

Research Program on

**HUMAN RIGHTS** and  
**PEACE-BUILDING**

Stockholm School of Theology  
Sweden



Justice and Reconciliation  
– Two Contexts, Two Reflections

Presentations held at the Swedish Forum for Human Rights  
November 2007  
Stockholm, Sweden

Augusto Castro, Lima, Perú  
Augustinho de Vasconcelos, Dili, Timor-Leste

Research Paper Series No. 6

2008

Justice and Reconciliation  
—  
Two Contexts, Two Reflections

Augusto Castro  
Líma, Perú

and

Augustinho de Vasconcelos  
Dili, Timor-Leste

Presentations held at the  
Swedish Forum for Human Rights  
November 2007  
Stockholm, Sweden

**Paper No. 6**  
**Research Paper Series**  
**Research Program on Human Rights and Peace-Building**

*Scripture quotations are from the New American Standard Bible © 1995.*

**Teologiska högskolan Stockholm**  
**Åkeshovsvägen 29, SE 168 39 Bromma**  
**Layout omslag: Sophia Tonneman**  
**© Författaren**  
**Tryck: Elanders Sverige AB, Vällingby, Sweden, 2008**  
**ISSN: 1654-7322**  
**ISBN: 978-91-88906-55-7**

# Content

<i>Authors</i> .....	<i>iv</i>
----------------------	-----------

<b><i>At the Heart of Reconciliation is Justice and at the Heart of Justice is Forgiveness</i></b> .....	<b><i>1</i></b>
--	-----------------

1. <i>Introduction</i> .....	3
2. <i>At the heart of reconciliation is justice</i> .....	4
2.1 So-called “commutative” justice.....	4
2.2 Distributive justice .....	5
2.3 Corrective justice .....	6
2.4 At the heart of justice is forgiveness.....	7
2.5 The true sense of forgiveness .....	8
2.6 The relationship between justice and forgiveness.....	9
2.7 Forgiveness: an exercise in freedom and a basis for building the future.....	10
3. <i>Final thoughts</i> .....	11

<b><i>On the Balance Between Justice and Reconciliation</i></b> .....	<b><i>13</i></b>
---	------------------

1. <i>Introduction</i> .....	15
2. <i>Brief history</i> .....	15
3. <i>Justice and reconciliation</i> .....	17
4. <i>The reconciliation process</i> .....	18
4.1 Reconciliation as a “Process or Goal”? .....	21
4.2 Reconciliation “a Reflection of Theology” .....	21
5. <i>Conclusion and closing remark</i> .....	22

<b><i>Research Paper Series</i></b> .....	<b><i>23</i></b>
---	------------------

## Authors

Professor Augusto Castro, Catholic University of Perú, Lima, Perú, was the Director of the Area of Reconciliation in the Truth and Reconciliation Commission in Perú.

Reverend Augustinho de Vasconcelos was National Commissioner in the Commission for Reception, Truth and Reconciliation (CAVR) in East Timor, and is presently in charge of the post-CAVR Secretariat in Dili, East Timor.

At the Heart of Reconciliation is Justice and  
at the Heart of Justice is Forgiveness

Augusto Castro, Perú  
2007



# 1. Introduction

One of the concerns of the Truth and Reconciliation Commission (*Comisión de la Verdad y Reconciliación*) in Peru was how to define the relationship between justice and reconciliation, and more specifically, between justice and forgiveness. The issue was and is of great importance since we are faced with issues that seem to be not only unrelated but which some would think are totally opposite. The question we asked ourselves was what is the appropriate attitude towards the victim compared with the appropriate attitude towards the person that has committed crimes by violating the rights and the life of people? How should we, in this case, interpret justice and how should we interpret reconciliation and forgiveness? What should be done to avoid impunity? But at the same time how should we forgive?

Despite the complexity of the problems that the Truth and Reconciliation Commission (*Comisión de la Verdad y Reconciliación*) had to face a closer look will show us that reconciliation – and of course forgiveness – are closely linked to justice and vice versa. In our opinion, as the title of this presentation suggests, at the heart of reconciliation is justice and we are not mistaken in stating that at the heart of justice is forgiveness.

Naturally our view on forgiveness changes if, instead of looking at the role of the victim, we look at the role of the victimizer (perpetrator) or criminal. If the attitude of the criminal is one of sincere repentance, the problem becomes thorny and complicated. In reality we are more likely to forgive someone who repents than someone who doesn't; in that sense it is clear that there is no forgiveness without repentance, justice and reparation. But what happens if the criminal repents and the victim doesn't forgive? What happens if the justice system fulfils its role but society is not reconciled and does not forgive? Seemingly God forgives any kind of sin but mankind cannot.

