the Indonesian government refused cross-border cooperation. The SPSC was not able to detain any high-ranking military officers or the leaders of the Timorese militia who had fled to Indonesia. The SCU was able to try low-level Timorese militia members who had returned from Indonesian West Timor; nevertheless, lack of funds and inadequate human resources made it very difficult for the court to keep up with the burden of cases (Stanley 2008, 172). As a result, many of the cases could not be brought to trial in time, and perpetrators of the many serious crimes other than murder, such as sexual offences, have not been investigated or indicted (Cohen and Lipscomb 2012, 288). In this regard, the hybrid court failed, not only to achieve international justice but also to accomplish its aspiration to assist in providing an international standard of justice (Reiger 2006, 158-62).

Aside from the serious crimes, UNTAET faced an urgent need to deal with

the pro-Indonesia militia members who had committed non-serious crimes such as theft, arson, and criminal damage in 1999 and fled to West Timor. After the referendum, the border area became increasingly destabilized with hundreds of thousands of refugees; some were forcibly taken, while others fled to avoid the violence, living in militia-controlled camps. From a humanitarian perspective, the repatriation of refugees was deemed urgent. UNTAET was concerned that those militia members who were involved in the 1999 violence might return as “refugees” and thus escape criminal charges.

The local Timorese were deeply dissatisfied with the slow and dysfunctional formal justice system established by UNTAET. In Timor-Leste, people have lived with hardly any reliance on a formal judicial system, instead being dependent on the traditional systems called *adat*. According to custom, traditional leaders resolve disputes based on both facts and principles set by the ancestors of groups (Burgess 2006, 189). At the local level, utilizing these traditional justice mechanisms, community leaders and local NGOs had already started facilitating a significant number of local reconciliation initiatives, and they successfully brought back some of the former militia members and pro-Indonesian groups and integrated them into their own communities (Pigou 2004, 29; Babo-Soares 2005, 228). UNTAET and the UN High Commissioner for Refugees also organized a series of “reconciliation” activities at the border that were aimed at building trust between the refugees and the communities in Timor-Leste so that the former could be repatriated without fear of retaliation (Kent 2012, 53).

Faced with an under-funded and non-functioning judicial system, UNTAET had to compromise on judicial justice; however, the Timorese leadership positively promoted impunity in the name of reconciliation. Despite a strong demand among the Timorese to hold those who had committed serious crimes accountable, the leadership, notably Xanana Gusmão, began to show reluctance to pursue prosecutions of both Indonesian and East Timorese perpetrators (Kent 2012, 54). Behind this was a pragmatic desire to maintain stability and consolidate a forward-looking relationship with Timor-Leste’s large, economically powerful neighbor. This reconciliatory approach caused friction with the UN-sponsored Serious Crimes Process, especially over the controversial indictment of senior members of the Indonesian military in 2003, including General Wiranto, who later ran for the presidency and vice presidency of Indonesia. Subsequently, UNMISSET terminated the judicial process in May 2005 without completing the cases. At the conclusion of its mandate, it handed over the cases to the government of Timor-Leste which had no interest in proceeding with the trials and eventually abandoned them.

However, the security crisis in 2006 triggered a resumption of the unfinished work of the Serious Crimes Process. UNMIT established a new institution, the Serious Crimes Investigation Team (SCIT), in 2008 to investigate nearly four hundred open and incomplete cases from the SCU (Cohen and Lipscomb 2012).



In contrast to their previous negative stance on the Serious Crimes Process, the Timorese leadership showed willingness to “address the past” (Kent 2012, 69). Indeed, it is believed that the primary cause of the 2006 crisis was division among the Timorese arising from the unresolved Timorese civil war of 1975. The crisis manifested the failure of the UN and international donors to redress the diverse grievances of the population.

