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**TOO MUCH FRIENDSHIP,
TOO LITTLE TRUTH:**

Monitoring Report on the Commission
of Truth and Friendship in Indonesia
and Timor-Leste

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January 2008

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January 2008

ISBN 978-979-17686-1-0

Published by

International Center for Transitional Justice (ICTJ)

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The International Center for Transitional Justice (ICTJ) assists countries pursuing accountability for past mass atrocity or human rights abuse. The Center works in societies emerging from repressive rule or armed conflict, as well as in established democracies where historical injustices or systemic abuse remains unresolved.

In order to promote justice, peace, and reconciliation, government officials and nongovernmental advocates are likely to consider a variety of transitional justice approaches including both judicial and nonjudicial responses to human rights crimes. The ICTJ assists in the development of integrated, comprehensive, and localized approaches to transitional justice comprising five key elements: prosecuting perpetrators, documenting and acknowledging violations through nonjudicial means such as truth commissions, reforming abusive institutions, providing reparations to victims, and facilitating reconciliation processes.

The Center is committed to building local capacity and generally strengthening the emerging field of transitional justice, and works closely with organizations and experts around the world to do so. By working in the field through local languages, the ICTJ provides comparative information, legal and policy analysis, documentation, and strategic research to justice and truth-seeking institutions, nongovernmental organizations, governments, and others.

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In Timor-Leste the ICTJ continues to work with civil society and other stakeholders on the follow-up to CAVR's report and recommendations, focusing on issues of justice, accountability, and reparations. It also monitors the UN's serious crimes investigations of 1999 crimes, revamped by the Security Council in August 2006.

In Indonesia the Center partners with civil society groups and human rights institutions working toward accountability for past crimes. It has published reports on the ad hoc trials held in Jakarta, on the atrocities committed in East Timor in 1999, and an analysis of the state's obligation to provide reparations for victims of the mass killings and detentions in 1965.

About the Author

Megan Hirst is program associate with the ICTJ in Timor-Leste.

Front Cover :

A woman cries while clutching flowers at a commemoration of the Liquisa church massacre. She is a member of a victims group called "Those Without A Grave" that organizes this annual event.

Photo by Galuh Wandita (2001)

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TOO MUCH FRIENDSHIP, TOO LITTLE TRUTH

Monitoring Report on the Commission of Truth and Friendship in Indonesia and Timor-Leste

EXECUTIVE SUMMARY

This report is the first part of an analysis of the Commission for Truth and Friendship (CTF or Commission), which Indonesia and Timor-Leste created bilaterally in 2005.¹⁶⁰ It considers the Commission's establishment, its Terms of Reference (TOR), and its hearing process. The CTF has not yet delivered substantive transitional-justice benefits, and its public hearings have seriously compromised the goals of truth and reconciliation. Many of the Commission's failings to date have their origins in the motivation and methods of the CTF's creators, as well as fundamental weaknesses in the Commission's Terms of Reference. These preexisting problems were compounded by the poor design and inadequate preparation of the public hearing process.

The Objectives of the CTF's Creators

The factors motivating the CTF's creation have been a central cause of its subsequent difficulties. In the face of continuing demands for an international tribunal to examine the mass human rights violations committed in East Timor in 1999, the new nation's leaders prioritized good relations with its neighbor Indonesia over the pursuit of justice, a goal they viewed as futile and damaging to diplomatic relations. The result was a bilateral commission mandated to seek the "conclusive truth" but precluded from recommending further prosecutions, and with the express power to recommend amnesties while not prioritizing the interests of victims. This angered human rights groups from the outset, leading to poor relations between the CTF and civil society.

A Lack of Consultation and Input

Despite significant criticism of the initial CTF concept, the creators of this commission made minimal attempts to involve communities, victims, human rights groups, or the United Nations in the design of the Commission. Moreover, the parliaments of Timor-Leste and Indonesia neither debated nor ratified the TOR.

The weak consultation process solidified civil society's antipathy toward the CTF. This caused continuing problems for the Commission, as civil society refused the CTF's subsequent requests for assistance or participation and human rights groups undertook campaigns against the CTF.

