

# The Community Reconciliation Process of the Commission for Reception, Truth and Reconciliation

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April 2004



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Commission for Reception, Truth and  
Reconciliation

Report for UNDP Timor-Leste  
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## Executive Summary

The United Nations Development Programme in Timor-Leste assists the work of the Commission for Reception, Truth and Reconciliation (CAVR) in a number of ways. During 2003, funds were made available to support the work of the Commission's Community Reconciliation Process (CRP). This report, funded by the UNDP, is intended to assist the CAVR to develop an in-depth analysis of the CRP, and in particular its integration of formal law and traditional, local conflict resolution mechanisms as a model for other countries.

Following the introductory segments that set out the purpose of the study and the methodologies employed, the report is divided into nine sections. The first section provides a background description of the formation of CAVR, and in particular the development of the Community Reconciliation Process, the relevant aspects of the governing legislation, the CRP's original programmatic targets and its performance to date. This section takes the reader chronologically through the various stages in the conceptualization and development of the CRP from 2000 to the promulgation of UNTAET Regulation No. 2001/10, and onto the establishment of the Commission during 2002.

The reconciliation process developed was unique in that it sought to address violations deemed to be 'less serious' (such as assault, arson and theft), in a voluntary process that was both public and participatory, and that harnessed community leadership including traditional elders. The process sought to secure the reception of 'deponents' with individual victims and the community at large by means of a Community Reconciliation Agreement (CRA) that was brokered by a Community Panel, made up of local community leaders and chaired by a Regional CAVR Commissioner. Reconciliation hearings could only proceed if the Office of the General Prosecutor (OGP) agreed that the matters under consideration were 'less serious'. The CAVR was bound to stop proceedings and refer the matter back to the OGP if the deponent made admissions relating to a serious crime. All CRAs would be registered with the relevant district courts, providing a record that would avert any future criminal proceedings against the deponent relating to the matters where agreement had been reached. The process was also open for 'deponents' who had not committed any particular crime, but who nevertheless sought acceptance within the community, because of their association (real or perceived) with negative elements that had been responsible for violations.

Initial projections that the CAVR would receive 1000 statements from prospective deponents were exceeded, with the CRP eventually receiving over 1500. During the course of late 2002 and 2003, the backlog of cases that needed to be processed through hearings grew exponentially, and by January 2004, the Commission was left with almost 900 cases to process through hearings during its last three months of operations. Although CAVR staff managed to ensure that the hearing programme was finalized on schedule, a number of matters remain 'outstanding', and the quality of the process and outcomes during the final stages needs to be carefully scrutinized.

The next section explores the rationale behind the incorporation of aspects of traditional justice into the reconciliation process and an assessment of the degree of

success and complications that arose in achieving this. The section begins with an examination of the evolution and development of traditional justice and conflict resolution mechanisms in Timor-Leste during occupation by colonial and post-colonial forces. Despite efforts to repress and manipulate local and traditional leadership and their remedial mechanisms, customary beliefs are strongly held and retain considerable legitimacy for many Timorese.

Although tradition and customs are neither uniform nor static, with a wide variance in practices across the country, notions of reconciliation are not unfamiliar and lie at the heart of customary law and practice. Indeed, traditional conflict resolution employs a variety of restorative justice elements, including notions of acknowledgement and compromise, and emphasizing the central facets of reciprocity and compensation, which are explicitly recognized in the legislation governing the CRP.

In the new dispensation, increasing attention is being given to the potential utilization of traditional justice as an integral component of the emerging criminal justice system. Most people in Timor-Leste have no experience of a functional criminal justice system with necessary checks and balances. What denotes justice and accountability in terms of a formal (essentially Western) system does not necessarily accord with people who may see such processes as largely alien, culturally irrelevant and socially unenforceable? For many people justice is not simply about punishment, but also about issues of confession, contrition and compensation.

During the conceptualisation process, it was recognised that accountability concerns and reconciliation needs at the community level could only be meaningfully addressed through a process of reception and reintegration, and that these were best achieved with the assistance of processes that were familiar, and above all, legitimate for most ordinary Timorese. Consequently, the incorporation of tradition and traditional leaders in the CRP served to endorse the process, adding a tangible sense of *gravitas* to proceedings. The success with which tradition and custom were utilised effectively varies both within and between the different districts. Considerably more empirical research is required in this regard, to determine more systematically what worked and what did not, and whether a more standardised and consistent approach might be developed and employed in this regard.

The next section provides an explanation of the relationship between the CRP division and the Serious Crimes Unit (SCU), which was delegated responsibility for handling CAVR cases by the Office of the General Prosecutor. The CAVR's founding legislation unambiguously stipulates that the prosecutorial authority of the General and Deputy General Prosecutor (who is in charge of the Serious Crimes Unit) remains paramount in matters relating to the CRP. No hearings can proceed without the OGP's express permission, and all community reconciliation applications received by the CRP are vetted to determine whether the case is applicable for a community reconciliation hearing. Although 84 cases were proscribed by the SCU because they appeared to involve 'serious crimes', their interpretation of what was acceptable to proceed appears to have become increasingly accommodating.

The CAVR's governing legislation nevertheless provides considerable detail on the required process and interaction between the CAVR and the OGP. A Memorandum of Understanding subsequently signed between the OGP and the Commission during

2002 further reinforced this. In a context of limited resources and competing priorities, the SCU required 30 days to process the deponents' applications. On top of other procedural and logistical considerations, this placed the CAVR, and especially its CRP teams, under considerable pressure to prepare and facilitate reconciliation hearings within relatively short time periods if they were to keep within the predetermined three-month schedules. Unsurprisingly, such delays contributed to the growing backlog of applications that needed to be processed through hearings.

Although the CAVR managed to finalise its hearing programme before the end of March 2004, approximately 120 cases, about 8% of the total number received, were either vetted by the SCU or suspended during the hearings themselves because they ostensibly relate to 'serious crimes'. These and many other similar matters constitute a considerable amount of unfinished business vis-à-vis the goals of reconciliation and accountability. It remains to be seen whether the promise of the OGP sanction for serious crimes, as inferred in the Regulation will be brought into effect. A failure to do so will exacerbate concerns raised about the 'justice gap' where certain categories of people admitting to serious crimes might face no justice at all from either the CRP or the SCU / OGP, might become a reality.

The next section provides an account of the methodology of implementing the CRP, including; the operational factors involved in forming the national programme, as well as developments and refinements to the process that have occurred during its implementation. The section explores the various phases of implementation, including an assessment of 'planning and preparation' in terms of national and district operational planning, training, preparing statement protocols and piloting the hearing process. The section also examines: the CAVR teams' experience vis-à-vis socialisation amongst the communities; the difficult task of securing the cooperation of deponents; the application / statement taking process; the role of the CRP national division and Statements Committee in terms of summarising and assessing applications, and the hearing authorisation processes by both the OGP and CAVR.

The section goes on to consider how district CRP teams and CAVR Regional Commissioners have established Community Panels that are tasked with presiding over the CRP hearings, how specific hearings are facilitated and reconciliation agreements are secured. The CAVR has also taken responsibility for monitoring the fulfilment of CRAs by deponents, as well as facilitating the registration of agreements with the District Courts.

The implementation of national and district strategic plans were based on a theoretically integrated approach that enabled line functions within each district to support each other's work. Despite considerable variances in needs vis-à-vis the core CAVR objectives, a principled decision was also taken to ensure an equitable distribution of resources between the districts.

The proposed sequencing of operations over a three-month period in each sub-district was always going to be difficult to maintain, as team members were obliged to double-back to sub-districts already visited in order to take further statements and to facilitate hearings. Two evaluations in early 2003, one from the UNDP and another internal process, highlighted the importance of securing more staff and resources for the CRP. These resources came 'online' in August 2003, enabling the CAVR to re-

deploy staff to districts needing assistance with the completion of sub-district responsibilities, as well as concluding the CRP hearing programme. The section also provides an initial examination of the 'West Timor Strategy' from the perspective of CRP objectives, which appears to have undertaken important work in terms of socialization, yet was unable to translate this into securing tangible 'buy-in' for the CRP from prospective deponents.

The report then looks at several 'generic considerations' in terms of CRP implementation, in relation to: the development of 'best practices', especially in terms of internal coordination and the maximization of limited resources; coordination and communication between the national office and district teams, and; the strategic integration and synergy between the CAVR divisions.

Not surprisingly, the quality of CRP implementation varied considerably. Despite the provision of guidelines by the CRP national division that promoted a standardised approach, the governing CAVR legislation and modus operandi of district teams instilled a considerable degree of flexibility into their *modus operandi*. Although many had envisaged the CRP would involve a relatively complex set of legal, institutional and managerial issues, in many instances the process was simplified to accommodate limited capacity. The success of the process was often based on the effectiveness of the CAVR's organisation, preparation and coordination. The process also fundamentally relied on the selection of effective panel members who were able to grasp the fundamentals of the process, as well as the conceptual reasoning behind the CRP.

The following section examines the various stages of the CRP hearing process. The various stages under examination include: introductions and formalities; the reading of statements; oral testimony from deponents; questions, clarifications and comment from panel members, individual victims and members of the community; how disagreements are dealt with, and; how reconciliation agreements are brokered.

Although each district team was enabled to determine its own procedures at CRP hearings, guidelines were provided and a generic format subsequently evolved in many districts. In line with the regulatory stipulations that the CRP panels hear from deponents, victims of the deponent's acts and other members of the community at the CRP hearing, most panels engendered an inclusive approach that encouraged participation. The section also provides a detailed descriptive overview of the CRP hearing convened on 30 January 2004 in the Caikasa Suco, Maubara sub-district, Liquica district.

The report continues with two cases studies of deponents that were interviewed during the study. These are from a serving member of the police force, who was also previously a member of the Indonesian police, and a female deponent (one of very few), who acted as a treasurer for a local militia group during 1999.

The following section looks at who has engaged the CAVR's reconciliation process and explores some of the experiences and opinions expressed about the process from a number of different interviewees that were directly involved in the process. Understandably, views and opinions are still very much in the process of being formulated. Some communities held CRP hearings some time ago, for most, however,

this remains a relatively recent happening. Consequently, it is somewhat premature to determine the full import of the process. Nevertheless, the general response was extremely positive.

Although the majority of deponents were involved in some capacity with the militia activities of 1999, applications came relating to violations from across the political spectrum and time period under review. Most admitted involvement in some form of criminal activity, and some simply wanted to be reintegrated with their communities having been ostracized because of their association to negative elements. A nuanced overview of dates of incidents, types of cases, and their geographical location and related analysis can be gleaned from the CRP database when it is completed.

Although many deponents had been back in their communities for some time before the CAVR processes began, the CRP provided an unprecedented opportunity for many individuals to engage their communities in relation to past violations that in many senses remain 'unfinished business'. Once potential deponents understood what the process was intended to achieve, most saw it in their interests to participate.

The objective to consolidating social cohesion in the aftermath of the conflict remains a critical priority for many communities. Panel members selected to help broker reconciliation agreements between deponents, individual victims and the broader community reinforced this perspective. Panel members were drawn from local community leadership, including village and sub-village chiefs, political and religious leaders, as well as representatives of women and youth groupings. It was universally agreed that the CRP was the most appropriate way of handling these relatively minor crimes, and many panel members saw the hearings as an important development in terms of instilling some sense of justice and accountability within the communities.

Eliciting victims' viewpoints remains methodologically challenging and is one of the most difficult areas to empirically assess. Although there has been little outright rejection of the process there is clearly no uniformity in terms of responses, whether victims felt reconciled or were able to forgive. For many victims, notions of acknowledgment, confession and contrition underpin their own capacity to forgive. It would be imprudent to suggest that the CRP is some sort of panacea for victims. As such, acceptance of and support for the CRP might not necessarily equate with personal notions of forgiveness and reconciliation.

It is difficult to gauge the extent to which communities have accepted the CRAs, both in terms of the specific acts of reconciliation brokered, and the explicit agreements that acknowledge deponents are officially 'received' into their communities again. Reconciliation hearings certainly provided communities with an important community 'event', and although attendance at the hearings varied from several dozen to many hundreds, efforts were made to ensure broad participation. The hearings were generally concluded with a social event that enabled communities to 'celebrate' the reaching of reconciliation agreements and joint commitments to rebuilding the community and maintaining peaceful relations.

Although many attended the hearings, for a number of reasons, many did not. Attendance was dependent on accessibility and proper communications and preparation. In addition, social and economic survival remains the priority for many

people, especially in poorer rural areas. Time spent attending hearings means time spent away from the fields, and the other necessities of daily survival, such as fetching water, collecting firewood etc.

Communities across Timor Leste have welcomed the CRPs, but their impact should not be overestimated. In the context of acute socio-economic deprivation and outstanding 'unfinished business', expectations remain that much more will be done to address issues of justice and accountability.

Although the viewpoints expressed from the different groupings are not necessarily representative, they are indicative of selected thoughts and views that the process has generated. The CRP has been a popular process in that it has engaged and encouraged grassroots community participation, and in so doing has managed to hold over 200 hearings the length and breadth of the country. It took some time for the process to develop its own momentum, reliant on patient engagement with individuals and communities to explain, cajole and persuade them about the merits of the process. Having experienced what could be achieved in this regard, there is now widespread support for the process.

For many observers it is clear that the CRP has helped to reduce tensions in many communities. In so doing, the CAVR has successfully introduced a novel and authoritative dispute resolution mechanism that appears to command the respect of many people, and whose validity is grounded in its community focus and participatory methodology. CRP hearings have become an important site for expression and have provided communities with important insights into the conflicts that affected them. They have reinforced notions of national unity and the authority of the OGP. They have demonstrated the potential of peaceful conflict resolution and the importance of process and agreements that respect the fundamental rights of perpetrators, as well as victims and the community at large.

The CRP has reinforced the importance of local justice mechanisms and the notion that justice in Timor Leste not always about punishment, but also compensation, contrition and other forms of reciprocity. The common denominator remains some form of accountability. This forms a core element of reconciliation and restoration for many individuals and communities.

Everyone interviewed was worried that the reconciliation process was drawing to a close at a time when many communities were only just beginning to really understand the potential benefits of the process. Although the CRP is not regarded as a panacea that will deliver reconciliation, its contribution to reconciliation in many communities has been pivotal. The CAVR has for many been the most visible aspect of the new justice system, and has been 'sold' to communities as part of a broader package of initiatives designed to address past violations.

The CRP should not therefore be examined outside of the broader context of justice and accountability considerations and related initiatives underway. There is considerable anxiety about the amount of unfinished reconciliation 'business' relating both to less serious and serious crimes, and consequently almost everyone interviewed concurred that the inter-related processes of prosecutions and reconciliation must continue. In terms of further prosecutions on either the domestic or international

stage, expectations remain high, although most people do not know what will happen and remain largely uninformed regarding the array of constraints and opportunities that will inform decision making in this regard.

In terms of specific reconciliation needs, many voiced concerns that the CAVR process was terminating with no concrete plans on how to develop what has already been achieved. In this regard, reconciliation needs must also be understood in the context of justice and accountability considerations. Although the Serious Crimes Unit at the OGP have managed to investigate a significant number of the murders from 1999, most cases have not been investigated, and almost all violations from the 1974-1999 period remain uninvestigated. Not all of the perpetrators of serious crimes from this period are in West Timor and many reportedly remain within their communities in Timor Leste, and as such remain a source of potential destabilization. This apparent 'justice deficit' in terms of the plethora of issues and violations that have not yet been addressed may therefore significantly undermine the important reconciliation work already carried out, especially if the CRP is eventually interpreted as part of a *de facto* state of impunity.

Reconciliation also requires more active participation from political leaders, and a greater synergy between the community processes undertaken, and political engagements at a national and district level. There is widespread and growing cynicism about politics and politicians in Timor Leste, and there was disappointment and concern that political leadership, both inside and outside the country, had not done enough to support and facilitate the CRP and other grassroots processes. Indeed, to many people it appeared that reconciliation efforts were being left to the 'little people', as opposed to the 'big people', and that if this situation remained unchecked, political divisions could seriously undermine what had been achieved to date.

The CRP alone could never hold the key to securing reconciliation, justice and accountability, but it was an important investment and foundation block in moving towards them. Much more is needed, however, and the challenge remains to see how this process can be further developed to continue contributing to Timor-Leste's regeneration.

## Introduction

### Background

The United Nations Development Programme's support to the Commission for Reception Truth and Reconciliation (CAVR) is a 15-month support programme commencing on 26 June 2003 and terminating at the end of the CAVR's mandate in September 2004<sup>1</sup>. In accordance with the objectives and programmatic model of the UNDP's Bureau for Crisis Prevention and Recovery, this support is intended to contribute to the promotion and development of reconciliation and sustainable peacemaking with a view to preventing future violence and human rights violations in Timor-Leste.

The core pillars of the UNDP's support for the CAVR's Community Reconciliation Process (CRP) is to provide resources to the Commission to accelerate the processing of outstanding perpetrator applications, and augment CAVR's capacity to visit communities in which the CRP process has taken place to assess the reintegration of perpetrators and provide support to victims. In addition, UNDP support will help the production of an in-depth analysis of the CRP, in particular its integration of formal law and traditional, local conflict resolution mechanisms as a model for other countries.<sup>2</sup> This report is intended to facilitate the realisation of this latter objective.

### Purpose of report

The content and structure of this report is contained within the terms of reference provided to the consultant. (Attached as Annexure 'A'). The report will both stand alone as an assessment of the community reconciliation process, its methodology, implementation and context, as well as providing material that can be developed and inputted into the final report of the Commission pertaining to its CRP. As such, the report will seek to assess/describe:

- A summary of the program to date
- Original targets of the program and assess their realisation.
- Formulation of the legislation pertaining to CRP.
- The rationale behind the incorporation of aspects of traditional justice in the reconciliation process.
- The formation and mechanism of the relationship between the CAVR and the Office of the Prosecutor General (OPG).
- The process as a national program, structure and strategies of implementation.

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<sup>1</sup> UNDP Support to the CAVR is funded by the Government of Denmark, Swedish International Development Co-operation Agency (SIDA) and UNDP's Bureau for Crisis Prevention and Recovery.

<sup>2</sup> A detailed breakdown of the UNDP's core objective 'activities' is contained in 'Annex 20 to UNDP Timor-Leste Programme Package Document', entitled "Support to the Commission for Reception, Truth and Reconciliation", dated June 2003.

- Ongoing needs for reconciliation in the Timorese community – current & anticipated actors.
- The degree of success in providing a service to those requiring it.
- Perceptions of the process' contribution to a sense of justice at the community level – particularly the impact of the 'impunity gap' involving perpetrators in Indonesia and those cases in East Timor which have been marked as unsuitable for CRP by OPG.

The report does not provide an explicit evaluation of the support provided by the UNDP and its impact on the process vis-à-vis the realisation of CAVR's reconciliation objectives. In many respects, such an evaluation is premature, as field operations have only closed down during March 2004. Aspects of what was intended can, however, be examined, are implicit in the report itself, and referred to in some detail in Section 5, which addresses the developments in methodology and implementation of the Community Reconciliation Process.

The report does not supply a statistical analysis of what has been achieved, as this data is not available until the data captured by the division has been fully entered into the CRP database.

## **Methodology**

This report and its analysis are based on a combination of primary and secondary data sources. Detail of secondary data sources is contained in the attached bibliography (Annexure 'B'). Primary data was collected from a series of interviews in a six-week period between the end of January to early March 2004. Interviewees included members of CAVR's staff from the national and district teams, deponents, victims, panel members, as well as community leaders that had been involved in the Community Reconciliation Process. Interviews were also conducted with representatives of the Serious Crimes Unit and the General Prosecutor, and with several non-governmental organisations in Dili. A complete list of interviewees (some of who wished to remain anonymous) is attached (Annexure 'C').

## **The evolution of the CAVR's Community Reconciliation Process.**

This section provides a background description of formation of CAVR, the development of the CRP, its legislation, and detail on the original programmatic targets, as well as its performance to date.

### **Conceptualisation and development of CRP**

During the course of 2000, and in the wake of immediate and continuing humanitarian priorities, discussions about the objectives and practicalities of dealing with past human rights violations, in terms of justice and accountability on the domestic terrain and other transitional justice considerations, started to receive more attention amongst East Timor's political leadership, as well as certain sections of the United Nations Transitional Administration in East Timor (UNTAET), and civil society groupings.

A core concern and consideration at this moment related to the tens of thousands of East Timorese who remained in West Timor, which included not only thousands of victims who were forcibly displaced following the Popular Consultation, but also the leadership of pro-autonomy and their followers, which included many perpetrators from within the ranks of the various militia groupings. How was it possible to encourage a process of return and reconciliation that addressed the challenge of the refugees in West Timor, but that also recognised and meaningfully addressed the legacy of Indonesia's brutal occupation and associated violations? Understandably, immediate priority was given to the specific events of 1999, and especially the post Consultation violence. It was recognised, however, that an examination of past conflicts required a focus on all aspects of these conflicts and their historical trajectory, including human rights violations committed ostensibly in the cause of liberation and independence.

In June 2000, the National Council for Timorese Resistance (CNRT) announced its intention to help develop a Commission for Reception and National Reconciliation, as one component in a broader package of initiatives intended to address security and justice concerns. In some respects this decision and subsequent developments were in response to growing criticism and frustration regarding national political reconciliation initiatives, and the absence of grassroots initiatives.<sup>3</sup>

A relatively detailed proposal to establish Truth Commission that addressed the specific challenges of reconciliation facing East Timor at a community level was subsequently developed.<sup>4</sup> With over 100,000 refugees still in West Timor, it was envisaged that one of the proposed Commission's core activities would be to facilitate their return, and more specifically their reintegration into East Timorese society

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<sup>3</sup> Soares, Dionisio da C. Babo, Nahe Biti: The Philosophy and Process of Grassroots Reconciliation (and Justice) in East Timor, 2002, p.7

<sup>4</sup> Hayner, P and Van Zyl, P, *The Challenge of Reconciliation in East Timor*, Report on a Mission to East Timor, June 18-28, 2000 on behalf of the Human Rights Office of UNTAET, unpublished, 2 July 2000

amongst the communities they had previously been a part of. It was realised, however, that any process of return and ‘reception’ must incorporate some form of accountability for those responsible for human rights violations, but in a way that also contributed to the prevention of acts of revenge by victims and communities, many of who personally know their direct perpetrators.

In short, the process undertaken must address its core objectives through seemingly contradictory processes, and at the same time facilitate and consolidate social cohesion amongst many fractured communities. The process, however, must also appeal to a common sense of identity and humanity and a shared future that eschews retribution and violence.

Thousands of East Timorese participated in militia activities during 1999, with different degrees of participation and culpability. In addition, many of these, and others, had participated in the repressive machinery of Indonesia’s security structures, and others had been responsible for violations during their involvement with the UDT and Fretelin militias that had fought each other during 1975.

In the context of limited resources, an embryonic criminal justice system, political sensitivities, and a gamut of competing humanitarian and development priorities, it was evident that wholesale, or even widespread criminal prosecutions for these violations was not a realistic option. Nevertheless, it was imperative that there remain a commitment to secure the principle of accountability and some measure of justice for these violations was retained.

Anecdotal evidence at this time suggested that there had been relatively few serious physical attacks against those returning from West Timor, but that this probably reflected the fact that most of the worst perpetrators remained beyond Timor-Leste’s borders, and/or that victims had expectations that these people would be brought to justice at some stage in the future. The potential for violent reactions, however, remained ever present and concerns about possible retribution and the implications thereof remained. It was therefore imperative that something was done that could facilitate the return and reintegration of refugees, and at the same time ensure some measure of justice and accountability.

In addition, it was also felt that reception and reintegration options were also necessary for those who had not necessarily committed any crimes, but who had openly sided with pro-autonomy groupings or Indonesian security structures. A similar arrangement to brokering agreements in the community would be put in place, but although the person seeking reception would not be admitting to any criminal wrongdoing, entering into such a process implicitly recognised that their role, perceived or otherwise, had undermined social cohesion within the community in the context of broader considerations around repression and collusion with the occupation. This arena of conflict remains contested and murky ground, as many who ‘worked with’, or were seemingly beneficiaries of, the occupation claim to have simultaneously advanced the clandestine (and therefore pro-independence) agenda, or at least use their position to protect clandestine interests. Having an opportunity to participate in reconciliation processes enabled them to explain and conceptualise their actions, and elucidate on the context of coercion that left little choice but to co-operate, or at least give the appearance of doing so. Some CRP hearings therefore

provided an important educative function amongst the broader community regarding the perspectives and complexities associated with the conflict.

It was also proposed that the Commission promote and facilitate the return of refugees who had been forcibly displaced. Although the work of getting people home was already being undertaken by a number of other organisations, such as the UNHCR, IOM and NGOs such as the Jesuit Refugee Services, it was important that this process receive the official support and participation of a 'home-grown' entity, and especially one that could also address certain justice considerations. Such a process, it was envisaged, could help build on the important work of other local initiatives, such as the local level reconciliation committees that were active facilitating the return of refugees in some districts. It was hoped that such initiatives would complement national efforts to secure agreements between political protagonists at a leadership level.

In August 2000, the CNRT National Congress unanimously endorsed the proposal to establish a Commission. Following the June announcement, a Steering Committee, facilitated by the Human Rights Unit at UNTAET had been established to discuss the mandate, functions and associated legal concerns. The Committee included representatives of the CNRT and several prominent East Timorese NGOs, and was assisted by international consultants.

Between September and December 2000, members of the Steering Committee held a number of meetings with a number of political groupings, and on 13 June 2000, the Cabinet of the East Timor's National Council made a policy decision to support the establishment of a Commission, requesting the Human Rights and Legal Affairs Units of UNTAET to draft legislation for this purpose.<sup>5</sup>

The Steering Committee helped to focus discussions about possible options. While some actors felt it was premature for a Commission to be established and that this was an initiative that should wait for a future Timorese government, others felt it was imperative to act now, in a context of massive reception and reintegration needs. Although the subsequent Commission focus on reception shifted from a prioritisation of repatriation, to reintegration back, the core needs and objectives of reconciliation and developing social cohesion within fractured communities remained paramount.

What was subsequently suggested and developed in terms of community reconciliation sought to distinguish between those responsible for 'serious crimes', such as murder and rape, and those responsible for 'less serious crimes', such as house-burning, looting and assault (whilst acknowledging that these were not necessarily mutually exclusive categories).<sup>6</sup> Those responsible for these 'less serious

<sup>5</sup> 'Update on the Establishment of the Commission for Reception, Truth and Reconciliation', Steering Committee for the Commission and Human Rights Unit, UNTAET, 12 March 2001

<sup>6</sup> Schedule 1 of UNTAET Regulation No. 2001/10 provided "criteria for determining whether (an) offence (was) appropriately dealt with in a Community Reconciliation Process." The Schedule was clear that "in no circumstance shall a serious criminal offence be dealt with in a Community Reconciliation Process." A subsequent Directive on Serious Crimes (UNTAET Regulation No.2002/9) amended the schedule by deleting the words, "In no circumstances shall a serious criminal offence be dealt with" and substituting the words, "In principle, serious criminal offences, in particular, murder, torture and sexual offences, shall not be dealt with". This change opened the door for the CRP to deal

crimes' would be allowed to seek an agreement that required them to admit to wrongs, apologise for their acts, and agree to some sort of sanction, symbolic or otherwise. In addition the process would also be available in relation to "non-criminal acts committed within the context of the political conflicts in East Timor."<sup>7</sup>

The CRP had to be a voluntary process, aimed at reaching agreements between applicants, who were officially called 'deponents', individual victims, and / or the broader community in relation to past political conflicts. The CRP would not address disputes relating to land, inheritance, or personal matters, although the process would be flexible enough to deal with a broad range of issues manifested during the conflict.

Community Reconciliation Agreements (CRAs), it was argued, should respond to relevant reciprocity and reconciliation needs. Subsequent legislation provided a framework that "acts of reconciliation may include: (a) community service; (b) reparation, (c) public apology; and /or (d) other act of contrition."<sup>8</sup>

A panel of respected members of the community, it was envisaged, would broker these agreements, with the Commission playing a facilitation and monitoring role to assist the process and the attainment of final agreements.<sup>9</sup> Once agreement is reached, the community and victims would 'welcome' the perpetrator back into the community, and once the obligations contained in the reconciliation agreements have been fulfilled, the perpetrator could no longer be held criminally or civilly liable for the acts, which they disclosed during the process.

Many observers had already drawn the distinction between "serious and less serious" crimes, and even before the CAVR process was conceived there was considerable evidence that less serious cases could be resolved via traditional approaches.<sup>10</sup> As can be seen in the following section, traditional processes were accessible and had retained a high level of legitimacy. The distinction between the types of crime also provided an opportunity, and some measure of realism, in terms of at least trying to address a reasonable cross-section the multiple violations that had been perpetrated.

What was denoted as "less serious" or "minor" crimes were in fact often very serious for victims, involving assaults, destruction and theft of property, forced deportation, resulting in considerable trauma and loss. It was envisaged that only isolated incidents would be applicable<sup>11</sup>, implying that if perpetrators had been involved in a succession of violations, as with serious crimes, such as murder, torture and sexual offences, they

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with more serious cases if necessary. It remains to be seen, how many cases of this nature, were eventually addressed.