The SCIT made no significant inroads into the backlog of cases since it had only investigatory, not prosecutorial, powers, and this only regarding crimes committed in 1999, not those prior to 1999. The issue of prosecution rested with the political will of the Timorese leadership. In fact, their initial willingness to address the past lasted only until the forced resignation of Gusmão’s political rival, Prime Minister Mari Alkatiri, after which the leadership soon shifted its emphasis to “moving on.” This return to a reconciliatory approach was easily observed, for instance, in a 2008 presidential decree issued by President Jose Ramos-Horta granting full or partial pardons to ninety-four prisoners who had been convicted of serious crimes of violence in 1999 and 2006 (Kent 2012, 117). The presidential pardons were extended not only to members of the security forces who allegedly had violated human rights during the 2007-8 operation to seize the remnants of the 2006 rebels but also to the rebels themselves. The leadership of Timor-Leste followed the common Indonesian strategy of buying over the opposing groups (Wilson 2009, 4-7). With the termination of UNMIT, the SCIT concluded its operations in 2012.

Since the departure of the UN, the government of Timor-Leste has maintained its stance on the prosecution of serious crimes that took place prior to and during 1999. Although there are persistent calls for an international tribunal from both international and local civil society, the government has not changed its reconciliatory approach. The imperfect criminal justice measures missed a chance to deliver justice to the victims and failed to win the trust of the population. This was due partly to a lack of resources and competence but largely to a lack of political will, which contributed to the prevailing culture of impunity in the post-conflict political environment. This flawed process not only failed to achieve mediate goals, but also had a negative impact on subsequent transitional justice measures.

**Truth Commissions:** Truth commissions are non-judicial institutions of limited duration that investigate human rights violations. Since they collect testimonies mainly from victims and acknowledge their truth, they are expected to provide victims with recognition, healing, and reconciliation. In addition, commissions provide an authoritative record of the conflict with the aim of contributing to the establishment of a collective memory and a basis for reparations, and of making recommendations for institutional reforms. Thus, some scholars argue that truth commissions can advance democracy and promote human rights and the rule of

law (Thomas et al. 2010).

The CAVR was created in 2001 as an alternative justice and reconciliation mechanism after numerous consultations with local Timorese leaders, NGOs, and international experts. It was modeled after the South African TRC, but with elements of Timorese local restorative justice. Unlike the formal legal processes that mainly focused on the crimes committed in 1999, the CAVR was mandated to institute processes for truth-seeking, reconciliation, and healing for the human rights violations committed from 1974 until 1999. The main functions of the CAVR included supporting the reintegration of individuals who had caused harm to their communities, especially minor offenders; seeking and establishing the truth about the conflict, thereby assisting in restoring the dignity of victims; and issuing a final report on the extent, causes, and responsibility for human rights violations and making recommendations to the government (CAVR 2005). The final report is not legally binding; however, the CAVR Regulation provides that the president “shall consider all recommendations made by the Commission in its final report with a view to their implementation” (UNTAET 2001). The CAVR collected 7,669 statements from thirteen districts and sixty-five sub-districts, and public victim hearings were held in every sub-district. In December 2005, the CAVR submitted its final report entitled *Chega!* to the president and dissolved itself.

In contrast to the Serious Crimes Process, the CAVR was arguably owned by the Timorese as they were heavily involved in its design and operation. The concept of creating a mechanism based on local approaches to justice and reconciliation was first discussed in June 2000 at a workshop hosted by the UN with a wide range of participants (CAVR 2005). Their discussion led to the establishment of the CAVR and the creation of the Community Reconciliation Process (CRP) within the CAVR. The CRP was a voluntary process initiated by minor offenders who wished to be reconciled with their communities. The village panel set up by the CAVR held reconciliation hearings and arranged appropriate “acts of reconciliation” for the perpetrators to carry out in order to be fully received back into the community. On completion of these acts, perpetrators would receive full immunity from criminal and civil liability for the crimes they had committed (Cross 2009). The CRP was completed in March 2004 with 1,371 perpetrators successfully reconciled with the community (CAVR 2005).

