

THE DYNAMICS OF TRANSITIONAL JUSTICE

INTERNATIONAL MODELS AND
LOCAL REALITIES IN EAST TIMOR

LIA KENT

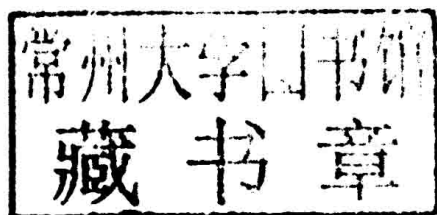
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The Dynamics of Transitional Justice

The Dynamics of Transitional Justice draws on the case of East Timor in order to reassess how transitional justice mechanisms actually play out at the local level. Transitional justice mechanisms – including trials and truth commissions – have become firmly entrenched as part of the United Nations ‘toolkit’ for successful post-conflict recovery. It is now commonly assumed that, by establishing individual accountability for human rights violations, and initiating truth-seeking and reconciliation programmes, individuals and societies will be assisted to ‘come to terms’ with the violent past and states will make the ‘transition’ to peaceful, stable, liberal democracies. Set against the backdrop of East Timor’s referendum and the widespread violence of 1999, this book interrogates the gap between the official claims made for transitional justice and local expectations. Drawing on a wide range of sources, including extensive in-depth interviews with victims/survivors, community leaders and other actors, it produces a nuanced and critical account of the complex interplay between internationally sponsored trials and truth commissions, national justice agendas and local priorities. *The Dynamics of Transitional Justice* fills a significant gap in the existing social science literature on transitional justice, and offers new insights for researchers and practitioners alike.

Lia Kent is a Postdoctoral Fellow in the School of International, Political and Strategic Studies at the Australian National University.

Transitional Justice
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The study of justice in transition has emerged as one of the most diverse and intellectually exciting developments in the social sciences. From its origins in human rights activism and comparative political science, the field is increasingly characterised by its geographic and disciplinary breadth. This series aims to publish the most innovative scholarship from a range of disciplines working on transitional-justice-related topics, including law, sociology, criminology, psychology, anthropology, political science, development studies and international relations.

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If justice doesn't come, we will still dream of justice, we will still scream for justice.

(José, Liquica)

No justice . . . seems possible or thinkable without the principle of some responsibility . . . before the ghosts of those who are not yet born or who are already dead.

(Derrida 1994: xix)