<sup>7</sup> Section 22.1, UNTAET Regulation No. 2001/10

<sup>8</sup> Section 27.8, UNTAET Regulation No. 2001/10

<sup>9</sup> Section 27.7, UNTAET Regulation No. 2001/10. Although not stipulated in the Regulation, in many instances, the traditional leaders were integrally involved in brokering agreements, reflecting the importance of their inclusion in adding weight to the process.

<sup>10</sup> In December 2000, one UNTAET 'District Commander' sought permission to have 'minor' crimes "dealt with traditional resolution", and 'serious crimes' to be processed through the police system. See *Looking Both Ways: Models for Justice in East Timor*, Dr. David Mearns, Australian Legal Resources International, November 2002, p.49. See also; Soares, Dionisio da C. Babo, Nahe Biti: The Philosophy and Process of Grassroots Reconciliation (and Justice) in East Timor, 2002

<sup>11</sup> UNTAET Daily Press Briefing Notes, 25 March 2002 <http://www.un.org/peace/etimor/DB/db250302.htm>

would rather be eligible for criminal investigation and prosecution. Given the acceptance of traditional reconciliation processes, and even though the perpetration of “less serious” crimes was pervasive, in the broader context of widespread “serious” violations, it was envisaged that communities would be more willing to accept processes that provided “less significant” perpetrators an opportunity to repair the wounds that victims had suffered. As such, this process offered an opportunity to rebuild and consolidate the social fabric of many fractured communities.

Understandably, therefore, precedence was given to cases from 1999<sup>12</sup>, which reflected the population’s most recent experience. It was important, however, that the CRP be allowed to address relevant issues relating to the broader conflict from before this period.

Another core element of the envisaged process was the linkage between the community-level process and the formal criminal justice system. For any case to proceed to a CRP, the application must be reviewed and can only be authorised by the Office of the General Prosecutor. Any subsequent agreement reached through a community reconciliation process would be registered with the nascent court structures, thereby demonstrating the official status of both the process and the agreement, and at the same time implicitly making it clear that the formal criminal justice systems have the final say in relation to all issues of law.

In addition, it was particularly important the process and agreements conform to human rights standards and basic principles of fairness and proportionality. During the subsequent drafting process of the legislation, concerns were raised about the possibilities of the traditional system not complying in this regard. In particular, concerns about gender insensitivities, and the likelihood of harsh punishments were raised. In this regard, it was emphasised that the process and outcomes *must* conform to human rights standards, and without losing sight of victims’ interests, encourage deponents in the categories identified to come forward.

This would obviously require balancing the interests of victims and deponents, within the broader context of challenges and needs to rebuild the social fabric of many communities. This would emphasise traditional notions of reciprocity and compensation, although in many instances the latter would necessarily be symbolic as the individual deponents and their families are more often than not indigent, (as is the case with most victims).

Conceptually, therefore, the proposed community reconciliation process was, for a number of reasons, posited as a realistic and workable approach to the reconciliation challenges facing Timor-Leste. The process would recognise the needs of victims both individually and collectively, as well as providing an outlet for reducing anger and resentment towards perpetrators and (real or perceived) ‘fellow travellers’ amongst local communities. In addition, the process would provide an additional incentive for perpetrators and others to return home, and a medium through which to constructively engage their communities. Centred around traditional community dispute resolution practices, the community reconciliation process would also

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<sup>12</sup> Section 22.3, UNTAET Regulation No. 2001/10 authorises the CAVR to prioritise CRPs for 1999 cases, if it wishes to do so. As will be seen in subsequent statistical breakdowns provided by the CAVR, the vast majority of cases processed relate to this period.

strengthen and complement the fragile justice system, as well as drawing a clear line between the sort of crimes that could be dealt with at this level and those that should fall within the purview of the courts.

Despite the incorporation of traditional aspects, the envisaged process required the establishment of a community panel, consisting of community leaders and representatives from the church, youth and local women. These inclusions sought to incorporate a mixture of trusted elements, such as community leaders and the church, which has played a pivotal role in terms of moral influence in Timor Leste, and “in many ways ... offers another layer in the structure of local governance and dispute resolution.”<sup>13</sup> The process would also incorporate representation from women and youth, who had typically been excluded from similar functions

Following the December 2000 policy decision by Cabinet, the Steering Committee undertook a national consultation programme, visiting all 13 districts and conducting meetings with community representatives, NGOs, and other actors, including political parties and groups involved with justice and reconciliation issues. In a number of meetings, Steering Committee members ‘role-played’ what a prospective CRP might look like, and the familiarity of aspects of the process immediately resonated in a number of quarters.

Amongst the range of issues raised about reconciliation and reintegration were the importance of: operating at a village level to encourage participation; ensuring effective and widespread communications amongst communities to facilitate understanding and acceptance of the processes undertaken; tailoring processes to contribute to social cohesion and specific community needs and dynamics; ensuring relevance of agreements in terms of reciprocity and compensation; and, sanctioning those who lie or do not comply with reconciliation agreements.

These meetings also reaffirmed the distinction most people made between ‘serious crimes’ and ‘less serious’ matters, and the related demands for justice, as well as the importance of integrating existing local dispute resolution mechanisms into the work of the Commission.<sup>14</sup> Many of these suggestions were subsequently adopted and integrated into the legislation, and subsequent operational plans.

The consultation process continued throughout the drafting phases and beyond. Given the sensitivities associated with the issues under discussion, it would have been ideal to expand this process further to allow for further debate, and a number of organisations and individuals urged that this be done. There was, however, considerable pressure to make progress, especially in the context of the ongoing refugee ‘crisis’, and the uncertainties regarding the duration of UNTAET’s mandate.

At this time, many thousands of refugees, and militia members, including many who had played a largely peripheral role in the violence remained in West Timor. The

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<sup>13</sup> *Looking Both Ways: Models for Justice in East Timor*, Dr. David Mearns, Australian Legal Resources International, November 2002, p.35

<sup>14</sup> ‘*Summary of issues raised during the consultations on the Commission for Reception, Truth and Reconciliation*’, appendix to ‘*Update on the Establishment of the Commission for Reception, Truth and Reconciliation*’, Steering Committee for the Commission and Human Rights Unit, UNTAET, 12 March 2001

Timor Leste political leadership wanted these people back, and the proposed Commission provided a mechanism to facilitate this, and at the same time incorporate some measure of accountability. During 2001 and 2002, before the Commission became operational, many more refugees returned, still leaving behind thousands, including a 'hard core' of individuals and families, reluctant to return and uncertain of what welcome they might receive if they did so.<sup>15</sup>

Draft legislation was finalised at the end of January 2001, and following further consultations, and detailed discussion between the Steering Committee and Legislation Committee, the Cabinet passed the legislation on 28 February 2001. The draft Regulation was subsequently forwarded to the CNRT's National Council who ratified it before passing it onto the UN's Transitional Administrator, Sergio Vieira de Mello, for promulgation on 13 July 2001, as Regulation Number 2001/10.

The Regulation provided considerable detail regarding the Community Reconciliation Procedures, institutional arrangements and responsibilities. These included:

- Requirements for initiating a CRP;
- The role of the CRP Statements Committee and the Office of the General Prosecutor;
- Delegation of responsibilities to Regional functionaries;
- Guidelines for the establishment of a CRP Panel;
- Guidelines for facilitating a CRP Hearing and CRA;
- Registration and distribution of CRAs;
- Sanctions for failing to comply with CRAs, and;
- Conditions for immunity.

Following the official promulgation of the legislation, an 'Interim Office' for the Commission was established, once again involving UNTAET's human rights unit, and representatives from Timor Leste's civil society. Six months later, after a participatory nomination process, seven national Commissioners were selected and sworn into office, and the 30-month period of operations began.

The RDTL Constitution subsequently affirmed the CAVR's obligations vis-à-vis its reconciliation (and other) objectives, and left open the door for possible parliamentary amendments to the CAVR's competencies, mandate and objectives.<sup>16</sup>

<sup>15</sup> According to the UNHCR, as of August 2003, 224, 576 refugees had repatriated to Timor Leste, leaving behind approximately 28, 000 refugees (including about 9,800 families). Information provided by the UNHCR at a workshop for the preparation of the UN Consolidated Appeal 2004 in Kupang on 23 August 2003.

<sup>16</sup> Section 162 of the RDTL Constitution is entitled "Reconciliation".

Subsection 1: "It is incumbent upon the Commission for Reception, Truth and Reconciliation to discharge functions conferred on it by UNTAET Regulation No. 2001/10".

Subsection 2: "The competencies, mandate and objectives of the Commission shall be redefined by Parliament whenever necessary"

## Programmatic targets

There was no way of predicting what level of 'buy-in' there would be to the Community Reconciliation Process. Initial targets outlined in the CAVR's Strategic Planning documents that were developed by the Interim Office team in late 2001, and approved during the preparation and initiation phases during the first months of operations in 2002, set a target of 1040 CRPs (an average of 80 from each of the 13 districts, or 16 from each of the 65 sub-districts).

At this stage, staff allocations to CRP were limited to one staff member and one Regional Commissioner per district. At first, it seemed that the Commission would really struggle to get deponents to make statements, and only a handful of hearings were arranged by the end of the first phase of operations. The first phase was also somewhat delayed by the national office's decision to schedule the first set of hearings to ensure the participation of National Commissioners.

In many respects, an understanding of the process only really matured when people witnessed the hearings first hand. As CRP visibility increased, so more people came forward and requested an opportunity to submit applications. This immediately presented a problem, as the Strategic Plan necessitated that they move onto the next sub-district. While this did happen, the teams were obliged to double back in order to take statements, and then subsequently run hearings in sub-districts they had already passed through. This became a concern in many districts, and was compounded as the CAVR became increasingly visible with media coverage, and the effective utilization of VCDs in the district socialisation process that was promoting the Commission's work.

By the end of November 2002, 143 statements had been taken, and 50 deponents had been 'processed' through hearings. By the end of January, a total of 203 statements had been taken, of which 103 had been processed. At this stage, the problems associated with the three-month timelines were raised at four regional workshops convened by the CRP national office. There was, however, no room to manoeuvre. The workshops also resulted in a commitment to improve coordination between districts and the national office, and to improve the recording of narratives at the hearings.

At the end of March 2003, the district teams had taken 319 CRP statements, and had convened hearings involving 159 deponents. Although the district teams were processing cases with relative efficiency, given the operational context, limited resources and delays caused by weeks waiting for approval from the national office and OGP, the backlog of cases to be processed through hearings was growing exponentially, and the teams were under pressure to move onto the next sub-district.

As recognised by the UNDP's March 2003 assessment mission, the CAVR's limited capacity in relation to the fulfilling its CRP mandate was in part due to the success of the process itself, and the fact that 'buy-in' to the process has exceeded expectations and internal capacity.

It was obvious though that the current resource component would not be able to finalise its programme without additional resources. The backlog was also continuing

to grow. At the end of May 2003, the CRP had taken 577 statements, and had run 51 CRP hearings across country involving 264 deponents. This left over 310 cases to be heard. By the end of July, the backlog of cases to be heard had grown to 400, with over 470 applications having been successfully dealt with through hearings. At the end of September, the CRP had passed their original target of 1000 statements, but had now over 500 cases to be arranged for hearings. At this stage, additional CRP staff that had been recruited in July and August became more operational and was able to take some of the pressure off the CRP teams. During September four teams, including the new recruits, were redeployed to other districts to help them reach their sub-district targets. The Commission also decided it could take no more statements from the end of December, allowing for the final three months (January to March 2004) to wrap up outstanding hearings.

By the end of December 2003, the cut-off date for receipt of applications, the CAVR had received 1510 application, 50% more than the 1000 cases they had originally expected. Despite the new staff, however, the backlog had continued to grow, and by early January 2004 there were almost 900 cases needing to be processed. Between January and March 2004, 887 cases were processed in over 100 hearings run in all districts across the country. This meant that over half the total number of cases and hearings were prepared and run during the final three-month operational period, in comparison with 600 plus cases that had been dealt with in the preceding 15 months.

At one level, this did demonstrate the increased levels of productivity and capacity in the various district teams, especially as their focus was exclusively on hearing preparation and facilitation. At another level, the sheer number of cases to be dealt with during the final three months of operations raises concerns about the quality of what could be realistically offered in terms of preparation and facilitation. The district teams had no options but to complete the hearings, which in many instance meant less time for appropriate preparations, and having to run hearings with large numbers of deponents out of necessity and convenience, rather than being the most suitable approach.

In the circumstances, it is a remarkable achievement that the teams have managed to finalise these hearings. It will, however, be necessary to scrutinise the quality and results of these processes carefully, given the context and constraints under which they were delivered.

## Traditional justice and the Community Reconciliation Process

This section provides a brief background to the mechanisms of traditional justice and conflict resolution in Timorese society. This is followed by an examination of the rationale behind the incorporation of aspects of traditional justice into the CAVR's reconciliation process, as well as an assessment of the degree of success and complications faced in achieving this.

### Traditional justice and conflict resolution in Timorese society

Customs and tradition, under the guardianship of traditional leaders, known as *Lia Nain*, *makair fukun* and *adat sira* have played an important role in the evolution of customary law<sup>17</sup> in Timor Leste. Traditional leaders are responsible for decision-making and determinations of right and wrong, good and bad, in community tribunals. Decisions made in these courts are theoretically "based on both facts and principles set by the ancestors of the group." As in other legal systems, previous decisions provide some sort of 'jurisprudence' and are applicable in similar future cases. In Timor Leste, knowledge about customary belief and practice is retained through oral narrative, and the rules and norms governing social status, behaviour, duties and responsibilities remain generally recognised and appreciated amongst the population. Indeed, "the activities of members of society ... are bound by these collective norms," although the authority to "pronounce these 'norms', uphold justice and execute justice" remain the responsibility of the traditional leaders, "who together constitute the council of customary law."<sup>18</sup>

Traditions and customs in Timor Leste, as elsewhere, are neither uniform nor static, with wide variance in practices, as well as their roots and historical trajectory and development. Although specific practices vary from place to place and have evolved in response to local as well as external factors, customary rules and norms have provided the basis for relative order and structure amongst most communities in the territory. Under the Portuguese, customary practices and law were not allowed to function as part of the formal legal system, although in most (especially rural) areas the Portuguese ruled indirectly through traditional hierarchical political structures that were subservient to the colonial administration.

The subsequent Indonesian authorities went further, seeking to eradicate Timor's traditional infrastructure, replacing it wholesale with a new civil administration.<sup>19</sup> Despite these manipulations and assaults on Timor's culture, its customs and

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<sup>17</sup> Although there is some contention about the most accurate terminology to describe community dispute resolution systems and practices, this report uses the terms customary, traditional, community and local justice interchangeably.

<sup>18</sup> Soares, D da C.B, *A Brief Overview of the Role of Customary Law in East Timor*, paper presented at a symposium on East Timor, Indonesia and the Region organized and sponsored by the Universidade Nova de Lisboa, 2000, p.4

<sup>19</sup> op cit, pp.9-10

traditional practices were able to survive, retaining considerable moral weight and continued to influence and provide social guidance for most Timorese.

During the Indonesian occupation, traditional courts remained in place, but only insofar as they were allowed to deal with relatively minor civil matters. More serious matters were usurped by state courts, which were not regarded by many as a legitimate way of resolving disputes. These courts remained inaccessible and alien, as they did not involve traditional leaders or the conflicting parties, they were not cost effective or time efficient, and they did not result in 'appropriate' sanctions or incorporate the important notion of compensation. The courts were perceived as benefiting primarily the wealthy, and did little in terms of resolving the disputes from which the violations had arisen.<sup>20</sup>

Throughout this period, although official recognition and utilisation of traditional structures was diminished, customary leaders and village elders (or those deemed to be so by the incumbent political authorities) retained considerable authority and influence over village life in relation to a range of civil and criminal matters. For many, this became the preferred way of addressing disputes. To a certain extent this also appears to be the case in the new post-independence dispensation.<sup>21</sup> In a number of areas, however, local leadership at the hamlet and village level (as opposed to customary or adat leaders) has been, and remains a contested arena.<sup>22</sup>

Since 1975, although the power of customary leaders has been consistently challenged by various post-colonial political developments, some argue that customary law has in fact become increasingly popular.<sup>23</sup> Indeed, tradition and customary practices have accommodated and adapted to the political systems, structures and processes that have accompanied them. In some areas customary and 'political' leadership have worked well together, as complementary and mutually reinforcing entities. Elsewhere, relations have been less harmonious. In all areas, leaders (political and traditional) and the accompanying relationship dynamics have had a considerable impact on local affairs and the way in which local conflicts and disputes have been addressed. This has led to a spectrum of permutations in the way in which disputes have been handled. Indeed, it is argued by some commentators that it would be more accurate to talk "in terms of 'local systems of justice' rather than 'traditional' or even 'community' systems."<sup>24</sup>

Since the end of Indonesia's occupation, there has been a considerable amount of research on traditional processes and systems, especially in relation to how best it might be utilised and adapted to complement the development of a new criminal justice system. Much of this research has focused on the role (actual and potential) of traditional systems dealing with crimes and disputes that are not necessarily considered serious enough for court appearances. While there is widespread

<sup>20</sup> op cit. pp.10-12

<sup>21</sup> A national opinion poll of 1561 respondents, conducted by the International Republican Institute (IRI) in November 2003 found that over 40% of respondents believed that village chiefs were the most respected mediators for personal and property disputes.

<sup>22</sup> *Looking Both Ways: Models for Justice in East Timor*, Dr. David Mearns, Australian Legal Resources International, November 2002, p.34

<sup>23</sup> Soares, D da C.B, *A Brief Overview of the Role of Customary Law in East Timor*, p.13

<sup>24</sup> *Looking Both Ways: Models for Justice in East Timor*, Dr. David Mearns, Australian Legal Resources International, November 2002, p.31

agreement on the potential and probable utility of these systems, there is also widespread agreement that more information and research is required.

Despite such influences and variances, there are certain apparent commonalities in terms of underlying principles of justice adhered to, namely reciprocity and fair compensation, as well as particular stages and components of the dispute resolution processes employed. Various levels of dispute resolution are utilised, at a household, neighbourhood (*aldeia*), village (*suco*) and sub-district level. If a particular problem cannot be resolved at one level, this is referred to the next level. If matters cannot be resolved at a household level, the neighbourhood and village chiefs may convene a meeting of village elders, including *adat* leaders, and particular emphasis is given to the legitimacy of collective decision-making, and trying where possible to resolve problems extra-judicially at the local level.

Recent research confirms that the vast majority of the country's population support traditional / local community justice and conflict resolution practices. "Many Timorese regard the authority of the *chefe do suco* or *liurai* and the traditional *adat* process as interrelated", and although many believe the formal legal system is generally more appropriate for dealing with "serious" issues, this system is perceived to be "less fair, less accessible, more complex, and a greater financial risk" than traditional processes.<sup>25</sup> Support for local dispute resolution does vary, and tend to be stronger amongst rural communities. It should be remembered that despite the continuing rural-urban drift, most people, as many as 70% of the population, continue to live outside the major towns, often in relatively remote villages and hamlets.

## Tradition and reconciliation

Although contemporary interpretations of reconciliation are relatively new for East Timorese, and have focused largely on leadership-related initiatives in the pre and post popular consultation period, notions of reconciliation are familiar and widely supported amongst the general population, and are often understood to involve an apology and forgiveness in order to achieve peaceful coexistence.<sup>26</sup>

"East Timorese see reconciliation or, what is termed locally, *nahe bitu* (lit. stretching, lying or rolling the mat) as embracing not only the notion of meeting, discussion, and agreement in order to reach a consensus among the opposing factions ... The concept, *nahe bitu* can be found in almost all ethno-linguistic groups in East Timor. Definition and approaches in its application also vary from one place to another. Nevertheless, there are common ways of defining this institution when it comes to implementation particularly in the eve of contemporary grassroots reconciliation in East Timor."

Reconciliation in this context still promotes notions of accountability, but "to the East Timorese, *nahe bitu* is only part of a grand process that aims to link the past and the future, bringing society into an ultimate state of social stability where peace, tranquillity and honesty prevail. Thus, unlike reconciliation in the contemporary

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<sup>25</sup> Asia Foundation, 'Law and Justice in East Timor – A Survey of Citizen Awareness and Attitudes Regarding Law and Justice in East Timor' – executive summary, February 2004.

<sup>26</sup> Asia Foundation, 'Law and Justice in East Timor – A Survey of Citizen Awareness and Attitudes Regarding Law and Justice in East Timor' – executive summary, February 2004.

sense, *nahe biti* is an evolving process, which seeks to achieve a stable social order in the society as its ultimate goal. In this, the academic concept of justice is only one option that can be pursued outside the broad concept – but without minimising the essence – of *nahe biti*.<sup>27</sup>

Notions of reconciliation therefore lie at the heart of customary law and practice in Timor, and embrace local concepts of justice, in terms of accountability, reciprocity and compensation.

Local reconciliation and dispute resolution practices rely heavily on the central involvement of both traditional and local political leadership, who facilitate the reaching of consensus between conflicting parties. The process of *nahe biti bootis*, however, only a mechanism to achieve certain ends, and not the end of the process itself. ‘Stretching the mat’ can result in agreements with the purpose of facilitating peace and stability, but this requires ongoing commitment to the agreement from all parties.

Implicitly, this understanding of reconciliation recognises that the goals of reconciliation go beyond the event of *nahe biti boot*. Nevertheless, this event is critical to the process, as it aims to acknowledge and rectify, or heal, past mistakes, and to secure consensus about these issues. *Nahe biti boot* does not guarantee that agreement can be reached, that disagreements can be reconciled, but does suggest that differences can be mended. Agreeing to come together to discuss these matters and to seek resolution is an important first step as it provides some foundation for building further consensus. The process also emphasises the importance of preparation, building trust and confidence between protagonists

Using the visual metaphor of the mat, and “bound by good intention and the spirit to come together, parties in a *nahe biti* meet and seek to weave or plait a compromise.”<sup>28</sup> Implicitly therefore, *nahe biti* recognises that actively seeking agreement will often necessitate compromise in order to bring differing and conflicting viewpoints together. “This process emphasises a number of aspects. These include the willingness to come together, the willingness to accept culpability, the willingness to reach consensus with one’s adversaries and the willingness to agree to disagree in order to maintain a stable social order.”<sup>29</sup>

## Political transition, the CAVR and traditional justice

Amongst the myriad of challenges facing the newly liberated Timor Leste was the fundamental question of how to deliver justice, resolve conflict and facilitate reconciliation, in a context of widespread (past) violations and fractured communities, but in the absence of adequate resources and capacity to ensure formal judicial remedies. Many of the people who had returned to Timor Leste from refugee camps in the west of the island, were known or believed to have been involved in the

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<sup>27</sup> Soares, Dionisio da C. Babo, *Nahe Biti: The Philosophy and Process of Grassroots Reconciliation (and Justice) in East Timor*, 2002, pp.1-2

<sup>28</sup> *op cit*, p.16

<sup>29</sup> *op cit*, p.13

violence and intimidation that accompanied militia activities during 1999. Divisions in some communities also related to internal Timorese political dynamics, dating back to the mid to late 1970s, as well as around issues of complicity and collusion with the Indonesian security apparatus. Without massive investment and sustained commitment to developing capacity, accessibility and legitimacy in relation to the criminal justice system, there is widespread consensus that the formal justice system will have only limited reach, both in terms of addressing past as well as contemporary violations.

Most people in Timor-Leste have no experience of a functional criminal justice system with necessary checks and balances. What denotes justice and accountability in terms of a formal (essentially Western) system does not necessarily accord with people who may see such processes as largely alien, culturally irrelevant and socially unenforceable. In Timor Leste, for example, for many people justice is not simply about punishment, but also about issues of confession, contrition and compensation. “Whenever harm has been done to another, a debt is created that must be settled if the matter is to be finalised and reconciliation (or at least the resumption of normal social relations) is to take place.”<sup>30</sup> Such circumstances therefore present Timor-Leste with further challenges in terms of how to meaningfully and sensitively address issues of justice and conflict resolution regarding both past conflict and present realities.

Despite cogent reasons for introducing systems and practices that reflect (or intend to reflect) development and progress on a range of fronts including the justice sector, researchers (amongst others) have highlighted the potential dangers of imposing new systems that do not adequately take into account local practices and values, and have warned of the inherent risks associated with devaluing cultural and social systems amongst rural communities, which make up the bulk of Timor Leste’s population.<sup>31</sup>

Conflict and injustice is experienced “as a personal and highly localised phenomena, no matter how systemic or common they may appear from the outside.”<sup>32</sup> As such, the importance of utilising responses that accord with lived realities becomes apparent. What constitutes local, traditional and / or community approaches to justice and conflict resolution in Timor Leste, and how these might be utilised as an integral component of the country’s criminal justice system, has increasingly become a focus of academic and non-governmental initiatives. Despite important progress, however, understanding ‘what is’, and how this might be utilised in terms of ‘administering justice’ or resolving conflict’ remains very much a ‘work in progress’.

Although there was no specific roadmap in terms of what aspects of local / community justice and conflict resolution practices might be utilised for dealing with aspects of the past conflict, the importance of accessing and utilising a range of traditional dispute resolution structures and procedures was recognised during the conceptualisation and planning phases of the CAVR.

It was recognised that accountability concerns and reconciliation needs at the community level could only be meaningfully addressed through a process of reception

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<sup>30</sup> *Looking Both Ways: Models for Justice in East Timor*, Dr. David Mearns, Australian Legal Resources International, November 2002, p.43

<sup>31</sup> *op cit*, pp5-6

<sup>32</sup> *op cit*, p.7

and reintegration, and that these were best achieved with the assistance of processes that were familiar, and above all, legitimate for most ordinary Timorese.

Between 2000 and 2002, before the CAVR became operational, a number of local reconciliation initiatives were instigated at village and sub-district levels involving a number of communities in several districts in the western half and border areas of East Timor and corresponding communities remaining in the refugee camps in Indonesian West Timor. These processes involved various stages of negotiation and agreement, culminating in customary ceremonies “to receive and accept refugees into their societies in which both sides agree to mend their differences and establish peace and order.”<sup>33</sup>

Although these ceremonies varied according to the applicable local customs and practices, the centrality of *nahe biti* and associated practices and principles were evident. These include confession and details of the guilty parties’ involvement in the past conflicts, an acceptance of the current political conditions, and the renunciation of violence and the use of violence. Many of these processes also involved elements of appeasement from returnees, as they ‘lowered’ themselves before their communities, demonstrating humility, contrition and confession.<sup>34</sup> In addition, having reached consensus, these processes are validated by ritual ceremonies that effectively legitimise what are agreed, and bind the parties to the agreement. In most instances, these processes have dealt only with relatively minor crimes, but nevertheless have been relatively successful in terms of facilitating reception and reintegration.

Local, community systems were therefore understood to have key advantages for any kind of official process, in terms of accessibility, visibility, and the fact that they were participatory, expeditious, relatively cost-effective and, perhaps most importantly, sensitive to local contexts. All of these factors would contribute to enhancing the legitimacy of the process amongst local communities. These processes allow for the public acknowledgement of wrongdoing, and public acceptance of reconciliation, which are both regarded as extremely important. Whilst certainly not full proof, local systems are known to have had positive results.

Indeed the Commission’s CRP represents the first concrete example of implementing a process that spans aspects of both traditional and formal justice practices, in a new format that accords with constitutional and human rights imperatives, and incorporates a written record of the process and content. Indeed, “by superimposing formal law on the traditional resolution mechanisms, the CRP takes advantage of the community members’ strong reverence for traditional justice, while excluding traits that are not yet consistent with gender sensitivities or (other) human rights (considerations).”<sup>35</sup>

As mentioned above, traditional and cultural practices are not uniform in Timor Leste. Some areas, such as Oecusse, have an apparently much stronger adherence to adat processes than other districts, although the influence of traditional leaders and

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<sup>33</sup> Soares, Dionisio da C. Babo, *Nahe Biti: The Philosophy and Process of Grassroots Reconciliation (and Justice) in East Timor*, 2002, p.8

<sup>34</sup> op cit, pp.14-15

<sup>35</sup> *Support to the Commission for Reception, Truth and Reconciliation*, Annex 20 to UNDP Timor Leste Programme Package Document, June 2003, p.10

processes remains deep-seated in most areas, and the potential power and sanction of the ancestors is invoked and carries considerable weight across the territory. Although this was primarily the case in rural areas, where it is estimated as many as 80% of the population live, traditional beliefs, and to a certain extent, practices remain ‘alive and well’ in Timor Leste’s urban areas. The urban areas, however, presented a series of complex challenges both in terms of tradition and other CRP-related considerations. The CAVR’s approach to incorporating traditional aspects into the Community Reconciliation Process therefore had to be flexible, effectively allowing different district teams to adapt processes to incorporate different traditional practices.

## The pros and cons of incorporating tradition into the Community Reconciliation Process

Has the CAVR experiment been successful in terms of incorporating aspects of traditional justice, into the reconciliation process? Are the Community Reconciliation Agreements that have been brokered by the panels set up by the CAVR just and culturally appropriate? To what extent do they reflect the norms and practices of ‘community justice’ in terms of fundamental principles of reciprocity and fair compensation? To what extent do the host communities regard these negotiated agreements as satisfactory and / or legitimate? How important have the traditional aspects of the process been in this regard? Has the CRP’s incorporation of traditional aspects adequately taken into account and respected ‘personal rights, liberties and guarantees’ as set out in Title Two of the RDTL Constitution?

