



JUDICIAL SYSTEM MONITORING PROGRAMME
PROGRAM PEMANTAUAN SISTEM YUDISIAL

Unfulfilled Expectations:

Community Views on CAVR's Community Reconciliation Process

'The Value of a House and Buffalo is not the same as the value of a Human Being'
Victim, Suai

Dili, East Timor
August 2004

The Judicial System Monitoring Programme (JSMP) was set up in early 2001 in Dili, East Timor. Through court monitoring, the provision of legal analysis and thematic reports on the development of the judicial system, JSMP aims to contribute to the ongoing evaluation and building of the justice system in East Timor. For further information see www.jsmp.minihub.org

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Executive Summary

1 Introduction and Aims of the Report

East Timor's Commission for Reception, Truth and Reconciliation (known by its Portuguese acronym, CAVR) has pioneered a unique and innovative approach to reconciliation through its community reconciliation process (CRP.) From early 2002 until the conclusion of the program in March 2004, more than 1400 cases involving 'less serious crimes' committed in the context of past political conflicts between 1974 and 1999 had been resolved through the CRP.¹

This study by JSMP provides a preliminary assessment of the CRP by drawing on the views and expectations of East Timorese community members, in particular the opinions of deponents and victims who have participated in CRP hearings.² Its focus therefore is primarily empirical and analysis of methodological, legal, and procedural issues is necessarily limited.³

Among its principal aims, the report seeks to assist the CAVR in its final report and evaluation and to provide a stand alone contribution to the study of truth and reconciliation processes more generally. In the light of the end of the UNMISET mandate in East Timor and in the context of the imminent downsizing of the Serious Crimes Unit and the concluding of the CAVR's work, the study further seeks to contribute to ongoing national discussion on questions of justice and reconciliation. While the opinions canvassed within the report are by no means representative of the entire East Timorese population, it is hoped they will serve to illuminate issues for further study and debate.

The report is structured into the following parts. Beginning with an outline of the methodology of the research study, there is a brief overview of the structure and operation of the CRP program, including its relationship to the formal legal process. The report then turns to a discussion of the research findings; an exploration of the views of the 23 victims and 23 deponents interviewed for the research study. The opinions expressed by interview respondents are diverse; however indicate that deponents' experiences of the CRP have generally been more positive than those of victims. The

¹ The term 'serious crimes' is used as defined in UNTAET Regulation 2000/15 *On the Establishment of Panels with Exclusive Jurisdiction over Serious Criminal Offences*, June 2000. The term 'less serious crimes' is used to refer to cases considered by the CAVR's Community Reconciliation Process.

² While the term 'survivor' is preferred by the author, the term 'victim' has been used throughout this report for consistency with the CAVR's terminology

³ Other, contemporaneous studies have focused extensively on these and other issues. See Piers Pigou, *The Community Reconciliation Process of the Commission for Reception, Truth and Reconciliation*, Report for UNDP Timor-Leste, April 2004, Professor Spencer Zifcak, *Restorative Justice in East Timor: An Evaluation of the Community Reconciliation Process of the CAVR*, The Asia Foundation East Timor, July 2004

reasons for this - including the CRP's focus on deponents' integration with 'the community' rather than the individual victim - are explored. The report then considers some broader issues including the extent to which the CRP program has contributed to reducing tensions within communities and building of social cohesion. It suggests that 'gaps' in the justice system, particularly limitations in the investigation and prosecution of perpetrators of serious crimes, will cause problems for the success of any reconciliation process.

Drawing on the insights generated from respondents, the report concludes by suggesting that the success of any reconciliation program in East Timor is contingent on an ongoing commitment to the investigation and prosecution of serious crimes, which remains the overwhelming priority for the majority of East Timorese people. In addition it offers some suggestions for the development of a more 'victim-centred' approach to future reconciliation initiatives.

1.1 The Judicial System Monitoring Programme

The Judicial System Monitoring Programme (JSMP) is an independent non-governmental organization based in Dili, East Timor. JSMP was created in April 2001 in response to the need identified by local and international observers for a consistent and credible monitoring presence to contribute to the developing legal culture within East Timor, and to the international justice community, by providing information and analysis of issues arising from the ongoing process of re-establishing East Timor's judicial system.

In its activities, JSMP focuses on three main areas: trial observation, legal analysis and public outreach activities. JSMP has not systematically monitored the CRP hearings but, through its extensive work with the serious and ordinary crimes processes and outreach programme, JSMP has close contact with the community on justice issues.

2 Methodology

2.1 Research design

To determine the scope of this study and to develop an approach that complemented rather than replicated contemporaneous evaluations, the researcher initially met with CRP staff of the CAVR and other researchers. It was decided that the focus of this study would be primarily empirical. Individual interviews were decided upon as the best approach as it would enable individuals to speak more freely and personally about their own experiences. In a few cases, interviews were conducted in small groups of two or three, at the request of respondents.

In an attempt to avoid 'framing' people's experiences in particular ways and to hear directly from respondents, the interviews were organized in a 'semi structured' manner rather than following a strict interview format. This allowed respondents to tell their own stories in their own words and for the interview to develop in its own way. To ensure that

certain topics were covered, an interview guide was used which ranged over a number of broad themes: individuals' experiences in the past; experiences of the CRP, and hopes and expectations for the future. Additionally, interviews explored general understandings of the concepts of peace, justice and reconciliation.⁴ At the conclusion of each interview, respondents were asked for their recommendations to the government and the CAVR regarding future justice and reconciliation initiatives.

2.2 *The respondents*

The researcher sought to speak primarily with deponents and victims who had participated in a CRP hearing. The perspectives of victims who had 'accepted' their deponent during the hearing as well as those who did not, were sought. Similarly, deponents who had been accepted by their communities and those who had not were interviewed. Where possible, the researcher attempted to achieve a gender balance amongst respondents, however, the overwhelming number of male participants in the CRP made it difficult to access equal numbers of men and women. The researcher also conducted interviews with a number of community leaders and observers of the CRP process, including *chefe de suco*'s (village heads) and *chefe de aldeias* (neighbourhood heads), members of CRP 'Panels', as well as CAVR district commissioners and staff. In a number of cases the victims and deponents were directly linked in relation to the same case.

To access victims and deponents the researcher was reliant initially on the district staff of the CAVR. However, attempts were made where possible to access respondents via alternative channels, including by talking with community leaders and other respondents.

Additional interviews were conducted in Dili with CAVR staff and advisers, national commissioners, as well as representatives of national and international NGOs, the Serious Crimes Investigations Unit, the UNMISSET Human Rights Unit and UNHCR.

In total, interviews with 23 deponents (3 female, 20 male); 23 victims (16 male, 7 female); 7 community leaders and observers (male) and 11 district CAVR staff (8 female, 3 male) were conducted. In Dili, interviews with a further 26 individuals were conducted, bringing the total number of interviewees to 90.⁵

2.3 *Language*

The majority of interviews with deponents and victims were conducted in Tetum. A minority of respondents were interviewed in other languages including Mumbai, Indonesian and Fatuluku, with the assistance of an interpreter. Most interviews were recorded by tape recorder and later transcribed.

2.4 *Study location and duration*

⁴ See Annex 2 for interview questions

⁵ See Annex 1 for list of interviews

Primary data was collected in East Timor within a 12 week period between February and May, 2004. In order to access a broad spectrum of community views it was decided to conduct the research in five of East Timor's 14 districts: Suai and Ainaro in the West, Los Palos in the East, and Aileu and Emera in the central area of the island. The researcher spent approximately five days in 'the field', in each of five districts, thus a total of 25 days in all. Where possible interviews were conducted in more than one subdistrict. Additional weeks were spent in Dili, gathering secondary information and conducting further interviews.

2.5 *Questions of Confidentiality*

Due to the sensitive nature of some of the information being divulged it was important to clearly explain the purpose of the research project to each respondent prior to the interview. The researcher stressed the independent nature of the project and ensured that individuals could refuse participation in the interview if they wished to do so. If an interview was agreed to, a time and place convenient to the respondent was agreed upon. Interviews were usually conducted in respondents' homes. Average interview lengths were between one and two hours. A commitment was made to translating the findings of the study and distributing them back to respondents.

Prior to the commencement of the interview the researcher explained that unless the respondent wished, their real name and other identifying information would not be used in the final report, to allow them to speak more freely. Respondents were also asked whether or not they consented to the taping of the interview. Throughout this report, pseudonyms are referred to in inverted commas.

2.6 *Recognising complexity*

Complex community dynamics have influenced the decisions of many individuals to participate in the CRP. The majority of deponents and victims live in small, tightly knit communities in which they are often related to one another and where community relationships have long and complex histories that well precede the 1999 violence. Rather than evaluating the effectiveness of the CRP program as successful or otherwise, the report attempts to reflect this complexity by hearing what victims and deponents say from their own unique standpoint. As Richard Wilson notes, 'listening to what victims say outside hearings during in depth interviews can take us to an unexpected place that is between or perhaps beyond either acceptance or resistance.'⁶

The way in which questions of justice, accountability and reconciliation are closely intertwined in the minds of respondents reflects this complexity. Questions of 'serious crimes' and 'minor crimes' form a part of the experience of many individuals and cannot be arbitrarily divided. In a very real sense, a victim of a house burning or looting may also have experienced the loss of a close family member, just as many 'deponents' who testified before the CRP have been victims themselves. Moreover, unfinished business

⁶ Richard Wilson, *The Politics of Truth and Reconciliation in South Africa: Legitimising the Post-Apartheid State*

relating to serious crimes cases forms part of the overall context in which ‘reconciliation’ processes have taken place.

2.7 *The voices of victims*

It is important to acknowledge that the CRP was developed primarily to support the reintegration of individuals who have committed minor criminal offences back into their *communities*; i.e., it was not designed as an individual reconciliation process between victim and deponents. Thus, in many cases the ‘victims’ with whom the deponents are seeking to be reconciled are not ‘individuals’ but entire *suco*’s (villages) and *aldeia*’s (neighbourhoods) Nonetheless, this report assumes that the CRP was designed to be of some benefit to individual victims, who are frequently named by deponents within their statements and are present during the CRP hearings. Indeed, the Regulation establishing the CAVR names ‘assisting in restoring the human dignity of victims’ as a core objective.⁷ This research study gives particular attention to the views of victims, as they have generally been given less emphasis.

3 Brief Introduction to the CAVR’s Community Reconciliation Process

3.1 Rationale for the CRP

East Timor’s Commission for Reception, Truth and Reconciliation (CAVR) commenced its operations in April 2002. The two year mandate given for its work was later extended by 6 months. The CAVR has had the following principal objectives: to inquire into and establish the truth regarding the nature, causes and extent of human rights violations that occurred between April 1974 and October, 1999: to assist victims, promote human rights and reconciliation; to support the reception and reintegration of individuals who caused harm to their communities by the commission of minor criminal offences and to compile a report which includes its findings, refer matters to the Office of the General Prosecutor where appropriate, and make recommendations to the government.⁸

In the promotion of community reconciliation, the CAVR was authorised to conduct Community Reconciliation Procedures (CRP’s). The CRP’s were designed to provide an alternative to the formal justice system for resolving the thousands of crimes deemed to be ‘less serious’ committed in the context of political conflicts between April 1974 and October 1999.⁹ The CRP program pioneered a unique and innovative approach to

⁷ UNTAET Regulation 2001/10, 3.1 (f)

⁸ UNTAET regulation 2001/10. For more detail on the background to the establishment of the CAVR and the CRP, and the relationship between the CAVR and the courts, see Piers Pigou, above, n 1; Spencer Zifcak, above, n 1; Patrick Burgess, *Justice and Reconciliation in East Timor: The Relationship Between the Commission for Reception, Truth and Reconciliation and the Courts*, Unpublished Conference Paper presented at international conference at the Irish Centre for Human Rights, Galway University, October 3-5, 2002

⁹ Schedule 1 of UNTAET Regulation 2001/10 sets out the criteria for determining whether an offence was appropriately dealt with within a Community Reconciliation Process. The following criteria are considered: the nature and severity of the crime committed, the total number of criminal acts engaged in; and the

reconciliation, which sought to address these less serious crimes at the community level through a program of restorative justice. Such a mechanism was deemed necessary for a number of reasons. It was believed that without a means of dealing with those perpetrators involved in lesser crimes the unresolved anger of victim communities may lead to renewed violence. Moreover, in the context of an overloaded, inexperienced and under resourced legal system that was pre-occupied with resolving new crimes and serious past crimes, it was recognised there was no possibility that minor crimes committed in the past would be dealt with by the courts. A faster and more cost effective mechanism was required. In addition, it was believed that a reconciliation process would facilitate the repatriation and reintegration of many of the thousands of refugees – amongst them militia members - who remained in West Timor, by balancing the need for ‘reception’ with some form of accountability and public apology.¹⁰

Another of the CRP program’s perceived strengths was that it incorporated East Timorese customary dispute resolution practices. In particular, the CRP sought to build on the concept of *nahe biti* (lit. stretching, rolling the mat), which involves a process of meeting and discussion in order to seek consensus amongst opposing parties.¹¹ Building on such a process was seen to have advantages over the formal justice system, including accessibility, visibility, cost-effectiveness and sensitivity to local contexts, which in turn would enhance the legitimacy of the process. The process would balance these practices with a sensitivity to human rights imperatives and gender considerations.