It's worth specifying here what we mean by reconciliation and what we mean by justice because, although we consider these two concepts are linked, they are not the same. We understand reconciliation as the rebuilding of a social pact or agreement broken by violence or war. In reconciliation the matter of forgiveness acquires an overriding role. Reconciliation restores and forgiveness allows the building of foundations for the future. We understand justice as giving someone their just deserts and then we see the importance of matters such as equality, citizenship and rights; these are fundamental in bringing us closer to the idea of justice.



## 2. At the heart of reconciliation is justice

We maintain that justice is a central component of any proposal concerning reconciliation and obviously citizenship. Justice has been traditionally understood as proportional and measured as one of its constituent elements is equality, for which reason justice has expressed, since time immemorial, concerns about the moral conduct of human beings. Justice is, without doubt, a virtue.

In our view, justice opens doors to reconciliation. Justice by “giving each person their just deserts” seeks to preserve harmony within a community or social institutions. To administer justice is to re-establish social harmony, and in that sense administering justice re-establishes relationships between people, between the victims and the victimizers (perpetrators). In addition damage is repaired, what has been destroyed is restored and what has been divided is reunited. In short a community is re-established.

We try, in this way, to get justice to face up to the constituent problems of the community, because that is, in our opinion, what defines the virtue of justice. We will try to show this in three ways.

### 2.1 So-called “commutative” justice

A first scope of justice is that which talks about the reciprocal links that exist in a community. As equal members of a society, any action against one member affects the rest. A crime against one is a crime against all. Reciprocity or solidarity expresses the principle of transitivity or commutativity of justice. But it's more than that. Vengeance can only be overcome when a punishment is applied by community justice in the name of the victim. In this sense, no individual has the right to administer justice alone. That is vengeance not justice.

Vengeance tends to be seen as an expression of justice and a way of satisfying the important wishes of the victim. Thus vengeance appears as a spontaneous response and becomes legitimate because of the harm suffered. Nevertheless vengeance has its limitations in overcoming a given situation and rebuilding because the craving for vengeance, once realized, does not appear to satisfy either the spiritual serenity or social tranquillity which is being sought; and also because vengeance tends to generate spiralling violence which is enormously destructive for society. Vengeance resolves neither personal nor

social problems. On the contrary it increases them. Unlike vengeance, justice is born when members of a community are united and there is a feeling of solidarity amongst them. It is this reality that enables communal justice to be talked about.

Punishment, for its part, belongs to the vocabulary of commutative justice and cannot be conceptualised as vengeance. Punishment looks to repair the wound to society generated by the crime. It tries to rehabilitate the offender in order to reincorporate the latter back into the dynamics of society and, in short, to restore the offender's citizenship. The objective of a punishment or sanction is the rehabilitation of the person who commits the crime and that person's reincorporation back into social life. Punishment, in addition to being a tool aimed at repairing damage, also shows that the community does not forget the crimes of those who act against it; an exemplary punishment at the time signifies the desire to remember that those who commit crimes do not have impunity, which helps to educate the whole community.

Here the important thing to understand is that justice is administered in the name of the community because whoever violated, killed or tortured did so not just against the victim but against the whole community or nation. In this sense the criminal has damaged the whole of society and all members of the community; not only has violence been committed against one but against all and therefore justice is administered in the name of the group and therefore the feeling of vengeance of a family towards another family is defeated. Indifference towards a crime or criminal clearly expresses the absence of a communal feeling which is so important for administering justice. We must point out that justice only exists when it is administered by the community; which shows that it is the feeling of communal solidarity which creates justice.

## 2.2 Distributive justice

A second scope of justice is that of re-establishing communal unity by overcoming and resolving the problems that were the origin of the conflict and the break up of the community. In the vast majority of cases the conflicts that generate the rupture are linked to the distribution of property in the community.

Poverty is quite illuminating in this respect but is by no means unique. For example, if a population does not have the minimum requirements to exist then democracy and citizenship are impossible because these are based on equality, in other words social justice. Each proposal will come to nothing if the

population is immersed in a world of misery and need. In Peru, where a large majority of people are struggling with poverty and misery, it will be difficult to build up citizenship and democracy and to feel that there is justice. The violence that Peru has lived through has been a fertile breeding ground for creating misery and abandoning the people. Even arguments in support of terrorism have been based on the existence of the prevailing injustice in Peru.

