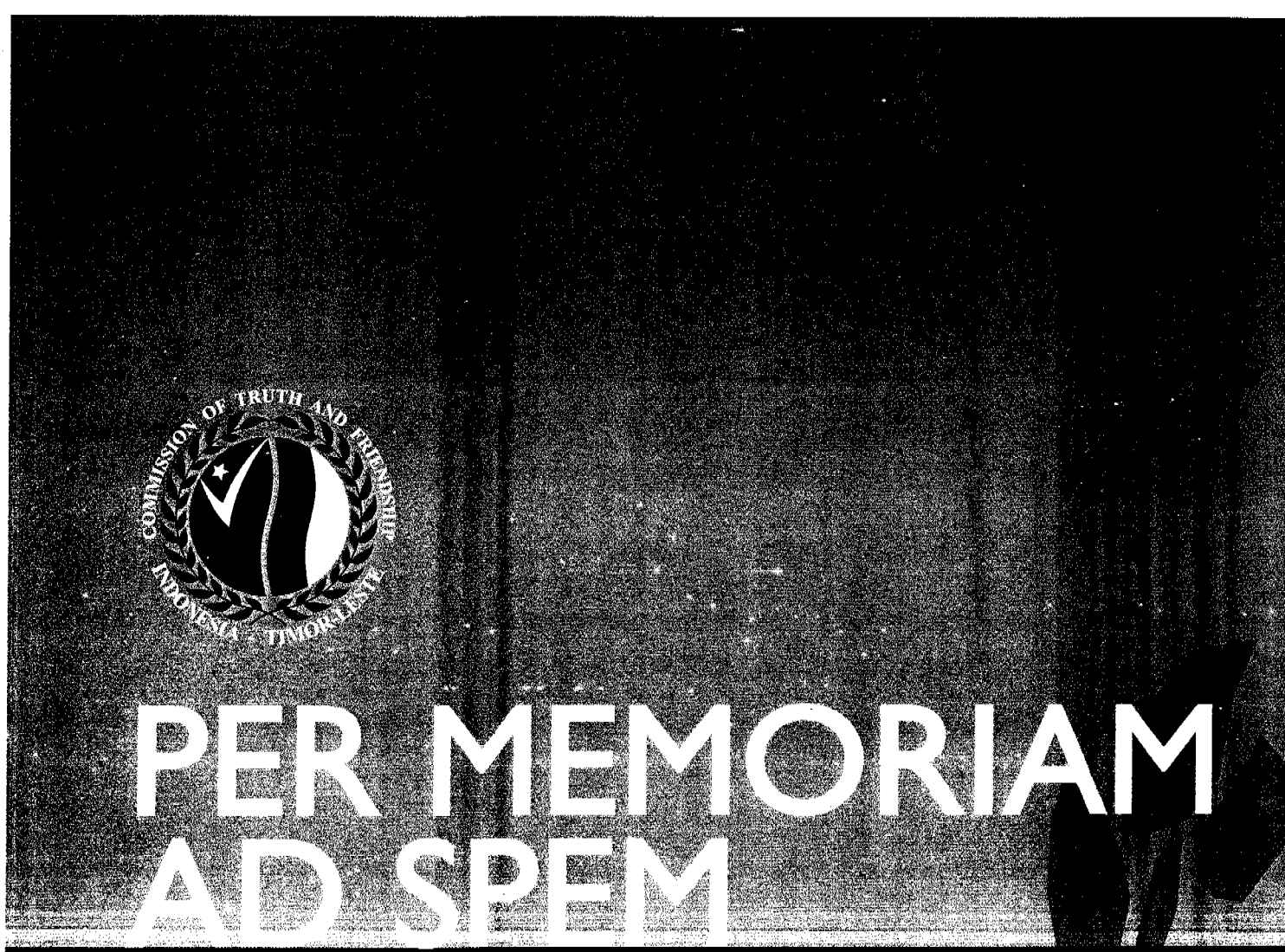


PER MEMORIAM AD SPEM

FINAL REPORT OF
THE COMMISSION OF TRUTH AND FRIENDSHIP (CTF)
INDONESIA - TIMOR-LESTE

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FINAL REPORT OF
THE COMMISSION OF TRUTH AND FRIENDSHIP (CTF)
INDONESIA - TIMOR-LESTE

FOREWORD

Based on shared experience and prompted by a strong desire to move forward in order to strengthen peace and friendship, Indonesia and Timor Leste have resolved to settle residual issues of the past through common effort. It is a fact that the people of the two nations have gone through a lengthy road in overcoming a part of their sometimes painful past. With the resolve to learn from the causes of past violence in order to strengthen the foundation for reconciliation, friendship, peace, and prosperity, this common effort was realized by the Governments of Indonesia and Timor-Leste through the establishment of the Commission of Truth and Friendship (CTF) Indonesia – Timor Leste.

After going through an initial stage that was full of challenges, the Commission was finally able to finish a Report addressing one of the residual issues between Indonesia and Timor Leste regarding various acts of violence surrounding the Popular Consultation in East Timor in 1999.

The Commission's mandate tasked it with establishing the Conclusive Truth regarding human rights violations reported to have occurred prior to, immediately after the Popular Consultation on 30 August 1999 and to prepare recommendations that can contribute to healing wounds of the past and strengthen friendship. These recommendations aim at realizing a shared historical record that can form the basis for a peaceful and prosperous future for the two nations.

The Final Report of the Commission, entitled Per Memoriam Ad Spem, is the Commission's response to its mandate. Since it officially began exercising its mandate on 11 August 2005, the Commission has designed metholodogies and programs intended to reveal the Conclusive Truth regarding human rights violations in 1999 in three main phases, namely: the (1) A Document Review of four bodies of documents from KPP-HAM Timor Timur, CAVR Timor Leste, the Jakarta Ad Hoc Human Rights Tribunal and the Special Panels for Serious Crimes in Dili; (2) A Fact Finding process; and (3) The Commission's Final Report. The Commission's Final Report was a result of a combined analysis of Findings and Conclusions from the Commission's Document Review Process and Fact Finding Process. The Report thus represents an account of the Commission's work for two-and-a-half years since its inception in the last quarter in 2005.

Through its process of truth seeking in the preparation of its Report, the Commission has reflected on all views in an atmosphere of openness, mutual respect, and a future-oriented reconciliatory approach. The Commission hopes that "Per Memoriam Ad Spem" will open up hope in the future. The result of the Commission's work asks the leadership of the two nations to accept events of the past with openness and sincerity and to work together to formulate real measures promoting future change.

The Commission believes that events of the past should never shackle the two nations in a space devoid of hope. The past must be accepted and agreed as a common footstep to open a new page of history. Revealing events of the past based on factual and conclusive truth serves as the foundation for the two nations to pave a new road towards cooperation that can empower each other in the spirit of eternal friendship.

It is the Commission's sincere intention to make this Report a joint effort that enables the two nations to move forward in friendship. This requires This requires strengthening pillars of peace and friendship that reach all layers of society in the two nations. It is on this basis that the Commission has chosen to use a Latin phrase as the title of this Report, that is, Per Memoriam Ad Spem, which the Commission understands as meaning to look into and take lessons from past experience to create a future full of hope.

In the exercise of its mandate, the Commission has received valuable support from the leadership of the two states, government institutions, expert advisors, academics and other sources, media, non-governmental organizations and individuals, both in Indonesia and in Timor-Leste. For that reason, the Commission would like to extend its highest gratitude and appreciation to:

President of the Republic of Indonesia and President and Prime Minister of the Democratic Republic of Timor-Leste along with officials and institutions of both states;

Minister of Foreign Affairs of the Republic of Indonesia and the Democratic Republic of Timor-Leste;

Public officials, police and military of both states;

Government of Bali Province who have provided the place and helped the Commission so that its organization aspect in the mandate implementation proceeded smoothly;

Government of East Nusa Tenggara Province;

Prof. Dr. David Cohen, expert in International Criminal Law and Director of Center for War Crime Studies, University of California, Berkeley, and his entire research team;

Prof. Dr. Robert Evans, Direktur, Plowshares Institute and Dr. Alice Evans;

Sources and academics from both countries as well as from the international community who have shed light on aspects pertaining to the context and constellation of East Timor issues, including for the period prior, during and after the Popular Consultation in East Timor in 1999;

Indonesian, Timor-Leste and international NGOs, as well as Centre for Internal Displacement Service (CIS) Kupang and the Peace and Justice Commission of Kupang Archdiocese;

Mass media, both print and electronic, from both countries as well as international media;

All other parties whom we cannot mention one by one, for the cooperation, partnership, advice and criticisms that hasve helped the Commission in carrying out its work.

Specifically the Commission would like to thank the Co-Directors of the Joint Secretariat, as well as all staff, including the translation team, who have enabled this Final Report to be materialized according to their respective roles.

Most importantly, the Commission would like to profoundly state its highest appreciation to all parties who have answered the Commission's invitation to appear and participate in the Commission's process to reveal the Conclusive Truth. The Commission appreciates the opinions as well as testimonies conveyed by each individual who appeared before the Commission as input to be further analyzed in the Commission's process.

The world has seen many Truth and Reconciliation Commission, but this Commission is the first Truth and Friendship Commission in the world established by two states, and will become an historical precedent as a comparison for other such Commissions that may be established in the future. Its nature as the first bi-national Commission in the world, aside from basing its mandate on the concept of restorative justice that is not linked with retributive justice, the Terms of Reference also provides a challenege to the Commission to seek institutional responsibility, a concept that is not recognized in criminal law. All of us, in particular those involved in the Commission's process, have been a part of an historical event.

The present generation owes the future generation to mend all broken relationships and lay a strong foundation for a future that shines, and is full of hope.

Finally, mindful that nobody is perfect, the Commission hereby submits this Report to the Leaders of Indonesia and Timor-Leste in accordance with its mandate. We hope that this Report will serve as an important step to open up a new page in the relationship between the two nations.

Denpasar, 31 March 2008

Commission of Truth and Friendship
Indonesia – Timor Leste

REFLECTION BY THE COMMISSION

Both Indonesian and Timor-Leste commissioners have worked together since August 2005 until May 2008 as part of the Commission of Truth and Friendship Indonesia – Timor-Leste. The responsibility borne by the commissioners in carrying out the mandate to seek the conclusive truth and to build reconciliation and friendship between the peoples of Indonesia and Timor-Leste is not a light one. On such realization, the Commissioners would like to extend their gratitude to the mandate givers from the Republic of Indonesia and the Democratic Republic of Timor-Leste for the trust given to us, the commissioners, who were appointed to sit in the Commission of Truth and Friendship Indonesia – Timor-Leste.

We too have gained experience from the process of exercising the mandate of the Commission, that it is not easy to reach agreements on the conclusive truth. This requires moral courage, humility and wisdom to be able to release oneself from emotional ties, and keep a distance from the violent events that took place in East Timor in 1999, in order to take a more objective and enlightened approach to build a better future between the two nations. We are also grateful that all findings in the exercise of the Commissions mandate were reached through agreement. Although we worked based on the Terms of Reference by using the term "kebenaran akhir", we do not intend to place the Commission's findings as absolute. We put that on the realization that the only absolute truth is one that belongs to God.

On this journey we learned that no reconciliation can be reached without sacrifice from all relevant parties. Sacrifice is needed in the dynamics to accept the fact of truth that determines the degree of responsibility of all relevant parties. The Commission also reached a conviction that in looking at events of the past that caused resentment, no one could claim oneself as being fully/absolutely right, and other parties as absolutely wrong. This is because in the reconstruction of history to reveal the fact of truth, challenges faced pertain to how all parties can reach a fact of truth that can be agreed upon.

In reflecting on the lessons learned from the process of the Commission's mandate exercise, we dedicate the Commission's final report to the future oriented visionary stance, moral courage, humility, and the sincerity that has overcome obstacles of the nature of short term narrow interests, rigidity in the past-looking perspective, on all of those who have been involved in the exercise of the Commission's mandate, since its establishment until the completion of the report.

It takes courage to accept and admit past wrongs and to turn it into a valuable lesson.

In closing, the Commission would like to dedicate this final report to truth and friendship between the peoples of Indonesia and Timor-Leste who have succeeded in overcoming their shared pasts, to build a future with better hope. In this regard, this final report has been compiled following the spirit of **Per Memoriam ad Spem**.

SIGNATURE SHEET

Per Memoriam ad Spem

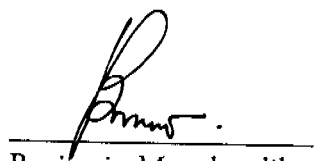
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Indonesia – Timor-Leste

Denpasar, 31 March 2008

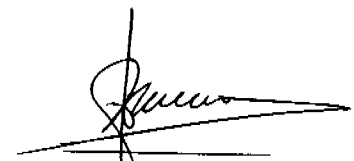
Dedicated to the truth and friendship between
the people of Indonesia and Timor-Leste

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Commissioners:



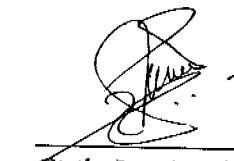
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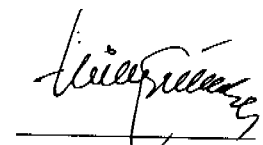
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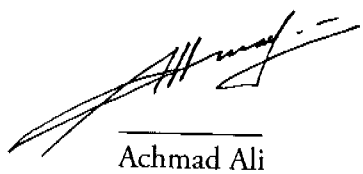
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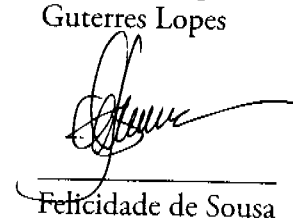
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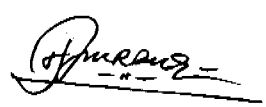
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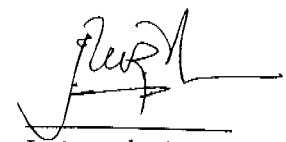
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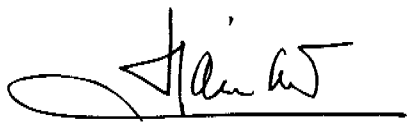


Mgr. Petrus Turang



Jacinto das Neves
Raimundo Alves

Alternate Commissioners:



Sjamsiah Achmad



Antonius Sujata



Maria Olandina Isabel
Caeiro Alves



Isabel Ferreira



Rui Pereira dos Santos

EXECUTIVE SUMMARY

Arising out of their shared determination to learn from the causes of past violence and to establish a firm foundation for future reconciliation, friendship, peace, and prosperity, the governments of Indonesia and Timor-Leste resolved to face the past between the two nations through the forum of the Truth and Friendship Commission. The Commission's goals were to conduct a shared inquiry with the aim of establishing the conclusive truth about the reported human rights violations and institutional responsibility, and to make recommendations which can contribute to healing the wounds of the past and further promoting reconciliation and friendship and ensuring the non-recurrence of similar events.

This Report presents the results of the two and a half years of work by the world's first bilateral Truth and Friendship Commission. As such, in itself the Commission represents a model for cooperation and the development of mechanisms for arriving at consensus on even the most difficult and challenging of issues.

This Report is comprised of nine chapters. Chapters 1-3 set out the structure, mandate, and terms of reference of the Commission and explain how the Commission interpreted and applied them. Chapter 4 describes the historical background, the institutional structures and political dynamics which formed the broader context of the violence in East Timor in 1999. Chapter 5-7 provides an analysis of all of the information and evidence gathered by the Commission. Chapter 8 sets out the Commission's findings on the basis of this analysis, relates them to the broader context discussed in Chapter 4, and arrives at final conclusions. On the basis of these conclusions and the Commission's reflections on what it has learned from its research, analysis, and deliberation, Chapter 9 sets out recommendations, lessons learned and final reflections. In accordance with the mandate, this report will be submitted to the heads of state and governments of both nations, who will make it available to the Parliaments and the public.

The Executive Summary is a comprehensive, condensed version of the Report, that encompasses the core aspects of each chapter and focuses on the findings and recommendations of the Commission

I. MANDATE AND IMPLEMENTATION

The Commission's mandate began in 2005, and was extended until 2008, to complete the three main components of its work: (1) inquiry, consisting of document review, fact-finding, and research, (2) making findings on the perpetration of gross human rights violations and institutional responsibility, and (3) arriving at recommendations and lessons learned. The foundation of the Commission's work was the process of establishing the "conclusive" truth about the events leading up to and immediately following the Popular Consultation in East Timor in 1999. This historical inquiry was conducted in accordance with the research framework outlined in the Commission's mandate, which required a document review, and fact finding process, that would be the basis on which the Commission analyzed and determined the "truth."

The Commission's Process

To fulfill its mandate of establishing the "conclusive truth" about the violence in East Timor in 1999 the Commission collected and analyzed a large body of evidence from a variety of sources. This evidence and analysis focused on the two central questions before the Commission: Were gross human rights violations committed in East Timor in 1999, and, if so, are there institutions that bear responsibility for those violations? To answer these questions the Commission conducted a Document Review, analyzing the results of previous trials and investigations. These included the Report of the Commission of Inquiry (KPP HAM) appointed by the Indonesian National Human Rights Commission (Komnas HAM), the trials before the Indonesian Ad Hoc Human Rights Court in Jakarta, including the investigative dossiers (BAP's) of the Attorney General's Office, the Report of the Commission of Reception, Truth and Reconciliaton of Timor-Leste (CAVR), and the trials and investigations conducted by the UN Special Panels for Serious Crimes and Serious Crimes Unit (SCU) in Dili.

All of these bodies of documents have strengths and limitations. For example, the investigation of KPP HAM and the process before the Ad Hoc Court in Jakarta did not encompass violations allegedly committed by pro-independence groups. The Ad Hoc Court trials also did not address a wide range of violations, such as sexual violence, nor did they focus on the alleged direct involvement of elements of the TNI or other bodies in the perpetration of these violations. In these trials there was also a general failure to bring the available relevant evidence and witnesses before the Court. CAVR and KPP HAM were both non-judicial bodies, and this necessarily limited the nature and scope of their research or investigations. The SCU focused its resources on priority cases of murder committed by pro-autonomy militias and did not fully investigate or bring to trial cases involving other major categories of violations. The SCU was also unable to obtain the cooperation necessary to fully investigate or try cases involving alleged Indonesian perpetrators. While the CAVR and KPP HAM considered the larger context of the violence, the trials in Jakarta and Dili focused largely upon individual cases as isolated events. The limitations and shortcomings of these previous investigations and trials are analyzed in Chapter 5-7 of the Report and form the basis for recommendations for institutional reform in Chapter 9.

In addition, the Commission engaged in an extensive Fact Finding process that included public hearings, closed hearings, statement taking, interviews, and written submissions. As the Commission is not a judicial body with the power to compel testimony, these hearings aimed to be inclusive and to allow all concerned parties to present their perspectives without interruption. These presentations were followed by "clarification", in which all the Commissioners could ask questions. As an aid in establishing the truth, the Commission developed closed hearings as a mechanism that would allow individuals to give testimony that they might be reluctant or afraid to provide in public. Through this process the Commission was able to ensure that it heard a wide range of perspectives on the 1999 violence from the testimony of witnesses who experienced the events of 1999 in many different roles. One perspective missing from the Fact Finding process was that of the United Nations. Despite repeated invitations by the Commission, the UN elected not to allow its personnel to appear and testify.

The Commission's Document Review and Fact Finding methodologies should be seen as distinct but nonetheless complementary parts of one process aimed at establishing to the extent possible the "conclusive truth" about the 1999 violence. Both of these methodologies follow a conceptual framework that elaborates in detail the criteria necessary for findings of gross human rights violations and institutional responsibility. This framework is set out in Chapters 3 and 5-7 of the Report.

The Commission was well aware of the criticisms made of its public hearings by members of civil society in both countries. These public hearings, however, were only one of many sources of information and testimony that the Commission employed. All of these sources were subjected to a careful analytical process that weighed the various sources of evidence against one another in order to arrive at sound findings and conclusions. This analytical process showed, for example, how the Document Review, because of the nature and depth of the evidence it provided, provided a solid foundation for evaluation of the various and often contradictory claims made by witnesses who appeared before the Commission in the Public and Closed Hearings. The greater evidentiary depth of the evidence gathered and analyzed in the Document Review substantiated some of the claims made by witnesses in hearings and definitively contradicted others. In turn, it also demonstrated how the testimony of some witnesses could add further to, or provide a greater degree of corroboration to the conclusions reached in the Document Review.

In order to fulfill its mandate to inquire into the nature, scope, and causes of the violence in 1999, the Commission conducted research into the historical background, political dynamics, and institutional structures that shaped events before and during 1999 (Chapter 4). This allowed the Commission to inform its conclusions with a broader understanding of the way in which the causes of the violence in 1999 were connected to previously established institutional structures and practices. This understanding was particularly important in arriving at recommendations (Chapter 9) aimed at preventing future reoccurrence through institutional reform and other measures.

II. THE "CONCLUSIVE TRUTH"

Conclusions about the Context of the Violence

There were multiple causes of the conflict in 1999, which are complex and inter-related. Some of these causes doubtless go back to at least 1974 and the events ensuing from the end of the Portuguese colonial presence. Others arose from the more immediate political context of the events of 1998 in Indonesia. The underlying reasons for each aspect of the conflict in 1999 requires further, specialized research in order to fully understand why the conflict happened in specific ways, and how various institutions and individuals participated. However, through its research processes the Commission has been able to identify some of the core causes of violence, which are examined in detail in Chapters 4, 6 and 8.

First, the events of 1999 can not be understood in isolation from the longer period of conflict that occurred in East Timor which displayed horizontal and vertical dynamics. The nature of the violence that occurred in 1999 was shaped by previous patterns of conflict.

Second, the violence that occurred in East Timor in 1999 also grew out of the unique political circumstances that were created by Indonesia's transition from an authoritarian to a democratic state (*Reformasi*), which began in 1998. On the issue of East Timor, the process of *Reformasi* and democratization created a new opportunity for Indonesia to settle the issue in a peaceful, comprehensive, and democratic manner, as was also the long-term aspiration of the independence movement in East Timor. However, there was no effective mechanism for abandoning the previous repressive security enforcement strategies and replacing them with new methods of law enforcement in line with international human rights standards. The pressures generated by the political impact of *Reformasi* and by the prospect of a Popular Consultation made it unlikely that the previous patterns of repressive security practices and policies could be easily reversed. Although orders were issued to prevent human rights violations, in this complex, transitional situation, these orders were, by themselves, did not serve as an effective mechanism to prevent such violence from occurring. Further, the rearrangement of the structures of authority, particularly for the Police vis-a-vis the military in 1999, meant that by the time of the Popular Consultation, institutions had not yet had time to build the institutional capacity to exert independence within their new roles and authorities in the emerging, democratic era.

Third, although in 1999 ABRI was intent on initiating internal reforms to transform itself by stages into a professional military force with particular focus on the external defense function, in early 1999 the political and social dynamics and security defense were still strongly influenced by the legacy of the past (including the *dwifungsi* doctrine), when ABRI was deeply involved in the social and political domains, while simultaneously conducting internal military operations. **The combination of a large military influence and a weak control function in the form of the civilian administration implied low accountability in government policies and opened the way to perpetration of violence by involved institutions.**

As a result of this system, a specific political and legal culture evolved from the close ties between the security apparatus and the civilian government. A situation of active military operation in what was formally "peacetime," combined with weak rule of law, made it difficult to hold authorities accountable for their actions. One of the results of this lack of accountability, was the creation of a political culture which could not peacefully accommodate differences, especially when those differences were openly expressed. Thus, within this governing system in East Timor, threats, intimidation and violence accompanied political differences without any certainty of legal consequences.

Another area where the weaknesses in this structure of civilian governance was most apparent is the legacy of the Sishankamrata system and its various interpretations, which allowed paramilitary groups comprised of civilians to act as legal auxiliaries to the military and receive public funding. In 1999, the existence of various civilian groups, armed and non-armed, with close relations with various government agencies may be seen as spillovers of such past security arrangements that allowed overlap between the military and civilian government. **The consequence of this constellation of civil and military authorities and armed civilian groups was violence directed against civilians.**

Finally, the institutional actions that led to violence in 1999 represent the culmination of the actions of those individuals taking part in the violence. However, determining individual responsibility is not the mandated task of this Commission. Moreover, individual perpetrators in the kind of organized, politically motivated violence that took place in East Timor in 1999 act in an institutional context. As noted above, the violence in 1999 was not random, isolated, or spontaneous. Its organized and coordinated nature indicates the way in which the acts of specific individuals must be seen in the larger institutional context in which they found themselves as the events of 1999 unfolded. This context, in turn, forms the basis for an assessment of institutional responsibility.

Conclusions about Gross Human Rights Violations and Institutional Responsibility

Part II of the Report analyzes the results of the Document Review (Chapter 5) and Fact Finding (Chapter 6), and concludes with a combined analysis (Chapter 7) that provides the basis for specific factual findings as to gross human rights violations and institutional responsibility and the conclusions presented in Chapter 8. Through this analytical process the Commission was able to provide the following answers to the two central questions mentioned above:

1. **The Commission concluded that gross human rights violations in the form of crimes against humanity did occur in East Timor in 1999 and that these violations included murder, rape and other forms of sexual violence, torture, illegal detention, and forcible transfer and deportation carried out against the civilian population.**

2. **The Commission concluded that there was institutional responsibility for these violations.**

3. **In regard to crimes committed in support of the pro-autonomy movement, the Commission concluded that pro-autonomy militia groups, TNI, the Indonesian civilian government, and Polri must all bear institutional responsibility for gross human rights violations targeted against civilians perceived as supporting the pro-independence cause.** These crimes included murder, rape and other forms of sexual violence, torture, illegal detention, and forcible transfer and deportation.

4. In regard to crimes committed in support of the pro-independence movement, the Commission concluded that because of the lack of previous systematic judicial investigations of such violations the exact nature and extent of such violations could not be conclusively determined. **The Commission also determined that it was nonetheless possible to conclude that pro-independence groups were responsible for gross human rights violations in the form of illegal detentions that targeted civilians who were perceived as pro-autonomy supporters.**

5. **The Commission concluded that persistent patterns of organized, institutional involvement in these gross human rights violations provide the basis for its conclusions about institutional responsibility. It further concluded that because of the nature and scope of this involvement, from a moral and political perspective the respective states must accept state responsibility for the violations identified in the Report as linked to their institutions.**

How the Commission Arrived at These Conclusions

A. Conclusions about Gross Human Rights Violations

The Commission received a very large volume of documentary, and live, testimonial evidence that gross human rights violations occurred. All of the four major bodies of documents examined in the Document Review agreed that gross human rights violatins were perpetrated in East Timor in 1999. In Chapters 5-7 the Commission carefully analyzes all of this evidence and concludes that the evidence overwhelmingly supports the conclusion that a large number of attacks against a civilian population, of a nature and scale to constitute gross human rights violations, occurred in East Timor 1999.

The Commission's next step was to identify who committed these gross human rights violations in the form of crimes against humanity and to determine how they were perpetrated. In this regard, the Commission reviewed the evidence to ascertain patterns at the operational level at which the gross human rights violations were actually perpetrated. The same standards to determine gross human rights violations were used for each event, regardless of the identity, or institutional affiliation of the perpetrator. On the basis of its review of all of the evidence, the Commission identified specific cases of gross human rights violations, and determined that there were in fact persistent patterns of organized, systematic violations perpetrated by members or elements of pro-autonomy groups and Indonesian governmental institutions. These violations include murder, torture, rape and other forms of sexual violence, forcible transfer and deportation, and illegal detentions. The Commission also identified a significant number of gross human rights violations in the form of illegal detention that appear highly likely to have been systematically perpetrated by pro-independence groups.

On the basis of its analysis of these patterns of perpetration and organized, systematic conduct (Chapters 5-7 and 8.3), the Commission concluded that gross human rights violations were perpetrated by both sides directly or indirectly (through material support, planning, encouragement, etc.), including members of pro-autonomy militias, TNI, Polri, and Indonesian civilian government, as well as members of pro-independence groups. **Although there is no statistical basis for quantitative assessment, the evidence analyzed in Chapters 5-7 indicates that the great majority of reported violations were perpetrated against pro-independence supporters.**

B. Conclusions about Institutional Responsibility

To find institutional responsibility the Commission analyzed whether there was sufficient evidence to demonstrate that the patterns of widespread and/or systematic violations manifested institutional involvement of sufficient scope and duration to justify conclusions of institutional responsibility on the part of several institutions that played a role in the violence in 1999. The central question of institutional responsibility facing the Commission was which organizations could be linked to these crimes sufficiently so as to justify a conclusion that they bear institutional responsibility.

On the basis of its analysis, the Commission concluded that the evidence clearlyh proved that pro-autonomy militias were the primary direct perpetrators of gross human rights violations in East Timor in 1999. **The consistent patterns of direct perpetration by pro-autonomy militias in targeting pro-independence supporters for violence that included murder, systematic rape, torture, severe deprivation of physical liberty, and deportation and forcible transfer were so clear that there could be no doubt of their institutional responsibility for these crimes.**

In analyzing the extent to which Indonesian institutions also met the criteria for institutional responsibility, the Commission concluded that the evidence was sufficiently clear and abundant to justify such conclusions. **More specifically, the Commission found that TNI personnel, police, and civilian authorities consistently and systematically cooperated with and supported the militias in a number of significant ways that contributed to the perpetration of the crimes enumerated above.** The evidence also demonstrated that TNI personnel sometimes directly participated in the operations that led to these crimes. Such participation included direct participation in the actual commission of the crimes by members of TNI units and the direction of militia operations by TNI officers who were present when the crimes were committed.

The Commission found that the TNI commanders in East Timor controlled the supply, distribution, and use of weapons to militia groups and did so in an organized manner. They also knew that these weapons would be used to further the pro-autonomy campaign and that gross human rights violations were occurring in the course of that campaign. The TNI's support for militias extended beyond the provision of weapons and included funding and other material resources. The support of the TNI also included planning and organization of joint operations that frequently included TNI personnel and officers. Local TNI headquarters were used as facilities for illegal detentions, where severe forms of mistreatment of civilians, including torture and sexual violence sometimes took place. **The Commission**

found that the patterns of co-perpetration and support arose out of the structural interconnections between the TNI and militia and other paramilitary groups that had developed over time. The reliance of the TNI on such armed civilian groups is a structural weakness which is one of the sources of their institutional responsibility for human rights violations in 1999.

The context in which the patterns of cooperation between militias and TNI operated involves a continuing practice, going back to long before 1999, of collaboration between militias, civilian defense groups, and TNI local garrisons, whose membership often overlapped. The patterns of cooperation involved not only planning and co-perpetration in operations, but also the provision of various kinds of material support. Developing out of the historical context of ongoing cooperation and close inter-relations between these organizations, in 1999 at the operational level these institutions all acted together in the pursuit of the common goal of defeating the pro-independence movement. The evidence showed unequivocally that these groups regularly employed violence to achieve their goals and that the violence resulted in the categories of gross human rights violations listed above. Their joint operations were often conducted under the direction of Indonesian military or civilian authorities. In other cases, even where though Indonesian officers or officials may not have planned or directed the operation the evidence shows that they knew of, acquiesced in, or approved of the operations. Civilian officials were on some occasions involved in the operations, and in general provided material support for the militia groups that perpetrated them with knowledge that this support would lead to such violations. When police were not involved in the operations themselves they were almost completely ineffective in preventing them and in providing security for the civilian population, even after the 5 May Agreement when it was their explicit responsibility to do so.

The Commission also found that there was abundant evidence that showed the activities of militia groups were also supported by the civilian government in a variety of ways. The best documented of these forms of support is the systematic and sustained way in which the civilian government supplied funding to the militias, even after they clearly were aware of gross human rights violations being perpetrated by these militia groups..

The Commission concluded that the evidence supported the conclusion that the provision of funding and material support by military and governmental officials was an integral part of a well-organized and continuous cooperative relationship in the pursuit of common political goals aiming at promoting militia activities that would intimidate or prevent civilians from supporting the pro-independence movement. This forms one of the bases for concluding that the TNI and civil government both have institutional responsibility for the gross human rights violations perpetrated against perceived pro-independence supporters in 1999. The TNI's domination of the civilian government, as shown by the analysis of the larger context in Chapter 4, reinforces the conclusion of institutional responsibility on its part.

Viewed as a whole, the gross human rights violations committed against pro-independence supporters in East Timor in 1999 constitute an organized campaign of violence. Individuals from the militia, police, local civil administration, and TNI participated in various phases of this campaign of violence and political

repression conducted against civilians they believed to be associated with the pro-independence movement. This campaign followed certain patterns often consisting of a series of connected events involving intimidation, threats and actual force in order to discourage support by the civilian population for the pro-independence movement. The campaign involved organized attacks on villages by militias and TNI.

A campaign of coordinated activity of this kind requires planning, and logistical and financial support. The Commission concluded that the evidence demonstrated that TNI and Police personnel, as well as civilian officials, were at times involved in virtually every phase of these activities that resulted in gross human rights violations including murder, rape, torture, illegal detention and other severe deprivations of physical liberty, and forcible transfer and deportation. This kind of sustained and coordinated activity involving many forms of support, encouragement, and co-perpetration forms the basis forms the basis of the **Commission's conclusion that the TNI, Polri, and civilian government all bear institutional responsibility for these crimes.**

The Commission experienced greater difficulty in reaching definitive conclusions about institutional responsibility for gross human rights violations committed by pro-independence groups. On the one hand, there is no doubt that human rights violations, including murder, destruction of property, and illegal detention were committed against civilian populations who opposed independence. On the other hand, because of the lack of systematic investigation by the SCU and other bodies of the role of pro-independence groups in the 1999 violence, there is considerable difficulty analyzing the extent to which some of these crimes are part of a larger context of organized violence, as required for findings as to institutional responsibility. **Because of this shortcoming, and on account of its mandate to make findings as to the "conclusive truth," it is only in the case of illegal detentions where there is enough reliable evidence to conclude that there is institutional responsibility on the part of pro-independence groups.**

The Commission also considered a difficulty concerning the institutional responsibility of pro-autonomy militias and pro-independence groups. Because of the achievement of independence by Timor Leste, these groups no longer exist. For this reason a conclusion about their institutional responsibility would have only a symbolic value. States have a political and moral obligation to accept responsibility for gross human rights violations committed by groups to which they have an historical connection, even when those institutions no longer exist or have undergone significant transformation.

From a forward looking perspective, **the Commission concluded that the government of Timor-Leste bears state responsibility for the illegal detentions constituting gross human rights violations that were perpetrated by pro-independence groups. This acceptance of state responsibility for these groups is not based on legal accountability but arises from the moral and political basis of institutional responsibility.**

In regard to Timorese pro-autonomy militias, because of the Commission's forward looking perspective in formulating its conclusions and the recommendations that are based upon them, **the Commission concluded that Indonesia also bears state**

responsibility for those gross human rights violations that were committed by these militias with the support and/or participation of Indonesian institutions and their members.

III. THE COMMISSION'S RECOMMENDATIONS

The Recommendations respond to the Commission's mandate, the lessons learned, as well as to tangible problems that currently face each country as a result of the violence in 1999. Above all, they are a response to the needs of those whose lives were affected by the violence in 1999.

The mandate authorizes the Commission to make specific recommendations, *inter alia*, regarding amnesty and rehabilitation. The mandate also asks the Commission to make recommendations that include innovative ways to improve people-to-people relationships in the two countries that are in congruence with local religious beliefs and customs, and to solidify cooperative and reconciliatory processes at the state level. In addressing these guidelines of its mandate, the Commission aimed to provide realistic and concrete recommendations that are inclusive, forward-looking, based on principles of restorative justice, and which would promote long term friendship, reconciliation and the prevention of future conflicts and violence.

In addition, in preparing its Recommendations, the Commission took into account the institutional shortcomings and failures that it had identified (Chapters 4-8) as having contributed to the 1999 violence. Remedying systemic and institutional failures through institutional reform is necessary to prevent future reoccurences of violence and to ensure the foundation for peace and friendship between the two countries.

In fulfilling its mandate the Commission followed two key principles in formulating recommendations. The Commission determined that in order to promote reconciliation recommendations must be inclusive, and must not discriminate between parties, particularly based on political affiliation. The second principle informing the recommendation is that they all take the form of **collective reparations**, requiring material and other forms of support from the relevant governments and institutions.

The Commission's recommendations for urgent action may be summarized under several themes.

1. Recommendations Focusing on Accountability and Institutional Reform

- The Commission does not recommend amnesty or rehabilitation for any persons.

- A key component of such institutional reforms is promoting a culture of accountability in the instutitions whose responsibility it is to maintain peace and security and to prevent and punish violations of law and human rights. Based upon this principle and in accordance with its Terms of Reference and considerations of procedural justice, the Commission made no recommendations for amnesty or rehabilitation of any individuals or groups.

- The Commission's Report identifies weak judicial institutions, the lack of an effective committment to the rule of law, and the lack of accountability in military and security forces, as factors that contributed to the violence of 1999. On the basis of its reflections on these conclusions and the underlying events, the Commission recommended a series of urgent institutional reform including: (1) A **human rights training program focused specifically on the role of security forces and intelligence organizations in situations of political conflict, mass demonstrations and civil unrest** and emphasizing the **obligation of the military and intelligence forces to remain neutral** in political controversies and elections, to refrain from using state resources in support of political parties or their goals, and to operate solely within the limits of the law and under the direction of civilian leadership. (2) A **human rights training program focused specifically on the role of particular civil institutions** in planning for and working to prevent situations of civil and political conflict through mediation, peaceful method sof conflict resolution, and the inculcation of a culture of understanding and toleration of political difference, and of the right of citizens to express their differences without fear or intimidation within all levels of the civilian government. (3) The promotion of institutional reforms that **enhance the authority and effectiveness of institutions or agencies charged with the investigation and prosecution of human rights violations alleged to have been perpetrated by members of the armed forces, police or other security agencies.** (4) Specialized training programs for military, police, and civilian officials to **promote the protection of women and children** and the prevention of sexual exploitation and violence in all forms against women, and other vulnerable populations.

- The Commission's findings and conclusions in regard to the nature and causes of the violence in 1999 underscores the importance of institutional reform that will lead to a clearer understanding of the role of a professional military operating in a democratic state solely under the control and authority of the elected civilian government. On this basis the Commission makes a series of recommendations aimed at preventing recurrence of the kind of violence that occurred in 1999 through a **transformation of military doctrine and institutional practices and mentalities from that of a freedom fighting or revolutionary people's army to the kind of professional armed forces appropriate for a modern, democratic state operating under the rule of law and civilian control.**

2. Recommendations Involving Joint Border and Security Policy

Unresolved border and security issues represent an ongoing impediment to achieving peace and friendship between the two nations and to addressing the needs of those individuals whose lives have been adversely affected by the violence in 1999. To resolve these issues the Commission recommended the following urgent measures:

- The governments of Indonesia and Timor-Leste establish **visa-free "Peace Zones,"** already informally in existence, on the border between Timor-Leste and West Timor. The establishment of an official Peace Zone(s) will bring legitimacy to these activities and expand the possibility for further widespread

bilateral communications, cultural exchanges, and economic development, particularly through the creation of a free trade zone within the Peace Zone(s).

- Increasing security on the border zone between the two countries through a mechanism of **field cooperation, coordination and training involving joint patrols and joint border posts.**

- The completion of agreements related to land, sea and air **border demarcation** and delimitation between the two countries, that have not yet been fully agreed.

- Developing special programs to **implement and enforce standards of professional and technical expertise and qualifications of border security personnel.**

- Consideration of a process for **enabling the "safe crossing"** for Indonesians citizens of Timor Leste descent, and Timorese citizens of Indonesian descent in accordance with the laws of the two countries.

3. Recommendations to Promote Conflict Resolution and Provide Psychosocial Services for Victims

- The Commission recommends the establishment of a **Documentation and Conflict Resolution Center** tasked with promoting understanding of the past between the peoples of the 2 nations, providing educational and training programs in conflict resolution and mediation for government, civil society, communities, and educational curricula. The Center shall also be tasked by the two governments with developing comprehensive and inclusive **survivor healing programs, particularly for victims of sexual violence and torture.**

4. Recommendations Involving Economic and Asset Issues

- The Commission recommends the two governments to accelerate the resolution of the complex economic and asset issues including the disposition of public and private assets, addressing unresolved pensions for former civil servants and other related issues.

5. Recommendation for a Commission for Disappeared Persons

- The Commission recommends that the governments of Indonesia and Timor-Leste work together to acquire information/form a commission about disappeared people and cooperate to gather data and provide information. This Commission shall also be tasked to identify the whereabouts of all Timor Leste children who were separated from their parents and to notify their families.

6. Recommendation for Acknowledgment

- Commission recommends for official **acknowledgment** through expressions of regret and **apology** for the suffering caused by the violence in 1999 and a firm commitment to take all necessary measures to prevent reoccurrence of such events and to heal the wounds of the past.

7. Long Term and Aspirational Recommendations

- The Commission made several recommendations that are more general in nature and aim at promoting long term friendship and reconciliation between the peoples of the two nations. They include, **cultural and educational exchanges, cooperation and support in the health sector**, promoting a wider **culture of peace and respect for the rule of law and human rights**, continuing security cooperation and **bilateral programs in respecting and caring for the remains of the deceased** in each country, and consideration of options regarding dual citizenship.

IV. LOOKING TOWARDS THE FUTURE

The Commission's recommendations and spirit of truth are a sound basis to further develop the ties between Indonesia and East Timor. Symbolically and through the tangible results of the Commission's work, the two countries have already joined together to face a difficult past, and have promised to take a positive approach to the future.

A commitment to friendship will require the full and speedy implementation of recommendations, which will need the financial support and human resources of each country. More importantly, friendship will flourish only with the time, dedication and dialogues by citizens, institutions and leaders. However, over time these investments have the potential to bring specific and significant benefits to the economic, social, cultural and political life of the two nations and the region. Within an environment of friendship there is the real potential for trade to increase, security to improve, and cultural and educational exchange to enrich the lives of the two nations' peoples.

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PART I

PURPOSE, MANDATE AND PROCESS

CHAPTER 1

INTRODUCTION

1.1 STATEMENT OF PURPOSE

Based on the principles of mutual respect and mutual benefit, the Republic of Indonesia and the Democratic Republic of Timor-Leste have undergone a long journey towards overcoming their shared past. As nations and democratic states that are still undergoing transformation towards a better life, each nation faces its respective domestic problems and priorities, especially in strengthening the social, political and economic order. To this end, the two nations desire conducive circumstances for peace and development, including harmonious mutual relations. For that reason, the two nations are determined to continue developing neighborly relations that are dynamic, friendly and mutually beneficial. As part of that determination, the two governments intend to resolve residual issues between them.

Among the important residual issues are those related to the various human rights violations reported to have occurred prior to and immediately after the Popular Consultation in 1999 in East Timor. Regarding those events, the two states have established various judicial processes as well as a number of commissions of inquiry. In Indonesia the Commission of Inquiry on Human Rights Violations in East Timor (KPP HAM) and the Ad Hoc Human Rights Tribunal were formed in September 1999. In Timor-Leste the Commission for Reception, Truth and Reconciliation (CAVR) and the Special Panels for Serious Crimes (SPSC) in the Dili District Court were established.[1] These four institutions have produced conclusions and decisions in accordance with their respective mandates, processes and procedures.

[1] Unlike KPP HAM, the Ad Hoc Human Rights Tribunal and the SPSC/SCU who all focused on human rights violations inquiry that took place in 1999, the CAVR pursuant to UNTAET Regulation No. 2001/10 was mandated to investigate Human Rights violations that took place since 24 April 1974 until 25 October 1999. The SCU was the prosecution unit of the SPSC tribunal system, and was responsible for the investigation of human rights violations that qualified as "serious crimes."

However, the violence that took place prior to and immediately after the Popular Consultation[2] in East Timor in 1999 was a terrible humanitarian experience that is regretable, and has continued to burden both Indonesia and Timor-Leste despite the establishment of these judicial and non-judicial processes. There is a deep awareness amongst the leadership of the two states that leaving this complex problem unresolved will result in the potential for instability, hatred and even conflict between the two nations and their peoples. The two nations are committed to not letting this historical legacy become a burden for generations to come.

In this spirit and motivated by a strong desire to create a better future, the leaders of Indonesia and Timor-Leste met in Bali on 14 December 2004 and signed a Joint Declaration and a Memorandum of Understanding. The most important point from this meeting in Bali was the agreement to establish a Commission of Truth and Friendship (CTF) between Indonesia (RI) and Timor-Leste (RDTL). The Commission was mandated to reveal the conclusive truth about the reported human rights violations that occurred in East Timor in 1999.

The leadership of the two nations realize that a common understanding about what occurred in East Timor in 1999, as well as learning lessons from these events, are of the utmost importance in the efforts to establish strong and beneficial relations between the two states and to restore human dignity. The Comission of Truth and Friendship was established to create a productive approach to diplomacy and healing the wounds of the past, as opposed to adopting attitudes or approaches at the state level that would foster unproductive blame, resentment or mistrust. Indonesia and Timor Leste have conducted this shared inquiry into the past as one way to transform a historical burden into lessons learned that can prevent future human rights violations and nurture peace for the peoples in both nations.

1.2 OBJECTIVES OF THE FINAL REPORT

The Final Report of the Commission of Truth and Friendship of Indonesia and Timor-Leste (subsequently referred to as CTF or the Commission) presents all aspects of the Commission's work in accordance with its Terms of Reference.[3] This report describes the mandate, the Commission's interpretation of the mandate, and the stages and methods of the mandate's implementation. The report culminates in specific findings about the conclusive truth and recommendations to the governments of Indonesia and Timor-Leste.

The substance of the Final Report elaborates matters pertaining to human rights violations reported to have taken place prior to and immediately following the Popular Consultation in East Timor[4] in 1999. The nature, causes and scope of

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2 The term *"Jajak Pendapat"* is used in the Bahasa Indonesian version of this Report for "Popular Consultation" following the translation of the Commission's Terms of Reference. "Popular Consultation" is also referred to as *"Penentuan Pendapat"* according to the translation of the 5 May 1999 Agreement.

3 The Terms of Reference (TOR) were prepared and agreed upon jointly by the two states on March 9, 2005 in Jakarta.

4 In the Bahasa Indonesia version of this Report the name *Timor Timur* (East Timor) is applied for the period of Indonesian Government in this territory before 25 October 1999. Timor-Leste is used to refer to the state, government and the people of Timor-Leste after 25 October 1999.

human rights violations are examined, and the Commission derives lessons learned from its evaluation of the conclusive truth. Based on the conclusive truth and the lessons learned, the Commission will make recommendations to the two Heads of State/Governments aimed at healing the wounds of the past and restoring human dignity. The Final Report will also serve as a common historical record for the two nations about the violence in East Timor in 1999 and the two nations' efforts to promote friendship and cooperation.

Pursuant to the Commission's Terms of Reference, the Final Report will be presented to the Heads of States/Governments who are the mandate givers. They will in turn forward it to the respective parliaments and make the report accessible to the public. The official languages of this report are Indonesian, Tetum[5] and English. The report has also been translated into Portuguese. To avoid misinterpretation due to linguistic discrepancies, the reference Final Report text will be the Indonesian language version.

1.3 REPORT STRUCTURE

The Final Report is structured as follows:

An Executive Summary introduces the main report. The main report is divided into three parts.

Part I discusses the objectives, mandate and process of the Commission, including:

Chapter 1: Introduction
Explains the objectives and structure of the report, as well as its scope and limitations.

Chapter 2: Mandate
Explains the Commission's interpretation of its mandate pursuant to the Terms of Reference.

Chapter 3: Mandate Implementation
(1) Description of the methodologies used by the Commission: (i) Document Review, and (ii) Fact-finding.
(2) Outline of the Commision's theoretical framework, including the Commission's working definitions of concepts of justice, standards of gross human rights violations and standards for institutional responsibility.
(3) Other aspects of the Commission's mandate implementation.

Part II presents context, analyses and findings from the Commission's mandate implementation, as follows:

Chapter 4: Historical, Social and Political Context

[5] The Final Report of the CTF will be translated into Tetum and made available in a popular version for distribution at the grassroots level.

Presents the background and aspects relevant to the conditions in East Timor in 1999 in order to provide a broader understanding of those events. These conditions are addressed in this chapter to provide additional information to augment the Document Review (Chapter 5), and in accordance with the mandate for the Commission to determine the causes and nature of violence in East Timor in 1999. The discussion of context includes a brief review of relevant aspects of the historical background that may add to an understanding about the general conditions in East Timor in 1999, the structure of the Indonesian government in East Timor, pro-autonomy and pro-independence organizations, the effects of the political transition in Indonesia, and issues pertinent to the 5 May 1999 Agreement. This section also addresses past mistakes, or structural weaknesses that need to be overcome in order to prevent similar events from reoccuring in the future. Measures to correct these problems will be presented in the recommendations section of this report.

Chapter 5: Document Review: Analysis of Evidence of Previous Trials and Reports.
This part presents an analysis of the bodies of documents from the Indonesian Commission of Inquiry on Human Rights Violations in East Timor in 1999 (KPP HAM), the Ad Hoc Human Rights Tribunals in Jakarta, the Special Panels for Serious Crimes (SPSC)/ Serious Crimes Unit (SCU) and the Commission for Reception, Truth and Reconciliation of Timor-Leste (CAVR). The analysis evaluates the respective strengths and weaknesses of each of the four bodies of documents, and presents an analysis of the evidence regarding gross human rights violations and institutional responsibility.

Chapter 6: Fact Finding
Analysis of the results of the Fact Finding process, including statement taking, public hearings, submissions and secondary source research.

Chapter 7: Comparative Analysis and Summary of the Four Bodies of Documents and the Fact-Finding Process. The summary addresses various substantive aspects about gross human rights violations as well as the context.

Part III is the concluding part of the Final Report and it contains:

Chapter 8: Findings and Conclusions
This section contains a brief and comprehensive summary of the Commission's Findings based on the Document Review and Fact Finding processes, including the nature, scope and causes of the violence in East Timor in 1999, as well as specific findings about gross human rights violations and institutional responsibility.

Chapter 9: Recommendations and Lessons Learned
This part discusses measures that the Commission deems necessary to be taken by the governments of Indonesia and Timor-Leste in order to realize the goals of its mandate. The substance of the recommendations is derived from tangible problems that face the two nations, and the Commission's analysis of the lessons learned, with specific regard to the mistakes and weaknesses that led to institutional responsibility for the commission of human rights violations in 1999.

Based on these lessons learned, the Commission will recommend measures to prevent the reoccurence of similar events in the future, as well as measures to promote reconciliation and friendship between the peoples of the two nations in the future. The Commission will also recommend mechanisms for implementation to ensure that the Commission's recommendations will be implemented, monitored and evaluated systematically and periodically.

Although this report functions as an integrated whole, the Executive Summary and the individual chapters have been composed in a style so that readers who wish to examine only specific aspects of the Commission's work, or who want only a brief overview, can understand the Commission's conclusions without reading the report chronologically in its entirety.

1.4 SCOPE AND LIMITATIONS

The scope of this Final Report is shaped by the Commission's mandate as stipulated in the Terms of Reference, namely, (1) to conduct a Document Review of the Commission's four reference bodies of documents, as well as (2) to implement Fact-finding process, to arrive at findings concerning:

(1) Gross human rights violations and institutional responsibility, and,
(2) The nature, causes and scope of gross human rights violations in East Timor that took place prior to and immediately following the Popular Consultation in East Timor in 1999.

The Commission's mandate is limited to:

(1) Events that took place in the period between 27 January 1999 until 25 October 1999 in East Timor.
(2) Documents accessible to the Commission throughout the duration of its mandate implementation.
(3) Conditions set out in the Terms of Reference.

c. Based on the spirit of a forward looking and reconciliatory approach, the CTF process will not lead to prosecution and will emphasize institutional responsibility.
d. The CTF shall promote friendship and cooperation between governments and peoples of the two countries, and promoting intra and inter-communal reconciliation to heal wounds of the past.
e. Does not prejudice against the ongoing judicial processes with regard to reported cases of human rights violations in Timor-Leste in 1999, nor does it recommend the establishment of any other judicial body.

The mandate of the Commission as stipulated in the Terms of Reference point 14 is:

a. Reveal the factual truth regarding the nature, causes, and the extent of reported human rights violations that occurred in the period leading up to and immediately after the Popular Consultation in Timor-Leste in August 1999 :
   i. Review all the existing materials documented by the Indonesian National Commission of Inquiry on Human Rights Violation in East Timor in 1999 (KPP HAM) and the Ad Hoc Human Rights Court on East Timor, as well as the Special Panels for Serious Crimes, and the Commission of Reception, Truth and Reconciliation in Timor-Leste.
   ii. Examine and establish the truth concerning reported human rights violations including patterns of behaviour, documented by the relevant Indonesian institutions and the Special Panels for Serious Crimes (as contained in its indictment letters) with a view to recommending follow-up measures in the context of promoting reconciliation and friendship among peoples of the two countries.

b. Issue a report, to be made available to the public, in Bahasa Indonesia, Tetum and English, and translated into Portuguese, establishing the shared historical record of the reported human rights violations that took place in the period leading up to and immediately following the Popular Consultation in Timor-Leste in August 1999.

c. Devise ways and means as well as recommend appropriate measures to heal the wounds of the past, to rehabilitate and restore human dignity, inter alia:
   i. Recommend amnesty for those involved in human rights violations who cooperate fully in revealing the truth;
   ii. Recommend rehabilitation measures for those wrongly accused of human rights violations;
   iii. Recommend ways to promote reconciliation between peoples based on customs and religious values;
   iv. Recommend innovative people-to-people contacts and cooperation to further enhance peace and stability.

The Terms of Reference point 15 specify the following in regard to the period for the Commission's mandate implementation: "The Commission shall commence its work as soon as possible, but no later than August 2005 for the period of one year, with the possibility of an extension of a maximum of one year."

Subsequently the Commission received approval from the two governments to extend the duration of its operations.

2.2 THE COMMISSION'S INTERPRETATION OF THE TERMS OF REFERENCE

Although the Terms of Reference have specified the main issues serving as the basis of its work, the Commission, formally established on 11 August 2005, felt that it needed to interpret a number of important elements in the Terms of Reference in order to achieve a common understanding among the Commissioners, and in order establish a more operational guideline for the Commission to carry out its work. In this section the Commission will explain particular points that required interpretation and elaboration.

The Commission's Process Will not Lead to Prosecution

The Commission's Terms of Reference stipulates that the CTF process will not lead to prosecution of individuals but instead will focus on analysis of institutional responsibility. The Terms of Reference also states that the Commission must "not prejudice against the ongoing judicial process with regard to reported cases of human rights violations in Timor-Leste in 1999, nor does it recommend the establishment of any other judicial body." The main issue to be emphasized from these points is the Commission's *non-judicial* nature. The Commission is not a judicial body established to conduct a prosecutorial process against individuals, or to recommend trials for the individuals in question.

The Commission affirms its independence from all of the legal processes that have been held, or are ongoing. The Commission also does not prejudice any legal processes pertaining to reported human rights violations in East Timor in 1999. The definition of prejudice in this case is that the Commission's work does not have any impact on any legal processes pertaining to reported gross human rights violations in East Timor in 1999.

The Conclusive Truth[3]

Pursuant to the Terms of Reference one of the goals of the Commission is to establish the conclusive truth. The Commission determined that the term *conclusive truth* is not a legal term. In this regard, conclusive truth is produced from findings based on review and analysis of all facts about the events, background and the overall context of violence in 1999. This review and analysis encompasses the documents and evidence produced by the Commission of Inquiry on Human Rights Violations in East Timor in 1999 (KPP HAM), the Ad Hoc Human Rights Tribunals in Jakarta, the Special Panel for Serious Crimes/SCU and the CAVR in Timor-Leste, as well as those found during the fact finding process conducted by the Commission. The Commission's understanding of the conclusive truth is consistent with its mandate to "Reveal the factual truth of the nature, causes, and the extent of reported violations of human rights, that occurred in the period leading up to and immediately following the Popular Consultation in Timor-Leste... ".[4]

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[3] In the Bahasa Indonesia version of this Report, the Commission uses the term *"Kebenaran Konklusif"* as the accurate translation of "Conclusive Truth," although in the Indonesian translation of the Terms of Reference it is alternatively referred to as both *"Kebenaran Konklusif"* and *"Kebenaran Akhir."*

[4] CTF Terms of Reference point 14(a).

Amnesty

The Terms of Reference point 14(c) specify measures the Commission may recommend "to heal wounds of the past, rehabilitate and restore human dignity." Point 14(c)(i) specifies that the Commision may, *inter alia*, "Recommend amnesty for those involved in human rights violations who cooperate fully in revealing the truth."

Regarding the clause about recommendations for amnesty, the Commission interprets this provision as providing an option that it can employ in the fulfillment of its mandate, including for the purposes of promoting reconciliation and friendship. In other words, the amnesty clause in the Terms of Reference is not an obligation nor an absolute requirement.

The Commission considers the two important issues stressed in the Terms of Reference in the point above, are (1) the purpose of giving amnesty recommendations is related to the Commission's goal of achieving reconciliation, that is, to heal wounds of the past and restore human dignity; and (2) amnesty recommendations shall be considered only when the alleged perpetrators meet the criteria encompassed in the term "full cooperation."

The Commission determined in order to fulfill the criteria of "full cooperation" a party must:

- Show willingness to come to a public or closed hearing,
- Testify truthfully and fully about what the party personally heard, knew, and felt about gross human rights violations in East Timor prior to and immediately after the Popular Consultation in East Timor in 1999.
- Testify truthfully about his/her involvement, either directly or indirectly, intentionally or unintentionally, in the events in question.
- Express remorse about the violence that took place in general, and specifically about those acts within his/her scope of responsibility. Expressions of remorse may include an apology.
- Assume a forward-looking stance to learn the lessons of the past and build friendship based on the spirit of reconciliation.
- State a commitment to not repeat similar acts in the future.

Furthermore, the Commission considers that it can recommend amnesty only when the following criteria are met: (1) The alleged perpetrator invited to Public Hearings meets the "full cooperation" standards above; and (2) An amnesty recommendation will promote the goals of healing wounds of the past, rehabilitating and restoring human dignity, and contribute to reconciliation; and (3) The amnesty provision will meet procedural justice requirements, in that it is open to all relevant parties.

Rehabilitation

The Terms of Reference also provide for the Commission to "Recommend rehabilitation measures for those wrongly accused of human rights violations." The goal of rehabilitation in the Terms of Reference is to restore the reputation of those wrongly accused of committing human rights violations. The aim of rehabilitation is to restore the dignity of the accused parties by clearing their names, restoration of their previous positions (if they were negatively affected as a result of these accusations), and their social status. The term *rehabilitation* in the Terms of Reference is therefore not only limited to the legal context, but also applies to social and political contexts.

This point encompasses two important matters, namely: (1) the goals of recommendations for rehabilitation are pertinent to reconciliation, that is, as a way to heal wounds of the past and restore human dignity; and (2) The basic criteria for rehabilitation is that the Commision must prove that the accusations against the alleged perpetrator were unsubstantiated.

The Commission considers that it can recommend rehabilitation only when: (1) the underlying criteria for rehabilitation recommendation have been met, and (2) the recommendation can support the objectives pertinent to the goal of reconciliation. In other words, the rehabilitation clause in the Commission's Terms of Reference is not an obligation or an absolute requirement.

Reconciliation

Point 12 of the Terms of Reference stipulates that the Commission aims to establish the conclusive truth to "...further promoting reconciliation and friendship...". Regarding reconciliation, point 14(c)(iii) of the Terms of Reference stipulates that one aspect of the Commission's mandate is to "Recommended ways to promote reconciliation between peoples based on customs and religious values".

As a process, reconciliation is an effort to reframe the present by combining an acknowledgment of past wrongdoing with visions or ideas for a better future.[5] The Commission interprets reconciliation between the peoples of Indonesia and Timor-Leste as a process that gives consideration to prevailing values in the two states.

Point 13(d) of the Terms of Reference states that one of the working principles of the Commission is "Further promoting friendship and cooperation between governments and peoples of the two countries, and promoting intra and inter-communal reconciliation to heal the wounds of the past." Point 14(c) of the Terms of Reference also articulates the need for appropriate measures to heal wounds of the past, rehabilitate communities and individuals impacted by the violence, and restore of human dignity. With regard to these points, the Commission understands that reconciliation and healing wounds of the past are complementary and interdependent processes.

[5] John Paul Lederach, *Building Peace: Sustainable Reconciliation in Divided Society*, (Washington: USIP, 1997), 26.

The Commission understands that the emphasis in the Terms of Reference points 13(d) and 14(c) encompasses all parties impacted by the violence that took place in East Timor in 1999. Even though the Terms of Reference do not explicitly refer to reparations, because the Commission works within a general framework of restorative justice, the Commission will recommend restorative measures to overcome victims' suffering, to heal wounds of the past and to restore human dignity. These measures do not fall within the legal context, but are elements of restorative justice that are seen as necessary to promote reconciliation and friendship. Consistent with the Commission's mandate to strengthen reconciliation and friendship, these reparation measures shall be public and collective, rather than individual.

In formulating reconciliation measures between the peoples of Indonesia and Timor-Leste regarding events in 1999 in East Timor, the following principles were followed :

a. Principle of Non-discrimination.
b. Reconciliation, although implemented among the peoples of the two nations, needs to be supported by policies of the two governments, both national and bilateral. These government policies are needed as the basis for planning, implementation and supervision of the reconciliation process.
c. Reconciliation needs to incorporate the lessons learned from the past, based on the principle of honoring the independence, sovereignty, and history of the respective nations and the common history of the two nations. This principle is also a part of the process of healing wounds of the past.

Friendship

The Commission considered the following points from the Terms of Reference in defining friendship: (1) Introduction to the Terms of Reference point 7 that "The two governments are committed to resolve residual problems of the past and to deepen and expand bilateral relations both at the government and people-to-people levels..."; (2) Terms of Reference point 12 affirms that the establishment of conclusive truth about the violent events of 1999 is ultimately intended to "to further promoting reconciliation and friendship, and ensuring the non-recurrence of similar events."; (3) Terms of Reference 13(d) states that one of the Commission's working principles is "Further promoting friendship and cooperation between governments and peoples of the two countries..." Based on these stipulations the Commission fully understands that promotion of friendship between the two nations is one of the main objectives of the Commission.

The Commission further understands that friendship in this case is an innovative relation between two nations and peoples based on mutual respect, sincerity and cooperation, that generates a reconciliatory, forward-looking approach to promote peace and welfare of the two nations.

Lessons Learned

Point 10 of the Terms of Reference states that "... Indonesia and Timor-Leste have opted to seek truth and promote friendship as a new and unique approach rather than the prosecutorial process..." Furthermore in point 11 of the Terms of Reference it is affirmed that through this new and unique Commission, the two countries, who share a common history, have agreed with "courage and vision to look at the past as a lesson and embrace the future with optimism".

Lessons that can be learned are the conclusions reached by identifying and understanding specific mistakes, or weaknesses in institutions or processes that allowed acts of violence to take place in East Timor in 1999. Learning lessons from the past is one way to begin to rectify past wrongs, and to create change so similar events will not happen in the future, either in Indonesia or in Timor-Leste. The lessons learned touch upon multiple areas including systems of governance and law, and social, economic, and cultural structures.

Complexities of the 1999 Transition Period

The introduction to point 5 of the Terms of Reference emphasizes that it is very important to understand the way in which political reforms in Indonesia that were coming to a peak in 1998 that had implications for the events in 1999. These implications arise because Indonesia was undergoing a complex and radical political transformation as the Suharto regime was deposed and the new *Reformasi* era began. Furthermore point 13(b) affirms that "In the exercise of its mandate, the CTF shall bear in mind the complexity of the transitional situation in 1999, aiming at further strengthening of reconciliation and friendship between the two countries and peoples."

The Commission affirms that the conditions in Indonesia in 1999 were still in a critical, transitional stage in overcoming the impact of the monetary and political crisis. The transitional state of the government of Indonesia is highly relevant to the decision to hold a Popular Consultation in East Timor, and its implementation. The transitional nature of Indonesia's polity is also highly relevant to the political and security excesses that were encompassed within the Popular Consultation process. The Commission has addressed the complexity of the transitional situation in various parts of its report, with specific attention directed towards the topic in Chapter 4.

CHAPTER 3

MANDATE IMPLEMENTATION

The Commisison began to implement its mandate on 11 August 2005 for a period of one year. This mandate was extended for one year, according to the Terms of Reference, on 10 August 2007.[1] The Commission then received approval from the two governments to extend its mandate until the submission of its Final Report to the mandate giver. The liquidation of the Commission will be completed after the submission of the Final Report to the mandate givers.

3.1 METHODOLOGY

To fulfill its mandate, the Commission has set out and applied two types of methodologies: (1) Methodologies to seek the conclusive truth, and (2) Methodologies to produce recommendations. In seeking the conclusive truth, the Commission conducted Document Review and Fact Finding methods. Fact finding methods included: statement taking, submissions, public and closed hearings, research, and consultation with experts. These methods were used in combination to reach factual findings that serve as the basis for the Commission's conclusions as to the conclusive truth and institutional responsibility.

In producing recommendations, the methods exercised included workshops and consultation with various parties, especially with the leaders of the two countries. For a detailed explanation of the methods used for Document Review and Fact Finding, see Chapters 5 and 6 respectively. For a detailed explanation of the methods used to formulate Recommendations, see Chapter 9.

Throughout the Commission's work in conducting research and producing recommendations, the following questions formed the basis of its analytical framework:

[1] Terms of Reference point 15.

- Were there gross human rights violations committed in East Timor in 1999?
- What was the nature, causes, and scope of these violations in 1999? In other words, why did these human rights violations occur?
- What were the most relevant contextual, or historical elements to understand these events in 1999?
- What institutions are responsible for gross human rights violations in East Timor in 1999?
- What lessons can be learned from the answers to the above questions?
- How can these lessons be best applied in the future to prevent human rights violations, as well as healing the wounds of the past and promoting friendship and reconciliation?

A chart of mandate implementation methodology of the Commission appears in the Attachment 3.

3.2 CONCEPTUAL FRAMEWORK

Standards of Justice

Two standards of justice are relevant for confronting past human rights violations during transitional periods: retributive justice and restorative justice. Retributive justice is based upon the idea that crimes create an imbalance in the social order that must be remedied by punishing the perpetrator of the crime. The idea behind restorative justice, on the other hand, is that human rights violations may be remedied through comprehensively addressing the needs and relations of victims, perpetrators and communities.

Restorative justice in essence stresses a systematic response to human rights violations through measures that contribute to healing the wounds of the victim, the perpetrator and the community. Restorative justice thus aims to: remedy the mental and physical harm suffered by victims and communities; to reintegrate the perpetrator into the community; and to restore damaged relationships through promoting deeper understanding and friendship. The most important element of restorative justice is its prioritization of reconciliation rather than punishment.[2] This spirit of reconciliation through restorative justice informs alternative mechanisms of conflict resolution and mediation and has also long been practiced in various systems of traditional justice found in many parts of the world.

The mandate of the Commission excludes retributive justice and emphasizes restorative justice. This is evident from its Terms of Reference, especially its guiding principles in point 13 (c) stating that the Commission is based on a forward-looking and reconciliatory approach, and that its process will not lead to individual prosecutions but will focus on institutional responsibility. Point 13 (e) also states that CTF does not prejudice ongoing legal processes in regard to the reported human rights violations in East Timor in 1999 and also will not recommend the formation of a new prosecutorial body.

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[2] Robert I. Rotberg and Dennis Thompson (eds.), *Truth v. Justice: The Morality of Truth Commissions*, (Princeton: Princeton University Press, 2000), 79.

The emphasis on restorative justice is also evident in the Terms of Reference, point 14 (c), which clearly stipulates that the Commission is mandated to devise ways or recommend appropriate measures to heal old wounds, and to rehabilitate and restore human dignity.

The Commission understands these guidelines for recommendations to be based upon three principles that can promote restorative justice: (1) Recognition of full rights of individuals as citizens with dignity and honor as humans; (2) Civic trust that requires the restoration of people's trust to the government, legal system, police and military; and (3) Social solidarity that demands an interest and willingness of the people to empathize with others and place themselves in the position of others.[3]

Thus, the Governments of Indonesia and Timor-Leste have mandated the Commission to promote restorative justice so as to strengthen friendship between the two nations and encourage reconciliation between divided communities in Timor-Leste.

Gross Human Rights Violations

The Commission refers to the definition of Human Rights that has been universally accepted in the Universal Declaration of Human Rights (UDHR). According to UDHR (Article 1), Human Rights are inherent to every person:

"All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood."

Respect for human rights is fundamental for the creation of a more dignified and prosperous society based upon peace and security. All human beings are entitled to the promotion, fulfillment and protection of their human rights without discrimination on the basis of race, sex, language or religion.

The Commission is of the view that violations of human rights cannot be tolerated. Violations of human rights can be committed both by state actors and non-state actors. This is consistent with Article 1 (6) of Indonesian Law No. 39/1999 regarding Human Rights[4] as well as UNTAET Regulation 2001/10 regarding the formation of CAVR.[5]

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[3] John Rawls, *A Theory of Justice*, (The Belknap Press, Cambridge, 2001), 47-98.

[4] Article 1 (6) Law No. 39/1999 stipulates: "A human rights violation is any act by a person or a group of individuals including the state apparatus either intentionally or not intentionally, or any unlawful failure to undermine, obstruct, limit and/or deprive the human rights of a person or group of individuals as guaranteed by this Law, and failed to receive, or there is a concern that [the person] may fail to receive a just and appropriate legal resolution, based on applicable legal mechanisms." From this statement it can be concluded that human rights violations can be committed by non-state or state actors.

[5] UNTAET Regulation 2001/10 Article 1 (c) regarding the establishment of CAVR contains the definition of "human rights violation" which includes violations by state or non-state actors. This understanding can be seen, inter alia, in Section 3 "Objectives and Functions of the Commission" in point 3.1 (d) where it is stated that the commission's goals include: "identifying practices and policies, whether of state or non-state actors which need to be addressed to prevent recurrences of human rights violations."

The Commission has considered previous accounts of human rights violations in East Timor in 1999. All of these conclude that the violence in 1999 can best be categorized as crimes against humanity as defined in Article 5 and Article 7 of the Rome Statute.[6] The Commission has also studied the findings and conclusions from the Ad Hoc Human Rights Tribunal in Jakarta, CAVR Report and SCU-SPSC and other documents. Based on these references, the Commission has decided to employ the conceptual framework of crimes against humanity as defined in the Rome Statute of the ICC and the jurisprudence of the international tribunals in conducting its analysis of human rights violation that occurred in 1999 in East Timor.

Operational Definition

Article 7 (1) of the Rome Statute of the ICC specifies that "crimes against humanity" include any one of a series of specified offenses "when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack"

These specified offenses constituting crimes against humanity include: (1) Murder; (2) Extermination; (3) Deportation or forcible transfer of population; (4) Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law; (5) Torture; (6) Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity; (7) Enforced disappearance of persons; and (8) Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.

In carrying out its mandate to make findings on gross human rights violations, the Commission applies the definition of crimes against humanity in article 7 (1) of the Rome Statute-ICC. Based on Article 7 (1) of the Rome Statute of the ICC, there are three requirements that constitute the *chapeau elements* of gross violations of human rights in the form of crimes against humanity, namely:

a. An attack directed against any civilian population
b. The attack is committed in a widespread or systematic manner
c. Knowledge that the conduct of the accused is part of the attack

According to Article 7 (2), the phrase "attack directed against any civilian population" means "a course of conduct involving the multiple commission of acts referred to in paragraph 1 against any civilian population, pursuant to or in furtherance of a State or organizational policy to commit such attack."

The terms widespread or systematic are disjunctive requirements.[7] Either one would be sufficient to prove the *chapeau elements*. It is the widespread or systematic character of the attack as a whole, and not of the individual conduct of the accused, that needs

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6 Law No.26/2000 Article 7, also states that: "Gross Violations of Human Rights include: a. genocide, b. crimes against humanity."

7 International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of Former Yugoslavia since 1991 (ICTY), *Stakic Appeals Judgment*, Case No. IT-97-24-A, (22 March 2006), Para 246. http://www.un.org/icty/stakic/appeal/judgement/sta-aj060322e.pdf (Accessed 1 March 2008)

to be proven.[8] In other words, a single act of murder, torture, or rape, can constitute a crime against humanity when the act is a part of a widespread or systematic attack against a civilian population.

The term widespread refers to the character and scope of the attack and the number of people that were targeted, whereas *systematic* refers to the character of the violence that is organized and the improbability that such violence occurred randomly.[9]

The pattern of crime, in the sense of a non-accidental repetition of a similar act of crime, can serve as an indicator of a systematic event. To determine a systematic character of an attack there is no requirement of a policy according to the jurisprudence of the ICTY and the ICTR.[10] Factors that are indicative of a systematic attack include: (a) geographic and temporal distribution, and a repetitive character of the way the attack was conducted; (b) patterned activities; (c) evidence of planning, training and organization; (d) commander's or leader's statement indicating a purposive nature of an act of crime and how the act relates to the larger context of violence; (e) organized targeting with a certain victim category (for example name lists); (f) organized logistical, financial and ideological support.

The required mental element (*mens rea*) of a crime against humanity is met if the perpetrator has the intention to commit the underlying offense of which he is accused; and if he knows of the attack against a civilian population and also knows that the underlying offense is a part of the attack.[11]

Concept Implementation

In order to reach a finding about whether or not gross human rights violations took place in East Timor in 1999, a number of criteria or questions need to be met as elaborated in the operational definition about gross human rights violations above.

Of the three requirements of the chapeau elements for gross human rights violations in the form of crimes against humanity, two are of particular importance for fulfilling the Commission's mandate, namely: (1) the attack is directed at a civilian population, and (2) the attack is widespread or systematic. The mental element (*mens rea*) is primarily relevant for individual responsibility, which falls outside the Commission's mandate to focus on institutional responsibility.

To establish the element of "an attack against a civilian population" three components need to be considered: (1) "attack"; (2) "against"; (3) "a civilian population."

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8 ICTY, *Kordic and Cerkez Appeals Judgment*, Case No. IT-95-14/2-A, 17 December 2004, para 94. http://www.un.org/icty/kordic/appeal/judgement/cer-aj041217e.pdf (accessed 1 March 2008)

9 ICTY, *Blaskic Appeals Judgment*, Case No.: IT-95-14-A, 29 July 2004, para 101. http://www.un.org/icty/blaskic/appeal/judgement/bla-aj040729e.pdf (accessed 1 March 2008).

10 According to ICC Statute Article 7(2)a there is a policy requirement for the chapeau elements. The ICTR and ICTY Appeals Chamber has held that a policy requirement does not exist under international customary law. Because the Commission has focused its analysis on the operational level of the commission of gross human rights violations, and because Indonesia is not a signatory to the Rome Treaty, the Commission follows the definition adopted by the ICTY and ICTR.

11 ICTY, *Kordic Appeals*, para. 99.

An "attack" does not require the use of armed force. An "attack" can be understood as violence or mistreatment directed against a civilian population. The term "against" means that a civilian population is the target of the attack, and that it was not a matter of civilians as victims of random acts. The attack in such a case was not indiscriminate, but was directed against a civilian population. The definition of "civilian population" does not require the involvement of the entire population of a country or a region where the attack took place. What is important to note is that the attack was not directed against a limited number of randomly selected individuals, but a group of civilians whose number is sufficient to be called a civilian population.

The element of "widespread or systematic" as stipulated in the Operational Definition section is a disjunctive element. If in the attack against a civilian population either the widespread or systematic characteristics are established, then this requirement is met.

In order to determine if an attack against a civilian population can be categorized as widespread, factors such as the extent of the attack, the number of victims, its geographic scope, the multiplicity of incidents, and its duration must be considered.

In order to ascertain whether the attack has been perpetrated systematically, the factors that may be analyzed include: (1) Whether the attack was perpetrated in an organized manner or chaotically or randomly (2) Whether there are underlying patterns or prior planning, and (3) Whether there is an explicit or implicit policy or an articulation of political or ideological goals linked to the attack.

To determine whether the attack has been done in an organized manner or chaotically and randomly, factors to be considered include whether a certain population group was targeted; whether there was planning, briefings, orders, or direction from officers or superiors; whether the perpetrators received training, equipment, or logistical or financial support.

To determine if there was a pattern in the attack or the violence that took place, factors to be considered include whether there is an underlying similarity between the various incidents that took place, or a repetition of the types of attacks; whether the various incidents constituting the attack all aimed to achieve certain ideological or political goals.

Although the existence of a policy is not required to establish the systematic element, the presence of such a policy can provide strong evidence about the systematic, organized and planned character of the attack. This policy may be official or unofficial, written or unwritten, formal or informal. It may exist even though no public official has ever stated that there is such a policy. The presence of such a policy can be inferred from the facts of the case, and particularly from the failure of officials to suppress violence against civilians carried out repeatedly and over an extended period of time. The existence of a policy can also be inferred from the degree of organizational support, logistical or financial resources, and coherence or consistent patterns manifested in the attack; it can also be inferred from the statements, remarks, reports or memoranda from civil or military authorities.

Institutional Responsibility

One of the most important working principles, as specified in the Terms of Reference point 13 (c), is that "based on the spirit of a forward looking and reconciliatory approach, the CTF's process will not lead to prosecution and will emphasize institutional responsibilities."

Institutional responsibility is not a concept derived from criminal law. Institutional responsibility is based upon the moral and political responsibility of states for the wrongdoing committed by individuals with a sufficient connection to state institutions. The criminal law only recognizes individual responsibility, and pursues it through prosecution. Mindful of the Commission's non-judicial nature and its mandate, the Commission has limited its inquiry to institutional responsibility.

The Commission understands that acceptance of state responsibility for gross human rights violations includes the following dimensions:

a. Assuming moral and political responsibility for gross human rights violations vis-a-vis the role and the authority inherent to the institution in question.
b. Healing wounds of the past to restore human honor and dignity.
c. Ensuring non-recurrence of similar events in the future by the promotion and protection of human rights.
d. Continuing to promote reconciliation and friendship through a series of recommendations by the Commission to the two heads of state.

Operational Definition of Institutional Responsibility

In implementing the Commission's mandate, the main idea behind institutional responsibility is that states must accept responsibility from the moral and political perspective for the gross human rights violations committed, either directly or indirectly, by state institutions or members of those institutions.

To establish institutional responsibility first requires a finding that gross human rights violations occurred. It must then be determined whether the connection between the perpetrators of these violations and state institutions is sufficient so as to ground a finding of institutional responsibility. Such a finding is based upon analysis of the factual circumstances according to criteria including the following:

1. There was institutional participation inferred from the systematic and organized character of the operations resulting in gross violations of human rights that were carried out by its members, or individuals or groups acting jointly with them or under their control. The terms "organized" and "systematic" in this case refer to the definitions articulated above.

2. There was institutional participation through the support, encouragement, planning, organization, or direction provided to the perpetrators of gross human rights violations even though those perpetrators may not have been members of the institutions responsible. These forms of indirect participation must be substantial enough to justify a finding of institutional responsibility. Factors to be

considered include the scope, degree, duration, consistency, and openness of such forms of indirect participation. Policies indicating such institutional participation may provide strong evidence indicating institutional responsibility and such policies may be inferred from the factual circumstances as described above.

3. There is either explicit or implicit institutional approval of the violence. This approval can be made implicitly when:

   (a) The violation committed by members of the institution has been reported to the institution but there was no effective action taken by the institution to stop the act or prevent it from reoccurring.
   (b) The violation was committed in a wide scope, over an extended period of time, or systematically, without effective actions taken by the institution to stop the action or prevent the action from continuing.

Implementation of the Concept of Institutional Responsibility

To find institutional responsibility, two questions need to be answered:

1. At the operational level where the gross human rights violation occurred, can a coordinated pattern of activity of substantial temporal or geographic scope be inferred from the factual circumstances?

2. At the operational level, does the coordinated pattern of activity indicate which institutions took part in or contributed to the activity? Institutional participation can be seen in two forms, namely (a) the members of the institution participated directly or indirectly in the crimes; (b) the institution provides regular and substantial support in terms of organization, resources, guidance, training or planning to the perpetrator of the crime.

Basically the answer to the first question can be found in applying the same criteria as used to establish the "widespread or systematic" element for crimes against humanity as articulated above. All factors that determine "widespread or systematic" must first be reviewed to determine whether there was substantial evidence to support a finding that there has been an organized and coordinated pattern of activity that demonstrates the involvement of certain institutions within a certain timeframe. This involvement can take either of the two forms described above.

3.3 SUMMARY OF COMMISSION'S ACTIVITIES

The Commission began its work in August 2005, immediately after the inauguration of the Commission members on 11 August 2005 in Denpasar by the President of the Republic of Indonesia and the President of the Democratic Republic of Timor-Leste. The discharge of the Commission's work refers to its mandate as set out in the Terms of Reference of the Commission agreed by the Heads of State/Government of Indonesia and Timor-Leste on 9 March 2005 in Jakarta. A summary of activities carried out by the Commission follows:

Document Review

The Commisison conducted the collection of documents required for its document review. The KPP HAM report was received by the Commission through the Directorate of Human Rights and Humanitarian Affairs of the Department of Foreign Affairs of Indonesia. Documents that pertain to the legal process (investigation, indictment and trials) of the Ad Hoc Human Rights Tribunal of East Timor in Jakarta, were obtained from the Prosecutor General of RI, the Supreme Court of RI and the Central Jakarta District Court.

The CAVR Report was received by the Commission officially in December 2005.[12] Even though the CAVR Report had not yet been disseminated then, the President of RDTL approved that the CAVR Report can be used by the Commission to help in the implementation of its mandate.

Pursuant to the Memorandum of Understanding (MoU) with *Ministério Público de Timor-Leste* or the Office of the Attorney General of Timor-Leste regarding opening of access to documents possessed by the institution, signed on 12 January 2007, the Commission has collected documents and evidence produced from investigation and indictments prepared by the Serious Crime Unit of Timor-Leste regarding Human Rights violations in East Timor in 1999 that were introduced to the Dili District Court. The Commission also accessed documents in the public database at the Museum of Resistance in Dili, Timor-Leste.

The first phase of document review was conducted from January until March 2006. This review established 14 priority cases as reference for the fact finding process. The fourteen cases were compiled in a report as a basis to be refined and verified using other methodologies.

The second phase of document review was conducted from February until October 2007. During this stage, the Commission conducted a document review with the assistance of the Commission's Expert Advisor, Prof. David Cohen, an international law expert from the Berkeley War Crimes Studies Center at the University of California - Berkeley and his research teams in Dili and Jakarta. The Expert Advisor and his research team conducted comprehensive research of documents and reports from the four institutions. The emphasis of the second phase of document review was on the analysis about the process and substantive findings regarding gross human rights violations and institutional responsibility as carried out by KPP HAM Indonesia, the Ad Hoc Human Rights Tribunal in Jakarta, SCU-Attorney General of Timor-Leste and CAVR Timor-Leste.

Fact Finding Activities

Statement-Taking and Interviews

Statement-taking and interview of connected parties began in January 2007. The names of parties connected to cases of violence in 1999 in East Timor were obtained

[12] The President of the Democratic Republic of Timor-Leste (RDTL) submitted the CAVR Final Report to the National Parliament of Timor-Leste on 30 November 2005, and in January 2006 the same report was submitted by the President of RDTL to the United Nations Security Council.

from the intial stage of the document review and totalled about 280 individuals. By the conclusion of its mandate, the Commission succeeded in collecting statements and interviews from 108 individuals of the approximately 280 names identified. Most of these individuals, including alleged perpetrators, witnesses as well as victims, live in East Nusa Tenggara (NTT), while others live in other regions in Indonesia as well as in Timor-Leste.

Specifically for NTT, especially Kupang, So'e, Kefamenanu and Atambua, in its statement taking activity, the Commission was assisted by the Commission of Justice and Peace of the Archdiocese of Kupang and the Center for Internal Displacement Services-Kupang (CIS Timor-Kupang) between February-May 2007. See Attachments 4 and 5 for a complete breakdown of CTF Statement Taking/Interview activity.

Submissions

Regarding submissions, the Commission sent 20 submission requests to various parties following a set of established criteria. The Commission also published announcements directed to members of the public who may be in possession of important information related to the violence that took place in East Timor in 1999 to make voluntary submissions. By the end of its mandate, the Commission received twelve submissions. See Attachment 9 for a complete list of submissions.

Hearings

The Commission held six Public Hearings and eight Closed Hearings, all in 2007. Five of the public hearings were held in Indonesia in February, March, May, July and October, and one in Dili in September. Closed hearings were held five times in Indonesia in March, June and November, and three times in Dili in September. In all, by the end of its mandate period, 62 individuals appeared to provide their testimony before the Commission. See Attachments 6-8 for a complete breakdown of CTF Public Hearings.

Research

In addition to the statement taking/interview process in the field, secondary source research was conducted throughout the Commission's mandate period. The Commission consulted multiple sources as part of its literature review including publicatons from the *Center for Strategic and International Studies* (CSIS), The Social and Politcal Sciences Faculty (FISIP) of the University of Indonesia, the National Library, and *The Habibie Centre.*

Secondary source research conducted by the Commission was mainly aimed at analyzing the transitional situation in Indonesia as well as the historical-political context in East Timor in 1999.

Discussions with Experts/Special Sources

Fourteen discussions with experts were held in the mandate implementation period. These discussions were held in Jakarta, Denpasar and Dili around the same time as the Commission's plenary sessions. The choice of experts and sources invited was determined by their knowledge and experience in the relevant field, as well as by the information the Commission sought in accordance with its mandate. See Attachment 10 for list of Expert Discussions held by the Commission.

Socialization and Public Relations Activities

Socialization and meetings with stakeholders

In carrying out its mandate, the Commission has held a number of socialization meetings and dialogues with stakeholders in the province of East Nusa Tengara (Atambua, Naibonat, Tuapukan, Kota Kupang), Bali (Denpasar), Jakarta, and Timor-Leste (Dili, Liquiça). In the period of 2005-2007, 16 such limited socialization/ dialogue meetings were held, involving government officials of both states, human rights NGOs, experts and observers, as well as editors-in-chief of media. As for open socialization/dialogue meetings, 14 such events were held with relevant communities as well as the diplomatic community and experts.

Seminar

The Commission held a seminar on 7 September 2006 with the theme "Strengthening the Friendship of Indonesia – Timor-Leste: Efforts to Reveal the Conclusive Truth through CTF" at Hotel Nikko, Jakarta. This seminar was intended as socialization to the public of Commission mandate implementation. Speakers at this seminar included Dionisio Babo-Soares, Ph.D., Co-Chairman of CTF from Timor-Leste; Abdul Hakim Garuda Nusantara, Head of Komnas HAM Indonesia; Marzuki Darusman, Chairman of ASEAN Human Rights Mechanism Working Group; Mochamad Slamet Hidayat, Director General of Multilateral Affairs, Department of Foreign Affairs of Indonesia; and Prof. Robert Evans, reconciliation expert with Plowshares Intitute.

Interactive Dialogue

The Commission held twelve interactive dialogues on television and radio stations, namely TVRI, TV Timor-Leste, TVRI Kupang, TVRI Denpasar, BeluTV-Atambua, Radio Rajawali-Belu, Radio Suara Timor-Kupang, Radio Timor-Leste, Radio Timor K'manek, Radio Utan Kayu-Jakarta, and Radio ElShinta-Jakarta.

Press Conferences and Press Releases

Throughout the Commission's mandate, seven press conferences were held and 19 press releases were issued. Press conferences were usually held after hearings. While press releases were aimed at distributing important information about Commission activities through mass media. In addition, interviews with the media were held in Indonesia and Timor-Leste.

Meeting with media leadership

A roundtable with editors-in-chief of the Indonesian media was held in Jakarta on 1 May 2007. This meeting was conducted to socialize the progress of the Commission's mandate implementation in Indonesia.

CTF Website

To disseminate information to the public the Commission deisgned and published information about the Commission's activities through its website, www.ctf-ri-tl.org

Friendship Workshop

As one of the methods used to obtain input from various parties to formulate its recommendations, the Commission held three friendship workshops attended by stakeholders in the context of Indonesia – Timor-Leste relations.

The first workshop was held in Denpasar on 28 July 2007. The speakers included Prof. Dr. Kjell-Åke Nordquist, expert in conflict resolution from Uppsala University, Sweden; Haris Nugroho, representative from the Directorate of Political, Security and Territorial Treaties of the Department of Foreign Affairs of RI; Roberto Soares, representative from the Ministry of Foreign Affairs and Cooperation of Timor-Leste; Djafar Assegaf, Indonesian Press Council; and Virgílio da Silva Guterres, President of the Timor-Leste Association of Journalists; Joachim Lopez, *Bupati* of Atambua; and representatives of East Timorese community in Atambua. This workshop was attended by the public, NGOs and mass media.

The second workshop was held in Dili on 28 September 2007. Speakers at this workshop included, among others, Pastor Domingos Sequeira, Pr., Lecturer at Fatumeta High Seminary, Dili; and Prof. Asvi Warman Adam, historian at the Indonesian Academy of Sciences (LIPI). Present at this workshop were representatives of victims, NGOs, mass media and the government of RDTL.

The third workshop was held in Jakarta on 23 October 2007. Speakers included John A. Heffern, Deputy US Ambassador in Jakarta; Judo Poerwowidagdo, conflict resolution expert; Prof. Hikmahanto Juwana, international law expert; Arif Havas Oegroseno, Director of Political, Security and Territorial Treaties, Department of Foreign Affairs of RI; Francisco Cepeda, Director of Multilateral Affairs, Department of Foreign Affairs and Cooperation RDTL; Fernando Hanjam, Lecturer of Economics, National University of Timor-Leste; and Filomeno Hornay, East Timorese community figure in Kupang. This workshop was attended by stakeholders in Indonesia and Timor-Leste.

Consultations with Mandate Givers

Consultations with the mandate givers were conducted to report on the progress of the Commission's mandate implementation and obtain input regarding the Commission's mandate implementation. Consultations with mandate givers were formally held six times, specifically:

1. With the President of RI, Dr. Susilo Bambang Yudhoyono and President of RDTL Kay Rala Xanana Gusmão on 17 February 2006, at Tampak Siring Palace, Bali;
2. With the President of RDTL Kay Rala Xanana Gusmão and Prime Minister of RDTL, Dr. Mari Alkatiri, in Dili on 20 February 2006;
3. With the President of RDTL, Dr. José Ramos-Horta, on 21 September 2007, in Bali;
4. With the Prime Minister of RDTL Kay Rala Xanana Gusmão on 24 September 2007, in Dili;
5. With the former Prime Minister of RDTL, Dr. Mari Alkatiri on 24 September 2007, in Dili;
6. With the President of RI, Dr. Susilo Bambang Yudhoyono, on 26 October 2007 in Jakarta;

The Commission also held a series of consultations with the two governments at the Foreign Minister level, specifically:

1. Consultation with the Minister of Foreign Affairs and Cooperation of RDTL, Dr. José Ramos-Horta on 20 February 2006, in Dili;
2. Consultation with the Minister of Foreign Affairs of RI, Dr. Hassan Wirajuda, on 28 June 2006 in Jakarta;
3. Consultation with the Minister of Foreign Affairs and Cooperation of RDTL, Dr. José Luis Guterres on March 2007, in Dili;
4. Consultation with the Minister of Foreign Affairs of RI, Dr. Hassan Wirajuda, and Minister of Foreign Affairs and Cooperation of RDTL, Dr. Zacarias Albano da Costa, on 30 October 2007, in Jakarta.
5. Consultation with the Minister of Foreign Affairs of RI, Dr. Hassan Wirajuda, and Minister of Foreign Affairs and Cooperation of RDTL, Dr. Zacarias Albano da Costa, on 25 April 2008, in Ubud, Bali.

In addition to consultations with mandate givers and the two governments at the ministerial level, the Commission also conducted courtesy visits and dialogues with:

1. Leaders of the Parliament of Timor-Leste, on 20 February 2006 in Dili.
2. President of the High Court of Timor-Leste, on 20 February 2006 in Dili.
3. Minister of Defense of RDTL and Commander of FDTL, on 21 February 2006, in Dili.
4. Special Representative of the UN Secretary General, on 25 February 2006, in Dili.
5. Minister of Defense of RI, on 20 June 2006, in Jakarta.
6. Minister of Defense of RDTL and Commander of FDTL, on 21 February 2006, in Dili.
7. Commander in Chief of TNI, on 21 June 2006, in Jakarta.
8. Commission I (Defense, Foreign Affairs and Information) of the Council of People's Representatives RI (DPR RI), on 22 June 2006, in Jakarta.
9. Coordinating Minister for Politics, Law and Security of RI, on 23 June 2006, in Jakarta.
10. Chief of National Police of RI (Kapolri), on 29 June 2006, in Jakarta.

Plenary Meetings

Plenary meetings of the Commission served as a forum to make decisions among the Commissioners to determine the strategy and direction of CTF mandate implementation. Plenary sessions were held regularly and were marked with intensive discussions and exchange of ideas. By the end of the mandate period, 36 plenary sessions had been held, both in Indonesia and in Timor-Leste. Plenary sessions are usually held for 12 working days and discussed issues related to substantive and procedural/organizatorial matters. See Attachment 11 for a complete listing of plenarry sessions held by the Commission.

Details about the Commission's activities can be found in the Appendices, and the Commission's periodic progress report available in the CTF Archives collection.

PART II

FINDINGS AND ANALYSIS

CHAPTER 4

HISTORICAL, SOCIAL AND POLITICAL CONTEXT

The Commission's mandate focuses on determining the nature of human rights violations in East Timor in 1999, and on the corresponding institutional responsibility for those violations. The mandate also tasks the Commission with consideration of the context for these events. Chapter 4 addresses that context by briefly describing basic points of history and institutional structures most relevant to understanding the events of 1999. The Commission does not intend that this presentation of the context represent a complete history of the conflict. Indeed, the events that occurred before 1999 are outside of the Commission's mandate and not the subject of its research or fact-finding. Rather, the historical, social and political factors discussed below were the most essential points of agreement in the Commission's construction of a framework for consideration of the issues to be the subject of its findings.

4.1 1974-1999 HISTORICAL BACKGROUND

From 1975-1999, there was a period of Indonesian presence[1] in East Timor, which was supported by some who favored integration and opposed by others who desired independence. The presence of these opposing political factions in East Timor may be traced back to the differences in political asprirations dating to the beginning of the Portuguese decolonization policy in 1974.

In 1974, in the aftermath of the "Carnation Revolution" that deposed the former, Salazarist regime, Portugal enacted a decolonization program for all its colonies based on the principle of self-determination.[2] On 27 July 1975 Portuguese Law No. 7/1975 provided for holding an election in Portuguese Timor for a people's assembly

[1] The nature of the process by which East Timor was integrated into Indonesia has been the subject of controversy. The two parties to the conflict have opposing intepretations of this process which it is difficult to reconcile. It is not within the scope of the Commission's mandate to make a final determination of the legal status of the Indonesian presence in East Timor.

[2] UN Resolution GA1514/1960 had already affirmed the right to self-determination of colonized peoples.

in 1976. This people's assembly would then form a new government and Portugal was to hand over its authority to a new Timorese state in October 1978.[3]

Political Party Formation and Internal Conflict

The decolonization process was greeted in Portuguese Timor by the formation of political parties each with its own aspirations. The three most important political parties were *União Democrática Timorense* (UDT) who wanted independence in stages through "progressive autonomy" under Portugal, *Frente Revolucionária do Timor Leste Independente* (Fretilin) who advocated immediate independence, and *Associação Popular Democrática de Timor* (Apodeti) who desired an autonomous integration with the Republic of Indonesia. Smaller political parties were later established, including *Klibur Oan Timor Assuain* (KOTA) and the *Partido Trabalhista* (Labor Party).

In January 1975 UDT and Fretilin formed a coalition based on the principle of independence, rejection of integration with Indonesia, and the formation of a transitional government consisting of representatives of both parties. But this coalition failed to overcome the differences between the respective parties' supporters and it broke apart in May. The situation quickly deteriorated, to the point that there was some open conflict between the supporters of both parties.[4]

On 11 August, UDT, with the support of the Portuguese Timor police commander, launched an armed movement and occupied a number of government facilities and arrested and detained hundreds of Fretilin leaders. Fretilin, with support from Timorese members of the colonial army, launched a counter attack against UDT on 20 August, 1975. With the attention of the central government of Portugal focused elsewhere, and in the face of a deteriorating security situation, on 26 August 1975 the Governor of Portuguese Timor, Mário Lemos Pires, moved to Ataúro island with a group of the remaining government officals. In the aftermath of this armed conflict, UDT members sought refuge in Indonesian territory in early September 1975 and Fretilin remained in control of the territory. The three other parties - Apodeti, KOTA and Trabalhista - followed UDT in crossing the border. They had with them thousands of people who entered Atambua.

Early Indonesian Contact with Pro-Integration Groups

Beginning in mid-1974 Indonesia initiated contact with East Timorese pro-integration supporters. After the beginning of the armed conflict between UDT and Fretilin, these contacts led to joint combat operations in East Timor with members of Apodeti and UDT.[5] From August through September 1975 there was a period of horizontal conflict in East Timor. Following October 1975, elements of a vertical

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[3] Portuguese government Decree No. 203/1974 and Indonesian Law No. 7/1975 as published in Heike Krieger, ed. *East Timor and the International Community: Basic Documents* (Cambridge: Cambridge University Press, 1997)

[4] Helen Mary Hill, *Gerakan Pembebasan Nasional Timor Lorosae* (Dili: Yayasan HAK dan Sahe Institute for Liberation, 2000), 171. The Commission here takes note of the Submission of Leigh-Ashley Lipscomb on the background to the local context of the conflict in East Timor in 1999, *Spontaneous Retribution: Local Dimensions of the conflict in East Timor in 1999*, 15 November 1999, CTF Archives.

[5] Julius Pour, *Benny: Tragedi Seorang Loyalis* (Jakarta: Kata Hasta Pustaka, 2007), 183-188.

conflict increasingly emerged as the Indonesian military became involved with Timorese pro-integration groups and established its presence in East Timor. Future developments in East Timor were also characterized by both horizontal and vertical dimensions to the conflict.[6]

Declaration of Independence by Fretilin and Integration Declaration

Fretilin proclaimed a unilateral declaration of independence on 28 November 1975. This declaration was not recognized by the Portuguese government. Two days later, four political parties, UDT, Apodeti, KOTA, and Trabalhista, proclaimed their desire for integration of East Timor into Indonesia, known as the Balibo Declaration. Portugal did not recognize both declarations because it still considered itself as the "administering power," and maintained that the problem of Portuguese Timor should be resolved through a referendum involving all political parties.[7]

Indonesia's Response

Indonesia officially stated that it did not hold any territorial ambitions over East Timor and considered the so-called Balibo Declaration as the valid statement of popular political will. The Indonesian government regretted Fretilin's proclamation and stated it "... can appreciate the sympathies and profoundly understand the proclamation of UDT, APODETI, KOTA and TRABALHISTA parties who, in the name of the people of Portuguese Timor declare integration into the State of the Republic of Indonesia."[8]

UN's Response

The UN, through the General Assembly Resolution No. 31/53 of 1 December 1976, rejected integration and called for holding of an exercise of the right to self-determination through internationally recognized means. Every year through 1981 the UN issued resolutions that affirmed the right of the people of East Timor to self-determination. In 1982 the UN General Assembly requested the Secretary General to initiate consultations with all relevant parties to achieve a comprehensive resolution. In all, there were 10 resolutions, two from the Security Council, and eight from the General Assembly.[9] The status of East Timor within the UN was a "Non-Self Governing Territory." It was therefore included in the agenda of the UN Decolonization Committee and in the General Assembly East Timor was discussed under the item heading: the Question of East Timor. The UN Secretary General's initiative led to the start of the tri-partite dialogue between Indonesia and Portugal under the auspices of the UN Secretary General.

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6 "Horizontal conflict" refers to the internal dimension of conflict between Timorese groups. The "vertical" dimension refers to the conflict between the resistance movement and Indonesia.

7 *Comunicado Comissão Nacional de Descolonização*, point 6 (29 November 1975); United Nations Department of Political Affairs, *Trusteeship and Decolonization*, No. 7 (August 1976), 44.

8 Sukanto, *Integrasi: Kebulatan Tekad Rakyat Timor Timur* (Jakarta: Yayasan Parikesit, 1976), 290-291.

9 UN Security Council Resolutions No. 384 (1975) of 22 December 1975 and No. 389 (1976) of 22 April 1976. UN General Assembly Resolutions No. 3485 of 12 December 1975, No. 31/53 of 1 December 1975, No. 32/34 of 28 November 1975; No. 33/39 of 13 December 1975; No. 34/40 tanggal 21 November 1979; 35/27 of 11 November 1980; No. 36/50 of 24 November 1981; and No. 37/30 of 23 November 1982.

Formation of a Provisional Government of East Timor

In a period which saw the inception of Indonesian military presence, on 17 December 1975 the "East Timor Provisional Government" (*Pemerintah Sementara Timor Timur*, PSTT) was formed consisting mostly of UDT and Apodeti organizers.[10] The provisional government formed a body called "East Timor Popular Assembly" (*Majelis Rakyat Timor Timur*, MRTT) consisting of individuals symbolically representing the people from all districts of East Timor. On 31 May, 1976, the MRTT held a meeting where they composed a petition that was signed by Arnaldo dos Reis Araújo as the head of PSTT and Guilherme Gonçalves as the head of MRTT. This petition requested that President Soeharto officially include East Timor as an Indonesian province. On 17 July, President Soeharto signed Law No. 7/1976 which officially declared East Timor as the 27th province of the Republic of Indonesia. Since this date the positive law of Indonesia applied in East Timor.

The Governance of East Timor (1976-1999)

Mindful of the fact that there was still a resistance movement that did not accept Indonesia's presence in East Timor, Indonesia resorted to several approaches in governing East Timor. The first was a security approach through which the Indonesian military actively conducted military operations against the resistance movement. Several members of the East Timorese pro-integration faction participated in these groups of Civilian Resistance (Wanra) and Trained Civilians (Ratih). Wanra and Ratih were involved in military operations against the resistance movement. Some of these Wanra and Ratih groups formed at that time were also active during the conflict in 1999 and included Halilintar, Tim Alfa, and Tim Saka. From 1982 this security approach was formalized as part of the doctrine of the Total Defense and Security System (Sishankamrata).[11] The Sishankamrata system was applied throughout Indonesia at the time, according to the perceived intensity of the threat, based on Indonesian Law 20/1982 on Basic Provisions of National Defense and Security.

The second approach was welfare-based to win the hearts and minds of the East Timorese by intensifying development projects in several sectors, such as education and infrastructure.

The security approach, however, was often the cause of excesses which resulted in civilian deaths and other human rights abuses. The existence and strategies of Indonesian institutions, including the militiary, in East Timor strengthened the resolve of the pro-independence supporters, who continued their movement through various forms (armed and un-armed) until the vote for the Popular Consultation in 1999.

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10 Soekanto, *Integrasi*, 380.

11 Previous laws include Law No. 3 of 1948 regarding Defense of RI, Law No. 29 of 1974 regarding Defense of RI, Law No. 29 of 1954 regarding Defense of RI and Law No. 66 of 1958 regarding Military Conscription.

The reforms and democratization taking place in Indonesia and the end of the centralized government system of the New Order were marked by the resignation of President Soeharto in 1998 and by the decline of the authority of the security forces throughout Indonesia. Meanwhile, pro-independence groups were able to conduct their activities more openly. This phenomenon increased in solidity after the Habibie administration offered East Timor the special autonomy option in June 1998. The uncertainty of the government and the security forces in East Timor about their authority and proper role at that time was not a unique situation in the context of the reform era in Indonesia. Similar situations of conflict were also occuring in Ambon, Kalimantan, and Aceh.

4.2 THE ORGANIZATION OF THE INDONESIAN GOVERNMENT IN EAST TIMOR

Civil Administration Structure

The civil administration structure in the province of East Timor was similar to that of the other provinces of Indonesia under Law 5/1974 on Principles of Local Administration as the juridical basis for local administrations in Indonesia. The province of East Timor was governed by a Governor. Every district had a Head of District (Bupati) under whom were a number of Sub-districts (kecamatan) led by a Camat. The Indonesian government formalized this structure all the way down to the RT (neighborhood units).

Governor

As the head of the Level I region of East Timor, the governor held the highest position of civilian authority as the representative of the central government in the region. In carrying out his duties, the governor had functional relations with the Regional Parliament whose authority was over the legislative sector.

Additionally, at the provincial level, there was the The Regional Leader Deliberation Forum (Muspida). The Muspida was a forum for consultation and coordination comprising the Governor, the commander of Korem, Head of the Provincial Police, Head of the Public Prosecutor's Office (Kajati), and, as Advisor, the President of the High Court. The Muspida structure was also repeated at the second level of governance to act as a coordinating body in each district between the head of the regency (Bupati), and the military district commander (Dandim), head of the district police (Kapolres), and the District Attorney (Kajari). A similar system existed at the sub-district level (Muspika).

The governor was assisted by a Deputy Governor, four Assistants, a Regional Secretary, and a number of staff members whose responsibility was to handle their own sections. The governor's staff was comprised of the following bodies: Regional Secretariat, Regional Inspectorate, Regional Development Planning Board (Bappeda), Development Board of Education and Implementation of the Guidelines for the Embodiment and Practice of Pancasila (BP-7), and the Regional Investment Coordinating Board (BKPMD). The governor presided directly over the regional

implementation units, regional offices and government-owned facilities, Bupatis and mayors, as well as a staff of governor's assistants to coordinate, supervise and facilitate implementation of government initiatives by the Bupatis.

To facilitate coordination in the supervision and development of general government functions and development by all the Bupatis at tier II of government, three regions were established. Each region was coordinated by a Governor's Assistant, a position usually filled by a military officer.[12]

In the province of East Timor there were also regional offices representing the departments of the central government at provincial or district levels. In their duties and functions at provincial level, these offices were under the supervision and control of the governor, while in the districts the function was performed by the Bupati. Public officials during the New Order period were elected by the DPRD.

Regional Secretary (Sekwilda)

The second most important executive position in the province was that of the Regional Secretary who was appointed as part of the civil service bureaucracy. The Sekwilda had control over the regional budget and therefore it was an influential position.[13] In the beginning, this position was filled by an East Timorese although, subsequently, every Sekwilda position (except one) was held by ABRI officers.

The People's Representative Council

The People's Representative Council (DPR) was the legislative body operating at several tiers of the government structure throughout Indonesia, namely, the central (DPR), provincial (DPRD tier I) and district (DPRD tier II) levels. The Speaker of the DPRD and the Governor were vested with the highest powers at the provincial level. During the New Order administration the DPRD (tiers I and II) by law was part of "the government", and not fully a legislative body as would be the case under a separation of powers arrangement.

The first DPRD in East Timor was formed in 1976. Thirty DPRD members were appointed. At that time, the DPRD Tier II was also formed with the agreement of the Muspida.[14] In 1982 the first general election was held in East Timor. A total of 311,375 East Timorese citizens cast their ballot. The results showed that almost 100% of the registered voters had voted for the Golongan Karya party. As a result of this first election, 36 individuals obtained seats in the provincial DPRD, while eight

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12 John Pedersen and Marie Arnberg, *Social and Economic Conditions in East Timor* (Oslo: International Conflict Resolution Programme, Columbia University and Fafo Institute of Applied Social Science, 2001), 117.

13 Ibid., 116. See also: Radjakarina Brahmana, Sekwilda Tk I Timor Timur, "Surat Tuntutan a.n. Terdakwa Drs. G.M. Timbul Silaen," Reg. Perkara No. 01/HAM/TIM TIM/02/2002 (25 July 2002), 73. His original statement reads: "Bahwa benar Pemda Tk I dan Tk II Timor Timur ada memberikan bantuan tidak rutin seperti bentuan bahan bakar kepada Pam Swakarsa dari kelompok pro integrasi yang disisihkan dari dana bantuan sukses jajak pendapat di APBD sedangkan bantuan kepada kelompok pro kemerdekaan tidak pernah diberikan karena tidak pernah diminta oleh kelompok pro kemerdekaan."

14 Armindo Soares Mariano (former Speaker of DPRD Timor-Timur), Interview with CAVR, 20 July 2004, "The Occupation," *Chega!: Report of the Commission of Reception, Truth and Reconciliation CAVR Timor Leste*, 43

individuals represented East Timor in the central parliament in Jakarta. In 1995 the provincial DPRD of East Timor increased its seats to 45. Throughout the period of Indonesian administration in East Timor, 80 percent of the members of the DPRD consisted of representatives of three parties that were permitted during the New Order, while ABRI was automatically allotted 20 percent of the seats. By law ABRI's percentage representation in the DPR and DPRD was fixed and the representatives were appointed by the ABRI Commander.