From the outset, it was envisaged that the CRP process would operate in a complementary manner with the Serious Crimes Unit (SCU), established by the United Nations Transitional Administration in East Timor (UNTAET) in June 2000 to conduct investigations and prosecute cases of ‘serious crimes’ in the Special Panels for Serious Crimes (SPSC) within the Dili District Court.¹² The division of responsibility for ‘serious crimes’ and ‘minor crimes’ between the SCU and the CAVR appears on the surface to be a balanced and coordinated response to meeting the challenge of justice and reconciliation. In reality however, there are many ‘gaps’ between the two processes. One of the most significant limitations of the SCU has been the national limits of its jurisdiction, with the result that many of those responsible for the most serious crimes remain outside the reach of effective prosecution.¹³ In addition, the slow pace of investigations and prosecutions has contributed to a sense within the East Timorese

deponents role in the commission of the crime. Schedule 1 cites theft, minor assault, arson, killing of livestock and destruction of crops as examples of appropriate cases for CRP’s. It also states that serious criminal offences, in particular murder, torture and sexual offences shall not be dealt with in a CRP.

¹⁰ For further background on the rationale for the CRP see Burgess, above, n 8

¹¹ Tradition and custom in East Timor is neither uniform nor static, however there are certain common key elements and practices. See for example, Dionisio da Costa Babo Soares, ‘Nahe Biti: The Philosophy and Process of Grassroots Reconciliation (and Justice) in East Timor, 2002

¹² ‘Serious Crimes’ are defined in UNTAET Regulation 2000/15, as genocide, war crimes, crimes against humanity, murder, sexual offences, and torture. The SPSC has universal jurisdiction over murder and sexual offences if they occurred between 1 January 1999 and 25 October 1999, while there is no temporal limit applicable for genocide, war crimes and crimes against humanity.

¹³ According to SCU statements, 281 of a total of 369 indictees remain at large in Indonesia and cannot be brought to trial. See JSMP ‘The Future of the Serious Crimes Unit’ *JSMP Issues Report*, January 2004

community that justice for serious crimes is not being served.¹⁴ The implications of these justice ‘gaps’ in relation to the reconciliation process will be later explored.

3.2 *The operation of the CRP*

A CRP hearing was initiated at the request of a perpetrator, who submitted a written statement including an admission of his/her actions to the CAVR and requested participation in a CRP hearing. This statement was then reviewed by the CAVR’s internal statements committee and forwarded to the Office of the General Prosecutor (OGP), which determined whether it was appropriate for the matter to be dealt with by the CRP.¹⁵ At this point the OGP could decide to exercise its exclusive jurisdiction over serious criminal offences if an assessment was made that the deponent may have been involved in serious crimes. The OGP would retain the statement of the deponent for further investigation and action. In this situation, the case of the deponent is commonly referred to as a ‘pending’ case.

If the OGP assessed that the acts disclosed were appropriately dealt with by a CRP, the CAVR would establish a three to five-person Panel in the community affected by the crime. The Panel consisted of local leaders and was chaired by a Regional Commissioner of the CAVR. It was often comprised of traditional elders, church leaders and representatives of local women’s and youth groups. As far as possible the members of the Panel were expected to be representative of the community from which they are drawn and include adequate gender representation.

In conducting the hearing itself, the Panel had considerable flexibility. It did, however, need to ensure that deponents, victims of deponents’ acts and members of the local community were given an opportunity to express their views. The deponent’s statement was read to those present at the hearing, followed by questions from panel members, community members and victims in order to clarify the acts to which he/she has admitted to. At the conclusion of the questioning process the Panel consulted with deponent and victims present in order to determine the ‘Act of Reconciliation’ that the deponent was required to undertake. If the deponent consented to the Act proposed, this was recorded as a ‘Community Reconciliation Agreement.’¹⁶ Should a perpetrator admit to the commission of serious offences not included in their original statement or should such evidence emerge during the Community Reconciliation Process hearing, the CRP was required to be adjourned and the relevant matters referred to the OGP.

¹⁴ It is important to note that of the estimated 1422 murders that were committed during 1999, more than half remain un-investigated. There have also been major problems with the operation of the Serious Crimes Unit and with the Special Panels of the District Court, which are well documented. See for example, David Cohen, ‘Seeking Justice on the Cheap: Is the East Timor Tribunal Really a Model for the Future?’ *Analysis from the East West Centre*, Vol 61, August 2002.

¹⁵ UNTAET Regulation No. 2001/10, Schedule 1, sets out the criteria for determining whether an offence was appropriately dealt with within a Community Reconciliation Process. The following criteria are considered: the nature and severity of the crime committed, the total number of criminal acts engaged in; and the deponents role in the commission of the crime.

¹⁶ Section 22.1 of UNTAET Regulation No. 2001/10 provides that ‘Acts of Reconciliation’ may include: a) community service; b) reparation, c) public apology; and/or d) other act of contrition.

Hearings generally involved some form of a reconciliation ceremony, drawing on customary East Timorese law and practice, drawing on customary East Timorese law and practice. This often involved chewing of betel-nut, sacrificing a chicken or pig, a rolling up of the *biti* (mat) and a celebratory feast.

After a hearing was concluded the Community Reconciliation Agreement was required to be registered with the appropriate District Court. Once registered the deponent was deemed to have completed the required Act of Reconciliation and he/she would receive immunity from criminal and civil liability regarding the actions admitted to.

At the conclusion of the CRP program in March 2004 more than 1,500 statements had been received by the CAVR from perpetrators. Just under 1400 of these cases had been successfully completed through the CRP program. Eighty-four had been retained by the Office of the General Prosecutor (OGP) and had not proceeded to a hearing, marked as ‘pending’ possible prosecution.¹⁷

4. The Research Findings: Community Perspectives on the CRP

4.1 Deponents Perspectives

The majority of the 23 deponents interviewed for this study explained that their sole ‘crime’ had been ‘joining the militia’. Some confessed to being involved in ‘minor crimes’ such as house burnings or lootings. None of those interviewed openly confessed to being involved in beatings however one deponent acknowledged that he had ‘pushed’ some young male prisoners while he had been involved in the militia (a fact which was disputed by the three young men, who alleged they had been treated more harshly.)

Only one deponent interviewed had participated in the CRP for a pre-1999 related crime. This deponent was also the sole ‘pro-independence’ case identified during this study. The majority of deponents spoke of their activities in the context of 1999, during the lead-up to and following the referendum. Many had fled to West Timor following the referendum in 1999 and returned in the following three years. Generally speaking, deponents had not experienced any serious problems upon their return to their communities. Two deponents interviewed in Suai were an exception to this. Both admitted they had been subjected to beatings on return to their village and in one case the violence had occurred recently, in 2003.

4.2 The impact in deponents’ lives

Although most deponents had not experienced physical violence on their return from West Timor (or at least had not admitted to this) and many described their relationships in the community as ‘normal’ prior to the CRP hearing, there was a general expression of satisfaction with the CRP and the results it had achieved. The CRP had often provided a

¹⁷ Interview with Patrick Burgess, Principal Legal Counsel to the CAVR, May 2004

catalyst for deponents to 'explain' their past involvements to the community and 'clear their names.' For several it had been an opportunity to talk as much about what they didn't do as what they did. Many felt that despite their apparent acceptance in the community, people continued to be suspicious of them. Several mentioned for example that prior to the CRP they felt that people spoke 'behind their backs', or were *laran moras* (lit. sick inside, resentful) towards them.

Several deponents explained that there had been a marked difference in their lives following their participation in the CRP hearing. When asked to describe this some stated that they felt 'freer' or 'lighter' when they walked around the community or went to work in their fields. A number felt that community members were no longer suspicious of them or called them 'militia'. Others believed that their children would now be accepted within the community in the future without discrimination, and were relieved that problems would not be passed down to future generations. Some stated that they could now live like *maun alin* (brothers) in their community. Thus, for many deponents, the reconciliation process represented a sense of 'closure' on their case. For example, for one deponent in Alieu who had who had been forcibly recruited into the *Ahi* (fire) militia in 1999, the CRP had afforded an opportunity to break with the past:

I was involved in the *Ahi* militia in 1999 because I was forced to join by the leaders of the militia. I worked as a driver. In September 1999 I fled to Atambua because I was scared. I came back in 2002 because I wanted to come back to my land. I didn't do anything bad like hit anyone or kill anyone and I only burnt one house. The leaders who forced me to join the *Ahi*, many of them are still in West Timor though some have come back.

Q. Did you have any problems when you came back from West Timor?

No I didn't have any problems. No one threatened me or treated me badly and I didn't feel anyone said anything bad.

Q. Then why did you feel you wanted to join the PRK?(Indonesian acronym for the CRP process)

A. I decided to join the PRK because I felt for my children's future. I didn't want anyone to discriminate against them in the future because they were the children of a militia member. In East Timorese culture if a father makes a mistake this can be passed to the children. I was worried that they would have problems finding work. I also wanted to declare openly what happened to the community.

Q. And what is different now in your life after the process?

Before I went to the PRK I still worried a lot, now I see that people look at me better. Before I felt that they were *laran moras* (resentful) towards me.

Similarly, another deponent in Aileu was also relieved to put his past involvements behind him. As he explained:

I joined the *Ahi* militia in 1999, but I am just an ordinary person. We were forced to join the militia. We didn't have any choice. We are just farmers. The TNI prepared a letter asking for 6 people from each *suco* to join the militia. My job was to bring gasoline to the military. I fled to Atambua and came back in September 2000. The reason I joined the PRK was because I thought about my children. I worried about my children's future...

...Before the PRK I felt ashamed to walk around the village. Now when I walk around I feel freer. People didn't talk to me sometimes before. Now I feel that people are more open. Before I felt *todan* (heavy) when I went to work in the fields.

Others proffered similar views. For example, a deponent in Los Palos - the only deponent interviewed regarding pre-1999 crimes - described the CRP as the catalyst for the resolution of an old family problem. In 1976, this man, a pro-independence supporter, had taken his 'victim' (now his brother in law) from his fields where he was looking for pigs, to be 'investigated' and beaten by Falintil. He explains:

Before I joined when we met each other in the street we still *odi malu* (felt vengeance) towards one another. We had not given our *laran* (lit. insides, our true selves) to each other. We Timorese can hold our anger for a long time.

When questioned as to why this deponent and his brother-in-law had not conducted their own *nahe biti* (dispute resolution process) themselves, given that the problem was so long ago, he explained that they had not been able to raise the funds to resolve the issue in the past:

We hadn't had our own *nahe biti* by the time the CAVR arrived because it was very expensive to buy a pig or buffalo. When the CAVR came they provided funds for the food. And we didn't need to kill a buffalo.

Thus, for a number of deponents the CRP had provided a catalyst for putting aside suspicions, for explaining the reasons for their past behaviour and putting the past to rest.

4.3 *Extent of sense of closure*

Although many deponents expressed satisfaction with the CRP, some continued to feel tentative about their relationships to others in the community. Several were anxious to receive the signed copy of the Community Reconciliation Agreement (CRA) from the Court to provide them a sense of security. (ie, providing evidence of immunity from any prosecution, civil or political, in future.) In the absence of the CRA some deponents remained concerned that they may be subjected to violence in the future. Thus the 'legal

nature' of the process appears to have been significant for many deponents. For example, a deponent in Ainaro who had been a member of the *Mahidi* militia, explained:

Who is going to look after our problems in the future? What is going to happen if someone hits me in the future? Who is going to monitor this? We have not yet received the *surat* back from the court. We need the *surat* (lit 'paper', refers here to the CRA) and we also need others to monitor the situation in the future. If new problems arise, how are we going to resolve them?