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Lia Kent
December 2011

Glossary of terms

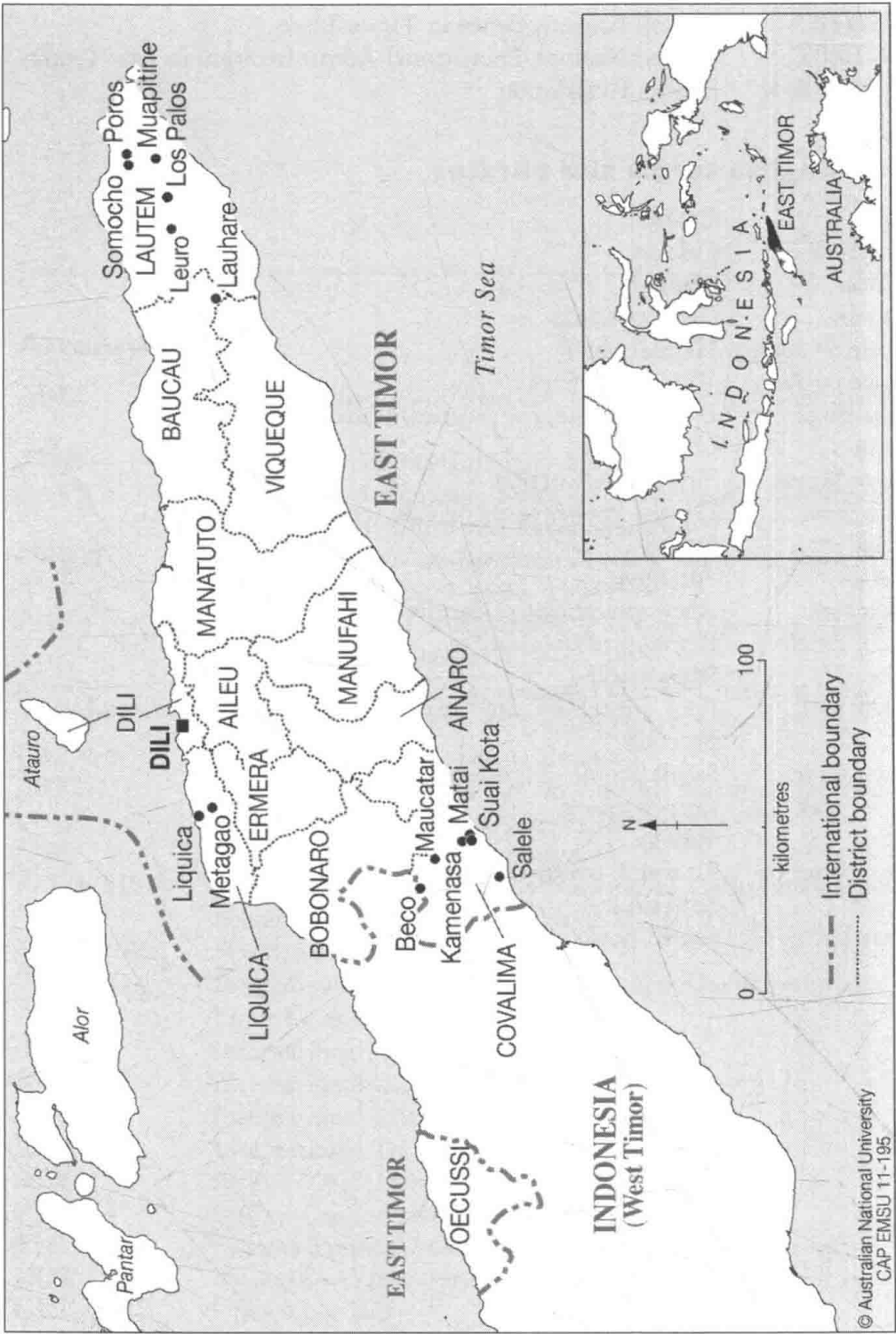
Acronyms

ABRI	<i>Angkatan Bersenjata Republik Indonesia</i> (Indonesian Armed Forces)
AMP	Alliance of the Parliamentary Majority
CAVR	<i>Comissão de Acolhimento, Verdade e Reconciliação</i> (Commission for Reception, Truth and Reconciliation)
CNRM	<i>Conselho Nacional de Resistência Maubere</i> (National Council of Maubere Resistance) (1988–1998)
CNRT	<i>Conselho Nacional de Resistência Timorese</i> (National Council for Timorese Resistance) (1998–2001)
CNRT	<i>Conselho Nacional de Reconstrução Timorese</i> (National Council for the Reconstruction of Timor-Leste) (2007–current)
CRP	Community Reconciliation Process
CRRN	<i>Concelho Revolucionário de Resistência Nacional</i> (National Council for Revolutionary Resistance) (1981–87)
CTF	Truth and Friendship Commission
FALINTIL	<i>Forças Armadas de Libertação Nacional de Timor-Leste</i> (Armed Forces for the National Liberation of East Timor)
FOKUPERS	Women's Communication Forum
FRETILIN	<i>Frente Revolucionária de Timor-Leste Independente</i> (Revolutionary Front for an Independent East Timor)
ICC	International Criminal Court
ICTJ	International Center for Transitional Justice
ICTR	International Criminal Tribunal for Rwanda
ICTY	International Tribunal for the Former Yugoslavia
SCIT	Serious Crimes Investigations Team
SCIU	Serious Crimes Investigations Unit
TNI	<i>Tentara Nasional Indonesia</i> (Indonesian National Army)
UDT	<i>União Democrática Timorese</i> (Timorese Democratic Union)
UN	United Nations
UNAMET	United Nations Assistance Mission in East Timor

UNMISET	United Nations Mission of Support in East Timor
UNMIT	United Nations Integrated Mission in Timor Leste
UNOTIL	United Nations Office in Timor Leste
UNTAET	United Nations Transitional Administration in East Timor
Yayasan Hak	Rights Foundation

Non-English terms and phrases

Adat	Custom
Ai farina	Cassava
Aldeia	Hamlet
Cadeira	Chair/position
Chefe de Aldeia	Hamlet chief
Chefe de Suco	Village chief
Ema Bo'ot	Big people (ie, the political leadership)
Funu	Conflict
Laran Moras	Sick inside/worried
Lian Nian	Lit. the 'owner of the words' (customary leader)
Lulik	Sacred
Malae	Foreigner
Matebian	Ancestors/ghosts of the dead
Mate Restu	Remains of the dead
Moe	Shy/ashamed
Nahe Biti	Lit. 'stretching the mat' (customary dispute resolution process)
Povu Ki'ik	Small people (ie, ordinary people)
Rate La'ek	Empty graves
Suco	Village
Tau matan ba	To watch over/look after
Terus	Suffering
Uma Lulik	Sacred house



Map of East Timor (Cartographic Services, ANU College of Asia and the Pacific, the Australian National University)