District and Sub-district Administration

The Bupati was the head of the district administration. The Bupati was responsible for the district administration and for the coordination of all sub-districts within his own district. Government administration at the district level was comprised of *"Dinas"* offices coordinated through the province. Most of the first bupatis originated from, or were connected to the Apodeti or UDT parties, or were former members of the Partisans. Several middle officers of ABRI also became Bupatis, including several prominent Bupatis who were serving in 1999.[15]

Village Administration

Indonesian villages are governed by a village head or *Kepala Desa*, in coordination with the neighbourhood units, *Rukun Tetangga (RT)* and the community units, *Rukun Warga (RW)*. After incidents of displacements and re-settlement between 1978 and the 1980s, Indonesia started to rebuild the village structure in East Timor. In 1980 the Indonesian government formed the Village Community Resilience Body, or LKMD. Pursuant to Home Affairs' Minister Decree 25/1982, the LKMD was formed in East Timor in 1982. The LKMD management originated from the village level and was tasked with implementing state development objectives at the village level.

Spheres of Governance

As a centralized governmental system, the Indonesian civil administration exercised formal control over various spheres of policy such as security, economy, public information, education and culture. However, the inclusion of military officers within the civilian administraton (in accordance with the *dwifungsi* doctrine), and the military presence in East Timor, allowed the interests of ABRI to dominate many policy structures and processes that operated at the local level.

Civil Administration Dynamics

The complexities of the civil administration system in East Timor can be illustrated through several examples of the dynamics of governance in various Governors' administrations. These examples will briefly show how the structures and systems described above functioned over time, and how certain aspects of the conflict in 1999 are related to particular themes, or problems, of civil governance in earlier periods.

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[15] For example, the Bupati of Suai in 1999 had come to his position as an ABRI officer (Herman Sedyono).

Each Governor's administration demonstrates the governmental system's difficulties in meeting local needs while also satisfying the central government's and military's policy interests. The dynamics of the governors' administrations also show the ways in which the civil government system lacked mechanisms to peacefully accommodate political differences, which led to shifts in political alliances and increased tensions based on political identity over time. Finally, the various administrations' approaches to economic policy demonstrate the ways in which civil budgets could be dominated by security, or military, interests.

Between 1976 and 1999, East Timor was led by four different governors, all of them East Timorese. The dynamics of the first two Governor's administrations reveal that the political system in East Timor was not well equipped to deal with political difference. The policies in general, including economic development, of the regional civil administration were planned and executed under the strong influence of the military and security policies of the central government. Deviations from, or criticisms of, the centralized view of policy objectives and strategies were not accepted by the government. During these adminstrations, the New Order regime also politicized the civil government, and this politicization was strongly evident in East Timor where individuals with pro-integration background were given preference. This situation created opportunities for Timorese involved in the civil administration to rethink their political loyalities from both sides, namely the pro-integration and the pro-independence movement. Therefore, when examining political alliances in 1999, one has to be careful to not assume that political loyalties remained constant throughout the period of the Indonesian presence.

During the administration of the third governor, President Soeharto officially ended the period of regional closure, which normalized the status of East Timor and declared it open to the outside world. Although the military's influence remained strong, military control in East Timor lessened. The normalization of the territory and the civil administration provided the East Timor independence movement with more opportunities to express its political aspirations through demonstrations. However, these more openly voiced aspirations of independence also to new conflicts, including the unnecessary loss of life at the Santa Cruz cemetary on 12 November 1991.

By 1999, with the approaching Popular Consultation, the civil administration continued to be impacted significantly by security interests. The dual function of ABRI had persisted, and allowed for the civil administration, including the office of the fourth and final Governor, to be strongly influenced by security considerations. Law No. 20/1982 governing the state defense and security system made provision for the concept of the "Total People's Defense and Security System" (*Sishankamrata*). This system gave the civilian administrators a role that in 1999 disposed them towards supporting security groups, such as Pamswakarsa.

Thus, normalization of the civil government in 1992 did not introduce new mechanisms that were able to resolve the political problems and diferences which had confronted previous administrations. The overlap between civil government and the security sector remained, and became even more marked with regard to civilian

security forces, during the final Governor's administration.[16] When opportunities emerged again for the lessening of the military presence and the open expression of political dissent in 1999, government structures and processes had not sufficiently changed to prevent violence.
An additional source of tension was the perception by some Timorese that they were being excluded from full participation in governmental functions, particularly senior positions in the civilian government. By the end of 1998 and during 1999, the public service was politicized in such a way over the issue of self-determination.

Military Structure in 1999

In 1999 the TNI structure in East Timor was organized in operational and territorial structures. The territorial structure was the same as in other provinces of the Unitary State of Indonesia and it basically followed the form of the administrative governmental function because ABRI, through its *dwifungsi* doctrine, held the domestic security function while Polri at the time was still a part of ABRI.

Based on this structure, the province of East Timor was included under the Kodam IX/Udayana led by a Commander-in-Chief, Pangdam. Kodam IX/Udayana is located in Bali and covers the provinces of Bali, Nusa Tenggara Barat and Nusa Tenggara Timur. The highest territorial command at provincial level was the Korem 164/Wira Dharma headed by a Korem commander (Danrem).[17] Every district had a Military District Command, or Kodim (Kodim 1627-1639) headed by a Kodim commander (Dandim). Every sub-district had a Koramil headed by a commander (Danramil). In every village, there was a Babinsa lead by a sargeant.

Two organic battalions were formed in East Timor, namely, Battalion 744 located in Dili and Battalion 745 located in Lospalos.[18] "Organic" battalions means that both were under the direct command of the Danrem. In the case of Battalions 744 and 745, their personnel were recruited from the Timorese population. The Timorese personnel could be promoted to Non-Commissioned Officers, but most Commissioned Officers were non-Timorese TNI officers. Additionally, there were also two strategic units outside the territorial line of command, namely, Kostrad and Kopassus. The Kostrad and Kopassus strategic units were divided into two sectors, namely, sector A comprising the eastern side of East Timor and sector B comprising the western side. Both sectors were headed by a colonel. To support intelligence function at every level of the territorial structure, the SGI or Intelligence Task Force Unit was formed and formally placed under the authority of the Korem, with posts

16 In accordance with Indonesian Law 20/1982 there were several auxiliary security groups, some of which came under the military or police. Pamswakarsa was the security formation that fell under the civilian government.

17 Unlike other Korems in Indonesia, Korem 164/WD tasks were not only limited to personnel and territorial development but was also conducting direct military operations. This is evident from the fact that Korem 164/WD also oversaw two combat commands, namely Sector A and Sector B. At times these two operational sectors would come under an Operational Command [Koops] when it was considered that there was an intensive threat. Despite being under Korem, the commanders of these two sectors had the same rank as the Commander of Korem, i.e. Colonel. In conducting military operations in East Timor the two organic battalions were reinforced by other battalions coming from military commands outside East Timor [Sektor A and Sektor B].

18 Battalions 744 and 745 were formed in January 1978 and September 1978 respectively.

throughout East Timor. Although officially the SGI was under Korem authority,[19] this unit was controlled by Kopassus officers.[20]

The operational structure was formed according to regional needs. In East Timor, the operational structure was a consequence of the the military operations launched in response to the presence of Falintil forces. This structure could be doubled up by the lowest territorial structure at the Korem level, however it could also have a new territorial structure as a Defense and Security Regional Command (Kodahankam), or Operational Command (Koopskam) carrying the operational sector.

The operational structure's function was to conduct and control military operations, whereas the territorial structure in the form of territorial command functioned more in a development function and mobilization of national resources to support the defense security effort. In relation to this structure, and as a practical realization of the Sishankamrata doctrine, the territorial command also played the role of developing and organizing the "People's Resistance" (Wanra) elements.

Military operations were undertaken by deploying infantry battalions as the main players assisted by elements of Kopassus units, with TNI-AD combat and administrative support. These forms of assistance were also extended by the Air Force (TNI-AU) and Navy (TNI-AL). The infantry battalions tasked at the time were composed of organic Korem 164/Wira Dharma East Timor infantry battalions, including battalions 744 and 745, and additional infantry battalions from military commands outside East Timor.

In July 1998, under instructions from President Habibie, ABRI's Commander-in-Chief, ordered the withdrawal of combat troops deployed in East Timor, Aceh, and Irian Jaya. The total withdrawal from East Timor amounted to 1300 military personnel. However, shortly after, new troops were sent to East Timor which may have included Rajawali VI troops from Kostrad and the Tribuana VIII Task Force from Kopassus.

The Dynamics of the Military Role in East Timor

Throughout the New Order, the Indonesian military embraced the doctrine of ABRI Dwifungsi. Based on this doctrine, ABRI carried out two functions, respectively as a security defense power and as a social and political power, as described above in the civil administration section. The section below will briefly discuss the most relevant ways for 1999 in which the security apparatus carried out these two roles.

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19 See letter dated 28 May 1998 from the Head of the Intelligence Section (Captain Sarengat) on behalf of the Commander of the Korem 164/WD Intelligence Task Force (copy with CTF, Appendix to the Expert Advisor's Report to CTF, #20).

20 Douglas Kammen "Notes on the Transformation of the East Timor Military Command," *Indonesia*, No. 67 (April 1999) 72. See also Samuel Moore, "The Indonesian Military's Last Years in East Timor: An Analysis of Its Secret Documents," *Indonesia*, No. 72 (October 2001) 26.

Defense Security Role

ABRI's role in terms of undertaking its security defense function in 1999 was different from present conditions. In 1999 the defense role was still united with the security function, so that ABRI's role was primarily understood as involving domestic security. This interpretation of its role was reflected in the organization of the security apparatus which consisted of: (1) a functional department carrying out the security defense function and (2) Polri as part of the ABRI structure. These two security structures implemented the security defense functions in the following circumstances:

(1) the "national" defense function was unified with the internal security function;
(2) ABRI, in this case the TNI, was the first and front element to respond to the whole spectrum of possible security disturbances;
(3) Polri was tasked to act in a practical supporting role almost indivisible from that of the TNI;
(4) the law enforcement function, as a result, was closely integrated into the military defense function in maintaining stability.

In the province of East Timor, the Indonesian government considered at the time that there was an internal threat from the independence movement which was intent on separating itself from Indonesia. In the perception of the Indonesian government, since East Timor officially became the 27th province of Indonesia, the armed resistance wing of Fretilin stuggling for independence was a separatist movement, and as such it had to be completely destroyed. Therefore, ABRI responded by conducting military operations in East Timor. After February 1979 when Falintil defense bases fell, ABRI refocused its military operations increasingly on control of the civilian population. Intelligence operations played an important role in these military operations and contributed to the creation of suspicion and division in Timorese society.

In carrying out its defense and security duties in East Timor, in accordance to the doctrine of internal threats, ABRI also conducted territorial development actions. Territorial development was intended to manage and develop the population to strengthen their unity and develop capacity to confront threats.[21] Territorial development was the responsibility of all levels of territorial commanders, to cooperate with the local administration and the population.[22] Forms of territorial development were territorial operations planned to improve the physical and social infrastructure of East Timor. ABRI was involved in building roads, schools, hospitals, government buildings, agricultural infrastructure, locals' houses and places of worship.[23] This involvement was, among others, through Operation Manunggal Karya and Operation Sejahtera[24] included in the program of ABRI Civic Mission (AMD). The presence of a territorial and operational structure was considered normal by Indonesia and it was applied throughout the nation.

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21 Robert Lowry, *The Armed Forces of Indonesia* (St Leonards, NSW: Allen & Unwin, 1996) 151.
22 Ibid.
23 Ibid., 155.
24 Dispenad, *Sewindu. TNI-ABRI Masuk Desa 1980-1988*, (Jakarta: Dispenad, 1988) 250.

In applying the Sishankamrata doctrine in East Timor, as in every other province of Indonesia, ABRI's role was to develop groups of civilians to become Ratih, which also included Wanra and Civilian Security, or Kamra.[25] Wanra, which was directed towards fighting armed threats, was under the leadership of the Indonesian National Army or TNI. Kamra, which was directed towards the implementation and supervision of public order, was developed by the Indonesian National Police (Polri). Civilian groups were also incorporated into military operations in a variety of roles in addition to Sishankamrata. Most of these groups were established by Kopassus, and some of the armed civilian groups, such as Tim Alfa and Tim Sera, were also active pro-autonomy parties of the conflict in 1999.

Law 20/1982 had not been implemented fully in Indonesia, which at times created confusion and shifting roles amongst the various auxiliary security groups. Members of Hansip were often used as combat support personnel, a role that is usually performed by Wanra in other parts of Indonesia. The difference between Hansip and Wanra in East Timor was not always clear. This is because the military often used Hansip in the capacity of Wanra. Both played a role that was essentially the same.[26]

Social Political Role

In addition to a security defense role, and in terms of its dual function, ABRI also had a social and political role. The ABRI social political role was based on the concept of *kekaryaan* (temporary duty/co-option) where an active ABRI officer was appointed to fill non-defense security positions.

In addition to the provincial level, ABRI's involvement was carried out also at district levels, where several ABRI middle officers became Bupatis. The role of the military commander was to become actively involved in the formulation of regional policies structurally standardized through the Muspida, just as was the case everywhere else in Indonesia. ABRI also placed representatives at the East Timor provincial DPRD and at the DPRD of every district. As noted above, ABRI received a seat allocation of 20 percent in the provincial DPRD and district DPRD by appointment. The military also played a prominent role in policy implementation bodies such as the TPPP[27] and the Kanwil[28].

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25 Trained Citizens Force (Ratih) was first formed in East Timor in 1981, to assist in Security Operations. In the following year there were 6,000 Ratih personnel. People's Security Force (Kamra) was formed by the Indonesian police in early 1981, and the number reached 1,690 in 1982. In all, by 1982 there were almost 12,500 East Timorese involved in various civil defense organizations. (Source: Secret Document of Komando Daerah Militer XVI/Udayana, Komando Resort Militer 164/Wira Dharma, "Instruksi Operasi No. INSOP/03/II/1982," 6).

26 Dinas Penerangan Korps Marinir, *Korps Marinir TNI AL, 1970-2000* (Jakarta, 2000), 219. See also Aleixo Ximenes, Interview with CAVR, (2 February 2004). By mid 1976, there were 5,897 Hansip personenel in East Timor Timur, with the biggest number in Baucau (700) and Ainaro (665), and the smallest number in Lautém (187) (Source: Daerah Pertahanan Kcamanan, Komando Antar Resort Kepolisian 15.3 Timor Timur, "Laporan Komando Komtarres 15.3 Timor Timur Dalam Rangka Kunjungan Kapolri Beserta Rombongan Ke Daerah Operasi Timor Timur," Annex 17).

27 In 1978 the Central Development Implementation Team (TPPP) was formed to run the administration. The implementing staff was from government institutions in Jakarta and was headed by a general. The team worked through the Regional Development Implementation Team or TPPD, chaired by the governor but in reality under the control of the Sekwilda. Most government sectors, such as security and order, politics, information, communications, population control and housing, manpower, and religious activities were under the direct supervision of the TPPP, which was in effect under the substantative control of the military. The local administrator was only responsible for five sectors: basic education, health, public works, agriculture and social welfare. See, Manuel Carrascalão, Interview with CAVR (30 June 2004) and *Australian Parlimentary Delegation Report* (1983), 66.

Police

Throughout the New Order, the Indonesian State Police (Polri) were part of the military structure of the Indonesian Armed Forces (ABRI). The long history of Polri's subordination to the ABRI strongly impacted on the independence and capacity of this institution to uphold law and order. Polri followed a similar doctrine to ABRI, a doctrine that views security as the responsibility of all citizens. Based on the Neighborhood Security System (Siskamling) members of communities play a role in securing their own areas.[29] The Police, like the military, had a regional structure, that extended down to the village level (Bintara Polisi Desa, Binpolda). In additonal to its normal policing tasks, the Police also has a paramilitary unit, the Mobile Brigade (Brimob). The role of Brimob was to reinforce the civilian police and the military in responding to internal security threats that were considered beyond the capacity of the cvilian police. Until April 1999 the police were under the authority of ABRI.

Until October 1997, the East Timor Sub-Regional Police (Polwil Timtim) was part of the Nusa Tenggara Regional Police (Polda Nusra) whose territory included the provinces of Bali, West Nusa Tenggara, East Nusa Tenggara, and East Timor. In 1997 the Regional Police (Polda) responsible for two or more provinces, was reorganized into a new Polda each covering one province. Polwil Timtim became Polda Timtim. Polda Timtim included 13 Polres (District Police) each covering one district. Every Polres presided over a number of Polsek (Sub-district Police).[30] Each Polsek covered one sub-district.

In 1999 Polda Timtim carried out Operation Hanoin Lorosae. This operation was planned to take place from 1 May to 17 August 1999. In this operation the Brimob unit was responsible for the prevention of chaos/mass actions, terror, high level crime and bomb threats.[31] These duties were in accordance with the 5 May Agreement which placed the responsibility of maintaining law and order on the Police, so that the Popular Consultation could be conducted peacefully. In August 1999 Polda Timtim developed a parallel plan to the Korem 164/WD (Operasi Wira Dharma-99), code-named "Operasi Hanoin Lorosae II."[32] Command and control of this operation originated from the Kapolda Timtim. The objective of this operation was to control the security situation, and in the event of threat to prioritize providing protection to prominent figures, both Indonesians or foreigners, who requested evacuation.

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28 In the early 1980s Indonesia developed further its official government structure in East Timor. Indonesia established three offices usually present at the provincial level, namely, the Regional Office (Kanwil) with a vertical structure in relation to the central office and responsible for the direct application of policies, for example, fiscal and industry policies. In East Timor the Regional Offices were mostly headed by personnel seconded from the army, and most of the staff came from outside East Timor. The second office was the departement agency or, dinas office, under the control of Bappeda who allocated 'wet", or lucrative projecta, to business people, military and government officers (Taudevin, *Tapol Occasional Report* (No. 26) 77-78.

29 Lowry, *Armed Forces*, 110.

30 "The Indonesian Armed Forces: Structure, Chain of Command, and Paramilitary Organization in East Timor," Report Prepared for Serious Crime Unit, UNMISET, 24.

31 Ibid.

32 Indonesian National Police East Timor Region, "Rencana Operasi Hanoin Lorosae II," Confidential Plan No. Pol: Ren Ops/04/VIII/1999 (CTF Archives).

According to the document Hanoin Lorosae 99 (May 1999), 5140 police personnel were in East Timor as back-up for the security forces.[33] Other sources reported the number of total police personnel in Polda in East Timor in 1999 as 3900.[34] This number increased with the arrival of the contingent Hanoin Lorosae on June 5, 1999. They numbered 452. In July 1999, another 800 Polri arrived in East Timor. An additional five companies of Brimob arrived just days before the Popular Consultation.[35] These Brimob troops carried automatic weapons and in addition to being trained in insurrection control, they had also been trained in counter-guerrilla warfare.[36]

Summary of Structure and Dynamics of Indonesian Government in East Timor

Although in 1999 ABRI was intent on initiating internal reforms to transform itself by stages into a professional military force with particular focus on the defense function, in early 1999 the political and social dynamics and security defense orientation were still strongly influenced by the legacy of the past, when ABRI was deeply involved in its *dwifungsi* doctrine. This doctrine gave ABRI legal authorization to exist not only as a defense and security force but also as a social and political force. Weak control from the civilian government – in the form of the legislature and the Executive branch - gave ABRI an umbrella for its role. The result was an institutional structure with weak boundaries between the realms of the civilian and military authorities. In these circumstances ABRI became deeply involved in the social and political domains, while simultaneously conducting military operations. This situation combined the reality of a large military influence that should only exist in a situation of military emergency and war with the weak control function of the civilian administration. This combintion implied low accountability for government policies and opened the way to the perpetration of violence by involved institutions.

4.3 ORGANIZATION OF PRO-INDEPENDENCE AND PRO-AUTONOMY GROUPS IN EAST TIMOR

Pro-Independence Groups

Pro-independence organizations were comprised of both political and military organizations. In the early days of the Indonesian military presence in East Timor Fretilin (Revolutionary Front for Independent Timor Leste) was the only pro-independence political organization. Through its military wing, Falintil (Armed Forces for the National Liberation of Timor Leste), Fretilin conducted its armed resistance against the presence of Indonesia in East Timor. After the death of the Fretilin leader and Falintil commander in chief in 1978 and other members of the leadership, in 1981 Xanana Gusmão took over the Fretilin leadership. Without

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33 Hanoin Lorosae I (May 1999), No. Pol: R/Ren Ops/03/V/1999, Dili, 8 Mei 1999, Lampiran "Rencana Administrasi Logistik Pada Rencana Operaasi Hanoin Lorosae 1999," 2.

34 Zacky Anwar Makarim, et. al., *Hari-hari Terakhir Timor Timur: Sebuah Kesaksian*, (Jakarta: Sportif Media Informasindo, 2003), 150.

35 Ibid

36 The Polri elements were backed up by TNI organic troops numbering 8737, and 7455 non-organic troops. Ibid., 150-151.

stopping the armed resistance, Xanana started to intensify political and diplomatic resistance efforts and incorporate all other pro-independence political groups in East Timor.

This shift in leadership in 1981 also led to a new strategy of guerrila warfare launched by small scattered units throughout the region without a permanent base. Fretilin attempted to build a united front by embracing parties outside Fretilin on the common ground of independence. The CRRN (Revolutionary Council of National Resistance) was formed for that purpose and in 1988 it changed its name to CNRM National Council of Maubere Resistance). By forming this united front, the resistance was no longer led by Fretilin, but by CRRN first and then by CNRM, with Xanana Gusmão at its head. Fretilin was only one of the elements within the CNRM. To ensure the resistance was of a non-party nature and could include all East Timorese, in 1987 Falintil broke its political party ties with Fretilin and the supreme leader of Falintil, Xanana Gusmão, left Fretilin. Hence, Falintil, with no affiliation to any political party, became the military wing of the CNRM.

During the meeting at Peniche, Portugal, in April 1998, all pro-independence factions from East Timor agreed to change CNRM to become CNRT (National Council of Timorese Resistance). The term "Maubere" was replaced with "Timorense" because of the objection of some non-Fretilin elements, mainly UDT, on the use of the term Maubere identifying it with Fretilin.

These structural changes in the organization of pro-independence groups were also related to a general change in their political strategy. The resistance leaders reached the conclusion that independence could only be achieved through a UN-sponsored referendum. Within the UN, East Timor was still classified as a non self-governing country, and as such it was maintained on its decolonization agenda. The resistance leaders shifted their focus to the UN with the prime objective of a UN-sponsored solution to the East Timor question through the exercise of the right of self-determination. The strategy that the resistance called the "peaceful solution" was discussed for the first time in 1983 at the time of the "Peace Approach" between the East Timor resistance leader and East Timor Korem 164 Commander.[37] The crux of this approach was the withdrawal of Indonesian forces, and the formation of a transitional government and an UN-sponsored referendum.[38] In a more elaborated form, the recommendation for a peaceful solution was detailed in two CNRM documents of 1989 and 1993.[39]

Pro-independence groups under the CNRM umbrella organization adopted a three-pronged strategy to acheive their goals: military, diplomatic and clandestine (underground resistance).

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37 Witness C, Testimony to CTF, Closed hearing, September 2007.

38 Jill Jolliffe, *Timor, Terra Sangrenta* (Lisboa: O Jornal, 1989), 137.

39 "Readjustamento Estrutural da Resistência e Proposta da Paz" (1989). In Xanana Gusmão, *Timor Leste: Um Povo, Uma Pátria* (Lisboa: Editora Colibri, 1994) 106-107, and "Peace Plan" (1993) submitted by special representative of CNRM José Ramos-Horta to EU and UN (James Dunn, *East Timor: A Rough Passage to Independence* [Loungeville: 2003], 338-339).

Through military strategy, the military wing of the pro-independence organization, Falintil, actively conducted armed resistance actions against the Indonesian government in East Timor. Falintil divided East Timor in four regions (*região*) of resistance. *Região* I covered all the district of Lospalos and all the eastern region of the district of Baucau. *Região* II covered the district of Viqueque, the western region of the district of Baucau, east and west regions of the district of Manatuto. *Região* III covered all the districts of Dili, Aileu, Same, North Manatuto, East Ainaro, East Ermera and East Liquiça. *Região* IV covered the districts of Bobonaro, Covalima, West Ermera, West Liquiça and West Ainaro.[40]

The diplomatic strategy was carried out, among others, by Resistance representatives abroad. They were active in international diplomacy in support of East Timor independence. One of their most significant areas of diplomatic action was through the UN Human Rights Commission.

The Clandestine strategy depended on the activities of underground groups (clandestines) formed by civilians in rural and urban settings. These groups operated independently from each other but were connected to Falintil units and provided logistics and information support. Additionally, clandestine groups were engaged in the political arena by organizing pro-independence demonstrations and gathering information on the political situation and human rights violations in East Timor, in order to channel them to East Timorese resistance organs outside Indonesia. During the 1980s an internal Commission formed to coordinate Clandestine's actions, as its role in the resistance movement became increasingly important.[41]

Some of these clandestine groups had an "official" structure despite operating underground, such as OJETIL (Youth and Student Organization of Timor Leste) operating in East Timor and RENETIL (National Students' Resistance of Timor-Leste) operating among East Timorese students in Indonesian cities outside of East Timor. These groups were coordinated by CEL/FC (Executive Committee for Struggle/Clandestine Front) whose name after the formation of CNRT was changed to FPI (Domestic Political Front).[42] In addition, there were also unofficial groups formed by individual, former Fretilin activists or Falintil guerrillas, *estafetas*, that each had their own connections with the Falintil guerrilla units in the jungles.

The highest organization in the East Timorese resistance in 1999 was the CNRT as the umbrella organization for all pro-independence powers. At the central level, CNRT was made up of four organs, namely, the National Political Commission, the Executive Commission, the Falintil Command and the Jurisdiction and Supervisory Commission.[43] The National Political Commission was the body with the authority

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40 Makarim, *Hari-hari*, 80.

41 Comité Executivo de CNRM na Frente Clandestina (CNRM Executive Committee of Underground Front) better known as CE. Before the Santa Cruz incident in November 1991, CE was replaced by Comité Executivo da Luta/Frente Clandestina (CEL-FC).

42 David Dias Ximenes, CTF Public Hearing IV (Denpasar, 23 July 2007) 14.

43 "Conselho Nacional da Resistência Timorense: Estatutos". This statute was prepared and legalized at the National Convention of the Timor Leste Nation in Peniche, Portugal, April 1998.

to make decisions on strategy and its implementation. The body included representatives from political parties (Fretilin, UDT, Pro-Referendum Apodeti, KOTA, Partido Trabalhista) as well as representatives from non-party organisations. The head of the National Political Commission also acted in the capacity as Executive Commission President and Falintil chief commander.

The Executive Commission was the CNRT organ with the authority to implement the decisions of the National Political Commission. This Commission included a Department of Foreign Affairs, Department of Administration and Resources, and the Youth Department. Positions in the Executive Commission were filled by individuals from the CNRT, members of political parties and non-party organizations. The duties of the Falintil Command were to *accelerate* the armed struggle. However, the operational authority at that time was held by the Head of Staff in the jungle of East Timor, given that the supreme commander was imprisoned in Indonesia. Since the party secession with Fretilin in 1987, Falintil had been made up of people without official political party alignments. The Jurisdiction and Supervisory Commission was tasked with supervising the other three organs and, as such, it maintained an independent stance vis-à-vis all three.

In its activities, the CNRT divided East Timor into five regions (*regiões*), namely, *Região 1* (Lautém and most of Baucau), *Região 2* (part of Baucau, all of Viqueque, and part of Manatuto), *Região 3* (Aileu, part of Manatuto, and Ainaro), *Região* 4 (Ermera, Liquiça, Covalima, and Bobonaro), and *Região Autonóma* (Dili). Each região was under a *Comando Região* (Regional Command), in turn led by a *Comandante da Região* (Regional Commander) and a *Secretário da Região* (Regional Secretary), except for the *Região Autonóma* of Dili which was led by just the *Secretário da Região*. The *Comandante Região* was responsible for the armed struggle and commanded units of Falintil troops whose number varied in different *região*. The *Secretário da Região* was responsible for the civil resistance and led the organs under his leadership which were organized according to the region of work.

Every *região* was further divided into *sub-região* each covering one district (kabupaten). Every *sub-região* was led by a *Secretário de Sub-Região*. The *sub-região* was also divided into a number of *zona* each including an administrative sub-district (*kecamatan*). The organ at the zone level was called CEZO (Zone Implementation Commission) led by a *Secretário da Zona*. Under the zone, the resistance organization was further divided into a number of NUREP (Popular Resistance Nucleus) each covering one village. Each NUREP was the responsibility of the *Secretário da NUREP*. The lowest organ of the resistance was called CELCOM (Community Cell) and one was established in every *aldeia* (village). Every CELCOM was led by a *Secretário de CELCOM*.

CNRT established this structure from the lowest cell (CELCOM) to the zone level approximately in early 1999, in principle, to continue the previous structure of the CNRM. The innovation was the organization of the CNRT formed at the district level, *sub-região*. If during the days of the CNRM, these organs operated underground, under the CNRT these organs operated openly.

Falintil went into cantonment in August 1999. Guerrillas units in *Região* I were cantonized in Atelari, those of *Região* II and III were cantonized in Uaimori while *Região* IV was cantonized in Poetete (Ermera) and Odelgomo (Aiasa, Bobonaro).

In 1999 the movement's activities in the political arena were not directed by a single organ within CNRT. There were three channels for directives. First, directives from the territorial structure of CNRT (*Região, Sub-Região, Zona,* NUREP, and CELCOM). Second, directives from the Youth Department within CNRT Executive Commission. This is conducted for each youth organization (RENETIL, OJETIL and others) that are under CNRT. Third, directives from FPI (*Frente Política Interna* – Domestic Political Front) conducted with respect to groups who during CNRM times were underground resistance cells. FPI was formed around January 1999 to replace CEL/FC in order to face new political developments after the "special autonomy" offer came from President Habibie. This organ was under the leadership of a Secretary and two Vice Secretaries.

After the resignation of President Soeharto, the increasing political activities in East Timorese towns could be conducted openly, and the role of Deputy Secretary became more prominent compared to that of the Secretary. FPI was under the CNRT National Political Commission and the Deputy Secretary became a member of this Commission.

After the signing of the 5 May 1999 Agreement, demonstrations were replaced by political propaganda to refuse the first option of widespread autonomy offered by the Indonesian government. Fund raising drives that in the past had been undertaken covertly to help with the logistics needs of Faintil, now took place openly everywhere to support propaganda activities challenging the autonomy option. There were some violent confrontations between pro-independence youth groups and pro-autonomy supporters in 1999. Some of these pro-independence youth groups may have been affiliated with CNRT. However, these confrontations appear to have taken place in contradiction to the official CNRT policy line of restraint

Pro-autonomy Groups

In general terms, pro-autonomy groups were made up of two components. The first component consisted of civilian groups pursuing their aspirations through political channels. The second component was made of civilian groups determined to promote the choice of special status with wide-ranging autonomy in East Timor by other means. On many occasions these two groups overlapped.

The civilian groups who focused their activitites on political channels included those who, since East Timor had become part of Indonesia, were active in the East Timor political system. These pro autonomy groups were pro-integration supporters who included some former Fretilin members who had changed their political views and recognized the integration of East Timor with Indonesia.

There were two such pro-autonomy groups operating through the political channels: the Front Persatuan Demokrasi dan Keadilan (FPDK) established on 27 January 1999 and Barisan Rakyat Timor Timur (BRTT) established on 20 May 1999. FPDK was formed with the objective to convince East Timorese to accept the autonomy

option, Some of the Bupatis, Camats and village heads become the leaders of FPDK or BRTT in their respective region.

In a letter from the Minister of Defense and Security/Commander of the TNI to Menkopolkam, the Minister stated that pro-integration groups needed to get support from various departments or related institutions to keep them united. The letter also stated that pro-integration groups should prioritize dialogue and avoid violence that could be counter productive in achieving each of their aspirations. Related to this issue both BRTT and FPDK were unified in the Front Bersama Pro Otonomi Timor Timur (FBPOTT).[44] This group was also known as United Front for East Timor (UNIF).

In addition to the groups primarily active in the political arena, other armed pro-autonomy groups resisted the independence movement directly at the field level. They formed armed groups of civilians to confront the pro independence movement. Some members of groups like Wanra and Kamra, that had previously been created under the Sishankamrata Doctrine, also joined these armed civilian groups.

Wanra groups that were active previously, as well as in 1999, included Halilintar (formed in 1978) in Bobonaro; Makikit (formed in 1986) in Viqueque; and Tim Saka (formed in 1986); Tim Alfa (formed 1986); and Tim Sera (formed in the 1990s).[45] These groups had been actively assisting ABRI in tracking armed pro-independence groups that at the time were known as Security Disrupting Movement, or GPK. ABRI had trained them and equipped them with weapons. In 1994, an organization called Gadapaksi (Young Guards for the Defense of Integration) was also formed as a security organization, and were also trained under ABRI to support integration with Indonesia.

After the government of Indonesia decided to grant the option of wide ranging autonomy to East Timor in June 1998, several groups that were active in the pro-autonomy movement at the field level were organized in some districts in East Timor. Pro-autonomy leaders perceived this development as a response to increasing activity by pro-independence groups. These pro-autonomy armed civilian groups were AHI in Aileu, Mahidi in Ainaro, Laksaur in Covalima, Aitarak in Dili, Darah Integrasi (Blood of Integration) in Ermera, Alfa in Lautém, BMP in Liquiça, Mahadomi in Manatuto, ABLAI in Manufahi, and Sakunar in Oecussi. They also included some Wanra groups which were formed before 1999 and had been reactivated in 1999. All these pro-autonomy armed groups then formed an umbrella organization called Pasukan Pejuang Integrasi (PPI).[46]

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44 Minister of Defense and Security/TNI commander, No.K/362/P/VI/1999, 15 June 1999, 4.

45 "Antara Timor Timur dan Timor Leste," *Kompas*, 23 August 1999.

46 See paper for KPP HAM titled "Profil dan Tantangan Pasukan Pejuangan Timor Timur" by João Tavares dated 18 December 1999, saying among others that PPI had a characteristic of being a group with loose organization, without Articles of Association, without command unity and without pay. The relations between members are of personal nature based on common destiny and struggle. In spite of this testimony, there is a lot of other evidence indicating otherwise (2).

4.4 POLITICAL TRANSITION IN INDONESIA

In May 1998 a historical political event took place in Indonesia. Demonstration movements demanding reforms in 1998 forced President Soeharto to resign after 32 years in power. Habibie, who was the Vice-President at the time, became the President in accordance with the constitution. This event marked the beginning of a political transition from an authoritarian political system to a democratic one.

In line with the democratization process, Indonesia entered a new era in terms of the life of its society and the nation. The 1945 constitution which, in the past was considered sacred, was amended by the MPR. The centralistized government system started a transformation towards decentralization with the enactment of Law No. 25/1999 on Regional Autonomy and Law No. 25/1999 on the Financial Balance between Central and Regional Governments. People were also free to voice their opinions in a variety of ways, including by demonstrating. The tight control previously exercised on the media disappeared. NGOs, which were were formerly restrained, were given the freedom to conduct their activities openly.

At that time ABRI came under severe criticism over alleged past violations of human rights. Accusations started being leveled at the excesses of military operations in conflict zones such as Aceh, Papua and East Timor. This caused a lack of certainty within the military about their role in this rapidly changing political context.[47] In Aceh, the Habibie administration abrogated the Military Operation Zone policy and the Commander-in-Chief of the Armed Forces publicly apologized to the people of Aceh for the wrongdoings of his soldiers.[48] At the same time, there were demands for the revocation of the ABRI dual function doctrine which had given ABRI unbridled power over the social and political life of Indonesia. With the fall of the New Order government, ABRI experienced a big transition from a politically dominant military into becoming a military under civilian authority.

The Habibie administration took some important steps towards limiting the military role, such as:[49]

a. Decreasing the number of military representatives in legislative institutions. In January 1999, the government and the parliament issued a law to decrease the number of military representatives in parliament from 100 to 38 and to decrease the proportion of military representatives in the regional parliaments from 20 to 10 percent.
b. The withdrawal of active military officers from civilian positions. As part of the military reforms, ABRI Commander issued a policy that as of 1 April 1999 active military officers in civil positions had to resign from the military or leave their civilian positions.
c. Political neutrality in the elections.[50] Whereas in the past the military had supported the Golkar party, in 1999 the Commander-in-Chief of TNI instructed the military to maintain neutrality in elections.

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47 Francisco Xavier Lopes da Cruz, Public Hearing I (Denpasar: 20 February 2007) 9,12.

48 Human Rights Watch, "Aceh di Bawah Darurat Militer: Di Dalam Perang Rahasia," December 2003, Vol. 15 (10), 9, http://www.hrw.org/indonesian/reports/2003/12/aceh1203.pdf (accessed 9 April 2008).

49 International Crisis Group, "Indonesia: Keeping the Military Under Control," ICG Asia Report 9 (5 September 2000) 3-4.

50 There were national elections held in 1999 throughout Indonesia, including East Timor.

d. The separation of the Police from the Armed Forces. On 1 April 1999, President Habibie issued a policy separating the Police from the Armed Forces pursuant to Presidential Instruction No. 2/1999. The separation policy was a series of policies to place security responsibility under Polri and defense responsibilities under TNI, although the Police remained under the authority of the Department of Defense and Security.[51]

All these changes had as their objective two essential reforms within the TNI, namely: (1) to concentrate the TNI's role on national defense and (2) to rescind the TNI's social and political role. These two essential reforms were meant to reposition the military from its previous role, in which it was to be seen as the nation's protector. In practice this had made the TNI the first resort in confronting any perceived threat, including internal threats. The reforms aimed to create a professional military in the sole role of national defense (i.e., against external threats), operating under civilian supremacy.

In East Timor, the change of government of Indonesia allowed for open expressions for demands to hold a referendum and for independence. Groups that previously operated underground opposing the presence of Indonesian government, were now conducting their activities openly. This had been taking place since before the "wideranging autonomy" offer came out in June 1999 and "two options" in January 1999.

With this period of internal political transition and the issuance of two options which became an international agreement with the signing of 5th of May Agreement, TNI had to change its stance with respect to the independence movement that for all this time it saw as a separatist movement. According to Zacky Makarim, "Indonesia, who was given security responsibility, had to change the pattern of the security approach it had been using. TNI and Polri forces in East Timor had to be neutral and able to embrace all conflicting parties."[52]

These changes and political reform in Indonesia also opened the way for efforts to find a resolution for the East Timor issue. In accordance with the spirit of democratization, in June 1998 the government of Indonesia proposed a decentralization policy in the form of special status with wide-ranging autonomy for East Timor. This is turn paved the way for the start of negotiations for the 5th of May Agreement. In summary, the political transition in Indonesia caused sweeping changes in all sectors of governance, including military policies. The events in 1999 took place in this context of reform, but reforms that were not yet complete.

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51 On the anniversary of POLRI, 1 July 2000, the President of Indonesia issued decree No. 89/2000 releasing Polri from the Department of Defense and Security and placed Polri directly under the President RI. See "Sejarah Polisi," http://tempointeraktif.com/hg/narasi/2004/04/21/nrs.20040421-01.id.html, (accessed 25 November 2007).

52 Makarim, *Hari Hari*, 223

4.5 INCEPTION, IMPLEMENTATION AND IMPLICATIONS OF THE 5 MAY 1999 AGREEMENT

Inception

In the introduction to the 5 May 1999 Agreement, the governments of Indonesia and Portugal took into consideration General Assembly Resolutions 1514 (XV), 1541 (XV), 2625 (XXV) and other relevant resolutions and decisions adopted by the Security Council and the General Assembly about East Timor. Since July 1983 Indonesia and Portugal had been seeking a fair, comprehensive and internationally acceptable solution about East Timor through the UN Secretary General. Under 5 August 1998 Agreement, the two governments continued negotiations under the auspices of the Secretary General regarding a special status for East Timor without affecting the basic positions of the two governments regarding the final status of East Timor.

Concurrent with negotiations between Indonesia and Portugal, other approaches were also used involving a dialogue between pro-integration and pro-independence East Timorese in the forums of the *All Inclusive East Timorese Dialogue* (AIETD) and Dare I and Dare II dialogues.[53] These dialogues only focused on economic, cultural, education and reconciliation issues. In 1998 when AIETD was held for the third time, the pro-independence participants in the dialogue asked UN representatives present to also include political issues in the agenda, however the request was not realized, and was only talked about informally. As a result, the two delegations failed to reach a consensus that would be beneficial collectively for the people of East Timor.

Political changes or *Reformasi* in Indonesia opened up room for the development of democracy in Indonesia and afforded a greater opportunity for self-determination in Timor-Leste. In June 1998, President B.J. Habibie's cabinet proposed to offer special status with wide ranging autonomy for East Timor, with the proviso that the international community would recognize Indonesia's sovereignty. The offer to become a region with special status with wide-ranging autonomy, indicated the possibility of the region to be able to freely organize itself, with the central government retaining authority over areas such as finances, foreign policy and external defense. The Indonesian government officially conveyed the recommended solution to the UN Secretary General, and intensive discussions between the UN, the Indonesian and Portuguese Foreign Affairs Ministers began. On 27 January 1999, President Habibie decided that his government was ready to consider the possibility for East Timor to be released from the Republic of Indonesia.[54] Two months later, in March 1999, tripartite talks between Portugal, Indonesia, and the United Nations took place, where it was agreed to organize a public consultation in East Timor to determine whether widespread autonomy would be accepted or rejected.[55]

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[53] Dare I dialogue was held on September 1998, in Dare, Dili and Dare II in June 1999, in Jakarta. The Dare II meeting in Jakarta for the first time brought together pro-independence leaders who had been outside East Timor, such as José Ramos-Horta, Marí Alkatiri and João Carrascalão. Similar to the AEITD dialogue, Dare II dialogue also did not discuss the political status of East Timor.

[54] CNN, "Indonesia hints at allowing East Timor independence", 27 January 1999, http://www.cnn.com/WORLD/asiapcf/9901/27/indonesia.02/index.html (accessed 1 March 2008): "Quoting President B.J. Habibie, Information Minister Yunus Yosfiah said the issue of East Timor leaving Indonesia could be put before the country's People's Consultive Assembly,

Implementation of the Popular Consultation

On 5 May 1999, Indonesia, Portugal and the United Nations reached an agreement about East Timor at the UN Headquarters in New York. The New York Agreement actually comprised three types of agreements: *First*, the main agreement called the "Agreement between the governments of Indonésia and Portugal regarding the East Timor question"; *Second*, the "Agreement on Organizing the Security of the Popular Consultation in East Timor"; *Third*, "Agreement on the Modalities for the Popular Consultation of the East Timorese People through Direct Ballot."[56]

Pursuant to the implementation of the 5 May Agreement, on 11 June 1999, the UN Security Council formed UNAMET through resolution No. 1246/1999. The mission and objectives of UNAMET were to organize and conduct the Popular Consultation that would determine whether the people of East Timor would accept or reject the constitutional offer of special autonomy for East Timor within the framework of the Unitary State of Indonesia.

The implementation of the UNAMET mission followed the operational stages of the Popular Consultation as contained in the "Agreement on Modalities for the Popular Consultation of the People of East Timor through Direct Ballot." The UNAMET operational tasks and guidelines were agreed upon as follows:[57]

a. Information Dissemination Stage
- The UN would make available the text of the Main Agreement and the autonomy document to be voted on in all the official languages
- The UN would disseminate and explain the content of the main Agreement and the Autonomy document impartially and factually in and outside East Timor.
- The UN would explain to the voters the voting process and the procedures and the implications of an "accept" or "reject" vote.
- Mulitple media outlets would be used in the dissemination process.

b. Registration
- Registration inside and outside East Timor would take place continously for 20 days.
- 200 Registration centers would be opened in East Timor for this purpose.
- Other special registration centers would be opened in Indonesia, and other international locations including specific cities in Australia, Lisbon, Maputo and Macau.

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or MPR, later this year if East Timor is not satisfied by an offer of greater autonomy. "'If the East Timor people decide to reject special autonomy, then (Habibie) would suggest the next MPR discuss the possibility for East Timor to be released from the republic,' Yunus told reporters."

55 This is the initial agreement session before the official event with the signature of 5 May 1999 Agreement in New York. See, Ali Alatas, *The Pebble in the Shoe: The Diplomatic Struggle for East Timor* (Jakarta: Aksara Kurnia,, 2006),159-174 and 313-314.

56 At the 3998th meeting of the UN Security Council, the 5 May 1999 New York Agreement was ratified with UN SC resolution number 1236 (1999).

57 "Agreement Regarding the Modalities for the Popular Consultation of the East Timorese Through a Direct Ballot," 5 May 1999, in Annex II, Ian Martin, *Self Determination in East Timor: The United Nations, the Ballot and International Intervention* (Boulder: International Peace Academy Occasional Paper Series, 2001) 144-147. The points of the agreement have been summarized for brevity, and are not exact quotes from the text of the agreement.

- Registration lists would be exhibited for five days at all registration centers and other relevant offices. Challenges could be submitted to to regional offices for a decision by the Electoral Commission before the polling day.

c. Campaign
- Supporters and opponents of the autnomy proposal would campaign ahead of the vote in a peaceful and democratic manner during the designated campaign period.
- The United Nations would propose a campaign Code of Conduct, to be discussed with the supporters and opponents of the autonomy proposal.
- The United Nations would devise a means for both sides to have an equal opportunity to disseminate their views to the public.
- Officials of the governments of Indonesia and Portugal would not participate in the campaign in support of either option.
- East Timorese government officials could campaign in their personal capacity. All such campaigning would be carried out strictly according to the Code of Conduct without the use of public funds and government resources or recourse to pressure of office.

d. Balloting in and outside of East Timor
- Voting in East Timor would take place in approximately 700 registration/polling stations located in 200 polling centers.
- Voting would take place in the same locations as the registration centers.

e. Observers
- Indonesia and Portugal would be entitled to send an equal number of representatives to observe all the operational phases of the consultation process both inside and outside of East Timor.
- International observers would be able to observe the consultation process under the terms by the United Nations to regulate their presence.

f. Funding
- The Secretary General of the UN would seek the approval of the Security Council for the operation in order to ensure the assessed budgetary funding. Voluntary contributions would be channeled through a Trust Fund established for this purpose.

As a whole, planning, preparation and implementation of the Popular Consultation was done in 117 days from the 5 May Agreement to the Popular Consultation, which took place on 30 August 1999.

From the inception of the UNAMET mission, controversy on the impartiality of UNAMET often surfaced. In the preparation and implementation process of the Popular Consultation by UNAMET, some events took place that the pro-autonomy supporters felt were an indication of UNAMET bias in favour of pro-independence groups. This perception of UN bias may have had an impact on the increase of tension between the pro-autonomy and pro-independence sides.

Security Implications

The 5 May Agreement stipulated that the security of the Popular Consultation was the responsibility of Indonesia. The Agreement demanded complete neutrality of the TNI and Polri as a primary requirement in undertaking their responsibilities to guarantee a safe atmosphere, free of all violence or any other forms of pressure and to guarantee the enforcement of law and order in general terms. In addition, it required that the institution with sole responsibility for security would be Polri.

Point 2 of the Agreement Regarding the Modalities of the Popular Consultation of the East Timorese Through a Direct Ballot also stated that the Commission of Peace and Stability (KPS) formed on 21 April 1999, would be one of the parties closely working with the UN. The task of KPS was to (1) determine the rules of engagement for the period before and after the Popular Consultation to be followed by all parties; and (2) to take necessary statements for the disarmament of all parties. The KPS was a commission intended to be a forum where East Timor political leaders, government apparatus and Church representatives could play an important role in the peace process prior to the Public Consultation.

Point 4 of the Agreement Regarding the Modalities of the Popular Consultation of the East Timorese Through a Direct Ballot determined that only the Police would be responsible for upholding law and order. The Secretary General, after obtaining the necessary mandate, provided a number of unarmed civil police officers to assist Polri in an advisory capacity. The civil police officers in the Popular Consultation also had the task to guard the ballot papers and ballot boxes to and from the voting stations.

Based on the 5 May Agreement, Command and Control (Kodal) of internal security forces, which was initially in the hands of the Commander-in-Chief of ABRI, was transferred to the East Timor Kapolda.[58] Although Polri had been separated from ABRI on 1 April 1999 (which later changed its name to TNI), Polri was still under the Department of Defense and Security (Dephankam) together with the TNI.[59] Prior to 1 April 1999, Polri had been a part of ABRI and under the Commander in Chief of ABRI. One of the implications of the 5 May Agreement in tasking Polri as the party primarily responsible for upholding law and order in East Timor in 1999 was that this was essentially the first major task where Polri operated independently of the TNI.

To ensure TNI/POLRI neutrality, on 15th June 1999 the Commander in Chief of TNI issued a written directive that stressed a shift in the mission criteria for TNI/POLRI units deployed in East Timor. The objective changed from finding and arresting the largest number of GPK in East Timor to maintaining a neutral posture

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58 Although the TNI announced a phased withdrawal of its forces in East Timor, controversy remains over the extent to which this was implemented.

59 Indonesian Presidential Decree No. 89 Tahun 2000 releasing Polri from the Department of Defense and Security and placing directly under the President, was issued on 1st July 2000 during the presidency of Abdurrahman Wahid.

and providing a situation of security and safety.[60] The stated goal of these missions was to ensure a smooth, peaceful and fair Public Consultation process without any pressure from any parties.

The UN aseessment team tasked to visit East Timor to prepare the UNAMET mission addressed concerns about the capabilities of Polri for maintaining security prior to the Popular Consultation in light of the fact that previously the TNI had exercised the dominant security role.[61] The assessment team reported that although there were positive assurances from Polri regarding security, nonetheless there were credible reports given to the UN that that the security personnel (including Police) were not effectively handling the armed pro-auotnomy groups in East Timor.[62] The results of the Popular Consultation were announced on 4 September 1999. This announcement was brought foward from the initial plan to announce the results on 7 September 1999. On the 4 September 1999, the UN Secretary General announced that 78.5 percent of the 450.000 voters refused the offer of widespread autonomy.[63] The door was opened for East Timor's independence.

Following the announcement of the results of the Popular Consultation, despite the directive of President Habibie to TNI and Polri maintain law and order, violence of an alarming intensity began.[64] Increasing international concern over this violence had been previously expressed by the UN Secretary General Kofi Annan.[65]

In order to take control of the worsening security situation, President B.J. Habibie issued Decree No. 107/1999 on Military Emergency in the province of East Timor on 6 September 1999. Subsequently, the Indonesian government agreed to invite the presence of the UN in East Timor and this was marked by the handover of security responsibility for East Timor from TNI Major General Kiki Sjahnakri to Major General Peter Cosgrove, as the commander of the UN INTERFET forces, on 27 September 1999.

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60 Minister of Defense and Security/Commander in Chief of TNI, No.K/362/P/VI/1999, 15 June 1999, 3. The relevant section reads in the original as follows: "Disamping itu juga telah dilaksanakan perubahan kriteria keberhasilan tugas Satuan TNI dan Polri yang bertugas di Timtim dari 'menemukan dan menangkap sebanyak mungkin GPK Timtim' menjadi 'bersikap netral serta menjaga situasi keamanan dan rasa aman masyarakat Timtim maupun Personel PBB, agar proses Jajak Pendapat dapat terlaksana secara aman, damai, jurdil dan tanpa tekanan/intimidasi dari pihak maupun."

61 Martin, *Self Determination*, 8

62 Secretary General of the United Nations, "The Question of East Timor: Report of the Secretary General," S/1999/595 (22 May 1999), 5-6.

63 On September 4 President B.J. Habibie instructed POLRI and TNI to uphold law, security and order in the region. He stated: "Pursuant to the results of the New York Agreement of 5 May 1999, the Inodnesian government has been entrusted with full authority to implement the content of the New York agreement, specifically in carrying the responsibility to foster and guarantee the necessary calm, general order and peace needed during and after the public consultation until the transfer of government takes place. Therefore I, as the Supreme Commander, instruct the Chief Commander of the Indonesian Armed Forces and the Inodnesian State Police to uphold the law, security and order and take all necessary steps ...." ("Amanat Presiden Republik Indonesia: Menyambut Hasil Penentuan Pendapat Rakyat Timor Timur" 4 September 1999)

64 The insufficiency of preventative security measures will be examined in detail in Chapter 5.

65 The Secretary General stated: "Despite repeated assurances that measures would be taken by the Indonesian authorities to ensure security in East Timor and curtail the illegal activities of the armed militias, I regret to inform the Security Council that credible reports continue to be received of political violence, including intimidation and killings, by armed militias against unarmed pro-independence civilians. I am deeply concerned to learn from the assessment team that, as a result, the situation in East Timor remains extremely tense and volatile." "The Question of East Timor: Report of the Secretary General" (22 May 1999), 5. http://daccessdds.un.org/doc/UNDOC/GEN/N99/151/14/PDF/N9915114.pdf (accessed 10 April 2008).

4.6 SUMMARY

In the discussion above various historical, social and political factors were highlighted that were most relevant to the development and dynamics of the events that occurred in East Timor in 1999, and could be agreed on by both countries. The reader is once again reminded that this chapter is not meant to convey final conclusions about the period of history prior to 1999. The focus of the Commission's mandate is understanding the events of 1999 and their implications for institutional responsibility, and to devise appropriate ways and recommendations for healing the wounds of the past, and to secure human dignity through promoting reconciliation and friendship. The historical and contextual points that the Commission found most applicable to fulfilling their mandate can be summarized as follows:

Decolonization process and political divisions

The lack of an effective decolonization process from the period of Portuguese rule to independence, resulted in various types of political divisions in East Timor. Different interpretations of the best strategies to achieve self-governance resulted in multiple internal political parties (including Fretilin, UDT and Apodeti), that were not able to resolve their differences through peaceful means. An armed conflict occurred between Timorese political parties. Meanwhile, the Indonesian military had initiated contact with the pro-Indonesian sources within East Timor.

The nature of the process by which East Timor was integrated into Indonesia has been the subject of controversy. The two parties to the conflict have opposing intepretations of this process which it is difficult to reconcile. It is not within the scope of the Commission's mandate to make a final determination of the legal status of the Indonesian presence in East Timor. On 17 July 1976, the President of Indonesia approved Law No. 7/1976 that officially made this territory a province of Indonesia. This integration was not acknowledged by the UN, with GA Resolution No. 31/53, December 1976. The issue of East Timor continued to be on the UN decolonization agenda until after the holding of Popular Consultation in August 1999. Both the internal conflict in 1975 and the period of contested Indonesian presence are related to these internal and external political differences, and the incomplete decolonization process.

The impact of these political differences on the period encompassed in the Commission's mandate is connected to an enduring and complex situation of conflict in East Timor. A vertical conflict existed due to the organized struggle for independence, which included military actions taken by Falintil and Indonesian security forces, which viewed the independence movement as a threat to national unity, and a "security disturbance." There were also remaining aspects of horizontal conflict between groups with different political aspirations within East Timor.

Both the horizontal and the vertical conflicts could not be accommodated in the political system of Indonesia at that time so as to resolve the political problems by peaceful means, and to avoid violence. In fact the structure of the governmental system, which allowed strong military control over civilian administration and which privileged pro-autonomy leaders, exacerbated both the horizontal and vertical conflicts.

Systems of Governance in East Timor (1975-1999)

The structures and organization of the Indonesian government in East Timor in 1999 contributed to the conditions that produced various acts of violence in East Timor in 1999, particularly due to the influence of the military and to the authoritarian nature of the government. The centralized structure of the Indonesian government during the New Order era had become an effective mechanism for supporting the security apparatus in its effort to implement the Indonesian government's security policies. This structure immediately became a liability when the authoritarian and centralized government structure had to be changed into a democratic and transparent one after the fall of the Suharto regime.

Furthermore, based on Indonesian Law No.20/1982 on Basic Provisions of National Defense and Security, the Armed Forces (including the National Police) had the authority to conduct security related functions with wide ranging authority to manage and employ "national" resources. One implication of these powers was that the civilian government could also play a role in the *pembinaan* (development) of various non-military organizations in security and defense functions. The civilian government's role in security included working with auxilliary military groups, such as *Pengamanan Swakarsa*, or *Pamswakarsa*. In the context of 1999 this led to the involvement of the civilian government in the support of armed militia groups through the organizational mechanism of Pamswakarsa.

Both the military and police institutions in East Timor historically also had ties to groups such as Ratih and Wanra under the Sishankamrata system. The existence of various pre-intergration civilian armed and non-armed groups in East Timor in 1999, including militias, with close relations with various government agencies, may be seen as a spillover of such past arrangements.

Until 1999, the civil law enforcement agency (Polri) was also subordinate to the defense and security policies of the military and State. In April 1999, the Police underwent a process of reform that allowed greater independence from the military apparatus. However, the Police still remained under the ultimate authority of the Department of Security and Defense. The restructuring of the Police institution may have resulted in a lack of confidence in the institution due to the previous structure of POLRI as part of ABRI.

Thus, in all aspects of governance in East Timor from 1975 until 1999, defense and security were the primary objectives. Every institution within the government was dominated by the military's primary function in achieving these objectives based on the Indonesian State's view of the conflict. The conduct of military operations against the independence movement inside East Timor took place outside of the legal and Constitutional framework of military employment in peacetime. These military operations took place in the context of what was popularly known as the "Military Operations Zone" (DOM). These factors made military operations in East Timor different than in other parts of Indonesia.

Conversely, the coordinated struggle for independence also affected all aspects of governance in East Timor. The Clandestine movement, which was able to infiltrate all organs of the government in East Timor, and the fact that there were some

figures who worked for both political camps, at times affected administration and allocation of resources to help the struggle for independence. The armed struggle for independence relied on a doctrine of guerilla warfare, which also required the support of civilian resources and logistics. In other words, both the Sishankamrata system of ABRI and the independence movement's strategy of guerilla warfare depended on the use of the resources of civilians. This situation placed civilians in a vulnerable position, so that they could become subjects fought over by either of the two parties to the conflict, and become targets for manipulation by political power holders.

Political Transition in 1999

The condition of political transition in Indonesia (*Reformasi*) had practical implications on all aspects of national and state life and governance, especially those pertaining to the situation in East Timor. This democratization process in Indonesia in 1999 paved the way for the appearance of various popular aspirations, and the weakening of state authority throughout Indonesia. In East Timor, this situation allowed the independence movement to progress further, and to expand its political strategies, including the implementation of the Popular Consultation.

The rise of *Reformasi* also corresponded to a growing awareness about human rights issues. Indonesian institutions experienced increased pressure to uphold human rights, and to abandon repressive mechanisms that were previously used by the security apparatus, particularly in East Timor.

Political changes in Indonesia allowed the independence movement in East Timor to operate more openly to demand referendum and independence. The independence movement organization that previously operated underground, came out and was present down to villages. Here and there there were clashes between civilian groups from the independence movement with pro-autonomy militias. Whereas Falintil that was the armed wing of the independence movement, went into cantonment.

The rapid pace of *Reformasi*, however, may not have allowed sufficient time to build capacity and competence in a new human rights approach to security issues, so that by the time of the Popular Consultation the security forces could effectively fulfill their obligations. There was not an effective mechanism for abandoning repressive security enforcement strategies that were previously allowed in Indonesia and replacing them with new methods of law enforcement. This period of transition between approaches and attitudes towards security enforcement may have led to ambiguity at the operational level in East Timor in 1999, and prevented security forces' members from responding to violence appropriately.

Furthermore, the structural security sector reforms that occurred as part of the political transition in Indonesia further weakened the capacity of the security forces to fulfill their role in providing security to the civilian population. The rearrangement of the structures of authority, particularly for the Police vis a vis the military in 1999, meant that by the time of the Popular Consultation, institutions had not yet had time to build the institutional capacity to exert independence within their new roles and authorities in the emerging Reformasi era.

Implications of the 5 May 1999 Agreement

The relatively short time span between the signing of the 5 May 1999 Agreement and the holding of the Popular Consultation on 30 August 1999 may have caused a rush in planning and preparation for the referendum. There may have not been adequate time to put in place sufficient physical infrastructure. Furthermore, there was not enough time to make effective political and socio-cultural preparations among the populace. Because polarized political and armed groups were part of the social environment at the local level in East Timor before May 1999, more time may have been needed to adequately incorporate each groups' concerns in the referendum and disarmament processes. A greater time commitment to such initiatives could have helped prevent perceptions by pro-autonomy groups of mistreatment or bias, which resulted in violent responses throughout the Referendum process.

Giving the security responsibility for the Popular Consultation process to the government of Indonesia was an extremely risky measure. Giving over security arrangements to Indonesian security forces, who were well-known to be closely tied to pro-integration armed and unarmed Timorese groups as part of the Sishankamrata system, was very likely to lead to conflicts of interest. Although the 5 May Agreement and its related modalities required the neutrality of the security forces, given the historical precedents and organizational structures of the security forces this was a difficult, and unrealistic assignment of duties.

In summary, the violence that occurred in East Timor occurred in a complicated, political, economic and social environment. There was no single cause of the violence, and there was not one, single actor responsible. In the following chapters the Commission will turn to examining the types of violations that occurred and what implications contextual factors may have had on both the patterns of violations and on institutional responsibility.

CHAPTER 5

DOCUMENT REVIEW: ANALYSIS OF EVIDENCE OF PREVIOUS TRIALS AND REPORTS

5.1 THE DOCUMENT REVIEW PROCESS

The mandate of the Commission provides for a review of four bodies of documents in reference to the determination of the conclusive truth concerning gross human rights violations and institutional responsibility: the KPP HAM Report, the twelve East Timor trials before the Jakarta Ad Hoc Human Rights Court, the CAVR Final Report, and the Serious Crimes process in East Timor (Special Panels for Serious Crimes/Serious Crimes Unit). These four categories encompass the following bodies of documents that were reviewed:

1. KPP HAM
   - KPP HAM Report
   - KPP HAM Databases of documents and testimony

2. Jakarta Ad Hoc Human Rights Court Process
   - Trial Documents and Final Judgments from the twelve East Timor Cases
   - Investigation Dossiers (BAPs) of the Indonesian Attorney General's Office for the twelve East Timor cases and documents attached to the BAP's

3. CAVR
   - CAVR Final Report[1]
   - CAVR Community Profiles

4. Serious Crimes Process
   - Special Panels for Serious Crimes indictments and judgments for trials involving charges of crimes against humanity
   - Serious Crimes Unit files, including the so-called "Wiranto Case File"

[1] The report by Prof. Geoffrey Robinson (popularly referred to as the "Robinson Report") was also included in the Document Review because it was adopted by the CAVR as an annex to their Final Report and played an influential role in the formulation of their report's analysis.

Methodology

The Commission conducted its own review of these documents but also obtained the assistance of independent experts in this task. An international research team under the supervision of the Commission's Expert Advisor prepared two lengthy reports analyzing the four bodies of documents. The second report took the form of an Addendum to the first, because its mandate was to, within the same analytical framework, address some issues that had not been researched in the first report. These reports are included in the appendices to this Report.[2] Each of these four bodies of documents was evaluated by means of the following questions:

- What conclusions do they each reach regarding the occurrence of gross human rights violations or crimes against humanity in East Timor in 1999?
- What conclusions do they each reach regarding institutional responsibility for those crimes?
- Are those conclusions supported by the evidence they had available to them?
- What are the strengths and weaknesses of each of the four bodies of documents?
- What are the common conclusions regarding gross human rights violations and institutional responsibility that were reached on the basis of the evidence contained in these four bodies of documents?

To answer these questions the Commission adopted an analytical framework for the evaluation of evidence and conclusions pertaining to the occurrence of gross human rights violations in the form of crimes against humanity and to institutional responsibility for such violations that did occur. Following the decision of the Commission, this framework was derived from international humanitarian law as reflected in the Statutes and jurisprudence of the International Criminal Court (ICC), the International Criminal Tribunal for the former Yugoslavia, the International Criminal Tribunal for Rwanda, and in the "Guidelines: Elements of Crimes, Gross Human Rights Violations, and Command Responsibility of the Supreme Court of the Republic of Indonesia."

According to this analytical framework a gross human rights violation in the form of a crime against humanity may be found to have occurred when credible evidence compellingly demonstrates the existence of the following elements. These elements are based upon the "chapeau elements" required for proving a case of crimes against humanity.[3] For each of these elements there are analytical questions that may be asked to guide in weighing the evidence to determine whether the element is met. The answers to these questions provide indications on the basis of which conclusions may be reached. The framework is constituted of the following:

1. **"An attack against a civilian population"** occurred. Such an attack may be found to have taken place when evidence shows that there were a substantial number of civilians who were victims of coercion, violence, or criminal

[2] These two reports by the Expert Advisor are cited in Chapters 5 and 6 as: Report to the CTF and Addendum to Report to the CTF.

[3] "Chapeau elements" refers to the elements that must be proven in all crimes against humanity cases in addition to the specific elements of the individual crimes against humanity (enumerated offenses), such as murder, torture, or persecution. Proof of the "chapeau elements" requires establishing that the specific crime against humanity (acts of murder, torture, rape, etc.) was committed "as part of" a widespread or systematic attack against a civilian population and that the perpetrator was aware of the connection of his or her individual act to that larger context of violence.

conduct. The violence, however, must have been sufficient to qualify as "an attack against a civilian population." In order to establish this, it must first be shown that there was an attack. An "attack" for purposes of this element may be defined as a "course of conduct involving the commission of acts of violence." For purposes of crimes against humanity the attack may consist of any mistreatment of the civilian population. An "attack" does not require the use of armed force. An "attack" does not have to include or coincide with an armed conflict.

That is, an attack may be found to have occurred when there were incidents involving violence against, or mistreatment of civilians. For example, a campaign by a government that attempted to deter the members of an opposition party from voting a particular way, and used coercive or violent tactics, such as threats to communities and families; illegal detention and mistreatment or torture of leaders, or their supporters or relatives; retaliation in the form of destruction of crops or houses; forced disappearances; and so on, would be sufficient to constitute an attack against a civilian population, even though it did not take the form of a military attack and did not include the entire population of the country or region.

2. In order to meet the criteria for gross human rights violations and crimes against humanity, however, the attack must be **"directed against"** civilians. That is, were civilians "the primary object of the attack"? In order to determine whether civilians were the primary object of the attack, the following kinds of evidence must be analyzed and weighed in reaching a conclusion:
   (i) Were the civilians only accidental or incidental victims?
   (ii) Did the violence occur during a military operation aimed at enemy, armed forces or at a gathering or community primarily containing civilians?
   (iii) What were the means and methods used in the "attack"? For example, did it involve an attack on a military base using heavy weapons and infantry assault tactics or was it a roadblock, sweeping operation, search of civilian houses, forcible removal of persons from their homes, etc. ?
   (iv) What was the status of the victims? For example, were they armed combatants, unarmed combatants, prisoners of war, civilians, women and children?
   (v) What was the number of victims in each category? Were the victims primarily civilians or armed combatants?
   (vi) Was the attack discriminatory? That is, was it just directed at random individuals or did it target specific groups because of their political affiliation or their ethnic or religious identity? Who were the targets and what was the aim of attacking them?
   (vii) What kinds of crimes were committed during the course of the operations or activities constituting the attack? For example, were these the kinds of crimes that are typical of purely military operations directed against military opponents (e.g., massacre of prisoners of war), or were these the kinds of crimes that are associated with the victimization of civilians (e.g., sexual violence, forcible transfer, illegal detention, torture, forced disappearance, etc.)?
   (viii) Did the victims use armed force to resist the attacks?

3. In order for an attack directed against civilians to qualify as encompassing gross human rights violations or crimes against humanity, the attack cannot be directed solely against individual civilians but against **"a civilian population."** The term "a civilian population" does not mean the entire population of the country or territory where the attack occurs. There is no minimum number necessary. Rather than a quantitative test, the decisive issues are whether the attack was aimed at a few, limited, randomly selected individuals or a group of civilians sufficient to be a civilian population. For example, a single incident of drunken soldiers who randomly shoot some civilians from their vehicle would not meet this test, or the targeted assassination of a small number of political opponents would not meet the test. It is also important to note that the presence of members of armed groups within a civilian population does not deprive that population of its civilian character. If the "population" includes some armed members of resistance groups or combatants who have laid down their arms it is still "a civilian population." If the group attacked comprises a large majority of soldiers, on duty and not on leave, with a much smaller number of civilians among them, this might not be "a civilian population."

   In analyzing the four bodies of documents reviewed, the basic method used to evaluate evidence and conclusions on this element was to determine if there is credible evidence of mistreatment or the use of force or violence against a substantial numbers of civilians. Or, on the other hand, does the evidence indicate that the violence was (1) directed merely against a few isolated civilian individuals, or (2) directed primarily against legitimate military opponents but a few civilians were killed in random, isolated incidents?

4. If the evidence is sufficient to establish that an attack directed against a civilian population occurred, it is necessary to also find that the attack was either "widespread or systematic." The term "widespread" encompasses the quantitative dimensions, scope, and character of the attack. The term "systematic" involves primarily qualitative aspects of the attack. In analyzing the evidence in the four bodies of documents on this point the basic question asked was whether the alleged attack involved a small number of random, isolated, unrelated, individual acts of violence, or either: (1) multiple related acts of violence or mistreatment of civilians, or (2) violence that indicates organization, planning, coordination, or patterned activity? If either of these characteristics is present then the element of "widespread or systematic" is satisfied.

   In analyzing the evidence and conclusions on the "widespread" characteristics of the violence, the Commission analyzed and weighed the evidence on the following kinds of issues:

   (i) Were there large-scale attacks or acts of violence, mistreatment or coercion?
   (ii) Were the incidents small in number and in scale?
   (iii) How many victims were targeted?
   (iv) How many incidents of mistreatment were there?
   (v) Was the violence confined to one locale or did it occur in various places?
   (vi) What was the duration of the violent activity?

(vii) Was there a relation between the perpetrators of different acts of violence? (e.g., political affiliation, membership in the same or related organizations, personnel of the same armed forces)

In analyzing the evidence on these questions, if the number of incidents and their scale are very small then the attack was not widespread. On the other hand, if there were multiple incidents of mistreatment or violence against civilians, or if only a few incidents occurred but they were of significant scale (large numbers of perpetrators and targeted civilians) then the elements of "widespread" would be fulfilled.

In analyzing the evidence and conclusions in the four bodies of documents on the "systematic" quality of the violence, the Commission considered whether the violence was conducted in an organized manner or was spontaneous, random, or chaotic. In this analysis of the "systematic" element the evidence on the following kinds of issues were examined:

(i) Were specific population groups, geographical areas, or victims targeted?
(ii) Did the perpetrators attack anyone they encountered or specific individuals or groups?
(iii) Was there any planning, briefings, orders, or disciplined leadership? Had the perpetrators received training? Was there a chain of command? Did the perpetrators have ranks and were they respected? Does there appear to have been any thought behind how to carry out the operation?
(iv) Did perpetrators act in military style units or in random groups? How many perpetrators were there?
(v) What logistical support did the perpetrators receive? Did they obtain arms, uniforms, transportation, ammunition, petrol, food, or financial support? How and from whom?
(vi) Did the violence take the form of a military or security operation? For example, were there roadblocks, lists of names, sweeps, or search operations? What tactics were employed? Who led the operation? Did the perpetrators wear uniforms and follow orders?
(vii) Were victims transported from one place to another? How and by whom?
(viii) Were government officials or military officers present when the acts of violence were committed?
(ix) Were victims detained? By whom? For how long? Where? How were they released?
(x) What were the kinds of crimes committed? Were there any patterns in the commission of the violence?

The question of whether there was a pattern underlying the attacks or incidents of violence was important not just for the systematic quality of the attack but also, in the Commission's judgment, for establishing whether there was institutional responsibility. The Commission defined a "pattern" in this context as a non-accidental repetition of similar criminal conduct on a regular basis. In evaluating the existence of patterns, the Commission evaluated the evidence on the following kinds of issues:

(i) Were there similarities between different incidents of violence?
(ii) Was there repetition of certain kinds of operations or kinds of mistreatment?

(iii) Did the incidents occur over a prolonged period of time or in a single day or week?
(iv) Do the incidents all appear to be the result of accidental circumstances? Do the victims appear to be randomly chosen, as "in the wrong place at the wrong time"?
(v) Do the incidents appear to be related by a political ideology or political goals?
(vi) Were there any statements by civilian, military, or political leaders, or by leaders, officials, or commanders at the local operational level indicating that conduct was purposive in nature?

For analyzing the systematic quality of an attack, it is important to note that there is not a requirement that there be a governmental policy. The jurisprudence of the international tribunals is unanimous and conclusive on this point. Although it is not required that such a policy be established, if such a policy exists this may provide good evidence of the planned, organized and hence systematic nature of an attack. Such a policy may be official or unofficial, written or unwritten, formal or informal. The existence of such a policy may be inferred from the kind of organization, resources, and coherence manifested in the attacks as well as from the utterances, reports, or memoranda of civilian or military officials. In other words it is not necessary for a finding of the systematic nature of an attack to establish that there is a policy.

As noted above, the Commission's method in reviewing the four bodies of documents was, following the mandate, to inquire first as to the evidence and conclusions about whether or not gross human rights violations occurred. Next, the Commission considered the evidence and conclusions in the four bodies of documents related to institutional responsibility for such violations. Since "institutional responsibility" is not a legal doctrine but is based upon political, moral, and ethical factors, the basis of the inquiry was to apply an analytical framework for evaluating evidence that identified institutions that from a political and moral perspective should be seen as bearing responsibility for the violence perpetrated against civilians in East Timor in 1999. It is also the case that because institutional responsibility is not a legal doctrine, most of the bodies of documents do not directly address this issue as a principle basis for their findings. Instead, most of them are judicial or quasi-judicial documents, focused upon individual responsibility. In such cases the method employed in the analysis was to first identify and evaluate conclusions that did focus upon institutional responsibility. Second, where there were no such direct conclusions, the analysis focused upon the evidence contained in the documents that was relevant to findings that could be made concerning institutional responsibility.

As noted above, institutional responsibility is not based upon formal legal elements as is the case with gross human rights violations. The Commission's analysis of institutional responsibility was, accordingly, based upon two central, analytical questions. In order to support findings of institutional responsibility, analysis of the available evidence in the four bodies of documents would have to address two central questions. Both of these questions would have to be answered affirmatively to support a finding of institutional responsibility:

1. At the operational level at which the crimes against humanity were actually perpetrated, does the evidence indicate patterns of coordinated activity over time and in multiple locations?

2. Do those patterns of coordinated activity reveal which institutions participated in enabling those activities to occur? That participation can take two forms: (a) institutions whose members or personnel participated directly in perpetration of these crimes; (b) institutions that provided regular and substantial support, organization, resources, direction, training, or planning for the perpetrators of these crimes.

In essence, the answer to the first question builds upon the same criteria used to make a finding on the element of "widespread and systematic" discussed above. That is, all of the factors for both the "widespread" and "systematic" characteristics of the crimes must be reviewed to determine if there is substantial evidence that supports a finding that there were organized and coordinated patterns of activity that reveal the involvement of specific institutions in the perpetration of crimes over the period of time under question. That involvement may take either form described in point 2 in the preceding paragraph. If there is only evidence to show institutional involvement in a few incidents, but not consistently over time and in different areas, then there may be insufficient evidence to establish institutional responsibility. If, however, there are persistent patterns of institutional involvement that are found in most or many of the types of crimes that occurred across East Timor during 1999 then there would be a strong case for findings of institutional responsibility.

Access to Documents and Limitations

The Commission was able to review a very large body of documents. It received cooperation from Komnas HAM, the Office of the Attorney General of Indonesia, the Prosecutor General of Timor Leste, and the CAVR. The Commission, with the assistance of its Expert Advisor and his research teams in Dili and Jakarta, conducted an in-depth analysis of these documents. This analysis of the documents obtained from these four sources and contained in the two Reports of the Expert Advisor,[4] constitutes the basis for the analysis in this section of the Commission's Final Report (Chapter 5). The analysis of such a large body of documents, however, was inevitably limited by considerations of time, resources, and access. All of the documents from the twelve Jakarta trials were examined. While the CAVR report was fully analyzed (in regard to the events of 1999), access was not granted to the actual witness statements on which the report is largely based, due to the nature of CAVR's confidentiality and access policies. However, the Commission was allowed to access a collection of Community Profiles at the CAVR archives. These Community Profiles consist of brief village histories as narrated by residents of each village, which recount major human rights violations from 1974-1999. This collection includes histories from over 300 villages from every district and sub-district of Timor Leste. In regard to the Serious Crimes Process, because of the size of the archive it was not possible to examine all of the files and documents in the custody of the Prosecutor General of Timor Leste.

[4] Report to the CTF(April 2008) and Addendum to Report to the CTF (November 2008).

Because of limitations of time, staff and technical resources, the following parts of the archive were prioritized: judgments and indictments from the SPSC trials involving charges of crimes against humanity; the so-called "Wiranto Case File" that contains the evidence against the high ranking Indonesian indictees; the SCU investigative files; the audio-visual evidence compiled by the SCU in VHS format.[5]

In addition to these materials, the CTF also requested a large number of documents from the TNI. Apart from a very small number (25) that were provided at a late date, this request for documents was not complied with and the Commission had no access to the TNI documents requested.[6] Further, the Commission did not receive access to the collection of INTERFET documents, which are now mostly located in Australia.[7] Finally, access was also not possible to the documents regarding the 1999 violence which are held by Yayasan HAK, though some of these documents did become available at a very late date. There is no doubt that access to these additional documents would have contributed significantly to the Commission's efforts to establish the "conclusive truth," particularly in regard to TNI daily reports and telegrams from field commanders in the districts of East Timor. The Commission was nonetheless successful in obtaining a very large body of evidence of sufficient quantity and quality to make it possible to reach solidly based findings. The scope and depth of the analysis provided to the Commission in the two Reports of the Expert Advisor, together comprising more than 600 pages of text and several hundred pages of appendices as well as extensive document indices, indicates the significant extent of the documents that the Commission succeeded in accessing.

Overview

Following the mandate of the Commission, the two central questions for the Document Review focused on gross human rights violations and that of institutional responsibility. In regard to the former, the analysis of the evidence for and conclusions about gross human rights violations in the four documents is more straightforward because **all of the documents reach the conclusion that gross human rights violations/crimes against humanity occurred**. For this reason it was not necessary to compare and explain different conclusions reached on this issue by different bodies. In regard to institutional responsibility, on the other hand, the various bodies of documents approach the issue of responsibility in different ways. That is, some of them, as noted above, focus their conclusions on individual rather than institutional responsibility. This is natural, because the trials and prosecutions (SCU/SPSC, Ad Hoc Court) necessarily aim at establishing individual criminal accountability, while the investigative reports (KPP HAM, CAVR) go beyond this and explicitly address

[5] The document research conducted as part of this phase of research adhered to strict confidentiality and access guidelines, in order to insure the integrity of the judicial process and the protection of witness identities. All access and reporting of information gathered from the SCU was monitored closely and carefully by both the research team and the Office of the Prosecutor General of Timor Leste, so that neither witness nor perpetrator identities that were not already part of the public record could appear in any information reported to the Commission. Investigative files were subject to special guidelines for access to protect confidentiality. The research team also conducted a survey of a database of documents relevant to 1999 that are housed at the Museum of Resistance in Timor Leste. The documents at this museum are all accessible to the public, but can only be viewed within the confines of the museum.

[6] For example, the Commission requested all of the daily and weekly reports from the various TNI commanders in East Timor from January to October 1999. Only a handful of these reports were provided by the TNI to the Commission.

[7] Some of the documents seized by INTERFET are available at the SCU Archives, but the Commission received information that a sizeable collection of other documents held by INTERFET remains in Australia.

larger institutional dimensions. Some of the trial judgments do make explicit findings on institutional responsibility, but many do not. The Document Review evaluated not just the conclusions about institutional responsibility, but also examined in great detail the findings and evidence on which such conclusions are based.

The analysis and conclusions in this summary of the process of Document Review are supported by the two extensive reports prepared by the Commission's Expert Advisor and his research team. These reports contain very detailed analysis of the evidence and conclusions in the four bodies of documents. They also contain extensive appendices which provide further documentation and a complete document index containing all of the evidence referenced in the reports. These two reports will be attached as appendices to this report and may be consulted as representing the full basis of the Document Review.

The analysis of the four bodies of documents was made easier by the fact that there is fairly broad agreement between the conclusions of most of them on certain issues. As noted above, they all conclude that gross human rights violations occurred in 1999. Secondly, they for the most part agree that there was institutional responsibility for the violence in East Timor in 1999. More specifically, they all agree that East Timorese pro-integration militias bear responsibility for much of the violence that occurred in 1999. Their conclusions on the whole also point to joint responsibility of Timorese militias and Indonesian institutions, but there is variance among the different accounts as to which institutions were involved, to what extent, in what manner, and at what levels. The main exception is represented by the Ad Hoc Court in Jakarta, where some of the Judgments conclude that there was institutional responsibility of Indonesian institutions and others do not.

The differences about the scope and level of institutional responsibility are due to several factors and it will be useful as a preliminary matter to review these. The most important of these differences arises from the difference in perspective between different bodies of documents: The KPP HAM Report focused on responsibility from the bottom to the very highest level, while the BAP dossiers which formed the basis of the Ad Hoc trials are limited only to 18 specific individuals who were the subject of criminal investigation. This was a much smaller number of individuals than considered in the KPP HAM Report and recommended there for further investigation and prosecution. The trials of these 18 individuals before the Jakarta Human Rights Court failed to consider much of the evidence uncovered by KPP HAM and a great deal of the evidence contained in the BAPs was also not introduced into evidence. The East Timor trials held in Dili on the other hand dealt exclusively with low level perpetrators because these were the only individuals in custody. Many of the Special Panels for Serious Crimes (SPSC) final judgments refer to extensive evidence that points to the direct and indirect involvement of Indonesian individuals and institutions in the crimes charged, but that evidence is often not fully explored or made the subject of specific findings because the Indonesian defendants were not before the Court.

The SCU archive contains case files for indictments of high-ranking Indonesian military officers. These case files contain a great deal of relevant evidence, but that evidence was never tested in judicial proceedings. The investigative files of the SCU contain even more evidence that points to the systematic involvement of Indonesian military, security, and governmental institutions in the violence. Because many of

these cases were not brought to indictment or to trial this evidence has never come before the court or the public. Some of these cases contain much better and more extensive evidence of Indonesian involvement than do the SPSC cases that were tried. This evidence points to the systematic connections between the Indonesian military, security, and governmental actors and the Timorese militias. Indeed, the evidence often shows the way in which at the operational level these groups all acted together, following common goals, often under the direction of Indonesian officials. They show how militia operations followed various operational patterns, including some actions carried out by pro-autonomy militia without direct TNI involvement, but also a number of operations at the instigation or orders of Indonesian officers, and joint operations carried out by TNI or Kopassus personnel together with militia members. In many cases they also show how some militia members were also in the TNI, sometimes making the two organizations indistinguishable at the operational level. Evidence also reveals how militia members might wear TNI uniforms or parts of uniforms while carrying out operations.

These cases did not come to trial because they were not prioritized by the SCU. In general the SCU cases that did come to trial did not focus on TNI involvement. This was not a priority of the prosecution since the defendants were not TNI, and was not deemed relevant by the judges, who focused on the guilt or innocence of those who appeared before the court. It is one of the weaknesses of the SPSC judgments that they neglect the issue of Indonesian involvement and often do not make specific factual findings on the evidence relevant to these issues. It was hence necessary to look beyond the trial judgments to the evidence contained in the case files of indicted and non-indicted cases. A further weakness of the SCU process was the lack of sufficient attention to crimes other than murder as well as crimes committed against pro-autonomy individuals or groups.

In other words, the focus of each body of documents determines and limits the nature of the conclusions reached. Both groups of trial documents (East Timor and Jakarta) are weak on establishing the details of the general context in which the violence occurred and the larger patterns of activity of which it was a part. Both are also very incomplete as to crimes perpetrated by pro-independence groups. The SCU case files contain massive amounts of evidence that could have been used to establish the context and the patterns of violence in 1999. The prosecutors and judges, however, with very few exceptions did not develop or analyze this evidence, but relied instead upon the mere introduction into evidence of various human rights reports.

On the other hand, KPP HAM and CAVR (through the "Robinson Report") do provide an overall account of the violence and develop an institutional interpretation of its causes and of who was responsible. This is consistent with their interpretation of their mandate. The judges and prosecutors of the Special Panels, Serious Crimes Unit, Indonesian Attorney General's Office and Jakarta Ad Hoc Court proceeded differently. They interpreted their mandate as considering the accountability of individuals, not of institutions. This is only natural in a criminal trial. As a result, however, they tended to ignore the general context of the violence and focus narrowly upon the role of specific individuals in the specific incident involved in the case. For this reason, in order to assess conclusions and evidence as to institutional responsibility in these documents, this section of Chapter 5 examines specific findings and evidence on factual issues relevant to institutional questions.

5.2 THE COMMISSION OF INQUIRY FOR HUMAN RIGHTS VIOLATIONS IN EAST TIMOR (KPP HAM TIMTIM)

KPP HAM was mandated to complete the following tasks:[8]

- Gathering facts, data and information on gross human rights violations committed in East Timor after January 1999 until the issuance of the decree of the People's Consultative Assembly that legalized the result of the Popular Consultation, by focusing on gross human rights violations such as genocide, massacre, torture, enforced displacement, crimes against women and children and scorched earth policy.
- To inquire into the involvement of state institutions and international actors in the gross human rights violations.
- To formulate the results of the inquiry as the basis for further investigation and prosecution before the Ad Hoc Human Right Court.

It should be noted that this mandate encompassed elements of both institutional and individual responsibility. That is, KPP HAM was tasked with investigating the involvement of state institutions and also making specific findings that could serve as the basis for criminal prosecution of individuals.

In order to implement this mandate the KPP HAM investigation included taking statements from victims, summoning witnesses and parties allegedly to have been involved in the incidents, collecting evidence on the allegations of violations, examining the crime scenes and other buildings relevant to the investigation, conducting exhumations of mass graves, collecting documents, and analyzing the facts. KPP HAM was given only three months to execute its mandate.[9] This was an extremely short time frame in which to undertake such a broad investigation, encompassing a wide spectrum of potential crimes, committed over a period of eleven months and in a variety of locales. Despite this time limitation a very extensive investigation was in fact accomplished, including repeated visits to exhumation sites and evidence gathering in various parts of East and West Timor. It was unavoidable, however, that these time constraints would place limitations both on the amount of evidence that could be gathered and the amount of time in which it could be sorted, classified, and analyzed for purposes of the KPP HAM Report.

These limitations made themselves felt in the investigation of some of the specific offenses which the Commission was mandated to cover, including extermination, torture, forced displacement, persecution, murder, and scorched earth policy, and gender-based crimes. It would have been impossible for even a much larger investigative body with much greater resources in such a short time to fully investigate all of these crimes individually and inquire as well into institutional and individual responsibility for their perpetration. The result was that not all the elements of each of these crimes were subjected to complete investigation and analysis. For example, in regard to gender-based crimes, KPP HAM was assisted by the Indonesian National Commission for the Prevention of Violence Against Women (*Komnas Perempuan*).

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[8] Komnas HAM, *Laporan Akhir Komisi Penyelidik Pelanggaran HAM di Timor Timur (KPP HAM)*, 2000, 4.
[9] Ibid., 4, 8.

But the evidence presented by the Komnas Perempuan was largely "second hand" evidence derived primarily from data already collected by NGOs or other individuals without an independent investigatory or verification process. Thus, the evidence collected by KPP HAM (through Komnas Perempuan) on these crimes was not as fully substantiated as was the case with other crimes where KPP HAM itself collected significant numbers of victim testimonies and statements of alleged perpetrators.[10]

Another limitation of the KPP HAM Report involved their decision not to inquire into the responsibility of other parties allegedly responsible for crimes occurring in East Timor other than those related to the Government of Indonesia or Indonesian Army. The KPP HAM Report does mention several incidents involving alleged attack against Indonesian Army or GoI personnel or pro-integration mass, however these crimes were not fully investigated.[11] One can speculate as to the reasons for this focus, but whatever the reasons, the fact is that the results of the KPP HAM Report were limited to recommendations for investigation and prosecution of members of Indonesian military and governmental institutions and to pro-integration Timorese militia leaders.

As noted above, the KPP HAM mandate broadly encompasses individual criminal responsibility and the responsibility of institutions. In regard to individual responsibility, however, there are many modes or forms of liability through which individuals can be held accountable for crimes against humanity or other serious violations of international law. These include different forms of commission of a crimes, from direct perpetration to ordering, inciting, planning, aiding and abetting, and so on, It also encompasses the theory of liability widely used in international prosecutions known as Joint Criminal Enterprise, which is considered a form of committing crimes giving rise to individual responsibility. In addition, international criminal law provides for command responsibility ("Superior Responsibility" under the ICTY and ICTR Statutes), encompassing both civilian and military leaders. This form of responsibility arises from the failure of a military or civilian superior to prevent his or her subordinates from committing crimes or from failing to punish them afterwards.[12]

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10 Ibid., 35. Overall, KPP HAM interviewed 123 witnesses; conducted 9 field visits, including several crime scenes in East Timor. The KPP HAM also opened a secretariat in NTT to support its field work, such as to prepare witnesses to be interviewed, to prepare the exhumation of a mass grave in Alas Village, etc..

11 Ibid, 27. See also the statement of Adam Damiri for KPP HAM investigation, 28; statement of Yayat Sudrajat for KPP HAM investigation, 7,15-18, 40; testimony of Noer Muis in KPP HAM investigation, 45; testimony of Leonito Martens in KPP HAM investigation, 2,8; testimony of First Lieutenant Sutrisno in KPP HAM Report, 5. testimony of Eurico Guterres in KPP HAM investigation, 33, 55; statement of Kiki Sjahnakri in KPP HAM investigation, 6; testimony of Timbul Silaen in KPP HAM investigation, 13; testimony of Glen Kairupan, KPP HAM Report, 9.

12 Under the ICC Statute, military commanders are held to a higher standard than civilian superiors. Military commanders are accountable when they either knew, or under the circumstances should have known, that their subordinates were committing or were about to commit crimes. The civilian superior, on the other hand, is only accountable when they knew, or consciously disregarded information that clearly indicated that subordinates were committing or were about to commit crimes. The ICTY and ICTR statutes do not distinguish between military and civilian superiors and apply to both the standard that they may be held accountable when they knew or had reason to know that their subordinates were committing or were about to commit crimes. For all three statutes the failure to prevent or punish after the superior is in the possession of such knowledge gives rise to their criminal responsibility.

When the KPP HAM Report makes its recommendations as to individuals who should be investigated by the Attorney General for potential prosecution, the recommendations did not provide an analysis or specific findings as to the form or responsibility for each of the persons named. For example, for General Adam Damiri, KPP HAM only stated that he was involved in "supporting militia activities, and did not prevent and punish TNI members involved with militias." These allegations are quite general and do not specify, for example, the nature of the support he was alleged to have provided as the basis, presumably of a charge of aiding and abetting. As to failure to "prevent or punish" the Report also does not specify which specific subordinates this applies to, what specific offenses they committed, or whether or not they were his subordinates as defined in international law.[13] Such questions were not addressed sufficiently by KPP HAM and the vagueness as to the specific forms and factual basis of individual responsibility was even worse at the Ad Hoc Court, where the indictments and the prosecution largely limited themselves to vague allegations of failure to prevent or punish.

Although the KPP HAM report was not as detailed as might have been hoped in regard to specific forms and bases of individual responsibility, there are other areas where it was much more thorough than the Ad Hoc trials, or the trials before the Special Panels in Dili. Most significantly, the KPP HAM Report does address in-depth the overall context of the crimes against humanity it finds to have been committed in East Timor. One of the greatest shortcomings of the Ad Hoc Court process was the way in which the prosecution and most of the Judgments treated each incident as isolated and discrete rather than as part of a "widepread or systematic attack against a civilian population" as required to establish a case of crimes against humanity. The KPP HAM Report, on the other hand, analyzes overarching patterns of violations and the institutional connections underlying these patterns. For this reason the KPP HAM Report was repeatedly used by the Serious Crimes Unit prosecution teams to establish the "chapeau" or "contextual" elements of crimes against humanity in the trials in Dili. In fact, the KPP HAM Report was accepted into evidence in all of the crimes against humanity cases before the Special Panels, and in many of these cases the judges made specific findings on the "chapeau" elements on the basis of the KPP HAM Report. The KPP HAM report thus does provide a substantial evidentiary basis for its findings as to the nature and scope of the 1999 violence. While these findings do involve investigation of various specific cases, KPP HAM moved beyond those cases to analyze in considerable detail the common patterns of conduct manifested in the different occurrences. It is the analysis of these common patterns that forms the basis for the KPP HAM Report's conclusions about institutional responsibility. This must be seen as one of the most important strengths of the report. The following section considers the methodology on which such conclusions are based.

[13] To have been his/her "subordinates" for purposes of command responsibility, the perpetrators would have to be shown to have been under his/her "effective control." To establish "effective control," the evidence must show that the commander in fact had the power *de facto* (not *de jure*) "to prevent or punish" the perpetrators.

The Process of Inquiry

As explained in the Report, the KPP HAM inquiry process was initiated by gathering secondary and tertiary information from printed and electronic media as well as reports issued by institutions, organizations and individuals on violations of human rights in the period of January-October 1999. The information was then analyzed and verified through its own investigation, which included the examination of physical, documentary, and forensic evidence, exhumations of mass graves, crime scene visits, interviews, and statement taking.

In the short period of its mandate, KPP HAM conducted nine field investigations in East Timor. Three of these involved exhumations in Nusa Tenggara Timur to exhume the bodies of victims of alleged mass murder in Suai, Covalima. KPP HAM also took direct testimony from 123 individuals. Their statements were taken in Dili, Suai, Liquiça, Maliana, Maubara, Kupang, Atambua and Jakarta. These witnesses included victims, civilian officials, military officers, and pro-integration militia members and leaders. KPP HAM also gathered extensive evidence in the form of documents, decrees issued by the civilian government and the military, transcription of radio conversations, mass media coverage of the incidents, as well as reports from other institutions. In addition to its Report, KPP HAM compiled all of its evidence and witness testimony into various documentary databases which served as appendices documenting and supporting the report. These databases are quite extensive and cover catalogues of physical evidence and a document index with more than 1000 entries. These sources of evidence serve as the basis of the Commission's analysis, and consequently, its conclusions.

Findings as to Gross Human Right Violations in the form of Crimes Against Humanity

KPP HAM concluded that crimes against humanity had occurred in East Timor 1999. This conclusion was based upon findings of specific patterns in the various incidences of violence that the Commission examined. These patterns involved the identity of the perpetrators and victims, the systematic nature of the methods of support and perpetration of the criminal conduct, the extensive geographical and temporal range of the violence, and the numbers of victims of the violence. KPP HAM analyzed these events occurring prior to and after the Popular Consultation and classified them by identifying certain types of crimes:

1. Murder
   KPP HAM concluded that murder and attempted murder had occurred. They also concluded that those murders were based on political motivations or other discriminatory grounds and that these murders were extra-judicial. In several cases of the cases they examined the murders occurred in civilian residence, churches, refugee centers, and in military or police headquarters. An example of the latter category involved their conclusion that a murder had taken place in the Military District Command Headquarters in Lautém on 11 September 1999. KPP HAM found that the victims were first detained by Team Alfa militia on 7 September 1999 and taken there because they were suspected to be pro-independence.

2. **Torture and Persecution**
The KPP HAM Report does not specifically delineate the elements of torture and persecution and thus does not clearly distinguish the definitions of these crimes. This confusion also occurred to an even greater extent at the Ad Hoc Court. KPP HAM did conclude that various instances of both torture and persecution had been perpetrated against civilians, for example, for refusing to join pro-integration militias or as acts of terror following the Popular Consultation. The lack of analytical clarity as to the legal elements defining these two crimes is one of the weaknesses of this aspect of the Report. Under international law, torture and persecution are distinct crimes with completely distinct elements. The reason for some of the confusion here and at the Ad Hoc Court arises from the fact that crimes such as torture, rape, inhumane acts, and so on, may also constitute the crime against humanity of persecution if they are carried out with an intent to discriminate on the basis of religion, ethnicity, race, or political affiliation. Thus someone may be convicted, for example of both torture as a crimes against humanity and persecution as a crime against humanity on the basis of the same conduct. The crimes, however, are distinct and must both be established on the basis of their respective elements.

3. **Enforced Disappearances**
KPP HAM concluded that forced disappearances were perpetrated in the period after the announcement of the two options. They found that the evidence indicated that these forced disappearances were committed by pro-integration militia groups. They also found that in some of these instances the militias were assisted by members of the Indonesian security apparatus. The disappearances sometimes took the form of abduction or sometimes of extra-judicial arrest and in some cases were followed by summary execution. In other cases the fate of the victim remained unknown. In terms of geographical spread, KPP HAM found that such disappearances occurred in several regions, including Dili, Bobonaro, and Liquiça.

4. **Gender based violence**
As noted above, KPP HAM did not conduct its own systematic investigation of gender based violence. It relied on the report prepared by Komnas Perempuan. On that basis KPP HAM concluded that gender based crimes included persecution, sexual harassment in public by militias and TNI, forcing underage girls into sexual servitude for militias, enforced prostitution, and rape. The weakness in regard to these conclusions has to do with the methodology on which the findings were based. Because KPP HAM did not conduct its own investigation, and because of the nature of the Komnas Perempuan report, there was no process of verification and cross-checking to support the allegations of these various kinds of sexual violence. The KPP HAM and Komnas Perempuan reports do provide specific and detailed examples of sexual violence from the various categories mentioned above. It must be acknowledged, however, that these incidents did not then receive the same kind of investigation and corroboration as was the case with some other categories of crime such as murder. As a result, while the allegations of these various forms of sexual violence need to be taken very seriously, and while much of the testimony appears to be credible and uncontradicted, the conclusions by KPP HAM are not as fully substantiated as is the case in other areas.

5. **Forced displacement**

The KPP HAM Report finds that there were different motivations at work in the movement of population alleged to involve forced displacement. They conclude that the evidence indicates that while some individuals migrated voluntarily, some were moved through practices of forced displacement. The Report is careful in its analysis, noting that the evidence is only preliminary in a number of instances. They find that forced movement occurred in two phases, before and after the Popular Consultation. They conclude that before the Popular Consultation thousands of refugees moved into Suai Kota (approximately 6,000 people), Liquiça (approximately 3,000 people) and Dili (approximately 1,000 people). They also find that the evidence indicates that many of these individuals were forced to move by the methods employed by pro-integration militias. These methods involved attacking their villages and burning their houses and farms. Many of these displaced persons, they conclude, collectively sought refuge in places such as the Suai Church, the Liquiça Church and the house of Manuel Carrascalão in Dili.

After the Popular Consultation, KPP HAM identified six mass displacements in Dili, Baucau and Lautém to regions in Eastern Nusa Tenggara (NTT). They found that the pattern of displacement in these instances involved militia attacks against villages, whereby people were driven to leave their homes. They were then herded into vehicles provided by the Indonesian security forces and were later transferred to NTT. The Report's conclusions are based upon an analysis of the patterns of forced displacement in these two periods. The Commission based these findings on the analysis of a considerable amount of evidence, but acknowledged that this evidence was in many ways preliminary. Because of the scope of the transfers, their broad geographical distribution, and the number of potential victims, a much fuller investigation with much greater resources would have been required to reach firm conclusions as to the complete picture of displacements. It is a strength of the KPP HAM approach, however, that they did not attempt to reach global conclusions, but rather focused on specific incidents of forced displacement for which they were able to collect evidence. It was the patterns in these relatively well documented incidents that grounds their conclusion that while some individuals left voluntarily others were forced to do so.

These crimes were analyzed in the KPP HAM Report as crimes against humanity. The Report builds upon its findings of patterns, broad temporal and geographical scope, and so on to conclude that the evidence provided sufficient indications that they fulfilled the elements of crimes against humanity, enumerated by the Report as widespread, systematic, attack against a civilian population, and perpetrated by parties with a common identity.

More specifically, KPP HAM, following standard international norms, interpreted the "massive and widespread" nature of the crimes as represented by the extensive area where the crimes occurred and the large number of victims. The report aims to document this element by focusing on 14 main cases occurring prior to and post Popular Consultation, namely:[14]

[14] Op. cit., Komnas HAM, para. 92-149.

a. The attack on the Liquiça Church, 5 - 6 April 1999
b. Killings in Cailaco, Bobonaro, 12 April 1999
c. The attack on Manuel Soares Gama, 12 April1999
d. Executions of civilians in Bobonaro district, 13 April 1999
e. The attack on Manuel Carrascalão's residence on 17 April 1999
f. The riot in Dili on 26 August 1999, during the last campaign of pro-autonomy, on which date a student named Bernardino (Bedino) Agusto Guterres was murdered in public by the Mobile Brigade
g. The attack on the Dili Diocese on 4 - 5 September 1999
h. The attack on the residence of Archbishop Belo on 6 September 1999
i. Arson of residences in Maliana on 4 September 1999
j. The attack on the Suai Church on 6 September 1999
k. The murder in Polres Maliana on 8 September 1999
l. The murder of Sander Thoenes on 21 September 1999
m. The murder of clergy in Lospalos on 25 September 1999
n. Gender based violence[15] consisting of :
   - On 16 September 1999 in Ainaro two women were brought to West Timor and forced to live together with a Commander of Mahidi in NTT.
   - 30 women were rumored to be detained in refugees in the area of Raihenek (Kobalima Sub-district, Belu District NTT) and were subjected to sexual violence by militias.
   - On June 6, 1999 23 women were detained by BMP militias near Gugleur, Maubara Sub District, Liquiça District and the victims were forced to cook and wash for the militias and were subjected to sexual violence.
   - Cases of gender based violence especially rape as reported by the UN Thematic Special Rapporteur on 8 December 1999.

While the documentation for a few of these cases is less substantial than others (for example the 30 women who were reported to have been detained in Raihenek) for many of the others KPP HAM possessed substantial amounts of evidence uncovered in its investigation. In terms of the quantitative dimension necessary to establish the element of a "widespread" attack this number of cases, if proven at trial, would be sufficient to support a finding that this element was fulfilled.

As to the "systematic" element, it should be emphasized that to establish this chapeau element of crimes against humanity either "widespread" or "systematic" would suffice. Both are not required. KPP HAM, however, analyzed both elements and concluded that the systematic quality of the violence against civilians could be established on the basis of the patterns or modus operandi by which the alleged crimes were committed. They especially focused on the planning of operations where the militias were involved with the police or TNI. In the jurisprudence of the international tribunals, planning provides strong evidence of the systematic nature of the attacks. So if the analysis of the evidence for these findings of planning is correct, this would provide a legitimate basis for such a conclusion. KPP HAM focused its analysis on the involvement of state actors in the crimes that occurred. This appears to be based on its view that gross human rights violations are the responsibility of the state and

15 Ibid., para. 144-149. These were adopted directly from the National Commission on the Violence against Women (Komnas Perempuan).

its institutions.[16] Thus to a significant degree it focused its analysis of the systematic element of crimes against humanity on the involvement of state institutions. Thus it comprehensively examined the role of civilian and military actors of Indonesian institutions in various incidences of violence that it found to indicate the existence of a pattern of conduct aimed at winning the Popular Consultation and defending East Timor as a part of Indonesia.

For example, using analysis of witness testimony and other evidence, KPP HAM elaborated upon the role of the civilian government in supporting the militias by providing financing from official budgets. They documented these findings for militia groups such as Aitarak in Dili. They also analyzed evidence which they concluded indicated the active and passive involvement of TNI officers and other officials in carrying out a series of field operations. They also pointed to other indications of the involvement of TNI personnel in the perpetration of the violence. KPP HAM concluded that statements by high-ranking TNI officers indicated an implicit acknowledgement and awareness of this involvement. For example, they relied upon statements that, "The soldiers were bearing a psychological burden" in regard to preventing the violence since they had connected together with the militias over a long period of time.[17] Or to take another example, they found that corroboration in the statement that, "the perpetrators were those who were disappointed with the result of the Popular Consultation."[18]

The KPP HAM Report's conclusions show the violence was implemented systematically in a manner which can indicatee the existence of an implicit policy.[19] Their central point in their conclusions was that violence occurred as a result of systematic patterns of conduct rather than merely spontaneous acts. They documented this systematic quality through analysis of evidence that showed patterns and concomitant relation of the TNI and the pro-integration militias. Table 1, appended at the end of this section summarizes some of the evidence that KPP HAM relied on in reaching this conclusion. While KPP HAM collected substantial amounts of evidence related to organization, support and planning, the evidence could have been analyzed in much greater detail in their report. This applies, for example, to the details of funding of the militias and PAM Swakarsa, or to the specifics of the kinds of firearms provided to militias, their provenance, the system for distributing and collecting them, etc.

In reaching its conclusions as to institutional responsibility, KPP HAM thus relied upon the systematic nature of the violence and the associated patterns of cooperation between the military and militias in carrying out field operations. Their Report concluded that the TNI was involved in the training, organization, recruitment, and operational direction of the militias.[20] In the analysis to support the existence of these patterns, KPP HAM also evaluated the identity of the victims. They found that the

16 Ibid., para. 57.

17 TNI brochures: Tuduhan dan Temuan pelanggaran Hukum, tata-tertib dan HAM Pasca Jajak Pendapat di Timor-Timur published by PUSPEN TNI, undated.

18 Transcript of Wiranto's examination by KPP HAM, 8 and 13.

19 Komnas HAM, Op. cit., 38-39, para. 152, 158-159.

20 Report to the CTF, Part I, Chapter II.1, Section III.a-III.d.

evidence indicated that the victims were for the most part targeted because of their political identity. Particular groups that they found were identified as targets included school students, university students and CNRT activists, as well as the general group of those who supported independence without any formal political affiliation. This analysis did not seek to differentiate among the different kinds of members of this general category.[21] Meanwhile, the profile of the perpetrator is the party with conflicting interests to the victims, namely pro integration militia that is supported or received officials support as elaborated in the table above. They also reached conclusions about the systematic quality of the crimes by analyzing the patterns in the way in which crimes such as forcible transfer were perpetrated. For example, the Report refers to evidence that they find shows how the alleged victims are first transferred to the local military or police offices or headquarters under the supervision of military officials, militia and the police. The supervision is ongoing until the refugees are relocated in the refugee camps located in West Timor.

In analyzing the strengths and weaknesses of the methodology and findings of the KPP HAM Report it is important to recall the function that it was intended to serve. KPP HAM was mandated to initiate the process of investigation and prosecution not to complete it. That is, KPP HAM was not supposed to conduct an investigation sufficient to establish the legal guilt of individuals accused of crimes. It was rather supposed to determine if there was enough evidence to suggest that gross human rights violations occurred and, if so, make recommendations as to who should be subject to further investigation and prosecution by Office of the Attorney General. That is, the "standard of proof" to support its recommendations would be lower than that to support a verdict of guilty in the courtroom. That is, the establishment of the conclusive truth as to accountability for the violence was left to the Ad Hoc Court. What KPP HAM aimed to do was to collect and analyze evidence sufficient to justify a conclusion that the process should move forward.

From this perspective it appears that for the mandate of the Commission on Truth and Friendship, the KPP HAM findings on the widespread and systematic nature of the violence, the patterns of conduct through which it was perpetrated, and the responsibility of state institutions are the most relevant and important. As has been indicated above, it is in regard to these areas that the evidence and analysis of the Report are strongest. The documentation and analysis of the roles and responsibility of particular individuals is less thorough, but the reasons for this were noted above and in any event these conclusions are outside the scope of the mandate of the Commission on Truth and Friendship. While it is the case that the analysis of the evidence for some of the categories of crimes is less substantial than for some others, the strength of the KPP HAM's conclusions are greatest in documenting that gross human rights violations did occur and that there was sufficient involvement of state institutions to suggest institutional responsibility.

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21 In this part, KPP HAM did not further analyze the profile of the victims. From other testimonies (for example Linda Pribadi Marcal, 20) and report letters in regard to the attack, it seems that the perception of their particular political affiliation as pro-independence victims have made them a target. The distinction between perceived and actual affiliation was not considered further by KPP HAM.

