

Título:

Creation of truth and memory in two truth commissions in Timor Leste: the inclusion and exclusion of civil society

Autor: Johannes Langer, Profesor Asociado de la Facultad de Ciencias Jurídicas, Políticas y Económicas de la Universidad de San Buenaventura, sede Bogotá, Colombia.

Correo: jlanger@usbbog.edu.co

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Investigadores: Investigador principal: Johannes Langer, Investigadores: Johanna Amaya y Pedro Valenzuela.

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Abstract

Truth commissions are a key part of transitional justice measures that allow clarifying the past related to oppression during dictatorship or violent conflict. It is civil society that often plays an important role in promoting and pushing the mandate of a truth commission, ensuring transparent work and a widespread distribution of the final report. In this paper, the two truth commissions created in Timor Leste are discussed. The first was a domestic commission that tried hard to involve civil society, created after the 1999 independence referendum. The second one was established as a bilateral body between Timor Leste and Indonesia and had severe difficulties with civil society organizations due to its mandate. Ultimately, both truth commissions faced severe problems, particularly in the distribution of the final report. Civil society had a limited role to play because it were not local civil society organizations that pushed the agenda, but rather international NGOs that do not have the necessary back-up to influence society.

Key words: CAVR, civil society, CTF, Indonesia, Timor Leste, truth commission.

Palabras: 9092

Introduction

Countries around the world that transition from authoritarian regimes or civil wars to democracy have set up truth commissions to investigate systematic violations of human rights. Truth commissions can contribute to achieving many important goals in a society that tries to deal with its past evils, including the clarification of the past, getting the voices that were silenced heard and ensuring the no-repetition of violence. Truth commissions are defined to focus on the past, analyze a systematic pattern of abuse, their existence is temporary in nature, they are sanctioned by the state and are publishing a final report usually with recommendations to the state (Freeman, 2006; Hayner, 2010; Wiebelhaus-Brahm, 2010).

The right to truth has been established as a “fundamental, emerging principle of international human rights law” for victims and their descendants (Bisset, 2012, p. 18). As the right to justice in itself is insufficient, the exercise to establish a complex truth that is victim-centered goes in hand with public acknowledgment toward specific occurrences. However, truth commissions usually do not have the power like trials to subpoena and cross-examine witnesses. Back in the 1990s, human rights groups feared that truth commissions would be counter to accountability and sanctions for perpetrators. However, during the past two decades it has been widely acknowledged that public hearings and the final reports of most truth commissions contribute to an end of impunity (Wiebelhaus-Brahm, 2010, p. 4). Even in the early generation of truth commissions, like in Argentina in the early 1980s, the obtained information served many years later for the court and institutional reform.

One important factor for the success of a transition is the pressure of civil society because it works as a watchdog of government institutions, brings about attention to the media and allows for ownership of the process by the citizens. However, in the international community there is still an implicit normative thought that transitional justice is universal. Although it is widely acknowledged that every situation is different, the “one-size-fits-all” approach continues to be dominant in the international community. It is increasingly acknowledged that the “voices from below” need to be heard as well, but even more so to actively engage them, because otherwise key notions of transitional justice are undermined, particularly justice, truth, reconciliation, and healing (Lundy & McGovern, 2008). This is the power of domestic civil society organizations (CSOs) that can play a key role for an approach that favors restorative over retributive justice. Moreover, involvement of CSOs can allow a needs-driven approach and not one that is initiated by donors. And yet, participatory approaches are often paid lip service to, but it is not yet the norm by the international community to work with and back up grassroots initiatives.

Civil society and truth commissions

Civil society has various meanings for different people. In general, civil society is often used in a celebratory way, linked to a hope of ownership. There are three basic points to consider why civil society is an important part to construct a public sphere and in fact

democracy: 1) issues that are important to all citizens and to the organization of their lives; 2) it is through communication like dialog or debates that citizens can relate to the issues of public concern and it gives them voice; and 3) states and other organizations serve the collective interest of the public instead of personal interests of rulers and elites (Calhoun, 2011, p. 311). Civil society is like an arena where people can help themselves and their fellow citizens through direct action in organized groups to achieve collective good (Edwards, 2014).

In this article, civil society is referring to local and national CSOs in contrast to international ones. CSOs cannot be reduced to non-governmental organizations (NGOs) because also faith-based organizations or community-based organizations and others need to be included. CSOs can build up capacity with the participation of individual citizens as long as they are autonomous and independent (Duthie, 2009). While civil society has often played an important role in the support of transitional justice mechanisms, it is usually in a weak and disorganized state after conflict (Brahm, 2007).

Within transitional justice, Crocker (2000, pp. 109-114) points out that civil society actors are operating within at least three ways: 1) they are a “bulwark of freedom” against the state which is reluctant to open up; 2) they influence the state by acting either constructively in building up social trust and civic capacities or destructively by fostering revenge or resistance to change; and 3) they can support in the public realm the functioning of a democratic and open government. In short, civil society can play a role in improving the effectiveness of transitional justice by supporting or holding the government to account through democratic participation. While civil society can push government and come up with critical and innovative ideas to improve the effectiveness and responsiveness of state institutions as well as transitional justice processes, it can only work outside and complementary to the state.