For some deponents, particularly those whom the community suspected of involvement in serious crimes, the CRP had provided at most a temporary reprieve. For example, one deponent in Suai had been beaten up by the community many times following his return from West Timor due to his high position in the militia and was anxious to receive the legal certainty provided by the CRA. He did not, however, feel that this would be sufficient. As he explains:

I have just gone through the PRK and I want to receive the *surat* (CRA) that my case has now finished. Who should I report to if I am called a militia? Because in the past I was beaten up many times and the police did nothing. We don't know if people will be brutal in future or not, but we feel not satisfied if the police do not resolve the problem.

Similarly, a deponent in Ermera explained that although he had participated in a CRP and been accepted by the community, he would not truly feel 'free' until the perpetrators of a murder returned from West Timor. He continued to be suspected by two widows of involvement in the murder of their husbands; a murder which he claimed only to have witnessed. The two widows had not been present at this deponent's CRP hearing. As he explains:

We need to bring them (those who committed the murder) back so that we can find the bones of those they killed. They must be processed. I want to be a witness at the tribunal when they come back. If the perpetrators of this crime (the murder of two UNAMET personnel in Ermera) do not come back from Atambua then the widows will still suspect me of being involved in killing their husbands. The two of them still do not accept me because they think I was involved. Its only when the perpetrators go to the tribunal that I will feel free. If I meet these two women now they will still not speak with me. They still suspect me. This makes me feel *todan* (heavy).

This man's friend elaborated further:

I feel there is potential for the victims to terrorise the deponent. If people don't attend the PRK hearing they may not agree to accept the outcome of the process. They may keep calling him 'militia' and mistrust him even though he has been accepted by the community. There should be some kind of fine if they go against the agreement.

4.4 A process 'incomplete'

A number of deponents referred to the CRP as an 'incomplete' process. Several requested the continuation of the CRP in order to encourage other militia members to come forward with their statements and participate in the process. Some believed that if the process ended, problems including violence may arise in future. For example, a deponent in Suai stated:

For me the problem is resolved. But for others it should go ahead. It should continue. Otherwise people might still beat each other up in the future. Many deponents feel scared to come forward because they don't want to be seen as perpetrators.

The request for the CRP to continue was often made in the context of a request for the prosecutions of the *big people*, (ie, militia leaders and those who had committed serious crimes); one of the most frequently raised concerns during interviews with deponents and victims alike. Many deponents expressed a view that until the leaders were prosecuted there would remain a sense that the reconciliation process was 'incomplete' or not *los* (right, correct). While they were grateful for the change that had occurred in their own lives, they felt it was unjust that the 'small people' such as themselves, often forced to be involved in militia operations against their will, were asked to participate in a CRP, whilst militia leaders - responsible for organizing militia operations and committing serious crimes - had not yet been made accountable for their crimes. While many stressed they were patient and could wait for the justice process to take its course, the expectation nonetheless remained. A common refrain was 'We were just ordinary people; we were forced to join the militia, why should we go through this (reconciliation) process while the big people continue to be free?' The perception is that these big people continue to 'live well' (i.e. live prosperously), and with impunity, either in West Timor, or in some cases back in East Timor. Some emphasised that the CAVR needed to 'work together' with the government and the tribunal to ensure that the big people are brought to justice. Without 'justice', some deponents stressed they would feel humiliated, made scapegoats for the crimes of the leaders. As a deponent in Ermera commented:

If only the small people confess then the big people will laugh at us. The government, the CAVR and the tribunal need to work together. If we only have the CAVR we don't yet have justice.

While some understood the distinction between the CAVR and the serious crimes investigations process, others clearly did not. For example, as a deponent in Alieu remarked:

I feel the PRK process has been good for me. I wanted to be involved. But we are just ordinary people. We also suffered. But when I see people like the military and the police who did bad things before, still walking around free, what can the process do about that? Is the CAVR going to look for the people who killed or

not? There were many '*ema boot*' (big people) involved in 1999, some of them are now back here in the community. Some of them work for the police. This makes me very sad. I also feel very confused. Why is it that the little people suffer while they continue to work and get money? If the CAVR doesn't do something about that in the future I will feel very sad.

Many deponents regarded themselves as 'little people', a number describing themselves as 'poor farmers'. Several used metaphors to make this point, referring to themselves as the 'fish' rather than the 'fishermen', the 'branches of a tree' rather than the 'root', or as 'chickens'. One deponent in Suai likened the need to prosecute those who committed serious crimes to a rotten tree, explaining,

It's like a tree that is rotten. If we keep cutting off the branches the tree will still live. We need to cut out the root.

As 'little people', many deponents felt themselves to be 'victims' in a broader political game; forced to commit the acts they did by militia leaders. Consider the case of two deponents of Ainaro who explained how they had come to be involved in the *Mahidi* militia and their sense of injustice regarding the lack of prosecutions of those who organised events:

The *Mahidi* leaders are still in West Timor and haven't come back. We feel not good that the big people are still free. They are like the root of the tree, we were the branches only... We feel happy with the process but we still feel heavy because we small people have gone through the process but the big people are still free. They are the *asu nain* (dog keepers) we are just the *asu* (dogs.) The state has to bring them back...

...We were involved in the *Mahidi* militia. When we came back from West Timor we felt that people were suspicious of us, even though we were not involved in any crimes... We were scared if we didn't join we would have been suspected of supporting the clandestine and killed.

...When we came back (from West Timor) our houses had been destroyed and our things were taken. The people had taken the walls of our house off. We had to put it back again. Our buffalo had been stolen, as had our pigs...

...If they (the *Mahidi* leaders) come back they should be taken to the tribunal if we are going to be satisfied. We were also victims of the *Mahidi* leaders, they beat us, many times, and abused us. We just wait but they must come back...

Similarly, as a deponent in Suai elaborates:

I still feel *laran moras* (resentful) because many small people didn't know about the plans of the big people. The small people suffered while the big organized the

plans. The big people must be processed otherwise it is not *los* (right). About the big people, *HAM* (*Hak Asasi Manusia*; human rights) must take it forward. Why only the small people like me? We were just like chickens. *HAM* has to process those people, and look for them. I am a deponent but I feel I was also a victim in the political process. We are victims because we are still poor. Before I had a motorbike and buffalo. Now my house has been burned and my possessions burned, someone ate my buffalo.

4.5 *Pressures upon deponents*

While it is difficult to ascertain the extent to which community pressure influenced deponents' decisions to participate in the CRP, it does appear that the majority had participated willingly. While had been approached directly by the CAVR, most had embraced the opportunity to 'clear their name.'

There were however, a minority of cases in which it seemed that impetus for the CRP had arisen primarily from a request from community leaders rather than the deponent. In some cases it was unclear just how much choice an individual had to refuse and the extent of comprehension of the voluntary nature of the process. For example, one deponent in Los Palos explained that he had given his statement to the CAVR so that he would not be called to join 'another process', presumably the formal justice process. Similarly, Lukas, in Los Palos, who was both 'victim' and 'deponent', explained that the CAVR had given him the option of the CRP or the tribunal:

The CAVR came and asked me what I wanted, the *nahe biti boot* (reconciliation process) or the tribunal? I said ok, lets have a *nahe biti* because we are just *maun alin* (brothers).

In this case, the *Chefe de Suco* of the village explained that Lukas had not wanted the reconciliation process at first:

In 2000 we had a plan to *dame malu* (make peace) but it didn't happen. Lukas didn't want to at the time. He also didn't want the CAVR process at first. We went to his house twice and then he agreed to join.

Another CRP hearing in Los Palos, had been organized for three deponents, that was clearly at the request of the community rather than the deponents themselves (although the CAVR subsequently gained the consent of the deponents.) In this case the community of a small *suco* was anxious to discover the 'truth' about the murder of a victim from the village, a pro-independence supporter and father of 7, in 1999. Three deponents living in neighbouring villages were suspected by the residents of Somocho of being involved in this murder. The community made a request to a CRP staff member of the CAVR, who clarified that the CAVR had no jurisdiction over serious crimes. Nevertheless, the CAVR agreed to take the statements of the three deponents and to run a hearing in the community regarding a small crime that one of the deponents had been involved in, and

also to give the opportunity to the three deponents to ‘explain’ what happened to the community.

The Office of the General Prosecutor (OGP) subsequently exercised jurisdiction over the cases of two of the three deponents and they were unable to participate in the CRP, which was organized for the remaining deponent only. In this case - to be discussed at a later section of this report - it is unclear how much community members, rather than the deponents themselves directed the process. There are now concerns about the safety of the two ‘pending’ deponents who remain living in the neighbouring *suco*.

5 Victims perspectives on the CRP

Overall, the views of the 23 victims interviewed were less consistent than those of deponents; reflecting perhaps that amongst these respondents there was a vast difference in the types of harms suffered. While some victims had been victims of the crime at question in the CRP only, a number had been a victim of more than one crime, crimes that had not yet been resolved through a CRP process or the formal justice system. Six victims interviewed had lost a close family member during the 1999 violence. For these respondents it was difficult to separate the CRP hearing from the broader questions of ‘justice’ for serious crimes, which was, by far, the overwhelming priority. Reconciliation was not viewed in isolation but represented a ‘stepping stone’ towards this greater goal.

5.1 *Victims prepared to accept*

For some victims the CRP had been a positive experience. This was particularly the case for those who were victims of minor crimes only. In some cases, victims were related to deponents and the CRP presented an opportunity to repair a family rift. For example for Estanislau in Los Palos, who had been beaten by a deponent, (to whom he was related) in 1976, the CRP had been a chance to resolve an old longstanding grievance that had been dividing the family:

Before we had the PRK I felt *laran todan* (heavy inside) towards him. I talked to him but we didn’t really go to each other’s houses. Now we feel light, I don’t feel heavy any more. Its like a big *ai* (tree, log) on my shoulders has been lifted.

For Estanislau the CRP brought a sense of relief that the grievance would not be passed down to the children of both men. The declaration itself took on greater significance than the need for a sanction.

Q. Why did you want to go through a biti boot for something so long ago?

When the CAVR came to took our information we didn’t want our children to by angry at each other in the future. I wanted ‘my house to be his house and his house to be my house.’

Q. Did you give a sanction?

A. I did not want to give him a sanction. The deponent declared his mistakes. I felt that he asked for forgiveness, this is according to *adat* (custom) There was no sanction because we are brothers. (his wife is sister of my wife)

A number of victims clearly recognised the deponent's actions as a 'consequence of the war'. Several expressed the view that the deponents were merely the 'little people' and that due to the circumstances at the time, they had little choice than to commit the crimes they did. Reflecting a similar view to that of deponents, victims often stressed that it was the 'big people' behind these events, who organized, who needed to be taken to justice. For example, as one victim of a house burning in Ermera explained:

I didn't think the deponents did what they did because of their own behaviour but because they were used by others. I wanted to accept them to achieve peace in our nation, community and family.

Q. What happened during the PRK?

A. At the PRK they said that they were forced to do these things by the militia leaders. I believed them. In their declarations they admitted they committed a crime of their own accord. I wanted to forgive them, I didn't feel negative. Some of them acted the way they did because they had drunk *tua*. (alcohol)

And another victim in Los Palos:

I didn't want to give them a sanction because it was the war that made them do it. If we want independence we have to have victims. I didn't want to ask them to rebuild my house. The 1999 problems happened because of the war so I didn't want to ask them to pay for my things. We are already peaceful with them. If the government gives us help then we would accept it but not from the perpetrator.

Some victims of small crimes expressed a view that the CRP had not really been necessary at all, as they felt that the crime was not of consequence in the broader scheme of things. Thus, as Senhora Balbina in Alieu, explains:

Before the PRK I didn't feel angry towards those who burnt my house. I had already accepted them because they are members of my 'family.' They are also children of god.

Q. What did you think about the reconciliation process?

A. It was good because we received each other. But I didn't really think the process was necessary because we had already accepted each other. I didn't want those people to receive a punishment. We can't 'buy' people. It was normal that people burnt down houses at that time. It was because of the war. It's not

important to me that people burnt down my house. What is important is that my family and I are still alive.

5.2 *Victims of more than one crime*

Victims who had been victims of more than one crime or of a crime in which a number of perpetrators had been involved were less positive about the reconciliation process. For many of these respondents the CRP has not provided a sense of closure as there is 'unfinished business' to be resolved. This is perhaps an inevitable consequence of the voluntary nature of the CRP process for deponents. For example consider the case, 'Filomena', in Aileu, who participated in the CRP process recently, as a victim.