The Flawed Terms of Reference

Some of the most noteworthy defects of the TOR were that they

- Focused on settling outstanding demands for justice by removing the threat to perpetrators rather than requiring them to account for their actions. The CTF was mandated to focus on institutional, not individual, responsibility. "Reconciliation" appears to have focused on measures to assist perpetrators, rather than victims; it included

¹⁶⁰ Funding for the ICTJ's program in Timor-Leste, including the production of this paper, has been generously provided by the Norwegian Ministry of Foreign Affairs and Irish Aid. Thanks are also due to Galuh Wandita and Patrick Burgess for their substantial input and editing. Manuela Leong Pereira and Ari Bassin provided further assistance. The author very much appreciates the cooperation and candor of a number of CTF commissioners and staff.

the power to recommend amnesties and take other measures that would assist in the “rehabilitation” of those “wrongly” accused of responsibility for human rights violations;

- Made no mention of victims;
- Provided insufficient powers to obtain evidence and information and failed to require the safeguarding of confidential information;
- Were generally vague and failed to provide details of how the Commission should deal with many significant issues. Most fundamentally, the CTF’s mandate and the activities it should undertake were left unclear. For example, the TOR did not mention whether the Commission might or should conduct public hearings;
- Unjustifiably limited the CTF’s mandate to the events of 1999, thus decontextualizing those events and limiting the Commission’s ability to deal effectively with underlying historical problems.

After the CTF was formed its commissioners attempted to rectify some of the TOR’s failings, particularly their ambiguity. However, the Commission’s attempts at internal regulation, while well intended, have proved inadequate to address the substantive flaws.

The Commission’s Hearing Process

Between February and October 2007 the CTF embarked on a series of six public hearing sessions (accompanied by a small number of closed hearings). Five sessions took place in Indonesia and one in Timor-Leste. Even in light of widespread pessimism about the CTF, these hearings were startlingly problematic. In particular:

- Accused perpetrators of crimes against humanity in East Timor were given a platform from which to publicly defend their actions and provide self-serving, highly questionable explanations that were not subjected to rigorous questioning by the commissioners. This resulted in a public presentation and media coverage of highly biased versions of events. Independent experts and witnesses were generally not included in the hearings, and the UN refused to participate in the process, intensifying the imbalance. Victims received far fewer opportunities to speak and felt at times that they were unprotected.
- The Commission further reduced its own credibility by appearing disorganized and divided.

There were several key weaknesses in the design and conduct of the hearings.

- Selection of witnesses unduly focused on accused persons whose willingness to testify truthfully was questionable;
- Inducements to truth telling were lacking for accused witnesses. Although an amnesty provision was included in the Commission’s TOR, the scant likelihood of prosecution in Indonesia, Timor-Leste, or an international venue removed much of the incentive for cooperation in return for amnesty. The weakness of commissioner questioning and the absence of any real guarantee of security for those who testified against the interests of the Indonesian establishment exacerbated this problem;
- The hearing procedures presented the Commission as composed of two adversarial sides, one Timorese and one Indonesian;
- The procedures failed to recognize the difference between witnesses who were victims and those who were accused of being perpetrators. They insufficiently supported the former and failed to adequately challenge the latter;
- Even minimal victim support or counseling was lacking;
- The great majority of witnesses provided evidence in the five hearings held in Indonesia, whereas the violations were committed predominantly in East Timor. Indonesian audiences lacked an understanding of the background of the events described, enhancing accused witnesses’ ability to provide self-serving accounts. In addition, allegations for overall responsibility for the violence rested with the Indonesian military, which remains

extremely powerful, and concerns about personal security limited the witnesses' willingness to testify truthfully in Indonesia;

- Hearings were not linked effectively to the CTF's other research. Commissioners responsible for questioning witnesses made little use of the wealth of available documentary evidence, which could have assisted in challenging the accounts of witnesses.

Given these flaws it is not surprising that the public hearings have contributed little to conclusive truth or bilateral friendship.

Prospects for the Future

Although damage has been done by the public hearing process, the CTF's work is not yet completed. Preliminary indications are that the Commission's final report will not replicate the alarming version of events many witnesses presented at the public hearings. Unfortunately, it will be difficult for the report to erase the effects of the hearings. To overcome the challenges of its creation and the TOR so that it will be remembered not just as a diplomatic charade but as a useful transitional-justice mechanism, the Commission must produce a report that can separate falsehoods from truth and propose strong and independent recommendations.

TOO MUCH FRIENDSHIP, TOO LITTLE TRUTH

Monitoring Report on the Commission of Truth and Friendship in Indonesia and Timor-Leste

- INTRODUCTION

The governments of Indonesia and Timor-Leste hailed the creation of a bilateral Commission for Truth and Friendship (CTF or Commission) by the two governments as a “new and unique approach” to confronting the past and a “testament to the democratic and political will of both nations.”¹⁶¹ However, human rights groups in the two countries have condemned the Commission.