In regard to the strengths and weaknesses of the methodology, it seems clear that the principle weakness was a result of the limited time afforded by the mandate. That is, the methodology of investigation was very strong and it encompassed a remarkable amount of investigative activity in a very short timeframe. The method extended to all of the various kinds of available evidence and to the comprehensive assembling of that evidence in various databases. Because of the very large size of this body of evidence, it was perhaps inevitable that the KPP HAM final report would not, given limitations of time, be able to analyze or refer to all of it. The Report instead relies on the support of the evidentiary database, without always citing precisely all of the evidence that supports particular statements. A further limitation apparently produced by the Commission's understanding of its mandate was too largely exclude from their investigation crimes committed by pro-independence groups.

In sum, for purposes of the Document Review of the Commission for Truth and Friendship the threads of KPP HAM's conclusions that are most significant and sufficiently supported by evidence and analysis are its general conclusions that gross human rights violations in the form of crimes against humanity occurred in East Timor in 1999 and that there are strong indications of institutional responsibility for those violations. The conclusions as to institutional responsibility were supported by various kinds of evidence including the patterns of perpetration, the patterns of cooperation between the Indonesian institutions and Timorese militias, the provision of support for militias, and other factors discussed above.

Table 1: Relation of military and pro integration militias

PATTERN	DESCRIPTION IN KPP HAM REPORT	QUOTED EVIDENCE
Recruitment of local people to military operation prior 1975	They were recruited into the organization called PARTISANS before the Independence. Then, an elite group became bureaucracy officials while others were allocated into TNI local organs, namely militias (civilian military) or militia such as the Alpha Team.	Profile and Challenges of East Timor Former Fighters (Former Fighters of Integration)", Kupang, December, 18 1999 [B:578]. Testimony from Tomas Gonçalves.
Formation of new militias in late 1990s.	Many of the youth who were the founders of militias are members of Gadapaksi. They were recruited, trained and funded by TNI, especially Kopasus (Special Force). They included Eurico Guteres, Manuel Da Sousa, Etc.	Weekly report telegram Military District Commander 1627/Dili to Military Resort Commander 164/WD on November 27, 1998, classified as confidential. [B:581]
The involvement of Civil Government in Funding	Based on the explanations made by the Head of Districts and the Governor of East Timor, pro integration militia groups in 1999 were called PamSwakarsa (Independent Community Security) and these groups were formed in every village, led by the head of the village, to achieve its autonomy.	Testimonies coded as follow: [B:829,766,779,770,834,768,857, 856,795,780]

PATTERN	DESCRIPTION IN KPP HAM REPORT	QUOTED EVIDENCE
	Eurico Guteres was named as the Coordinator of Pamswakarsa (Independent Community Security) Operation in Dili, a group that consists of 1521 members.	
TNI elites are at least aware of the size of pro autonomy militia and they also morally support the militia	Wiranto, TNI General, referred to the groups in the Contingency Plan that he compiled. In the plan, it is written that: "Armed forces consisting of approximately 1,100 people, are equipped with 546 weapons of various types - including assembled weapons, they are joined under pro-integration organizations. Militant supporters consisting of 11,950 people under resistance groups namely Besi Merah Putih, Aitarak, Mahidi, Laksaur Merah Putih, Sakunar, Ahi, Jati Merah Putih, Darah Integrasi, Dadarus Merah Putih, Guntur Kailak, Halilintar Junior, Tim Pancasila, Mahadomi, Ablai and Naga Merah." These militia organizations united into Integration Fighters Force with Barisan Rakyat Timor Timur (BRTT) and Forum Perdamaian Demokrasi dan Keadilan (FPDK) as its political wings. In regards to both of the pro integration political wings – BRTT and FPDK- TNI General, Wiranto, in his letter to Coordinating Minister for Politics and Security, on June 15, 1999 wrote: "Among the efforts to guide pro integration groups that also needs support from all relevant Departments/ Institutions is to keep them united/not scattered and to prioritize dialogue/ consensus and avoid physical activities/violence and intimidation that would actually be counter productive in fighting for their aspirations. Regarding this matter, the two Pro Integration factions joined under FPDK and BRTT had successfully been united under a struggle forum of Front Bersama Pro Otonomi Timor-Timur (FBPOTT) with collective leadership from the two factions above." Udayana Military Region High Commander, TNI Major General, Adam Damiri, in his report to Coordinating Minister for Politics and Security stated that the attack in Liquiça Church that resulted in casualties of the anti integration members had turned the anti integration youth into being powerless. TNI Major General, Adam Damiri [P:506] stated that after the attack, all people in East Timor loved the Red and White (Indonesia). People of East Timor just realized that they have many supporters.	Contingency Plan after Popular Consultation in East Timor Option-1 Failed, h.10. This plan was issued in August 1999 Letter of Minister of Defense and Security / TNI Commander No.K/362/P/ IV/1999, dated on June 15, 1999 [B:722]. Classified as confidential. "Situation and Condition Development in East Timor prior to Popular Consultation, Dili", July, 1999 [B:569, p. 3]

PATTERN	DESCRIPTION IN KPP HAM REPORT	QUOTED EVIDENCE
TNI involvement in militia	In Leadership Structure: In Dili Pamswakarsa (Independent Community Security) included 25 people from Babinsa (Village Level Military) and 25 people from Binpolda (Village Level Police), and elements from the Armed Forces also participated. Acting as the advisors are the Governor and Danrem (Military Resort Commander) 164/WD [P:409], acting as the patron is Level II Muspida (Regional Leader Council) in Dili and led by the Mayor of Dili and Military District Deputy Chief of Staff 1627/Dlli and Deputy Chief of Sub-district Police. Facilities Support 1. TNI Brigadier General, Tono Suratman [P:505] in his explanation to KPP HAM [B:858] stated that this group is the responsibility of the Local Government and its guidance falls under the hand of the Regional Police, whereas TNI/Military Resort Command gave its support. The attempt to achieve autonomy that involves TNI elements and civil officials encourages pro autonomy civil groups to gather in 13 districts. The biggest rally participated in by the biggest number of pro autonomy is the pro – integration mass rally in front of the governor office in Dili, on April 17, 1999. This mass rally in Dili was attended by all militia groups from all 13 districts. In each of the armed militia rallies, including this one, military and civil officials of East Timor attended the rally. 2. The militia head quarters are located in the Military District Command Head Quarter or Military Rayon Command. Moreover, in its patrol, these militias often use military facilities, such as vehicles or doing a joint patrol. Aside from generic weapons as well as weapons inherited by Portugal, types of weapons that they often use are SKS, M16, Mauser/G-3, grenade and pistol. According to Tomas Gonçalves (Former Ermera Head of District) [B:460], he received 300 long guns directly from the hand of Tribuana Task Force Commander, Lieutenant Colonel Yayat Sudrajat [P:628], Lautém/Military District Command Intelligence Staff, Level II Sergeant, Gabriel de Jesus, admitted that several days before the registration of Popular Consultation, there was a dropping of 40 SKSs to Military District Command from Military Resort Command [B: 179].	Decree of Level II Head of District in Dili issued in May 1999. [B:492]. Testimony by Tono Suratman Statements by Bonifacio dos Santos, Head of Regional Office of Social Department, Lautém [B:848]; Armando dos Santos, TNI Level II Sergeant, Army, Babinsa (Village Level Military) of Pairara Village, Lautém sub-district, Military District Command 1629 [BAP]; Gabriel de Jesus, TNI Army Sergeant Level II [B:179], Military District Command Intelligence Staff 1629/Lautém [B:136]; Antonio Fernandes, TNI Army Second Private [B:515]; Military District Command Head Quarter Security Post. Military District Command Intelligence Staff / Lautém Level II Sergeant, Gabriel de Jesus Thomas Gonzalves (Former Ermera Head of District). Level II Sergeant Gabriel de Jesus; Chief of Regional Police of East Timor. Police Colonel Timbul Silaen Liquiça Police Resort

PATTERN	DESCRIPTION IN KPP HAM REPORT	QUOTED EVIDENCE
	TNI Mayor General Zacky Anwar Makarim to KPP HAM stated facts that weapons from the militias are stored in several military head quarters, where they can retrieve the weapons when they needed them [B: 771]. Evidence of support coming from local military and civil authorities did not exist. Militia members who have committed murder, torture, kidnapping and open arrest were arrested by security officials. According to Chief of Regional Police of East Timor, Police Colonel Timbul Silaen [Recording tape ID No.699], even if they were arrested, in a short period of time, their detention was suspended.	

5.3 REVIEW OF THE INVESTIGATIVE DOSSIERS (BAP)[22]

The investigative dossiers (BAPs) were evaluated in the Document Review as part of the legal process before the Jakarta Ad Hoc Human Rights Court. These dossiers were compiled in the investigation initiated on the basis of the acceptance of the KPP HAM report by the Attorney General. It should be noted, however, that the scope of the investigations undertaken by the Attorney General's Office was narrower in scope than the KPP HAM investigation in important respects. First, although KPP HAM recommended further investigation and prosecution for 22 persons, the prosecutions before the Ad Hoc Court only encompassed 18 of these individuals in 12 cases. Further, none of the highest level TNI commanders named in the KPP HAM report were included in the investigations on which the trials were based. Thirdly, the scope of crimes and modes of responsibility considered in the BAP's are much narrower, encompassing murder, assault, and destruction of property. Overall, only five major occurrences were explored in the Attorney General's investigation:[23]

1. The attack against the Liquiça Church complex and the residence of Fr. Rafael, 6 April 1999[24]
2. The attack against Manuel Carrascalão's residence, 17 April 1999,[25]
3. The attack against Ave Maria Church, Suai, 6 September 1999[26]
4. The attack against Dili Diocese, 5 September 1999[27]
5. The attack against Archbishop Belo's residence, 6 September 1999[28]

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22 This section relies on the extensive analysis of the Investigative Dossiers in the Report to the CTF Part I, Chapter II.2. It also relies on the more detailed and comprehensive analysis of the Dossier's evidence in the Report to the CTF, Part I, Appendix 2 to the Report to the CTF.

23 The only exception with regard to the scope of locus is the Adam Damiri case file, in which the prosecutors argued that there are twelve major incidents before the Popular Consultation, one during the consultation and another five after the Consultation. Scopes of the loci are also broader, which includes Bazartete, Liquiça, Covalima, Alieu, Ainaro and many others. See Adam Damiri Dossier, 44-46.

24 See investigative dossier on Asep Kuswani et.al., 18-27. See also Rafael dos Santos, 2-3; Antonio da Conceição Santos, 3-5; and José Menezes Nunes Serrão 5-6; Yayat Sudrajat, 38-39; Rafael dos Santos, 18-19; Antonio da Conceição Santos, 20-23; and João Pereira, 23-24.

25 See investigative dossiers on Tono Suratman, 114-115. See also Julio de Sousa, 11-12; Mudjiono, 27; Florindo de Jesus, 42-44; Endar Priyanto, 46-48; Victor dos Santos, 6-8; Alfredo Sanches, 11-13; Santiago dos Santos, 13-15; Eurico Guterres, 43-48, Florindo de Jesus, 15-17; Domingos M. Dores Soares, 21-22; Joanico Dasiva, 32-33; Adam Damiri, 39; Drs. Hulman Gultom, 22-25.

26 See investigative dossiers on Tono Suratman. See also João Pereira, 5-6; José Menezes Nunes Serrão, 6-7; Lucas Soares, 7-8; Adam Damiri, 39, 41-43; M. Noer Muis, 6-7; Drs. Herman Sedyono, 31; and Lettu. Inf. Sugito, 32-33; Noer Muis, Letkol. Liliek Koes Hadiyanto, 7; Nanang Djuanda Priadi, 7-8; Armindo de Deus Granadeiro, 11-12; Herman Sedyono, et.al., 21-41; Jehezkiel Berek, 1-2; Sonik Iskandar, 2-3; Yopi Lekatompessy, 5-6; Yayat Sudrajat, 41.

27 See investigative dossiers of Tono Suratman. See also Drs. Muafi Sahudji, SH, 56; Adam Damiri, 39, 41-43; M. Noer Muis, 6-7; Letkol. INF. Soedjarwo, 15-16; Drs. Hulman Gultom, 24-25; Noer Muis, 46; Mgr. Carlos Filipe Ximenes Belo, SDB, 1-3; Yayat Sudrajat, 16-17; Drs. Hulman Gultom, 17-20; Soedjarwo, 53; Nelio Mesquita da Costa Rêgo, 1-3; João Bernadino Soares, 3-4; Lucia da Costa Rêgo, 9-10; Yayat Sudrajat, 40; Hulman Gultom, 59-60 (affirmed by witnesses' statements, among others, João Bernadino Soares, 9-10; Nonato Soares, 12-13; Vicente A.G. de Sousa, 13-15.

28 See investigative dossiers of Tono Suratman. See also Drs. Muafi Sahudji, SH, 56; Adam Damiri, 39, 41-43; M. Noer Muis, 6-7; Letkol. INF. Soedjarwo, 15-16; Drs. Hulman Gultom, 24-25; Noer Muis; Mgr. Carlos Filipe Ximenes Belo, SDB, 1-3; Maria Olandina Isabel Caeiro Alves, 13-14; Fransisco Kalbuadi, 14-15; Soedjarwo, 53; Inocencio da Costa M Freitas, 11; José Vattaparambil, 12; Maria Olandina Isabel Caeiro Alves, 13-14; Yayat Sudrajat, 41; Hulman Gultom, 60; Inocencio da Costa M Freitas, 16-17; José Vattaparambil, 17-18; and Manuel Soares Abrantes, 20-21.

Most of the investigation appears to have focused on "failure to prevent" rather than other forms of responsibility. Finally, the scope of the evidence included is also much narrower. It is unfortunate that when KPP HAM forwarded its Report to the Attorney General's Office, prosecutors did not make use of the extensive databases included with the Report on CD-ROM. This failure to use or evaluate the evidence assembled by KPP HAM was said to have occurred because prosecutors did not know how to operate the database software.[29]

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In regard to the two central questions to be addressed in the Document Review, the Investigative Dossiers provide a clear answer in regard to the issue of the commission of gross human rights violations and a somewhat more ambiguous response to the question of institutional responsibility. In regard to gross human rights violations, all the dossiers agree that gross human rights violations occurred in East Timor in 1999. Indeed, this is the foundation of the criminal prosecutions for crimes against humanity for which the Dossiers assemble the evidence.

In regard to institutional responsibility the situation is somewhat different. The investigative dossiers are, of course, part of a criminal trial process based upon individual responsibility. Institutional responsibility is not a legal doctrine on which individual liability may be predicated. On the other hand, the investigative dossiers of all 12 cases also involve the notion of institutional responsibility because they seek to establish the responsibility of commanders and civilian officials through the theory of command responsibility. Because the prosecutorial strategy in all of these cases was to obtain convictions upon the basis of command responsibility rather than forms of individual direct or indirect perpetration, the evidence collected has potential implications for institutional acquiescence through the failure to prevent or punish. However, the BAPs do not directly analyze or make conclusions about institutional involvement but rather the roles of specific individuals. This is natural because the focus of the investigations and prosecutions was on individual responsibility. There is, however, substantial evidence in the BAPs that could be used to support findings of institutional responsibility, at least at the local operational level. The Document Review prepared for the Commission by its Expert Advisor analyzes this evidence in detail.[30]

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[29] David Cohen, *Intended to Fail: The Trials Before the Ad Hoc Human Rights Courts in Jakarta* (New York: International Center for Transitional Justice, 2003), 47.

[30] Report to the CTF, Part I, Chapter II. 2 and Appendix to the Report to the CTF.

Analysis of the Dossiers reveals both strengths and weaknesses. On the one hand the Dossiers assemble a substantial amount of evidence that supports their conclusion that gross human rights violations in the form of crimes against humanity occurred. There is also considerable evidence to suggest institutional involvement, for example through the provision of material support in the form of financial and logistical assistance, arms and munitions, transportation, etc. Other evidence suggests that at the operational level there was at times direct participation of TNI or police personnel in operations conducted by militia against presumed pro-independence supporters, at times acquiescence through tacit approval or through a failure to prevent or punish.[31] As will be seen, however, lack of understanding of the elements of the relevant offenses and doctrines led to much of this evidence not being used in the way it could have if the legal framework of the charges had been more coherently articulated.

On the other hand, there are also major weaknesses in the approach of the investigative dossiers. Most fundamental perhaps is the failure in most of the Dossiers to consider any form of liability other than a failure to prevent the crimes, treated in the Dossiers as an omission. Only three of the twelve cases attempted to explore other forms of accountability. The other nine of the twelve Dossiers ignored all other forms of responsibility other than omission, and, not surprisingly, this is what most of the indictments were finally based on. This occurred despite the fact that the investigations had provided substantial evidence that might have been used to establish a link at the operational level between the field perpetrators and military and civilian officials. This evidence suggested other forms of potential liability based upon direct and indirect perpetration rather than mere omission.

Other weaknesses reflect a fundamental misunderstanding of the elements of command responsibility. In particular, this misunderstanding involves both the mental element[32] required for command responsibility and of the central requirement of the existence of a superior subordinate relationship. Another weakness involves the failure to comprehend the larger context of the crimes and to relate that context to the chapeau elements required to prove crimes against humanity. This resulted in the failure to collect adequate evidence to support the charges used to develop the indictments and in the failure to fully use the evidence that had been collected.

As to the issue of command responsibility, the weaknesses noted above affected the case because only a clear grasp of the required elements can provide the prosecution with the evidence that it needs to establish guilt at trial. For example, proof of command responsibility requires establishing the existence of a superior-subordinate relationship between the accused and those individuals who perpetrated the crime. The Investigative Dossiers generally neglect to focus on the proof of that element, which depends not upon the mere formal chain of command (*de jure* authority) but upon the "effective control" (*de facto* authority) exercised by the alleged commander over the particular individuals who committed the crimes in question.

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31 This evidence is discussed in Report to the CTF, Part I, Chapter 3, Sections IId1 and IId2. See also Addendum to the Report to CTF, Part II, Sections 1 and 2, which analyze additional evidence from the Dossiers and from the KPP HAM databases.

32 The term "mental element" refers to the requirement that the crime in question must be committed intentionally, or knowingly, or recklessly, etc. That is, it refers to a kind of mental state that is required in order for a person to be found guilty of a particular offense.

The Investigative Dossiers do not aim to provide evidence on this crucial question and do not focus on the identity of the perpetrators and their relationship to accused commander. In order to establish the superior-subordinate relationship it is necessary to clearly identify the institutional affiliation of the perpetrators. In most cases the Dossiers fail to focus on this. They apparently consider that it is enough to show that the crimes were committed.

The Dossiers also do not seek to provide evidence on whether or not the accused military commanders were able to exercise effective control over Timorese militia members who perpetrated, or in some cases co-perpetrated, the crimes. There is evidence in the Dossiers that might have been used to try to prove this connection, but the absence of a clear understanding of the required elements resulted in this evidence not being organized around the crucial issues.

Another aspect concerns the mental element that must be established to prove command responsibility. There was an apparent lack of clarity underlying the Dossiers about the definition of the mental element and what kind of evidence was required to prove it. A commander may only be held accountable for the crimes committed by his subordinates if he is shown to have known that the crimes were occurring or to have had information that should have put him on notice that there was a risk that they would occur. Proof of this element requires assembling evidence that shows what information was available to the accused, what kind of reports he was receiving, to what extent he was in a position to see or hear things that would have indicated the risk, and so on. Again, although there was evidence, for example, about the presence of some of the accused field commanders at or near the scene of some of the crimes, the significance of such evidence was not reflected in the way in which witnesses were questioned and the case was prepared. The impact these misunderstandings about key elements had on the actual trials before the Ad Hoc Court will be treated in the next section.

Another area where misapprehensions about the required elements weakened the prosecution case involves the *chapeau elements* of crimes against humanity ("the crime charged is part of a widespread or systematic attack against a civilian population"). For example, the Dossiers proceed from the assumption that an official policy is required to prove the "systematic" nature of the attack against the civilian population.[33] First of all, there is no requirement that the attack be ***both*** widespread ***and*** systematic; these elements are disjunctive. However, failure to focus on the broader context of which the specific crime under investigation was a part resulted in a failure to focus the assembly of evidence on proving the "widespread" element. Further, there is no requirement for proof of crimes against humanity in international law that there be ***any*** policy.[34] The Dossiers on the other hand not only proceed from the assumption that a policy is required, but also define "policy" only as a formal policy (that is, a policy that is written and officially adopted by the governmental institutions). As is well established in international jurisprudence, however, policies may provide evidence of the systematic nature of the crimes, and such policies may be unofficial,

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[33] See page 63 for an explanation of the fact that a "policy" does not have be proven in order to establish the element of a "systematic" attack.

[34] Addendum to Report to the CTF for citations, chapter II.2, p. 48.

implicit, unwritten, and even unspoken. Thus, the existence of a policy may be inferred from patterns of conduct and patterns of institutional support, acquiescence, and reaction. Such patterns may provide evidence of a policy even when no official government decision, statement, order, or policy document has ever existed.

Two further basic weaknesses in the Dossiers limited the way in which the available evidence could have been used to establish institutional responsibility. (1) While all twelve investigations concluded that crimes against humanity had been committed, most of them failed to clearly explain how the accused had any substantive link with the crime alleged. This was a flaw that also had serious consequences when these cases went to trial. (2) The failure in most of the cases to comprehend the whole context in which the crimes were committed also critically affected the prosecution and trial process. Apart from the Adam Damiri Case, the narrow case-based approach looked at each incident as isolated and as having no relation to other incidents investigated in other case files. This failure to locate the crimes charged in their larger context and to explore linkages between them had serious consequences for using the evidence available to establish the widespread or systematic occurrence of crimes against humanity as well as command responsibility or other forms of liability.

It should be noted that this kind of narrow, case-base approach was not unique to the Jakarta trials but was an issue in the trials before the Special Panels for Serious Crimes in Dili and before other international tribunals in their early stages as well. These kind of structural problems manifested themselves in other areas as well, and especially in the lack of a more effective legal framework to ensure cooperation and coordination between Komnas HAM and the Attorney General's Office. While KPP HAM adopted a very broad institutional and contextual approach in its investigation and recommendations, the Attorney General's Office largely ignored these central features of the KPP HAM Report and, for the most part, treated each case as an isolated event. A statutory framework that better regulated the cooperation of the Attorney General's Office and Komnas HAM might have prevented these failures.

Another exception to this narrow approach was adopted in the case of the investigation of the attack on Ave Maria Church in Suai. There, the investigator concluded that the crimes, involving the killing of those seeking protection inside the church, met the element of widespread, and should be looked at as part of widespread attack in East Timor. In the report, the investigator concluded:

> "the killing by means of attacking and shooting in the Ave Maria Church complex that was committed by members of the pro integration (Laksaur and Mahidi) ... against pro independence people, really was a part of widespread attack throughout East Timor, because at the same time, that of 6 September 1999 there also was the same attack against pro independence people who were at Dili Diocese, Archbishop Belo's residence, and Suai church, which also brought casualties, committed by the pro integration people."[35]

Further the investigators also point out that the attack in Suai was preceded by the intimidation against targeted groups, that of the pro independence supporters,

[35] See, Conclusion of the investigation on Herman Sedyono et al., 53.

beginning on the 3 September 1999. However, it does not elaborate further this fact to demonstrate the systematic nature of the crime.

While the attempt to prove the widespread element in this manner may be considered narrow and simplistic, **out of the twelve dossiers, it is only this investigative dossier that clearly points out the link of the attack to a broader context of violence occurring in East Timor.**[36] It is a major weakness that in trying to prove a case of crimes against humanity all the other dossiers fail to connect the specific crimes charged to the broader context of violence in East Timor in 1999.

In conclusion, while the dossiers all agree on the existence of crimes against humanity and that these crimes against humanity involve a targeting of pro-independence groups, they reach no substantive conclusions about institutional responsibility. Although the Dossiers are unanimous on the issue of the ocurrence of crimes against humanity, on the whole their approach is conceptually flawed and they do not utilize much of the evidence they collected that is relevant to proof of the *chapeau elements.*

The Dossiers, however, do contain substantial amounts of evidence that could have been the object of serious inquiry as to institutional responsibility. This evidence indicates that at least at the local level there was considerable institutional support for the pro-integration militias who were the primary perpetrators of the crimes against humanity. In addition, the Dossiers include a substantial amount of evidence that suggests the direct involvement of TNI or Polri personnel in the actual perpetration of the crimes in the form of co-perpetration with the militias. The dossiers, except in three cases noted above, systematically fail to explore this dimension of responsibility.

5.4 THE AD HOC COURT PROCESS

Trials Before the Ad Hoc Human Rights Court[37]

The Dossiers discussed in the previous section provided the evidentiary basis for the twelve trials before the Jakarta Ad Hoc Human Rights Court. There were a very few instances in which the Judges themselves brought in evidence that was not contained in the Dossiers, so that overall the Dossiers contain the majority of the evidence, which was supplemented by in-court testimony that was available at trial. A key issue, as will be seen, was the failure of the prosecution to utilize that evidence in presenting their case to the court. The preceding section analyzed the narrow and deficient legal framework of the Dossiers. As these deficiencies were carried over to the trial in shaping the indictments and the case of the prosecution they do not need to be analyzed again here. The focus here will rather be upon the weaknesses in the way the prosecution presented its case at trial, the way in which the judges dealt with these weaknesses, and the impact of these deficiencies on the conclusions they reached.

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36 There were several BAPs compiled on the basis of charges of crimes against humanity, however many of them tend to draw conclusions by only concluding from the fact that murders have been committed, or the attack has been proven, as seen in BAP's of Endar Priyanto, 53; Hulman Gultom, 70; Tono Suratman, 129; Noer Muis, 61; Herman Sedyono, et. al. 54; Yayat Sudrajat, 49; Asep Kuswani, et. al 42; Eurico Guterres, 53; Adam Damiri, 49; Soedjarwo, 61.

37 The analysis in this section relies on Report to the CTF Part 1, Chapter 4, as well as Report to the CTF, Appendix 3 to Part I. See also David Cohen, Intended to Fail.

Section 5.3 above explained some of the ways in which the limitations of the Dossiers negatively influenced the trial process. This analysis does not need to be repeated here. As a result of this and other factors, the Judgments of the Ad Hoc Court gave diverse, and often conflicting accounts as to what happened in East Timor in April and September 1999. There were, however, important conclusions common to all of the judgments. The most important of these was that gross human rights violations and crimes against humanity were committed in 1999 and that these crimes were largely perpetrated by pro-integration groups who targeted pro-independence civilians. However, different panels of the Ad Hoc Court derived different conclusions as to the crucial questions of **whether or not the pro-autonomy armed groups were assisted or supported by individuals from the TNI, Police, and the Civilian Government**. For this reason their conclusions are also divided as to the implications for institutional responsibility.

The Judgments of the twelve panels present four versions of the relation between the Timorese pro-autonomy groups and Indonesian institutions:

1) There was no relation between the militias and the TNI, Police, and Civilian Government. The militias planned and perpetrated the attack themselves and the TNI and Police tried to prevent the attacks but failed.[38]
2) The relation between the militias and TNI, Police, and Civilian Government is unknown because it is considered as irrelevant to the cases that involve only individual responsibility.[39]
3) Some members of the TNI were involved in the attacks, but did so on their own volition without the approval or orders of their superiors.[40]
4) TNI, Police, and the Civilian Government supported the pro-integration militias in perpetrating the attack by providing finance, arms or through acquiescence or omission before, during or after the attack.[41]

The discrepancies between these four versions were largely due to issues relating to witnesses and evidence presented by the Prosecutor. It was typical in all of the trials that the prosecution would present only 2-4 witnesses who were either victims or not institutionally related to the accused. They also typically called 15-20 witnesses who were either TNI or civilian officials who were defendants in the other cases or were superiors or subordinates of the accused.[42] More detailed examples of this will be provided below in the discussion of the Adam Damiri case. The result of this pattern of presentation of the evidence by the prosecution was that the vast majority of the

38 See Judgement on Herman Sedyono, 124-127 and Judgement on Soejarwo, 44-58.

39 See Judgement on Endar Priyanto, 48. The court rules that crimes against humanity were committed in the event of 17 April 1999, but as none of his subordinates were proven to have been committed the crimes, therefore, "it is irrelevant to consider the element that the "commander" did not take appropriate and necessary actions within his jurisdiction to prevent or halt these violations or surrender the perpetrators for investigation and prosecution" (48). See also Judgement on Asep Kuswani, et. al. The court ruled that the crimes against humanity were proven to have been committed in the attack against the residence of Fr. Rafael, Liquiça church complex by the BMP (white and red iron) group, therefore, the elements of command responsibilities as provided by article 42 of the Act no 26/2000 shall be stated legally and certainly unfulfilled (125-126).

40 Judgement on Timbul Silaen, 128.

41 Judgement on Adam Damiri, 168-169. On the act of ommission, see Judgement on Noer Muis, 83 and 89, and Judgement on Soejarwo, 52.

42 One of the factors affecting victim witnesses' willingness to testify had to do with the lack of effective witness protection. This resulted in the intimidation of some witnesses who did travel from East Timor to Jakarta and also inhibited others from agreeing to do so.

witnesses they called actually testified against the prosecution case and in favor of the defendant. This was perhaps to be expected since these witnesses were professionally related to the accused, often his subordinates, and many of them were either on trial themselves in the other cases or could have potentially incriminated themselves for future prosecutions. These factors greatly undermined the credibility of many of the witnesses because their testimony was so blatantly self-serving.

The problem of the probative quality of in-court testimony was also undermined by another factor. While many of the prosecution witnesses from the TNI gave only very general testimony in favor of the defendant (for example, the unsupported opinion that they had always done their duty to protect civilians rather than specific factual instances of how they had done so), some of them had at the pre-trial stage provided investigators with important information that would tend to prove the guilt of the accused, for example by confirming the participation of military personnel in an attack and the presence of the accused. Without exception all of these witnesses changed their testimony at trial and completely contradicted their previous sworn statements to investigators. In their new testimony, they provided testimony that attempted to demonstrate the innocence and integrity of the accused. For example, Jehezkiel Berek and Sonik Iskandar, who testified for Herman Sedyono, et. al. case, and Damianus Dava, who testified for Asep Kuswani, gave these kinds of statements.[43]

Prosecutors typically did not question these witnesses as to why they had changed their testimony. Nor did they usually attempt to attack or impeach this testimony that had suddenly undermined their case. In some cases the judges did strongly question the witnesses as to the dramatic reversal of their account of what had happened. The witnesses then typically stated that they had been mistaken in their original testimony and now they were accurately remembering what had happened. While every witness has the right to change his or her testimony, in this case this was not a matter of slight modifying the account that had been previously given. Indeed, the complete reversal of previous testimony in this case was very striking, especially when it occurred with multiple witnesses, and all at the same time and in the same manner. Also significant was the fact these witnesses claimed faulty memory as the reason for their change in testimony. Whatever the reasons for this change in testimony it weakened the evidentiary base of the case by undermining the credibility of these witnesses whose memory was, by their own admission, so volatile.

The result of all of these factors was that the judges were confronted with two categories of witnesses (victim witnesses and TNI/government officials) whose versions of events were conflicting with one another. It is normal in a criminal trial that prosecution and defense witnesses sharply disagree with one another over crucial

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[43] In the investigative dossier, he testified that preventive measures failed to be taken due to huge numbers of people as well as the presence of TNI personnel providing training to Laksaur, but he changed this statement before the trial, asserting that there was no TNI personnel at the crime scene. Similarly, Sonik Iskandar previously stated that he saw dead bodies taken away to be buried, but before the court he refused this and stated that he saw no casualities in this event. See transcript of the witness examination proceeding on Sonik Iskandar, ELSAM Court Monitoring Record, 23 April 2002, unpublished, 10-11. See also transcript of the witness examination proceeding on Jehezkiel Berek, ELSAM Court Monitoring Record, 30 April 2002, 8; transcript of the witness examination proceeding on Damianus Dava, ELSAM Court Monitoring Record, 23 April 2002, unpublished, 16; transcript of the testimony of Soegito, ELSAM Court Monitoring Record, 9 July 2002, 32.

facts. In this case, however, these were all prosecution witnesses who were split into these two categories. The judges had to choose which version to accept. One would expect that this decision would be based upon a careful analysis of the credibility of the witnesses, and particularly their motivation in providing self-serving testimony. In some cases, however, the judges decided to choose based on the quantity of the witnesses who supported a particular version. Since the number of TNI witnesses vastly outnumbered the few victim-witnesses called, this inevitably meant that these panels of judges tended to find in favor of the accused and acquit.[44] In other cases, however, the judges decided to determine the version to be adopted by a determination of the credibility of the testimony. In these cases the judges usually convicted the defendants, because they analyzed the testimony of the different witnesses and found the testimony of the victim witnesses more credible.

The result of these different approaches was that the conclusions reached by different panels of judges in the various cases display different strengths and weaknesses. In almost all of the cases there was a dearth of victim-witnesses. But in some of the cases the judges used rigorous examination of the witnesses in court and analysis of their credibility in the judgments to make their findings. These cases usually resulted in convictions. In the cases where the judges acquitted the defendants they often did not carefully analyze the credibility of the witnesses' testimony or look beyond it to the full range of evidence in the Dossier. One must take into account here, however, that the fundamental failure was of the investigators and prosecutors in not ensuring that the available evidence came before the court.

A thorough analysis shows that the conclusions reached in the twelve Judgments of the Ad Hoc Court were not based on all of the evidence available in the Dossiers.[45] This was because the prosecution did not introduce most of the evidence in the Dossiers at trial. For example, the Dossiers for the twelve trials contain forty-five documents in support of their allegations. Only six of these documents were actually introduced into evidence. It should also be recognized that much more evidence was available than is contained in the Dossiers. The Dossiers themselves register documents and other evidence that was collected but not included in the Dossier.[46]

At the same time, two major sources of evidence available to the prosecution were not utilized at all. The first of these is the KPP HAM document database (and other evidentiary databases) referenced above. In contrast to the 45 documents included in the Dossiers, the KPP HAM document database includes more than 1000 documents. The second major source of potential evidence was the Serious Crimes Unit in Dili. Despite repeated offers by the SCU to provide documentary or physical evidence, or to make witnesses available, the prosecution did not obtain any evidence from this source.

44 One reason for the small number of victim-witnesses was the lack of effective witness protection provided to the witnesses who did come from Timor Leste.

45 For detailed analysis see Report to CTF, Part I Chapter 4 and David Cohen, Intended to Fail.

46 The CTF was able to obtain a substantial number of these documents from the Attorney General's Office and they are indeed highly relevant.

The failure to utilize these two sources had a direct and serious impact on the trials. To cite just one example, at the trials of Abilio Soares (Governor of East Timor) and of Eurico Gutteres, a crucial fact had to do with the contents of the speech given by Aitarak militia commander Eurico Gutteres at the militia rally held on the grounds of the Governor's mansion. Manuel Carrascalão testified in Court that he heard the live radio broadcast of the speech in which he alleged Gutteres had directly and explicitly called for the killing of Manuel Carrascalão and his family. This speech was followed shortly thereafter by a militia attack on Manuel Carrascalão's house in which his son was killed. Eurico Gutteres denied that he had said these words and other witnesses gave conflicting testimony.

Despite repeated requests by the judges, the prosecutors failed to produce an audio or video recording of this speech that would have definitively resolved this matter. Both of these were available from the Serious Crimes Unit in Dili. Further, the Serious Crimes Unit had possession of a TNI Telegram reporting on the rally and the speech. The telegram gave a detailed account of precisely that crucial part of the speech at issue and confirmed that Eurico Gutteres had indeed incited the killing of pro-independence leaders in general and Manuel Carrascalão in particular. This telegram was also available in the KPP HAM document database. Doubt as to the exact contents of Eurico Gutteres' speech was given by the judges as an important factor in their decision, and particularly about sentencing. The failure to obtain evidence that was readily available thus had a direct impact upon the trial and upon the strength of the conclusions reached by the judges.

A further way in which the lack of preparation by prosecutors undermined the evidentiary basis of the judgments was in the treatment of physical and forensic evidence. When weapons or bloodstained clothing from mass graves was presented to the court it was done so in a manner that completely negated its evidentiary value. Prosecutors were often unable to answer the judges' questions about the origin or significance of this evidence. In many cases it was not tagged or identified in any way and was presented in such condition that it could not be identified as having any connection to the crimes of which the defendant was accused. It was also the case that the weapons introduced at court were not the ones that were listed in the Dossier as having been confiscated by investigators. For example, when the Dossier listed modern military assault rifles such as M-16 or SKS, the prosecution brought into court WWII vintage bolt-action weapons.[47]

The foregoing discussion has enumerated many of the weaknesses of the trial process. It has revealed that the conclusions reached by the different trial panels differed on central issues and it has discussed how these differences are related to evidentiary problems produced by the way the case was prosecuted. It has also discussed the way in which the trial panels differed in their evaluation of witness testimony. These differences and the underlying evidentiary problems contributed to the different conclusions reached about the individual responsibility of commanders and civilian superiors in the various trials. As noted above, however, all of the trial judgments agreed that crimes against humanity had been committed in East Timor. The

[47] Cohen, Intended to Fail. The Appendix in the electronic version of the report (available at www.ictj.org) on "disappearing evidence" details the discrepancies between evidence in the BAPs and evidence introduced in three of the trials.

differences had to do with whether or not specific individual commanders could be held liable for the perpetration of these crimes by their alleged subordinates. This issue of individual responsibility is outside the scope of the Commission's mandate. Of relevance here is only the significance of the Court's conclusions for institutional responsibility. As noted above, most of the judgments do not make findings that bear upon institutional responsibility. In the cases where TNI commanders were convicted on the basis of command responsibility, however, the findings on this issue may have implications for institutional responsibility. The Adam Damiri Case illustrates this potential connection.

General Adam Damiri, who operated at the Udayana level, was not accused of any direct connection to or participation in the crimes against humanity. He was charged on the basis of his failure to prevent or punish his subordinates for their alleged roles in these crimes. While there are many issues that can be raised about the treatment of command responsibility in this case we will focus only on examples of those most immediately relevant for institutional responsibility.[48] The Court appears to have based its conviction of Damiri on at least two grounds. First, the Court finds:

> "that it has been proven that the actors of the crime against humanity in the incidents were the Pro-Integration, it has been also proven that there had been involvements of TNI members."

It bases this finding on the following:[49]

- In Liquiça Church attacks members of the TNI and POLRI who were standing by but did nothing;
- Members of TNI who belonged to the Kodim of Liquiça participated in the attacks with Besi Merah Putih;
- That the pepetrators in this case departed from the front yard of Kodim Liquiça;
- In the attacks at the house of Manuel Carrascalão DANREM 164 Wira Dharma, Col. Tono Suratman, knew of the attacks but did nothing;
- In the attacks on Diocese of Dili the TNI, failed to make the preventive actions and corrective measures, as also happened in the attacks on the Ave Maria Church, Suai and at the residence of Bishop Belo.

On this basis the Court concludes that:

> "Considering that on the basis of these facts it has been proven that there was involvement (actively, as well as passively) of the members of TNI under his effective command and control, therefore the Panel of Judges consider the Defendant should be responsible for the crime against humanity as indicted in this case."

These factual findings by the Court may support its general conclusion about the knowledge of some TNI commanders that their subordinates were participating,

48 For a detailed analysis of these issues, see David Cohen, "Analysis of the Adam Damiri Trial and Appeals Judgments from the Standpoint of International Jurisprudence," legal notes on the examination of jugment on Adam Damiri case, Elsam, 2007.

49 See Judgement of the first instance court on Adam Damiri, Putusan No 09/PID.HAM/AD.HOC/2002/PH.JKT.PST, 166-169.

supporting, or acquiescing in crimes against humanity.[50] In reaching its conclusions, however, the Court appears to have considered that it was the failure to take adequate preventative measures and to investigate and punish after the accused learned of the crimes that is the most important basis of their conclusions:[51]

> "Considering that during the proceedings, the Ad Hoc Public Prosecutor presented some evidence in the form of official reports, including about the conditions, incidents, as well as the geographic locations of the incidents that resulted in many victims, that was known to the supervisor of the Defendant, which was General Wiranto, who even in his testimony always stated that he continually received official reports from his subordinate, the Defendant, so that General Wiranto, as the ABRI Commander, was able to know and follow the latest situation in East Timor sufficient to prove that the Defendant ***knew*** or ***should have known*** what happened." (emphasis added)

These findings are also relevant for institutional responsibility in that the conclusions as to command responsibility are ultimately based upon institutional awareness of the gross human rights violations in East Timor and a failure to respond to these in a manner that meets the requirements of international humanitarian law. A fuller discussion of this and other trials maybe found in the Report to the CTF, Part I, Chapter 4.

One further point deserves consideration. The conviction of Adam Damiri was reversed upon appeal and he was acquitted of all charges. This raises the question of whether this, or other such decisions at the appellate level, are relevant from the standpoint of conclusions reached by the Ad Hoc Trial Court about gross human rights violations or institutional responsibility. A consideration of the Appeals Judgment in the Damiri Case reveals that this reversal of the verdict does not undermine conclusions on the issues of relevance for the Document Review conducted by the Commission.

Appeals to the Ad Hoc Appellate Court

The Judgment of the Ad Hoc Appellate Court in the Damiri Case is clearly inferior to the Trial Judgment in terms of its quality in relation to international standards of judgment writing and jurisprudence. The Judgment of the Ad Hoc Appellate Court contains almost no analysis - only summary conclusions. This represents a deviation not only from the norms of international practice, but also from the very essence of the task of appellate decision writing. Appellate decisions, especially when they overturn the findings of the lower court by their very nature need to justify and explain the rationale behind rulings. This involves careful legal analysis of the issues raised on appeal. The Appeals Judgment in the Damiri Case almost entirely fails to do this. Further, it is the task of the appellate courts to review the treatment of

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50 There are deficiencies in the reasoning as to how some of these finding support the conclusion that Adam Damiri was liable as a commander (for example failure to make specific findings on elements such as the existence of a superior subordinate relationship or about the information available to the accused) but they are not relevant to the discussion of institutional responsibility based upon the involvement of TNI officers and personnel at the operational level as indicated in these factual findings.

51 Cohen, Judgment in First Instance, 171.

jurisprudential issues by the Trial Court. In this case the Appellate Court seems to be fundamentally unaware of the norms of international practice and jurisprudence that were relied upon by the Trial Court. Should there be any doubt about the applicability of international norms and practice, **the Ad Hoc Appellate Court itself states clearly that it is indeed bound by such norms.** In setting out the basis of its conclusion that the conviction of the accused should be reversed, it states:[52]

> "Recalling article 42 (1) letter a and b, Jis. Article 7 letter b, Article 9 letter h, Article 37 and Article 40 of Law No. 26 of 2000 regarding Human Rights Court, articles of Law No. 8 of 1981 regarding the Criminal Procedural Code (KUHAP), Law No 39 year 1999, ***the relevant norms and principles of International Humanitarian Law***..." [emphasis added]

The result is an appellate decision that is flawed in its understanding and application of the law and that fails to provide a reasoned justification for its decision. There are serious legal issues raised in this appeal and the Ad Hoc Appeals Court treats them so briefly and so cursorily that it reads more like a summary of a decision rather than the decision itself. A few examples will illustrate these points.

1. The Court enumerates the elements of the offense:[53]

> "Considering, that on both counts, the Defendant was indicted of having committed ***the criminal act*** in article 42 (1) Law No. 26 of 2000, that has the following core elements....
>
> Considering, that the Ad Hoc Human Rights Court of Appeal is of the opinion that in relation to ***element 1 and 2 of the crime*** the part of those elements that is most essential and critical in determining whether or not the crime has been proven as stipulated in article 42 of Law No. 26 of 2002, namely that it has to be proven that there was personnel or subordinate of the Defendant committing gross human rights violations."

This passage appears to reflect a fundamental misunderstanding. Command responsibility is not a "criminal act." Article 42 does not define a crime. The elements of command responsibility are not elements "of the crime." Command responsibility is not a crime but rather a theory of liability that connects a commander to the criminal acts of his subordinates and makes him or her liable for those crimes (in this case, murder as a crime against humanity). What is missing in the Appeals Judgment is therefore a discussion of whether the subordinates committed crimes against humanity. The Court must analyze the elements of crimes against humanity in relation to the acts of the subordinate. If they did not commit such crimes, the rest of the analysis is irrelevant because the most basic element of command responsibility is missing: the commission by the subordinates of a crime within the jurisdiction of the Court.

The Appellate Court enumerates this element in the very next paragraph:[54]

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52 Appellate Court's Judgement on Adam Damiri, Putusan No 01/PID.HAM/AD.HOC/2004/PT.DKI, 23.
53 Ibid., 19.
54 Ibid., 19-20.

> "That in command responsibility, the chain of command can be followed upwards by fulfilling the following elements: 1. There has to be first that there were gross human right violations committed by his members, if this did not occur, there will not be command responsibility."

It correctly states this element, but seems to believe that command responsibility is also a crime.

There are also important errors in these two sentences. The first involves the phrase "the chain of command can be followed upward." In the jurisprudence of the international tribunals there does not have to be a formal command structure or "chain of command" and it does not need to be "followed upward." As discussed above, what matters for the purpose of establishing the superior-subordinate relationship is de facto authority in the form of "effective control." To make a finding of effective control the court must inquire whether the alleged commander possessed the de facto power to prevent these crimes or punish these specific subordinates. Would they have followed his order to desist had it been given? Whether the effective control is exercised through or outside of the chain of command is irrelevant. If there is an intact formal command hierarchy this may serve as evidence to raise a presumption of the power to prevent or punish. The burden would then be on the defense to introduce evidence to show that the command hierarchy was not functioning properly in regard to these specific units at the time the crimes were committed or the commander became aware of them. This is, however, only an evidentiary matter, it is not part of the elements and not a requirement for conviction. For this reason, a military commander in a national army may be held liable under command responsibility for crimes committed by paramilitary groups or death squads that are not manned by soldiers and are entirely outside of the army command structure. Regardless of this de jure situation, if these units consider the Accused to be in a position of authority such that he would have the power to prevent, there is a superior-subordinate-relationship sufficient to fulfill this element.

2. When the Court enumerates what it considers the remaining two elements it makes further mistakes of central significance: [55]

> "(b) The Superior knows that the subordinate is committing or about to commit a crime
> (c) The Superior fails to prevent or punish the aforementioned subordinate in question"

Most seriously, the Court misstates the mental element. Their definition encompasses only actual knowledge. What is missing is the element of "had reason to know" or "should have known." This is a very serious omission because in this case the real issue should be whether, because of the previous violence, the accused was put on inquiry notice that crimes might be committed. This crucial issue is entirely ignored by the Appellate Court. It is also not sufficiently analyzed in the Trial Judgment. With high level commanders it is frequently the case that they are distant enough from the scene of the crime that they may not have actual

55 Ibid., 20.

knowledge that the crimes are being committed or are about to be committed. In any event this may also be very difficult for the prosecution to prove. The "reason to know" or "should have known" standards focus instead on other information available to the commander about factors like previous violence or criminal conduct, the discipline of the troops in question, potential provocations or tensions that might lead to violence, etc. If the prosecution can show that the commander had awareness of such factors in regard to the units that commit the crimes and that that awareness should have caused him to inquire further, then the mental element (*mens rea*) is fulfilled. In such a case, to avoid liability the commander must take effective measure to prevent the crimes. Merely issuing orders and so on is insufficient. He must implement steps to see that they are effectively carried out.

3. Even more serious is the Appellate Court's brief justification for rejecting the factual findings of the Trial Court:"[56]

> "Considering, that based on the testimony of witnesses, Lieutenant General Ret. TNI. Kiki Sahnakri [sic], Major General TNI. Zaki [sic] Anwar Makarim.... [names omitted] it is not proven that there were subordinate/troops under the effective control of the Defendant who were involved in the clash between the Pro-Independence Group with the Pro Integration/Autonomy group [...] it has not also been proven that there was hierarchical and effective relation between the Defendant as the Pangdam Udayana at the time with those involved in the clash and therefore element 1 and 2 of the crimes indicted against the Defendant have not been fulfilled by the acts of the Defendant;"

This discussion is fundamentally unsatisfactory. These few sentences represent the central basis for the rejection of the findings of the Ad Hoc Trial Court. There is no discussion of the definition of the elements or how they should be applied to the facts of the case. There is no analysis of the testimony that is supposedly exculpatory and no analysis of what evidence the trial chamber relied upon in reaching its conclusions.

Their Judgment gives no reasons for the finding that no subordinates of the accused were involved in the attack. "Involved" in what manner? There has been no discussion of the possible basis of liability of the subordinates. That is the Court has not considered if the conduct would fulfill the elements of crimes against humanity. For example, even if they were not involved as perpetrators, they might have been aiding and abetting, ordering, or inciting. What of the evidence that the attackers proceeded from the Kodim or of the presence of TNI commanders at the scene? Whether the Appellate Court accepts such evidence as sufficient it is nonetheless obliged by basic norms of appellate practice to analyze such evidence and explain why it is not sufficient to meet the requirement for liability.

One of the requirements of the trial court's finding that crimes against humanity were committed was that there was an attack against a civilian population. The Appellate Court does not even address this issue and simply refers to a "clash."

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56 Ibid., 20-21.

They do not discuss any of the evidence on this point or, despite its crucial importance, the reasons given by the trial court for its findings. This again is a failing in meeting the most basic and obvious requirements of appellate practice.

The Court lists a number of witnesses whose testimony it maintains, supports its conclusion. There is not a single reference to specific testimony of these individuals let alone an analysis of their version of the facts. Even more significantly, the Court omits to even mention the witnesses whose testimony contradicts the TNI witnesses they list. There is absolutely no discussion of credibility or of the standard of review for assessing decisions about credibility made by the trial chamber. They fail to consider the obvious point that there is an apparent reason for bias in the testimony of all of the named individuals that might have, in the judgment of the trial court, undermined their credibility (for example that many of them were defendants in other trails before the Ad Hoc Court). This is, of course, exactly what the trial chamber found, but the appellate court does not even mention this vital holding let alone analyze its foundation. The central issues that the Ad Hoc Court of Appeal never mentions or considers are what evidence the Ad Hoc Trial Court relied on, whether this reliance was reasonable, and whether that evidence supports their conclusions. Of course it would also have been appropriate to articulate the standard of review they are applying to the determination of these issues by the trial court.

4. In regard to the third element of command responsibility the Ad Hoc Court of Appeal concludes:[57]

> "That based on the explanation of the witnesses Lieutenant General Ret. TNI. Kiki Sahnakri [sic], ...[names omitted] there is no evidence that the defendant or the subordinate has committed omission in regard to the clash between the Pro Integration/Autonomy group and the Pro Independence Group. It was just that the clash could not be overcome, due to the expansive field of conflict and the limited personnel and equipment. This proves that the Defendant as the Udayana Military Region High Commander at the time had fully attempted to conduct his function as the Tactical Command of a Commander Structure within TNI."

Two points deserve to made here. First, where is the analysis to support this finding? Quite simply, there is none. There are no specific references to any of the relevant testimony or to the findings and reasoning of the trial Judgment. When an appeals court makes factual findings different from those of the trial court its conclusions need to be based upon a careful examination both of the evidence and the findings and conclusions of the lower court. This is standard international practice, except perhaps in the equally flawed appellate decisions of the Court of Appeal of the Special Panels for Serious Crimes.

Second, there is a fundamental misunderstanding of how command responsibility works as a theory of liability. The basic reasoning of the Appellate Court is that there was no "omission" on the part of the accused because the "clash" could not be controlled. This completely misses the point. The question of whether the

[57] Ibid., 21.

accused had information on the basis of which he should have been on notice that such crimes might be committed. If so, then he is under an obligation to take effective measure to prevent the crimes from occurring. The point is not whether they could have been controlled once they had occurred but whether they could have been prevented once the accused was aware of the risk that such events might occur.

Based upon this account of the elements the Ad Hoc Appellate Court concludes that,[58]

> "Therefore based on the substantiated facts, and also by bearing in mind the expert opinion of Prof. Dr. Hikmanto Juwana, SH, who opined amongst others "that omission in the context of Article 42 Law No. 26 year 2000 amongst others the act of letting subordinates is not the act to omit security [sic] (an act of administrative violation nature), omission in this context is the act of failing to prevent in regard to an order, but this has to be seen or determined by the relevant superior and a superior of higher rank in the Organization's structure, [and] if there had been an attack against in the context of this omission, an administrative sanction can be imposed against him;" [it is unclear in the original text where Juwana's quote ends]

This passage from the judgment is conceptually incoherent. There appears to be a completely erroneous understanding of the meaning of the doctrine of command responsibility as a theory of liability. There also appears to be a similar misapprehension of the applicable standard under the international jurisprudence that defines command responsibility. From this perspective all of the talk of omissions and superiors of higher rank is totally irrelevant. The only issue from the standpoint of command responsibility is whether there was a culpable failure to prevent or punish crimes committed by a subordinate. What is needed here is a careful analysis of the evidence as to the existence of the superior-subordinate relationship, the conduct of the subordinates, the information available to the accused, and the steps he took to either prevent or punish the subordinates. What the Judgment gives instead is a single incoherent and uninformed sentence instead of analysis and legal reasoning.

Concluding its discussion the Ad Hoc Appellate Court turns to an issue that seems completely out of place in the context and also betrays further shortcomings of the Judgment:[59]

> "That according to elements of crime, crimes against humanity of murder has to fulfill the element of "deliberate failure" so a Defendant can be determined to have failed to prevent and secure;"[italicized words appear in English in the original]

This statement appears to confuse the command responsibility and crimes against humanity. Perhaps the underlying problem is the apparent belief by the Court that command responsibility is a crime with which the accused is being charged. In any event "deliberate failure" is neither an element of crimes against humanity

58 Ibid., 21-22.
59 Ibid., 22.

nor command responsibility. The Court has not even considered the elements of crimes against humanity, which it should have done in conjunction with its findings on the first element. Again, this part of the Judgment appears to reflect a lack of understanding of the basic legal doctrines the Court is applying as well as a failure to provide a reasoned account of its conclusions.

In conclusion, there appears to be no sufficient grounds to view the Judgment of the Ad Hoc Appellate Court as having undermined the factual findings of the Ad Hoc Trial Court which relate to gross human rights violations and institutional responsibility. Above all this is the case because the Appellate Judgment contains virtually no analysis of the evidence or of the reasoning of the trial court in reaching its conclusions.

5.5 COMMON FEATURES OF INDONESIAN DOCUMENTS

A comparison of the findings and conclusions reached by the KPP HAM Report, the Investigative Dossiers, and the Judgments of the Ad Hoc Human Rights Court as to the occurrence of crimes against humanity and the issue of institutional responsibility for those crimes suggests that they have the following common features:

- All three documents agree that in the period before and after the Popular Consultation in East Timor in 1999, there were gross violations of human rights.
- All three agree that the gross violations of human rights were widespread in terms of geographical areas and number of victims.
- They also agree that this is one of the key elements in determining that gross human rights violations in the form of crimes against humanity were committed.
- The three documents agree that these gross human rights violations involved attacks directed against civilian population and that this is another key element of crimes against humanity.
- In terms of the underlying cause of the crimes, the three documents agree that these crimes are the product of the conflicting political objectives during that period, namely for East Timor to remain part of Indonesia or to be an independent state.
- The three documents agree that the crimes were perpetrated with at least some extent of planning.
- All three documents agree that the crimes against humanity were directly perpetrated by the pro-integration militias.
- The involvement of elements of Indonesia's armed forces in the attacks has been acknowledged in the KPP HAM report and the Investigative Dossiers but there are different conclusions as to their involvement in the 12 Judgments of the Ad Hoc Court.
- In the KPP HAM and Investigative Dossiers, as well as in some Judgments, there is also agreement that there was at the very least tacit support by Indonesian institutions towards the perpetration of the crimes by way of omission, namely not taking the necessary action to prevent or stop the perpetration of the crimes, or not taking appropriate actions against those responsible for the crimes.

It can be concluded that the available evidence was adequate to support the findings of the three bodies of documents that gross violations of human rights in the form of crimes against humanity occurred from January to September 1999 in East Timor. It can also be concluded, however, that in the course of the judicial process of the Ad Hoc Human Right Court there was an increasing narrowness and inadequacy in the attempt to find the truth and determine accountability for these crimes against humanity. The following factors reflected or accounted for this trend:[60]

1. Significant narrowing of the tempus and locus covered in each process, from January-September 1999 in regards to 16 main cases in KPP HAM report until five incidents over the period of April-September 1999 in the investigation and trials.
2. A significant decrease of evidence investigated and presented. While the KPP HAM report interviewed more than 130 witnesses, collected more than 1000 documents, and also used secondary and tertiary data, the BAPs listed only 45 documents and prosecutors introduced into evidence far fewer at trial. The number of witnesses with relevant and credible testimony at trial were so few that some panels repeatedly demanded that the prosecution produce more witnesses and evidence.
3. The failure of the investigation, prosecution, and most trial panels to consider the context of the particular crimes or to analyze the interrelations between the incidents or parties. This factor contributed greatly to the difficulty of the Ad Hoc trials in reaching clear and credible findings and final decisions bearing upon institutional responsibility.

Based on the analysis of the evidence, testimony and legal rulings considered in Part 1, the evidence supports the conclusions of the three documents that crimes against humanity have occurred. Beyond this the contradictory findings and verdicts of the Ad Hoc Court and the subsequent decisions by the Supreme Court on appeal, produce a situation in which there is little agreement about the existence or scope of institutional responsibility. While the KPP HAM report suggests that such responsibility reaches the highest levels of the Indonesian military and political authorities, its report does not cite specific conclusive evidence to prove those conclusions beyond a reasonable doubt. That, of course, was not its task, but rather that of the Ad Hoc Courts, a task in which they, for the most part, manifestly failed. The Dossiers, on the other hand, fail to make use of the mass of evidence collected by KPP HAM or available elsewhere. Indeed, the lack of interest and cooperation by the Attorney General's office in utilizing this evidence was another easily avoidable but very damaging failing in the process.

Finally, the greatest disservice to the cause of establishing the truth occurred through the utter failure of the prosecution in most of the trials to present the evidence in the Dossiers to the Court. These failings also included calling many witnesses who could not support their case or testified in favor of the defense; manifest lack of preparation and familiarity with the evidence in the case; failure to utilize the evidence readily available, etc. From this perspective, regardless of the verdicts, as a whole the

60 See Report to the CTF, Part I, Chapter III, 141-142.

trials before the Ad Hoc Court cannot be regarded as having made a significant contribution to establishing the truth about institutional responsibility for the crimes against humanity they found to have been committed in East Timor in 1999. There were some trial judgments, as in the Adam Damiri Case that did make findings indicating institutional responsibility. The findings, however, were not the focus of the Court's analysis as their aim was to assess individual responsibility. In addition, there were judgments in other trials that made no findings indicating a basis for institutional responsibility. It is instead to the evidence, findings, and conclusions in the trials and investigations in Timor-Leste that we must look to examine further the case for institutional responsibility.

5.6 THE CAVR REPORT[61]

The CAVR Report is not the product of a judicial or quasi-judicial proceeding. This mandated limitation must be born in mind when discussing its findings and conclusions. Because of the nature of its mandate, the CAVR did not proceed to conduct investigations and collect evidence in the manner of KPP HAM or of a prosecution team. The non-judicial nature of its methodology meant that although it aimed at establishing the truth, it did not conduct its own judicial investigation to verify or corroborate the information provided to CAVR by the many thousands of individuals who gave statements. The individuals providing statements were also not questioned or cross-examined in the manner of a judicial or quasi-judicial proceeding. In addition, the scope of the CAVR undertaking was far wider than 1999, encompassing the entire period from 1974-1999. Documenting the 1999 violence in particular was not a primary aim of the report and discussion of the 1999 violence makes up only a relatively small proportion of the 2,700 page report. Beyond analyzing the statements of witnesses, CAVR also undertook a number of other means to deepen its analysis and to support its findings. For example, they adopted the Report of Prof. Geoffrey Robinson (referred to hereafter in this report as the Robinson Report) which provided an analysis, among other things, of the Indonesian military operations in East Timor, the relation of the TNI to Timorese pro-integration militias, the policies of the Indonesian government, and the scope, breadth, and patterns of the violence specific to 1999. In addition to using reports by NGOs and other individuals or organizations, they also obtained expert assistance in developing a statistical analysis of the 1999 violence.[62]

The Document Review of the CAVR operated under certain limitations of access. The Commission was given access to the Community Profiles and access was also granted to examine (but not copy) the scripts from the Executive Interviews of Xanana Gusmão and Taur Matan Ruak for the sections related to 1999. In addition, the Document Review analyzed several volumes of the CAVR's Community Reconciliation Process forms located at the Serious Crimes Unit. These documents include testimony from perpetrators who applied to take part in the CAVR reconciliation process. Once testimony was collected from the applicant, a CAVR

61 This section relies on the more detailed analysis of the CAVR Final Report in Report to the CTF, Part 2 Chapter 7, and in Addendum to the Report to the CTF.

62 This statistical analysis is discussed in Report to CTF, in the appendix to Chapter 7.

panel had to assess if the applicant was suitable for the reconciliation process, which included a formal consultation with the Prosecutor General's office. The testimonies were provided to the SCU for them to rule on whether the statement of a perpetrator contained information related to an investigation of a serious crime. The Prosecutor General's office then reported back to the CAVR with their assessment as to whether the perpetrator's actions should be adjudicated, or were less serious and appropriate for the reconciliation process at the community level. Access was not granted, however, to the actual CAVR witness statements. The lack of access to some of these materials often made it impossible to evaluate the evidentiary basis on which some of the Report's findings were reached.

The CAVR Report reaches broad and wide reaching conclusions about the responsibility of individuals and organizations. One of the strengths of the report is the large number of statements from victims and eyewitnesses, and they are summarized and quoted extensively in the Report. This contrasts sharply with the proceedings at the Ad Hoc Court where few victims' voices were heard and where there was a dearth of eyewitness testimony. Basing the account of the 1999 violence largely upon such victim and witness statements provides an important perspective and rich detail from those who experienced the violence most directly. Unlike a judicial process, however, CAVR employed no independent mechanism for assessing the credibility of witness statements or verifying the factuality of the allegations they contain. Also unlike a judicial proceeding, perpetrators named by witnesses did not automatically have an opportunity to contest these allegations and provide their own account of events. This structure makes the obvious point that it is the methodology of a certain model of a truth commission and not that of a criminal court. The CAVR's conclusions about individual responsibility are, however, outside of the scope of the mandate of the Commission for Truth and Friendship.

An example of the difficulties presented in evaluating conclusions based upon unverified and uncorroborated witness statements may be seen by taking as an example the CAVR account of gross human rights violations involving gender-based violence. This section of the CAVR Report represents the most comprehensive attempt to date to document and analyze the sexual violence perpetrated in East Timor in 1999.

The CAVR Report documents rape in connection with targeting of women related to pro-independence supporters. However, the references to victims' or witnesses' statements are often so abbreviated that they often do not provide sufficient information about the incident. Because the Document Review was not granted access to the original statements it was impossible to ascertain if those statements contained details not included in the summary references, for example about the targeting of the victims or the participation of elements of TNI, Polri, or Kopassus. The accounts of gender-based violence reflect a horrific degree of suffering on the part of the victims and reflect the relation of sexual violence to other forms of coercion in the context of political and armed conflict. However, the nature of the CAVR process results in a report where the broad conclusions about the responsibility for sexual violence are based upon the statements of victims, without the verification that an extensive and systematic investigative check on their accuracy would produce.

This does not imply that the witness accounts are not true or accurate, only that there has been no independent process to verify their allegations. As noted above, such a non-judicial manner of proceeding was mandated for the CAVR, but it must be recognized that the conclusions reached through such a process have different limitations than those arrived at through a rigorous process of judicial inquiry. Where CAVR accepts the allegations in the accounts of the victims as true, a judicial process would subject them to a process to test their veracity. As will be seen, however, some of the conclusions reached about gender-based violence in he CAVR Report are confirmed by the judicial investigations carried out by the Serious Crimes Unit.

The CAVR Report also reaches broad conclusions about the role and responsibility of organizations and institutions. The broad conclusions, however, are often not supported with specific references to the documents, testimony, or analysis on which they are based.

The conclusions of the CAVR Report about gross human rights violations rest upon the analysis of a broad evidentiary base, supported by quantitative analysis of the geographical, temporal, and demographic scope of the violence. The conclusion that various categories of gross human rights violations occurred is very substantially documented. This is also the case for conclusions about the institutional responsibility of Timorese pro-integration militias, where the weight of the evidence is very substantial. In regard to Indonesian institutional responsibility, the CAVR Report's conclusions weigh heavily and almost exclusively on the TNI and in particular on certain members of its senior leadership. The basis for assigning this responsibility for the events of 1999 largely rests upon the Robinson Report and SCU indictments. It is a weakness of the CAVR Report's conclusions on this issue that it often does not quote or include the specific documents or evidence on which particular conclusions are based. The validity of their conclusions thus depends on whether the evidence they cite from the SCU indictments and the Robinson Report can also be determined as valid. In regard to the SCU indictments, it is important to recognize that indictments represent allegations that the prosecution will attempt to prove at trial, not the evidence on which that proof will be based. In regard to the SCU materials supporting those indictments, these will be considered in the next section dealing with the SCU.

The Robinson Report was adopted by the CAVR. Its interpretations of institutional responsibility exercised a great deal of influence over the CAVR's conceptualization of the role of militias and their ties to the institutional responsibility of the Indonesian armed forces. For these reasons it has been discussed here, even though it was not one of the 4 documents forming the subject matter of the CTF's Document Review. The most influential conclusions of Robinson's Report for the CAVR centered on its argument that,

> "... the evidence [...] offers strong support for the conclusion that the militias were not independent bodies acting outside the purview of the Indonesian state, but were in fact created, supported and directed by Indonesian authorities..."[63]

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63 CAVR Final Report, Chapter 12, Annex 1: East Timor 1999, Chapter 6.3, 97.

Building on this conclusion, the Robinson Report rejects the notion that it was only "rogue elements" In the Indonesian army that were responsible for human rights violations. The report supported its conclusions by arguing that the close connection of the TNI and the militia groups was not new, but rather the continuation of a previously existing systems and patterns. Robinson also argued that TNI officers were active in establishing the militias and that the militias,

> "were granted formal political and legal standing by Indonesian government and military authorities. Public statements in support of the militias, made by numerous officials, constituted expressions of formal state recognition and support for those groups."[64]

These conclusions are in many respects similar to those reached by KPP HAM about the connection of Timorese pro-integration militias to Indonesian military institutions. An evaluation of these conclusions in the Robinson Report depends upon the evidence on which they are based. The methodology of the Robinson Report is academic and emphasizes documentation and analysis. It cites a great deal of documentary and testimonial evidence to support its conclusions, but it is difficult to locate some of these documents in the SCU Archive or other repositories. In regard to the SCU Archive this appears to be mainly due to the fact that the document classification numbers used by Robinson differ from the document numbering system in the SCU Archives because the classification system was changed after Robinson wrote his report. There are also significant weaknesses in the SCU Database system. Further, Robinson obtained many documents from the Yayasan HAK archive, but Yayasan HAK has not made all of these documents available for examination by the CTF. Nonetheless, the Commission was able to gain access to some of the evidence used in the report's analysis, and in these cases the report has been shown to be credible.

The Strengths of Robinson's report include:

- A careful and fairly balanced tone and methodological approach.
- Discussion of the history and formation of 1999 militias.
- Brief discussion of structural violence in Indonesia that gives 1999 a broader historical and political context.
- Access to documents and detailed documentary analysis.
- Variety and volume of sources that are properly cited, translated and documented.
- Extensive argumentation that offers theories backed with evidence as to why and how the perpetration of human rights violations occurred in East Timor in 1999.
- Detailed discussion of evidence related to funding, and other means of support to the militia, such as granting special status.
- Detailed discussion of different types of perpetration and their shades of accountability.
- Detailed discussion of how theories of individual and command responsibility relate to the cultural and command structures relevant to East Timor.

On the basis of these strengths it was understandable for the CAVR to rely on this report in supporting its own conclusions but, as noted below, CAVR could have

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[64] Ibid.

engaged in greater independent analysis to confirm and corroborate the conclusions reached by Robinson.

The weaknesses of the Robinson Report include:

- It accepts allegations in SCU indictments without being able to probe fully the value of their evidence.
- The evidence adduced is strong in citation of documents but sometimes weak in reference to witness testimony. However, much witness testimony became available after the Robinson Report had been completed.
- The Report doesn't fully acknowledge the limitations that accompany using tightly defined categories or models as a methodology. At times there are inadequate explanations or allowances for randomness or exceptions.
- Footnotes are no longer easy to trace or verify because of changes in indexing systems at SCU. Other documents are not publicly available, such as the ones cited that only the author possesses, or others that only the UN Human Rights Unit or Yayasan HAK can supply.

On the basis of the Document Review, including the various CAVR documents enumerated above, as well as the Robinson Report, the strengths and weaknesses of the CAVR Final Report may be summarized as follows:

Strengths:

- Extensive background information to understand the violations of 1999 in a cultural and historical context.
- The most comprehensive collection and analysis of quantitative data related to human rights violations committed in East Timor in 1999.
- Considers the institutional responsibility of both Indonesian and Timorese institutions.
- Provides the only comprehensive reporting on sexual crimes committed in 1999.
- Features individual victims' stories to humanize reporting of grave violations of human rights.

In summary, the CAVR Final Report is a valuable source for understanding the events of 1999 because it combines quantitative and qualitative methods, and legal and historical perspectives in reaching its conclusions.

Although the CAVR documents provide an excellent base for the CTF to assess the "truth" about the events in 1999, there are some areas of weakness in the CAVR's methods and analysis. These areas include:

- Over-reliance on the human rights database. Although the Human Rights Database is a tool that in general strengthens the quality of the CAVR report, it should be used with caution. The database catalogues summaries of testimony rather than the original testimony, so a full understanding of an event must rely on the original testimonies and not merely on the database summaries. The Document Review, in a relatively small number of searches in the database, found a number of errors in the database, such as accidentally coding the wrong crime or only recording one crime without recording others in an event. The only accurate way to assess the statistics is to view each statement for each event, because the

database returns all references to keywords in searches. For example, when cross-checking the CAVR Report's claim that there were no sexual crimes committed by Falantil in 1999, the database search returned five events of sexual crimes by Falintil. Only by searching the event records closely for each case was it possible to determine that all five of those incidences were technical errors in the coding, and invalid reports. It should be acknowledged that the CAVR did take measures to periodically evaluate and improve its database system throughout the period of its mandate. However, this high incident of error in this case suggests that the Human Rights Database must be used carefully with a system of crosschecking to verify claims. The data regarding 1999 also needs to be supplemented with more independent and thorough qualitative analysis.

- Insufficient discussion and evidence of civil institutional responsibility (i.e. public officials) for violations of human rights in 1999.
- Insufficient discussion of Fretilin and other pro-independence group violations in 1999.
- Insufficient citations to show the basis for some of the reports' conclusions.
- Lack of independent analysis of violations of 1999. The report relies too heavily on the indictments filed by the Serious Crimes Unit and Robinson Report, without providing a critical discussion of these sources.

5.7 SERIOUS CRIMES UNIT ARCHIVES[65]

The SCU Archives contain a rich store of testimonial, audio-visual, physical, and documentary evidence. For purposes of this Document Review this evidence may be divided into four categories: case files of the 87 cases that were tried before the Special Panels; indictments with supporting investigative files; investigative files of the approximately 450 open investigations that did not result in indictments;[66] and audio-visual evidence.[67] The second category also contains a special subset of documentation that is commonly known as the "Wiranto Case Files." These files contain 15,000 pages of documentary and testimonial evidence that was used to support not only the indictment of General Wiranto, but also those of other high-

65 This section of the report relies upon Report to the CTF, Part 2, Chapters 7-8 and Addendum to the Report to the CTF, Part 1.

66 Research on the investigative files was subject to extensive restrictions, as agreed upon with the Prosecutor General of East Timor, due to considerations of confidentiality.

67 The full collection encompasses the following kinds of evidence that were gathered by SCU investigators:

1) Audio-visual files as both primary and secondary evidence
2) Physical Evidence, such as confiscated weapons
3) Forensic Evidence (in this case "forensic evidence" is referring to the examination of gravesites etc)
4) Witness Statements (these can be located by case or by District)
5) Documentary Evidence (Much of the Documentary evidence is contained in the National paper files, unsorted, and in a more organized form in the case files for Case #5/2003, which is often referred to as the Wiranto Indictment). Documentary evidence is also part of other case files, but the bulk of evidence relevant to the CTF's mandate is confined to these areas.
6) District investigative file summaries and evidence
7) Individual case files for both indicted and un-indicted cases
8) Full case files for adjudicated cases that include indictments, judgments and, in some cases, transcripts.
9) Internal correspondence regarding cases
10) External press releases, correspondence and memos
11) Secondary reports and research including Geoffrey Robinson's report, and other UN or special consultant reports.

ranking Indonesian indictees. It is also supplemented by a 90-plus page legal brief prepared by the SCU in support of the indictment. This section of the Report will deal with evidence, findings, strengths, and weaknesses of the materials in the SCU archive. The next section will take up the cases that were tried before the Special Panels for Serious Crimes.

The Archives of the Serious Crimes Unit contain such a large volume of material that there was insufficient time to examine the complete collection. Nonetheless a very substantial amount of evidence was reviewed and carefully analyzed. In the first phase of research, emphasis was placed upon analyzing the documentary evidence that could help establish the conclusive truth about gross human rights violations and institutional responsibility. For example, a document index created in the early years of the SCU for contains a list of many of the documents included in this large body of material. The index alone is more than 100 pages long. All of these documents were located and reviewed, except for a relatively small number that could not be found. A significant amount of the witness testimony collected in the "Wiranto Case Files" was also analyzed as well as material from other case files. In the second phase of research for the Document Review more emphasis was placed on witness testimony and audio-visual files because so much of the documentary evidence has already been analyzed.

As noted above, some of the investigative files became available in this phase of the research. In total, approximately 1000 witness statements, 50 volumes of evidence consisting of more than 10,000 pages, and approximately 30 videotapes, were analyzed in depth. In addition to the materials already mentioned, the portions of the "Wiranto Case Files" containing the Deportation cases (3 volumes) and the Destruction of Property cases (2 volumes) were also examined. These volumes consist entirely of witness testimony about 1999 taken by SCU investigators. They include statements of perpetrators, victims, bystanders, and analysts. The so-called High Command File (1 volume) in the "Wiranto Case Files" was also evaluated. It contains testimony from senior UN officials, several prominent pro-autonomy leaders, lower level TNI and militia perpetrators, and civil servants in influential positions. Former TNI members and civil servants' statements give some of the most detailed and useful testimony to understand the structures of the TNI and pro-autonomy groups and how they operated in East Timor in 1999.

The evidence in the SCU Archives is so extensive that it cannot be reviewed in any depth here. The analysis provided by the Expert Advisor to the Commission on Truth and Friendship and his research team on the evidence in the SCU Archives comprises more than 240 pages, and in addition there are very extensive appendices and document indexes and annexes in support of this analysis. For a full discussion of the evidence reviewed reference may be made to the Report to the CTF of the Expert Advisor and the Addendum to the Report to the CTF, both of which will be appended to this Report.[68] A few examples will illustrate some of the different kinds

[68] See Chapters 7-8 of Report to the CTF and all of Part I of the Addendum to the Report of the CTF. See also the appendices to these sections of the report that contain a document database with copies of all of the documents as well as document indices and further analytical tools.

of evidence used to support findings on gross human rights violations and crimes against humanity. The so called "High Command File" in the "Wiranto Case Files" contains a great deal of evidence relevant that establishes the commission of grave human rights violations in a widespread and systematic manner in East Timor in 1999.

There is credible evidence in this volume that shows the TNI both supplied weapons to the militia and pro-autonomy leaders and then took them away when it chose to do so.[69] This demonstrates both material support and control. This evidence also strongly suggests that the TNI also supported the militias in a variety of ways including recruitment,[70] training[71], facilities[72] and moral support.[73] Trainings included teaching militia how to make their own firearms and giving them the necessary supplies.[74] The evidence further confirms the consistent systematic behavior of the militias.[75] The statements confirm other evidence that the civil government used state funds appropriated for development to fund the militias, even after the government would have had knowledge that militia groups had committed and were committing human rights violations.[76] The statements in the file also confirm that TNI, police, civilian government officials and militia worked closely together,[77] at times to directly commit serious human rights violations, and at times to support or encourage them.[78]

Some witnesses reported with credibility that some TNI members were incorporated into the militia structures, confirming other evidence from trial and investigative case files that demonstrates overlap between membership in militias, civilian defense groups, and local TNI garrisons.[79] They also offer very strong evidence that there was a superior-subordinate relationship between the TNI and the militias, which would be relevant for findings of institutional responsibility.[80] Finally, they most strongly and conclusively confirm that the TNI, Police and Civil authorities in East Timor failed to prevent the commission of gross violations of human rights throughout East Timor in cases where they had sufficient knowledge about the commission of these crimes and the authority and material ability to prevent them.[81] There are also several references in the "High Command File" statements that support allegations that Falintil committed illegal detention in 1999 against individuals identified with pro-autonomy groups.[82]

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69 "HC#" codes all refer to witness statements in this particular volume of the case files for SPSC Case #5/2003, SCU archives. They are coded to protect witness identities. HC2, HC3, HC4, HC5, HC6, HC7, HC8, HC9, HC10, HC11, HC12, HC13, HC14, HC15 and others.

70 HC16, HC2, HC17, HC18, HC4, HC8, HC10 and others.

71 HC16, HC2, HC3, HC8, HC9, HC10, HC12, HC19 and others.

72 HC7, HC8, HC10, HC11 and others.

73 HC16, HC2, HC17, HC4, HC5, HC7, HC8, HC9, HC10, HC14, HC21 and others.

74 HC9.

75 HC16, HC31 , HC1, HC24, HC2, HC17, HC3, HC18, HC27, HC4, HC5, HC7, HC8, HC9, HC30, HC10, HC28, HC11, HC13, HC20, HC22, HC19, HC23, HC15, HC21 and others.

76 HC16, HC31, HC24, HC2, HC25, HC26, HC17. HC27, HC5, HC8, HC9, HC30, HC10, HC28, HC11, HC12, HC22, HC19, HC15 and others.

77 HC16, HC31, HC1, HC24, HC2, HC25, HC17, HC3, HC18, HC27, HC5, HC8, HC9, HC10, HC11, HC12, HC13, HC19, HC15, HC21 and others.

78 HC16, HC31, HC1, HC2, HC25, HC3, HC18, HC5, HC7, HC8, HC30, HC10 and others.

79 HC16, HC24, HC2, HC3 and others.

80 HC16, HC31, HC1, HC24, HC2, HC17, HC18, HC4, HC7, HC8, HC9, HC11, HC13, HC15 and others.

Deportation and Destruction of Property

The Deportation and Property Destruction files offer evidence that in every district, and in nearly every sub-district, large numbers of people were forced to leave their homes, either to hide in the jungle or to go to West Timor as the result of the conflict. These files also showed a consistent pattern of house burnings and property destruction preceding forced movement. These files strongly support the conclusion that the militia, the Civilian government and the TNI all bear institutional responsibility for the destruction of property and acts of deportation and forcible transfer.

The majority of witness statements in the Deportation files contain evidence that force was applied most often through **direct threats by armed militia or TNI.** For example, Witness WDF3 – a former ABLAI militia member, explained in an interview with a SCU Investigator:[83]

> "Q: Why did all the villagers come to [redacted] together with the ABLAI militia leaders?
> A: Because they were forced to leave their homes by the ABLAI militia and go to West Timor.
> Q: Do you know by what means they were forced in their villages to follow the militia leaders down to [redacted]?
> A: They said to them: 'If you don't want to go to West Timor, East Timor will become dust.' Before that they had said, 'If Pro-Autonomy doesn't win the election the situation will be the same as it was in 1975.' The villagers were scared of the militia leaders and that's why they left their homes and went with them to [redacted].
> Q: Were [names redacted] and the others you mentioned armed when they went to [redacted] and [redacted]?
> A: Yes, they were carrying machetes and spears and all of them were armed.
> Q: For how long did the villagers from [redacted] and [redacted] stay at [redacted]?
> A: They stayed there for two days and two nights and they stayed in the houses of us locals at [redacted]. They had to eat cassava and no one gave them food.
> Q: What would have happened if any of the people had chosen to return to [redacted] or [redacted]?
> A: None went back, as [name redacted- militia leader] had said to them that if they stay on in East Timor they would die. I heard only [name redacted] say this to the people."[84]

Quantification of the absolute numbers or percentages is impossible given the available data, but the evidence suggests that a significant majority of people appear to have been forced to leave East Timor in 1999. The Document Review also found that this evidence about forcible transfer and deportation was supported by very substantial bodies of evidence in the investigative files. Some of the

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81 HC16, HC31, HC1, HC25, HC2, HC3, HC7, HC8, HC9, HC29, HC30, HC10, HC28, HC11, HC12, HC20, HC22, HC21 and others.

82 HC16, HC2, HC18, HC12 and others.

83 All questions in this quote were asked by the SCU investigator.

84 LL3, Case files #5/2003, SCU Archives. Witness statements from this case's files have all been coded in this report with this system of LL# for confidentiality.

documentation from Suai will be discussed below and provides strong confirmation of the conclusions in the Deportation and Property Destruction Files. However, the evidence in this collection also indicates that the charges made by the SCU about Deportation as a crimes against humanity and in other scholarship should be qualified to reflect the reality that some people left East Timor voluntarily in 1999.

Based upon examination of the investigative evidence supporting the charges of deportation, there appears to be very substantial and credible evidence that in East Timor in 1999 forcible transfer and deportation often followed similar patterns. These patterns encompassed orders for civilians to leave their villages from militia, TNI or civilian government officials. These orders were often backed by a direct threat to specific individuals or families who may have been unwilling to move, general threats to villages or groups as a whole that they would die if they remained, and acts of violence such as burnings, assaults, murders, or illegal detention to create an environment in which individuals would feel they had no choice but to abandon their homes and property. The next step in this sequence was the organized transport of villagers by militias and/or TNI or public officials, or facilitating transfer of villagers, to an interim holding facility that was under the authority of the Indonesian government or armed forces such as the Kodim or Polres. After a period of time spent in a holding facility, many East Timorese were transported to West Timor either in private vehicles, by transport arranged by militias and/or TNI, or in Indonesian state vessels, such as navy boats. In many cases of Deportation or Forced Transfer other crimes were committed within this chain of the process (Burning/Threats, Transport to Kodim/Polres for detention, Forced transport to West Timor), including sexual violations,[85] extortion,[86] murder,[87] and other forms of inhumane treatment. After a period of deportation or forced transfer, militia and TNI appear to have conducted follow-up searches to determine if people remained. People found in civilian areas after the majority of the population had already left often became victims of further gross human rights violations, including murder.[88] The evidence reveals that this pattern of forcible removal occurred in many parts of East Timor during approximately the same time period. Both the consistency of the pattern of conduct and the mobilization of very substantial resources to accomplish the removal of such a large number of persons in such a relatively short period of time indicate that this conduct was systematic and well-planned rather than random, spontaneous, or the product of isolated individual acts.

This pattern of Deportation and/or Forced Transfer occurred in both the pre and post-ballot periods.[89] In the pre-ballot period, Forced Transfer caused a large number

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85 SCA, SCC, SCD, SCE, SCH, SCI, SCJ, SCP, SCV, SCW, SCX, SCY, BAA, BAB, DI. These codes, and the subsequent codes of a similar nature, refer to witness statements that appear in the individual district files at the SCU archives. The witness statements have been coded to protect confidentiality. Code references to the specific location of this information within the archive (but not names) are on file with the CTF Archives.

86 See Community Profiles, CAVR: Saburai (Maliana, Bobonaro); Tumin (Quibesselo, Oecussi); Usitaqueno (Oesilo, Oecussi). Taiboco (Pante Macassar, Oecusse).

87 See Community Profiles, CAVR: Bemori (Dili), Rainakdoko, Malinamuk (Dom Alcixo, Dili); Arara and Lasaun, (Arsabe, Ermera). Aitun (Fatululik, Covalima). Acomateni (Suai, Covalima).

88 AE, BBJ, LBD, LBP, LAP.

89 See also, CAVR Final Report, "Forced Displacement and Famine," Chapter 7.3, 105-142.

of civilians to be gathered in refugee centers such as the Suai Church[90] and Manuel Carrascalão's house,[91] which then provided the conditions for the later fatal attacks on these civilians and subsequent deportation. Multiple witness statements recount burning of their villages by militias, or a wave of violence that then prompted them to flee their homes to find protection in an appointed safe haven during the pre-ballot period.[92]

A woman from Suai explains:

> "I went to stay at the [Suai] church in August 1999. We went to stay there because I was afraid of the kidnappings at night by the militia. They came to houses at night looking for people. Before I went to the church, I don't remember the date, there were people coming to the house throwing stones and making the dogs bark but I hid in the house and couldn't see who they were. I and my husband and children ran to the church for our safety."

She and her children survived the attack on Suai Church. Directly after the attack on Suai church, she was taken to the Kodim where she was forced to stay for one week. Then, she was deported with others to West Timor.[93] Many witness statement provide similar accounts of the events at Suai, including from families which sought refuge within the church and those that did not.

As will appear below, both of these groups (those who were in the Suai church and those who were rounded up and detained outside the church) were subjected to the same process leading to their deportation. Because Suai was one of the SCU priority cases there was an intensive investigation of the events there and of charges of murder, forcible transfer/deportation, torture, and sexual violence. The results of these investigations provide a very significant body of witness statements that provide a coherent picture of these events. Their testimony is also corroborated by other statements given by militia who were involved. While some of these statements are considered here, others will be examined in the section below on sexual violence. Because sexual violence at Suai occurred as part of this process of removal and transfer of civilian populations, the evidence in that part of the report also supports the conclusions in this section.

It must be noted however that the SCU focused its investigations on individuals who were targeted for transfer and deportation because of the perceived association with the pro-independence cause. These investigations support findings that forcible transfer and deportation as crimes against humanity occurred in East Timor in 1999. They also support findings that pro-integration militias perpetrated these acts and that in doing so, personnel of the TNI and often police were involved either as co-perpetrators, providing material support, or failure to prevent the crimes that they saw occurring. This evidence is largely based on the operational level and shows the cooperation of militia and military personnel in the forcible transfers and deportation.

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90 Community Profile Bcco2 (Zumalai, Covalima); See also Witnesses SCV, SCW, SCY.

91 HC2, HC30.

92 HC21, SCV, SCW, SCY, SCV and others. See also Community Profile, CAVR, Laculai (Liquiça).

93 LL94.

Indeed, it is hard to imagine that the forcible transfer and deportation of so many individuals could have been accomplished without such cooperation. One former militia member from Lautém explained,[94]

> "In the year of 1999 I was a member of the pro-autonomy movement. The day after the consultation vote was announced on Sept. 1999, the pro-autonomy movement groups began a movement to evacuate villagers in [village name redacted].
> The first phase of the plan was to intimidate and threaten the villagers to try and get them to evacuate to West Timor instead of going to the forest to hide. Team Alpha took part in this. The members in [redacted] who did this were [redacted 7 names. One of these persons named has testified before the CTF]. The BTT branch of the TNI took part. The only name of a person I know was [redacted]. The Kepala Desa [redacted]was also involved."

A great deal of other evidence, analyzed in detail in the reports of the Expert Advisor discussed above, confirm the validity of these conclusions reached in the SCU investigations. The SCU Archive thus provides strong evidence to support a conclusion of institutional responsibility.

Although the SCU focused its investigation on pro-independence victims, evidence in the SCU investigative files and CAVR documents also indicates that not all individuals left for the same reasons. A generalization that everyone who left East Timor in 1999 was forced to do so is not supported by the evidence, which suggests that there were also individuals who left voluntarily for various reasons and others who were forced to leave because of real or perceived threats by pro-autonomy groups. Both pro-autonomy and pro-independence supporters left East Timor en masse. They often traveled together.[95] In some instances, both pro-autonomy and pro-independence supporters were taken to West Timor, but prior to their leaving they were divided into different detention areas, or departure groups.[96] In most cases pro-autonomy supporters appear to feel that they were also forced to leave[97] for different reasons including orders from their direct superiors, or fear of reprisals by pro-independence groups. In some cases militia and TNI members were even ordered to burn their own houses or facilities and leave,[98] at the same time they burnt pro-independence houses and forced their occupants to leave. In such cases, pro-autonomy individuals could also be the victims of forcible transfer if their departure from their homes and property was involuntary. It is not the political affiliation of the individual that is determinative but rather whether they were forced to leave against their will. While it is impossible to quantify how many individuals belonged to which group the available evidence indicates that a majority of those who left were forced to do so because of real and perceived violence and threats of violence targeted against pro-independence supporters.

94 LL108.
95 HC2, HC5, Community Profile, CAVR, Bebunuk (Dili).
96 HC31.
97 HC21, LL108.
98 LL13, LL127

Sexual Violence

In another category of violations, prosecution of sexual violence was not a priority for the SCU. Murder was prioritzed above all other offenses. The SCU investigative files nonetheless contain considerable evidence about the perpetration of sexual violence by pro-autonomy forces[99] and several cases allegedly committed by pro-independence supporters. The Document Review analyzed this evidence in regard to the occurrence of sexual violence as a gross human rights violation and as to institutional responsibility. There were individual investigations, particularly focusing on the aftermath of the Suai Church Massacre, but there was no serious attempt to conduct an overall investigation of the perpetration of sexual violence. Nonetheless, there is a substantial amount of evidence, but it must always be borne in mind that there are undoubtedly large numbers of cases that were never reported or investigated. Because of this lack of investigation it is difficult to arrive at a general assessment of the extent of the sexual violence. Examples from the SCU investigation of sexual violence in Suai will illustrate both the strength and the limitations of the evidence.

When the SCU was conducting its investigation of the murders that occurred during the attack on the church at Suai it became apparent that a significant amount of sexual violence occurred in the aftermath of the attack. As a result of this, and of the wide scope of the Suai investigation itself, investigators pursued the issue of sexual violence and uncovered a great deal of evidence. Numerous statements of victims in the SCU investigations of Suai provide testimony pointing to a pattern in the perpetration of sexual violence. After the attack women taken from the church, separated from the general population, taken to certain collection centers and detained there, separated from their male relatives. One of the detention centers was the Suai Kodim, the others were a school building and a camp at Betun where other women had already been detained after being taken during sweeping operations. The detention at the Kodim is significant, as is the fact that many of the women reported seeing Herman Sedyono, the Bupati, at the church. They testified that he saw the women being detained and taken away in his presence. Some testified specifically that he ordered that they be taken to the Kodim. Other women who were not in the church but had been detained during sweeping operations in or around Suai were also brought to the Kodim or other detention centers. Afterwards they were forcibly taken to West Timor. Many of these women reported sexual assaults that occurred in the detention centers or in West Timor. Because of the separation from family and community they were particularly vulnerable to assault throughout this process of detention and transfer. Many of them believed that they were being targeted for sexual violence because of the perception that all of the individuals seeking refuge in the church were independence supporters.

One woman (AA) described her experience of being raped during detention. She stated that she was raped by both militia and police. She was in the church at Suai during the attack. Afterwards she was brought to the school detention center SMP2. While detained there she said the militias would come at night and pull the blankets

99 The Report to the CTF dealt with this topic briefly in two places: a short section on patterns of sexual violence and the analysis of the Lolotoe Case, in which rape was one of the charges against two of the accused. The Addendum to the Report to the CTF treats this topic at much greater length..

off the women. If they liked them they would take them with them. On 9 September she said she was raped by a militia who took her to a room where a policeman stood outside the door during the rape. After he raped her he threw 10,000Rp at her. On 12 September she testified that she and the other women were taken to the Kodim and told they would be taken to West Timor. At the Kodim a militia member gave her to a policeman who took her to his house and raped her. His rifle was next to them while he raped her. She was taken to West Timor on 15 September 1999. AA testified that,

> "Militia came to us in the middle of the night and withdrew the blankets from our faces and looked at us. If they liked a women the just pulled her away into another room ... I told the policeman that I was three months pregnant. He didn't care... we were taken at the same time and raped in different rooms."

Another victim (BB) explicitly describes the political context:

> "Militia in Suai went from house to house and looked for people who were supporting CNRT and the independence of E. Timor [...] I was a pro-independence supporter. One of my tasks at that time was to explain to the villagers all about the elections. As I said everyone knew I was a pro-independence supporter and the niece of CNRT leader [redacted] [...] The militia who caught me then forced me to go to the Indonesian Military station in Suai town called Kodim [...] [The perpetrator] threatened me and my uncle actually the whole family all the time because we were pro-independence [...] He cut my t-shirt with the knife he pointed at my chest. My upper body was naked [...] I tried all the time to kick. I actually thought he would kill me so I gave up. I also cried permanently after he raped me but he didn't care, he would just continue what he was doing. He threatened to kill me if I told anyone what he did."

Witness DD described the entire process of how the TNI surrounded the church and after the attack forced people to go to the Kodim. She testified that after a few days many of the women were then forcibly removed to West Timor:

> "My daughter was kidnapped by the militia from Suai church. The militia took my daughter to West Timor to become [redacted]'s wife."

Witness EE described the forced displacement and the accompanying sexual violence. She was not detained at the church, but captured by the militia in Suai under the command of [redacted]. After being forced into a camp in Betun she described how women were raped night after night by the militiamen, usually at the same time each night. It is also clear that she believed she was targeted for political affiliation:

> "The situation was very dangerous because of TNI and militia. Myself and also other men from Suai hid in the forest because we were known independence supporters and were afraid of getting killed."

The participation of TNI personnel in these attacks was also described by many other witnesses. Some of them explained that they had fled to the church because of such attacks. Witness EE continued:

> "[Redacted] and four other men arrived at our place (in the camp). [Redacted] and one other man were armed with rifles.... I only recognized [redacted]. The others had black hoods over their heads. I could see only their eyes. They came with a blue pickup truck. [Redacted] was wearing military trousers and a white shirt. The others wore TNI uniforms."

She then describes the rapes which she witnessed:

> ...."[Redacted] tore [redacted]'s shirt apart so her upper body was naked...she was lying on her back. He then raped her for a few minutes. [She] tried as much as she could to escape. When [redacted] pushed her to the ground she was able to get up and run away. The soldiers ran after her and caught her. The whole situation was very dangerous and [redacted] didn't have any chance to escape....[Redacted] threatened all of us and told us he would kill us if we told anyone what happened to her later on."

Another witness (FF) described how she was taken to a camp in Betun after the violence at the church in Suai. She too had fled to the church because of militia attacks against her community, During the course of these attacks, she testified, she was raped by TNI personnel and militia. The militia, she stated, had burned all the houses in her village, including her own. Then a Laksaur militia member by the name of [redacted] and a uniformed TNI soldier forced her to go to a wooded area where she testified she was raped and assaulted. Another female was there to witness this. On a previous occasion members of the militia came to her house and accused her of being a pro-independence supporter and had given her the choice of sex or death:

> "We will bring you to Koramil not to meet the Koramil [sic], but we want to rape you."

She also describes how, once they reached the women's detention camp in Betun, rapes occurred every night:

> "... each night the militia would come into the room and switched off the light and take a girl with them. This would happen usually around 8 pm ....We were guarded at all times by the militia."

There is a great deal of other evidence in the SCU files that also follows the pattern of the cases discussed above. Extensive as this evidence is, it is far from complete. This was due to the lack of investigations arising from the SCU's failure to attach sufficient priority to sexual violence cases. The evidence is, however, substantial enough to support certain conclusions. First, sexual violence was widespread and was not random. Rather, it exploited the vulnerability of the members of the civilian population in the context of ongoing conflict. A principal pattern of sexual violence was constituted by its connection to the political agenda of pro-autonomy supporters. Sexual violence occurred often in the context of sweeping operations, attacks on villages or refugee centers, and illegal detentions. It targeted pro-independence supporters to punish families or individuals that were perceived as pro-independence and to intimidate and terrorize the population.

The evidence makes clear that there is institutional responsibility on the part of the pro-autonomy militias that were the primary direct perpetrators. There are cases where TNI or police were directly involved in sexual violence, but in the majority of the documented cases militias were the direct perpetrators. On the other hand, the occurrence of sexual violence at the Suai Kodim and other detention centers and in other similar contexts suggests institutional responsibility at the very least for failing to protect the civilian population from such violence. That the TNI in such cases knew that this violence was regularly occurring is also apparent from the evidence, as was the knowledge of local commanders in these areas that TNI personnel were encouraging, permitting, supporting, or participating in such crimes.

The evidence pertaining to the possibility of sexual violence perpetrated by pro-independence supporters is much less substantial, in part due to the failure to fully investigate allegations of such crimes. The available evidence does not permit any conclusions as to institutional responsibility for this category of crimes by pro-independence groups.[100]

Illegal Detention by Pro-Independence Groups

While the SCU does not provide sufficient evidence to support allegations of institutional responsibility of pro-independence organizations for murder or sexual violence, they do contain a substantial amount of evidence which suggests that Falintil and pro-independence groups systematically captured and illegally detained targeted persons. The victims were most often militia members, but their detainees may have also included non-combatant civilians. Detentions appear to have become more systematic and widespread during the post-ballot period of 1999.

One of the most widely known cases of illegal detention occurred in Liquiça in June 1999. Falintil captured a policeman and a militia member and held them hostage for several days until the UN negotiated and oversaw their release. UN staff filed a report related to this incident. In their original report it states that Falintil beat these men during their period of detention, and an examination by ICRC identified severe bruising on the bodies of the men.[101] These acts, if true, would constitute human rights violations. It is interesting to note that this case was also never investigated by the SCU, even though there was a detailed UN report of the incident in the Wiranto Case File High Command statements. The UN report also notes that Falintil was cooperative with the UN, but that the hostages' handover was delayed because there were militia and TNI attacks on that same day in the area of the appointed meeting place.

Evidence in the SCU files suggests that rather than individual, isolated or random acts, there appears to be a widespread pattern of Falintil and/or CNRT detaining people who are perceived as current, and/or former militia. The systematic elements of the crimes allegedly include formal orders from commanders to conduct detentions, reports to commanders regarding the timing and methods of detentions,

[100] For a discussion of this evidence see Addendum to Report to the CTF, Part 1, Section 4.4.

[101] HC12, "Report on UNAMET Retrieval of Hostages from Falintil and Observations of Joint TNI/Militia Operations," 15 June 1999.

written records and lists of people who were detained, and the construction of roadblocks in order to commit the initial act of detention. The evidence does not permit generalizations about how widespread such detentions were and how often they involved mistreatment or torture of those detained. It thus appears that there is evidence that suggests that Falintil and/or CNRT may bear institutional responsibility for these acts of illegal detention, and/or torture or other inhumane acts as gross human rights violations.

Summary

The SCU files contain a massive amount of evidence. Analysis of this evidence leaves no doubt that gross human rights violations in the form of murder, sexual violence, forcible transfer and deportation, and persecution, as well as others, occurred in East Timor in 1999. The evidence also leaves no doubt that pro-autonomy militias were typically the primary perpetrators of these crimes and that the consistent, patterned, and systematic manner in which they were carried out demonstrates institutional responsibility for these crimes. The evidence also supports findings by the SCU that the TNI and civilian authorities cooperated with and supported the militias in a number of significant ways. The patterns of cooperation between militias and TNI are best documented at the operational level where there was a continuing practice of collaboration between militias, civilian defense groups, and TNI local garrisons whose membership often overlapped. The patterns of cooperation involved at times planning and co-perpetration in operations, and at times the provision of material support in various forms. Viewed from the operational level this evidence in the form of witness statements by victims, former militia, former TNI personnel, military officers and civil servants and a large body of documentary evidence also supports SCU's conclusions about the institutional responsibility of the TNI and civilian authorities for gross human rights violations.

As noted above, there is sufficient evidence to suggest the institutional responsibility of pro-independence groups for deprivation of liberty in the form of illegal detention. However, the available evidence is not strong enough for such conclusions as to other crimes. The strengths of the evidence most utilized by the SCU in its investigative and indictment processes include:

- Demonstrated knowledge of the crimes against humanity contextual elements under international law, and placing evidence of these crimes as they occurred in East Timor in the context of international jurisprudence.
- Focused, but not always successfully executed, investigations into crimes against humanity.
- District specific investigations that created detailed documentation about how each area of East Timor experienced human rights violations in 1999, which allowed even closer investigation of specific communities.
- Focused investigations and strong evidence to convict those directly responsible for killings in East Timor.
- Some investigations of other important categories of crimes against humanity such as forced transfer or deportation, torture, persecution, and crimes involving sexual violence.

into evidence various reports about the violence in East Timor, such as the KPP HAM Report. In none of these cases did they introduce documentary evidence or call witnesses to provide testimony about the broader context of violence in order to establish the required "chapeau" elements of a "widespread or systematic attack against a civilian population." For this reason, the evidentiary base in these Lospalos and Lolotoe cases is the most relevant for the Commission because it bears more closely upon issues of institutional responsibility than do most of the other trials where such evidence was not introduced and the judges merely made very general findings on the basis of the reports. Once this practice had been established it was repeated in case after case and the judgments in one case just repeat more or less verbatim the general findings about the chapeau elements from previous cases. There is usually no citation of specific evidence from these reports. For this reason these cases are not particularly useful in regard to the Commission's inquiry.

Another reason for selecting these cases is that they were by far the longest trials with the greatest amount of testimony and evidence provided to the Court. Also, the Court's Judgments ("Final Written Decisions") in these cases are by far the longest amongst all the SPSC decisions. It is not the length that is in itself significant, but rather that the Court attempts to fully summarize and analyze prosecution and defense cases, and to consider the testimony of all witnesses relied on by the prosecution and defense. Building upon this analysis the Court makes specific factual and legal findings on all of the central allegations of the defense and prosecution cases. This practice was quite unusual at the Special Panels and as a result, it is these two cases that afford the best opportunity for evaluating the evidence and reasoning by which the Court reaches its conclusions.

The Lolotoe Case

João França da Silva, alias Jhoni França, José Cardoso Fereira alias Mouzinho, and Sabino Gouveia Leite were indicted jointly for crimes against humanity, including murder, torture, rape, and persecution, committed in the Lolotoe sub-district. Joni França was the commander of the KMP militia in Lolotoe, José Fereira was his deputy-commander, and Sabino Leite was a village chief (*Kepala Desa*) in Lolotoe. After the beginning of the trial Joni França and Sabino Leite pleaded guilty and their cases were severed. Individual judgments were rendered in each of these cases after hearings at which the prosecution introduced evidence to satisfy the Court that the guilty plea was in fact supported by evidentiary facts (as required by UNTAET 2000/30 Sec. 29a). The trial of José Fereira proceeded and resulted in a guilty verdict.

Under a plea bargain Joni França pleaded guilty to all the counts of imprisonment and deprivation of liberty as crimes against humanity, as well as to the torture of Benedito Da Costa, Adao Manuel, Mario Gonsalves, and José Leite as a crime against humanity.[103] In arriving at its findings the Special Panel relied on the admissions of the accused as well as evidence introduced by the prosecution in the form of witness testimony. In addition to the admissions to specific paragraphs of the indictment (paras. 20-48, 50-52,53-59, 60-68) he also specifically admitted that the crimes he

[103] Judgment of João França da Silva, Case No, 4a/2001, 5 December 2002.

admitted to were committed as "part of a widespread and systematic attack against a civilian population with knowledge of the attack" (Judgment para. 57). Because these admissions were made against his interest, were corroborated by other testimony, and were uncontradicted by any other evidence they provide a firm basis for findings and conclusions.[104]

In regard to the events in Lolotoe charged in the indictment the court makes the following findings relevant to the issues of gross human rights violations and institutional responsibility:

- The TNI in Lolotoe under the command of Lt. Bambang Indra "worked in close cooperation with two of the principal armed militia groups," the KMP and DMP.
- The TNI in Lolotoe under the command of Lt. Bambang Indra provided the militias with logistical support and compensation for their participation in actions against civilian supporters of independence.
- Between April and October 1999 the TNI and KMP militia in Lolotoe carried out acts of violence against civilians considered to be pro-independence or linked to pro-independence supporters. These attacks included illegal arrest and detention, arson, murder, torture, and persecution. Further, "many acts were directed in particular against women whose husbands were presumed to be Falintil ... or supporters of independence."
- These attacks included the torture and illegal arrest and detention of Benedito da Costa and his wife and children by the KMP. The KMP were looking for their son, Mario, who was believed to be a member of Falintil. They were taken by the KMP to the Koramil in Lolotoe where they were illegally detained for almost three months.
- Adão Manuel was targeted as a supporter of independence. He was illegally detained after being forcibly removed by KMP members from the church in Lolotoe. He was detained, tortured, and interrogated by the KMP at the Koramil.
- Mario Gonçalves was also targeted during a KMP operation against Guda Village because he gave speeches in support of independence. Approximately 100 KMP members led by Joni França beat him, cut him with machetes, cut off his ear, and forced him to eat it. He was then held with the other detainees at the Koramil.
- José Leite was the vice-secretary for CNRT in Lolotoe. He was targeted by the KMP and was repeatedly beaten by them, under the orders of Joni França, at various locations in Lolotoe including outside the CNRT office. He was taken to a Polri office "where they met an Indonesian officer, Martin." He was further interrogated and beaten at the Koramil, where he was then detained for approximately three months.
- Aurea Cardoso was targeted with her children because she and her husband were supporters of independence. She was told by KMP "that she and her two children were to be arrested by the militia because they could not locate her husband..." She was interrogated by Joni França as to the whereabouts of her husband and he threatened her children. She and her children were detained at Koramil until July 1999.

104 In reaching its findings the court relied on the admission of the Accused, the testimony of Amelio Belo, Aurea Cardoso, Rosa de Jesus, Adao Manuel, Herminio da Graça, Mariana da Cunha, Victim A, Victim B, and Victim C, as well as the KPP HAM and UN Secretary General's reports on East Timor.

- Herminio de Graça was targeted by KMP because of his affiliation with CNRT. He was detained by KMP and taken to the house of Joni França who questioned him about Falintil. The next day he was interrogated at Falintil by a TNI sergeant. He was subsequently detained at the house of Manuel da Costa, a TNI member, until July 1999.
- On 20 May 1999 about 50 KMP and "a few TNI" went to Guda village. "They gave a speech to the villagers present telling them that there is information that the villagers were supporting Falintil with food and that some of the female villagers were having relationships with Falintil members." The names of Maria da Cunha and Victims A, B, and C were read out from a list. They took Maria da Cunha to Lolotoe where she was forcibly held for 6 nights until she was released by Joni França.
- In May 1999 KMP militia and TNI went to the houses of Victims A,B and C. "Some of them were wearing TNI uniform." They were taken to Lolotoe where they were held for one week by Joni França and other KMP. They were also moved to other locations where they were forced to stay and to cook for Joni França and others.

In addition to the admissions on specific allegations of the indictment noted above, the accused also made a statement to the court. In that statement he said that he was forced by Indonesian intelligence commander Sutrisno to join the KMP because he feared he would otherwise be killed. He further stated that

> "the militia and TNI started to carry out operations searching for pro independence youths."

He also stated that he received his orders from the TNI:

> "I ... was told what to do by the TNI. After I became a militia I had to satisfy the hearts of the TNI who ordered me to tell the youth to join the pro- autonomy."

He reiterated these points at some length. In evaluating these findings it appears that there was evidence before the court which supported its specific findings as to the allegations of criminal conduct in Lolotoe. This evidence was furnished by the guilty plea, specific admissions, and statements of the accused. These support the accusations of illegal arrest and detention specifically targeted against civilians believed to support pro-independence. They also support findings of beatings and torture similarly targeted against pro-independence supporters. In addition to these specific conclusions there is also evidence which supports the findings that the criminal conduct did not consist of random, isolated acts but rather constituted gross human rights violations and crimes against humanity. The findings indicate a multiplicity of attacks against the civilian population of Lolotoe. Further, these attacks followed a pattern: KMP groups, under the command of Jhoni França or José Cardoso obtained information about independence supporters and their families. They used these lists and information in operations directed against unarmed civilians, including women and children, because they were suspected of pro-independence activities. The operations followed a similar pattern: Villages were entered by organized groups of KMP, specific individuals were detained and were then taken to Koramil in Lolotoe for interrogation. The men were subjected to repeated beatings. CNRT members were typically beaten in public places. Some of the victims were subjected to torture. All of

the detainees were held in Koramil, or, in a few cases, other locations associated with the TNI. They were all released at the same time in July 1999.

