

August 2015



CAVR hatudu duni katak aifunan mos
bele moris iha kadeia ida

CAVR has shown that flowers can grow
in a prison



INCONVENIENT TRUTHS

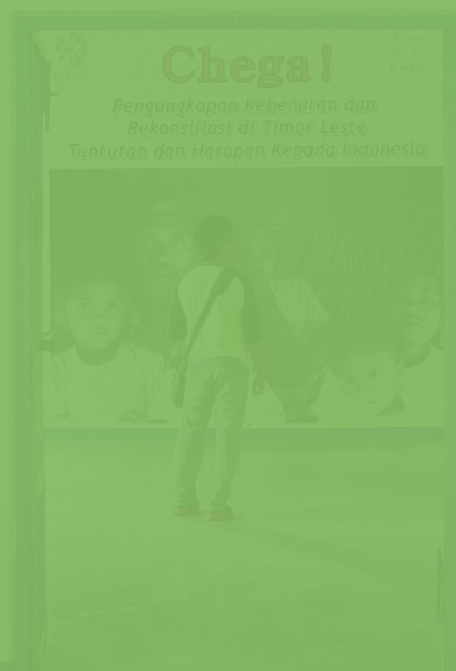
The fate of the Chega!
and Per Memoriam Ad Spem reports on Timor-Leste

Budi Hernawan and Pat Walsh

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Asia Justice and Rights (AJAR) is a non-profit human rights organisation based in Jakarta, Indonesia, established in 2009. AJAR works to increase the capacity of local and national actors, including victims' organisations, in the fight against entrenched impunity, and to contribute to building cultures based on accountability, justice, and a willingness to learn from the root cases of mass human rights violations in Asia-Pacific.

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AJAR is conducting a campaign to commemorate 10 years since the launching of the Chega! report. Visit our website on the report at www.chegareport.net

For further information about AJAR, visit <http://asia-ajar.org>

Executive summary

Ten years after the *Chega!* report and seven years after the *Per Memoriam Ad Spem* report were published, knowledge of the two reports and the related question of accountability for gross human rights committed by the Indonesian state apparatus and their proxies in Timor-Leste remain conveniently buried.

Interviews with 23 Indonesian professionals and exchanges with students and academics in nine Indonesian cities confirm that the memory of Timor-Leste has more or less joined the silent history of other state-sponsored Indonesian atrocities that have been misrepresented or suppressed and rendered invisible. Given that the climate of impunity in Indonesia remains impenetrable, this slippage is not surprising. Amnesia about Timor-Leste further confirms the continuing denial of the state over historical justice and blocks the implementation of recommendations made by both reports on behalf of victims.

Five key findings explain why the historic Timor-Leste issue remains unknown or contested.

First, limited or even no access to both the *Chega!* and *Per Memoriam Ad Spem* reports have left a significant gap in the record and no real alternative to the version of events propagated by the Soeharto regime and its latter-day defenders.

Second, the state has not addressed the broad issue of accountability for the past so the need to discuss Timor-Leste is remarkably low.

Third, contemporary memory is largely the memory of Indonesian returned soldiers who do not want to connect the past and the present. They view the past from a defensive and nationalist perspective and are reluctant to concede anything that might compromise this way of remembering or implicate them.

Fourth, Timor-Leste is a blank chapter in Indonesia's history textbooks.

And, fifth, the implementation of *Per Memoriam Ad Spem*'s recommendations, though officially agreed to by both governments, has been removed from the public domain to be addressed at high-official level and is mainly limited to the non-human rights questions of assets and joint border administration.

To rescue the Timor-Leste issue from the limbo of memory and to ensure that the important recommendations in *Chega!* and *Per Memoriam Ad Spem* are implemented for the benefit of all stakeholders, most particularly victims, this study proposes the following recommendations:

1. That a public inquiry, chaired by former President SBY, be held into the implementation of recommendations common to *Chega* and *Per Memoriam Ad Spem* with a view to evaluating progress on their implementation and hearing from relevant stakeholders, including both governments, on problems affecting implementation and ways forward.

2. That the Indonesian government includes the history of human rights in Timor-Leste in the country's national history and other relevant curricula and utilises the *Per Memoriam Ad Spem* and *Chega!* reports for this purpose in order to ensure that the younger generation learn the truth of the past and the importance of preventing human rights violations.
3. That the government incorporates the history of human rights in Timor-Leste in the curriculum of the military and police academies in order to equip the younger generation of security personnel with a concrete understanding of human rights and the cost of impunity.
4. That the government addresses the problem of disappearances by enacting the CTF recommendation on the issue and supporting the work of Komnas HAM in identifying disappeared persons and locating and addressing the needs and rights of separated children.
5. That the governments of Timor-Leste and Indonesia initiate a comprehensive inquiry into the situation of ex-East Timorese refugees in West Timor with a view to forming a fresh set of policies and high-level initiatives to address outstanding issues. The inquiry should include hearing the freely expressed views and recommendations of the ex-refugees, but also of local residents, local government, churches and NGOs.
6. That the academic community, consistent with its mission of independent critical thinking and professional integrity, takes the initiative individually and collectively to reclaim and teach Indonesia's past history wholistically including Timor-Leste's significant place in that story.

1. Introduction

Dealing with the unresolved past is confronting since the past is often perceived to be a threat to the prevailing status quo. The perception of threat often relates to the question of historical justice that demands accountability from those in a position to be held answerable for what happened and who may have an interest in maintaining the status quo.