Here equality is central to the issue. Justice shows how property must be distributed in a community. There may be many criteria but we all recognise merit and need as basic.

Merit refers to the fact that there are individuals in a community who have more wisdom, value and experience. In this respect in various communities property is given to the wisest, the bravest or the oldest amongst others; to not respect this means to fight against the feeling of justice that recognises merit when distributing property. In the case of need, equality means for example to give more to those who have less and to demand more from those who have more to give; it is as unjust to give more to those who already have as to not give to those who have a need. In this way distributive justice looks after the material needs of individuals and their potential to achieve.

The importance of this scope of justice is to recognise that human beings live in communities and therefore proportional and equal division of wealth and property of a community is crucial for development. A bad distribution of property will create permanent conflict and this will be harmful to the functioning of the community. Justice meaning equality or social justice helps guide social organization that enables all members of the community to achieve their potential. Justice is seen as an important tool in the life of a community and for people to achieve their potential.

## 2.3 Corrective justice

A third scope of justice is that which is found in relations between individuals. As we have just pointed out firstly there is a sense of communal solidarity which gives birth to justice. Then there are the criteria for an orderly communal life that face up to the differences between individuals with the criteria for equality. Finally we have a new sense of justice, more specific and concrete and which is corrective and repairing by nature. It's about the practical administering of justice that seeks to repair the damage that has been caused and to punish offences committed. Administering judicial reparation demands "measure, balance and impartiality". In other words justice is demanded.

Administering justice in a community is principally about repairing the damage caused and punishing the crime. The victims that have suffered the death of a family member, the destruction of their property or a deterioration in their own lives and similarly a community that has lost its members, its world and its relationships, require reparations and the administration of justice. It's about repairing, where possible, the deterioration and rupture of the social fabric and the individual psychological breakdown of people.

The demand for reparations in the Final Report of the Truth and Reconciliation Commission (*Informe Final de la Comisión de la Verdad y Reconciliación*) and the proposals to administer justice to some of the crimes committed, are tools and practices that seek to end the imbalances originating from conflict and serve to secure a new social agreement and to seek reconciliation in the country. This type of justice demands that Peruvian society, through the State, makes reparation to the thousands of victims and creates the conditions for never repeating the tragedy of war.

In this case the administration of justice is closely linked with the reestablishment of social harmony. Punishments seek to be corrective because the idea is to reassert the role of the community and to rehabilitate the persons who have committed crimes.

## 2.4 At the heart of justice is forgiveness

If the idea of justice is closely linked to the feeling of communal solidarity, concern for the weakest members in the community and the effort through corrective measures and reparations, then it seems clear to us to assert that justice is at the heart of reconciliation.

Reconciliation relies on a justice that presupposes solidarity and not vengeance, that is concerned about those who have less, and finally on efforts to correct and overcome human defects. Isn't it the job of reconciliation to reunite those who have been split up, to repair the damage caused and to rebuild social pacts? Naturally justice is the foundation of reconciliation.

## 2.5 The true sense of forgiveness

I think that so far we can understand that justice is a very important instrument of communal life and something that enables a society to be reconciled. But the fundamental consideration is about the relationship between forgiveness and justice. What exactly is the relationship between forgiveness and justice? This seems to us to be tricky and problematic not only in theory but in practice and represents a big challenge to the Truth and Reconciliation Commission (*Comisión de la Verdad y Reconciliación*).

As a child I learnt that there were five things necessary for a priest to forgive sins in the name of God: an examination of the conscience; heartfelt pain; compensation; verbal confession; and finally a feeling of satisfaction. These 5 things set out what was needed to obtain forgiveness.

A glance at this Christian concept of forgiveness shows that it places various demands on the shoulders of the person who has committed an offence or sin: (first) a rational awareness of the error committed; (second) feelings and repentance; (third) a resolve to not repeat the offence; (fourth) a public recognition to the community of the offence; (fifth) reparation. We must be very clear that to be forgiven, from this perspective, demands a radical change of attitude. There is no forgiveness if the requirements are not met. How can there be forgiveness for someone who does not repent, does not confess the crime and does not try to repair the damage? In reality the unrepentant person who does not repair the damage and impedes the administration of justice is not interested in forgiveness. In reality that person does not look for forgiveness and that very same person decides it is not necessary.