These conclusions are supported by the specific admissions of Jhoni França. No evidence was introduced in court to the contrary because of the guilty plea. In terms of institutional responsibility, the uncontroverted evidence points to the close integration and coordination of TNI and militia activities at the local operational level in Lolotoe. The use of the Koramil as a detention facility for individuals forcibly removed from their homes by the militia, the joint participation in interrogations, the moving of individuals back and forth from militia to TNI habitations, and the presence of TNI officers and personnel during operations and other activities was clearly indicated by the evidence given both by witnesses and by the accused themselves. In addition, the admissions of guilt made by the accused suggest an overall control by the TNI of the operations and membership of this militia group. While that contention may have been made in part to shift responsibility away from the Accused, it is nonetheless corroborated by the other evidence presented in the case, as well as by evidence presented in the other Lolotoe cases as well.

Sabino Leite initially plead not guilty. After the trial had been underway for some months and after the prosecution had presented many of its witnesses Sabino Leite changed his plea to guilty to the three charges of imprisonment and deprivation of liberty, the charge of torture, and the charge of "other inhumane acts." The prosecution agreed to withdraw the charge of persecution. In the Judgment, the Court examines the evidence to determine (as required by UNTAET 2001/25 29A.1) if it is sufficient to support the plea of guilty.[105] In its formal Findings (section F of the Judgment, p. 21), the Court reaches a series of conclusions as to the facts of the case. The first findings have to do with the existence of a widespread and systematic attack on a civilian population, as is necessary to support the conviction for crimes against humanity. It is significant that the Court here specifically cites the testimony of 13 named witnesses as the basis of its findings, in addition to the KPP HAM and UN reports. What is unfortunate, however, is that in the individual findings on the context they do not refer to which of these testimonies support specific points. But they do at least indicate that the evidentiary basis of their findings on the context is drawn from the testimony and statements of the witnesses in the case.

On the basis of the admissions of the accused and the evidence of the witnesses the Judgment makes the following findings relevant to gross human rights violations and crimes against humanity:

- In regard to the situation in Lolotoe itself, the Court finds that the TNI, "under the command and control of 2nd Lt. Bambang Indra, worked in close cooperation with two of the principal armed militia groups, namely Kaer Metin Merah Putih and the Dadurus Merah Putih (Red and White Typhoon). (para 91).
- The TNI in Lolotoe under the command of Lt. Bambang Indra provided the militias with logistical support and compensation for their participation in actions against civilian supporters of independence. (para 93)

105 Special Panels for Serious Crimes, Judgment of Sabino Gouveia Leite, Case No. 4b/2001, 7 December 2002.

- The TNI and POLRI allowed the militias "to act with impunity." (para. 92)
- Between April and October 1999 the TNI and KMP militia in Lolotoe carried out acts of violence against civilians considered to be pro-independence or linked to pro-independence supporters. These attacks included illegal arrest and detention, arson, murder, torture, and persecution. Further, "many acts were directed in particular against women whose husbands were presumed to be Falintil ... or supporters of independence." (para 94)
- Sabino Leite, the Accused, was the chief (Kepala Desa) of Guda village in Lolotoe Sub-District. He provided information to the KMP as to the identities of civilians who were independence supporters or had relations with Falintil, so that they could be targeted by the KMP militia. (paras 95-96).
- When Mario Gonçalves, a supporter of CNRT who gave speeches supporting independence in Guda village, was detained by KMP militia, Sabino Leite ordered KMP members to beat him in front of the CNRT office. Sabino Leite incited the militia members to cut of Mario's ear. Sabino Leite and militia members then forced the victim to eat his ear under threat of death. He was then taken to the Koramil, where he was detained for approximately three months. (para 99)
- Sabino Leite participated in the apprehension and detention of José Gouveia Leite, the vice-secretary for CNRT in Guda. After being encouraged by Sabino Leite (who was the victim's godson) to come to Lolotoe, he was there beaten by KMP outside of the CNRT office. He was then taken by the KMP to the Sub District Police Office and questioned by an Indonesian officer named Martin. He was then taken to Koramil, where he was beaten and detained.
- Sabino Leite participated in the interrogation of Herminio da Graça and ordered him to go to the Koramil where he was detained and interrogated. (para 104)
- Sabino Leite provided information to the KMP about Victims A, B, and C that led to their detention for supporting members of Falintil with food. They were detained in an operation jointly conducted by the KMP and TNI, armed with automatic weapons. Victims A, B, and C were taken to the house of Sabino Leite where they were held for approximately one week. During that time they were forced to cook for the militia and Sabino Leite's family. They were moved several times after this, but spent another month detained in the home of Sabino Leite where they were again forced to cook. During the entire time of their detention they were guarded and lived under the threat of death if they did not obey. (para 105)
- When Benedito da Costa and others detained at the Koramil were released in July 1999, Sabino Leite typed the letter of release. (para 102)
- Sabino Leite admitted that during their detention Benedito da Costa, Amelio Belo, Adão Manuel, Mario Gonçalves, José Gouveia Leite, Aurea Cardoso and her two children, were locked in a small room without proper sanitation facilities. The detainees were subjected to extremely unhygienic conditions and were not given food and water regularly. (para 161)
- Members of the civilian population of East Timor, like those enumerated in the previous paragraph, were subjected to "orchestrated inhumane conditions because of their opinion in the future political status of East Timor ..." Sabino Leite admitted to the Court that "he was aware of the context in which his actions of submitting people to inhumane conditions were committed. He knew that he was participating in a widespread and systematic attack against a civilian population." (para 162)

Sabino Leite made a statement to the Court about the context in which he found himself as a village chief in 1999. The statement was made as part of his admission of guilt. It undoubtedly aims to shift some of the responsibility away from him, but it is nonetheless instructive in terms of the way it portrays the cooperation of Indonesian civilian and military authorities with pro-autonomy militias. Sabino Leite notes that he was the lowest level public servant. As such, he says, he was ultimately subject to the authority of the TNI and militia, because "at that time all the rights and civil authority were taken over by TNI and militia under their regime" (para 168). He defends his participation in that "regime" by saying that he would have placed himself and family at risk if he did not "obey the orders of TNI and militia" (para 168). He states that his authority was merely symbolic:

> "because all authority were under TNI and militia .... So I considered TNI, SGI, and the militia as the Second God. I'm speaking now based on the reality, but the situation which I experienced in the past, was very dangerous within [sic] brutal acts of TNI and militia against civilians and me" (para 168).

What is striking is the way in which Sabino Leite consistently portrays the TNI and militia as a pair of institutions that is acting together as one, that is wielding power in Lolotoe. This is consistent with his other testimony and with the testimony of all the other witnesses. It is also consistent with the testimony of João França da Silva, who, in the companion case above, portrayed the situation in much the same way even though he was in fact the KMP commander. The way in which both militia and TNI use the Koramil as their base and conduct their operations from there indicates the same close connection, The testimony of both the perpetrators and the victims is unanimous and undisputed in portraying the way in which the KMP integrated their activities with those of the Koramil. Detainees were moved around by KMP from the Koramil to their houses (or the house of Sabino Leite) and back again. Interrogations and beatings began outside the Koramil by KMP and then continued when they brought individuals back there for detention. This is the same pattern as found in the Lospalos case.

It must be emphasized, however, that there is no evidence presented in these two Lolotoe cases that shows links between these TNI/militia/civilian authorities operations and higher levels of military command. The focus in the evidence presented is entirely on the local operational level. But at that level the evidence is consistent and undisputed by defense or prosecution. The evidence before the Court was clearly sufficient to support the findings indicated above. Those findings, and the evidence that supports them, indicate both that gross human rights violations in the form of crimes against humanity occurred, and that there is a reasonable basis for the attribution of institutional responsibility. That institutional responsibility, from the perspective of that evidence is shared. The evidence, including the admissions of the key authority figures, indicates the close cooperation of the TNI, KMP militia, and the Village Chief in the organization and perpetration of a long series of crimes committed over a substantial period of time and following a pattern. These operations targeted both pro-independence supporters and their families - particularly the women in their families. In terms of direct perpetration, furnishing material aid with the knowledge of what it would be used for (aiding and abetting), and a failure to prevent crimes that they knew were occurring, persons of authority in military and civilian institutions failed to control the militias and also took an active part in

encouraging and furthering their activities. While it is outside the scope of this report to comment on the individual responsibility of accused like Sabino Leite and João da Silva, their admissions of responsibility and their statements about their roles and their relation to the TNI, supports the Court's finding of joint responsibility of these three institutions for the crimes against humanity which the Court found to have occurred.

While the other two defendants in the Lolotoe Case changed their pleas to guilty during the trial, José Cardoso did not. As a result, the trial continued with him as the only defendant. He was charged with 13 counts of crimes against humanity. The Judgment finding José Cardoso guilty of most of the crimes charged reviews and analyzes at great length the evidence introduced by the prosecution and defense.[106] The Court notes that the prosecution and defense agreed on the statements of 15 witnesses whose testimony was undisputed (para 275). On the basis of the careful analysis of the evidence and the credibility of the witnesses the Court makes the following general findings relevant to gross human rights violations and crimes against humanity:

- Reviewing the various victims they conclude that all were civilians and either members of CNRT, engaged in pro-independence activities, or relatives or supporters of pro-independence. (para 308)
- From the testimony of the victims and witnesses they find that it is clear that the victimization of these individuals by the Accused and his subordinates, that is, members of the KMP, sometimes operating with members of the TNI, was carried out according to a policy or plan to attack supporters of independence. "What took place in Lolotoe sub-district was planned and organized by the accused and his subordinates targeting the supporters of independence." (para 310)
- Mariana da Cunha and Victims B and C testified about the meeting at Zoilpo on 21 May 1999 where the Accused spoke to the civilian population and read the names of these women from a list and then ordered them to be detained. (para 311) On August 30, 1999 the Accused held a meeting at Raimea where he warned the population that he knew the names of independence supporters and threatened them. (citing specific witness testimony)
- The accused was the Deputy Commander and then the Commander of the KMP militia. (para 313)
- It has been established beyond a reasonable doubt that there was a systematic attack against the civilian population in Lolotoe sub-district. These attacks were part of an orchestrated campaign of violence that included intimidation and threats to life, unlawful confinement, rape, torture, assaults, murders, and forced displacement. These were carried out by members of the militias, the TNI, and POLRI, with the acquiescence and participation of military and civil authorities. (paras 314-327)
- 2nd Lt. Bambang Indra, Danramil, was the TNI commander in Lolotoe. He provided the KMP with logistical support. Many members of the KMP received compensation from the Indonesian government for their militia activities. (para 328)

106 Special Panels for Serious Crimes, Judgment of José Cardoso, Case No. 4c, 5 April 2003

The Judgment also makes a very extensive series of detailed findings as to the 13 crimes charged in the indictment.[107] These support and provide further details for the findings enumerated above.

Conclusions as to Crimes Against Humanity

It was undisputed that crimes against humanity occurred in Lolotoe in 1999. The admissions of the Accused and the prosecution and defense testimony all concur that there was a campaign by the KMP militia to intimidate the civilian population by attacking pro-independence supporters and their families. Illegal detention, beatings, torture, and murder were all used to carry out this purpose. The acts were not random but wee clearly well organized. All of the testimony, both of defense and prosecution supports this. Villages were selected and particular individuals were targeted because of their activities or those of their families. Women relatives of independence supporters were a particular target. The use of lists of names and the selective targeting of individuals rather than random violence indicates organization. The attacks also follow a common pattern, as do the detentions. The duration of time over which the attacks were carried out, the multiplicity of victims and incidents, the organized nature of the attacks, the careful selection of victims, and the targeting of independence supporters all establish that this was a widespread and systematic attack against a civilian population. In other words, the findings of the SPSC that crimes against humanity occurred in these three cases is clearly supported by the evidence. The fact that the defendants in two of the three cases pleaded guilty and admitted all of the essentials necessary to establish crimes against humanity strengthens this case. Even though José Cardoso did not plead guilty, he did not dispute the facts which support the finding of crimes against humanity.

Conclusions as to Institutional Responsibility

As to institutional responsibility, the evidence is uncontradicted, unequivocal, and plentiful as to the responsibility of the KMP militia for the crimes of which the three men were convicted. There was also very substantial evidence to support the Court's findings as to the role of TNI soldiers and officers participating in this violence and supporting the KMP. The role of the Koramil and the way it was freely used by the KMP, the way in which detainees were moved from TNI facilities to private houses of militia leaders and civil officials, and the close connection of Lt. Bambang Indra to the KMP leadership all corroborate the Court's findings. The testimony of numerous witnesses supports the findings as well, as do the admissions of the defendants. The way in which Lt. Bambang Indra operates together with the KMP leadership and with Noronha in regard to Victims A, B, and C is another clear indication of the closeness of this relationship. This is particularly striking in regard to the transportation of the three victims to Atambua to rape them.

There is also a substantial amount of testimony, and particularly the admissions of the defendants to support the finding of logistical and financial support by the TNI and civil authorities. Although there is no evidence presented by the defense to contradict this testimony, it is nonetheless the case that the testimony does not indicate the

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107 Ibid., para. 332-499

exact nature, scope, and method of this support. Of course, such testimony was not germane to the specific charges against the defendants, so there was no reason for the prosecution to produce it. In order to clarify the extent of institutional responsibility on the part of the TNI and civil officials, it would be necessary to examine further evidence as to the mechanisms and extent of the support.

The evidence in the Lolotoe Cases is sufficient to establish that at the local level, operational level in this particular subdistrict, the TNI played an active and important role in militia operations. Indeed the evidence about detentions and interrogations in particular suggests a very substantial integration of the the TNI and militias in regard to operations targeting independence supporters. To what extent the institutional responsibility for the crimes against humanity in Lolotoe extends to higher levels of military and political authorities is a question left open by the evidence in the case. Certainly the Accused stated clearly that TNI largely created and directed the militias. It was also, however, in their interest to shift responsibility to the TNI and present themselves as mere unwilling pawns.

The Court makes sweeping conclusions about the way in which the events in Lolotoe relate to larger patterns of cooperation between militia and TNI in all of East Timor. These conclusions are based upon the human rights investigative reports they received into evidence rather than the testimony produced by those involved in the events at Lolotoe. No testimony was heard on the broader context or on the reports themselves. In short, the Lolotoe Judgments establish that crimes against humanity occurred in Lolotoe and that there was joint institutional responsibility for those crimes between the KMP militia, the TNI, and civil officials. The decisions do not provide an independent account of the mechanisms and evidence by which institutional responsibility may be definitively demonstrated at higher levels. In this regard they only rely upon previous reports rather than upon their own findings based upon a review of testimony and other evidence produced in Court.

The Lospalos Case

The Lospalos Case, as it is commonly known, can be treated more briefly as its findings confirm the findings and conclusions in the Lolotoe Case. The Lospalos Case was the first major crimes against humanity trial before the Special Panels for Serious Crimes.[108] It was by far the longest trial held before the Special Panels. Involving 10 defendants accused of carrying out a series of five crimes against humanity as members of Team Alfa, it dealt explicitly than any other SPSC case with the broader context of the violence in East Timor in 1999. The Judgment is extremely detailed in regard to the analysis of the evidence and the factual findings.[109] The Court spends a considerable amount of time analyzing the chapeau elements on the context of the violence. Because of the amount of testimony the Court heard and analyzed on the context in which Team Alfa operated, it also provides a clear account of way in which the evidence can support findings of institutional responsibility for these crimes.

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108 Special Panels for Serious Crimes, Judgment of Joni Marques et. al., Case Number 09/2000, 11 December 2001.

109 It also produced by far the most detailed Judgment of any of the trials. The Judgment is 433 pages long, consisting of 1166 numbered paragraphs setting out in great detail the allegations of the parties, the analysis of the evidence on which the defense and prosecution cases rested, and the specific factual and legal findings of the Court.

The Court itself directed its verdicts against the ten accused as individuals. As in the Lolotoe Case, however, numerous factual findings bear upon the issue of institutional responsibility. The admissions and statements by the accused themselves repeatedly pointed to the close relationship of Team Alfa and Kopassus. These admissions are corroborated by a great deal of uncontradicted testimony by significant numbers of both defense and prosecution witnesses. The context of the murder of Evaristo is particularly clear in this regard in indicating that Team Alfa functioned under the direction and orders of Kopassus in targeting civilians thought to be independence supporters for torture and death. The shared headquarters of the Kopassus and Team Alfa also points to this inference, as do the joint meetings, and joint participation in the torture and killings. The evidence and findings as to Kopassus equipping Team Alfa with weapons, transportation, operational directives, and so on, also supports these findings indicating institutional responsibility.

In making the findings that support these conclusions the Court did not rely on just the testimony of a few witnesses, but on a significant body of testimony that was not disputed as to the facts relevant here. This evidence indicates a systematic targeting of alleged or actual independence supporters. In every one of the five crimes dealt with in the Lospalos Case the victims were unarmed civilians. The carefully planned roadblocks used in the murders of Evaristo and the nuns make particularly clear the operational methods of Team Alfa, as does the evidence in the forcible transfer part of the case. In regard to some of these crimes there is quite substantial evidence to support the Court's finding of institutional responsibility on the part of Indonesian military or security units because of their roles in ordering, encouraging, equipping, and providing material support for Team Alfa. The Court also relied upon strong and undisputed evidence of ordering and of co-perpetration on the part of Indonesian military personnel in reaching its findings. Were these isolated acts that do not indicate a pattern of institutional support? The testimony suggests otherwise in regard to the Lospalos area of operations. Whether this conclusion extends to other geographical areas in East Timor is another question that was beyond the scope of the Lospalos case except in its consideration of the five reports introduced into evidence by the prosecution and certain other witness statements. Joni Marques' admissions as to the relation between Team Alfa's activities and the larger patters of violence in East Timor indicate clearly that he, at least, understood what he was doing as a Team Alfa commander to be related to more general patterns of operations being conducted by Timorese militias and Indonesian military units in other regions of East Timor. In short, the evidence, analysis, and factual findings in the Lospalos Case are well-founded in supporting the Court's conclusion that gross human rights violations occurred and there was institutional responsibility for those crimes.

5.9 CONCLUSIONS

Each of the sections above evaluated the findings of the different bodies of documents included in the Document Review and indicated the extent to which the conclusions concerning gross human rights violations and institutional responsibility reached in those documents were supported by the evidence. This section summarizes common limitations in the processes that led to their conclusions and the common threads and points of agreement between these bodies of documents as to the issues of gross human rights violations and institutional responsibility for these violations.

1. All of the bodies of documents manifest limitations in terms of the scope of their research. In the case of KPP HAM this had to do with limitations of time and access. In the case of the Ad Hoc Court, the failure to utilize the evidence from the KPP HAM, the failure to call sufficient witnesses, and the failure at trial to fully utilize the evidence in the BAP's all had a serious impact on the trials because they limited the evidence available to the judges. The CAVR, by its very nature, did not conduct a criminal investigation. This meant that much of the testimony obtained was not subject to corroboration and systematic verification. The SCU did not have access to the Indonesian indictees, or to many witnesses who were located outside of East Timor.

2. None of the investigations or research processes that produced the four bodies of documents had access to the documents in TNI archives. None of them had access to the INTERFET document collection purportedly held in Australia.

3. None of the investigations or research processes identified violence perpetrated by pro-independence groups as a subject for systematic inquiry or prosecution.

4. The KPP HAM and CAVR reports focused on the larger context of the violence. The SCU and Ad Hoc Court cases, on the other hand, for the most part limited themselves to consideration of individual cases as isolated events.
5. All of the documents reviewed reached the conclusion that gross human rights violations in the form of crimes against humanity occurred in East Timor in 1999. These findings are, in most of the documents, based upon very substantial, and in some case massive, amounts of evidence. The body of evidence considered in the Ad Hoc Human Rights Court investigations and trials is considerably narrower than that in the other bodies of documents but nonetheless sufficient to support their findings.

6. In establishing the elements of crimes against humanity all documents focused upon the political dimensions of the conflict and its focus on the Popular Consultation, the kinds of crimes and the status of the victims, and above all the targeting of civilians associated with particular political beliefs and goals in concluding that an attack against a civilian population occurred.

7. In establishing that this attack was widespread or systematic all the bodies of documents focused upon the operational level. In regard to the question whether the crimes were random, sporadic, and spontaneous or organized and coordinated they all found that gross human rights violations were perpetrated in an organized manner by pro-autonomy militias that systematically targeted perceived supporters of independence.

8. All the documents made findings supporting the conclusion that these militias bear institutional responsibility for murder as a crime against humanity. Most of the documents found that these crimes included murder, sexual violence, forcible transfer and deportation, deprivations of liberty, and persecution. The major exception is the Ad Hoc Human Rights Court where it is also the case that many of these crimes were not charged.

9. All of the documents make findings that indicate significant and consistent support of Indonesian military and civilian institutions for the operations conducted by these militias. Some of these findings were directed to general support for the militia organizations, others for specific operations and criminal acts which they carried out. They also made findings that in some instances this support included the direct participation of Indonesian military or security personnel to support militia operations or in the form of joint TNI/militia operations. The major exception here is some of the decisions of the Ad Hoc Human Rights Court. Some of the judgments in the twelve cases make such findings and reach conclusions indicating institutional responsibility but others do not. The reasons for these differences were discussed above.

10. All of the documents make findings that the violence perpetrated by pro-autonomy militias with the support or cooperation of Indonesian institutions should be seen in the broader context of the way in which the Indonesian military and civilian authorities were involved from before 1999 in the creation and operation of civilian defense forces and other armed formations. This broader context provided the backdrop and foundation for the way in which at the local level these organizations and pro-autonomy militias interacted in 1999 in regard to operations resulting in gross human rights violations.

11. Some of the documents reach explicit conclusions about institutional responsibility on the basis of the kinds of findings enumerated in the previous paragraph. These documents include the KPP HAM Report, the CAVR Report, the SCU Case Files, the Judgments of the Special Panels for Serious Crimes and some of the Judgments of the Ad Hoc Human Rights Court.

12. Most, but not all, of the documents make findings that suggest that gross human rights violations were also committed by pro-independence groups. Because all of the documents focus primarily upon crimes committed against pro-independence victims these findings are often not specific, extensive, or detailed.

13. Some of the documents also make findings that suggest patterned and coordinated perpetration of certain specific crimes, such as illegal deprivation of liberty, by pro-independence institutions.

CHAPTER 6

FACT FINDING

In accordance with its mandate, the Commission has conducted a Document Review on the four bodies of documents discussed in Chapter 5 above. This Document Review provided a primary basis of for the Findings and Conclusions the Commission arrives at in the subsequent sections of this report. Following its mandate, the Commission also conducted its own fact finding utilizing a variety of methods. This section of the Report provides an analysis of the results of this fact finding process.

Independent from the document review and the Reports provided to the Commission by its Expert Advisor,[1] the Commission at an early stage established 14 priority cases as sample cases to analyze events that took place in 1999. The Commission's researchers employed a "matching and corroboration" methodology to analyze these 14 priority cases that spanned the duration of the Commission's research phases. In 2006, after the initial matching and collaboration was completed using the available documents, the Commission summarized the information gathered for each of the priority cases, and applied its conceptual approach to the material. This approach involved an outline of the case, including a chronology and the pertinent details to understand the events that took place. This outline became a reference guide for subsequent Fact Finding on these cases. The Commission's Fact Finding employed several methodologies, including statement taking/interviews, public hearings, closed hearings, and submissions.

The result of the Commission's Fact Finding process that encompassed these methodologies was the reconstruction of each of the 14 priority cases and the compilation of a large amount of contextual information about 1999. The results of this Fact Finding also provided additional sources of information to be analyzed in this chapter (6) in arriving at Findings and Conclusions. The results of this analysis will be compared to the analysis of the Document Review in the preceding chapter (Chapter 5). This overall comparative analysis of all of the research and Fact Finding conducted by the Commission will be presented in the next chapter of the report (Chapter 7), and will constitute the basis for the Findings and Conclusions in Chapter 8.

[1] The Report to the CTF and Addendum to the Report to CTF are referenced in Chapter 5.

6.1 THE FACT FINDING PROCESS

Statement Taking/Interviews

Statement Taking/Interviews (referred to hence as "Statement Taking") was used by the Commission to obtain information from relevant parties directly connected to an incident or event. These relevant parties included victims, witnesses and alleged perpetrators. In addition to the documentary research, the Statement Taking process was crucial to the reconstruction of the 14 priority cases.

The Commission initially designed a work plan for implementing Statement Taking anticipating receiving statements or conducting interviews with 44 parties identified from the 14 priority cases. In this regard, the Commission set a target of taking at least three statements for each case - one each from a victim, a witness and an alleged perpetrator. In implementing this process the Commission collaborated with the Center for Internal Displacement Services (CIS) Kupang and the Justice and Peace Commission of Kupang Diocese (JPC KAK). Before conducting Statement Taking the staff from these two institutions were given basic training regarding the methods and procedures to be employed. The Commission's staff and Commissioners themselves participated actively in the Statement Taking, as well as the monitoring and evaluation of the Statement Taking.

The principle on which the Statement Taking was based was to give an equal opportunity to all connected parties to incidents to make clarifications about existing facts. This information was expected to provide a more complete picture of an event than was available in the documentary evidence alone. In the two months of conducting the Statement Taking process in West Timor, the Commission exceeded their goal and collected 119 statements. At the end of this chapter is a table that provides a breakdown of the number of witnesses per priority case, along with their institutional affiliation. Names of the statement givers have been removed from this table in order to protect confidentiality.

All people who were approached by the Commission to give statements had an opportunity to discuss their confidentiality options. If a person chose to give a statement, they signed an "Informed Consent" form. No person was forced to share information with the Commission in either a public or private forum. The testimony given by witnesses who did not want their statements to become public has been accordingly protected.

From this Table of Statement Givers it can be seen that of the three categories of parties targeted by the Commission for Statement Taking, the "alleged perpetrator" category contains the most statements taken (48 statements). There are two reasons for the greater proportion of testimonies in this category. "Alleged perpetrators" were more readily identified than the other two categories, and they were also more readily available to give statements. The Commission also felt that because its collection of documentary evidence contained more information from victims than perpetrators, the perpetrator testimonies were useful in gaining a different perspective. This also means that because this "perpetrator perspective" is over-represented in the Statement Taking process, the evaluation of these statements had to be balanced by reference to the testimonies representing other perspectives. Since there was so much information

available to the Commission from sources outside of the Fact Finding process, such as the Document Review, the Commission was able to reach balanced and well-founded conclusions. The majority of alleged perpetrators[2] identified for Statement Taking reside in West Timor, and were interviewed there.

The implementation of the Statement Taking encountered a number of obstacles that affected the outcome of the process. For example, The CIS-Kupang and JPC KAK teams found the following obstacles:

Field obstacles

The two partner institutions of the Commission, CIS and JPC KAK, worked on the basis of a list of names and information prepared by the Commission. This preliminary data first had to be reprocessed by the two institutions in order to confirm the whereabouts or the most recent address of the connected parties. Since 1999 these former East Timorese refugees live in a number of camps in East Nusa Tenggara (NTT) and some have also been relocated to other regions in NTT and in Indonesia. The field team from CIS and JPC KAK conducted the Statement Taking in Kupang, Kefamenanu, Soe and Belu Districts. But the uncertainty about the location of persons, as well as the distance and remoteness of the locations where potential statement givers might be found, presented the CIS and JPC KAK Teams with serious difficulties in implementing the goals of this part of the fact finding process. Other factors that were obstacles included the concern of some witnesses that their statements would be used to incriminate them, or individuals felt that it was unfair that only 1999 cases were being addressed by the Commission. As a result, these teams failed to meet the earlier established targets, especially in regard to the names of parties previously identified.

From the 119 statements the Commission actually collected, not all the statements were given regarding the 14 Commission priority cases. Other statements came from parties who in 1999 identified themselves as victims of violence committed by pro-independence groups or Falintil, and witnesses who shared information about the context of the violence in 1999.

Structural Obstacles

In addition, the CIS and JPC KAK Teams faced other challenges that may be categorized as structural obstacles because they relate to the position of the connected party in the government, military or other civic organizations. This obstacle occurred most often in regard to parties who were still active members of the TNI, Polri or were working as civil servants. These individuals were reluctant to testify to the Commission before getting permission or official approval from their superiors. In addition, another factor that influenced the testimony of alleged perpetrators was the alleged receipt of threats and/or instructions as to exactly what information the statement-giver should give to the Commission. The JPC KAK staff reported to the Commission several instances where after providing a statement in the morning, the

[2] The list of alleged perpetrators sought by the Commission was compiled from reviewing indictments filed by the SCU with the Special Panels for Serious Crimes in East Timor and the documentation available from the KPP HAM report and the Jakarta Ad Hoc trials.

party giving the statement would be visited by certain individuals. In the evening, the statement-giving party would then retract the statement already given.[3] Needless to say, these difficulties both limited the number of individuals willing to participate in the Statement Taking process and also raises issues about the reliability of the testimony of those who did participate. Because the Commission had no provision for protective measures for such statement givers, there was no available method to avoid such problems. However, it should also be noted that not all individuals who received threats, or who other parties tried to sway in their testimony, responded to this behavior. There were individuals whose testimony was delayed by these obstacles, but who nonetheless ultimately decided to come before the Commission and testify.

One of the strengths of the Statement Taking methodology was that it provided a balanced approach for obtaining information about the perspectives of the various parties involved in each of the 14 priority cases. Difficulties were encountered that made it impossible to fully realize this methodological goal. Nonetheless, an additional strength was that the process did encompass the perspective of alleged perpetrators that had not been fully represented in other sources. This is significant, because the central goals of the Commission in its Fact Finding process included giving all parties an opportunity to have their views heard as well as making sure that the Commission took into account the broadest possible range of information and perspectives in reaching its findings and conclusions. While the over-representation of the "perpetrator perspective" provides an important source of information, it must also be acknowledged that it represented a departure from the original methodology of Statement Taking which aimed at providing a quantitatively balanced sampling. The reasons for this departure have been note above, as well as the necessity in the overall analysis of balancing the "perpetrator perspective" from this source with other perspectives better represented in different sources.

Further weaknesses arose from the difficulty in locating parties connected to the 14 priority cases and, as noted above, from the pressures exerted upon them, both real and perceived, in regard to testifying. The result was that some individuals refused to participate. As to those who did participate, when a witness has to request permission from his or her superior to testify, potential pressure to conform to the expectations of the superior are implicit in the hierarchical structure. Further, direct pressure was documented by the Statement Taking teams in a number of cases, casting doubt about the extent to which such statements can be relied upon. The absence of available protective measures meant that there was no mechanism by which such witnesses could testify with complete anonymity and without fear of consequences. Thus, from the results of the Statement Taking and the subsequent 14 priority case reconstructions, the Commission concludes that not all connected parties could be heard in the way originally envisaged in the methodology to illustrate the background and the event chronology. This resulted in some mismatches or gaps in main facts in the 14 priority cases, including who did what to whom, as well as the where, the why and the how of events. However, Statement Taking was not the only source of information available to the Commission. Several other truth-seeking methodologies were able to fill the gaps that resulted in this process to sufficiently enable the Commission to make balanced and conclusive findings.

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[3] JPC KAK and CTF Staff Evaluation Report, CTF Secretariat, Imanuel Church, Kupang, March 2007.

Hearings

The process of determining names of parties to be invited by the Commission to a Public Hearing was similar to the process used in statement taking (i.e. identifying parties relevant to the 14 priority cases). However, some parties invited to the public hearings were chosen based on other considerations, such as specialized knowledge. The parties invited to a Public Hearing can be grouped into three categories:

- Directly connected parties to the 14 priority cases (i.e. victims, witnesses or alleged perpetrators)
- Context speakers
- Observers or experts

These parties were identified during the case reconstruction process as well as through a preliminary analysis of the results of the Statement Taking conducted by the Commission. The Commission then sent invitations to these parties to appear at Public Hearings. In the invitation, the Commission provided a brief explanation as to why the person was invited, as well as the information the Commission expected from the party.

Over the Commission's mandate period, in particular between February-October 2007, the Commission held six Public Hearings and eight Closed Hearings. Information about the connected parties who have given their information in the six Public Hearings is attached in the Appendix as tables. Hearings were conducted in Dili, Jakarta, and Denpasar.

Closed Hearings were held by the Commission without the presence of the public and other parties, except for the Commissioners, its expert advisors and staff. Closed hearings were held based on a number of considerations, including:

- Requests by the related parties,
- Political Considerations,
- Personal security of witnesses,
- The Commission's own judgment, when it deemed certain kinds of information to be discussed more appropriate if expressed in a closed setting.

Connected parties who agreed to participate in a Public Hearing were asked to prepare presentation material regarding issues requested by the Commission in its invitation. During the Public Hearings, witnesses were allocated time to make their presentation, followed by a question and answer "clarification" session by the Commissioners. The public and the Commission staff were not permitted to ask questions, or to make objections to or comments on the information provided. Commissioners asked clarification questions, based on information identified throughout the research process of case reconstruction and from the Document Review. Questions could also be raised in order to clarify information given in the witness' presentation and within the clarification process itself.

Information gathered in the hearings usually pertained to the chronology, roles of parties in events, and context of the 14 priority cases or of the general events in East Timor in 1999. Overall, the Hearings process provided further information and other perspectives to be used in the substantive analysis to determine whether gross human rights violations may have occurred and whether there was institutional responsibility for those violations.

The principal obstacle encountered in the Hearings was the refusal of some individuals to appear before the Commission. The Commission invited 64 people to appear and of these 56 accepted. The largest category of those unwilling to participate involved internationals who were in East Timor during the 1999 violence. Most significant here was the institutional refusal of the UN to allow its present or former personnel to testify. The Commission invited individuals who were connected to the UN in 1999 in East Timor but none of them testified at the public hearings. The Commission made repeated requests to the UN through a variety of channels but all such requests for granting permission for individuals to testify were rebuffed. Some UN personnel indicated to the Commission their desire to appear at public hearings if permission were granted, but requests for such permission were denied by the UN Secretariat.

The failure of the UN to cooperate in allowing its personnel who wished to testify to do so had two very important consequences. First, it meant that an important perspective and source of information on the violence in East Timor in 1999 was absent. The Commission's aim in conducting Hearings and Fact Finding was to hear as many perspectives as possible and to acquire the fullest range of information about and interpretations of the 1999 violence in East Timor. For this reason the Commission placed a very high priority on ensuring that it could fully inform itself as to the experiences and perspectives of UN personnel who observed or participated in key events related to both the violence and its context. The failure of the UN to allow participation in the Hearings meant that the Commission was deprived of this opportunity that might have assisted it in reaching its findings and conclusions. While the factual information available to the Commission from all of its others sources is more than sufficient to base its findings as to the conclusive truth, it would have nonetheless welcomed the opportunity to hear the perspectives of these international observers.

The second consequence of the failure of the UN to allow its personnel to testify was that there was no opportunity for the UN to respond to the allegations made by various witnesses at the hearings about the conduct of UN personnel in 1999. Such allegations ranged from bias in the management of some arrangements pertaining to the Popular Consultation to accusations of crimes allegedly committed by UN personnel. The Commission considered it to be vitally important that the UN have an opportunity to respond to such allegations in a public forum and regrets that it chose not to do so. The result is that the analysis of such allegations as part of the Fact Finding process does not have the benefit of the information or evidence that UN personnel might have provided.

In assessing the strengths and weaknesses of the process of public and closed hearings it is important to underline the nature of these proceedings. The Commission is not a judicial body and does not enjoy judicial powers to compel testimony or the production of evidence. As such, the Public Hearings were not designed in the manner of a judicial or quasi-judicial forum. They were not like trials where the parties and judges engage in a process aimed at introducing and testing evidence to establish the guilt or innocence of the Accused. At the Public Hearings individuals appeared without counsel and made a statement of their own choosing without any interruption by the Commission. This afforded them the opportunity to have their voice heard and it provided the commission with their perspective on the events of 1999. When their statement was completed and the Commissioners asked questions this was not in the form of a direct or cross-examination as in a judicial proceeding. The process was rather one of 'clarification" in which each Commissioner could ask a question to elicit further information or ask for explanation or clarification. Some Commissioners chose to ask questions based upon evidence provided other sources obtained in the Commission's research, others asked different kinds of questions. These differences in approach are a product of the nature of the Commission's process in conducting Public Hearings. This approach allowed, on the one hand, the person testifying to present their views to the Commission and the general public in whatever way they chose to do so. This ensured that all perspectives and voices might be heard. On the other hand, the process also allowed each Commissioner to ask questions in his or her own manner.

The result of this manner of proceeding had strengths as well as limitations. Its principal strength was that it provided a public forum where a wide variety of different parties could air their views and present their interpretations of the events of 1999. This is vital to a process that aims at reconciliation and friendship, for if certain parties feel that they have not participated and their perspective has not been heard, then they are unlikely to accept the results. A further strength of the manner of organization of the Public Hearings was that by permitting all the Commissioners to ask whatever questions they chose to, it enabled the publics of the two countries to see that many different analytical perspectives were being brought to bear upon the fact-finding process. This is important in assuring various public constituencies that their points of view or concerns were reflected in the Commission's deliberations. In short, the main strength of the public hearings as conducted had to do with their inclusiveness. This strength would have been furthered even more if there had been broader participation on the part of international parties and particularly the UN.

A significant limitation of a non-judicial hearing arises from the way information is gathered. For example, as noted above, many individuals appearing before the Commission avoided directly responding to Commissioners' questions. Their answers were often evasive, irrelevant, too general, or incomplete. On those occasions where Commissioners asked follow-up questions, the responses were often similarly flawed. With no mechanism to compel those testifying to answer the questions, and with no possibility for prolonged questioning in the manner of judicial examination of a witness, such problems are inevitable. There was also no mechanism for confronting those appearing with documentary or other kinds of evidence and systematically testing their testimony against these other sources. The result was too often general allegations made by those testifying, unsupported by facts or by the sufficient information about the foundation of their testimony.

A further weakness arises from the very nature of public hearings. An analysis of the results of the Public Hearings and Closed Hearings reveals that Closed Hearings represented a more effective method to obtain information. The value of Closed Hearings is evident from the higher quality of the information – both in terms of consistency and volume - given in this private setting, compared to the information given in Public Hearings. In some cases, parties who testified in Public Hearings were invited again to participate in a Closed Hearing, in an attempt to elicit more information. In general, the information from the Public Hearings requires a more careful analysis because the Commission noted a tendency in the Public Hearings for some connected parties to make general allegations or statements unsupported by facts, especially when the witness perceived factual information to be against their interests. Furthermore, as noted above, some participants in Public Hearings repeatedly avoided answering questions asked by the Commission aimed at eliciting the factual basis of such claims. Yet, it was essential for the Commission to hold hearings in public. This is a necessary feature of the work of truth commissions for it is one of the principal ways in which they can communicate the impact of their truth-finding mission to the public and promote a broader impact for their work. Some truth commissions have means to overcome the difficulties presented by requiring witnesses to testify in public. In some cases they may grant immunity from prosecution, guarantee amnesty, or threaten prosecution. None of these means was available to the Commission. For this reason the comparison between testimony in public and closed settings reveals some of the limitations of the information gathered in the Public Hearings.

Submissions

In order to obtain information from other parties who were not involved in the fact finding processes through Statement Taking or Hearing methods, the Commission also invited submissions. This method aimed to involve a greater breadth of institutions and individuals in revealing the truth about events in 1999. The identified institutions, or individuals, were deemed by the Commission as having in-depth or expert knowledge about the context and acts of human rights violations and the holding of the Popular Consultation in East Timor in 1999.

The Commission received submissions in two ways: submissions requested by the Commission and voluntary submissions. From the first category, the Commission identified 20 institutions and individuals and sent a submission request to them that asked them to provide a well-researched and concise submission by the deadline for the fact-finding process (November 2007). The Commission received three submissions in this category: one from Komnas Perempuan Indonesia, one from Forum Rektor and the other from the Center for Internal Displacement Services-CIS Kupang. This method of fact-finding could have been more successful if it had garnered a greater number of submissions. Other submissions came from the second category, amounting to 9 submissions. The total number of submissions received was 12. A complete list of names of institutions and parties who made submissions to the Commission is attached (See Appendix).

6.2 ANALYTICAL FRAMEWORK

In order to frame the analysis of Fact-Finding, the Commission established a conceptual framework to determine whether human rights violations that can be categorized as crimes against humanity took place in East Timor in 1999, and to determine what institutions were responsible for the violations that occurred. This conceptual framework was also elaborated in Chapter 5 as furnishing the basis for the analysis conducted in the Document Review. The substantive analysis of the Fact Finding process adopts this conceptual framework but applies it within a somewhat wider inquiry.

Chapter 4 discussed the context in which the 1999 violence in East Timor occurred. Many of the participants in the Fact Finding process related their experiences and their interpretations of events to this broader context. For this reason, the present section will also take into account testimony that relates to the discussion of the context as elaborated in Chapter 4.

As part of its mandate of establishing the conclusive truth as to gross human rights violations and institutional responsibility the Commission was also tasked with revealing the nature and causes of the violence so that recommendations might be adopted to ensure that it does not occur again. In order to carry out this task it is necessary to analyze the evidence bearing upon the context in which gross human rights violations occurred and the context which created the conditions for institutional participation in, or responsibility for, those violations.

For the sake of analytical clarity the conceptual framework discussed at greater length in Chapter 5 will be summarized again here. The information gathered in the various modes of the Commission's fact-finding process described above (i.e. documentary research, statement taking, public hearings and submissions) formed the body of sources to be analyzed by a set of standards agreed upon by the Commission as comprising the elements of crimes against humanity. These criteria are derived from international humanitarian law as interpreted and applied by international tribunals, such as the ICC, ICTY and ICTR.

In analyzing the information presented to the Commission through its fact finding process the following two questions were used to assist in the determination of whether gross human rights violations occurred:

- Was there an attack directed against a civilian population?
- Was the alleged gross human rights violation part of a **widespread and/or systematic** attack against a civilian population?

For a detailed explanation and description of the entire analytical process used in answering these two main questions relevant to crimes against humanity, see Chapter 5.

Following its analysis to determine whether gross human rights violations were committed in East Timor in the form of crimes against humanity, the Commission analyzed the products of the Fact-Finding process further in order to determine whether there was institutional responsibility for such crimes. As explained in Chapter 5, unlike crimes against humanity, institutional responsibility is not a formal legal

doctrine and therefore does not have internationally standardized "elements" which establish the means of its determination. The standards used by the Commission can be summarized by two sets of key analytical questions that were applied to the facts revealed in the Commission's research process. In summarized form these questions are:

- At the operational level at which the crimes against humanity were actually perpetrated, can we identify patterns of coordinated activity over time and in multiple locations?

- Do those patterns of coordinated activity reveal which institutions participated in enabling those activities to occur?

The Commission determined participation could take two forms: (a) institutions whose members or personnel participated directly in the perpetration or co-perpetration of these crimes, or (b) institutions that provided regular and/or substantial support, organization, resources, direction, training, or planning for the perpetrators of these crimes. For a detailed explanation and description of the entire analytical process used in answering these two main questions relevant to institutional responsibility, see Chapter 5.

This section of the report is divided into three main categories that reflect the information received in the Commission's Fact Finding process most relevant to determining the Commission's Findings and Conclusions:

- Historical Background, or Context, of the Conflict
- Substantive analysis of elements of crimes against humanity, and
- Substantive analysis of elements of institutional responsibility.

As part of each category of discussion, the Report will provide examples of representative information it received during the Fact Finding Process, and evaluate this information for its strengths and weaknesses. The two main categories of analysis are foregrounded by relevant contextual information that the Commission deems important to consider when making its Findings regarding crimes against humanity and institutional responsibility.

Before embarking on this analysis, however, it is also important to outline the Commission's methodology for evaluating statements made in Public Hearings and Statement Taking. This importance is underscored by some of the features and limitations of these processes pointed out above.

Because the Commission was not operating within a judicial framework the testimony of participants in the fact finding process was not bound by rules of evidence. In addition, witnesses were not systematically subjected to scrutiny about the origin or nature of their knowledge of the events they testified about, for example, whether it was based upon their own direct experience as a participant, upon their observation as an eyewitness, or what they heard about from others. For these reasons, and because of the nature of the process as noted above, the testimony obtained through Fact Finding must be subjected to careful scrutiny.

The factors taken into account by the Commission in analyzing the fact finding testimony include:

- The nature of the statement itself. Does it purport to report facts or is it in the form of opinion or interpretation? Is it a general allegation or a factually specific statement about individual, discrete and specific events? General allegations have little or no weight as evidence. They may be regarded as expressing an individual's perspective on events but not as assisting in establishing the truth about what occurred.

- If the statement expresses an opinion or interpretation, on what factual basis is that opinion or interpretation founded? What are the qualifications of the person providing the opinion or interpretation? What are the extraneous factors that may have influenced or shaped that opinion or interpretation? Does the opinion or interpretation conflict with other information available? Opinions and interpretations of events should be carefully distinguished from factual statements that provide specific information about what occurred. Opinions and interpretations may provide different perspectives that can be useful in understanding the way in which different participants or observers subjectively viewed what occurred. These different views may be of use in analyzing an event but they have little or no evidentiary value in establishing facts.

- If the statement purports to report facts, does it disclose the source of the factual content? Is it based upon alleged direct participation? Does the person claim to have been an eyewitness? Factual statements that do not clearly indicate the source of the information and the relation of the person testifying to the event must be treated with great caution.

- If the statement purports to be based upon direct experience (e.g., victim or perpetrator) or the observation of an eyewitness, what information was offered to substantiate that they did participate in or witness the events? What information was offered to establish that if present they would have been able to see or hear what they allege to have transpired? Is this information plausible and credible?

- Does the statement contain specific factual details that support the claim that the person actually witnessed or participated in the event? For example, does it contain specifics as to time, place, conditions, location of the witness, names of participants, and other details that support the credibility of the account? Is the account of the event consistent, coherent, plausible, and credible?

- If the information was conveyed to the statement giver by another, who was the informant? What were the circumstances? What relation did the informant have to the recipient of the information? What was the informant's knowledge based upon? Was the statement-giver in a position to evaluate the accuracy of the information? Did he or she take steps to corroborate or verify what was reported? What were these steps? Were they adequate and effective?

- What extraneous factors may have influenced the testimony? Is the statement self-serving or is it an admission or statement against the interest of the person making it? Does the person making the statement have some personal or professional

interest that is at stake? Is the person making the statement related to, or stand in a hierarchical or professional relationship to the persons about whom he or she is testifying? Are there circumstances which indicate that the person testifying may have been under the influence of actual, potential, or perceived threats, rewards, or other kinds of incentives or motivations that may have influenced their testimony?

- Are the statements of a specific individual made on one occasion consistent with their statements made on other occasions, either as part of or independent of the fact finding process? For example, some of the individuals who participated in fact finding gave statements in both closed and public hearings. Others had provided testimony to KPP HAM, the Ad Hoc Court, or the Special Panels for Serious Crimes. If there are inconsistencies, what factors might explain them? How seriously do they impact the credibility of the person testifying?

- Are the statements made by a specific individual contradicted by the statements of others who participated in the fact finding process? If so, what factors might explain the contradictions? How should these testimonies be weighed against one another? Is there documentary evidence or other testimony independent of the fact finding that can help resolve discrepancies? How do the discrepancies affect the credibility of the person testifying in the fact finding process?

6.3 ANALYSIS OF CONTEXTUAL FACTORS LEADING TO HUMAN RIGHTS VIOLATIONS

The Commission received information from various parties about the factors that they regarded as having shaped or affected the violence in 1999. In this section the Commission will only briefly consider those claims, interpretations, and arguments that were common themes in the testimonies received in the Fact Finding process, and which may have some bearing on the subsequent analysis of gross human rights violations in the form of crimes against humanity and institutional responsibility. For a more detailed examination of the context of the conflict in 1999, see Chapter 4.

Various participants in the hearings presented their interpretations of the causes and nature of the violence in 1999. A common thread among these speakers was that East Timor's cultural and political history was highly relevant to the formation of the conflict in 1999. Some of these speakers, including the former President of Indonesia, B.J. Habibie, and Kiki Sjahnakri, felt that the absence of a solid and responsible decolonization process between the people of East Timor and Portugal resulted in deep political rifts among the populace.[4] They claim that political alignments that originally formed over different views regarding independence from Portugal and which animated the ideologies of the political parties involved in the Civil War in East Timor in 1975, continued to be the sources of political power and conflict in

[4] Jenderal Wiranto, CTF Public Hearing III, 5 May 2007, Jakarta, 4; José Estevão Soares, CTF Public Hearing IV, 24 July 2007, Denpasar, 4, 12; Bishop Carlos Filipe Ximenes Belo, CTF Public Hearing II, 26 March 2007, Jakarta, 6; Eurico Guterres, CTF Public Hearing II, 28 March 2007, Jakarta, 6, 15-16; Domingos Maria das Dores Soares. CTF Public Hearing II, 26 March 2007, Jakarta, 4,9.

East Timor into 1999. Kiki Sjahnakri offered the opinion that throughout the period of the Indonesian presence in East Timor, these internal divisions were suppressed. He stated that the conflict that took place in this time period (1975-1998) was more vertical in nature, that is, it involved the people or pro-independence groups against the government or the state apparatus.[5] However, Sjahnakri, and others, argued that in 1999, as the question of independence resurfaced, previous political divisions were revived and played a role in the conflict in 1999. Sjahnakri's interpretation points to some of the horizontal aspects of the conflict in 1999.

All of such statements are, of course, opinions and not factual statements, as is the case with the majority of contextual information provided in this forum. They offer interpretations of Timorese history without substantiating those interpretations with carefully documented and nuanced analyses of specific events. These individuals are also not acknowledged experts in the history of Timor nor are their opinions based upon their own independent research.

Komnas Perempuan's submission also included a discussion of the divisions and violence that occurred from 1974-1975, as part of its submission regarding 1999.[6] However, in their submission they added a brief discussion, or comment, on the role that Indonesia's Military and Intelligence services played in supporting Timorese armed groups that came to them for assistance in opposing Fretilin, who had made a declaration of independence in 1975.[7] This submission's historical interpretation highlights the precedent for overlap between horizontal (i.e. internal, political divisions) and vertical (i.e. the Indonesian state playing an active role in supporting these internal divisions) dimensions of conflict in East Timor.

Other presenters to the Commission, such as David Dias Ximenes, made the argument that the roots of the conflict in 1999 should be categorized as primarily "vertical" (i.e. the Indonesian state was the primary actor in causing conflict).[8] He categorized it as an international conflict when he spoke to the Commission:

> "The problem of East Timor is an international conflict, to the point that it needs to also be resolved in an international manner, so the coming of the United Nation was to do this."[9]

Such interpretations as that provided by Ximenes are not, of course, the product of historical research, but may be seen as related to particular political stances on these issues. Komnas Perempuan's account appears to seek to provide a more balanced and multi-dimensional interpretation.

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5 Kiki Sjahnakri, CTF Public Hearing VI, 24 October 2007, Jakarta, Written Statement "Sebuah Retrospeksi-Kritis dan Analisis Kontekstual dan Beberapa Perspektif Penting", 3.

6 Komisi Nasional Anti Kekerasan Terhadap Perempuan, Menggelar Tikar PerdaMaían, (Jakarta:The Asia Foundation, 2003), 7.

7 Ibid., 8. See also Tomas Gonçalves, CTF Public Hearing V, 25 September 2007, Dili, 11.

8 David Dias Ximenes, CTF Public Hearing IV, 23 Juli 2007, Denpasar, 19: "That was no horizontal conflict, but there was a third party involved. I here dare to say that ABRI played a part."

9 Ibid., 3:" Masalah Timor-Leste adalah konflik internasional, sehingga perlu juga disclesaikan secara internasional, maka datang PBB untuk melakukannya."

Several participants in hearings provided interpretations of the 1999 conflict thatrelied upon the concept of "a culture of violence." For example, Bishop Carlos Filipe Ximenes Belo offered an opinion about the effects of the long term presence of violence in various forms in East Timor.[10] The idea that certain acts of violence experienced historically had become embedded in the culture of East Timor was also referenced by Zacky Anwar Makarim, when he opined that he felt burning houses had become a patterned and common local means of engaging in conflict.[11] Others who participated in hearings made a related argument which referred to cycles of vengeance as a characteristic of Timorese society, where one conflict is responded to by another and a violent cycle of action and reaction persists over time.[12] These kinds of interpretations of the historical experience of violence may be seen as providing insight into why certain types of human rights violations accompanied political differences in 1999.

However, this argument has been disputed by other parties, who provided the counter-argument that the violence was the direct result of specific political events (such as the 1959 Rebellion and the period of 1974 -1975), rather than an intrinsic characteristic of the culture of East Timor.[13] In the context in which they were provided many of these statements remain in the realm of unsubstantiated interpretations. They are of use, however, in providing a picture of the divergent perspectives on the historical context that formed the background of the 1999 violence.

Another theme that emerged from the testimony gathered in the fact-finding process was the historical importance of the Indonesian democratic transition on the violence that occurred in East Timor in 1999. Various statements explained how in 1998-1999 the Indonesian nation underwent a political and democratic transition due to the demands, and positive changes of Reformasi. These changes included the strengthening of democracy and institutional professionalism throughout Indonesia. Most significantly, the political situation in Indonesia in the transitional period beginning in 1998 influenced institutions, so that various shifts in policies, structures and actions were experienced by organizations such as the security apparatus. For example, some testimonies suggested that in 1998-1999 the security apparatus in East Timor (military and police) may have been experiencing changes in attitude towards its accountability and therefore its modes of operations may have undergone change, and it may have been in a state of ambiguity.

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10 Bishop Carlos Filipe Ximenes Belo, CTF Public Hearing II, 26 March 2007, Jakarta, 15: "In October I came to Dili to tell a word [sic] that confused people there; that we, Timorese, do not have a culture of peace, but a culture of war. Since long ago, eh, since 16th century, 17th century, the Timorese have always been at war. We are in a good situation when we are at war. If we're not at war, we're not happy. That is ingrained in our flesh or our blood. That is why it could be a contributing [factor] for that, ya."

11 Zacky Anwar Makirim, CTF Public Hearing II, 28 Marct 2007, Jakarta, 19: "If we study the culture, Ibu, you as Timorese know that all these burnings has been a part of life of the people of East Timor, ya. So from 1974, what I know to this day, this thing about burning and burning of villages, it's sort of cultural, ya."

12 Mateus Carvalho, CTF Public Hearing I, 19 Februaty 2007, Denpasar, 10; Asep Kuswani, CTF Public Hearing IV, 23 July 2007, Denpasar, 7-9.

13 Eurico Guterres, CTF Public Hearing II, 28 March 2007, 15-17.

For example, Witness AX stated in his presentation at the closed hearing that in his opinion during this timeframe the TNI was experiencing a new dilemma: the scrutiny of international organizations and NGOs on human rights issues became more pronounced as the result of Reformasi, so that it became increasingly difficult for TNI-Polri to conduct open operations in East Timor as it had previously. This opinion, it should be noted, expresses an awareness that previous operations might have been viewed as involving human rights violations. He also gave several different examples of instances where the Police and military were reluctant to act in line with requests by pro-integration leaders, because they were afraid of being reprimanded by their superiors. The factual basis of such claims was not demonstrated by these statements, but they do reflect an opinion that the police and military were aware that previous methods of conducting operations were no longer acceptable because of concerns about human rights. This testimony also expresses an opinion that military and police commanders at higher levels would no longer approve of such operations.

The statement of José Estevão Soares to the Commission supported an interpretation of the tension caused by the perceived need to appear accountable to human rights standards. He argued that at times this need may have conflicted with competing internal and political demands on the military and police to act strongly in line with national interests. For example, he recalled a statement made by General Wiranto at the Commander's Residence (RTPANG) that reflected these dual pressures on the security forces in East Timor. He alleged that General Wiranto commented that the security forces "had to avoid emotional and extreme actions that could prove counterproductive and threaten the achievement of the final goal of the integration struggle." His unverified account of General Wiranto's testimony would indicate an awareness at the highest command levels that there was a very real potential in the local security forces for "emotional and extreme actions."[14]

In the Public Hearings, General Wiranto stated that in a meeting at Bishop Belo's residence he urged both sides (pro-autonomy and pro-independence) to reconcile. The emotional component, of course, would derive from the bond created between these security forces and those engaged in the "integration struggle." Although the statement attributed to General Wiranto cannot be verified, it is consistent with other available documents that suggest General Wiranto's assessment of consequences of the "emotional" connection of Indonesian security forces to Timorese pro-integration groups and their political goals.[15] The discussion in Chapter 4 of the context in which Indonesian forces operated in East Timor during this period is also consistent with this interpretation.

Witness AX, in a statement corroborated by another witness, later suggested that the impact of these new pressures on the security apparatus may have been to push both the military, and pro-autonomy leaders into a dilemma and towards achieving their directives through indirect means. This line of argument emphasizes the role that Indonesia's political changes played in determining institutions' strengths and

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[14] José Estevão Soares, Submission at CTF Public Hearing IV (Denpasar, 24 July 2007), p. 9.

[15] "Surat Menhankam/Panglima TNI, Nomor: R/511/P-01/03/14/Set," 6 September 1999, p. 2: "The existence of emotional closeness [sic] between the security apparatus and the pro-integration community, is a psychological factor that hindered the consistency and the assertiveness of law enforcement, in addition to the fact that some of the security personnel are native East Timorese."

weaknesses in responding to the conflict in 1999. It also reflects the possibility that pro-autonomy militias were in fact an instrument through which the Indonesian military and pro-autonomy leaders could pursue their political objectives. The unverified statement attributed to General Wiranto by José Estevão Soares, if true, would support the view that the military viewed itself as a party committed to the achievement of a political goal, namely the final success "of the integration struggle."

Other speakers believed that the terms of the 5 May Agreement may have exacerbated these conflicting pressures put on Indonesian institutions, including the security forces and the Regional government. For example, under the 5 May Agreement brokered by the UN between Indonesia and Portugal, the Indonesian Police Force was given the primary role in providing security for the elections. Former Foreign Affairs Minister, Ali Alatas, explained his view of the history of these negotiations to the Commission. According to Alatas, from the beginning the UN Secretary-General refused to hand over security control to Indonesia. The UN initially wanted the deployment of international troops to support UNAMET and the security function of the Popular Consultation. However, Indonesia wanted to maintain control of security for reasons of national sovereignty. In the end a compromise was reached that gave control of security to Indonesia, but there were qualifications. Because the UN believed it was a matter of order and law enforcement, the responsibility was given to the Police and the military was asked to take a backseat position and only intervene if its help was needed.

In the opinion of some who testified, these security arrangements proved significant because the Police institution in Indonesia had just undergone a major structural change (operational separation from ABRI's umbrella, while maintaining the command authority of the supreme commander of ABRI) which some observers of the conflict suggest did not allow the Police to perform its functions in East Timor in a manner adequate to maintain security.

According to this interpretation, after May 1999, the Police were suddenly placed in the superior position to enforce the rule of law in East Timor which overturned the long-standing operational practice of the Indonesian military exercising the superior role in the security apparatus. These changes were seen by some of those who testified to the Commission as creating confusion and ambivalence when conducting operations. For example, Hulman Gultom in the Public Hearing in Jakarata explained that at that time the Police were still coordinating with the military because the Police were under the ultimate authority of ABRI, and it was not really possible for them to act completely independently. This structural weakness that resulted from both democratic transition and the UN – brokered agreement, may provide another interpretative means of understanding the failure of the security forces to effectively prevent violence in East Timor.

It also reflects the opinion of these observers that before the 5 May Agreement the Indonesian military, and not the Police, were functioning as the institution primarily tasked with maintaining law and order despite a situation where neither a state of war nor martial law/state of emergency had been officially declared. There appears to be wide agreement among observers that this was in fact the case, a situation which is also confirmed by the 5 May Agreement itself.

The Commission also received statements which argued that there was a failure of UNAMET to convince all parties in the conflict of their neutrality. The 5 May Agreement required the UN to exercise neutrality in the conduction of the Popular Consultation. The specific UNAMET actions these statements regarded as reflecting a lack of neutrality included its hiring practices of local staff, the choice of location for its headquarters, the distribution of allegedly misleading campaign materials and an alleged failure to respond adequately to several reports of election irregularities.[16]

On multiple occasions, the Commission invited various parties who worked as part of the UNAMET mission in East Timor in 1999 to participate in Public Hearings, in order to clarify these issues and to offer their perspective on the international community's role in East Timor in 1999. As noted above, the United Nations has declined all of these invitations. The Commission regrets individuals involved in the UN mission were not able to provide the Commission with their perspective and present testimony in response to such allegations. Because of the limitations of the fact finding process noted above, the Commission was not in a position to be able to carry out the kind of systematic investigation that alone could fully determine whether weaknesses or biases within the UN system might have affected the UN's role in the Popular Consultation. The statements presented to the Commission during the Fact Finding process provide primarily unsubstantiated allegations about the kinds of activities that purportedly reflect a lack of neutrality that could have affected the events in 1999,[17] but other accounts of the Popular Consultation have contradicted these conclusions.[18]

In conclusion, the Commission received many different views of the contributing historical and contextual factors to the conflict in East Timor in 1999. The Commission recognizes each of these arguments' value as reflecting different perspectives on an understanding of the ways in which this context affected the events in 1999. In other words, they offer evidence of the beliefs and interpretations of individuals testifying who were involved in various ways in East Timor in 1999. This evidence may assist the Commission in interpreting the motivations and perspectives of different actors and parties to the conflict but it is not evidence that can provide the basis for findings about substantive facts. This arises from the nature of the Fact Finding process as indicated above, where individuals were encouraged to freely express their opinions and interpretations, but where no mechanism was provided for the systematic apprehension and testing of the evidence on which such opinions

16 Zacky Anwar Makarim, CTF Public Hearing II, transcript, 19-20, and written statement, 5-16; Edmundo da Conceição Silva, CTF Public Hearing II, 27 March 2007, Jakarta, written statement, 10-11; Leoneto Martins, CTF Public Hearing IV, 23 July 2007, Denpasar, 9; F.X. Lopes da Cruz, CTF Public Hearing I, 20 February 2007, Denpasar, written staement, 12; Martinho Fernandes, CTF Public Hearing II, 26 March 2007, Jakarta, written statement, 12-13; Closed Hearing, June 2007, Denpasar, 3; Ali Alatas CTF Public Hearing I, Denpasar, 19 February 2007, 12-14; Domingos Maria das Dores Soares, CTF Public Hearing II, 26 March 2007, Jakarta, written statement, 9 and transcript, 14; Gatot Subyaktoro, CTF Public Hearing III, 4 May 2007, Jakarta, 7-8; Dr. Yan Rizal, CTF Public Hearing IV, 23 July 2007, Denpasar, 3-5, 12, 14.

17 Dr. Yan Rizal, CTF Public Hearing IV, 23 July 2007, Denpasar, 3-5.

18 Ali Alatas. The Pebble in the Shoe: The Diplomatic Struggle for East Timor (Jakarta: Aksara Karunia, 2006), 210. "In referring to these protests, the Electoral Commission, in their report to the Secretary-General concluded that the allegations of irregularities that could be proven had not had any effect on the outcome of the ballot.
In its overall determination of the results, the [UN Electoral] Commission stated that 'the Popular Consultation had been procedurally fair and in accordance with the New York Agreements and consequently provided an accurate reflection of the will of the people of East Timor.'"

were based. However, collectively these interpretations can be used to understand the way in which key particpants in the events of 1999 understood the institutional and political context in which they were operating and the multiple and conflicting dimensions of the conflict. Because many of these individuals occupied important positions in various institutions involved in the conflict, this contextual information may serve as a reference point when considering various factual information about the context of human rights violations and institutional responsibility. These contextual elements of the conflict can also provide a basis for assisting the Commission in considering recommendations for institutional change might help to prevent the reoccurrence of such human rights violations.

6.4 ANALYSIS OF GROSS HUMAN RIGHTS VIOLATIONS IN THE FORM OF CRIMES AGAINST HUMANITY

Having considered historical interpretations of the events in 1999 from various perspectives, the Report now considers the testimony obtained during the Fact-Finding process which relates to whether crimes against humanity occurred in East Timor in 1999.

Evidence for a "Widespread" Attack against a Civilian Population

Human rights violations can be considered as encompassing a "widespread" attack on civilians in terms of time, geographic space or scale. The Commission's 14 priority cases, among the many others reported during 1999, in themselves meet this requirement of "widespread" human rights violations against civilians because they occurred in a non-random manner, in a close succession over a finite span of time, and across multiple geographic areas in East Timor. Further, many of these cases entail multiple and grave human rights violations. The 14 priority cases considered by the Commission were as follows:

1. Attack and killings at the Liquiça church complex on 6 April 1999. (Liquiça district)
2. Attack and killings of civilian population in Cailaco on 12 and 13 April 1999. (Bobonaro district)
3. Attack and killings at the house of Manuel Carrascalão, on 17 April 1999. (Dili district
4. Attack and killings in Dili post-Popular Consultation (Diocese complex on 5 September 1999 and at the residence complex of Bishop Belo on 6 September 1999); (Dili district)
5. Attack and killings in the Suai church complex on 6 September 1999; (Covalima district)
6. Attack and killings at the Maliana Polres on 8 September 1999; (Bobonaro district)
7. Killings in Passabe, Oecussi, on 8-10 September 1999; (Oecussi district)
8. Rape and killing of [redacted], in Ermera on 13 September 1999; (Ermera district)
9. Killing by Battalion 745 on 10-21 September 1999; (spans Lautém, Baucau, Manatuto and Dili districts)

10. Killing and forced disappearance by the troops of Battalion 745 on 10-21 September 1999; (spans Lautém, Baucau, Manatuto and Dili districts)
11. Killings of nuns in Lautém, on 25 September 1999; (Lautém district)
12. Forced disappearance and killing of Mau Hodu in September 1999; (spans Bobonaro, Liquiça districts and West Timor)
13. Gender-based violence following the attack on the Ave Maria Church in Suai on 6 September 1999; (Covalima district)
14. Destruction of Property in 1999; (East Timor)

From the reconstruction of the 14 priority cases and other information gathered during fact finding, the Commission observed that violations occurred throughout the period from January through October 1999. Analysis of these cases indicates that the timing of violations appears to be patterned around a number of factors including, periods of campaigning for Popular Consultation, militia recruitment, or the presence or absence of international observers. Overall, there were two peak periods of human rights violations 1) April-May, and 2) September 1999. These temporal concentrations of violations are not coincidental, but rather point to the related nature of these events to one another, and to the broader political context in which the violations occurred, such as the strengthening of the militias in a series of rallies held from April to May, and the holding of the Popular Consultation in September. The Commission considered several factors that, according to witnesses, accompanied these peaks of violence in the September period in addition to the actual balloting:

- The escalation of terror and intimidation of civilian populations prior to the Popular Consultation.
- The announcement of the Popular Consultation results with allegations of irregularities by UNAMET staff and international NGOs in Dili.
- Changes in the security apparatus, including the establishment of martial law.
- Statement issued by Xanana Gusmão.[19]
- The exodus of international observers from East Timor, including the UNAMET staff, UN civil police, foreign journalists and Popular Consultation observers.

The concentration of human rights violations during these critical periods is reflected in the timing of the Commission's 14 priority cases. Four of the cases occurred in the pre-ballot April-May period, and ten occurred after the holding of the Popular Consultation.

The widespread pattern of violations can also be observed from the geographical spread of similar types of violations. As seen in terms of the 14 priority cases and other cases analyzed by the Commission, these incidents of violations can be divided geographically into the Eastern (Lautém, Baucau, Viqueque, Manatuto), Central (Dili, Aileu, Ainaro, Manufahi) and Western (Liquiça, Ermera, Covalima, Bobonaro, Oecussi) regions.

The Commission's research and fact finding indicated that these regions experienced grave human rights abuses, particularly during the peak period following the Popular

[19] The statement by Xanana Gusmão was a call for self-defense.

Consultation in 1999. However, there was some variance across the regions, which is reflected by the determination of the 14 priority cases.[20]

Analysis of the 14 priority cases also shows that they include a variety of types of gross human rights violations:

1) Murder (every priority case)
2) Enforced Disappearance (at least two of the priority cases)
3) Deportation and/or Forced Transfer (at least five of the priority cases)
4) Sexual Violence (at least dua of the priority cases)
5) Torture and Inhumane Treatment (at least dua of the priority cases)
6) Illegal Detention (at least tiga of the priority cases)
7) Persecution (potentially all of the priority cases)
8) Other Inhumane acts (potentially all of the priority cases)

Further, five of the priority cases also included destruction of property (including the arson of both public buildings and private homes) as one of the enumerated crimes.

On the basis of the Commission's analysis of the 14 priority cases a number of factors indicate that there was substantial evidence that there was an attack that was widespread and was directed against a civilian population. The factors supporting the element of "widespread" include the number of incidents, multiplicity of victims, wide geographical distribution, repetition over a period of many months, and the wide range of crimes against humanity. The factors that indicate that there was substantial evidence that the attack was "directed against a civilian population" include the identity of the victims, the circumstances under which they were attacked, the locations where they were attacked and the types of crimes committed (for example, sexual violence, deportation, and persecution). These factors are also supported by the evidence concerning the systematic targeting of civilians in these attacks. That evidence will be considered below.

Evidence for the "Systematic" Nature of the Attack against a Civilian Population

There are various ways to determine whether a set of human rights violations occurred "systematically," as opposed to a random, isolated, or spontaneous occurrence. One important kind of indicator of systematic attacks is the targeting of specific groups in the civilian population based on geographic location, political affiliation, ethnicity, religious affiliation, or other identity markers. In other words, victims are not just randomly selected, but are chosen for certain perceived characteristics. Other important factors for analyzing the "systematic" nature of an attack include the existence of patterns underlying the attacks, and evidence indicating organization or coordination by perpetrators. The kinds of evidence that indicate systematic organization include: planning meetings, briefings, disciplined leadership, operational chains of command that issue orders, training, logistical or financial support, provision of arms or equipment, and planning of operations.

[20] See also the Expert Advisor's Report to the CTF (Appendix) which provides further analysis on geographical distribution.

Other analytical factors for evaluating evidence for the "systematic" nature of an attack focus on evidence as to whether the human rights violations were the result of what appear to be strategic and coordinated security operations. For example, did perpetrators use roadblocks, lists of names, "sweeping" or search operations, other forms of targeted and planned operations, or methods of detention? As noted above, there is no requirement of demonstrating a governmental policy to establish the systematic element.

The next section will highlight some of the most important information regarding "systematic" human rights violations received during the Fact Finding process. Because all the information relating to systematic perpetration in the 14 priority cases concerned the institutions of pro-autonomy militias, civilian government officials, police or military, the Commission will only evaluate the evidence pertinent to their systematic operations. The Commission will also evaluate the additional information it received about violations against pro-autonomy groups using the same standards in the section of this chapter entitled, "Pro-Independence Crimes and Institutional Responsibility."

1) Targeting of victims for specific characteristics

The Commission received various testimonies that strongly indicated victims were deliberately and systematically selected for attack according to their perceived political identity.

For example in the case concerning Mário Gonçalves, the victim stated before the Commission that he became a target of the violence by the Kaer Metin Merah Putih (KMP) militia because of his well-known political support for independence. Mário Gonçalves' involvement in Falintil and the clandestine movement dated back to 1993. He testified that in 1999, Joni França, commander of the KMP Lolotoe, tried to coerce him into supporting autonomy. This pressure led him to flee to the jungle to stay with Falintil. Later, he was captured by the militia group. According to his testimony, when he was caught, Joni França and Mouzinho (another militia member) explicitly stated their reasons for targeting him for attack. These two militia leaders, he claimed, were equipped with automatic rifles. The witness told the Commission that in front of 37 other members of the militia, who were armed with home-assembled weapons, the two militia leaders told Gonçalves that he was a GPK[21] and because of this affiliation with pro-independence, he was tortured and threatened with death.[22]

Mário Gonçalves went on to recount that after he was caught, he was ill-treated and detained for 45 days with twelve others who were known independence supporters in Lolotoe village hall. Gonçalves claimed that during this period of detention, neither the police nor the army did anything to prevent, or to stop the militia's actions against the independence supporters. The witness expressed the opinion that the KMP militia appeared to be operating in an uninhibited manner against independence supporters

21 See Glossary for an explanation of GPK.

22 Mário Gonçalves, CTF Public Hearing V, 27 September 2007, Dili, 7, 3 and 6

in the Lolotoe sub-district. In summary, in his account the targeting of specific victims is revealed not only in the threatening statements made by the militia men to the victim, but also in the shared political identity of all of those who were detained.

The Commission received a statement from a former militia member which supports the claim that some victims were targeted for their political views. Marcelo Soares, a former member of Darah Merah Integrasi (DMI) militia, explained that victims were targeted by his organization in Ermera by political affiliation. He recounted that after the announcement of the Popular Consultation results, he fled to Atambua on 6 September. However, on 7 September 1999, he was asked by Lucas Martins (one of the militia commanders) to return to Ermera. The witness explained that after he, his commander and other militia members returned to Ermera, they killed people suspected as pro-independence.[23] Besides killing, he claimed, they also looted rice, coffee stores and tractors belonging to the people.

Other testimony that related to the targeting of specific victims was heard from a witness in another priority case from Oecussi district. Marcus Baquin survived a mass killing of civilians from Passabe. He explained the chronology of the attack as beginning on 8 September when a Sakunar militia commander, Gabriel Kolo, his group of militia men, and Anton Sabraka from the TNI, attacked his village and two other villages in the area and burnt all their property. As a result of the attack, he and his fellow villagers ran into the jungle surrounding the village. When he returned to the village, he found that at least 18 people had perished in the attack.[24] Marcus Baquin explained to the Commission that at the time of the attack and arson against his village, all of the houses were burned but it was the perceived pro-independence supporters that were targeted for murder.[25] After the attack when the villagers returned to their village, they were brought by the militia to join a large group of civilians who were being taken to West Timor on 9 September. All of those brought to Imbate were registered at the village administration office.

According to Baquin, in the late afternoon, 74 men were selected from the families who were gathered as refugees at the Imbate village office. These men were tied up in pairs. Then, these men were herded by groups of militia led by Gabriel Kolo (a Sakunar militia commander), and the TNI member, Anton Sabraka, towards the East Timor border. He testified that the march occurred in an orderly and choreographed way, so that the detainees were in a line formation, boxed in by the militias on the perimeters (front, left, right and rear). He testified that the group departed from Kefamenanu on the evening of the 9 September 1999 and were killed en masse in the early hours of the 10 September 1999, just after crossing the border into East Timor. The witness stated that most victims fell under the machete blows administered by Gabriel Kolo and his militia men, as well as being shot by Anton Sabraka. During the

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23 Marcelo Soares, interview with the CTF, 26 Januari 2007, Belu, NTT, 1-8.

24 Marcus Baquin, Public Hearing V, 26 September 2007, Dili, 6; interview with CTF, "Summary of Witness Statement," 1.

25 Marcus Baquin, interview with CTF (Dili, 23 September 2007), 1: "When the attack took place, most of the people from Bobometo village fled and hid in the forests around Bobometo Village. The reason for the attack on Bobometo Village according to Marcus Baquin, was because the people in the village chose to be independent. According to Marcus Baquin, the people in Bobometo village comprised of independence supporters and autonomy supporters. However when the houses and property of the people was burned, members of Sakunar did not discriminate based on political choice of the people." Baquin confirmed this information in the public hearings (7).

attack Baquin's right side of his face and ear were slashed by a machete and he fell to the ground, where he was presumed to be dead. Baquin survived the attack, but his features remain disfigured by these wounds.[26]

The perpetrators displayed their systematic targeting of these victims in this victim's account in two clear ways:

- Selecting and separating victims for murder from a larger group, including the separating of the men from the women and children.
- Constraining the movements of these selected victims in ways different from the other groups (i.e. tying the men in pairs)

Other elements of "systematic" operations contained in Baquin's testimony include:

- An identifiable command structure (Kolo is called the "commander")
- Coordination of two attacks (arsons and killings) on two different dates by multiple militia members and in conjunction with a TNI member. Significant coordination was also required to bring the large groups of civilians from Oecussi to Imbate, and to restrain the men and march them from Imbate back to East Timor. The military style, tightly controlled formation for the marching of the prisoners back to East Timor also indicates significant organization and coordination.
- The orderly registration of the civilians brought to Imbate, before they were separated and assembled for the march, and
- Timing the attack so it would occur at night in the dark, and once the prisoners had crossed back into East Timor.[27]

2) Institutional formation and operational structures

Some of the most detailed testimony obtained by the Commission concerned the systematic nature of the operations of pro-autonomy groups. The amount of testimony pertinent to the systematic operations of militias is too great to consider each piece of evidence individually in the space of this report. Certain key topics on which the Commission received substantial evidence to weigh and consider are highlighted as follows.

Systematic Formation of Militias

By late 1998 *Reformasi* in Indonesia had allowed the Timor-Leste independence movement to operate more openly in East Timor and abroad. For example, Xanana Gusmão explained to the Commission that he was granted release from prison and moved to house arrest status in Salemba, Jakarta. He attributes his release from Cipinang to the positive political changes accompanying Reformasi. His change in terms of mode of imprisonment allowed him to participate in the process of resolving the Timor-Leste issue including communicating with Falintil, the Clandestine organization, the Diplomatic Front and representatives from other countries or the UN.

26 Ibid., 5.

27 See Chapter 7 for a full discussion of the events in Passabe.

Other witnesses indicated that at the same time the independence movement was benefiting from the beginning of *Reformasi*, the pro-autonomy movement was growing increasingly concerned about the status of East Timor. For example, Tomas Gonçalves explained to the Commission that when the *Reformasi* movement in Indonesia overturned the regime of President Soeharto in May 1998, Tomas Gonçalves, along with several other pro-integration figures, began to think about the status of East Timor as part of the Unitary State of the Republic of Indonesia. They were worried about the lack of resolution in the UN regarding the East Timor issue, and were afraid that the economic and political changes of *Reformasi*, might lead to further changes in the political status of East Timor. As a result, together with the government apparatus of East Timor, integration figures began discussing and planning how to face the new political circumstances.[28] Other prominent militia leaders, such as Câncio Lopes de Carvalho and Mateus Maía portrayed their desire to form militias as a response to the threat posed by "Clandestines", or other forms of pro-independence supporters' attacks.[29] As will be seen from the testimony heard by the Commission, this planning by pro-autonomy leaders began in 1998 and included taking steps to procure funds, weapons and other forms of material and moral support in order to create specifically pro-autonomy militias.

According to Tomas Gonçalves, ABRI said it could not do anything to assist the pro-autonomy groups without orders from above.[30] Gonçalves claims that in October 1998, Major General Prabowo Subianto came to East Timor and, together with the Danrem of East Timor (Col. Tono Suratman) and the Commander of SGI (Lieut. Col. Yayat Sudradjat), held a meeting with the pro-integration figures.[31] At this meeting they allegedly told the pro-autonomy leaders that the problem of East Timor's status must be resolved by the Timorese themselves.[32] However, following this meeting in October, Gonçalves stated that additional secret meetings were held to plan the formation of militias.

One of those meetings was related to the Commission by Witness AX, of the [militia group redacted]. He claimed that on 17 December 1998, in Koramil [location redacted], a meeting was held to form [militia group redacted], led by Dandim [location redacted], Lieutenant Colonel of Infantry [name redacted] and Deputy Commander of Sector [redacted] of Rajawali Task Force [name redacted] Lieutenant Colonel of Infantry [name redacted].[33]

Additional testimony presented to the Commission related several meetings of pro-integration groups with Indonesian civilian and military officials. In their testimonies Tomas Gonçalves, Francisco Lopes de Carvalho and José Estevão Soares all recalled

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28 Tomas Gonçalves, CTF Public Hearing V, 3.

29 Mateus Maía, CTF Public Hearing II, 30 March 2007, Jakarta, 5-7, 9; Câncio Lopes de Carvalho, CTF Public Hearing III, 5 May 2007, Jakarta, 8-9, 16.

30 Tomas Gonçalves, CTF Public Hearing V, 3.

31 Ibid., 3;

32 José Estevão Soares, CTF Public Hearing IV, 5.: "So, what happened after that, TNI and ABRI [sic] presence there was just symbolic, in my opinion, just a symbolic presence there. And, I remember then when Prabowo, Pak Prabowo spoke to us at Hotel Dili. He said the following, 'you don't have any support anymore. From the generals, I and my line, one in front, one behind, maybe we still support you. But as for the rest, no one's supporting you anymore.' So, I already felt that Indonesia no longer wanted to defend East Timor but to the contrary was letting East Timor slip away just like that."

33 Witness A, Closed Hearing, 9.

and corroborated each other's statements that meetings took place in Dili, Jakarta and Denpasar with regard to the formation of militias. According to Gonçalves, in February 1999, he, together with several pro-integration figures, including Francisco Lopes de Carvalho, Labut Melo, and Equito Osorio Soares, conducted a series of high level meetings in Jakarta with various officials. While he was specific as to some of the details of who attended the meetings, the testimony as to exactly what was discussed, and by whom, in regard to support for pro-autonomy organizations was much more general and vague. Another meeting in Jakarta that Gonçalves discussed with the Commission was conducted with the Minister of Transmigration, A.M. Hendropriyono. According to Tomas Gonçalves, at that time Hendropriyono said that funds from the Department of Transmigration in East Timor can be used for anything. Hendropriyono purportedly even offered a general to lead in East Timor.[34]

After these meetings in Jakarta to build support for the formation of the pro-autonomy militias, Gonçalves and his colleagues, returned to East Timor. He claimed that upon his return to Dili in March 1999, he also met with the Commander of Kodam IX/Udayana, Major General Adam Damiri and his chief of staff, Brigadier General Mahidin Simbolon in Denpasar. The essence of their discussion was to immediately form an armed unit for which the TNI would provide financial and other support.[35]

According to the testimony of Francisco Lopes de Carvalho, Major General Zacky Anwar Makarim and other military leaders met with the founders of BRTT. At the meeting, Carvalho reported the following statement:

> "Last time, the meeting was at Domingos' house, '*this is fifty-fifty.*' That's what Pak Zacky said '*fifty-fifty can't lose. If [we] lose, I'll leave it all up to you.*' I'm asking, if you swear, don't just swear."[36]

In regard to both his testimony and that of Tomas Gonçalves, while the witnesses claim that they personally participated in this meeting the content of what was discussed cannot be independently verified from other testimony obtained in the Fact Finding. One must also note that there is a general tendency in much of the testimony of militia leaders, both in the Fact Finding and in the SCU, to shift blame away by stating that it was the Indonesian authorities that took the leading role. This in itself certainly does not mean that their testimony was false, but it does indicate that it needs to be analyzed carefully.

On the other hand, some witnesses gave testimony that adopted an opposite interpretation. For example, according to José Estevão Soares, in February 1999 he and a group of FPDK members were received by the Minister of Defense and Security/Armed Forces Commander General Wiranto at ABRI Headquarters. At that time members of this group strongly requested that pro-integration groups be armed

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34 Tomas Gonçalves, CTF Public Hearing V, 4.: "It was during this dinner that there was a discussion about whoever choses integration with Indonesia will be assisted with weapons and funds. At this dinner present also was the younger brother of Pak President Habibie. After that we held a meeting with the minister of transmigration, Pak Hendro. At the time he said that funds from the Department of Transmigration in di Timor-Leste [sic] can be used to form militias or used for whatever purpose, and he also offered if these groups needed a general to lead in Timor-Leste [sic]."

35 ibid, 4.

36 Francisco Lopes de Carvalho, CTF Public Hearing V, Dili, 26 September 2007, 18.

to defend themselves, because the pro-autonomy leaders felt that the Indonesian military and police no longer cared for their safety. José Estevão Soares testified, however, that General Wiranto tried hard to convince the pro-integration groups to avoid acts of violence.[37]

After this series of meetings in Jakarta in February, another strategic meeting allegedly took place in April 1999. Tomas Gonçalves testified before the Commission that on 6 April 1999, he, together with Rui Lopes, Labut Melo, Claudio Vieira, and Equito Osorio (all honorary members of Kopassus) met with Kiki Sjahnakri at TNI Headquarters in Jakarta. In that meeting they purportedly asked Kiki Sjahnakri about the fate of integration supporters if the autonomy option was defeated. They asked if ABRI would support them. Kiki Sjahnakri allegedly replied that ABRI would continue to support pro-integration, but added that the pro-integration group must be in the front. In that meeting, Kiki Sjahnakri, according to the witness, said that for operational issues in East Timor, especially in terms of funding and weapons, they needed to contact Zacky Anwar Makarim.[38]

The testimony regarding these meetings is important because, if accurate, it shows that militias were not formed "spontaneously," as some claimed in their testimony to the Commission. For example, José Estevão Soares stated that the militias were formed spontaneously,[39] but contradicted himself when he provided some of this evidence of strategic planning.[40] The testimony discussed above provides an account indicating that pro-autonomy militias were formed through a set of carefully planned and coordinated meetings. These meetings had specific objectives – such as seeking guarantees that the pro-autonomy leaders would receive weapons to arm these groups, and that the TNI would provide additional support.

There are, of course, weaknesses in this testimony. It is not always specific in regard to exactly what was said by the parties and there are some inconsistencies between different testimonies about some of the details. As noted above, Indonesian military and political authority figures are portrayed as adopting divergent views on crucial points. Although this group of testimonies is not conclusive or consistent about what degree of support was actually obtained from the Indonesian military and government, it does provide a good deal of support for the position that pro-autonomy militias were systematically organized. Since much of this evidence as to systematic planning and organization comes from the pro-autonomy leaders, they were not only in a position to have accurate information but also directly participated in these meetings and activities that clearly indicate that the formation of the militias was not "spontaneous."

Furthermore, these testimonies indicate to the Commission that there was institutional awareness in the Indonesian government and military from an early stage in 1999 that the autonomy movement in East Timor was organizing to arm

37 José Estevão Soares, CTF Public Hearing IV, 9.

38 Tomas Gonçalves, CTF Public Hearing V, 7.

39 José Estevão Soares, CTF Public Hearing IV, 8.

40 Ibid., Submission to the CTF, "Kesaksian sebagai Salah Seorang Pendiri Organisasi Pro-Otonomi Yang Dinamakan Forum Persatuan PerdaMaian Demokrasi Dan Keadilan," 20 Juli 2007, Dili, 7.

themselves. Even if, as was alleged for General Wiranto above, the requests for assistance were rebuffed, the testimony at the least suggests that such figures were aware that groups identified with pro autonomy were seeking arms and support and were in the process of organizing themselves. The testimony of all of these militia leaders also indicates the involvement of Indonesian military institutions in direct contact with political and paramilitary groups in East Timor. This testimony, as will be seen below, is also relevant for the issue of institutional responsibility.

The Context of Militia Creation and the Coordinated and Overlapping Structures of the Militias and other Security Formations

The testimony received during the Commission's fact finding indicates that the pro-autonomy leaders succeeded in implementing their plan for creating militia groups. As seen in Chapter 4 above, although there are some variances in the structures of the groups that formed in every district in East Timor in 1999, there are also some common structures or systems according to which the groups were formed. Many of the militia, or paramilitary, groups appear to have been formed after a model already established in East Timor and throughout Indonesia under the Sishankamrata system, where paramilitaries acted as legal auxilaries of the Indonesian security agencies.

In his testimony to the Commission, Zacky Anwar Makarim discussed the context of the Sishankamrata system, which was relevant to the systematic formation and operations of paramilitary groups in 1999. According to Makarim, certain kinds of paramilitary groups are an implementation of the security system, or doctrine, practiced in Indonesia. In other words, the Sishankamrata[41] (The Total System of People's Defense and Security) involved the people in their local communities helping ABRI to maintain domestic security and order. In East Timor, these paramilitaries included Hansip, Wanra, Kamra and Pamswakarsa with differing functions and operating under the control of institutions such as TNI, the Police and the Provincial Government.[42] These groups could receive training from Kopassus, and some of them could also use weapons issued for specific operations decided by the TNI or Police institutions.[43]

The ability of pro-autonomy leaders to create militia groups, as described in the testimony received by the Commission, must be understood against this backdrop of the operational structures and practices already existing by virtue of the Sishankamrata system. These operational structures and practices, when carried over into the formation of militias by pro-autonomy leaders provided an institutional environment which facilitated the close operational interaction between armed civilian paramilitary groups and the Indonesian state's security apparatus.

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41 Undang-Undang Nomor 20 Tahun 1982.

42 Zacky Anwar Makarim, CTF Public Hearing II, 4-5.

43 "Gada Paksi Kembangkan 17 Bidang Usaha di Timtim", Suara Timor-Leste, February 14, 1996; and "HUT Kopassus Memiliki Makna Refleksi dan Introspeksi", Suara Timor-Leste, April 17, 1996. In the SCU archives several members of militia groups in 1999 supplied their certificates of Kopasus training that they had received as part of these earlier paramilitary groups prior to 1999.

The Commission heard a great deal of testimony regarding the implementation of the plan to create militias which demonstrates the different ways the Sishankamrata system influenced the establishment of the structures of the armed parties in the conflict in East Timor in 1999. The greatest amount of information received about these groups concerned the Aitarak militia and its relationship to Pamswakarsa. Pamswakarsa appeared in early 1999 in East Timor, particularly in Dili. Aitarak was also formed as a paramilitary group in the Dili area at the same time. The leader of these two groups was the same: Eurico Guterres. Thus, one of the key issues debated in the testimony before the Commission was whether at the operational level these groups were one and the same, and if so, to what degree they were both state-supported paramilitary groups, as stipulated under the Sishankamrata system.

For example, Mateus Maía, the former Mayor of Dili in 1999, told the Commission that before 1999, neither Aitarak nor Pamswakarsa had existed in Dili. On his interpretation, the formation of these two groups was a result of political changes in Indonesia (Reformasi) and the appearance of clandestine-CNRT groups that became more visible during this time, to the point that the pro-independence groups were holding open demonstrations. According to Mateus Maía, members of Aitarak led by Eurico Guterres came from integration fighters from the old party structures relevant to the 1974-1975 conflict (i.e. UDT, Apodeti, Kota and Trabalhista), as well as from members of Hansip.[44] Hansip is one of the organizations that is part of the Sishankamrata system. The former Bupati of Liquiça, Leoneto Martins, stated to the Commission that Pamswakarsa originated from the system of civil defense patronage [*pembinaan*] pursuant to Law No. 20 of 1982, but he also contended Pamswakarsa was different from the militia.[45] Domingos Maria das Dores Soares told the Commission that Pamswakarsa in Dili was formed in February 1999, but he claimed that Pamswakarsa was not militia, because they were not allowed to use weapons.[46] Finally, Mateus Maía also said that Aitarak was not the same as Pamswakarsa, but he admitted to the Commission that there were members of Pamswakarsa who were also members of Aitarak.[47]

Indonesian military leaders who testified before the Commission, and who had experience and knowledge about the 1999 violence, also expressed divergent views. Adam Damiri, for example, offered the opinion that Pamswakarsa was not a "militia" and that Pamswakarsa was not under the control and command of TNI like other groups in the Sishankamrata system.[48] On the other hand, in his statements to the Commission Zacky Anwar Makarim implied that Pamswakarsa was related to other

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44 Mateus Maía, CTF Public Hearing II, 5.

45 Leoneto Martins, CTF Public Hearing IV, 7

46 Domingos Maria das Dores Soares, CTF Public Hearing II, 26 March 2007, Jakarta, 20

47 Mateus Maía, CTF Public Hearing II, 5.

48 Adam Damiri, CTF Public Hearing II, 30 July 2007, Jakarta, 8 [paper transcript]: "Next is Pamswakarsa. Pamswakarsa was not under the control of TNI. No such thing. Kamra, Wanra, like I said, not a militia. I don't know of such a term, militia, ya. It's just those people who call it militia, militia. I never knew of such a term, militia, ya. And tyen, Pamswakarsa grew on its own, because they felt the need was there. So my life was threatened. Should I just keep silent? 'C'mon folks, let's do patrols.' These patrols were Pamswakarsa activities. Because the enemy being faced is armed, not [sic] they also armed themselves [unclear], despite having been collected. So there is no command relationship, ya, between Pamswakarsa and TNI, that lead to these assertions that Pamswakarsa is the genesis of militias. Not that, ya, no. So I think that's it, pak."

types of armed civilian security groups.[49] He informed the Commission that the Pamswakarsa in East Timor began to be formed in February-April 1999 and the formation of the three main elements of Sishankamrata was done in June to secure the Elections of 1999.[50]

The testimony given to the Commission by Witness BX highlighted further overlapping in the implementation of the formation of various types of security organizations in East Timor in 1999. He explained to the Commission that in 1999, 300 members of Kamra were recruited in East Timor under the Sishankamrata system. After being trained by the Kodim, these Kamra members were sent to the Police. As a government apparatus, Kamra was funded by the state, but he underscored that Kamra was not part of Pamswakarsa. However, this testimony to the Commission was inconsistent, or the implementation of a separate Pamswakarsa model was inconsistent, because he also told the Commission that some Kamra members were also members of Pamswakarsa.[51]

The debate over the structure of the militias, and their various nominal forms, in Dili is relevant to the formation of militias across East Timor in 1999. According to the testimony of Mateus Maía, the formation of Aitarak in Dili lead to the appearance of other pro-autonomy groups such as BMP in Maubara and Liquiça and Darah Merah in Ermera.[52] These groups joined with other militias in districts that spanned every region in East Timor to form an integrated, coordinating body called the Integration Fighters Forces (PPI).[53] All of these armed militia organizations joined under PPI were further integrated with its political wing through the organizations of BRTT and FPDK.[54]

Thus, the debate over the relations between Pamswakarsa, Aitarak and other Sishankamrata forms resonated throughout the analysis of the structures of the militia groups across East Timor. For example, in his testimony to the Commission, José Afat, explained that the membership of Liquiça's militia, BMP, was comprised of an overlap between the BMP and Pamswakarsa members. Pamswakarsa, he stated, was under the control of village chiefs, while BMP was under the control of a civilian appointed by the group itself. According to José Afat, all Pamswakarsa were de facto members of BMP, while not all BMP were members of Pamswakarsa.[55]

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49 Zacky Anwar Makarim, CTF Public Hearing II, 4: "Let me explain a little, ya, that in the system of state security and defense we have a doctrine of Universal People's Defense and Security. So this is not my theory, bet let us have a look at it. The problem is like this. In this Universal People's Security and Defense, it is assisted by the basic element, the basic element is the people, the trained people. Nah, these trained people are comprised of a number of elements, ya. There's what's called Wanra. Wanra is official under TNI, ya. Wanra is official. So if Ibu saw there is a Wanra team at Kodim, that is official under TNI. So, Wanra is part of the corps, the basic element, ya. Kamra, like during elections, maybe Ibu still remembers the election in 1999 in Timor, the Indonesian elections in June, if I recall. We recruited just in Eat Timor seven thousand (7000) Kamra, ya. This Kamra is under the Police. There's a budget for them. So, Wanra has a budget, Kamra has a budget, Hansip, who is under Pemda, has a budget. Nah, this is the state defense and security system, ya. Hansip also has a budget, the Civil Defense. Nah, in this Civil Defense there's all sorts of organizations, according to the need at the time. Nah, the so called militias in our terminology, to us it's rather strange, ya. Maybe it's western terminology, ya. The so-called militias are Pamswakarsa formed in villages to defend themselves actually, to defend their home village, defend their property.

50 Ibid., 4-5.

51 Witness B, CTF Closed Hearing, 29.

52 Mateus Maía, CTF Public Hearing II, 6.

53 Ibid.

54 Eurico Guterres, CTF Public Hearing II, 20-21.

55 José Afat, Interview with CTF, 9 Februari 2007, Kefamenanu, NTT, transcript, 3.

In light of all these divergent views it is difficult to disentangle the precise relation of the formation of the militias to the formation of other oficially sanctioned civilian paramilitary groups. From the variety of testimony given, it appears that at the operational level the distinctions between these various names and types of official status for these groups might have had little bearing on their functioning. Membership in the armed militia groups could be inclusive of any and all of these various security groups. As will be seen in the next section, the overlap between the systems (Pamswakarsa, Sishankamrata, PPI) meant that armed groups such as Aitarak and BMP were eligible to receive indirect support through funding or other means from the civilian administation (through funding allotted to Pamswakarsa), the military or police (through funding allotted to Sishankamrata) or civilian political groups (FPDK/BRTT). The elaborate overlapping structures indicated in all of the testimony, however, reveals clearly that the militias were not loosely formed spontaneous creations but rather organized and systematic creations. Furthermore, the multitude of these security structures operating at these various levels under various titles also provided multiple opportunities for government or military agencies to become either directly or indirectly involved in militia support or activities.

Funding and the Systematic Operations of Militias

The discussion above regarding the structures and status of the militia groups is important in order to analyze the testimony received by the Commission with regards to the systematic way in which militia groups obtained funding for their organization to support their operations. On the political front, testimony to the Commission revealed that the organizations of FPDK and BRTT were successful in supporting the operations of the militias by receiving financing from outside sources, such as the civilian government. For example, pro-autonomy leader Fransisco Lopez de Carvalho told the Commission that FPDK provided funds and that Mateus distributed these funds to all militia members in East Timor. In his testimony, pro-autonomy leader Câncio Lopes de Carvalho also stated that the Mahidi militia received funds from FPDK and BRTT.[56] Both of these individuals were in a position to have direct and detailed knowledge of these funding arrangements and their testimony is confirmed by numerous other witnesses in the fact finding process.[57]

Leoneto Martins' statements to the Commission also shed light on the ways in which funding was provided. He claimed that at the time there was a "community patronage fund", and the Bupatis received organizations' requests, such as BRTT and FPDK, through this fund. However, Martins also claimed that he did not personally hold or distribute any of this money himself.[58] Another Bupati, Martinho Fernandes, from Viqueque agreed that he could fund political groups through the Socialization fund

56 Mateus Amaral, Statement, (Kada, Belu, NTT, 13 February 2007), 3-10.

57 For a detailed analysis of the evidence on funding, see Chapter 7.2, below.

58 Leoneto Martins, CTF Public Hearing IV, 6 : "As far as funding, all of this relates to the 5th of May event. All that, all of it is already with the Attornet, hah, Attonery General's office there, because at the time there was already *pembinaan masyarakat* [community patronage] funds and the Bupati only entertained requests from organizations. Bupati did not keep this money to be distributed. So this came, that was not there [sic]. And there were pro-autonomy organizations, but the Bupati stood in the middle. There was BRTT, there was FPDK. Me, no. I was not the head of BRTT, I was not the head of FPDK. I am a man from Liquiça who, for five years, hah, loves [sic] the people. Some sent to school, some became presidential candidate [sic], not graduating, oh, don't want it there in East Timor. [sic] Hah, so I think I have done good, sending people to school, so [why would] I want to take sides, hah? I feel proud. He was a presidential candidate, he had his name but just did not pass, but that's okay."

given to him by the central government. However, he emphasized in his testimony to the Commission that he had the power to use these funds for political groups on both sides – pro-autonomy and pro-independence.[59] Nevertheless, the Commission has noted that Martinho Fernandes was the Commander of the pro-autonomy militia groups in Viqueque district, and his Deputy administration officer in the district civilian government, was the vice-commander of the militia groups. Thus, the militia groups could systematically receive funds through this mechanism established through the FPDK/BRTT organizations and facilitated by the dual leadership function of individuals like Fernandes in the civilian government and pro-autonomy groupings.[60]

Pamswakarsa was another mechanism for indirectly receiving funding to support the operations of the militias. For example, Domingus Soares explained to the Commission that Pamswakarsa members were given incentives on a "humanitarian" basis. Eurico Gutarres also stated that all members of Pamswakarsa received incentives of Rp. 150,000 payable directly by their leaders appointed by a Bupati's Decree. In additon, he said the Pamswakarsa members also regularly received between 5 and 10 kg of rice via this funding. Mateus Maía testified to the Commission that Pamswakarsa members were given incentives of Rp.150,000 per month.[61] When he was asked if it was true this money was derived from the East Timor Regional Budget, and if the allocation had been agreed to by the DPRD, Maía affirmed that this was correct.[62] Mateus Maía said he never distributed rice to members of Pamswakarsa, but he said it was true that at the time rice was being distributed to village heads to anticipate food supply shortages in East Timor. There are minor discrepancies here about the exact amounts and types of assistance, but all of these individuals testified of their direct knowledge of and participation in a system for the distribution of governmental resources to Pamswakara.

Similar to the Bupati from Viqueque, Dili Mayor Mateus Maía also told the Commission that he distributed Popular Consultation socialization funds to pro-independence groups as well as to pro-autonomy, but he did not provide the Commission with detailed information or other forms of corroboration of this support. He said he knew nothing about the amount of the total fund from the central government, which he was participating in administrating. He claimed that as far as he knew the socialization money being distributed came from "squeezing" businesses, Bupati donations, and an injection of funds from the governor. In addition to funding, Mateus Maía claims he also assisted the pro-independence group by providing logistical support. He used an example of allowing Mau Hodu, to use his government vehicle.[63] The Commission notes, however, that Mau Hodu was serving in the capacity of an official government representative on the KPS Commission at that time, and therefore was eligible to receive this form of support, regardless of his political affiliation.

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59 Martinho Fernandes, CTF Public Hearing II, 4: "Like you said earlier, that I as a Bupati to all people, all, for the pros and the contras, they are all my people. So this socialization funds, I made it available to all. So that, that is my answer."

60 These different interpretations of the funding process are analyzed in Chapter 7.2.

61 Mateus Maía, CTF Public Hearing II, 3.

62 Ibid., 15.

63 Ibid., 8.

In his testimony to the Commission, pro-autonomy leader Matheus de Carvalho also stated that members of Pamswakarsa were funded by the local administration, so that each member was receiving Rp. 300,000 per month for three months (July-September 1999) from the local government.[64] In another part of his statement he made a statement that treated Pamswakarsa and Aitarak as a single entity: "Because after Aitarak, Pamswakarsa were inaugated on 17 April, so some went patrolling on the outskirts."[65] The explicit refernce to Panswakarsa and Aitarak in this conjunctive manner also indicates, as noted above, that the distinctions between these organizations was not clear and their identities were viewed as overlapping. In his testimony in Statement Taking, Matheus de Carvalho was explicitly asked, "Is there a difference between Pamswakarsa and Aitarak?" He responded that although there were some differences in how they were formed, these groups in Dili were joined, or unified ("*bersatuan*").[66]

This issue of funding has been considered seriously by the Commission, because the groups who allegedly received some of these public funds through these various, indirect means are the same groups that are implicated in committing the widespread human rights violations revealed in the 14 priority cases. Namely, those groups directly relevant to this discussion are Aitarak, BMP and Mahidi militias. However, all the militia groups were affected by these funding issues as they were structurally united in the umbrella organization of PPI.

The Commission received one particularly important testimony relevant to these issues in one of its Closed Hearings. This witness was involved directly on the bureaucratic level with the planning and distribution of funds by the civilian government for activities in support of the Socialization process. He gave extremely detailed information to the Commisson about the process used to divert funds from the routine Development Project funds to support the Socialization campaign. These funds were distributed through the government's central offices in Dili to the district levels throughout East Timor via the Bupati, Muspida and other organizations. He/she explained:

> "In mid, no, in early May, because the organization already started, bapak bupati ordered us to seek funds, whereas in May the APBD [regional budget] process has been established, there has to be a DIP [Project List Form]. We'd have to send the DIP to the KPN. KPN must look at the DIP first. Only after it is approved KPN would issue an SKO. Then Pemda [Regional Government] would issue an SPM [Payment Order] to transfer funds from KPN to BPD [Regional Development Bank] as the regional treasury.
>
> And, because the length of the process on one side, on the other hand bupati and Muspida pressed to find money, from where. And, in early May, because Pemda – there's tier II pemda of Dili who had a share in BPD. The shares in BPD, bapak bupati as the

64 Mateus Carvalho, CTF Public Hearing I, 5: "I will answer the question about this Pamswakarsa funds. Indeed, the funds were to support each Pamswakarsa member in their respective village, because Pamswakarsa is a support force to assist with security whenever it happens in their respective locales. When they go on patrols, night watch, the must buy cigarettes, buy drinks, and so forth. And, for every man every month it was three hundred thousand (300,000), for three months."

65 Ibid., 4, 7, in his explanation of the different names used in relation to Aitarak.

66 Mateus Carvalho, Interview with CTF, Kupang, NTT, 26 January, 2007, 3:
Interviewer: So what actually is the difference between Pamswakarsa and Aitarak?
MC: Actually Pamswakarsa was formed by the government, but the Pamswakarsa in Dili was given the name based on the unit.

> shareholder had authority over it. And at the time he gave a 50 million [rupiah] check to [unclear]. This is only from the regional treasury, not even from other sources. And the 50 million money, after we cashed the check at BPD , it was used for three or four activities. And the activities included inauguration ceremonies, like, FPDK, inauguration of FPDK candidates, and then monies for camats, and then to regional heads to promote FPDK among the community. The 50 million [was for] such as for disbursement for activities, that was the beginning [sic, first payment]. And then after the DIP process to KPN, the funds were transferred to the tier II regional treasury at Bank Pembangunan Daerah, bupati, sekwilda, and all [government] apparatus at Kabupaten Dili then, held a meeting to create regional autonomy socialization programs. And at the time the bupati targeted for that activity around 2.6 billions more or less to support those activities. Hopefully this is the approximate number, but it was around this amount [for] activities [...]"[67]

This testimony strongly suggests that the civilian government was engaged in funding the pro-autonomy campaign, and specifically FPDK/BRTT, which were known to be aligned with some of the militia groups. However, the Commission remained cautious in assessing this testimony, to determine whether there was a direct relationship between the diversion of these funds for general socialization purposes and the human rights violations committed by pro-autonomy groups. For example, Commissioner Petrus Turang asked:

> "Were there people who, say, among those who we call now militias, who indeed pressured [you] to disburse money for their interest, that in fact, some of them then went on to commit violence?
>
> WITNESS: Thank you. Directly, from these groups, [they] did not pressure me. I always received orders from the bupati and sekwilda, and such forcible nature like I told earlier, even though it cannot be done, well, it has to be done and like that. But as for these groups, there was never a direct relationship."[68]

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67 Witness C, CTF Closed Hearing, 3: "Di pertengahan bukan di awal bulan Mei karena organisasi mulai jalan, bapak bupati memerintahkan kami untuk mencari dana padahal di bulan Mei proses APBD setelah ditetapkan harus ada DIP (Daftar Isian Proyek). DIP-nya kita harus kirim ke KPN, KPN harus lihat dulu DIP-nya, baru setelah di disetujui baru KPN menerbitkan SKO. Dari Pemda mengajukan SPM (Surat Perintah Membayar) guna transfer uang dari KPN ke BPD sebagai pemegang kas daerah. Dan, karena lamanya proses di satu pihak, di lain pihak bupati dan Muspida (musyawarah pimpinan daerah) mendesak agar dicarikan uang dimana. Dan, pada awal Mei tersebut karena pemda (pemerintah daerah), ada pemda tingkat II Dili ada saham di BPD, saham di BPD bapak bupati sebagai pemegang saham dia punya wewenang. Dan, pada saat itu dia memberikan satu cek kepada senilai lima puluh (50) juta, itu dari sumber tabungan daerah belum dari dari yang lain. Dan, dana lima puluh (50) juta tersebut setelah kami tukarkan ceknya di BPD digunakan untuk tiga atau empat kegiatan. Dan, kegiatannya seperti apa pengukuhan seperti FPDK, pengukuhan calon FPDK, terus dana untuk para camat, terus untuk para kepala daerah untuk mempromosikan FPDK di di masyarakat. Itu lima puluh (50) juta seperti pembagian untuk kegiatan itu awal. Kemudian setelah proses DIP ke KPN, transfer uang ke kas daerah tingkat II di Bank Pembangunan Daerah, bupati, sekwilda, dan seluruh aparat yang ada waktu itu di Kabupaten Dili mengadakan mengadakan rapat untuk menyusun program program sosialisasi otonomi daerah. Dan, pada waktu itu bupati targetkan untuk kegiatan tersebut berkisar dua koma enam (2,6) miliyar kurang lebih untuk mendukung kegiatan tersebut. Mudah-mudahan angka ini kurang lebih sedikit tapi sekitar ini kegiatan [...]"

68 Ibid., 25: "Apakah orang-orang yang misalnya dari dari yang sekarang ini kita sebut milisi memang memaksa Bapak untuk mengeluarkan uang demi kepentingan- kepentingan mereka yang di dalam kenyataan kemudian mereka ada beberapa dari mereka yang melakukan tindak kekerasan?"

