

Rethinking Transitional Justice: Lessons From East Timor



Australian
National
University

LIA KENT

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Background

Transitional justice mechanisms have become firmly entrenched in the United Nations' (UN) 'toolkit' for post-conflict recovery. Criminal justice processes and truth and reconciliation commissions, it is claimed, will help individuals and societies to come to terms with the violent past and enable states to make the transition to peaceful, stable, liberal democracies. Following the end of the 24-year Indonesian occupation of East Timor, and in the wake of the post-referendum violence of 1999, the UN created a Serious Crimes Investigations and Prosecutions Process (Serious Crimes Process) to investigate and prosecute cases of genocide, war crimes and crimes against humanity, and a Commission for Reception, Truth and Reconciliation (CAVR), to address cases of minor crimes through community-based reconciliation hearings, and document the stories of thousands of survivors.

The East Timor experience reveals a vast gap between UN claims about the benefits of transitional justice mechanisms and local expressions of disenchantment with that process. How can this disjuncture be explained? This *In Brief* reports the key findings of a research project that investigated these issues. It argues that the lack of Indonesian government co-operation with the Serious Crimes Process — which led to an inability to prosecute suspects based in Indonesia — is only part of the reason for local disappointment with transitional justice. Specifically, it suggests the discourse of transitional justice is based on limited definitions of justice (as retributive justice or restorative justice) and envisages a 'rupture' between the violent past and the peaceful present; this does not encapsulate the complexities and realities of dealing with the past.

Research Findings

A key finding — based primarily on interviews with East Timorese survivors of violence — was

that local understandings of justice differ markedly from prevailing criminal law understandings of this concept. While prosecutions, punishment and truth-telling were widely held to be important, many had participated in the transitional justice process to seek other goals — for example: identification and recovery of bodies, public shaming of perpetrators and the restoration of victims' status in the community, or economic assistance to help them escape poverty. These views reflect a range of influences including powerful customary belief systems, which entail ongoing responsibilities to the spirit world and the dead; historical experiences and beliefs linked to the resistance struggle, and current socioeconomic conditions. They indicate it is unlikely that trials and truth commissions alone would fully address local expectations of justice.

Another finding was that East Timorese conflict survivors are not passive recipients of the official transitional justice process, but attempt to make sense of the violence of the past in their own, locally grounded, ways. These include recovery and reburial of the remains of loved ones, and ceremonies to put the spirits of the deceased to rest, and the construction of community monuments to keep the memories of the past alive and educate future generations. Some survivors are also becoming involved in civil society campaigns to demand that political leaders respond to their experiences of suffering — a process contributing to the emergence of a tentative and fragile politics of victims' rights.

The East Timorese national leadership is also transforming the transitional justice process. Nationalist narratives of the past that evoke themes including national unity, resistance, collective sacrifice, endurance and liberation continue to inform the leadership's approach to questions of prosecutions, reconciliation, memorialisation and recognition. This raises additional questions about the capacity of trials and truth commissions to mark a distinct break with the past.

Rather than being a short-term project that fosters a nation's transition from conflict to peace, transitional justice is best understood as a fluid, dynamic and locally embedded process shaped by ongoing interactions between international, national and local institutions and actors. In the context of East Timor, the official process has become part of a nationally and locally engaged conversation that is being shaped and contested by myriad actors with different degrees of political power — among them international and national NGOs, the East Timorese leadership, local victims groups and other marginalised groups.

Implications: Beyond the Toolkit

For scholars, a key implication from this research is that it is important to study the long-term and often unanticipated consequences of transitional justice mechanisms, not only the short-term production of truth commission reports and trial verdicts, and to conceptualise transitional justice as a multifaceted process that is given meaning and shape by myriad 'official' and 'non-official' actors.

For practitioners, a crucial shift must be to move beyond the standardised, internationally devised, toolkit approach. In East Timor, more attention is needed to the structural injustice affecting many — a legacy of years of conflict that includes poverty, inequality, malnutrition and lack of access to education — and *local* processes of remembering and responding to the past. While not without their own politics and exclusions, it is within local communities and families that the rebuilding of relationships, the reconstruction of everyday life and the negotiation of the future is taking place. Critically, practitioners also need to recognise that transitional justice is an ongoing process that involves divergent narratives of the past and will not necessarily lead to a final resolution or closure. The challenge is to consider how this conversation can be as inclusive as possible of those who have been affected by the conflict, recognising that building an inclusive political community cannot be instituted from above.

My argument is not that trials and truth commissions have no role to play in addressing the legacy of violence in post-conflict societies. Rather, I suggest there is a need to move beyond the celebratory rhetoric that portrays these mechanisms as holding the capacity to resolve complex legacies of conflict. Responding to local demands for justice requires thinking both within and beyond the prescriptive parameters of the transitional justice toolkit. It entails acknowledging that the pursuit of justice is an ongoing process that needs the active participation of those who have been most affected by conflict.

Author Notes

Lia Kent is a Research Fellow in the State, Society and Governance in Melanesia program, School of International, Political and Strategic Studies, the Australian National University.

Endnotes

- 1 This is underscored by the UN Department of Peace-keeping Operation's establishment of a Security Sector Reform and Transitional Justice Unit, the production of a number of UN documents and 'tools', and the UN's sponsorship of recent transitional justice mechanisms, including those in East Timor and Sierra Leone.
- 2 Fieldwork in East Timor — including interviews with around survivors of the conflict who had participated in the transitional justice process — was a key aspect of the project. In addition to observation and informal conversations, I conducted around 100 interviews in the districts of Suai, Liquica, Los Palos and Dili. My interviewees comprised a mix of men and women, the majority of whom were rural subsistence farmers with limited formal education. The results of this project have been published as Kent, L. 2012. *The Dynamics of Transitional Justice: International Models and Local Realities in East Timor*. Oxford and New York: Routledge.
- 3 The Indonesian military is widely regarded as being responsible for organising the violence of 1999.