This is the situation in relation to historical justice in Timor-Leste. In different ways, two important documents, *Chega!* (Enough, No More!) and *Per Memoriam Ad Spem* (From Memory to Hope, hereafter *Per Memoriam*), have established facts to reconstruct the human rights history of Timor-Leste. These accounts, however, have become at best reference textbooks rather than a living memory that inspires and influences the current social and political dynamics in both countries. While *Chega!* was solely produced by the Timor-Leste Commission for Reception, Truth and Reconciliation (CAVR), *Per Memoriam* was a joint product of Indonesia and Timor-Leste. It might be expected, therefore, that both countries would have a stronger sense of ownership of the latter report. This study will show that the reality is quite the opposite. Although the Yudhoyono government has followed-up some of its recommendations, the *Per Memoriam* report has been largely quarantined from Indonesia's political and educational scene.

This study was undertaken to assess the impact of the two reports in shaping the collective memory of contemporary Indonesians and generating action on outstanding human rights challenges. For this purpose, in-depth interviews were conducted with 23 individuals well placed to evaluate the two reports from both government and non-government perspectives¹. The study was further enriched by exchanges with students, academics and other professionals in nearly thirty institutions in nine Indonesian cities. The motivation for the study was not to score points but to contribute to the strengthening of existing human rights protection measures and to ensure that the positive recommendations common to both reports are fully implemented for the benefit of the victims and other stakeholders for whom they were designed.

The report is divided into five parts. First, it outlines the background to the *Chega!* and *Per Memoriam* reports in order to provide a context for the study. Second, it describes contemporary Indonesian perceptions of the Timor-Leste issue. Third, it discusses the ways in which state and non-state actors have constructed their memories of Timor-Leste and how this has impeded follow-up to the two reports. Fourth, it briefly assesses the impact of the reports on the international community. Fifth, the report concludes with recommendations.

¹ To keep the report brief, the methodology employed is explained in the appendix.

Reclaiming Indonesia: Resisting Forgetting of Timor-Leste 1974-1999



Brief background to Chega! and Per Memoriam

2. Brief background to *Chega!* and Per Memoriam

This section presents a brief background to the two reports. A full account of their respective origins and functions can be found in both reports. See www.chegareport.net

While both reports focused on the human rights history of Timor-Leste and came to essentially the same conclusions, the governance, rationale and mandates of the respective commissions differed.

Chega! is the product of the Timor-Leste Commission for Reception, Truth, and Reconciliation (CAVR). CAVR was an official, independent, East Timorese commission established in 2001 by UNTAET Regulation 2001/10 following a request for a reconciliation mechanism by the Resistance umbrella body CNRT. CAVR's mandate was to establish the truth about human rights violations committed on all sides in Timor-Leste during the 25-year period 1974-1999, to facilitate community reconciliation for less serious crimes, to restore the dignity of victims, and to report on its work and findings and make recommendations². The 3,200 page report was presented to then President Xanana Gusmao in October 2005 and marked the end of the work of CAVR. Following the dissolution of the commission, President Gusmao established a Post-CAVR Technical Secretariat to, inter alia, disseminate *Chega!*. The Secretariat is now funded by the Timor-Leste government and will continue until the Parliament decides on a permanent replacement body.

The truth commission specialist Priscilla Hayner (2011: 39-42) regards CAVR as one of the five strongest truth and reconciliation commissions established world-wide so far. Its strong points included its innovative community reconciliation programme, its powerful public hearings, the universal support it enjoyed across Timor-Leste, its impartial documentation of violations by all sides including the Resistance, its comprehensive victim-centric approach, a principle that informs most of its recommendations, and the financial support it attracted from a range of donors.

Nonetheless, despite the domestic and international support CAVR enjoyed during its operation, the response to its *Chega!* report has been mixed. Susan Harris Rimmer (2010: 115) identified two major challenges beyond CAVR's control that have negatively affected follow-up to its report. These are the lack of clear political acceptance of the CAVR report by the government and parliament of Timor Leste and the mixed fortunes of the serious crimes process. These two challenges point to the complex power relations between the new emerging nation of Timor-

² For further information see the full *Chega!* report (English and Indonesian) on www.chegareport.net and the CAVR website www.cavr-timorleste.org

Leste and its big and powerful neighbour. Without wishing to minimise the question of historical justice, understanding the geopolitics in play helps explain the ambivalence of the government of Timor-Leste towards the *Chega!* report.

The unequal power relations between Timor-Leste and its Indonesian counterpart are reflected in the comment of Jose Ramos-Horta as Foreign Minister of Timor-Leste at the time, that the CAVR recommendations 'are only recommendations and are not obligations for the Government and the Parliament to follow' (quoted from Rimmer 2010: 119).

The uneven relationship also explains the decision by Indonesia and Timor-Leste to establish a joint Commission for Truth and Friendship (CTF) in 2005 with a different mandate to that of CAVR. Under pressure to head off calls for an international tribunal on the violence of 1999 (Kent 2010: 101-103) and concerned that the impending CAVR report would call for justice by Indonesia, both governments felt the need to institute a more credible response than Indonesia's widely criticised Ad Hoc Human Rights Court. The CTF mandate included undertaking an '(1) inquiry, consisting of document review, fact-finding, and research, (2) making findings on the perpetration of gross human rights violations and institutional responsibility, and (3) arriving at recommendations and lessons learned' (Commission on Truth and Friendship 2008: 6). The bi-lateral commission was also mandated to recommend amnesty and to clear the names of those 'wrongfully accused'. The latter provisions and the decision not to name names of alleged perpetrators were strongly criticised by national³ and international observers (Hirst 2008). Critics argued that CTF was designed simply to save Indonesia's face⁴ and to absolve from blame those high-ranking Indonesian military and police officers indicted by the UN Serious Crimes Unit rather than to address the question of justice for victims. These objectives would ensure, said the critics, that CTF would not be able to reveal the truth.

