

Briefing Paper

The legacy of mass torture and the challenge for reform in Timor-Leste

A joint paper by AJAR and AcBit



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About AJAR

AJAR (Asia Justice and Rights) is a regional human rights organization based in Jakarta. AJAR works to increase the capacity of local and national organization in the fight against entrenched impunity and to contribute to building cultures based on accountability, justice and a willingness to learn from the root causes of mass human rights violations in Asia Pacific region.

Please visit: www.asia-ajar.org

About AcBIT

Associação Chega Ba Ita (AcBIT) aims to promote the values and principles that served as foundation for the work of the CAVR (Comissão de Acolhimento, Verdade e Reconciliação de *Timor-Leste*), including human rights, justice and reconciliation. We are committed to bringing the lessons of the past to guide our decisions and choices as individuals and as a society, working towards the fulfillment of the promise for a better future for all.

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Front Cover: Poriaman Sitanggang for AJAR

Cover back: Poriaman Sitanggang for AJAR

After centuries of colonial neglect, Timor-Leste experienced an internal political struggle (1975), a brutal occupation (1975-1999), and a UN-sponsored referendum. The vote for independence in 1999 was followed by a scorched earth campaign by retreating Indonesian forces and their proxy militias. Since then there have been a series of efforts to address these serious crimes, including a “hybrid” court, a UN-backed truth commission, and a bilateral commission with Indonesia. These commissions recommended that the governments provide reparations and acknowledgement for victims of torture, particularly women, but they have yet to create the necessary funding and institutions. With a lack of political will to formally recognize the country’s history of torture and the victims who have lived through it, the offenses of the past continue to cycle into the present.

Historical Context

The practice of torture had been long cultivated, and its legacy is still felt among the Timorese. Portuguese colonial authorities instituted a feudal system that used torture and other forms of violence as a way to curb dissent. Punishments were not limited to “rebels” but also used on students and indentured servants whose work was deemed unsatisfactory.

In 1974, swift decolonization resulted in a power struggle between Timorese political parties, causing several thousand deaths in 1975. After successfully mobilizing for its cause, the Fretilin party declared independence on 28 November 1975. When the Indonesian invasion took place, Fretilin retreated into the interior from 1976-1979, while detaining its captured enemies from the internal conflict under controlled “liberated zones.” In 1977, following an internal conflict inside the Fretilin leadership, hundreds became victims of torture, detention and ill-treatment in detention centers or *Renals* (Campo de Recuperação Nacional). Detainees experienced torture and ill-treatment on accusations of treason, planning to surrender, contact with Indonesian-controlled regions, leaving Fretilin land

boundaries, or other crimes under the Fretilin justice system.

In the years that followed, civilians returned to areas of Indonesian control and created a clandestine movement of rebellion. The Indonesian military reacted with a strategy of unyielding violence, instilling patterns of torture that included beating until unconscious, electric shocks, torture with lethal animals such as sharp-toothed lizards, isolation, sexual harassment, being hung, being dragged by a vehicle, rape (sometimes in front of family members or other prisoners), and sexual slavery or “forced marriage.” Timor-Leste’s truth commission (CAVR) found that “Indonesian security forces and their auxiliaries committed, encouraged and condoned widespread and systematic torture and ill-treatment of victims.”

Implementation of transitional justice mechanisms

The international community, the UN and CSOs made exhaustive efforts to foster transitional justice mechanisms after the Indonesian occupation. The UN Transitional Administration in Timor-Leste (UNTAET) established the hybrid Special Panels for Serious Crimes which focused on the 1999 post-referendum violence. Upon the courts closing in 2005, the UN Mission in Timor-Leste (UNMIT) established a Serious Crimes Investigation Team to see through 396 pending cases, but prosecutions have all but stopped.

Even though these courts laid the groundwork for justice for victims, conspicuous gaps remain. The Special Panels for Serious Crimes saw 95 indictments that involved more than 360 defendants, many of them in Indonesia. Only eight indictments involved gender-based crimes, with six of those considering rape as a crime against humanity, producing only conviction on that charge. Sexual slavery and other forms of gender-based violence were never processed, due to a framework that did not prioritize women victims and the violence they experienced. Under the

2000 Serious Crimes regulation (15/2000), a Victims Trust Fund should have been established as part of a strategy to strengthen victims' participation in the serious crimes process. The Trust Fund was never established, though it still has a basis under Timorese law.

CAVR held eight national public hearings and 52 local ones, drawing on the testimony of 7,699 victims, witnesses and perpetrators in the final report, *Chega!*. The commission provided urgent reparations to 712 victims, established a national archive and documentation center, and promoted reconciliation. A bilateral commission, the Commission for Truth and Friendship, formed with the Government of Indonesia also produced recommendations on reparations, which have not been implemented.

The Ministry of Social Solidarity (MSS) has the mandate to provide assistance to those most vulnerable in Timor-Leste, including former combatants, victims of natural disasters, the disabled, and vulnerable women. MSS has also distributed grants to NGOs who work with victims. However, the ministry has yet to acknowledge a need for a specific program for survivors of torture, inclusive of rape and other acts of sexual violence. Survivors of torture must seek aid through programs for "vulnerable people" or veterans, though many survivors of torture cannot claim veteran status because they were not part of the organized resistance movement.