Therefore, it shall not be argued that civil society is the answer to overcome all problems. In fact, it is important that government on all levels is strong and has the ability to assume its role, which is very challenging in the reconstruction phase (Paris, 2004). It would also be the role of the state to strengthen civil society that is often weak and fragmented after civil war or a dictatorship. Particularly in the work of a truth commission, Crocker (2000) suggests that civil society can play a rule in public activities in the rural areas, in the evaluation of the work, provide assistance to victims and recommendations how to deal actively with the past and the history of violations.

There are multiple roles for civil society in transitional justice processes, and particularly in truth commissions, overall ten different roles can be mentioned: 1) data collection and monitoring; 2) representation, advocacy and lobbying of government officials; 3) making connections and consultations within local communities; 4) service delivery and intervention; 5) acknowledgement and compensation; 6) provision of training and background material; 7) the provision of access to records; 8) the accompaniment of victims providing statements in public hearings; 9) the provision of support services; and 10) offering public feedback on methodology and impact (Backer 2003, pp. 302-305; UN, 2006, pp. 33-34).

It is furthermore a variety of organizations that can be involved in transitional justice work, including human rights organizations, humanitarian organizations, victims groups, survivor association, lawyers, religious organizations, peacebuilding groups and mental health associations (Duthie, 2009, p. 12). However, in all these links that may be created, it is key that civil society remains independent of government by collaborating work with but also criticizing actively the government in its shortcomings. Having that in mind, CSOs are said to have an enormous potential in transitional justice processes and can serve as a watchdog against corruption and for good governance. After all, as de Greiff (2008, p. 132) explains, transitional justice initiatives offer the opportunity to create trust through action.

In the common framework of transitional justice by the international community, the healing of trauma and psychosocial services are not playing an important role, often due to very high costs. Neither the United Nations (UN) nor national government usually foster processes of healing, forgiveness and reconciliation that would allow for a personal, spiritual transformation. This type of conflict transformation is much more linked with the grassroots, like faith-based organizations that acknowledge and work with the individual and collective healing for peacebuilding. This is often based on localized approaches that are embedded in the communities and are a key factor for prevention of further violence and a more sustainable peace (Lederach, 1997). What is rather happening in many post-conflict situations, is that the international community lobbies and imposes a model of key tools in the transitional justice toolbox. What is thereby ignored is the importance of local ownership and civil society participation.

Civil society has a major impact on truth commissions, as their strength influences the debate on the mandate, the work of the commission and the dissemination of the final report. Without strong public pressure, it seems likely that spoilers undermine the overall transitional justice process. Research shows that civil society actors have strategic options available to advance democratization. The information that civil society groups have collected, the contacts and local understanding that they have can be key for the success of a truth commission and the demand to expand its operations, like accessing government archives or the full cooperation of the government with the commission. Public hearings that are accompanied with media coverage can help to bring more awareness of the violations to the wider public (Taylor & Dukalskis, 2012, p. 682). Sometimes, the report is not widely distributed and it depends on NGOs to actually allow for a wider distribution. In some instances though the commissions tried to keep a distant relationship with the human rights NGOs because they feared that parts of society that are linked with the security forces would perceive a bias. In turn, the NGOs themselves were frustrated that the commission was not working with and relying on them (Hayner, 2010, pp. 223-225).

In the following, the case of Timor Leste is presented and the two truth commissions that were established there. First, a background about the violent Indonesian occupation of Timor Leste is provided to have the context for the need to satisfy the right to truth. The two truth commissions that have been established, one inside Timor Leste

and the other together with Indonesia will be analyzed through the angle of civil society participation.

The context of human rights violations in Timor Leste

Timor Leste¹ is located on a small island in Southeast Asia that got its full independence in 2002 after 24 years of armed struggle against Indonesia. Having a population of only 1.2 million people, the new country is characterized by ethnic heterogeneity and multiple languages (Strating, 2014). After 400 years of Portuguese colonial rule, the 1974 Carnation revolution resulted in independence prospects for Timor Leste. New political parties were set up with different views upon the secession.² When the Portuguese authorities left the island, violent tensions led to a short civil war. ASDT, that later became known as the Revolutionary Front for an Independent East Timor (Fretilin), declared Timor Leste as an independent territory on 27 November 1975, although it only lasted for some days.

Indonesia invaded Timor Leste soon afterwards with the pretext of its fight against communism and the argument that the artificial separation of the island of Timor caused by colonial powers was finally over. Fretilin³ resisted the 24-year-long brutal Indonesian military occupation with an armed liberation struggle. The consequence was that up to one third of East Timorese were killed, particularly in the early years of the occupation. It was not until the 1990s when information about some atrocities started coming out of the island, leading the international community to become progressively aware of what occurred at the time. Another significant event for the international recognition of the resistance was the joint Nobel Peace Prize for the Catholic bishop Carlos Belo and a representative of Fretilin, José Ramos Horta, in 1996.