Critics (Braithwaite, Charlesworth & Soares 2012: 198-199; Hirst 2008, 2009; Kent 2010: 116) were surprised, then, when *Per Memoriam* concluded that Indonesian state institutions were principally responsible for the human rights abuses committed before and after the 1999 popular consultation. There was nothing new about this finding which had already been made by Indonesia's Human Rights Commission, CAVR, the UN and other bodies. But this was the first time that the Indonesian state had acknowledged wrongdoing by state institutions against victims whom it regarded as its own citizens at the time. The CTF also identified seven key areas that both governments should take action on. The relevant recommendations included [1] accountability and institutional reform, [2] joint border security, [3] establishment of a joint documentation and conflict resolution centre, particularly psychosocial services for victims, [4] addressing questions of assets, [5] a commission for the disappeared and separated children, [6] acknowledgement and apology for the 1999 violence, and [7] promoting friendship between the two nations (Commission of Truth and Friendship 2008: xviii-xxi).

Although the CTF is not legally binding on Indonesia, the Yudhoyono government took steps to selectively follow-up *Per Memoriam* by issuing Presidential Decree 72/2011. The decree stipulates two main courses of action: [1] to address the issue of the past between Indonesia and Timor-Leste in the context of promoting bilateral relations between the two countries, and [2] to take preventive action against a recurrence of the past through three strategies, viz institutional reform, national legislation and capacity building. These provisions are useful benchmarks against which to measure the impact and implementation of *Per Memoriam* in Indonesia. This will be elaborated further below.

³ Interview with KontraS, Jakarta, 17 October 2014.

⁴ Interview with LIPI researcher, Bogor, 20 October 2014.



Contemporary Indonesian perceptions of the East Timor issue: a blind spot



3. Contemporary Indonesian perceptions of the East Timor issue: a blind spot

In the course of the study, exchanges on *Chega!* and to a lesser extent on *Per Memoriam* were held with university students, academics and other professionals in almost thirty institutions in nine major cities in Indonesia. The cities visited were Banda Aceh, Medan, Jakarta, Bandung, Kupang, Denpasar, Yogyakarta, Malang and Surabaya.⁵

It was clear from these exchanges that generally speaking Indonesia's intellectual community lacks minimal evidence-based information on the history of Timor-Leste. Many said they could not recall hearing much about Timor-Leste at school and that after 1999 teachers only said that Timor-Leste used to be part of Indonesia but was now independent. Few knew about or had had access to the *Chega!* and *Per Memoriam* reports.

It was also clear that, in the absence of any correctives or alternative narratives, the Soeharto era version of events remains current to some extent and continues to frame the issue from a defensive and nationalist point of view. In question and answer exchanges, participants suggested that Indonesia's intervention was justified in order to safeguard the unity of Indonesia, to pre-empt communism, to prevent internal violence or because a majority of Timorese had asked Indonesia to intervene. Respondents expressed sadness that a part of Indonesia had been lost, like a family member, and blamed former President Habibie for the loss. A more nuanced justification was that the intervention was 'necessary evil'. Others absolved Indonesia from blame by claiming that it could no longer afford to carry East Timor economically in the aftermath of the East Asia economic crisis, that countries like the US and Australia were equally or more to blame because they permitted and supported the intervention, that Fretilin had committed more violations than the Indonesian military or that the loss of Timor-Leste was due to a western-motivated resources grab. In brief, these responses indicated that Indonesian professionals believed that the intervention was justified and, far from doing anything wrong, Indonesia was more victim than perpetrator. It is probably fair to conclude that if this is how sections of the educated elite understand the Timor-Leste issue, the masses of Indonesia's general public will have only the faintest idea of the real story.

Given this mindset, audiences were therefore sometimes shocked to hear authoritative evidence-based accounts of systematic and widespread human rights violations across 24 years committed principally by the Indonesian military and its auxiliaries. At the same time, participants were hospitable, open and appreciative, indicating that a shift in public

⁵ AJAR organized public events with local partners to discuss the *Chega!* report. Pat Walsh was a key resource person at these events.

understanding is possible if not underway. Participants also questioned why there had been no justice or mechanisms such as an international tribunal put in place. Lecturers either undertook to include the two reports in their respective subjects or agreed to cooperate in the development of course materials and teaching strategies in keeping with the accepted ethos of universities to foster a spirit of inquiry and critical thinking.

It should be noted at this point that this openness to alternative narratives is completely consistent with the recommendations and spirit of both the *Chega!* and *Per Memoriam* reports. The latter, as its name states, rejects forgetting and calls explicitly for more research, documentation, training and education about the events in Timor-Leste as a way of deepening a culture of human rights and non-violence in Indonesia and using its shared history with Timor-Leste to consolidate their relationship.

This blind spot is not unique to the Timor-Leste issue. It is characteristic of the Indonesian public's attitude towards the broader history of state violence in Indonesia. A recent Komnas HAM report (2014) on 8 major cases (Talangsari, Tanjung Priok, 1965 mass killings, Aceh, Papua, Timor-Leste, Semanggi, and the May 1998 riots in Jakarta) concluded that the Indonesian state apparatus and its proxies were responsible for crimes against humanity in these instances. But these cases have been largely erased from the memory of the Indonesian public despite the continuing efforts of Indonesian civil society to ensure they and their victims are not forgotten. Media presentations that have exposed Timor-Leste such as the film *Balibo* or the documentaries *The Act of Killing* and its sequel *The Look of Silence* about the mass killings of 1965, for instance, were produced by outsiders. They received mixed reactions in Indonesia ranging from bans to selective screenings. It is arguable, however, that the case of Timor-Leste has generated less public attention in Indonesia than the 1965 massacres. Indonesia's largest Muslim organisation Nadhatul Ulama felt obliged to publish a white paper '*Benturan NU-PKI 1948-1965*'⁶ on the 1965 issue, but no mass organisation has done anything similar in relation to Timor-Leste. Official policies to let bygones be bygones and to forget the Timor-Leste issue like a bad dream seem to be working in the public domain where memories are vacuous or still shaped by the Soeharto era narrative.

This study has identified a number of reasons why the Timor-Leste issue has been forgotten.