This report examines the background, mandate, and public hearings of the CTF and analyzes whether they have contributed to an appropriate and constructive transitional-justice response to the conflict in East Timor.¹⁶²

Indonesia and the Conflict in East Timor

On April 25, 1974, the “Carnation Revolution” brought regime change to Portugal and opened the way for Portuguese decolonization, including in East Timor. Various political parties formed in Portuguese Timor, but disagreements among them eventually escalated into civil war with an estimated 1,500 to 3,000 casualties.¹⁶³ During this internal conflict Indonesian intelligence operations and incursions into Timorese territory increased, culminating in a full-scale invasion on December 7, 1975. From 1975 to 1999 a violent conflict between the Timorese resistance and Indonesian security forces (with their Timorese auxiliaries) devastated the local population. It is estimated that around 18,600 were killed or disappeared,¹⁶⁴ and at least a further 84,200 died of starvation or illness as a result of the conflict.¹⁶⁵ Other human rights violations, including arbitrary detention, torture, and sexual offenses, were widespread.

With the fall of the Soeharto regime in Indonesia in 1998 a new opportunity arose for political solution of the Timor conflict. During his temporary appointment following the 1998 crisis, Indonesian President Habibie decided to offer the East Timorese people a choice

¹⁶¹ Commission for Truth and Friendship (CTF) Terms of Reference (TOR), March 9, 2005, para. 10; and “Identical letters dated June 22, 2005, from the President and Prime Minister of Timor-Leste to the Secretary-General,” UN Doc. S/2005/459 (July 15, 2004), annexes I and II.

¹⁶² During the Indonesian occupation the name “East Timor” was used in English for the territory. Since independence it is “Timor-Leste,” and a preference is apparent for this terminology, even in English. Accordingly in this paper “Timor-Leste” refers to the now-independent nation, but “East Timor” refers to the territory as it existed under Portuguese and Indonesian control.

¹⁶³ *Chega! The Report of the Commission for Reception, Truth and Reconciliation in Timor Leste (CAVR)*, Part 7.2, “Unlawful Killings and Enforced Disappearances,” 8, para. 24.

¹⁶⁴ *Ibid*, Part 7.2, “Unlawful Killings and Enforced Disappearances,” 294, para. 887.

¹⁶⁵ *Ibid*, Part 7.3, “Forced Displacement and Famine,” 143, para. 502. The civilian death toll of the conflict from 1974 to 1999 is estimated to be at least 102,800 (out of a total population of less than 800,000). *Ibid*, Part 6, “The Profile of Human Rights Violations,” 3, para. 8.

between independence and special autonomy. In May 1999 agreements reached between Indonesia, the UN, and Portugal provided for the holding of a “popular consultation” to be administered by the UN Mission in East Timor (UNAMET), with security provided by Indonesia. On August 30, 1999, the people of East Timor voted overwhelmingly for independence. However, the periods before and after the vote were characterized by widespread and extreme violence. An estimated 400,000 people were displaced, around 70 percent of the territory’s buildings were destroyed, and between 1,200 and 1,500 people were killed.¹⁶⁶

Timor-Leste’s Transitional Justice Context

The circumstances of the CTF’s establishment are fundamentally linked to measures already undertaken in regard to the conflict in Timor-Leste.

UN Commissions of Inquiry

The first responses to the violence of 1999 in East Timor were reports by two UN inquiries. An official mission of three UN special rapporteurs and the UN International Commission of Inquiry concluded that the Indonesian military (TNI) was involved in organizing militia violence in East Timor in 1999 and was ultimately responsible for the human right violations and crimes that occurred. Both bodies recommended that failing a credible judicial process in Indonesia, an international tribunal should be established.¹⁶⁷

Investigations and Trials in Indonesia

In late 1999 Indonesia’s National Commission for Human Rights established a special Commission of Investigation (KPP-HAM) to gather information about human rights violations committed in East Timor.¹⁶⁸ KPP-HAM’s report implicated Indonesian security forces and government officials in the systematic violations, publicly named 33 persons suspected of bearing individual responsibility, and recommended the establishment of a special Indonesian human rights court to try crimes committed in East Timor.¹⁶⁹

¹⁶⁶ Geoffrey Robinson, *East Timor 1999: Crimes Against Humanity*, Dili and Jakarta: HAK Association and ELSAM (2006), 32–35. Although Robinson’s report was submitted in 2003, it was revised and eventually published in 2006. An earlier version of the report appeared as an annex to *Chegal!*, the final report of the CAVR.

¹⁶⁷ “Situation of Human Rights in East Timor,” UN Doc. A/54/660 (December 10, 1999), paras. 72, 74; “Report of the International Commission of Inquiry on East Timor to the Secretary-General,” UN Doc. A/54/726, S/2000/59 (January 31, 2000), paras. 140, 152–153.

¹⁶⁸ The body was created by the National Commission for Human Rights’ Resolution No. 770/TUA/IX/99 of September 22, 1999, subsequently amended by Resolution No. 797/TUA/X/99 of October 22, 1999. The Indonesian abbreviation “KPP-HAM” is used to designate ad hoc investigatory commissions established by the National Commission for Human Rights. This Commission was “KPP-HAM East Timor” but for brevity will be referred to in this paper as KPP-HAM.