On May 11 1999 Filomena had just returned from her fields when 7 East Timorese militia members from her village and a neighbouring village arrived at her house. They beat her children, at the time aged 10, 8 and 5. At the time, Filomena's husband had fled to Aileu and she did not know whether he was alive or dead. Filomena and her children were then taken to the head of the TNI in the subdistrict where they were held for three days, 'insulted', and accused of being members of Falintil. On the 13th May they were released. On 14th May Filomena's house was burned down, her possessions and corn destroyed, and her animals stolen.

Filomena described her views on the CRP:

I see that the reconciliation process is a good, but there are still many people who have not come forward. Until now only two of those who were involved in burning my house and beating my children have given their statements to the CAVR as deponents. The others are either living in the community or still in Atambua. I see that only 5 people from this *suco* have come forward. I want to know, where are the others who hit my children and burnt my house? There are around five others who were involved who have not given their names...

...There are many people living here who committed crimes like beating people and burning houses. We don't know why they haven't come forward. The PRK is a good process but we need another way of dealing with those who do not come forward. If not I will continue to feel *fuan kanek* (broken hearted) because people who committed crimes have not been punished for what they did. They are still living well and have not suffered as we have. The State has to do something about this. We need to extend the process, otherwise I will feel confused. If the perpetrators do not come forward then people will laugh at me because they see that I have not received justice.

Thus, for Filomena, the reconciliation process is 'incomplete' as there is a perception that the others involved in beating her children who have not yet participated in the CRP

continue to humiliate her by ‘laughing’ in the background.¹⁸ Indeed, several victims expressed a view that they would not be satisfied unless the reconciliation process continued and until the totality of crimes were resolved.

5.3 *Victims of serious crimes*

‘The Value of a House and Buffalo is not the same as the value of a Human Being’
Older Male Victim, Suai

Of the 23 victims interviewed, 6 had lost a close member of their family during the 1999 violence in addition to being a victim of a minor crime. For these respondents the overwhelming priority in their life was the resolution of the serious crimes case. For many the reconciliation process has taken on an added symbolism as a ‘stepping stone’ towards the goal of retributive justice. CRP hearings were often viewed as defacto ‘truth telling exercises’ about serious crimes cases; an opportunity to gather evidence and establish the ‘truth’; information that may be useful within a court of law. Consider for example the case of one older male victim in Suai, who participated in the CRP recently to discuss the case of his house burning. He explains:

I was involved in the clandestine and in 1999 my house was destroyed. The *Mahidi* took my buffalo and destroyed my things. My younger brother, Mario was involved in the clandestine was killed after the ballot in 1999. Mario was in the jungle. After he came down for the vote the *Mahidi* picked him up and brought him to the Mahidi militia centre in the subdistrict. There they beat him until he was dead. They dumped him in the mud. When I came back from the jungle I looked for his body and I found him, his body was all rotted away, there were only bones. They killed my brother like a buffalo and threw him naked in the mud. I told the PKF where the body was and they took his body to Dili.

Q. What happened in the PRK process?

I received ‘Jacinto’ (the deponent) in the PRK because he said he is waiting for ‘Paulino’ (the Commandant of *Mahidi* in the subdistrict) to return because he was the witness to who killed the bodies. But Paulino is still in Betun. The State has to bring Paulino back to face justice. I received Jacinto but I didn’t really want to. I received him because he said when Paulino comes back we will meet him and talk to him. He said that he will be a witness when Paulino comes back. I receive him because of this, but if Paulino doesn’t come back I do not want to accept the result. Because my brother was killed. I believe the process is not yet *los* (right) because Paulino is not back. If Paulino comes back and provides this information I will be happy to accept Jacinto. At the moment I still don’t know. If Paulino comes back the State has to take him to the tribunal.

¹⁸ While theoretically, these crimes could be investigated by the ‘Ordinary Crimes Unit,’ which has jurisdiction over pre-1999 ‘ordinary’ crimes, the Unit lacks the capacity and resources to investigate and prosecute these crimes.

Q. Did you also speak about your house and buffalo?

About my house and buffalo, they were burnt while I was in West Timor. But I did not speak about these things at the PRK, because someone was killed. The value of a house and a buffalo is not the same as the value of a human being. The house and buffalo are still important, I still think about these things. But I first need to resolve the case of my brother.

Q. How did you come to be involved in the PRK?

The CAVR came in the afternoon and asked me to attend the next day. But I did not want to go because I didn't want peace. I went because they called me. If Paulino is not back what is there to talk about? We talked all day, from morning to night, but I still have no result. The State has to bring Paulino back or the process is not *los* (right).

Thus, for this victim, acceptance of the deponent is provisional only, predicated on the eventual return of the militia commander from the sub-district. Reconciliation is seen at best as a temporary step toward the greater goal of 'justice.' Similarly, Sandina, a young woman in Alieu, explained that she would continue to feel *fuan kanek* (broken hearted) because she did not yet have the remains of her brother who was killed in Atambua and she still did not know who the perpetrator was. Regarding the case of her house that was burnt down she stated:

Those who gave their declaration about burning my family's house I am happy to forgive. I am not angry at them and I was not angry at them before the PRK because they were just ordinary people. But it's good that they went through the process to declare what they did. They also confirmed that it was the militia commander who killed my brothers because they saw it with their own eyes. But I still feel bad because we still do not have the remains of my brother back from Atambua and we still do not have justice. We keep telling our story – telling it to everyone - including the CAVR, but until now we don't have an answer.

For Sandina and others who have lost family members 'reconciliation' is not possible until the whole truth is known, bodies are recovered and there is accountability and punishment for perpetrators of these crimes. 'Justice' is a precondition for peace of mind.

5.4 Opening up our wounds

'The CAVR has opened up our wounds, our pain, and now what is going to happen?'

Young widow, Ermera

Some victims who had lost family members were more critical of the 'lack of results' gained by participating in the CAVR and perceived a lack of consideration for victims'

interests. Some expressed the view that speaking about their problems did not make them 'lighter', but on the contrary, *loke fali ami nia kanek*, (opened up our wounds again) and left them raw. For these victims, the value of 'confronting their perpetrator' in the CRP has been questionable. Several victims who had lost family members expressed a view that they were tired of talking about what happened to them. For these victims, talking in and of itself is not necessarily healing and cathartic when there is a perception that there are no 'results' and that the government is not listening to their real priorities. Some explained that they continue to feel *todan*, (heavy), or *fuan kanek nafatin* (forever broken hearted) because the CRP hearing has caused them to remember once more the painful events of the past.

For example, a young widow in Ermera, whose husband, a UNAMET employee, had been murdered in 1999, described her feelings on the day after the final CRP hearing for militia leaders in Ermera. The hearing had continued until 3 am in the morning and she had left early because she did not believe the process was going to yield any 'results':

I don't really understand the CAVR aim and purpose. I feel that many human rights organizations have already come and interviewed me and until now I have not seen any result. I am tired of talking to different groups. I feel that the CAVR does not really think enough about the victim's wishes. The CAVR only wants to have our information, it does not really care about our welfare or our children or about our day to day lives.

Q. How did you feel when you spoke during the PRK?

A. When I spoke during the PRK I felt very nervous and angry. When I came home I still felt nervous and angry because it had *loke fali ami nia kanek* (opened up our wounds again) and they can't just leave them.

Q. Did you attend last night's hearing until the end?

A. I didn't stay until the end because I felt too angry and nervous. I didn't want to accept them. I came home and followed it on the radio and I didn't sleep because I felt so stressed. I was not satisfied. There was not enough time for victims to ask questions last night and the deponents did not speak clearly and honestly. I listened on the radio and felt even more broken hearted when I heard the result, that people accepted each other.

Similarly, another young widow in Ermera, who had also left the hearing early, was extremely critical of the CRP, remarking:

I think the CAVR wants the international community to think the process has been a success. To show that it has brought peace. But it doesn't look at what the victims want. For us it has not been a success.

The strong sentiments expressed by victims who have lost family members do not necessarily detract from the contribution the CAVR has made towards the resolution of less serious crimes. What they do reveal however, is that for many victims, the reconciliation process cannot be separated from the broader desires to know the truth and to achieve justice for serious crimes. Although the CRP mandate is restricted to minor crimes, a great deal of information related to serious crimes matters is aired within the context of a CRP hearing. In spite of the extensive community education process conducted by the CAVR, some victims do not understand the limitations of the CAVR mandate. Others who do now expect the serious crimes process to step in where the CAVR has left off. Indeed it could be argued that the very holding of a CRP hearing and calling victims forward to tell their stories – ‘opening their wounds’ - raises expectations that the next logical step will be the resolution of serious crimes.

Finally, the opinions expressed by these respondents highlight that for victims who have lost family members, the desires to know the truth about the death of loved ones and to see the perpetrators of serious crimes prosecuted are desires that remain paramount and remain unmet by *any* process, whether the CAVR or the formal justice system.

6 Other Factors influencing victims’ acceptance

6.1 The importance of full disclosure of acts

As other studies have identified, the importance of ‘full disclosure’ of acts by deponents within a CRP process is viewed as by many victims as more important than community service or symbolic repayment in determining their re-acceptance of the deponent.¹⁹ Indeed, this research study found that for several victims, hearing a true confession from the deponent and the associated ‘public shaming,’ was more important than ‘punishment.’ Conversely, the perception of ‘lack of disclosure’ on the part of deponents leads to a high level of dissatisfaction amongst victims.

The emphasis of ‘full disclosure’ however is also connected with the desire of many victims for the CRP to be a ‘truth telling’ rather than a reconciliation exercise. For victims who have lost family members, the emphasis on full disclosure takes on an added urgency and is viewed as a critical step in the process of finding witnesses and the building of a legal case. The need for full disclosure is thus, not important in and of itself, but as a means of uncovering the ‘facts’ about the deaths of loved ones. For example, the young UNAMET widow in Ermera, quoted above, when asked whether the CRP process had been helpful to her, replied:

The process helps me a little because it can help us to find witnesses who saw our husbands getting killed. This can help in the court.

¹⁹ See, *Monitoring and Evaluation of the Community Reconciliation Process*, Ben Larke – Adviser to the CRP National Division, June 2003

Though when the ‘full declaration’ is perceived not to have been forthcoming (as was the case in the CRP hearing for militia leaders) she expressed her frustration and disappointment:

The process can make me feel *fuan kanek* (broken hearted) because it makes me think again about the past. Yesterday (during the hearing) I felt that the deponents didn’t speak the whole truth. I also felt this in the first hearing I attended (about deponent 1 who was a witness to her husbands murder) How can he (the deponent) have been involved in the group that killed my husband and brother and not have been involved in some way? How can he just have watched?

Q. Why do you think people didn’t speak the truth?

Those who talk as deponents in the PRK still have a relationship with those still in Atambua, with the big perpetrators so they don’t want to speak the whole truth to us...

...I feel the process often goes according to the deponents’ wishes. The deponents see that the process is not going to harm them and that it is good for them because when they sign something, people can’t call them militia any more. So they can come and talk about what they want. This is not reconciliation.

Similarly, a young widow in Los Palos stated:

When ‘Aze’ came to speak at the CAVR I went to hear him but I didn’t want to receive him. He said he didn’t know who killed Virgilio. But I said to him ‘you were a big person in *Tim Alfa* (militia) how can you have not known?’ He didn’t speak the truth. If the CAVR comes here again there is no point, we don’t get any result.

6.2 *More than shaking hands: The need for economic justice*

We talk and talk from morning to night and then come home and we are still hungry...I can’t even buy salt but I see some people living very well.

Joao, Alieu

We feel like ‘mate restu’ (left overs from the dead). We have independence but the government still doesn’t help us.

Margadida, Suai

The government has to help us to find work. We have suffered. We are very poor. We have lost our house, our possessions, our family. We sit confused. We still feel in darkness. We just wait. We want work but we don’t have work. We have no money to buy anything, to buy a buffalo or to pay for our children’s schooling.

Abel, Suai

Another strong theme arising during interviews with victims (and some deponents) and influencing their acceptance of the CRP process was that of 'economic justice.' Problems of poverty, economic inequality and the lack of economic assistance were raised by several respondents, many of whom felt disappointed that their expectations following the country's independence had not been met. A consistent theme was that the 'little people' who struggled hard for independence, have now been abandoned by the government. Several respondents felt that talking alone about past abuses in the context of a CRP hearing was not enough to lead to reconciliation while they continue to live in abject poverty.