"Terima kasih. Secara langsung dari kelompok-kelompok itu tidak memaksan saya. Saya selalu menerima perintah dari bupati dengan sekwilda, dan ada sifat paksaan seperti tadi saya ceritakan walaupun itu tidak bisa ya harus bisa dan seperti itu, tapi dari pihak pihak kelompok-kelompok itu tidak pernah ada hubungan secara langsung."

Other questions by the Commissioners established that in addition to the absence of direct threats, the Finance office in Dili was operating as usual during 1999, and were not under exceptional or unusual administrative proceedings. Therefore, of particular concern, was whether the government could have been aware that these funds were used for militia groups that were known to have committed human rights violations. The witness approached all the questions directed towards establishing this relationship between funding and militias with precision. For example, the following series of questions was used by Commissioner Antonius Sujata to understand how and if the funds could have been legitimately diverted into the hands of the militia, or whether government fiscal policies and rules could have prevented this occurence:

> What I want to ask, so, take for instance the husbandry projects, those are physical projects, right? Physical, right? I used to be the head of a planning bureau. That is physical. Physical. Whereas, here we have organization and other, those are non-physical. What I want to ask is, for these organizations, what were the terems and conditions, the conditions for them, so that they [are able] to receive, like, [what/who we talked about] earlier, Aitarak, BRTT, and other apparatus? Because this is of non-physical nature.
>
> WITNESS: Thank you, Pak. My apologies, if I may correct it a little. True, the project on paper was a crop husbandry project coming from the DIP, my request to transfer from KPN to BPD for the project, SPT and the treasurer and the project officer would file a proposal to me, is for husbandry in Metinaro and Atauro. The SPM that I issued ordered the treasurer to give the project office, even that was for husbandry in Atauro and Metinaro. However, the project had approval to be run in a *swakelola* [self-managed] way. So, bapak bupati would say, "take this money first, hold the swaklelola. I'd keep this money now to support socialization, eh, socialization activities." We did have, like I said, we did have objections from us technical people, "Bapak, these funds are for projects. If it is taken like this, if there is inspection in the future, it is us, technical people, who would be in trouble." "No, this will be paid back. The funds are a loan, and will be returned by the center [central government]." So it was paid, so the money that was paid was used for Muspida, socialization and and so forth, as I specified earlier."[69]

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69 Ibid., 9-10:
Antonius Sujata:
Yang ingin saya tanyakan, jadi itu kan sebetulnya proyek pembibit pembibitankan fisik itu, ya kan fisik kan. Saya dulu kepala biro perencanaan. Itu fisik, fisik sedangkan ini organisasi dan lain-lainya itu kan non-fisik. Yang yang ingin saya tanyakan itu, untuk organisasi-organisasi itu syarat-syaratnya apa, syarat baginya apa saja sehingga dia menerima seperti tadi Aitarak, BRTT, dan aparat- aparat yang lain? Karena ini sifatnya itu non-fisik.
Terima kasih Pak. Saya minta maaf, saya ada sedikit koreksi. Memang ini proyeknya di atas kertas adalah untuk proyek pembibitan mulai dari DIP, permintaan saya ke transfer dari KPN ke BPD untuk proyek, SPT yang bendahara dan pimpronya ajukan ke saya adalah untuk pembibitan di Mitinaro dan Atauru, SPM yang saya keluarkan memerintahkan untuk pemegang kas memberikan kepada pimpinan proyek itu juga pun untuk pembibitan di Atauru dan Mitinaro. Namun, proyek itu ada persetujuan untuk dilaksanakan secara swakelola. Jadi, bapak bupati mengatakan, "ambil dulu uang ini, swakelola jangan dulu. Uang ini saya pegang dulu untuk mendukung sosialisasi eh kegiatan sosialisasi." Sempat tadi saya katakan, sempat ada keberatan dari kami-kami teknis, "Bapak, dana ini untuk proyek, kalau diambil seperti itu apa kemudian hari ada pemeriksaan kami teknis di bawah yang akan kena." "Tidak, ini akan dikembalikan. Dana tersebut adalah pinjaman dan akan dikembalikan kemudian oleh pusat." Sehingga keluarlah schingga uang yang dikeluarkan itu digunakan untuk Muspida, sosialisasi, dan dan sebagainya yang tadi saya sebut.

The extremely technical nature of the response to Commissioner Sujata's questions lends credibility to this witness' testimony. He/she seems more concerned with the procedural nature of the funding, than the broader political context of the question. His response unequivocally confirms that funds were diverted to help with Socialization. This explanation by the witness was alone not conclusive enough to establish direct ties between militia groups and systematic receipt of government funds. However, under another series of questions from the Commission the witness was able to provide more specific information that linked the provision of funds for Socialization to active militia groups.

This exchange lent direct corroboration to the other testimonies received by the Commission, such as statements from Eurico Gutteres and Cancio Lopes de Carvalho that asserted that their armed militia groups benefited from government funding, directly and via the FPDK and BRTT. This exchange, and this witness' testimony in general, corroborate the multiple statements from finance administrators throughout East Timor which were compiled by the SCU and considered by the Commission in the Document Review process.[70] In further questioning, this witness' testimony also cast doubt on whether these socialization funds were always distributed equally among all political groups who were engaging in campaigns for the Popular Consultation.[71] However, it should be noted that three Bupatis testified that they had distributed the funds in a balanced manner to all groups.[72]

In summary, all of the statements in the Document Review agree with this testimony presented in hearings, and in other parts of the fact-finding process, to the Commission that government funds were directly and/or indirectly diverted in 1999 into the hands of pro-autonomy militia groups. Aitarak was among the groups that received these government funds, and it received them after its implication in the human rights violations that occurred in at least two of the Commission's Priority cases - the attack on the Carrascalão house, and at Liquiça church. The provision of financing through a bureaucratically organized governmental financing system provides support for the conclusion that the militias operated in a manner that reflects organization, planning, and governmental administrative cooperation in support of their activities. It also provides important evidence for the analysis of institutional responsibility in the next section.

Supply of Weapons as a Systematic Element of Militia Operations

The Commission also received and evaluated a great deal of testimony about the ways in which pro-autonomy groups received support in the form of equipment. The supply of weapons was crucial to the functioning of the militias and for their operations that led to human rights violations. The militias appear to have obtained

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70 SCU Witness statements: HC16, HC31, HC24, HC2, HC25, HC26, HC17. HC27, HC5, HC8, HC9, HC30, HC10, HC28, HC11, HC12, HC22, HC19, HC15.

71 It should also be noted that this particular witness was interviewed on several occasions by an SCU investigator. The testimony he gave the Commission is consistent with his testimony before the SCU. Because of the repeated and detailed questioning by the investigator his testimony in the SCU context was even more detailed as to the way in which funds were channeled to support pro-autonomy and militia groups. His testimony was also consistent with statements the SCU took from other financial administrators who received or administered these monies at the district level across East Timor.

72 See the analysis of these claims in Chapter 7.2.

weapons from a variety of sources, and the types of weapons used ranged from modern, military issue weapons (such as SKS, G-3s and pistols) to homemade guns (rakitans) and local knives, machetes and swords. The points to consider with regard to systematic human rights violations are: Did the militias "spontaneously" seek or pick up weapons to conduct operations, or was the supply, distribution and regulation of weapons systematic and organized?

The Commission received conflicting testimony about the ways in which militias received weapons and munitions. On the one hand, various statements were obtained by the Commission that suggested that TNI weapons were distributed regularly to the pro-autonomy groups. On the other hand, the Commission heard testimony that contradicted these claims. For example, Adam Damiri stated:

> "The weapons [that were] there are no longer there. [They] had to be collected. So just the keys, actually, ya. So on the initiative of the TNI Commander a peace accord was held that was agreed to on the 21 April 1999. And then, so what's the follow up to that peace accord? There was Dare II, the agreement between the government of RI with them to collect weapons. How was the weapons' collection actualized? Could all of [the weapons] be collected? Both [from] pro-integration as well as pro-independence? I'll explain that later, ya."[73]

Adam Damiri was certain that the TNI did not distribute weapons to the pro-autonomy groups, including Pamswakarsa.[74] He also stated that as for weapons held by Kamra, they were returned after operations. Adam Damiri suggested that it was Portuguese-era weapons, numbering some 25 thousand pieces, that were held by the pro-independence and pro-autonomy groups.[75] Adam Damiri's allegation was also supported by Zacky Anwar Makarim who said that Aitarak had 20% organic [sic] weapons left by Portugal and 80% assembled weapons.[76] Neither witness provided an indication of the factual basis on which they derived these statistics. The contradiction here is both as to whether or not the TNI distributed weapons and how they derived this detailed knowledge as to the kinds of weapons that the pro-autonomy groups and militias possessed.

While the testimony of Adam Damiri and Zacky Anwar Makarim was quite general, in the sense that it made overall statements about the arming of all the militias as a whole, other testimony was far more specific and factual. For example, Commander A gave the Commission more detailed and substantiated testimony about the ways in which his militia group, [redacted], obtained modern weapons from the TNI. First, he claimed that on 27 December 1998, Lieut.Col. Infantry [name redacted, the deputy commander of sector [redacted] handed over 20 SKS rifles and one AKA 45 [sic] to the militia group, taken from the Nanggala [redacted] post, SGI-Kopassus Task Force, in [redacted]. Then, he continued, on 21 December 1998, the militia group was formally established by the commander of Kodim [locale redacted], Lieut. Col. Infantry [name redacted], Commander of Sector [redacted] Rajawali Task Force,

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73 Adam Damiri, CTF Public Hearing II 3-4.

74 Ibid. 9.

75 Adam Damiri, CTF Public Hearing II, 9.

76 Zacky Anwar Makarim, Submission to the CTF, "Sebuah Retrospeksi-Kritis dan Analisis Kontekstual dan Beberapa Perspektif Penting," 5.

Lieut.Col. Infantry [name redacted], Commander of SGI Intelligence Task Force, and Lieut.Col. Infantry [name redacted]. The Ceremony was attended by what he described as thousands of pro-integration supporters from various places in the district. Soon thereafter, on 30 December 1998, Lieut.Col. Infantry[name redacted], the Commander of Intelligence task Force of SGI-Kopassus, came to the village where the militia was based and handed them three M-16 rifles. Commander A contends that this supply of weapons continued throughout 1999. For example, he stated that on 26 August 1999, the Commander of Kodim [locale redacted], Lieut.Col. Infantry [name redacted] handed 97 units of firearms and assembled weapons to the militia group in [locale redacted] village, consisting of 34 G-3 firearms, 18 SP2 firearms, 8 mausers, 2 LE firearms, and 35 units of assembled weapons. Finally, he claimed that on 26 October 1999, Lieutenant Colonel Infantry [name redacted] and Chief Sergeant [name redacted] handed 50 units of SKS firearms to a group of militias in East Timor including, Mahidi, Laksaur, Ablai, AHI in Bakateu Betun, Wehali Village, Malaka Tengah Sub-district, Belu District, East Nusa Tenggara Province. According to a senior commander of one of the largest militias, the 153 SKS units were only returned to TNI on 5 April, 29 April and 16 June 2000, in West Timor.[77]

The testimony of Witness AX is specific, detailed, and limited to the distribution of weapons to the militia he commanded, He thus had the ability to know these facts with certainty and he participated directly in the events he describes. He also has no apparent motivation for inventing such facts. The statements by Adam Damiri and Zacky Anwar, on the other hand, are far more general. They do not offer documentation for the numbers of weapons they give. They do not provide a basis for substantiating how they could know that no militia groups in all of East Timor possessed modern weapons. They also provide no substantiation for how they could know with certainty that no local TNI commander had ever provided weapons to any such groups. There is also a clear interest on their part in denying that the TNI provided such weapons. For these reasons, the Commission finds the testimony of Commander A, especially as corroborated by considerable other testimony, to be more credible. In addition, the Commission received detailed weapons supply and distribution lists from the [redacted] militia group that corroborated Commander A's statements regarding the militia group's possession of weapons such as these. As to the issue of the organized manner in which the militias operated, this testimony and the supporting documents, indicate clearly that the [redacted] militia systematically obtained and tracked its weapons inventory obtained from the TNI. The distribution of weapons was not random, but rather, strategic, organized, and controlled.

In another group of testimonies regarding the supply of weapons to militias, the Commission was able to further observe the ways in which weapons were given, but also could be taken back, by TNI units in East Timor in 1999. This fact is relevant for showing that TNI units could control the supply of weapons to militias and thus their ability to conduct operations.

For example, Team Alfa Commander Joni Marques stated before the Commission that prior to the Popular Consultation, his militia group received weapons from the TNI. He claimed to have received SKS rifles from a member of the military named

77 Witness A, CTF Closed Hearing, 10.

Wagirin. These SKS arms allegedly received by Team Alfa in 1999 were thought to have come from Dansatlak A (Commander of Implementation Unit A) based in *Rumah Merah* (the Red House) in Baucau. It was also said that in 1998, all weapons that were distributed to all Kopassus nurtured groups [binaan] in the entire East Timor had been taken back in. However, Jhoni Marques stated that in 1999 SKS rifles were distributed again to Team Alfa.[78] Modern firearms were used in the attack on the clergy members in Com on 25 September 1999 by Tim Alfa. At trial the evidence revealed 21 gunshot holes in the vehicle carrying the clergy. The driver of this vehicle died of the gunshot wounds. Joni Marques fired a rifle twice at one of the nuns during the attack, which killed her. In fact firearms were used in the commission of nearly every crime in 1999 for which Tim Alfa stood trial.[79] As the attack on the clergy in Lautém is one of the priority cases considered by the Commission, the Commisison must consider the provision of arms used in such attacks seriously.

Witness FX said his militia company received 10 SKS rifles but these were also taken back again by the TNI right before the day of the Popular Consultation.[80] He also explained that each of those weapons was registered and monitored by the Kodim. However, one of this militia group's commanders stated that the weapons in other Companies in the Laksaur militia were not taken back during this time frame.[81] The Laksaur militia is implicated in the human rights violations that occurred in the priority case of the attack on Suai Church.

Mateus Carvalho, Former Chief of Hera Village and Former Commander of Company D Aitarak also stated before the Commission that he received weapons from the Kodim. According to Mateus de Carvalho, arms used by his militia group were from Kodim Dili.[82]

Adão Salsinha Babo said in his statement to the Commission that the militia organization he commanded had two modern firearms. He did not name the persons who kept the weapons, but only said that one was for the Halilintar militia organization, and the other for Guntur. He admitted that the weapons came from the Kodim, but were also taken back by the Kodim.[83]

Joanico Belo testified that elements of Milsas did not all have weapons, except those placed at posts. The resistance elements of his team only consisted of about 120 people, and the weapons given to these resistance elements numbered 22, of the type SKS and M-16. He alleged that the elements of milsas used the Kodim inventory. According to Belo, in 1999 members of SAKA were given weapons by the Kodim because they used to be Wanra and were under the leadership of the Kodim.[84]

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78 Joni Marques, CTF Public Hearing V, printed transcript, 13.

79 See Special Panels for Serious Crimes, Judgment in Joni Marques et. Al, 11 December 2001, 29-30 and 65-66. Marques plead guilty to these charges, and did not contest the factual allegations concerning the attack on the clergy.

80 Witness F, p. B4-B5.

81 Ibid., 5.

82 Mateus Carvalho, CTF Public Hearing I, 19 Februari 2007, Denpasar, 7-8, 16-17, 20.

83 Adão Salsinha Babo, Interview with the CTF, 27 January 2007, Atambua, 3

84 Joanico Belo, Statement, Kupang (NTT), 8 February 2007, 2-4.

Another militia member, Alberto Mali da Silva reported that his friends were not armed, but only used a *kelewang* (traditional weapon). However, he stated that the Danyon and Danki of his militia group were armed with modern weapons. The witness claimed that those arms were given by ABRI. The witness could not name the person who distributed these arms from the TNI, but he did say that the ABRI member was from Java.

The Commission also received several testimonies from pro-autonomy leaders that yet again point to the potential for close relationships between the security apparatus and prominent militia leaders, which could result in the procurement of weapons.

Mateus Maía, on the other hand, stated that weapons were not distributed institutionally by the TNI but on the basis of personal policies (by certain members of TNI) through "loans" because of their good individual relations.[85] Maía also added that natives of East Timor were related to police and army officers and some were in Wanra or Kamra. He estimated that it was from these sources that their relatives obtained these weapons.[86]

Tomas Gonçalves, for example, claimed that the TNI gave, or "lent", him weapons directly.[87] He also testified, however, that the both his pistol and his assault weapon, that had been given to him as an honorary Kopassus member prior to 1999, were taken back by the Danrem and SGI in 1999. Therefore, even if these were "favors" granted through informal means, the supply of weapons to militia leaders does not appear to be random, or without control, because the TNI maintained the ability to regain their weapons.

José Estevão Soares also told the Commission that in the middle of July 1999, he had requested a weapon from the Commander of Tribuana Task Force/SGI Colonel Yayat Sudrajat to be used to conduct official trips to the regions. This request was rejected by the Task Force Commander. But in the middle of August 1999, José Estevão Soares was called by the Commander of Tribuana Task Force and through his Deputy Commander he was allegedly given an organic [sic] firearm of SKS type with five bullets. The provision of this weapon was purportedly with a message to keep the matter secret and only to use it to defend himself.[88]

There is both consistency and inconsistency in the statements by these various militia leaders and members. On the one hand, virtually all of them agree that some pro-autonomy militia groups possessed modern weapons on at least some occasions in 1999. They also agree that the source of these weapons was the TNI or Kopassus. They differ as to their accounts of how weapons were distributed, whether they were kept in the possession of the militias on a regular basis, and as to how closely the TNI controlled this possession of weapons. However, the testimony that the TNI at

85 Mateus Maía, CTF Public Hearing II, 6.

86 Ibid., 9.

87 Tomas Gonçalves also maintains he was to be sent 300 assault rifles by the TNI in April 1999, but he did not receive them personally. He claims the weapons were directed to the Kodim, although they had been intended for him. However, his testimony could not be verified and he could not verify the weapons were ever sent or received.

88 José Estevão Soares, CTF Public Hearing IV, 8.

times withdrew weapons from the militias is also consistent with the inference that may be drawn from the testimony about the TNI's distribution of weapons. In both cases, the ability to distribute and the ability to withdraw indicate systematic control over the possession of modern weapons by local TNI commanders. Some of these discrepancies in the testimony may also be explained by local variation in the ways in which different TNI commanders related to different militia groups at the local level. This explanation also finds some support in the testimony of Maía, Soares, and Gonçalves that points to the importance of personal relations between militia leaders and local TNI commanders. It should also be noted, however, that some testimony interpreted the withdrawal of weapons as indicating the intention of the TNI to prevent further violence.

In summary, the supply, monitoring and retraction of weapons to and from the militias appear to have occurred in a deliberate and systematic manner. It must be noted, however, that the testimony as to the highly personal nature of weapons distrubution in some specific cases, may be seen as a qualification to this generalization. Multiple witnesses who testified regarding the 14 priority cases described the use of these modern weapons (such as SKS, M-16s, and pistols) during these attacks, either by the militia members, or by TNI members themselves who were participating in the attack.[89] The limitations on the kind of testimony presented during the fact finding, however, make it impossible for the Commission to establish on the basis of this evidence a direct link between every event where each of these weapons was used that was obtained through the support of the TNI. The weight of the witness statements, however, does support the view that militias were acting strategically to obtain these weapons and the military responded in an organized manner to either supply or to take away these arms. The way in which this testimony relates to the large amount of evidence about weapons analyzed in the Document Review will be discussed below in Chapter 7.

3) Organized Operations

Joint Operations

In the testimony received by the Commission about the 14 priority cases, there were multiple indicators that at the time of attack there was a significant degree of organization, direction, and plannning. In other words, these events appear to be organized, rather than spontaneous, out-of-control, mob attacks.

On the other hand, the Commission also heard testimony which claimed that the violence was of a chaotic nature. For example, Francisco Xavier Lopes da Cruz stated before the Commission that in his opinion, during the period of post-Popular Consultation, East Timor was almost devoid of power and security authority. According to him, a massive exodus of population started towards West Timor, Java and Sulawesi. Lopes da Cruz estimated at that time, the TNI and the Police were

89 Esmeralda dos Santos, CTF Public Hearing II, 2; Nonato Soares, CTF Public Hearing II , 29 Maret 2007, Jakarta, 10; Marcelo Soares, Interview with the CTF, 26 Januari 2007, Belu, NTT, 3; Emílio Barreto CTF Public Hearing I, 19 February 2007, Denpasar, 5, 10; Adelino Brito, CTF Public Hearing II, 30 March 2007, Jakarta, 3, 5; Marcus Baquin, CTF Public Hearing V, 26 September 2007, Dili, 6; Agusto Dato Buti, CTF Public Hearing III, 2 May 2007, Jakarta, 4.

feeling under pressure, and therefore took no action. He himself felt that at the time the situation was out of control. He recalled that at that time he was at home. He said he heard shots being fired right and left. He called the Police, but there was no police. Then one or two police officers arrived and reported to him that the condition was out of control and difficult.[90]

On the other hand, some of the most compelling indicators of organization in the attacks appear in the testimony the Commission heard about militia groups working together with TNI in coordinated military operations. Operations such as these require planning, and leadership and coordination before, during and after the attack in order to achieve operational objectives. The presence of indictaors such as these in the testimony given to the Commission depicting operational cooperation between TNI and militia members suggests that the attacks against civilian populations were systematic in nature.

As noted above, however, the Commission also received several pieces of testimony that offered a different interpretation of the violence in 1999. This testimony often suggested that attacks were spontaneous and not planned, and in some cases they were the result of a general breakdown of order, in others, of a cycle of revenge and retaliation. For instance, Mateus Amaral, one of the FPDK officials in Suai during stated that the incident on 6 September 1999 at Suai Church began from the dissatisfaction of pro-integration youth after being ridiculed, scolded, and made fun by pro-independence people regarding the loss by pro-integration. Another example of vengeful attacks and counter-attacks that occurred several times in the information given to the Commission, are a series of attacks between pro-independence and pro-autonomy supporters in Liquiça district. These "clashes" appear to have included house-burnings, rock throwing, and possibly some armed confrontation.[91]

Examples of the testimony that was received about the systematic nature of joint operations between the TNI and militia are provided by two different witnesses involved in the Cailaco case. They reported that attacks on the civilian population occurred as a joint operation between local militia groups and the TNI.[92] Manuel Ximenes told the Commission that after the killing of Manuel Soares Gama, TNI from the Kodim, SGI and BTT Troops together with Guntur militia conducted an operation in the Cailaco region. According to Manuel Ximenes, on 17 April TNI units arrested and killed five people suspected of involvement in the killing of Manuel Soares Gama. This operation was allegedly initiated with a meeting at an SGI post attended by the Commander of PPI, João Tavares, Commander of SGI and Commander of Kodim Maliana, Lieut.Col. Burhanuddin Siagian. The five people were killed near the SGI Post, a mere 50 meters away from the house where Manuel Soares Gama's body was laid for mourning, and where Manuel Ximenes was present. During the joint TNI-militia operation, 47 people were killed and most of them were teachers, civil servants and students.[93]

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90 F.X. Lopes da Cruz, CTF Public Hearing I, 12.

91 Asep Kuswani, CTF Public Hearing IV, 23 July 2007, Denpasar, 3, 7-8; Emílio Barreto, Public Hearing I, 19 February 2007, Denpasar, 2, 4; Leigh-Ashley Lipscomb, "Spontaneous Retribution: Local Dimensions of the East Timor Conflict 1999," 15 November 2007, Submission to the CTF, 7-10.

92 Manuel Ximenes, CTF Public Hearing I, 20 February 2007, Denpasar, 4, 8,11. Adão Salsinha Babo, Interview with CTF, 3-5.

93 Ibid., 4-5, 9.

There are certain limitations to this testimony. Most importantly, it is not clear how Manuel Ximenes had the sufficient knowledge of what happened at the meeting prior to the attack, or what was the basis of his knowledge of the killings and the physical attack on the village. This evidence is detailed, but in order to support solid conclusions it would need to be verified through other means, such as the interview of multiple witnesses who witnessed the attacks on the village, the five killings, and had knowledge of the meeting beforehand.[94]

In the case of an attack and killing of people in Liquiça Church compound on 6 April 1999, Emílio Barreto testified that Sergeant Tome Diogo from the Intelligence Unit of Kodim 1638/Liquiça was involved in the attack. In addition, the witness testified that it was Tome Diogo who gave the order to begin the attack. The witness also reported that there were members of Brimob from the Lorosa'e Contingent who kept watch along the road near the church compound. The witness also claimed he personally recognized several TNI and Police members involved in the attack.[95]

The witness established his position to be able to make these observations with clarity: he claims that he was an eyewitness and he was located only 20 meters from the church compound.[96] The detailed nature of his account and its specificity in terms of persons and events also lend it credibility.[97] However, as in the testimony considered above, the Commission did not receive other statements in the fact finding process that could corroborate (or contradict) this witnesses' account of the events.

The Commission also received testimony of joint operations during the attack on the residence of Manuel Carrascalão on 17 April 1999. A witness, Florindo de Jesus Brites, stated before the Commission that BMP, Aitarak militias and TNI members were working together when they attacked the people seeking refuge at the house of Manuel Carrascalão. Florindo de Jesus Brites said that he was stabbed in his right arm, back and legs by a BMP militia member named Domingos Bomdia. During the attack, he was also able to see a member of the TNI from Koramil Maubara, José Mateus, shooting to death his older brother, Eduardo de Jesus. The witnesses said they knew the identities of their attackers because they were all from the same Maubara area.[98] The witness had first hand knowledge of this attack as he was one of the victims. He claims that he also witnessed the killing of his brother by a member of the TNI, though there was no specific information about his exact position in regard to his brother at the time of the attack. On the other hand, he was able to specifically identify the TNI member and explained why he knew him.

Other witnesses who were militia members described those who were present and the activities at the rally in front of the Governor's Office which preceded the attack on the Carrascalão house.[99] The Commission was able to verify the events, and the

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94 During the Commission's Document Review process, the former investigator of this case at the SCU (David Savage), contributed a submission which supports Ximenes' and José dos Santos Nunes' claims made in this testimony, and a finding that the human rights violations in the Cailaco case were perpetrated jointly and systematically (Expert Advisor's Report to the CTF, 390).

95 Emílio Barreto, CTF Public Hearing I, 8.

96 Ibid.

97 His description also matches statements that were examined in the Document Review Process (Report to the CTF, 30).

98 Florindo de Jesus Brites, CTF Public Hearing I, (Denpasar, 20 February 2007), 4.

99 Mateus Carvalho, CTF Public Hearing I, (Denpasar, 19 February 2007), 10.

content of the speech of the militia leaders at this rally, including the death threats made by Eurico Gutteres. The Commission also received evidence of the TNI's knowledge of these threats, in the Document review process. A report of the incident was communicated via a telegram to the TNI which quoted the threats made in Guterres' speech.[100] There is also footage of a TNI member filming the rally, and specifically Guterres' speech.[101] However, the threats uttered by Gutteres, although specific, do not necessarily provide evidence that the subsequent attack had been previously planned. Further, while Brites' testimony is credible as to the identification of a TNI member, in itself this does not demonstrate that this was a joint operation. The presence of a single member of the TNI, without the presence of officers, is not sufficient to establish that at the operational level this was planned to be executed jointly. This is not to say that such evidence is not available elsewhere. The underlying problem here is that the limited amount of information provided by this single witness indicates the limitations of the Commission's fact finding process by itself in providing sufficient evidence to form the basis for definitive conclusions.

Deportation and/or Forced Transfer

The Commission received multiple testimonies which recounted the displacement of a large portion of the population of East Timor in 1999. There were testimonies of internal diplacement, such as the movement of people to the Carrascalão house from Liquiça district, and the movement of people to the Suai Church, the Dili Diocese, and Bishop Belo's house. In addition the Commission received a significant amount of testimony from people who were brought to West Timor during the post-ballot period.

Consistent patterns noted in these testimonies provide strong indications of planning for these displacements of populations. If the pattern of movements is viewed as a whole, the evidence presented to the Commission suggets that displacements typically took place following attacks on villages. These attacks included the destruction of property so that people felt they had no other choice but to leave their homes. There also appeared to be the systematic provision of government and military vehicles and other means of support in this process that indicate planning. For example, in the Maliana Polres case, witnesses reported that they were forced to leave their homes and go to the main road where vehicles provided by the security forces were waiting and used to transport the population to East Nusa Tenggara.

On the other hand, other witnesses testified before the Commission that although there was systematic organization in the movement of peoples across East Timor, this operation was not always intended to forcibly displace.

For example, Paolo dos Santos' statement explained that he chose to leave East Timor and head for Indonesia because he had chosen to become pro-autonomy, so there was no compulsion for him to move to Indonesia. It was voluntary.

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100 Telegram Rahasia: STR/200/1999, tertanggal 18 April 1999. CTF Document #: No. G0251/SCU-2/No.13.

101 Daftar CD-8, Folder AV-Disk 3, Clip # 2 "Dili Rally." CTF Document #: G0251/SCU-6/No.8.

Fernando B. dos Santos explained to the Commission that he and his subordinates who joined him in KMP group offered to allow the people to stay in East Timor or follow them to West Timor. People's departure in his area of operations, he claimed, were not based on coercion. This statement provided no specific details and was not corroborated. It was also made by a militia member who might well be reluctant to admit that he forced civilians to leave Ermera.

Fernando Sousa also testified that people were not forced to move. According to his allegations they chose to leave Liquiça and their villages for security considerations alone. This testimony leaves open the question of what the source of the security considerations was. A direct threat is not required to make a displacement involuntary. This testimony is so general and ambiguous that it has no probative value.

Joanico Belo explained that as a leader of Tim Saka he did not force people to move. He also claimed before the Commission that he never received orders to forcibly move people. Belo interpreted the movement of people from Baucau to Dili, and then subsequently to Baucau as evacuation – not deportation or forced displacement. He stated that he never used terror or threats when helping to transport people. As in regard to the previous statement this testimony is general and leaves open the issue of why the evacuation was necessary and why individuals would have voluntarily agreed to participate in it. As the witness was also a militia leader there are apparent reasons why he might deny that he forcibly deported civilians.

Armindo Soares also told the Commission that there was never forced displacement. This is a very broad and general statement and it provides no account of how the witness would be in a position to know this. However, when he explained the situation further it was was not clear to what extent he was claiming that forced displacement actually did not occur. On the one hand he claimed that all people in East Timor were fleeing – regardless of political affiliation. On the other hand, he stated that some pro-autonomy supporters were afraid of Fretilin. Unfortunately, the remainder of his testimony is not clear enough to provide more details or clarification. However, the notable point in this individual's testimony is that there was still sufficient control in East Timor for pro-autonomy militia leaders to command convoys and guarantee safe passage. This appears to be the case with Eurico Guterres (Aitarak) in this case, and with Joanico Belo (Team Saka) in the earlier testimony. Therefore, this testimony, while weak in establishing the element of force does indicate that the movement of peoples did not occur without control, or order. It appears to have been a systematic movement.

Another militia leader, Mateus Carvalho, told a more nuanced version of this story. His description of events did not include an element of force in the movement of people.[102] Later, however, he stated that he did not deny that there might have been some people who were forced. Then he, like Fernando Sousa, explained to the Commission that people left because they feared for their lives. He maintained that in leaving their homes and going to West Timor people were trying to "save themselves"

102 Mateus Carvalho, CTF Public Hearing I, 19 February 2007, 19.

because they felt involved in a political problem. While Mateus Carvalho denied that people were forced to leave his testimony that these people left because they feared for their lives is actually highly relevant to a determination whether the displacement was involuntary, an element required for the crime of forcible transfer or deportation. In weighing these varying accounts against each other, there are divergent opinions as to whether individuals were directly forced to leave their homes. Many of the statement reviewed are too general or self-serving to possess much evidentiary value. On the other hand, most of them agree that even if there was not direct threat of force, individuals left their homes because they feared for their lives. It is important to note that in order to establish forcible transfer or deportation as a crimes against humanity force or the threat of force does not need to be explicit or direct. If residents in these areas felt that they had no choice but to leave in order to save their lives, then their displacement may still qualify as forced, or as deportation if all the elements of the offense are present. The key issue is whether they were able to exercise genuine voluntary choice and, if not, what was the source of the explcit or implicit coercion. Unfortunately, there were a limited number of witnesses who were able to testify in detail to this matter and the fact finding process by itself did not justify reaching definitive conclusions.

4) Strengths and Weaknesses of the Evidence on the "Systematic" Element

The Commission received a wide array of information in its Fact Finding that was pertinent to factors relevant for the determination of the systematic violation of human rights. The Commission first considered whether the victims in the 14 priority cases could have been systematically targeted. Testimony given to the Commission about the Passabe case, the Ana Lemos case,[103] and Mario Gonçalves case[104] among others provided substantial evidence of systematic selection of victims. The Commission next considered whether the perpetrators of these attacks were operating within an institutional context which provided organization, planning, direction, or physical resources that assiisted in the commission of these crimes. Evidence suggested that the processes of forming, funding, and supplying the militia organizations provided evidence of highly organized activity that indicates that the conduct of these militias was not random or spontaneous.

This indication was supported by consideration of whether the actual attacks conducted by perpetrators were carried out in a systematic manner. The Commission received convincing examples of coordinated joint operations between militia and TNI. Some of these operations were conducted in an organized manner to achieve specific objectives. These factors also provide indications that the attacks against civilian populations were systematic rather than isolated or random.

Throughout this analysis the Commission has noted the difficulty it had in receiving sufficient and balanced testimony in the fact-finding process (particularly the Public Hearings) in order to make independent conclusions about systematic perpetration of human rights violations. The limited number of witnesses, and the time limitations placed on both their testimony and the period for clarification,

103 Aliança Gonçalves, Interview with CTF, 18 April 2007; and CTF Public Hearing III, 3 May 2007.

104 Mario Gonçalves, Interview with CTF, 23 September 2007.

hampered the Commission's ability to obtain sufficiently detailed, credible, testimony or corroboration from independent sources so as to justify defintive conclusions on the basis of the Fact Finding alone. Of course the limitations of the evidence obtained in fact finding made themselves felt to differing degrees in regard to different issues. For example, the collection of testimony and supporting documentation regarding supplying weapons to militias, and their systems of managing weapons, provided very substantial evidence on this important issue. In sum, however, the indications from analysis of the fact finding on the systematic element may be best viewed as confirming or corroborating the much more substantial body of evidence analyzed in the Document Review rather than as an independent basis for conclusions.

Pro-Independence Crimes and Institutional Responsibility

During its Fact Finding about the 14 priority cases, the Commission also heard reports of other attacks that were alleged to have been perpetrated against pro-autonomy supporters by pro-independence groups.

[Redacted] said to the Commission that Falintil conducted two operations in 1999. One of these operations occurred close to Laklubar and the other close to Laleia. He told the Commission that at that time he instructed the Falintil Commander, Taur Ruak, to order all Falintil soldiers into cantonment, and not to move or conduct any activities. He explained the purpose of cantonment was to avoid any accusations that Falintil had provoked violence during 1999. By virtue of his position he was in a position to have knowledge of operations conducted by his subordinates, though the precise source of his information was not specified.

Kusparmono Irsan (former member of KPS) also discussed one of these incidents with the Commission during the Public Hearing in Jakarta. He stated the younger brother of F.X. Lopes da Cruz, Belarmino Lopes da Cruz, was shot dead by Fretilin [sic]. That incident, in his opinion, led to an even more violent turmoil, so at the time KPS consulted with Danrem and Kapolda to discuss what efforts could be made to contain the problem, and enforce the rule of law.[105] The Commission notes that these two witnesses attributed Belarmino Lopes da Cruz's murder to different groups, and each attributes the death to the party which best serves their interests. Therefore, although they corroborate each other in regard to the murder having been committed, a question remain as to the organizations that were involved.

The Commission received additional reports of alleged violence by CNRT and other pro-independence groups, which may, or may not have included Falintil, or Fretilin.[106] One weakness of these statements to the Commission is that the reports are not specific about the details of these instances, particularly with regard to the perpetrators' identity and their institutional affiliation. However, the Commission deems these allegations serious enough to consider their content.

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105 Koesparmono Irsan, CTF Public Hearing II, 4 May 2007, Jakarta, 3

106 Domingos Alves, CTF Public Hearing IV, 24 July 2007, Denpasar, 12-13; José Estevão Soares, CTF Public Hearing IV, 24 July 2007, Denpasar, 6; Camilo dos Santos, Interview with CTF, 27 November 2006, 1

Luisa Alves de Almeida, told the Commission that on 19 May 1999 her husband was killed by pro-Independence supporters. This witness testified that while she was at her house, a group of pro-independence youth came to take the weapons of her husband, Luis de Almeida, who was a member of Kodim Baucau. Because Luisa and her husband resisted the group, her husband was killed inside the house by this pro-independence group. The group allegedly used a gun and machete to commit the murder. Afterwards this group reportedly took Luis de Almeida's weapons, and fled.[107]

This witness told the Commission that she reported this incident to Kodim Baucau and Polres Baucau. Seven days later the alleged perpetrators were arrested and the weapons of Luis de Almeida were returned to Kodim Baucau. The alleged perpetrators were then processed legally. According to Luisa, while living in Baucau, she and her husband never had any problems with other people.[108] This witness also provides a detailed, first-hand account of the violence perpetrated against her and her husband.

However, in order to reach firm conclusions about what occurred, corroboration of important allegations would have to be provided, for example about the fact that the witness admits that she and her husband had weapons and used them against the alleged attackers only in self-defense. She also did not testify specifically as to whether her husband was targeted for killing because of his connection to the Kodim or was rather killed because he resisted and the real objective of the attack was only to obtain the weapons in their house. If verified and amplified by further details, this testimony would also provide an example of an apparently targeted killing by a pro-independence group.

The pro-autonomy leader, Câncio Lopes de Carvalho, claimed that there was a series of pro-independence group attacks in his area that began in May 1998, and continued through July 1999. He reported to the Comission the following statistics in his testimony: Soro village, four cases (intimidation, terror and violence), Manutasi village, two cases of attacked and attempted abduction/murder; Mape village, three murder cases; Casa village, three cases of maltreatment.[109] In order to assess the substance of these allegations, details would have to be provided about each of these incidents. The statistics may in fact be accurate, but without detailed documentation in support of their summary allegations they have little or no value as evidence of violence perpetrated by pro-independence groups.

Another pro-Autonomy leader and member of the Mahidi militia, told the Commission that a man in his village, Feliciano dos Reis, who worked at the Koramil, was killed by a pro-independence group in February 1999.[110] Although the testimony about the alleged attack against Alves himself is based upon first-hand experience as a victim, it is not clear what was the source of his knowledge of the alleged torture of Feliciano dos Reis. Further, Alves' account of his own alleged abduction lacks the kind of detail that would enhance its credibility. These would include, for example,

107 Luisa Alves de Almeida, CTF Public Hearing II, 5 May 2007, Jakarta, 3.
108 Ibid.,2-3, 5.
109 Cancio Lopes de Carvalho, CTF Public Hearing III, 5 May 2007, Jakarta.
110 Domingos Alves, Statement to CTF, (Denpasar 23 Juli 2007), 1.

the date and location of the events, the circumstances of his abduction, the name and institutional affiliation of the perpetrators, and so on.[111]

Militia leader, Lukas Martins, Commander of Darah Merah Putih in Ermera testified to the Commission that in 1999 a pro-independence group burnt his house and village. His testimony described his house and village being burnt by CNRT, and relates this attack to the fact that CNRT wanted him to join with them, but he refused.[112] This account is also suggestive, but even more vague and general. There are no allegations as to specific incidents. There is also no specific testimony to support his conclusion as to why his village was burnt. As articulated it only relies on his belief that this was the cause, but no factual grounds are given to support that belief. This does not necessarily imply that his account is false. Whle it may or may not be factually correct, its veracity and accuracy cannot be assessed from the non-specific and vague allegations he makes.

Another witness who testified before the Commission provided corroboration of an incident of abduction by pro-independence supporters which was analyzed during the Document Review process. Kuspramono Irsan, in the Public Hearing in Jakarta, gave several examples of pro-independence crimes reported to him, including an incident reported by one of UNAMET's advisors, Colin Stewart. Stewart and his UN colleagues had reported an abduction of a militia member, Bento da Costa, and a policeman by pro-independence supporters in front of Caicoli Village office. This well-corroborated testimony supports the conclusion that these abductions were committed by pro-independence supporters targetting political opponents.The statement of Zacarias Alves, also mentioned this incident. He told the Commssion that that the weapons he had obtained for his militia members were taken after a chase of armed CNRT supporters in the Village of Asumanu. He said the chase ensued when a policeman was held hostage by CNRT.

A set of allegations about patterns of attacks against pro-autonomy supprters was also made to the Commission concerning house burnings in different areas of East Timor by pro-independence groups. For example, Liberatus Kolo told the Commission that house burnings occurred between 4-7 September in Passabe under the orders of John Tabes (CNRT). Lukas Martin during his statement also claimed that one of the commanders of Darah Merah Putih said that his house was burned by pro-independence supporters from Fukara. He claimed that they burned the villages surrounding their own village, such as Hotete and others. The witness claimed that these villagers, and the burnings were led by a commander from CNRT named Madeira.[113] Kandido Meko also told the Commission that house burnings were committed by both pro-autonomy groups and pro-independence groups. These are important allegations of apparently systematic destruction of property by pro-independence groups.[114] They need to be supported, however, by specific factual information concerning the events themselves and the source of the information.

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111 Ibid.

112 Lukas Martins, Interview with the CTF, (Hotel KingStar, Belu, NTT, 12 March 2007), 2.

113 Ibid.

114 Kandido Meko, Interview with CTF, 17 February 2007, TTU, NTT, transcript, 13-16; Armindo Soares Mariano, Interview with CTF, 14 March 2007, Oebobo, Kupang, NTT, transcript, 1. Matheus Mendonza Soares, Interview with the CTF, 24 February 2007, Tasbar, Belu, NTT, transcript, 6-7.

Manuel da Costa Tilman made a similar claim. In his statement he contended that burnings took place in Ainaro on 4 September 1999 that were perpetrated by members of both pro-integration as well as pro-independence groups. However, he only gave detailed testimony about burnings that appear to be persecutory committed by pro-autonomy supporters. Tilman said the reasons expressed by the pro-integration groups for burning the houses was because the pro-integration people saw that the houses were built by Indonesian money. He explained that houses with thatched roofs and wooden walls were set on fire straightaway, whereas those with permanent walls were doused with gasoline/diesel first, and then torched. If the owner was known to be a supporter of independence, then the inhabitants would be ordered out at gun point. When they walked out militias would say, "Ask Xanana!, because this belongs to Indonesia," and just burn it down.

A similar story was also told by a witness of burnings in Manatuto, named Lucia Soares Morais. As noted, while this account does provide specific details as to some of the events it is clearly not balanced. Crimes by pro-independence groups are noted in general but no specific information is given.

Asep Kuswani also told the Commission that before the Liquiça incident on the 4th and 5 April 1999 violence pro-independence groups burnt houses. He said some 100 members of CNRT were involved in the arson, as was reported by the leader of Mudika. After this incident, he stated, the security forces [had] attempted to reconcile the two clashing independence and factions. This statement appears to be based upon hearsay and provides no information as to the documentation provided to Asep Kuswani that might have corroborated or documented this allegation. The witness also provided no information about independent investigation or documentation of this claim.

It is difficult for the Commission to assess the value of these statements, particularly about the house burnings, because most of these reports are, at best, second-hand information. None of the testimony could provide the Commission with sufficient details to thoroughly analyze these events, particularly with regar d to institutional responsibility. For example, not only has the Commission not been presented with sufficient information about the crimes themselves, but also there has not been sufficient investigation to delineate the relationships between all of the pro-independence groups alleged in these attacks. There is therefore no basis for a thorough structural analysis in order to assign institutional responsibility. The Commission has also noted that many of these testimonies came from leaders of the pro-autonomy movement, which may compromise the value of their testimony, because they were engaged in a conflict against pro-independence supporters.

6.5 ANALYSIS OF INSTITUTIONAL RESPONSIBILITY

The analysis of the widespread and systematic elements above identified gross human rights violations committed across East Timor in 1999. This section addresses the question of what institutions are most responsible for the suffering of these victims. As discussed in the analytical framework for institutional responsibility elaborated in Chapter 5 above, the factors analyzed in regard to the widespread and systematic elements are key indicators for findings of institutional responsibility. The analysis

of these factors focuses on two questions, both of which would have to be answered affirmatively to support a finding of institutional responsibility:

1. At the operational level at which the crimes against humanity were actually perpetrated, does the evidence indicate **patterns of coordinated activity over time and in multiple locations?**

2. Do those patterns of coordinated activity reveal which institutions participated in enabling those activities to occur? That participation can take two forms: (a) institutions whose members or personnel participated directly in perpetration of these crimes; (b) institutions that provided regular and substantial support, organization, resources, direction, training, or planning for the perpetrators of these crimes?

The analysis of the widespread and systematic elements considered the factors of patterns, coordination, and geographical and temporal distribution. There is no need to repeat the discussion of that evidence here. The core of this analysis is to note where consistent patterns of participation or coordinated activity by each institution have been observed. If there is only evidence to show institutional involvement in a few incidents, but not consistently over time and in different areas, then there may not be sufficient evidence to establish institutional responsibility. Therefore, this section will only highlight the areas where evidence of institutional responsibility was significant and sustained across the different forms of testimony received.

Militias

The Commission's analysis of the 14 priority cases found that there was substantial evidence that the human rights violations enumerated in many of the 14 priority cases were perpetrated in an organized and direct manner by pro-autonomy militias that systematically targeted perceived supporters of independence. Militia were directly implicated in the commission of gross human rights violations in each of the 14 priority cases.

The Commission received several admissions from militia leaders and members that indicated that each militia group on its own, and also as an institution united under the PPI structure, was directly responsible for crimes against humanity. These admissions include testimony given by a Laksaur militia Commander, that gave information that the Laksaur milita committed the attack on the Suai Church.[115] Sufficient evidence was presented to the Commission to indicate that specific militia groups also bear responsibility for the attack on Liquiça Church (BMP),[116] for the attack on Maliana Polres (DMP), for the attack on Suai Church (Laksaur and Mahidi), for the attacks on the Carrascalão house, Bishop Belo's house, and the Dili Diocese (Aitarak and in some instance BMP), in the Lautém case (Tim Alfa), in the Cailaco case (DMP), in the Ana Lemos case (DMI), and for the attack in Passabe (Sakunar).

115 Witness F, NO ST/KKP/ATB, p. B7.

116 Aitarak members were also at the scene of the church before the attack, but the evidence in the Fact Finding process is not conclusive as to their exact nature of involvement in this attack.

The Commission received sufficient testimony, as outlined in the systematic section above, to also find that the militia groups acted as institutions and in an organized manner. As institutions, militias provided the planning, organization, support, and direction that enabled the commission of these crimes by its individual members. Sufficient evidence was uncovered in the fact-finding process to document the militia's supply incentives (promised payment of money, food or other services), equipment, training, orders and direction and logistics.[117]

Military, Police and Indonesian Civilian Institutions

The Commission received a significant amount of testimony that suggests that members of the military directly participated in the commission of human rights violations.

From the 14 Commission priority cases, TNI members were allegedly directly involved in the following cases:

- Sergeant Tome Diogo allegedly leading the BMP militia attack on the Liquiça church complex.
- Sergeant José Mateus allegedly involved in the attack to the house of Manuel Carrascalão.
- TNI members from Kodim and SGI in Maliana allegedly involved in civilian killings in Cailaco.
- Sergeant Anton Sabraka allegedly leading the attack on Tumin, Quibiselo in Passabe with the Sakunar militia. Anton Sabraka and the Sakunar militia also killed 65 Passabe civilians in Nainaban.
- Members of Battalion 745 troops allegedly causing the disappearance of Anacleto da Silva and killing civilians on their journey from Lautém to Dili.
- Lieutenant Sugito, Danramil Suai, allegedly leading the attack on the Ave Maria church in Suai.
- Sergeant Simão Correia and Sergeant Luis dos Santos allegedly killed Mau Hudo in Sanirin, Atabae.
- Sergeant Melky and Hilario allegedly raped and killed [redacted].
- In the attack against the Dili Diocese, residence of Bishop Belo in Dili, attack to the Maliana Polres and cases of forced displacement, TNI and Police officers were present before during and after the acts but did not do anything to prevent the militias from attacking civilians at those three locations.

Although these allegations do not always completely clarify these individuals' roles in these events, the multiple, detailed descriptions (often including the exact date, time, names, ranks, uniform, and physical descriptions of the personnel) of TNI involvement in many different attacks in locations across East Timor in 1999, lend strong credence to the interpretation that TNI personnel participated, and some times played a leading role, in a number of the 14 priority cases. While a good deal of the testimony from the fact finding process relevant to these conclusions is credible and suggestive, in most cases further evidence would be required to reach definitive conclusions as to institutional responsibility.

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[117] For discussion of provision of funding, training and weapons, see Chapter 7, subsections 1 and 2. See also Chapter 5 for analysis of other forms of support and incentives for militias.

The military, as well as the Police and the Civilian government, are also implicated in a number of testimonies as indirectly participating in enabling the commission of human rights abuses. Indirect participation most often seems to have taken the form of providing various kinds of support to militia groups. In addition to the testimony analyzed above about funding, the supply of equipment, and joint or coordinated TNI activities with the militia, there are also indications that the military, police, and also the civilian government could be responsible for encouraging, facilitating, or indirectly supporting the pro-autonomy militias. These forms of support allegedly occurred through the structural vehicle of the Muspida and also emerged in the testimonies explaining military, police and civilian official's presence in various mass rallies held by PPI,[118] including the mass rally held by Aitarak in April 1999 in Dili.

The Commission heard testimony from a former senior Police Commander that directly addresses this matter. He gave the explanation that this presence (at militia events) only went as far as a ceremonial matter, and was more moral in nature, such as when an official is invited to a *sunatan* (traditional circumcision ceremony). This Police Commander did not indicate any relation of a structural nature in the chain of command between militias and the security apparatus.[119] The testimony reviewed above concerning the provision of weapons and financial support for militia groups was especially strong in suggesting institutional responsibility. While there was testimony that contradicted this interpretation, that testimony was found to be weaker and less credible.

The evidence reviewed suggests that these various forms of support discussed above were the product of the close cooperative relationship that had developed over time between TNI local garrisons and the leaders and personnel of militias and paramilitary civilian defense groups. The nature of this relationship also made it difficult for the the Indonesian and Timorese institutions to disassociate themselves from each other and from their common political cause when obligated to do so under the 5 May Agreement.

In its analysis of the testimony it received above the Commission noted that there were indications that some officials of the Indonesian civil administration could have participated in the process of the formation, funding and arming of pro-autonomy groups, namely, FPDK, BRTT and PPI-militia. There are also indications that government officials and Public Service employees were involved in acts of violence in their capacity as members or commanders of PPI-militias.

Analysis of Efforts by Institutions to Prevent or Stop Violence

There was a great deal of conflicting testimony alleging on the one hand that the military and police failed to intervene or take effective measures to prevent violence and, on the other hand, that the military did all that it could to do so.

Institutional resposibility was attributed in some testimony to the failure of the military and police to take adequate measures to prevent or stop human rights

118 Simão Lopes, Interview with the CTF, 14 April 2007, TTU, NTT, 1-2.

119 Witness B, CTF Closed Hearing, 31

violations of which they were aware. Allegations of institutional responsibility based on an institution's failure to prevent human rioghts violations for all three of these institutions were included in the testimony of, among others, Bishop Belo,[120] Emílio Barreto[121] and Adelino Brito.[122] Whether adequate measures were taken to stop the violence was a contentious issue among those who testified before the Commission. Another witness who testified to the Commission felt strongly that there were acts of omission on the military's part. In his testimony he explained:

> Therefore, as I said, in detention in [redacted] [we] always were subject to obstacles and difficulties from the Indonesian security apparatus, so Ian Martin often went there. I also met with [redacted – Indonesian military commander]. I also met with high officers from the Department of Defense. We often talked about this, but always felt that [redacted], he always said that it was very difficult to tell the Timorese who used to help them in the past to stop all the actions, to accept the results of the ballot, because they already had this relationship that they must acknowledge, accept, and they cannot, and they cannot just cut off that relationship arbitrarily. [...] [redacted] himself, everytime he went to [redacted], he'd say, [redacted], don't forget, on our side we also have many who died or perished there. Their families, we still have many people who are still loyal to us. We cannot, in very difficult times such as this, we cannot order them to stop. They respect, ah, they seem to appreciate what these militias were doing, but my analysis is just a justification to encourage militias to continue their actions.[123]

However, other sources, such as Asep Kuswani, explained that the presence of the security apparatus, including the military, at the scene of the attack on Liquiça church compound was a valid effort to deal with incidents in order to prevent even more victims.[124] Consistent with Asep Kuswani, Noer Muis also stated that the presence of his members at the residence of Bishop Belo before the incident was on his orders to the Dandim to secure the masses gathered there. On this basis Noer Muis rejected the claim that he had allowed the attacks to take place at the Dili Diocese and the Residence of Bishop Belo.[125]

However, many witnesses offered detailed testimony of specific instances where military or police personnel did not make due efforts to intervene during an attack. For example, in the case of gender-based violence, one of the victims named Esmeralda dos Santos stated that at the time, she and her three friends named

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120 Bishop Carlos Filipe Ximenes Belo, CTF Public Hearing II, Written Statement, 5.

121 Emílio Bareto, CTF Public Hearing I, 4.

122 Adelino Brito, CTF Public Hearing II, 30 March 2007, 3-4.

123 Witness D, CTF Closed Hearing, 6: "Oleh sebab itu saya sudah katakan dalam di tahanan di [redacted] selalu mendapat tantangan-tantangan atau kesulitan dari pihak pertahanan keamanan Indonesia, karena Ian Martin sering ke sana. Saya juga ketemu dengan [redacted]. Saya juga ketemu dengan perwira tinggi-perwira tinggi dari Departemen Pertahahan. Sering kami bicara tentang hal ini tapi selalu merasa bahwa dari [redacted], beliau katakan bahwa sulit sekali untuk mengatakan kepada orang-orang Timor yang dulu membantu mereka untuk menghentikan segala aksi untuk dapat menerima jajak pendapat, karena sudah ada hubungan yang harus mereka akui terima dan mereka tidak boleh dan tidak boleh mereka semena-mena memutuskan hubungan itu [...] [redacted] sendiri tiap kali pergi ke Salemba, beliau katakan,"[redacted] jangan lupa kami memiliki di pihak kami juga banyak yang tewas atau gugur di sana. Keluarga mereka, kami masih banyak sekali orang yang masih loyal kepada kami. Kami tidak bisa, pada saat-saat yang sangat sulit atau siap seperti ini, kami tidak bisa memerintahkan kepada mereka untuk berhenti.' Mereka menghormati ah mereka sepertinya lebih menghargai apa yang dilakukan oleh para milisi ini, tapi analisis saya itu hanya sebuah justifikasi untuk mendorong milisi tetap melakukan aksi-aksi mereka."

124 Asep Kuswani, Public Hearing IV, 4, 10, 15.

125 Noer Muis CTF Public Hearing III, 19.

vvictim A, victim B, and victim C, were raped for one week by the militia at SMP 2 high school in Suai. This rape was committed in front of many people, by armed perpetrators while TNI and Police were acting as "guards" to the group of refugees.[126] In the case of the alleged rape and killing of [redacted], as related by Aliança Gonçalves, Sargeant Melky and Sargeant Hilario could be implicated in the event.[127]

Early in its Document Review process to prepare for the hearings, the Commission reviewed a telegram addressed to Kodim Commanders in all East Timor. In this telegram the Danrem 164/WD ordered the Dandims to pull in weapons from Ratih, Kamra and Mahidi. The telegram stated that for the occasion of the visit by UN Human Rights Commission, and referring to incidents of violence involving the three groups in Baucau, Ainaro and Suai, it is ordered to all Dandims to pull in weapons from these groups and to only use the weapons during special operations.[128] The telegram refers specifically to three cases in three districts (Baucau, Ainaro and Suai).

According to Adam Damiri, additional efforts to prevent the use of automatic as well as assembled weapons were made by pro-autonomy groups following the Peace Agreements of 21 April and Dare II Meeting on 18 June 1999. According to Damiri, the terms of the agreements negotiated at Dare II were later adopted during the cantonment of Falintil and disarmament of pro-autonomy groups.[129] In Damiri's view the weapons withdrawal ceremonies were attended and supported by the government apparatus, including the TNI, UNAMET and KPS (the bilateral Commission formed at the recommendation of General Wiranto). At that time, all armed pro-autonomy groups were supposed to have handed in their weapons, so that militias would no longer have access to arms. However, Eurico Guterres in his testimony to the Commission, stated that the weapons collected were not taken to the Police Headquarters of Indonesia or UNAMET Headquarters, but were housed in Aitarak Headquarters in Tropikal, Dili.[130] According to Eurico, at a later stage, his men took and used those weapons.[131]

Witness AX also told the Commission that there were efforts to withdraw weapons. He stated that according to the orders by General Wiranto, the Commander of ABRI, in June 1999, in order to create security and stability prior to the Popular Consultation, all weapons had to be stored or put in cantonment. He allegedly attempted to implement these orders by ordering all of his militia members to collect their weapons. He claimed that at that time [redacted] members managed to collect 251 automatic weapons, and there were even more homemade weapons. However, those arms were not collected at the TNI armory, but were housed in the [redacted] storage area. As a result, Commander A explained that those weapons could be taken out and used again. He told the Commission that he did not return the weapons to TNI until he was already in West Timor.[132]

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126 Esmeralda dos Santos, CTF Public Hearing II, 2-3,8; Interview with CTF, transcript, 1.

127 Aliança Gonçalves, CTF Public Hearing III, 3.

128 Lihat TR/41/99, Klasifikasi RAHASIA, Dari DANREM 164/WD kepada DANDIM 1627 S/D 1639 Tembusan: PANGDAM IX/UDY, DANREM 164/WD sebagai laporan, IRDAM IX/UDY, ASINTEL, ASOPS, ASTER KASDAM IX/UDY, DAN SEK A/B, DAN SAT GAS TRIBUANA dan PARA KASI KOREM 164/WD, tertanggal 28 Januari 1999. CTF Archives, Document #: G0251/SCU/No. 4.

129 Adam Damiri, CTF Public Hearing II , 15-16.

130 Eurico Gutteres, CTF Public Hearing II, 24. For further documentation on this issue see Chapter 7.1.

131 Ibid., 10.

132 Witness A, CTF Closed Hearing, 10.

It is not clear from Witness AX's testimony why or how he would have had access to knowledge about TNI orders regarding weapons withdrawal. It is possible he is referring to Wiranto's support of the KPS disarmament measures, or alternatively, that he was in a direct subordinate relationship to the TNI, and received these orders from a superior. Therefore, the degree of accuracy of the testimony about these orders can not be ascertained. However, it can be noted from this group of testimonies that at some points during the conflicts militias, the military, the Police, the UN and the government via the KPS were involved in institutionally managed processes to control and contain their weapons. However, by some of the militias' own admissions they did not contain them in a permanent or effective manner. This lack of effectiveness to prevent and control the use of arms can be seen from the widespread, and systematic use of firearms and other weapons to commit human rights violations throughout the period of conflict in 1999.

Adam Damiri, also testified before the Commission that there were attempts by the TNI to act as mediators in conflicts between pro-independence and pro-autonomy supporters, in order to prevent further violence. He gave as an example the case of the attack on Liquiça church. He told the Commission that the pro-autonomy groups who came to the church compound asked Iptu Dafa and Lieutenant Johanis Rea to act as liaisons to negotiate with the Church. The pro-autonomy group was asking that the head of Dato village be handed over to "be processed by law," but Father Rafael dos Santos refused. Father Rafael, according to Damiri asked that Jacinto dos Santos be taken under the escort of Muspida to Polda Dili. In view of the failing negotiations, Damiri claims that two platoons of Polri, including Brimob, and a platoon of TNI was prepared as a shield between the two groups. He claims that the Police were overcome by masses of people, and a TNI was injured in his efforts to prevent further violence. He also claimed before the Commission that rescue efforts were made to help two pastors and several nurses. However, Damiri's interpretation of these preventative measures has not been able to account for the reasons why it was necessary to fire on a large group of civilians in order to prevent further violence. His account is also not consistent with other witness testimony which reports coordination and cooperation between some members of the TNI and the militia groups who were attacking the church.

The Commission also heard testimony from Damiri regarding the preventative measures taken during the attack on the Dili Diocese. On this day, TNI high officers, including the Commander of TNI, General Wiranto, the Pangdam of Udayana, the Danrem of East Timor and several pro-autonomy and pro-independence figures were holding a meeting. International representatives and the UN were also involved in some of these meetings on this day regarding measures to stop hostilities. After escorting the Commander of TNI to the Airport, Adam Damiri received a report trhough the Danrem that there had been an incident at the Dili Diocese. At that time Pangdam IX instructed the Danrem:[133]

133 Tentara Nasional Indonesia Angkatan Darat, Komando Daerah Militer IX, Udayana, STR/551/1999, 5 September 1999, CTF Document #: G0032/Kejagung/No. 14, p. 2.

"• Stop all riots comma sporadic shooting comma looting etc
- Prioritize security of unamet personnel in dili and in the regions comma vital installation that exist comma (airport comma navy base comma electric utility comma telkom comma rri [radio of RI] comma tvri [television of RI] comma water utility and pertamina [state oil company]
- Urgently organize existing units to oversome the situation
- Watchout for and arrest provocators [sic]
- Unit commanders to control and monitor members comma prevent destructive actions
- Announce curfew through tvri and rri
- Request immediate assistance when needed for the purposes of restoration [of order]"

However, the Commission did not receive sufficient information in its Fact-Finding process to know to how these orders were implemented.

In the case of the attack Bishop Belo's residence on 6 September 1999, the Commission heard evidence that it was only due to the request to remove protective measures that an attack occurred. Because it was deemed a dangerous zone, one platoon has been sent previously from Brawijaya Battalion led by a captain to secure the house of Bishop Belo on the request of Bishop Belo because of the many pro-independence refugees gathered there. However, this testimony alleged that it was on Bishop Belo's own request that the troops were withdrawn because a mass was to be held. In fact, when the attack took place, TNI troops had been withdrawn. After the security apparatus arrived, Bishop Belo was rescued.[134] It is not clear from this account however, if alternative measures were taken to prevent violence in the area, or why the response to the attack was not made in a more timely manner.

In summary, the Commission considered the conflicts between testimony alleging the failure of the TNI to prevent violence and testimony alleging various ways in which institutions acted to try to fulfill their obligations to prevent and halt human rights violations. One of the most apparent limitations of the latter kind of evidence is its failure to account for the widespread and systematic commission of crimes in East Timor in 1999 or for credible testimony concerning the direct and indirect participation of military personnel in these crimes. Another is the self-serving nature of these blanket denials of any TNI role in these events. A limitation of the evidence alleging a failure of the TNI and other institutions to prevent gross human rights violations arises from the limitations in the fact finding process itself. That is, the lack of a mechanism for corroborating such allegations or for elicitng the kind of detailed, specific, and factual evidence that could support their credibility and accuracy. Thus, while a good deal of the evidence is credbile and suggestive, it is often not sufficient in itself to establish the conclusive truth about the events and institutions in questions.

134 Adam Damiri, CTF Public Hearing II, (Jakarta, 30 March 2007), 14-15.

Summary of Institutional Responsibility

In Chapter 5, the focus of the analysis was determining institutional responsibility through evidence which was compiled mostly about the operational level of institutions' actions. In this present section of the report the Commission examined patterns of operational level evidence, but also conducted interviews with and sought the participation of leaders and experts of each institution to hear their perspectives on institutional responsibility. The purpose in gathering this additional contextual information was to ensure that all parties in the conflict were heard and their perspectives considered in a balanced way. Furthermore, this contextual information regarding institutions' perspectives can assist the Commission in identifying the most effective corrective measures to recommend in order to prevent future human rights violations. Therefore, adding this additional layer of testimony regarding context and institutional responsibility, can be considered one of the procedural strengths of the fact finding process. In its implementation, the Commission could have benefited from more specific information, including documentation of orders or plans provided by witnesses, about preventative and punitive measures taken by their institution throughout the period of 1999.

The sum of the testimony received in the truth-seeking process points clearly to the institutional responsibility of the militia groups. It also provides a basis for indications of both direct and indirect involvement by military institutions. The indirect supporting role of civilian authority structures has also been noted. In order to make definitive findings the analysis of the more extensive and detailed evidence obtained through the Document Review will have to be compared with the evidence obtained during fact finding. This will be the task of Chapter 7. At the end of the chapter a table may be found that illustrates the types of the testimony considered in this chapter and which has provided the basis for these conclusions regarding institutional responsibility (see Table 3).

CHAPTER 7

COMPARATIVE ANALYSIS OF THE RESULTS OF THE DOCUMENT REVIEW AND FACT FINDING

The aim of this chapter is to illustrate the analytical process, and factual basis that shaped the Commission's determination of the nature and extent of human rights violations in 1999 and the corresponding institutional responsibility. The two previous sections of this chapter have summarized the two mechanisms the Commission has used in implementing its mandate to establish the conclusive truth in regard to the commission of gross human rights violations and institutional responsibility. This concluding section illustrates the comparative analysis the Commission engaged in to evaluate and synthesize the results of the Document Review and Fact Finding process. It focuses on key issues as examples of the methodology used to weigh the evidence and conclusions from Chapters 5 and 6 in order to make findings on whether gross human rights violations occurred in East Timor in 1999 and whether there was institutional responsibility for such violations.[1] Those findings will be set out in Chapter 8.

The conceptual framework for making such findings has been elaborated above (Chapter 3.2). The key issue to first be addressed in that conceptual framework involves whether there was an attack against a civilian population and, if so, whether that attack was widespread or systematic. If there was a widespread or systematic attack against a civilian population and that attack involved acts such as murder, persecution, rape, deportation, or other kinds of inhumane treatment, then it can

[1] The analysis in this section, as in preceding ones, will refer to certain pro-autonomy, armed civilian groups as "militias." This terminology follows the Indictments and Judgments of the Indonesian Ad Hoc Human Rights Court and the findings of the KPP HAM Final Report. Organized pro-independence groups, both armed and unarmed will be referred to simply as "pro-independence groups." See Glossary for further explanation.

be concluded that gross human rights violations occurred. The existence of an attack against a civilian population can be dealt with fairly briefly because of the congruence of the evidence from the various parts of the document review and from the Commission's Fact Finding process. This evidence also clearly reveals the widespread and systematic nature of the attack and of the various kinds of crimes that constituted parts of that attack. The more complex question concerns institutional responsibility. Here the key issue is whether gross human rights violations were committed in a patterned, organized, and systematic manner that sufficiently links them to particular institutions so as to ground findings of institutional responsibility.

7.1 GROSS HUMAN RIGHTS VIOLATIONS: THE EVIDENCE FOR A "WIDESPREAD OR SYSTEMATIC ATTACK AGAINST A CIVILIAN POPULATION" IN EAST TIMOR IN 1999

The vast majority of the evidence revealed in both the Document Review and the Fact Finding process strongly agrees that there was a widespread attack against a civilian population in East Timor in 1999.

First, there was sufficient congruence between the results of the two research processes to show that there was an attack against a civilian population. All four bodies of documents examined in the Document Review, as well as the testimony obtained in the statement taking and public hearing processes uniformly acknowledged attacks against civilians that included such events as the attack on the Liquiça Church (Liquiça district), the attack on Suai Church (Covalima district), the attack on the Carrascalão house, the attacks on the Dili Diocese and Bishop Belo's house (all Dili district), the attack on clergy in Lospalos (Lautém district), the killings at Passabe (Oecussi district), and illegal detentions carried out by all sides to the conflict. These attacks included acts of murder, torture, rape, deportation/forcible transfer, and destruction of property.

Second, the dispersion of these attacks across multiple districts is evidence of a geographically widespread attack. The Commission considered confirmed reports of human rights violations from every district in East Timor in 1999, and multiple sub-districts within each district. As only a few examples, the Commission reviewed credible reports of human rights violations from every sub-district in Bobonaro, Covalima, Liquiça and Ermera districts. The evidence also consistently showed that the attacks were temporally widespread, because the Commission reviewed credible evidence that indicated human rights violations occurred in every month of 1999 relevant to the Commission's mandate. There were obvious temporal peaks of violence that occurred in April, and following the announcement of the results of the Popular Consultation. Taken together, the evidence discussed at length in Chapter 5 and 6 above clearly can support findings that gross human rights violations occurred in East Timor in 1999.

7.2 INSTITUTIONAL RESPONSIBILITY: THE EVIDENCE FOR THE SYSTEMATIC AND PATTERNED PERPETRATION OF GROSS HUMAN RIGHTS VIOLATIONS IN EAST TIMOR IN 1999

Because of the bulk of the available evidence from the Document Review and the Fact Finding phase of the Commission's work, it is impossible to review all of that evidence comprehensively in this Report.[2] Instead of briefly summarizing every aspect of the evidence relevant to the issue of the systematic and patterned perpetration of gross human rights violations, this section selects several key factors relevant to findings of institutional responsibility and comparatively analyzes the evidence for them from the Document Review (Chapter 5) and the Fact Finding (Chapter 6) in depth. This will provide much clearer insight into the nature, strengths, and weaknesses of the evidence and the analytical process the Commission employed to evaluate it and reach its findings.

Organized Provision of Weapons

Provision of weapons to perpetrators of violence against civilians may provide one of the clearest examples of material support for the perpetration of gross human rights violations because this particular kind of material support is often so closely linked to the actual commission of crimes.[3] When that provision of weapons is carried out over a significant period of time and in a systematic and organized manner it provides a sound basis for a finding of institutional involvement of a substantial enough nature that it suggests institutional responsibility for the crimes perpetrated by the recipients of those weapons. The analysis of the provision of weapons is also useful because from an evidentiary standpoint, the funding, supply, distribution, control and use of weapons is one of the most tangible and well-documented issues identified by the Commission. The Commission received varying testimonies with regards to weapons supply and distribution in the Fact Finding process. The evidence analyzed in the Document Review process, as well as information provided by witnesses during the Fact Finding process, enabled the Commission to reach clear findings regarding the provision of weapons.

In the Hearings process, at least five different militia groups' leaders from different geographic areas told the Commission that either they were personally supplied with weapons by the TNI, or commanders of other militia groups were supplied with weapons by members of the TNI.[4] Another witness provided information to the Commission that militia members, especially those who were or had been military

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2 The two reports prepared by the Commission's Expert Advisor and his research team together comprise more than 700 single-spaced pages and several hundred pages of appendices. These two reports analyze the most important evidence from the four bodies of documents comprising the subject matter of the Document Review. See Report to the CTF and Addendum to Report to the CTF.

3 Civilians were prohibited from carrying firearms in East Timor in 1999. In Indonesia there are strict gun ownership laws which prohibit civilians from owning weapons without special government approval.

4 Joni Marques, CTF Public Hearing V, 13; Mateus Maía, CTF Public Hearing II, 6-7; Adão Salsinha Fubo, Interview by CTF, 27 January 2007, Belu, NTT, Recording #: 00A/ST/KKP/ATB, CTF Archives, Statement Taking Form, p.B1, p.3; Witness YY, "We were not armed (only used kelewang). It was Danyon [battalion commander] and Danki [company commander] who were armed with modern weapons. Those weapons were given by [a member of] ABRI whom I did not know. They were Javanese." Interview by CTF, transcript, 3; Commander B, Interview with CTF, transcript, pp. B2, B4, 5.

members, were allowed to borrow weapons.[5] Several other witnesses provided information to the Commission that showed as militia members, or pro-autonomy leaders, their use of weapons was monitored, or controlled by the TNI.[6] Furthermore, a number of witness testimonies alleged that TNI, often working together with militia members, used automatic weapons in the course of committing human rights violations.[7] However, other witnesses, including those who served as active, high ranking, TNI officers and paramilitary commanders in East Timor in 1999, contended that weapons were not given to the militias by the TNI.[8] Other witnesses testified as to how individual militia members had obtained weapons from the capture, or confiscation of weapons from Falintil prior to 1999.[9] Witnesses explained to the Commission that weapons used by the militia groups to commit human rights violations in 1999 were left over from the Portuguese era, or were home-made weapons that were created by the militia members themselves.[10]

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5 Mateus Maía, CTF Public Hearing II, 7.

6 Ibid.; See also José Estevão Soares, CTF Public Hearing IV, Written Statement, 8: : "It was only in August 1999 than he [SGI Commander Yayat Sudrajat] called me to his post in Colmera, and through his deputy commandet, witnessed by two Aitarak militia members led by Eurico Guterres, I was handed an SKS firearm with 5 bullets, while advising me to keep it a secret and not to use it except for self defense." Adão Salsinha Babo, Interview with CTF, B1, 3; Fransisco Lopes de Carvalho, CTF Public Hearing V,, 14-15; Mateus Carvalho, CTF Public Hearing I, 7-18. He explained he and his group requested weapons from the Kodim for self protection and received loaned weapons from them. Câncio Lopes de Carvalho, CTF Public Hearing III, 18-20. Cancio Lopes de Carvalho explained to the Commission that he recalled all weapons from his members for cantonment because of an order issued by high leaders in the TNI.

7 Esmeralda dos Santos, CTF Public Hearing II, 2: "The militias carried swords while TNI carried automatic arms. I knew exactly some of those TNI members. The others were also TNI members but I did not know their names and almost always [sic]. That is why we sought refuge to the church [...] I personally saw them using the automatic and homemade weapons and swords. One of Laksaur militias shot first at the time and he had been jailed and now he is free. His name is Joanico. After the attack, I, including my other friends, were taken by the militia, TNI and Police, [to the]Kodim. [The one] who ordered [that we] must [be taken] to Kodim was a TNI member." Marcus Baquin, CTF Public Hearing V, 9. He explained that one TNI member participated in the attack using a firearm, while the militias with him used samurai swords: "So that night what I saw was that all of these Besi Merah [militias] carrying samurai [sic] swords with them. So at the time I saw that the militias and their leader, Gabriel Colo, all of them carried samurais [sic]. Only Anton Sabrangka [sic] had a firearm, a rifle." Agosto Dato Buti, CTF Public Hearing, 2 May 2007, Jakarta, 4. He stated that an M16 that was being used to kill Mau Hudo was carried by Simão Correia who was wearing an Aitarak Tshirt. The witness stated that during this operation, he saw Correia together with a group of TNI and militia members. Florindo de Jesus Brites, CTF Public Hearing I, 4-5. Manuel Ximenes, CTF Public Hearing I, 10-11.

8 Noer Muis, CTF Public Hearing II, 7; José Estevão Soares, CTF Public Hearing,6: "We did not have weapons like SKS, like M16, and so forth. But if you want to say that the military itself was behind it, supporting, that's something else. In 1975, yes, but in 1999 it was no longer like that at all."Adam Damiri, CTF Public Hearing II, 30 March 2007, Jakarta, 9: "And TNI had never and would never at the time have given weapons to them [pro-integratio militia]. Because by the time the Popular Consultation was about to be held, the TNI armory, I ordered the Danrem to secure all weapons." Edmundo da Conceição Silva, CTF Public Hearing II, 27 March 2007, Jakarta, 12: "So, if [you] ask whether we received weapons or not from TNI, [we] did not."

9 Zacarias Alves, Interview with CTF, 25 January 2007, Atapupu, Belu, NTT, transcript, CTF Archives, 3, 6; Edmundo da Conceição Silva, CTF Public Hearing II,12; Sera Malik, CTF Public Hearing II, 27 March 2007, Jakarta, 6.

10 Adam Damiri, CTF Public Hearing II, 9: : "First, Pamswakarsa, even up until the announcement of the Popular Consultation [results] still held weapons. Possible, because weapons that are in the hands of East Timorese, the source, first, they assembled their own weapons, even though the pro-integration side, well, some of it has been collected because of the Dare Agreement earlier, yeah. Second, Portugal left East Timor in 1975 leaving twenty five thousand firearms. Was it all buried? No. Must be in their hands. Be it with pro-integration, maybe with pro-indepondece, well, it's with them." Sera Malik, CTF Public Hearing II, 4-5. He claimed weapons used by Wanra, including his militia group, were left from the Portuguese era. Eurico Guterres, CTF Public Hearing II, 22-24. Guterres testified that the weapons used by Aitarak were weapons they had assembled themselves. Zacky Anwar Makarim, CTF Public Hearing II, 5: "Now about weapons, let us look at it clearly, yeah? I think as far as weapons, like Eurico, Aitarak, eighty percent they made their own, twenty percent maybe commercial weapons, organic [sic] weapons. I want us to look back briefly. The decolonization process was never finished by Portugal. Portugal ran away. It left twenty seven thousand (27,000) firearms. This is data from the Portuguese Arsenal that we obtained, yeah? Some of the heavy weaponry was sunk in the sea."

Although it may be true that some weapons were home-made by the militias, and that there could have been weapons still in circulation from the pre-1975 era, or those captured from Falintil, there is clear and conclusive evidence available from both the Fact Finding process and the Document Review to show that weapons were controlled and supplied by the TNI to militias in East Timor in 1999 in a highly organized and systematic manner.

Comparison of Witness Testimony and Documents [11]

A significant amount of evidence from the four primary collections of documents (KPP HAM, Jakarta Trials, CAVR and SCU/Special Panels), and from participants in the hearings and statement taking processes, offers credible evidence that the TNI supplied weapons which were used for the commission of human rights violations, and furthermore, the TNI had the ability to control the use and availability of these weapons.

One important source of testimony was the lengthy statement from Witness A who provided the Commission with detailed information (including specific names, dates, and locations) about how his militia received weapons from the TNI, and how these weapons were controlled by the TNI (specifically Kopassus and SGI officers)[12] throughout 1999. Although he repeatedly stated that his militia group felt the need to obtain arms in response to pro-independence attacks that mostly took place in 1998, he stated on multiple occasions that the TNI had a direct relationship to the militia in 1999, and the militia were dependent on the supply of weapons from the TNI to achieve their objectives. The value of this witness' statement was enhanced by three main factors: 1) His testimony was inculpatory; 2) He provided complete documentation to support his testimony, including his militia's weapons' lists. These lists included serial numbers, distribution dates, etc. that supported his testimony; 3) He was cross-examined to verify and test the critical points regarding weapons in his original testimony.

For example, one of the documents he provided was a Travel Pass letter issued on 13 May 1999. In this letter signed in the name of the Commander of the military district by a member of the Administrative unit (Rank: Letnan Satu), the militia Commander is acknowledged by name and as Commander of his militia group, and acknowledged as carrying a pistol with the permission of the TNI. By this point in 1999, this Commander's militia group had already committed gross human rights violations (by the Commander's own admission) which were well known in the area and, and throughout East Timor. Yet, the TNI not only made no efforts to disarm him, they gave him permission to travel with the awareness of his armed status and an exact record of his weapon.

This letter was preceded by another letter issued on 12 May, which is copied to the Danrem and Dandim of the district, as well as the Pasi Ops, and Pasi Min of the local military command. This letter also involves travel and reveals that the purpose of Commander A's trip is to go to Denpasar, at the invitation of the Foreign Minister

[11] The Commission does not cite the source of this information to protect witness identity.

[12] Witness A, CTF Closed Hearing, 9, 18, 28, 32.

of Indonesia. Other sources of information obtained by the Commission record that there was a meeting held on 15 May 1999 at the Sanur Paradise Plaza hotel attended by the Minister of Foreign Affairs and other officials.[13] At this meeting pro-autonomy leaders and pro-independence representatives received information regarding the 5 May Agreement, in two separate closed sessions with officials from the Indonesian government. The significance of this letter is that the TNI knew that this militia Commander was traveling with his weapon, after the 5 May Agreement, and made no efforts to prevent his movements while armed, or seize his weapon.

Commander A also provided a copy of his License to Carry a Firearm (*Surat Ijin* [sic] *Memegang Senjata Api*), which was reissued on 27 July 1999, signed by another officer of the District Military Command (Rank: Letkol), and recorded the exact make, caliber and serial number of the weapon. This license also lists the carrier of the gun as the militia group's Commander, and contains a picture of the individual, so he could be easily identified. The late date of this license is significant because it shows the TNI District Military Commander's approval and his continuing failure to disarm militia members (and in this case a leader) despite recorded human rights violations and repeated agreements between the UN and the Indonesian government to try to disarm militia groups.

One of the most important documents supporting Witness A's statement is a "Handover Receipt" that shows the approval of the District military command to give 35 "Senjata Rakitans" (the "homemade weapons" referred to in other testimonies) to the Commander of the militia group on 18 August 1999. This distribution list is signed by a militia representative, a TNI soldier responsible for the armory (Rank: Sertu), and the Head of Staff of the Kodim (Rank: Kapten).[14] The late date of this distribution of weapons is particularly significant, because it reveals the organized, systematic and deliberate violation by both the military and the militias of the disarmament agreements made with the UN and the KPS. The organized quality of the provision of weapons is indicated by the formal document that records it, specifying the exact number and type of weapons, the date, the participants, etc. This was not an informal "under the table" transaction but a formal, official provision of arms.

This document is also highly significant because it indicates that this provision of weapons took place on the same date this militia surrendered its weapons in a formal disarmament ceremony. It shows after the disarmament process the TNI returned weapons to the militia. The witness' testimony supports the conclusion that the TNI re-armed the militia after they had been disarmed, because he documents specific numbers of each type of weapon (including an array of modern weapons and "senjata api"s he received and the people who gave them to him on 26 August 1999,

[13] Report to CTF, 294-299. These sources included notes taken by an Aitarak member who attended the meeting (SCU document index #:2515), and corroborating witness testimony by other individuals (including Witness Testimony, #2-1b, Case files #5/2003, p.103413. This witness stated that General Wiranto attended this meeting).

[14] All of the TNI identifying personal identification numbers are listed on these documents, but will not be revealed in accordance with the CTF's confidentiality policies and focus on Institutional Responsibility.

approximately one week after the militia had been formally disarmed).[15] In addition, during questioning, this witness was explicitly asked if he was aware that it was illegal for civilians to possess weapons during 1999, and the witness affirmed that he knew these acts were illegal.[16] These weapons were used by this militia group in post-ballot violence which included the gross human rights violations of murder, torture, illegal detention, sexual violence, forced transfer and deportation.

According to Commander A, his militia group surrendered some of their weapons to the TNI after they moved to West Timor in 1999. The Commission now possesses the documents that list the weapons that were surrendered, as well as photographs of the disarmament ceremony. However, the militia group remained active in NTT after 1999, and some of their members remain armed.[17] With his statement, the militia Commander included documentation of his members' arsenal (the remaining weapons are all modern firearms), including serial numbers, and the name of the member who has retained each weapon as recently as 2005.

In summary, these documents show that the militia possessed these modern military firearms before they came to West Timor in 1999, that is, during the period in which they were involved in gross human rights violations. The disarmament ceremony and the retention of certain numbers of weapons by this militia indicates the close cooperation between the militia and the TNI and the degree of control that can be exercised by the TNI over the supply and provision of weapons.

Other evidence obtained by the Commission supports Commander A's testimony and indicates similar procedures were followed with other militia groups. In addition to the testimony of the leaders themselves, the evidence includes a recording and transcription of an intercept of a radio communication between a Kopassus member and a different militia group. Among other instructions given in this conversation, the groups appear to have arranged for the pick-up of weapons left by the TNI for the militia. The Commission has independently examined the original transcript of this intercept, but has also obtained the news footage from an Australian broadcast that features its own translation and interpretation of the same intercept.[18] As an example of the quality of the evidence, the transcript made for the purposes of the SCU's investigations and cases includes the following segment about the supply of weapons by Kopassus to the Ablai militia:

> "Transcript 27 August 1999, 5:30 pm
> K: Selamat sore 73 Merah Putih sampai titik penghabisan darah – 73% vote for red and white until the last drop of blood (code for beginning of transmission).
> M: Markas Ambon (Ablai militia Headquarters) to Kresna (Kopassus/Nagala): here is a message from 92 (commander of Kopassus by the name of Ribuana) regarding the picking up of rifles which are in Cassa. When should that be?

15 The document shows that the formal discharge from the TNI armory to the militia of the 35 rakitans occurred on 18 August 1999. The witness testimony reported a much larger handover of weapons, that included 35 guns ("senjata api") as the last item given to them by a TNI officer by the 26 August 1999. Commander A, written statement, 10 and CTF Document #: G1034/pengambilan pernyataan/1-10. It is not clear if these were two separate handovers of 35 weapons (i.e. rakitans on 18 August, then 35 more "senjata api" on 26 August) or a single handover of 35 weapons.

16 Witness A, CTF Closed Hearing, 16.

17 The Commission compared the 2005 lists with membership information for 1999 contained in the SCU archives and confirmed that there are some individuals who have remained continuously in leadership positions, and armed.

18 Daftar CD-7, Folder: AV-disk 2, #4 (Systematic Presentation clips), Clip #3, #4.

K: According to the coordination with Mahidi (militia from Ainaro) on that day, it ought to be tonight. However, yesterday I met with Mr. Bang Bang who is the commander of Suria (from Kodim) he gives the advice to be careful in order that the people of UNAMET who are watching us the whole time and who check us all the time don't find out about this at the cantonement. He suggests to do it on the 30th [because the UN will be busy then].

M: Oh, so according to Pak Bang Bang it's supposed to be picked up on the 30th.

K: 73 (meaning affirmative), but if you can pick it up before that's fine too. Once we have it in our hands, then we'll report it to him. I would say just go and get it. Mr. 92 [Kopassus commander] said to me if possible it would be good to pick it up tonight.

M: Yes, I cant go there because I'm ill. Just go and get them and bring them back. Maybe Saka and Kresna, and a commander from Kompi can go there to get it. All we have to do is coordinate with Mr. Cancio [commander of Mahidi] as commander of Region 3, so we can get those 5 rifles and bring them back tonight.

K: Affirmative. Discussion about campaign in Dotik [not yet transcribed].

M: So please just let Mr. 92 know that we will go there [Kassa] tonight to get the 5 rifles.All you need to do is tell Pak Cancio in order to get those ones that belong to us to return here to Sama Sama Enak [Same].

K: Affirmative.

M: Selamat malam 73 merah putih sampai penghabisan darah.

[closing] [19]

Another important feature of this radio transcript is it shows coordination between TNI and militia, but also coordination between two different militia groups – Ablai and Mahidi. Therefore, the quality of weapons distribution in East Timor in 1999 appears to be extremely systematic, and part of a plan that crosses district borders and includes multiple institutions that coordinate with each other.[20]

A TNI military telegram (Daily Report) of 19 August 1999, reported that weapons surrendered by Aitarak in a grand ceremony in Dili were actually returned to and stored at the Aitarak headquarters. After a detailed description of who was at the ceremony, and what weapons were surrendered, the telegram reports:

"On 191600 Agsto 1999 WITA [central Indonesia time] rally activity complete then Pasukan Pejuang Pembela Integrasi returned to Aitarak HQs. Weapons stored at Aitarak HQ Tropical Dili and guarded by Polri as well as UNAMET Police. (A-2)"[21]

19 Document index #3282, SCU Archives, 2-3.

20 The original tapes have not yet been located for the CTF to independently assess the quality of the translation of these intercepts. However, there are at least three different sets of transcriptions and translations of the original cassettes at the SCU, each by a different translator, in addition to the video footage. All the transcripts contain the above quotation with translations that agree on the critical point that the Kopassus and militia member are arranging for the handover of weapons at Cassa with the cooperation of Mahidi militia. Due to the Commissions's inability to examine the original source of this information in depth, these radio intercepts alone can not conclusively show the TNI armed militias. However, in conjunction with the other documents and testimonial evidence, and because multiple translations portray the same scenario, this evidence may be regarded as supporting the conclusion that the TNI, and specifically the Kopassus, coordinated to supply weapons to the militia with the knowledge that they were to be used for illicit purposes.

21 Laporan Harian R/351/LH/VIII/1999, SCU Archives, 2. "Pada 191600 Agusto 1999 wita giat upacara selesai selanjutnya Pasukan Pejuang Pembela Integrasi kembali ke Markas Aitarak. Senjata digudangkan di Markas Aitarak Tropical Dili dandijaga oleh Polri serta Polisi UNAMET." This is confirmed by testimony of Eurico Guterres and Saksi A.

The report enhances the understanding of patterns of weapons distribution and disbursement, because it shows that militias were in practice sometimes allowed to keep their weapons, even after they had been surrendered. The fact that UN Police were aware of this practice, and participated in the guarding of these weapons at the militia headquarters is disturbing. Their alleged participation indicates the UN was aware that disarmament was occurring, but was ineffective. Since there is documented proof that Aitarak committed human rights violations leaving from their headquarters with weapons in the post-ballot period, this report also means that UNAMET Police advisors were either not willing, or not able to prevent Aitarak's use of these weapons.

Other documents provide further evidence of the way in which Aitarak obtained and used their weapons. In a letter dated 26 May 1999, Eurico Gutteres requested the release from official duties of 37 policemen and civil servants to assist Aitarak in its organizational efforts.[22] He attached to this request a list of these individuals, including name, office and personal identification number. The letter is copied to the governor, Danrem, head of Parliament and the Head of the Police. The significant element of this letter is that it indicates Police could be expected to participate in Aitarak's pro-autonomy activities, despite the international agreement that required their neutrality. Furthermore, it makes preventative efforts, such as having police guard the weapons at the Aitarak headquarters above, meaningless. If members of the Police are members of Aitarak, and Police are given the immediate control of the weapons, then the overlap in membership means the militias were not effectively disarmed. This evidence indicates the participation of the Police in the activities of Aitarak and the telegram indicates the knowledge of Police that disarmament has been ineffective.

A considerable number of TNI members were interviewed by the SCU, and among these witnesses several of them gave credible testimony that confirms the control and distribution of weapons used by the militia in East Timor in 1999. The following example shows how witness testimony corroborates the documentary evidence discussed above.

A former member of Kopassus, Witness B, gave testimony to the SCU.[23] He stated that he was surprised by the assignment he received because the orders came suddenly, and were issued orally, rather than in written form. He claimed that this was the first time in his career that he had not received written orders for deployment. Before his deployment the witness was briefed in West Java by a superior officer at the Dan Yon Group I Kopassus office. He and other Kopassus members who were deployed were instructed that their assignment was to ensure that the autonomy option succeeded at the Referendum, but no further elaboration on methods and strategies were discussed.

Upon his arrival in East Timor, Witness B met with the Dandim in the area where he had been stationed. The Dandim informed the witness that his job was "to lead and

22 Aitarak Letter Nomor: #23/MK-AT/V/1999, SCU Archives.

23 Witness B-SCU, 2-7. The Kopassus member gave the SCU proof of his rank, training, and period of service in the Indonesian military, which is available in the original file to confirm his identity and position to have this information.

control a militia group,"[24] and that these orders came from the Kopassus commander in Jakarta. The Dandim went on to describe the exact role of the militias as:

> " 1. To suppress, by force if necessary, independence supporters from speaking out in promotion of the independence cause; and
> 2. To use threats and intimidation in order to convince the people to vote for autonomy. An example of the intimidation was to tell the people that they would be killed by 'pro-autonomy supporters' if they did not choose [correctly]."

On his first visit to the militia headquarters, Witness B discovered that the group had already been armed with modern weapons, including grenades, pistols and SKS, AR-16 and SP1 firearms. The witness expressed the opinion that other Kopassus members supplied these weapons to the militia. In addition, he testified that the commander of this Kopassus unit had instructed a key militia member on how to make homemade rakitans at the SGI headquarters in Dili. This militia member then instructed the rest of the militia on how to make the weapons. According to Witness B, the Kodim in this district supplied the pipes and other materials needed to assemble the homemade weapons. The witness reports that by August 1999 every rank and file member of the militia had his own "rakitan", and that the militia commanders were all supplied with commercially manufactured firearms by the TNI.

In addition to his testimony about the provision of weapons, Witness B also testified about training he conducted and military operations that he directly observed. He stated that he observed the TNI and militia engaged together in shooting attacks on pro-independence students. He claimed that he was reprimanded by one of his superior officers for not firing on the students.

In summary, Witness B's statement corroborates the other evidence that the TNI, and specifically the Kopassus and SGI, gave weapons, training, and logistical support to the militia to carry out their activities, which were known to the TNI to be violent and directed against pro-independence supporters. His testimony also indicates the systematic, organized and deliberate manner in which support was provided in furtherance of particular political goals. This is made clear by the specific directives and instructions which Witness B testified he received from the Dandim about the use of force and the threat of force to suppress pro-independence supporters. According to Witness B, the implementation of these directives involved not only the provision of weapons and training, but also extended to joint perpetration of attacks on civilians by TNI and militias. This testimony is highly relevant for findings of instututional responsibility.

At the public hearings conducted by the Commission, several individuals testified that the militia armed themselves with home-made rakitans. The testimony of Witness B and the testimony and documents supplied by Commander A indicate clearly that some militias, at least, did possess modern weapons and that these weapons were supplied by the TNI. Further, this evidence also indicates that even where the militia may have used rakitans, these home-made weapons were also linked directly to the

[24] The militia group is named as are all the Commanders, but have been redacted to preserve the witness' identity. The phrase quoted is taken from the English official version of the statement at the SCU.

TNI, as can be seen by their distribution and assistance in manufacturing these weapons for militias. The statements of witnesses who testified to the contrary were not specific, factual, and detailed like the testimony and documents just reviewed. The witnesses at the Public Hearings were also interested parties who, as their other testimony indicated, were clearly motivated to deny any connection of the TNI to the arming of militias. In reaching findings on this issue, the kind of evidence supplied by Commander A and Witness B is given greater weight. This provides an example of the limitations of the evidence obtained in the public hearing process and how the investigative methodologies of other sources could provide a fuller and more accurate picture of the nature of weapons distribution.

Other evidence also supports the testimony of these two witnesses, A and B. For example, the observations of an UNAMET Military Liaison Officer regarding this same group of militias was compiled into an UNAMET Political Affairs document that was available to the Commission via the SCU archives. This UNAMET report independently corroborates the information about militia groups' ties to TNI and the flow of weaponry, given by Witness B for this same district, Kodim and militia group.

Other testimonies given by TNI members to the SCU corroborate the provision of weapons and training of militias by TNI elite troops in other districts. For example, another witness who was a long-term TNI soldier in a different district of East Timor gave multiple interviews to the SCU regarding the relationship between militias and his commanders in his Kodim, particularly after the Popular Consultation. His testimony confirms that militias were allowed to take and use TNI firearms directly from the Kodim in the post-ballot period, without any interference from the officers present.[25]

Another group of documents (also cited in the CAVR Final Report)[26] provides further corroborative documentation on this issue. One example is a weapons list for a group of individuals under the command of Joanico Belo (Belo was a member of the TNI,[27] as well as a commander for the militia umbrella group PPI, and the commander of the auxiliary, paramilitary group Team Saka) and based at the Kodim 1628 in Baucau. This document indicates that on 3 February 1999, these individuals were armed with modern firearms. For example, the group possessed 90 weapons, including 19 G-3s, 56 SP-IIs, 10 SP-Is, a Mauser, a M-16, and other assault weapons.[28] Every person on this list, except for one, is assigned a weapon, and as the Commander, Belo received two weapons. In short, this is a well-equipped and sizeable armory for a group that is acting as an auxiliary to the military. This armory list bears the stamp of "Komandan, Komando Distrik Militer 1628", in addition to Belo's signature with the insignia "Kompi Khusus Pusaka" (i.e. Special Company, aka

25 HC55, pp. 010364-010370.

26 See, CAVR Final Report, Annex 12: East Timor 1999, Chapter 7.4, 109-113.

27 Joanico Belo, CTF Public Hearing II, 28 March 2007, Jakarta, 6. Belo explained he was assigned as part of the organic troops in 1999, but previously he was a member of Kopassus.

28 Belo explained to the Commission that only some parts of his group were armed. Of those who were allowed to use weapons he stated in an interview with the CTF: "As for weapons given to resistance elements, there was 22 arms of type SKS, M-16. Whereas those who were militarized ("milisasi") were given SP-G3 [sic], because they used Kodim inventory weapons" (3-4). The Commission notes however,that this number is siginificantly less than what is indicated was actually possessed by the group according to the weapons inventory list.

Team Saka)[29], and the heading of the Kodim, so that it is clear that the Kodim has the ultimate authority, and control of these weapons. Every individual who possesses a weapon is listed by name, rank and identification number, and each weapon's serial number is recorded. In the CTF Public Hearings, Joanico Belo confirmed that the TNI armed his group, but he also nuanced his explanation of armament by explaining that there were un-armed segments of Team Saka, as well as a militarized unit. He stated:

> "As for weaponry, it's clear already. A military man surely has a weapon. And in [Team] Saka itself there were two groups, there was militerisasi and Wanra. What I said earlier that since its genesis, after they became Saka, some were appointed to become military, some civil servants, and others still had not [sic] to this day. Became refugees, commonfolk. So that's pretty much about Saka."[30]

The existence of this list of weapons in February 1999 appears to contradict the TNI's own orders to remove weapons from auxillary groups to the professional military, such as Team Saka. According to a military telegram found at the SCU archives, the TNI had issued orders to remove weapons from Wanra and Ratih members in late January.[31] One of the reasons cited in the telegram for this order is a Team Saka member in Baucau (and other auxillary paramilitary members elsewhere) had used firearms to commit murder in late 1998.[32] These orders may have been the impetus for Belo to report to the Kodim the inventory of weapons possessed by his men. It is clear from these documents that the Kodim was fully aware of the weapons possessed by Team Saka and was in a position to exert control over their supply of weapons. Despite the order to disarm such groups, various acts of violence have been recorded in the four sets of documents as perpetrated by Team Saka members with firearms in 1999.

In the public hearings, Belo explained that his members underwent a period of cantonment in 1999, and were not allowed to have weapons. He told the Commission:

> "And, those who still were not, still as Wanra, all of them went into cantonment. So, [they were] no longer armed. And, many people know about it indeed. By the time of the ballot, we knew exactly that East Timorese usually wear a sarong, with a pouch at the front. That's usually where they put their money, tobacco, or whatever in it. In there they would also keep their ballots. What I tried to do then, I called them one by one and held their hand, and they would shake and shiver. [They'd] say, "forgive me pak, we're just small people, we know nothing." I tried then, Bishop Boko was also

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29 Belo explained that Team Saka is synonymous with "Kompi Khusus Pusaka." His testimony is as follows: "mereka mengganti namanya lagi menjadi Saka, Tim Saka, tapi yang sebenarnya adalah Kompi Khusus Pusaka nama panjangnya, tapi yang lebih dikenal adalah Tim Saka." (CTF Public Hearing II, 10).

30 Joanico Belo, CTF Public Hearing II, 2. "Untuk kesenjataan, sudah jelas. Seorang militer pasti memiliki senjata. Dan, di dalam Saka itu sendiri memang ada dua (2) kelompok, ada militerisasi dan Wanra. Yang tadi saya sebutkan bahwa dari cikal bakalnya itu setelah mereka jadi Saka, ada yang diangkat jadi militer, ada yang PNS, ada yang tidak sempat sampai dengan sekarang. Jadi pengungsi, jadi masyarakat biasa saja. Jadi, seputar itu Saka."

31 According to the telegram weapons could only be distributed for special operations.

32 G0251/SCU-2/No.4; Danrem 164/WD to Dandim 1627-1639 and others. Secret Telegram No. TR/41/1999, January 28, 1999. The Commission verified that the Team Saka member from Baucau who was implicated in the murder in 1998 does not appear in the membership or weapons lists in 1999.

> there. And we wanted to boycott the ballot then. But if we had weapons then, maybe it would have been a mess already. But, because as I said earlier, the weapons were stored already. We already came as Timorese people to cast our ballot. So, yeah, we only did [that is], tried to reprimand. Something like that."[33]

Belo's information regarding cantonment may represent a valid preventative measure, but his testimony does not explain why Team Saka members were reported as still armed and committing acts of violence in September 1999. In order to test whether these weapons in the list could have really been used to commit human rights violations, or whether Team Saka members were fully relieved of their weapons and in barracks, the Commission had the indictments, witness statements, membership lists and this weapons list matched to confirm that at least three of the members who are registered as holders of SPIIs, and one of the deputy commanders issued a G-3 on this list, were indicted for crimes against humanity, including murder, committed with modern firearms in 1999. This process again demonstrates the incompleteness of the testimony given by some witnesses at the Public Hearings and the need to collate the evidence obtained from all sources in order to test and verify such testimony.

According to the Baucau district indictment filed by the SCU, the Deputy Commander of Tim Saka, who is named on this weapons list, was also a member of the TNI. The indictment alleges that he is directly implicated in the torture of five men on 27 May 1999. The victims of torture appear to have been selected because they were pro-independence supporters.[34] On 10 September 1999, the indictment alleges that two of the Tim Saka members provided with weapons on this list and an additional TNI member called a meeting of Tim Saka and Rajawali members to plan an operation to arrest all Tim Saka members who had not reported for duty, and to take them to West Timor. The indictment states the Deputy Commander of Tim Saka told the group "they had permission from Joanico Belo to destroy all the shops and the houses in Quelicai and to kill whoever stood against them."[35]

Of course, the strength of allegations in an indictment depends on the evidence on which they are based. The Commission examined some of the supporting evidence for the indictment in the SCU files to determine whether there was any credible eye-witness testimony that Team Saka operated in this way, particularly with firearms. One of the witnesses stated:

> "On 9 September 1999, I was attending to my sick son, when suddenly I heard a loud voice calling me and demanding that I get out of my house. I went out and noticed [redacted] and [redacted][36] and about one team of Team Saka members, all in military

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33 Joanico Belo, CTF Public Hearing II, (Jakarta, 28 March 2007), 10-11. The original statement reads: "Dan, mereka-mereka yang belum itu masih dalam bentuk wanra memang semua masuk di kantonisasi. Jadi, sudah tidak bersenjata lagi. Dan, itu memang banyak orang yang tahu. Pada saat jajak pendapat, kita tahu persis bahwa orang Timor Timur itu biasanya pakai sarung, di depannya bikin kayak kantong begitu, itu biasanya ngisi uang, tembakau, atau apa di dalamnya. Di dalam situ ada tersimpan surat suara. Yang saya mencoba waktu itu panggil satu-satu orang untuk baru saya pegang tangannya, dia udah menggigil gemetar. Dia bilang, "maaf pak, ini kami orang kecil nggak tahu apa-apa." Saya mencoba waktu itu Bapak Uskup Boko juga ada. Dan, kita mau boikot jajak pendapat itu. Tetapi, kalau misalnya waktu itu kita pegang senjata, mungkin udah rusuh itu. Tapi, karena itu tadi, senjatanya sudah disimpan, kita udah datang sebagai masyarakat orang Timor yang ingin memberikan suara, sehingga ya kita hanya melakukan, mencoba untuk menegur seperti itu saja."

34 Prosecutor General of East Timor vs. Hutadjulu, 11.

35 Prosecutor vs. Hutadjulu, 13.

36 Of the two names redacted, one is a known TNI member, and the other is a Team Saka member listed in the weapons list as armed with a SP-II.

> uniform and with long firearms, surrounded my house. Further, he told me to allow them to use my truck for transport. SAKA members and their families from [location redacted], and threatened to kill me, burn my house, and truck if I did not follow orders. I drove my truck, brought them to their compound and later we all went down in convoy with four other military trucks and one blue Super Kijang [...]"[37]

This witness' statement was corroborated by a neighboring shop owner who saw and heard the same group of soldiers approach the witness. The neighbor's shop was looted by the same brigade of Team Saka and TNI members, which is corroborated by the driver in the statement above because they used his truck in the act.[38]

In another incident Team Saka members on this weapons list allegedly forcibly removed a former Team Saka member with his family and put him on the boat to go to West Timor. During this operation, carried out in conjunction with a TNI member, the Team Saka members allegedly fired their weapons at civilians and their houses, killed livestock, burnt and looted houses.[39]

In yet another incident on the same day in September, a Team Saka member that was issued a weapon according to this weapons list, allegedly approached a man and accused him of being a Falintil supporter. Then, the Team Saka member aimed his gun at the man and fired twice. The man died of these gunshot wounds. According to the indictment, this incident was reported through the operations' strict command lines via radio. First, it was reported by the Deputy Commander of Team Saka (also named on this weapons list) to a TNI member. Then, the same commander contacted Belo to inform him of the incident. The body was allegedly left in the village to be buried by its residents.[40]

It is important to note that these violent acts were allegedly carried out armed, and either in the presence of a TNI soldier, or under a TNI member's authority as is evidenced by the planning meeting, and the radio reports. Although Belo's testimony to the Commission admitted that there were some violent acts in the Baucau area that involved TNI soldiers and/or militia who were allegedly ambushed, his testimony claimed that these were not acts carried out on orders, but were incidental, and may be due to the lack of the professionalism of those individuals.[41] It is true that the Baucau area experienced some of the lowest levels of crime and destruction in 1999, which may have been due to better discipline of armed groups, such as Tim Saka, by Commanders such as Belo compared to other areas of East Timor.[42] However, these particular acts of murder and destruction occurred as part of organized patrols with clear systems of leadership during the operations (i.e. there

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37 Witness D-SCU, SCU Case files, #BA-34-00, p. 1.

38 Witness E-SCU, SCU Case files, #BA-34-00, p.1.

39 Prosecutor vs. Hutadjulu, 13

40 Ibid.

41 Joanico Belo, CTF Public Hearing II, 28 Maret 2007, Jakarta, 4. "And then another case happened during evacuation of a Saka member and Quelicai Koramil member who were taking their families to the port, [they were] ambushed in a hamlet called Kotaesi, Abafala Village, Quelicai subdistrict. And indeed, during the ambush, because they were not professionals, they were the ones who got hit. And a grenade was found and bullets. Then some of them were hit, and the weapons were taken away."

42 Belo's testimony claims that he received orders to make sure security was maximized so that there would not be burnings and destruction. "And at the time, we tried to guard and we did receive an order to guard to the maximum, no burning or killing can happen, or deaths at the time."

were recognized commanders and ranks among the participants in these operations). If these individuals were not "professional" as Belo claims, then why were these individuals permitted to participate armed in patrols for the purpose of evacuation and the protection of the civilian population? These acts of murder and destruction committed by Tim Saka members appear more likely to be systematic human rights violations conducted with the support and knowledge of their commanders and the TNI, rather than random acts of indiscipline.

One of the most significant aspects of this document and of Belo's testimony for findings of institutional responsibility is the clear overlap between military, paramilitary and militia leadership structures and membership. Belo serves simultaneously as a soldier, a paramilitary commander and a leader within the militia group for all of East Timor – PPI. He also testified to the Commission that there was overlap in the Hansip and Wanra members in his Team Saka and the PPI group. He explained:

> "Therefore, it's formation, I was the leader, yeah, I, how do you say, I got in there, because they too, the Wanra and Hansip, yeah, they got into PPI, all of them. Because, PPI, as I said, they defended their principle. Like Falintil, right? Pro-independence has Falintil, pro-integration has PPI. Fighters from 1975 to 1999 they are."[43]

From his statement here it is also clear that PPI was a group with an obvious political agenda. Therefore, it is in violation of the 5 May Agreement for him as a soldier to be a leader of a partisan militia group, and for paramilitary auxillaries (Tim Saka, Hansip, Wanra) who are tied to the TNI through Belo to be engaged in an organization that is not neutral. The fact that weapons used by Belo and his men were supplied, monitored and controlled by the TNI, and then these men joined the PPI group, provides a linkage that can support findings of institutional responsibility for the gross human rights violations committed by both Team Saka, and PPI. In summary, the TNI's support through leadership and supply of weapons, allowance and reliance on auxillary military groups, such as Team Saka, is a structural weakness which is one of the sources of their institutional responsibility for human rights violations in 1999.