¹⁶⁹ *Report of the Indonesian Commission of Investigation into Human Rights Violations*, paras. 177, 191–193, 198, <http://www.jsmp.minihub.org/Resources/2000/KPP%20Ham%20%28e%29.htm> (partial English version). A fuller list submitted to the attorney general contained more than 100 names. David Cohen, “Intended to Fail: The Trials Before the Ad Hoc Human Rights Court in Jakarta,” International Center for Transitional Justice (ICTJ) Occasional Paper Series (August 2003), 7.

In response to KPP-HAM's report and international pressure an Ad Hoc Human Rights Court was established in 2001 in Jakarta to try crimes committed in East Timor.¹⁷⁰ The attorney general's office undertook investigations and issued indictments against 18 individuals. Twelve trials took place between March 2002 and August 2003. Although six defendants were found guilty at first instance, all but one subsequently had their convictions overturned on appeal. The prosecutions and trials have been widely condemned as fundamentally flawed.¹⁷¹ Aspects criticized included the Court's jurisdiction, whose geographical and temporal limitations meant that it covered only a small portion of the 1999 conflict; the inadequacy of witness protection; weakness of judicial institutions, including at appellate levels; and—most significantly—a complete lack of will on the part of the attorney general's office, including failure to investigate adequately or use available evidence in the trials.¹⁷²

The Serious Crimes Process in East Timor

In 2000 the UN established Special Panels for Serious Crimes (Special Panels) within the Dili District Court, with jurisdiction to try those accused of “serious crimes” (defined as genocide, war crimes, crimes against humanity, murder, sexual offenses, and torture).¹⁷³ Each panel comprised two international judges and one Timorese judge. The United Nations Transitional Administration in East Timor (UNTAET) also established and staffed a Serious Crimes Unit (SCU) in East Timor's prosecution service to prosecute such crimes. The SCU operated until

¹⁷⁰ Presidential Decree 53 of 2001, April 23, 2001; and Presidential Decree 96 of 2001, August 1, 2001. The establishment of special human rights courts was enabled by Law 39 of 1999 Concerning Human Rights (September 23, 1999) and Law 26 of 2000, Concerning Human Rights Courts (November 6, 2000).

¹⁷¹ “Report to the Secretary-General of the Commission of Experts to Review the Prosecution of Serious Violations of Human Rights in Timor-Leste (then East Timor) in 1999,” UN Doc. S/2005/458 (May 26, 2005) annex II, paras. 152–339; Human Rights Watch (HRW), “Justice Denied for East Timor,” December 20, 2002, <http://www.hrw.org/background/asia/timor/etimor1202bg.htm>; Open Society Initiative (OSI) and Coalition for International Justice (CIJ), “Unfulfilled Promises: Achieving Justice for Crimes Against Humanity in East Timor,” November 2004, http://www.justiceinitiative.org/db/resource2/fs/?file_id=15004, 19–33; Leonie von Braun and Monica Schlicher, “Rethinking Justice for East Timor: Position Paper on the Reform of the International Justice Process in East Timor and Indonesia,” Watch Indonesia!, February 2005, http://home.snafu.de/watchin/Rethinking_Justice.htm.

¹⁷² For details of these flaws and a wider critique of the ad hoc trials see Cohen, “Intended to Fail”; Suzannah Linton, “Unraveling the First Three Trials at Indonesia's Ad Hoc Court for Human Rights Violations in East Timor,” *Leiden Journal of International Law* 17 (2004), 303; Bernd Häusler, “Justice for the Victims: A Legal Opinion on the Indonesian human rights trials concerning the crimes committed in East Timor in 1999,” Watch Indonesia! (March 2004), http://home.snafu.de/watchin/Justice_for_the_Victims.pdf; and ELSAM, “The failure of Leipzig repeated in Jakarta: Final Assessment on the Human Rights Ad-Hoc Tribunal for East Timor” (September 9, 2003), <http://socrates.berkeley.edu/~warcrime/ET-ELSAM-Reports/ELSAM-Final-Assessment.pdf>.

¹⁷³ United Nations Transitional Administration in East Timor (UNTAET), Regulation 2000/15, On the Establishment of Panels with Exclusive Jurisdiction over Serious Criminal Offences (June 6, 2000), secs. 1 and 2.