I have to admit that in the Peruvian experience neither the militants of the *PCP-Sendero Luminoso* (Peru Communist Party – Shining Path) nor the military who have been accused of crimes have asked for forgiveness and naturally have tried to justify their actions. Obviously the Peruvian Commission for Truth and Reconciliation (*Comisión de la Verdad y Reconciliación del Perú*) had no powers. In other words a person who confessed to a crime was acting against him-/herself as there was no pardon or reduction of sentence for confessing crimes to the Commission.

However Christianity maintains that God always forgives. Therefore the requirements above only relate to the person who seeks forgiveness and not to the person offering forgiveness. In fact Christianity speaks of forgiveness “up to seventy times seven”, in other words for ever. In Christianity, he who really and sincerely seeks forgiveness will receive it. Therefore the real question is: should the person who is truly repentant and talks about reform and change be forgiven? For us the answer is yes. This response obliges us to define what

happens with justice.

## 2.6 The relationship between justice and forgiveness

In our concept he who asks for forgiveness cannot be exempt from justice, because that is fundamental to forgiveness: forgiveness is probably deserved but that person should go to prison. We repeat that there is no forgiveness without justice.

Forgiveness must not be confused with forgetting. Of course to forgive suggests to forget and to get over the offence and damage. But granting an amnesty is not a morally appropriate form of resolving problems of justice because it not only avoids completing a sentence but is an invitation to forget about the crime and all the consequences. In respect of a general pardon (forgiveness) there would have to be a decision on whether granting it really is useful for social and political coexistence.

The Latin American experience is quite explicit on this point. In the case of Peru to forgive human rights violations cannot imply that criminals and perpetrators are exonerated from completing their sentences. The perpetrators of crimes against humanity cannot just be granted an amnesty or be reprieved.

In Peru, as we know, certain social and ethnic groups have been systematically and permanently excluded. We must start recognising that there exist “scars on the soul and body of the poor and excluded”, as Kimberly Theidon says in her book *Entre prójimos. El conflicto armado interno y la política de reconciliación en el Perú*. This is something fundamental for reconciliation.

At this point it is worth reflecting on forgiveness in an unequal society such as Peru. The majority of the victims in peasant communities have been or are Christians; it does not really matter whether they are Evangelicals or Catholics. In general Christianity has been of great help towards the psychological restoration of families and communities. Religious forgiveness as in the case of Uchuraccay, helped to rebuild the town. In Peru, inhabited by Christians (both men and women) this traditional religion has helped to overcome the scars of war.

## 2.7 Forgiveness: an exercise in freedom and a basis for building the future

What does forgiveness mean in the end? Although forgiveness does not exempt payment, sanction or reparation forgiveness is a “gift” from the victim to the person who committed an offence or crime. Forgiveness starts from exercising the greatest human freedom because the victim must get over their pain and by recognising the limitations, the misery and fragility of the human condition want to re-establish links with the community and the future.

In the case of forgiveness this does not imply acceptance of and much less forgetting or denying the offence. On the contrary it means recognising and getting over the offence. “Perdonar” (To forgive) literally means “sobreabundancia del don” (overabundance of gifts). It implies therefore generosity and new grounds for building a future. In the case of asking for forgiveness, repentance can express nothing other than recognition that the damage to the other person has created injustice and enormous inequality. A request for forgiveness assumes this recognition that can only be appreciated through the effort of re-establishing a relationship with the other party and building a new future. Thus forgiveness is expressing a new relationship of equality between the persons involved. Unfortunately where there is no forgiveness, communication and friendly links are not re-established and there can be no reparation or restoration of equality. If there is no forgiveness then justice is simply reduced to sanction or punishment and is nothing more than vengeance.

Forgiveness as a voluntary and free act has the power of restoration. Forgiveness by the victim and the aggrieved party is the only valid type of forgiveness. We stress that forgiveness is incompatible with injustice, forgetting and the granting of an amnesty. Forgiveness can create – and in fact does – amongst a people with old Christian traditional values such as ours, the possibility of reconciliation. Tragically in Peru, in the case of the armed internal conflict, requests for forgiveness have continued to be absent from the perpetrators of the violence who think that what they did was good.

It is worth repeating once more before the end of this presentation that it is one thing for the victim to forgive and another thing for the justice system to absolve the criminal. They are not the same thing. The victim can forgive but the delinquent or criminal must pay his/her debt to society by receiving due punishment because this is the way to show repentance to society.

Finally we are able to state that forgiveness by the victims can generate within them the conditions for their psychological and emotional restoration and at the same time be a basis for facing up to restoration of the social life and

the necessary reforms of the State.