First, information about the issue was suppressed and censored during the Indonesian occupation. Very little information of any kind, let alone independent information, was available to the Indonesian public at that time and what was available was filtered or spin-doctored to serve the interests of the state and its agencies. An Indonesian journalist recounted being warned to be careful about what she wrote about Timor-Leste. "In 1992, I went to East Timor for the first time as a journalist. But then, my sister received an anonymous fax telling what I had been doing, places that I went to, etc. This fax simply sent a message that I had been watched very closely"⁷ The quarantining of Timor-Leste until 1989 and, to a lesser extent, beyond is largely responsible for the minimal understanding and interest in Timor-Leste among the professionals interviewed for the study. Not surprisingly their knowledge of events and personalities following 1998 is sharper than for the previous decades.

Second, the issue continues to be officially downplayed or suppressed. The Timor-Leste issue is not included in the new school curriculum so there is no need for teachers to inform themselves about the issue or to introduce it to students. Similarly, military and police academies do not

⁶ See the large Indonesian daily Kompas for debates on the white paper: <http://politik.kompasiana.com/2014/05/07/telaah-kritis-buku-putih-benturan-nu-pki-1948-1965-654036.html>

⁷ Interview with an Indonesian journalist who worked in Timor Leste. Jakarta, 12 November 2014.

include Timor-Leste in their training programmes at any level⁸. The state prefers that the issue be forgotten rather than be used as a source of lessons learned and nation-building.

Third, the past is no longer a live political issue in relations between Timor-Leste and Indonesia. Since independence following the UN transitional period, Timor-Leste has focused on fostering pragmatic economic and political relations with Indonesia and opposed talk of justice or an international tribunal. While the chain of cause and effect is debatable, it is clear that Timor-Leste's focus on moving forward in its relations with Indonesia has served well Indonesia's interest in ignoring the past. Both states concur that the only issues from the past to be addressed are those identified in *Per Memoriam* (i.e. what happened in 1999, only one year of the 24-year occupation) and that these are residual and secondary.

Fourth, contemporary Indonesian media coverage of Timor-Leste is minimal⁹. This contributes significantly to keeping Indonesian public interest in Timor-Leste at a minimum. The power of the media to mobilise or kill off public interest in an issue like Timor-Leste was highlighted in interviews. Though it might be expected that the Indonesian public, including the many thousands of civilians and military who served there over 24 years, would have a keen interest in developments in their former colony, it is also true that Indonesian media disinterest in Timor-Leste is common to media in most other countries. Though welcome exceptions to this general pattern, occasional investigative reports on events or personalities associated with the past have not drawn on *Chega!* or *Per Memoriam*. Prabowo Subianto's extensive involvement in Timor-Leste was barely mentioned during the 2014 presidential campaign.

Fifth, Timor-Leste is no longer a significant stand-alone issue in the programmes of many Indonesian civil society organisations¹⁰. NGOs are well aware that the issue of justice in Timor-Leste is unresolved but for practical reasons related to a combination of resource constraints, workload and the continuing political sensitivity of the Timor-Leste issue, they can only maintain a watching brief on the subject or support efforts to incorporate Timor-Leste into a cross-cutting campaign that seeks to reclaim Indonesia's broader human rights past and support victims of past violations regardless of their origin.

Sixth, the past is contested territory in Indonesia and this includes Timor-Leste. Though low-key, the struggle for hearts and minds continues well after the ground war in Timor-Leste has been lost. The findings of *Chega!*, *Per Memoriam*, KomnasHAM and other inquiries and processes, including indictments arising from the Serious Crimes process in Timor-Leste, have been rejected *de facto*, though not directly confronted, in a series of widely circulated memoirs and books by former military. On the one hand, *Per Memoriam* reports that CTF did not recommend amnesty because 'none of those who appeared in its hearings process met the conditions enumerated' (of telling the complete truth and giving full cooperation) (Commission of Truth and Friendship 2008: 296). On the other hand, those accused of serious crimes in 1999 can claim they were wrongfully accused because Indonesia's Ad Hoc Human Rights Court exonerated all Indonesian military from guilt. At the very least these differing narratives are sources of confusion if not a red light from well-connected, influential ex-military not to venture where angels fear to tread.

⁸ Interview with Spokesperson of the Indonesian National Police. Jakarta, 10 November 2014. The Spokesperson also provided a written response to research questions.

⁹ Interview with an Indonesian journalist. Jakarta. 11 November 2014.

¹⁰ Interview with Legal Aid Foundation. Jakarta, 15 October 2014.



**The impact of the reports in official
and non-government circles**

4. The impact of the reports in official and non-government circles

Despite the existence of serious blind spots, both state and non-state actors retain partial and fragmented memories of Timor-Leste. The study identified a number of key themes that relate to both reports, including access, memory, accountability, the blank Timor-Leste chapter, and implications for the Joko Widodo government.

4.1 Access to the *Chega!* and *Per Memoriam* reports

State and non-state actors contacted were generally not aware of, or familiar with, the *Chega!* and *Per Memoriam* reports. Respondents either did not have access to *Chega!* and *Per Memoriam* or they had not utilised the reports in their work despite the availability of the published reports in the public domain. The police¹¹ and military¹² academies do not make use of the material in their courses. Respondents from these institutions said that they only discussed human rights in general and never specifically referred to the issue of Timor-Leste. Conflict studies scholars¹³ said that they had not read the reports. Based on a vague recollection, one said, 'I saw a documentary on East Timor once when I visited Yogyakarta in 2007 and I got a resumé of *Chega!* but I have never seen the whole *Chega!* report or *Per Memoriam*'. Another academic, who has researched Indonesia's Ad Hoc Human Rights Court on Timor-Leste, acknowledged, 'I have not read *Chega!* or *Per Memoriam*. So my apologies if I can't be of help'.¹⁴

Only a few interviewees had detailed knowledge of the two reports and were able to make informed comments on issues of mandate, data collection processes, findings and the politics associated with the two commissions.