The CRP is seen as a hybrid mechanism for integrating restorative and retributive justice (Lambourne 2009, 28-29) jurisdictionally distinct from the Serious Crimes Process. It is considered to have demonstrated respect for human rights and gender equality while maintaining some flexibility in conducting traditional ceremonies and rituals (Cross 2009). However, it is questionable whether it satisfied the victims’ substantive needs for justice and reconciliation. With respect to ensuring accountability, the CRP functioned as nothing more than a quasi-judicial mechanism benefiting perpetrators, since the CAVR had no

authority to force perpetrators to apply the CRP even if there was clear evidence against them, nor could the victims request the process. This meant that there were quite a few perpetrators who gained practical impunity. Moreover, the acts of reconciliation imposed on the perpetrators, which were usually extremely lenient, such as an apology and community service, did not reflect the victims' preferences. In theory, the victims could refuse to accept reconciliation with perpetrators, but the consent of the victims was not required to conclude the process. For the victims, completing the CRP process meant losing all legal rights to claim for their losses and damages (Cross 2009).

More importantly, in the case of serious crimes, despite an institutional design that determined a complementary role with respect to jurisdiction, the poor performance of the formal justice system resulted in a failure to satisfy the victims' expectations that a formal judicial process would follow. The victims who gave testimonies at the hearings often suffered from re-traumatization (Cohen and Lipscomb 2012). Even though the CAVR had a victim support service, insufficient training and resources of the victim support unit meant that victims were offered inadequate benefits in return for their participation (Wandita et al. 2006).

In terms of establishing a collective memory, the CAVR's Final Report presents a highly credible comprehensive account of human rights violations that occurred during the period of Timor-Leste's civil war, the Indonesian occupation, and the 1999 referendum, captured through the documenting of compelling testimonies and the provision of a holistic statistical analysis (Cohen and Lipscomb 2012, 293). The report also contains the shocking finding that while about 90 percent of serious crimes were committed by the Indonesian military and police as well as the East Timorese auxiliaries of the Indonesian military, resistance fighters and Timorese political groups were responsible for the remaining 10 percent (CAVR 2005, 44).

As expected, "Chega!" provoked controversy. The Indonesian government denied many of the report's findings, such as that the government and security forces bore responsibility for the massive, widespread atrocities against the Timorese population during the occupation period. In addition, among the report's many recommendations, the most contentious one consisted of support for the UN's Serious Crimes Process and the suggestion that the UN should establish an international tribunal to hold those most responsible in the Indonesian military accountable. This met with outright rejection from the Timorese government and silence from the UN (Kent 2012, 64-65). For the Timorese leadership, the findings concerning their own serious crimes were an uncomfortable truth which did not correspond to their own narrative of the struggle as a legitimate war.

For the violence committed in 1999, another truth commission was created. The Commission of Truth and Friendship (CTF) was jointly established by the

governments of Indonesia and Timor-Leste in 2005 and was mandated to seek the “conclusive truth,” to identify institutional responsibility for the violence committed in 1999, and to make recommendations for preventive and healing measures with the aim of consolidating a peaceful friendship between the two countries. Among other things, many civil society organizations raised concerns about the commission’s power to recommend amnesty and legal rehabilitation, which was recognized as a sign of the Timor-Leste government’s appeasement policy toward Indonesia.

The CTF released its final report, *Per Memoriam ad Spem* (From Memory to Hope), in 2008. It was received with surprise as it was not the whitewash that many had anticipated (Kent 2012, 70). The CTF concurred with many of the CAVR’s findings that the Indonesian military was primarily responsible for the crimes against humanity that occurred in Timor-Leste in 1999 and that the pro-Indonesia militia groups committed gross human rights violations against pro-independence groups with support from the Indonesian military, police, and civilian authorities (Hirst 2009).

One of the most apparent advantages of the CTF over the CAVR was that it was created and supported by the two governments. In fact, President Susilo Bambang Yudhoyono of Indonesia endorsed the report’s findings and provided Indonesia’s first official recognition that its state institutions had systematically violated human rights in Timor-Leste (Hirst 2009, 7). However, the president did not apologize, nor did he specifically acknowledge Indonesia’s responsibility; he only expressed remorse (Hirst 2009, 30).