### 3. Final thoughts

When we discuss the topic of forgiveness in relation to justice we consider that forgiveness has distinct possibilities for building coexistence as a cure for the damage done to the psyche of the people and to alleviate the social and political conflict. Therefore we say that at the heart of justice is the decision to forgive.

Without this freedom and generosity to restart the process, it would not be possible to build communal life. It seems to us therefore that forgiveness produces a new kind of relationship between human beings. It is a relationship that is asserted through the equality of people, where all recognise their ability to make mistakes, to cause damage and to commit offences because they are equal; and also because they are capable of getting over this since they are able to forgive.

We have tried to show that the process of reconciliation has as its central issue the question of justice and forgiveness. We have asserted this because it is only possible to build social and political agreements from justice and forgiveness.

Administering justice is not sufficient to create the conditions that reconciliation demands. It is the political and social activity in which the parties involve themselves which give cause for reconciliation. Although reconciliation cannot demand forgiveness it is essential to offer the possibility of forgiveness. To not do so would be to keep on with hate and hostility which rules out the possibility of a civil community. In other words those who become reconciled don't immediately establish a close and deep relationship but are disposed to do so. That is what makes the difference between vengeance and justice. Reconciliation is a process of the whole society that more than just looking at the past is open to the present and faces the future. To speak of reconciliation supposes firstly that it starts with justice and then is disposed towards forgiveness in order to build a community.





# On the Balance Between Justice and Reconciliation

Augustinho de Vasconcelos  
2007



# 1. Introduction

When invited to contribute to the theme of justice and reconciliation, I was thinking if the issue of East Timor would still be relevant to bring up? Or is East Timor no more of interest to the international community, since it has received its independence? I hope this is not the case. Probably the case of East Timor is very relevant, not only for post-conflict countries but also for developed countries in Europe as well as the United States of America.

I have chosen to discuss the *balance between justice and reconciliation*, and to do so on the basis of my working experience with the Commission for Reception, Truth, and Reconciliation (CAVR) in East Timor. I realize, from the very beginning, that this paper does not cover all issues identified in this context. Hopefully, though, it can be complemented and still be a useful lesson for the future.

## 2. Brief history

East Timor was colonized by Portugal for about approximately 450 years and due to this oppression East Timor is today the most underdeveloped country in the Asia-Pacific region. This colonization continued until the fall of the Salazar military regime in Portugal, in early 1974, when it was succeeded by the government of Marcelo Caetano. This change did however not bring any significant changes to the Portuguese colonies, and very much so for East Timor. However, when the "Movimento Forças Armadas (MFA)" launched its revolt on April 25, 1974, (also known as the Carnation revolution), General Spínola was elected President of Portugal. This election opened a new chapter for all Portuguese colonies, including East Timor.

This chapter was marked by giving the right to self-determination through a decolonization process, led by Portugal. However, "the decolonization process" did not go smooth after the formation of political parties in East Timor, in particular after the two big parties Revolutionary Front of Independent East Timor (Fretilin) and Timorese Democratic Union (UDT) were formed. Although various efforts were made by these two major political parties to form a coalition, in order to support the decolonization process, this process failed when the coalition was dismantled.

On August 11, 1975, the UDT launched an armed attack against Fretilin. It was responded by Fretilin on August 20, 1975, and these events forced the Portuguese Authority in East Timor, led by General Lemos Pires, to escape to the nearby Atauro Island and thereby effectively abandon East Timor. Consequently the decolonization had failed and East Timor was in practice trapped between internal political games and international conspiracy. Various efforts and resolutions were taken, including an offer from the Australian Consulate in Portuguese Timor, led by James Dunn, to facilitate a meeting between General Lemos Pires and Fretilin Central Committee (CCF). This effort also came to a deadlock. In order to anticipate the possibility of a large-scale Indonesian military invasion, Fretilin, as a major political party with legitimate support from the population, then proclaimed unilaterally the independence of the Democratic Republic of Timor-Leste (RDTL), on November 28, 1975. In response to this move from Fretilin, representatives of UDT and other parties left East Timor for Indonesia (Kupang) to ask for military support from Indonesia, which then conducted a full-scale invasion into East Timor, beginning in Dili on December 7, 1975.

Though there has been a 25 year long Indonesian occupation, East Timor has gone through various significant changes, especially in the development and education sectors. At the same time, there were in this period, violations of human rights and of the right to self-determination of the East Timorese people. Negotiations between Indonesia and Portugal, under the auspice of the United Nations, were held but with difficulties, and almost every year the United Nations adopted resolutions on the East Timor case until the end of the 1980s. Every year, in this period, Indonesia continued to claim that East Timor was an integral part of Indonesia, even if this claim was questionable historically.