*In essence, CAVR was more comprehensive than CTF because of its methods, time coverage and broad people's participation. So this would be more in-depth. Politically, CTF was a compromise because [Indonesia] didn't want an international court. That's why the compromise between the two countries was made and the result was also a compromise. Perhaps CTF's result was less than that of CAVR's but I guess both reports have to be used in tandem*¹⁵.

¹¹ Interview with a senior police officer. Jakarta, 10 November 2014.

¹² Interview with a retired army general. Jakarta, 23 October 2014.

¹³ Interviews with three academics from Yogyakarta, Maluku and Malang respectively. Yogyakarta, 3 November 2014; interviews with Jakarta-based academics. Jakarta, 15 October 2014.

¹⁴ Interview with Jakarta-based academic. Jakarta, 17 October 2014.

¹⁵ Interview with a member of Komnas HAM. Jakarta, 13 October 2014.

Some state actors who have had direct involvement with Timor-Leste had detailed knowledge of the reports and were able to make critical observations on both documents. These officials sharply demarcated *Chega!* from *Per Memoriam* and categorised the former as the document of a foreign country that was its business not Indonesia's. 'It [*Chega!*] belongs to Timor-Leste. So we don't have anything to do with it'.¹⁶ 'It is an internal document of Timor-Leste'.¹⁷ Another respondent simply dismissed *Chega!* completely in a different way by claiming that it was biased and that it exaggerated the number of casualties¹⁸. This respondent said he had not read the report and chose to speak on behalf of others, but stated emphatically that '[CAVR] received information from the pro-independent groups. We regret about the [exaggerated] number of victims in the report that gave an impression as if [the violence] was widespread, ordered or planned. But it was not the case!'

Some state actors, however, were willing to engage in in-depth discussion on *Per Memoriam* highlighting the issue of human rights violations and state responsibility as one of the key contributions of *Per Memoriam*. While admitting that human rights were violated in 1999, however, one respondent used the Ad Hoc Human Rights Court process in his defence.

*It was human rights violation, I confess. We were not brought before an international court. But like Eurico Guterres and other senior officials, such as Adam Damiri, were already examined by the [ad hoc] court even though the court found no evidence*¹⁹.

In this sense the Ad Hoc Human Rights Court, though widely and strongly criticised 'as a failure on every level' (Cohen, David *Intended to Fail: The Trials Before the Ad Hoc Human Rights Court in Jakarta*, ICTJ, 2003), is perceived to have effectively ruled a line under the issue of individual Indonesian responsibility for human rights injustices in Timor-Leste, and to have legitimised impunity and closed the case.

4.2 Accountability

Interviewees were split on the issue of accountability. Some supported the idea that the Indonesian government should follow up the CTF finding that state institutions are accountable for the violence in 1999. Others argued the opposite.

Those who believe that CTF's findings on accountability should be acted on are deeply pessimistic that even the current Joko Widodo government would be able to act on them. 'The [CTF] report was great but there was no follow-up. So what is the point of having the report? There was violation [of human rights] but there was no prosecution. I am afraid this is some kind of mix between stupidity and ignorance'²⁰. This respondent also believes that there is no hope for CAVR because the 'two countries [Indonesia and Timor-Leste] are involved in the crime of impunity!'

Those who oppose prosecution argued that 'there is no need to re-open the old wounds and thus raise a new expectation that the two countries won't be able to meet. This is the space that we take care of'²¹. In a slightly different tone, another official emphasised the need to learn the history of Timor-Leste in order to understand the failure of the Indonesian government at that

¹⁶ Interview with a member of CTF. Jakarta, 16 October 2014.

¹⁷ Interview with a senior official at the Indonesian Ministry for Foreign Affairs. Jakarta, 27 October 2014.

¹⁸ Interview with a retired army general. Jakarta, 23 October 2014.

¹⁹ Interview with a retired army general. Jakarta, 23 October 2014.

²⁰ Interview with KontraS. Jakarta, 17 October 2014.

²¹ Interview with a senior official at the Indonesian Ministry for Foreign Affairs. Jakarta, 27 October 2014.

time and to prevent similar things happening in the future. While acknowledging wrongdoing in the past, this informant insisted that there was no need to take a judicial path.

Another interviewee commented as follows on what she saw as the pragmatism that underpins the perspectives of both governments on accountability and reconciliation:

In contrast to the experience of South Africa's [Truth Commission] in which victims and perpetrators made confessions and told the naked truths before the same forum, shed tears, and then were reconciled, this was not the case of East Timor. "The confession of sins" was not made by Indonesia and was not the demand of Timor-Leste either. What TL wanted was to move forward so as not to waste their energy²².

Leaving aside the intra-Timorese process used by CAVR in Timor-Leste, the informant believes that in relation to Indonesia 'truth has been sidelined in order to build friendship'. From this perspective, both governments believe their respective interests will be better served by at best a *pianissimo* approach to the past. The truth will make friendship impossible. The two should therefore be disconnected.

This assertion resonates with what Stanley Cohen (2001) calls *implicatory denial*, the third type of denial that he identified in the context of human rights violations. In contrast to *literal denial* that simply rejects facts as if they do not exist or *interpretative denial* that recognises facts but rejects their interpretation, *implicatory denial* does not deny facts or interpretations of facts. Rather it denies the connection between facts and interpretations. The officials interviewed did not deny the facts of human rights violations in Timor-Leste or the responsibility of the Indonesian state for what is documented in *Chega!* and *Per Memoriam*. What they denied was the implication that accountability and the further implication of judicial process necessarily followed from the facts. The history of Timor-Leste and its lessons learned should be taught at school but not the implication of accountability for injustice.