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Introduction

The global celebration of transitional justice and the East Timor reality

On a hot, muggy afternoon in the sleepy town of Liquica, East Timor, I sit down to speak with José on the veranda of his modest home, a few blocks from the church where the massacre of April 1999 occurred, in which more than sixty people were killed by the *Besi Merah Putih* (Red and White Iron) militia group. As we drink sweet, black coffee, José begins by explaining to me the origins of the long machete scar that begins behind his ear and runs diagonally down his neck. He tells me how he managed to survive the militia's assault and protect his young son by covering him with his body. After recounting his survival story, José turns quickly to his preoccupation with the present. José is well educated, and was employed by the Commission for Reception, Truth and Reconciliation (CAVR) as a victim support worker. He also told his own story as part of the CAVR's truth-seeking process, and has been interviewed on numerous occasions by serious crimes investigators. José expresses deep frustration at the lack of practical outcomes from transitional justice and says that he feels the government has 'lied' to him. 'We keep creating commissions but we don't have a solution,' he says. José speaks forcefully about his desire for the Indonesian military who orchestrated the massacre to be brought to justice. Another of his main preoccupations is his machete wounds, which still cause him pain and headaches, and worry about how he will pay for his child's schooling. 'I can't work hard because of my injuries. But my child needs to go to school so what can I do?'

In the district of Covalima a few weeks later – the site of another horrific church massacre, in September 1999 – I am introduced to two members of a local widows' group called *Mate Restu* (leftovers from the dead). Both women had been interviewed by serious crimes investigators a number of times and had participated in the CAVR's truth-seeking and reconciliation process. The women now have stalls at the local market selling basic items such as instant noodles, sugar, cigarettes and condensed milk. When I request an interview with them, they make clear their desire not to speak to me. As we sit perched on wooden boxes inside their small market stall, the women ask, 'What are we to talk about? Whether we talk or not it is just the same. It just wastes our time.' 'Many people have come and taken our information', they say. 'What we want is justice. And we need the government to provide assistance for our children to go to school.'

There is a profound sense of frustration and disappointment with the lack of 'results' from the transitional justice process in East Timor. This disjuncture between the rhetorical claims made for transitional justice and the local expressions of disenchantment with its achievements is something I have been constantly struck by throughout my experiences in East Timor – first as a human rights officer during the United Nations Transitional Administration in East Timor (UNTAET) period, and later as a researcher. I wondered how it was that a process that claimed for itself the capacity to deliver 'justice', to establish the 'truth' and foster reconciliation and nation-building, could engender such disillusionment amongst those whose interests it purported to serve. While some of the reasons, I knew, related to the political constraints under which East Timor's transitional justice process was established – which resulted in an inability to hold high-level members of the Indonesian military to account – I also thought that this disparity might reflect deeper issues. My intuition was that the ways in which transitional justice mechanisms conceptualise conflict, justice and transition did not encapsulate the complexities and lived realities of these issues. It was this that drove me to explore the divergence between the official claims made for transitional justice and community discontent in greater depth.

Transitional justice mechanisms – including trials and truth commissions – have become firmly entrenched as part of the United Nations (UN) 'tool-kit' for successful post-conflict recovery. It is now commonly assumed that by establishing individual accountability for human rights violations, and initiating truth-seeking and reconciliation programmes, individuals and societies will be assisted to 'come to terms' with violent pasts, and states will make the transition to peaceful, stable, liberal democracies. Set against the backdrop of East Timor's referendum and the widespread violence of 1999, this book unsettles these assumptions by exploring the social and political realities of transitional justice in East Timor. It seeks to unravel the complex interplay between internationally sponsored trials and truth commissions, the nation-building and justice agendas promoted by East Timor's political elite, and local priorities, practices and expectations of justice. In doing so, it aims to contribute to a more nuanced and grounded understanding of the complexities of both 'justice' and 'transition' in East Timor.

While the findings of this book are specific to East Timor, they also have broader applicability. Despite burgeoning scholarship in the transitional justice field, relatively little attention has been paid to the ways in which local communities engage with, and seek to make sense of, these concepts and practices within particular social, political and cultural contexts. Examining these dynamics can help to unsettle the 'seductive' assumptions (as per McEvoy 2008) that pervade the discourse and practice of transitional justice, and may also open up new and unexpected possibilities (see Shaw and Waldorf 2010). Most importantly, it can contribute to a more nuanced appreciation of the intricate and long-term justice issues facing individuals, communities and societies emerging from debilitating periods of conflict.