The window of change came with the fall of the New Order regime in Indonesia under General Suharto in 1998. In early June that year the Indonesian Government announced an option for autonomy for East Timor.<sup>1</sup> While efforts now were under way to find a solution for East Timor, a letter to the Indonesian President at the time, B.J. Habibie, from the Australian Prime Minister, dated December 9, proposed that the issue of East Timor could be settled through a "referendum", implying that Indonesia should let East Timor independent if the option of autonomy was rejected. This surprising proposal from Australia had to do with the settlement of the case of New Caledonia, a former French colony.

On January 27, 1999, the Indonesian Government, on the basis of on various considerations, offered the possibility of having a second option, in a

---

<sup>1</sup> This was announced after special meetings held by Coordinating Minister for Politics and Security (MENKOPOLKAM) on June 5, and a Cabinet Meeting on June 9, 1998.

referendum among the people of East Timor. While a draft autonomy proposal was prepared and socialized throughout East Timor, an agreement was signed on May 5, in New York, between Indonesia and Portugal, and the United Nations. This agreement led to a "referendum" in August 1999, where a majority of the people of East Timor opted for independence, and thereby opened yet a new chapter in East Timor's struggle.

### 3. Justice and reconciliation

*Acts committed between the 25th of April 1974 and the 31st of December 1999 that can be considered crimes against humanity, genocide or of war shall be liable to criminal proceedings with the national or international courts.*

Timor-Leste Constitution  
Section 160  
(Serious Crimes)

We have to bear in mind what the Timor-Leste Constitution in its article 160 says, namely that any criminal action, conducted between April 25, 1974 and December 1999, and which can be categorized as crimes against humanity, genocide, or war crime must be tried in a criminal court process, by national or international tribunals.

During 25 years of political conflict in East Timor, there were not only committed serious crimes against humanity. This has been concluded by the International Inspection Commission, KPP-HAM, in 1999. There have also been other crimes committed which were not categorized as serious crimes (see UNTAET Regulation No. 10/2001 on establishment of CAVR, July 13, 2001). In addition to this, in the Democratic Republic of Timor-Leste Constitution Section 162/1 and 2, it is stated that the mandate of the Commission of Reception, Truth and Reconciliation (CAVR) should include the investigation of human rights abuses occurring during the period of conflict and, based on this evidence, make recommendations to the State.

The CAVR Commission also applied the "Community Reconciliation Process" (a combination of a legal process and a traditional system) as an alternative to deal with crimes which are not in the category of "serious". This was made through the Community Reconciliation Process (PRK), which was applicable to the whole 25 years covered in the CAVR mandate. This process has been regarded as an alternative resolution of problems during the present transitional stage. This mechanism was even proposed as an alternative for resolution of minor problems – of any kind – emerging at community level.

One reason was that due to a very limited capacity to control and solve the crimes by regular institutions, this idea was proposed. Generally, though, the resolution of cases from both the past and till today has to be regarded as “very slow” or, using an extreme language, it can be regarded as a “failure” from the judiciary due to its lack of capacity to provide a sense of justice for the community in a timely and effective manner.

Thus, one of the major challenges faced by the people of Timor-Leste today is how to solve human rights violations that occurred in the past effectively in order to achieve a sense of justice especially for the victims and their families. The present slow process signals “incapability” from the legal authorities’ side. Since most of the concerned cases now have been registered but never handled by the judiciary system, this is a major factor contributing to the lack of public trust in the on-going judicial process.

All problems associated with judicial processes in Timor-Leste will be considered by the public as incapacity of the judicial system to provide justice for the community.

The existing judicial institutions in East Timor have been functional since the year 2000. They did not function fully from the beginning as they were supposed to do, however with the exception of the Dili district court.

Being the capital of Timor-Leste, Dili has become the centre for community activities. This has led to migration of youth living in rural areas around Dili to earn their living in town. Because of a high level of urbanization, Dili is also a centre for competition among social organizations, martial art groups, and unorganized city gangs – all of which have contributed to a relatively high rate of crime in Dili. The court has registered 3006 criminal cases occurring in 2006 and 2007. This, for Timor-Leste, very high rate, is excluding a number of previously unresolved cases which makes the figure even higher. This clearly shows, for instance, that it is beyond the capacity of the court to handle them. In order not to overburden the court, an alternative mechanism is needed to handle small crimes; this justifies the importance of community reconciliation.