Many of the recommendations of the CAVR and the CTF were shelved and have remained untouched since the release of the reports. After a protracted delay, the Timor-Leste parliament finally adopted a resolution on the CAVR and the CTF reports in December 2009, which authorized a parliamentary committee to prepare to implement their recommendations. Subsequently, two draft laws were submitted to the parliament: one sought to establish a National Reparations Program to provide individual and collective reparations to victims of human rights violations committed between 1974 and 1999, and the other sought to create an Institute of Memory to implement and monitor the recommendations of the CAVR and CTF. However, the parliamentary debate on the two draft laws prepared by the committee has been repeatedly postponed. As discussed in the reparation section, this slow process highlights the conflicting views of the past among the Timorese.

The underlying cause of the rejection of the two commissions’ findings and recommendations by the governments is the failure of the judicial processes to ensure accountability for past human rights violations. Although both commissions managed to complete their individual institutional goals and provide the victims with recognition through collecting testimonies and publishing the reports, they failed to fulfil the victims’ expectations. The victims’

rights to reparation have not been realized, as both governments refused to accept responsibility. Further, the CAVR failed to nurture a sense of trust between the deeply divided populations, and this consequently led to the 2006 security crisis.

**Institutional Reform:** Institutional reform is the process of reviewing and restructuring state institutions, such as the police, military, and judiciary, so that they respect human rights and promote the rule of law. Institutional reform measures include vetting and lustration, structural reform, transforming legal frameworks, Disarmament, Demobilizations, and Reintegration (DDR), and so forth. Institutional reform aims to build trust between the whole population and the state institutions.

Under the auspices of the UN, several institutional reforms were conducted, including the establishment of a reformed national police force and a Timorese defense force. One of the most notable reforms in the security sector is the establishment of a community policing system (CPC); however, due to space constraints, this section focuses on judicial reforms and leaves discussion of the reform of the two uniformed institutions to Uesugi's article in this volume (Uesugi 2021).

In the wake of the 2006 security crisis, the UN recommended prosecuting numerous individuals allegedly involved in it, with the aim of strengthening the rule of law. However, the Timorese leadership was reluctant to establish accountability because various members of the political elite were alleged to have been deeply involved in the crisis. Therefore, contrary to the UN proposal, the parliament passed a law, Truth and Measures of Clemency for Diverse Offences, in 2007, which contained amnesty clauses for crimes committed between 2006 and 2007. Although the law was ruled unconstitutional by the Court of Appeals, about one-third of the convicted perpetrators of serious crimes committed in both 1999 and 2006 were freed after the subsequent presidential pardons, as noted earlier in the criminal prosecution section. The leadership continued to uphold its stance of undermining the rule of law by promoting reconciliation in order to avoid instability.

One observable transformation in the legal framework involves the criminalizing of violence against women. The government passed the long-awaited Law Against Domestic Violence in 2010, which was drafted with assistance from UNMIT. Members of the CPC, which assists villagers in solving problems and has been installed in nearly 80 percent of villages in Timor-Leste as of April 2021, now have a clear understanding that domestic violence constitutes a public crime that needs to be reported to the formal justice system. Although most women prefer cases not to be dealt with publicly (Asia Foundation 2018, 20), it is important to provide access to the legal system. More importantly, the anti-violence against women norm is widely shared and recognized. This could be, in effect, a significant change for Timorese society, as traditionally, domestic

violence was regarded as a transgression of social order, not a violation against individuals. Thus, in the past, punishment meant restoring lost value by paying goods equivalent to the wife's value to her family (Hohe 2003, 341). Despite the criminalizing of violence against women, however, domestic violence arguably remains a serious problem in Timor-Leste.

This achievement, albeit on a limited scale, was brought about by efforts to tackle violence against women in the previous transitional justice processes, with active support from numerous women's groups. Even before the 1999 violence, Timorese women's groups campaigned against violence against women by the military (Wandita et al. 2006, 293). Women took the lead in the transitional phase by providing support for victims of violence and played a vital role in the CAVR as commissioners and support staff. After the conclusion of the CAVR, many NGOs which had participated in transitional justice programs shifted their focus to other pressing social issues, such as gender-based violence (ICTJ 2010, 8).