The economic recession that devastated Indonesia in 1998 led to the end of Suharto's 31 years of presidency over Indonesia. His successor B.J. Habibie drastically changed Indonesia's attitude towards Timor Leste and declared that the territory would have a referendum about its future, whether to receive autonomy or independence. Despite this announcement, the security situation deteriorated as newly created paramilitary groups joined existing ones and increased activities against pro-independence leaders, human rights activists, priests, students, and journalists. With the help of the UN, an independence referendum was held on 30 August 1999, with a 98.6 percent of turnout. Despite Indonesian intimidation, 78.5 percent voted for the independence for Timor Leste. As soon as the results were announced, a new wave of violence aroused that resulted in more than 1,000 people killed, 400,000 displaced out of

¹ This article refers to Timor Leste although the country is officially known in Portuguese as *Republica Democratica de Timor Leste*. During the time of the UN transition (2000-2002), the country was called East Timor, a name that is still used a lot in the literature in English. During Indonesian occupation the territory was named *Timor Timur* (1974–1999). Many Timorese actually used the Tetum expression *Timor Lorosa'e*.

² The Timorese Democratic Union (UDT) and the Timorese Social Democratic Association (ASDT) were the biggest players: while the former longed for the relationship with Portugal to remain intact, the latter yearned for total independence.

³ And its military wing, known as the Timorese National Liberation Army (Falintil).

a total population of 890,000, and some 250,000 refugees in Indonesian-controlled West Timor. On top of this, havoc was wrecked on the infrastructure of Timor Leste, destroying between 70-80 percent of businesses and 50 percent of homes in the capital Dili (Pushkina & Maier, 2012).

The situation became so blatant, that the international community saw the necessity to intervene and after long diplomatic resistance, the Indonesian government accepted that the UN deployed a long-awaited peacekeeping operation that had the mandate to restore peace and security in Timor Leste while providing humanitarian assistance. The UN Security Council also established the United Nations Transitional Authority in East Timor (UNTAET), the largest multifunctional operation in UN history back then, which took over the administration of a country with no pre-existing institutions (Chawla, 2001). The principal objectives were achieved as a secure environment was created, elections were held in August 2001 to convene a constitutional assembly, a constitution was developed, and the country came to full independence under its first president, Xanana Gusmão, in May 2002 (Harland, 2005). However, critics point out that UNTAET preached about transparency, accountability and democracy as important values. However, in reality the UN mission gave at times the impression to be a somewhat authoritarian body, which treated the local population as victims rather than partners (Steele, 2002).

UNTAET, which essentially operated as the government then, had to establish a state “from scratch” because a political community was missing (Brown, 2009, p. 149). Besides, it was also responsible to administer a transitional justice order and as calls for an international tribunal were not realized, established the Special Panels of the Serious Crime Unit (SCU)⁴ that was part of the Office of the General Prosecutor (OGP) with the aim to prosecute the major crimes, including torture and murder. The main weakness of the body was that no person outside East Timorese boundaries could be indicted, thus no Indonesian security forces or East Timorese who fled to Indonesia were sentenced. Consequently, the SCU could not deal with the “big fish” of crimes, the most responsible were not brought to justice as a consequence, undermining the right to justice for East Timorese (Burgess, 2004, pp. 139-141). Moreover, only 84 individuals were held responsible for crimes of the 1999 violence, and almost all of the convicted received a pardon from the president in the following years (Robins, 2012).

UNTAET also discussed the idea of a truth commission as well as an international inquiry into the violence surrounding the 1999 independence referendum, although Indonesia and its Asian allies in the UN blocked that proposal. The new local political elite was cautious as Xanana Gusmão stated in an interview already in March 1999 while being under house arrest in Jakarta that he was against a possible truth and reconciliation commission in Timor Leste because it would be “too divisive” (Gorjao, 2001, p. 149).

⁴ The SCU was an internationally mandated hybrid court that only convicted “serious crimes” committed in 1999. As Jakarta refused to extradite any perpetrator from its territory to East Timor, the SCU largely became irrelevant.

The East Timorese civil society organizations were during the time of UNTAET mostly focusing on justice issues. When the idea of a truth commission was coming up, it was viewed with suspicion because it was perceived as a tool for amnesty of perpetrators. Yet, the Catholic Church and community leaders participated in workshops to consider transitional justice mechanisms, including a truth commission (CAVR, 2006b, p. 3). Also the most renowned NGO in the field, the New York-based International Center for Transitional Justice (ICJT) was involved, as in so many other transitional countries (Roosa, 2007/2008b, p. 570). The renown researcher on truth commissions, Priscilla B. Hayner, as well as the former executive secretary of the South African Truth and Reconciliation Commission, Paul van Zyl, participated in a workshop on 9-10 October 2000 in the East Timorese capital Dili. They assisted Father Domingos Soares, chair of the Steering Committee on Reconciliation, to set up a truth and reconciliation commission in Timor Leste.