## 4. The reconciliation process

Because of the prolonged conflict with Indonesia (25 years), the nationhood of Timor-Leste was destroyed: this, so called, third party intervention destroyed East Timorese unity. Differences of opinion and political ideology became wider than before. Oppression by the rich over the poor became stronger, as became the pressure between the strong and the weak. The strategy and politics

of “divide et impera” between groups in East Timor worsened the situation during this long, illegal occupation by Indonesia.

After the hardships of authoritarian rule, including a strong military regime, had ended, East Timor became an independent state. It wanted to be characterized by “openness, reformation and democracy”. The Timorese people seem, in this new situation, to ignore what happened in the past. Even more so, systematic discussions on a legal and political settlement of the past’s problems have not become a priority for legislative, executive and judicative bodies’ agenda. Sometimes it is included in the agenda of these agencies, but people tend to be pragmatic and set aside existing procedures and their goals. Timor-Leste simply does not have appropriate structure to handle past traumatic cases. On the other hand, the effects of the trauma of the past have come to present themselves in the form of violent behaviour of communities, of resistance, or of social disobedience, something that for instance occurred in 2006 and 2007.

In order to reunite the people of Timor-Leste in a process of new nation-building, the government should establish a clear policy of National Reconciliation based on truth and justice. The National Council for East Timorese Resistance (CNRT) proposed in August 2000 to establish a Commission for National Reconciliation with the purpose to push this process forward. This process was underway simultaneously with the repatriation at that time. Reconciliation meetings were conducted in various places at the border between East and West Timor, Indonesia. Most of the reconciliation meetings at the time were held ceremonially between political, and conflicting, parties in order to find solutions to facilitate the return of Timorese refugees in West Timor and in other areas of Indonesia back to East Timor. Besides, political leaders have used this reconciliation process to get political consensus and power sharing.

Based on both the weaknesses and strengths of the reconciliation process, which was conducted in various places internationally, and conducted by various agents, CNRT, on its congress in 2000, focused on discussing “the idea” of the establishment of an independent commission to facilitate an all-reconciliatory process also in Timor-Leste. After a wide range of consultations, the Commission of Reception, Truth and Reconciliation was established, in accordance with UNTAET Regulation, No. 10/2001.<sup>2</sup> It had a mandate of three major pillars:

---

<sup>2</sup> This UNTAET Regulation is also stated in the RDTL Constitution, article 162, section 1.2.



- Truth-seeking
- Strengthening community reconciliation processes
- Submitting a final report to the President of the Democratic Republic of Timor-Leste

Being a new nation, East Timor needed such a commission, basically to bring peace to the people who have lived for so long in conflict.

Not only political leaders were involved in conflict, but almost the whole community was involved and affected in social conflict for decades. Though it is just at its initial stages, and therefore difficult to make a conclusion, we believe this process at least will be able to contribute to bring peace to many people living in conflicting communities in East Timor.

Obviously, reconciliation is not only forgiving each other but reconciliation should be based on truth, love and justice and on this basis be leading to peace. Therefore, reconciliation is not coming from only one party but it must come from all parties involved in conflict.

According to an Italian theologian, Paolo Ricca, in his book “Reconciliation, reconstruction”<sup>3</sup> we can say that:

*Reconciliation cannot come from one party only, ... if it comes from one party only..., it is not reconciliation. Reconciliation must come from both sides or more... Forgiveness can be from one side: I forgive you, whether you accept it or not ... but I will not, I cannot make peace without you.*

Reconciliation is a “peaceful process” between conflicting parties. Reconciliation also means “a process of finding truth and forgiveness”. In a reconciliation process everyone should sit together to discuss the root causes of conflict and even different views or interests – which may trigger the conflict between parties - and then agree upon finding solutions for the existing differences. This implies that reconciliation is more than a ceremonial event. Many have regarded reconciliation as a symbolic gesture of embracing each other, and this gesture can be a part of the process, but it is not the main content or goal of reconciliation.

---

<sup>3</sup> See Revue Mision, No.71, November, 1996.

## 4.1 Reconciliation as a “Process or Goal”?

As a *process* reconciliation is a means for everyone to come together, to discuss all their problems seriously and deeply and get consensus for finding solutions for their problems, whereas reconciliation as a *goal* means that people come to together and meet each other to get necessary information and clarification from the other party. They come to meet each other and greet each other in order to show that they have reconciled.