These and related questions about the impact and import of the CAVR’s Community Reconciliation Process, and the inherent complexities vis-à-vis the incorporation of traditional aspects are likely to be the subject of considerable debate and possible disagreement in the coming months and years. In many respects it is not possible to answer these questions, because it is premature to do so, and because the empirical evidence has not yet been collected. Despite this, we can draw some preliminary conclusions.

The incorporation of tradition and custom into the CRP is widely regarded as a both necessary and useful. The involvement of traditional leaders endorses both the process and its outcome, and without it, many are convinced the validity of the process would have been undermined.

Securing the active support of traditional leaders was often difficult and frequently complex, as the CAVR needed to develop a clear overview of practices and practitioners in each of the areas that they operated within, as well as ‘sell’ them a process that was in some core respects completely innovative and alien. In several areas there was considerable scepticism from traditional leaders about engaging in a process that addressed contemporary political issues, which many considered outside of their purview. Some leaders had to be persuaded about the importance of traditional involvement, and at the same time demonstrating that the CRP Panels were, in the words of one regional commissioner, “not usurping their function, or messing with something that was sacred”.

Even though the CRP utilises aspects of tradition in certain parts of the process and strongly relies on the cultural imperatives of truth telling, the overall process is essentially innovative, in that it utilises a panel of community leaders and representatives who seek to facilitate a reconciliation agreement between deponents and their victims, and / or the wider community. Although traditional leaders are frequently included in the CRA aspect, their involvement is largely utilised to endorse the process and seal these facilitated agreements, and as such bring an essential additional level of *gravitas* to the proceedings. The inclusion of this aspect in the process has been a central draw-card in terms of enhancing its legitimacy. Conversely, traditional dispute resolution practice has almost certainly been enhanced in terms of its potential role within the contemporary justice sector.

Although the CRP is prohibited with dealing with “serious crimes”, such as murder, torture or sexual offences<sup>36</sup>, if agreed to by the General Prosecutor on a case-by-case basis, it has ‘jurisdiction’ to deal with crimes, such as theft, arson and assault, that might ordinarily be dealt with by the courts. In many instances, these matters are certainly ‘serious’, certainly in relation to the relative impact on the lives of the victims, many of who have lost everything. Relative to the broad scope of violations visited on many communities in Timor Leste, however, most of these crimes might well be described as ‘less serious’.

Quite clearly, however, certain cases have been processed that might not have been originally intended for the CRP. Although research into traditional conflict resolution practices has largely focused on how systems deal with less serious crimes, a number of interviewees point out that in many areas traditional systems have in the past dealt with such matters, and could well be adapted to do so again. It remains to be seen whether this option might be explored in relation to the plethora of serious crimes cases that are unlikely to be addressed by the Office of the General Prosecutor.

### **Community Reconciliation Agreements – striking a balance between unfair punishment and impunity?**

Some earlier research raised concerns about the inconsistency of the outcomes of local dispute resolution processes within the various districts, as well as between them.<sup>37</sup> In some respects it was evident that decision-making could be arbitrary, discriminatory and / or subject to manipulation. During the conceptualisation and drafting phase of the CAVR’s founding legislation, there was considerable concern that panels might facilitate reconciliation agreements that were harsh and potentially ‘unfair’ to the deponents. In the past, traditional justice practices are known (at times) to have instituted harsh physical (i.e. killing, physical beatings), and social sanctions (i.e. ostracism, denial of rights) that violate human rights standards and norms. In particular, processes and outcomes were more often than not insensitive to the plight of women, and tended to reinforce inequitable gender relations.

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<sup>36</sup> *Directive on Serious Crimes No. 2002/09 – on amending the criteria for determining whether offence (is) appropriately dealt with in a Community Reconciliation Process*, 18 May 2002

<sup>37</sup> *Looking Both Ways: Models for Justice in East Timor*, Dr. David Mearns, Australian Legal Resources International, November 2002, p.40

Local and customary dispute resolution requires the victim's concurrence with the types of compensation provided, and if the perpetrator fails to comply with the agreement, that his or her family may take over responsibility for this.<sup>38</sup> The CRAs were intended to facilitate individual acts of reconciliation, which may have a host of meaningful consequences for the deponents' families, but does not 'legally' hold them responsible. Nevertheless, "in the cosmology of the East Timorese, honouring the tradition of 'exchange' is essential in one's life."<sup>39</sup> Consequently, families may be obliged to play this role, even if not legally obliged to do so. In addition, the CRAs were also intended to facilitate reconciliation between individual deponents and the broader community. Obviously, this did not involve multiple individual acts, but required symbolic gestures from the deponents to the community. In such cases, the CRAs were brokered between the panels – as representatives of the community, deponents and in many instances the traditional leaders present.

There were also concerns about victim's rights, whether the process would be fair to them, and whether or not they would be under undue pressure to comply with 'recommendations' and 'guidelines' laid down by the panel. Ordinarily, tradition did not require the victims' direct role in decision-making, although it did require their acquiescence with the decision. If traditional leaders supported what panels suggested, even if this appeared unreasonable, this would in many instances inevitably manoeuvre victims towards resolution.

Whether or not the process and the influences within it are fair in terms of criminal justice procedure and outcomes is certainly moot. Although it may well be shown in many instances that they are not, "the abstract notion of justice and the concept of equality before the law are principles that do not fit with the experience of a people who have never lived in a democratic society."<sup>40</sup> Nevertheless, these are concepts that have certainly gained currency in Timor Leste and will continue to do so, even if direct experience of this remains, for the time being, limited and / or non-existent.

It was therefore essential for the CAVR's process to ensure that consistency and balance were retained at all times. At the same time, the CRP sought to maintain the core principles of reciprocity and compensation, as had been recognised during the conception and drafting processes. Ensuring the incorporation of these aspects, as well as the necessary balance between victims' rights and expectations, and meaningful sanctions against perpetrators was inevitably contentious terrain.

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<sup>38</sup> Soares, D da C.B, *A Brief Overview of the Role of Customary Law in East Timor*, p.11

<sup>39</sup> *op cit.* p.12

<sup>40</sup> *Looking Both Ways: Models for Justice in East Timor*, Dr. David Mearns, Australian Legal Resources International, November 2002, p.49

## The Community Reconciliation Process, the Office of the General Prosecutor and the Serious Crimes Unit.

This section of the report examines the relationship between the CRP national division, the Office of the General Prosecutor (OGP) and the Serious Crimes Unit (SCU). As we have heard, the CRP was established to deal with relatively minor crimes in the context of past political conflicts between 1974 and 1999. In terms of sanction for criminal violations during this period, the UNTAET established an OGP and SCU, led by a General Prosecutor and Deputy General Prosecutor respectively, with exclusive authority to investigate and prosecute serious crime as respectively defined in Section 14 of UNTAET Regulation No 2000/16 and Sections 1 and 2 of UNTAET Regulation No. 2000/15.

Although there remains some contention regarding the specifics of jurisdictions (complementary or otherwise), roles and responsibilities between these two offices, the CAVR's founding legislation unambiguously stipulates that the prosecutorial authority of the General and Deputy General Prosecutor (who is in charge of the Serious Crimes Unit) remains paramount in matters relating to the CRP.<sup>41</sup>

Indeed, the Regulation requires the CAVR to submit all applications by persons wishing to proceed through a CRP, along with a copy of the CRP Statement Committee assessment<sup>42</sup>, to the OGP. The OGP then had 14 days, (and provision to request for an additional 14 days) in which to decide whether they will exercise their "exclusive" prosecutorial jurisdiction, or will give the CAVR permission for a CRP to go ahead. Whatever decision is taken is sent to the CRP's Statements Committee.<sup>43</sup>

Having been given permission to proceed, the CAVR's national office is authorized to delegate the function of facilitating a CRP to responsible Regional Commissioners in one or more district or region (depending on the nature of the case.). Once delegated, the OGP's authority to institute criminal proceedings is stayed subject to compliance with the CRP hearing procedures.<sup>44</sup> The Regulation provides considerable detail on what is required from a CRP hearing: empowering the presiding panel to adjourn hearings in certain circumstances and refer statements back to the OGP; enjoining the panel to make a record of any disclosure of information relating to serious crimes and referring this information to the OGP and suspending the hearings.<sup>45</sup>

The Regulation provides considerable detail in relation to cases that have been adjourned by a CRP panel. Once informed of the adjournment and the reasons for it, the OGP is obliged to "promptly determine whether it concurs in the determination of the CRP Panel that there is evidence of a *serious criminal offence* and shall notify the *Commission* of its determination." If the OGP concurs, the hearing is officially

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<sup>41</sup> Section 22.2, UNTAET Regulation 2001/10

<sup>42</sup> For more detail on the CRP Statement Committee, please see 'Section 4 – Implementing the Community Reconciliation Process'

<sup>43</sup> Section 24.5– 24.8, UNTAET Regulation 2001/10

<sup>44</sup> Section 25, UNTAET Regulation 2001/10

<sup>45</sup> Section 27.4– 27.5, UNTAET Regulation 2001/10

discontinued. If the OGP disagrees, or does not respond within 14 days of being informed of the adjournment, the Commission could, “where it considers it appropriate”, continue with the hearing.<sup>46</sup>

CRP panels are also empowered to refer cases back to the OGP in instances where deponents have refused to undertake the act of reconciliation recommended by the CRP panel.<sup>47</sup> This reaffirms the notion of the criminal justice systems responsibility for cases and issues that could not be resolved through the CRP.

The Regulation also importantly provides for sanctions in relation to cases where deponents have agreed to reconciliation agreements, but who have then subsequently reneged on these agreement. In such cases, the OGP should also be informed of the failure to comply. If prosecuted, a conviction carries a possible sentence of one year of imprisonment and a fine of US\$3, 000.<sup>48</sup>

The CAVR therefore had several points of interaction with the OGP, both in terms of their general relationship, and primarily with regards to technicalities of processing CRP applications, including provisions for non-compliance, or if processes need to be adjourned and discontinued.

In June 2002, several months after the establishment of the Commission, but before the start of field operations, the CAVR and OGP signed a Memorandum of Understanding (MOU) that sought to “clearly define the working relationship between the two institutions during the course of the CAVR’s mandate”, thereby affirming the OGP’s “exclusive prosecutorial authority”, as well as both institutions legal obligations “with respect to the exchange of information and exercise of jurisdiction over certain matters by (the) OGP.” The MOU was “intended to assist in ensuring a mutually beneficial and efficient relationship”.<sup>49</sup>

Although the issue of confidentiality, relating to information disclosed to the CAVR, and the Commission’s subsequent responsibilities to disclose this to the OGP, remain contentious and not conclusively resolved<sup>50</sup>, the CAVR’s obligations with respect to CRP disclosures is very clear, as all (relevant) information received through the CRP process would (in theory) be passed onto the OGP.

The CRP Statements Committee, who determined whether, in their opinion, a statement should or should not proceed to a hearing, made an initial assessment of

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<sup>46</sup> Section 27.6, UNTAET Regulation No. 2001/10.

<sup>47</sup> Section 27.9, UNTAET Regulation No. 2001/10

<sup>48</sup> Section 30, UNTAET Regulation No. 2001/10

<sup>49</sup> ‘Memorandum of Understanding Between the Office of the General Prosecutor (OGP) and the Commission for Reception, Truth and Reconciliation (CAVR) Regarding the Working relationship and Exchange of Information between the Two Institutions’, signed by Longuinhos Monteiro, the Prosecutor General, and Aniceto Gutters Lopes, Chairperson of the Commission for Reception, Truth and Reconciliation, on 4 June 2002.

<sup>50</sup> Section 44.2 of UNTAET Regulation No. 2001/10 states rather ambiguously that the CAVR can receive information confidentially, and is not compelled to release this information, unless requested to do so by the OGP. It is not clear whether the CAVR is compelled to inform the OGP about information received, or whether the OGP can simply make a general request for information compelling specific disclosures. A lack of clarity relating to this matter may well have inhibited potential witnesses from making disclosures if there was no guarantee regarding the confidentiality of disclosures.

CRP applications. The Committee's recommendation of (a) suitable, (b) unsuitable, or (c) suitable with reservations, was subsequently referred to the OGP. In all cases where serious crimes are referred to in the statement, the Statement Committee proposes "unsuitable" or "suitable with reservations" in terms of their recommendation on proceeding.

The responsibility of determining whether or not the OGP wanted to exercise its jurisdiction was delegated by the OGP to the SCU. Although the SCU was not provided with supplementary resources to deal with these additional responsibilities, it was in a stronger position to process these applications, and had a clearer overview of the serious crimes cases from (primarily) the 1999 period. As such, it was theoretically in a better position to determine whether such cases should or should not proceed through a CRP.

CRP applications and summaries were written in Bahasa Indonesian or Tetum, and needed to be translated for the international prosecutors based at the SCU. The translators focused on the summaries, and would generally only be asked to translate full statements if there was some indication that substantive reference was being made to a serious crime. The SCU is divided into four teams working on the basis of regional jurisdiction, and CRP cases were allocated to prosecutors on the basis of where the offences occurred. This meant that some prosecutors had more cases to attend to than others.

In general, though, the summaries were relatively short, and did not present a massive professional challenge. Nevertheless, translators and prosecutors had to do this work over and above their core SCU responsibilities, and without additional resources. It is therefore noteworthy that they managed to ensure a relatively consistent turnaround of the applications.

The MOU agreed that the statutory 14 days for determining whether a case could proceed, would only "commence from the date of the receipt of the relevant document by the OGP in English, being the official working language of the Serious Crimes Unit within the OGP."<sup>51</sup> Although this was an understandable practical consideration, it contributed to further delays in the overall process, and consequently additional pressures for the CRP teams in relation to their three-month sub-district strategic plan deadlines.

Initially the SCU prosecutors appeared to act with considerable caution, refusing permission to proceed in a number of cases, not necessarily because the applicant, or details referred to, were actually under investigation, but also on the basis that they could be. In total, by January 2004, the OGP had exercised their jurisdiction in 64 cases.

Such matters, however, do not always appear to have been dealt with consistently, and there are several incidences where permission was given for hearings to proceed, despite clear linkages to serious crimes. In one of the last cases dealt with by the Oecusse district team, for example, two CRP applicants who admitted to involvement in the notorious September 1999 Passabe massacre, were allowed to participate in the

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<sup>51</sup> *Memorandum of Understanding*, Section 10

hearing (along with 54 other deponents) in relation to their involvement in less serious related crimes. When the deponent's involvement in the serious crime was raised, instead of stopping the hearing (as had happened in other hearings – in accordance with the regulation), the hearing proceeded, but only after the team has explained to the community and those gathered that the CRA can only relate to the less serious matters, and that the serious crimes remained under the jurisdiction of the courts.

In another case from Ermera, the CRP received permission to proceed with a matter linked to a killing from 1976. Although the SCU gave permission for this matter to proceed, the CAVR stopped the hearing and referred the matter back to the OGP. The SCU subsequently wrote a letter to the CAVR explaining that it had no jurisdiction to make decisions on pre-99 cases (which it is estimated make up about 10% of the total number of cases), advising that the CAVR must decide whether it wishes to proceed. If the SCU was unwilling to exercise jurisdiction on pre-99 cases, it is not clear why such matters were not referred to the OGP, which theoretically has overall jurisdiction for this period. Matters of jurisdiction were not altogether straightforward, especially in relation to determining what laws were applicable. Indonesian law, for example, has an 18-year statute of limitation on murder cases, and despite the UNTAET Regulation that Indonesian law applied except in cases where it violated human rights principles, recent Timorese court rulings have left a considerable amount of confusion as to precisely which laws apply.

In order to facilitate some clarity in this regard, the SCU and CRP agreed during a meeting convened in early 2003 that they would not allow any persons to proceed with a CRP if they admitted to murder, rape and assault with intention to cause grievous bodily harm (covering definitions for torture). Cases in which applicants might be associated with 'serious crimes', including matters where applicants mentioned that they had participated in operations to hunt down Fretelin in the late 1970s and early 1980s, having previously been refused, were subsequently allowed to proceed, under the provision that proceedings would be halted if there was evidence of direct involvement in the commission of a serious crime. In a number of these cases, the CAVR were able to reach an appropriate and satisfactory conclusion in some of these matters, although some others were adjourned for referral back to the OGP.

In some respects, the May 2002 amendment to point four of Schedule 1 of the Regulation, which amended the criteria for determining whether an offence would be appropriately dealt with by a CRP, technically allowed the CRP to deal with serious crimes. By deleting the words, "In no circumstances shall a *serious criminal offence* be dealt with" and substituting the words, "In principle, *serious criminal offences*, in particular, murder, torture and sexual offences, shall not be dealt with", this amendment theoretically opened the door to allowing certain serious crimes to be addressed by a CRP.

Despite these apparent anomalies, it is important to remember that the processing of applications from receipt to finalization of reconciliation agreements had a number of checks and balances to ensure that the violations concerned are appropriate for the CRP, and that serious crimes concerns remained within the purview of the OGP. Nevertheless, a more detailed overview of how the CRP and OGP dealt with serious crimes and the apparent inconsistencies that have arisen therein will have to be examined, to determine what can and should be done to address them.

The SCU began receiving the first applications in October 2002, and during the first few months received between 20 and 30 applications per month. These were submitted on a relatively ad hoc basis, having been through the Statement Committee process. During 2003 the volume of applications steadily increased, reaching a peak of over 100 per month. Towards the end of 2003 this increased further with the final ‘rush’ of applications. During the first three weeks of January 2004, the SCU received over 200 new applications for processing.

For most of the operational period, and despite the unavoidable delays in finalising status determination, the relationship between the CRP and SCU was effective and relatively efficient, working to all intents and purposes within the spirit of cooperation outlined in the MOU. The delays in the determination process came to a head, however, in January and early February 2004, as the CAVR had expected statements submitted in December to be processed by mid January. They needed authorisation as quickly as possible, as they had literally hundreds of cases to process, and less than 12 weeks to organise and run the hearings. The CRP statements were sent to the SCU in December, when many staff and interpreters were on leave, and it took longer for these statements to be translated and processed, creating additional pressure for the district teams and national CRP division.

In response to Section 27.2 of the Regulation, which allowed district teams to determine their own hearing procedures, at most CRP hearings, an explanation and detail of the relationship between the OGP and CAVR had been included as part of the proceedings. In many instances this is set out in some detail, with: a formal reading out of status determination of the case (i.e. that it does not involve a serious crime); and that cases can be referred to the OGP in instances of refusals to disclose, or if detail of serious crimes arise during the hearings, and if deponents refuse to accept CRAs, or if the deponents do not comply with CRAs. This detail and information affirms the overriding authority of the OGP, raises the prospects of sanction, and contributes a general level of *gravitas* to the overall proceedings.

In a number of cases, hearings have been discontinued where panels have been presented with information relating to serious crimes, and cases have been referred back to the OGP. In some instances, the panels have continued with the aspects of hearings that deal with ‘less serious’ crimes, and put aside the more serious matters for referral to the OGP. This distinction, while perhaps legally defensible, has potentially negative ramifications in communities that are expected to believe that the ‘serious’ aspects that have been disclosed will be dealt with by another forum. While this might be accepted in the interim, as with those cases that the OGP refused to let proceed from the onset, the criminal justice system and CAVR’s reputation will be damaged if no further action is taken.

Cases have also been referred back in matters where a Community Reconciliation Agreement could not be concluded. In other instances, new information has been disclosed relating to witnessing – as opposed to participating in – serious crime. Although the CAVR publicly reports (i.e. in the CAVR Updates) that these cases and the detail collected have been referred to the OGP, the reality is that they have not, as the relevant information is noted and forwarded to the national CRP Division. At the

time of writing, this information has not been forwarded to the OGP, although it is in the process of being collated for submission.

As can be seen, there is a considerable amount of ‘unfinished business’ of ‘serious crimes’ relating to ‘pending cases’ and cases that have been adjourned or not concluded, either because of information about serious crimes arising, or because a reconciliation agreement could not be brokered. It remains to be seen whether the promise of the OGP sanction for serious crimes, as inferred in the Regulation will be brought into effect. A failure to do so will exacerbate concerns raised about the ‘justice gap’ where certain categories of people admitting to serious crimes might face no justice at all from either the CRP or the SCU / OGP, might become a reality.

The writer is not aware of any formal decision being taken by the CAVR or the OGP in relation to discontinuing or resuming hearings that have been adjourned. It appears that, although the internal process of compiling and collating the relevant information has been ongoing, detail relating to many of these matters have not been submitted to the OGP as stipulated in the Regulation. Consequently, what might supposedly be a *de jure* “suspension” of the hearing, is in fact a *de facto* termination. There have also been several cases where deponents have refused to accept CRP Panel recommendations on prospective agreements. It is unclear how many, if any, of these matters have been referred to the OGP.

In terms of non-compliance with CRAs, at the time of writing, there had only been one reported case. The deponent, a serving police officer, has been visited by the CRP team, but refuses to comply with his original agreement. A formal notification by the CRP to the OGP is pending.

As can be seen, there is a considerable amount of ‘unfinished’ business relating to approximately 120 cases, about 8% of the total number of statements received. The General Prosecutor has indicated a willingness to investigate and pursue these matters and to investigate and prosecute them where possible, but says that it would be unrealistic to expect any progress in these matters without the provision of additional resources.

The CRP has been a relatively effective and efficient prototype in terms of formally linking community dispute resolution / reconciliation practices and the criminal justice system, and has laid the groundwork for further developments in terms of employing alternative dispute resolution remedies to deal with contemporary conflict and violations, both civil and criminal. Such issues are at the heart of current dialogue and research by a number of interested parties. Registration of applications and agreements creates an irrefutable record.

The link to the OGP in terms of oversight, and the potential stick of prosecutions added a tone of gravity to proceedings, which undoubtedly enhanced respect for the process and those facilitating it. Although the ‘unfinished business’ of cases that did not proceed because the OGP deemed they involved ‘serious’ crimes, and those that were referred back to the OGP, affect only a limited number of people (i.e. 120 cases) in certain sub-districts and districts, if they are not addressed in terms of investigation and prosecution – and importantly, communications to the respective communities

about what is happening and why – there is a very real danger the benefits (and potential benefits) accrued from the CRP will be undermined and even lost.

## **Implementing the Community Reconciliation Process**

This section provides an account of the methodology of implementing the Community Reconciliation Process, including; the operational factors involved in forming the national programme, as well as developments and refinements to the process that have occurred during its implementation. The section will also include an assessment of the issues impacting on the standardization of the service provided across the different districts.

Although the overall process of implementation required a sequenced approach in terms of planning, preparation and implementation, in reality this did not always happen in distinct and consecutive steps, as processes and procedures were developed, refined and augmented through experience and in response to specific issues and needs that arose.

### **Planning and preparation**

#### **Operational Planning**

Operational planning for all the Divisions, including the CRP, was set out in a ten-phase Strategic Plan that covered CAVR operations from its establishment in February 2002 to the handover of the ‘final report’ in October 2004. This was divided into four main operational stages, namely (a) preparation and programme initiation, (b) peak field operations, (c) scaling down and finalization of field operations, and (d) report writing.

During the ‘programme initiation’ phase (between April and July 2002), it was envisaged that recruitment for district and regional offices would be completed and the national office would complete pilot projects and finalize operational methodologies for the CRP, Truth Seeking and Victim Support Divisions, as well as begin the regional and district training programme. In addition, District Teams were expected to determine sub-district priorities

During the ‘peak operations’ stage, each district team would focus on one sub-district to provide an integrated package of services focusing on community outreach, truth seeking statement-taking, CRP statement-taking, developing community profiles of violations, victim hearings, and victim support. Between August 2002 and finishing in March 2004, the teams would visit each of the 65 sub-districts and collect 1040 reconciliation statements.

Although the Regulations provided a framework of issues and procedural steps that had to be addressed in the process, this was not a ‘roadmap for implementation’. The Strategic Plan provided the broad framework of Divisional targets and responsibilities, but left the detail of how these would be practically fulfilled to each line function. The embryonic CRP Division now had to work out a workable means of turning theory into reality.

## Training

A considerable amount of relevant information and advice about how best to proceed with the CRP had been gathered during the periods of the Steering Committee, the Interim Office and the CAVR's preparations' stage.

The CAVR's 'Training and Development Unit', in conjunction with newly recruited national CRP staff, were responsible for developing the training of new staff for implementing the reconciliation process. Given the limited (relevant) practical experience of those involved, and acknowledging they were faced by many imponderables and uncertainties, the training regimen opted for a flexible and incremental approach, that allowed the teams to feed into the programme's development.

Staff recruitment was undertaken in two phases during June and July 2002, closely followed by various stages of training. The first training for CRP lasted for seven days and involved ten new staff members and covered a range of general CAVR issues, including socialization and other basic CRP issues. Staff then went into various sub-districts to 'pilot' the socialization aspects, and hold general discussions with communities about the CRP. The next phase of training drew heavily on the feedback from these consultations, which had highlighted serious concerns from staff about whether it would even be possible to secure the co-operation of deponents for the CRP. Considerable effort went into training staff to develop their strategic options and tactical approaches towards target communities, which would necessarily have to respond to specific contexts and circumstances.

Specific training on how to conduct a CRP Hearing was then provided to the 13 staff and 13 Regional Commissioners in mid-September. Given the central role played by Regional Commissioners in the preparation of participants, and the facilitation of the hearings, more attention might have been directed towards the sharing of experiences and lessons learnt, in order to consolidate the process, where possible.

In December 2002, Regional and National Commissioners gathered with regional and district coordinators for a national evaluation workshop to discuss conceptual and practical challenges facing the Commission in terms of developing its activities amongst the communities.

In January 2003, the CRP staff conducted workshops in four regional offices – Oecusse, Maliana, Alieu and Baucau – to evaluate the 'lessons learnt' from the first phase of operations. The teams were encouraged that the process was working, but promised to work to improve coordination and ensure they recorded more narrative detail at the hearings themselves.<sup>52</sup>

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<sup>52</sup> A considerable number of CRP hearings have been recorded, both visual and audio. The CRP Division, with the assistance of the CAVR archivist, should ensure it compiles a full inventory of what has been captured.

The results and recommendations of the internal March evaluation were distributed to the district teams and incorporated into the general training package being prepared for the new staff recruited in July 2003. This included improved guidelines on socialization techniques, the development of clear operational steps and timelines.

The next training was provided in August 2003, primarily for the new staff recruited with UNDP funding. The training involved all national and CRP staff as well as all Regional Commissioners involved in the CRPs. The training emphasized the importance of resolving all known outstanding cases in sub-districts that had already been visited, and setting up hearings, and the potential of dividing responsibilities between the new and old staff. Although the response was not uniform, in reality it was not realistic to expect young female staff to take on from scratch the job of taking statements from primarily male deponents. It was discussed and agreed at the training that a period of 'shadowing' would be necessary with the older staff members mentoring the new recruits. This also sped up the processing of cases as teams soon developed a good working relationship.

Most staff agree that the most important training they received was 'on the job', as it was only here that they could understand how theory could relate to practice, and how the parameters and potential of the process very much depended on a range of variables, which they sometimes had little or no control over. It was during this time that many team members learnt the importance of developing personal relationships with community members. The significance of practical exposure to the process also underscores the importance and potential of piloting as a core training method.

Many district teams now have considerable experience and expertise, and clearly developed impressive organizational and content-related skills. Any further related work should seek to utilize this skill base.

### **Developing the CRP statement form**

The CRP statement form was developed from scratch by the CRP national division, in conjunction with the CAVR's legal team, and went through several drafts before being piloted and completed before the end of August 2002. In November, a disclaimer permitting the CAVR to use information from the statement in a variety of ways was appended. Although the statement taking process was not intended to be investigative, the form was designed to comply with the detail stipulated by Section 23.1 of the Regulation, and as such requested detail on specific events, and related authorization and command responsibility. The statement taking form was also designed in a way that affirmed the voluntary nature of the process, and explained, in some detail, the process in relation to the Office of the General Prosecutor, the importance of full disclosure and identifying victims and communities with whom the deponent wishes to reconcile with.

The statement taking form assumed a considerable amount of information would be gleaned during the statement taking process. CRP staff, however, was not adequately trained to access adequate detail, as sought from the forms, although in many instances, such detail was simply not available.

The statement taking form subsequently provided the basis for the subsequent development of the CRP database.

### **Piloting the reconciliation process – Liquica**

The CRP was piloted in the Suco of Maumeta in Liquica District on 23 August 2002. Three deponents, involved in low level militia activity with the Besa Mera Putih, one of the most active and notorious militia groups, gave testimony about their involvement in a series of minor violations, before an assembled group of approximately 150 community members, as well as CAVR's National Commissioners, the General Prosecutor, and the (then) UN High Commissioner for Human Rights, Mary Robinson. In addition, there was a considerable media presence with widespread coverage on national television and radio. At the end of the process, the deponents' apologies were accepted, no sanction was imposed, and the three men were officially welcomed back into their communities.

The success of this pilot convinced those involved that the CRP was a tangible possibility in many communities. Unfortunately, few of those who were employed by the Commission to facilitate these processes actually witnessed the Liquica pilot (directly or through audio-visual training), or were given an opportunity to undertake similar process in their home districts.

### **Developing a strategic plan for targeted intervention**

With only one staff member and one Regional Commissioner (assigned with a responsibility for the reconciliation portfolio) per sub-district, and only sixteen months available for field operations, it was evident that there would not be adequate resources to cover each of the 400 plus sucos and 2000 plus aldeias across the country, and that teams would have to identify and target priority areas. In addition, operational conditions were difficult in many areas, with communities spread out and often in remote areas, very limited transportation, capacity and infrastructure. Local knowledge and the strategic use of limited resources would be vital in this regard.