This Steering Committee comprised local and UN officials and hold consultations with grassroots organizations across all 13 districts of Timor Leste at all levels, receiving a lot of community support for a truth and reconciliation commission that eventually led to the creation of the CAVR (CAVR, 2006b, pp. 5-6). These consultations allowed the basis for successful work for the CAVR, because there was a general sense that reconciliation and truth-seeking was appropriate and even necessary. With these consultations, the Commission for Reception, Truth and Reconciliation (CAVR)⁵ was created and stood for one of the few exceptions where customary life and the local community was actually valued in the otherwise highly centralized country (Gorjao, 2001, p. 151). And yet, the CAVR was mostly promoted from the international community and not a demand from CSOs in Timor Leste.

The creation and work of the CAVR

The relative impotence of both civil society and the UN influenced the form and timing of transitional justice in Timor Leste. That may not come as a surprise considering the circumstances as the country was basically lacking everything at the time. The priorities of civil society were sidelined who mostly focused on justice issues, particularly related with Indonesia. The new political elites preferred a policy of “forgive and forget,” in order to avoid damaging the relationship with the neighbor next door, being clear that a survival of the new country would depend on good relations with the former occupier.

While many international advisors made sure that the truth commission would try to include lessons learned from other bodies around the world, civil society had relatively little to say. There were workshops organized for them, and one Catholic father was particularly active to lead it. The process of setting up the commission was therefore based on outside advice and was not a demand of local civil society organizations. That is not to say that local NGOs were against a truth commission, but at the time large parts of the country were still in shambles of the scorched earth policy of Indonesia when they retreated after the independence referendum. A truth commission was thus just another

⁵ CAVR is the Portuguese acronym of *Comissão de Acolhimento, Verdade e Reconciliação de Timor Leste*.

exercise among many, which were going on at the same time and was not perceived to have the highest priority among many NGOs.

An UNTAET regulation set-up the CAVR in July 2001 after an unanimous recommendation of the National Congress for Timorese Reconstruction (CNRT). The idea of the truth commission was to shed light on the violations of human rights committed during the period of the Indonesian occupation of East Timor from April 1974 to December 1999, including in its work the violence committed by the East Timorese parties at the time.⁶ Originally set up for two years, the East Timorese government extended the mandate of the CAVR to overall 39 months due to three extensions (CAVR, 2006b, p. 6). In February 2002, the CAVR began working as an independent institution that would have no control or influence of neither the transitional government nor UNTAET (Järvinen, 2004, p. 56).

The CAVR was “unusual,” as Roosa points out, in a particular point and that was the absence of the occupying power (Indonesia). Usually, truth commissions are created on the basis of some kind of consent between different actors within one country. In contrast, the CAVR focused on human rights violations that were committed by Indonesia. Consequently, the main perpetrators – Indonesian army officers – could not undermine the work of the CAVR as spoilers. However, these very same perpetrators did not testify, thus reducing the impact of the CAVR’s work (Roosa, 2007/2008a, pp. 564-565).

Another aspect that needs to be addressed is that the CAVR was not “only” a truth and reconciliation commission, but also the word “reception” was added. The purpose of this concept was related to the fact that some East Timorese had fled in the chaos of the independence referendum and were worried to return, as many of them were involved in pro-Indonesian militias. The CAVR should also be a tool and symbol that East Timor would be forgiving to those that had been involved in less serious crimes. Only those directly responsible for murder would be put to the courts that were set up for the perpetrators.

Responsible for the work of the CAVR were seven national commissioners from East Timor (therefore no international commissioners were involved) and assisted by 29 regional commissioners. They were selected after a nation-wide consultation with a lot of input of CSOs that strengthened the process of the CAVR and established a good partnership from the beginning. The commissioners had the task to fulfill four mandates: 1) to establish the truth about human rights violations committed on all sides during the period from 1974 to 1999, 2) to facilitate community reconciliation for less serious crimes, 3) to assist in restoring the human dignity of victims, and 4) to report on its work, inquiry, findings and recommendations (Walsh, 2012, p. 4). As a strategic decision, the former Comarca prison was chosen as the national office for the CAVR, because East

⁶ More specifically, the CAVR covered the period from the start of Portugal’s Carnation Revolution on 25 April 1974 that started the decolonization process for East Timor as a Portuguese colony until the point where UNTAET established its peacekeeping mission and the administration of the eastern part of the island on 25 October 1999.

Timorese political prisoners were kept there during the time of the Indonesian occupation (Järvinen, 2004, p. 57). Therefore, the national office served as a symbol for the repression that the East Timorese people experienced. Moreover, in total four regional offices were installed (CAVR, 2006b, p. 7).

The regulation required the CAVR to write a “comprehensive report, which sets out the Commission’s activities and findings, based on factual and objective information and evidence collected or received by it or placed at its disposal” (CAVR, 2006a, p. 4). The mandate of the CAVR included elements of legal practices (although these were not the standard procedures of criminal justice) with a mix of indigenous conflict resolution practices and lessons learnt from the South African Truth and Reconciliation Commission (although it was not allowed to grant amnesties). With respect to the indigenous practices, the CAVR tried actively to avoid the gender discrimination that was part of the existing patriarchal system (Järvinen, 2004, p. 56).