4.3 Memory of 'returned old soldiers'

A former military officer who served in Timor-Leste for many years recounted his recollection of the war in Timor-Leste as follows:

Our intervention to East Timor failed because we were not prepared to engage in war. Our equipment was from the Trikora and Dwikora wars in 1960s. Our men were assembled at the last minute from different Kodim, Koramil to make up battalions. So they were not trained to go to war....We were too long there so it caused violence. We did not meet the original intention to stop the fight between political factions. We were staying way too long. But [violence] occurred unintentionally. As a result we shot people²³.

The account is reminiscent of what the German theologian Johann Baptist Metz (Metz 1980) calls the *memory of reconfiguration*. For Metz, returned soldiers can feel free to reconfigure their war experience for a younger generation because the danger is past, they are the principal witnesses to what happened and no longer accountable. Metz distinguishes this from *memoria passionis* (the memory of suffering) which questions the status quo and has the energy to turn it upside down.

The returned soldier's account above reconfigures the Timor-Leste issue in several ways. He makes admissions that few Indonesians will have heard, viz that the military intervention in Timor-Leste failed. He blames this on out-dated equipment and poor planning and for staying in

²² Interview with a senior official at the Office of the Vice-President. Jakarta, 17 December 2014.

²³ Interview with a retired army general. Jakarta, 23 October 2014.

Timor-Leste ‘too long’. He does not concede that the military may have underestimated the Resistance (in its various forms) or that the Resistance might have been a reason for the failure, though this is possibly implied in the claim that the military stayed ‘too long’. In fact, he implies that Timorese in-fighting was responsible for Indonesia’s intervention and that, though there was violence, the military did not commit violence intentionally. In other words, though they made mistakes and people died, the Indonesian military was trying to do the right thing and cannot be held accountable for crimes.

Consistent with this reconfiguration, the interviewee did not mention the words ‘justice’, ‘responsibility’, ‘human rights’ or ‘accountability’ in his account. These loaded terms would have added judicial dimensions, with contemporary implications for him and colleagues, to an account that he preferred to explain in essentially operational military terms. In this sense, the present has reconfigured the past, not the other way around. One wonders what the families of the young Indonesian soldiers who lost their lives in Timor-Leste – after being sent there poorly armed and prepared by their superiors – would feel about this account. But they too are probably still trapped in Indonesia’s time warp.

Consistent with his military focus, the interviewee said two important lessons from the Timor-Leste experience were to ensure that Indonesia’s security forces were trained in international humanitarian law and in local culture, structures and practices. Training in these areas, he said, would assist the military today in places like Papua. These proposals are to be welcomed. They are also implicit admissions that the laws of war and local culture were not respected by the military in Timor-Leste.

These proposals coincide *de facto* with similar recommendations in *Chega!* and *Per Memoriam*, Apart from this, however, the respondent was ignorant of the two reports and dismissed *Chega!* in particular as biased though he said he had not read it.

4.4 The history textbook: a blank chapter

While censorship by the Soeharto New Order regime left the general Indonesian public ill-informed or ignorant on Timor-Leste, the absence of any mention of Timor-Leste in the contemporary education curriculum will ensure that current and future generations will be blank on this period.

According to a LIPI researcher, the decision by the Ministry of Education to drop Timor-Leste from the curriculum related to a dispute within the Ministry on the 1965 massacres. In the 2004 curriculum, the word ‘PKI’ (Indonesian Communist Party) was dropped suggesting that the 1965 killings should no longer be framed exclusively with reference to the PKI. However, following complaints by a number of prominent individuals, the Minister for Education, Bambang Sudibyo, stopped work on the curriculum in June 2005²⁴, said that a mistake had been made and even requested the Attorney General to investigate the matter. Reference to the ‘PKI’ was subsequently returned to the curriculum in 2013 while, at the same time, reference to Timor-Leste was left out. The researcher suspected that the omission of Timor-Leste was partly because officials ‘might have found it difficult to decide which version should be included in the curriculum while they were under investigation’²⁵.

²⁴ <http://www.tempo.co/read/news/2005/06/22/05562830/PKI-Sudah-Tak-Ada-Dalam-Buku-Kurikulum-Sekolah>

²⁵ Interview with a senior researcher at the Indonesian Institute of Science (LIPI). Bogor, 20 October 2014.

4.5 Follow-up of CTF's recommendations

Few interviewees knew much about the follow-up of CTF, including former CTF members²⁶ themselves. Only two respondents knew of the existence of Presidential Decree 72/2011 regarding the follow-up of CTF's recommendations which has been tasked to the Ministry of Security and Political Affairs and the Ministry of Foreign Affairs. The two respondents in question represent government agencies but made opposing observations.

A respondent from Komnas Perempuan²⁷ observed that follow up was managed at a high-level by senior officials coordinated by the two Ministries referred to above. She felt the process demonstrated a lack of commitment.

So in every meeting, we divided labour and were supposed to prepare the work for the next meeting. But in the following meeting, nobody would ask you about that. After 2012 I heard nothing²⁸.

The lack of commitment was also reflected in the shortage of funding available to support the work of inter-governmental bodies mandated to implement the decree.

A respondent from the Ministry of Foreign Affairs acknowledged that a number of issues remained pending but was more hopeful in his comments²⁹. He said that, even though progress on a number of CTF-related issues has a way to go, bilateral cooperation between the two countries is proceeding smoothly. In support of this he referenced the fact that Indonesian experts were being invited to go to Timor-Leste to share their expertise in capacity building; that joint training between Indonesian and Timor-Leste military and police was proceeding; and that 'even the Kopassus Commander was warmly welcomed in Dili on his visit there'.