The national strategic plan dictated a three-month operational phase in each sub-district. In terms of CRP district operations, this time period was divided into 5 phases: Socialization; Follow-up and Statement Taking; Submission to National Office to secure permission to proceed from OGP; Preparation for Hearings; and, Conducting Public Hearing. A further component to monitor and evaluate the fulfillment of CRAs was implemented more systematically following an internal evaluation in March and April 2003. This was a very tight schedule, especially as it required at least one third, often more, of the total period was spent waiting for the national office and OGP to process the applications.

Each team was expected to design its own sub-district programme, addressing all the relevant stages from initiating socialization to monitoring compliance of Community Reconciliation.

It was apparent that it would take some time for each team to function effectively and develop an effective modus operandi. Consequently, each team was asked to identify the least complicated sub-district (in terms of conflict) to initiate the process. In addition, the first phase allowed for four months in these sub-districts, as opposed to the following stages which allocated only three.

There is widespread consensus that these timelines acutely restricted the potential of the process, in terms of overall targets, but also in relation to strategic priorities. In short, the timelines did not give district teams adequate time to invest the necessary time and attention in enough communities, and in many areas the demands and needs outstripped the Commission's capacity to deliver a developed product.

## **Implementation**

The implementation of national and district strategic plans were based on a theoretically integrated approach that enabled line functions within each district to support each other's work. A central challenge in this regard was how to overcome basic logistical constraints, and teams had to operate as best they could in often-adverse conditions. For most of the field operation phases, for example, the national office had no telephonic contact with its regional offices or district teams and was forced to rely on physical contacts for all interactions, from basic communications, dissemination and collection of documentation, to the provision of resources and the payroll. Likewise, internal communication within the districts was based exclusively on physical interaction, which often delayed actions and decision-making considerably. One consequence of this was the uneven development of district teams, with some coping and proving more effective than others. At a national level, this resulted in an ongoing revision of priorities and plans, which frustrated any meaningful efforts to fine-tune programmes.

Despite considerable variances in needs vis-à-vis the core CAVR objectives, a principled decision was also taken to ensure an equitable distribution of resources between the districts. There are obviously arguments for and against this decision, although it was quite evident that equitable resource distribution greatly simplified issues of operational planning, management and logistical considerations.

Initial considerations, which were contained in the Regulation, regarding the involvement of a regional layer of management to facilitate these processes became increasingly redundant as it became clear that the CAVR would be operating primarily at a district and sub-district level. It soon became obvious that it was simply unrealistic to expect communities to engage proactively with the Commission. Consequently, it became imperative that the Commission proactively interacted with communities, and the programmes developed to ensure that district teams had an intense interaction with communities within each sub-district. Some teams responded better than others to these new priorities.

Following the recruitment and training of staff across the country, district team operations began sub-district implementation in two different periods, with Team 'A', (i.e. Dili, Liquica, Baucau, Manatuto, Lautem, Viqueque and Oecusse) starting in

early August 2002, and Team 'B' (Aileu, Manufahi, Covalima, Ainaro, Bobonaro and Ermera) commencing towards the end of September 2002.

As we have already heard, the proposed sequencing of operations over a three-month period in each sub-district, was always going to be difficult to maintain, as team members were obliged to double-back to sub-districts already visited in order to take further statements and to facilitate hearings. In some respects, a number of the teams never really extracted themselves from this situation, although most did remarkably well to juggle all of their commitments, especially with such limited resources to hand.

These tight timelines were further compounded by time taken off for annual and sick leave, as well as public holidays. Although the first operational phases was extended from early September to the end of December 2002, most of December was effectively lost due to the holiday season, which also spread over into the beginning of the second phase in January 2003. This was repeated in the December 2003, January 2004 period.

By early 2003, it was already evident that the backlog of cases that needed to be processed through hearings would continue to grow exponentially. The subsequent UNDP/ICTJ needs' evaluation in March 2003 recommended an additional thirteen district CRP staff, one for each district, and a motorbike for each team, as well as three staff in the national office. At this point, the division had only one woman working for it, so in accordance with CAVR's general gender considerations, a decision was taken to fill the district positions with women.

This needs' assessment echoed the findings of an internal CRP evaluation process released in April, which sought to make a preliminary assessment of the impact of the CRP on participants and other involved parties. This evaluation highlighted the absence of women deponents and gendered perspectives from the process, lending weight to the CAVR's Senior Management Team request that CRP employ only women district field officers.

The UNDP accepted the 'March evaluation' proposal to fund additional positions in the CRP along with other support. The new staff, it was posited, would be used to address the growing backlog of cases, and "would allow effective follow-up visits to check on the completion of acts of reconciliation previously decided on through the reconciliation hearings. They will also conduct monitoring interviews to allow the wider gathering of information from those who have previously participated in the process for inclusion in the final report."<sup>53</sup>

Initial efforts to designate regional portfolios of responsibility to individual members of the expanded national CRP team were not rigidly complied with, and most staff took on a variety of roles; including district visits, monitoring hearings, processing and summarizing statements for the Statements Committee, data entry and the preparation of documents for the OGP.

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<sup>53</sup> 'CAVR Update: June – July 2003'

Having more personnel and resources inevitably enhanced the district teams ability to deliver on these and other goals. To a large extent this is reflected in the fact that many more cases have been processed since these new positions came online. Despite this, it was simply not possible to keep up with the demand.

### Redeployment

The new staff came “online” in September 2003, just before four of the district teams were due for redeployment to four other districts. The timelines contained in the national strategic plan provided little room for manoeuvre. If the district teams were to complete all 65 sub-districts it was imperative that staff from districts with only three or four sub-districts were redeployed to those with six or seven districts. Consequently all staff Oecusse, Liquica, Ainaro, Manufahi and Aileu were moved to Bobonaro, Baucau, Covalima, Manututo and Dili respectively in September 2003 to ensure the latter could cover two sub-districts during the fifth phase. It was agreed that no further statements would be taken after the end of December. This would then allow every district team to wrap up its hearing programme during the first three months of 2004.

Although the ‘imported’ teams were split up and combined with the local teams, problems of language and a lack of familiarity with the environment frustrated efforts and hampered productivity. The Oecusse team that was moved to Bobonaro indicated that it was only able to take a handful of statements during its redeployment, and felt the exercise was generally a waste of time. The Bobonaro team, however, appreciated the support, as this allowed its most experienced workers to concentrate on a Balibo sub-district that had been acutely affected by the conflict. The Liquica team that was moved to Baucau struggled with the local dynamics and was unable to significantly augment the output from the district in terms of applications from deponents or the running of hearings. This situation was not, however, uniform. The Aileu team that moved to Manututo worked in the sub-districts of Lacló and Manututo town, obtaining few statements from the former, but a substantial number from the latter.

The redeployment also fed frustrations amongst redeployed teams that felt they still had a considerable amount of work to complete ‘back home’. Linked to this were concerns that their extraction from the community may make some feel that the process had been abandoned, and could engender negative sentiments to the CAVR in general and specifically to them as individuals. The national office had considered trying to keep a skeletal staff operational in each district, but this idea was abandoned due to transportation and resource management considerations.

In general, many of those directly involved in the redeployment exercise felt that the it was not a great success with respect to the CRPs (especially in terms of productivity), although most understood it was necessary in terms of general obligations to ensure the remaining sub-districts received the same degree of attention from the Commission, and in the context of limited resource options.

The redeployed teams were sent back home at the end of December, although an allowance was made for the CRP Regional Commission and CRP staff member to return at the beginning of the month. Each district team was subsequently instructed to complete hearing processes in the three remaining months of CAVR’s field

operations. Each team was left to develop its schedule according to locally identified priorities,

## **Socialization process**

The socialisation process was the basis of each district team's engagement with a particular sub-district, and was a major determining factor in the potential success of subsequent CAVR processes, including the CRP hearings in terms of securing high levels of community participation. Although organised meetings and events often punctuated what was done in this regard, district teams recognised the importance of ensuring that engagement with communities was carried out on a more sustained basis. This was necessary for building trust, all the more so as the topics of engagement were sensitive, problematical and potentially divisive.

The process facilitated various objectives, in terms of disseminating information about the work of the CAVR, but also in terms of identifying specific cases, victims and perpetrators that would be relevant to Truth Seeking, CRP and Victim Support objectives.

The methodologies employed in the socialization process by district teams were developed and refined with practice and experience. Initially, most teams experienced considerable difficulty in getting people interested and involved in the process. There was also considerable misunderstanding about the CAVR's mandate, which was not necessarily addressed through community meetings, but necessitated a more individual approach.

Some people had difficulties and / or were reluctant to express their aspirations vis-à-vis the CRP. Some were suspicious and uncertain how the process related to broader justice and accountability considerations, and where the process would lead communities. Others were negative, even hostile. On occasion, CAVR staff has also been threatened. Within some communities, a few actively tried to undermine the processes, using their influence to discourage any sort of engagement. In Bobonaro District, for example, CRP staff explained that elements within the political movement 'Colimo 2000' had opposed the process on a number of fronts. The situation varied from area to area, and it was important for CAVR teams to develop an appreciation of dynamics and issues within particular communities.

Once they understood what the CAVR was intending to do, many supported their work. This was, after all, the first opportunity they had ever had to address these issues in an official way. It was therefore important for the Commission to address concerns and sensitivities, and to ensure that people fully understood the official status of the Commission, and how it related to broader justice initiatives underway. This underscored the importance of direct and more personal approaches, rather than trying to rely exclusively on general meetings.

After several months, district teams were provided with video and audio resources, as well as material handouts to facilitate the work. Their job was to try and show how the various CAVR processes fitted into a broader picture of developments in Timor Leste, and should not be viewed in isolation to other initiatives, relating to justice,

institutional development and transformation. In a number of areas, district teams also worked closely with community radio stations. The socialisation process provided opportunities on a number of fronts for District Teams to develop contact and build trust with target communities. As the teams own understanding and appreciation of the issues and product grew, so did their ability and competency at marketing it.

The teams soon recognized the importance of developing ‘partnerships’ with the communities and the best way of doing this was working through local leadership, such as village and hamlet chiefs and elders, traditional leaders, church representatives, teachers and those identified as ‘representatives’ or ‘leaders’ of the youth and women. These strategic interventions were by no means always straightforward and often required developing an appreciation of local power dynamics and how best to navigate through them.

Although there was a danger that leadership elements could manipulate or influence according to specific agendas and in so doing reinforce patron-client relations, it was widely acknowledged that they were best placed to facilitate CAVR’s access to target communities, as they knew more about the community characteristics, were by and large held in high regard amongst these communities, and importantly could advise on the best methods to employ to encourage participation in the process. In addition, many of these individuals had access to a range of fora, such as church services, village meetings, schools and so on. As such, they could play a pivotal role in disseminating information about the CAVR and its objectives, as well as lending their moral authority by encouraging potential participants to engage in the process.

Considerable effort, therefore, went into developing ‘buy-in’ to the process from these elements. In most areas, this required an investment of time, energy and resources, all of which were in relative short supply. The sub-district-by-sub-district methodology was intended to ensure that communities ‘on the ground’ were given ‘their time with the CAVR’.

In most instances, however, there were simply too many communities to access in each sub-district forcing them to prioritize, and not enough time to ensure socialization processes penetrated as comprehensively as they might have. The CRP teams had a limited reach, and securing widespread community participation was a consistent challenge throughout field operations. Teams were also slowed down by adopting a more individual approach and had to balance the effectiveness of one-on-one interactions with the relentless need to ‘move on’ to the next village. In some areas, community support and engagement was more enthusiastic, as word spread and interest developed. Elsewhere, interests were limited for a number of reasons, most commonly as villagers are spread out over large areas, and were often busy tending their fields or some other responsibility. In some areas, local leaders were reluctant to participate, which subsequently discouraged others from coming forward.

A central drawback for the CRP across the country was the fact that its biggest selling point was the actual process itself. In most instances the hearings were only held at the end of the implementation phase of the three-month sub-district programme. Consequently, many people only really understood and began to appreciate the value of the CRP as the CAVR was preparing to move on to the next sub-district.

An attempt was made with the additional resource provision from the UNDP to try and run a showcase or pilot hearing in remaining sub-districts, towards the beginning of the three-month cycles. The idea was to split the district teams into two units, one of which would concentrate on trying to fast-track a hearing to take place as near to the beginning of the three-month cycle, in order to provide the general community with an example of what could be done. This did not, however, prove to be a feasible option or a practical utilization of the available resources, and the idea was abandoned.

By and large, communities have demonstrated considerable interest, willing and cooperation with the CAVR. This has also developed exponentially, but has not always translated into widespread active participation in meetings, hearings and other CAVR processes. Nevertheless, there is ample evidence of enthusiastic engagement in a number of communities as evidenced by the hundreds of community members that have traveled, sometimes long distances, to witness and participate. Several interviewees felt that the CAVR would no longer have to pursue a ‘door-to-door’ approach to engaging communities, as the Commission was now relatively well known.

### **Accessing the deponents**

There was no uniform methodology to ensure the identification and participation of deponents in the CRP. All the teams struggled to obtain cooperation during the first phase of field operations, and after two and half months in the field only thirteen deponents (one from Baucau, three from Lautem, and nine from Viqueque) has come forward.

Although it was expected that the socialisation process would generate a certain amount of interest, and some deponents came to the Commission of their own volition, getting the CRP moving and securing collaboration necessitated a proactive approach. In a number of instances, district teams felt it was more productive to access deponents by working through community leadership and structures. These were, after all, extremely sensitive matters, which required an investment in building trust with the ‘target’ communities, not only with potential deponents and victims, but also with the leadership and community at large. Success, in terms of laying the foundations for sustainable reconciliation, rested largely on ‘buy-in’ and cooperation from all the parties

In some districts, for example, Baucau, the lack of leadership support for the process was reflected in the small number of deponents that willingly engaged with it. For a number of reasons, however, the situation in Baucau is regarded as unique.

In some respects, the identification of potential deponents was a relatively straightforward process, as within most communities there were people who were aware of who fell within the stipulated deponent criteria. Securing their agreement for participation, however, was not so easy.

A key factor in ‘selling’ the process to deponents, was the legal stipulation that once community reconciliation agreements had been reached and carried out, there would

be formal legal finality, which meant no further action could be taken against the deponent in relation to the issues s/he disclosed. While official closure around these issues certainly did not guarantee that people would not harbour grudges, it provided a tangible step forward for many people in terms of acceptance and reintegration.

More often than not, several approaches were made to deponents in order to lay the necessary groundwork. Confession and disclosure about sensitive issues was not easy, and many understandably preferred to avoid dealing with these issues. Some aspects of the CRP criteria were particularly problematic. This included, for example, the stipulation that there should be full disclosure about the names of others involved as participants or in the command structure. For some, this raised additional vulnerabilities, as pointing the finger at others had potentially negative repercussions.

In fact, much of process was intangible, which meant the benefits (and potential benefits) of participation needed to be explained in detail by the CAVR teams. This was not necessarily clear-cut, and some teams emphasised that deponents would be pioneering an example that could be followed by others, that they were opening the door that others could subsequently step through. At first, most teams found selling the conceptual framework was not at all easy, but with time insights and understanding grew. Few teams were met with outright refusals, but many potential deponents who were approached did not subsequently go forward for hearings, although several teams felt that in time they could have been persuaded, whereas others had to be turned away. Some did not understand the value of their engagement, or why it was necessary if senior elements were not involved. Others were actively discouraged from participating by friends, family and former colleagues.

It is important to note that many deponents had already been back in their communities for over a year or so. Reactions from the general community to their presence varied greatly, and although many deponents didn't feel physically threatened, many welcomed the opportunity to 'clear the air'.

Some teams, for example Bobonaro, claim that every deponent they had contact with eventually submitted a statement. Elsewhere, identified deponents refused to participate. The situation was particularly difficult in communities where serious crimes were perpetrated on a wide scale, and the persons responsible remained in the community.

Several CRP staff felt that it would have been considerably more difficult to sell the process to deponents, victims and the community at large, if it had required them to deal with more serious crimes. Despite this, a number of deponents who were somehow linked to more serious crimes did try and access the process, and most were not given permission to proceed to holding a CRP. This suggests some potential in terms of this sort of process being utilised in more serious matters.

## **CRP Statement Taking**

Potential deponents must apply through the Commission to participate in a Community Reconciliation Process. This requires the completion of a Statement Taking Form that includes:

- (a) A full description of the relevant acts;
- (b) An admission of responsibility for such acts;
- (c) The identification of any individuals victimised by these acts
- (d) An explanation of the association of such acts with the *political conflicts in East Timor*;
- (e) An identification of the specific community in which the Deponent wishes to undertake a process of reconciliation and reintegration
- (f) A request to participate in a Community Reconciliation Process
- (g) A renunciation of the use of violence to achieve political objectives; and
- (h) The signature or other identifying make of the Deponent.<sup>54</sup>

Although individuals were entitled to fill in the forms themselves, the Regulation stipulated that the Commission should provide assistance where necessary<sup>55</sup>, and this appears to have been the case in most instances.

The Statement Taking form sets out a series of issues that must be explained to the deponent before anything is written down. These include; a reiteration that the statement is voluntary and not induced; that the statement will be submitted to the Office of the General Prosecutor who will determine whether the application includes a “serious crime”, or whether the matter can proceed to a CRP; that the deponent must be prepared to take full responsibility, and; that the deponent must make a full disclosure regarding “all the crimes committed ... over the duration of the political conflict in East Timor”.<sup>56</sup> Considerable emphasis was given to the fact that the process was voluntary, and that applicants must take responsibility for violations, which meant they must be prepared to accept sanctions and the possibility of being held accountable by the courts, especially if there was evidence of involvement in “serious crimes.” In addition, they would publicly renounce the use of force to achieve political objectives.

District teams in all thirteen districts, as well as some by national office staff took statements. Having taken and manually registered details of the statements at the Regional Office, the statements were routinely sent by car via the district and regional coordinators to the CRP Division in national office, where they were registered, summarised and placed before the ‘Statements Committee’ to determine their appropriateness vis-à-vis the Community Reconciliation Process.

## **CRP Statements Committee**

In accordance with the Regulation, a CRP Statements Committee was established to “examine all statements received to form an initial assessment as to whether the act of acts disclosed therein are appropriate to be dealt with in the context of a Community Reconciliation Process.”<sup>57</sup> The Statements Committee was provided with a Schedule to guide its deliberations about the acts disclosed and the appropriateness of proceeding. If the Committee felt the cases were not appropriate, for whatever reason

<sup>54</sup> Section 23.1, UNTAET Reg. 2001/10

<sup>55</sup> Section 23.2, UNTAET Reg. 2001/10

<sup>56</sup> Taken from a copy of the CRP Statement Taking Form.

<sup>57</sup> Section 24.1, UNTAET Regulation 2001/10

(i.e. involved a serious crime, fell outside of CAVR mandate period), the deponent would be informed of the decision not to proceed. The Committee was bound to provide the Office of the General Prosecutor with a copy of every statement received.<sup>58</sup> Although the OGP's office received copies of the full statements, they worked primarily from statement summaries of the main issues that were prepared by the CRP staff in the national office.

Initially the CRP Statements Committee was comprised of two national Commissioners, the CRP Divisional Coordinator and a member of the CAVR's legal division. The full Committee only ever met once, as this process was found to be cumbersome and time-consuming. Legally, the OGP had the final word as to whether a case could proceed, and the Committee could only make recommendations on whether it felt the case was suitable or not for the CRP, or whether they were uncertain as to its status. Constituting a full committee to review the statements, in the context of considerable resource constraints was therefore deemed unnecessary.

In effect, the Committee 'review' was not the first or only assessment, as district CRP staff carried this out during the initial stages of approaching potential deponents and during the statement taking process. In addition, the CRP national staff also looked over the statements that they summarised for the Committee process. As such, reducing the Committee to one person did not necessarily have a serious impact on the quality of assessments. The CAVR was also able to rely on the fact that prosecutors in the OGP's office would also review these cases.

The CRP Statements Committee has also been responsible for informing interested parties (including the OGP) when deponents have decided not to proceed with CRP hearings, even though permission to do so has already been granted. To date, this has happened in less than twenty cases, spread across 6 districts (Ainaro, Dili, Baucau, Ermera, Bobonaro, Viqueque).

## **Liaison with Office of the General Prosecutor**

Once a statement had been referred to the OGP, the regulations stipulated that this office had fourteen days to notify the Commission whether it would sanction the application, and that it could request a further 14 days to consider the matter.<sup>59</sup>

Statements referred from the CAVR to the OGP were written in either Tetum or Bahasa Indonesian. As mentioned above, the review process in the OGP had been delegated to the SCU, whose prosecutors used English as their language medium. Consequently, all summarised statements were translated into English for the prosecutors, who subsequently made decisions on whether the case could proceed. The original CAVR-OGP Memorandum of Understanding gave the OGP additional leeway in terms of time to make their status determination, as it was agreed the 14-

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<sup>58</sup> Sections 24.2-5, UNTAET Regulation 2001/10

<sup>59</sup> Sections 24.6-8, UNTAET Regulation 2001/10

day process would only commence after the statement summaries had been translated into English, the language medium of the SCU<sup>60</sup>.

Largely because of the delays caused by having to translate all these statements, and the constraints on the limited human resource capacity at the SCU, during the final nine months of CAVR field operations, the additional 14 days was automatically requested with each batch of statements received, thereby providing the SCU with almost a month in which to make a decision. This had not been previously envisaged and consequently compounded the existing constraints faced by district teams in relation to the three-month operational cycle.

Of the 1512 CRP statements taken and submitted to the SCU, at the time of the fieldwork in February 2004, 1179 had been returned, including 64 cases had been sanctioned. A further 332 cases were still with the SCU awaiting their decision.

### **Referral to Regional Commissioners**

Once the national CRP division has been informed of the SCU's decision, the Commission is authorised to "delegate the function of facilitating a Community Reconciliation Process to a Regional Commissioner performing functions in the Regional Office having responsibility for the Community of Reception identified by the Deponent."<sup>61</sup>

The Regulation makes provision for referral to more than one Regional Commissioner, should "the Deponent admit to acts occurring in several Districts or Regions", and that this might result in separate hearings in the respective districts, or one hearing involving representatives from the involved district. To date, however, the Commission has not been faced with these circumstances.

### **Establishing a Community Reconciliation Panel**

According to the Regulation, the Regional Commissioners were responsible for convening a panel of between three to five persons. The panel should include local community representatives (from the host community), have appropriate gender representation and be chaired by the Regional Commissioner.<sup>62</sup>

In many locations, and in conjunction with community leaders, the CAVR's district teams organised a community meeting to explain the CRP hearing process in more detail, and at which panellists were elected or chosen. The CAVR provided general criteria for panel selection, asking that the chosen panellists be independent, neutral, respected in the community and committed to reconciliation objectives. Panel members should also include sectoral representation from the youth, and church, as well as local community leaders, while a women's representative was mandatory for each panel. Sometimes, those chosen were not even present in the meeting, requiring

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<sup>60</sup> The MOU was subsequently re-drafted by the CAVR's legal counsel to exclude the translation of the time provision.

<sup>61</sup> Section 25.1, UNTAET Regulation No. 2001/10

<sup>62</sup> Sections 26.1 – 26.2, UNTAET Regulation No. 2001/10

additional intervention from the CAVR (often with the direct assistance of the community) to explain to these persons what they were being asked to do.

More often than not, traditional leaders were not included in the CRP Panel, but retained a distinct ‘overseeing’ role, which required them to endorse and support the process and the agreement reached regarding the ‘act of reconciliation’.

Although some teams had difficulties in securing cooperation and were, on rare occasions, unable to put together panels, this problem was not widespread and most teams did not experience this problem. It is unclear, however, the extent to which appropriate individuals were or were not selected.

On several occasions, panel members were actually related to particular victims or deponents. Although this might have been avoided with more careful preparation, this was not always possible in the context of closely interlocked and inter-related communities. Although there have been no complaints regarding bias or vested interests in this regard, it is not clear whether, and to what extent, such matters prejudiced these cases.

### **Facilitating a Community Reconciliation Hearing**

The preparation and facilitation of the reconciliation hearings was a crucial factor in ‘making or breaking’ hearings. Preparation required district teams to ensure communities were given adequate notice as to when hearings would be held, that panel members, deponents and victims had been properly briefed on what to expect, how the process would unfold, and what their rights and responsibilities were.

In response to a recommendation contained in the internal March evaluation, the National CRP division developed a standardised checklist of issues relating to preparation needs for CRP hearings. It appears, however, that in most instances preparations for hearings did not proceed until permission had been given to proceed by the national office. This often meant starting the preparatory process from scratch in terms of convening panels, locating witnesses, finding appropriate venues and so on. In retrospect, as most cases were not controversial, and most of those that were had been identified by the CRP Statements Committee (see below), hearing preparations should have proceeded in anticipation of permission being given. This may have taken away some of the pressure that became inevitable as teams rushed to organize hearings within acute time deadlines and resource pressures.

In most instances, notices about the hearings went out primarily by word-of-mouth, and where possible through community radio. It was important to get as much participation as possible, as the process was designed to ensure community engagement, and the hearings had the potential to be a seminal event in the community calendar.

The Regulation made reference to an individual approach in terms of processing cases through hearings<sup>63</sup>, and at this stage, it was not clear how each CRP statement taken

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<sup>63</sup> Section 27, UNTAET Regulation 2001/10

would translate into specific hearings, or how many and whether they could be pulled together for joint hearings. In many areas, it soon became evident that running hearings for individuals would be neither practical nor strategic, as deponents came forward in groups, presumably as this provided a sense of “security in numbers.”

The Regulation gave the Panel considerable flexibility to “determine its own procedure for the CRP hearing,”<sup>64</sup> enabling them to conjoin applications under the umbrella of single hearings. Consequently, the number of deponents at individual hearings varies considerably, from single figures, to hearings involving tens, even twenties. Some of the larger hearings were split up over two or more days. On one occasion, at Passabe in Oecusse district, 55 deponents at one hearing over four days.

Determining their own procedures also allowed each team to develop specific responses to particular situations. Although different teams certainly developed their own idiosyncrasies, a general *modus operandi* developed in terms of preparation and the running the hearings, facilitated by a set of guidelines provided by the CRP national division on how to do this.

Hearing preparations were crucial for preparing the Panel, traditional leaders, deponents and victims for the process. Although victims were always given separate and a distinct orientation and support process, the general premise of the preparation phase was to reinforce the notion that this was a shared process, from which an outcome that could benefit everyone could be sought.

During the first phases of CRP operations, a member of the CRP national office, or a National Commissioner was always present at the briefings and hearing, which helped to ensure some measure of standardisation in the management of the process. Even as the hearing schedule intensified the national office was able to maintain a presence at many of the hearings.

### **Securing a Community Reconciliation Agreement (CRA)**

A critical concern throughout was how best to achieve a balanced result that would contribute to consolidating reconciliation and buy-in from deponents, victims and the communities at large. According to the Regulation, the CRP Panel had ultimate responsibility for reaching decisions, and although decision-making by consensus was recommended, “in the absence of consensus, the Regional Commissioner shall make the final decision.”<sup>65</sup>

Despite these powers, a number of panel members and Regional Commissioners were reluctant to engage in a process that might result in imposing, or perceptions that they were unpopular solutions. This did not accord with the voluntary nature of the CRP process, or customary norms of consensual decision-making.

The Regulation empowered the CRP Panels to decide upon an appropriate “act of reconciliation” which could include: community service, reparation, public apology;

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<sup>64</sup> Section 27.2, UNTAET Regulation No. 2001/10

<sup>65</sup> Section 26.3, Regulation No. 2001/10

and / or (an) other act of contrition. The national CRP division developed and disseminated guidelines on how to convene and facilitate a CRP hearing. This document provided some concrete examples of what these “acts of reconciliation” might entail:

Community service might include a donation of labour in the reconstruction of homes and buildings destroyed by the deponent, or in the improvement and repairing of gardens, school buildings, and churches. This might involve community service to the church, village office or an orphanage. In terms of symbolic reparations, the need for acknowledgement of the victims’ suffering was emphasised, and the return of goods, or reparation in money, livestock or other goods. Any material reparation must be in accordance with the deponent’s ability to pay. With regards to apology, this must be directed towards individual victims and/or the general community and was encouraged to be a standard part of all CRP hearings. Any other act of contrition should be in accordance with traditional law and practice and abide by the principles of reconciliation.<sup>66</sup>

During the early days of the Steering Committee, it was agreed that CRAs should be a CRP Panel decision, and that victims should not be ‘burdened’ with responsibility in that regard. Consequently, the Regulation stipulates that “the CRP Panel shall deliberate upon the act of reconciliation which it considers most appropriate for the Deponent and inform the Deponent of the outcome of their deliberations.”<sup>67</sup>

In reality, most teams developed their own process of CRA decision-making, which invariably involved traditional leaders, deponents and victims. This more inclusive approach more closely resembled traditional consensual conflict resolution practices, and sought to avoid the ‘imposition’ of a decision. As such, many panel members considered themselves (as did CRP Regional Commissioners) as facilitators as opposed to arbiters in the process.

Several of the panel members and Regional Commissioners interviewed pointed out that observers should understand that many victims really do understand that their cases is a small part of a much bigger picture, and whilst they may not like the CRA, in that it does not compensate adequately, in general they do understand why it is so, and by and large accept this. A detailed and independent assessment of victims’ experiences and views has yet to be canvassed.