May 2005, when the Security Council discontinued its work, reflecting a lack of political will within the Timorese government and the UN itself.¹⁷⁴

By the conclusion of its work in May 2005 the SCU had indicted 391 persons, and the serious crimes process had resulted in 84 convictions and three acquittals.¹⁷⁵ However, the work of the SCU and special panels has received strenuous criticism. Throughout most of the SCU's work a coherent prosecutorial strategy was lacking. The special panels lacked basic facilities such as translation and transcription. Its jurisprudence was weak and in some cases deeply flawed. Adequate defense representation was lacking for much of the special panels' process. Outreach to the community, including victims and witnesses, was weak. Finally, the vast majority of those indicted, including all the most-senior suspects, were in Indonesia. Thus, while a number of relatively low-level perpetrators were tried in Timor-Leste, those most responsible remained outside the special panels' jurisdiction.¹⁷⁶

The Commission for Reception, Truth and Reconciliation in East Timor

In 2001, following a substantial period of consultation and planning, the UN created the Commission for Reception, Truth, and Reconciliation¹⁷⁷ (usually referred by its Portuguese acronym, CAVR). The CAVR's mandate broadly included

- *Truth seeking*: investigating and reporting human rights violations (and their requisite causes) committed between April 25, 1975, and October 25, 1999.
- *Reconciliation*: conducting community reconciliation procedures for the resolution of nonserious offences;¹⁷⁸
- *Rehabilitation of victims*: supporting victims who participated in CAVR processes;
- *Recommendations*: making recommendations based on its findings, including for prosecutions and reparations.

The CAVR functioned from early 2002 until October 2005. During its work the Commission collected nearly 8,000 statements; conducted more than 1,000 interviews; held 52 subdistrict victims' hearings and eight national public hearings; carried out data collection and statistical analysis to establish conflict-related mortality; convened 216 Community Reconciliation

¹⁷⁴ See Megan Hirst and Howard Varney, "Justice Abandoned? An Assessment of the Serious Crimes Process in East Timor," ICTJ Occasional Paper Series (June 2005), 25–26, 28.

¹⁷⁵ Carl DeFaria, "ET's Quest for Justice—The Serious Crimes File" (paper presented at UNMISSET International Symposium on UN Peacekeeping Operations in Post-conflict Timor-Leste: Accomplishments and Lessons Learned, April 28, 2005, 6); and Judge Phillip Rapoza, "Statistics of the Special Panels for Serious Crimes," April 30, 2005, document provided to the author by Judge Rapoza and on file with the ICTJ.

¹⁷⁶ For detailed accounts of the serious crimes process see Caitlin Reiger and Marieke Wierda, "The Serious Crimes Process in Timor-Leste: In Retrospect," ICTJ Prosecutions Case Studies Series (March 2006); and David Cohen, "Indifference and Accountability: The United Nations and the Politics of International Justice in East Timor," East-West Center Special Reports, No. 9 (June 2006).

¹⁷⁷ UNTAET Regulation 2001/10, On the Establishment of a Commission for Reception, Truth, and Reconciliation in East Timor, July 13, 2001 (later amended by Timor-Leste Parliamentary Laws 17/2003, 13/2004 and 11/2005). Upon official independence in 2002 the CAVR's role was included in the Timorese Constitution (section 162).

¹⁷⁸ Serious crimes were excluded from the community reconciliation procedures. UNTAET Regulation 2001/10, secs. 22.2, 27.5, 27.6.

Procedure hearings (which dealt with 1,379 perpetrators); provided urgent reparations to vulnerable victims; and produced a report of more than 2,000 pages including detailed recommendations.¹⁷⁹ The CAVR made findings on accountability, including substantial findings of responsibility against Indonesia and its security forces.¹⁸⁰

The CAVR recommended, among other things, reestablishment and improvement of the serious crimes process and establishment of an international tribunal should justice fail to be delivered by other means.¹⁸¹

Other Commissioned Reports

Two reports were commissioned on the violence of 1999: one by James Dunn for UNTAET prosecutors and one by Geoffrey Robinson for the UN High Commissioner for Human Rights.¹⁸² Both found that the violence was the result of deliberate TNI policy and recommended the establishment of an international tribunal.¹⁸³

The UN Commission of Experts

The UN secretary-general established a Commission of Experts (COE) in February 2005 in response to pressure following the failure of the Ad Hoc Human Rights Court trials in Jakarta.¹⁸⁴ It was to review the work of the Ad Hoc Court in Jakarta and the Special Panels in Dili; recommend measures for ensuring accountability, reconciliation, and justice for victims; and consider ways its analysis could assist the CTF.¹⁸⁵ The COE submitted its report May 26, 2005. It reiterated the fundamental failings in the Ad Hoc Court proceedings in Indonesia,

¹⁷⁹ *Chegal*, Part 1, “Introduction,” 26–34, paras. 82–88, 90–91, 95–106, 118–129 and Part 10, “*Acolhimento* and Victim Support,” 26, 38–44, paras. 120, 168–188.

