

ACKNOWLEDGMENTS

This Special Report owes much to the fine work that has been done in the form of reports and articles by many Timorese and international organizations and individuals. During numerous visits to Dili, I conducted in-depth interviews with as many participants as I could, meeting with most of them several times. Among those I interviewed I was fortunate to find a number of key individuals who, despite the demands of their jobs, generously allowed me to consult them repeatedly and who steered me towards relevant documents and sources of information. I owe a particular debt of gratitude to them. I have also benefited enormously from the database of the Serious Crimes Unit and the CD/ROMs of the Judgments, interlocutory motions, trial transcripts, and Indictments in the cases before the Special Panels and Court of Appeal that were made available to me by Judge Coordinator Phillip Rapoza and Deputy Prosecutor General for Serious Crimes Carl DeFaria. The Judicial System Monitoring Programme (JSMP) and its director, Tiago Sarmiento, generously provided me with CD/ROMS of all of their reports and other publications on the Serious Crimes process. I am also grateful to Special Representative of the Secretary-General Sukehiro Hasegawa, and to his staff, for their kindness and hospitality and for furnishing me with a number of important documents.

One of my goals in this report is to convey, as much as I am able, the views and experiences of the individuals I interviewed. It is they who know the process most intimately and their perspective, while by no means the whole story, is an essential part of it. In many cases, because of fear of reprisal from the organizations they work for, they are unable to express their views publicly. In such cases, and where they have requested I do so, I have kept their identities confidential. In an organization genuinely devoted to transparency, such fear of retaliation would not be a serious problem, but unfortunately it is very real. It is also for this reason that I do not thank by name some of the individuals who were of great assistance in providing advice, information, and documentation for this report.

I also express my gratitude to the individuals who read parts of my report and offered comments, criticisms, and in some cases additional documentation. This especially includes the Portuguese-Tetum translation expert, who generously assisted in the preparation of the Appendix, and John Rough, who provided key support as well as astute analysis on that part of the report. I thank as well my friends in Indonesia who contributed a valuable perspective on various topics: Asmara Nababan, Aviva Nababan, and Gregory Churchill. I also consulted my colleagues at the International Center for Transitional Justice (ICTJ), Caitlin Reiger and Marieke Wierda. Several other individuals read the entire report and offered extremely detailed criticisms, factual corrections, and suggestions. Mere thanks are not enough, but suffice it to say that I benefited enormously from their expert advice. They include Dr. Sidney Jones, Professor Suzannah Linton, Leigh-Ashley Lipscomb, and Barbara Oliveira.

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Rocky Point, O'ahu
May 2006

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Indifference and Accountability

The United Nations and the Politics of International Justice in East Timor

The goals of this report are fourfold: (1) to provide an overall assessment of the “hybrid” UN-sponsored Serious Crimes process in East Timor; (2) to analyze the performance of the various structural components of that process; (3) to examine the legacy of the Serious Crimes enterprise; and (4) to discuss the lessons to be learned from the five-year experience of the United Nations in seeking justice for the people of East Timor.

The report’s conclusions are based upon a comprehensive and detailed analysis of a number of key areas and a full assessment of the jurisprudence of the trials. It draws heavily upon hundreds of hours of interviews with key participants in every aspect of the Serious Crimes process. The report demonstrates that, on the whole, the process was so deeply flawed from the beginning that, despite the important and successful efforts of key individuals to make structural improvements, egregious problems remained until the very end. These problems are serious enough to at least call into question whether important aspects of the process as a whole met international standards. Further, an analysis of the impact of these problems upon trial and appellate proceedings and Judgments provides substantive grounds for questioning the basic fairness of a significant number of the Serious Crimes trials, the adequacy of the appeals process, and, hence, the legitimacy of some of the ensuing convictions.

One of the questions this report addresses is why this state of affairs was allowed to persist for so long. This is a question that must be answered if the “lessons learned” from East Timor are to be a guide for future tribunals and for the UN in its ongoing role of administering international judicial institutions.

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