Although there have been serious disagreements in some instances, the CRP has been able to secure CRAs in the majority of its hearings. In Bobonaro for example, agreements were secured in 15 of the 19 hearings convened. A more detailed overview of where agreement was or was not reached will be forthcoming. An overview of 101 CRAs reported in CAVR’s bi-monthly updates between August 2002 and November 2003, show that in 58 of these hearings, the CRA was simply an acceptance of the apology, with no community service, reparation or other act of contrition. Although it is evident that this outcome is more prevalent in some districts than others, there does appear to be a general increase in these sorts of agreements in the latter stages of the process, especially from July 2003. It remains to be seen

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<sup>66</sup> CRA guidelines, provided by the CRP National Division.

<sup>67</sup> Section 27.7, UNTAET Regulation No. 2001/10

whether this prevalence and patterns are continued in the January to March 2004 period.

A detailed analysis of the agreements reached has yet to be undertaken, although the March internal evaluation indicates that generally victims and the wider communities had accepted these.

## **Post hearing activities**

### **Fulfilment of community reconciliation agreements**

As part of their monitoring and evaluation work, since July 2003, district CRP teams have been proactively checking to see whether deponents have complied with CRAs. In most instances, it has been possible to check whether agreements have been fulfilled. To date, there has been only one case, in which the deponent has refused to comply with the agreement. This involves a serving police officer that had agreed to pay US\$100 to the victim over a period of three months, but then subsequently reneged. The matter has been referred to the national office by the district team, and was in the process of being forwarded to the OGP at the time of the fieldwork.

The monitoring and evaluation work has enabled the district teams to also assess, albeit anecdotally, what sort of longer-term impact CRAs have had on interested parties and the community in general. Several CRP staff and Regional Commissioners said that they had personally witnessed the positive impact these processes were having.

Many CRAs were completed at the time of the hearing, either in the form of an apology, or with the handing over of goods, livestock etc. No monitoring is required in these matters in such instances where they were completed at the time of the hearing. It is expected this will also be applicable to a significant number of cases processed between January and March 2004. It is not clear, however, how agreements made during this period that do require monitoring will be monitored after district teams are disbanded and regional offices closed at the end of field operations.

### **Registration and dissemination of Community Reconciliation Agreements.**

According to the Regulation, CAVR's regional offices have responsibility for submitting the CRAs to the relevant district courts, and that these shall be registered at these courts, unless they believe the CRA "exceeds what is reasonably proportionate to the acts disclosed or that the CRA violates human rights principles."<sup>68</sup>

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<sup>68</sup> Section 28.1 & 28.2, Regulation No. 2001/10

An attempt by the CAVR to amend the regulation to allow all CRAs to be registered at the Dili District Court was rejected by the Parliamentary Committee responsible for justice considerations. In the current context, however, with the exception of Baucau, most of the district courts are not functioning *in situ*, as the appropriate infrastructure has not been developed, and many of the judges and prosecutors are currently in training overseas. Consequently, judges for district courts in Covalima and Oecusse continue to operate from Dili, where their cases and paperwork is still carried out. As such and until this situation changes, the registration process for most CRAs would be carried out in Dili.

Registration of CRAs is an important part of the process, as agreements are subsequently to be disseminated to deponents, civilian police and made publicly available to other interested parties.<sup>69</sup> Several interviewees raised concerns that they had not heard what had happened with the CRAs and some deponents raised concerns that without this formality they felt there was a chance that they could still face legal action.

To date none of the CRAs have been registered. In fact, the CAVR has had some difficulty in making progress to establish a registration process with the courts. Despite several meetings aimed at facilitating this, the CAVR has yet to provide the relevant judges with relevant training and orientation, which appears to reflect some reluctance from the courts to take on this task. This might be understandable, especially in a context of a burgeoning backlog of ordinary criminal cases (estimated in February 2004 as 1600 cases) and the absence of court officials to process these matters.

Nevertheless, the CAVR strongly believes that this need not be an overly burdensome task. Over half of all agreements are an acceptance of the formal apology given at the hearing, and the subsequent registration process should be no more than a formality. All other CRAs will be completed within a maximum period of three months following the hearing, many before that. The CAVR's monitoring and evaluation work around CRPs has already been checking to determine whether agreements have been complied with, and would be in a position to do a comprehensive assessment in this regard. The CAVR could provide the courts with a basic *pro forma* on each case, which the courts could then officially sign off on, thereby fulfilling their responsibilities without further unnecessary burden. With regards to issues of proportionality, it seems highly unlikely that this will become an issue of contention, as most CRAs have been remarkably "light", and none (that this writer is aware of) can reasonably be described as violating human rights.

## **Developing the CRP database**

The CRP database was developed during 2003 as a stand-alone data source, although it has been designed to ensure compatibility with the Truth Seeking Database.

A considerable amount of detail has been entered onto the database, in relation to core facts (names, dates, locations etc, hearing outcomes etc), which will provide a range

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<sup>69</sup> Section 29, Regulation No. 2001/10

of useful statistical data about the process. In addition, additional observation notes taken at the hearings are being captured and entered into the database. This information and other detail from CRP statements are, however, not being coded and entered into the database. Although a certain amount of detail is captured, the database will not be able to automatically generate a nuanced (collated) insight into the applications and what unfolded at the hearings.

Staff in the national office has been responsible for entering data onto the database. This exercise has been ongoing, undertaken in between a range of other responsibilities. Consequently, efforts to monitor the quality of what has been captured and entered have been limited. The data entry process is ongoing and expected to be completed by June 2004.

## **The West Timor Strategy**

Although most refugees had returned from West Timor by the time the CAVR had moved into its peak operation stage, many thousands remained behind in refugee camps. Reception and reintegration remained core objectives of the CAVR's work, which were closely linked conceptually to their community reconciliation goals. Although many of those that remained in West Timor were believed to be responsible for "serious crimes", most were not, and it was important for the CAVR to see how best it could assist to facilitate their return.

During the "preparation and programme initiation" stage in 2002, National Commissioners and senior staff made several visits to West Timor with the UNHCR and other agencies. The Commission also initiated a weekly radio news bulletin and regular interviews that broadcast to refugees in West Timor.

Despite these promotions, the CAVR decided it needed to do more, and in late 2002, early 2003, developed an 'Outreach Programme' with West Timorese NGOs working in the refugee camps. This programme, which ran from March – July 2003 sought to: "increase awareness and understanding of CAVR's mandate among refugees and key leaders, including how CAVR can assist in re-integrating those who have harmed their communities; facilitate CAVR activities in relation to its mandate, and; ensure greater support (and input) from all sides of the conflict, particularly in relation to the Final Report."<sup>70</sup>

The CRP national division was involved in the training and orientation of the West Timorese team in Dili, providing detail on the theory and practice of the CRP and taking team members out to witness first-hand how the process was being implemented. Although this was an important input, the West Timorese team subsequently struggled to tailor the reconciliation process for refugee conditions and needs. The West Timor team had suggested they be allowed to take statements and convene hearings, but this proposal was rejected. The programme was, however, successful in terms of disseminating information to the refugee community about the CAVR reconciliation process through a series of radio broadcasts. Although the programme was also able through a strategic mapping exercise to develop a profile of

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<sup>70</sup> CAVR West Timor Strategy Document, *undated*.

their target communities, who they were, where they are, where they were from and what their priority needs and concerns were, resource and time constraints meant the programme could only target four areas where refugees were concentrated.

Similarly to the district teams in Timor Leste, the West Timor programme had to invest a lot of energy into efforts to build trust with these communities, local leadership in the camps, and the pro-Indonesian political leadership. At the heart of these endeavours were the core objectives of ensuring refugees had adequate information about the situation back home, and in so doing, laying the groundwork for further reception, reintegration and reconciliation initiatives. The programme had no mandate to initiate CRPs.

In short, the programme sought to change attitudes and perspectives about the reconciliation process. Although reactions were by no means uniform, the subject of reconciliation proved to be a particularly ‘hard sell’ in some quarters, and NGO coalition members were frequently rebuffed, and on occasion even threatened. Even where discussions were initiated, attitudes towards reconciliation initiatives from some quarters were often negative, and sometimes quite hostile. These and other generally cynical reactions appear to reflect a “perpetrator mentality” that seeks to avoid issues of acknowledgement, accountability and contrition for human rights violations, yet seeks ‘resolutions’ under the broader rubric of ‘forgiving and forgetting’. It also reflected a fundamental lack of trust in some quarters regarding the *bona fides* of the programme and of the CAVR in general, including significant misunderstandings regarding their purpose and intentions. While such attitudes and perceptions may reflect concerns about alleged political agendas and bias, it is also indicative of the breakdown in trust that many have after experiences of disappointment and abandonment. Despite these hurdles, the programme ensured that the reconciliation issue become subject to serious and widespread debate amongst these communities, and responses from certain quarters, particularly women, were extremely encouraging. It is not clear, however, whether these discussions have been sustained in any way. An evaluation report of the programme in West Timor and its various components is forthcoming.<sup>71</sup>

Despite agreements with the West Timor team that they would alert the national CAVR office of any potential deponents, and although the CRP national Division did not monitor this specific aspect, anecdotal evidence suggests that there was no direct link between these outreach initiatives, subsequent returns and participation in CRPs. As has already been mentioned, witnessing the CRPs was the most effective form of socialisation. This option was not available to the people in West Timor. Consequently, the process remained conceptual, and therefore at times difficult to grasp, or perhaps easy to dismiss.

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<sup>71</sup> See forthcoming report “*Not Eno – Documentation of Information Dissemination Program on CAVR By West Timor NGOs Coalition.*”

## **Generic considerations**

### **Developing best practices**

CRP staff and Regional Commissioners came from a range of backgrounds, and fed into the evolving dynamics accompanying the development of each team's approach. Viewpoints as to whether certain teams established 'best practices' vary considerably. Several national staff members pointed out that all teams had strengths and weaknesses, and all had examples of conducting 'poor hearings'. A whole range of variables, relating to the CAVR, and the operational context impacted on the process. This included problems relating to internal communications (see below), bad planning, uncooperative community leaders, inclement weather etc.

Coordination and maximizing of scarce resources depended greatly on the effectiveness of the district and regional coordinators and their ability to plan and implement at the same time as balance and juggle competing needs and priorities. The conditions between and within the districts varied considerably, impacting on the type of constraints and opportunities faced by the various teams.

Some teams, however, appeared to fare better than others. A review of the first 12 months of operations, for example, shows that districts such as Bobonaro, Liquica, Ermera and Oecusse conducted considerably more hearings than Covalima, Viqueque or Baucau. Indeed, Baucau is widely acknowledged to be the district that struggled the most to secure support for the CRP. A number of problematic issues were identified. These include: the deteriorating working relationship between the regional commissioners and their relationships with the district teams; the backgrounds of the regional commissioners, which became a focus of concern in many communities, as they were not regarded as acceptable to take the CRP forward; general levels of resistance in Baucau towards embracing something new, especially if it was dealing with sensitive issues; and, that a lot of potential deponents remain in West Timor.

Various interventions were made by the national office to address the problems in Baucau, as this was having a negative knock-on effect in other districts serviced by the Baucau regional office. This included two evaluations; one specifically dealing with CRP related matters, the other the entire regional operation. Agreements were reached, strategies developed and undertakings made, but these were not implemented. At the time of writing, only 19 deponents had been processed through 9 hearings.

### **Coordination and communication between the National office and District Teams**

For most of the Commission's operational period, there was no telephonic communication between the national division, based in Dili, and the District Teams operating out of the six regional offices.

Although there was regular communication in terms of visits to the districts by CRP staff (and others), and regular visits to the national office from Regional Coordinators, travelling to and from the more far-flung districts imposed considerable logistical

constraints. The worst affected team was Oecusse, which had to rely on the overnight ferry service, which meant a trip to and from Dili (or vice versa) would take up a minimum of three days.

The national CRP Division attempted to introduce a regular de-briefing process for district staff, but once again logistical constraints frustrated these efforts. Despite this, up to about January 2004, the national office managed to have a presence at most of the CRP hearings across the territory.

## **Strategic integration and synergy between CAVR Divisions**

Synergy between the different CAVR divisional line functions was most evident at the district level, where teams worked together to facilitate mutual responsibilities, such as socialisation, and at times doubled up to assist with statement taking, hearing preparations, logistics and so on.

Although district teams worked together relatively effectively, it is evident that this was not always the case at the national level. Several regional and district coordinators explained that they had at times been sent mixed and contradictory messages from the different division to whom they were reporting.

Apart from the West Timor programme, the Reception and Victim Support Programme was involved in providing support to returning refugees, and for some time had a reception officer based at Batugade on the border with West Timor. Although the idea was for potential CRP deponents would be identified at this point, and relevant district teams would follow up the information, in reality this never happened.

The CRP collected a considerable amount of useful information directly relevant to the CAVR's Truth Seeking Division, especially in relation to the events of 1999. This information has not been accessed or utilised by the CAVR to facilitate its more in-depth research enquiries or analysis.

## **Some concluding thoughts about implementing the CRP**

It is always easier to see what might have been done in retrospect, in terms of planning or actual implementation, especially in a context where there are few, if any, comparable examples. The CRP has, however, highlighted some critical areas of concern and lessons learnt, in terms of both specific considerations for Timor Leste, but also generically in relation to community-based reconciliation processes.

The effective and efficient management and coordination of the process was a critical factor in the context of resource and time limitations. Maximising available human, technical and financial resources put considerable pressure on each of the teams.

Although the CRP's implementation was initially conceived as a 'individual' process, it soon became evident that this wasn't the most appropriate approach, and the in

terms of truth-telling, accountability and issues of contrition and reconciliation, a group / community approach was more effective in terms of 'buy-in'.

Despite the provision of guidelines by the CRP national division that promoted a standardised approach, the Regulation and modus operandi of district teams instilled a considerable degree of flexibility into their *modus operandi*.

Although district teams adapted well to the needs of collective hearings, these were logistically more complicated and it was evident that some hearing were inadequately prepared, especially if it involved larger groups of deponents. Some teams tried to stagger bigger groups over more than one day, but logistics and resource considerations did not always allow for this. At times this meant hearings ran late into the night and the early hours of the following morning.

Along with the ever-present time constraints, this raises broader considerations about what is really required in terms of time and resources to ensure a community process run smoothly and effectively. In many parts of Timor Leste, communities are spread over a large area, and transportation is required to ensure attendance, or at least provision of accommodation and food if people are expected to come long distances and are unable to return the same day.

Community gatherings of this nature can be seminal events in the community calendar, and as dictated by custom and tradition in many parts of the country, community reconciliation processes must be cemented in feasting and celebration. In many instances, the CRP teams were able to ensure that some of their budget was set-aside for a party at the end of the process. Although some observers felt this was an extravagant or unnecessary expenditure, it is evident that this was a principal means of securing a wider level of community involvement and interaction with the whole process.

Although many had envisaged the CRP would involve a relatively complex set of legal, institutional and managerial issues, and the Regulation made technical provision for a number of options, in many instances the process was simplified to accommodate limited capacity. Although emphasis was given to each interested party fully understanding his or her role, this was not always possible, as preparations were often only possible at the last moment, and were reliant on logistical considerations, such as communication, transportation and the availability of the involved parties.

The success of the process was therefore often based on the effectiveness of CRP organisation and coordination. The process also relied on the selection of effective panel members who were able to grasp the fundamentals of the process, as well as the conceptual reasoning behind the CRP. While panels and Regional Commissioners clearly had an significant influence on the decisions reached around Community Reconciliation Agreements, the general approach adopted was inclusive of deponents, victims and traditional leaders, and an emphasis was given to facilitating agreements as opposed to imposing them.

## Stages in the Community Reconciliation Process Hearing

Although each team was enabled to determine its own procedures at CRP hearings, a generic format evolved in many districts. This was aided by the provision of a set of guidelines from the national CRP division, on how to set up community panels, facilitate the hearings, and attain community reconciliation agreements.

The Regulation stipulated that the CRP panel “shall hear from” deponents, victims of the deponent’s acts and other members of the community at the hearing.<sup>72</sup> It was therefore incumbent on the CRP panel to engender an inclusive approach that would encourage participation.

### Introductions

Most district teams adopted a somewhat formal and official approach towards the hearings, at which the Commission, panel members, local leaders (political and traditional) as well as other dignitaries were given an opportunity to provide an initial input. In general, the hearing opened with prayers from a local priest, and / or in some instances a traditional incantation or ceremony.

The Commission’s input, often from the Regional or District Coordinator, the Regional Commissioners, or the CRP staff member, invariably provided an overview of the CAVR’s mandate and CRP work in the district, the specific stages of the hearings, and overall objectives of the process. CAVR’s core CRP objective is encapsulated in the slogan on the banner above the Panel’s head in a hearing in Maliana – “CAVR – the Road to Peace – We accept each other to enhance national unity and make it grow.” The Commission provides the community with a snap shot of the ‘big picture’ of challenges facing the country, in terms of reintegration and reconciliation needs, and the importance of healing community divisions, in order to prevent a repeat of these violations in years to come.

These introductory remarks also provided a further opportunity to explain in some detail the purpose of the process, its similarities to the traditional adat processes, the CAVR and CRP’s legal status and the Commission’s relationship with the OGP and the formal criminal justice system. The Commission explained that it was not in the business of making decisions, but affirmed its role as a facilitator to the process, as an agency to help reach agreement. “We are like a bridge to repair bad relations.”

During this input (and in other instances throughout the process), Commission staff reminded those gathered of the importance of conducting themselves with dignity and respect, affirmed the rights of deponents to defend themselves against any allegations leveled at them, as well as the rights of victims to seek clarity and challenge the versions presented by deponents. The community was reminded of the importance

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<sup>72</sup> Section 27.1, Regulation No. 2001/10.

and courage of deponents to come forward to admit their wrongdoing, and that the objective of the process was reception not punishment. This in turn, required deponents to publicly explain what they had done and why.

In many locations, local political, administrative and community leaders would also make presentations. This sometimes included government representatives such as the sub-district administrator, and in several instances the District administrator. Participation required the CAVR to proactively engage these leaders to secure their support. Much depended on the availability of these individuals, which highlighted the importance of effective preparation and communication.

## **Reading of Statements**

The Regional Commissioner chairing the Panel reads out the determination made by the OGP, stating that the applicant has not made reference to a “serious crime”, and as such, permission is given to for the hearing to proceed. This has become an important part of the hearing, reinforcing the official tone, and reminding those gathered that what they are participating in is an integral (albeit transitional) component of the new state’s fledgling criminal justice system.

Summaries of the CRP statements are read aloud to those assembled. In some instances this is undertaken by members of the Panel, in others, staff members have done this. In hearings involving more than one deponent (i.e. the majority of cases) some teams (i.e. Liquica) have read out all the statement summaries before proceeding. In other areas, each statement is followed by the respective oral testimony of the deponent.

## **Oral Testimony**

The deponents are asked to make an oral presentation to those gathered. This is an opportunity for deponents to talk directly to victims, the CRP Panel the community at large, as well as fellow perpetrators.

The quality and quantity of disclosures varied tremendously. Although district teams were requested to encourage deponents in the pre-hearing briefing to provide as much information as possible with respect to the incidents and context they are talking about, a number of deponents gave very brief oral testimonies, sometimes no more than a minute or so. In response to this some Panel Chairpersons made a point of telling victims and community members that they had a right to ask for clarity and detail on anything that was said, or they thought was missing from the testimony.

Conversely, some other deponents spoke at length – one deponent in the Hauba suco in Bobonaro district spoke for over 70 minutes, although according to some observers, his contribution was very repetitive and did not provide adequate detail. Yet, other community members appeared to hang onto every word. As had been identified in the internal CRP evaluation in March 2003, the ‘quality of the confession’ was often the key factor influencing notions of forgiveness. One deponent at a February 2004 hearing in the suco of Fatumasi in Liquica district was able to retain the attention of

hundreds of community members, despite a deluge of rain that threatened to bring proceedings to a complete halt. In this instance, the quality of his input was quite distinct from others that spoken, and the audience remained engrossed despite the downpour, as he provided a detailed chronology and anecdotes of his involvement with Indonesian security forces and militias. In fact, anecdotal evidence suggests that many deponents took the opportunity to provide considerable detail of their involvement and that of others.

Issues of quality and quantity were not necessarily determining factors, and although many deponents were quite clearly natural orators, many were not and were obviously uncomfortable having to speak on a public platform into a microphone. For many this was probably the first time in their lives that they had to speak publicly. By and large, the CRP Panels took a flexible approach towards oral submissions. At times, but not always they picked up on and attempted to reconcile inconsistencies that arose between written and oral submissions.

It was often the case that the more deponents present at the hearings, the shorter the testimony and more limited the detail of disclosures tended to be. Some hearings conjoined as many as twenty deponents who had to be 'processed' in the course of one day. If necessary, and where possible, district teams split up hearings over several days. The largest hearing, in Passabe, in the district of Oecusse, involved 55 deponents and was run over four days. For a host of reasons, holding hearings over several days was neither practical, nor possible.

Although testimony often related to similar incidents and issues, especially in relation to low-level militia activities from 1999, which made up the bulk of cases processed, this was not always the case, and a number of hearings included a cross-section of cases from different time periods, and even from across the political divide.

Oral testimony provided an opportunity for deponents to explain in more detail the context in which they had acted, and provide more perceptible insights on the push and pull factors that had contributed to their involvement in violations. The context of repression and fear was familiar to everyone in Timor Leste, so it was seemingly uncomplicated for victims and observers to understand how militia members were press-ganged and pressurized into participation.

Oral testimony also gave deponents an opportunity to accept responsibility for their actions and apologize. Although official acceptance of responsibility and public apologies were routinely incorporated into the process as an outcome of the CRA, some deponents wanted to address these issues during the testimony stage. In a number of hearings it was evident that deponents were 'lowering themselves' before their communities, and that the hearing was at one level a public process of shaming, that concluded with the official re-admittance of the deponents back into the family.

A number of other deponents showed little, if any remorse or contrition for their involvement and culpability regarding the violations they admitted to. Many conflated their explanation of what had happened with justification, and did not take personal responsibility.

Some other deponents were not testifying to criminal activities, but wanted to publicly address issues and suspicions relating to their association with the Indonesian occupation. Many of these people simply wanted to apologize and use the opportunity to officially re-engage with their communities. This innovative option in the CRP has enabled the Commission to address other aspects of mistrust and social discord that permeate through many communities.

## **Question Time**

An opportunity was afforded to CRP panel members, victims and community members to question the deponents. The order in which this happened was usually in the sequence of Panel members, then victims and finally community members. While some CRP Panels waited until all the deponents had given their oral testimony before questions of fact or clarification began, others allowed the questioning process to follow on directly after each deponent's testimony.

Although the Regulation provided some outline of the sorts of questions that could be asked by the panel, and in most instances this opportunity was extended to victims and community members, there was certainly no uniformity in terms of what actually was asked. Indeed, the issues raised and level of detail probed was largely dependent on the specific individual asking the question. CRP Panels, for example, did not pursue a 'checklist' of issues it wanted to address.

Although the deponents are required to make a full disclosure, and the Panel is empowered to ask specific detail on command structures and details on others who were involved, many Panels upheld an unwritten rule that these processes were not meant to be interrogative or designed to catch-out deponents who preferred to tailor their disclosures by being economical with the truth.

To a large extent, this approach lent heavily towards giving the deponent and his or her version of events the benefit of the doubt. For example, a number of deponents have claimed they were playing a double agent role, ostensibly working with pro-Indonesian structures, but secretly working for the clandestine structures. In the two hearings I attended where this was raised, no effort was made to clarify details or corroborate details by victims, communities, or the Panel. This was evidently either not regarded as significant, or unbelievable, as organizational affiliations and loyalties were neither static, nor clear for many people seeking to survive in the context of repression and occupation.

In some hearings (i.e. CRP hearing in Lolotoe sub district, Bobonaro on 28 October 2003), deponents were informed that they did not have to disclose names and details publicly, but could provide these details to the Commission privately. It is not clear what, if any, follow-up was made by the CRP teams to ensure this information was captured. Indeed, in many hearings, detail that could have been of use to either the CAVR's Truth Seeking Division, or the (potential) investigations of the OGP and SCU, was neither probed nor captured. Although the Regulation stipulates that relevant information should be sent to the OGP, in practice the process focused more exclusively on specific local needs. This was a workable formula, which allowed victims and community members to address very particular questions that they

wanted answered, which did not necessarily probe information about others who were complicit. One victim, at the aforementioned Fatumasi hearing, for example, did not ask for detail on who else had beaten him, but simply wanted to know what had happened to his sacred (*lulik*) sword that had been stolen from him in the same incident, and refused to engage in any form of reconciliation with the deponent until his questions were satisfactorily answered.

Although the versions of some deponents were not questioned, those of others were, and panel members, victims and community members all expressed their disbelief at aspects of the testimonies given in certain hearings.

Question time was an important opportunity to raise issues without fear or favour. At one hearing in the Balibar Suco of Dare sub-district in Dili, one of the victims was in the full throes of malaria and had to be supported while he gave his testimony and raised his questions. He explained how important it was for him to be able to look into the eyes of the man he had suspected for so long and at last hear the truth.

The parameters of what was acceptable in terms of questioning varied between the district teams. There were reports from one district that a Regional Commissioner was restricting victim's questions and inputs for two minutes to ensure the process was expedited. Elsewhere, victims and community members had a relatively free range in terms of their contributions, and could ask for specific deponents to address specific issues, or ask a general question to the deponents, or indeed the Panel. Some community members used this opportunity to ask deponents whether they had any information about their own cases, which often they did not. Some observers used question time as an opportunity to make a statement or comment about the process. The wife of one victim at a hearing in Dili for example, explained that she had come to the hearing to make sure that an agreement was secured, as it was "time to bury the hatchet and move on."

The nature and incisiveness of what was asked varied considerably from team to team and from hearing to hearing. Although most Regional Commissioners actively encouraged the victims and communities to engage in the process, and often requested that questions relate to the deponents present and the actions they had declared, this did not guarantee that core issues in terms of getting to the truth of what transpired and why would be addressed. There was of course no compulsion for that to happen. Panels had the option to explore these issues, which in general they extended to victims and the broader community, but they were under no specific obligation in this regard.

## **Dealing with Disagreements**

There was no uniform response to dealing with disagreements that arose during the CRP hearings. Panel members did their best to ensure that disagreements were dealt with in a constructive manner and did not descend into mutual recriminations. Deponents and victims were asked to carefully consider the basis of their disagreements and to substantiate any accusations with some form of corroboration (i.e. witnesses), and the option of 'agreeing to disagree' was raised as a possible solution in certain matters.

In some cases, the Regional Commissioner chairing the panel would invite community leaders who were observing to venture their opinion on how best to proceed. At a hearing in the Fatumasi suco in Liquica district, for example, the proceedings were blocked because of a fundamental disagreement between a victim and perpetrator, with the former demanding the return of a sacred object that the latter claimed he did not have. The sub-district and district administrators who were present at the hearing were both invited to venture suggestions on how to proceed. The victim was prevailed upon to recognize that many people had loved ones and possessions that could never be returned, and that at one level it was important to move past this, while the deponent was asked to accept that while he may not be in possession of these goods, his actions were at least partially responsible for the loss, and as such he bore a responsibility to the victim in relation to this matter. Contributions from the administrators, as well as the panel members urged victim and perpetrator to find common ground, which they eventually did.

Finding common ground required CRP Panels to develop and utilize a combination of skills, that would coax, influence and pressurize, but at the same time were not over-domineering. The role of the Regional Commissioner as Panel Chairperson was pivotal in this regard.

Although Panels could technically override disagreements between different parties, and make unilateral decisions, this approach lacked legitimacy in the eyes of the community, and was largely avoided. The Panels therefore looked wherever possible for alternate solutions. On at least one occasion, the CAVR's legal officer who happened to be present at the hearing was drawn into give his advice on how to proceed. In that particular case, the family of a man who disappeared were concerned that reaching agreement with the deponent - a former police officer, who had arrested the man who subsequently disappeared - might jeopardize future criminal sanctions against those involved in the disappearance. The legal officer was able to provide an explanation, which showed that the family's rights were not jeopardized in this regard, and that the police officer was actually an important and willing witness in the case.

There are very few recorded cases of hearings breaking down because of disagreements, although this did happen on occasion. The reconciliation process was very localized, so agreement between deponents and the community in one area, did not equate to an agreement between the deponent and other communities. In one hearing I attended in Dili, agreement was reached at the hearing between the victims and the deponents, despite observers from a neighbouring community claiming that the deponent had not made a full disclosure and therefore did not qualify for a CRA.

During the preparation phases, the CRP teams had been able to secure some general level of (pre-hearing) agreement, and as such hoped they were able to iron out serious problems that might arise at the hearing. In most instances this did not involve face-to-face meetings between deponents and victims where specifics were discussed, but involved meetings at which general issues of process and principle were discussed under the broader rubric of how best to secure a reconciliation agreement. The idea was that the key parties went to the hearing hoping for a similar outcome, namely a reconciliation agreement, and did not go there to oppose or upset the process of

reaching agreement. Obviously, responses and interactions were not uniform, and some victims and deponents pulled out of the process during the preparatory stages. Most, however, did not, which is testimony to the success and persuasive powers of the CRP teams and Regional Commissioners.