¹⁸⁰ *Ibid*, Part 8, “Responsibility and Accountability,” paras. 5–8.

¹⁸¹ *Ibid*, Part 11, “Recommendations,” 24–26, recommendations 7.1.1–7.1.12, 7.2.1.

¹⁸² James Dunn, “Crimes against Humanity in East Timor, January to October 1999: Their Nature and Causes” (February 14, 2001), <http://www.etan.org/etanpdf/pdf1/dunn.pdf>; and Robinson, *East Timor 1999*.

¹⁸³ *Ibid*, 6, 228; and Dunn, “Crimes against Humanity,” 3, recommendation 3 and 36–40, paras. 41–46. Note that Dunn qualified this recommendation as applicable if those most responsible in Indonesia were not brought to justice by other means.

¹⁸⁴ See for example HRW, “Justice Denied for East Timor”; OSI, “Unfulfilled Promises”; Amnesty International and Judicial System Monitoring Program (JSMP), “Justice for Timor-Leste: The Way Forward” (April 14, 2004), <http://web.amnesty.org/library/index/engasa210062004>; JSMP press release, “East Timorese Civil Society Demand the Creation of a Commission of Experts” (July 19, 2004), http://www.jsmp.minihub.org/News/2004/July/19jul04_jsmp_easttimor_eng.htm; “Letter to UN Secretary-General calling for the establishment of a Commission of Experts to review the justice processes in Indonesia and Timor-Leste,” June 24, 2004, <http://www.ictj.org/en/news/press/release/284.html> (signed by the ICTJ, HRW, Amnesty International, Open Society Justice Initiative, CIJ, and International Federation for East Timor).

¹⁸⁵ “Summary of the report to the Secretary-General of the Commission of Experts to Review the Prosecution of Serious Violations of Human Rights in Timor-Leste (then East Timor) in 1999,” UN Doc. S/2005/458 (July 15, 2005), annex I, para. 2. The Commission of Experts (COE) was established and carried out its work in early 2005, when the CTF’s TOR had already been signed but the Commission had not yet begun its work.

made more-muted criticisms of the Serious Crimes Process in Timor-Leste, and called for the establishment of an international tribunal if genuine domestic remedies were not implemented within six months.¹⁸⁶

The Security Council requested that the secretary-general develop “a practically feasible approach” that considered the COE report and “the views expressed by Indonesia and Timor-Leste.”¹⁸⁷ The resulting report from the secretary-general called only for further efforts to develop the two states’ judicial systems, the recommencement of SCU’s investigations (but not prosecutions) in Timor-Leste, and the establishment of a solidarity fund to be used for justice and community restoration programs in Timor-Leste.¹⁸⁸ The Security Council endorsed these suggestions when it created the current United Nations Integrated Mission in Timor-Leste (UNMIT), which included a team to investigate serious crimes.¹⁸⁹

The Commission for Truth and Friendship

In December 2004 the presidents of Indonesia and Timor-Leste agreed to establish the CTF to “establish the conclusive truth” regarding the events of 1999 in Timor-Leste. Funded by Timor-Leste and Indonesia and composed of commissioners from the two countries, the Commission was to review the documents of the four most-significant previous transitional-justice institutions, reveal the truth regarding reported human rights violations in East Timor in 1999, and produce a final report of its findings and recommendations.¹⁹⁰

The Commission began its work in August 2005 and was to operate for one year. Following two extensions of its mandate it is now expected to submit its report in February or March 2008. The CTF’s work is not yet finished, but its most public activity—a public hearing process—ended October 24, 2007.

The Purpose of this Report

It is timely to review CTF’s performance to date while awaiting its forthcoming report. Although the Commission has been the subject of considerable public comment and criticism, a detailed analysis of its work has not yet been undertaken. This report considers two of the most controversial aspects of the CTF: its creation and mandate, and its public hearings. We hope this report will provide some insight into the CTF’s work so far and provide the Commission with recommendations that will help it complete its mandate. By identifying and analyzing some of the weaknesses of the Commission’s work to date, we also hope to affect debate about the creation of similar commissions in the future.¹⁹¹

¹⁸⁶ More precisely, the Commission made recommendations for measures to be taken domestically in Indonesia and within the serious crimes framework in East Timor; if these measures were not implemented within a short time (six months in the case of Indonesia), an international tribunal should be established. See “Report to the Secretary-General of the Commission of Experts,” paras. 503, 525.

¹⁸⁷ “Letter dated 24 June 2005 from the Secretary-General addressed to the President of the Security Council,” UN Doc. S/2005/458 (July 15, 2005).