The official identified two specific areas of bilateral cooperation where significant progress has been accomplished, namely the issue relating to traditional border crossers and the issue of reclaiming the assets of Indonesian citizens who returned to Indonesia after the referendum in 1999. The latter has reached 99% payment completion. However, asset claims by ex-Timorese who became Indonesian citizens remains at a deadlock. 'There is no progress whatsoever. It is extremely difficult to verify their claims of their property. Sometimes the property has been occupied by their relatives who might have a different ideology. But it does not mean that it's lost. Another difficulty is no property standard is available in Timor-Leste. That makes things much more complicated. This technical issue remains unresolved'.

Two other major issues acknowledged by the official were disappearances and ex-refugees in West Timor (NTT). He welcomed the cooperation between Komnas HAM and its Timor-Leste PDHJ counterpart and their investigations but stressed that the issue of disappearances remains delicate for both countries. The issue of ex-refugees in West Timor also remains problematic.

We [Ministry for Foreign Affairs] are disappointed with the local government that refused to call them new residents and even to count them in the census! If they were counted as new residents, it would have raised many questions, particularly public services. On his visit to Kupang in 2011, SBY committed to build houses and public services for them. But the issue has been politicised for the consumption of the local election campaign. We pushed it to the Ministry of Welfare and got approval. But when we went to the Finance Ministry, they did not give us the funding [to build infrastructure]³⁰.

²⁶ Separate interviews with two members of CTF. Jakarta, 16 & 30 October 2014.

²⁷ Interview with a member of Komnas Perempuan. Jakarta, 20 October 2014.

²⁸ Ibid.

²⁹ Interview with a Director of Human Rights at Ministry for Foreign Affairs. Jakarta, 27 October 2014.

³⁰ Interview with a Director of Human Rights at Ministry for Foreign Affairs. Jakarta, on 27 October 2014

This demonstrates that implementation is not always straightforward. Good intentions can be frustrated when a range of stakeholders in two different countries and from different levels of government are involved.

The Ministry of Foreign Affairs is just one part of a larger government bureaucracy 'with no executive power'³¹. It must also work together with the Ministry of Security and Political Affairs and ultimately substantive decisions on follow up are a matter for the president. Most respondents are convinced that President Joko Widodo will not take action on past human rights issues, either in general or in relation to Timor-Leste, because, for one thing, it might expose the government to the issue of reparations.

Some respondents believe KomnasHAM should take the lead to follow up *Chega!* and *Per Memoriam* recommendations on human rights but are concerned that factionalism within the commission has significantly weakened its role.

³¹ Ibid.

WANTED

for CRIMES AGAINST HUMANITY in EAST TIMOR



General
Soeharto



General
Wiranto



General
Benny Murdani



Major General
Adam Damiri



General
Johnny Lumintang



Brig. General
Timbul Silaen



Maj. General
Tyasno
Sudarto



Maj. General
Kiki Sjahnakri



Maj. General
Zakky
Anwar Makarim



Brig. General
Tono
Suratman



General
Feisal Tanjung



Brig. General
Mahidin
Simbolon



Maj. General
Sjafrie
Sjamuddin



General
Mohammad
Yunus Yosfiah



General A. M.
Hendropriyono



General
Prabowo
Subianto



General
Endriartono
Sutarto



General
Rudini



Maj. General
Theo Syafei



Prosecute the Masterminds and Conspirators

Establish the International Tribunal

Stop Impunity in Indonesia

National Alliance for an

International Tribunal for East Timor

Asia Paci

of Red Cross and Red Crescent So

International Impact

5. International Impact

There were significant differences between CTF and CAVR from an international perspective.

CTF was an exclusively bi-lateral initiative between Indonesia and Timor-Leste. It was paid for by both governments, staffed by their respective nationals, and did not inquire into the role of the international community or make recommendations to the international community. Indonesia in particular resisted international input to the CTF process but CTF later engaged the US expert David Cohen and personnel from the Berkeley War Crimes Studies Center to research the issue and this work informed *Per Memoriam*. The CTF terms of reference were strongly criticised by many in the international community and the UN declined to cooperate on the grounds that the CTF's openness to amnesty conflicted with UN policy (see Braithwaite, Charlesworth & Soares 2012; Hirst 2008).

There is no dedicated CTF website and both governments have undertaken only limited international dissemination of the report. The Timorese leaders most closely associated with it, Jose Ramos-Horta and Xanana Gusmao, have promoted it in international forums as a notable contribution to reconciliation between former enemies and, for different reasons, pro-CAVR advocates have emphasised that its key human rights findings and recommendations are shared by CAVR.

It can be said, however, that, as in Indonesia, little is known about *Per Memoriam Ad Spem* internationally and, because it has not been actively disseminated and only selectively endorsed by Timorese leaders, few realise that it rejected amnesty and concluded that the Indonesian military committed crimes against humanity and war crimes in Timor-Leste in 1999. Better exposure may also have helped speed up implementation of the report's positive recommendations which, to date, has been slow, government controlled, and low-profile.

Though a Timorese initiative and institution, CAVR, on the other hand, had a range of international inputs. It was established when the UN acted as the transitional administration in Timor-Leste, benefited from the expertise of UN and other experts, was funded entirely by some 30 international governments and donors, conducted a critical inquiry into the role of the international community on the Timor-Leste question, and made recommendations to the international community including on dissemination.

Following the completion of the CAVR report, a fitful but on-going effort has been made to disseminate it abroad. As president, Xanana Gusmao personally delivered the report to the UN in New York, Geneva and other locations. A website was created, launches, lectures and academic studies have been conducted in several countries, visitors to Dili frequently visit the *Chega!* exhibition, and bodies like the UN, ICTJ and Amnesty International have called for recommendations to be enacted.

Given this background, it is surprising that, with some exceptions, the report is not widely known internationally (Hayner 2011: 42). Institutions dedicated to conflict-resolution and reconciliation in many countries that were donors to CAVR are not aware of the report. Media and opinion-makers in the immediate Asia-Pacific region will refer to South Africa's TRC but not to CAVR.