At the public hearings, topics were brought up that were not discussed beforehand in the public realm and gave victims voice to talk openly about human rights abuses. Overall, the CAVR conducted eight national hearings, 52 sub-district hearings (of 65 sub-districts in total) and 297 village level hearings. Among the issues were: 1) human rights violations committed by East Timorese political parties in the years 1974 to 1976, 2) sexual violence as women were speaking up although there was a wide-held view that the East Timorese culture would not allow them to do so, and 3) the personal dimensions of the enduring violence of the Indonesian military during the time of the occupation (CAVR, 2006b, p. 45). Many East Timorese politicians were implicated in the events in the 1970s and it was considered to be a big step forward that they described their version of what happened, including the difficult realities of the time that led to human rights abuses of all sides. The general aim was to hear and listen to the victims so that their dignity would be restored (CAVR, 2006a).

Of particular interest in the CAVR was the grass-roots assistance with the aim that community reconciliation can take place (Babo Soares, 2004; Belo Ximenes, 2004). This process happened with the community reconciliation process (CRP) that was based on local mechanisms on the bases of villages and should allow for the reintegration for perpetrators that had committed minor offences. The CRP was therefore a tool of restorative justice inside the framework of the CAVR (Nevins, 2007/2008, p. 598). It was important for the CAVR to get the word out about their work, thus on a weekly basis a radio program was produced and broadcasted with different focuses on mandate-related topics, whereby most of them were related to the promotion of reconciliation (CAVR, 2006b, p. 7).

The reconciliation process was called “unique” because it was a bottom-up process based on traditional conflict resolution mechanism with voluntary involvement and included the public as well as local leaders and traditional elders (Pigou, 2004, p. 6). Overall, some 1,500 CRP were organized across the country allowing the participation of 40,000 people from August 2002 to March 2004 in community meetings. The character of the CRP was quasi-legal where deponents would provide their account of what

happened and provide the specific information about the time line and the location of events. Interviews showed that 96% stating, “the CRP had achieved its primary goal of promoting reconciliation in their community” (Horne, 2014, p. 27). The perpetrators were required to fully confess their involvement in the crimes they committed in front of the victim and the community at large. The panel of local leaders had then the task to broker an agreement in which the perpetrator would agree to fulfill some special actions related to the offence they had committed (Pigou, 2004, p. 56; Horne, 2014, p. 26).

Overall, 7,669 statements of victims, witnesses and perpetrators were collected by dozens of CAVR staff travelling across the country, in addition 91 in West Timor (Nannelli, 2009, p. 32). Roosa (2007/2008b, pp. 571-574) criticizes that the quality of the interviews varies a lot. Besides the statements that were collected, also some 1,000 oral interviews were conducted by leading experts on the Indonesian and East Timorese history about special topics that they followed, particularly the Santa Cruz massacre of 1991, the abduction of East Timorese children by the Indonesian military and forced displacement.

There was also some suspicion and reluctance to participate of local communities against the CRP in some areas because it was not necessarily clear how this process played into a tool that would mean for perpetrators that they would be sent to prison. On the one hand there was the fear that no justice would be done to the perpetrators, on the other hand CAVR staff was in a few occasions threatened because the local community reacted in a very hostile way to them, in the fear that they, as perpetrators, would face punishment (Pigou, 2004, p. 47). Overall, however, the large majority of communities welcomed the CAVR and cooperated actively, willingly and with a lot of interest. It really depended on the active engagement of regional commissioners with the local communities how many people participated and moved forward. According to the final report, the CRP made a “significant contribution” to reconciliation (Nevins, 2007/2008, p. 600).

One of the contradictions of the prosecution process in East Timor was that the SCU worked very slowly. Therefore, many of those people who were denied to participate in the CRP because they were considered to have committed a “serious crime,” were in fact never prosecuted by the SCU. As a consequence, those considered to have committed worse crimes, were – ironically – more likely to receive immunity. The perpetrators of “less serious crimes” resented the CRP process when they realized that those who committed “serious crimes” were not prosecuted. While victims were in general satisfied with the CRP process, they were much less so with the serious crimes procedures undermining the right for justice (Hirst & Varney, 2005, pp. 13-15).

The CAVR report and its impact

In October 2005, the final report *Chega!* (Portuguese for ‘no more, stop, enough’) was published, containing 2,500 pages. The title was chosen because victims wanted that the violence would finally stop (CAVR, 2006a, p. 3). The report should have been published

in four languages (English, Indonesian, Tetum⁷ and Portuguese) although the Portuguese and Tetum version are still not available as of yet. As defined by its mandate, the CAVR came up with recommendations, in fact 204 of them (CAVR, 2006a, p. 10). The major weakness of these recommendations was that the recommendations were not binding, thus the impact has been almost non-existent. Even worse, parliament never discussed these recommendations, thus the impact of the report was severely weakened. In fact, “since receiving the CAVR report, parliament has declined to debate it, let alone to act on its recommendations” (Robins, 2012, p. 89).