Related to this is a perception amongst many victims of economic disparity between themselves and the deponents. Several victims expressed the view that the deponents are still 'living well' (i.e. prosperously); working in civil service positions, as teachers and for the police; while those who were pro-independence continue to be *aat nafatin*. (still living poorly.) While some expressed the desire for deponents to be given heavier sanctions, interestingly, others expressed a strong view that it was the government's responsibility to *tau matan* (look after) people. Joao in Alieu was perhaps the most articulate advocate of this position. Joao was angry at what he saw as the lack of government assistance for him to help him to recover from his injuries that were inflicted during the conflict. Joao explained that because of the beatings he received during his involvement in the clandestine movement he remains unable to work today and must take daily medication:

Q. How do you feel now towards those who beat you?

I don't feel badly towards those who hit me because we won the referendum and they lost. I feel peaceful to them. But I feel strongly that the government needs to look after me.

Q. What did you think about the PRK?

I didn't really feel it was necessary for me to speak at the PRK. I felt that I lost valuable time that I should have been spending working in the fields. I don't go anymore to the PRK hearings because I feel I have wasted too much time. The CAVR just keeps having processes, we keep talking, but I feel I have not achieved any result.

Q. What is it that you would like to achieve?

What I want is for the CAVR to do is to give my information to the government. I want the government to *tau matan ba ami* (look after us). We need to be able to eat and drink. I am like a disabled person because of what happened to me and I want the government to give me assistance.

For Joao, there is a strong correlation between justice and economic justice.

Economic issues need to be resolved before anything else. We can't just leave the problems of justice but we can't talk about justice if we are hungry.

Q. So does justice have some relationship to the economy?

A. Problems will continue to emerge in the community because we don't have justice. Justice to me means economic justice for everyone. I see those who were pro autonomy living well but those of us who were *pro merdeka* (pro-independence) are still struggling. So there is no justice.

Q. Does reconciliation also have a relationship to economic issues?

We have to think about whether people are hungry or not. If they come back to their house and continue to be hungry they cannot accept reconciliation. Many people don't participate in the reconciliation process because they think it is better for them to go to work in their fields. We can't just keep sitting and talking every day. We need to resolve our economic problems. The process should not just be about shaking hands with each other, the victims and deponents also should receive financial assistance. What I think about the reconciliation process is that it is a process that is not complete. The CAVR should give a clear report to the government, asking the government to make a law to ensure that everyone is able to live well. Everyone should have enough to eat and the government should look after people. We should not just talk from morning until night and then come back to our house to be still hungry.

While Joao was extremely articulate in his views, (and interestingly, included deponents as well as victims amongst those requiring government assistance) many others expressed similar sentiments. For example, Margadida in Suai was clearly disappointed with independence:

But the people really suffered. The government needs to look after those of us who suffered. The big people sit in Dili in their chairs, but many people were killed, the dogs ate them, their bones rotted in the river...

...The government has to look after women who have suffered. Those whose husbands fled to the jungle. The government has to look after them, open their eyes to women's suffering. We don't have food, money. We have independence but we still do not have anything. Our life is still the same. We feel not happy because we struggled so long and now the big leaders do not care about us. Those who have suffered cannot find work. Those who were pro-autonomy before are still getting money. We feel like *mate restu* (left overs from the dead). We have independence but the government still doesn't help us.

And Abel, also in Suai:

The government also needs to look after the victims. We have suffered. The government needs to find work for us and to think about our situation. They could also offer us aid, until now we have not received any and we are living in a *uma kredit* (credited house) What if the government one day asks us to leave this house? The government needs to think about the little people like us. I have suffered and I don't have enough money to support my children I want to work again as a teacher again. Many pro-integration have got work but we victims have not yet got work. Members of *Intel* (intelligence) have also got work again. I feel not satisfied because we continue to suffer while others continue to live well. Others come back from Atambua and get work. We are victims but we have still not received any iron for our roof.

When asked for their 'recommendations to government' many victims expressed the need for work, assistance for their children's schooling, and roofing iron. Interestingly, a number of respondents were able to consider the situation of others worse off than themselves, emphasising that the priority groups for assistance were widows, orphans and veterans. Schooling for orphan's and children of widows was raised as a particular issue, which was also reflected during discussions with community leaders and district CAVR staff.

For one of the UNAMET widows in Ermera, a reparations program was important, not for the material assistance alone, but for the symbolic value it would give to victims' lives. This young woman suggested that it was critical for the CAVR to take an interest in the 'welfare and day to day lives' of the victims. She also raised the question of reparations of a symbolic kind, requesting the establishment of a national cemetery and monument in Dili for all those who died in 1999, not just for those who fought, but for the 'little people' too. This would be a symbolic reminder of their sacrifice and so that 'when people come from other countries they can see this'.

6.3 Type of personal harm suffered

Another significant factor influencing victim's acceptance of the CRP process appears to be the type of harm suffered by the victim. Leaving aside the added complications raised by victims who have suffered more than one crime, it appears that cases of house burnings and theft have been less controversial than cases of beatings and verbal abuse to resolve through the CRP. This may reflect the reality that victims of mass house burnings are generally able to accept that they were only one victim amongst many, and that these were the inevitable 'consequences of the war.'

In cases of beatings and verbal abuse, in which a victim had suffered personal injury, sometimes for which they were suffering permanent consequences, acceptance of the deponent was less likely. Some victims, such as Joao in Ermera, (above) were prepared to accept their deponent even though they had suffered ongoing harm, because 'we won the war and they lost', Similarly, another victim of a beating in Suai explained that what was important was the declaration itself and that the deponents had been suitably 'shamed' before the whole community:

Those that beat me did so because of the war. I felt they were also Timorese people. I wanted them to confess their mistakes...During the hearing I felt angry at the person who hit me but afterwards I felt better, because it was a consequence of the war. It was good because the deponents were scared of us.

However, this preparedness to forgive was not universal. While it was unusual for victims to refuse to accept a deponent during a hearing, a few victims who had suffered personal harm stated that although they had accepted their deponent they did not do so with their *laran*. (lit. inside, ie sincerely) In such cases there may be a number of pressures acting upon a victim to accept. In small, close knit communities, in which victims and deponents are often related to one another, this is perhaps, unsurprising.

Consider, for example, the case of Margadida in Alieu (above), who was threatened on September 2, 1999 in her house by two *Mahidi* militia members wielding knives. They threatened to kill her and repeatedly questioned her about her husband's whereabouts. Margadida participated in the CRP as a victim; one of those who threatened her in the house in 1999 was the deponent. Margadida explains:

I was called to come to the PRK midway because the person who threatened me in my house did not acknowledge this in his declaration. So I was called along and when I went, he eventually admitted that he must have 'forgotten' this incident. He finally admitted that he had threatened me at the end.

Q. So how did you feel during the PRK?

A. When I spoke at the PRK I still felt angry and *laran moras nafatin* (still resentful) But the State knows best.

Q. Was there a sanction given to him?

A. In the PRK the CAVR asked whether we wanted the deponents to fix the road. We said it was not necessary. I said that we could not punish him but I think that the State needs to teach him. I felt it was not necessary to punish him. I also didn't want to punish him because he married my older sister. If he hadn't married my sister I would want to punish him. I would like to take him to the tribunal but I thought about my family. So I said 'it's in the past.' I also thought that fixing the road is not good because it's not a strong enough sanction. I still want the government to teach him a lesson.

Q. What do you mean by 'teach him a lesson?'

A. They should take him to the police so that he will feel scared. I feel that I am not yet satisfied. I don't want to punish him but to teach him, they should put him in jail for a short time, maybe one or two days is enough. Although he has gone through the PRK the State needs to teach him. He has not yet learned anything.

He thinks that because he has gone through the *PRK* he has got peace already. But I still feel unsatisfied, I want to make his *matan mos* (eyes clean) and make him understand what suffering is. If the State does not teach him I feel that peace and harmony is not good enough. If the State punished him I would feel better. I forgive him but only if he confesses to the State what he did. The *PRK* is only a 'general' process, (ie not formal justice)

Q. Why did you agree to be reconciled with him if you didn't want to?

I didn't want to shake hands with him at the end of the process because I was still *laran moras* (resentful) I said that I accepted him because I didn't want the process to go on too long. So I just said what I needed to. I said I accepted him because the CAVR said 'we are here to bring peace and harmony.' I said that I accepted him with peace but inside I didn't feel peaceful. I just wanted to follow the CAVR's wishes about peace and harmony. I didn't feel brave to say *la simu* (not accept) because I wanted to follow the CAVR's wishes and I didn't want the process to go on too long. I just said what they wanted.

For Margadida, only formal justice would be enough to make this deponent's 'eyes clean', ie, to open his eyes to the suffering caused and to 'teach him a lesson'. Margadida's desire for the State to put the deponent in jail 'for a few days' demonstrates that she did not understand the legal implications of the CRP process, ie that the case is now closed and no further civil or criminal proceedings are possible. It also reveals the many pressures that are at play in the CRP process that may influence victims; the fact that the deponent was married to her sister, that she did not want to go against the CAVR's wishes, that she didn't want the process to continue too long. Margadida's case also shows that the preparation given to victims prior to the CRP is sometimes inadequate, as will be discussed in the following section.

Margadida is not alone in her acceptance of the deponent 'on the outside only'. Another victim in Kamanasa, Suai, who was badly beaten and his body thrown in the sea, continues to suffer physical consequences. When asked whether he was happy with the fact that the deponent had not been asked to perform an Act of Reconciliation, this victim replied:

I felt broken hearted because I remembered what happened to me. But the 'big people' (ie, the government, the CAVR) know what's best (in terms of Acts of Reconciliation.) Actually, I wanted to give a sanction to the deponent but we felt that community service was not really enough. The panel asked us if we wanted to give some community service to them, but we felt this is not tough enough. They can still walk around freely. They are not in jail. It is not really a punishment we felt, so we left it. What I really wanted was for them to go to jail, because the deponent hit me. Now we just wait to see whether they will go to jail. We don't want them to do community service. They should be punished because they are still doing well. We were poor before, now we are still poor. If they went to jail I would feel satisfied.

Q. How do you feel now if you meet the deponent?

A. If we meet the deponent now it is fine. I just ask God. I say it is in the past. If we keep carrying it with us it is not good for our life. If we keep talking we feel broken hearted. But inside I still feel *fuan kanek* (broken hearted). In my *laran* (inside) I don't really accept them. Peace is just the same. We are still living the same as before. Those who were police before are still police, they are still making money. For me, peace is on the outside only, not on the inside. I still don't go and sit in their (the deponents) houses. I still feel that I have suffered.

Q. Why did you go if you didn't really want to?

A. The CAVR asked me to go along but I felt *baruk* (lazy) to go. But they told me that if a problem happened against the deponents some time in the future then there might be suspicion of me. That's why I went.

This victim's story also reveals that for some victims, 'Acts of Reconciliation' are not viewed as real punishment. It also reveals community pressures at work. Whether it is true or not that this victim was told there might be suspicion of him in future is perhaps not important, he clearly felt that not attending a CRP was not an option. Finally, the reference to the deponents 'living well' while 'we were poor, we are still poor' reiterates again the importance that economic factors play in victims acceptance of reconciliation.

The reluctance of some victims who had suffered personal injury to accept their deponent also indicates that the line between 'serious crimes' and 'less serious crimes' is somewhat blurry, and there may be a number of so called 'grey area crimes' (severe beatings etc) for which, greater sensitivity may be required in making decisions about the holding of a CRP hearing. For example, an interview with three young men who had declared partway during a CRP hearing that they were 'victims' of a deponent, reveals the line that some victims draw with respect to what is permissible to resolve through the *nahe biti*. The three men described the way they had been imprisoned for a number of months in a militia cell and severely beaten by the deponent until their 'blood flowed'.

What happened in the PRK?

In the PRK 'Amado' (the deponent) said that he only 'pushed' us. But our blood was flowing. We know that he lied.

Would you have been prepared to accept him if he had spoken the truth?

We want to go to the tribunal because he committed a crime. We wouldn't feel satisfied if he went through the *nahe biti boot* again. If our blood had not spilt then maybe we would have received him if he told the truth. But because our blood flowed we don't accept him. We think the *biti boot* is not enough to punish him.

In this case Amado was made ‘pending’ during the course of the CRP hearing because according to the community he had not fully disclosed his acts. Regardless of the level of truth declared, however, the three young men clearly drew a line at this case going through the CRP because of the level of violence they had experienced.

6.4 The ‘Acts of Reconciliation’

As other commentators have noted, the Acts of Reconciliation prescribed to deponents during the CRP processes have tended to be extremely lenient.²⁰ In the majority of cases deponents have been requested to provide an apology only to the community rather than carry out any specific act of community service or provide compensation to the victim.