Evidence from other militia groups, also used by CAVR, supports the foregoing analysis. The Makikit militia in Viqueque district in 1998 kept records of their militia members' and their stock of modern weapons. This weapons list contains the heading of the military: in this case both the Korem 164, and the Kodim 1630 appear as the heading of the document, and it is entitled, "*Daftar: nominatif Pemegang Senjata Team Makikit.*" This group of individuals possessed at least three M-16s, 35 SP-Is, and 11 Garands.[44] Unlike the Baucau list, the members of Makikit are not assigned identification numbers, or ranks. Another distinction is that this group's dates of birth are listed. Team Makikit in 1998 appears to have been comprised of mostly late, middle aged men (all members were in their 40s to 50s). Six people on the list

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43 Joanico Belo, CTF Public Hearing II, 17. "Sehingga, berdirinya itu saya sebagai seorang pimpinan, ya saya apa namanya nama masuk ke situ itu, karena mereka juga yang wanra dan hansip itu kan masuk ke PPI semua, itu. Karena, PPI ini kan orang yang tadi saya bilang membela prinsipnya. Seperti Falintil, ya toh? Pro kemerdekaan punya Falinitil, pro integrasi punya ya termasuk PPI itu, pejuang-pejuang mulai dari 1975 sampai dengan 1999 itu. "

44 CTF Document #:G0251/SCU-2/No.145, CTF Archives.

are indicated in the margins as being members of Yonif 328, a military, infantry Battalion. The listing of affiliation with the TNI on this document indicates overlap between militia and military membership. However, we have no documents that can verify that these military personnel remained in East Timor in 1999, or were not removed from these militia posts in 1999. There is no official stamp, signature, or indication of rank and/or command on the document. Furthermore, the date and location of the document are handwritten, informally across the top of the list. These features of this document could raise concerns about its authenticity.

However, cross-checking with militia membership lists for Viqueque at the SCU verified some of the information in this document. This cross-checking indicates that at least one member of the militia in Viqueque in 1999 overlaps with this 1998 list. He is the first person who appears on the 1998 list (which may correspond with a higher rank, as other weapons lists have placed Commanders' names first), and he is one of only three individuals who was issued a M-16 in 1998. It should also be noted that the SCU archive contains multiple weapons lists kept by different militia groups, including these militia groups in Baucau and Viqueque.

The BAPs from the Jakarta Ad Hoc Human Rights Court trials also contain corroborating evidence that the TNI distributed and controlled militia weapons usage. For example, Laurentino Soares (a militia member from Oecussi who is indicted for multiple counts of crimes against humanity) gave the following testimony regarding the use of weapons by Sakunar militia from Oecussi:

> "In the inauguration of PPI on 17 April, DANDIM 1639 Ambeno Leutenant Colonel Bambang gave the firearms to the Sakunar task force [namely] 3 pieces of firearms (2 SKS, 1 SF) each complemented with 10 bullets. At the time I saw there were Aitarak members holding M16 firearms. Three days later the firearms were pulled back except 1 SKS which was still held by the Commander of The Operation Task Force Sakunar Bela Menu [sic] Da Costa [...] Around September, upon the request of The Head of District of Ambeno to the Dandim 1639, the Sakunar Task Force was armed with five M -16s, five SKS 2 because the Task Force was ordered to escort the refugees... three days afterwards the weapons were returned to Kodim 1639 through Leutenant Hendrik."[45]

Although in this testimony the stated purpose of giving these weapons back to the militias, was to "escort refugees", Sakunar militia undoubtedly committed multiple human rights violations throughout the district of Oecussi in September, which did not include the safe evacuation of refugees, but rather comprised acts of killing, torture, sexual violence, forced transfer and deportation. Furthermore, with the increase in violence, after the referendum there was a clear mandate for the TNI to disarm, rather than give arms, to militia members in order to prevent human rights violations. The ability to distribute and then pull back weapons again indicates the systematic nature of the cooperation and the high degree of control that TNI units exercised in regarding to the arming and operations of militia groups.

[45] Report to the CTF, 56.

In summary, the documentary and testimonial evidence discussed above casts considerable doubt on the claim that the TNI did not supply or control the weapons of the militia groups who committed human rights violations in East Timor in 1999. This evidence from former TNI and militia members solidly corroborates the dozens of victim's statements given to the Commission and the other extensive evidence analyzed in the Document Review that indicates that weapons were supplied by the TNI to militias. Because there are multiple witnesses who have different motivations, backgrounds, locations, institutions and interests who all agree on this point and can support their opinions with specific examples such as dates, locations, weapons descriptions, and names of individuals and physical descriptions of specific members of the TNI who participated in this process, their testimony is highly credible. In addition, as seen above, it is supported by extensive documentary evidence.

It has been repeatedly seen above that the different sources of evidence available to the Commission all have both strengths and limitations. These various sources must be combined in a comparative analysis in order to reach well-substantiated findings and conclusions.

The systematic organization of the provision of weapons and of the organization and operational integration of militia and TNI activities may be traced back to the Sishankamrata system and its variations elaborated in Chapter 4 above. This system has historically encouraged close relations between local paramilitary groups and the TNI. The evidence available to the Commission indicates that local militia leaders clearly desired to be armed and approached the TNI for the provision of weapons. Although the reasons cited for armament may have included self-defense, the provision and use of these arms was clearly in violation of the law and, after the date of its signing, the 5 May Agreement. There is little or no evidence that demonstrates the weapons were used in 1999 primarily for self-defense. Rather, the evidence indicates that these weapons were used in military operations in furtherance of the objective of suppressing support for the pro-independence cause. These operations, as was seen in previous sections of this chapter and as will be discussed below, targeted civilians on account of their actual or perceived political orientation and resulted in various kinds of gross human rights violations. While social or psychological bonds and shared political goals forged over a long period of time may explain why individuals became involved in the perpetration of such gross human rights violations, they cannot justify institutional involvement in the perpetration of such crimes. The systematic provision of weapons, with the knowledge of what shared purposes for which they could be used, manifests a very strong form of institutional involvement.

Funding

The issue of how the militia groups obtained the necessary financial means to carry out their activities throughout the mandate period of 1999 has been analyzed at length in the Document Review and the Fact Finding process. The reason why this issue is important is that an understanding of the financial systems of the various institutions helps establish to what degree public institutions used State funds to systematically support militias and other groups and their activities involving human rights violations. Furthermore, in light of the Commission's mandate to make recommendations that include institutional reform, an understanding of underlying structural weaknesses is crucial.

The militia groups in East Timor, in addition to weapons, had many members, vehicles, uniforms, radios, headquarters and posts, computers and other office supplies, and the logistical means to hold events such as rallies. In other words, for the militias to function in this way, they needed money, for all of these purposes and for financial support for their members, collectively numbering in the thousands. Funding on such a scale does not appear "spontaneously." The large amount of funding and other forms of material support necessary for the militias to carry out their activities required specific, rapid, and planned disbursements across the region. The Commission has considered carefully how institutions supplied the material means by which gross human rights violations were perpetrated in East Timor in 1999 by militias and other groups.

During the public hearings the Commission received several statements from militia commanders that they received funding and other forms of material support via the Pamswakarsa system from the civilian government.[46] There has been considerable debate over whether the Pamswakarsa system can be considered synonymous with militia groups, such as Aitarak. Some civilian leaders testified to the Commission that funding to Pamswakarsa was a normal part of government activities and was not made with the intent or knowledge that it would support the activities of "militia" groups, such as Aitarak.[47] Some witnesses claimed that Pamswakarsa was a reaction to the unstable security environment that characterized 1999, and served as a government mechanism to provide safety – not to commit violence.[48] Other individuals testified that Pamswakarsa was a separate entity, but stated that some

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[46] Mateus Maía, CTF Public Hearing II, 5, 14. He explained that Pamswakarsa members were given monetary incentives each month for a period of time: "So this Pamswakarsa was formed. Now they consolidated and then they formed their group as [pro] integration [group], and then some Pamswakarsa members joined there. Not all. Ah, so this is now one's rights, I could not do anything about it. But them, as Pamswakarsa members, I paid them monthly, including the village chiefs who strayed [sic] because it had been budgeted. And this incentive, I was not allowed [sic] to continue paying it. So like the other day one of my village chiefs came to me and said, "the men are waiting and it's not there, and then I do not have a Pamswakarsa, I also did not get." So I told him, "you've been taking care/you take care yourself" [unclear without intonation] What is clear is that everyone has his right. Village chiefs are all at the same level. Actually there were only 100 members, and 150 village chiefs. Membership was on average 100. And I know the guy, [redacted], the name [redacted], ask the fat one in East Timor, whose name is [redacted]. He knows for sure, he was the one who went and distributed the money. Because he was a government administrator." Mateus Carvalho, CTF Public Hearing I, 19 Februari 2007, Denpasar, 5. He confirmed that members of Pamswakarsa (who were also members of Aitarak) received monetary incentives from the regional government: "I will answer the question about this Pamswakarsa funds. Indeed, the funds were to support each Pamswakarsa member in their respective village, because Pamswakarsa is a support force to assist with security whenever it happens in their respective locales. When they go on patrols, night watch, they must buy cigarettes, buy drinks, and so forth. And, for every man every month it was three hundred thousand (300,000), for three months." Eurico Guterres, CTF Public Hearing II, 22. He also stated all members of Pamswakarsa received incentives of Rp. 150.000 payable directly by their leaders appointed by Bupati Decree: "Those who were opposing Indonesia, how come [they own] the land, everything, yes? The car, everything, yes? Hah, we are helped with the bonus. So indeed every month we received a hundred and fifty thousand (150,000) and paid directly by the head appointed with the bupati decree. Hah, so why it happened? It is not.. not.. how do you say, my business. Who does not want money there, Pak? Every one [wants] money, especially when you're jobless. Every day, every month you can get a salary of 150,000. I'm happy, right? Hah, so about that, you can ask Pak, Pak, Domingos later. I don't know if Pak Domingos is here yet. Hah, ask him. He must know because he was the one who issued the the decree."

[47] Domingos Maria das Dores Soares, CTF Public Hearing II, 4: "Pamswakarsa is government's business. It doesn't discriminate if you want independence, or you want whatever, as long as you're Indonesian citizen you do it, ya [...] I invited everyone, 'come along. This is for the good of us all.' Whether you want independence or integration, or whatever, that is none of Pamswakarsa's business. Pamswakarsa is [there] so that you're safe in your homes. Ya, please. And.. no need to confuse it. Don't confuse it."

[48] Ibid. See also Mateus Maía, CTF Public Hearing II, 6.

Aitarak members were also Pamswakarsa members.[49] Some officials maintained that funding was made to both sides of the political campaign - pro-autonomy and pro-independence.[50] Finally, political leaders of FPDK stated that they provided funds that were distributed to militia groups throughout East Timor.[51]

These various, and at times conflicting, testimonies from the Public Hearings cloud, rather than clarify, the issue of using public funds to support militia groups and their unlawful activities. The Commission also notes that after the 5 May Agreements, the Police were the only institution with the authority to provide security measures in East Timor, and therefore funding to Pamswakarsa after the signing of this agreement would have violated its terms. Therefore, the Commission has carefully considered to what extent government officials in East Timor knew they were funding militias involved in political, and violent activities, as opposed to groups operating as neutral, security corps. This also raises the issue of why Pamswakarsa would have been supported, rather than concentrating these resources on strengthening the capacity of the Police in accordance with the 5 May Agreements. Furthermore, the Commission has examined whether this funding occurred haphazardly, or strategically, because of its violation of the 5 May Agreements, and potential links to human rights abuses. Therefore, the Commission turned to the evidence from the Document Review process to clarify this issue. This again points to the limitations of the Fact Finding process and the need to examine all of the various kinds of evidence together in order to arrive at well-supported conclusions.

The first, and perhaps most telling document is the plan for the Pamswakarsa system for Dili signed by the Bupati Kepala Daerah Tk. II Dili (Domingos Soares) on 14 May 1999.[52] The Commission notes that during his testimony in the Public Hearings, Domingos Soares explained that Pamswakarsa were given incentives on a humanitarian basis.[53] However, he denied that funds amounting to Rp. 5 billion

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49 Mateus Maía, CTF Public Hearing II, 5-6: "So, in Dili there was Pamswakarsa, and then Clandestines formed this, then Aitarak appeared. Some of these Aitarak members were also members of Pamswakarsa, because with this Aitarak group, when I would order the.. eh.. my staff would go pay, some accepted, but some protested [...] So as long as you try to pinpoint that Pamswakarsa is this, is that, no. Pamswakarsa is Pamswakarsa, but that members of Pamswakarsa as [/who were?] pro-integration members organized themselves into Aitarak, now that is true, because they are pro-integration. But they named their organization differently, as integration supporters Aitarak."

50 Domingos Maria das Dores Soares, CTF Public Hearing II, 4; Martinho Fernandes, CTF Public Hearing II, 26 Maret 2007, Jakarta, 4; Mateus Maía, CTF Public Hearing II, 8, 14.

51 Francisco Lopes de Carvalho, CTF Public Hearing V, 15: "And then, where's this money from? That money, I think Zeca [José] Estevão, Pak Zeca Estevão said this earlier. That money came from all sorts of channels, especially from ABRI also, from BRTT too. BRTT, Pak Lopes told me personally, [unclear] gave twenty three million to him. Hah, this Domingos, what, Soares gave a car, and what car, a Taft. My family never had a private car. Even the company did not have. Poor. Only a mikrolet. But it was when integration was about to end, only then we bought. Then suddenly you see militias, aih, with cars! Wow! Great! So, frankly at the Kastaf [Chief of Staff], and the [ones] from FPDK who gave them money, I don't know if it was hundreds of tens [of millions of Rupiahs]. They would know it. I wouldn't. But clearly, money was given. But from FPDK the one who gave, distributed [the funds] was Mateus. Mateus... all militias in East Timor, he held them and he was the one distributing. And, militias... frankly, they are a reincarnation of all pro-integration resistance fighters under the command of TNI."

52 A copy of the text of this document does not appear as part of the CTF's Final Report because the original contains individuals' names who were members of Aitarak, and the CTF has an obligation to uphold confidentiality.

53 Domingos Maria das Dores Soares, CTF Public Hearing II, 11: "Thank you. So five billion, huh? Indeed, I'd say that Pamswakarsa was given incentives based on humanitarian considerations."

existed for use by Pamswakarsa.[54] Therefore, the Commission finds it necessary to analyze this policy document at some length to understand the funding and support mechanisms for Pamswakarsa in Dili.

This policy document is entitled "Pengamanan Swakarsa (Pam Swakarsa) dan Ketertiban Kota Dili."[55] According to this document, the Bupati establishes a plan for the Pamswakarsa system in Dili, which would report directly to the Muspida[56] and the Bupati, with the stated objective of seeing to the security needs of the populace and developing a feeling of safety in the area of Dili. This document lays out in detail the justifications, strategies and activities intended for the Pamswakarsa, which all appear to be peaceful. There are no specific instructions regarding funding in the document, despite the extensive activities and supervisory mechanism laid out for the organization.

However, of particular significance is the part of the document, beginning on page 9, that states the names and the specific titles of the individuals who will lead the organization. The first name that appears as "Operational Coordinator of Pam Swakarsa" ("Koordinator Bidang Operasional Pam Swakarsa") is Eurico Gutteres. It was already established knowledge when this document was written that Eurico Gutteres was the leader of the pro-autonomy militia group, Aitarak. It was also widely known that Guterres had explicitly called for murderous violence against pro-independence leaders at the Dili Rally in April 1999, and that Aitarak had attacked the Carrascalão House and killed civilians after the rally.[57] However, apart from Gutteres' individual role as Pamswakarsa commander and Aitarak leader, this document clearly indicates that the Bupati assigned to Aitarak the primary Pamswakarsa duties. From page 11 on there is a long list of security groups' numbers and members' names, and the first category to appear in the list is Aitarak, with 1521 members.[58] Then, more detailed lists begin that contain information about the Aitarak companies per geographic area of Dili, which were explicitly assigned as Pamswakarsa. The titles of these lists are: "List of Company Names [A, B, C,] Aitarak Forces (Pam Swakarsa)" [Daftar Nama-Nama Kompi [A,B,C etc.] Pasukan Aitarak (Pam Swakarsa)]. This title is the most revealing aspect of the document: it denotes that the civilian government itself had devised and recorded a policy to support an armed militia group, which would be synonymous with its civilian security structure (Pamswakarsa). The document makes it clear that Aitarak was Pamswakarsa in the city of Dili. It also specifies that Pamswakarsa had to report to the Muspida, which includes military, police and civilian representatives. This system of organization thus placed both the civilian government and the military (including the police) in a direct position of authority over the Aitarak militia from the time of the dissemination

54 Ibid. "And then the five billion [rupiah], I just heard about it, yah. Or, budgeting has a long process, right Pak? So in Indonesia, the budgeting [process] has three selection [stages], from the bottom, second tier, and another selction at tier one, and then another selection at the national level here. And only then can there be a budget where it is recorded in the budget what it is used for. So if all of a sudden only five billions come out of there without a bottom up selection, I don't think so. And I just found out about this. To my knowledge, there was no such money."

55 This document was made available to the Commission by the Museum of Resistance and the SCU Archives. 'This bound document contains and consists of the text of "Surat Keputusan Bupati Kepala Daerah TK.II Dili Nomor 33 Tahun 1999."

56 Ibid., Article 4, p. 4.

57 STR/200/1999, 18 April 1999, 1. CTF Document #: G0251/SCU-2/No.13

58 The list attached to the document is an official Aitarak membership list.

of this document in May 1999. This policy document also includes information about the jobs of the membership in Aitarak. At least one TNI member, and several KAMRA members appear officially in these Aitarak membership lists. Therefore, there must have been awareness, on the part of the civilian government and the Muspida, that the military and police - affiliated security groups were joining the activities of this pro-autonomy group in violation of the May 5 Agreement's requirement of neutrality by TNI and Police.

While this document thus provides strong evidence of institutional linkage, it alone does not reveal the funding mechanisms for the militia groups in Dili. This document contains an obvious "missing link": in other words, who would pay for the activities of Pamswakarsa?

The Jakarta Trials, KPP HAM report and the SCU archives all contain documents regarding the distribution of funds by the Governor's Office of East Timor to the Bupatis of each district, in support of the "Socialization Campaign" for the election. All of the four bodies of Documents considered in the Document Review contain documentary and testimonial evidence that these funds were then distributed to militias that committed human rights violations in 1999, and to their political support groups (FPDK and BRTT).

First, there is the document issued by the Governor Abilio Soares that directs all Bupatis to allocate a certain percentage of the Development Budget to the Socialization of the Autonomy Option. This letter, with the number of 100/734/ [unclear]/99, undated, stated that all lower level government has to dedicate 10-20% of their development budget for the socialization of autonomy. As can be seen in the various documents below which were attached to this original letter, only pro-autonomy political groups and militias are specified as recipients. For example, in the sample budget allocation attached to the above document, there is money allotted to an armed militia group under the heading "organizational assistance": the Ablai militia. Money in this sample budget is also allocated to the pro-autonomy groups, FPDK and BRTT, but there is no corresponding funding in the proposed budget for pro-independence groups (See Document Annex: #1 and #2).

Testimony was given to the Commission in Closed Hearings, as well as in the Document Review, which explained in detail how the instructions in these documents were executed at various levels of the civilian administration throughout East Timor. One witness among this group, Witness F, testified that he executed the plan to divert funding to pro-autonomy groups at the level of the Governor's office. He explained the process in detail from its inception until its completion. This witness also provided documentation of payment slips, letters with orders and dates and details of key meetings that were conducted in conjunction with the Danrem and other civil government authorities to facilitate the funding process. This documentation provides very strong corroboration of the credibility and veracity of Witness F's testimony.

One of the most important aspects of this witness' testimony is the pattern of timing of the budget requests and approvals. He testified that he was first asked to become involved in diverting monies set aside for development projects to "Socialization of Autonomy" projects a few days after the Aitarak rally in Dili and the attack on the Carrascalão house. It is significant that the support of the militias were facilitated by

the civilian government in a period when there was common knowledge about the violent methods used by the militia in their pro-autonomy campaign.

The witness also claimed that after a BBC story ran on television about UNAMET's discovery of Indonesian provision of funds to the militia, a telegram was sent that instructed the civilian government in East Timor to stop payments previously set aside for the "Socialization" campaign (See Document Annex, #3 and #4). The witness was given a copy of this telegram at a meeting as part of his official duties, which the CTF has obtained. Several weeks after this meeting where Witness F was told to stop the duties of transferring funds, the witness claimed that there were oral instructions to resume payments of the funds to the districts. The witness explained:

> "Two weeks later [redacted] called me and told me that there had been a verbal request from Jakarta, without saying specifically from whom, to continue the payments but confidentially. We did not receive any written instructions to this effect because there was concern that any documentation would be leaked to UNAMET because there was strong suspicion that East Timorese civil servants were supportive of the independence side."[59]

Witness F specifically confirmed that the distribution of the funds to the districts occurred from June to August. He provided documentation of the exact amounts spent by the districts on the pro-autonomy campaign (Rp. 62,315,781,300).

In corroboration of the testimony of Witness F about the awareness of civilian officials that the Pam Swarkasa budget included militia groups, the Jakarta Ad Hoc Court in its Judgment of Adam Damiri cited testimony from former East Timor Governor Abilio Soares that stated:

> "Pam Swakarsa was officially established by the district administration based on Gubernatorial decree and the names of Pam Swakarsa were given by the district administration such as Aitarak, BMP, Mahidi, ABLAI, Mahadomi."[60]

In its Fact Finding process, the Commission received other documents that illustrated that militia groups that committed human rights violations in 1999 were supported by civilian government funding. One of the best examples is a budget document from Lautém district (See Document Annex, #5). In this document the militia group Tim Alfa is listed more than once to receive funding from the Lautém district budget. Tim Alfa has been ruled by the Special Panels as responsible for the killing of the clergy at Lospalos, as a crime against humanity, which was also considered as one of the Commission's 14 priority cases.[61] The Commission also notes that the pro-autonomy groups FPDK and BRTT were budgeted funding, and these groups are well known to have been later distributed among militia groups through the PPI. There is no evidence in this budget document that pro-independence groups received equitable

59 LL450, SPSC Case files #5/2003, p. 8.

60 Jakarta Ad Hoc Human Rights Court, Judgment of Adam Damiri, 78.

61 CTF Public Hearing V, (Dili, 26 September 2007), 3. During the Hearing, the leader of Tim Alfa, Joni Marques admitted his groups' responsibility for these acts.

funding from the district administration. A subsequent budget document from the same district in June 1999 further demonstrates that "Pam Swakarsa" was allotted funding, as indicated by the testimony and documents discussed above regarding the Governor's proposal to supply funding.

Testimony of the former Bupati of Lautém, Edmundo da Conceição Silva, about Pamswakarsa during the Public Hearings process provided a different perspective on the funding of Pamswakarsa. The former Bupati told the Commission that Pamswakarsa was formed by the villages themselves in anticipation of an escalation of violence and terror by CNRT.[62] He claimed that members of Pamswakarsa could be from either the pro-integration or pro-independence groups, and a person's political background was not examined in forming the membership of Pamswakarsa.[63] Conceição further stated that Pamswakarsa was not armed because, in his understanding, there was no legal provision permitting Pamswakarsa to carry arms.[64] However, the Commission notes that this witness was not clear as to how funds were allocated to Pamswakarsa,[65] although he claimed they only received remuneration, according to the situation and condition. He also claimed he did not have any knowledge of the Governor's letter that gave instructions on how to direct funds from the APDB budget to the socialization campaign.[66] The documentary evidence clearly contradicts his testimony and casts considerable doubt upon his credibility.

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62 Edmundo da Conceição Silva, interview with CTF, 2-3: "Maybe I'll tell briefly about Pamswakarsa. Indeed, Pamswakarsa was formed in Lautém District. I don't know the date, but perhaps it was in June after it was formed in Dili, then it was formed in the districts. Pamswakarsa was formed based on information given by the people to community figures, village chiefs, that in their locales it was no longer under control. That the security was disturbed by clandestines as well as the 'out of forest' [sic] elements who spread propaganda to the people and held secret meetings in every village. Because of this, and from reports from the community, then finally Pamswakarsa was formed in every village."
"Mungkin sedikit akan saya ceriterakan tentang PAM-SWAKARSA. Memang PAM-SWAKARSA itu dibentuk di Kabupaten Lautém. Saya tidak tahu tanggal, tapi mungkin bulan Juni setelah terbentuknya di Dili maka terbentuklah di Kabupaten. PAM-SWAKARSA dibentuk berdasarkan atas informasi-informasi yang diberikan oleh rakyat para tokoh-tokoh masyarakat, Kepala Desa bahwa di daerah mereka sudah tidak bisa kontrol. Bahwa terganggu keamanan dari pada klandestin maupun dari pihak luar 'hutan" yang akan memberikan propaganda-propaganda terhadap rakyat, dan membuat rapat-rapat secara gelap di masing- masing desa. Sebab inilah dan dari laporan masyarakat ini akhirnya dibentuk PAM-SWAKARSA untuk setiap desa."

63 Ibid., 3.

64 Ibid., 13: "To my knowledge there's no law allowing for Pamswakarsa to bear arms. But, I explained to them at the time when they asked if possible we in.. ten, ah, thirty men per village, or however many, to form Pamswakarsa, to be given weapons. I told them, back then, this District only had a segunda linha, and 150 had firearms. And now so many villages to distribute weapons for.. from where? And it is not allowed by law to give weapons to Pamswakarsa."

65 Edmundo da Conceição Silva, CTF Pulic Hearing II, 8 March 2007, Denpasar, 5:
'Interviewer: Maybe, let's talk about something else, did you, Pak Edmundo, also receive funds to conduct the campaign? Like what pak Lopez da Cruz said during the first public hearing, that you received financial support from the Regional Government [that went] to the officials in the regions at the district level to 'goal' [sic, ensure the success], not to 'goal', but to facilitate the conduct of the pro-autonomy campaign[?] That amounted to... how much, more or less, if pak Edmundo still remembers?
ECS: If I'm not mistaken, okay, we received funds from everywhere. But as far as Lautém District funds [go, they came from] the APBD [regional budget].
RP: Lautém District Funds?
ECS: Lautém District Funds that we diverted to Bupati's Tactical Funds.
RP: It was those funds that were used? For campaigns?
ECS: Those funds were used. Ya, for campaigns and not just one but campaigns.. well, not really campaigns, not campaigns in... to support the success of the Popular Consultation. Not just for one side, but we as Bupatis, there was. Personally I supported, how do you say, ah, Autonomy! [That was] my choice. But as Bupari, to ensure the success... I can't [support] just one side."

66 Ibid., 9: "I think a sekwilda would know better than a bupati. And, the governor's sekwilda would know better than the governor about the distribution. If there ever was a letter, it must have gone though the sekwilda first, and only then I would issue instructions to carry it out and distribute it. That's all I know."

Other witness testimony from the Document Review corroborates evidence that would support a finding of highly organized funding support for militias. For example, in an examination by a SCU investigator, Witness G testified that the distribution of funds to Tim Alfa was public knowledge. His testimony also indicates the systematic form that such support took and its explicit linkage to armed groups like Team Alfa and to the shared political goal of supporting the autonomy cause. According to his testimony, on a date between May and June 1999, all civil employees, including Battallion 745, police, militias and Kopassus were called to the gym in Lospalos so their leaders can tell them to support the Pro Autonomy movement. The Bupati instructed the [name redacted – civil servant] and others to take out Rp. 10,000,000 so members of Alpha and Ratih can be trained.[67]

When considering this testimony, the Commission noted that the 5 May Agreement was already in effect, and only the Police had been given the authority to provide security. The civilian government's official monetary support for Pamswakarsa at this stage is in conflict with the Agreement. The specific inclusion of Tim Alfa in these funding proposals demonstrates deliberate support by the civilian government of a militia group that has a history of violence.

Further witness testimony was collected from civil servants who administered government funding at the district level to determine how monies from the civil administration were distributed and spent at the micro-level by local officials in 1999. There are multiple examples of how money allocated for militia groups was spent with the planning and knowledge of civilian government officials. For instance, one of the documents obtained by the Commission clearly shows the supply of rice by the TNI to the Mahidi militia group in July 1999 (See Document Annex, #7).[68] Another document shows that the electricity bills for two houses used as militia offices by Aitarak were asked to be forwarded directly to the Korem for payment on 12 August 1999 (See Document Annex, #8).

Thus, on the logistical level, these documents among others present further credible evidence of institutional involvement on the part of the civilian administration of East Timor in funding and providing material support to militias. Together with the evidence considered above about the provision of funding at the provincial level through budgetary mechanisms, the systematic and sustained nature of the financial support is strongly indicated.

In addition to the evidence about funding considered above, some testimony given to the Commission suggests that the Indonesian military also contributed funding to the militias. Such testimony suggests that military personnel were involved in and had knowledge of the civil government's monetary support of the militias at the local level. For example, one district level bureaucrat was able to give detailed information about the distribution of funds to militias in Bobonaro district. In questioning by a SCU investigator, Witness H explained the following:

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67 I.BC, SCU files.

68 The document has been redacted to protect identities.

Q29 [SCU Investigator]: Who was responsible for deciding who received the diverted funds for the Autonomy ?

A: We would receive requests at the PEMDA (District Offices) from the militia leaders in Bobonaro District, and also the military and the FPDK and BRTT. When we received the request if it was a small amount like under $100USD we could give it out, but larger amounts had to be approved by the BUPATI. Like Mauzinho from Lolotoe came to us and asked for two Motorola radios which cost $30 each so we could just give him that money. This was a very strange situation because there didn't seem to be any accounting like was normal before 1999. One day the KASDIM [Name redacted] came to me to acquit RP6 million that I had given the DANDIM to pay the militia leaders, but when he brought the receipts I saw that all of the 20 signatures looked like they had been written by the same person. I wanted to complain about this in case we had an audit but I was told not to worry about this by the BUPATI, as it would upset the DANDIM [...][69]

There was an order from the BUPATI, the DANDIM and João TAVARES that each militia member would receive Rp30, 000 per month, each militia leader would come and collect the money from [name redacted], I would have to sign for it when they received this money. I saw [Name redacted] who was the head of the militia for Balibo and married to [Name redacted]. He received Rp 18,000,000 each month, which meant that he had 600 militia members.

There was a specific budget line to charge different requests against, it was different than in previous years where there were many, for example in July 1999. I signed for Rp10, 000,000 for each of the BUPATI, the DANDIM, [Name redacted] head of DPR, which had specific budget lines, which they never had before 1999, and then there was only one other budget line, which was a general or miscellaneous budget line which could go to militia funding without specific instructions."(636)

At this point in the interview the witness has already shown the manner in which the military and civilian governments appear to be cooperating in a common plan to fund the militias. Later, Witness H more explicitly corroborates that the funding mechanism is the same as recommended in the Governor's budget document. Witness H stated:

"...There was Rp. 300,000 million [sic] for Development and the infrastructure had a separate funding stream. It was much bigger than the development funding. I think also that the funding from the World Bank for Community Empowerment Projects were also diverted to the militias and Autonomy.

Q30: Why was the BUPATI paying the militia?

A: He was paying the militia so that they could intimidate the population and find those who were not Pro-Autonomy, he would always say in meetings whenever the talk went to violence or killings that it was too bad and just a consequence of their support for Pro-Independence that they could be killed.[...]"[70]

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69 Witness 6 – 6a, Report to the CTF, 394

70 Ibid., Witness 6 – 12a, 395.

This testimony shows how systematically the civilian government and military representatives collaborated to give money to the militias. It also shows how that cooperation aimed to achieve common political objectives with the militias and encompassed the use of violence against the civilian population. The level of detail of this witness' testimony is high, and it is corroborated by at least two other witnesses who held similiar positions related to the distribution of public funds in other districts.[71] This testimony describes a process that is also in accordance with the documentary evidence of the Governor's budget proposal, and his testimony at the Jakarta Ad Hocs trials. Taken together all of this evidence supplies a strong institutional link between the anti-independence violence perpetrated by militias against civilians, and the civilian and military authorities that funded and supported them.

As a further illustration of the close dynamics between TNI and militias, there is documentary evidence that shows the TNI personnel in local garrisons could have also received funding from the militias. As noted above, there was apparently considerable overlap between TNI and militia membership. For example, the plan for Dili's Pamswakarsa system lists several members of the TNI. In a budget report submitted to Eurico Gutteres from the Aitarak Treasurer there are clear lines and amounts spent which strongly suggest members of the military received payments from Aitarak (See Document Annex, #9).

As an example of how Guterres followed up on budgetary reports, another letter from him informs the Dandim of Dili of the shortage in funds (See Document Annex, #10). Presumably this letter indicates that Guterres felt an obligation to report on Aitarak's financial matters to the local military command, which shows a degree of military financial and logistical control over the militias as well as the collaborative relationship between these institutions. This evidence thus presents significant evidence of institutional involvement since payments to the military are documented in the evidence discussed above, and reports about lack of payments are reported to the military in this letter.

Although there were general statements made to the Commission that claimed no funding was explicitly provided to pro-autonomy militias, such claims were not supported by evidence of comparable depth or credibility. Indeed, the Commission did not receive any evidence that could discredit in specific, documented, or corroborated ways the testimony analyzed above which points to the close involvement of both the military and civilian government in provision of funding and material support of militia groups. As a result, the foregoing analysis of the evidence on funding supports specific findings that militias were systematically funded by the civilian government in East Timor. The evidence also supports findings that the military provided funding for the militias, though perhaps not in the same centralized and systematic manner as was the case with the civilian budgetary process. Taken together this evidence supports a more general finding that this provision of funding and material support was an integral part of a highly organized and continuous cooperative relationship in the pursuit of common political goals aiming at promoting militia activities that would intimidate or prevent civilians from supporting the pro-independence movement.

[71] HC31, HC24, HC25, HC17 (Wiranto case files, volume 1).

Systematic Targeting of Pro-Independence Supporters

The previous two sections have described systematic patterns of support by Indonesian institutions for militias engaged in violence against civilians associated with the pro-independence cause. This section focuses upon the systematic and organized manner in which militias targeted civilians and perpetrated gross human rights violations against them. It also provides examples of the way in which Indonesian institutions were linked to or involved in the perpetration of such crimes. The Document Review provided many detailed and credible examples of patterns of such gross human rights violations and others were described by witnesses who testified in the Fact Finding process. Other individuals who appeared before the Commission alleged that violence against civilians was spontaneous and not carried out in a planned or systematic manner, or with the support or participation of Indonesian institutions. Such allegations were typically general in nature rather than specific and based upon direct knowledge as an eyewitness to the events. This section and the following one provide some examples of the kind of evidence relied on by the Commission to support findings on the systematic patterns by which independence supporters, perceived or actual, were targeted.[72]

The Commission heard testimony that related to the targeting of specific classes of individuals from a witness in a priority case from Oecussi district. Marcus Baquin survived a killing of 65 civilians from Passabe.[73] He explained the chronology of the attack as beginning on 8 September when a Sakunar militia commander, Gabriel Kolo, his group of militia men, and Anton Sabraka from the TNI, attacked his village and two others in the area and burnt all their property. As a result of the attack, he and his fellow villagers ran into the jungle surrounding the village. When he returned to the village, he found that 18 people had perished in the attack.[74] Marcus Baquin explained to the Commission that at the time of the attack against his village, members of Sakunar destroyed everything. He did not see that they chose property and houses they would destroy based on political affiliation.[75] After the attack when the villagers returned to their village, they were brought by the militia to join a large group of civilians who were being taken to West Timor on 9 September. All of those brought to Imbate, TTU, West Timor and were registered at the village administration office.

According to Baquin, in the late afternoon, 74 men were selected from the families who were gathered as refugees at the Imbate village administration office. These men were tied up in pairs. Then, they were herded by groups of militia led by Gabriel Kolo

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72 See also the many similar examples analyzed in Chapter 5 above, and in the Expert Advisor's Report to the CTF and Addendum to Report to the CTF.

73 Marcu Baquin, CTF PUblic Hearing V (Dlli, 26 September 2007), h.6. 65 is the lowest number given by the witness. However, in the statement taking process and in other parts of the public hearing the witness estimated the number of civilians killed was higher.

74 Marcus Baquin, CTF Public Hearing V, 6.

75 Marcus Baquin, Interview with CTF, 1: "When the attack took place, most of the population from Bobometo Village fled and hid in the woods around Bobometo Village. The reason for the attack on Bobometo Village, according to Marcus Baquin, was because the people in the village chose independence. According to Marcus Baquin, people in Bobometo Village was comprised of independence supporters and autonomy supporters. But when the houses and properties were burned, members of Sakunar did not discriminate based on the people's political choice." Baquin confirmed this information in the public hearings, transcript (7).

(a Sakunar militia commander), and the TNI member, Anton Sabraka, towards the border between East and West Timor. He testified that the march occurred in an orderly, and choreographed way, so that the detainees were in a line formation, boxed in by the militias on the perimeters (front, left, right and rear).[76] He testified that the group departed on the evening of 9 September 1999. He then explained how most of them were killed en masse in the early hours of 10 September 1999, just after crossing the border into East Timor. The witness stated that most victims fell under the machete blows administered by Gabriel Kolo and his militia men, as well as being shot by TNI member Anton Sabraka. During the attack Baquin's right side of his face and ear were slashed by a machete and he fell to the ground, where he was presumed to be dead. Baquin survived the attack, but his features remain disfigured by these wounds.

The perpetrators displayed their systematic targeting of these victims in this victim's account in two clear ways:

- Selecting and separating victims for murder from a larger group, including the separating of the men from the women and children.
- Constraining the movements of these selected victims in ways different from the other groups (i.e. tying the men in pairs)

Other elements of "systematic" operations contained in Baquin's testimony include:

- An identifiable command structure (Kolo is called the "commander")
- Coordination of two attacks (arsons and killings) on two different dates by multiple militia members and in conjunction with a TNI member. Significant coordination was also required to bring the large groups of civilians from Oecussi to Imbate, and to restrain the men and march them from Imbate to the border. The military style, tightly controlled formation for the marching of the prisoners also indicates significant organization and coordination.
- The orderly registration of the civilians brought to Imbate, before they were separated and assembled for the march, and
- Timing the attack so it would occur at night in the dark, and once the prisoners had crossed the border.

In the Clarification portion of Baquin's testimony, the witness was asked many questions by the Commission that were meant to probe the political identity of the victims of the attack on the villages on 8 September and these killings at Passabe on 10 September. In one set of questions meant to delve deeper into the issue of whether certain victims were targeted the witness seemed to indicate that all victims of the attacks were pro-independence supporters. However, in the statement taking process and in other follow- up questions the witness could not absolutely confirm the identity of each of the victims as pro-independence.[i] He was able to report with certainty that all the houses were burnt and destroyed and that everyone in his group was killed. At the end of this witness' testimony there was a final question and answer exchange that re-emphasized the idea that the victim was targeted because he was pro-independence. The witness was specifically asked if he thought he was literally, slashed, because of his political identity. The witness replied that he felt he was attacked because he was pro-independence.[ii]

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76 Ibid., 4

From this series of questions it can be ascertained that the victim perceived his political identity was shared with the other victims, and that political identity was the cause of his attack. His testimony is an eye witness account and the fact that he was an eyewitness is credible, especially in light of the injuries he received. His testimony is consistent and provides details that would have been known by him by virtue of his participation in this event. It should be noted that although these aspects of his testimony are fairly strong, there are limitations in regard to his ability to clearly identify all the victims in terms of their political identity. Further, more information is necessary to conclusively show that the perpetrators also perceived that they were targeting victims based on political ideology. Because the public hearings process did not allow for multiple and sustained question and answer sessions, and they only heard from one victim witness in this case, the Commission heard no other witnesses that could corroborate this testimony. Baquin is nonetheless a credible witness and his testimony should be accorded considerable weight. It was also not contradicted by any other witness appearing before the Commission who had personal knowledge of the killings.

Apart from the testimony of this single victim witness given in the fact finding process, the Document Review identified a great deal of information at the SCU archives regarding this case. A brief comparison of these different sources of information can indicate some of the limitations of the information obtained through the Fact Finding process as compared to the Document Review. At the SCU archives there is a significant amount of testimony from multiple low - level militia members who were involved in these attacks on Baquin's village on 8 September and the 10 September killings, as well as testimony from other victims and witnesses. Their statements provided the basis on which the indictments were drafted by the SCU, which the Commission reviewed during the early stages of its fact-finding process. The Commission used these indictments in order to ask questions of Baquin, as well as Simão Lopes, the Sakunar militia commander for Oecussi. In the case of Baquin, the information from the SCU helped clarify issues and corroborate his statements to the Commission. In the case of Simão Lopes, the information at the SCU provided information that Lopes was either unable, or unwilling to discuss with the Commission, despite the repeated attempts by the Commissioners in the Clarification session to obtain accurate statements.

For example, one of the militia men, Witness I, who participated in the attack on Sept. 8th explained to the SCU investigator how the burning campaign on the villages was planned, and the militias were briefed the day before the attack.[iii] His testimony to the SCU first indicated that there was a meeting before the attacks where he and other militia members were briefed on a plan for the operation. The militia members were to be split into two groups, with militia Commander (Kolo and Simão Lopes) leading the groups. The militia member was then briefed that Simão Lopes' group would proceed via Passabe, while Kolo's group would march through Oesilo, and the groups would reunite at Quibiselo. The militia members were then told the operation would start on the morning of the 8 September. To reach the starting point of the operation, after the meeting on the 7 September the militia member traveled by car with other militia members to Kefa and spent the night. At Passabe the militia member reported that further instructions were given by Simão Lopes and another man named Bellarmino. He said they instructed the group:

> "We were also told we were going to burn houses and if anyone resisted they were to be beaten or killed."[77]

Although when questioned by the Commission Simão Lopes denied being at this meeting, multiple witnesses, such as this one, who were interviewed by the SCU place him there and at some of the arson attacks on 8 September. This discrepancy indicates the lack of credibility and veracity of his testimony before the Commission, as does his reluctance to respond clearly to questions put to him.

The statement of Witness I, on the other hand, is coherent and detailed. In testifying to his participation in these crimes he is also testifying against interest. His testimony highlights some of the most significant "systematic" elements of the events of 8 September.

According to his SCU statements, there was a clearly constructed plan prior to the attack,[78] which involved coordinating two different groups of militias. This plan was communicated to the militia members at a meeting the day before, and further instructions were given the day of the attack. Furthermore, his statements indicate that specific orders were given to militia members to burn houses, and permission was granted to beat or kill civilians. But, neither this witness nor Simão Lopes appear to have been present at Imbate, so as to be able to testify as to the systematic nature of the militia's actions after 8 September.

In addition to this testimony, SCU investigators interviewed other witnesses in regard to this point. In particular, they interviewed militia members who were present at Imbate, and their statements corroborate Baquin's testimony before the Commission. Several of these militia witnesses alleged that they were responding to a commander's orders, and that they assumed they were attacking pro-independence supporters. Of course, if they merely assumed this it might not have been the case, but it is sufficient to indicate both their perception and their expectation that they were targeting pro-independence supporters.

One militia member who gave a statement to the SCU was ordered by Kolo to guard the men who were tied up, and if any of them escaped he would be killed.[79] Another militia member who was present at Imbate told the SCU:

> "Later the militia brought those men out. That is when we were called closer and I saw them tied up, the people tied up were CNRT. I was told that but I didn't recognize any of them. Later we were told that they were from Tumin and Quibiselo. I saw that the men were tied with their hands behind their backs and two men together."[80]

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77 LL19, SPSC Case files #5/2003, pp. 130107-130113.

78 A witness statement taken by SCU from another militia member confirmed the dates, location and content of the meetings prior to the attacks on Sept. 8. See LL24, SPSC Case files #5/2003, pp.130141 – 130143.

79 LL23, SPSC Case files #5/2003, p. 130138.

80 LL24, SPSC Case files #5/2003, p. 130144. Yet another militia member involved in the attack confirmed the identity of all the men as CNRT in his statement. See LL25, SPSC Case files #5/2003, p. 130151.

81 LL25, SPSC Case files #5/2003, p. 130151

Yet another militia member involved in the attack said that Gabriel Kolo specifically stated that all the men killed were CNRT.[81] A different militia member present at Imbate and at the killings in Passabe told the SCU in his statement: "I knew that the men tied were CNRT."[82] Finally, still another witness who participated in the attack said in his statement that one of the militia commanders [not Kolo] shouted at the victims during the killings: "You are CNRT. You must die!" After hearing this proclamation, this witness was then allegedly handed a machete by Kolo, who then ordered him to kill one of the tied men.[83]

A comparison of the testimony from the SCU and from the Commission's hearings indicates the following. First, there is considerable consistency in these different SCU witness accounts from participants in the attack and the testimony of the victim-witness, Baquin, as to the chronology of events and the manner in which the attack and the subsequent killings were carried out. The SCU statements also corroborate Baquin's belief that pro-independence supporters were targeted. Second, the SCU's method of investigation allowed for cross-checking, corroboration, repeated questions when necessary, and analysis of various accounts of the same events. The testimony obtained through these methods can be used to evaluate the statements of Baquin and Lopes. Such a comparative evaluation supports the credibility and accuracy of Baquin's testimony and suggests that Lopes' denials of his knowledge and participation were not credible.

The breadth of the information contained in the documents reviewed at SCU provides a more comprehensive base to determine the systematic elements of human rights violations in 1999 in this particular case.[84]

The SPSC Judgment in the Florencio Tacaqui Case (Case No.20/2001), after reviewing the witness testimony as to the planning and organization of the attack and of the targeting of CNRT supporters, found that "the systematic nature of the attack is inherent."[85] On the basis of this review of the witness testimony the Court also found that TNI and police personnel participated together with Sakunar in the detention for several days of approximately 40 alleged CNRT supporters in Gabriel Kolo's house in April 1999 in Passabe, where they were beaten and threatened to coerce them to abandon support for the pro-independence cause.[86] The Judgment also found that the "constant presence" of TNI and Police personnel with Sakunar during the various operations at Passabe, and the shared purpose manifested in their activities, supports findings that these three groups co-perpetrated "a coordinated, large scale operation aimed to impose and determine the course of the political campaign" leading up to the Popular Consultation.[87]

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82 LL26, SPSC Case files #5/2003, p. 130154

83 LL27, SPSC Case files #5/2003, p. 130162

84 Other priority cases also contained explicit testimony that suggested the victims were chosen because of their affiliation with the pro-independence cause. The cases where there is the strongest and most specific testimony that could establish the victims was specifically, and not randomly, targeted due to their political beliefs were the [redacted] and Mau Hodu cases.

85 Judgment, 15.

86 Judgment, 16-17.

87 Judgment, 19.

The Court concluded that the murders were a continuation and culmination of the campaign of intimidation that began in April and specifically held that the murders were not spontaneous but were carefully planned and organized: "It is impossible for a crime of this magnitude and complexity to be spontaneous or generated progressively."[88] They also made specific findings on the chronology of the events immediately leading up to the mass killings that supports the testimony discussed above.[89]

The foregoing analysis of the various testimonies related to the events at Passabe provides a sufficient basis to support findings as to the highly organized and systematic manner in which perceived pro-independence supporters were targeted by militia, with the support of TNI and police personnel. The targeting was not spontaneous but was carefully planned and organized, and was systematically carried out over an extended period of time. The campaign of intimidation employing attacks on multiple villages, illegal deprivation of liberty, and mistreatment culminated in mass murder after the results of the Popular Consultation were known. Individuals from the militia, police, local civil administration, and TNI participated in various phases of this campaign of violence and political repression conducted against civilians they believed to be associated with the pro-independence movement. This section has examined one series of incidents in considerable depth to demonstrate the quality of the available evidence and how it can be analyzed to support such findings. This evidence comes from the Commission's Fact Finding, the SCU Archives, and the Judgments of the Special Panels for Serious Crimes.[90]

This analysis provides one example of the systematic nature of the targeting of pro-independence civilians. Other cases that manifest similar patterns of systematic targeting are discussed in Chapter 5 and, in much greater depth, in the two reports provided to the Commission as part of its Document Review. The next section of this chapter will provide further substantiation for such findings by considering patterns of systematic perpetration of gross human rights violations involving sexual violence, deprivation of liberty, and forcible transfer or deportation.

Patterns of Institutional Involvement in Organized Operations

As noted in Chapter 6, there were strong differences of opinion expressed in the Fact Finding process as to the organized nature of the violence. On the view of some individuals who testified to the Commission violence was perpetrated through organized operations.[91] On the other hand, some individuals, like F.X. Lopes da Cruz,

88 Judgment, 25.

89 Judgment, 25.

90 Further evidence supporting this analysis is available in other SPSC cases. SCU indictments and investigative files, as well as in the KPP HAM Report, Ch. IV/10, para. 131-141 (English Translation) For example, see also, Indictment of Prosecutor General of East Timor vs. Simão Lopes et. al, Case #20A-2001. The Defendant Florenco Taqaqui was originally indicted as part of this case, but was later severed and tried separately as Case #20-2001. The SPSC Issued a Statement on 10 May 2005 that there is no judgment in Case #20A-2001 because of the absence of the Defendants from East Timor.

91 Emílio Barreto, CTF Public Hearing I, 3, 8-9; Adelino Brito, CTF Public Hearing II, 30 Maret 2007, Jakarta, Written Statement, 1-8; Mário Gonçalves, CTF Public Hearing V, 26 September 2007, Dili, full statement; Tomas Gonçalves, CTF Public Hearing V, full statement.

alleged that the violence was of a spontaneous nature.[92] For example, Mateus Amaral, one of the FPDK officials in Suai, offered this kind of interpretation of the events of 6 September 1999 at Suai Church.[93]

The attack on the Suai Church was heavily investigated by the SCU. This section examines the evidence available from the SCU and other parts of the Document Review process to evaluate the claims by witnesses such as Mateus Amaral about the spontaneous nature of the violence there. The focus will be on the complex of events preceding and following the attack on the church, as they involve a wide range of gross violations of human rights, including deprivation of liberty, rape, persecution, and forcible transfer and deportation.[94] It must be emphasized that, as in the preceding section, this is but one example of many analyzed in the Document Review. Following the methodology articulated above, this section will analyze the evidence on this event in some detail so as to indicate the kind of evaluative process it employed in making its findings.

There is widespread agreement in the conclusions in all of the four bodies of documents considered in the Document Review that civilians who had taken refuge at the Suai Church were attacked by militia.[95] There is also general agreement in the conclusions that TNI personnel were present at the scene during the attack and that some also participated in the attack together with the mass of militia. In the Commission's Fact Finding process, a Laksaur Commander, admitted that it was Laksaur Militia who committed the attack on the Suai Church,[96] while a victim of the attack gave testimony to the Commission that identified specific militia members perpetrating multiple human rights violations.[97] The two different witnesses' description of events match. The evidence from both the Fact Finding and Document Review is sufficient to ground findings as to the attack itself. As noted above, Mateus Amaral claimed that the attack on the church was motivated by a desire for revenge after pro-autonomy supporters had been ridiculed the day before for their loss in the Popular Consultation and violence ensued. Further research into testimony at the SCU and Community profiles at the CAVR supports Amaral's account that there was a violent exchange (rock throwing and insults) between pro-autonomy supporters and pro-independence supporters before the attack on Suai Church.[98] On the other hand there was also a Catholic Mass officiated by Bishop Belo where reconcilation agreements were made between the pro-autonomy and pro-independence groups as

92 F.X. Lopes da Cruz, CTF Public Hearing I, 20 February 2007, Denpasar, 3. See also Eurico Guterres, CTF Public Hearing II, 26.; José Estevão Soares, CTF Public Hearing IV, 6.

93 Mateus Amaral, Interview with CTF, 13 February 2007, Kada, Belu, NTT, transcript, 3: "The events on 6 September 1999 at Suai Church began because of the disaffection of the youth at being ridiculed, scolded, and made fun of by the pro-independence people." See also, Interview Notes, 3: "At the time security was impossible, all people were on the move. On the 4th (September) after I could tell that there's going to be a great battle, after that I looked for a car to take me [to/from] Naimara village.

94 The attack on the Suai Church and the incidents of sexual violence following the attack are two of the Commission's 14 priority cases (7 and 11, respectively).

95 Report to CTF, 12, 14,36,49, 119-121, 146 and Addendum, 29, 41-49, 101-104, 126-130; Esmeralda dos Santos, CTF Public Hearings II, 2, 6.

96 Saksi B, Interview with CTF, Interview notes and tape No. ST/KKP/ATB, p. B7. The witness provided information on specific members of [redacted] who participated in the attack, described their acts and the weapons used in each act.

97 Esmeralda dos Santos, CTF Public Hearings II, 2.

98 Leigh-Ashley Lipscomb, "Spontaneous Retribution: Local Dimensions of the East Timor Conflict in East Timor," Submission to the CTF, 15 November 2007, 10.

well.[99] Whatever the factual merits of Amaral's claim, it is irrelevant to the issue of the human rights violations committed in the course of this attack on the Church. Retaliation can never be a justification for attacks on civilians.

In order to analyze the organized patterns of instiututional involvement it is necessary to broaden the scope of the inquiry and consider the full context of events preceding and following the attack on the Church. This will provide more conclusive evidence on the patterns of instututional involvement relevant for findings of institutional responsibility. From the methodological standpoint the analysis of the Suai material at the SCU will also indicate the advantages of the evidence obtained through a criminal investigation where many witnesses can be interviewed, re-interviewed, questioned at great length especially about inconsistencies in testimony, and corroborative evidence actively sought. As will be seen, this kind of evidence can provide a firmer basis for factual findings than the kind of testimony that is sometimes produced, for example at public hearings, where there is only a very limited amount of time to question a witness and little opportunity for verification or corroboration through examining other witnesses to the same event.

The Suai Investigations

When the SCU was conducting its investigation of the murders that occurred during the attack on the church at Suai it became apparent that other crimes against humanity occurred before and after the attack. The SCU widened the scope of its investigation to include crimes of sexual violence and forcible transfer or deportation. What these investigations reveal is a pattern of widespread violence directed at civilian individuals and communities perceived as associated with the pro-independence cause. This violence appears to consist of a series of connected events involving intimidation, threats and actual force in order to discourage support by the civilian population for the pro-independence movement. Attacks on villages by militias lead to acts of physical violence (including murder, rape, and torture) as well as to deprivation of liberty, forcible transfer away from home villages, and eventually, in many cases, to deportation.

As in the case examined in the preceding section involving Passabe, these events may be seen as linked by an organized and systematic effort to influence the political developments leading up to the Popular Consultation through a campaign of violence directed at civilians and then, after the Consultation, to itensify that violence against communties and individuals deemed to have supported the success of the independence movement in the popular vote. The evidence that will now be examined will focus initially on sexual violence, but in numerous cases it will be seen how the victims of sexual violence were first made vulnerable by attacks on their villages that caused them to leave their homes, and later led to their forcible transfer and deportation. What will also emerge from this analysis is the way in which the primary perpetrators of this violence were pro-autonomy militias, but that they also often can be shown to have operated with the support, assistance, and sometimes direction and co-perpetration by members of the Indonesian police, military, and civilian government.

99 Bishop Carlos Filipe Ximenes Belo, CTF Public Hearing II, Written Statement, 3 (Portuguese version).

Numerous statements of victims in the SCU investigations of Suai provide testimony that points to a pattern of sexual violence connected to illegal detentions and forcible transfers. After the attack on the church, many women were taken from the church by militia and/or TNI, separated from the general population, taken to certain collection centers and detained there, separated from their male relatives. One of the detention centers was the Suai Kodim, the others were a school building and a camp at Betun where other women had already been detained after being taken during sweeping operations involving attacks on their villages aimed at pro-independence supporters. Their detention at the Kodim is significant, as is the fact that many of the women reported seeing Herman Sedyono, the Bupati, at the church. As will be seen, many testified that he saw the women being detained and taken away in his presence. Some testified specifically that he ordered that they be taken to the Kodim. Other women who were not in the church but had been detained during sweeping operations in or around Suai were also brought to the Kodim. Afterwards they were forcibly taken to West Timor. Many of these women reported sexual assaults that occurred in the detention centers or in West Timor. Because of the separation from family and community they were particularly vulnerable to assault throughout this process of detention and transfer. Many of them believed that they were being targeted for sexual violence because of the perception that all of the individuals seeking refuge in the church were independence supporters.

Witness AA described her experience of being raped during detention. She stated that she was raped by both militia and police. She stated that she was in the church at Suai during the attack and was afterwards brought to the school detention center SMP 2. While detained there she said the militias would come at night and if they liked a woman they would take her with them. On 9 September she testified that she was raped by a militia who took her to a room where a policeman stood outside the door during the rape. After he raped her he threw Rp. 10,000 at her. On 12 September she and the other women were taken to the Kodim and told they would be taken to West Timor. At the Kodim a militaman gave her to a policeman who took her to his house and raped her. His rifle was next to them while he raped her. He gave her Rp. 10,000 afterwards. She was taken to West Timor on 15 September. AA testified that,

> "Militia came to us in the middle of the night and withdrew the blankets from our faces and looked at us. If they liked a women they just pulled her away into another room... I told the policeman that I was three months pregnant. He didn't care... we were taken at the same time and raped in different rooms."

Another victim (BB) explicitly describes the political context:

> "Militia in Suai went from house to house and looked for people who were supporting CNRT and the independence of East Timor ... I was a pro-independence supporter. One of my tasks at that time was to explain to the villagers all about the elections. As I said everyone knew I was a pro-independence supporter and [redacted] of CNRT leader [redacted] ... The militia who caught me then forced me to go to the Indonesian Military station in Suai town called Kodim... [the perpetrator] threatened me and my [redacted], actually the whole family all the time because we were pro-independence. ... He cut my t-shirt with the knife he pointed at my chest. My upper body was naked...I tried all the time to kick. I actually thought he would kill me so I gave up. I also cried permanently [sic] after he raped me but he didn't care, he would just continue what he was doing. He threatened to kill me if I told anyone what he did."

In BB's experience the political motivation of the attack is directly alleged by her in a clear and credible way that is corroborated by other testimony about militia operations in this area. Her relation to a male supporter of independence is a recurrent pattern that connects many of the acts of violence against women in Suai as well as in other parts of East Timor during this period. The fact that the perpetrator took her to the Kodim is also a common pattern and reflects the close relationship between militia and TNI at the local level. The Kodim often served as a place where militia brought civilians whom they had illegally detained for mistreatment.

Another victim (CC) describes her experience in the detention center and explains how the prior detention of the men in her village as suspected independence supporters made the women vulnerable to assault:

> "About midnight [redacted] and [redacted] came into my house and grabbed myself and [redacted] and took us outside. I struggled against [redacted] but could not make him let go of me. My [redacted] could not help me as he had been taken forcibly to the militia headquarters ... a few hours earlier."

Witness DD describes the entire process of how the TNI and militia surrounded the church where she had taken refuge, and how after the attack they forced people to go to the Kodim. She testified that after a few days many of the women were then forcibly removed to West Timor:

> "My daughter was kidnapped by the militia from Suai church. The militia took my daughter to W. Timor to become [redacted]'s wife."

Witness XX also describes the forced displacement and the accompanying sexual violence. She was not detained at the church, but captured by the militia in Suai under the command of [redacted]. After being forced into a camp in Betun she described how women were raped night after night by the militiamen, usually at the same time each night. It is also clear that she believed she was targeted for political affiliation:

> "The situation was very dangerous because of TNI and militia. Myself and also other men from Suai hid in the forest because we were known independence supporters and were afraid of getting killed."

The testimony of DD and EE reflects the involvement of the TNI in various phases of the attacks carried about by the militia against civilians. EE's statements show how the violence was not limited to women detained at the church, but encompassed women who had been directly detained after attacks on their villages. In other words, the pattern of attack, detention, sexual violence, and forcible transfer and deportation was aimed at a part of the civilian population as a whole and not just those seeking refuge in the church. That part of the civilian population that was targeted in the attack were those perceived as connected in some way, directly or indirectly, to pro-independence.

The participation of TNI in these attacks was also described by many other witnesses. Some of them explained that they had fled to the church because of such attacks. Witness EE continued:

> "[Redacted] and 4 other men arrived at our place (in the camp). [Redacted] and one other man were armed with rifles... I only recognized [redacted]. The others had black hoods over their heads I could see only their eyes. They came with a blue pickup truck. [Redacted] was wearing military trousers and a white shirt. The others wore TNI uniforms."

She then describes the rapes which she witnessed:

> ...."[Redacted] tore [redacted]'s shirt apart so her upper body was naked...she was lying on her back. He then raped her for a few minutes. [She] tried as much as she could to escape. When [redacted] pushed her to the ground she was able to get up and run away. The soldiers ran after her and caught her. The whole situation was very dangerous and [redacted] didn't have any chance to escape....[Redacted] threatened all of us and told us he would kill us if we told anyone what happened to her later on."

Investigations by KPP HAM also uncovered evidence of TNI participation in the attacks, or more specifically, the destruction of the evidence related to the attacks. These investigations involved the excavation of mass graves in Alas Village, Kobalima District, Belu District, East Nusa Tenggara. A TNI member reportedly revealed in an interview with KPP HAM investigators that one day after the attack, he, as Danramil of Suai, brought 27 corpses with a *Panther*, a *Kijang* and a mini bus (*mikrolet*) to bury them at the aforementioned site. These details were allegedly admitted by him to the KPP HAM investigators without providing any justification or plausible explanation.[100]

Another witness (FF) describes how she was taken to a camp in Betun after the violence at the church in Suai. She too had fled to the church because of militia attacks against her community. During the course of these attacks, she was raped by TNI personnel and militia. The militia had burned all the houses in her village, including her own. Then a Laksaur militia member by the name of [redacted] and a uniformed TNI soldier forced her to go to a wooded area where she testified she was raped and assaulted. Another female by the name of [redacted] was there to witness this. On a previous occasion members of the militia came to her house and accused her of being a pro-independence supporter and had given her the choice of sex or death:

> "We will bring you to Koramil not to meet the Koramil [commander], but we want to rape you."

She also describes how, once they reached the women's detention camp Betun, rapes occurred every night:

> "... each night the militia would come into the room and switch off the light and take a girl with them. This would happen usually around 8 pm ....We were guarded at all times by the militia."

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100 Examination of Sugito by KPP HAM for the case against Herman Sedyono, et. Al. Case #: 03/HAM/TIM/02/2002, 9 July 2002, Jakarta, Transcript, 32. See also Expert Advisor's Report to the CTF, 119-121.

The SCU conducted an extensive investigation of a few of the cases in the aftermath of Suai. Case SU-56-01-SC, for example, involved the alleged rape of two [redacted] (HH and JJ). They describe how they fled to the church after an attack on their house by militia and TNI (individuals named). Their house was targeted because of their pro-independence activities. Their [redacted] (GG) described in great detail the arrest and detention of her [redacted] and other men by TNI and militia. Her [redacted] was taken away because of his pro-independence activities and when he was brought back several days later he had sustained very severe injuries from beatings and torture (he was mutilated). He was thereafter under house arrest. She did not witness the rapes of the two victims, HH and JJ. HH describes how she and her [redacted] left their village because they were afraid of the [redacted] militia. They went to Suai and stayed in the house of GG. On 12 March they fled to the Church because of the attack on the village by [redacted] militia. They were later asked to leave the church by the nuns and priest out of fear the church would be attacked (confirmed by GG). They left and on April 14 they were attacked again by militia and TNI (individuals of both groups named) who were looking for HH's relative. In the aftermath of this event she was repeatedly sexually assaulted but claims that she was not raped. The investigator appears to believe she might have been raped but is reluctant to say so. She had no information about the alleged rape of JJ because she says her [redacted] did not talk about it.

JJ was also questioned by investigators and her statement was also taken. She testifies that she was raped but says she does not know if her [redacted] was raped because that although her [redacted] was visibly very upset after being taken away and was afterwards crying at night, she did not want to talk about what had happened to her. JJ clearly identified and described the perpetrator and ask the SCU that he be arrested because everyone in her village knows that she was raped and it "does not look good" for her if he is allowed to go free. She identifies him as [redacted] and states that he was known to her in her village. He was a member of [redacted] militia and he came to her family's house and said, "You are Fretilin people. We will kill you." He later came to her house at midnight with [redacted] who went with her [redacted]. Their [redacted] could not protect them because he had been taken away by militia that evening. Her assailant threatened her with death, knocked her down, and raped her. She asks for protective measures if the case comes to court.

The [redacted] of HH and JJ was also interviewed. He describes the attack on their village by TNI and militia personnel in which he was arrested. He names [redacted] militia members and says that several of them always wore TNI uniforms.[101] He was taken away in the attack after he and several other men were dragged out of their homes and beaten and struck with machetes. He was taken to the Kodim in a Hino military vehicle, where they were interrogated by TNI members. They were asked if they were hiding Falintil members. After two priests came they were released and then taken to the hospital for treatment and then to the Suai church. He then

[101] See also very detailed statement of Witness N (Case number SA-38-99 SC, document index #3300 WE. IM, Interview of 2 August 2004). He was a driver taking TNI officers and militia on one of the operations where they were rounding up people for forced deportation. He describes in detail who was involved, co-perpetration by TNI and militia, and violence that accompanied the operation. SCU Document index #:5259WE. IM contains additional documentation and testimony about transfers and role of TNI.

returned home on April 14 and describes the attack that then occurred, during which he was again severely beaten and tortured. The assailants, who were militia and TNI (and some belonged to both) wanted to know whether arms were hidden in the church. At this time his [redacted] were sexually assaulted but not raped. He thinks they were not raped but only sexually assaulted because this is what they told him after the attack.[102] One witness testified that he thought the sexual violence was used to punish supporters of independence (18 May 2001, SCU Archives, Document Index #: 1706 WE. IM). He stated that his [redacted], [redacted] was raped repeatedly by TNI and militia members to punish him for his pro-independence political activities. As he had escaped, "she was an easy target."

Another case also involves the aftermath of the Suai church attack.[103] The files for this case include three important witness statements. They indicate (as do other statements in other case files reviewed above) the way in which the women were separated from the men after the attack on the church and were taken to the Kodim. This particular case involves a victim, II, the [redacted] of KK, who was claimed as a "prize" by one of the militia members after the attack. Witness NN testifies in detail as to this as she was present. She explains how the victim was taken to the Kodim and how the perpetrator forcibly took her away, put a necklace around her neck, and stated that she was now his "wife." She was later taken to West Timor. At the time of the completion of the investigation in March 2005, the investigator states that she and her assailant are still in West Timor and that she is still being kept there against her will. Witness KK testifies in great detail about the events leading up to the attack, the attack itself, and the aftermath. She names various TNI and militia members who were involved, including the local TNI commander, Lt. X, who she claims took a leading role in the attack itself. Her child was killed in the attack. She testifies about how they were taken to the Kodim by TNI in Kijangs after the attack and how on the night of 7 September she saw several women being raped, including her [redacted].[104] She names two of the perpetrators (corroborating other testimony in other cases that identifies them as involved in rapes at the Kodim. One of them was a [redacted] commander). She stated that the rapes she saw were perpetrated by militia and that the TNI saw what was happening but did nothing. She states that she complained to the TNI the next day and did not see rapes after that.[105]

Witness LL testifies to the detention and forced transfer and to the sexual violence that occurred after they arrived in West Timor. She relates how she and her [redacted] left the church on 5 September because they were too afraid to stay there. Fleeing from Suai they were detained by militia and taken to the high school in Suai. They were guarded by Kontigen Lorosae and Laksaur militia. They were told that they were going to be taken to West Timor. She stated that she did not want to go to West Timor "but was forced to." In West Timor she was held with others in a warehouse.

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102 The details of the attack on the village were corroborated by other witnesses, who also named names of the assailants, including both TNI and militia (commanded by a TNI Lt.). This included details such as the Hino truck used to transport them from their village from their village to the Kodim, and how they were beaten on the way.

103 Case #: SCU-030-99-SC.

104 The witness statement of MM has good information about dual membership in Laksaur militia and TNI but does not pertain to sexual violence. MM was detained and repeatedly beaten and severely tortured. Among others, she was tortured by female militia members.

105 Suai case files, electronic document index #:1706 WE IM, SCU archive.

There she was raped by Laksaur militia (whom she named, and knew previously and hence could positively identify by name).

In the case of the rape of Witness SCA the connection of the violence to political affiliation is particularly clear. She was a CNRT campaigner for independence. She took refuge in the church because militia were hunting for CNRT in Suai and she was afraid. She was taken to the Kodim after the attack and they were told that they would be taken to West Timor. They were guarded by militia and names were checked every morning at 8am. She was then taken to an orphanage building in Suai, guarded by four TNI with rifles. She was raped there by a militia member and told she would be killed if she resisted. She was then brought to West Timor. Her assailant attempted to rape her again but she was with her family and successfully resisted.

Witness SCB was also taken along with the others to West Timor and was raped there in the camp. After the men of her village in Suai had fled to the mountains, Laksaur militia rounded up the women and took them to West Timor. SCC was her relative and was beaten when she was apprehended by Laksaur militia. She was forcibly taken to a camp in Betun, along with her relative, SCB. At the warehouse in Betun a militia came and asked for SCB. He raped her in the presence of SCC.

SCD reported that her village was attacked by Laksaur militia in April 1999 and they burned many houses. She fled to the jungle. In June she sought refuge in the Suai church. On 1 September she left the church to go to her relative's place but militia told her to go back because people who went to the jungle "would be killed." After the attack, on 6 September she was forcibly rounded up with the other women and taken to the Kodim. She was beaten that night and saw how militia took girls out of the sleeping quarters at night. She was transported to West Timor and was raped in the refugee camp there by militia members. On the occasion she was raped, she saw another woman being raped at the same time close by.

SCH was also at the Suai church and was taken to the Kodim after the attack. At the Kodim she was informed that her [redacted] had been forced to become the "wife" of a militia leader. She did not see rapes but she heard the militia guards shouting that they should all be raped because they were pro-independence. They were brought against their will to Betun on 14 September in a truck with two armed TNI guards. At Betun they were told that if they tried to go back they would be killed. She saw her [redacted] there, and all her [redacted] could do was cry.

Witness SCP testified to the cooperation of TNI and militia personnel. Her testimony was very specific and she identified members of both militia and TNI as having raped her. She said eight militia came to her house. Two of them wore TNI uniforms and were carrying rifles. [Redacted] and [redacted] told her she had to go to the school building in [redacted]. She went there with [redacted], who was also ordered to go there. At the school there were many TNI members, from the Koramil who threatened them. There were seven women altogether, and the TNI told the women to sleep in the class rooms. TNI told them they would have to pay Rp. 400,000 to be taken to West Timor. The night before they left, SCP and [redacted] were told to sleep in separate rooms from the others. Militia and TNI members raped them that night.

Witness SCV stated that she fled to the forest because of threats from Laksaur militia. She was in the Suai Church on 6 September 1999 and was taken to Kodim Suai. On 15 September 1999 she was taken from Kodim to Atambua by truck. She was taken to an elementary school in [redacted] where she stayed there for two months. While there on 24 September 1999, she was taken by [redacted] to [redacted] Village and he raped her there. Her friend [redacted- Witness SCD] was raped by [redacted], and she saw this incident herself.

Witness SCW testified that her house had been burned by militia so she took refuge in the church at Suai. She tried to flee during the attack but was caught and was beaten by a militia member. Another militia interrupted and said "Don't kill her because the Chief of the District ordered women to be taken to Kodim." On the way to the Kodim they passed Herman Sedyono and the militia said to him, "We took these from the church" and Herman allegedly said "take them to the Kodim." At the Kodim all were women. They were made to cook at the Kodim. On 14 September they were taken to West Timor by TNI. The TNI just left them on the road where there were many militia. On 15 or 16 September at night, the militias came to them and said, "If you don't give us a girl, tonight we will kill you all." There were three militia members. Then they took SCW in a car. They stopped the car on the road, and she was dragged to the jungle and was raped by one, then brought to a house and then was raped by another [redacted] who forcibly gave her his necklace, thereby claiming her as his "wife." The next morning she got someone to take her to Polsek by motorbike, so she was able to escape from [redacted], who was pursuing her. She was protected by the police and the police arranged for her to be brought back to West Timor by UNHCR on October 13, 1999.

Witness SCY testified that she was taken from Suai and on 7 September brought to Betun. She testified that she and the other women wound up in the government refugee center where militias also lived. They were not allowed to leave the camp. In the camp she was raped by four men on different occasions. The first set of incidents of rape occured from January to February 2000 by a TNI named [redacted] who came to her room and said "your husband is Anti Integration so we can use you freely." She was raped over the next months by three other men, one of whom wore a TNI uniform and another who was [redacted] commander [redacted]. She returned to East Timor in January 2001. Physical force and threats were used against her on all these occasions. She testified,

> "They just came one by one. It was like a game for them. They were playing with me like with a ball... They just came and took me. I did not have any choice."

The witness statements examined above typically include a variety of crimes in addition to sexual violence. In some cases, witnesses testified only that they had been forcibly removed from their villages, detained, and then deported. This pattern of deportation and/or forcible transfer occurred in both the pre- and post-ballot periods.[106] In the pre-ballot period, systematic violence caused a large number of civilians to be gathered in refugee centers such as the Suai Church[107] (and Manuel Carrascalão's

106 For more information please also see, CAVR Final Report, "Forced Displacement and Famine" chaptet, 105-142.

107 Community Profile Beco 2 (Zumalai, Covalima); See also Witnesses SCV, SCW, SCY.

house[108]), which then provided the conditions for the later fatal attacks on these civilians and subsequent deportation. Multiple witness statements recount burning of their villages by militias, or a wave of violence that then prompted them to flee their homes to find protection in an appointed safe haven during the pre-ballot period.[109]

A woman from Suai explains:

> "I went to stay at the [Suai] church in August 1999. We went to stay there because I was afraid of the kidnappings at night by the militia. They came to houses at night looking for people. Before I went to the church, I don't remember the date, there were people coming to the house throwing stones and making the dogs bark but I hid in the house and couldn't see who they were. I and my husband and children ran to the church for our safety." [110]

She and her children survived the attack on Suai Church. Directly after the attack on Suai church, she was taken to the Kodim where she was forced to stay for one week. Then, she was deported with others to West Timor.[111] Many witness statement provide similar accounts of the events at Suai, including from families that sought refuge within the church and those that did not.

The evidence presented above, (and corroborated by other testimony not discussed at length here, such as the Public Hearings testimony of Esmeralda dos Santos) shows a well-organized and systematic campaign of violence against civilians that follows certain patterns. These patterns repeated elsewhere in East Timor in 1999. Attacks on villages aimed at intimidating or terrorizing the civilian population associated with the pro-independence movement caused many civilians to leave their homes. Some of these individuals were taken to detention centers in military or civilian government structures. Others fled to the forests or sought refuge in the Suai church.

After the attack on the church there was a further concentration of individuals in detention centers, along with others who had already been detained. Sweeping operations were conducted prior to the attack on the church and afterwards and civilians detained during these operations were also brought to the centers. Men suspected of pro-independence sympathies or activities in some cases were mistreated, in other cases tortured. Women were separated from the men and were detained against their will in centers where they were subjected to abuse, mistreatment, and systematic rape. The individuals from these centers were then moved, in many cases explicitly, in other cases implicitly, against their will to West Timor. While some individuals may have voluntarily gone to West Timor, many others testified that they were forced to do so. In other cases their decision to "voluntarily" leave was because their home, or farm, or village had been destroyed or because the insecure environment made them feel that their survival depended on leaving. In such cases, as the international criminal tribunals have repeatedly held, there is no opportunity for a genuine voluntary choice and such transfers of persons may qualify as deportation as a gross human rights violation.

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108 HC2, HC30.

109 HC21, SCV, SCW, SCY, SCV and others. See also Community Profiles: Laculai (Liquiça).

110 LL94, SPSC Case files #: 5/2003, p. 160153.

111 LL94, SPSC Case files #: 5/2003, p. 160152.

This pattern of coordinated activity required planning, a high-degree of organization, and considerable logistical support. The witnesses' testimony makes clear that TNI and Police personnel were involved in virtually every phase. Sometimes this involvement took the form of direct co-perpetration, for example in attacks on villages or acts of sexual violence. In other cases the involvement took other forms, such as standing guard outside the door while women were raped by militia. The Indonesian authorities provided the detention facilities, including public and military facilities. The civilian authority was also involved, as many witnesses described the Suai Bupati as playing a key role in the detention process after the attack on the church. The forms of participation varied, but the overall pattern was one of support and cooperation produced by the same long-established close institutional connections described above between Indonesian institutions and Timorese pro-autonomy groups at the operational level. The strong evidence of these patterns of institutional organization and cooperation make clear that violence such as that occurring at Suai was not random, not spontaneous, and not simply the product of retaliatory dynamics. Rather, this evidence supports findings of sustained and coordinated institutional activity at a level sufficient to justify findings of institutional responsibility for the crimes described above.

Violations Committed by Pro-independence Groups

All four parts of the Document Review, as well as they Fact Finding process provided information about human rights violations committed by pro-independence groups. Overall, this process indicated that while such violations were committed, they were not comparable to those committed by pro-autonomy institutions in regard to quantity or scope. It must be emphasized, however, that none of the investigations or trial encompassed in the Document Review had assigned priority to crimes committed by pro-independence groups. Indeed, some did not consider them at all. For this reason, the information available to the Commission about such crimes is necessarily partial and incomplete. Furthermore, much of it is anecdotal and based on hearsay because the incidents involved were never subject to thorough investigation. Despite these limitations, it is nonetheless essential that the Commission carefully consider the nature and responsibility for these acts, so that the truth about human rights violations in 1999 is told in a balanced way. Although the Commission recognizes that claims of self-defense were raised by some participants in the conflict, it emphasizes that these claims cannot be used to justify the victimization of civilians or the perpetration of gross human rights violations.

In the Fact Finding phase of its work the CTF received a number of allegations that pro-independence groups committed violations including murder, destruction of property, abduction and torture.[112] Several other witnesses described fears of violence and the perceptions of threat because of attacks they claimed to have experienced by

112 Mateus Carvalho, CTF Public Hearing I, 5-6, 15, 18; Domingos Alves, CTF Public Hearing IV, 6, 12 José Estevão Soares, CTF Public Hearing IV, 6; Camilo dos Santos, interview with CTF, 27 November 2006, Kupang, NTT, transcript, 1; Luisa Alves de Almeida, CTF Public Hearing II, 2-3, 5; Lucas Martins, Interview with CTF, 2; Kandido Meko, Interview with CTF, 13-16; Armindo Soares Mariano, interview with CTF, 14 March 2007, Oebobo, Kupang, NTT, transcript, 1; and Mateus Mendonza Soares, Interview with CTF, 24 Februari 2007, Tasbar, Belu, NTT, transcript, 6-7; Commander A, CTF Closed Hearing, 5-8.

pro-independence groups either prior to, or during 1999.[113] Although the quality of many of these individual reports about violations is not particularly detailed or corroborated, in conjunction with the information uncovered during the Document Review process, there is sufficient evidence to indicate that some human rights violations by pro-independence groups occurred in East Timor in 1999. It must be emphasized that the Commission has noted that in some cases discussed below the institutional identity of the alleged perpetrator could not be confirmed. In a number of cases this difficulty arises because of the lack of sufficient investigation of the incidents involved. This shortcoming arises from the predominant focus on crimes against pro-independence groups, except in the CAVR Report. For this reason caution must be exercised in arriving at conclusions about the specific institution involved in alleged violations committed by pro-independence groups.

Of the core documents, the CAVR Final Report devotes the most focused attention to crimes by pro-independence groups. However, because 1999 represented only a small fraction of its report, detailed information about violations in 1999 is scanty compared to the scale of research into this issue in other time periods. Nevertheless, the CAVR report found violations occurred, in particular, killings. The CAVR Final Report contains the following description of pro-independence violations committed in 1999:

> "The Commission has received reports about 11 fatal violations (killings and disappearances) committed by Falintil between January and May: in February three civilians were killed in Covalima; in March two civilians were killed in Ermera, in April two civilians "disappeared" in Baucau and one individual was killed in Bobonaro; and in May individuals were executed singly in Ermera, Covalima and Liquiça. In terms of the number of violations, the identity of victims and the locations, these cases appear to be a continuation of the pattern observable during the previous three years[...] In all the Commission received information about 22 extra-judicial executions and seven disappearances committed by Falintil in 1999, 17 of these coming in the post-ballot period."[114]

In Timor Leste the leaders of the Resistance Movement during the CAVR process have admitted that such violations, including those committed in 1999, were committed by pro-independence groups and apologized to the victims and their families.

The Commission performed a cross-checking of the CAVR database to verify these reports and found that two districts, Bobonaro and Ermera, appear to have suffered a significant number of unlawful killings, and incidents of deprivation of liberty and torture by Falintil during the post-ballot period. On 1 September 1999, a civilian was allegedly tortured and killed by Falintil in Ermera and a separate killing occurred the same day in Bobonaro. On an unspecified day in September 1999, Falintil allegedly illegally detained and mistreated a man in Cailaco they suspected of formerly belonging to a militia group.

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113 Câncio Lopes de Carvalho, CTF Public Hearing III, 6-9; Mateus Carvalho, CTF Public Hearing I, 7, 12.

114 CAVR Final Report, "Unlawful Killings and Disappearances," 243-244.

There are three separate incidents of civilians in Ermera allegedly being illegally detained and tortured in September: On 21 September 1999 Falintil allegedly detained and killed one civilian in Ermera. On 25 September, Falintil allegedly detained and killed a civilian on his way to Atambua. On 28 September, Falintil allegedly detained, tortured and killed another civilian. Falintil allegedly killed one man who was reportedly an Aitarak combatant in September 1999 as well. The motives for these killings appear to be revenge for collaboration with pro-autonomy groups.

While these violations are included in the statistical analysis of institutional responsibility, they were not analyzed thoroughly in the CAVR Final Report. The temporal distribution of these crimes and similar pattern of crimes across at least two districts is suggestive but not conclusive in order to determine whether these crimes meet the standards of widespread or systematic perpetration. Furthermore, on the basis of the information provided it is not clear which pro-independence institutions should be considered responsible for these alleged violations. Falintil is listed as the primary violator, but these statements have not yet been examined, and cross-examined in order to verify these institutional affiliations.

The Special Panels tried several cases involving pro-independence groups' violations. It should be noted here that the Court took quite seriously the allegations of attacks by pro-independence groups. In the Lospalos case, for example, evidence emerged at trial that there was allegedly an ambush by a pro-independence group in Lautém. The Court's reaction deserves emphasis:

> "As the aforementioned report noted, gross violations were also committed by parties oriented to the independence cause. During this trial [Lospalos case] more than one accused addressed to the Panel a request for the punishment of those who attacked part of the group on 27 September 1999 during an ambush which resulted in several deaths and serious and permanent injuries in some of them. The Court immediately requested the Prosecution Service to undertake inquiries about criminal persecution [sic] for that incident. The accused Paulo Da Costa added in his Closing Statement that a Serious Crimes unit investigator had already recently interviewed him." (para 687)

However, while research at the SCU archives uncovered several mentions and questions directed to witnesses regarding these allegations in Lautém district, the Commission was unable to find any serious pursuit of investigations into these violations.

This incident was also referred to in the testimony of Johny Marques in the Public Hearings in Dili.[115] Marques' testimony raises a certain degree of question as to whether it was actually Falintil who conducted the attacks on his groups' members. Marques stated that he did not know if the attack was conducted by individuals who were actually Falintil, or another group:

115 Joni Marques, CTF Public Hearing V, 3, 6-7.

> "It was on 27 September. There they were ambushed by Falintil, but personally I don't know for sure if it was Falintil or other groups, because at the time I didn't know, I did not go with them. Suddenly at around one o'clock I heard information that my men were attacked. Lah, so I was astounded. And I wanted, wanted to come to the scene, but a lot of my guys were there already, "Pak Jhony should not go there, because this is an ambush." Hah, an ambush by whom? Hah, then one of my men managed to escape to Com, ya, so he told me, "we were ambushed by Falintil. Our friends have all been shot or killed."[116]

Unfortunately, the Commission has not been able to obtain sufficient information to verify the exact nature of this particular attack.

In the trial of Julio Fernandes (Ermera district), a Falintil commander was found guilty of the crime of murder. The victim in the Julio Fernandes case was a former militia member whom a crowd of villagers threatened to kill in public.[117] Julio Fernandes was sentenced to a significantly longer sentence (7 years in initial proceedings when found guilty of "homicidio previsto", and reduced to 5 in the Appelate Court ruling because they found him guilty on a different and lesser charge of "homicidio simples") for his crime compared to another independence supporter - Victor Alves. The reasons for their different treatment by the Court have not been sufficiently explained in the judicial records.[118] In another case heard by the Special Panels, The Prosecutor vs. Carlos Soares [aka Carman][119], the Court found a Falintil soldier guilty of a murder of a civilian who was patrolling with him and two other Falintil soldiers.

Thus, several individuals from pro-independence groups have already been held legally responsible for human rights violations (murder). Beyond these conviction of individuals, however, the Commission is mandated to consider institutional responsibility in an effort to provide sound recommendations to prevent future violations and facilitate reconciliation. Further research into this issue produced a troubling conclusion: there could have been a significant number of violations committed by pro-independence groups in East Timor in 1999, but these violations have not been adequately investigated. For this reason the same degree of information is not available regarding pro-independence crimes as pro-autonomy crimes. Although it is clear from the breadth of research undertaken about patterns of violations in East Timor in 1999 (including forensic analyses) that pro-autonomy groups committed the majority of violations, it is also clear that the full extent of

116 Ibid., 6. "Itu pada tanggal 27 September. Di sana mereka dihadang oleh kelompok Falintil, tapi saya sendiri saya tidak tahu apakah benar itu Falintil atau kelompok siapa, karena pada saat itu saya tidak tahu, saya tidak ikut dengan mereka. Tiba-tiba sekitar jam satu saya mendengar informasi bahwa anggota saya diserang, lha ini saya terkejut. Dan, saya ingin ke datang datang ke tempat kejadian, tapi banyak anak-anak anggota saya juga di sana, "Pak Jhony jangan ke sana, karena ini suatu penghadangan." Hah, ini penghadangan oleh siapa? Hah, terus ada lagi anak buah saya yang sempat lolos sampai ke Com, ya dia mengatakan, "kami dihadang oleh Falintil. Teman-teman kita sudah habis tertembak atau terbunuh."

117 For an example of villagers reporting former militia members, see the KKP Audiovisual index, Daftar CD-7, Folder: AV-disk 2, #1 (Arresting militia). In one clip residents in Dili bring an alleged former militia member to INTERFET soldiers for arrest.

118 See Suzannah Linton, "Prosecuting Atrocities at the District Court in Dili," Melbourne Journal of International Law 2 (2001): 414-458, for a detailed discussion of Julio Fernandes case.
For a judicial analysis of the Victor Alves case see Cohen, Legacy of Indifference.

119 The Special Panels heard three different cases, all with a defendant named "Carlos Soares." Please note that these are three different individuals and separate cases. We are referring to case number 9/2002 or ER-58-99.

pro-independence violations is not known. The Commission engaged in a process of research and investigation that serves as the basis of its analysis and conclusions, but the kind of investigation required to establish the conclusive truth about these specific allegations is beyond the scope of the Commission's mandate and powers. The rest of this section indicates the state of the available evidence and the degree to which it can support specific findings.

In the Document Review process the Commission encountered a number of reports of killings of former pro-autonomy supporters, which have not been adequately investigated or prosecuted. For example, at the SCU the Commission located a report filed by UNAMET which states two Aitarak members were stabbed to death by pro-independence supporters in Comoro market the morning of the final day of pro-autonomy campaigning. The report suggests that Aitarak was forcing civilians to attend their rally, which may have been the motive for the alleged pro-independence attack. UNAMET reports on the same day pro-autonomy militia killed a man and a woman in Pantai Kelapa who refused to attend their rally.[120] It is not clear if the SCU took any further action with regards to these murders.

The SCU files also reveal that Falintil troops in Manufahi district were not all under cantonment because the SCU investigated a battle that occurred in the district in September 1999 between Falintil and ABLAI militia members.[121] It is not yet clear if human rights violations occurred in relation to this battle.

Other research by the Commission revealed that a man in Oecussi confessed that he murdered a pro-autonomy militia leader in the post-ballot period. His confession is supported by several eyewitness statements, and he declared his willingness to stand trial, but this case has also not been the subject of further judicial inquiry.

The Commission reviewed several different video tapes with segments of unedited video footage from ABC news service and a documentary film that contained visual evidence of the murder of an Aitarak member by a pro-independence youth group in Becora in August 1999.[122] The victim allegedly rode by a group of pro-independence supporters on his motorcycle and taunted them. The youth, armed with machetes and other rudimentary weapons then attacked him. The fatal blows to the victim can not be seen on the video, but a recognized pro-independence youth group leader can be seen dragging a limpid body to a taxi and putting it in the vehicle as other pro-independence youths continue to beat the militia member. The leader of this youth group, João da Silva, claims he was trying to save the life of this man by sending him to the hospital. However, he was later asked by Xanana Gusmão to turn himself into the authorities and to take responsibility for the crime. The man turned himself in, at the request of Falintil and with the coordinating efforts of the UN, and he was detained in Becora prison. During his detention da Silva was reportedly taunted

120 Case #: DI -114-99

121 See the map of the attack that appears in our previous report to the CTF. The map is also contained in the SCU investigative files, case # SA-52-99. In this attack there was one fatality on the pro-autonomy side, and three Falintil members who were detained. After the Falintil members were captured, they were transported to Ainaro district. Here they were allegedly tortured and killed by ABLAI militia members.

122 See KKP Audiovisual index, Daftar CD-R6, Folder: AV disk 1 (Presentation Clips/Proindp), Clip #4.

by militia groups and his rights as an accused and detainee were severely abused. Allegedly a policeman assisted him in escaping a death threat by a pro-autonomy militia group, and Silva later fled to safety.

There is also extensive video footage of clashes between Aitarak members and pro-independence youth, including several clips of violence that can be placed in the area of Matadouro, Dili near the UNAMET headquarters, which took place in August 1999.[123] These clips are short (1-5 minutes each) and are not necessarily in chronological order, or all filmed in Matadouro. In these various short clips, pro-independence youth are armed with various types of knives and swords and use rocks. In examining the footage closely it can also be observed that in at least one video clip, a pro-independence group member seems to be carrying a firearm. The pro-independence supporters are not uniformed, although two men appear in the footage in uniforms that cannot be identified. In one clip, the pro-independence supporters also constructed a roadblock. Other footage of the same incident shows the roadblock is marked with a poster painted with pro-independence slogans in Tetum (i.e. "Rasik An") and a CNRT flag. The pro-autonomy supporters in the clips are a mixture of people – some who wear a clearly visible Aitarak uniform and others who are not clearly distinguishable as pro-autonomy combatants. The pro-autonomy group carries various arms – including pistols, machetes, and rakitans. The CAVR Community Profile for this area reports that there were deaths as a result of the Matadouro incident in the clips, but does not indicate the institutional or political affiliation of the victims. The community profile for this area reports three people were killed and one person was seriously injured in the incident.[124] However, it can not be currently ascertained if there were any fatalities attributable to the pro-independence side.

Another video clip reports the murder of an Aitarak member in the market (Mercado Lama) in the pre-ballot period by a pro-independence supporter[125], but there is no evidence of investigation into this case at the SCU.

In Liquiça, witness statements and military telegrams report a clash between pro-independence and pro-autonomy supporters in the area of Dato on 4 April 1999, just before the attack on the Liquiça Church.[126]

A military telegram reported another incident on 24 February where there was a dispute between a group of CNRT youth and an Intel member over a motorcycle that escalated into a full conflict between TNI and the youth.[127] Two pro-independence youth died in the attacks from gunshot wounds, and one TNI soldier was killed from a stab wound and beatings from the crowd. The same telegram reports roadblocks had been constructed around the city by CNRT. On 19 February, allegedly the Dili airport received a bomb threat from a pro-independence group as well.[128] The escalation of violence during these two weeks appears to be related to

123 See KKP Audiovisual index, Daftar CD-R6, Folder: AV disk 1 (Presentation Clips/Proindp), Clip #3-4.

124 Community Profile, Mascarenhas and Rumbia (Dili).

125 KKP Audiovisual index, Daftar CD-R6, Folder: AV disk 1 (Presentation Clips/Proindp), Clip #2.

126 HC8.

127 Staf Intel, Dili 1627, Daily Report Nomor: R/59/LH/II/1999, CTF Document #: G0251/SCU-2/No.174, CTF Archives, 1-2.

128 Staf Intel, Dili 1627, Daily Report Nomor: R/50/LH/II/1999, CTF Document #: G0251/SCU-2/No. 171, CTF Archives, 1-2.

the shooting of a pro-independence youth, Benedito Soares, on 14 February, in an incident where pro-independence groups allegedly burnt the house of a policeman. The escalation of violence also coincided with the visit of the UN Rapporteur Tamrat Samuel on 23 February.[129]

Yet another avenue of document research revealed an incident in [location redacted] district of illegal detention and murder of alleged pro-autonomy supporters by at least one person who was identified by witnesses as a CNRT "commander".[130] The testimony of one witness reported that her husband and his three friends came from Atambua to East Timor. The group was captured and bound with rope. The youths who detained the witness' husband stated that the victim was called to come with the group by a "Commander"[131], hereafter referred to as Commander X, whom witnesses refer to as part of the "Force Security Popular," which was under the umbrella of CNRT at that time. The victims were allegedly told to accompany the group to the Region [redacted] Falintil Command Headquarters. However the victims may have never been brought to the headquarters of Falintil, or to the higher Falintil Commander who allegedly summoned them.[132] Instead, they were allegedly beaten, and perhaps killed, in front of a group of twenty people or more. Other witness statements claim the men were beaten and injured in front of the crowd, but survived and were taken to another location to be killed.[133]

The "Commander" (hereafter referred to as Commander Y) who allegedly ordered Commander X to bring the men to Falintil headquarters,[134] is not absolved by these circumstances though. Other witnesses allege this Falintil Commander Y ordered the men's detention and killing by the youth.[135] Commander Y admitted in his statement to telling the group to tie the men up if they were former militia.[136] The Falintil Commander Y who allegedly ordered the detention and killings also appears to have admitted that he gave no orders to prevent their mistreatment, even though he says in his statement that he knew the men would be killed by Commander X, who allegedly took control of the operation.[137] One witness says Commander Y did not report the murders as soon as he received news of them from Commander X.[138] Commander Y claims he did report the murders to his superiors within Falintil, but only after

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130 Note that we use the words in the original case files for accuracy, "CNRT Commander." However, we suggest that investigations into pro-independence cases were not conducted with precision regarding pro-independence affiliation, or proper ranks.

131 The exact word recorded in the key witness statement that appears in both the original written in Indonesian and the English translation in the SCU files to identify the main perpetrator is " [name redacted] Komando." This witness statement is on CNRT' stationary ("East Timor National Resistance Council (CNRT), Frente Politica Internal (FPI), Region 4 – Bobonaro Sub-Region, Popular Security Force (FSP), Document Number: 02/FSP/II?/2000"). It is not clear if the English translation was made by the SCU, or supplied by CNRT. Commander X does not identify himself as a Commander, or a member of any group in his first statement, but in a second statement taken by the SCU he identifies himself as being in charge of the security group (FSP), but working with Falintil.

132 The Falintil Commander Y in this case identifies himself as a Falintil member. Commander X's statement (BAK) identifieds the Falintil Commander as his leader, and a member of "Estafeta." Commander X claims Commander Y was responsible for coordinating activities with Falintil in the area. BAJ also identifies Commander Y as a Falintil member.

133 BAH, BAI, BAJ, BAK (statement 1 and 2).

134 He also claims he was sent on patrol with the Youth Group and was fulfilling orders given to him by another higher Falintil commander.

135 Witness statement, BAH, 2. Also, BAJ, 1-2 and BAK, 1.

136 Witness Statement, BAI, 4.

137 Ibid.

138 BAH, 2.

the youth group returned and told him the men had been killed.[139] However, yet another witness reported that the CNRT Commander X reported the murders to another Falintil Commander [named in the files, hereafter referred to as Commander Z] after he committed them.[140] Commander X says he just hid in the forest.[141] So, it is not clear who the person Commander X feels aligned with – Commander Y or Commander Z? It is also not clear how or why Commander Y or Commander Z would have been active in this area, because it is during the period of Falintil cantonment. Another witness testified that he tried to refuse the Commander's order to assist the group in detaining the men, but the Commander came to his house with the other men and tried to make him come and participate. The witness says he joined the group after they visited him at his house because he was afraid that they were going to beat him.[142] This witness, with others, claims that Falintil Commander Y helped in the detention of the four men, and told a crowd that had gathered that they were former militia.[143] Then, Commander Y allegedly participated in beating the men, and observed as Commander X stabbed one of the men.[144] This witness further alleges that Commander Y ordered the men who were beaten by the crowd to be taken off into the woods to be finally killed, where Commander X led the group in the murders.[145] Therefore, it appears that this instance of alleged murder and illegal detention, if conclusively proven to be true, would indicate an institutional connection relevant for a determination of institutional responsibility.

However, this case is intricate, and some points need further clarification. While the witness statements are consistent on the general chain of events that took place, and the identities of the main perpetrators and victims as individuals supporting and involved with pro-independence organizations, the statements are not consistent in identifying the victims as former militia. Some of the family members denied these victims had supported autonomy, and in fact said they had initially fled to West Timor because they were pro-independence supporters. Other witnesses in the case identify the victims as pro-autonomy members. Commander Y's statement said he received a letter that reported the men's arrival to the area and they were identified because they were "strange," or from out of the area.[146] However, at the time of the attack one perpetrator allegedly called out to the crowd: "I killed four militia [...]"[147] and named one of the victims. Another suspect knew a different victim by name.[148] The case clearly involves individuals who claim affilition to both CNRT and Falintil. However, all of the suspects' statements shift the blame to another person within their group, and each suspect appears to claim they were not in control at certain points during the incident. On the other hand, at least two of the suspects, Commander X and Commander Y, are both singled out by the witnesses as being in charge. Thus,

139 BAI, 5
140 BAH, 2
141 BAK, 2.
142 BAJ, SCU case files, 1-2.
143 BAJ, SCU case files, 2.
144 Ibid.
145 Ibid.
146 BAH, SCU case files, 2.
147 BBB, SCU case files, 1. The original document reports one of the perpetrators says: "I killed four militias, everyone had to come out and had to witness the deaths of [names redacted]"
148 BAJ, SCU case files, 2.

it is not clear how the exact chain of command between CNRT (which includes civilians) and Falintil (declared, professional combatants) worked. However, both Commander X and Commander Y report the murders to Commander Z in a manner that indicates they acknowledge Falintil as the institution with the ultimate command authority.

This incident went through several phases of investigation by both CNRT and Falintil, because one key witness statement comes from a document written on CNRT stationary and the Case File summary notes that the files also contain a letter written by Falintil that informs the victims' families of the deaths.[149] However, it is not yet entirely clear if and how each institution is connected to the perpetrators, victims or the specific acts. It is possible, but not certain from the case documents, that CNRT handed the case over to UNPOL/SCU so that it could be properly adjudicated. Alternatively, the victims' families may have pursued the case directly with UNPOL.

Regardless, from the documentation reviewed by the Commission, it does not appear that any individual or institution has been finally held responsible to date for these violations of law and human rights, although Commander X appears to have been detained by UNPOL for a period of time in Gleno prison while the case was being investigated. In prison he confessed to the murders to SCU investigators.[150] He claimed he committed the murders because Commander Y ordered him to kill the men.[151] On 6 April, 2005, during its Case File Review process the SCU deemed the evidence strong, and recommended the case proceed, and gave instructions to investigate further to pursue a charge against Commander Y, but there is no further documentation that has been supplied to the CTF that shows the case was ever completed.[152] In summary, while it seems evident from this case that human rights violations were committed by persons who claimed to be part of pro-indepedence groups' command structures, further investigation is necessary in order to make more precise conclusions about institutional responsibility.

Apart from the cases of killings examined above, there is a significant amount of evidence that suggests Falintil and pro-independence groups may have systematically and on a widespread basis captured and illegally detained people. The victims most often appear to be active militia members, but their detainees may have also included non-combatant civilians. Detentions appear to have become more systematic and widespread during the post-ballot period of 1999.

One of the most widely known cases of illegal detention allegedly occurred in Liquiça in June 1999. Falintil captured a policeman and a militia member and held them hostage for several days until the UN negotiated and oversaw their release. UN

149 We were not able to locate a copy of this letter in the files.

150 BAJ (statement #2), 4-5.

151 Ibid.

152 The apparent failure to pursue this case is likely to have arisen from the fact that in 2005 virtually all available SCU resources had been reallocated to preparing the "handover" of the SCU's files to the Prosecutor General of Timor Leste, scheduled for May 20, 2005. This clearly indicates the way in which the UN's hasty and ill-planned termination strategy for the SCU and SPSC resulted in important cases not being follwed up.

staff filed a report related to this incident.[153] In their original report it states that Falintil appears to have beaten these men during their period of detention, and an examination by ICRC identified severe bruising on the bodies of the men.[154] It is significant that this case was also never investigated by the SCU, even though there was a detailed UN report of the incident in the Wiranto Case Files. The UN report also notes that Falintil was cooperative with the UN, but that the hostages' handover was delayed because there were militia and TNI attacks on the day in the area of the appointed meeting place. From the documents seized at the Aitarak headquarters we have another report during the same time frame of a pre-ballot illegal detention reported by ABLAI militia in the Same area.[155]

In documents located at the Museum of Resistance it appears that Falintil captured and detained a group of Besi Merah Putih members in Ermera in March 1999 (See Document Annex, #10). The telegram does not indicate that these detentions were carried out in accordance with international law.

In the community profiles from the CAVR the Commission found a report of Falintil conducting roadblocks to apprehend those who were suspected of being militia. The area of Belecasac, Maucatar, Covalima recorded in their village history:

> "26 April 1999, Falintil held a blockade against a mini bus (Sinar Rejeki) because all the passengers used the Indonesian flag (Merah Putih). The vehicle was burnt by Falintil and the 10 persons escaped. Due to this accident, the combined forces (Laksaur, Mahidi and TNI) complete with all kinds of weapons, chased people. Those who were identified from the combined forces were: Dato Filomeno (Laksaur), Armindo Gusmão (Laksaur), Leopoldo (Laksaur), George (Laksaur), Vital(Laksaur), Calisto (Laksaur), Clementino (Laksaur), Manuel (Laksaur), Rui (Laksaur), Romeo Siri (TNI) and Adolfo Hale (TNI) and 10 more TNI. The impact of the chase was the civilian peoples at Busadao were scared. Seven people were tied up and beaten because they were suspected of cooperating with Falintil. Futhermore, one woman was hacked by machete and two houses were burnt. In August 1999 when the election day came, there were stonings between the militias and the pro-indepedence groups at the church grounds. This made the population afraid and one person was injured (Joel)."

Thus, this evidence, while not complete, is sufficient to indicate that Falintil systematically captured militia members in multiple areas in East Timor and illegally detained them.[156]

On the other hand, the Commission also found evidence that Falintil had issued preventative orders that required the protection of militia members (See Document Index, #11 and #12). These orders provided detailed instructions about specific measures that should be taken to avoid provocation and actions that might give rise to violence or conflict. These included instructions to cease shooting, to avoid

153 The Commission also has a copy of the military telegram which initially reports the capture of the two men. Staf Intel 1638, Daily Report Nomor: R/88/LH/VI/1999, p. 2.

154 HC12, "Report on UNAMET Retrieval of Hostages from Falintil and Observations of Joint TNI/Militia Operations," 15 June 1999.

155 Note there is a misspelling of the militia group's name in the original.

156 For other references to Falintil's alleged illegal detentions, see also: HC4, HC10.

interference with the movement of persons, to refrain from coercion of individuals to support the pro-independence cause, and a variety of other acts. It also declared that any individuals who violated these instructions would be punished.

However, these guidelines do not appear to have been adequately enforced in the case of illegal detention given the number of reports of incidents received of this type of violation, and the Commission has not yet encountered any specific, punitive measures taken for violations of illegal detention by Falintil or other pro-independence group members.

These detentions at times seem to have led to other serious violations such as inhumane treatment or torture. For example in Oecussi, there is one case considered by the Commission where a former militia member was arrested by CNRT. He was held for several days and eventually handed over to INTERFET. Both the witness and the reporting INTERFET officer noted that the man received maltreatment during his period of detention by CNRT. This treatment included beatings and allegedly trying to force the man to rape a woman in front of a group of people. In this case the evidence suggests CNRT committed the violation of both illegal detention (neither CNRT, nor any other pro-independence group, had the legal authority to arrest people without charges and hold them indefinitely) and torture, in addition to a sexual violation against the woman. Although the SCU investigator pursued this line of questioning of the witness, there is no evidence that this case was ever further investigated in depth by the SCU.[157] The reasons for the lack of investigation are not made clear in the files.

A case concerning a group of murders allegedly committed by militia members in Liquiça district also contained information that is suggestive that CNRT may have detained these suspects illegally. The majority of the suspects in this case are listed by what appears to be the SCU investigator as having "surrendered" to CNRT, and to have been in their custody for approximately one month from September to October 1999. The term "surrender" does not on its own indicate that illegal detention did not occur. However, one of the other witnesses/suspects in the same case, who was not part of this group originally detained in 1999, was held by CNRT after he returned from West Timor in February 2000. He described his period of custody by CNRT (55 days) to the SCU investigator explicitly as illegal detention. He said: "I was more or less under arrest by them."[158]

From the case documents in another case in Dili it seems that some other men were illegally detained by a group of Falintil persons led by suspect DC. It can be gathered also from the documents that the other six Falintil members who were helping to detain these men received their order from DC and DC himself claimed to have received his order from one of the most senior leaders in CNRT. However, there is no statement from this leader in the files to corroborate or dismiss these allegations.

157 LL5972, SCU Case Files. This file is an exception to the coding system (LL#), and is contained in an investigative file. The reference to its location is on file with the CTF.

158 Witness Statement, LAG, Case #: LI-1-99 (filed under #LI-10-99), 1.

It is not clear from the case files if this individual was ever contacted for questioning. During detention, all of the men appear to have been interrogated, and assaulted for information. One of the witnesses/detainees was visibly injured, and examined by an INTERFET doctor. However, the medical report does not appear in this file. The documents also noted that additional witnesses were still in a Falintil's custody after these men were released.[159] The witness statements in this case were not available to the Commission to verify the specific allegations that emerged in the other documents in the case files. Thus, the Commission can only ascertain that the evidence it has reviewed in this case to date is highly suggestive, but must be investigated in greater detail, and tested, to confirm the allegations made in these files.

Nevertheless, in light of the other instances we have encountered in the Community Profiles and the SCU files, it is possible that this case involves crimes against humanity including the violations of torture and severe deprivation of liberty. This possibility exists because the evidence reviewed suggests a widespread pattern of Falintil and/or CNRT detaining people who are perceived as current, and/or former militia. It also suggests that illegal detainees were regularly mistreated. The systematic elements of the crimes allegedly include formal orders from commanders to conduct detentions, reports to commanders regarding the timing and methods of detentions, written records and lists of people who were detained, and the construction of roadblocks in order to commit the initial act of detention. These factors suggest highly organized and repeated activity that suggests at the very least tacit institutional approval. Accordingly, Falintil and/or CNRT may bear institutional responsibility for these acts of illegal detention as a crime against humanity.

Another category of human rights violations to be considered involves the destruction of property targeted against pro-autonomy supporters. The available evidence, while by no means complete, indicates there may have been a significant number of acts of property destruction by various pro-independence groups, including the burning of houses.

Various documents and testimony from the SCU archives include references to destruction of property. This letter dated 14 June 1999 alleges that on the previous day a group of five or more armed Falintil soldiers or a pro-independence group attacked a village in Maubara and burned civilians' houses. Four houses were allegedly destroyed and the identities of the owners of the houses are listed. The letter is from a member of Aitarak in Sector B named "Agus." The information on which the report is based came from reports by Besi Merah Putih militia members in Liquiça. The report is addressed to the Leader of the FPDK and the Commander of Aitarak's Sektor B.

The Commission has not found any evidence of investigation into this event, or other acts of property destruction, in the bodies of documents that were examined. Therefore, the accuracy of this report cannot be confirmed or denied. There is also a witness testimony from the Same region that claims pro-independence supporters burnt houses in several villages during the post-ballot period.[160]

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159 "Prosecution Submission on Application for Release," 2 November 1999, 2. This application also notes that Falintil's illegal detention of individuals may have been tacitly approved by Interfet. The document reads: "At the very least this appears to have been condoned by INTERFET."

160 LL3, Case files #5/2003, p. 160516

From the video footage the Commission examined, there was another report of a burning of a house by a pro-independence group. A house and store next door to the Indonesian Marines compound was destroyed. One Indonesian soldier told a reporter:

> "I think it's the pro-independence who burned the house because the house belongs to pro-integration, so its not burned by TNI."[161]

Again, without access to Police archives or other sources, we can not deny or verify these reports.

The Commission also received a number of TNI daily and weekly reports that contain routine crime and political analysis of events in East Timor in 1999. In these telegrams a number of alleged violations are recorded. It must be emphasized, however, that because the TNI did not provide all of the daily and weekly reports requested by the Commission, and in fact only a very small number of them, the picture they provide of alleged violations is very incomplete.