The CAVR seemed to have been conscious that it had a function to search for a “useable past” that would account for past human rights violation but not seek revenge. It was not the aim to write a new authoritative history of Timor Leste, but rather present multiple voices. Yet there was a dichotomy between the inclusion of non-elite perspectives and showing the complexities of the past while being usable for the future by creating internal unity and allow for good relations with Indonesia (Webster, 2007/2008, pp. 582-583). The work of the CAVR has been praised because it allows for an enormous record of history produced, the voice of the East Timorese. As little written evidence of the violence during the Indonesian occupation existed, a major effort was achieved to collect multiple voices of all parts of Timor Leste. *Chega!* as the final report of the CAVR has contributed to the collective memory of Timor Leste with the “as a vehicle for the transmission of these narratives across time and space” (Nannelli, 2009, p. 40).

The Commission also expressed the necessity to continue its work that would allow to recognizing and acknowledging the truth of what happened to achieve non-violence and reconciliation. Therefore, a new institution was set up in 2005, the post-CAVR secretariat to: 1) implement the recommendations of the CAVR report; 2) continue with reconciliation efforts in East Timor; and 3) the former Comarca prison should be transformed from being the national office of the CAVR into a national center for education that should commemorate the human rights violations and its victims and should house the CAVR archives as well (CAVR, 2006b, p. 54). While the post-CAVR secretariat indeed has been established in a former Indonesian detention center, it has blocked civil society initiatives to work with them, having a very narrow understanding of its mandate. ICTJ, for example, offered to distribute the report, but the secretariat rejected the proposal.

Chega! has been distributed to formal organizations like churches, donors, political parties and the international community and followed up with the local community in the time period of six months, from April to September 2006. Moreover, the post-CAVR secretariat produced at the beginning a weekly radio program on the report, invited community groups to visit the exhibition of *Chega!* and published a “plain guide to *Chega!*” that is a much shorter and comprehensive version of the final report (CAVR, 2006a, p. 13; CAVR, 2006b, p. 2). In 2008, there was additionally a comic version of the report printed for children and for the many people with a low literacy rate

⁷ Tetum is an Austronesian language spoken on the island of Timor and one of two official languages (next to Portuguese) in East Timor.

in Timor Leste. However, the post-CAVR secretariat was not able, and it seems also not willing, to disseminate and advocate the report through different means. Consequently, the material did not reach the audience, like teachers, community leaders or victims. In current debates about curriculum changes of history books, *Chega!* should finally find its place inside there. That also shows the weakness of civil society which did not demand a more pro-active approach of the post-CAVR secretariat, with the exception of international NGOs like ICTJ.

Although the CAVR wrote a massive report, the impact has been very not very strong. Indonesia has dismissed the report, but also the major power centers in the world like Washington or London have not paid attention to it. Even inside Timor Leste, there was hardly any impact, if any. Even politicians favorable to the work of the CAVR, like Ramos Horta and Gusmão were not backing up the final report. The call for reparations in the report has not been fulfilled as of yet by East Timorese politicians, thus many East Timorese were frustrated because their participation did not materialize in economic support of the new government. Moreover, the report has not been widely distributed (Hayner, 2010, p. 42). Many people are not aware of *Chega!* and there is very little knowledge of CAVR's recommendations. Overall, there was relatively little follow-up on the recommendations. While the East Timorese government claimed that "many" recommendations were already implemented, in fact human rights groups claim that not a single one has been even touched so far. Moreover, in any policy proposal, politicians do not refer to the recommendations.

What the CAVR provided for the victims though, argues Guthrey (2015), is voice and a sense of healing. This is done through getting the message out, not even to the rest of Timor Leste but in fact to the entire world that is linked to a sense of empowerment. She also found some sense of relief to speak out, although Hayner (2010) argues that in truth commissions across the world, mixed results can be found. The acknowledgement of crimes also helped to get support, inside the family and particularly the wider community. However, Guthrey (2015) also found that shaming was the result of the truth-telling, particularly for women when it comes to sexual violence. In fact, even retraumatization is possible, as Brounéus (2008) already discussed in the case of Rwanda with the Gacaca courts.

Finally, as it happens with many truth commissions, the resources were limited, expectations were too high and many different, even contradictory agendas influenced the creation and the work of the CAVR. The process of obtaining the information has mostly been based on individual memory, the oral interviews being a methodological exception. The *truth* inside *Chega!* surely is not impartial or objective; however, it is a vital source for nation-building, reconciliation and restorative justice. As Kent (2012) shows, the CAVR did not satisfy the demand for justice for local communities. They set up consequently their own initiatives to construct memorial, create victims' support groups and gain political recognition of their suffering during the Indonesian occupation and beyond. These "unofficial memory practices" (Kent, 2012, p. 174) are based on their own Timorese culture with believes that ancestors are restructuring society.

The final report also called on the United Nations about the importance of Indonesian accountability about the events of 1999 and reminded them of UN Security Council resolutions. Specifically, the CAVR called upon the international community to establish an international tribunal to bring about justice (CAVR, 2006b, pp. 48-49). Moreover, the CAVR urged that the Commission for Truth and Friendship (CTF), a truth commission established by Indonesia and Timor-Leste, should strengthen the ties of criminal justice between East Timor and Indonesia instead of granting blanket amnesties as it eventually happened (CAVR, 2006b, p. 50). In the following, the CTF is going to be discussed with its precursors.

