

Accountability for Serious Human Rights Violations

Addressing Impunity in Timor-Leste

Background

- In 2000 the United Nations Transitional Administration in East Timor (UNTAET) established a system of criminal laws and institutional structures designed to bring to justice those who had been responsible for the commission of serious crimes in Timor-Leste (“the serious crimes process”).
- The judicial arm of this system is referred as the Serious Panels for Serious Crimes (SPSC). The prosecutorial arm was constituted by the Serious Crimes Unit (SCU); and the defence arm was constituted by the Defence Lawyers’ Unit (DLU)
- The ‘special panels’ were created within the Dili District Court, with their own registry. Each panel was composed of 2 international judges and 1 Timorese judge.

Jurisdiction of the Special Panels for Serious Crimes (SPSC)

- The jurisdiction of the SPSC is set out in UNTAET Regulations 2000/11 and 2000/15.
- According to sections 10.1 and 10.2 of UNTAET Regulation 2000/11 the Dili District Court had exclusive jurisdiction with respect to the following serious criminal offenses:
 - (a) genocide;
 - (b) war crimes;
 - (c) crimes against humanity;
 - (d) murder, if committed between 1 January 1999 and 25 October 1999;
 - (e) sexual offenses, if committed between 1 January 1999 and 25 October 1999; and
 - (f) torture, if committed between 1 January 1999 and 25 October 1999

Jurisdiction of the Special Panels for Serious Crimes (SPSC)

- UNTAET Regulation 2000/15 established panels within the Dili District Court with exclusive jurisdiction to hear cases involving those crimes.
- Article 15.5 of the UNTAET Regulation 2000/11 provided that where an appeal occurred in a serious crimes case, a panel of East Timorese and international judges from within the Court of Appeal should be appointed to hear the appeal.

Indictment & Trial Process

- The Serious Crimes Unit (SCU) was able to issue indictments in respect of 572 of the approximately 1400 murders committed in 1999 (including former General Wiranto, Indonesia's former defence minister and commander of the armed forces during the commission of the 1999 Timor atrocities).
- In all, 97 suspects were eventually brought to trial, 94 of whom were convicted.
- Those who were successfully prosecuted in the SPSC have been considered 'small fish' (low-level offenders who were all ex-militia). Notably, most have since been pardoned by the Timor-Leste Government.

Weakness and Challenges of SPSC

- A large proportion of the many crimes within the mandate of the SCU have not been investigated adequately or at all, due to time and resource constraints.
- The majority of the primary perpetrators remain beyond the jurisdiction of the Timorese courts.
- The high-ranking Indonesian military figures with the greatest responsibility for the violations that occurred in Timor-Leste continue to enjoy impunity in Indonesia.

Weakness and Challenges of SPSC

- Indonesia was unwilling to cooperate in the process by extraditing suspects. This was despite Indonesia's signing on 6 April 2000 a Memorandum of Understanding with UNTAET which required Indonesia to assist with investigations and court proceedings, including the extradition of those being prosecuted for criminal offences.
- Lack of political will from the Timorese Government, due to the establishment of the Indonesia & Timor-Leste Commission on Truth and Friendship, was a main obstacle for the SPSC.
- The SPSC did not have jurisdiction to hear charges of murder & rape that were not charged as crimes against humanity if they were committed outside Timor-Leste.

SPSC Status after 2005

- In May 2005, with the end of the UN Mission in Support of East Timor (UNMISET), the SPSC and SCU were closed.
- This resulted in the SPSC only completing investigations and indictments for less than half of the 1,339 reported murders from 1999. As well, many other serious crimes that were perpetrated in 1999 – such as torture and sexual offences – remain uninvestigated, as did the vast number of crimes under international law that had been committed during the Indonesian occupation.

Serious Crimes Investigation Unit

- In January 2007, The Serious Crimes Investigation Team (SCIT) was established as part of UNMIT's Office of the Deputy Special Representative of the Secretary-General for Security Sector Reform and Law.
- In early 2008, SCIT began assisting the Office of the Prosecutor General (OPG) in Timor-Leste with investigations of outstanding cases of serious human rights violations committed in 1999. Notably, SCIT did not have any prosecutorial powers.
- The mandate of the SCIT was to investigate cases and submit the resulting file to the OPG with a recommendation that the case should either be closed or proceed to prosecution.

Challenges faced by the SCIT

- SCIT had limited resources with considerably fewer investigative staff than the SCU had at the beginning.
- Difficulty communicating effectively with, and securing the cooperation of, witnesses and victims' family members.
- Minimal coordination between SCIT and the OPG, and prosecutors did not closely supervise the investigations.
- The burden of conducting any prosecutions or trials that might result from the SCIT investigations fell entirely on the national justice sector of Timor-Leste.
- No political will to support the pursuit of justice and full accountability for the gross human rights violations committed in Timor-Leste between 1976 and 1999.

Efforts & Initiatives

- A variety of community initiatives and NGOs emerged, which organized memorialization activities for the massacres inflicted during the Indonesian military occupation.
- Memorialization events involved a religious ritual; putting flowers on graves and giving speeches of recognition
- In some places, these efforts also led to the building of a 'monument' using victims' creativity and money and donations from the international community.

Efforts & Initiatives

- But over time, the enthusiasm for conducting these yearly memorialization activities began to fade.
- This was due to the absence of a positive response from the Government towards victims' demands for justice and reparation (compensation).
- The Government's policy was to 'forget the past' so as to move forward with 'the reconciliation with Indonesia', even if this meant obviating justice and compensation issues.
- The Government also prioritised reparations for the ex-combatants and veterans, over reparations for civilian victims.

Progress in the Last Two Years

- The Law on the procedure of granting commutation of sentences has been promulgated by President. However, crimes against humanity are excluded.
- JSMP are monitoring 5 serious crimes cases which are before the Dili District Court. However, this is only a small number of cases before the Court.

Current Challenges

- The Courts do not meet the requirements for the composition of the Panel due to the expulsion of international judges in 2014.
- No political will to pursue legal processes against defendants (more reconciliatory approach).
- Law on Reparation and Memorialization is currently stalled with the National Parliament.

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