The Serious Crimes Process stipulated that sexual violence in conflict constitutes serious crime, while the CAVR held special public hearings focusing on violence against women to provide a space for women to talk about abuse. The introduction of a gender lens to transitional justice highlighted persistent structural violence against women embedded in society, which has hindered the process of providing women with recognition as victims and as equal rights bearers. Transitional justice successfully drew attention to violence against women in the private sphere; however, it failed to meet the special needs of women who survived the inordinate impact of war, let alone those of women who continue to face marginalization, such as those women who were raped during the conflict or forced into relationships with Indonesian soldiers that resulted in them bearing children.

Although impunity was still prevalent, gendered transitional justice gave recognition to a certain group of women. Despite this emerging norm, as discussed below, victims were divided into two categories, rightful victims and disqualified victims, the latter being those whose experience did not accord well with the version of Timorese national history promoted by the leadership. The needs of those disqualified vulnerable victims have been the least prioritized.

**Reparations:** State-funded reparations aim to restore trust in state institutions as well as the victim's dignity and human rights by acknowledging the truth and the suffering endured. Reparations, with material and symbolic benefits, are generally regarded as the most direct and effective way of delivering justice to victims.

The UN-led transitional justice initiatives and the subsequent national efforts to redress the past have fallen short of delivering substantial reparations to the victims of human rights violations. As in many other cases, reparations were the lowest priority and the least-funded measures in Timor-Leste. As mentioned above, the CAVR provided opportunities for victims to speak at public hearings

and submit testimonies. Many victims feel, however, that their sufferings were not acknowledged adequately because many perpetrators were still at large or received lenient sentences. In addition, most victims do not receive enough support to recover from the physical, psychological, and economic damage caused by the 1974-99 conflict (ICTJ 2010, 12).

Nevertheless, there have been attempts to provide reparations for victims. For instance, the UNTAET regulation setting up the Serious Crimes Process provided for a trust fund to be created for victims of crimes within the jurisdiction and their families, although it was not viewed as a priority and thus has never been established (ICTJ 2010, 7). While both the CAVR and the CTF recommended reparation policies in their final reports, it was the CAVR that provided urgent reparation programs for the most vulnerable victims during its operation.

The CAVR restructured its victim support unit into a reparation unit after conducting field operations to identify victims in 2002. Utilizing funds from the World Bank, the reparation unit provided urgent reparation in the form of cash payments, a one-off grant of US\$200 to 712 victims, home visits, and care by local NGOs to over one hundred individuals, as well as hosting healing workshops for 156 victims (Wandita et al. 2006, 306-07). Though these activities and field operations assisted victims, the CAVR emphasized in its final report that, regardless of their past political affiliations, all the victims of human rights violations, especially the most vulnerable, need to be protected and that a gender quota should be introduced in reparation programs to increase the number of female beneficiaries (CAVR 2005).

As noted above, the parliamentary debate over the CAVR's recommendations was repeatedly delayed, primarily due to the security crisis of 2006. The crisis highlighted the urgent security imperatives around the dissatisfied veterans (members of armed, clandestine, and diplomatic front of resistance) and youth, which aggravated grievances relating to post-independence socioeconomic conditions. Thus, the government launched several cash payment schemes for the veterans, the petitioners, and the internally displaced persons in the aftermath of the 2006 crisis.

In contrast, efforts to obtain reparations for the 1974-99 victims have been disregarded by political leaders and influential veterans, who have argued that the question of veterans needs to be resolved first and foremost. Some victims qualified as veterans and could therefore receive pensions and other benefits. A few small social assistance programs were provided by the government for vulnerable social groups, such as the elderly and the disabled. However, it should be noted that those cash payment schemes were not reparations based on victims' legitimate rights. Furthermore, as for the veterans' pensions and benefits, those who were the victims of violations committed by the resistance groups and who were not actively engaged in the resistance were excluded from these schemes (ICTJ 2010, 9). The victims felt neglected by the government since a large amount

was spent on compensating the victims of the 2006 crisis without delay (ICTJ 2010, 9).