## **Reaching agreement**

Guidelines on the sorts of agreements that might be reached were provided to District CRP teams and Regional Commissioners as a working tool for the panels that were charged with facilitating CRAs. As mentioned above, most panels were keen to include deponents, victims and traditional leaders in the discussions around the available options, their appropriateness and related preferences. Concerns have been raised that the Regional Commissioners or district CRP teams have had too much influence in some decisions, and that there has been a tendency to promote very limited (and therefore inappropriate) sanctions. Some commentators, for example, are not convinced that apology by itself is suitable, or was actually the intention of those who had conceived the process. The extent to which this analysis is relevant, let alone accurate is unclear, as it is largely based on anecdotal evidence. This should not, however, preclude any further enquiries regarding how decisions were reached.

From amongst those panel members interviewed, some were clearly heavily reliant on input and guidance from the resident Regional Commissioner, as they were uncertain about the parameters of what was or was not appropriate and acceptable. Others, such as panel members interviewed in Oecusse, were much clearer about their role as facilitating a dialogue and agreement between the deponents and their victims, which they achieved successfully. In such instances, the CAVR Regional Commissioner played a very limited 'active' role in the deliberations.

## **Generic considerations**

### Flexibility

The Regulation provided district CRP teams and their Regional Commissioners with considerable flexibility in relation to actions undertaken: targeting particular communities (and deponents); types and methodologies of socialization and hearing preparation was carried out, and; how the hearings were run. Of course, guidelines and orientation had been provided to teams through their training, but the overall approach allowed teams to adapt their tactics to the conditions, needs and circumstances as they arose.

### Language

Language is a complex and sensitive issue in Timor Leste. The CRP hearings have tried to be as responsive as possible to language needs and preferences. Consequently, the hearings often involved a combination of Bahasa Indonesian, Tetum and local dialects. Deponents, victims and community members must be able to speak in their

language of choice. This does, however, add an additional burden if one or more functionaries require translation, and can complicate the manual recording

## Caikasa Community Reconciliation Process Hearing

This CRP hearing was convened on 30 January 2004 in the Caikasa Suco, Maubara sub-district, Liquica district. The hearing involved 20 deponents, all men, who were all members of the Besi Merah Putih (Red and White Iron) (BMP) militia group. Caikasa, a community spread across the hills to the south east of Liquica town, is known as the 'birthplace' of the BMP, one of Timor's most notorious militia groups.

The Liquica team has developed considerable experience in preparing and facilitating hearings, and at this point had already run 12 hearings involving 114 deponents, and was expecting to have 'processed' about 200 applicants by the end of March 2004. This hearing was one of four that had been planned for this community, and follows on from a CRP hearing held the previous week that had dealt with a number of other individual cases

When the deponents, panel members and victims were all present, the hearing formalities began with a brief introduction from the Liquica CAVR District Coordinator who set out how the day's proceedings would progress. This was followed by an input from the village chief who asked those assembled to remain calm and listen quietly to what people had to say, pointing out that there would be an opportunity to ask questions and seek clarification.

The Regional Commissioner chairing the CRP Panel then set out the procedures in more detail, providing a thorough explanation of why the process is important in both the local and national context. The Commissioner encouraged the community to speak out if they feel the deponents have not made full disclosures, but that they must allow the deponents to explain themselves first.

The Commissioner explained that deponents and any others speaking must use the language that they are most comfortable to speak in, which for most people was the local vernacular language (Tokodede – sic), although many understand both Tetum and Bahasa Indonesian.

The Regional Commissioner then read out the OGP's statement, written in Bahasa Indonesian, which officially endorsed the applicability of the applicant's statement to proceed through a CRP.

Summaries of all twenty statements were then read aloud to those gathered by the CRP staff. Almost uniformly, the statements claimed that the deponents had been forced into the BMP, that their role had been largely perfunctory in terms of providing guarding duties around buildings and so on, and that they had never victimized individuals or been involved in serious crime.

The deponents were then asked one-by-one to make an oral presentation to the victims and community members assembled. This was evidently the first time for a number of deponents to speak on a public platform, and many appeared nervous, not using the microphone properly and having to be gently coaxed to face the victims and communities.

The length and quality of the inputs varied considerably, from several minutes of animated ‘story-telling’ to a few seconds of mumbled apology, or in several cases simply detailing a list of violations the deponent was not responsible for – “I did not kill, I did not intimidate, I did not burn houses or steal”. Many were relatively ‘low-level’ militia members that had been drafted into the militia and performed menial tasks, such as guarding and so on. Some deponents had information to share about well-known incidents, such as the April 1999 Liquica church massacre, others had been present at the subsequent militia rally in Dili, which led to the massacre at the Carrascalao house. Another deponent had been present at a militia meeting attended by General Wiranto, but claimed he couldn’t understand what was being said as it was in Bahasa Indonesian.

The quality of disclosures was often very limited, which may reflect the fact that there is simply not much to say. Many Timorese were simply press-ganged into the lowest rungs of the militia structures, where they fulfilled basic roles such as guard duty, or were forced to attend meetings, where they literally made up the numbers. Others were seemingly more reticent to make disclosures, perhaps it was speculated by some CAVR staff because of their proximity to violent acts and, and fears relating to the presence of perpetrators of serious crimes in the community.

This exercise in public accounting was often quite emotional and clearly difficult for some deponents, and many looked perceptively uncomfortable throughout the proceedings. Indeed, for some this process appeared to be a sort of ‘public shaming’, as their actions and associations were acknowledged and accepted to be part of a larger crime that was visited on the people of Timor Leste.

After the oral testimony, CRP Panel members, victims and community members were given an opportunity to comment and direct questions towards the deponents. Questions ranged from wanting specific detail on dates of when deponents joined the BMP, names of others involved in specific attacks, to explanations of how people who were involved in the clandestine movement could be forced to work with the militia.

One victim directed several questions at his nephew who was one of the deponents, requesting more detail about the specific attack on his home, which had resulted in the killing of his livestock. He felt that the version now presented at the hearing detracted from what he had been told privately by some of those involved. Some questions were not directed at any one deponent in particular, and several of these were consequently not answered, as the Panel did not always ensure that they were addressed. In general, however, having heard a round of questions, the Panel chairperson summarized the questions again before handing back to the deponents to answer.

Some responses were very defensive, eliciting mumbled disapproval from sections of the assembled community. Some deponents clearly don’t remember details and dates, while others appeared somewhat evasive. The Panel Chairperson intervened to remind the deponents that they were not there to punish, but to get to the truth of what had happened, in order to facilitate reconciliation.

Several questions were directed at one deponent, ‘Domingos’ about the disappearance and murder of a community member called Bruno. Domingos was known to have

been with Florentino, who tied Bruno up before he was taken away. Florentino had also applied to participate in a CRP, but this had been rejected by the OGP, presumably because of his proximity to a 'serious crime'. The assumption was that the courts would deal with Florentino's case, although it was not clear whether Florentino would be prosecuted or used as a state witness.

These specific issues and details were not raised or discussed and it is highly unlikely that most community members will know or have been told what is happening in relation to such matters. It does, however, point to concerns about how the local community perceives what is happening regarding the case of Bruno's murder. This was one of several killings in this area in the aftermath of the Popular Consultation. Florentino continues to live in the community, and it appears that he felt it was necessary for him to participate in a CRP. This was disallowed, but it remains unclear what if anything will happen now. Members of the community felt that Florentino also needed to explain what had happened in Bruno's case. In his absence, the next best thing was to question Domingos who had been present and could perhaps shed some light on what had transpired. Having protested his innocence in terms of complicity in the murder, Domingos was persuaded by the Panel to explain in more detail exactly what had happened from his vantage point.

Another deponent was asked about the murder of an old man. The deponent was clearly familiar with the matter and responded angrily that he was fed up with being accused of responsibility for the murder. He acknowledged he was present when the killing had taken place, that he had already told the authorities that were responsible, and he now wanted an end to these allegations. As more questions were fired at him, he countered accusing one of these people of himself being an informer for the Indonesian security forces. As tempers flared, CRP staff intervened immediately and successfully to calm the situation.

The Panel Chairperson reminded those gathered that if they were hiding their involvement in serious crimes, this would eventually catch up with them. This was a clear inference to expected serious crimes investigations and prosecutions, which in the current context may in fact never happen. The Chairperson warned deponents that there would be implications if what they said were subsequently shown to be untrue.

Testimonies and answers to questions sometimes appeared tailored to bolster justifications and ensure some measure of damage limitation. While much of what was said appeared to be generally accepted by those gathered, some things clearly were not.

The CAVR was also asked questions, especially in relation to 'unfinished business', and what would happen to other perpetrators that wanted to come forward after the Commission had finished its work. This is a vexed issue for many district teams that feel under considerable pressure from communities that want to see a continuation of the work. Related to this were questions about how the process of reconciliation will be taken forward with the refugees in Atambua in West Timor.

Eventually there were no more questions, and each deponent was given an opportunity to make a formal apology, ask for forgiveness and commit himself not to repeat these mistakes again. This was done with a considerable sense of humour, with

the contributions of some deponents causing considerable mirth. Most of the deponents were applauded by those gathered, although a few were not.

The Panel chairperson asked for ideas and input on what would be an appropriate “act of reconciliation”, and in conjunction with the input from the victims and traditional leaders, the act of apology was accepted as sufficient.

The traditional leaders then asked the deponents to participate in a traditional ceremony at which several chickens were slaughtered, and their entrails were examined for blemishes. Each deponent had brought their own chicken, and at first, they had expected that they would all be slaughtered and examined. Instead, the traditional leaders took only four to be slaughtered. Of these, one had blemished entrails, leading the traditional leaders to conclude that a few deponents had not told the whole truth, and proclaiming that they would have to live with the consequences of this. This observation accorded with the general observations that those gathered were satisfied with most of what they had heard, but disappointed with the input of several deponents. No one individual was ‘picked out’, but there appeared to be a common understanding amongst those gathered who those people were.

Despite this drawback, the process was clearly an important community event. Over two hundred community members sat through the hearings, from all age groups, men and women, many wearing their best clothes. Those assembled included the families and friend of deponents and victims, and the broader implications of the reconciliation process within the broader community were evident.

The process was chaired by one of several women Regional Commissioners employed by the CAVR. Her command and control over the proceedings was palpable, and those gathered demonstrated a genuine respect for her office, the CRP and the Commission in general.

The hearing had a clear educative role for the community regarding not only the views and perspectives of former militia members from their community, but also in relation to the broader CAVR mandate, reconciliation objectives, and the role of the OGP.

Throughout the hearing, the local CRP staff, and a representative from the national CRP Division took notes on what was being said. These would be submitted and subsequently analyzed for inputting onto the CRP database.

## Case Studies

### No.1

Joao dos Reis is a serving member of the East Timorese police force, known as the PDTL, in the Maliana sub-district of Bobonaro. He is one of a handful of former police officers, who had served with the former Indonesian police force (POLRI), and was able to successfully apply for a position within the new post-independence structures.

Dos Reis says that he was 'encouraged' by the Police Commander to join POLRI in 1990, and was sent to Surabaya for six months training. After training he returned to Dili and was subsequently deployed to Maliana, and instructed to report on 'activities and movements' in the local market to the local police commander. He claims he did not provide this information, but provided the CAVR with the names of three police officers who played this role.

Although he was experiencing no particular problems in the community, and was not responsible for any specific violations, Dos Reis was aware that there would be elements in the community that might harbour a feeling of resentment against him because of his association with Indonesia's security forces. Consequently, he saw the CRP as an important opportunity to formalize his acceptability within the community.

Dos Reis attended one of CAVR's socialization public gatherings, and subsequently approached the Maliana office to find out more about the process and what was required to be a deponent. He decided to proceed with an application, in order to face the community, publicly explain his role in the Indonesian police force and his commitment to independent Timor Leste. Consequently Dos Reis sought a reconciliation with his home village community, and not with any specific individuals.

Dos Reis gave his statement in early 2003, and his case was eventually processed at a public hearing in the village of (Holsa) in June 2003, where he was one of three deponents appearing that day. The other deponents were unrelated to his case. Dos Reis said that he had taken a great deal of interest in what he should expect from the hearing, and after the pre-hearing briefing felt well-prepared for what might follow.

The hearing was, he felt, well attended with over 150 people present. Dos Reis felt relieved to have this opportunity to face the community and explain from his perspective what had happened in the past and his role in it. He was able to tell his village about his role in the Fretelin militia during the mid 1970s, and how he had used his subsequent position in the Indonesian police to assist elements in the clandestine structures.

Dos Reis felt that many in his community already knew and understood who he is and where he has come from, and that perhaps this makes issues of acceptance easier with regards to his case than for some others. Nevertheless, although it is difficult to precisely assess what impact the CRP hearing has had, Dos Reis feels that there is certainly a greater level of acceptance in the community than before.

Dos Reis believes there is much more reconciliation work to be done, especially in relation to 'serious crimes', which continues to haunt many communities. In his opinion this does involve people who are living back in the community, but relates primarily to others who remain in West Timor. He is concerned that a failure to deal with this issue may have negative repercussions in terms of stability and security.

Within the PDTL, Dos Reis says he has been accused on several occasions by other colleagues of having been a 'whistle blower'. In general, however, he says that he feels respected, although acknowledges that there are differences of opinion. There are, however, no major divisions and problems relate primarily around personality issues, as opposed to ideological considerations.

Dos Reis reiterated the importance of instilling a 'long-term' view of transformation amongst the general population, and that although liberation has been achieved, there is still a long road ahead in terms of addressing fundamental priorities. In relation to the work of the CAVR, he believes that many are now aware of the organization, and whilst a considerable number have had some sort of engagement with the Commission, many have not and are still ignorant regarding its mandate and fundamental objectives.

## **No 2.**

Fernanda Mafalda is one of the few female deponents who made an application to the CAVR for a CRP. Mafalda was a local schoolteacher and acted as the treasurer of a local militia group, and was provided with money by senior militia figures to distribute amongst local members. In her CRP statement, Mafalda claims that it was an inadequate amount to divide amongst all the members, so she instead bought food and provisions that she subsequently distributed.

Mafalda returned to her community (Raifun Sucu on the outskirts of Maliana town) from West Timor. Because of her previous association with the local militia, she and other members of her family were threatened and intimidated. She was taunted and stones were thrown onto the roof of her house and at her windows. Although she had returned to her teaching post, she had an uncomfortable relationship with some of her colleagues, and was subsequently relocated to another school in a neighbouring community. She was, however, able to return to the original school before attending a CRP hearing.

Mafalda did not attend any of the socialization activities undertaken by the CAVR, but heard about its activities and consequently approached the office in Maliana to enquire whether they might assist her. Having heard precisely what the CRP entailed, she decided that it was important for her to proceed as the process provided a real opportunity to publicly address the allegations and mistrust that surrounded her.

The CRP hearing was convened in March 2003 and Mafalda was one of 12 deponents (2 women and 10 men), all of who were seeking reception in relation to events that had transpired in 1999. At the time, Mafalda was 8 months pregnant, but this did not deter her from standing up in front of the community to explain what had happened and why she had been involved with the militia. No questions were directed at her from the community following her testimony, only some points of clarification from

certain panel members. Her family who had at first been hesitant about her participation fully supported her and were present at the hearing to give her encouragement. She felt there was a general understanding that people such as her were cogs in a bigger machine and that it was the leaders and political elites who need to be held to account. Nevertheless, she felt that the community appreciated seeing those who were perceived as being pro-Indonesian were now back in their communities and willing to work for the betterment of an independent Timor Leste.

Since the hearings, Mafalda believes that her situation has greatly improved. The threats and intimidation have ceased, and for the first time feels really part of the community. She felt that the unfinished business of reconciliation and the criminal elements that remain in West Timor were the main source of insecurity and that the CRP must continue to proactively engage those who might be willing to participate in these endeavours.

## Responses to the Community Reconciliation Process

This section examines who has engaged with the reconciliation process, and scopes some of the experiences and opinions expressed about the CRP from different groups within the community that were directly involved in the process. Although the viewpoints expressed are not representative, they are indicative of selected thoughts and views that the process has generated.

### Deponents

Applications for CRPs can be broken down into five major (and in many respects interrelated) categories. These included: low level militia activities; more active militia members, East Timorese who worked with the police, military or other security structures (i.e. Hansip), those who did not admit to any crimes but sought reception within their communities, and; other. This last category included the handful of cases that included members of the pro-independence forces that applied for indemnity, and a large group of Fretelin militia members from one community that had been involved in harassing and intimidating local UDT village during the mid-1970s.

Not surprisingly, the vast majority of applicants were male. Despite efforts to try and address gender considerations within the CRP by employing a female staff member into each district team (with the exception of the Dili team), these staff only became operational in September 2003, and these efforts did not result in a significant increase in the number of female applicants.

Indeed, it is evident from a preliminary overview of CAVR's human rights violations database that most recorded perpetrators were male and came from a range of age groups, although mostly younger men. This accords with an anecdotal overview of CRP applicants. As with the statement taking process, most cases recorded in the CRP also related to 1999 events, although the proportion of CRP cases dealing with 1999 is likely to be significantly higher, as many as 90 per cent. Although, the vast majority of applicants can be identified as part of the pro-Indonesian / anti-independence camp, many do not articulate discreet political views or partisan opinions, but rather were caught up or dragooned into participating. A nuanced overview of dates of incidents, types of cases, and their geographical location and related analysis can be gleaned from the CRP database when it is completed.

By virtue of the CAVR regulations' definition of 'serious crimes' as "genocide, war crimes, crimes against humanity, murder, sexual offences and torture as defined under ... sections 4 to 9 of UNTAET Regulation 2000/12", CRP applicants have been involved in a range of violations that have been categorized as 'less serious'. These include: threats and intimidation; assaults and beatings; house-burnings and destruction of property; theft of property and livestock; and, forced deportation.

Although most applicants admitted to certain criminal violations, many did not admit to specific violations, but sought reconciliation and reception because of their

association with or involvement in repressive security structures and the militias. This included a number of deponents who had been members of the police and military, and others who worked with intelligence structures as informers. Some participants did not identify with any particular group but sought inclusion in the process, as they felt alienated from their communities by virtue of their previously held political beliefs and associations.

Many deponents were anxious to have an official channel through which to communicate with their home communities, and therefore welcomed the CAVR. Although many deponents had been back in their communities for some time, and of these some had already participated in a local reconciliation procedure, the CRP provided the official imprimatur of the new authority, which would be widely respected, and thereby provide them with some measure of protection.

Indeed, without the CAVR, some deponents feared they would or could have experienced serious problems. Some explained that before the CAVR had come to their communities to explain their work, there was a generally negative atmosphere towards those who were regarded as opposed to independence. Although some had been harassed and threatened – one deponent actually sought and received protective custody from the authorities - most others had not, but nevertheless felt it was more how people in the community reacted, or didn't react to them, which made them feel uncomfortable, and on guard. Several said they felt vulnerable to retaliation and recriminations, but most simply felt they could not move about freely within the community, which inhibited their social and economic intercourse, prompting them to remain in the confines of their homesteads and surrounding areas. For these people the situation was peaceful, but certainly not 'normalised', as they remained essentially ostracised from the mainstream community. Not everyone was in this situation and some no particular compunction to participate, but had complied, having been asked to do so by community leaders.

For several deponents the CRP provided an unprecedented opportunity to explain and unpack complexities and trajectories of their personal histories and influences. For some this was an obvious opportunity to clear the air. Many admitted they had participated in the militia structures, but that the situation gave them little choice, as they would have been targeted if they had not. Some deponents claimed they had played a 'double role', working with the militia or security forces, yet at the same time passing information to the clandestine structures. While some provided detailed corroborative information in this regard, several did not. Several older militiamen from 1999 had previously been members of the Fretelin militia in 1975. This included one hamlet chief (Chefe d'Aldeia) who after being forced down from the mountains in the late 1970s had been 'turned' and integrated into local security structures. He explained how he had been rewarded for his service by being made the Chefe d'Aldeia, which subsequently made him an ideal candidate to be dragooned into the Dili-based Aiterak militia. There was simply no option, he stated, as any refusal to serve, would have exposed him to attack.

Although many deponents were willing to talk publicly about what they had done, for some this was the first time that they had spoken in a public venue. While some 'warmed' to the occasion and spoke eloquently about their past activities, others were

evidently nervous and didn't really know what to say. Despite this, deponents were unanimous about the importance of having a public engagement.

Many deponents explained their actions by blaming others, who they said had forced or ordered them to commit the violations. When asked, deponents gave up names and details where they could, although none of those interviewed said they were seriously questioned or challenged in terms of the versions they presented. Most agreed that it was necessary to apologise for what they had done, although it was not always clear that they understood or appreciated how their particular actions fitted into the broader landscape of violations that had been perpetrated across the country. Efforts were made by to contextualise the hearing content and this was a common feature of introductory speeches made by regional commissioners and other authority figures. As such, the focus remained very much community focused.

Deponents were generally satisfied with the terms of the CRAs and where applicable had complied with community service and compensation requirements. No opinion was proffered on whether they felt these were appropriate or fair, although some were evidently relieved that the conditions were not severe.

In terms of impact, a number of deponents felt that the CRP had helped them improve their relationship with the community. Although attendance at some hearings could have been better, most felt that the turnout had been good. Many felt they could move around the community without fear of hindrance. Others had been able to get their old jobs back, as teachers for example, or felt that the hearing had cleared the way for securing employment. One former police officer with over twenty years experience said he felt the process now gave him a better chance of recruitment into the PDL, now that the allegations that hung over his head had been dispelled. In a number of places deponents are now included in community activities, which had not previously been the case. In some instances this community activity *was* the 'sanction' placed on the deponent and included recommendations that the whole community should participate.

Most deponents concurred that the process should continue and that much more needed to and could be done to get other potential deponents to engage. Several deponents suggested their experiences might well be the best advertisement for the process, and consideration might be given to utilizing willing deponents in this regard. Deponents also raised the vexed issue of 'serious crimes', reiterating concerns that a failure to address these issues could undermine the work of the CRP.

Several deponents raised their concerns about not having received official notifications that they would not be prosecuted having completed the terms of their CRA.

## **Victims**

Where possible the CRP teams attempted to identify victims and ensure their presence at the public hearings. It is difficult to measure levels of victim acceptance vis-à-vis the CRP, and much more empirical research is required in this regard. Although there

has been little outright rejection of the process there is clearly no uniformity in terms of responses, whether victims felt reconciled or were able to forgive.

The CRP's internal March evaluation found high levels of forgiveness amongst victims interviewed. Many acknowledged that what had happened had been done in the context of war, others mentioned their acceptance of their losses and the compromise of the CRP process as a necessary sacrifice for independence. Such explanations were also common during the interview process, reflecting a matured understanding and acceptance of the constraints faced and the context in which some deponents had become embroiled in conflict and the repressive machinery of occupation.

Although the CRP teams had emphasized that the CRA should not be punitive, there appears to be an equally widespread understanding amongst victims of the indigent circumstances in which many deponents and their families currently live. Communities living with one another are generally aware of each other's social and economic fortunes. Many victims therefore had a perceptive appreciation of what deponents could afford to bring to the process.

Several victims were acutely aware that they were part of a small minority that had been given an opportunity to face their perpetrators. In communities where most families have suffered the consequences of serious violations, it is generally understood that these matters are, as the CRP mandate stipulates, 'less serious'. As such, some victims felt they should play a symbolic role in terms of reconciling, even in the face of particularly weak disclosures.

Notions of truth and full disclosure were however paramount for many. The internal March evaluation, for example, found that all of the victims interviewed said the "key to their forgiveness lay in the strength of the confession of the deponents", and "the act of reconciliation – whether apology, community service or symbolic payment – was felt to be of much less importance in determining their re-acceptance."<sup>73</sup>

Some observers have criticized the CRP's for paying lip service to individual's rights, arguing that CRAs are more focused on community interests, or more accurately vested interests in the community. This was not apparent in field interviews, and many pointed to the voluntary nature of the process and that there was no pressure or obligation on individuals to comply. Indeed, in some areas, there is clear evidence of victims refusing to either participate in the process (as they were unwilling to reconcile with deponents), or to endorse suggested formulae for agreements. In many such cases the hearings continued, and as the victims assent was not conditional for the deponents to be declared reconciled, in some cases deponents 'won' the right to an immunity from prosecution against the wishes of their victims. Statistical analyses of these permutations have yet to be generated and analyzed.

It would be imprudent to suggest that the CRP is some sort of panacea for victims. Some are clearly dissatisfied with the outcome of the process, even if they concur with its recommendations. In many respects they feel powerless to object, as there are

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<sup>73</sup> 'Monitoring and Evaluation of the Community Reconciliation Process', report by Ben Larke, Advisor to CRP National Division, June 2003

considerable pressures (real or imagined) to acquiesce. The CRP teams were looking to achieve positive results, as were community leaders who participated on the panels. As such, acceptance of and support for the CRP might not necessarily equate with personal notions of forgiveness and reconciliation.

## Panel Members

Although district teams struggled to secure community leadership participation in the CRP in a couple of districts, most teams were able to identify potential panel members during the socialization process. The Commission refrained from ‘selecting’ panel members, and instead provided communities with guidelines on what kind of representation was required. Many panel members were selected or elected at a general community meeting. Although there is no tradition of female representation at such processes, communities willingly appointed female panel representatives, thereby acknowledging and supporting the importance of their inclusion.

Panel members interviewed said they felt honoured to be part of the process and that this was a positive contribution to their communities’ social consolidation. As such, they saw the CRPs as an important development in terms of instilling some sense of justice and accountability within the communities, and at the same time (along with other CRP processes) providing a safety valve through which communities could also express themselves, tell their stories, and if necessary vent their anger. Although the cases dealt with often represented a fraction of what had transpired, the hearings presented the whole community with an opportunity to address their own issues, however vicariously.

Whilst many panel members certainly recognized the limitations of the process, some concerns were raised that the CAVR may have elevated expectations about what was being done in relation to broader justice considerations. The CAVR, after all, had been explaining to people during the socialization process that the SCU was responsible for dealing with the serious crimes in their community. Panel members were clearly worried when asked what they felt might happen if these crimes were not addressed. As such, the issue of ‘unfinished business’ and dealing with ‘serious crimes’ continues to preoccupy many people.

It was universally agreed that the CRP was the most appropriate way of handling these relatively minor crimes, and that it was necessary for the process to continue. Although most said they would not necessarily feel comfortable proceeding without the support and authority of an official entity, they recognized that they had begun to develop community capacity, and that the process was significant in that it involved a range of leadership components (traditional, political etc), emphasized transparency and public participation, and sought to incorporate core values of consensus, reciprocity and compensation. Communities could really get involved, and panel members believed that this, along with the incorporation of tradition, provided a strong foundation of legitimacy.

Panel members said that they were well prepared by CRP teams for the hearings, and felt comfortable in terms of asking questions, and brokering the CRAs. Some panel members were clearly more proactive than others. Many women panel members did

not proactively participate, in terms of asking questions, although some certainly did. The relationship between panel members and relevant CAVR Regional Commissioners was paramount. The CAVR was almost heavily dependent on community leadership to ensure the process was adopted and taken forward. Those community leaders chosen or elected leaned heavily on the Regional Commissioners and CRP staff for guidance.

## **Community Members**

Levels of community involvement and participation in the CRPs varied from a few dozen to many hundreds. The Bobonaro team estimated that there were on average two to three hundred community members present in each hearing, although had over 500 present, and one that was estimated as having over 1000 people present. Hundreds of people attended hearings in Oecusse, and over 600 attended one hearing at a suco in Dili. A range of variables impacted on levels of attendance: what kind of cases were being addressed, which individuals were involved etc. There was understandably greater interest in more profiled individuals in the communities, and in some communities the curiosity factor was also very much in evidence.

Attendance also depended on the success of the socialization process, as well as appropriate preparation and scheduling of, as well as access to the hearings. In communities spread over wide areas, the absence of transport to a central location meant many community members would have to walk to attend the hearings. Time away from home in the rural areas often means taking time away from attending to fields, livestock and local gardens. In the context of subsistence and deprivation, taking time off to attend hearings was not always a luxury that could be afforded. Where possible, the CAVR strove to provide some food for those attending, and held a neighbourhood party after most hearings, in an attempt to ensure this was a notable community event. This also helped to promote a sense of satisfaction, closure and an opportunity for the deponents to socialise again with the community they had just reconciled with.

District teams were encouraged to utilize networks of local leadership and other dissemination options, such as the Church and community radio. UNDP funding has enabled the CRP Division, in conjunction with the CAVR's Community Outreach and Public Information Division to pay for community radio broadcasts of local hearings live from a number of districts. In addition, this support has underwritten a series of national radio drama broadcasts based on the CRP.

In terms of impact, there is a widespread feeling that the CRPs have definitely contributed to building social cohesion and relieving tensions in many places. Notions of reconciliation and conflict resolution resonate strongly amongst communities that consider themselves as part of a community family. The importance of family and depth of family relations, both close and extended, is palpable in Timor Leste. "The notion of family is very important in Timorese culture. Most Timorese people have an extensive knowledge of their extended family and that of others, and these ties define many social relations. Familial terms are also commonly used as everyday terms of address. Hence, being able to regard someone as part of the same family again infers a

full return of their status in the community.”<sup>74</sup> In some instances familial ties were real as well as symbolic, with relatives as deponents, victims, and panel members. Family members of deponents, victims and panel members also participated as observers.

It is difficult to gauge the extent to which communities have accepted the CRAs, both in terms of the specific acts of reconciliation brokered, and the explicit agreements that acknowledge deponents are officially ‘received’ into their communities again. Community members interviewed in the internal March evaluation supported the CRP as an important means of bringing some form of closure to these issues, and providing an opportunity to move on and look forward.