A victim may not wish to request an Act of Reconciliation for a number of reasons. As discussed above, some see the declaration alongside a ‘shaming’ in front of the community as sufficient. In other cases there is a genuine acknowledgment that the deponent was only a ‘small person’, and therefore not responsible for the acts they committed. In other cases there is a recognition of the deponents lack of financial capacity to pay. For example, Abel in Suai explained:

The 9 of them who were involved had to work together in the subdistrict and repair the church. The sanction was light because everyone in the community worked together, not just the deponent. We just asked them to be involved in community activities. I wanted to give a heavy sanction but I felt there are many *Lakusaur* militia and only some present at the PRK. I wanted to ask them to pay for my roofing iron but I didn’t because there were so many *Lakusaur* involved in taking peoples roofing and things at the time, we don’t know who took who’s iron. When I asked on the deponents about this they said they were told to carry the roofing iron and there were many people involved. They don’t know who’s iron they took. I also thought that they didn’t have enough money. I also felt these people had not made a big mistake. They were only the small people. The big people are the ones who have to have a big punishment.

Similarly, as a victim in Ermera explained:

In my hearing there was no act of reconciliation given to the deponent. The CAVR asked us what we wanted. I wanted to ask them to rebuild my house and pay for my things, but I also thought ‘this is the consequence of the war’. Everywhere it happened like this. I felt I hadn’t lost much compared to other people and that for economic reasons they didn’t have the capacity to rebuild my house. The main thing I wanted was that it would not happen again.

However as the cases of Margadida and Joao, above, reveal, there are sometimes other reasons why victims do not request the deponent to carry out an Act of Reconciliation. For both Margadida and Joao, there was a sense that Act of Reconciliation would not

²⁰ See for example Pigou, above n 1

constitute a real punishment, so it would be pointless to request one. Informal community and family pressures and a sense of ‘obligation’ to conform to the wishes of the CAVR for the ‘good of their community’ also influence victims. Discussions with CAVR district staff revealed that there is a tendency for victims to defer to the *Chefe de Suco*, or the Panel to decide the Act of Reconciliation. One CAVR commissioner believed that victims are sometimes scared to request a heavy ‘Act’ in case they are threatened again in the future by the deponent.

The likelihood of a victim feeling free to request an Act of Reconciliation of the deponent is further reduced in cases where victims have been given limited preparation prior to the CRP, and thus, have little understanding of their role within the CRP and what it is possible for them to request.

7 The place of victims in the CRP process

The cases described above highlight some broader concerns surrounding the place of victims within the CRP process generally. The reconciliation process was designed primarily as a ‘community’ process, facilitating the re-entry of deponents into their ‘communities’ and providing an alternative to the formal legal system in cases of minor crimes. As other commentators have noted, while reference is frequently made to victims and the potential importance of acknowledgement, apology and community service for victims was recognised, no specific role or responsibility was designated to them in the Regulation.²¹ This section discusses the place of victims in the CRP and presents some case studies highlighting a number of consequences arising from the lack of attention to the needs and rights of victims.

7.1 The role of victims in the reconciliation process

During original discussions on the development of the CRP model, a decision was made that the ‘community’ rather than the individual victim would be the primary focus of the reconciliation process. It was decided that victims’ consent would not be required in order to conclude a CRA. Moreover, victims would be unable to initiate a CRP but would be called to participate in it. The policy behind these decisions was to ensure that the cases of deponents would be settled in an achievable way. Allied to this were the practical difficulties of ensuring the consent of individual victims in cases for example in which a deponent has committed a number of crimes in the one community. As the Principal Legal Council to the CAVR explains ‘If there is a formal requirement for victims to consent how do you ensure that all of those affected by a particular act are present and consent, what happens when 18 victims of house burnings consent to receiving back a perpetrator and one does not?’²² In a large number of cases a deponent is seeking to reconcile with their whole community rather than a single victim. Thus the CRP is more analogous to a process of arbitration or diversionary justice system than a mediation model between two individuals.

²¹ Pigou, above, n 1

²² Interview with Patrick Burgess, above, n 17

In these early discussions it was however envisaged that the Act of Reconciliation would be closely correlated to the harm the deponent had caused. It was decided that the decision making on these matters would be left to the panel's discretion, and early concerns were more that the community would request excessive sanctions rather than the other way around. The question of whether victims should be allowed to take civil cases in the future was also explored and a decision arrived at that the reconciliation process should represent a form of 'closure', drawing a firm line with respect to the case, and that no further civil action would be possible.

Despite these policy decisions there was nonetheless an assumption that the CRP process would be of benefit to victims. It was envisaged, for example, that the opportunity for victims to confront their perpetrators in these forums would contribute to the healing process.

7.3 *Victim preparation*

One of the inadvertent consequences of the focus on deponents' integration was that preparation and support for victims was sometimes accorded a lesser priority within the CRP than that of deponents. The CRP staff were required to organise separate briefings for deponents and victims prior to their participation in the hearing. However, while some victims interviewed had received such a briefing several explained that they had only received an 'invitation' to attend, sometimes the day before the hearing. Senhora Balbina, a victim in Alieu, explained:

I joined the PRK because the CAVR came and brought me a letter one day, asking me to come to a meeting. I didn't know what the meeting was about, but when I got there the next day I found it was a meeting about my house that had been burned down.

Others were called directly on the day. As one victim in Ainaro said:

I didn't really understand the PRK process. I thought I was being asked to go along to prepare the coffee. But when I got there they asked me to sit at the front.

Another issue arose where victims were called to participate in a CRP hearing because new information had come to light during the course of the hearing and their name had been mentioned. In these cases hearings often continued, often with little explanation provided to the victim. For example, a young male victim in Ainaro was called from the fields one day to participate when his name was mentioned:

I don't know why I attended the PRK process. I didn't understand what it was about. I went along because they called me, because Mus (the deponent) had put my name forward. They just came and got me from my fields suddenly, I didn't know what it was about. I felt scared. I didn't speak during the PRK because I didn't understand what I was supposed to say.

The chances of such individuals being able to play a meaningful role within the CRP hearing, much less understand the legal implications of the process and feel capable of requesting an 'Act of Reconciliation' from the deponent, are obviously limited in these circumstances.

7.4 *The role of the Victim Support Unit*

One of the problems in ensuring consistency in briefing and preparation of victims was that the role of victim support did not fall under the responsibility of the National CRP Unit. While the CRP unit organised the briefing and preparation of deponents, the responsibility for victims' preparation fell to the Victim Support and Community Outreach Unit (VSU). The VSU could not however, operate in isolation and was reliant on the CRP to provide details of the victims to be included in each hearing. The VSU was assigned a number of critical roles with respect to victims rights within the CRP including: organizing and briefing victims prior to the hearing, 'accompaniment' and moral support to victims during the CRP process (including by being physically present with the victim during the hearing), and follow-up with the victims following the hearing. In addition to the CRP program the VSU staff were responsible for coordinating the 'Community Profile Program' and for identifying and referring victims to the 'urgent reparations' fund. The VSU was comprised of 6 staff in Dili and two staff members, one woman, one man, in each district.

One of the problems with this division of responsibilities was the potential for lack of coordination between the two units. Some VSU staff considered that there was a lack of consideration amongst the CRP staff for the needs of victims. For example one VSU staff member explained that lists of victim's names would sometimes be given to them the day before a hearing, not enabling enough time for a victim's briefing. The same person stated that sometimes the CRP staff would overlook involving victims in the hearing if they lived too far away.

Another issue that worked against coordination and preparation of victims were the very tight time pressures under which all CAVR staff were operating. At the planning stages of the CAVR a goal of processing 1,000 CRP cases had been set. At the close of the program this initial goal had been exceeded by more than 50% as more than 1,500 deponents had provided statements to the CAVR. An emphasis on processing applications in the short time period may have inadvertently led to a focus on 'quantity' rather than 'quality' of hearings; sacrificing for example the time given to preparation and briefings. Towards the end of the CAVR's mandate, there were a large number of hearings occurring, virtually simultaneously, and it was difficult for CRP and VSU staff to keep up with the demands. In addition, it was perhaps also the case that CRP staff were encouraged to view a 'successful' reconciliation hearing as one in which resulted in acceptance of the deponent by the community and the concluding of a Community Reconciliation Agreement rather than one which failed to reach resolution. There may have been a bias therefore amongst CAVR staff and panel members towards manoeuvring victims and community members towards 'peace and reconciliation' rather than allowing for an 'unsuccessful' hearing.

Another issue of concern to some VSU staff that was sometimes overlooked by CRP staff was the question of victim and witness protection. Again, inadequate opportunity for briefings meant that some victims were not briefed about questions of victim protection (ie, that the CAVR had limited capacity to ensure their safety.) These are particular concerns in East Timor, where victims and deponents often live side by side. For example, in one case in Ermera a female victim accused a deponent, in the heat of the moment, of being the person who killed her husband. The VSU staff person asked of this, 'What can she now do? Where can she now go? She is very scared of retribution. We are worried she will be a victim again. How can we protect victims?'

7.5 *The urgent reparations programme*

The identification of victims for the CAVR's 'Urgent Reparations Program' was another area of interaction between the CRP and the VSU. The CAVR was conscious that many individuals continued to struggle with urgent needs resulting directly from human rights violations, and had developed a scheme - drawing on funds of approximately \$166,000 provided by World Bank through the Community Empowerment Project - whereby small sums of money could be made available to victims who met certain criteria. The program was designed to meet some immediate needs of victims and was not aimed at providing a comprehensive reparations program, which was deemed to be the responsibility of the government of East Timor.²³

Victims who had given their statement to the CAVR truth seeking process and those who participated in CRP hearings could be identified for assistance by the CAVR's VSU and referred to the national CAVR office, where a steering group, involving CAVR staff and NGO's would make decisions on those to receive the urgent reparations.

In order to be eligible for assistance through the scheme victims needed to meet a number of criteria: they were to be a survivor of human rights violations; be in severe need (and the need directly related to the human rights violations experienced); a vulnerable member of the community (for example, a widow, orphan, a person with a disability, an isolated person, etc); other means of assistance did not exist or were not easily accessible; the need was immediate; the assistance would help the recipient in a 'sustainable' way. The urgent reparations measures could include the provision of medical and/or psycho-social care; equipment and training for the disabled; accompaniment and support for establishing survivors self-help groups; accompaniment and support for organising a commemoration event; accompaniment and support for organizing the instalment of tombstones of monuments for victims.

Between September 2002 and March 2003 \$130 600 was distributed to 617 individuals. Of these, 178 (26%) were women and 501 (74%) were men. Most received an amount of \$200. The VSU staff also attempted where possible to refer victims to other organizations providing support.

Many CAVR staff described the urgent reparations scheme in extremely positive terms; explaining that it had made a concrete difference in the lives of many victims. The VSU believes that the greatest impact may not have been the material assistance itself but the symbolic recognition that people's sufferings have been symbolically heard and acknowledged. However, recent feedback to the VSU from recipients of urgent reparations funds also indicates that while they expressed gratitude, many felt that the assistance was not enough, some believing initially that they would receive the \$200 every month.²⁴

The urgent reparations scheme has also been a 'silent' scheme with the aim of avoiding jealousies amongst those who received and those who hadn't. The silent nature of the scheme has however, potentially detracted from the symbolic value of publicly acknowledging individual victims. Communities themselves have played no role in the identification of vulnerable individuals requiring assistance, and the scheme was thus, not generally known about in the community. There remains a perception amongst therefore that the economic needs of vulnerable individuals are not being addressed.

8 Women in the Reconciliation Process

8.1 Female commissioners and panel members

Despite the CAVR's attempts to address gender consideration by employing women within the CRP district teams, the vast majority of both deponents and victims have been male. Whilst a special effort was made to interview female deponents and women victims as part of this research study, only 3 women deponents and 8 women victims were accessed in total. Discussions were also held with female staff and commissioners of the CAVR at national and district level in an effort to understand why women's participation in the process had been less than that of men and how the role of women as panel members and CAVR staff has been perceived by the community, in what is traditionally a very male activity, dispute resolution.