The aims of this book are both practical and scholarly. I hope that this book will be of interest to practitioners involved in the design, establishment and implementation of transitional justice mechanisms, as well as scholars, justice activists and non-governmental organisations (NGOs). Specifically, I hope that the findings of this book may assist these actors to reflect more deeply on the possibilities and limitations, contradictions and silences of transitional justice, and stimulate an interest in the development of more locally informed responses to complex legacies of violence.

The remainder of this chapter sets the scene for the in-depth exploration of the encounter between transitional justice norms and practices and local realities in East Timor that occupies the rest of the book. It first charts the global expansion and celebration of transitional justice discourse and practice, and situates East Timor's transitional justice process within these developments. It then provides a brief background to the establishment of the UN-sponsored transitional justice process in East Timor, which included a serious crimes investigations and prosecutions process (Serious Crimes Process) and a Commission for Reception, Truth and Reconciliation (CAVR). I finish by outlining a number of the institutional shortcomings of this process that have contributed to widespread dissatisfaction amongst the community.

The global celebration of transitional justice discourse and practice

It has become almost a truism to assert that societies emerging from protracted periods of conflict need to find ways of 'coming to terms' with past human rights abuses. In recent decades, a set of mechanisms and tools known as 'transitional justice' has been developed to assist states to confront the wrongdoings of repressive predecessor regimes and thereby make the shift from violent pasts to peaceful futures. Although transitional justice may encompass a broad range of measures such as reparations policies, institutional reform, lustration (the vetting of public officials), memorialisation, and reforms to police, prisons and judiciary, the most popular mechanisms are criminal trials and truth commissions. Transitional justice is more than just a collection of tools or mechanisms, however; it is also a 'discourse' that assumes a relationship between the promotion of the liberal values of individual rights and liberties, the rule of law and democracy, and the achievement of peace and stability in post-conflict societies. These assumptions are often taken for granted by transitional justice policymakers.

There is now a celebration of transitional justice practice – reflected in the proliferation of international courts and tribunals around the globe, including the recently created International Criminal Court (ICC), and the growing number of truth commissions. Indeed, as Stanley (2009: 56) observes, forty international courts and tribunals and over thirty-five truth commissions have been established over the last three decades. The emergence of non-governmental

institutions, such as the International Center for Transitional Justice, in New York, and the birth of a new academic journal, the *International Journal for Transitional Justice*, are further testament to the growing popularity of transitional justice practice and discourse (see Moon 2008: 3).

The proliferation of transitional justice mechanisms has gone hand in hand with an expansion of the discourse regarding what these mechanisms can accomplish. Once viewed simply as a means of contributing to the redress of past violations and the development of an official historical record, transitional justice is now also claimed to facilitate broader processes of societal transformation and to contribute to ambitious goals such as reconciliation, nation-building and peace. Through the official investigation and public exposure of past human rights abuses, transitional justice is claimed to provide a rite of political passage towards the creation of a liberal political order that embeds values such as the rule of law and the rights of individuals.

Recent years have also seen a shift away from the dichotomous debate about the relative merits of truth commissions versus trials. Previously, proponents of truth commissions argued that the broad and flexible mandates of these mechanisms made them more 'victim-centred' than the adversarial and confrontational nature of judicial proceedings, and that they promote accountability, deterrence, reconciliation, truth and the rule of law more successfully than criminal tribunals (see Waldorf 2006: 16). By contrast, those who favour trials suggested that criminal accountability for human rights abuses provide more 'just' outcomes for victims than truth commissions, thereby creating a firmer basis for societal reconciliation. There is now a growing recognition that trials and truth commissions can positively complement each other and, recent transitional justice processes, including those established in East Timor, Argentina, Peru and Sierra Leone, have adopted a combination of mechanisms (see Lambourne 2009: 33; Leebaw 2008: 102; UNSG 2004: 9).

The current era is also marked by an apparent shift away from 'one-size-fits-all' approaches to transitional justice, towards a greater emphasis on 'local context'. Evidence of this can be seen in the 2004 report of the UN Secretary General, *The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies*, which calls for greater attention to indigenous and informal processes for administering justice or settling disputes on the basis that this will help to make transitional justice processes more meaningful to informal populations (UNSG 2004: para 36). The enthusiasm for incorporating local justice practices into formal transitional justice processes is apparent in the UN-sponsored truth commissions of both East Timor and Sierra Leone (Shaw and Waldorf 2010: 15; Waldorf 2006: 3).

In a different way, the renewed attention to local context is reflected in the UN's growing embrace of 'hybrid' or internationalised tribunals. Located within the country where the crimes were committed, and comprising both national and international staff and judges, hybrid tribunals are sometimes claimed to promise greater local legitimacy than international tribunals: they