As a result of these shortcomings, the government's cash payment schemes have inspired the victims of 1974-99 to claim the reparations they felt they deserved in the same way as the veterans and victims of the 2006 crisis. With strong advocacy efforts from individual members of parliament and human rights NGOs, such as the National Association of Victims, the victims' groups urged the parliament to endorse the recommendations of the CAVR and CTF on the provision of reparations, which resulted in the two draft laws of 2009 mentioned above.

However, these draft laws met with strong opposition in the parliament and were eventually scrapped. In addition to the outright refusal to accept the CAVR's call for the prosecution of Indonesian perpetrators, the Timorese leadership was also reluctant to accept the CAVR's finding that the resistance had also committed serious crimes, such as unlawful killings, throughout the invasion and occupation by Indonesia (CAVR 2005). Thus, the members of parliament who represented the interests of veterans' groups opposed the draft reparation law because the proposed reparation was directed toward all the "vulnerable victims" based on the CAVR's recommendation, including those who had supported the Indonesian side (Wallis 2013, 148). Essentially, there was no agreement about who deserved to be called a victim, as all Timorese had suffered violations of their rights, and the possibility of every Timorese being entitled to reparations was both logistically and financially overwhelming and a potential cause of conflict (Interview with Patrick Walsh, former Special Advisor to both CAVR and the Post-CAVR Technical Secretariat and former Member of the Working Group for Setting up CNC, Dili, 2019).

In the case of Timor-Leste, the victims of 1974-99 have not received any official recognition as victims or survivors of the conflict from the Indonesian government. On the other hand, the Timor-Leste leadership has resisted providing reparations on the grounds that the responsibility for payment lies primarily with the perpetrators, specifically Indonesia, despite its reluctance to hold the Indonesian perpetrators accountable. In addition, the most balanced CAVR account of the conflict has been repeatedly denied by political leaders. Therefore, victim status has become a political issue in Timor-Leste as the 1974-99 victims demand reparations rather than social welfare services. Ironically, the incident in 2006 underscored the necessity to pay attention to the dissatisfied veterans, but at the same time, it encouraged the victims and their supporters to turn their attention once again to the work of the CAVR and pursue official reparations. Though only to a limited degree, this advocacy finally paid off in the establishment of the CNC.



## Chega! National Centre—From Memory to Hope (CNC)

While successive Timorese governments and parliaments turned their backs on the reports of both commissions, international and national civil society groups continued to advocate justice and reparations for the victims of 1974-99. In 2010, Asosiasaun Chega! Ba Ita (ACbit) was established by local women's groups to promote the findings and recommendations of the CAVR. ACbit focused on the most vulnerable victims, such as women subjected to sexual slavery and rape, successfully linking their needs to social assistance from the Ministry of Social Solidarity.

Advocacy by civil society organizations such as the Post-CAVR Technical Secretariat (the successor body to the CAVR), ACbit, and an Indonesia-based human rights NGO called Asia Justice and Rights (AJAR) for a CAVR follow-up institution finally paid off in 2015. At a conference organized by these groups to mark ten years since the handover of the CAVR report, Prime Minister Rui de Araujo announced that his government would take steps to implement the CAVR recommendations (Walsh 2017). The prime minister was moved to action following a meeting with “stolen children,” East Timorese who had been taken to Indonesia during the war and then reunited with their Timorese families in response to the CAVR report and recommendations. The prime minister's own sister had been one of those taken as a child. The encounter made him aware that many important recommendations in the CAVR report could be implemented without creating controversy or tension with Indonesia (Personal communication with Patrick Walsh, 2020).

Araujo set up a working group of seven experts to review and analyze the status of the CAVR recommendations and to advise on the establishment of a follow-up mechanism to implement these recommendations to the maximum. But at the same time, in keeping with official state policy, he directed the working group to exclude CAVR recommendations on justice and reparations for victims (Personal communication with Patrick Walsh, 2020). The working group accepted this substantive compromise in the interests of leveraging action on the many other untouched recommendations and on the understanding that not including reparations and justice in the new center's mandate would not extinguish the victims' rights to such redress in international law (Personal communication with Patrick Walsh, 2020). Thus, the Decree-Law of the CNC avoids use of the contentious terms “reparation” and “victims” (AJAR 2019). The prime minister's working group debated the merits of “victim” (used by CAVR) versus “survivor” and opted for the latter after it became clear that Timorese opinion had shifted in favor of the term survivor. In keeping with international best practice, it was felt that the term better expressed the resilience shown by victims in the face of repression and spared them the sense of hopelessness sometimes associated with

victimhood (AJAR 2019). The prime minister also instructed the new institution to take action on the recommendations of the CTF (Personal communication with Patrick Walsh, 2020).