¹⁸⁸ “Report of the Secretary-General on Justice and Reconciliation for Timor-Leste,” UN Doc. S/2006/580 (July 26, 2006), para. 39.

¹⁸⁹ Security Council Resolution 1704 (August 25, 2006), paras. 4(i), 11.

¹⁹⁰ These are KPP-HAM, the CAVR, the ad hoc trials, and the serious crimes process.

¹⁹¹ Discussion is already under way in Indonesia regarding a mechanism to replace a national Truth and Reconciliation Commission. The initial law that attempted to establish such a commission was struck down by the Indonesian Constitutional Court in December 2006 as unconstitutional (Case No. 006/ PUU-IV/2006).

The information in this report is based on interviews with those involved in the CTF's creation and work, numerous documents relating to the Commission, and the ICTJ's monitoring of all six CTF public hearings.

An update of this report is planned for April 2008, following release of the CTF's final report.

- THE ESTABLISHMENT OF THE COMMISSION

The Process of Establishing the CTF

The Idea for an International Panel

By 2004 Timorese leaders had begun to view international and domestic pressure for accountability regarding the 1999 violations as a threat to bilateral relations with Indonesia, leading to an increasingly "reconciliatory" approach. At the same time the failure of the ad hoc trials in Jakarta initially stirred feelings of injustice in Timor-Leste.¹⁹² However, when the UN-sponsored serious crimes process in Dili led to issuing of an indictment and an arrest warrant for Indonesian General Wiranto (former head of the armed forces) on charges of crimes against humanity, Timorese leaders publicly distanced themselves from the process.¹⁹³

Senior Timorese officials believed that calls for an international tribunal were futile and impractical.¹⁹⁴ In the face of Indonesian opposition, the establishment of such a tribunal would require support from all permanent members of the UN Security Council, an extremely unlikely prospect. Faced with this reality and desiring friendly relations and economic cooperation with Indonesia, the Timorese leaders chose not to support the establishment of an international tribunal.¹⁹⁵ This left both Timor-Leste and Indonesia in opposition to calls for such a tribunal and subject to increasing criticism for failing to address continuing impunity.

In May 2004 Timorese President Xanana Gusmão met with Indonesian President Megawati Soekarnoputri and later with General Wiranto. Pictures of Gusmão embracing Wiranto (at the time indicted by, but remaining outside the jurisdiction of, Timor's courts), stunned the Timorese community and drew protests from civil society.¹⁹⁶ In his meeting with President Megawati, Gusmão made preliminary plans for a bilateral and conciliatory approach, including the creation of an international truth and reconciliation commission.¹⁹⁷

¹⁹² At one point it was reported that Timorese Prime Minister Mari Alkatiri had called for an international tribunal to be established by the UN. Fearing damage to the relationship with Indonesia, senior government officials hastily refuted such reports. See "Jakarta 'Perplexed' By E Timor PM's Call for Intl Tribunal," *Joyo Indonesian News*, June 10, 2003; and "RI, East Timor to discuss residual issues," *Jakarta Post*, June 10, 2003.

¹⁹³ See Hirst and Varney, 10–11, 25–26.

¹⁹⁴ José Ramos-Horta, interview with the author, June 7, 2007.

¹⁹⁵ See for example "East Timor Says No to UN Tribunal," *Laksamana.Net*, August 9, 2004, <http://www.globalpolicy.org/intljustice/tribunals/timor/2004/0809no.htm>.

¹⁹⁶ "Indonesian Presidential Candidate Holds Talks with East Timor Leader," *Associated Press*, May 29, 2004; "Xanana and Wiranto Meet Reaped Condemnations in Timor Leste" *Tempo*, June 8–14, 2004.

¹⁹⁷ "Kay Rala Xanana Gusmão: It's Easy to Shout 'Arrest Wiranto!'" *Tempo*, June 15–21, 2004.

In September 2004, following discussions led by Timorese Foreign Minister José Ramos-Horta, a proposal for an “International Truth and Reconciliation Panel” was made public. The panel was to be composed of eminent persons, not necessarily from Indonesia or Timor-Leste but preferably from Asia. An early concept paper for the panel outlined its aim “to establish the truth of the 1999 events in Timor-Leste, identify those responsible, naming names, and without demanding a trial.” The panel would then submit its conclusions in a report to the UN secretary-general to be considered by the Security Council.¹⁹⁸

The Shift to Bilateralism

Eventually, through negotiations with Indonesia, the concept evolved from an international panel to a bilateral commission to be called the Commission of Truth and Friendship. Rather than being established by UN resolution, as originally intended, the Commission would be created by bilateral agreement.¹⁹⁹ Initial negotiations resulted in a joint declaration issued December 14, 2004, in Bali and signed by the president of Indonesia and the president and prime minister of Timor-Leste. TOR for the Commission were finalized and made public March 9, 2005.