The Truth and Friendship Commission

After the 1999 violence in Timor Leste, two UN inquiries produced reports. Three UN special rapporteurs as well as the UN International Commission of Inquiry found that the Indonesian military (TNI) was responsible for militia violence Timor Leste in 1999, thus also for the human right violations and crimes. Both reports recommended that an international tribunal should be established in case Indonesia would not guarantee its own investigations. In fact, Indonesia responded by establishing the National Commission for Human Rights established a special Commission of Investigation (KPP-HAM) in late 1999 with the mandate to gather information about human rights violations in Timor Leste. When their report was published, Indonesian security forces and government officials were accused of systematic human rights violations. Moreover, 33 persons were named in the report that had individual responsibility, and recommended the establishment of a special Indonesian human rights court to try crimes committed in East Timor (Hirst, 2008, p. 6).

Jakarta responded to the KPP-HAM report, mostly due to international pressure, with an Ad Hoc Human Rights Court to try individuals linked to crimes of the 1999 violence. From 2001 onward, the attorney general's office undertook investigations and issued indictments against 18 individuals. Twelve trials took place between March 2002 and August 2003. Although six defendants were found guilty at first instance, all but one subsequently had their convictions overturned on appeal. The prosecutions and trials have been widely condemned as fundamentally flawed (Cohen, 2003).

As discussed above, inside Timor Leste the UN set up a hybrid tribunal with international and Timorese judges that were referred to as Special Panels for Serious Crimes within the Serious Crimes Unit (SCU) in Dili. These special panels tried those accused of serious crimes until May 2005, when the UN Security Council did not prolong the mandate of the work, being discontent with the lack of political will in Timor Leste, but even the UN itself (Hirst & Varney, 2005). By then, the SCU had indicted 391 persons, whereby 84 people were convicted and three acquitted. Civil society has consistently criticized the process because no coherent strategy could be seen, even the basics were missing like translation and transcription. The worst was the perception in society that cases were flawed, not least because the court did not reach out to the victims and witnesses.

Finally, a truth commission was set up between Indonesia and Timor Leste, which was unique because it was the first (and so far only) bilateral truth commission in the world. Each country appointed five members and was co-chaired by Benjamin Mangkoedilaga of Indonesia and Dionisio da Costa Babo Soares of Timor Leste, whereby Timor Leste announced several former members of the CAVR. There was no public consultation organized of how and who should be selected to be a commissioner of the CTF. From the beginning, the CTF faced criticism from human rights groups and CSOs from both countries, victims organizations in Timor Leste and the Catholic Church because they saw in the commission an attempt to whitewash the past in contrast to clarify of what actually happened. In fact, the conclusions drawn in the CAVR were seen to be at risk.

Consultations with civil society took place, and yet organizations felt that their recommendations and views were not taken serious nor considered in the actual planning of the CTF. When the terms of reference (TOR) were made public, CSOs were upset about the concept of the CTF. That was due to the lack of public consultation before Indonesia and Timor Leste presented the TOR. In fact, not even the parliaments of Indonesia or Timor Leste ever ratified the TOR, thus missing public accountability. CSOs pointed out that the aim to look for a “conclusive truth” was highly problematic about the 1999 violence, because Indonesia would continue with its policy of impunity. Moreover, the limitation of neither recommending prosecutions nor naming names of perpetrators while at the same time recommendations for amnesties were possible, thus undermining the basis of communication between CSOs and the CTF (Hayner, 2010, p. 64). The actual work of the CTF rather should concentrate on previous investigations by the UN, the CAVR and other judicial investigations in Timor Leste and Indonesia, thereby raising questions from observers why yet another commission would contribute anything new (Linton, 2006, p. 223).

Despite the fact that human rights groups and the Catholic Church publicly criticized the CTF, no changes were made in the TOR (Hirst, 2008, p. 13). Civil society in Timor Leste, Indonesia and around the world criticized the CTF, the commission basically ignored their voices. This ultimately led to a break-down in the relationship. This approach severely undermined the work of the CTF, because its credibility from the start was questioned. By not listening to CSOs and victims, they felt excluded from the process and rather as a tool of empowerment saw the CTF with high suspicion that the policy of impunity would continue. Thereby, the CTF was not able to get the support necessary from local or international agencies nor of international cooperation that could have been key for general advice and other input.

Instead of focusing on victims, the CTF provided a platform for perpetrators. Accused persons had the chance to speak out and basically deny their role in any violence. Instead of investigating and correcting their statements, the commissioners hardly asked difficult or critical questions, thus the substance of the hearings was superficial. CSO representatives feared that instead of shedding more light on the past, the public in Timor Leste and Indonesia rather would be more confused of what actually happened and whom to believe. This obscure process led to a withdrawal of support by

the UN who stopped to cooperate with the CTF when it became clear that such amnesty measure were possible, violating customary law obligations to investigate, prosecute and punish, and the duty to provide an effective remedy for violations of human rights. However, in the very end the CTF did not use its power to recommend amnesties (Hayner, 2010, p. 64).