Prime Minister Araujo's support was critical to the establishment of the CNC in 2016. To avoid the problems previously encountered in the parliament and effect long-overdue action, the CNC was created by a decree-law drafted by the prime minister's office and approved by the cabinet. The parliament was advised but otherwise not involved (Personal communication with Patrick Walsh, 2020). The CNC is overseen by and subordinate to the prime minister of the day (Decree-Law No. 48/2016, Article 1).

The CNC is a permanent institution with a broad mandate to promote the implementation of the two commissions' recommendations on memorialization, education, solidarity, and outreach. Specifically, the CNC has direct power to implement recommendations in two areas: on memory and learning, and on rehabilitation and healing. In terms of reparation, the CNC has the authority to develop programs to address conflict-related trauma in collaboration with the government and NGOs (AJAR 2019). The drafters of the CNC law strategically avoided the term "reparation" and granted powers to the CNC to fund and deliver needed services jointly with other organizations (Interview with Hugo Fernandes, executive director of Timor-Leste's Centro Nacional Chega! Dili, 2019). In addition, they restricted the beneficiaries to the most vulnerable survivors, such as "children who were separated from their families; families of the disappeared; persons with disabilities due to the conflict; survivors of sexual violence, torture, and mass atrocities; displaced East Timorese who are still living in West Timor" (Decree-Law No. 48/2016, Article 6). This means that survivors of human rights violations committed by both pro-Indonesia and pro-independence groups can benefit if they still need psychological treatment and have not received any social assistance from the government. The CNC has started building a database of the most vulnerable survivors in cooperation with ACbit and had registered five hundred recipients as of August 2019 (Interview with Hugo Fernandes, Dili, 2019).

It is too early to evaluate the activities of the new institution; however, the effect of transitional justice measures in the past can be observed from the CNC's establishment process. While transitional justice efforts have stalled, numerous individuals and organizations, most of whom were involved in the previous transitional justice processes, have long advocated the implementation of the recommendations. Indeed, transitional justice acted as a catalyst for organizing civil society. At the same time, civil society catalyzed the stalled transitional justice process. For example, a local NGO supported by a Korean NGO hosted reconciliation and repatriation programs for refugees in West Timor who were returning to Timor-Leste between 2009 and 2013 (Interview with Chamel Meluck, former human rights NGO worker, Dili, 2019). After those who chose

not to be repatriated were given Indonesian citizenship, the government of Indonesia terminated their special status as refugees and officially closed the camp in which they were living in 2005; however, many of those who remained in West Timor were poorly integrated into their host communities and living in appalling conditions (ICG 2011). It may be argued that it is because of the achievements of these civil society organizations that the refugees still living in West Timor, who could have been supporters of the Indonesian side, are recognized as vulnerable and are thus entitled to receive support from the CNC.

As well as providing advocacy, NGOs have helped victims organize groups and connect to available support. Through these activities, some victims of violence may have begun to develop a sense that they are rights bearers, like any other people. Victims started to voice their norms-based expectations of justice and reparation and became a driving force in the creation of the CNC. This realization was brought about through the numerous disappointments with previous transitional justice efforts. However, in the same way that the norms regarding violence against women have been internalized (although not actioned), the existence of an active civil society and its achievements show that the principles of human rights and the rule of law have been, at least conceptually, accepted by the population over time.