When questioned about women's participation in the CRP as panel members and commissioners, remarkably few concerns were raised by community members or by female commissioners themselves. Some female commissioners stated that it had taken some time to build trust amongst the *toko adat* (traditional leaders) that women could be involved in conflict resolution. However, over time most felt that acceptance of their role had grown and they were now respected. One female commissioner explained that she had to tread carefully in the beginning, in dealing with the *toko adat*:

As a woman commissioner when I meet with the *adat nains* (traditional leaders) I say that I am not there to teach them. I try to explain that women and men are equal. Sometimes they laugh at me and say 'in the past you would have been in

²⁴ *Follow-up terhadap korban yang telah menerima dana CEP* (follow-up with victims who received CEP money), Internal CAVR document

the kitchen cooking’, but I feel brave. I explain that we need to value each other, men and women, and to improve our *adat*. Slowly they are understanding what ‘gender’ is all about. I feel they respect me, as does the general community when I speak.’

Indeed, some female commissioners felt that women did a better job at this kind of work than men, because they tend to be more patient and less directive. As one commissioner remarked:

As a woman commissioner when I first began I was worried about being involved in *tesis lia* (resolving conflicts). But after the first hearing everyone congratulated me and told me I had helped to resolve their problems. I felt very happy. When men are involved on the panel sometimes they are more threatening to the deponent. One of the skills we need is patience. To do this we need to get close to people and give them courage, not threaten them. As mothers, women often have more patience to do this work than men!

One commissioner felt that she could play an important role encouraging women to sit on the Panel, stating that ‘I knew women may not be able to read but they can still be involved in *tesis lia* (resolving conflicts) and I gave them courage to be involved.’ Although it is difficult to measure, the presence of women as panel members and as commissioners it is hoped, assisted in encouraging more women to participate as victims, deponents and community members than would otherwise have been the case.

Deponents and victims rarely, if ever, raised concerns about the involvement of women on the panels and as commissioners. Many expressed the view that ‘women and men are equal now’ or ‘women and men have the same capacity to resolve conflicts’. Whether this reflects their real views or the desire to appear ‘politically correct’ in the interview, is difficult to judge. It may also reflect a perception that ‘important people’, whether they are women or men, are to be accorded respect, whereas this respect is not necessarily accorded to ‘ordinary women’ in the village.

8.2 Female victims and deponents

While the presence of women as commissioners and panel members did not seem to be problematic, more difficult was ensuring the participation of women as deponents and victims and community members in the CRP. Amongst the CAVR staff interviewed, most suggested that CRP hearings tended to be male dominated.

When it came to female deponents, several CAVR staff and commissioners stated that more were indeed out there in the community, and many were fearful to come forward. Indeed as part of this research report three female deponents were interviewed. One had been the wife of a prominent military leader in Suai, and had exploited her position by threatening others. The other two had been members of Gadapaksi (*intelligence*) in Alieu. The main problem in encouraging women deponents to participate according to CAVR staff was gaining their trust. Many stated that it took frequent visits to their houses in

order to encourage women to come forward. Some stated that it was only now, as the process is concluding, that a number of female deponents are wanting to come forward.

Similarly when it came to female victims, CAVR staff stated that in reality there were many more female victims in the community than had participated in the CRP process. One of the problems here is that CAVR staff relied on the statements of deponents in order to identify victims. Female victims were sometimes ‘forgotten’ in the deponent’s statement. Male deponents would tend to mention men rather than women within their statements, as they are considered to be the ‘head of the household.’ Thus, when it came to a house burning, the man rather than his wife would be identified as a victim. Another factor was the influence of women’s husbands. Sometimes, particularly when testimony was of a sensitive nature, women’s husbands did not want them to participate in hearings.

The time factor also influenced the involvement of women as deponents, victims and community members. Hearings often ran late into the night, and it was difficult for women to participate if they had home duties and children to care for.

Women staff of the CAVR stressed that it was important to specifically give an opportunity for women members of the community to speak during the hearing, otherwise they would be reluctant to do so. One also stressed that working closely with women’s organizations, including OMT, had been a useful strategy.

Again, when it came to encouraging women’s involvement in the CRP process as victims many CAVR staff and commissioners stated that time was the biggest constraint, stressing that it required time and patience to involve women in the process, including frequent visits to their house. The time constraints under which the CAVR was operating often meant that this level of attention was just not possible.

9 Understandings of reconciliation and justice

Justice is like the ai moruk (medicine) that we drink to cure our illness. Reconciliation is like the root but justice is the shade.

Chefe de Aldeia, Ainaro

One of the questions explored during the interviews was how respondents perceived the concepts of ‘justice’ and ‘reconciliation’. There was remarkable consistency in the responses to this question, and for many, the two processes were seen as inextricably linked. When asked to define justice, both victims and deponents alike described it as the punishment of perpetrators of serious crimes (and sometimes ‘less serious’ crimes’) in a court of law. Some described it as *komarka* (jail) In addition some victims (and deponents) viewed justice as a kind of ‘social justice’, reflecting a view that there could be no real ‘justice’ until ongoing social and economic inequalities were addressed.

When asked to identify which was most important; justice, reconciliation or peace, the majority of respondents expressed the view that reconciliation and justice need to occur concurrently for real peace to be realised, many commenting that they were two roads to the same ends, peace. As a chefe de suco and panel member in Ainaro remarked, ‘reconciliation needs to keep going, but are reconciliation and justice separate or the same? Are the two processes working together or not?’ For some victims who had lost family members the term ‘reconciliation’ was one that had little meaning or relevance to their lives. Some expressed anger at the term, while others saw it simply as not a priority in their lives.

Amongst respondents, it was an almost universally held view that perpetrators of serious crimes (including crimes of murder and rape) could not enter into a CRP type process but must be prosecuted in the formal legal system. When asked why this was the case, some respondents simply stated that victims would not accept anything less than a prison sentence for the perpetrators to feel satisfied. Others were fearful that a perpetrator who simply apologized for their actions within a traditional dispute resolution process and remained free in the community may perpetuate a ‘cycle of impunity’ as the perpetrator could go on to commit crimes in future. The only exception to this was a view expressed by some respondents that perpetrators of serious crimes should go through two processes; a traditional dispute resolution process in order for perpetrators to explain their behaviour in front of the whole community, in addition to incarceration and other punitive sanctions. For some respondents this ‘explanation’ or disclosure in front of the community should take place before the formal legal process, for others it should occur following their release from custody to help their reintegration back into the community.

10 Key Issues for the Future: building social cohesion?

The extent to which the CRP has contributed to building social cohesion and relieving tensions within the broader community is difficult to measure. What however, can be said is that the role of the CRP in healing community relationships has been uneven. While it has resolved some problems and facilitated the integration of many deponents back into their communities it has raised a host of new issues that are left unresolved. A great deal of opinions and accusations are aired within the context of a CRP hearing that are not necessarily about the minor crime in question. Deponents and victims remain living in close proximity to one another. The voluntary nature of the process has meant that only some deponents have participated in the process, leading to resentment amongst victims and deponents alike of those who have not yet come forward. Some deponents have been made ‘pending’, and their cases remain in limbo, without any foreseeable means to their resolution. This due to the fact that with its limited resources to investigate serious crimes the SCU has its own means of targeting and prioritising cases, and those identified through the CRP process may not necessarily accord with existing SCU priorities.²⁵

²⁵ Indeed, to a large extent the SCU has focused its resources on the investigation of 10 priority cases, committed between 01 January to 25 October 1999. These include the Liquica church attack, the Suai Church Massacre, the September attack on the compound of Bishop Belo, the Maliana Police Station attack and the TNI Battalion 745 killings. The SCU lacks resources to investigate and prosecute pre-1999 crimes, and while the Ordinary Crimes Unit has jurisdiction over pre-1999 ‘ordinary’ crimes, it also lacks

More critically, the CRP has inadvertently ‘stirred the pot’ with respect to serious crimes issues, raising expectations that the ‘big fish’, some of whom are perceived to be living back in the community, will now be investigated and prosecuted. Indeed, while serious crimes issues remain unresolved, it is perhaps premature for many to contemplate questions of ‘community harmony’. This section explores some of the key challenges for the future with respect to these broader questions of community cohesiveness and the potential for violence.

10.1 Continuation of the CRP?

Many respondents, both victims and deponents alike, stressed that the CRP process has been too short and that it is only now, as the CAVR is ending, that the community is beginning to understand and appreciate its value. A number of respondents expressed the desire for the CRP to continue in order to enable those deponents who have not yet come forward to do so, including those who have yet to return from West Timor. District CAVR staff also noted that many people had recently approached them, requesting CRP hearings. Some respondents expressed a view that CRP process was ‘incomplete’ and that if it ends now, ‘new problems may arise’. For example, in, Ainaro, a *Chefe de Suco* and member of the Panel explained his community’s dissatisfaction with the fact that only one deponent, ‘Pedro’ had participated in the CRP process while 6 other members of the *Mahidi* militia remained at large in the community:

When 6 *mahidi* members came back from Atambua in 2000 the community did not beat them, but they abused them. I kept them in my house for two months because I was afraid the community would react badly. These 6 people were probably only responsible for small crimes but we don’t really know, we have not had a process with them yet. Some young people here in the community think ‘Why only Pedro?’ He is only a small person. Why only him, when these others are still free? They still feel *laran moras* (resentful) The young people need to feel satisfied. According to me the CAVR is not yet finished. Are they going to come back or not? The government should continue their work otherwise new problems will arise. Young people may beat each other up because many people have not confessed openly yet.’

Q. So what do you think needs to happen?

A. My proposal is that the government should create a commission to continue the work of the CAVR. If not, in our *suco* there are still many people who have not come forward. Only one person has gone through.

The requests for the CAVR to continue must however be viewed within the broader context of justice. Respondents often requested the continuation of the CRP while

the resources to investigate and prosecute these cases effectively. Thus, pre-1999 serious crimes will not, in all likelihood, be prosecuted.

simultaneously stressing the importance of the prosecution of serious crimes. There is now a clear expectation amongst many community members that investigations of serious crimes will follow on from where reconciliation has left off. In part this indicates the success of the CAVR's 'socialisation' program, which has made it one of the best-known national institutions in the country. In its explanations to communities, the CAVR has been clear to outline that its mandate encompasses minor crimes only and that the resolution of serious crimes falls under the jurisdiction of the Serious Crimes Investigations Unit. As Pigou remarks, the people of East Timor have been sold a justice and reconciliation 'package' and it could be argued that raised expectations around the promise of prospective prosecutions have smoothed the way for the CAVR's operations.²⁶

10.2 The potential for future violence

It is difficult to gauge what may happen if these expectations are not met. While many respondents stressed they were patient and were willing to 'wait' for justice, there may be limits to just how long. While the majority of respondents felt the situation in their community was peaceful at the moment and that community members would not commit violence against perceived militia members, some respondents believed that the 'partial justice' that has been achieved by the CAVR may fuel community frustrations and discontent.

For example, the *Chefe de Aldeia* of Faulata, Ainaro, described the sense of anger and confusion amongst young people in the community regarding the fact that a serious crimes case had not yet been resolved and only a 'little person' had participated in the CRP:

Mus (the deponent) used to threaten people during 1999. He would say, 'You Fretilin people, we will kill you, we will capture you and beat you.' But other than threatening people Mus did not commit any other crimes. Mus was a small person. In Casa 'Jose' was the big person. He was the commander of the militia. The small people didn't really make mistakes. It was the big people. If 'Jose' had not forced them then Mus would not have done what he had done, we would still have been like brothers...

...The work of the CAVR is good but it is about the small crimes only. It is still important for the small crimes to be resolved too, but we all thought 'Is this process only for the small people?' There was one person present watching the PRK who had been a militia member in the past and had carried a gun. Everyone here suspects him of being involved in the killing of 12 people. The community keeps asking, why can't the CAVR do something about this? Why is the CAVR only looking at the small cases? We still feel confused. Although he lives in our *aldeia* and we are peaceful with him, if something happens to him I feel I am not responsible for it. I am ready to wait for justice but if he dies in the meantime how

²⁶ Pigou, above, n 1

will we get this? We need to know the truth and then to punish him. But at the moment we see there is no law to call people forward. People are confused...

...I want to say to the government, reconciliation has started already but justice needs to happen too. How can we find the big crimes and bring them to justice? With which law?

Some CAVR staff interviewed, including the commissioners in Suai and Ainaro, were concerned at the potential for future violence if militia members returned from West Timor. The Suai commissioner had been informed by a number of community members that if the CAVR ends 'we will just beat each other up again.' Similarly, two *Chefe de Aldeia*'s and two deponents in Ainaro expressed concerns that young people may feel dissatisfied if the CAVR ends now if and serious crimes cases are not pursued. As one *Chefe de Aldeia* questioned, 'What is going to happen now? People could beat each other because peace has been brought to some people only. There are still many people in (this aldeia) who have not come forward.'

