

## **An Overview**

### **Justice Processes and Commissions for Timor-Leste**

#### **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 East Timor and UN undertaking after the country's independence in 2002. Investigations, prosecutions, and trials for crimes against humanity in Timor-Leste fell under the jurisdiction of the SCU. Indonesia's total refusal to cooperate with the SCU on evidence, witnesses, and extradition seriously curtailed the effectiveness of the process, which formally concluded on May 20, 2005. The SCU indicted 392 people, including former Indonesian military chief General Wiranto, before it was phased out. A total of 85 defendants were convicted and two defendants acquitted. More than 70% of those indicted, including all non-Timorese, remain free in Indonesia, some in positions of power. A total of 186 murder cases remain for which no one has been indicted yet, and 469 murders from 1999 have yet to be investigated. Materials from the serious crimes process are archived in New York and East Timor. Some evidence may have been lost when the Office of the Prosecutor-General was ransacked during a period of violence in 2005. The UN Integrated Mission in Timor-Leste (UNMIT), created in August 2006, is to complete investigations into outstanding cases of serious human rights violations committed in 1999, but work on investigations has only recently begun. Timor's already overburdened justice system has responsibility for all prosecutions and trials, including of those indicted by the SCU. Political realities and resource limitations have made it impossible for Timor-Leste by itself to confront its huge neighbor.

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

Indonesia established its Ad Hoc Human Rights Court on East Timor to fend off calls for an international tribunal. Trials began in Jakarta in 2002. This process has been denounced widely as a sham, including by the U.S. State Department. A total of 18 people were indicted for failing to prevent crimes against humanity in East Timor, rather than for their actions committing such crimes. Twelve were acquitted at trial, and five had their convictions overturned by Indonesia's Appeals Court, which completed its rulings in 2004. Only the conviction of East Timorese militia commander Eurico Guterres stands as of now: In 2006, the Supreme Court upheld his conviction and 10-year sentence, but in April 2008, the court cleared him on a further appeal.

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

In February 2005, then UN Secretary-General 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. The Commission, composed of three international jurists, examined the Indonesian government's Ad-hoc Human Rights Court on East Timor, the SCU and the Special Panels process in Timor-Leste. The COE completed its report in May 2005. The UN Security Council then asked the Secretary-General to provide recommendations in response to the COE's report. Those were issued more than a year later.

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 government of Timor-Leste, 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, at least until July 2007, to manage appeals and protect case files, with a clear strategy for the handover of their functions to local institutions. In response, the Secretary-General recommended in July 2006 the revival of international support for investigations and indictments of serious crimes committed in 1999, but not the resumption of the prosecutorial component of the SCU. The report called for the Security Council to endorse the findings of the COE, but failed to address most of its

recommendations or those of the CAVR (see below). The next month, the Security Council called for reviving the investigations, but only took note of the findings of the COE, not its recommendations.

## **Timor-Leste's Commission for Reception, Truth and Reconciliation**

An independent body created and operated with the support of the United Nations, the commission is known by its Portuguese acronym, CAVR. The commission has produced the most comprehensive documentation to date of the 1974 to 1999 period in East Timor, covering the entire Indonesian occupation. Its 2,500-page report (Chega!) is the product of three years of intensive research and is based on the testimony of thousands of victims and witnesses. The CAVR urged increased attention to crimes committed before 1999 (which include 99% of the killings), including the use of starvation as a weapon of war, as well as systematic sexual torture and enslavement. 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 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." Timor-Leste's parliament is expected to discuss the report in 2008.

## **Commission of Truth and Friendship (CTF)**

The presidents of Indonesia and Timor-Leste proposed a bi-national Commission of Truth and Friendship in late 2004 in an unsuccessful effort to dissuade then UN Secretary-General Kofi Annan from appointing the Commission of Experts. The CTF was formed in March 2005 over the objections of Timor-Leste's bishops, as well as those of civil society organizations in both countries. The Commission, which consists of equal numbers of people from both countries, is to establish a "shared historical record" of human rights violations before and after Timor-Leste's independence ballot in 1999. It can recommend amnesty for those who "cooperate fully" and can also propose people-to-people reconciliation efforts. However, it cannot recommend prosecution or other judicial measures, and it has no power to compel testimony or cooperation.

The UN's COE found that the CTF's terms of reference contradict international and domestic laws, and offer no mechanisms for addressing serious crimes. The COE report recommended that the governments revise the terms of reference as a precondition to receiving international support. Indonesia's Constitutional Court has cast further doubt on the CTF's legal basis. The CTF is supposed to operate under the principles of Indonesia's Truth and Reconciliation Commission, but the Court declared the Indonesian commission unconstitutional, citing provisions allowing for amnesty for serious crimes and conditioning reparations on victims forgiving their tormentors. Early in 2007, several commissioners made known their plans to recommend amnesties.

The CTF began to hold public hearings in February 2007. General Wiranto, former President Habibie, Xanana Gusmão and others testified before the commission, some in private. Some Indonesian commissioners engaged in hostile questioning of some East Timorese victims. Some East Timorese militia leaders publicly acknowledged the role of the Indonesian military in the violence, but most Indonesian officials gave self-serving testimony, blaming the UN and the East Timorese for the violence they directed and carried out. Much of this testimony went unchallenged. The UN refused to allow former officials to testify before the commission, saying it "cannot endorse or condone amnesties for genocide, crimes against humanity, war crimes or gross violations of human rights, nor should it do anything that might foster them."

In May 2007, a global coalition of human rights organizations, led by groups from Indonesia and Timor-Leste, urged the presidents of Indonesia and Timor-Leste to close the CTF. The groups wrote: "It is obvious from its mandate and its performance that the CTF is not a credible mechanism to seek justice or even truth regarding events in Timor-Leste in 1999, let alone from 1975 to 1999." In March 2008, a coalition of Timorese organizations wrote their leaders that the CTF "does not reflect the principles of justice for the Timor-Leste people." The CTF has said it will present its final report to the presidents of the two countries once the injured President Ramos-Horta recovers from the February 2008 attack on him.

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ETAN can provide further information, including the CAVR and COE reports and the CTF's terms of reference. Links can be found at [www.etan.org](http://www.etan.org).