Current legal context on torture

Partly because the international community facilitated the founding of Timor-Leste's government system, the nation has accepted the responsibilities of a modern state by international standards. Timor-Leste has committed itself to several UN conventions concerning human rights, including the UN Convention against Torture. Article 4 requires that all acts of torture are to be adopted as criminal offences in domestic law, with appropriate punishment. Timor-

Leste has ratified a criminal code that criminalize acts of torture, and its procedural law does not recognize the validity of evidence obtained through torture. However, these mandates have yet to be tested in court.

More importantly, Article 14 states that victims of torture have "an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible." Although Indonesia arguably holds a primary obligation to provide reparations, Timor-Leste has also failed to fulfill its obligation to rehabilitate victims of torture. Many victims continue to experience chronic ailments, disabilities and mental trauma. They also suffer from the lack of recognition from their communities, as there are no specific programs or mechanisms to address their needs. Discussions of these issues have been stalled by the National Parliament since 2011 and are no longer on the body's agenda.

Under the UN Human Rights Council's Universal Periodic Review in 2011, Timor-Leste supported the recommendation to establish reparations programs for victims of past human rights violations. The National Parliament could meet this need by enacting laws and building institutions based on the recommendations of the CAVR and CTF, such as the Institute of Memory and a National Reparations Program for victims. The need to reverse impunity for past violations is not just essential to victims, but is explicitly linked to a functioning judicial system and security sector in Timor-Leste today. In October 2014, the Parliament adopted resolutions to conduct an audit of the justice sector and terminate the contracts of all international officials working in the judiciary, the Public Prosecution Service, the Public Defenders' Office, the Anti-Corruption Commission and the Legal Training Centre. This action could undermine the independence of these bodies to proceed in investigations and prosecutions that contradict official sentiments.

From 2006 to 2008, security sector institutions collapsed as growing tensions between police and military bodies led to violent outbursts, protests and lack of

government control. The reform agenda that followed, assisted by the UN, was never comprehensively adopted by Timorese security bodies. Human rights groups have documented violations during joint operations of the police and military in 2015, including ill-treatment during arrest and detention, arbitrary arrest and detention, and arbitrary interference with privacy and home, including destruction of private property. These actions have given the public and the CSO community reasonable doubt over the legality of 2014 parliamentary and government resolutions that approved these joint operations and outlawed selected groups without specific criminal accusations against them. The security sector has been found to be lacking in awareness of the Convention against Torture, in violation of many provisions in that treaty.

In 2006, the Ombudsman's Office for Human Rights and Justice (known as PDHJ) was established with a mandate "to investigate violations of fundamental human rights, freedoms and guarantees, abuse of power, maladministration, illegality, manifest injustice and lack of due process, as well as instances of nepotism, collusion, influence peddling and corruption." Although torture is not specifically mentioned, PDHJ also has the powers to conduct inquiries, monitor, and advise the government on cases and policies. To date PDHJ has taken a proactive role in dealing with UN treaties, however its scope for engagement in supporting torture survivors from the past and preventing torture in the present needs to be strengthened.

Situation of survivors of torture

The government of Timor-Leste has yet to formally address the legacy of torture. Thousands of victims are mainly surviving on their own, dealing with their injuries and psychological trauma, with no means to obtain the specialized services they require, particularly in remote regions. The impact in society is widespread, as acts of torture and ill-treatment were reported to the CAVR at the highest

frequency of any type of incident during the conflict period of 1974-1999.

The situation of each survivor is complex and variant, though patterns are evident. The CAVR reported that more men were victims of torture during the conflict. Many male victims of torture, though certainly not all, have now been recognized by the state for their involvement in the organized resistance struggle and are given a status of "hero" or "veteran" by their communities. Women survivors of torture not only experienced physical trauma, but also were ostracized by their communities or families. Many were raped repeatedly by multiple perpetrators and became pregnant with no way to identify the father. These women faced ongoing discrimination when they were denied in obtaining birth certificates for their children. Other victims in need of appropriate recovery services include civilians and those tortured in *Renal* programs.

The total number of survivors of torture is still unknown as many remain silent about their experiences. Many women survivors of torture have yet to speak out due to cultural taboos. Without any formal government policy and poor access to services beyond Dili, many victims become vulnerable. With time, many ailments resulting from torture have worsened and become disabilities, chronic pain, and illnesses.

Photo: Poriaman Sitanggang for AJAR



Jose de Carvalho

"Although I am a victim, I never get any assistance from government. For me, it's a consequences in struggling for freedom."



Mira Testimony Baucau

In 1975, Mira (a pseudonym) became involved in the fight for independence and in mid-1976 she attended a meeting to plan an attack on a visiting Indonesian official. The Indonesians learned of the plans and captured 31 who were left behind when others fled to the forest. were taken to Hotel Flamboyan where all of them (including four women) were detained in one cell, with no room to walk or lie down for six months. She was interrogated and tortured still has the scars where she was burned with cigarettes on her thighs. Every night the women were taken out and sexually abused.