Thus, in my opinion, reconciliation is a process where every – in our case – Timorese must involve him- or herself in the process with honesty, openness and humbleness. During its mandate the Commission for Reception, Truth and Reconciliation (CAVR) has facilitated hundred of perpetrators to join the process of community reconciliation. The process of finding truth in East Timor has begun and will go on to reach its goal (peace), something which is everyone’s dream. As a new nation East Timor is however not united yet. Therefore it is important to begin this process.

## 4.2 Reconciliation “a Reflection of Theology”

Psalms 85:9 –10 says:

*I will hear what God the LORD will say; For He will speak peace to His people, to His godly ones; But let them not turn back to folly.... Loving kindness and truth have met together; Righteousness and peace have kissed each other.*

There are four main elements found in this psalm of the Book of Psalms, in the Bible’s Old Testament, here: Love (forgiveness), righteousness, truth and peace. There will be no reconciliation without love, there will be no reconciliation without truth and justice, and there will be no reconciliation without peace. When we talk about reconciliation there is a need for changing the spirit and moral of individuals and of communities which are disintegrated. We need to decide to strengthen our relationship based on this new moral base.

Change is also needed in the political and social life, since these sectors have traditionally favored violence and injustice in the state. This change should be made so that conditions and possibilities are created for groups to live together and therefore be able to rebuild the foundations of a nation. This is based on the rule of law, where justice and human rights are respected by all citizens.

## 5. Conclusion and closing remark

In general, most post-conflict nations face various problems during their earlier stages of transition. This includes not only problems of the judicial process but also problems of rule of law and justice overall. To overcome the complicated judicial process there is a need for an alternative mechanism, as an alternative process to help solving some appropriate and proportional cases. Such a mechanism will assist the courts, which in the East Timor case have faced many problems leading to a stockpile of unresolved criminal cases. This alternative mechanism has a role during the transitional period but, however, what is most important is the question of maintaining the balance between the two different processes so that they are complementary to each other, in judicial and reconciliation processes, such as was the case in Timor-Leste.

This is a short description on how judicial and reconciliation process occurred in Timor-Leste after many years under Portuguese colonialism and Indonesian military occupation. Ensuring the realization of these two processes should always be seen in the context of nation-building. To do this will take some time, to initiate such a complex process is time-consuming but yet worthwhile.

## Research Paper Series

1. Göran Gunner, Kjell-Åke Nordquist, *Mänskliga rättigheter och fredsbyggande – skilda agendor men samma mål?* 2007
2. Kjell-Åke Nordquist, *The Crossroads of Human Rights and Peace-Building. An ongoing debate.* 2008
3. Jaana Rokka, *Att konfronteras med sitt våldsamma förflutna för en hållbar fred – Israel och Palestina.* 2008
4. Göran Gunner, Kjell-Åke Nordquist (redactores), *Derechos Humanos y Construcción de Paz. Procedimientos de seminarios en Colombia y Guatemala 2007.* 2008
5. Ingmar Armyr, *No Shortcuts to Peace. International Development Cooperation, Human Rights, and Peacebuilding.* 2008
6. Augusto Castro and Augustinho de Vasconcelos, *Justice and Reconciliation - Two Contexts, Two Reflections.* 2008.



## Justice and Reconciliation – Two Contexts, Two Reflections

The Swedish Forum for Human Rights was in 2007 devoted to issues related to justice, reconciliation and human rights. Two presentations to the Forum, included in this Research Paper, represent experiences from a personal involvement in truth and reconciliation processes in different parts of the world.

Professor Augusto Castro, Catholic University of Perú, Lima, Perú, was the Director of the Area of Reconciliation in the Truth and Reconciliation Commission in Perú, and develops in this paper his view of the relationship between justice and reconciliation. Reverend Augustinho de Vasconcelos was National Commissioner in the Commission for Reception, Truth and Reconciliation (CAVR) in East Timor, and he is presently in charge of the post-CAVR Secretariat in Dili, East Timor. The Secretariat has the task to disseminate the Report and other findings from the work of the CAVR.

Stockholm School of Theology is one of the founding organizations behind the Swedish Forum for Human Rights. The Research Program on Human Rights and Peace-building at the School is studying both theoretical and empirical connections between human rights and peace processes. The Program includes minor studies as well as comparative global projects.

The Research Paper Series within the Research Program consists of studies and reports written in connection to the Program's ongoing work.



Stockholm School of Theology is an ecumenical, Swedish university college providing teaching and research in the fields of theology and human rights. The School has long experience from international cooperation and research, established with universities as well as development organizations. For further information about research and education at Stockholm School of Theology, see [www.ths.se](http://www.ths.se).