An interesting observation made by a number of interviewees, including panel members, staff and deponents was that community ‘acceptance’ was often predicated on whether or not the specific victims were willing to reconcile and receive. Community members, it was reasoned, feel obliged to honour these agreements, even if they personally have problems with it. It is not clear how this rationalization plays itself out; however, in instances where deponents are seeking agreement with the community in general, as opposed to identified individual victims. Although it remains to be seen whether there is any consistency in terms of community reaction, acceptance of deponents (or lack thereof) must also be understood in the specific context of the violations, the trajectory of conflict in any particular area, and other contemporaneous considerations.

Many community members witnessing the hearings were also victims, but have not had the opportunity to face their (individual) perpetrators. There is widespread consternation about the presence of perpetrators of serious crimes living amongst the community, and the fact that other perpetrators live freely in neighbouring West Timor.

In some instances, the internal March evaluation found that “the focus of the Reconciliation Process on the perpetrators of less serious crimes has in some cases resulted in feeling of frustration (amongst the general community) when contrasted against the perceived lack of justice being pursued for those involved in more serious crimes.”<sup>75</sup>

Communities across Timor Leste have welcomed the CRPs, but their impact should not be overestimated. In the context of acute socio-economic deprivation and outstanding ‘unfinished business’, expectations remain that much more will be done to address issues of justice and accountability.

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<sup>74</sup> *Monitoring and Evaluation of the Community Reconciliation Process*, report by Ben Larke, Advisor to CRP National Division, June 2003

<sup>75</sup> *Monitoring and Evaluation of the Community Reconciliation Process*, report by Ben Larke, Advisor to CRP National Division, June 2003

## **Common denominators**

### **An Acceptable Process**

There is broad acknowledgement from victims and deponents that the Commission played its neutral role with considerable dexterity. When compared with the formal justice system, the CRP is seen to be relatively quick and a visibly just resolution of the problem. In addition it expedites the possibility of returning to normal life, which is important in context where violence is regarded by some as a legitimate problem-solving mechanism.

Criticism and concerns about the process related largely around what the CAVR had been unable to address, especially in relation to serious crimes. The legitimacy of the process and ongoing support for agreements reached in some areas may depend on whether and how other justice concerns and considerations are dealt with. For the moment, however, there is a widespread call for the CRP to be taken forward, which reflects high levels of support for the process

### **Tradition and culture**

Everyone interviewed supports the importance of tradition and culture, which corroborates conventional wisdom, as well as the findings of the internal March evaluation. There is widespread confidence that reconciliation would be binding where agreement had been reached and sealed by traditional (and religious) rites. Consequently, there is general support for the adat rather than criminal justice system to handle these sorts of matters, especially because they are more tangible and therefore more relevant to the community.

Not all CRP hearings, however, have included adat customs or adat leaders. Some teams have struggled to secure the cooperation of traditional leaders – some of whom were reluctant to engage with issues of political conflict. Others have been reluctant to make use of the ‘Biti bo’ot’ ceremony if victims and deponents come from villages using different customs, as this involves the involvement of a group of adat leaders.<sup>76</sup>

### **Political leadership**

Community members, as well as victims and deponents, have all expressed their irritation at the failure of political leaders to adequately reconcile with one another, and of not showing sufficient interest in the CRP process. A large number of those spoken with feel disaffected by political systems and politicians whom they hold primarily responsible for the conflicts that have prevailed. Some interviewees even felt that there should be no political parties, as they had “entrapped” people and sown the seeds of discord and disunity.

In terms of concrete actions relating to reconciliation, many people feel that senior political leadership needs to set an example that people can follow. In this regard, the December 2003 Public Hearings dealing with the inter-party conflict in the mid 1970s

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<sup>76</sup> ‘*Monitoring and Evaluation of the Community Reconciliation Process*’, report by Ben Larke, Advisor to CRP National Division, June 2003 - Elsewhere, other district teams have been able to successfully bring groups of adat leaders together

was an important development and warmly welcomed. Despite widespread television and radio coverage, some people interviewed had not even heard about the hearings. Most of those who had felt that the hearings were a good beginning, but that much more was required. Several suggestions were made about taking the process forward, including more public hearings at a national level, and public hearings at a district and sub-district level, which would enable relevant local politicians and leadership elements to engage and reconcile. A broad call for participation and engagement was extended to leaders of pro-autonomy groups that remained outside Timor Leste.

Although the situation is far from uniform, several interviewees expressed their disappointment at the limited level of engagement that political leaders at a national and district level have had.

### **Unfinished business**

There was universal (although at times qualified) support for the role and work of the CAVR, and the importance of the reconciliation work continuing. There remain a large amount of unfinished business, which has prompted concerns that this would impact negatively on a fragile security situation, especially for those living proximate to the West Timorese border. The work of reconciliation, reception and reintegration will continue with or without the CAVR, though a host of informal processes. For many, however, the CAVR's official status has represented the only point of contact with the new 'justice system' of an independent county.

## **Challenges to and opportunities for reconciliation in Timor-Leste**

This section provides an assessment of the challenges facing efforts to build reconciliation in Timor-Leste and a series of recommendations on how this could best be achieved.

### **Processes of reconciliation - Who reconciles with who?**

Reconciliation objectives in the context of political conflict in Timor Leste have focused on a spectrum of fissures and broken, violent relationships that have characterised the politics of Timor Leste since the mid 1970s. Considerable attention has been given to the divisions that manifested in 1999, reconciling pro and anti-independence supporters, as well as other internal divisions that characterised the civil strife and conflict that manifested during the mid 1970s. Each era is unique and specific, though there are correlations and clear lines of continuity between these two key periods of conflict, both in terms of issues and personalities. The focus on these two eras at either end of the CAVR's mandate period has not detracted from the (oft-related) issues and incidents that occurred between these times during the occupation,

when communities across Timor Leste were divided and subjected to the bureaucratised repression that was characteristic of the Indonesian occupation.

Attempts to broker discussions between pro-Indonesian and pro-independence elements was attempted by the Catholic Church in 1998 and 1999 in what became known as the Dare I and Dare II processes. These discussions were significant in that they brought politically opposed groups and individuals to the table for the first time. In light of what subsequently happened in 1999, it is clear the talks had limited value, certainly in terms of ensuring disagreements did not result in intimidation, conflict and violence. Although there is evidence of failed responsibilities across the political spectrum, the bulk of violations are clearly attributable to the pro-Indonesian support base, significant sections of which worked hand-in-glove with the Indonesian security forces. The Timorese political leadership amongst pro-autonomy groupings were either directly complicit in this, or had limited, if any, influence over what subsequently developed.

In the wake of the post Consultation violence between 2000-2001, reconciliation initiatives focused primarily on discussions between political leadership of the independence movement and leaders of the pro-Indonesia / pro-autonomy camp, including a number of militia leaders. These 'elite-led' reconciliation processes were not inclusive, and regarded by some commentators as "(falling) short of helping to reintegrate the refugees into their societies and is unable to mend differences among people at the grassroots level."<sup>77</sup> This process was clearly an exclusionary one in which "big men" engaged with "big men", and although there was some publicity about these meetings, there was little detail, and ordinary people were left to decide what sort of issues were being discussed or agreed upon.

In response to marginalisation from these political processes, various civil society-led grass roots initiatives were attempted, often without political endorsement, but with varying degrees of success.<sup>78</sup> A series of structured meetings (about 12 in total) between communities from the refugee camps and their home areas in Timor Leste were convened, mainly in border locations of the refugee camps themselves. In addition, civil-society interventions supported a series of "*Go and See*", and "*Come and Talk*" visits, which enabled representatives from the refugee camps to visit locations throughout East Timor to assess conditions for themselves. These initiatives had an important impact on facilitating the return of many refugees and laying the groundwork for their subsequent reception by host communities.<sup>79</sup>

Although such activities were continuing throughout 2002, a series of security-related incidents in the border areas during late 2002 and early 2003 undermined further developments in this regard, and by 2004 such initiatives appear to have all but stopped. Despite this, social and economic cross border interaction continues to develop and the flow of people from east to west and vice versa has continued.

Grassroots reconciliation efforts also involved initiatives between family members, often by way of direct approaches by families who had remained or returned to Timor

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<sup>77</sup> Soares, Dionisio da C. Babo, Nahe Biti: The Philosophy and Process of Grassroots Reconciliation (and Justice) in East Timor, 2002, p.3

<sup>78</sup> op cit, p.4

<sup>79</sup> Personal communication with Catholic Relief Services, 12 March 2004.

Leste to those that remained across the border. These initiatives concentrated in the western and border areas (i.e. Ainaro, Ermera, Covalima, Bobonaro) and enjoyed a marked degree of success. “Through family reunions, refugees were brought back to their societies. Ceremonies were conducted in traditional ways for a symbolic hand-over of these people, under the auspices of community leaders. Upon their arrival in their districts or villages, another welcoming ceremony was held before they were reintegrated into their societies. Such welcoming ceremonies were held in a way that allows the representative of refugees to address the public, usually in a public square, confessing their actions and offer(ing) apologies and their acceptance of being brought before the court should they be found to be guilty.”<sup>80</sup>

Unlike the national political reconciliation processes, acknowledgement and acceptance of past violations was an integral part of these initiatives. A number of returnees who were aligned with the pro-autonomy camp accepted they are identified as “the guilty party” and took responsibility for their association with the 1999 violence.<sup>81</sup>

In many respects, the CAVR’s CRP resembles the “people’s reconciliation” processes, which involved negotiations at a village, sub-district or district basis between ‘home’ communities and corresponding groups in the refugee camps in West Timor. These processes had emphasised the importance of public face-to-face interactions, involving victims and perpetrators and involving the entire community.

In some respects the CRP was developed because of, and in reaction to, these elite-led processes. Although it was completely different initiatives in terms of its methodology and broad objectives, it would never have got off the ground without the support of the internal political hierarchy, who officially endorsed efforts to develop a community-based approach. This was reflected in the support generated by the CNRT, as well as from the pre and post independence cabinets. This was not, however, always translated at other levels within the political hierarchy, and many interviewees were generally concerned, and sometimes quite critical that not enough was being done by political leaders to facilitate the CAVR’s core objectives.

Conversely, many interviewees complained that the CAVR in general, and the CRP in particular failed to adequately address issues of reconciliation and responsibility at the leadership level. The CAVR’s mandate does not emphasise an exclusive focus on ‘community-based’ reconciliation, and is responsible for promoting reconciliation, in the broader context of truth seeking and accountability concerns.<sup>82</sup> During its operations, the CAVR certainly encouraged Timor Leste’s political leadership to address their responsibilities in relation to the mid 1970s internal conflict, abuses related to collaboration with the occupying forces, and violations committed within the ranks of the independence movement. Efforts have also been made to engage with political and militia leaders remaining in West Timor, with limited success.

Although there has been some progress in relation to aspects of these matters, for example the December 2003 Public Hearing about the mid 1970s conflict, many

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<sup>80</sup> Soares, Dionisio da C. Babo, *Nahe Biti: The Philosophy and Process of Grassroots Reconciliation (and Justice) in East Timor*, 2002, pp.7-8

<sup>81</sup> *op cit*, pp.13-14

<sup>82</sup> Section 3, Regulation No. 2001/10 – “Objectives and Functions of the Commission”

interviewees regard what has been achieved is inadequate. Consequently, the CAVR is urged to make strong public recommendations outlining the leaderships' responsibilities in this regard.

## Notions of reconciliation

There is widespread acknowledgement that there are many definitions of reconciliation, and that the concept means different things to different people. In the pre Popular Consultation period, reconciliation initiatives sought to bring pro-integrationist and pro-independence leadership together under a common set of principles, utilising the methodology of sustained dialogue, in which issues of retrospective accountability, allegations and recriminations were intentionally absent. The Dare processes were undertaken in the context of occupation, and sustained efforts by the State and its Timorese 'fellow-travellers' to undermine the pro-Independence movement. Notions of liability, justice, and reparation were absent from the reconciliation lexicon, and the process objectives sought essentially to maintain dialogue and open up channels of communication.

In the wake of the Indonesian withdrawal and introduction of the UN Transitional Authority, pro-Independence political leaders spearheaded reconciliation efforts. As we have seen, this focused on a series of discussions with members of the pro-autonomy political elite and the attendant militia leadership. Some commentators have questioned the extent to which some of these leadership elements have popular constituencies, and therefore legitimacy, also arguing that the processes engaged in fail to resonate with ordinary people, that they are expensive and exclusionary and therefore have a limited positive impact in terms of more broad-based reconciliation objectives. Conversely, it is suggested that the limited progress from these processes have contributed to further frustrations, and "and reduced trust in high level reconciliation, particularly among people who are concerned to see their relatives living in the slums of West Timor refugee camps and afraid to return to East Timor."<sup>83</sup>

Although these engagements were largely abstract for many Timorese, they certainly contributed to facilitating the return of refugees and those forcibly relocated in the post-Consultation violence. For many of these returnees, although they required resettlement assistance, this did not relate to reconciliation needs per se. For others who had been either active in repressive machinery of Indonesia's occupation, as members of the security forces or militias, or who might be described as supporters and beneficiaries of occupation, reception and reintegration were more relevant. The situation 'back home' was fundamentally different now and it was unclear what might happen to those associated with the former regime. Fears of retribution and recrimination were exacerbated by exaggeration and rumour.

On the ground, physically moving people home and the complimentary processes of reception and reintegration were amongst the pro-Independence political leaderships

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<sup>83 83</sup> Soares, Dionisio da C. Babo, *Nahe Biti: The Philosophy and Process of Grassroots Reconciliation (and Justice) in East Timor*, 2002, p.6/7

core priorities. The elite-led reconciliation processes had not delivered workable mechanisms on the ground, but it might be argued, had imbued a wide-ranging understanding, if not acceptance, that co-existence between former enemies was a critical pre-condition of moving forward. At this time, non-governmental initiatives and the work of multilateral agencies, such as the UNHCR and IOM, were pushing people from across the political divide to sit down ‘face-to-face’ and listen to each other’s versions of what had happened.

Local reconciliation initiatives, of which the CAVR’s CRP has been the most prominent, have embraced the customary practice of *nahe biti*, the process of meeting, discussion and mutual agreement. Such agreement at a community level is seen as essential, if conflict and disagreement between various political entities is to be ended once and for all.

Some observers have noted that some elements in Timor-Leste have equated reconciliation with a need to forget the past and accept perpetrators without any form of justice or redress. While this might have worked in the short term, it would probably have exacerbated resentment and bitterness, possibly resulting in further violence and retribution at a later stage. The CAVR’s CRP fundamentally rejected the ‘forgive and forget’ option, explicitly emphasising the importance of recognition, admission, and apology with respect to specific acts and violations. To a certain extent, this was integral to some of the earlier local processes. To a certain extent the CRP also incorporated, albeit in a somewhat haphazard way, another of CAVR’s core objectives, namely to expose and examine the truth of specific acts and omissions.

Grassroots initiatives have not necessarily been dependent on the direct involvement / engagement of political leadership, and have proceeded without this. Political support from Timor Leste’s political elite was not matched by cooperation from the political (and militia) leadership that remains outside the country. Sections within this grouping had advocated a large symbolic *nahe biti boot* ceremony on the border, and were adverse to a process that examined in some detail issues of culpability. Such a process would inevitably undermine and rupture the mythologies and denials they had cultivated regarding their responsibilities vis-à-vis the violence. In brief, it appears that many of these individuals and groupings did not believe the CRP served their interests, and have largely dismissed CAVR operations as a partisan exercise. This does, however, belie any meaningful examination of what was needed and what has been achieved in terms of reconciliation and other core objectives relating to justice and accountability.

Any examination of community and social reconciliation initiatives, however, must take into consideration efforts and initiatives (or a lack thereof) to develop political and national reconciliation. Although discord at the national level may have direct relevance in a rural village setting, their permutations at the local level can also provide space for engagement and dispute resolution opportunities not necessarily available in the national arena. In addition, it appears that there has been a “growing willingness at this level of the society to disassociate itself from the ideological and symbolic differences in the centre (political elite).”<sup>84</sup>

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<sup>84</sup> Soares, Dionisio da C. Babo, *Nahe Biti: The Philosophy and Process of Grassroots Reconciliation (and Justice) in East Timor*, 2002, p.7

Soares sees national political and local typologies of reconciliation as ‘distinct’ processes with different objectives. “Reconciliation among the elite seeks to mend differences and aims to bring the divided political factions together; thus an agreement between the two sides is regarded as the ultimate goal of reconciliation. This is different from what is understood at the local level about *nahe biti*. Reconciliation in the latter sense is perceived as a process between ‘past mistakes’ and ‘future harmony’. Thus, consensus or mending differences is merely a process that must take place in order to achieve *rohan* (tip, end), in harmony in life, peace and social order.”<sup>85</sup>

Although the processes at the community level may indeed be distinct from national initiatives, they are implicitly related, and these courses of action should not be isolated from one another in terms of their complementary, or indeed contradictory, implications vis-à-vis the broader objectives of building sustainable solutions that seek to prevent further conflict and violations. Developing and maintaining synergy and mutual support to consolidate the gains made by these processes therefore remains an important goal. This in turn underscores the importance of ensuring that political leadership have a more developed sense of the aims and importance of the CAVR, a recurring theme since the inception of the Commission.

## Challenges to reconciliation

A host of issues continue to present fundamental challenges to the building and sustaining of reconciliation in Timor Leste. At the forefront is the apparent unwillingness of pro-Indonesian and militia leadership elements to engage with Timor Leste’s political leadership. The lack of national political reconciliation continues to reverberate within many communities. Over 30, 000 East Timorese remain in Indonesian West Timor. Although these numbers are believed to include many of those responsible for gross violations of human rights, many are not and many interviewees felt that the return of these people remained of paramount importance.

Despite overtures to the political leadership of pro-autonomy groups outside the country, these groupings have been systematically unwilling to account and accept responsibility for violations, but continue to present themselves as victims. At the heart of this lies a distinct preference to ensure some sort of *de jure* or, if not, *de facto* immunity is secured. Whilst Timor Leste’s political leadership appears keen to pursue an agenda to facilitate the return of remaining refugees, it is difficult to see how this can be done without renegeing on undertakings to secure some form of accountability. Such an approach is likely to be unpopular as many people regard establishing liability and punishment as integral components of the reconciliation process.

The CRP has attempted to expand notions of accountability and punishment in relation to less serious matters, and despite relevant concerns regarding certain aspects of implementation and the applicability of certain agreements, the process appears to

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<sup>85</sup> Soares, Dionisio da C. Babo, *Nahe Biti: The Philosophy and Process of Grassroots Reconciliation (and Justice) in East Timor*, 2002, p.12

have been widely accepted. It is less clear whether this would be the case in relation to more serious matters.

Although there is anecdotal evidence of violent reprisals against former pro-autonomy supporters<sup>86</sup>, by and large these appear to be limited. It is not clear, however, what potential remains for more widespread retaliation and retribution, especially in the absence of any sort of accountability mechanism. This is of particular concern for community leaders who are anxious that most serious crimes (from between the mid 1970s and 1999) involving Timorese will probably not be addressed by the formal courts.

### **Termination of the CRP**

The CRP's innovative approach to accountability has raised questions (both positive and negative) about the potential of this methodology. As we have seen, the levels of unfinished business in relation to both 'less serious', as well as 'serious crimes' are significant and widespread. Despite this, with the termination of the CAVR process, there is nothing in place to take the reconciliation process forward, or it would seem in the pipeline. Consequently, it is likely that there will be a lull in efforts to take forward reconciliation and accountability initiatives.

### **Reconciliation and justice**

In the wake of the violence following the Popular Consultation, many pro-independence leaders supported the need for reconciliation, but argued that this should and could not happen at the expense of justice. Indeed, some leaders explicitly promoted a position of 'reconciliation with justice', implicitly recognising the interwoven relationship between both concepts.

There was, however, little detailed discussion regarding what sort of justice (i.e. retributive, restorative) was necessary or indeed possible in the context of contemporary circumstances. It is also important to remember that justice considerations span a cross-section of issues, social and economic as well as civil and political, and relate to deponents as well as victims. Notwithstanding some fundamental concerns that relate to victims' and deponents' rights (or lack of them) in the CRP, several other issues were raised during discussions. Primary amongst these were concerns about property ownership, and the fact that some deponents' homes have been taken over as a result of their association with the militias, and little has been done to address this situation, even for those that have submitted themselves to the CRP. Disputes around issues of property and land ownership seem destined to remain a site of contestation for the foreseeable future.

Securing justice in the context of widespread historical impunity, and the contemporary challenges and limitations associated with building a new criminal justice system, present those seeking justice and accountability with some fundamental challenges. This will be compounded without necessary resources and

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<sup>86</sup> Soares, Dionisio da C. Babo, Nahe Biti: The Philosophy and Process of Grassroots Reconciliation (and Justice) in East Timor, 2002, p.4

the political will to proceed. It remains to be seen to what extent either will be forthcoming.

### **Reconciliation and the role of political leadership**

CAVR has received considerable support from a number of senior district government officials across the country, and many district and sub-district administrators have also lent their support to the process. Although some national and local political leaders have undoubtedly played a constructive role, concerns were raised that much more was needed in this regard, not only with regards to procedural support for the CRP, but also in terms of grasping the nettle in relation to broader responsibilities around ownership of past violations, and setting more of an example in terms of promoting dialogue and reconciliation.

The dearth of political leadership in efforts to secure meaningful reconciliation that address notions of reciprocity and contrition has contributed to the general levels of uncertainty, dissatisfaction and disappointment from many Timorese regarding political leadership (or the lack of it) in the country.

Political leaders have a central role to play in terms of responding to the needs and demands of their constituencies, but also in terms of carefully explaining the reasons and context on which certain policy decisions are being pursued. Reconciliation initiatives are inextricably tied to issues of justice, accountability and reparation. Regrettably, silence, mixed messages and denial have characterised much of the response to these issues from political leaders, both inside and outside Timor Leste.

## **Conclusions and Recommendations**

### **Indicators of success**

#### **Impact of CRPs**

It remains difficult to empirically assess what impact the CRPs have had across the country (and from different vantage points), and in many respects it is clearly premature to try and do so as the process for most participants is still relatively recent. Despite this, early indications from the CRP monitoring and evaluation process, which was implemented across the country from the latter half of 2003, as well as other anecdotal evidence, suggests that in many areas the CRP has had a very positive impact.

This feedback supports the findings of the internal March 2003 evaluation, which found high levels of satisfaction with the CRP hearing process. Several CAVR interviewees reported they had actually witnessed how the situation had improved for deponents, that it had enhanced individual's freedom of movement, that some had been re-appointed to certain jobs, others felt the process would facilitate their employment opportunities, and so on. A number of interviewees, including several senior administrators, felt that the CAVR's work, and the CRP in particular, had

contributed to the consolidation of stability in many parts of the country, and that consequently the potential threat of instability had been further dispelled.

The effect of reconciliation processes in particular communities also depended on the quality of the process, which was in turn predicated on a range of variables such as what issues were under consideration, the quality of preparations, how the hearings were run, levels of participation and so on.

### **Buy-in to the process**

Initial estimates of 1000 plus deponents have been greatly exceeded with over 1500 deponents finally participating in CRPs. In some respects, the process became a victim of its own success, as interest from potential deponents grew incrementally, but at the same time fuelled the backlog of cases that needed to be processed through hearings. Additional resources provided by the UNDP were instrumental in enhancing CRP capacity from August 2003 onwards, and ensuring that district teams were able to complete their demanding hearings schedule during the first three months of 2004.

Given the subject mandate of the CRP, we should not be surprised that many of the deponents were relatively low-level members of militia formations, or other Indonesian security structures. Despite this, most potential deponents did not access the process, although many interviewees believe there is considerable potential for further collaboration in this regard.

### **Community support**

The CAVR's sub-district focus has enabled the Commission to be active across the country, and amongst some of the country's remotest communities. Levels of exposure and engagement have varied, but have ensured that CAVR is one of, if not the best-known national institutions in Timor Leste. The socialization process was a critical component of the process in terms of securing buy-in and general support from communities. Although many thousands of people have participated or had proximity to the CRP, for a host of reasons, many more have not. Even though the Commission may have passed through most communities many people were not able to engage, as they were pre-occupied with the immediate priorities of everyday survival. Time and resource constraints have inhibited the Commission's reach and many people across the country did not benefit from direct interaction with the community.

Although the Commission is certainly well known, there are concerns that more was needed in terms of ensuring that the public had a greater insight into the CAVR's core objectives. Several interviewees were confident, however, that the Commission has made a significant contribution to "instilling a solid message in the community." With the CAVR closing its doors, it remains to be seen how and to what extent the Commission's work will continue to resonate in the community. Much depends on the subsequent communications regarding the CAVR's findings, and what action the government intends taking (or not taking) in relation to the Commission's unfinished business, as well as broader considerations around justice and accountability.

## **Disclosure and Ownership of wrongdoing**

The CRP stipulated a full disclosure of criminal actions between 25/4/74 and 25/10/99 as one criterion for reaching agreement. The CRP was not, however, strictly a truth seeking exercise, and as such it was not possible to accurately test disclosures. Statements taken from many deponents were essentially the version and detail presented, and did not necessarily include additional detail that might have been probed for by the CRP staff member taking the statement. During the hearings themselves, although questions and interventions from victims and community members sometimes prompted deponents to expand on the written submissions, (sometimes providing detail of acts not previously mentioned at all), many statements and disclosures were limited and vague.

Despite this, the process provided space for victims and others to question, engage and express disquiet about what was disclosed. By and large, however, it appears that many deponents were not tested on such matters, but instead often given the benefit of the doubt. Dissatisfaction with the quality or quantity of disclosures was aired publicly in a number of hearings and deponents were urged to provide more information in terms of context and detail.

Acceptance of responsibility for violations and wrongdoing was also a criterion for reaching agreement. Although every deponent was required to go through the motions of officially accepting responsibility, determining whether this was intentional or not is less straightforward. Certainly, a number of deponents addressed this issue in their statement or oral testimony, and made it very clear that they took responsibility. Accepting responsibility was also conflated with apology and enunciations of contrition. It was evident that some deponents were genuinely sorry. Indeed in some districts, particularly those that had a stronger adherence to traditional practice (i.e. Oecusse), the CRP Hearing was an effective forum for the publicly shaming of deponents, as they stood before their fellow community members to explain themselves, often having to answer detailed and sensitive questions about specific violations, what motivated their actions, who they worked with, who they worked for and why. Earlier research had indicated that forgiveness and support for the process from victims had rested largely with the quality of deponents' disclosures. In some instances, however, it was evident that the deponents took no real ownership or personal responsibility for violations, but instead tended to try and justify their actions where a simple explanation might well have sufficed. Even in many of these cases, CRAs were concluded that only required an apology, which has in turn raised questions from some quarters as to whether this was always the most appropriate form of agreement, and whether victims had felt compelled to comply.

During the early stages of the conceptualisation process, more focus was given to the objective of reintegration with the broader community, as opposed to specific acts of reconciliation with individuals that the perpetrators had, or might have, wronged. Although reference was 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. The importance of their endorsement is, however, implicit, and in many hearings they played an integral role in the agreement process.

## **Preparation and resources**

There is widespread acknowledgement that the CRP was acutely under-resourced, even with additional support derived from UNDP funds. This constrained the number of communities that could be accessed and deponents approached, as well as the quality of those interactions. Limited resources also inhibited what could be done in terms of ensuring community participation, as the CRP budget was unable to support or underwrite adequate transport, refreshment and entertainment costs. This frustrated efforts in some areas to ensure that the CRP hearing was a community event of great consequence.

In addition, the success of CRP was very dependent on the quality of preparations that went into each hearing process. In a context of limited time and human resources, this relied heavily on the organizational and logistical capacity, as well as support and ‘buy-in’ from local communities and their leadership. Pre-hearing preparation required ensuring panel members; deponents and victims understood their role and what was required of them. In most instances, such preparation was left until the day before the hearings. The process presented considerable logistical hurdles, especially if participants were coming from considerable distances.

## **Delivering Justice**

### **Utilising traditional justice in contemporary conflict resolution**

In his examination of options for justice in East Timor, Dr. David Mearns raises a series of questions regarding the dilemmas of delivering justice in the context of the plethora of transformation objectives and competing priorities, and where there are acute limitations on both human and financial capacity and resources. How does the government develop a justice system that is accessible and constitutionally applicable, as well as acceptable? In this regard, increasing attention has been directed towards the potential utilization of aspects of traditional and community dispute resolution practices. The various initiatives undertaken within civil society in this regard<sup>87</sup> have recently been complemented by the office of the Presidency, which has been examining options for developing the justice system through its ‘national dialogue’ process.

Practices in traditional justice and dispute resolution are neither uniform nor static, but at the heart of these processes are agreements that lead to the mutual recognition of a transgression or, as in some cases before the CAVR, acknowledging and thereby addressing perceptions and allegations of wrongdoing.