Mira receive an old age pension from the government, but no formal recognition or compensation for her suffering veterans pension he impoverished and illiterate women have been unable to access government assistance

My friends would get angry at me because they thought I've been giving information to the Indonesians. But I just stayed quiet when they asked me questions, because I could not explain what I was being taken for every night.

I suffered for independence from 1975 until now. I still bear the scars. But I am still waiting for justice.

Enduring Impunity, p.108

inability to work and go about regular activities to the torture they experienced, and do not seek help.

Notably, in its most recent Concluding Observation for Timor-Leste (2015), the CEDAW Committee stated that the Timorese and Indonesian government are “working together to establish a ‘survivor healing programme’, particularly for survivors of rape, sexual slavery and other forms of sexual violence committed during the Indonesian occupation,” although evidence on the ground is lacking on this initiative. The Committee called for the Timorese government to ensure access to justice for women victims and to implement recommendations to redress their rights.

The Ministry of Social Services has programs and funding to support vulnerable persons through small grants, hospital visits, therapy, or services through the National Center for Rehabilitation. However, “vulnerable” victims are unable to access these services, because it takes funds and the support of family to travel to obtain these resources, particularly for those with a physical disability. Often the requirements for the victim to get the services they need, such as physical therapy, becomes too much of a strain on family members. In addition, victims often do not attribute their

Analyzing gaps and negligence

With perpetrators living both within Timor-Leste and in Indonesia, the Timorese government has overlooked the crimes of the past to ensure economic stability, foreign investment and border security. Even though the constitution

Resolution No. /2008 On the Implementation of the Recommendations of the Commission for Reception, Truth and Reconciliation

3. The National Parliament will lead and oversee the process of implementing the CAVR’s recommendations, and will give particular priority to advancing the implementation of recommendations concerning:

- (1) the establishment of a new institution whose responsibilities may include ongoing dissemination of the CAVR report, custody of the CAVR archives, and memorialization and education programs, assistance in the implementation of the CAVR’s recommendations and regular reporting to the National Parliament on the implementation of those recommendations;
- (2) the creation of a national reparations scheme for victims of the conflicts which occurred in the territory of Timor-Leste between 1974 and 1999;
- (3) the ongoing dissemination of the CAVR’s final report, including through its inclusion in the official school curricula.

requires implementation of the recommendations of the CAVR, including a reparations scheme, there has been little political will.

The failure to address past crimes encourages impunity within an independent Timor-Leste. From 2012 to 2015, human rights groups have alleged that the police were directly involved in 111 incidents of violence and the military in 53 incidents of violence. There are frequent reports of security force members negotiating personal business in uniform and holding membership in martial arts groups, which are known to contribute to conflict.

Just as the government lacks a functioning internal monitoring system to implement its international and domestic commitments, the security sector lacks an independent mechanism for accountability with regards to discipline processes. When victims have made statements against the police for violent punishments or acts of torture, the cases have not been brought to court. All too often, the Prosecutor claims it cannot find the perpetrator. There is an unwillingness within the judicial and security systems to investigate its own members, including those within the police force and military.

The seeming acceptance of violence as punishment for crime in Timor-Leste's present society is a critical example of how the entrenchment of impunity can lead to new forms, or continued patterns of gross human rights violations.

Recommendations

To the Government of Timor-Leste:

- Work with parliament and civil society to ensure a budget and strategy for the implementation of a National Reparations Program and an Institute of Memory, as recommended by the CAVR. Ensure effective efforts to provide economic and social support programs, particularly for victims of sexual violence.
- Re-establish the credibility of the judicial system and mandate transparent internal monitoring

systems within all security sectors and judicial bodies. The Council of Coordination for Justice needs to ensure the investigation and prosecution of members of the police and military who instigate or condone acts of violence and torture.

- Restrict the use of Presidential pardons and establish effective extradition and mutual legal assistance agreements with other states, so that those prosecuted for crimes under international law can be extradited to Timor-Leste to stand trial.
- Establish a Victim's Trust Fund as provided in Regulation 2000/15 to be managed together with civil society with the aim to empower and strengthen survivors of torture and other human rights violations.

To the Parliament:

- For the 2016 agenda, prioritize the implementation of the National Reparations Program for victims, in particularly victims of sexual violence and the Institute of Memory. Both issues have not been revisited since 2011, and the implementation of these recommendations will both assist victims and help prevent acts of torture and other violence.
- Monitoring the implementation of any relevant policies or programs of the government, particularly the implementation of the CAT and its articles on domestic policies necessary to prevent and prosecute acts of violence and torture.

To the International Community:

- Expand support for Timor-Leste to develop its national capacity to prosecute serious crimes and pursue international arrest warrants.
- Stand by agreements to support a National Reparations Program for victims of 1974-1999 and an Institute of Memory, and pledge contributions to a solidarity fund as agreed upon in the recommendations of the CAVR and the UN-Secretary General's 2006 report on justice and reconciliation for Timor-Leste.
- Support community development programs that integrate the needs of thousands of torture survivors who remain invisible. Support for torture survivors can be designed to strengthen a human rights movement dedicated to non-violence for future generations.