Rather particular dynamics were created between the commissioners. Normally, commissioners work as a team, although there are sometimes severe tensions as the cases of Peru and Kenya show. In the CTF case, the commissioners actually got split along national lines like delegations; a new phenomenon, as it was the first bilateral commission. Instead of independent individual members of a commission that should uncover the truth, it turned more into two sides with very opposing views of what happened (Hayner, 2010, pp. 64-65). The whole exercise of trying to find the truth in objective ways was undermined as a consequence.

The work of the CTF was therefore throughout its work contentious, however when the final report was released after three years of work in July 2008, actually very similar findings as in the CAVR report were stated. The final report *Per Memoriam Ad Spem* (Latin for “Through memory to hope”) confirmed on its 350 pages severe human rights abuses throughout Timor Leste. Indonesian security forces, pro-autonomy militias as well as Indonesian civilian authorities contributed to crimes against humanity, stressing that there can be “no doubt” about the Indonesian responsibility with the involvement of human rights violations being an organized campaign of violence. Also pro-independence groups committed gross human rights violations, but it was stressed that these were carried out on a limited scale.

With the review of the other reports, actually a contribution of truth-finding was achieved because they often contradicted themselves and the CTF could qualify them in new light. Particularly important was the access to the SCU documents because they were not accessible beforehand. Finally, Indonesian president Susilo Bambang Yudhoyono endorsed the findings of the report at a formal ceremony, which meant that it was the first official recognition of Indonesia’s systematic violations of human rights in Timor Leste (Hayner, 2010, p. 65).

As Hirst demonstrates, the recommendations in the final report of the CTF are “beneficial” (2009, p. 7), because it includes recommendations for institutional reform, reparation, more research for past violations and not least the creation of a commission for disappeared persons. Overall, five key recommendations can be identified, including 1) accountability and institutional reform; 2) creation of new institutions, including a documentation center and a commission for the disappeared; 3) joint border and security policies; 4) long-term measures like cultural and educational exchanges; and 5) dissemination of the report (Hirst, 2009, pp. 9-10). However, all of the recommendations remained general and did not provide details, therefore the impact for change was limited. As Hayner (2010) points out, recommendations need to be as specific and detailed as possible, otherwise there is hardly a chance that they will be implemented, but rather ignored and not considered for change. The final report of the CTF also helped to

bring the CAVR work and its recommendations back on the agenda as there was hardly an impact felt until that point.

When it comes to the weaknesses of the CTF report, Hirst (2009, pp. 13-15) points out that 1) the report did not discuss sexual violence as a priority for investigation, something that the SCU already failed to do; 2) comparatively few documents were looked through, related to the short time available; 3) only 85 statements were collected next to 62 witnesses who spoke in six open as well as some closed hearings;⁸ and 4) the CTF did not use its budget and resources well. While some institutions like the SCU or the Ad Hoc investigation files were available for the CTF, the post-CAVR secretariat did not provide many documents. Although confidentiality was an issue to have in mind, Hirst (2009, pp. 13-14) stresses that it would have been important for the CTF to have more documents at hand.

Conclusions

Civil society involvement is difficult to achieve in countries that come out of devastating violence. Transitional justice mechanisms are not so much the primary concern in comparison to reconstruct the country. Even more so, it were justice concerns and not so much to find out the truth that guided demands of human rights groups and other CSOs, including the Catholic Church. Although the CAVR tried hard to involve CSOs in the set-up of the commission as well as the selection of the commissioners, there was not much involvement or pressure of CSOs during CAVR's work. A particular mistake was that CSOs were not involved in the writing of recommendations that were produced at the very end of the mandate in a big rush. That might have been one of the factors while hardly any civil society group stood up for Chega! and to disseminate its products so people would be aware about the findings of the final report. The only demand that was taken over by CSOs was the reparation, although this point did not have much influence either on

The CTF was from the beginning an elite project of the Indonesian and East Timorese governments with the aim to strengthen their relationships. The perception of CSOs in both countries was that the CTF should whitewash history in contrast to engage critically with the gross human rights violations committed in 1999. As CSOs were excluded at the beginning of the process, its terms of reference and the selection of commissioners, civil society was not interested anymore to collaborate with the CTF when they tried to reach out. The final report of the CTF was surprisingly critical and, importantly, the Indonesian president officially embraced it, thus admitting severe human rights violations. However, there was very little ownership of CSOs, therefore it was easy for the two government to make sure that the final report was not distributed in the two countries, thus having very little impact.

Participatory approaches are difficult to achieve in post-conflict settings where the

⁸ In contrast to other truth commissions that organize public hearings that include thousands of victims as well as statement-taking of other thousands of people. Moreover, Hirst (2009, pp. 14-15) criticizes that the people interviewed were not selected in a systematic way but through arbitrary means and those key institutional figures interviewed were uncooperative and not share critical information.

state is in the making. A true demand of CSO participation would mean that there is pressure and ownership of citizens of the transitional justice processes. That was not the case in neither the CAVR nor the CTF. It would be critical for future exercises that the CSOs are actively listened to and space is provided by the commissioners for civil society to help shaping its work. That seems to be a critical tool that civil society can also help to write recommendations to the state, feel ownership of this process and lobby and pressure the government afterwards to actually implement the recommendations and make sure that the violence is not repeated and an end to impunity is achieved.

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