For example, a report for the 12-14 February 1999 stated that a member of the Dili Polres had his home destroyed by a group of approximately 250 pro-independence youth.[162]

Another daily report alleged that on 31 July 1999 a group of pro-independence supporters ransacked and burnt the house of an Aitarak member in Taibessi. The Aitarak member was also a Deputy Camat. The telegram attributes the events to a shooting that occurred earlier in Taibessi which killed one youth. The pro-independence group allegedly attacked the Aitarak member's house because they believed he was responsible for the youth's death. The telegram specifically states that the pro-independence group that burnt the house was "coordinated."[163]

On 30 January 1999 the TNI reported that a pro-independence group attacked a pro-autonomy group, and possibly a number of cars around the Hotel Mahkota, where the FPDK was holding a meeting.[164] This meeting was attended by prominent pro-autonomy leaders such as Cancio Lôpes de Carvalho. Carvalho's militia group, Mahidi, was present as security, and the telegram noted they were armed. A group of pro-independence youth allegedly taunted the guarding militia, and threatened to burn the cars.[165] They allegedly attempted to release a grenade in the direction of the hotel. As a result, the militias fired their weapons, including Cancio Lopes de Carvalho himself who allegedly fired warning shots. In total the militias fired approximately 40 times. The pro-independence group fled, and there is no further information as to whether there were casualties. Pro-independence youth also allegedly attacked and burned cars of pro-autonomy leaders, including the Governor and Mayor of Dili, after the opening day at the UNAMET headquarters on 4 June 1999.[166]

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161 SCU Archives, AV collection, VT005, #151. "Raw footage Sept-Oct 1999.'

162 Staf Intel 1627/Dili. Daily Report, Nomor: R/45/I.H/II/1999, SCU Archives, 2.

163 Staf Intel 1627/Dili. Daily Report, Nomor: R/315/LH/VIII/1999, CTF Document #: G0251/SCU-2/No.145, p. 2.

164 Surat Telegram, STR/72/1999, 30 January1999, CTF Document #: G0251/SCU-2/No.149, p.1

165 It is not clear from the original text if the cars were actually burnt in the attack, or not.

166 Ian Martin. Self-Determination, 41. See also José Estevão Soares, CTF Public Hearing IV, 6.

The military telegram collection received by the Commission also reported one act of extortion by a pro-independence group. A report on 19 July 1999 stated that three pro-independence youth had approached a TNI soldier in Becora, and asked for Rp. 50,000.[167] The pro-independence youths claimed they were going to use the money for the pro-independence campaign for the Popular Consultation. The man did not have that amount, and the group said they would take anything he had, such as rice. The telegram states that the TNI member was threatened and gave the youths Rp. 15,000.

Lastly, the Commission reviewed one report of a sexual violation committed by a Falintil Commander. Although the documents show that Falintil investigated the incident concerning sexual slavery, the information also demonstrates that the case was not fully or adequately pursued. In fact, the documentation strongly suggests that the senior leadership in Falintil issued instructions to not discuss the case further,[168] even though it had not been resolved according to legal procedures, or to the victim's satisfaction. The evidence very clearly and strongly suggests the Falintil member had committed a violation. As in the other case, further investigation into this matter would be required to reach final conclusions, but the multiple statements in this case contain evidence that strongly suggests this particular Falintil member was investigated, but never punished for this specific act of sexual violence.

In summary, a significant number of violent acts appear to have been committed by pro-independence groups in East Timor in 1999. It also appears that this violence took a variety of forms but was systematically targeted against pro-autonomy groups and their supporters. However, it is not as clear, as in the case of pro-autonomy groups, how the specific institutions within the pro-independence rubric were involved, and to what degree each of these acts was supported, coordinated, planned or systematic. The lack of attention given to the pro-independence crimes in all four sets of core documents limits the degree to which the CTF can make a conclusive finding on this information. In addition, the information obtained during Fact Finding was in many ways consistent with the evidence from the Document Review. However, it was also not detailed and substantiated enough to make up for the weaknesses in the evidence from the Document Review.

Despite the limitations of the available evidence it is nonetheless possible to make certain findings. First, the evidence does indicate that there were clearly multiple acts of violence committed against pro-autonomy supporters throughout 1999 and in a variety of locales. While the exact extent of these acts of violence is unknown, they appear to be sufficient in number, scope, and distribution to support a finding that they were widespread. The fact that they were consistently directed against pro-autonomy groups in an organized manner involving, at least in some instances, the pro-independence groups' command structures, also indicates the liklihood of their systematic quality and a substantial institutional linkage. Patterns of such conduct are particularly apparent in regard to illegal detention, which appears to have been systematically employed as a strategy against pro-autonomy groups. Other crimes committed include extrajudicial killings and destruction of property that appear to

[167] Staf Intel 1627/Dili, Surat Telegram, Nomor: STR/172/1999, CTF Document #: G0251/SCU-2/No.150.
[168] Witness statement BAE, 2-3.

have targeted victims based on either perceived political affiliation, or as retribution for other acts of violence, but the evidence in regard to these categories is much less conclusive as to whether they were isolated instances or part of a pattern of persistent activity. As seen above, substantial numbers of killings have been documented but the investigation of these events typically did not focus on the institutional context of the killings or the way in which they might fit into larger patterns of deadly violence employed against targeted groups.

Although the Commission acknowledges the existence of multiple preventative orders by the pro-independence groups' leadership[169], in the case of illegal detention it appears most likely that they were not effective and that these acts of illegal detention occurred systematically in East Timor in 1999.

169 In addition to the document featured in the annex, see also Museum of Resistance documents #07634.001#1 (Falintil preventative orders), 1999/CNRT/FPI#07110.033 (CNRT preventative orders).

i) CTF Public Hearing V, Dili, 7:

"**Aniceto Guterres:** Kalau begitu pertanyaan saya orang-orang yang dibunuh pada tanggal 8 delapan belas (18) ini kemudian rumah kalian yang rumah yang dibakar itu, banyak rumah yang dibakar, dan juga kalian tujuh puluh empat (74) orang yang diikat itu apakah ini semua pro kemerdekaan?

Marcus Baquin: Ya, itu orang pro kemerdekaan.

Aniceto Guterres: Ya, terima kasih. Saya hanya mau tanya itu."

ii) DPV, Dili, 26/09/07, pp.10-11:

"**Aniceto Guterres:** Kenapa tidak mengungsi atau melarikan ke wilayah Indonesia saja, karena waktu itu sudah banyak orang yang mengungsi ke sana?

Marcus Baquin: Karena waktu itu saya sudah luka dan saya khawatir kalau saya keluar orang sudah menandai saya, dan kalau saya keluar saya akan dibunuh.

Aniceto Guterres: Tidak, maksud saya bukan bel belum terluka, tanggal 8 itu.

Marcus Baquin: Ya, waktu itu kami tidak memutuskan untuk lari ke wilayah Indonesia, karena orang-orang pro otonomi itu sudah duluan ada di sana sehingga kami kuatir kalau kami ke sana pasti mereka akan menangkap kami juga.

Aniceto Guterres: Ya, kalau begitu Bapak sendiri pro-kem ya?

Marcus Baquin: Ya, mau merdeka sendiri.

Aniceto Guterres: Ya, jadi karena itu anda dibacok?

Marcus Baquin: Ya.

Aniceto Guterres: Ya, terima kasih. "

iii) The original transcript of the interview with the SCU investigator and the witness reads as follows:

Q [SCU investigator]: Going back to the meeting. Tell me how you were briefed and what was said.

A [Witness I]: We were told our division [would be split] into 2 groups and that Kolo's group would go via Oesilo and Simão Lopes' group via Passabe and that later we would meet at Quibiselo .

Q: Was this an organized operation that was to start at a particular time on the 8th of September 1999?

A: Yes. It was to start in the morning and we were to meet at Quibiselo.

Q: How and when did you travel to Kefa?

A: After gathering at Padiman in the morning of the 7th we went to Kefa by car where we stayed that night.
[...]

Q: When you met in Yard in Passabe were there more instructions given?

A: The only instructions were that we would start walking now and meet with Moko's group in Quibiselo. We were also told we were going to burn houses and if anyone resisted they were to be beaten or killed.

Q: Who said that?

A: Simão Lopes and Bellarmino.

PART III

CONCLUSIONS, RECOMMENDATIONS AND FURTHER STEPS

CHAPTER 8

FINDINGS AND CONCLUSIONS

8.1 FINDINGS FROM DOCUMENT REVIEW AND FACT-FINDING

The Document Review and Fact Finding Processes: Scope and Methodology

The Document Review and Fact Finding Processes have been discussed at length in Chapter 5-7. As noted there, there were important differences between these two aspects of the Commission's inquiry into the "conclusive truth" about the violence in East Timor in 1999. The most important of these differences have to with the scope and methodology of these two modes of inquiry.

The scope of the Document Review was in important ways far wider than the Fact Finding process. The Document Review encompassed two sets of trials (Special Panels for Serious Crimes in Dili and the Jakarta Ad Hoc Human Rights Court), two large-scale criminal investigations (BAP dossiers and the SCU files), and reports of two major commissions (KPP HAM and CAVR). These collectively represent many years of work by hundreds of individuals, the testimony of many hundreds of witnesses, collections of thousands of documents, as well as forensic investigations and expert testimony and reports. The Serious Crimes process alone, for example, encompassed 55 trials and the investigation of more than 500 individuals over a five year period, by a prosecution unit that for most of that time numbered more than 100 individuals. The Fact Finding process on the other hand was limited to what the Commission could accomplish within approximately eight months in six Public Hearings, plus some Closed Hearings, a substantial amount of Statement Taking, and several expert submissions. In addition, the Commission lacked the power to compel appearance, testimony, or the production of evidence.

The methodologies of the Commission's Document Review and Fact Finding processes were also quite distinct. The Document Review was in essence a purely analytical undertaking that assessed the evidence and conclusions contained in the four bodies of documents regarding the two basic issues before the Commission: the perpetration of gross human rights violations and institutional responsibility for those violations in connection with the violence in East Timor in 1999. The Document Review collected and examined the most significant evidence pertaining to these issues from the four bodies of documents. It then analyzed whether this evidence could support the conclusions reached in those documents. It also considered in detail to what extent the evidence might support other conclusions regarding gross human rights violations and institutional responsibility. The Document Review was carried out through preparation of two extensive reports by the Commission's Expert Advisor. These two reports form the basis of the analysis in Chapter 5 and 7 above.[1] These two reports and the extensive documentary and analytical appendices that support their analysis and conclusions are attached to this report in the Appendix.

The Commission's Fact Finding was a truth seeking process that relied upon the testimony of those individuals who agreed to appear before the Commission in closed or public hearings, or gave statements or made submissions to the Commission. The ability to question these witnesses was sharply constrained both by the non-judicial nature of the hearings as well as by the very short time span allocated to each witness. The format of the hearings thus did not permit the kind of extensive examination possible in the investigations and trials conducted as part of the Jakarta and Dili judicial processes.

In summary, the Commission's Document Review and Fact Finding methodologies should be seen as distinct but nonetheless complementary parts of one process aimed at establishing, to the extent possible, the "conclusive truth" about the 1999 violence. The way in which these two aspects of the Commission's work can be brought together to make specific factual findings, which in turn form the basis for Conclusions, was demonstrated in Chapter 7 above. In that chapter the Commission gave examples, by focusing on five key issues that demonstrate the method of comparative analysis it used to weigh the results of the Fact Finding and Document Review against one another. This comparative analysis showed how the Document Review provided an evidentiary and analytical foundation for evaluation of the various and often contradictory claims made by witnesses who appeared before the Commission in Fact Finding. It was seen there how the greater evidentiary depth of the evidence gathered and analyzed in the Document Review could corroborate some of the claims made by witnesses in hearings and definitively contradict others. In turn, it also demonstrated how the testimony of some witnesses could add further to, or provides a greater degree of corroboration to the conclusions reached in the Document Review. The results of that comparative analytical method, as illustrated in Chapter 7, supply the basis for the findings and conclusions arrived at in this chapter.

[1] Report to the CTF and Addendum to Report to the CTF.

Findings and Conclusions from the Document Review

Process and Methodology of the Documents Examined

The different bodies of documents considered in the Document Review are the product of very different processes that shape and limit their conclusions. This is particularly the case in regard to two issues: institutional responsibility and violations committed by pro-independence groups. It is much less so in regard to the question of whether gross human rights violations occurred in East Timor in 1999, because all of the bodies of documents conclude that they did.

In regard to institutional responsibility, the differences arise from several factors and it will be useful as a preliminary matter to review these. The most important of these differences arises from the variance in perspective between different bodies of documents: The KPP HAM Report focused on responsibility from the bottom to the very highest level, while the BAP dossiers which formed the basis of the Ad Hoc trials are limited only to 18 specific individuals who were the subject of criminal investigation. While the KPP HAM investigation and report explicitly considered the role and responsibility of the TNI by focusing on its higher command levels, the Jakarta trials limited their inquiry to the responsibility of specific individuals for specific crimes. The scope of these crimes was also much narrower than that considered by KPP HAM.[2]

While it is natural that criminal trials focus on individual responsibility for specific crimes, it is also the case that the cases were framed in such a way as to avoid consideration of the larger context of violence of which the individual crimes charged were an integral part. This was the case despite that fact that the KPP HAM Report had discussed that context in great detail. The trials of these 18 individuals before the Jakarta Ad Hoc Human Rights Court failed to consider much of the evidence uncovered by KPP HAM. A great deal of the evidence contained in the BAPs was also not introduced into evidence. At the same time, the highest level of alleged perpetrators identified in the KPP HAM report and recommended for investigation were not followed up by the Attorney General's Office for inclusion in the Jakarta trials.[3]

On the other hand, the East Timor trials held in Dili dealt exclusively with low level perpetrators because these were the only individuals in custody. Many of the Special Panels for Serious Crimes (SPSC) final judgments refer to extensive evidence that points to the direct and indirect involvement of Indonesian individuals and institutions in the crimes charged, but that evidence is often not fully explored or made the subject of specific findings because the Indonesian defendants were

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2 There was first a significant narrowing of the scope, from January-September 1999 in regards to 14 main cases in the KPP HAM report to only 5 incidents over the period of April-September 1999 in the investigation and trials. There was also a very significant decrease in the scope of evidence presented. KPP HAM interviewed more than 130 witnesses, collected more than 1000 documents, and also used secondary and tertiary data. The BAPs listed only 45 documents and prosecutors introduced into evidence far fewer at trial. The number of witnesses with relevant and credible testimony at trial was so few that some panels of judges repeatedly demanded that the prosecution produce more witnesses and evidence.

3 KPP HAM recommended investigation and prosecution of 22 individuals, only 18 of whom were included in the Jakarta Ad Hoc process. Those omitted were the highest ranking individuals named by KPP HAM, even though the entire legal basis for the Jakarta prosecutions was command responsibility.

not before the Court. On the other hand, the SCU archive contains case files for indictments of high-ranking Indonesian military officers. These case files contain a great deal of relevant evidence, but that evidence was never tested in judicial proceedings.

The CAVR Report, on the other hand, is not the product of a judicial or quasi-judicial proceeding. The non-judicial nature of its mandate meant that although it aimed at establishing the truth, it did not conduct its own judicial investigation to verify or corroborate the information provided to CAVR by the many thousands of individuals who gave statements. The individuals providing statements were also not questioned or cross-examined in the manner of a judicial or quasi-judicial proceeding. In addition, the scope of the CAVR undertaking was far wider than 1999, encompassing the entire period from 1974-1999. Documenting the 1999 violence in particular was not a primary aim of the report and discussion of the 1999 violence makes up only a relatively small proportion of the 2,700 page report.

It should be noted, however, that all of the bodies of documents examined share certain limitations in the scope of their evidence. None of these investigations were granted complete access to the archival records of the Indonesian military. Further, none of them obtained access to the entire body of documents that were seized by INTERFET and taken to Australia. Access to these documents would no doubt provide a more detailed reconstruction of the events of 1999. However, the documentation that was provided to the Commission by the SCU, KPP HAM, and the Indonesian Attorney General's Office was more than sufficient to support the findings of this report. The additional documents might be particularly relevant for the individual responsibility of particular persons, but that issue falls outside the mandate of this Commission.

One other very significant methodological limitation must be mentioned. None of the various investigations, reports, or trials prioritized violations allegedly committed by pro-independence groups or individuals. KPP HAM, the BAP's, and the Ad Hoc Court do not deal with this issue at all. The CAVR is the only source which gives sustained attention to this issue. As part of its inquiry into pro-independence violations for the entire period of 1974-1999, it enumerates some specific, reported instances of violations by pro-independence groups in 1999. The 87 individuals tried before the SPSC included three who were accused of having committed crimes against pro-autonomy supporters. Finally, the SCU files do contain references to, and preliminary investigations of allegations of such crimes, but very few were followed up with full investigations or were brought to indictment.

In other words, the mandate, scope, methods and focus of each body of documents determines and limits the nature of the conclusions reached. Both groups of trial documents (East Timor and Jakarta) are weak on establishing the details of the general context in which the violence occurred and the larger patterns of activity of which it was a part. Both are also very incomplete as to crimes perpetrated by pro-independence groups. The SCU case files, on the other hand, contain massive amounts of evidence that could have been used to establish the context and the patterns of violence in 1999. The prosecutors and judges, however, did not develop or analyze this evidence in most of the crimes against humanity prosecutions before the SPSC, but relied instead upon the mere introduction into evidence of various

human rights reports. The two Reports of the Commission's Expert Advisor, however, evaluated this evidence for the Commission for its use in conducting its analysis and reaching the findings and conclusions in this chapter and in Chapter 7.

On the other hand, the KPP HAM and CAVR reports do provide an overall account of the violence and develop an institutional interpretation of its causes and of who was responsible. This is consistent with their interpretation of their mandate. The judges and prosecutors of the Special Panels, Serious Crimes Unit, Indonesian Attorney General's Office and Jakarta Ad Hoc Court proceeded differently. They interpreted their mandate as considering the accountability of individuals, not of institutions. As a result, however, they tended to ignore the general context of the violence and focused narrowly upon the role of specific individuals in the specific incident involved in the case. To make up for this shortcoming, Chapter 5 examines specific evidence in regard to factual issues that can form the basis of findings and conclusions about institutional responsibility.

Having indicated the scope and limitations of the processes that produced the four bodies of documents considered in the Document Review, the Commission now summarizes its findings and conclusions as to the substance of those documents.

Gross Human Rights Violations

In regard to the commission of gross human rights violations in the form of crimes against humanity, all of the four bodies of documents reviewed agree that such violations occurred in East Timor in 1999. KPP HAM found specific patterns in the various incidences of violence that they examined. These patterns involved the identity of the perpetrators and victims, the systematic nature of the methods of support and perpetration of the criminal conduct, the extensive geographical and temporal range of the violence, and the numbers of victims of the violence. On this basis, and having examined 14 priority cases, more than 1000 documents, forensic evidence, and the testimony of 130 witnesses, they concluded that gross human rights violations in the form of crimes against humanity occurred in East Timor in 1999. Such violations encompassed murder, torture, forcible transfer, sexual violence, persecution, and severe deprivation of liberty.

The 12 Investigative Dossiers (BAP's) of the Indonesian Attorney General's Office also agree that gross human rights violations occurred in East Timor in 1999. Indeed, this is the foundation of the criminal prosecutions for crimes against humanity for which the Dossiers assemble the evidence. These conclusions were reached on the basis of extensive criminal investigations that led to the formulation of indictments. The crimes charged include murder and torture. These conclusions were upheld in the findings of the trial judgments at the Jakarta Ad Hoc Human Rights Court. There were significant differences among the cases as to who should be held accountable for these violations.

The CAVR Final Report also concludes that gross human rights violations occurred. It reaches these conclusions on the basis of extensive witness testimony, expert reports, community profiles, statistical analysis, and other methods. The Report concludes that gross human rights violations in the form of crimes against humanity, including murder, rape, torture, forced disappearance, forcible transfer, and severe

deprivation of liberty occurred in East Timor in 1999. The Special Panels for Serious Crimes tried 21 cases of crimes against humanity and handed down convictions in almost all of them. These crimes included murder, torture, persecution, severe deprivation of liberty, and inhumane treatment. In addition, the SCU issued several hundred indictments for crimes against humanity and investigated many more such cases which were not brought to indictment because of the premature closure of the tribunal by the UN before investigations could be completed. The indictments were the product of professionally carried out criminal investigations relying on documentary, forensic, and testimonial evidence. That evidence was tested before a Court in a large number of trials and was found sufficient to prove that crimes against humanity were committed.

In conclusion, the evidence from all bodies of documents examined in the Document Review conclusively supports findings that gross human rights violations in the form of crimes against humanity were perpetrated in East Timor in 1999. The evidentiary basis for this conclusion is overwhelming in its consistency, scope, and depth. This evidence largely focuses upon violations committed or allegedly committed against civilian supporters of independence, for the most part by militia perpetrators, but in some cases also by TNI and/or Polri members, either as perpetrators or co-perpetrators. CAVR, the SCU, and the SPSC do, however, document some cases involving gross human rights violations perpetrated, or allegedly perpetrated, by pro-independence groups or individuals against pro-autonomy supporters.

Four serious and extensive investigations, including those carried out by professional criminal investigators in the Indonesian Attorney General's Office and the Serious Crimes Unit, reached the same conclusion. On the basis of the Document Review the Commission's analysis of this extensive body of evidence also supports conclusions that gross human rights violations in the form of murder, torture, severe deprivation of liberty, forcible transfer/deportation, persecution, and sexual violence occurred in 1999 in East Timor. Thus, the Commission's conclusion from the Document Review is that the findings of the various bodies of documents that gross human rights violations occurred in East Timor in 1999 were well-supported by very substantial and conclusive evidence.

Institutional Responsibility

Criminal trials such as those before the Ad Hoc Human Rights Court or the SPSC focus on the accountability of individuals for specific crimes. In such cases, findings about institutional responsibility must be inferred from the evidence that bears not only upon those individuals, but also upon their connection to institutions. Investigative commissions such as KPP HAM, on the other hand, may have a less restrictive mandate. For this reason, building upon its examination of certain high-level individuals, KPP HAM focused its analysis on the involvement of state actors in the crimes that occurred. This appears to be based on its view that gross human right violations are the responsibility of the state and its institutions.[4] For this reason

[4] Komnas Ham, Final Report, 57.

it comprehensively examined the role of civilian and military actors in regard to Indonesian institutions in various incidences of violence in 1999. On the basis of this inquiry it found the existence of a pattern of institutional conduct aimed at winning the Popular Consultation and defending East Timor as a part of Indonesia.

The KPP HAM Report found that the violence was implemented systematically in a manner which indicated the existence of an implicit state policy. Their central point here was that gross human rights violations perpetrated in the course of such violence occurred as a result of systematic patterns of conduct rather than merely spontaneous acts. They documented this systematic quality through analysis of evidence that showed patterns and the concomitant relations of the TNI to the pro-integration militias. In reaching its conclusions as to institutional responsibility, KPP HAM thus relied upon the systematic nature of the violence and the associated patterns of cooperation between the military and militias in carrying out field operations. Their Report concluded that the TNI was involved in the training, organization, recruitment, and operational direction of the militias.[5] In addition, they found that the evidence indicated that the victims were for the most part targeted because of their political identity.

From this perspective it appears that for the mandate of the Commission on Truth and Friendship, the KPP HAM findings on the widespread and systematic nature of the violence, the patterns of conduct through which it was perpetrated, and the responsibility of state institutions are the most relevant and important. Indeed, the strength of the KPP HAM Report is greatest in documenting that gross human rights violations did occur and that there was sufficient involvement of state institutions to suggest institutional responsibility.

Although the investigative dossiers (BAP's) are the product of a criminal investigation predicated upon individual responsibility, all 12 cases also implicitly involve the notion of institutional responsibility because they seek to establish the responsibility of commanders and civilian officials through the theory of command responsibility. Because the prosecutorial strategy in all of these cases was to obtain convictions upon the basis of command responsibility rather than forms of individual direct or indirect perpetration, the evidence collected has potential implications for institutional acquiescence through the failure to prevent or punish. However, the BAPs do not directly analyze or make conclusions about institutional involvement but rather in regard to the roles of specific individuals. Particularly in regard to the cases of the more senior commanders (Adam Damiri, Tono Suratman, and Noer Muis) the evidence for command responsibility suggests institutional responsibility because the failure to prevent crimes against humanity alleged in the Dossiers implies an institutional failure.

It must also be noted, however, that the Dossiers also contain substantial evidence that indicates a link at the operational level between the field perpetrators and military and civilian officials. This evidence indicates that at least at the local level there was considerable institutional support for the pro-integration militias who were the primary perpetrators of the crimes against humanity. In addition, the Dossiers

[5] See Report to CTF, Part I, Section IIIa-IIId.

include a substantial amount of evidence that suggests TNI and possibly police direct involvement in the actual perpetration of the crimes in the form of co-perpetration with the militias. All of these types of evidence in the Dossiers can also support findings of institutional responsibility.

For the reasons detailed in Chapter 5, the Judgments of the Ad Hoc Court gave diverse and often conflicting accounts as to what happened in East Timor in April and September 1999. Although all the panels agreed that gross human rights violations had occurred, different panels of the Ad Hoc Court derived different conclusions as to the crucial questions of whether or not the pro integration armed groups were assisted or supported by individuals from the TNI, Police, Militia and the Civilian Government. For this reason their conclusions are also divided as to the implications for institutional responsibility. Three of the Judgments make findings that support institutional responsibility of the Indonesian military for crimes with which the accused are charged, while the other nine judgments do not. From this perspective, as a whole the trials before the Ad Hoc Court cannot be regarded as having made a significant contribution to establishing the truth about institutional responsibility for the crimes against humanity they found to have been committed in East Timor in 1999.

As noted above, the conclusions of the CAVR Report about gross human rights violations rest upon the analysis of a broad evidentiary base, supported by quantitative analysis of the geographical, temporal, and demographic scope of the violence. The conclusion that various categories of gross human rights violations occurred is very substantially documented. CAVR also used this broad documentation to support its conclusions about the institutional responsibility of Timorese pro-integration militias, where the weight of the evidence is very substantial. CAVR also reached the conclusion that there was Indonesian institutional responsibility, and it focuses this conclusion almost exclusively on the TNI and in particular on certain members of its senior leadership. In reaching this conclusion as to Indonesian institutional responsibility, its findings are largely based upon the report commissioned by the United Nation's Office of the High Commissioner of Human Rights (OHCHR), entitled "East Timor 1999: Crimes Against Humanity" [popularly referred to as the "Robinson Report"] and SCU indictments. Its reliance on these sources was analyzed in Chapter 5. In regard to the SCU indictments, however, it is important to recognize that indictments represent allegations that the prosecution will attempt to prove at trial, not the evidence on which that proof will be based. That evidence is contained in the SCU case files, which will be discussed next. While the CAVR did discuss a number of cases of alleged violations by pro-independence groups, it did not reach conclusions as to whether the evidence was sufficient to find that such groups bore institutional responsibility for these crimes.

In its indictments against members of the Indonesian military, and particularly of those holding high rank, the SCU proceeded on a view of the violence in 1999 that clearly encompassed notions of institutional responsibility. That is, although its prosecutions were directed against individuals, in compiling investigative files and indictments against the TNI, the SCU aimed to establish that there was sustained and systematic institutional support and direction of the violence perpetrated against pro-independence civilians. They also clearly aimed to establish that this support extended to the very highest levels of the military. The so called "Wiranto Case Files" that

support the indictments of high leaders of the Indonesian military command contain a great deal of evidence to support this theory. There is credible evidence in this volume that shows the TNI both supplied weapons to the militia and pro-autonomy leaders and then took them away when it chose to do so. This demonstrates both material support and control. This evidence also strongly suggests that the TNI supported the militias in a variety of ways including recruitment, training, funding, facilities and moral support. The evidence further confirms the consistent, systematic behavior of the militias. The statements also confirm other evidence that the civil government used state funds appropriated for development to fund the militias, even after the 5 May Agreements and after the government had knowledge that militia groups had committed and were committing human rights violations. The file also assembles evidence to suggest that TNI, police, civilian government officials and militia worked closely together, at times to directly commit serious human rights violations, and at times to support or encourage them.

Because the prosecution focused on a theory of command responsibility in framing indictments against senior military members, they also compiled evidence that there was a superior-subordinate relationship between the TNI and the militias. Such evidence, of course, is also highly relevant for findings of institutional responsibility. Finally, the evidence also conclusively confirms that the TNI, Police and Civil authorities in East Timor failed to prevent the commission of gross violations of human rights throughout East Timor in cases where they had sufficient knowledge about the commission of these crimes and the authority and material ability to prevent them.

In addition to the evidence about institutional responsibility of the TNI, there are also several references in the "Wiranto Case Files" and other cases' statements that support allegations that Falintil committed illegal detention in 1999 against individuals identified with pro-autonomy groups. This evidence, however, is not developed systematically to lead to final conclusions about institutional responsibility.

By far the largest amount of evidence concerning the 1999 violence in East Timor is found in the SCU files. As noted above, analysis of this evidence leaves no doubt that gross human rights violations in the form of murder, sexual violence, forcible transfer and deportation, severe deprivation of liberty and persecution, as well as others, occurred in East Timor in 1999. The evidence also leaves no doubt that pro-integration militias were the primary perpetrators of these crimes and that the consistent, patterned, and systematic manner in which these crimes were carried out demonstrates institutional responsibility for these crimes. The evidence also supports the findings by the SCU that TNI personnel and civilian authorities cooperated with and supported the militias in a number of significant ways. The patterns of cooperation between militias and TNI are best documented at the operational level where there was a continuing practice of collaboration between militias, civilian defense groups, and TNI local garrisons, whose membership often overlapped. The patterns of cooperation involved at times planning and co-perpetration in operations, at times the provision of material support in various forms. Indeed, the evidence often shows the way in which at the operational level these institutions all acted together, following common goals, often under the direction of Indonesian officials. They show how militia operations followed various operational patterns, including actions carried out by pro-autonomy militia without any TNI involvement,

operations at the instigation or orders of Indonesian officers, and joint operations carried out by TNI, or more specifically, Kopassus personnel together with militia members. In many cases they show how some militia members were also in the TNI, sometimes making the two organizations indistinguishable at the operational level. Such evidence supports SCU conclusions about the institutional responsibility of the TNI and civilian authorities for gross human rights violations.

As noted above, crimes committed by pro-independence groups were not systematically investigated by the SCU. The SCU compiled sufficient evidence to suggest the institutional responsibility of pro-integration militias for severe deprivation of liberty in the form of illegal detention. The available evidence, however, is not strong enough to support such conclusions as to other crimes.

To summarize the conclusions reached in the Document Review the first point to be made is that there can be no doubt that evidence fully supports the conclusion that gross human rights violations in the form of crimes against humanity in East Timor in 1999. Following the conceptual framework articulated in Chapters 3 and 5-7 above, the elements necessary to reach such a conclusion include findings that the 1999 violence occurred in a widespread and systematic manner, targeting the civilian population of East Timor. It necessarily follows from these conclusions that the violations were not random, sporadic, or spontaneous. Instead, all the documents concluded that gross human rights violations were perpetrated in an organized manner by pro-integration militias that systematically targeted perceived supporters of independence. Some of the documents also found that a comparatively small number of gross human rights violations occurred when pro-independence groups systematically targeted pro-autonomy supporters. These documents suggest patterned and coordinated perpetration of certain specific crimes, such as illegal deprivation of liberty, by people affiliated with pro-independence institutions.

All but one of the documents make findings that indicate significant and consistent support of Indonesian military and civilian institutions for the operations conducted by militias, including operations that targeted civilians and involved the perpetration of gross human rights violations. In some instances this support included the direct participation of Indonesian military or security personnel to support militia operations or in the form of joint TNI/militia operations. The major exception here is some of the decisions of the Ad Hoc Human Rights Court. Some of the judgments in the 12 cases make such findings and reach conclusions indicating institutional responsibility but others do not. The reasons for these differences were discussed above.

The Document Review also indicated that evidence in all of the four bodies of documents supported findings that the violence perpetrated by pro-autonomy militias with the support or cooperation of Indonesian institutions should be seen in the broader context of the way in which the Indonesian military and civilian authorities were involved from before 1999 in the creation and operation of civilian defense forces and other armed formations. This broader context provided the backdrop and foundation for the way in which at the local level these organizations and pro-autonomy militias interacted in 1999 in regard to operations resulting in gross human rights violations

Conclusions from Fact Finding

Process and Methodology

A fundamental characteristic of the Commission's methodology arises from the fact that the Commission is not a judicial body and does not enjoy judicial powers to compel testimony or the production of evidence. As such, the Public and Closed Hearings conducted by the Commission were not designed in the manner of a judicial or quasi-judicial forum. At the Public Hearings individuals appeared without counsel and made a statement of their own choosing without any interruption by the Commission. While the Commissioners could then ask questions, the format was such that it could not operate in the manner of cross-examination in a courtroom. For this reason the question period was called "clarification" because each Commissioner could ask a question to elicit further information or ask for explanation or clarification. Some Commissioners chose to ask questions based upon evidence provided by other sources obtained in the Commission's research, while others asked different kinds of questions.

An advantage of this methodology was that it provided a public forum where a wide variety of different parties could air their views and present their interpretations of the events of 1999. In this manner the Hearings were inclusive but provided little opportunity for in-depth examination of witnesses or verification, testing, or corroboration of testimony.

A significant limitation of the hearing process was the lack of UN participation, which included this institution's refusal to allow its personnel to testify, despite repeated invitations by the Commission to do so in either their individual or official capacity. This meant that an important perspective and potential source of information on the violence in East Timor in 1999 was absent. It also meant that the UN had no opportunity to respond to the allegations made by various witnesses at the hearings about the conduct of UN personnel in 1999.

A second major limitation arises from the non-judicial approach and has to do with the way in which some of those witnesses appearing before the Commission avoided directly responding to Commissioners' questions. Their answers were often evasive, irrelevant, too general, or incomplete. On those occasions where Commissioners asked follow-up questions, the responses were often similarly flawed. With no mechanism to compel those testifying to answer the questions, and with no possibility for prolonged questioning in the manner of judicial examination of a witness, such problems are inevitable. There was also no sufficient mechanism for confronting witnesses with documentary or other kinds of evidence and systematically testing their testimony against these other sources. The result was too often general allegations made by those testifying, unsupported by facts or by sufficient information about the foundation of their testimony.

In summary, the information elicited in the Fact Finding process is fundamentally different than that obtained in a criminal or quasi-judicial investigation. In comparison with the evidence obtained through the SCU or Attorney General's Office the results of the hearings lack evidentiary depth and weight. The statements are quite short compared to the statements generated in a judicial process.

Furthermore, the in-court testimony of witnesses in a judicial process has been preceded by lengthy investigations, where witness statements are cross-checked, verified, and corroborated. Many potential SCU witnesses, for example, were interviewed multiple times. None of this was possible within the limitation of the Commission's resources and mandate. The result is that the processes encompassed in the Document Review produced a far greater amount of evidence and, apart from its quantitative dimension, this evidence is of greater credibility and qualitative value in reaching findings.

Gross Human Rights Violations

From the reconstruction of the Commission's 14 priority cases and other information gathered during fact finding, the Commission observed that violence occurred throughout the period from January through October 1999. Analysis of these cases indicates that the timing of the violence appears to be patterned around a number of factors including, periods of campaigning for elections, or militia recruitment, or the presence or absence of international observers. Overall, there were two peak periods of human rights violations 1) April-May and 2) September 1999. These temporal concentrations of violations are not coincidental, but rather point to the related nature of these events to one another, and to the broader political context in which the violations occurred, such as the strengthening of the militias in a series of rallies held from April to May, and the holding of the Popular Consultation in September. In addition to the temporal distribution of the violence, a widespread pattern of violations can also be observed from the geographical spread of similar types of violations.

On the basis of the Commission's analysis of its 14 priority cases, a number of factors indicate that there was substantial evidence that the attack was widespread and was directed against a civilian population. The factors supporting the element of "widespread" include the number of incidents, the fact that many of them include a multiplicity of victims, their wide geographical distribution, their repetition over a period of many months, and that they encompass a wide range of very serious types of crimes against humanity. The factors that indicate that there was substantial evidence that the attack was "directed against a civilian population" include the identity of the victims, the circumstances under which they were attacked, the locations where they were attacked and the types of crimes committed (for example, sexual violence, deportation, and persecution). These factors are also supported by the evidence concerning the systematic targeting of civilians in these attacks. This analysis provides the basis for the Commission's conclusions that based on the Fact Finding process, gross human rights violations in the form of crimes against humanity occurred in East Timor in 1999. The evidence from the Commission's 14 priority cases indicates that these violations included murder, torture, deportation/forcible transfer, sexual violence, severe deprivation of liberty, and persecution.

Institutional Responsibility

There are various ways to determine whether a set of human rights violations occurred "systematically," as opposed to random, isolated, or spontaneous occurrences. One important kind of indicator of systematic attacks is the targeting of specific groups in the civilian population based on geographic location, political affiliation, ethnic

group, religious affiliations or other identity markers. In other words, victims are not just randomly selected, but are chosen for certain perceived characteristics. Other important factors for analyzing the "systematic" nature of an attack include the existence of patterns underlying the attacks, and evidence indicating organization by perpetrators. The kinds of evidence that indicate systematic organization include: meetings to plan or coordinate, briefings, disciplined leadership, operational chains of command that issue orders, training, logistical or financial support, provision of arms or equipment, and planning of operations. Other analytical factors for evaluating evidence for the "systematic" nature of an attack focus on evidence as to whether the human rights violations were the result of what appear to be strategic and coordinated security operations. For example, did perpetrators use roadblocks, name lists, "sweeping" or search operations or other forms of targeted and planned operations or methods of detention? These factors concerning the systematic and organized nature of violations are crucial indicators for determinations of institutional responsibility because they indicate the extent to which state institutions and resources were consistently used in connection with such violations. They also can indicate to what extent state officials were aware of such violations or support for violations and whether their reaction was, on the one hand, to take decisive and effective action to stop them and to prevent further recurrence, or, on the other hand, continued support or acquiescence.

In the Fact Finding process, the Commission received various testimonies that strongly indicated victims were deliberately and systematically selected for attack. For example, in the "Passabe Case", the Commission heard evidence that showed perpetrators systematically targeted victims in two clear ways:

- Selecting and separating victims for murder from a larger group, including the separating of the men from the women and children.
- Constraining the movements of these selected victims in ways different from the other groups (i.e. tying the men in pairs)

Other elements of "systematic" operations revealed in the fact finding process included:

- Operations conducted under an identifiable command structure.
- Coordination of attacks by multiple militia members and in conjunction with TNI members.
- Operations conducted in a manner indicating military planning, implementation, and discipline.
- Direct involvement of TNI units or personnel in conducting operations.

This kind of evidence is important because it demonstrates that militias were not formed, nor did they act "spontaneously", as some witnesses claimed in their testimony to the Commission.

Despite such allegations of "spontaneity," an analysis of the testimony received on this issue indicated that pro-autonomy militias were formed through a set of carefully planned and coordinated meetings. The testimony given to the Commission on these meetings is not conclusive or consistent about what degree of support was actually obtained from the Indonesian military and government. It does, however, provide a good deal of support for the position that pro-autonomy militias were systematically organized. Since much of this evidence as to systematic planning and organization

comes from the pro-autonomy leaders, they were not only in a position to have accurate information but also directly participated in these meetings and activities that clearly indicate that the formation of the militias was not "spontaneous." Furthermore, these testimonies indicate to the Commission that there was institutional awareness in the Indonesian government and military from an early stage in late 1998 and early 1999 that the autonomy movement in East Timor was organizing to arm themselves. Even if the requests for assistance were rebuffed, as some witnesses alleged, the testimony at the least suggests that such figures were aware that groups identified with pro autonomy were seeking arms and support and were in the process of organizing themselves. The testimony of all of these militia leaders also indicates the involvement of Indonesian military institutions in direct contact with political and paramilitary groups in East Timor.

Testimony concerning the context in which militias were formed indicates that many of the militia, or paramilitary, groups appear to have been formed after a model already established in East Timor and throughout Indonesia under the Sishankamrata system, where paramilitaries acted as legal auxilaries of the Indonesian security agencies. The Commission heard a great deal of testimony regarding the implementation of the plan to create militias which demonstrates the different ways the Sishankamrata system influenced the structures of the civilian armed groups in the conflict in East Timor in 1999. One of the key issues debated in the testimony before the Commission was whether at the operational level these groups were one and the same, and if so, to what degree they were all state-supported paramilitary groups, as stipulated under the Sishankamrata system.

The Commision heard very divergent views on this issue. From the variety of testimony given, it appears that at the operational level the distinctions between the various names and types of official status for these groups might have had little bearing on their functioning. Membership in the armed militia groups could be inclusive of any and all of these various security groups. Thus, the overlap between the systems (Pamswakarsa, Sishankamrata, PPI) meant that armed groups such as Aitarak and BMP were eligible to receive indirect support through funding or other means from the civilian administation (through funding allotted to Pamswakarsa), the military or police (through funding allotted to Sishankamrata) or civilian political groups (FPDK/BRTT). The elaborate overlapping structures described in all of the testimony indicate clearly that the militias were not loosely formed spontaneous creations but were rather formed and operated in an organized and systematic manner. They were also integrated into a security system that enjoyed state support and financing.

The Commission also heard divergent views expressed in the Fact Findings process about the extent and nature of governmental financial support for militias. The weight of the evidence indicates, however, that government funds were directly and/or indirectly diverted in 1999 into the hands of pro-autonomy militia groups. Aitarak was among the groups that received these government funds, and it received them after its implication in the human rights violations that occurred in one of the Commission's Priority cases - the attack on the Carrascalão house. The provision of financing through a bureaucratically organized governmental financing system provides support for the conclusion that the militias operated in a manner that reflects organization, planning, and governmental administrative cooperation in support of their activities.

The Commission also received and evaluated a great deal of testimony about the ways in which pro-autonomy groups received support in the form of equipment. The supply of weapons was crucial to the functioning of the militias and for their operations that led to human rights violations. The evidence shows that militias obtained weapons from a variety of sources, and the types of weapons used ranged from modern, military issue weapons (such as SKS, Mausers, G-3s and pistols) to homemade guns (*rakitan*) and local knives, machetes and swords. The points to consider with regard to systematic human rights violations are: Did the militias "spontaneously" seek or pick up weapons to conduct operations, or was the supply, distribution and regulation of weapons systematic?

There is both consistency and inconsistency in the statments by these various militia leaders and members. On the one hand, virtually all of them agree that some pro-autonomy militia groups possessed modern weapons on at least some occasions in 1999. They also agree that the source of these weapons was the TNI or Kopassus. They differ as to their accounts of how weapons were distributed, whether they were kept in the possession of the militias on a regular basis, and as to how closely the TNI controlled this possession of weapons. However, the testimony that the TNI at times withdrew weapons from the militias is also consistent with the testimony that they also distributed them. In both cases, this indicates systematic control over the possession of modern weapons by local TNI commanders.

The general conclusion that the testimony obtained in Fact Finding supports is that the supply, monitoring and retraction of weapons to and from the militias appear to have occurred in a deliberate and systematic manner. The militias depended on this supply of weapons for many of their operations which led to human rights violations considered by the Commission in its 14 priority cases.[6] Multiple witnesses who testified regarding the 14 priority cases described the use of these modern weapons during these attacks, either by the militia members, sometimes involving TNI members.[7] The limitations on the kind of testimony presented during the Fact Finding, however, make it impossible for the Commission to establish on the basis of this evidence alone a direct link between every event where each of these weapons was used that was obtained through the support of the TNI. The weight of the evidence, however, does seem to support the view obtained through these statements that militias were acting strategically to obtain these weapons, and the military responded in an organized manner to either supply or to take away these arms.

In the testimony received by the Commission about the 14 priority cases, there were multiple indicators that at the time of attack, there was a significant degree of organization, direction, and plannning. In other words, these events were organized and coordinated, rather than spontaneous, out-of-control, mob attacks. Despite some testimony which claimed that the violence was of a chaotic nature, there were compelling indicators of organization. This appeared clearly, for example, in the testimony about militia groups working together with TNI in clearly coordinated military operations. Operations such as these require prior planning, leadership,

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6 Marcelo Soares, Interview with CTF, 3-4. For the details of his testimony see Chapter 5.

7 Esmeralda dos Santos, CTF Public Hearing II, 2; Marcus Baquin, CTF Public Hearing V, 9. Agosto Dato Buti, CTF Public Hearing III, 4. Florindo de Jesus Brites, CTF Public Hearing I, 4-5. Manuel Ximenes, CTF Public Hearing I, 10-11. For the details of their testimony see Chapter 5.

and coordination before, during and after the attack in order to achieve operational objectives. The presence of indictators such as these in the testimony given to the Commission depicting operational cooperation between TNI and militia members suggests that the perpetration of these acts involving attacks against civilian populations were systematic in nature. On the other hand, the Commission also received several pieces of testimony that suggested that attacks were spontaneous and not planned, that in some cases they were the result of a general breakdown of order, in others of a cycle of revenge and retaliation. The underlying problem here is that the limitation of the evidence provided by testimony at hearings indicates the limits of the Commission's Fact Finding process. In itself the evidence from the Fact Finding process did not provide sufficient evidence to form the basis for definitive conclusions. Despite these qualifications, analysis of the testimony obtained during Fact Finding does permit certain conclusions:

- There was substantial evidence that the human rights violations enumerated in many of the 14 priority cases were perpetrated in an organized and direct manner by pro-autonomy militias that systematically targeted perceived supporters of independence. Militias were directly implicated in the commission of gross human rights violations in each of the 14 priority cases.

- There was sufficiemt evidence to establish that militia groups acted as institutions and in an organized manner. As institutions, militias provided the planning, organization, support, and direction that enabled the commission of these crimes by its individual members.

- Some TNI personnel participated, and some times played a leading role, in a number of the 14 priority cases. While a good deal of the testimony from the Fact Finding process relevant to these conclusions is credible and suggestive, in most cases further evidence would be required to reach definitive conclusions as to institutional responsibility.

- In addition to Indonesian military personnel, members of the Police and the civilian government indirectly participated in enabling the commission of human rights abuses. Indirect participation most often seems to have taken the form of providing support to militia groups, such as funding, the supply of equipment, and joint or coordinated TNI activities with the militia.

- The evidence from Fact Finding also provides credible indications that the military, police, and also the civilian government played a role in gross human rights violations by encouraging, facilitating, or indirectly supporting the pro-autonomy militias.

- While there was also testimony that contradicted these conclusions, under the Commission's analysis (see Chapters 6 and 7) that testimony was found to be weaker and less credible.

- The evidence suggests that these various forms of support discussed above were the product of the close cooperative relationship that had developed over time between TNI local garrisons and the leaders and personnel of militias and paramilitary civilian defense groups.

- The nature of this relationship also made it difficult for the the Indonesian institutions and Timorese pro-autonomy groups to disassociate themselves from each other and from their common political cause when obligated to do so under the 5 May Agreement.

The sum of the testimony received in the Fact Finding process points clearly to the institutional responsibility of the militia groups. The findings enumerated above also clearly indicate the responsibility of Indonesian governmental and military institutions. It must be emphasized, however, that while the evidence obtained in the hearings supports such findings, in order to arrive at definitive conclusions, these findings will have to be combined with those based upon the far more extensive and detailed evidence and analysis provided by the Document Review.

During its Fact Finding process about the 14 priority cases, the Commission also heard reports of other attacks that were alleged to have been perpetrated against pro-autonomy supporters by members of pro-independence groups. These attacks allegedly included a number of different kinds of gross human rights violations. For example, a set of allegations about patterns of attacks against pro-autonomy supporters was also made to the Commission concerning house burnings in different areas of East Timor by pro-independence groups. Although these are allegations of apparently systematic destruction of property by elements of pro-independence groups, they were often not supported by specific factual information concerning the events themselves and the source of the information. For this reason it is difficult for the Commission to assess the value of these statements, because most of these reports are, at best, second-hand information.

None of the testimony could provide the Commission with sufficient details to thoroughly analyze these events, particularly with regard to institutional responsibility. For example, not only has the Commission not been presented with sufficient information about the crimes themselves, but also there has not been sufficient investigation to delineate the relationships between all of the pro-independence groups alleged in these attacks. There is therefore no basis in the Fact Finding process for a thorough structural analysis in order to assign institutional responsibility for these alleged violations.

Conclusions from Combined Analysis of Document Review and Fact Finding

On the basis of the findings and conclusions discussed above, the Commission makes the following factual findings reflecting the entirety of its Document Review and Fact Finding processes:

- Taken together, the evidence discussed at length in Chapter 5 and 6, and summarized in 7 above is more than sufficient to support findings that gross human rights violations occurred in East Timor in 1999.

- This evidence indicates that members of militias, pro-independence groups, and TNI elements all participated in gross human rights violations. While quantitative analysis of the relative frequency of these violations is not possible with existing data, it is nonetheless clear that a significant majority of the

violations was committed by pro-autonomy militias, who possessed financial and material resources due to their connection to Indonesian institutions.

- One such resource was access to weapons, including modern military firearms. Militias received weapons from TNI units to which they were connected. In many documented cases these TNI units controlled the funding, supply, distribution, and use of these weapons.

- Although it may be true that some weapons were home-made by the militias, and that there could have been weapons still in circulation from the pre-1975 era, or those captured from Falintil, there is clear and conclusive evidence available from both the Fact Finding process and the Document Review to show that weapons were controlled and supplied by the TNI to militias in East Timor in 1999 in a highly organized and systematic manner.

- The TNI supplied weapons which were used for the commission of human rights violations. The TNI units supplying these weapons knew that they would be used in furtherance of the pro-autonomy campaign.

- The pattern of distribution and control of weapons before and after the 5 May Agreement and various disarmament processes indicates the close cooperation between the militia and TNI units and the degree of control that could be exercised by the TNI over the supply and provision of weapons. The ability to distribute and then pull back weapons again indicates the systematic and institutionalized nature of the cooperation and the high degree of control that TNI units exercised in regard to the arming and operations of militia groups.

- This close cooperation was facilitated by the clear overlap between military, paramilitary and militia leadership structures and membership. Historically, the pattern of this cooperation and overlap arose from the way in which the TNI organized armed civilian defense groups in East Timor prior to 1999. Thus, the systematic and institutionalized organization of the provision of weapons and of the organization and operational integration of militia and TNI activities may be traced back to the Sishankamrata system, and its variations, elaborated in Chapter 4 above. Such cooperation may have been enhanced by the personal and psychological connections that developed over time from the joint participation in these overlapping military and paramilitary formations in furtherance of shared political objectives.

- In such a context the supply and control of weapons and other resources provides a linkage that supports conclusions of institutional responsibility for the gross human rights violations committed by such groups (such as Team Saka, Team Alfa, and PPI). In summary, the TNI's support through leadership and supply of weapons, funding, and other material resources, and their reliance on such armed civilian groups is a structural weakness which is one of the sources of their institutional responsibility for human rights violations in 1999.

- The evidence clearly indicates that these weapons were not used primarily for self-defense, but were employed in military-style operations in furtherance of the objective of supporting the pro-autonomy cause. These operations targeted

civilians on account of their actual or perceived political orientation and resulted in various kinds of gross human rights violations. While social or psychological bonds and shared political goals forged over a long period of time may explain why individuals became involved in the perpetration of such gross human rights violations, they cannot justify institutional involvement in the perpetration of such crimes. The systematic provision of weapons, with the knowledge of the shared purposes for which they could be used strongly supports a conclusion of institutional responsibility for such violations.

- These activities of militia groups were not supported only by TNI personnel. The civilian government issued a document in May 1999 indicating support for an armed militia group, which would be synonymous with its civilian security structure (Pamswakarsa). For example, the evidence demonstrates that Aitarak was Pamswakarsa in the city of Dili. It also specifies that Pamswakarsa had to report to the Muspida (which includes the Bupati, civilian representatives, military, and police). This system of organization thus placed both the civilian government and the military in a direct position of authority over the Aitarak militia. At this time it was well known to civilian authorities that Aitarak was engaging in violent attacks against civilians. There was also awareness on the part of the civilian government and the Muspida, that the military and police - affiliated security groups were joining the activities of this pro-autonomy group, in violation of the 5 May Agreement's requirement of neutrality by TNI and Police.

- The civilian government used this funding structure to distribute money and food to militias that committed human rights violations in 1999, and to their political support groups (FPDK and BRTT).

- It is highly significant that the support of the militias was facilitated by the civilian government in a period when there was common knowledge about the violent methods used by the militia in their pro-autonomy campaign.

- Funding was systematic in form and it manifested itself in explicit linkage to armed groups like Team Alfa and to the shared political goal of supporting the autonomy cause. Because such funding was provided when the 5 May Agreement was already in effect, and only the Police had been given the authority to provide security, the civilian government's official monetary support for Pamswakarsa at this stage is in conflict with the Agreement. The specific inclusion of Tim Alfa in these funding proposals demonstrates deliberate support by the civilian government of a militia group that had a history of violence against civilians.

- Military representatives collaborated with the civilian government to give money to the militias. That cooperation aimed to achieve common political objectives with the militias and encompassed the use of violence against the civilian population. There was thus a close connection between the anti-independence violence perpetrated by militias against civilians, and the civilian and military authorities that funded and supported them.

- Overall, the evidence on provision of various kinds of material support to militia and paramilitary groups by Indonesian governmental and military institutions leads logically to the conclusion that this provision of funding and material support was an integral part of a well-organized and continuous cooperative relationship in the pursuit of common political goals aiming at promoting militia activities that would intimidate or prevent civilians from supporting the pro-independence movement. This conclusion provides a clear indication of institutional responsibility on the part of these institutions.

- The attacks of civilians and the military style operations through which they were perpetrated by militias indicates the well-organized and systematic manner in which perceived pro-independence supporters were targeted by militia, with the support of TNI and police personnel. The targeting was not spontaneous but was carefully planned and organized, and was systematically carried out over an extended period of time. The campaign of intimidation employing attacks on multiple villages, illegal deprivation of liberty, and mistreatment culminated in instances of mass murder after the results of the Popular Consultation were known. Individuals from the militia, police, local civil administration, and TNI participated in various phases of this campaign of violence and political repression conducted against civilians they believed to be associated with the pro-independence movement.

- This campaign of widespread violence directed at civilian individuals and communities perceived as associated with the pro-independence cause manifests certain patterns of activity. Thus, this violence often consisted of a series of connected events involving intimidation, threats and actual force in order to discourage support by the civilian population for the pro-independence movement. Attacks on villages by militias lead to acts of physical violence (including murder, rape, and torture) as well as to deprivation of liberty, forcible transfer away from home villages, and eventually, in many cases, to deportation. These events may be seen as linked by an organized and systematic effort to influence the political developments leading up to the Popular Consultation through a campaign of violence directed at civilians and then, after the Consultation, to intensify that violence against communties and individuals deemed to have supported the success of the independence movement in the popular vote.

- While the primary perpetrators of this violence were typically pro-autonomy militias, they often can be shown to have operated with the support, assistance, and sometimes direction and co-perpetration by members of the Indonesian police, military, and civilian government. TNI personnel participated directly in various operations and attacks directed against the civilian population. Sometimes this participation took the form of personnel, who might also be members of the militia or paramilitary groups involved, simply co-perpetrating the attack. Sometimes this participation also took the form of active planning or direction of the operation by TNI officers who were in command at the local level.

- This pattern of coordinated activity required planning, a high-degree of organization, and considerable logistical support. Witnesses' testimony makes

clear that TNI and Police personnel were sometimes involved in virtually every phase. The forms of participation varied, but the overall pattern was one of support and cooperation produced by the same long-established close institutional connections described above between Indonesian institutions and Timorese pro-autonomy groups at the operational level. The strong evidence of these patterns of institutional organization and cooperation make clear that violence, such as that occurring at Suai or Passabe, was not random, not spontaneous, and not simply the product of retaliatory dynamics. Rather, as seen above, this evidence supports findings of sustained and coordinated institutional activity at a level sufficient to justify a conclusion of institutional responsibility for these crimes.

- Gross human rights violations were also committed against civilian populations who opposed independence. There were documented cases of killings and other forms of violence perpetrated by pro-independence groups. The available evidence shows that elements of Falintil and other pro-independence groups systematically and on a widespread basis captured and illegally detained people. The victims most often appear to be militia members, but their detainees may have also included non-combatant civilians. Detentions appear to have become more systematic and widespread during the post-ballot period of 1999.

- There is considerable difficulty in documenting the extent of such crimes because of the lack of systematic investigation of the role of pro-independence groups in the 1999 violence.

- Both the TNI and Pro-Independence groups issued preventative orders and guidelines. These instructions were in some cases quite detailed and specific in other cases more general. They aimed at preventing violence and other forms of interference directed against civilian populations. In both cases these guidelines do not appear to have been adequately enforced and implemented. They were certainly not effective in preventing violence from occurring, as it continued to do so after such orders were issued. The repeated issuance of such orders indicates an institutional awareness that violence was occurring.

- The evidence of a widespread pattern of elements of Falintil and/or CNRT detaining persons who were perceived as current, and/or former militia also suggests that illegal detainees were also regularly mistreated. The difficulty arises in assigning precise responsibility to specific institutions for individual instances of such violations. While there is no doubt that such violations occurred in a systematic manner, the ambiguities in the evidence as to lines of command and institutional linkage mandate caution in reaching definitive conclusions as to the role of specific institutions. The systematic elements of the crimes allegedly include formal orders from commanders to conduct detentions, reports to commanders regarding the timing and methods of detentions, and the construction of roadblocks in order to commit the initial act of detention. These factors suggest highly organized and repeated activity that suggests at the very least tacit institutional approval. Accordingly, the evidence supports the conclusion of a strong likelihood that Falintil and/or CNRT bear institutional responsibility for these acts of illegal detention as a gross human rights violation.

8.2 NATURE, SCOPE AND CAUSES OF VIOLENCE IN EAST TIMOR IN 1999

Scope and Nature of the Violence: How much and what kind of violence occurred in 1999?

As explained in the previous sections discussing the evidence that demonstrated the widespread and systematic nature of violence that occurred in East Timor, the scope of violations extended to all parts of East Timor and there were a great number of victims. Although there were doubtless some instances of "spontaneous" violence, such as acts of revenge, this report has made clear that on the whole the violence was organized and systematic, rather than consisting of random, isolated incidents.

Statistics concerning the exact numbers of violations are subject to dispute, and much further research would be required in order to obtain precise and reliable quantification. However, the CTF process shows conclusively that every district, and even every sub-district, experienced multiple human rights violations. For example, the SCU opened over 1400 murder investigations.[1] Evidence also revealed that tens of thousands of people were forcibly transferred, or deported, and a majority of public buildings and private homes in East Timor were destroyed. The violence included gross human rights violations, which were discussed in depth in Chapter 5, and in 6.1, and which will be summarized in the subsequent sections of this chapter.

The violence that occurred in East Timor in 1999 affected all aspects of social, political, economic and spiritual life. Individuals who were perceived as supporting independence experienced the greatest number of human rights violations, and were specifically targeted by perpetrators. However, there were also individuals who supported autonomy who were targeted and became victims of violence in 1999. All people in East Timor, regardless of political affiliation or nationality, were affected in negative ways by this conflict.

Causes of the Conflict: Why did this violence happen in East Timor in 1999?

There were multiple causes of the conflict in 1999, which are complex and inter-related. Some of these causes doubtless go back to at least 1974 and the events ensuing from the end of the Portuguese colonial presence. Others arose from the more immediate political context of the events of 1998 in Indonesia. The underlying reasons for each aspect of the conflict in 1999 requires further, specialized research in order to fully understand why the conflict happened in specific ways, and how various institutions and individuals participated. However, through its research processes the CTF has been able to identify some of the core causes of violence. These include:

Long-term Conflict in East Timor

In East Timor opposing political factions based on political orientation towards Indonesia (i.e. in favor or against integration with the Indonesian state) can be

[1] "Report of the Secretary General on the United Nations Mission of Support in East Timor," Security Council Document No. S/2003/944, 6 October 2003, 6.

traced back to the differences in political aspirations regarding the Portuguese decolonization process. These differences came to the forefront of political life in East Timor in 1974 when the authoritarian Salazar regime in Portugal fell. In 1975 an armed, internal conflict between UDT and Fretilin took place. Fretilin declared independence on 28 November 1975. UDT then joined with Apodeti, KOTA and Trabalhista and declared integration with Indonesia. As a result, this internal conflict, which can be characterized as "horizontal" in its early stages, transformed over time into primarily a "vertical" conflict with horizontal components.

Indonesia initially became a party to this conflict through its support of armed pro-integration groups in Portuguese Timor, and later became a direct participant as it entered the country and established its presence through both military and political means. From October 1975 until 1999 there was an on-going conflict between the pro- independence resistance movement and the Indonesian government.

Indonesia's presence in East Timor was also enforced and opposed by non-violent means, which further developed the tensions between pro-integration and pro-independence supporters, as well as spawning differences within the pro-integration groups. Individuals at times shifted political identity, or perceived political identity, over the course of the Indonesian presence in East Timor (i.e. a pro-integration supporter in 1975 became a pro-independence supporter in 1999, and vice versa).

In summary, as explained in greater detail in Chapter 4, the events of 1999 can not be understood in isolation from the longer period of conflict that occurred in East Timor which displayed horizontal and vertical dynamics. The nature of the violence that occurred in 1999 was shaped by previous patterns of conflict.

Unique Political Circumstances

The violence that occurred in East Timor in 1999 also grew out of the unique political circumstances that were created by Indonesia's transition from an authoritarian to a democratic state (*Reformasi*), which began in 1998. Because the resolution of issues involving East Timor was part of the *Reformasi* agenda, new opportunities arose in East Timor for the independence movement to press its agenda more openly, and to expand its political strategies, including the implementation of the Popular Consultation.

On the issue of East Timor, the process of *Reformasi* and democratization thus created a new opportunity for Indonesia to settle the issue in a peaceful, comprehensive, and democratic manner, as was also the aspiration of the independence movement. The rise of *Reformasi* also corresponded to a growing awareness about human rights issues. Indonesian institutions experienced increased pressure to uphold human rights from domestic and international critics. Repressive mechanisms that had been previously used by the security apparatus, particularly in East Timor, were no longer accepted as a legitimate use of power within the new, Reformasi paradigm.

However, the sudden and rapid pace of *Reformasi* may not have allowed sufficient time to build competence in a new Human Rights approach to security issues, so that by the time of the Popular Consultation in East Timor in 1999 the security forces could fulfill their obligations. There was no effective mechanism for abandoning the

previous, repressive security enforcement strategies and replacing them with new methods of law enforcement in line with international human rights standards. This period of transition between approaches and attitudes towards security enforcement may have led to some ambiguity at the operational level in East Timor in 1999, which manifested itself at times in a failure to prevent violations. Indonesian authorities perhaps failed to understand how difficult it would be to reverse the patterns of many years of repressive security practices, particularly as they operated at the local level in East Timor where constellations of interests and practices between Indonesian military and security forces, local civil authorities, and civilian paramilitary formations had been long established. The pressures generated by the political impact of *Reformasi* and by the prospect of a Popular Consultation made it even more unlikely that the previous patterns of repressive security practices and policies could be easily reversed. Orders issued to prevent human rights violations would, by themselves, be unlikely to serve as an effective mechanism to prevent such violence from occurring.[2]

Furthermore, the structural security sector reforms that occurred during the early stages of the political transition in Indonesia further weakened the capacity of the security forces to fulfill their role in providing security to the civilian population. The rearrangement of the structures of authority, particularly for the Police vis-a-vis the military in 1999, meant that by the time of the Popular Consultation, institutions had not yet had time to build the institutional capacity to exert independence within their new roles and authorities in the emerging democratic era.

Specific Institutional Structures and Political Culture

As a centralized government system, the Indonesian civil administration exercised formal control over various spheres of policy such as security, economy, public information, education and culture. However, the inclusion of military officers within the civilian administraton (as a consquence of the dwifungsi doctrine), and the strong military presence in East Timor arising from the so-called Military Operation Zone (DOM)[3], allowed the interests of ABRI to dominate the policy structures and processes that operated at the local level.

Although in 1999 ABRI was intent on initiating internal reforms to transform itself by stages into a professional military force with particular focus on the external defense function, in early 1999 the political and social dynamics and security defense were still strongly influenced by the legacy of the past, when ABRI was deeply involved in the social and political domains, while simultaneously conducting internal military operations. The combination of a large military influence and a weak control function in the form of the civilian administration implied low accountability in government policies and opened the way to perpetration of violence by involved institutions.

[2] These changes in doctrine and their operation affects have been discussed at length in Chapters 4 and 5.

[3] See Radiogram of Minster of Defense and Security/Armed Forces Commander, #RDG/Siaga/240/B/VIII/1976, 14 August 1976, CAVR Archive, Dili, East Timor.

A specific political and legal culture evolved from these close ties between the security apparatus and the civilian government. For example, a state of military emergency was declared in East Timor on 6 September 1999. Before that date the status of East Timor was technically "peacetime" according to Indonesian law. But, in reality military operations were conducted by the Government of the Republic of Indonesia, and fire fights and other violent exchanges were the usual situation of life in East Timor. The use of force by all parties in the conflict prior to and during 1999 had no legal basis, not even according to Indonesian law (Law No. 13/1959). There was also no effective law enforcement, in regard to this non-legally sanctioned use of force. This situation of active conflict in formal "peacetime" combined with weak rule of law, made it difficult to hold either civilian or military authorities accountable for their actions.

One of the results of this lack of accountability, was the creation of a political culture which could not peacefully accommodate differences, especially when those differences were openly expressed. Thus, within this governing system in East Timor, threats, intimidation and violence accompanied political differences without any certainty of legal consequences.

Another area where the weaknesses in this structure of civilian governance was most apparent is the legacy of the Sishankamrata system, which allowed paramilitary groups comprised of civilians to act as legal auxiliaries to the military and receive public funding.[4] In 1999 there was clear involvement of government agencies (military, police, public officials) in the creation and support of armed civilian groups (militias).Many of these groups were previously formed under the rubric of Sishankamrata, or variations on its philosophy of the "Total People's Defense and Security System" that produced other types of groups such as Pamswakarsa[5]. The existence of various civilian groups, armed and non-armed, with close relations with various government agencies may be seen as spillovers of such past security arrangements that allowed overlap between the military and civilian government. As seen above, the consequence of this constellation of civil and military authorities and armed civilian groups was violence directed against civilians opposing autonomy and supporting independence.

Active Institutional Planning, Participation and Support

The systematic and widespread nature of the violence in 1999 could not have been perpetrated without active institutional planning, participation and support. Militias and other institutions worked together in support of common political goals that encompassed violent attacks against the civilian population as a means to achieve their aims. Militia groups in East Timor in 1999 acted as well-structured institutions. Militias in East Timor were not completely un-organized, loose affiliations that were responding to provocations spontaneously. Militia leaders and their members capably coordinated and executed specific plans of violence in order to achieve political objectives.

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[4] The State Law No. 20/1982 on Independence and Security stipulates the Armed Forces (including the National Police) can conduct security related functions with wide ranging authority to manage and employ national, including civilian, resources.

[5] The philosophy of the "Total People's Defense and Security System" is that the Armed Forces may establish and train people's resistance groups against external and internal threats. This doctrine was in effect in East Timor, as it had been integrated as part of the unitary Republic of Indonesia.

The militia groups acted in a direct relationship to Indonesian government authorities, and most directly, with the support of the TNI. The Commission finds that the government of Indonesia, in particular the Indonesian security forces and civil authorities at the time, supported the wide ranging autonomy movement through assistance in forming armed groups, providing these groups with financial and logistical support, and by allowing members of the Indonesian security forces to become active members of the pro-autonomy armed groups, and to co-perpetrate acts of violence with them against pro-independence civilians.

Although the evidence is not yet conclusive, it appears that there were also some acts of violence,committed by pro-independence supporters which also received institutional planning, support and participation. There is particularly strong documentation for such acts in the form of illegal detentions by pro-independence supporters.

Participation of Individual Perpetrators

No institution can function without members, or without leadership. The institutional actions which led to violence in 1999 represent the culmination of the actions of those individuals taking part in the violence. Ultimately, each of the human rights violations committed in 1999 was caused by the acts of specific individuals. However, determining individual, or even command, responsibility is not the mandated task of this Commission. Moreover, individual perpetrators in the kind of organized, politically motivated violence that took place in East Timor in 1999 act in an institutional context. As noted above, the violence in 1999 was not random, isolated, or spontaneous.[6] Its organized and coordinated nature indicates the way in which the acts of specific individuals must be seen in the larger institutional context in which they found themselves as the events of 1999 unfolded. This context, in turn, forms the basis for an assessment of institutional responsibility.

Thus, under its mandate, the focus of the Commission's inquiry into the conclusive truth has been to examine in depth how institutional planning, participation and support caused and shaped the conflict in 1999 and its outcomes (see previous point, on active institutional planning). The other causes of conflict listed above should be considered in greater depth in the future by historians and other bodies concerned with identifying factors leading to conflict in East Timor.

Why Did the Violence Escalate in East Timor in 1999?

There were multiple causes for the violence in 1999, including the political culture noted above where there was no effective law enforcement to prevent or provide accountability for the violence taking place on a regular basis before 1999. Against this larger context, an enabling condition for violence in East Timor in 1999 was the formation, and/or strengthening and support of pro-autonomy militia groups for the purpose of pursuing certain political aims by means including armed force.

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6 The Commission has found that the argument that the violence was the spontaneous result of a perception by pro-autonomy groups that UNAMET had acted without impartiality in the Popular Consultation is not supported by the available evidence. See Chapters 4 and 5 for a detailed review of the evidence concerning the UN's role and the organized and planned nature of the violence in the period January-October 1999.

There may have been various underlying motivations for the creation of these groups, including the perception of threat by pro-independence groups, but they acted for the explicit purpose of supporting, and securing the success of the pro-autonomy option in the Popular Consultation, and used methods of intimidation and violence for this purpose. These groups were armed and were not prevented from using violent means to achieve their objectives. Indeed they were assisted and encouraged in doing so with Indonesian institutional support ranging from finance and weapons to planning, direction, and co-perpetration. Although pro-autonomy militia groups consistently committed human rights violations against a civilian population from January–September 1999, they still received various forms of support from the civilian government and the military, including in the period after the 5 May Agreement.

The existence of militia groups based on political identity is a reflection of the structural weaknesses in the governing system in East Timor as discussed above, including the implications of:

- An environment where there was the excessive use of force by multiple parties in East Timor, which was unauthorized by law, but without definitive legal consequences,
- The "Total People's Defense and Security System,"
- An inability to accommodate differences in the political system,
- The lack of capability, confidence, or willingness of the Indonesian National Police to respond effectively to violations, including disarming and arresting militia members

The patterns of violence in April and September illustrate how at moments when political difference was made most stark, for example at militia rallies or following the Popular Consultation, violence peaked.

Although there were some valid, reported events of "spontaneous clashes" between civilian pro-independence and pro-autonomy supporters in East Timor in 1999, this does not appear to be the primary trigger, or pattern, of conflict. These few instances were part of a broader pattern of a campaign of organized, coordinated, and strategic violence in which pro-autonomy militias were used to achieve specific political goals of multiple institutions.

Why Preventative Measures Failed to Prevent the Violence

The Commission has noted that both the Indonesian security forces and the pro-independence groups (Falintil and CNRT) made specific and legitimate efforts to prevent the use of violence by its members in 1999. Why weren't these measures successful?

First, preventative orders failed because, particularly in the case of the TNI, it is clear that the preventative measures were accompanied by operational practices that allowed the direct commission of violence by its members and supported other groups that used violence. There was not a consistent message conveyed to the Indonesian security apparatus down to the local level that acts of violence would not be tolerated, and could not be supported by any means, implicitly or explicitly. The failure to anticipate that preventative orders issued from higher command levels

could reverse the long established patterns of cooperation at the local level between TNI commanders and garrisons and the paramilitary formations they supported was indicated above. The overlapping membership of individuals in TNI units, paramilitary defense forces, and pro-autonomy militias exacerbated this problem.

Preventative measures could never succeed in such an environment where pro-autonomy militia members were given arms, or allowed to carry arms, by the TNI; use public facilities (such as the Kodim) as meeting places, or headquarters; given rice or other forms of material and financial support; and allowed to conduct joint operations such as trainings and "sweeping" campaigns, or even independently use military-style tactics, such as road blocks. The moral support expressed by military representatives and civilian officials attending, facilitating, and participating in events such as pro-autonomy militia rallies also did not demonstrate a sincere commitment to preventing violence, and maintaining the security apparatus as a neutral body during the Popular Consultation process in 1999.

The legacy of the Sishankamrata system that allowed for the operation of paramilitary groups, as well as the deep involvement of the military in civilian government and politics during the pre-Reformasi era, may have made achieving neutrality at the operational level of the security forces a difficult task in 1999. The factors of overlapping membership and psychological commitment to the pro-autonomy cause on the part of local TNI garrisons were perceived by TNI commanders as rendering problematic the effectiveness of preventative orders. Nevertheless, the knowledge that neutrality was difficult to achieve meant that there was an obligation to take effective measures to enforce preventative orders and to provide for an ongoing system to monitor the extent to which they were succeeding in preventing violence. Neither military nor civilian institutions in East Timor in 1999 demonstrated a genuine commitment (i.e. acting with due diligence) to follow through in this manner on the preventative orders once they were issued. As seen above in Chapter 5, operational orders conflicting with the mandated neutrality were also issued by local commanders.

Therefore, the second reason the preventative orders did not stop the violence in East Timor in 1999, was the failure of institutions to fully enforce them and to pursue all possible preventative measures. Methods of prevention which were not adequately pursued or sufficiently enforced include full disarmament (no armed group in East Timor was completely or consistently disarmed), cantonment, and punitive actions (including arrests, prosecution, immediate dismissal and/or full and immediately effective removal from the area) of members who violated specific orders of neutrality, committed human rights violations and/or violated preventative orders by other means. Individuals who failed to exercise their duties with full diligence should have been held accountable for their actions.

In addition to these concrete actions, there was a failure to provide adequate training for the security forces in respecting human rights and protecting civilian populations. There was also the failure to develop effective monitoring mechanisms which could investigate, report and resolve violations. The Police were specifically not provided with the institutional capacity, or full confidence, to fulfill their duties as the security mechanism in East Timor in 1999.

In the case of pro-independence groups, we have far less information about the nature of the violations that were allegedly committed by its supporters, which would allow for concrete identification of the reasons why preventative orders failed. The pro-independence groups were highly organized in their structures at every level of society (from the village to overseas), and documentary evidence demonstrates that the organizational structures were intact and able to communicate clearly to their members in 1999. Falintil was the only armed group who voluntarily and uniformly took the preventative measure of the cantonment of all its troops, although there appear to have been a few violations of this order. The SPSC tried three cases that involved violations by pro-independence group members, with the consent and cooperation of pro-independence groups. Falintil and CNRT also encouraged and facilitated the surrender of a pro-independence supporter to the legal authorities who allegedly killed a pro-autonomy supporter in Becora in August 1999. For the most part, these multi-pronged preventative and punitive measures seemed to have been effective. However, it is nonetheless necessary to consider why some acts of violence persisted against pro-autonomy supporters.

The same basic principles apply to pro-independence groups as the civilian government, police, and military. If any part of the pro-independence structure explicitly or implicitly condoned specific acts of violence by its supporters, this contradicted the preventative message and weakened the effectiveness of measures to stop violence. Furthermore, the long term existence of violence, and the charged political atmosphere increased the obligation to expend every possible effort to prevent and stop violence, and to establish systematic mechanisms to follow through using strict and unbiased disciplinary measures on every reported violation. Training and reporting mechanisms could have also improved the effectiveness of the pro-independence groups' preventative measures.

8.3 CONCLUSIONS: GROSS VIOLATIONS OF HUMAN RIGHTS

Were there Gross Violations of Human Rights in East Timor in 1999?

Based on the results of the Document Review and the analysis of the Fact Finding process, the Commission **concluded that gross human rights violations in the form of crimes against humanity occurred in East Timor in 1999.** This conclusion is supported by the Commission's factual findings (Chapter 7) that crimes against humanity occurred as part of a widespread and systematic attack on civilian populations. The types of gross human rights violations in the form of crimes against humanity include: (1) murder; (2) deportation or forced displacement of civilian populations; (3) illegal detention in the form of severe deprivation of physical liberty; (4) rape and other forms of sexual violence (5) forced disappearance; and (6) other inhumane acts, including destruction and burning of property.

How the Commission Identified Gross Human Rights Violations?

In order to conclude if gross human rights violations in the form of crimes against humanity occurred, the Commission first inquired if violence was "***directed against***" civilians. This violence can be any form of physical violence, or coercion, threats, or intimidation, or deprivation of physical liberty.[1] The civilians attacked must be large enough in number to show that the attack was not just aimed at a few, limited, randomly selected civilian individuals but a significant group of persons.[2]

The basic idea here is to determine if there is credible evidence of mistreatment or the use of force, coercion, or violence against a substantial number of civilians. If the violence was either (1) directed merely against a few isolated civilian individuals, or (2) directed primarily against legitimate military targets but a few civilians were killed in random, isolated incidents then this would not qualify as gross human rights violations in the form of crimes against humanity. But, in East Timor in 1999 the political dimensions of the conflict and its focus on the Popular Consultation, the kinds of crimes and the status of the victims, and above all the targeting of civilians associated with particular political beliefs and goals clearly indicate that an attack against a civilian population occurred. The Commission concluded that the evidence on this point was overwhelming and definitive.

In addition to the Commission's finding that there was an attack directed against a civilian population, it is necessary to also find that the attack was either "widespread or systematic." The term "widespread" encompasses the quantitative dimensions, scope, and character of the attack. The term "systematic" involves primarily qualitative aspects of the attack, indicating, for example, that it was not comprised of random, isolated, individual acts of violence. Rather, "systematic" means that the attack encompassed multiple acts with a significant number of victims or scale, or it manifested organization, planning, coordination, or patterned activity. Here again, the Commision concluded that the evidence overwhelmingly demonstrated that the attacks against civilian populations in East Timor were both widespread and systematic. This evidence indicated that the numbers of victims and incidents, as well as the scale was large. The evidence also showed that attacks regularly targeted individuals of a particular perceived political affiliation and these attacks occurred repeatedly over a period of time, in a number of places, and followed regular and organized patterns of perpetration.

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1 To identify gross human rights violations there must have been an attack against a civilian population, that is, civilians must have been the primary object of the attack. This section applies the conceptual framework elaborated in chapters 3 and 5 above in terms for a non-expert reader to easily understand. See these previous sections for a more technical discussion of the elements of gross human rights violations in the form of crimes against humanity.

2 In order for an attack directed against civilians to qualify as encompassing gross human rights violations in the form of crimes against humanity, "a civilian population" must be the object of attack. The term "a civilian population" does not mean the entire population of the country or territory where the attack occurs. There is no minimum number necessary. See chapters 3 and 5 above.

How the Commission Argued that these Gross Human Rights Violations Happened?

The Commission received a very large volume of documentary, and live, testimonial evidence that gross human rights violations occurred. These sources were considered individually to assess their authenticity, depth, relevance and factual merit.[3] Then, the sources were compared and further scrutinized in order to determine which accounts were sufficiently corroborated to be deemed truthful, and which accounts were contradicted sufficiently to be considered false. In some areas of analysis regarding allegations of certain, specific human rights violations, there was not enough information of probative quality for the Commission to be able to ascertain the truth. Victims, perpetrators, witnesses, the authorities of government institutions and expert advisors were all consulted and included during this process. Supporters of both political persuasions – pro-autonomy and pro-independence - were given the opportunity to provide their factual testimony and perspectives. As explained in Chapters 5 and 6 the culmination of these sources overwhelmingly agreed that a large number of attacks against a civilian population, of a nature and scale to constitute gross human rights violations, occurred in East Timor.

The Commission's next step was to identify who committed these gross human rights violations in the form of crimes against humanity and to determine how they were perpetrated. In this regard, the Commission reviewed the evidence to ascertain patterns at the operational level at which the gross human rights violations were actually perpetrated. The same standards to determine gross human rights violations were used for each act, regardless of the identity or institutional affiliation of the perpetrator. Namely, the Commission identified specific cases of gross human rights violations, and determined if there were patterns of systematic and/or widespread perpetration by individuals who were members of pro-autonomy groups, government institutions or pro-independence groups.

Pro-Autonomy Groups and Government Institutions

Pro-autonomy groups, specifically militias, were identified in the large majority of the cases as the direct perpetrators of the acts that constituted gross human rights violations. These acts were committed in a widespread manner. In fact, militia groups operated throughout East Timor in 1999 and perpetrated human rights violations in every district and subdistrict in East Timor. The organization of militia groups displayed multiple, "systematic" characteristics, including organized recruitment of members and material resources; military type structures (command hierarchy, orders, uniforms) and operations (routine reporting and radio communications, roadblocks, sweeping campaigns, planned attacks); payrolls; headquarters where trainings and meetings occurred, and where weapons were stored. The gross human rights violations were committed by these pro-autonomy militia groups as systematic attacks. This is indicated by multiple factors including:

- Planning meetings and rallies.
- Instructions, orders, and planning originating from recognized leaders, or commanders before, during and after attacks, sweeping operations, and patrols.

[3] For a detailed explanation of the analytical process used to weigh the evidence, see Chapter 5.

- Monitoring and distribution of weapons to members.
- Choreographed attacks employing organized, military-style tactics, with TNI officers and/or militia commanders coordinating or directing the attacks.
- Provision of logistics, including transportation, munitions, and food by Indonesian authorities.
- Targeting of categories of victims on the basis of perceived political affiliation or gender in connection to supporters of a political group.

The pro-autonomy groups perpetrating attacks directed against supporters of independence did not act spontaneously or alone. In many instances they functioned with the guidance and support of government institutions. The commission determined that there were co-perpetrators of gross human rights violations from the military in a number of specific cases, as well as the police and civil service. There were also numerous instances where Indonesian military officers planned, prepared, or directed military operations, sometimes including the participation of TNI personnel in the operation. In some cases they also provided other forms of material support, such as transportation or the use of local military facilities for illegal detentions or other forms of mistreatment of civilians. There also were numerous instances of shared or overlapping membership at the operational level between militias, the security forces, and civil government officials. In addition to joint participation with the militias as direct perpetrators, organizers, or commanders, the Commission also identified the military and civilian government engaged in the formation and support of the militia groups in a number of ways, including but not limited to:

- Systematic provision of funding, logistical support, physical facilities, and other material goods, such as food, to militia groups
- Systematic provision of weapons to militia groups

These patterns of perpetration were repeated by militia and TNI units and personnel across multiple districts in East Timor. They involved multiple individuals and multiple institutions cooperating together in the use of armed violence in the furtherance of common political objectives. These institutions involved in the perpetration of gross human rights violations in 1999 in an institutional context included pro-autonomy militias, elements of the Indonesian security forces (TNI and Polri), and civilian government officials. The quantitative and qualitative features of the evidence enabled the Commission to reach these conclusions in a definitive manner that leaves no doubt as to their accuracy. Whether the involvement of the institutions mentioned was of sufficient nature and scope to also warrant a conclusion that they bear institutional responsibility for these crimes will be discussed in 8.4 below.

Pro-Independence Groups

The Commission also identified acts of violence allegedly committed by members of pro-independence groups (CNRT, Falintil, pro-independence youth groups) against civilians. Some of these acts included murder, illegal detention, destruction of property, and sexual violence.

In all of these alleged attacks the victims appear to have been civilians, and pro-autonomy supporters, including former militia members. Violations by pro-independence groups in 1999 were reported from at least eight districts in East Timor.

These alleged attacks also displayed a number of systematic elements, including:

- Targeted attacks against individuals "known" to have been pro-autonomy supporters
- The use of military- style operations such as roadblocks, organized patrols, and ambushes
- Orders and reporting procedures to military or CNRT officials

Therefore, if the allegations about these attacks are verified, it is highly likely that pro-independence groups committed gross human rights violations in a widespread and systematic manner, in particular the act of illegal detention.

However, the evidence from which these patterns were derived requires considerable caution. This arises from failure of the SCU, KPP HAM, and Ad Hoc Court to attach priority to the investigation of such alleged violations. In addition, the total number of all violations reported as perpetrated by pro-independence groups in 1999 is few (less than 50), whereas there are thousands of reports of violations by pro-autonomy groups. Furthermore, many of the reports of pro-independence violations are not substantiated by first-hand witness, victim or perpetrator accounts, or other forms of credible documentation. Much of this information has not been tested in Court proceedings, or other settings that allowed for detailed examination.

The number of reports does not necessarily indicate the definitive quantity of violations by pro-independence groups, because there has not yet been sufficient investigation into these events on which to make such a determination. The impact of the limited amount and quality of these reports is they do not provide the Commission with a sound basis on which to make conclusive finding as to which pro-independence institutions were involved in precise ways, for each type of violation and on what scale (i.e. widespread), or in what manner (i.e. systematic) attacks took place.

Three trials were held by the SPSC in which pro-independence group members (including Falintil) were found guilty of acts of murder against civilians. In addition, some of the reports of pro-independence crimes reviewed by the Commission in depth began as internal investigations within CNRT and/or Falintil, and appear to have been provided to the legal system for adjudication.

Therefore, based on these documented cases there is a basis to conclude that pro-independence group members committed gross human rights violations in 1999, and at least in some instances have been held accountable for them. However, the ability of the Commission to determine precisely the ultimate nature, scope, and causes of violations committed by pro-independence groups in 1999, and their precise institutional affiliations and links was, as explained in Chapter 5, constrained by the limited scope of SCU investigations into such alleged violations.

8.4 CONCLUSIONS: INSTITUTIONAL RESPONSIBILITY

How the Commission Assessed Institutional Responsibility

The previous section explained the framework used by the Commission for arriving at its findings and conclusions concerning gross human rights violations. More specifically, that section enumerated the grounds on the basis of which the Commission concluded that the violence in East Timor in 1999 was not comprised of random, isolated, individual acts of violence, but rather manifested organization, planning, and coordination. Further, section 8.3 also explained how the Commission concluded that these coordinated and organized attacks targeted individuals because of their perceived political affiliation. These factors are the basis of the Commission's conclusion that the gross human rights violations were perpetrated in a large-scale and systematic manner, and these factors also provide the first step towards a finding of institutional responsibility.

As explained in detail in Chapters 3 and 5-7, as well as in 8.1, institutional responsibility arises from participation or acquiescence by state institutions in criminal or unlawful conduct. In order to support a finding of institutional responsibility, that participation or acquiescence cannot merely consist of isolated or occasional incidents, small in scale and only involving a few members of state institutions. Institutional responsibility arises from the support of, acquiescence in, or direct or indirect institutional participation in violations that are systematic and occur repeatedly over a period of time, in a number of places, and which follow regular and organized patterns of perpetration. Under such circumstances these institutions must accept responsibility for the conduct of their members because the degree of their institutional connection to the perpetration of these violations is so great that it cannot be excused as the isolated actions of a few individuals or "rogue elements." In applying the conceptual framework elaborated in previous chapters the Commission focused on two central questions. The first question asks whether, at the operational level the evidence is sufficient to ground findings of patterns of coordinated activity over time and in multiple locations. The second question focuses on the institutional actors who are connected to these patterns of activity. It asks whether the evidence of those patterns also reveals which institutions participated in enabling those activities to occur. That participation can take two forms: (a) institutions whose members or personnel participated directly in perpetration of these crimes; (b) institutions that provided regular and substantial support, organization, resources, direction, training, or planning for the perpetrators of these crimes.

If there is only evidence to show institutional involvement in a few incidents, but not consistently over time and in different areas, then there may be insufficient evidence to establish institutional responsibility. If, however, there are persistent patterns of institutional involvement that are found in most or many of the types of crimes that occurred across East Timor during 1999 then there would be a strong case for findings of institutional responsibility.

How the Commission Reached Its Conclusions about Institutional Responsibility

In Section 6.1 above the Commission enumerated its findings on the basis of the combined analysis of the Document Review and Fact Finding. Those findings formed the basis of conclusions that there was sufficient evidence to demonstrate institutional involvement in gross human rights violations. The findings also demonstrated that the institutional involvement was of sufficient scope and duration to justify conclusions of institutional responsibility on the part of several institutions that played a role in the violence in 1999.

In applying the two questions discussed above to the combined evidence from Fact Finding and Document Review, the Commission concluded that the evidence left no doubt that pro-autonomy militias were the primary direct perpetrators of gross human rights violations in East Timor in 1999 and that the consistent, patterned, and systematic manner in which these crimes were perpetrated meets the requirements for institutional responsibility. The consistent patterns of direct perpetration by pro-autonomy militias in targeting pro-independence supporters for violence that included murder, systematic rape, torture, severe deprivation of physical liberty, and deportation and forcible transfer were so clear that there could be no doubt of their institutional responsibility for these crimes.

In analyzing the extent to which Indonesian institutions also met the criteria for institutional responsibility, the Commission concluded that the evidence was sufficiently clear and abundant to justify such conclusions. More specifically, the Commission found that TNI personnel, police, and civilian authorities cooperated with and supported the militias in a number of significant ways that contributed to the perpetration of the crimes enumerated above. The evidence also demonstrated that TNI personnel sometimes directly participated in the operations that led to these crimes. Such participation included direct participation in the actual perpetration of the crimes by members of TNI units operating within militias as well as direction of the operations by TNI officers who were present when the crimes were committed.

The context in which the patterns of cooperation between militias and TNI operated involves a continuing practice, going back to long before 1999, of collaboration between militias, civilian defense groups, and TNI local garrisons, whose membership often overlapped. The patterns of cooperation involved not only planning and co-perpetration in operations, but also the provision of various kinds of material support. Developing out of the historical context of ongoing cooperation and close inter-relations between these organizations, in 1999 at the operational level these institutions all acted together in the pursuit of the common goal of defeating the pro-independence movement. The evidence showed unequivocally that these groups regularly employed violence to achieve their goals and that the violence resulted in the categories of gross human rights listed above. Their joint operations were often conducted under the direction of Indonesian military or civilian authorities. In other cases, even where Indonesian officers or officials may not have planned or directed the operation, the evidence shows that they knew of, acquiesced in, or approved of the operations. Civilian officials were on some occasions involved in the operations,

and in general provided material support for the militia groups that perpetrated them with knowledge that this support would lead to such violations. When police were not involved in the operations themselves they were almost completely ineffective in preventing them and in providing security for the civilian population.

The Commission's analysis of the evidence in light of the two questions that form the basis of findings of institutional responsibility revealed that militia operations followed various operational patterns, including actions carried out by pro-autonomy militia without any TNI involvement, operations at the instigation or orders of Indonesian officers, and joint operations carried out by TNI, or more specifically, Kopassus personnel together with militia members. The Commission's analysis also revealed that in many cases militia members were also in the TNI, sometimes making the two organizations indistinguishable at the operational level.

Such incidents were not random or isolated but occurred throughout 1999 and throughout East Timor, though in varying degrees of intensity. The operations that resulted in gross human rights violations reveal consistent patterns of activity involving the direction of operations under an identifiable command structure, coordination and planning of attacks on civilians, and the carrying out of attacks in a military manner following regular tactical patterns. In other words, the Commission found there was overwhelming evidence to answer the first and second question in the affirmative for the pro-autonomy institutions discussed above, including militias, TNI, police and the civilian government of Indonesia. There were patterns of systematic and coordinated activity over time and in multiple locations that involved the perpetration of gross human rights violations by institutional members, and with institutional support. This coordinated, patterned activity was of a sufficient degree and duration to necessitate a finding of institutional responsibility.

The Commission experienced greater difficulty in reaching definitive conclusions about institutional responsibility for gross human rights violations committed by pro-independence groups. As noted above (8.3) there is no doubt that the large majority of gross human rights violations were committed by pro-autonomy groups, but the number of violations committed by pro-independence groups cannot be ascertained with any certainty. On the one hand, there is no doubt that human rights violations were committed against civilian populations who opposed independence. These crimes included murder, destruction of property and illegal detention. On the other hand, there is considerable difficulty analyzing the extent and degree of organization or planning behind such crimes because of the lack of systematic investigation of the role of pro-independence groups in the 1999 violence. It is clear that these acts were not all random and isolated acts, and some of the violations may qualify as gross human rights violations. It is only in the case of illegal detentions where there is enough reliable evidence to reach conclusions as to institutional responsibility.

How the Commission Reached Its Conclusions as to the Specific Institutions Responsible for the Gross Human Rights Violations

The Commission analyzed all of the evidence from the Document Review and the Fact Finding to determine which institutions were involved in gross human rights violations through the direct participation of their members or personnel. It also examined the evidence to determine which institutions were connected to the

perpetration of these crimes because their members provided regular and substantial support, organization, resources, direction, training, or planning for the perpetrators of these crimes. It then weighed the evidence to assess whether these various forms of participation or support were of sufficient duration or scope to ground conclusions of institutional responsibility.

The findings produced by this analysis were discussed in detail in Chapter 5-7 and summarized in 8.1 above. In regard to the institutional responsibility of pro-independence groups, as noted above, lack of systematic investigation makes it difficult to assign institutional responsibility for the illegal detentions committed by these groups. There is sufficient evidence of a widespread pattern of elements of Falintil and/or CNRT detaining persons who were perceived as current, and/or former militia but it is not easy to assign precise responsibility to specific institutions for individual instances of such violations. The Commission's analysis of the evidence revealed that such illegal detentions were carried out in a systematic manner that included formal orders, reports to commanders, etc. On the basis of such evidence the Commission concluded that there was at least tacit institutional approval for this pattern of illegal detentions on the part of Falintil and/or CNRT.

In regard to institutional responsibility for gross human rights violations committed against perceived pro-independence supporters, the Commission analyzed many kinds of evidence connecting various institutions to such crimes. As noted above, the Commission concluded that pro-autonomy militias were the primary direct perpetrators of these crimes. The central question of institutional responsibility facing the Commission was which other organizations could be linked to these crimes sufficiently so as to justify a conclusion that they too bear institutional responsibility.

The Commission found that the TNI commanders in East Timor controlled funding, and the supply, distribution, and use of weapons to militia groups and did so in a highly organized manner. They also knew that these weapons would be used to further the pro-autonomy campaign and that gross human rights violations were occurring in the course of that campaign. The support of the TNI also included planning and organization of joint operations that frequently included TNI personnel and officers. Local TNI facilities were used for illegal detentions, where severe forms of mistreatment of civilians, including torture and sexual violence sometimes took place. The Commission found that the patterns of co-perpetration and support arose out of the structural interconnections between the TNI and militia and other paramilitary groups that had developed over time. The reliance of the TNI on such armed civilian groups is a structural weakness which constitutes one of the sources of their institutional responsibility for human rights violations in 1999.

The Commission also found that there was abundant evidence that showed the activities of militia groups were supported by the civilian government in a variety of ways. The best documented of these forms of support is the systematic and sustained way in which the civilian government supplied funding to the militias, even after they clearly were aware of gross human rights violations being perpetrated by these militia groups. The Muspida also contributed to the support of militia groups. The civilian government and the Muspida were aware that military and police - affiliated security groups were joining the activities of the pro-autonomy organization in violation of the 5 May Agreement's requirement of neutrality by TNI and Police. The

Commission concluded that the evidence clearly supported the conclusion that the provision of funding and material support by military and governmental officials was an integral part of a well-organized and continuous cooperative relationship in the pursuit of common political goals aiming at promoting militia activities that would intimidate or prevent civilians from supporting the pro-independence movement. This forms one of the bases for concluding that the TNI and civil government bear institutional responsibility for the gross human rights violations perpetrated against perceived pro-independence supporters in 1999. The TNI's domination of the civilian government, as shown by the analysis of the larger context in Chapter 4, reinforces this conclusion of institutional responsibility on its part.

The Commission's analysis of the evidence in Chapter 5-7 led to the conclusion that the gross human rights violations it found to have occurred were clearly not the result of spontaneous isolated incidents. Instead, the attacks were carried out in a well-organized and systematic manner that targeted perceived pro-independence supporters. These attacks were primarily carried out by militias, though TNI personnel can be shown to have often participated in and/or planned and directed them. Viewed as a whole, these attacks constituted an organized campaign of violence. Individuals from the militia, police, local civil administration, and TNI participated in various phases of this campaign of violence and political repression conducted against civilians they believed to be associated with the pro-independence movement. This campaign followed certain patterns often consisting of a series of connected events involving intimidation, threats and actual force in order to discourage support by the civilian population for the pro-independence movement. The campaign involved organized attacks on villages by militias and TNI. These attacks led to gross human rights violations that included murder, rape, and torture, as well as to deprivation of liberty, forcible transfer away from home villages, and eventually, in many cases, to deportation.

A campaign of coordinated activity of this kind requires planning and logistical and financial support. The Commission concluded that the evidence demonstrated that TNI and Police personnel, as well as civilian officials, were at times involved in virtually every phase of these activities that resulted in gross human rights violations including murder, rape, torture, illegal detention and other severe deprivations of physical liberty, and forcible transfer and deportation. This kind of sustained and coordinated activity involving many forms of support, encouragement, and co-perpetration forms the basis for the Commission's conclusion that the TNI, Polri, and civilian government all bear institutional responsibility for these crimes.

How the Commission Reached Conclusions on the Institutional Responsibility of Non-State Actors

The Commission has identified the institutional responsibility of pro-autonomy militias and pro-independence groups. Because of the achievement of independence by Timor Leste, these groups no longer exist. For this reason a conclusion about their institutional responsibility would have only a symbolic value. States have a political and moral obligation to accept responsibility for gross human rights violations committed by groups to which they have an historical connection, even when those institutions no longer exist or have undergone significant transformation.

From a forward looking perspective, the government of Timor-Leste should acknowledge state responsibility for the illegal detentions constituting gross human rights violations that were perpetrated by pro-independence groups. This acceptance of state responsibility for these groups is based not upon legal accountability but arises from the moral and political basis of institutional responsibility.

In regard to Timorese pro-autonomy militias, because of the Commission's forward looking perspective in formulating its conclusions and the recommendations that are based upon them, the Commission concludes that Indonesia bears state responsibility for those gross human rights violations that were committed by these militias with the support and/or participation of Indonesian institutions or their members.

CHAPTER 9

RECOMMENDATIONS AND LESSONS LEARNED

In Chapter 8 the Commission summarized its conclusions and indicated how they embodied the analytical understanding achieved by the Commission of the nature and causes of the 1999 violence and of the need for institutional responsibility for the gross human rights violations that occurred. In this concluding chapter, the Commission reflects on the lessons learned from this analytical process and how these lessons form the basis for concrete recommendations for institutional reform and other measures that can prevent such events from reoccurring. The Commission's recommendations are thus forward looking and aim to prevent the repetition of future human rights violations, to heal old wounds, and to promote reconciliation and true friendship. In this spirit, the Commission's recommendations are based upon restorative justice that emphasizes the needs of victims of the 1999 violence. Human rights violations lead to the loss of human dignity; establishing the truth is a powerful step toward restoring dignity. Restorative justice focuses on all parties involved in a conflict and seeks to reintegrate them into an inclusive society.

The Recommendations respond to the Commission's mandate, the lessons learned, as well as to tangible problems that currently face each country as a result of the violence in 1999. Above all, they are a response to the needs of those whose lives were affected by the violence in 1999. The mandate authorizes the Commission to make specific recommendations, inter alia, regarding amnesty and rehabilitation. The mandate also asks the Commission to make recommendations that include innovative ways to improve people-to-people relationships in the two countries that are in congruence with local religious beliefs and customs, and to solidify cooperative and reconciliatory processes at the state level.

In fulfilling its mandate the Commission derived two key principles to be used in formulating recommendations. The Commission first determined that recommendations must be forward looking, inclusive, and must not discriminate between parties, particularly based on political affiliation, if they are to be reconciliatory. Consequently, the second principle applied is that all of the

Commission's recommendations will take the form of collective reparations, which will require material and other forms of support from the relevant governments and institutions. The Commission therefore, makes no recommendations for individual reparations. The obligation to provide support for collective reparations arises from the conclusions on state and institutional responsibility discussed in Chapter 8.4.

The Commission's process in arriving at recommendations included a series of workshops incorporating government, civil society, community representatives, international and national experts, foreign diplomats, and mass media, to consult about the post-conflict needs of peoples in both countries, and to consider effective means for achieving reconciliation. Participants in the fact-finding process were also asked for their thoughts on recommendations, and the Commission's research unit surveyed secondary sources to determine the "best practices" used in other countries and examined data and studies specific to the communities on the border areas of East Timor and Indonesia.

The Commission's Conclusions in Chapter 8 identified particular errors, structural weaknesses and other causes of the violence in 1999. The lessons to be learned from these shortcomings provide the basis for recommendations because only in learning from the past can concrete measures be adopted to prevent the repetition of these same mistakes in the future. The core concept informing the lessons learned is based on the recognition that in a context, such as that in 1999, where the rule of law and judicial accountability are weak, and where there are no effective political mechanisms for resolving differences peacefully, the result will be a resort to violence to settle these differences. Based on this insight, the recommendations identify reforms that are essential to enact within state institutions, including the military, police and civilian government, to prevent future human rights violations. These recommendations also propose methods, including specific kinds of human rights training and education, that in the long term can foster change in institutional values and practices which can contribute to both nations' commitment to the strengthening of national cultures of peace and democracy.

In addition to the need for institutional reform, the Commission's recommendations must also address more immediate and particular needs that also require timely solutions. These needs include claims to pensions and assets, reunifying family members, resolving cases of disappearances, and matters of border.security and access. Finally, the recommendations suggest ways in which the two nations can continue the reconciliation process with an approach based on friendship, including both symbolic and concrete actions.

9.1 RECOMMENDATIONS

To be effective, recommendations must be realistic and implementable. To this end, this Commission has divided its recommendations into two categories: 1) Short Term and Urgent, and 2) Long Term and Aspirational. Some kinds of recommendations, such as those aiming at institutional reform, conflict resolution programs and victim healing, will require both urgent and long - term actions. The Commission has grouped its concrete and urgent goals into categories that correspond to the major forward looking goals the recommendations aim to achieve: promoting friendship

and reconciliation between peoples of the two countries, meeting the needs of those affected most by violence, healing old wounds, and preventing future reoccurrences of conflict.

The Commission has phrased the majority of its recommendations in a way that does not isolate a recommendation to one country or the other. With the formation of this Commission both nations have chosen to improve bilateral relations, and work together towards establishing a stable and prosperous environment of peace for their peoples. To this end, both nations will engage in learning the lessons of the past, and taking preventative actions.

SHORT TERM AND URGENT

1) Accountability and Institutional Reform

The Analysis and Conclusions of Chapters 4-6 identify failures and shortcomings that led to the violence in 1999. These failures and shortcomings form the basis for the Commission's conclusions concerning instutional responsibility. Remedying systemic and institutional failures through institutional reform is thus necessary to prevent future reoccurences of violence and to ensure the foundation for peace and friendship between the 2 countries. A key component of such institutional reforms is promoting a culture of accountability in the instutitions whose responsibility it is to maintain peace and security and to prevent and punish violations of law and human rights.

a. Amnesty

The Terms of Reference, point 14 (c), state that examples of measures for healing old wounds, and promoting rehabilitation and restoration of human dignity, shall be recommendations to grant amnesty to all those involved in human rights violations who cooperate fully in the disclosure of the truth. Further, in accordance with the Commission's mandate, the Commission's work shall not prejudice any ongoing or future judicial process for cases of human rights violations reported in East Timor in 1999 and, also, the Commission shall not recommend the formation of any judiciary body.[1]

Under its Terms of Reference, the Commission may give an amnesty recommendation where the following criteria are fulfilled: (1) Giving an amnesty recommendation supports the achievement of the objective to heal old wounds, rehabilitate and restore human dignity, which will contribute to achieving reconciliation; (2) alleged perpetrators invited to the public hearing fulfill the criteria of telling the complete truth and "full cooperation" as determined by the Commission; and (3) amnesty stipulations can fulfill the criteria of open procedural justice for all. The Commission has concluded that none of those who appeared in its hearings process met the conditions enumerated in condition (2) above. Further, amnesty stipulations for individuals would not be in accordance with the principle

[1] Terms of Reference point 13.

of open procedural justice available on an equal basis. Finally, the Commission concludes that amnesty would not be in accordance with its goals of restoring human dignity, creating the foundation for reconciliation between the two countries, and ensuring the non-recurrence of violence within a framework guaranteed by the rule of law. Therefore, the Commssion does not make any recommendations for amnesty.

b. Rehabilitation

Pursuant to Terms of Reference point 14(c)(ii), the Commission considers that rehabilitation consists of actions meant to restore the good name of those unjustly accused of human rights violations. Therefore, in order to recommend rehabilitation, the Commisson needs to be able to prove that the alleged perpetrator was unjustly accused. The Commission determined they were not given the instruments to conduct research on individual cases of accusations of individuals. Therefore, the Commission makes no recommendations for rehabilitation.

c. Institutional Reforms and Capacity Building

Chapter 8 identified weak judicial institutions, the lack of an effective committment to the rule of law, and the lack of accountability in military and security forces, as factors that contributed to the violence of 1999. On the basis of its reflections on these conclusions and the underlying events, the Commission makes the following recommendations.

An important component of promoting accountability and preventing future recurrence of violence involves the development of a culture of institutional responsibility in government in general and in military, police and justice institutions in particular. More concretely it also requires effective training of judicial actors and security personnel in human rights and respect for the rule of law. The Commission acknowledges that there are already substantial programs for human rights training in the judiciary and security forces of both countries. These general training programs however, do not necessarily address in depth the specific issues related to the causes of the 1999 violence identified in Chapter 4-8. The Commisson therefore recommends the following actions:

- Develop a human rights training program focused specifically on the role of security forces and intelligence organizations in situations of political conflict, mass demonstrations and civil unrest. Such a program should have as its primary goals inculcating respect for human rights, including civil and political rights, in the institutional culture of security forces and particularly those units or formations who will be called on to respond to situations of civil conflict. It should also emphasize the obligation of the military to remain neutral in political controversies and elections, to refrain from using state resources in support of political parties or their goals, and to operate solely within the limits of the law and under the direction of civilian leadership.

- Develop a human rights trainings program focused specifically on the role of particular civil institutions such as the Attorney General's Office, Ministry of Justice, Ministry of the Interior, and Ministry of Defense, in planning for and working to prevent situations of civil and political conflict. This training

should emphasize the development of conflict mediation approaches and other mechanisms to promote the peaceful resolution of disputes. It should also emphasize government officials' duties and enhance their capacities to promote respect for human and civil rights, and for the rule of law. In the long term, this program should develop within all levels of the civil government a culture of understanding and toleration of political difference, and of the right of citizens to express their differences without fear or intimidation.

- Promote institutional reforms which will enhance the authority and effectiveness of institutions or agencies charged with the investigation and prosecution of human rights violations alleged to have been perpetrated by members of the armed forces, police or other security agencies. In the case of Indonesia this would include amendments to the human rights law that will enable the National Human Rights Commission to move human rights cases forward more effectively with the cooperation of the Attorney General's office. In the case of Timor Leste, this would involve the development of a National Human Rights Action Plan encompassing mechanisms for the pro-active investigation of human rights violations and the enforcement of human rights standards. For both countries these reforms should also include training and strengthening of accountability mechanisms within military and police institutions.

- The Commission's findings and conclusions demonstrate the particular vulnerability of women and children in periods of conflict and civil unrest. The Commission therefore recommends specialized training programs for military, police, and civilian officials to promote the protection of women and children and the prevention of sexual exploitation and violence in all forms against women, and other vulnerable populations. The Commission further recommends the development of specialized investigative and enforcement mechanisms within the police and Attorney General's Office for gender crimes committed in the context of conflict, civil unrest or political disturbance.

The Commission's findings and conclusions in regard to the nature and causes of the violence in 1999 underscore the importance of institutional reform that will lead to a clearer understanding of the role of a professional military operating in a democratic state solely under the control and authority of the elected, civilian government. The Commission therefore recommends:

- In order to prevent recurrence of the kind of violence that occurred in 1999 the two governments develop and implement a program to complete security sector reform in the form of transformation of military doctrine and institutional practices and mentalities from that of a freedom fighting or revolutionary people's army to the kind of professional armed forces appropriate for a modern, democratic state operating under the rule of law. These measures aim to give strong emphasis on principles of democracy and respect for law and human rights in military and intelligence doctrine. These measures should include the transformation of the doctrine of People's Defense including armed civilian groups into a formal military reserve system operating within a clearly delimited legal framework.