There are a number of explanations for this mental block. They include (wrong) perceptions that the report is of limited international significance because it concerns only Timor-Leste and only justice, the latter being a matter that Timor-Leste has chosen not to pursue in relation to accused Indonesian perpetrators. The report's profile has also been lowered by its limited availability, the fact that no high-level Timorese individual or institution such as the Catholic Church or a major political party has championed it, and confusion about its official status. On the one hand, Timor-Leste has given the impression that *Chega!* is problematic and has been officially superseded by the CTF report, an impression compounded by the failure of the Parliament to debate and act on the report. On the other hand, Timor-Leste has continued to fund a Post-CAVR Secretariat to disseminate the report and has funded the publication of international editions of the report in English and Portuguese.

The international promotion of the report now underway in 2015 will help to correct these misunderstandings. It is hoped that this will install *Chega!*, to quote Archbishop Desmond Tutu, in 'its rightful place in the international canon of human rights and conflict resolution literature'.



Conclusions & Recommendations

6. Conclusions

The study shows that, for various reasons, the Timor-Leste issue has been marginalised if not dropped from public discourse in Indonesia including from the consciousness and agenda of a cross-section of Indonesian professionals. The study has also shown that, despite their availability, both the *Chega!* and the *Per Memoriam* reports have had little impact on residual public understanding of the issue or on the academic, research, policy, educational or advocacy activities of Indonesian professionals.

Five key findings explain why the Timor-Leste issue languishes in this limbo of memory.

1. First, limited or even no access to both the *Chega!* and *Per Memoriam* reports has left a significant gap in the record and no real alternative to the version of events propagated by the Soeharto regime and its latter-day defenders.
2. Second, the state has not addressed the broad issue of accountability for the past so the need to discuss Timor-Leste is remarkably low.
3. Third, contemporary memory is largely the memory of Indonesian returned soldiers who do not want to connect the past and the present. They view the past from a defensive and nationalist perspective and are reluctant to concede anything that might compromise this way of remembering or implicate them.
4. Fourth, Timor-Leste is a blank chapter in Indonesia's history textbooks.
5. And finally, the implementation of *Per Memoriam's* recommendations, though officially agreed to by both governments, has been removed from the public domain and addressed at high-official level and mainly limited to the non-human rights questions of assets and joint border administration.

7. Recommendations

To rescue the Timor-Leste issue and to ensure that the important recommendations in *Chega!* and *Per Memoriam* are implemented for the benefit of all stakeholders, most particularly victims, this study proposes the following recommendations:

1. That a public inquiry, chaired by former President SBY, be held into the implementation of recommendations common to *Chega* and *Per Memoriam* with a view to evaluating progress on their implementation and hearing from relevant stakeholders, including both governments, on problems affecting implementation and ways forward.
2. That the Indonesian government includes the history of human rights in Timor-Leste in the country's national history and other relevant curricula and utilises the *Per Memoriam* and *Chega!* reports for this purpose in order to ensure that the younger generation learn the truth of the past and the importance of preventing human rights violations.
3. That the government incorporates the history of human rights in Timor-Leste in the curriculum of the military and police academies in order to equip the younger generation of security personnel with a concrete understanding of human rights, international humanitarian law and the cost of impunity.
4. That the government addresses the problem of disappearances by enacting the CTF recommendation on the issue and supporting the work of Komnas HAM in identifying disappeared persons and locating and addressing the needs and rights of separated children.
5. That the governments of Timor-Leste and Indonesia initiate a comprehensive inquiry into the situation of ex-East Timorese refugees in West Timor with a view to forming a fresh set of policies and high-level initiatives to address outstanding issues. The inquiry should include hearing the freely expressed views and recommendations of the ex-refugees, but also of local residents, local government, churches and NGOs.
6. That the academic community, consistent with its mission of independent critical thinking and professional integrity, takes the initiative individually and collectively to reclaim and teach Indonesia's past history wholistically including Timor-Leste's significant place in that story.

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Appendix on research methodology

This study employed two major methodologies. First, it undertook a desk-study to examine two key documents: *Chega!* and *Per Memoriam ad Spem* and the most relevant literature that discussed these two documents. This stage aimed at clearing the ground in order to formulate research questions and to identify potential interviewees.

Second, the study involved in-depth interviews, focus group discussions and public lectures. Interviews targeted persons who were well-placed to provide credible opinions and judgements on *Chega!* and *Per Memoriam* from different angles. These respondents included state and non-state actors with past or current involvement in national politics and who could be expected to be knowledgeable about government policies, human rights and the Timor Leste issue.

Some 30 respondents based in Jakarta were identified. Of these, 23 respondents agreed to in-depth interviews, while others declined. The latter includes Lemhanas, the headquarters of the military, the Ministry for Education, some journalists and the Attorney General. Most of these respondents either did not respond to interview requests or answered that they were not in a position to participate in the survey.

A small number of focus group discussions were held with media, academics and NGOs. In addition, lectures on the reports were given in nine cities across Indonesia and were followed by extensive question and answer forums. Participants were typically university staff and students from political science and related faculties. Lectures were all very well organised by student associations and/or faculty staff and were well attended, open, frank and positive. University staff also delivered presentations and answered questions.

Information gathered in these different ways was then categorised and analysed according to themes in order to determine patterns of responses among respondents. After cross-checking with independent sources, the findings were presented in the form of this study.

The authors

Budi Hernawan is Research Fellow at Abdurrahman Wahid Centre for Interfaith Dialogue and Peace of the University of Indonesia and Lecturer at Paramadina Graduate School of Diplomacy.

Pat Walsh was an adviser to the CAVR and to its successor the Post-CAVR Secretariat. He is a senior adviser and member of AJAR's regional board.



CAVR hatudu duni katak aifunan mos
bele moris iha kadeia ida

CAVR has shown that flowers can grow
in a prison