10.3 The problem of the 'pending cases'

The potential for future violence is of particular of concern in relation to the so called 'pending cases', including those cases in which the SCU has exercised its jurisdiction over and those cases suspended due to new information related to serious crimes coming to light during the course of the hearing. There are currently 111 such statements of deponents, which remain with the Office of the Prosecutor General. The likelihood of future legal action is extremely low²⁷. Theoretically all statements given by deponents to the CAVR are confidential, however in reality it is difficult to keep confidentiality in many small, close-knit communities. Everyone is aware of the 'pending cases' in their community.

Some deponents whose cases remain pending are extremely anxious to have a resolution of their case. For example, Tomas Mendonca, the former commander of the *Ahi* militia in Alieu gave a statement to the CAVR and wanted to participate in the CRP process. The Serious Crimes Unit exercised its jurisdiction over Mendonca's case and he has been unable to take part in the process. Mendonca remains anxious to be to have a public audience to explain his past behaviour to the community. He explains:

If I don't have a chance to talk then people will think that I killed people. Some people think that I am no good. Many don't understand that I had an agreement with Falintil (to set up the Ahi militia) and that I was pro-independence. In Alieu the situation was different to other districts. What is going to happen when the CAVR finishes? Where are the cases, including my case going to go, if the CAVR finishes?

²⁷ This is due to the following factors: the SCU is already being scaled down; investigations by SCU are scheduled to finish in November 2004; those currently being indicted are high level suspects; and the national formal justice system arguably does not have the capacity to handle such cases.

In small, remote, communities in which victims and deponents live side by side, there is potential for both parties to be at risk of violence. For example, in Hatoudo, Ainaro, three victims explained that while they were patient and could wait for the justice system to resolve the case of a pending deponent, they could not necessarily wait forever:

We want our case to go to the tribunal. To us, justice is the most important. We want this because our 'blood flowed.' What's important to us is that the process goes ahead. We don't feel vengeance towards him but we want the process to go ahead.

Q. Do you think any problems could arise if this case does not go ahead?

(The deponent) still lives in our *suco*. If we meet him in the street we feel normal, we speak to him normally. We can wait for justice but if we wait for too long then new problems could arise.

The interviews conducted in a small *suco* in Los Palos, gave the strongest indication of the potential for violence if pending cases are not resolved. In this case the impetus for the holding of a hearing came from community residents and leaders who wanted to 'clarify' facts surrounding the murder of a father of 7, 'Gil', allegedly by *Tim Alfa* members in 1999. While the CAVR explained to the community that they could not run hearings for serious crimes, they nevertheless agreed that a hearing could be organised in this case, in order to discuss a less serious crime. The CAVR then approached and gained the consent of three deponents who were suspected of the local community of involvement in the murder. When the Office of the General Prosecutor (OGP) subsequently exercised jurisdiction over two of these cases, this was no secret to the community. There are now clear security concerns for the two deponents made pending. As the *Chefe de Suco* and *Deputy Chefe de Suco* explained.

When the CAVR came to our village the community wanted to hold a process to explain to people what happened to Gil in 1999. But we felt that 'Ze' (the deponent) was not clear during the process and so the rest of the community is still angry with him. The population wanted Ze to explain what happened to Gil and they also wanted the other two to come and explain what happened. The community knows that their names are still at the tribunal.

Q. What will happen if they don't go to the tribunal?

A. People will not accept it if the tribunal does not process them. Gil's widow is also very poor, doesn't have any food or any assistance. We wait and we wait and if nothing happens within one month I am worried someone will beat them or maybe kill them. So they should be investigated quickly. Ze and the CAVR promised that this would happen. The CAVR told us we just wait for the summons from the tribunal. But until now they are still here, we see them here and the community feels vengeance towards them. Gil's children are still very angry with them and if nothing happens they will beat or kill him.

In addition to the security concerns it raises, the Somocho case further highlights the way in which many community members view the CRP as a ‘truth telling’ exercise rather than a reconciliation process; the desire to establish the facts of the case clearly outweighing the need for reconciliation.

11 Conclusions

Deponents and victims have complex motivations for participating in the CRP, which this report has only skimmed. For many deponents, it appears the CRP has been a valuable process; a welcome opportunity to ‘clear their name’ and explain the reasons for their actions to the broader community. Some others, including community leaders and victims, have appreciated the opportunity provided by the CRP to ‘tell their story’; to air concerns relating to past events and discuss them in an open forum. The requests for the continuation of the CRP are testimony to the effectiveness and reach of the CAVR’s work, down to the level of the most remote *aldeia*.

However, as a mechanism for achieving just outcomes for individual victims the CRP has been less consistent. In its focus on the deponent reconciling with the ‘community’ the CRP has paid too little attention to the needs and rights of individual victims. Indeed, the notion of ‘community’ itself, as defined by the CAVR, is perhaps one that needs further consideration. Communities themselves are not by nature monolithic and cohesive entities but are made up of individual victims and deponents. The views expressed by victims interviewed for this study are a reminder that sacrificing individual needs for the ‘collective good’ is not necessarily an ‘indigenous’ East Timorese concept.

While some victims have appreciated the opportunity to ‘confront their perpetrator’ others are more circumspect about the benefits of reconciliation and the value of telling their story when they have already done so innumerable times without ‘result’. For those who have lost family members, the CRP has unearthed painful memories – ‘opened their wounds’ - and left them unresolved. Reconciliation for many is not seen as an end in itself but as a stepping- stone in the broader process of justice and a de-facto truth telling exercise towards these ends. ‘Reconciliation’ cannot be contemplated until truth and justice are realised.

As a mechanism for contributing to the building of ‘community cohesion’ the CRP has also been uneven. While it has facilitated the reintegration of a number of individual deponents it has also inadvertently ‘stirred the pot’ in relation to serious crimes issues and contributed to a general raising of expectations with respect to justice and accountability. While this raising of expectations has been by no means intentional, it is the consequence of the ways in which victims and deponents alike link ‘reconciliation’ to the achievement of justice for serious crimes. If these expectations of justice remain unfulfilled, the valuable work of the CAVR in resolving the minor crimes of deponents may well be undermined. At worst, these unresolved serious crimes issues may fuel resentments and lead to violence within some communities at some future stage.

Currently, the investigation and prosecution of serious crimes is drawing to a close. In accordance with Security Council Resolution S/RES/1543 (2004) all investigations should conclude in November 2004 and all trials should conclude in May 2005. It is estimated that at least half the murders that were committed in 1999 will remain un-investigated let alone the other serious crimes including rape and torture.²⁸ As of the end of July 2004 there were eleven cases either on trial or ready to be scheduled for trial. Given the speed in which cases progressed in the first half of 2004, JSMP is of the opinion that it is unlikely that all of these trials will be completed by the end of this year. If the UN mandate for the support of the Special Panel for Serious Crimes is not extended past May 2005 it is likely that the high percentage of serious crimes that have not been investigated or prosecuted will remain.

The greatest challenge facing the prosecution of serious crimes in East Timor is the fact that those alleged to be most responsible by the community remain outside the jurisdiction of the Special Panel for Serious Crimes, in Indonesia. To date Indonesia has refused to facilitate for any of its citizens to appear before the the Panel. Currently the Secretary General of the UN is considering the deployment of a commission of experts to assess the needs and possibilities in East Timor. JSMP believes that an assessment by a Commission of Exerts is an essential step in attempting to resolve reconciliation and justice needs in East Timor.²⁹

12 Recommendations

JSMP makes the following recommendations to the different areas of the CRP process:

Serious Crimes

The continuation of the serious crimes investigations process is of critical importance to the success and credibility of any ongoing reconciliation process. Establishing accountability for serious crimes committed during 1999 continues to be a fundamental priority for many East Timorese people. For many it remains premature to contemplate 'reconciliation' until 'justice' has been served. Any decision to continue the CRP should be carefully considered in the light of the current levels of commitment to the serious crimes investigation and prosecution process. A coordinated strategy towards both justice and reconciliation (including a strategy for dealing with those perpetrators outside of the jurisdiction of East Timor) is essential. In the absence of a functioning serious crimes process, a reconciliation process will only serve to raise peoples' hopes; leading to a sense of injustice, confusion, unfulfilled expectations and the possibility of future violence.

Developing a Victim-Centred Approach

²⁸ For more information see JSMP report *The future of the Serious Crimes Unit*- January 2004

²⁹ For more information on the Court process in Indonesian and East Timor see joint JSMP and Amnesty International report; *Justice for Timor- Leste : the way forward*, 14 April 2004 .

Discussions on future CRP- type processes should pay greater attention to victims' rights and the role of victims in the process generally. In its focus on the deponent reconciling with the 'community' the CRP has tended to exclude the critical voice of the individual victim. It is suggested that the notion of 'community' itself is one that needs further scrutiny, as communities themselves are comprised of individuals. Given that the majority of East Timorese people live in close proximity to one another in a web of complex community relationships, particular attention is needed to ensure that individual needs are not ignored and subsumed to the 'greater good' of the community. In order to develop an approach more sensitive to victims' needs the following measures are suggested:

1. The policy decision regarding immunity from future civil and criminal liability following a CRP should be revisited;
2. The policy decision that victims' consent is not required in the concluding of Community Reconciliation Agreements should be revisited;
3. Greater attention should be given to developing policy guidelines on the types of 'Acts of Reconciliation' acceptable for particular crimes to ensure greater consistency and fairness. In developing these, 'Acts' that are of direct benefit to individual victims should be given greater consideration;
4. The development of clear and consistent policy guidelines on the conduct of victims' briefings is essential. It is essential that victims' briefings explain the legal implications of the process and the rights of victims, particularly if immunity from civil and criminal prosecution are to be granted to deponents;
5. Clear policies on victim and witness protection should be developed and training on these provided to all staff;
6. Consideration should be given to locating the function of 'victim support' more centrally within the organization and linking it more closely to the 'reconciliation' function.
7. More research should be undertaken into the types of crimes more likely to be acceptable to victims through a CRP-type process. In particular, crimes that have resulted in personal injury would benefit from further scrutiny. Clear internal procedures should be introduced to consider whether a particular 'grey area' crime should proceed through a CRP. Greater rights should also be accorded to victims as to whether the cases of such a nature should proceed through a CRP.

Improving Quality and Consistency

The strict timeframes under which the CRP process operated often resulted in an emphasis on quantity rather than quality of hearings. In discussion of future CRP-types processes, greater attention to quality is essential to ensure consistency of the process. This would include: more focus on the preparation and briefing of victims and deponents; greater attention to the training of CAVR staff and commissioners to ensure thorough understanding of legal issues and policy guidelines; a commitment to internal monitoring of hearings and regular training of staff based on monitoring results.

Gender

Longer timeframes and greater attention to quality of hearings would also assist in encouraging greater numbers of women deponents and victims to participate in the process. In addition, gender training for staff should be mandatory. Training should include: how to encourage women's participation in hearings by allocating specific time for women to speak; scheduling hearings at times convenient to women; coordinating with local women's organisations to access women deponents and victims; and ensuring support for women before, during and after hearings.

Pending cases

There are concerns about the safety of both victims and deponents in relation to the so-called 'pending' cases. Currently eighty-four such cases remain with the Office of the General Prosecutor and the likelihood of future legal action is slim. Many 'pending' cases are not among the priority cases of the SCU, the Unit has limited resources and a process of downsizing is taking place. In the immediate term the CAVR should identify and list these cases and ensure that they are passed on to the East Timorese Police Service to enable ongoing monitoring and protection of 'at risk' cases. In addition, discussions on future CRP-type processes should give greater consideration to the problems raised by pending cases, including the potential for community discontent and violence if they are left unresolved. Clear guidelines in relation to protection of deponents need to be developed.

Community Reconciliation Agreements

A number of deponents have experienced a delay of two years in receiving a copy of the Community Reconciliation Agreement from the court, (providing immunity from future civil and criminal prosecution in future) In any future process, greater coordination with the court is required to ensure that CRA's are processed expeditiously.

Reparations

The CAVR did not intend to undertake a comprehensive reparations program, but rather, to make recommendations to the government in this regard. The issue of reparations is of critical importance to many victims, and there is a pervasive sense amongst many that the government has neglected them; in particular vulnerable groups such as widows and orphans. The CAVR's victim support program has made a good start in developing a reparations program and it would be important to evaluate the success of this scheme. The success of any future reconciliation processes will depend on further attention to the issue of reparations. It is unclear how much 'reconciliation' can achieve when there is a perception amongst victims of economic inequality.

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