In Timor Leste, as in some other societies, exchange is a major medium and indicator of social interaction. As per customary practice, such compensation, however, is “not necessarily designed to profit the family or individual who has been wronged, but rather provides an opportunity for a feast or distribution of wealth which creates the public symbolic closure of the issue and amounts to a form of reconciliation.” In accordance with customary practice, “the hoped for outcome is a redressive process

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<sup>87</sup> For example, by the Judicial System Monitoring Programme in collaboration with Australian Legal Resources International, and the Peace and Democracy initiative to develop a draft mediation model for Timor Leste, based on research on customary dispute resolution practices.

leading to the mutual recognition of the transgression and a satisfactory final resolution of the conflict it has produced. In many cases, the success of this relies on a collective assessment that adequate recompense has been paid, either in suffering or in suitable goods.’<sup>88</sup>

While this type of agreement has been evident in the CRPs in a few districts, most notably Oecusse, this type of agreement has not been widespread. As can be expected, the content of the agreements vary, although most are principally symbolic. Indeed, most cases have resulted in an acceptance of the apology provided by the deponent, with no further sanction. In cases where community service has been agreed upon, this is generally light, with no more than two weeks worth of labour required. In a few cases, financial recompense or payment of goods (i.e. livestock, tais) has been ordered. Consequently, because many CRAs have not included an element of compensation, symbolic or otherwise, the appropriateness of apologies alone has been questioned by some observers in some instances.

Despite its shortcomings, the CRP provides an important step in the development of a culturally appropriate mechanism for local community conflict resolution in Timor Leste. It is a unique process that seeks to address conflicts and fractures that have arisen as a result of, and in the context of, political conflict, and as such provides a concrete example of what might be done in terms of developing a regularized modus operandi for addressing conflicts at the community level that incorporate local customs and a broad spectrum of community leadership.

As we have seen, this mechanism focuses on aspects of past conflicts that continue to invade contemporary realities. Such divisions are often closely inter-related to social and personal issues and interests, and the CRP in practice has demonstrated a flexibility that promotes an inclusive approach that implicitly recognizes that conflicts at community level are not exclusively or specifically about politics differences.

### **Unfinished business**

CAVR’s 30-month operational mandate and restricted resource allocation to the CRPs has curtailed its ability to address the totality of needs, and while it is recognized by many that it would not be possible to deal with everything, there are very real concerns from a number of quarters about how much has not been addressed.

In a number of districts, the CAVR teams were simply not able to impact significantly on all the sub districts. In Oecusse, for example, the District Administrator praised the work of the Commission, but said there were many villages that had not been engaged. In this district, and elsewhere there are many potential deponents who want to come forward. In the sub-district of Balibo (Bobonaro District) for example, scores of men from one suco have indicated their interest to do so. In other areas, hundreds of potential deponents have been identified. Many of these potential or aspirant deponents remain within the communities and are a prospective source of friction. Some of these are also responsible for serious crime, as indicated by the cases that the OGP or the CAVR have refused to process through a CRP. Although it is generally felt that the bulk of those responsible for serious crimes remain in West Timor,

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<sup>88</sup> Mearns, p.17

several interviewees said that some have been coming backwards and forwards from there, which in turn has generated fears and tensions in some communities.

Of the almost thirty thousand refugees that remain in West Timor, spread across its four districts, it is unclear what percentage are perpetrators of “serious crimes”. While a number certainly are, many are not, but may be tainted by their associations with the former regime and its security apparatus as well as because of an assumed guilt that may be supposed by their communities because of the length of time they have been absent from East Timor. According to the Indonesian government data, 5, 640 refugees were former civil servants, TNI or police members.<sup>89</sup> No figures have been produced in terms of militia membership.

Many refugees live in precarious economic circumstances, especially since assistance from the Indonesian government stopped at the end of 2001. Relations with locals from West Timor are often strained, as refugees are regarded with mistrust, as competitors for scarce local resources, and as a source of conflict and tension. Reasons provided not returning to Timor Leste include issues of security, the lack of employment and educational opportunities. Despite this, a number of refugees are apparently keen to return if the situation ‘back home’ improves, and would not opt for permanent resettlement in West Timor or further a field in other parts of Indonesia. This raises questions about the potential of more targeted reconciliation initiatives, including family interventions and targeted information dissemination.

Many victims and communities are waiting for these people to return, including perpetrators to come forward or be dealt with by the authorities. There is almost universal support for ongoing processes to address issues of justice and accountability. Such positions strongly support recent research findings that “holding perpetrators accountable for abuses has widespread support” and that “although many participants (feel) perpetrators should be punished, most (believe it is) the court’s responsibility, and that the nature of the punishment should reflect the nature of the crime.”<sup>90</sup> Support for the CRP and calls for its continuation suggest we can add reconciliation processes to that list as well.

Unfinished business does not only relate to violations and perpetrators that have not been engaged by the CRP. Amongst those that have ‘bought in’ to the CAVR processes, there is also some concern that having expressed themselves and opened up, the process is terminated without any kind of support or apparent strategy to take the process forward. There are fears that the absence of continuity and follow-up could fuel frustrations and result in real problems, exacerbate tensions and contribute to conflict and even violence in other settings (domestic and social). There are also concerns that such frustrations could be manipulated by opportunistic elements. The situation is therefore characterized by uncertainties about what is going to happen next, and whether the government will formally support some sort of ongoing facility

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<sup>89</sup> Figures provided at a meeting between the Government of Indonesia and related UN Agencies on 15-16 July 2003, to discuss solutions to the ongoing refugee problem – reference from draft report *Not Eno – Documentation of Information Dissemination Program on CAVR By West Timor NGOs Coalition*, February 2004, p.10

<sup>90</sup> Pigou, P, *Crying without Tears – In Pursuit of Justice and Reconciliation in Timor-Leste: Community Perspectives and Expectations*, International Center for Transitional Justice, September 2003, p.ix (Executive Summary)

to consolidate what has been done thus far, and to broker reconciliation agreements amongst those who were unable or unwilling to do so during the CAVR mandate period.

### **Timor Leste's 'justice deficit'**

Many people are waiting to see what will be delivered in terms of the formal justice system, and at one level there are high expectations that serious violations will be dealt with by either the international community or Timor Leste's courts.

The people of Timor Leste have been sold a justice and reconciliation package that claimed 'serious' crimes would be dealt with by the courts, while the CAVR would record testimonies about serious crime and other violations, while process 'low-level' perpetrators through the CRP. This is clearly demonstrated for example, by the OGP's decision to CRP veto applications from proceeding, and by the suspension of some hearings by the CAVR when issues of 'serious crime' were raised. It remains unclear how the prosecution authorities will now handle such cases.

It could be argued that raised expectations around the promise of prospective prosecutions also smoothed the way for the CAVR's operations, and that to a certain extent 'buy-in' to the CRP from especially victims and communities was partially predicated on impending delivery of justice for serious crimes.

International consultants recognized the negative impact for the CAVR, of the potential failures of the criminal justice system, especially the SCU, during their visit to the Interim Office of the Commission in October 2001.<sup>91</sup> While the SCU has been able to address a significant number of serious cases from 1999, they are only a fraction of the total number of cases. Many more perpetrators of serious crimes remain at large, both within and outside of the borders of Timor Leste, and almost unanimously interviewees said that they were waiting for 'justice' to be done in relation to serious crimes. The question remains whether the level of justice secured is adequate, and what more will be done.

### **Dealing with 'Serious Crime'**

During the CAVR consultation phase, concerns were raised in several quarters about the injustice of dealing only with lower-level perpetrators while those mainly responsible remain free.<sup>92</sup>

Although it remains unclear how many perpetrators of these crimes remain outside Timor Leste's jurisdiction, most district interviewees claimed that there were perpetrators of serious crimes that had returned and were living back in their communities. We know from the over a hundred cases that were either stopped by the OGP or the CAVR itself, that this is the case. In some districts, however, it appears

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<sup>91</sup> *Trip Report for East Timor Visit- 15-26 October 2001*, International Center for Transitional Justice.

<sup>92</sup> See *'Summary of issues raised during the consultations on the Commission for Reception, Truth and Reconciliation'*, appendix to *'Update on the Establishment of the Commission for Reception, Truth and Reconciliation'*, Steering Committee for the Commission and Human Rights Unit, UNTAET, 12 March 2001

that the bulk of perpetrators of serious crimes (from at least the 1999 violence), remain across the border in West Timor or further a field in Indonesia.

Although recent pronouncements, argue that “justice is being served with respect to the serious crimes committed in Timor Leste” and that “many of the perpetrators have been brought to justice”<sup>93</sup>, less than 40% of the murders from 1999 under investigation by the Serious Crimes Unit have been investigated, and only a handful of matters from before this period have been looked at, and none of these have proceeded to a prosecution stage. Quite clearly, the bulk of serious crimes perpetrated in the period under review have not been addressed. It is therefore premature to suggest that the work has been done. In fact, without significant additional funding and the political will to pursue such matters, pronouncements on the state of affairs in the justice sector would more accurately point to an array of unfinished business in relation to serious crimes.

### **Community reconciliation for ‘Serious Crimes’?**

Research has highlighted the importance of “some local resolution in the absence of a formal system response”, and that “the local justice system ... offers some sort of mechanism for defusing the tension and restoring some level of normalcy to social interaction.”<sup>94</sup>

Over and above incarceration or other punitive sanctions for serious crimes, several people suggested that perpetrators should also go through a traditional dispute resolution process to help their integration following their release from custody.<sup>95</sup> In fact, the relevance of local reconciliation processes for those involved in ‘serious crimes’ was raised on several occasions during the interview process. The criminal justice system will not be able to deal with most of the serious crimes from 1999, let alone those perpetrated between 1975 and 1999, and something must be done to address these matters. In the absence of other options, a number of interviewees argued that it was necessary to explore a CRP -type option to address these cases. A few interviewees felt that is was the best option of dealing with such cases anyway, as court processes do not involve the communities, and this was essential for building social cohesion.

Any extension of the CRP would have to be accompanied by extensive further socialisation, training, briefing and a more rigid application of the process. Several interviewees suggested that this extension should only apply to cases from before 1999.

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<sup>93</sup> Hasegawa, Dr. Sukehiro, *‘International Support to Peace-Building Efforts in East Timor: Achievements and Challenges’*, paper presented at International Conference on Peace-Building: Towards Rehabilitation of East Timor and Afghanistan, United Nations University, Tokyo, 24-25 February 2004, p.24

<sup>94</sup> *Looking Both Ways: Models for Justice in East Timor*, Dr. David Mearns, Australian Legal Resources International, November 2002, p.46

<sup>95</sup> This issue was also raised during the community consultations on the draft CAVR legislation – see *Summary of issues raised during the consultations on the Commission for Reception, Truth and Reconciliation*, appendix to *‘Update on the Establishment of the Commission for Reception, Truth and Reconciliation’*, Steering Committee for the Commission and Human Rights Unit, UNTAET, 12 March 2001, p.6

## **The CRP – the road to reconciliation?**

For many observers it is clear that the CRP has helped to reduce tensions in many communities. In so doing, the CAVR has successfully introduced a novel and authoritative dispute resolution mechanism that appears to command the respect of many people, and whose validity is grounded in its community focus and participatory methodology. CRP hearings (as well as other CAVR processes, such as the ‘Victims’ Hearings) have become an important site for expression. They have been accessible, thousands have participated, they have been educative, and many stories have been told. The CRP has provided communities with important insights into the conflicts that affected them. They have reinforced notions of national unity and the authority of the Office of the Prosecutor General. They have demonstrated the potential of peaceful conflict resolution and the importance of process and agreements that respect the fundamental rights of perpetrators, as well as victims and the community at large.

The CRP has reinforced the importance of local justice mechanisms and the notion that justice in Timor Leste not always about punishment, but also compensation, contrition and other forms of reciprocity. The common denominator remains some form of accountability. This forms a core element of reconciliation and restoration for many individuals and communities.

The CRP alone could never hold the key to securing these objectives, but it was an important investment and foundation block in moving towards them. Much more is needed, however, and the challenge remains to see how this process can be further developed to continue contributing to Timor-Leste’s regeneration.

## **Recommendations**

### **Maintaining momentum**

The success of what has been started in the CRP will fade away, and the investment will be lost, if political leaders and others do not take advantage and build on what has already been achieved. The process will automatically lose momentum with the finalisation of field operations at the end of March, as it is a further six months before the Commission’s final report is officially handed to the President. In the meantime, efforts should be made to get the offices of the Presidency and Prime Minister, the Ministry of Justice and other interested parties in government and civil society, to discuss how best the process might be taken forward, without a complete loss of impetus.

There is widespread goodwill towards the CAVR and CRP process, although patience with official justice-related processes has worn thin in some quarters. There have been mixed messages about what can or will happen in relation to justice and accountability concerns. There is a broad understanding about and commitment to building national unity, and many see the CAVR and CRP as an important part of this. There needs to be a clear strategy that will help sustain and develop these efforts, and the role of political leadership could be pivotal.

### **Profile of unfinished business**

The CRP should develop a comprehensive listing of sucos and aldeias that were not accessed during the socialization period and / or did not engage / participate in a CRP. Where possible, the CRP should utilize local district team knowledge to assess which are the priority areas requiring attention in terms of community reconciliation needs and possibilities.

### **Evaluation of information collected during the CRP**

Although the CRP was not necessarily designed or utilized as a mechanism for investigating the truth about past violations, this was of course implicit in aspects of what was undertaken. Consequently, a considerable amount of potentially useful data was generated, not only through the statement taking process, but also during the hearings. Although testimony and issues raised during the hearings was not systematically collected during the early stages of the process, the District teams began to take a more detailed written record of events.

In addition records are available from the over 50 hearings that were attended by the radio unit of the Community Outreach and Public Information Unit, as well as other hearings that employed a community radio broadcast.

### **Monitoring the impact**

There should be ongoing monitoring and more in-depth case studies of a sample of communities where reconciliation agreements have taken place.

### **Communication**

A comprehensive communication campaign is necessary to explain what has been achieved with the CRP, including a profile of 'unfinished business'. This campaign should set out ongoing objectives and recommendations for how best the reconciliation process can be taken forward in the context of current constraints, and competing transformation priorities.

### **Developing the process**

This should include: a review of reconciliation agreement processes; training and orientation for officials and participants in the process should be strengthened; further

investment in socialization, education and messaging around importance of accountability and reconciliation; and, encourage and facilitate public participation.

## **ANNEXURE 'A'**

### **Background:**

The Commission for Reception, Truth, and Reconciliation (Commonly known by its Portuguese acronym CAVR - Comissao de Acolhimento, Verdade e Reconciliacao) was established by UNTAET Regulation No. 2001/10. Inaugurated in early 2002, the Commission is mandated to perform its activities over a two and a half-year period from February 7th 2002 to December 7th 2004. During this time it is tasked with the promotion of national reconciliation as well as establishing a historical record of crimes committed over the past 25 years and, finally, producing a report documenting its activities and recommendations to the government and people of East Timor. The specific period covered within the context of the Commission's work relates to the political conflicts between 25 April 1974 and 25 October 1999, commencing with the date of Portugal's Carnation Revolution and ending on the date of the handover from Indonesian rule to a UN transitional administration (UNTAET).

In order to address the task of promoting national reconciliation, the CAVR has incorporated a community reconciliation process (CRP) into its structure. The CRP comprises a community based process which seeks to assist in building a dialogue between individuals and their communities, where the individuals concerned have been involved in an incident related to the political conflict (commonly a criminal activity) and thus find themselves distanced from their communities.

The CRP has its legal basis in the Timorese constitution and under regulation 2000/10, where a clear framework is laid out for the authority of the commission to perform such a process after obtaining approval on a case-by-case basis from the Office of the Prosecutor General. Provision is also made for the involvement of traditional conflict resolution rituals and ceremonies in the CRP to reflect the local customs and validate the outcome by involving the communities' acknowledged and respected leaders in the decisions reached during the CRP.

The Commission does not have the power to grant amnesty to perpetrators of human rights violations. Those who fulfil the terms of a community reconciliation agreement - decided during the hearing by a panel of community leaders as well as a member of the commission's staff - will be immune from any further civil or criminal liability for those acts disclosed during their participation in the reconciliation process. While the CRP is authorised to pursue the resolution of cases of a non-serious nature, serious crimes will continue to be handled exclusively by the Special Panels established under Regulation 2000/15.

In completing its report to the Government of RDTL, the Commission plans to provide an assessment of the effectiveness and sustainability of the community reconciliation process. Community reconciliation is unique to the global experience in truth and reconciliation processes. The CAVR has already conducted an internal assessment, which will guide the external evaluation of the CRP. Both will be reflected in the final report of the Commission to the Government of RDTL.

## Objective of the Evaluation

The outcome of this evaluation will be a report which will both stand alone as an assessment of the community reconciliation process, its methodology, implementation and context as well as providing a significant input into the final report of the commission pertaining to the CRP. This report will seek to assess/describe:

- A summary of the program to date
- Original targets of the program and assess their realisation.
- Formulation of the legislation pertaining to CRP.
- The rationale behind the incorporation of aspects of traditional justice in the reconciliation process.
- The formation and mechanism of the relationship between the CAVR and the Office of the Prosecutor General (OPG).
- The process as a national program, structure and strategies of implementation.
- Ongoing needs for reconciliation in the Timorese community – current & anticipated actors.
- The degree of success in providing a service to those requiring it.
- Perceptions of the process' contribution to a sense of justice at the community level – particularly the impact of the 'impunity gap' involving perpetrators in Indonesia and those cases in East Timor which have been marked as unsuitable for CRP by OPG.

The production of this report is anticipated to involve a series of interviews with the commission's staff, both at national and regional levels, to provide background information and insight into the development of the reconciliation process, as well as interviews with the respective external stakeholders involved with the Commission's work. The consultant will attend a minimum of two reconciliation hearings over the duration of the consultancy period in order to become familiar with the reconciliation process, as it is run in the community.

This report is expected to make a substantial contribution to the CAVR's final report, particularly to establishing how the CRP was formulated and developed. It will also provide an analysis of the impact of the reconciliation activities on the national psyche and assess the remaining needs of the Timorese community as the CAVR's activities are drawing to a close.

A further function of the report will be to provide an analysis of the ways in which perpetrators of crimes committed during the period of political conflict may be 'slipping through the net' of the justice system and to assess the impact of this phenomena on the perceptions of justice at the community level.

### **Responsibilities:**

- Conduct a review of literature on transitional justice to supplement the review of documents relevant to East Timor specifically. The CAVR will provide available secondary documents, internal reports and external reports, interviews and other

relevant documentation in order that the consultant can assess the proceedings to date in the context of East Timor.

- Review filmed footage of the hearings, existing transcription notes, completed interview questionnaires and hearing forms.
- Observe a minimum of two selected community reconciliation hearings in order to obtain more detailed information on the proceedings. Final selections are subject to scheduling and other factors.
- Interview a selection of CAVR's staff involved in the reconciliation process both at the national and regional level. These interviews will subsequently be used to evaluate the programs success in its implementation across the country as well as providing an institutional record of the methodology of the CRP.
- Interview individual participants in the reconciliation process to assess the community reconciliation process from the perspective of the victim, perpetrator, community members, and panel members. Individuals to be selected through joint discussion with the CAVR.
- Interview other actors involved in the justice sector including representatives of the office of the Office of the Prosecutor General and the Serious Crimes Unit, representatives of the courts, key agents involved in the formation of the legislation pertaining to the CRP as well as other agencies and organizations involved in monitoring and support of the justice sector.
- Develop a minimum of four in-depth cases studies of deponents participating in the reconciliation process to illustrate the experiences and background of individuals involved in the process as well as their experiences of going through a hearing and their subsequent reception by the community. CAVR will develop criteria for selection of the case studies

At the beginning of the consultancy, the CAVR and the consultant will develop a written work plan detailing the specific work assignments for each week of the consultancy. The work plan will identify the procedures to be followed in confirming interviewees and clarify the nature and quantity of data already gathered to avoid replication.

Close cooperation between the consultant and the CRP division will be essential in order to develop a work plan that is both realistic and relevant. The details of the work plan will therefore be subject to an initial consultation to establish a generalized plan of how to proceed with weekly meetings taking place to feedback developments and fine-tune the research in order to best fit with the activities of the CRP division.

The assessment will be utilized by the CAVR in its development of the final report to the Government of RDTL. Following submission of the report, the CAVR will organize a seminar with the National Commissioners to discuss the report. Subject to the CAVR's decision, prior to release of the CAVR formal report to the Government of RDTL, excerpts from the consultant's report may be disseminated to inform representatives of the formal justice sector about the effectiveness, significance, and contribution of the CAVR's community dispute resolution processes to legal development in East Timor. The dissemination will be organized and shaped by the CAVR (including invitees, extent of dissemination, etc.).

## **Report content**

- Background description of formation of CAVR, the development of the CRP, its legislation, original programmatic targets and performance to date.
- Brief background to the mechanisms of traditional conflict resolution within Timorese society.
- Explanation of the rationale behind the incorporation of aspects of traditional justice into the reconciliation process, assessment of the degree of success/ complications in achieving this.
- Explanation of the relationship between the CRP division and the Serious Crimes Unit, assessment of its functionality.
- An account of the methodology of implementation, including; the operational factors involved in forming the national program. Developments/refinements to the process that have occurred over its implementation. An assessment of the standardization of the service provided across the thirteen districts.
- Breakdown of the common stages to the reconciliation hearings and the factors that may change between them including an in-depth analysis of one hearing.
- Presentation of summarized versions of the four case studies (to be included in full as an appendix)
- Assessment (from interviews conducted by the consultant and data gathered by the CRP division) of the responses to the CRP hearings by those participating in them (whether as deponents, victims, panel members or as observers). Will include their perceived validity, comprehension, and effectiveness in reaching all those interested in participation as well as an appraisal of their impact on the long-term resolution of conflicts in Timorese society.
- An evaluation (from interviews conducted by the consultant with those agents involved in the Timorese justice sector) of the continuing needs for national reconciliation and a series of recommendations on how this could best be achieved.
- Bibliography
- Appendices to include four in depth case studies of deponents involved in the CRP, a list of all interviewees, and transcriptions of two hearings observed by the consultant (transcription to be arranged by the CAVR)

***Period of implementation*** - 2 months (mid Jan – mid March, 2004)

***Requirements*** - One consultant to perform fieldwork, write report and present findings to the commission.

***Secured*** - Funding for consultant salary, translator and transport

***Reporting/  
support requirements*** - Contractual matters will be resolved between the consultant and representatives of UNDP East Timor. The consultant will be required to make regular progress reports to the CRP division director and advisor and to provide any reports directly to the UNDP as required by them.

#### Candidate requirements

- Previous experience of working in East Timor
- Fluency in Tetun/Bahasa Indonesia strongly favoured
- Knowledge of the mandate of the CAVR
- Proven experience in programmatic evaluation
- Knowledge/experience of other Truth commissions
- Ability to work independently/travel to remote areas

## ANNEXURE 'B'

### Bibliography

Hasegawa, Dr. Sukehiro, *'International Support to Peace-Building Efforts in East Timor: Achievements and Challenges'*, paper presented at International Conference on Peace-Building: Towards Rehabilitation of East Timor and Afghanistan, United Nations University, Tokyo, 24-25 February 2004.

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Mearns, D, *Looking Both Ways: Models for Justice in East Timor*, Australian Legal Resources International, November 2002 – This report contains three related reports: (a) *Alternative Dispute Resolution and Customary Practice in East Timor – A consideration of the issues and some of the literature* (pp10-25), (b) *Variations on a theme: Coalitions of authority in East Timor* (pp.26-57), and (c) *First Responses – Workshopping the issues in Dili*

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Soares, Dionisio da C. Babo, *A Brief Overview of the Role of Customary Law in East Timor*, paper presented at a symposium on East Timor, Indonesia and the Region organized and sponsored by the Universidade Nova de Lisboa, July, 2000

Soares, Dionisio da C. Babo, *Nahe Biti: The Philosophy and Process of Grassroots Reconciliation (and Justice) in East Timor*, March 2002

### Internal CAVR Documents

*'CAVR West Timor Strategy'* – CAVR, undated, circa January 2003

*'Monitoring and Evaluation of the Community Reconciliation Process'*, Ben Larke – Advisor to CRP National Division, June 2003

*'Memorandum of Understanding Between the Office of the General Prosecutor (OGP) and the Commission for Reception, Truth and Reconciliation (CAVR) Regarding the Working relationship and Exchange of Information between the Two Institutions'*, signed by Longuinhos Monteiro, the Prosecutor General, and Aniceto Gutters Lopes, Chairperson of the Commission for Reception, Truth and Reconciliation, on 4 June 2002.

*'Revised Strategic Plan'* – CAVR, January 2003

*'Update on the Establishment of the Commission for Reception, Truth and Reconciliation'*, Steering Committee for the Commission and Human Rights Unit, UNTAET, 12 March 2001. This report includes a *'Summary of issues raised during the consultations on the Commission for Reception, Truth and Reconciliation'*

**Public CAVR Documents** (see [www.easttimor-reconciliation.org](http://www.easttimor-reconciliation.org))

UNTAET Regulation No. 2001/10 On the Establishment of a Commission for Reception, Truth and Reconciliation in East Timor, 13 July 2001

CAVR Updates

- April 2002
- May 2002
- June-July 2002
- August-September 2002
- October-November 2002
- December 2002 – January 2003
- February-March 2003
- April-May 2003
- June-July 2003
- August-September 2003
- October-November 2003

**Other Reports**

Asia Foundation, *Law and Justice in East Timor – A Survey of Citizen Awareness and Attitudes Regarding Law and Justice in East Timor*, February 2004

International Center for Transitional Justice, *'Trip Report for East Timor Visit- 15-26 October 2001'*

Judicial System Monitoring Programme, *Findings and Recommendations: Workshop on Formal and Local Justice Systems in East Timor*, Dili, July 2002

Peace and Democracy Foundation, *Research on Customary Dispute Resolution & Draft Mediation Model for East Timor*, Dili, December 2003

## **ANNEXURE ‘C’**

### **Interviewees**

#### **Participants**

- Abilio – Deponent and former Aiterak member, Dili
- Florindo Perreira da Silva – Deponent and former police officer, Liquica
- Joao dos Reis – Deponent (former and current) police officer, Maliana
- Pocky Rodrigues D’Oliveira – Deponent, Liquica
- Domingos Lopes – Deponent, Maliana
- Fernanda Mafalda – Deponent, Maliana
- Marcus Amaral Soares – Deponent, Lacluta, Viqueque
- Zeke – Deponent and former militia member, Oecusse
- 2 anonymous deponents – former militia members, Oecusse
  
- Antonio de Cruz – Victim, Maliana
- Filomena Ferreira da Silva – Victim, Maliana
- Jose Andrada dos Santos – Victim, Lacluta, Viqueque
- Jose Filomeno Martins – Victim, Maliana
- Senhor Joao – Victim, Oecusse
- Ramois Ribeiro – Victim, Liquica
  
- Natali Xavier – Panel Member, women’s representative, Maliana
- 2 anonymous panel members (one male, one female), Oecusse
- Anonymous – panel member, women’s representative, Oecusse
- Anonymous – panel member, church representative, Lacluta, Viqueque
  
- Anonymous – community leader, Oecusse
- Anonymous – community leader, Oecusse
- Filomeno da Cruz – Sub-district Administrator, Lacluta, Viqueque
- Fransisco Marquez – District Administrator, Oecusse
- Acacio Martins – Community Leader, Maliana
- Domingos Martins – Sub-district Administrator, Maliana, Bobonaro
- Jose Martins – Sub-district Administrator, Pante Makasar
- Jose Suarez – Community Leader / Chefe de Suco, Dili
- District Administrator, Liquica
  
- Group discussion in Caikasa, Liquica, with Community leader / Chefe de Suco, with three Chefe Aldeias (one of whom has served as a Panel member), a representative of the church, and a representative of a women’s organisation

#### **CAVR**

- Alfredo Cyprian Amaral, CRP officer, Bobonaro

- Patrick Burgess, Legal Department, CAVR national office
  - Jaime Carbafo, Regional / District Coordinator, Oecusse
  - Carmen, Radio Unit, CAVR national office
  - Chris, national CRP Division, national office
  - Edelmiro, CRP Staff, Liquica
  - Enrique, District Coordinator, Viqueque
  - Guilherme Goncalves Caeiro, District Coordinator, Bobonaro
  - Jaimito da Costa, Divisional Coordinator of the Community Reconciliation Process, CAVR national office
  - Sergio Freitas de Costa – CRP Staff, Baucau
  - Vicente de Jesus – District Coordinator, Liquica
  - Ana Maria de Jesus dos Santos, Regional Commissioner, Liquica
  - Dominogo dos Santos, Regional Commissioner, Bobonaro
  - Daniel Sarmento Soares, Regional Commissioner, Viqueque
  - Teresinha de Souza, Regional Commissioner, Dili
  - Kieran Dwyer, Institutional Development, CAVR national office
  - Chiquito da Costa Gutierrez, District Coordinator, Dili District
  - Jose – CRP Officer, Viqueque
  - Ben Larke, International Advisor to the Community Reconciliation Process Division, CAVR
  - Jorge Martens, CRP Office, Dili District
  - Arnold Sunny, Regional Commissioner, Oecusse
  - Galuh Wandita, Programme Manager, national office
- Group discussion in Oecusse office involving 2 CRP officers, Regional Coordinator, Regional Commissioner, Victim Support Officer, Logistics and Admin / Finance officer

## **NGOs**

- Project Officer, Catholic Relief Services, Dili
- Santana Soares, Peace and Democracy Foundation
- Group discussion with 5 staff members from La'o Hamutuk
- Discussions with staff from Judicial Services Monitoring Project.

## **Other**

- Longuinhos Monteiro, Prosecutor General
- Mark Wallbridge, Serious Crimes Unit, Dili



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