- This program must also clarify and emphasize the legal boundaries between civil authorities who are exerting the authority and responsibility of making policies, versus the military and police forces who are exerting operational responsibility. This program can be implemented with, among other means, the following efforts: (1) to enhance democratic control over security forces and intelligence operations; (2) to prevent politicization of security forces and intelligence organizations.

- These reforms must also include a completion of the separation of authority and responsibilities in matters of law and order and defense between the police and military forces, and a mechanism for military assistance to the authorities in times of peace.

2) Joint Border and Security Policy

Unresolved border and security issues represent an ongoing impediment to achieving peace and friendship between the two nations and to addressing the needs of those individuals whose lives have been adversely affected by the violence in 1999. Preventing future occurrences of violence and promoting friendship between the two nations requires effective resolution of these issues. Effective and efficient border management respecting human rights and applicable legal regulations can also help to improve the social, cultural and economic life of the communities on both sides of the borders. Border security is related to residual issues still lingering along the length of the border zone, such as black marketeering, illegal transactions, smuggling, illegal border crossers, women and children trafficking and shooting incidents against civilians. The Commission therefore recommends:

- The governments of Indonesia and Timor-Leste establish visa-free "Peace Zones," already informally in existence, on the border between Timor-Leste and West Timor. These multifunction zones shall become the location for family reunions, cultural events, traditional markets, houses of worship and a meeting place for government officials, public and community figures. The establishment of an official Peace Zone(s) will bring legitimacy to these activities and expand the possibility for further widespread bilateral communications, and economic development, particularly through the creation of a free trade zone within the Peace Zone(s).

- Increasing security on the border zone between the two countries through a mechanism of field cooperation, coordination and training involving joint patrols and joint border posts. Developing and implementing such a program should involve a third party with the requisite qualifications and commitment.

- The completion of agreements related to land, sea and air border demarcation and delimitation between the two countries that have not yet been fully agreed. These agreements should include speedy resolution and implementation, in compliance with Indonesian law, of ongoing proposals for a corridor from the enclave of Oecussi to the mainland.

- Developing special programs to implement and enforce standards of professional and technical expertise and qualifications of border security personnel. The governments of Indonesia and Timor-Leste should pay particular attention to improving the standards of technical resources for border units.

- As an important component of border security policy to promote friendship, the Commission recommends the development of a process for enabling "safe crossing" for Indonesians citizens of Timor Leste descent, and Timorese citizens of Indonesian descent, who wish to return either temporarily or permanently to Timor-Leste or Indonesia. In order to develop a safe crossing policy the two governments should consult their respective Attorney General's Office, the Justice and Human Rights Ministers, and in the case of East Timor the Supreme Council of the Judiciary, on the legal feasibility and implications of this policy for individuals who are the subject of ongoing criminal investigations or for whom there are outstanding indictments or arrest warrants. Resolution of these legal issues may constitute a first step towards a development of a more comprehensive joint policy on formal and informal reconciliation processes. As part of the initiation of this security policy the governments may wish to consider a joint ceremonial opening of the "Peace Zone", which incorporates local religious leaders and customs.

3) Documentation and Conflict Resolution Center

Promoting friendship between the two peoples and preventing future violence requires an understanding of the past violence, effective programs to educate and train those responsible for protecting human rights and mediating or preventing conflict and restorative measures to heal old wounds and meet the needs of those who suffered most in 1999.

An understanding of the past and the ability to educate and inform the two peoples about the common history they share requires preservation and analysis of the historical record of the violence of 1999. The various bodies that have conducted investigations or trials involving the violence in 1999 have assembled a vast amount of documentary and other evidence. These organizations include the Commission's collection of documents and testimony as well as CAVR, SCU, KPP HAM Indonesia and the Human Rights Ad Hoc tribunal in Jakarta. Other relevant evidence and documentation is held by other organizations or governments. These documents constitute an important historical, legal and political legacy and a resource that must be protected, preserved and where appropriate made accessible to researchers and the peoples of the two countries. When properly preserved and utilized this resource and legacy can make an important contribution to promoting friendship and non-recurrence of violence between the two countries.

Through its research and analysis the Commission has concluded (Chapter 8) that the failure to understand the need for political processes to resolve differences and the failure to provide adequate mechanisms and forums for achieving this resolution of political differences were major underlying contributing factors to the violence in 1999. To prevent future conflict and violence it is necessary to enable substantial transformations in mentalities as well as institutional reforms. Education and training in regard to mediation and conflict resolution are vitally necessary to achieve these goals. The Documentation and Conflict Resolution Center (DCRC) will be tasked with developing and implementing educational and training programs in conflict resolution and mediation for government, military, police, civil society and communities. These dual tasks of promoting understanding of the common history of the two nations, and providing a resource center for conflict resolution initiatives

at the national and local level are the two central purposes of the Documentation and Conflict Resolution Resource Center.

The Commission therefore recommends the following:

- In consultation with relevant government ministries, the establishment of a Documentation and Conflict Resolution Resource Center (DCRC) to be located in Dili, Timor Leste, with a partner Center in Jakarta. These centers, both including staff from the 2 countries, should be tasked with collecting and preserving all of the documents relevant to violence in 1999. The Center's collection should serve as a resource to organizations and individuals, particularly from the two countries, who are working to understand the nature and causes of the 1999 violence and seeking to develop means through which political differences and conflicts may be resolved peacefully.

- The collection of documents housed in this Center will contain confidential information and testimony that must be appropriately secured. In particular the two countries should take all necessary steps to insure that the non-disclosure of the identity of confidential or protected witnesses is guaranteed. These steps must follow the general principle that the identities and testimony of all witnesses must remain confidential unless they gave full and informed consent to their identities or the content of their testimony being revealed to the public, or to other governmental or non-governmental agencies or bodies. In the case of Timor-Leste, the Commission encourages the establishment of a National Archives Law, which will formalize these procedures through legislation.

- Acting through the DCRC the two governments should encourage and promote cooperative historical research between scholars and experts from the two countries with the aim of promoting a common understanding of the shared history between the two nations. To achieve such mutual understanding cooperative research must encompass the historical roots of the events of 1999, extending back to the period of Portuguese colonization. This dimension is reflected in this Report in Chapter 4 which, following the Commission's mandate, explores the historical context of the 1999 violence. As part of the cooperative research process, documents that are contained in state files of Indonesia and Timor-Leste regarding this period of shared history should be provided to and preserved at the DCRC with appropriate consideration for issues of security and confidentiality. Priorities for this document recovery program should include all documents related to any persons detained, tried and convicted for their stated political opinions. The results of this cooperative historical research should be used to develop new course materials and curricula for use in education at all levels in the two countries to promote understanding of their common history.

- Acting through the DCRC, the two governments shall develop effective programs aimed at identifying, preventing and resolving social and political conflict. These programs should include concrete capacity building and training for leaders and experts from government, security forces, communities and civil society.

Skilled, trusted facilitators and mediators have the potential to prevent or diminish gross violations of human rights emerging from community conflicts. Acting through the DCRC, the two governments shall develop effective programs to equip government, religious and community leaders to identify, prevent and resolve emerging and active social and political conflicts. These programs should include principles and concrete skills of analysis, constructive conflict intervention, mediation and community problem solving. The training should also be contextual, including traditional forms of resolving conflicts which employ local wisdom and traditions. The DCRC shall be tasked by the two governments with developing survivor healing programs. Many such programs already exist in Timor-Leste. In developing such programs the first step will be to conduct an expert evaluation of existing programs and identify specific survivor needs that are not already being adequately met and to make recommendations about how such existing programs can be strengthened. The likely area of such needs will be in highly specialized areas that require the assistance of international experts in clinical psychology and psychiatry who work in centers devoted to dealing with the victims of torture, systematic sexual violence, and mass atrocity. Their assistance will be required to ensure that effective programs are developed and to avoid the dangers of re-traumatization by inadequately trained personnel. Such programs must encompass at least three components and include special attention to local cultural and religious practices related to healings and reconciliation.

- Workshops for public officials that emphasize the importance of providing protection and healing for those suffering from trauma or other psychological disabilities in the aftermath of violence or conflict.

- Therapeutic programs for victims of violence, and particularly specialized workshops for individuals who have experienced sexual violence or torture.

- Professional training for public health workers, social workers and other health care professionals in trauma healing, particularly for victims of sexual violence and/or torture.

4) Economic and Asset Issues

Towards promoting friendship and reconciliation, and meeting the needs of those affected by the violence, the Commission strongly recommends that the two governments accelerate the resolution of the complex economic and asset issues that are a result of the conflict in 1999. These issues include clarifying the disposition of public and private assets, addressing unresolved pensions for former civil servants and other related issues.

The Commission recommends these issues be referred to the existing bilateral commission and the two governments to promote and encourage cooperation on economic issues that can contribute to long - term cooperation and friendship. The two governments should take into account humanitarian perspectives in resolving assets issues. While mindful of the role of the bilateral-commission, the Commission nonetheless recommends that the two governments each take responsibility for resolving the private asset claims asserted by its citizens on a priority basis.

5) Commission for Disappeared Persons

The Commission considers that in respect for those who have suffered or were affected by the human rights violations of 1999 and before, including those placed in detention, killed or disappeared, appropriate programs are needed for their families. The implementation of these programs can be put in place concurrently by each country.

The Commission recommends that:

- The governments of Indonesia and Timor-Leste work together to acquire information about the fate of disappeared people and cooperate to gather data and provide information to their families.

The Commission shall also be tasked to identify the whereabouts of all Timor Leste children who were separated from their parents and to notify their families. The Commission also recommends the continuation of programs previously undertaken to ensure protection of displaced children's rights, primarily for those whose cases are unresolved and those still in the hands of their Indonesian wardens, including the rights of those children to freely access identification and citizenship procedures. Priority must be given to education and scholarship programs for these children who were victims of the violence.

LONG TERM AND ASPIRATIONAL

The Commission recommends the following areas be pursued as part of a long term strategy by both nations to foster reconciliation and friendship. Programs which address these areas should complement the set of actions taken in response to the concrete and urgent recommendations above.

- Promote cultural and educational exchanges including border activities, scholarships and teacher and scholar exchanges at all levels (primary through tertiary). Such exchanges should include programs to promote the teaching of Bahasa Indonesia in the curriculum of schools in Timor-Leste from the primary level.

- Promote cooperation and support in the health sector, including education programs for medical personnel, public health research and assessment, and the mutual provision of hospital facilities and joint services, as well as accepting inter-hospital referrals.

- Promote a wider culture of legal and human rights awareness among the people as a whole, including human rights material in the general education curriculum of both countries. Initiatives related to these aims may include the promotion of the implementation of those rights through convenants, conventions and treaties (e.g., the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, CEDAW, Rome Treaty of the ICC).

- Continue bilateral cooperation in respecting and caring for the remains of the deceased in each country, including the cemetery of Indonesian military personnel fallen in Timor Leste. Both countries should endeavor to facilitate the return of remains back to the country of origin, and to cooperate with family visit programs for those who wish to pay respect to their loved ones whose remains are located outside of their home country.

- Consider allowing a dual citizenship option for those children born of mixed national heritage (i.e. one parent of Indonesian citizenship, and the other of East Timorese)

9.2 IMPLEMENTATION OF RECOMMENDATIONS

The Commission proposes a comprehensive docket of recommendations, aiming at both concrete and abstract goals, ranging from, for example, the resolution of outstanding asset and pension issues, to changing long-held attitudes or institutional systems which have not promoted human rights. The breadth of these recommendations reflects the complexity of the challenges that face the two nations as they work through the past, and look towards a peaceful and prosperous future. Thus, the Commission has suggested multiple steps that will be necessary towards overcoming these challenges.

As a first step, the two Presidents should make a joint statement inviting both nations to overcome the legacy of past violence and work together towards preventing reoccurrence of conflict and promotion of lasting friendship in the future. The Commission recommends that the two Presidents together acknowledge responsibility for past violence and apologize to the peoples of the two nations and especially to the victims of violence for the suffering they have endured.

The next step that the two governments must take towards implementing the recommendations is the dissemination of this report. The proposed dissemination process is outlined in detail here.

1) Report Dissemination

In order to accomplish any of its mandated goals, the Commission's report must be effectively disseminated to the peoples of the two nations. Publication, dissemination, promotion and discussion of the Commission's report are thus the first and most important steps towards reconciliation, and prevention of human rights violations. This report has made the findings that establish 1) Gross human rights violations occurred in East Timor in 1999, and 2) Institutions are responsible for these acts. It is crucial that the acknowledgement of these facts be communicated to all parties to the conflict, especially victims, in a prompt manner, so that this act of recognition can be incorporated into the healing process on the state as well as the individual level. Furthermore, stakeholders will be in a better position to support and participate in the implementation of recommendations if they are informed promptly.

The dissemination process is outlined as follows:

- The Commission will submit its Final Report to the Presidents of the two mandating countries. In the interest of immediate and effective implementation of dissemination, in principle, dissemination will be carried out based on the policies agreed together by mandate-givers of the two countries.

- The Commission recognizes the importance of continuity and public consultation in dissemination. The Commission recommends that the President of each country appoints an advisory group including, where necessary, drawing on the knowledge and experience of current members of the Commission. This advisory group will oversee and participate in the dissemination process in each country, including the report distribution, creation of forums to discuss and answer questions about the CTF process and, in the case of East Timor, the creation and dissemination of a Tetum popular version of the report.

- The Commission recommend that the two Presidents take immediate steps to disseminate the report as widely as possible using a variety of media and in ways that will promote the fullest possible discussion in a variety of public forums. Dissemination includes submitting the report to the National Parliaments and civil society.

- Official versions of the report will be posted on the internet (such as a government, or sponsoring NGO website) in an electronic format so that the report can reach an international audience.

- Dissemination will not be limited to written publications. The dissemination of the report should include multiple forms of media including television, radio, and community discussions.

- The dissemination activities need to be implemented at the grassroots level by an educative facilitation team who are trained and focused on strategies to avoid the reoccurrence of violence and violations of human rights, the development of a human rights culture and a deeper understanding between both countries. In this regard, the dissemination process of the report in itself can serve as a mechanism for human rights training and peace building.

2) Implementation Mechanism

Once the two Presidents have received the report and have made their respective decisions to begin the dissemination process, a mechanism will be necessary to design, oversee, undertake and evaluate each of the specific recommendations above. If the implementation process is not managed and monitored effectively these recommendations will not be able to achieve the outcomes desired according to the Commission's original mandate – namely, reconciliation and friendship. Therefore, the Commission recommends that the Presidents consult with the advisory group formed to disseminate the report in order to formulate the specific model most appropriate to each country for the implementation of the other recommendations. The Commission recommends that the two governments design this implementation body to operate for a minimum of five years following the dissemination of this report.

The reason for the constitution of this recommendations implementing body is not to necessarily create a new, or "post-KKP" commission. Rather, the aim of this body is simply to ensure that there is a well-defined system that will be committed, focused and accountable for achieving the goals of these recommendations. Furthermore, many of the recommendations will require highly specialized expertise to enact, such as legal issues regarding assets, or the design of formal reconciliation processes. Special attention must also be paid to attracting and incorporating civil society's participation in the recommendation implementation and monitoring process. If there is not a particular body that is specifically charged with this task of implementing and managing recommendations, as well as monitoring their effectiveness, there is a much lower likelihood that these suggested actions will be taken, and can succeed. The degree to which the peoples of the two nations can mutually benefit from the relationship of friendship will very much depend on whether these recommendations are efficiently and sustainably implemented.

In order to provide financial support for the implementation of the Commission's recommendations and the continuity of the monitoring institution over the first five years, the Commission recommends the establishment of a "solidarity fund". The fund shall be along the lines of a similar request by the former UN Secretary General in his message to the Security Council in July 2006 where he gave his approval to the work of the Commission. An officially approved "Solidarity Fund" could provide an opportunity to the national and international community to make contributions to processes meant to address the needs of those affected by the violence in East Timor, and to the healing of old wounds. Thus, the Solidarity Fund would be directed solely towards the implementation of the recommendations described above which aim to build lasting friendship between the peoples of Indonesia and Timor-Leste. In fulfilling this aim the Solidarity Fund would give priority to meeting the humanitarian needs of those who suffered through the violence in 1999, and particularly in the areas of housing, health care, and economic opportunities.

9.3 LESSONS LEARNED AND FINAL REFLECTIONS

The recommendations enumerated above represent the distillation of the Commission's work over more than two years. They embody the knowledge and experience that the Commissioners have accumulated in the course of working together to understand the violence of 1999 through research, Document Review and Fact Finding, and collective analysis and deliberation. In reflecting together over the course of many months on the nature and causes of the violence and gross human rights violations described in this report, the Commission has arrived at a common insight and understanding that is expressed in this Report's Conclusions and Recommendations. The Commission drafted its recommendations in a manner that emphasized the lessons learned from its study of the 1999 violence in East Timor.

Lessons Learned

Resort to violence always represents failure, and above all institutional failure to provide the mechanisms, forums, and understanding necessary to overcome differences peacefully and to work together to resolve political conflicts before they escalate into violence. But such failures also present an opportunity to learn from the

mistakes of the past so that they will not be repeated in the future. In this forward looking spirit, the Commission summarizes here the lessons learned that have shaped the recommendations it makes to the two governments. These lessons learned are a product of the Commission's common effort to achieve consensus on the truth of the violence perpetrated in 1999. The Commission communicates these lessons learned to the two governments so that the spirit of cooperation, understanding, and mutual respect embodied in this report may be continued and enhanced in the implementation of the institutional reforms and other measures recommended by the Commission to build a lasting friendship between the two countries. The most basic lesson learned is that only by adopting such reforms and instituting the constructive measures recommended here can the root causes of the mistakes of the past be overcome and never repeated again. From this most basic principle follow lessons learned that the Commission draws from the Conclusions presented in Chapter 8 and which it has applied in the formulation of the Recommendations that flow from those conclusions:

1. A fundamental cause of the 1999 violence was that different political aspirations could not be accommodated in the existing political system so as to arrive at peaceful rather than violent solutions.

2. Societal conflicts could not be mediated and resolved because of an inadequate legal framework of political and civil rights, an institutional lack of respect for human rights and the rule of law, and weak legal and political mechanisms for mediating conflict and peacefully resolving disputes.

3. In the absence of such frameworks and mechanisms a military response was the first means resorted to in order to settle political disputes. Not only was it the first response to political conflict, but it was also resorted to outside of the constitutional and legal framework that alone could authorize and legitimize the use of military force.

4. An underlying reason for this extra-legal resort to military force was the lack of democratic, civilian control of the military. This situation allowed the military to be the dominant force in policy making and implementation and this situation was exacerbated by the lack of political accountability mechanisms.

5. The lack of accountability arose from a weak commitment to the rule of law and a legal culture that paved the way for the resort to violence and lack of accountability.

6. Another underlying cause of violence arose from the conception of military institutions as based upon the legacy of the revolutionary army of freedom fighters. This legacy created distortions in upholding the principles of democratic rights. Above all, these distortions arose from the conception that the revolutionary army is the embodiment of the people. This conception tends to lead military institutions to believe that they have direct "ownership" of the state and its national resources, including the people. This conviction of "ownership" by the military puts them in the position of policymakers, and subordinates civilian authority in the realm of politics. This, in turn, produced very weak democratic control over military and intelligence institutions.

7. Without democratic controls and a commitment to accountability and the rule of law, military and security forces lack an awareness of the obligation to protect and promote human rights. This leads to abuses and violations of human rights in the way in which military and security forces try to accomplish their mission.

8. The lack of effective judicial institutions and accountability mechanisms based upon the rule of law, and the lack of adequate training and professionalization in some elements of the justice system, undermined the legal processes meant to provide accountability for gross violations of human rights.

9. Conflicts that have left scars on society and that were never adequately resolved leave a desire for vengeance and deep divisions in society. These divisions, in the absence of effective civil and judicial institutions, bear the latent threat that under the right conditions violence would be resorted to again.

10. To summarize all of these lessons learned into a guide for prevention of reoccurrence of violence, the Commission concludes that:

    - Weak awareness and protection of human rights, operating together with
    - Weak law enforcement, and
    - Weak adherence to principles of democracy and human rights
    - Lead to the resort to violence to settle political differences, and to weak adherence to principles of democratic governance and the rule of law.

Final Reflections

Healing the wounds of the past and achieving true reconciliation will be the work of a generation. To begin such a process, the Commission has endeavored to recommend innovative measures to address the suffering that has occurred in the past, and to restore human dignity after a period of violence which eroded the value and recognition of human rights.

The creation of the Commission by the two governments and the work of the Commission itself was itself an exercise in learning how to strengthen inter-governmental and personal relationships, and to engage in working towards common solutions. This experience of achieving a shared goal, as embodied in this Report, represents a foundation for future partnerships to overcome the legacies of the past.

The Commission's approach to its work also represents a model for the future because it was based upon a spirit of inclusiveness. All political perspectives were welcomed, and all institutions invited in an attempt to create a transparent, peaceful forum for contact between parties of the conflict and representatives of their governments, and for a shared discussion of painful, and tragic events.

Through this cooperative and inclusive process the Commission has reached the Conclusions presented in Chapter 8. These conclusions are not legal judgments because the Commission had no judicial or quasi-judicial powers. The Commission is also not a religious body that has the authority to issue spiritually – based, moral judgments. The Commission is a joint creation of the two governments that was vested by its mandate with the authority to reach conclusions as to specific facts about

human rights violations that have affected the relationships between the two states, and the lives of their citizens.

These conclusions do not represent the end of a process of closure and reconciliation, but rather a beginning. The Commission's judgments provide a basis on which the two governments can recognize the suffering caused by the events in the past, so that both nations can take further steps to prevent the reoccurrence of such events, and can honor the dignity of all victims. In this regard the Commission has exercised its powers of judgment to officially acknowledge the commission of gross human rights violations in East Timor in 1999 and to identify the institutions which are responsible for victims' suffering.

This process of acknowledgement of institutional responsibility is a vital step towards implementing institutional reforms that are necessary to prevent future human rights violations or conflicts. In other words, the Commission's identification of causes of the conflict and institutional responsibility for gross human rights violations aims to improve the capacity of each nation's institutions to work together, and individually, to encourage a culture of accountability and prevent the reoccurrence of such violence. Institutional Responsibility represents a fresh step towards healing the wounds of the past and looking towards the future.

The Commission's recommendations and spirit of truth are a sound basis to further develop the ties between Indonesia and Timor Leste. Symbolically and through the tangible results of the Commission's work, the two countries have already joined together to face a difficult past, and have promised to take a positive approach to the future. A commitment to reconciliation and friendship through the full and speedy implementation of recommendations will require the financial and human resources of each country. More importantly, friendship and reconciliation will flourish only through dedication and dialogue by citizens, institutions and leaders. However, over time these investments have the potential to bring specific and significant benefits to the economic, social, cultural and political life of the two nations and to enrich the lives of their two peoples.

GLOSSARY

Amnesty	Amnesty for those who were involved in human rights violations who cooperate fully in revealing the truth.
Cantonment	Placement of weapons and containment of the movement of armed personnel to one place to avoid clashes between conflicting parties.
Clandestine	Underground movement in support of the independence of East Timor.
Connected parties	Persons of institutions deemed by the Commission to have connections to the violence in East Timor in 1999 as victims, perpetrators or witnesses.
Dwifungsi	ABRI doctrine providing that ABRI plays a role as a defense security and social political role in Indonesia.
East Timor (Timor Timur)	Refers to the former colony of Portugal in the period of Indonesian government until 25 October 1999.
Expert Advisor to the Commission	Expert in certain areas appointed by the Commission to provide technical advice in the exercise of its mandate.
Expert Discussion	Discussion held by the Commission with experts in certain fields pertaining to the mandate of the Commission.
GPK	Gerakan Pengacau Keamanan (Security Disturbance Movement). Term used by TNI to refer to the independence movement in East Timor.
Hearings (Public/Closed)	The Commission's method to obtain facts and providing the opportunity to all connected parties to give information or testimony, both publicly or in a closed hearing.
Horizontal Conflict	Conflict between communities in East Timor with differing political affiliations.
Internal Conflict	Armed conflict between East Timorese political parties in August-October 1975.

Mandate givers	President of the Republic of Indonesia and the President and Prime Minister of Timor-Leste who established the Commission of Truth and Friendship, Indonesia – Timor-Leste.
Militia	Is the general term for armed civilians groups as used in the four bodies of documents. In this report, militia refers to pro-autonomy armed civilian groups.
Milsas	An abbreviation for "militerisasi". Refers to the recruitment process and military training for members of Hansip to be co-opted into regular ABRI units. Aside from process, the term milsas is also used to refer to persons who become members of ABRI through this process.
Non-organic troops	Troops assigned in a region, originating from outside the command in the operation zone.
Orde Baru (New Order)	Refers to the government of Indonesian under the leadership of President Soeharto (March 1966-May 1998).
Organic troops	Troops under the direct tactical and administrative command.
Popular Consultation	The process of consulting the people of East Timor through a direct ballot in 1999 whether to accept or reject the Special Autonomy offer from the Government of Indonesia. This term is used in the 5 May 1999 Agreement.
Portuguese Timor	Refers to the Eastern part of Timor island during the Portuguese colonization.
Priority Cases	14 major cases addressed by CTF to reveal the truth behind gross violations of human rights committed in East Timor prior to and immediately after the Popular Consultation in 1999.
Pro-autonomy group	Group of people who support autonomy of East Timor within Indonesia.
Pro-independence group	Group of people aspiring for the independence of East Timor.
Reformasi	Change from authoritarian and centralistic government towards democracy marked by the resignation of President Soeharto in May 1998.

Reparation	Material and non-material restoration of the dignity of victims of human rights violations based on restorative principles and various policies with the aim to create justice for the promotion of friendship and reconciliation between the two nations. In this report, is defined as collective reparation through bilatreal policies between the two states.
Resistance	Activities and organizations resisting the Indonesian government in the struggle for East Timorese independence.
Statement Taking	Methodology used by the Commission to obtain information regarding human rights violations through structured questioning.
Submission	Written information presented by a person or institutions with experience and/or knowledge regarding all matters pertaining to human rights events in East Timor in 1999 as well as its context.
Timor-Leste	Refers to the state, government and the people of Timor-Leste after 25 October 1999.
Transition situation in 1999	The situation in 1999 marked by a change from the centralistic and authoritarian political system of the New Order regime to a more democractic Reformasi order that gave rise to a new policy of the Indonesian Government with respect to East Timorese question.
Vertical Conflict	Conflict between East Timorese pro-independence groups and Indonesian government and armed forces.

LIST OF ABBREVIATIONS

ABLAI	*Aku Berjuang Lestarikan Amanat Integrasi* – I Fight to Preserve the Mandate of Integration
ABRI	*Angkatan Bersenjata Republik Indonesia* – Armed Forces of the Republic of Indonesia
AD/ART	*Anggaran Dasar/Anggaran Rumah Tangga* – Articles of Association
AHI	*Aileu Hametin Integrasi* – Aileu Strengthens Integration
AIETD	All Inclusive Intra-East Timorese Dialogue
AMD	*ABRI Masuk Desa* – ABRI Civic Mission
APBD	*Anggaran Pendapatan dan Belanja Daerah* – Regional Budget
Apodeti	*Associação Popular Democrática de Timor* – Popular Democratic Association of Timor
Babinsa	*Bintara Pembina Desa* – Village Management Non-Commissioned Officer
BAP	*Berita Acara Pemeriksaan* – Investigative Dossier
Bappeda	*Badan Perencana Pembangunan Daerah* – Regional Development Planning Board
Binpolda	*Bintara Polisi Desa* – Village Police Officer
BKPMD	*Badan Koordinasi Penanaman Modal Daerah* – Regional Investment Coordinating Board
BMP	*Besi Merah Putih* – Red and White Iron
BP-7	*Badan Pembinaan Pendidikan Pelaksanaan Pedoman Penghayatan dan Pengamalan Pancasila* – Board of Education Development to Implement the Guidelines for the Embodiment and Practice of Pancasila
BPD	*Bank Pembangunan Daerah* – Regional Development Bank
Brimob	*Brigade Mobil* – Mobile Brigade
BRTT	*Barisan Rakyat Timor Timur* – East Timor Popular Front
BTT	*Batalyon Tugas Teritorial* – Territorial Deployment Battalion
CAVR	*Comissão de Acolhimento, Verdade e Reconciliação* – The Commission of Reception, Truth and Reconciliation of Timor-Leste
CEL/FC	*Comitê Executivo da Luta/Frente Clandestina* – Executive Committee for Struggle/Clandestine Front
CELCOM	*Célula da Comunidade* – Community Cell
CEZO	*Comissão Executivo da Zona* – Executive Zone Committee
CIS-Timor	Center for Internal Displacement Services-Timor
CNRM	*Conselho Nacional da Resistência Maubere* – Maubere National Council for Maubere Resistance
CNRT	*Conselho Nacional da Resistência Timorense* – National Council for Timorese Resistance
CRRN	*Conselho Revolucionário da Resistência Nasional* – National Resistance Revolutionary Council
CSIS	Centre for Strategic and International Studies
Dandim	*Komandan Komando Distrik Militer* – District Military Commander
Danki	*Komandan Kompi* – Company Commander
Danyon	*Komandan Batalyon* – Battalion Commander

Danramil	*Komandan Komando Rayon Militer* – Military Sub-district Commander
Danrem	*Komandan Komando Resort Militer* – Military Sub-regional Commander
Dansatlak	*Komandan Satuan Pelaksana* – Commander of Operational Unit
Dephankam	*Departemen Pertahanan dan Keamanan* – Department of Security and Defense
DIP	*Daftar Isian Proyek* – Project Application Form/Project List
DMI	*Darah Merah Integrasi* – Red Blood of Integration
DMP	*Dadurus Merah Putih* – Red and White Children
DOM	*Daerah Operasi Militer* – Military Operations Zone
DPR	*Dewan Perwakilan Rakyat* – People's Representative Council
DPRD	*Dewan Perwakilan Rakyat Daerah*
Falintil	*Forças Armadas de Libertação Nacional de Timor-Leste* – National Liberation Armed Forces of Timor-Leste
FBPOTT	*Front Bersama Pro Otonomi Timor Timur* – Joint Pro-Autonomy Front of East Timor
FDTL	*Forças de Defesa de Timor Leste* – Defense Forces of Timor-Leste
FISIP UI	*Fakultas Ilmu Sosial dan Ilmu Politik Universitas Indonesia* – Faculty of Social and Political Science, Univerity of Indonesia
FPDK	*Front Persatuan, Demokrasi dan Keadilan* – Unity, Democracy and Justice Front
FPI	*Frente Política Interna* – Domestic Political Front (CNRT)
Fretilin	*Frente Revolucionária do Timor-Leste Independente* – Revolutionary Front for Independent Timor-Leste
Gadapaksi	*Garda Muda Penegak Integrasi* – Young Guards for Upholding Integration
Golkar	*Golongan Karya* (Political Party)
GPK	*Gerakan Pengacau Keamanan* – Security Disturbance Movement
GRPRTT	*Gerakan Rekonsiliasi dan Persatuan Rakyat Timor Timur* – East Timorese Popular Movement for Reconciliation and Unity
Hansip	*Pertahanan Sipil* – Civil Defense
ICC	International Criminal Court
ICRC	International Committee of the Red Cross
ICTR	International Criminal Tribunal for Rwanda
ICTY	International Criminal Tribunal for the Former Yugoslavia
INTERFET	International Forces for East Timor
Iptu	*Inspektur Satu* – First Inspector
JPC KAK	Justice and Peace Commission of Kupang Archdiocese
JPS	*Jaring Pengaman Sosial* – Social Security Net
Kamra	*Keamanan Rakyat* – People's Security
Kapolda	*Kepala Kepolisian Daerah* – Chief of Regional Police
Kapolres	*Kepala Kepolisian Resort* – Chief of District Police
Kapolri	*Kepala Kepolisian Republik Indonesia* – Chief of the National Police of the Republic of Indonesia
Kasdim	*Kepala Staf Komando Distrik Militer* – Chief of Staff of the District Military Command
KKR	*Komisi Kebenaran dan Rekonsiliasi* – Truth and Reconciliation Commission

KMP	*Kaer Metin Merah Putih*
Kodahankam	*Komando Daerah Pertahanan dan Keamanan* – Defense and Security Zone Command
Kodal	*Komando dan Pengendalian* – Command and Control
Kodam	*Komando Daerah Militer* – Regional Military Command
Kodim	*Komando Distrik Militer* – District Military Command
Komnas HAM	*Komisi Nasional Hak Asasi Manusia* – National Human Rights Commission
Komnas Perempuan	*Komisi Nasional Anti-Kekerasan terhadap Perempuan* – National Commission Against Violence Against Women
Koops	*Komando Operasi* – Operational Command
Koopskam	*Komando Operasi Keamanan* – Security Operations Command
Kopassus	*Komando Pasukan Khusus* – Special Forces Command
Koramil	*Komando Rayon Militer* – Sub-district Military Command
Korem	*Komando Resort Militer* – Sub-Regional Military Command
Kostrad	*Komando Cadangan Strategis Tentara Nasional Indonesia Angkatan Darat* – Indonesian Army Strategic Reserve Command
KOTA	*Klibur Oan Timor Asuwain* – Timorese Knights Association
KPN	*Kantor Perbendaharaan Negara* – State Treasury Office
KPP HAM	*Komisi Penyelidik Pelanggaran Hak Asasi Manusia* – Commission of Inquiry
KPS	*Komisi Perdamaian dan Stabilitas* – Peace and Stability Commission
KUHAP	*Kitab Undang-undang Hukum Acara Pidana* – Indonesian Criminal Procedure Code
Letkol	*Letnan Kolonel* -
LIPI	*Lembaga Ilmu Pengetahuan Indonesia* – Indonesian Academy of Science
LKMD	*Lembaga Ketahanan Masyarakat Desa* – Village Community Resilience Body
LSM	*Lembaga Swadaya Masyarakat* – Non-Governmental Organization
M&C	Matching and Corroboration
Mahadomi	*Manatuto Hadomi Otonomi* – Manatuto Loves Autonomy
Mahidi	*Mati Hidup Integrasi dengan Indonesia* – Live or Die Integration with Indonesia
Menhankam	*Menteri Pertahanan dan Keamanan* – Minister of Defense and Security
Menkopolkam	*Menteri Koordinator Politik dan Keamanan* – Coordinating Minister of Politics and Security
MK	*Mahkamah Konstitusi* – Constitutional Court
MoU	Memorandum of Understanding
MPR	*Majelis Permusyawaratan Rakyat* – People's Consultative Assembly
MRTT	*Majelis Rakyat Timor Timur* – East Timor People's Assembly
Muspida	*Musyawarah Pimpinan Daerah* – Regional Leaderboard
NGO	Non Governmental Organization
NKRI	*Negara Kesatuan Republik Indonesia* – Unitary State of the Republic of Indonesia
NTT	*Nusa Tenggara Timur* – East Nusa Tenggara
Nurep	*Núcleo da Resistência Popular* – Popular Resistance Nucleus
Nusra	*Nusa Tenggara*

OJETIL	*Organização Juventude e Estudante de Timor-Leste* – Organization of Timor-Leste Youth and Students
P3TT	*Pengamanan Penentuan Pendapat mengenai Timor Timur* – Body for Securing Popular Consultation on East Timor
Pamswakarsa	*Pengamanan Swakarsa* – Self-initiative Security
Pangdam	*Panglima Komando Daerah Militer* – Military Regional Commander
Pasimin	*Perwira Seksi Administrasi* – Administrative Section Officer
Pasiops	*Perwira Seksi Operasi* – Operational Section Officer
DCRC	Documentation and Conflict Resolution Center
Pemda	*Pemerintah Daerah* – Regional Government
Pemilu	*Pemilihan Umum* – Indonesian National Elections
Polda	*Kepolisian Daerah* – Regional Police (Province)
Polres	*Kepolisian Resort* – Sub-district Level Police
Polri	*Kepolisian Negara Republik Indonesia* – National Police of the Republic of Indonesia
Polsek	*Kepolisian Sektor* – Sectoral Police
Polwil	*Kepolisian Wilayah* – Sub-regional Police
PPI	*Pasukan Pejuang Integrasi* – Integration Fighter's Force
PSTT	*Pemerintah Sementara Timor Timur* – Provisional Government of East Timor
Puspen TNI	*Pusat Penerangan Tentara Nasional Indonesia* – Indonesian National Army Information Center
Ratih	*Rakyat Terlatih* – Trained Populace
RDTL	*República Democrática Timor-Leste* – Democratic Republic of Timor Leste
Renetil	*Resistência Nacional dos Estudantes de Timor-Leste* – National Resistance of the Studens of Timor-Leste
RI	Republik Indonesia – *Republic of Indonesia*
RT	*Rukun Tetangga* – Neighborhood Unit
RTPANG	*Rumah Tangga Panglima* – Commander's Residence
RW	*Rukun Warga* – Community Unit
Satgas	*Satuan Tugas* – Task Force
SCU	Serious Crimes Unit
Sekwilda	*Sekretaris Wilayah Daerah* – Regional Secretary
SGI	*Satuan Gabungan Intelijen* – Joint Intelligence Unit
Sishankamrata	*Sistem Pertahanan Keamanan Rakyat Semesta* – Total People's Defense and Security System
Siskamling	*Sistem Keamanan Lingkungan* – Neighborhood Security System
SKO	*Surat Keputusan Otorisasi* – Authorization Letter
SMP	*Sekolah Menengah Pertama* – Junior High School
SPM	*Surat Perintah Membayar* – Payment Order
SPSC	Special Panels for Serious Crimes
SPT	*Setoran Pajak Tahunan* – Annual Tax Payment
ST	Statement Taking
Tap MPR	*Ketetapan Majelis Permusyawaratan Rakyat* – People's Consultative Assembly Resolution
Timtim	*Timor Timur – East Timor*
TNI	*Tentara Nasional Indonesia* – Indonesian National Defense Force
TNI-AD	*Tentara Nasional Indonesia Angkatan Darat* – Indonesian Army

TNI-AL	*Tentara Nasional Indonesia Angkatan Laut* – Indonesian Navy
TNI-AU	*Tentara Nasional Indonesia Angkatan Udara* – Indonesian Air Force
TPPP	*Tim Perencanaan Pembangunan Pusat* – Central Development Planning Team
TVRI	*Televisi Republik Indonesia* – Television of the Republic of Indonesia
UDHR	Universal Declaration of Human Rights
UDT	*União Democrática Timorense* – Timorese Democratic Union
UN	United Nations
UNAMET	United Nations Mission in East Timor
UNIF	United Front for East Timor
UNPOL	United Nations Police
UNTAET	United Nations Transitional Administration in East Timor
Wanra	*Perlawanan Rakyat* – People's Resistance
WD	*Wira Dharma* – Wira Dharma Command of East Timor
Yonif	*Batalyon Infanteri* – Infantry Battalion

APPENDICES

ATTACHMENT 1

Terms of Reference for
The Commission of Truth and Friendship
Established by
The Republic of Indonesia
and
The Democratic Republic of Timor-Leste

Preamble

1. Inspired by human solidarity and our peoples' aspiration to freedom and dignity, the Republic of Indonesia and the Democratic Republic of Timor-Leste, both being developing countries, one with the largest Muslim population in the world and the other with a predominantly Catholic population, have embarked on the path towards full democracy. This path is full of challenges and perils; and it needs to be carefully nurtured and strengthened.

2. The peoples of Indonesia and Timor-Leste have come a long way in overcoming the sometimes painful chapter of their shared past. As close neighbors we are determined to work together to promote peace and friendship.

3. In today's era of globalization, taking full advantage of the freedom that we have attained, our peoples endeavor to build a solid foundation for a future of peace; a future where human dignity and social justice are the guiding force of transformation. Peace, however, is a process and has to be built. The pillars of peace are democracy, sustainable development and respect for human rights.

4. The democratic transition in Indonesia since 1998 and the international recognition of the independence of Timor-Leste in 2002 have provided the momentum for both countries to strive for those objectives. The prompt recognition of the Democratic Republic of Timor-Leste, the participation of Indonesia at the highest level during the celebration of the 20 May 2002 and the establishment of diplomatic relations signify the spirit of reconciliation and the magnanimity of our peoples.

5. It is important, however, not to lose sight of the fact that the process of political reform in Indonesian began only at the end of 1998. In the history of countries and peoples, all and any change of an old political system requiring a radical transformation, entails as an almost inevitable consequence different challenges of multi-dimensions. The fact remains that in Indonesia, an archipelagic nation with a great diversity, the process of political transformation has been even more complex than in any other country. It imposes upon Indonesia tremendous efforts to preserve the unity of the country without hindering the goals of reform and democratization.

6. Despite our respective domestic preoccupation and priorities, the Republic of Indonesia and the Democratic Republic of Timor-Leste have spared no effort in developing a stable, friendly, and mutually beneficial neighborly relationship between the two countries and peoples.

7. The two governments are committed to resolve residual problems of the past and to deepen and expand bilateral relations both at the government and people-to-people levels. Based on the forward looking and reconciliatory approach, the progress made in all areas of cooperation over the last three years has been satisfactory. Hence, reconciliation has actually taken place.

8. One of the important residual issues relates to the reported violations of human rights in 1999 in Timor-Leste. In regard to these events, the two countries have made serious efforts, namely :

   a. In Indonesia, the National Commission of Inquiry on Human Rights Violations in East Timor, known as KPP-HAM, established in September 1999 conducted a credible investigation in 1999. It was followed with the establishment of the Ad Hoc Human Rights Court and the subsequent judicial process against a number of suspected perpetrators. This unprecedented judicial process has not yet come to its completion.

   b. In Timor-Leste, a judicial process has been conducted by the Special Panels for Serious Crimes. Moreover, a truth and reconciliation process has also taken place and it has been universally commended as innovative, credible and effective.

   Based on and benefiting from our shared experience, and motivated by our strong desire to move forward, we are determined to bring to a closure a chapter of our recent past through joint efforts. A definitive closure of the issues of the past would further promote bilateral relations.

9. Consistent with the spirit described above, the Leaders of Indonesia and Timor-Leste, met in Bali on 14th December 2004, have decided to establish the Commission of Truth and Friendship (CTF), fully owned and operated by the two countries with a mutually agreed terms of reference.

10. Different countries with their respective experiences have chosen different means in confronting their past. The leaders and people of South Africa, where apartheid was defined as a crime against humanity, opted to seek truth and reconciliation. Indonesia and Timor-Leste have opted to seek truth and promote friendship as a new and unique approach rather than the prosecutorial process. True justice can be served with truth and acknowledgement of responsibility. The prosecutorial system of justice can certainly achieve one objective, which is to punish the perpetrators; but it might not necessarily lead to the truth and promote reconciliation.

11. The CTF constitutes a new and unique experience whereby two countries, with a recent shared history, agree with courage and vision to look at the past as a lesson and embrace the future with optimism.

Objective

12. To establish the conclusive truth in regard to the events prior to and immediately after the popular consultation in 1999, with a view to further promoting reconciliation and friendship, and ensuring the non-recurrence of similar events.

Principles

13. The Commission shall work under the following principles:

    a. The relevant principles contained in the Indonesian Law no. 27/2004 on the Commission of Truth and Reconciliation and the Timor-Leste Law no. 10/2001 on the Commission of Reception, Truth and Reconciliation (CAVR), in accordance with the mandate of the CTF.

    b. In the exercise of its mandate, the CTF shall bear in mind the complexity of the transitional situation in 1999, aiming at further strengthening of reconciliation and friendship between the two countries and peoples.

    c. Based on the spirit of a forward looking and reconciliatory approach, the CTF process will not lead to prosecution and will emphasize institutional responsibilities.

    d. Further promoting friendship and cooperation between governments and peoples of the two countries, and promoting intra and inter-communal reconciliation to heal the wounds of the past.

    e. Does not prejudice against the ongoing judicial process with regard to reported cases of human rights violations in Timor-Leste in 1999, nor does it recommend the establishment of any other judicial body.

Mandate

14. The Commission shall have the mandate to:

    a. Reveal the factual truth of the nature, causes, and the extent of reported violations of human rights, that occurred in the period leading up to and immediately following the popular consultation in Timor-Leste in August 1999 :
        i. Review all the existing materials documented by the Indonesian National Commission of Inquiry on Human Rights Violation in East Timor in 1999 (KPP HAM) and the Ad Hoc Human Rights Court on East Timor, as well as the Special Panels for Serious Crimes, and the Commission of Reception, Truth and Reconciliation in Timor-Leste.
        ii. Examine and establish the truth concerning reported human rights violations including patterns of behaviour, documented by the relevant Indonesian institutions and the Special Panels for Serious Crimes (as contained in its indictment letters) with a view to recommending follow-up measures in the context of promoting reconciliation and friendship among peoples of the two countries.

    b. Issue a report, to be made available to the public, in Bahasa Indonesia, Tetum and English, and translated into Portuguese, establishing the shared historical record of the reported human rights violations that took place in the period leading up to and immediately following the popular consultation in Timor-Leste in August 1999.

    c. Device ways and means as well as recommended appropriate measures to heal the wounds of the past, to rehabilitate and restore human dignity, inter alia:

i. Recommended amnesty for those involved in human rights violations who cooperate fully in revealing the truth;
ii. Recommended rehabilitation measures for those wrongly accused of human rights violations;
iii. Recommended ways to promote reconciliation between peoples based on customs and religious values;
iv. Recommended innovative people-to-people contacts and cooperation to further enhance peace and stability.

Time Frame

15. The Commission shall commence its work as soon as possible, but no later than August 2005 for the period of one year, with the possibility of an extension of a maximum of one year.

Composition

16. The Commission shall comprise of 10 members (five from Indonesia and five from Timor-Leste) chosen among persons of high standing and competence drawn mainly from legal and human rights fields, academia, religious and community leaders.

    a. Following consultation, and in accordance with the domestic requirements or the constitutional provisions of each country, the President of the Republic of Indonesia and the President of the Democratic of Timor-Leste shall jointly appoint the ten members of the Commission.

    b. Members of the Commission, in the exercise of their mandate, shall enjoy immunity from prosecution and civil liability for actions arising from their mandate.

    c. Members of the Commission shall enjoy the necessary facilities to exercise their mandate.

    d. The Commission shall be co-chaired by two members, one from Indonesia and one from Timor-Leste, chosen by all members.

    e. The joint secretariat of the Commission shall be in Denpasar, Bali.

17. The Commission shall adopt its working procedures, and consider the possibility of establishing sub-commissions as necessary, as well as technical support offices in the respective capitals.

18. The two Presidents, in accordance with the domestic requirements or the constitutional provisions of each country, may appoint individual(s) of international standing as patron of the Commission.

Right to Free Access

19. In the conduct of its work, the Commission shall be guaranteed:

a. Freedom of movement throughout Indonesia and Timor-Leste.

b. Free access, in accordance with the law, to al documents of the Indonesian National Commission of Inquiry on Human Rights Violations in East Timor in 1999 (KPP-HAM), the Ad Hoc Human Rights Court in Jakarta and the Special Panels for Serious Crimes in Dili, and the CAVR final report.

c. The right to interview all persons in possession of information considered relevant by the Commission, guaranteeing privacy and confidentially if necessary.

d. Appropriate security arrangements both by the Governments of Indonesian and Timor-Leste to the Commission members and persons interviewed by the Commission and persons who provide information and documents to The Commission, and for documents obtained and retained by the Commission, without restricting their freedom of movement.

Financing

20. The Governments of Indonesia and Timor-Leste shall bear the costs of the Commission.

21. Both governments shall allocate start-up funds.

International Assistance

22. The two governments welcome any assistance from the international community, based on joint request.

Working Languages

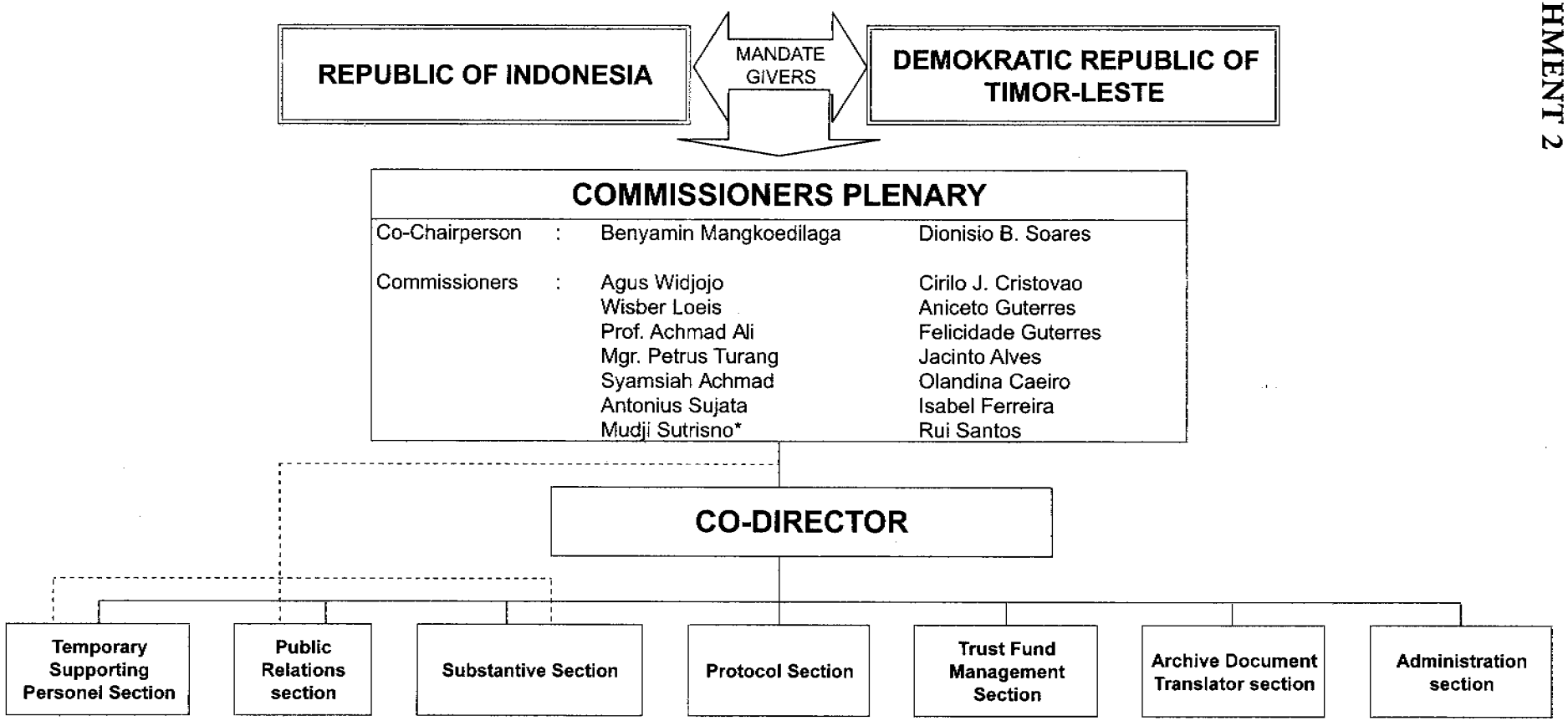
23. Working languages of the Commission shall be Bahasa Indonesia, Tetum and English.

Reports

24. The Commission shall submit progress reports of its work to the respective Heads of State and Government on a periodical basis through their respective Foreign Ministers. The two Foreign Ministers shall observe the work of the Commission and act in an advisory role.

25. The final report shall be presented to the Heads of State and Government of Indonesia and Timor-Leste, who shall forward it to the respective National Parliaments and make it available to the public. The final report shall contain the findings of the Commission and recommendations focusing on revealing the truth, ensuring the non-recurrence of similar events, fostering reconciliation and promoting friendship.

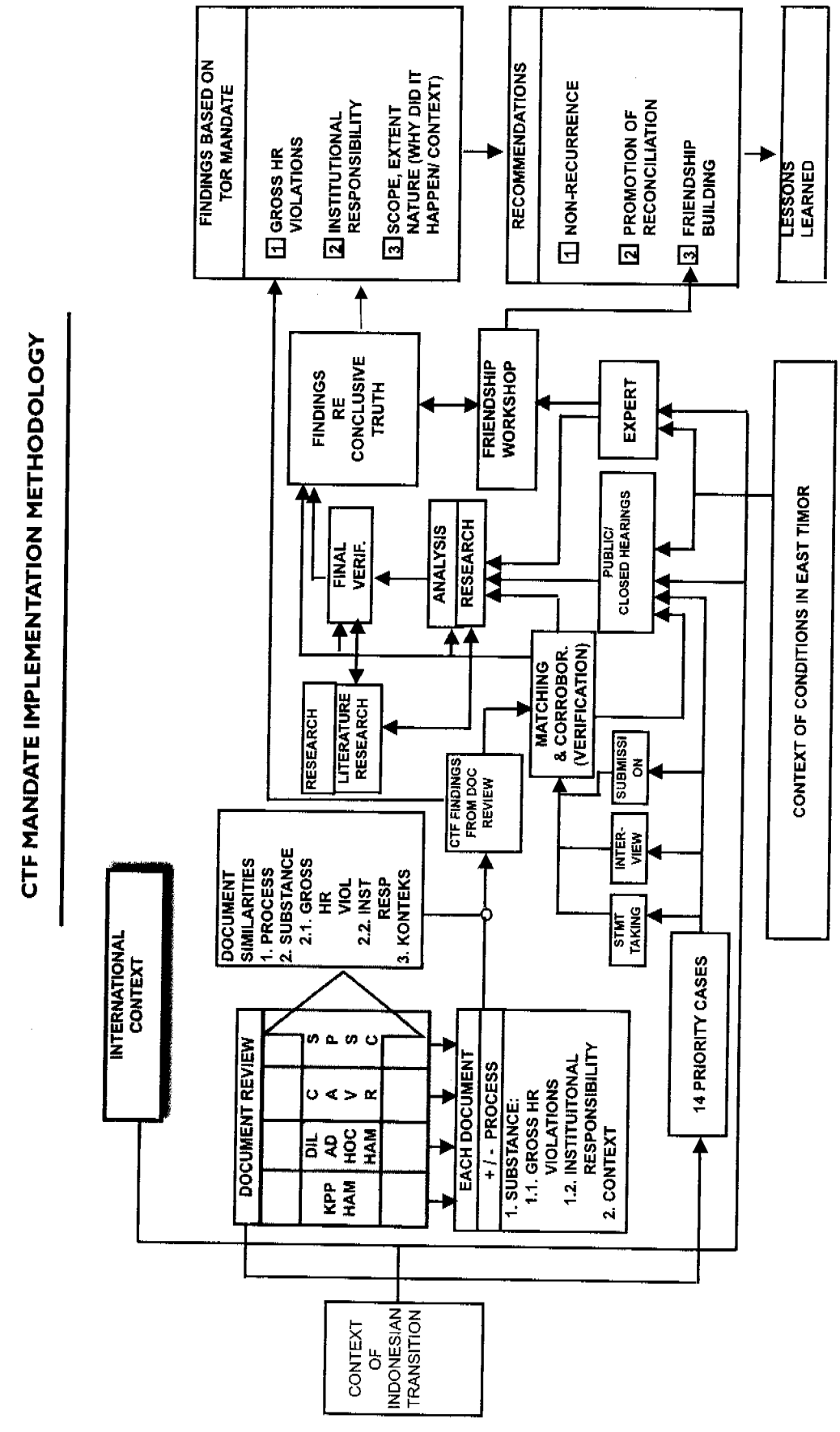
ORGANIZATION OF THE COMMISSION OF TRUTH AND FRIENDSHIP COMMISSION INDONESIA - TIMOR LESTE



NOTE : ———— : Line of General Organisational Management Function
..... : Line of Special Function ;

* Commissioner Mudji Sutrisno resigned on 12 October 2008

ATTACHMENT 3



ATTACHMENT 4

Table 1
Connected Parties
Who Gave Statements to/interviewed by CTF

No	Name	ST/I	Location	Date
1	Adam Damiri	I	Jakarta	28-02-2007
2	Adão Salsinha Babo	ST/I	Belu, NTT	27-01-2007
3	Adelino Brito	ST	---	30-03-2007
4	Adelino Freitas	ST/I	Kupang, NTT	2007
5	Adios Salova	I	---	2007
6	Agustinho dos Santos	I	---	28-01-2007
7	Agustinus Bili Tab Soares	ST/I	Belu, NTT	29-01-2007
8	Agusto Gama	ST/I	Kupang, NTT	28-03-2007
9	Alberto Mali da Silva	ST/I	Belu, NTT	13-04-2007
10	Alcino Faria da Silva	ST	Kupang, NTT	08-09-2007
11	Alexio Sipa	ST/I	Timor Tengah Utara, NTT	15-02-2007
12	Alfredo Sanches	ST/I	Dili, Timor-Leste	28-01-2007
13	Aliança Gonçalves	I	---	18-04-2007
14	Américo Serano	ST/I	Kupang, NTT	24-01-2007
15	Anna Pinto Correia Ximenes	ST/I	Kupang, NTT	14-02-2007
16	António Ximenes	ST/I	Kupang, NTT	27-01-2007
17	Armindo Tavares	I	---	28-01-2007
18	Armindo Soares Mariano	ST/I	Kupang, NTT	14-03-2007
19	Arnol Soares	ST/I	Belu, NTT	30-01-2007
20	Arselumus Martins,	I	---	28-01-2007
21	Arsenio da Silva	I	---	08-09-2007
22	Aurora Guterres	ST/I	Kupang, NTT	29-06-2007
23	Berta dos Santos	I	---	2007
24	Bonifacio Bobo	ST	Timor Tengah Utara, NTT	11-02-2007
25	Budi Susilo	I	Jakarta	26-04-2007
26	Camilo dos Santos	ST/I	NTT & Jakarta	27-11-2006
27	Câncio Lopes de Carvalho	ST/I	Kupang, NTT	31-01-2007
28	Cornelio Loreno	I	---	28-01-2007
29	David Dias Ximenes	I	---	10-07-2007
30	Domingos Alves	ST/I	Denpasar, Bali	23-07-2007
31	Domingos Filipe	ST/I	Kupang, NTT	24-03-2007
32	Domingos Freiks Dehan	I	---	2007
33	Domingos Mali Rangel	ST/I	Belu, NTT	23-02-2007
34	Domingos Obe	ST	Timor Tengah Utara, NTT	2007
35	Domingos Ulan	ST/I	Timor Tengah Utara, NTT	14-02-2007

No	Name	ST/I	Location	Date
36	Dominikus Mali	I	---	05-02-2007
37	Edmundo da Conceição Silva	I	Denpasar, Bali	08-03-2007
38	Egidio Sarmento	ST/I	Kupang, NTT	22-03-2007
39	Elvis da Silva Suan Lopes	ST/I	Timor Tengah Utara, NTT	17-02-2007
40	Emílio Barreto	ST/I	Dili, Timor-Leste	25-01-2007
41	Esmeralda dos Santos	ST	Covalima, Timor-Leste	23-10-2002
42	Eurico Guterres	I	LP Cipinang,	01-03-2007
43	Fares da Costa	ST	Jakarta	16-03-2007
44	Fernando B. dos Santos	ST	Gereja Covalima, Timor-Leste	09-02-2007
45	Fernando de Sousa	ST/I	Belu, NTT	15-02-2007
46	Filomena Poto	ST	Belu, NTT	12-04-2007
47	Flaviano de Guilherme	ST/I	Timor Tengah Utara, NTT	30-01-2007
48	Florindo de Jesus Brites	ST/I	Belu, NTT	28-01-2007
49	Frans Nubatonis	ST/I	Liquica, Timor-Leste	29-06-2007
50	Fransisco Gonçalves	ST/I	Kupang, NTT	08-09-2007
51	Fransisco Lopes de Carvalho	I	Kupang, NTT	22-09-2007
52	Gatot Subiyaktoro	I	---	26-04-2007
53	George Ulan	ST/I	Jakarta	14-02-2007
54	Geraldo Rodrigues	ST/I	Timor-Tengah Utara, NTT	08-09-2007
55	Herman	I	Kupang, NTT	28-01-2007
56	Hulman Gultom	I	---	2007
57	Humbertus Taek	I	Jakarta	11-02-2007
58	Inés da C. Lemos	I	--- Ermera, Timor-Leste	18-09-2007
59	Joni Marques	ST	Dili, Timor-Leste	27-01-2007
60	Joaquim dos Santos Babo	ST/I	Belu, NTT	14-02-2007
61	Joanico Belo	I	Kupang, NTT	08-02-2007
62	João Mendonça de Araújo	ST	Belu, NTT	21-02-2007
63	John Sera da Silva	I	---	2007
64	José Afat	I	Kefa, NTT	09-02-2007
65	José Andrade da Cruz	ST/I	Dili, Timor-Leste	29-01-2007
66	José de Conceição	ST/I	Kupang, NTT	07-09-2007
67	José Dias	ST/I	Kupang, NTT	26-03-2007
68	José Menezes Nunes Serão	ST/I	Dili, Timor-Leste	25-01-2007
69	José Pereira	ST/I	Timor Tengah Selatan, NTT	15-02-2007
70	Juliana Lafu	I	NTT	12-04-2007
71	Julio da Costa	ST/I	Timor Tengah Utara, NTT	18-02-2007
72	Julio Soares Ximenes	ST/I	Belu, NTT	26-01-2007

No	Name	ST/I	Location	Date
73	Julius Adu	ST/I	Belu, NTT	12-02-2007
74	José dos Santos Nunes	ST/I	Belu, NTT	31-01-2007
75	Kandidu Meko	ST/I	Timor Tengah Utara, NTT	17-02-2007
76	Kiki Syahnakry	I	Jakarta	28-02-2007
77	Victim Baucau & Witness prior to Popular Consultation	I	---	22-03-2007
78	Kot Ret Dena	I	Kupang, NTT	2007
79	Laurentino Moko Soares	ST/I	Timor Tengah Utara, NTT	12-02-2007
80	Leoneto Martins	ST/I	Kupang, NTT	23-03-2007
81	Liberatus Kolo	ST/I	Timor Tengah Utara, NTT	16-02-2007
82	Lipiano Leto	I	---	28-01-2007
83	Lucas Bily	I	---	17-02-2007
84	Lucas Martins	ST/I	Atambua, NTT	12-03-2007
85	Lucia Soares Morais	ST	Timor Tengah Selatan, NTT	30-04-2007
86	Luisa Alves de Almeida	I	---	2007
87	Manuel da Costa Tilman	ST/I	Timor Tengah Selatan, NTT	23-03-2007
88	Manuel Gomes	ST/I	Kupang, NTT	09-09-2007
89	Marcus Baquin	ST	Dili, Timor-Leste	23-09-2007
90	Mário Gonçalves	ST	---	23-09-2007
91	Mário Pereira	ST/I	---	28-01-2007
92	Marcelo Soares	ST/I	Belu, NTT	26-01-2007
93	Marino Tavares	ST	---	2007
94	Martinho da Costa	ST/I	Kupang, NTT	08-09-2007
95	Maternus Bere	ST/I	Belu, NTT	04-02-2007
96	Mateus Carvalho	I	Kupang, NTT	26-01-2007
97	Mateus Maía	I	---	08-03-2007
98	Mateus Mendonza Soares	ST/I	Belu, NTT	24-02-2007 19-09-2007
99	Mateus Amaral	ST/I	Belu, NTT	13-02-2007
100	M. Ndoen	I	Kupang, NTT	01-06-2007
101	Muhammad Fernandes	ST/I	Kupang, NTT	07-09-2007
102	Noer Muis	I	Jakarta	28-02-2007
103	Orlando Baptista da Silva	ST/I	Kupang, NTT	09-09-2007
104	Orlando da Costa	ST/I	Kupang, NTT	07-09-2007
105	Paulo dos Santos	ST/I	Belu, NTT	06-02-2007
106	Paulus Kapitan	I	Kupang, NTT	01-06-2007
107	Pedro Franklin Magno	ST/I	Belu, NTT	30-01-2007
108	Remigio Lopes de Carvalho	ST/I	Kupang, NTT	09-09-2007
109	Rozito Lopes	ST/I	Atambua, NTT	09-09-2007
110	Sancho Ramos da Ressureição	ST/I	Dili, Timor-Leste	24-09-2007
111	Sera Malik	I	Kupang, NTT	11-02-2007
112	Simão Correia	I	Jakarta	2007

No	Name	ST/I	Location	Date
113	Simão Lopes	ST/I	Timor Tengah Utara, NTT	14-04-2007
114	Tomas Cardoso	ST/I	Kupang, NTT	22-03-2007
115	Tono Suratman	I	Jakarta	28-02-2007
116	Tubaki	I	---	21-02-2007
117	Valente Domingos	I	---	28-01-2007
118	Zacky Anwar Makarim	I	Jakarta	28-02-2007
119	Zakarias Alves	ST/I	Belu, NTT	25-01-2007

ATTACHMENT 5

Table 2.
Breakdown of Statement Taking and Interview Process

No.	Connection to Case [14 Priority Cases] and Context	Affiliation				Status of source		
		Pro-Independence	Pro-Autonomy	POLRI	TNI	Alleged Perpetrator	Victim	Witness
1	Rape and Killing of [Redacted]	2	-	-	-	-	-	2
2	Attack and Killing of Civilians in Cailaco Sub-district	-	5	-	-	4	-	1
3	Attack and Killing of Civilians in Cailaco and Lolotoe Sub-districts	1	-	-	-	-	1	-
4	Attack and Killing of Civilians in Cailaco and Liquiça Sub-districts	-	1	-	-	1	-	-
5	Killings in Liquiça Church Compound	-	1	1	-	1	1	-
6	Killings in Suai Church Compound	1	7	1	1	7	1	2
7	Killings in Suai Church, Violence and Destruction of Property	-	1	-	1	-	-	2
8	Gender-based Violence	1	1	-	-	-	2	-
9	Violence and Destruction of Property in Dili	-	5	-	-	-	-	5
10	Violence and Destruction of Property in Ainaro District	-	4	-	-	2	-	2
11	Violence and Destruction of Property in Baucau District	1	-	-	2	1	-	2
12	Violence and Destruction of Property in Lautém District	1	-	-	-	-	1	-
13	Violence and Destruction of Property in Manatuto District	-	1	-	-	-	-	1
14	Violence and Destruction of Property in Same-Manufahi District	-	1	-	-	-	1	-
15	Violence and Destruction of Property in Oecusse District	-	2	-	-	-	-	2
16	Violence in Ainaro District	-	3	-	-	1	-	2
17	Violence in Baucau District	-	2	1	5	-	3	5
18	Violence in Baucau District in 1997	-	1	-	-	-	1	-

No.	Connection to Case [14 Priority Cases] and Context	Affiliation				Status		
		Pro-Independence	Pro-Autonomy	POLRI	TNI	Alleged Perpetrator	Victim	Witness
19	Violence in Bobonaro District	-	1	-	-	1	-	-
20	Violence in Ermera District	-	1	-	1	1	-	1
21	Violence in Uato-Carbau Sub-district, Viqueque District	-	1	-	-	-	1	-
22	Violence by Pro-Independence Groups (CNRT)	-	1	-	-	-	1	-
23	Violence by Pro-Independence in Zumalai Sub-district, Suai District	-	1	-	-	-	1	-
24	Violence after Popular Consultation by Pro-Independence	-	1	-	-	-	1	-
25	Violence after September 1999	-	1	-	-	-	1	-
26	Violence in Liquiça	2	5	-	-	4	2	1
27	Violence in Lolotoe Sub-district & Violence and Destruction of Property	-	-	-	1	-	-	1
28	Violence in Manatuto	-	1	-	-	1	-	-
29	Killings in Pasabe	1	8	-	1	5	1	4
30	Killings in Passabe, Violence and Destruction of Property in Oecusse District	-	1	-	-	1	-	-
31	Killings of Clergy in Lautém	1	2	-	-	3	-	-
32	Killing and Disappearance of Mau Hodu	1	6	-	2	8	-	1
33	Killing in Baucau Distirct in 1997	-	-	1	-	-	1	-
34	Attacks at Dili Diocese	-	1	-	1	1	-	1
35	Attacks at Manuel Carrascalão Residence	2	-	1	-	-	2	1
36	Attacks at Manuel Carrascalão Residence, and Liquiça Church, Dili Diocese, and Bishop Belo Residence	-	1	-	-	1	-	-
37	Attack and Killing at Polres Maliana	-	1	1	-	2	-	-
38	Attack and Killing at Polres Maliana, and Violence in Bobonaro District	1	-	-	-	-	1	-

No.	Connection to Case [14 Priority Cases] and Context	Affiliation				Status		
		Pro-Independence	Pro-Autonomy	POLRI	TNI	Alleged Perpetrator	Victim	Witness
39	Killings during the Withdrawal of Battalion 745	1	-	-	1	1	1	-
40	Context	1	4	3	5	10	-	3
	Total ST/I	**17**	**72**	**9**	**21**	**56**	**24**	**39**

Source : CTF Indonesia-TimorLeste

ATTACHMENT 6

Table 3.
Public Hearing I–VI
and Number of Speakers

Public Hearing held	**Number of Speakers invited to Public Hearing**	**Number of Speakers who came to Public Hearing**	**Remarks**
Public Hearing I Denpasar-Bali, 19–20 Februari 2007	7 persons	6 persons	1 person could not come
Public Hearing II Jakarta, 26–30 Maret 2007	18 persons	16 persons	1 person could not come, and 1 person specifically requested a Closed Hearing
Public Hearing III Jakarta, 2–5 May 2007	18 persons	18 persons	2 persons specifically requested a Closed Hearing
Public Hearing IV Denpasar-Bali, 23–24 July 2007	8 persons	8 persons	-
Public Hearing V Dili, Timor-Leste, 25–27 September 2007	11 persons	6 persons	2 persons could not come and 3 persons specifically requested a Closed Hearing
Public Hearing VI Jakarta, 24 October 2007	2 persons	2 persons	-
Total	**64 persons**	**56 persons**	

Source : CTF Indonesia-TimorLeste

ATTACHMENT 7

Table 4.
Incidents/Cases in East Timor in 1999
Name and Status of Speakers present during CTF Public Hearing

14 Incidents/Priority Cases in East Timor in 1999	Speaker	Status of Speaker at the time of Incident	Tempat dan Tgl Public Hearing (DP)
Killings at Liquiça Church, (4-6 April 1999)	Emílio Barreto	Victim	Denpasar, 19 Feb 2007
	Leoneto Martins	Witness/Bupati of Liquiça	Denpasar, 23 July 2007
Attack and Killing of Civilians in Cailaco, (12-13 April 1999)	Manuel Ximenes	Victim	Denpasar, 20 Feb 2007
Attack on Manuel Carrascalão residence, Dili, (17 April 1999)	Florindo de Jesus Brites	Victim	Denpasar, 20 Feb 2007
Attack and Killings in Dili Post-Popular Consultation in 1999	Mateus Carvalho	Commander of Company D AITARAK	Denpasar, 19 Feb 2007
	Nonato Soares	Victim	Jakarta, 29 March 2007
Killings at Suai Church, (6 September 1999)	Fares da Costa	Victim	Jakarta, 30 March 2007
Attack on Refugees at Polres Maliana Compound, (8 September 1999)	Adelino Brites	Victim	Jakarta, 30 March 2007
Rape and Killing of [redacted] in Ermera, (13 September 1999)	Aliança Gonçalves	Witness	Jakarta, 3 May 2007
Killings during Withdrawal of Battalion 745 Troops, (21 September 1999)	Mayor TNI Jacob Djoko Sarosa	Commander of Battalion 745 Lautém	Jakarta, 3 May 2007
	Letnan TNI Camilo do Santos Sancho Ramos de Ressureição	Batalion 745 Personnel Connected Party - Victim	Jakarta, 2 May 2007 Dili, 25 Sept 2007

14 Incidents/Priority Cases in East Timor in 1999	Speaker	Status of Speaker at the time of the the Incident	Date and Place of Public Hearing
Killings of Clergy in Lautém, (25 September 1999)	Joni Marques	Commander of Team ALFA	Dili, 26 Sept 2007
Killing and Disappearance of Mau Hodu, West Timor, 1999	Agusto Dato Buti	Witness	Jakarta, 2 May 2007
	Sersan TNI Simão Correia	Alleged Perpetrator	Jakarta, 2 May 2007
	Sersan TNI Luis dos Santos	Alleged Perpetrator	Jakarta, 2 May 2007
Rape in 1999	Esmeralda do Santos	Victim	Jakarta, 29 March 2007
General Human Rights Violations in 1999	Berta dos Santos	Victim	Jakarta, 4 May 2007
	Luisa Alves Almeida	Victim	Jakarta, 5 May 2007
	Domingos Alves	Victim	Denpasar, 24 July 2007
	Mário Gonçalves	Victim	Dili, 27 Sept 2007
Killings in Passabe, Oecussi, (8-10 September 1999)	Simão Lopes	Commander of SAKUNAR	Denpasar, 24 July 2007
	Marcus Baquin	Victim	Dili, 26 Sept 2007
Connected Parties or Witnesses for the Context of Human Rights Violations in 1999	Ali Alatas	Foreign Minister of Indonesia	Denpasar, 19 Feb 2007
	Francisco Xavier Lopes da Cruz	Founder and Head of BRTT	Denpasar, 20 Feb 2007
	Uskup Carlos Filipe Ximenes Belo	Bishop of Dili Diocese	Jakarta, 26 March 2007
	Domingos Maria das Dores Soares	Bupati of Dili, Founder and Head of FFPDK	Jakarta, 26 March 2007
	Martinho Fernandes	Bupati Viqueque	Jakarta, 26 March 2007
	B. J. Habibie	President of RI	Jakarta, 27 March 2007
	Sera Malik "Agustinho Ximenes Boavida"	Commander of Team SERA, Baucau	Jakarta, 27 March 2007
	Edmundo da Conceição Silva	Bupati of Lautém,	Jakarta, 27 March 2007

14 Incidents/Priority Cases in East Timor in 1999	Speaker	Status of Speaker at the time of the the Incident	Date and Place of Public Hearing
	Eurico Guterres	Pembina BRTT Commander of AITARAK, PPI Vice Commander	Jakarta, 28 March 2007
	Joanico Belo	Commd'r of team SAKA, Baucau	Jakarta, 28 March 2007
	Mayjen TNI Zacky Anwar Makarin	Vice Chairman of P3TT	Jakarta, 28 March 2007
	Galuh Wandita Sudjatmoko	Independent Observer	Jakarta, 29 March 2007
	Kol. Inf. TNI Suhartono Suratman	DANREM 164-WD Timor-Timur	Jakarta, 29 March 2007
	Mayjen TNI Adam Damiri	PANGDAM Udayana	Jakarta, 30 March 2007
	Mateus Maía	Mayor of Dili	Jakarta, 30 March 2007
	Muflizar	ANFREL [Asian Network for Free and Election]	Jakarta, 2 May 2007
	AKBP Pol. Drs. Hulman Gultom	KAPOLRES Dili	Jakarta, 2 May 2007
	Kol. TNI Noer Muis	DANREM 164-WD Timor-Timur	Jakarta, 3 May 2007
	Armindo Soares Mariano	Kead of DPRD Tk.I Timor-Timur	Jakarta, 3 May 2007
	Agus Tarmizi	Head of SATGAS – P3TT	Jakarta, 4 May 2007
	Koesparmono Irsan	Member of KPS	Jakarta, 4 May 2007
	AKBP Drs. Gatot Subiyaktoro	KAPOLRES Covalima, Suai	Jakarta, 4 May 2007
	Kol. Pol. Drs. G.M. Timbul Silaen	KAPOLDA Timor Timur	Jakarta, 5 May 2007 Denpasar, 20 June 2007
	General TNI Wiranto	Commander of ABRI, TNI	Jakarta, 5 May 2007
	Câncio Lopes de Carvalho	Commander of Mahidi, Vice Comdr of PPI	Jakarta, 5 May 2007 Denpasar, 15 June 2007
	David Dias Ximenes	CNRT Leader	Denpasar, 23 July 2007
	Lt.Col. TNI Asep Kuswani	Commander of KODIM Liquiça	Denpasar, 23 July 2007

14 Incidents/Priority Cases in East Timor in 1999	Speaker	Status of Speaker during the Incident	Date and Place of Public Hearing
	José Estevão Soares	Founder of FPPDK	Denpasar, 24 July 2007
	Dr. Ir. Yan Rizal	Forum REKTOR	Denpasar, 23 July 2007
	Lt.Col. TNI Yayat Sudrajat	Commander of Tribuana VIII Intellig. Task Force	Denpasar, 24 July 2007
	José Alexandre Xanana Gusmão	President of CNRT-Falintil Commander	Dili, 24 Sept 2007
	Taur Matan Ruak	Falintil Chief of Staff	Dili, 28 Sept 2007
	[redacted]	[redacted]	[redacted]
	Tomas Gonçalves	Mantan Partisan APODETI 1975	Dili, 25 Sept 2007
	Francisco Lopes de Carvalho	Founder of FPDK, BRTT and member of CNRT	Dili, 26 Sept 2007
	Colonel Inf TNI Aris Martono	Commander of Battalion 621	Jakarta, 24 Oct 2007
	Maj.Gen. TNI Kiki Sjahnakrie	Martial Law Commander	Jakarta, 24 Oct 2007
	Curdula Maria Rin Kuntari	Kompas War Correspondent	Denpasar, 27 Nov 2007
	Patrick Burgess	UNAMET Staff	Denpasar, 28 Nov 2007

Source : CTF Indonesia-TimorLeste

ATTACHMENT 8

Tabel 5.
CTF Pulic Hearing Activity

Place and Date of Public Hearing	Speaker		Status of Speaker in 1999
Public Hearing I, Denpasar, 19-20 February 2007	1	Ali Alatas	Foreign Minister of Republic Indonesia
	2	Emílio Barreto	Victim
	3	Mateus Carvalho	Commander of Company D AITARAK
	4	Manuel Ximenes	Victim
	5	Florindo de Jesus Brites	Victim
	6	Francisco Xavier Lopes da Cruz	Founder and Head of BRTT
Unable to come		Prof. Dr. Eko Budihardjo	Forum REKTOR
Public Hearing II, Jakarta, 26-30 Maret 2007	1	Uskup Carlos Filipe Ximenes Belo	Uskup Diosis Dili
	2	Domingos Maria das Dores Soares	Bupati of Dili, Founder and Head of FFPDK
	3	Martinho Fernandes	Bupati of Viqueque
	4	Sera Malik "Agustinho Ximenes Boavida"	Commander of Team SERA, Baucau
	5	Edmundo da Conceição Silva	Bupati Lautém, Patron of BRTT
	6	Eurico Guterres	Commander of AITARAK troops, Deputy Commander of PPI
	7	Joanico Belo	Commander of Team SAKA, Baucau
	8	Maj. Gen TNI Zacky Anwar Makarin	Vice Chairman of P3TT
	9	Esmeralda do Santos	Victim
	10	Nonato Soares	Victim
	11	Galuh Wandita Sudjatmoko	Independent Observer
	12	Col. Inf. TNI Suhartono Suratman	DANREM 164-WD Timor-Timur
	13	Maj. Gen TNI Adam Damiri	PANGDAM Udayana
	14	Adelino Brites	Victim
	15	Fares da Costa	Victim
	16	Mateus Maía	WALIKOTA Dili
Unable to come		José Afat	Founder BMP, Camat of Maubara-Liquiça

Public Hearing III, Jakarta, 2-5 May 2007	1	Lt. TNI Camilo do Santos	Member of Batalion 745, Lautém
	2	Sergeant TNI Simão Correia	Alleged Perpetrator
	3	Sergeant TNI Luis dos Santos	Alleged Perpetrator
	4	Muflizar	ANFREL [Asian Network for Free and Election]
	5	Agusto Dato Buti	Witness
	6	AKBP Pol. Drs. Hulman Gultom	KAPOLRES Dili
	7	Col. TNI Noer Muis	DANREM 164-WD Timor-Timur
	8	Armindo Soares Mariano	Chairman of DPRD Tk.I Timor-Timur
	9	Aliança Gonçalves	Witness
	10	Maj. Gen TNI Jacob Djoko Sarosa	Commander of Battalion 745, Lautém
	11	Agus Tarmizi	Head SATGAS – P3TT
	12	Koesparmono Irsan	Member of KPS
	13	Berta dos Santos	Victim
	14	AKPB Drs. Gatot Subiyaktoro	KAPOLRES Covalima, Suai
	15	Col. Pol. Drs. G.M. Timbul Silaen	KAPOLDA Timor Timur
	16	Luisa Alves Almeida	Victim
	17	Jenderal TNI Wiranto	Commander-in-Chief of ABRI, TNI
	18	Câncio Lopes de Carvalho	Commander of MAHIDI, Deputy Commander of PPI
Public Hearing IV, Denpasar, 23-24 July '07	1	Leoneto Martins	Witness/Bupati Liquiça
	2	David Dias Ximenes	CNRT Leader
	3	Lt. Col. TNI Asep Kuswani	Commander of KODIM Liquiça
	4	Dr. Ir. Yan Rizal	Forum REKTOR
	5	Simão Lopes	Commander of SAKUNAR
	6	José Estevão Soares	Founder of FPPDK
	7	Domingos Alves	Victim
	8	Lt. Col TNI Yayat Sudrajat	Commander of SATGAS Intelijen Tribuana VIII

Unable to Come		João França	Commander of DMP-Lolotoe Case, Bobonaro.
		Rui Emiliano Teixeira Lopes	Former Partisan 1975, and Former Bupati Covalima
Public Hearing VI, Jakarta, 24 October 2007	1	Col. Inf. TNI Aris Martono	Commander of Battalion 621
	2	Lt.Gen. TNI Kiki Sjahnakrie	Martial Law Commander

Source : CTF Indonesia-TimorLeste

ATTACHMENT 9

Table 6
List Of Submissions

No.	Name	Submissions by CTF Request	Voluntary Submission	Position in 1999	Remarks
1	B.J. Habibie	---	√	President RI	---
2	Mayjen TNI (Purn.) Zacky Anwar Makarim	---	√	Vice Chairman P3TT	---
3	Koesparmono Irsan	---	√	Member of Justice and Researcher	---
4	Sertu TNI Simão Correia	---	√	Alleged Perpetreter	---
5	Perkumpulan Relawan CIS Timor	√	---	---	CTF Statement Taker
6	Komnas Perempuan, Komisi Anti Kekerasan terhadap Perempuan, Tahun 1994–2007	√	---	Observer	---
7	José Estevão Soares	---	√	Founder FPPDK	---
8	Fransisco Lopes de Carvalho	---	√	Founder FPDK, BRTT, CNRT member	---
9	Letjen TNI (Purn.) Kiky Sjahnakrie	---	√	Martial Law Commander	---
10	Câncio Lopes de Carvalho	---	√	Comander of MAHIDI, Deputi Commander PPI	---
11	Forum Rektor	√	---	Observer	---
12	Leigh-Ashley Lipscomb	---	√	---	Researcher KKP

ATTACHMENT 10

Table 7
Expert Discussion

No	Discussion	Place/Date	Speakers
1	Roundtable Discussion	The Park Lane Hotel, Jakarta 14 Desember 2005	Former members of KPP-HAM who handled Jakarta Ad Hoc Human Rights cases.
2	Roundtable Discussion	The Park Lane Hotel, Jakarta 15 Desember 2005	Attorney General Office team that handled Jakarta Ad Hoc Human Rights cases.
3	Roundtable Discussion	The Park Lane Hotel, Jakarta 15 Desember 2005	Dr. Arifin Siregar (Chairman of ICWA/ Indonesian Council of World Affairs)
4	Roundtable Discussion	Hotel Sanur Paradise, Denpasar, Bali 16 Januari 2006	Former Judges who handled Jakarta Ad Hoc Human Rights cases: 1. Iskandar Kamil, SH (Head of Special Crimes, Supreme Court of RI) 2. Arbijoto, SH 3. Artidjo Alkotsar, SH 4. Tommy Bustomi, SH 5. Dr. Eddy Djunaedi Kamasudirdja, SH, MCJ 6. Prof.Dr. Sumaryo Suryokusumo, SH, LLM 7. Prof. Soedjojo Dirdjosisworo, SH, MH 8. Cicut Sutiarso, SH 9. Andriani Nurdin, SH
5	Expert Speaker Discussion at CTF Plenary 12	CTF Office Denpasar, Bali 18 Mei 2006	Dr. Longinhos Monteiro (Prosecutor General RDTL)
6	Expert Speaker Discussion at CTF Plenary 12	CTF Office Denpasar, Bali 19 Mei 2006	Prof.Dr. Robert Evans (Reconciliation Expert from Plowshares Institute, USA)
7	Expert Speaker Discussion at CTF Plenary 12	CTF Office Denpasar, Bali 22 Mei 2006	General TNI (Retired) Fahrul Razi (Deputy Commander of TNI and Secretary General of RI Department of Defense)
8	Expert Speaker Discussion at CTF Plenary 12	CTF Office Denpasar, Bali 24 Mei 2006	Prof. Dr. Muladi, SH (Legal Expert)

9	Expert Speaker Discussion at CTF Plenary 13	Hotel Nikko, Jakarta 20 Juni 2006	Ali Alatas (Former Foreign Minister of RI)
10	Expert Speaker Discussion at CTF Plenary 13	Hotel Nikko, Jakarta 21 Juni 2006	Prof.Dr. Hikmahanto Juwana (International Legal Expert, Dean of UI Faculty of Law)
11	Expert Speaker Discussion at CTF Plenary 13	Hotel Nikko, Jakarta 26 Juni 2006	Fadilah Agus (presented the paper of Prof. KGPH Haryo Mataram, SH. Expert of Humanitarian Law)
12	Expert Speaker Discussion at CTF Plenary 13	Hotel Nikko, Jakarta 26 Juni 2006	Andrey Sujatmiko (University of Trisakti Dean of the Faculty of Law, Secretary of Humanitarian and Human Rights Law Center)
13	Expert Speaker Discussion at CTF Plenary 13	Hotel Nikko, Jakarta 27 Juni 2006	Prof.Dr. David Cohen (International Criminal Law Expert, University of California, Berkeley, USA)
14	Expert Speaker Discussion at CTF Plenary 15	Hotel Nikko, Jakarta 4 September-2006	Djoko Sugijanto (Member of KPS)
15	CTF Seminar	Hotel Nikko, Jakarta 7 September 2006	1. Dionisio Babo Soares (Co-Chair KKP) 2. Marzuki Darusman (Chairman of ASEAN Human Rights Mechanism Working Group) 3. Abdul Hakim Garuda Nusantara (Chair Komnas HAM) 4. Mochamad Slamet Hidayat (Directoral General of Multilateral, Affairs, Department of Foreign Affairs of RI) 5. Prof. Dr. Robert Evans (Plowshares Institute, USA)
16	Semiloka	Hotel Sanur Paradise, Denpasar, Bali 17 Oktober 2006	1. Abdul Hakim Garuda Nusantara (Ketua Komnas HAM RI) 2. Kamala Chandrakirana (Ketua Komnas Perempuan) 3. Maria Natércia Gusmão (Hakim pada Pengadilan Serious Crimes Panel, TL) 4. Cecilio Caminha (Aktivis HAM TL)
17	Expert Speaker Discussion at CTF Plenary 27	CTF Office Denpasar, Bali 23 Agustus 2007	Dr. Salim Said (Indonesian Military Expert)
18	Expert Sepeaker discussion at CTF Plenary 27	CTF Office Denpasar, Bali 24 Agustus 2007	Dr. Bilver Singh (Expert on Indonesia-East Timor and Indonesian Military Expert)

ATTACHMENT 11

Table 8
CTF Plenary Meetings

Plenary	Place	Date
1	Denpasar	4–5 August 2005
2	Denpasar	11–12 August 2005
3	Denpasar	1–4 September 2005
4	Denpasar	26–27 September 2005
5	Denpasar	17–20 October 2005
6	Denpasar	14–17 November 2005
7	Denpasar Jakarta	11-12 December 2005 16–17 December 2005
8	Denpasar	12–17 January 2006
9	Dili	20–26 February 2006
10	Denpasar	20–25 Maret 2006
11	Denpasar	24–29 April2006
12	Denpasar	15–26 May 2006
13	Jakarta	19–30 June 2006
14	Denpasar	17–22 July 2006
15	Jakarta	28 August–8 September 2006
16	Denpasar	25–30 September 2006
17	Denpasar	20–25 November 2006
18	Denpasar	11–15 December 2006
19	Jakarta	8–16 January 2007
20	Denpasar	12–17 February 2007
21	Denpasar	5–9 Maret 2007
22	Jakarta	22–24 Maret, 2–3 April 2007
23	Jakarta	26–30 April, 7–9 May 2007
24	Denpasar,	22–25 May 2007
25	Denpasar	14–23 June 2007
26	Denpasar	19–21 July, 25–27 July 2007
27	Denpasar	20–31 August 2007
28	Denpasar	17–22 September 2007
29	Jakarta	22, 24–30 October 2007
30	Denpasar	12–28 November 2007
31	Denpasar	7–19 December 2007
32	Denpasar	7–24 January 2008
33	Denpasar	11–29 February 2008
34	Denpasar	12–31 Maret 2008
35	Denpasar	7–19 & 22–26 April 2008
36	Denpasar	8–14 May 2008

ATTACHMENT 12

RULES OF PROCEDURE OF THE COMMISSION

THE MEMBERS OF THE COMMISSION OF TRUTH AND FRIENDSHIP

Having regard to the Memorandum of Understanding on the Establishment of the Commission of Truth and Friendship (hereinafter referred to as the Commission), signed by the Governments of Indonesia and Timor-Leste on August 11, 2005 and the Joint Declaration signed on March 9, 2005 on the Terms of Reference of the Commission of Truth and Friendship,

RESOLVED

That the following RULES OF PROCEDURE of the Commission shall be established:

I. Definitions

Rule 1. Co-Chairpersons, Members, Alternate Members, Plenary Meeting, Sub-Commissions, Working Groups, Secretariat, and Staff:

1. "Co-Chairpersons" refers to the Co-Chairpersons of the Commission.
2. "Members" means all Members of the Commission.
3. "Alternate Members" refers to the Alternate Members of the Commission.
4. "Plenary Meeting" means the Meeting attended by all members of the Commission.
5. "Sub-Commission" refers to a Sub-Commission consisting of Members and/or alternate members of the Commission.
6. "Working Group" refers to (the) a Working Group(s) consisting of members and/or alternate members of the Commission.
7. "Secretariat" means the Joint Secretariat of the Commission located in Denpasar, Bali.
8. "Staff" means all persons appointed, recruited or engaged by the Governments of the Republic of Indonesia and the Democratic Republic of Timor-Leste, the Commission and its Joint Secretariat under the Commission's rules and regulations.

II. Organization and Management

Rule 2. The organization of the Commission shall consist of:
Plenary Meetings
Sub-Commissions
Working Groups
Co-Chairpersonship
Joint Secretariat
Co-Directorship
Staff

III. Plenary Meeting

Rule 3. The Plenary Meeting of the Commission has the highest authority for decision making of the Commission.

Rule 4. Authorities of the Plenary Meetings may include:

a. Election of the Co-Chairpersons of the Commission;
b. Establishment of the Rules of Procedure of the Commission;
c. Establishment of the Rules and Procedures on the Financial Management of the Commission's Joint Trust Fund;
d. Creation of Sub-Commission(s) and appointment of the members of the Sub-Commission(s);
e. Formulation and adoption of the Work Programme and Budget of the Commission;
f. Adoption of the Periodic Reports and the Final Report on the implementation of the Work Programme of the Commission and its Recommendations;
g. Consideration of other matters deemed necessary to be addressed.

IV. Sub-Commissions and Working Groups

Rule 5. Sub-Commissions

The Commission shall establish two Sub-Commissions: Sub- Commission A and Sub-Commission B, with the possibility of creating additional sub-commission(s) in the future, if it is deemed necessary. The Sub-Commission members shall be drawn from among the members and/or alternate members of the Commission.

Rule 6. Tasks of Sub-Commission A

Sub-Commission A shall have the task of reviewing all the existing materials documented by the Indonesian National Commission of Inquiry on Human Rights Violations in East Timor in 1999 (KPP HAM) and the Ad-hoc Human Rights Court on East Timor, as well as the Special Panels for Serious Crimes, and the Commission of Reception, Truth and Reconciliation in Timor-Leste as stipulated in para 14 a (i) and recommend amnesty as well as rehabilitation measures as stipulated in Para 14 c (i & ii) of the Terms of Reference of the Commission of Truth and Friendship.

Rule 7. Authority of Sub-Commission A

In performing its task in accordance with Rule 6, the Sub-Commission A shall have the authority to:

a. Analyze the documented materials as stated in Rule 6 above, and determine whether or not:
   - additional information is still needed to fulfill the mandate of the Commission;
   - certain Experts should be invited to give additional clarifications.

b. Recommend to the Plenary Meeting of the Commission:
- follow-up action such as public hearing, submission, interview, and field visit;
- amnesty for those involved in human rights violations who cooperate fully in revealing the truth;
- rehabilitation measures for those wrongly accused of human rights violations.

Rule 8. Tasks of Sub-Commission B

Sub-Commission B shall have the task of examining and establishing the truth concerning reported human rights violations as documented in the reports of the related institutions stated in Rule 6 in accordance with para 14 a (ii) and recommend ways to promote reconciliation between peoples based on customs and religious values as well as recommend innovative ways and means for people-to-people contacts and cooperation to further enhance peace and stability as stipulated in para 14 c (ii & iv) of the Terms of Reference of the Commission of Truth and Friendship.

Rule 9. Authority of Sub-Commission B

In performing its task in accordance with Rule 8, the Sub- Commission B shall have the authority to:

a. Take follow-up action such as public hearing, submission, interview, and field visit for the purpose of acquiring required information as recommended by Sub-Commission A to reveal the truth;

b. Invite or arrange meetings or establish other appropriate ways of communicating with certain individuals considered to be in possession of and to provide required information in the context of revealing the truth;

c. Request additional information from relevant authorities in Indonesia and Timor-Leste or from certain individual(s) residing overseas as well as from foreign based institution(s);

d. Hold public hearings at any place outside of Denpasar, Bali in Indonesia or Timor-Leste and ensure maximum public participation through all available means about the location and date(s) of the public hearings;

e. Recommend to the Commission ways and means to promote:
- reconciliation between peoples based on customs and religious values in order to ensure a lasting friendship;
- innovative people-to-people contacts and cooperation to further enhance cooperation and friendship.

Rule 10. Report

a. Each Sub-Commission shall submit progress reports of its work every four months to the Commission for review and eventual adoption. The Progress Report shall be prepared in Bahasa Indonesia and English.

b. Final Report of the Commission shall be presented to the Heads of State and Government of Indonesia and Timor-Leste, as stipulated in para 25 and made it available to the public, in Bahasa Indonesia, Tetum and English, and translated into Portuguese, as stipulated in para 14 (b) of the Terms of Reference of Commission of Truth and Friendship.

Rule 11. Working Groups

a. The Commission may set up a Working Group or Working Groups as deemed appropriate to carry out task(s) related to the issues under its consideration.
b. The Working Group (s) shall consist of members of the Commission or its alternate members, and be tasked to deal with specific issues.

Rule 12. Further arrangements concerning the conduct of work of the Sub- Commission(s) and Working Group(s) are to be decided by the Commission.

V. Co-Chairpersons, Members and Alternate Members

A. Co-Chairpersons

Rule 13. Elections of the Co-Chairpersons

a. As stipulated in Rule 4, the Commission Meetings shall elect the Co-Chairpersons in a secret ballot, drawn from among the members of the Commission.

b. The Co-Chairpersons shall consist of two persons, each from Indonesia side and Timor-Leste side, for the term of one year.

c. Should a Chairperson be:
   i. unable to attend a meeting, he/she should appoint another member of the Commission from his/her side (Indonesia or Timor-Leste) to temporarily replace him or her;
   ii. permanently unable to continue his/her chairpersonship, he/she should be replaced by another member of the Commission from his/her side (Indonesia or Timor-Leste) elected by all members of the Commission present.

Rule 14. Authority of Co-Chairpersons

a. The Co-Chairpersons shall be responsible for chairing meetings of the Commission, in accordance with Rule 29.

b. The Co-Chairpersons will serve as the official spokespersons of the Commission.

c. The Co-Chairpersons shall be responsible for the overall management of the Joint Funds for the Commission.

B. Members

Rule 15: Members of the Commission

a. The Commission comprises of ten Members, five from Indonesia and five from Timor-Leste. Two of the Members act as Co-Chairpersons.

b. Members of the Commission shall attend the Plenary Meeting(s) of the Commission.

c. Should a member of the Commission be unable to attend a meeting due to unforeseen circumstances, he/she is obliged to notify the Commission in writing and the respective Co- Chairperson appoint from one of the alternate members to act as his/her proxy.

d. Should a member of the Commission be unable to continue his/her membership in the Commission permanently, the Co- Chairperson shall consult the respective government on the replacement of the member concerned with one of the alternate members.

C. Alternate Member

Rule 16: Alternate Member of the Commission

a. In addition to the Members, the Commission has six Alternate members, three from Indonesia and three from Timor-Leste.

b. Should an Alternate member of the Commission be unable to attend a meeting, he/she is obliged to notify the Commission in writing.

c. Should an Alternate member of the Commission be unable to continue his/her membership in the Commission permanently, the Co-Chairperson shall consult the respective government concerning the replacement of the alternate member concerned.

D. Entitlement of the Members and Alternate Members of the Commission

Rule 17. Each member and alternate member of the Commission is entitled to:

a. Monthly Honorarium;

b. Transportation, hotel, and per diem for activities related to official performance of their duties, and fund for representation expenses which will be determined by the Commission[1].

c. Medical expenses which occur during official performance of their duties, entirely or partially, depending on the financial situation of the Commission.

VI. Engagement of Patron(s), Advisor(s), Expert(s)

Rule 18. Patron (s)

The Commission may propose to the Heads of State and Government of Indonesia and Timor-Leste a number of prominent persons to be invited as patron(s) in accordance with para 18 of the Terms of Reference.

Rule 19. Advisor(s)

The Commission may decide to request certain prominent person(s) to give advice on certain issues to the Commission.

Rule 20. Experts

The Commission may decide to invite expert(s) to provide view(s) on certain substantive matters.

VII. Joint Secretariat of the Commission

Rule 21. In performing its function, the Commission shall be assisted by a Joint Secretariat located in Denpasar, Bali.

The Joint Secretariat shall be fully accountable to the Commission.

Rule 22. Co-Directors of the Joint Secretariat

a. The Joint Secretariat of the Commission is headed by Co- Directors, from Indonesia and Timor-Leste.

b. The Co-Directors are jointly accountable to the Commission and responsible for the financial management of the Joint Fund of the Commission.

c. The Co-Directors, with the consent of the Co-Chairpersons of the Commission, shall appoint professional staff, while the general service staff will be appointed by the Co-Directors.

Rule 23. Duties of the Joint Secretariat

The Joint Secretariat shall provide substantive and administrative services for the implementation of the Commission's mandate which include but not limited to:
a. making the necessary arrangements for the holding of meetings;
b. obtaining, reproducing and distributing documentation for the Commission;
c. preparing draft summary records of meetings;
d. keeping all records of all meetings;
e. preparing draft of the Commission's Reports-Periodic, Final, and Specific- of the Commission;
f. Providing services which the Commission, Sub-Commission(s), and Working Group(s) may require.

VIII. Working Language

Rule 24. Working Language

Bahasa Indonesia, English and Tetum shall be the working languages.

During the Commission meetings, Bahasa Indonesia will be the primary working language.

Rule 25. Summary Records of Meetings

Summary records of meetings shall be prepared in Bahasa Indonesia and English.

Other documents may be prepared in Bahasa Indonesia, English, and Tetum.

IX. Conduct of Business during the Meetings

Rule 26. Types of Plenary Meetings

The Commission may hold two types of meetings: closed plenary meetings and open plenary meetings, depending on the nature of the issues to be considered.

The types of the plenary meeting shall be decided by the Co- Chairpersons upon consultation with other members present in each meeting.

Closed plenary meetings will be strictly limited to members of the Commission and Alternate member(s) who has/have been designated to replace member(s) of the Commission who is/are unable to attend the meeting. Open Plenary Meetings may include alternate members as well as external advisors, experts and other invited guests.

Rule 27. Location of the Meeting

Plenary meetings shall be held in Denpasar, Bali, where the Joint Secretariat is located unless the Co-Chairpersons shall decide otherwise.

Rule 28. Agenda of the Meeting

Issues to be addressed in the next meeting of the Commission shall be determined by the preceding meeting.

The provisional agenda shall be transmitted to the members and alternate members of the Commission together with the notification of the meeting.

Rule 29. Report of the Previous Meeting of the Commission and Other Documents

Copies of the report of the previous meeting of the Commission and other required documents shall be distributed to members and alternate members of the Commission by the Secretariat prior to the Meeting.

Rule 30. Quorum

Members of the Commission shall constitute a quorum for meetings of the Commission.

A quorum is reached when 4/5 or more of the whole members are present (8 out of 10 persons).

Rule 31. Right to Speak during Meetings

a. During the Plenary meetings of the Commission, members and alternate members of the Commission shall be recognized to speak by the Co-Chairpersons.

b. The Commission may decide to invite certain Advisor(s) or Expert(s) to participate in the discussion on certain issues in the Commission, Sub-Commission or Working Group.

X. Decision Making

Rule 32. Process of Decision Making

a. Decisions shall be reached by consensus of the members of the Commission present.

b. Should the consensus not be reached, the decision will be made through voting. The decision shall be considered valid should 50% +1 (simple majority), of the members of the Commission present vote for the same option, at the same time allowing members to present dissenting opinion should they vote "No".

Rule 33. Meaning of "Consensus of the Members of the Commission Present"

For the purpose of these Rules, the phrase "Consensus of the Members of the Commission Present" shall mean that the consensus has been reached through intensive consultation among all members of the Commission present.

XI. Principle of Confidentiality

In view of the nature of the mandate of the Commission, there is no doubt that the Commission will have to deal with "confidential documentation" and may have to produce documents or determine position on certain issues, which have "confidential character" either temporarily or for a certain period of time for the public in general. Therefore:

Rule 34: Plenary Meeting of the Commission will determine which documents, views, or information are classified as confidential.

Rule 35. Types of Confidential Documents

All members, alternate members and staff of the Commission's Joint Secretariat will abide to observe "the principles of confidentiality" regarding:

a. the Commission's "reference documents";
b. "documents produced by the Commission";
c. the Commission's "position on certain issues";
d. "views or positions on certain issues expressed or information provided by certain individuals to the Commission".

Rule 36. While all staff of the Joint Secretariat are accountable for their individual conduct with regard to the principle of confidentiality related to the work of the Commission, the Co-Directors of the Joint Secretariat are mainly responsible for the observance of the principle of confidentiality within the Joint Secretariat.

Rule 37. Sanction

The manner of dealing with any violation of these principles of confidentiality will be decided by the Plenary Meeting of the Commission.

XII. Amendment or Suspension of the Rules

Rule 37. Any one of these Rules may be amended or suspended by consensus or majority vote (4/5 of the members presents) as stipulated in Rule 31 32.

Rule 38. Proposals for amendments to the Rules shall be presented in writing and submitted to the Co-Chairpersons for consideration and decision by the Commission.

Signed in Denpasar, Bali, on 28 September 2005:

Benjamin Mangkudilaga
Co-Chairperson

Dionisio da Costa Babo-Soares
Co-Chairperson

ATTACHMENT 13

Table 9.
CTF List of Personnel

NO	NAME	POSITION	PERIODE
1	Primanto Hendrasmoro	Co-Director	Februari 2007 – Mei 2008
2	Manuel Serrano	Co-Director	April 2006 – Mei 2008
3	Syahri Sakidin	Co-Director	Januari 2006 – April 2007
4	Juvêncio Martins	Co-Director	Agustus 2005 – April 2006
5	Kristio Wahyono	Co-Director	Agustus 2005 – Januari 2006
6	Behardi	Co-Finance	Agustus 2005 – Januari 2006
7	José Luis Lopes da Cruz	Co-Finance	Oktober 2005 – Januari 2007
8	Martin Suryo Madyantoro	Chief of Protocol	September 2005 – Februari 2007
9	Satrio Budi Santo	Co-Finance	Juli 2006 – Februari 2007
10	Priyanto Mawardi	Co-Finance	Februari 2007 – Mei 2008
11	Prof. Dr. David Cohen	Expert Advisor	Januari 2007 – Mei 2008
12	Prof. Dr. Robert Evans & Prof. Dr. Alice Evans	Expert Advisor	November 2006 – Januari 2008
13	Krishna Kesuma Utama Hannan	Professional Staff	Februari 2007 – Januari 2008
14	Alipio Baltazar	Professional Staff	November 2005 – Januari 2008
15	Chalief Akbar Tjakraningrat	Professional Staff	November 2005 – Agustus 2007
16	Lasro Simbolon	Professional Staff	Juli 2006 – Februar1 2008
17	Hugo Fernandes	Professional Staff	Agustus 2005 – Mei 2008
18	M. Chandra Widya Yudha	Professional Staff	Februari 2007 – Mei 2008
19	Dodo Sudradjat	Professional Staff	Februari 2007 – Mei 2008
20	Vitto Rafael Tahar	Professional Staff	Februari 2007 – April 2008
21	Dina Zenitha	Professional Staff	November 2005 – Januari 2008
22	Budhi Masthuri	Professional Staff	Januari 2007 – Februari 2008
23	RM Surachman	Professional Staff	Januar1 2007 – Januari 2008
24	Domingos Monteiro	Professional Staff	Desember 2005 – Februari 2008
25	Mateus Gonçalves	Professional Staff	November 2005 – Februari 2008
26	Expedito Belo	Professional Staff	November 2005 – Februari 2008
27	Manuel F. Exposto	Professional Staff	Juni 2006 – Februari 2008
28	Hélio Freitas da Silva	Professional Staff	Januari 2007 – Januari 2008
29	Guilherme da Silva	Professional Staff	Januari 2007 – Mei 2008

30	Diogo Neto Fraga	Professional Staff	Januari 2007 – Mei 2008
31	Alexandrino Xavier Araújo	Professional Staff	Januari 2007 – Januari 2008
32	Arnaldo B. dos Reis Araújo	Professional Staff	November 2007 – Februari 2008
33	Mulyadi	Professional Staff	Agustus 2005 – Agustus 2006
34	Satryo Bramono Brotodiningrat	Professional Staff	Agustus 2005 – Agustus 2007
35	Desi Pratiwi	Professional Staff	Juli 2006 – Mei 2008
36	[redacted]	Translator/ Interpreter	January 2007 – Mei 2008
37	Nugroho Katjasungkana	Writer	August 2007 – Mei 2008
38	Akbar Meirio	Writer	September 2007 – Mei 2008
39	Christian Pangaribuan	Chief of Protocol	Februari 2007 – Mei 2008
40	Agus Rino	Protocol Staff	Agustus 2005 – Mei 2008
41	Ben Sambodo	Protocol Staff	November 2005 – Mei 2008
42	Gusti Agung Surabrata Agung	Finance Staff	Agustus 2005 – Mei 2008
43	Kadek Nila Kencana Dewi	Secretary	Maret 2006 – Mei 2008
44	Luciana Ferrero	Translation advisor	Desember 2007 – Februari 2008
45	Leigh-Ashley Lipscomb	Assistant to David Cohen, Expert Advisor	Agustus 2005 – April 2006 Januari – April 2008
46	Dr. C.P.F. Luhulima	Proof Reader	Februari – Maret 2008
47	Paula Pinto	Portuguese Translation Expert	Februari –April 2008
48	Fernando Brum	Portuguese Translation Proofreader	April –Mei 2008
49	Lalu Haerul Anwar	Chief of Security	Mei 2006 – Mei 2008
50	Francisco da Costa	Security	Agustus 2005 – Mei 2008
51	Robert Reymond Laode	Security	Agustus 2005 – Mei 2008
52	I Gusti Ngurah Sukrasana	Security	Agustus 2006 – Mei 2008
53	I Gusti Agung Bagus Setiawan	Driver	Agustus 2005 – Mei 2008
54	I Komang Rai N. Tirta	Driver	Agustus 2005 – Mei 2008
55	Yuliarta	Document Reproduction Specialist	Agustus 2005 – Mei 2008
56	Putu Mariani	Cleaning Service Staff	Agustus 2005 – Mei 2008
57	I Nyoman Renes	Gardener	Agustus 2005 – Mei 2008
58	Mulyadi	Protocol Staff	Agustus 2005 – Februari 2006
59	Deni Panji S.	Finance Staff	Agustus 2005 – Januari 2006
60	I Putu Sudiantara	Cleaning Service Staff	Agustus 2005 – Februari 2006
61	Casri	House Keeper	Agustus 2005 – Februari 2006