An emerging sense of being rights bearers in the population, however, has caused competition over legitimate victimhood (Kent 2012, 198). The Timorese people suffered from various kinds of violence stemming from colonization, occupation, and security crises. Indeed, they are victims of direct and structural violence to varying degrees. Therefore, it is difficult to draw lines between victims and even harder to decide who suffered most. As a result, so-called victims have competed for cash payments from limited resources. The CNC attempts to heed the voices of the most politically, economically, and socially marginalized victims and pave the way for the delivery of social assistance to them by acting pragmatically rather than sticking to principles.

## Conclusion

While the failure of the UN's state- and peacebuilding was revealed in 2006, it was clear that UN-led transitional justice, especially criminal justice, was flawed from the very beginning. The failure to hold the most responsible accountable at the Jakarta Human Rights Court showed that there was no political will on the Indonesian side to conduct transitional justice, which further discouraged the leadership of Timor-Leste from pursuing criminal justice. The UN, for its part, avoided going further after the hybrid court was faced with Indonesia's refusal to cooperate on the arrest of indictees. The consequent impunity of those most responsible for human rights violations cast a sizable shadow over the subsequent

transitional justice efforts in Timor-Leste, leaving a “culture of reconciliation” prevalent in the domestic justice system. The CAVR published the most balanced and comprehensive account of the conflict and revealed the sensitive truth. However, the CAVR’s findings lack an account from the Indonesian side, which, in some respects, benefitted the Timorese leadership as they were able to manipulate the truth to suit their own narrative.

Accordingly, scholarly evaluation of transitional justice in Timor-Leste has not been positive. The immediate goals of individual transitional justice programs have not been attained, except for limited success in delivering justice and reconciliation through the CRP and compiling a report on the findings and recommendations of the CAVR. Reform and reparation, which are mainly in the hands of the Timorese government, still fall short of delivering results.

Nonetheless, the impact of the transitional justice process on Timorese society should not be underestimated. In terms of mediate goals, an increasing number of victims are now recognized as survivors rather than victims. Perhaps more importantly, victims have gained an appreciation of their rights and have started to demand the opportunity to exercise them. Behind this change were the persistent calls for transitional justice from civil society and the slow but steady implementation of relevant programs. With respect to achieving civic trust, there has been a gradual growth of shared norms in broader society. For instance, the criminalization of domestic violence has been widely recognized and accepted among the population. Many activists for women’s rights claim that violence against women should be criminalized regardless of war or peace. In principle, domestic violence is beyond the reach of transitional justice; however, the emerging transformation in cognitive values should be regarded as reflecting, albeit indirectly, the influence of past transitional justice programs, such as criminal justice and truth commissions.

These tireless efforts have culminated in the setting up of the CNC. On the surface, it seems to have compromised on the justice imperative; however, it has subtly resolved one of the most contentious issues, that of who has a rightful claim to victimhood. Through the activities of the CNC, the most vulnerable survivors are finally going to receive social assistance through the broad but ambiguous status of victims. This pragmatic approach was the product of numerous interactions between civil society and policymakers, who eventually set aside incompatible goals to seek attainable measures. Transitional justice in Timor-Leste should not be seen as something that was revived suddenly by the installation of the CNC; rather, from a broad and long-term perspective, it has developed gradually to break through a structural bottleneck.

However, it is too early to assess what the transitional justice measures have collectively achieved. Although the security situation has greatly improved, there is still sporadic violence stemming from the internal political struggles of the past. The CAVR’s historical account of the conflict has not been substantially

shared and agreed on by the wider population. The CNC is mandated to collect testimonies that the CAVR did not complete. The CNC, with no limit on its duration, could help the Timorese people face many truths through memorialization, education, and outreach programs. The realization of peacebuilding goals, such as peace, human rights, democracy, and reconciliation, will depend on the activities of the CNC. Indeed, those who have been disqualified from victim status might finally achieve recognition as rightful victims.

It should be noted that transitional justice in Timor-Leste will never be perfect unless Indonesia makes a concerted effort to redress the wrongs of the past, which at the moment is unlikely to happen. Social assistance without specific acknowledgement of responsibility for human rights violations will not bring justice that could truly heal the victims. Like many other countries, in Timor-Leste, dealing with the past is an ongoing and long-winded process. In the long term, however, ideas of transitional justice are steadily but surely bearing fruit in a country still in transition.

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