The CTF shared some characteristics, such as a focus on 1999 and the stipulation that it would not lead to prosecutions, with the panel originally proposed by Ramos-Horta. However, in important respects the new body was substantially different from the original panel concept.²⁰⁰

- Rather than being composed of international experts, it would include only commissioners from Timor-Leste and Indonesia;
- The TOR included references to recommendations for amnesty and the rehabilitation of wrongly accused persons;
- The Commission would not be required to determine individual responsibility or name names;
- The Commission would not have enforceable powers to compel attendance of witnesses or production of documents;
- There was no requirement for gender balance among commissioners;
- The Commission’s TOR did not require that it be independent.

Motivation for the Establishment of the CTF

Opponents of the CTF have claimed that its creation was designed to pre-empt the COE’s anticipated recommendation of the establishment of an international tribunal²⁰¹ (which the COE did eventually make). This allegation was reinforced by statements from the two governments claiming that the COE was unnecessary in the light of the CTF’s creation. After learning that UN plans to establish a COE would go ahead, the foreign ministers of Indonesia and Timor-Leste issued a joint press release stating, “In the light of the initiative of the Heads

¹⁹⁸ José Ramos-Horta, “An International Truth and Reconciliation Initiative for Timor-Leste and Indonesia” (September 2004), 1. [unpublished paper on file with the ICTJ]

¹⁹⁹ Janelle Saffin (former adviser to José Ramos-Horta), telephone interview with the author, August 7, 2007.

²⁰⁰ Information about the proposed international panel from Ramos-Horta, as well as other Ministry of Foreign Affairs documents.

²⁰¹ See for example comments by John Miller of the East Timor Action Network (ETAN) in “Joint Commission Unlikely to Further Truth or Friendship Between Timor and Indonesia,” Newswire Services, February 22, 2007.

of States of Indonesia and Timor-Leste [to establish the CTF], the said initiative of the UN Secretary-General [to appoint a COE] appears to be redundant.”²⁰²

The Indonesian foreign minister subsequently made similar statements around the time of the COE’s establishment.²⁰³

Whether the motivation can be specifically tied to the COE or not, it is clear that the CTF’s purpose was primarily to foster good bilateral relations. The joint declaration of December 14 stated as much, explaining that residual issues were being resolved to “maintain and further promote bilateral relations.” Although most leaders in Timor have been careful not to say that improved diplomatic relations with Indonesia were the *raison d’être* of the CTF, a few have done so. The Timorese co-chair of the Commission, Dionísio Babo Soares, explained the reasons for the CTF’s creation as follows.

- Although the UN has pursued efforts to address the Timor Leste 1999 crisis adequately, many in Timor Leste are frustrated with the world body for not seriously resolving the problem of 1999 by opting instead to allow Indonesia to establish its own ad hoc tribunal to try the perpetrators of 1999 in the first place, knowing well beforehand that any trial in Indonesia would be doomed to failure;
- The relations between Indonesia and Timor Leste are at a high point and improving by the day;
- Issues of interest seem coincidentally to match well (Timor Leste is interested in joining ASEAN and needs Indonesian help, whereas Indonesia needs Timor Leste to improve its image abroad and also to approach the USA to lift its ban on selling technical stocks of armaments to Indonesia, etc.);
- Indonesia is becoming very important to Timor Leste in political, economic, and development terms;
- Timor-Leste wants to concentrate on developing its country and forget about the past conflict with Indonesia;
- The recent crisis in Timor Leste provides little room for the country to deal with broad issues of an international nature that may be counter-productive to the international process of nation building.²⁰⁴

A strong diplomatic relationship with Indonesia is undoubtedly a critical factor in the stability of this new nation. However, it does not necessarily follow that a truth commission is an appropriate or well-adapted means to achieve this goal.

²⁰² “Joint Press Release of Foreign Minister of the Republic of Indonesia and the Democratic Republic of Timor Leste,” December 22, 2004, <http://www.kbri-tokyo.go.id/menue/information/press/joint-press-release-ri-timorleste.htm>.

²⁰³ “Main Point of the Press Briefing by the Spokespersons of the Department of Foreign Affairs Dr. Marty Natalegawa and Yuri O. Thamrin,” February 17, 2005, http://www.deplu.go.id/?hotnews_id=430 (select “English”); and Indonesian Department of Foreign Affairs, press release, “Indonesia Remains Consistent that COE is Unnecessary,” February 21, 2005, http://www.deplu.go.id/?press_id=50 (select “English”).

²⁰⁴ Dionísio Babo Soares, “East Timor: Reconciliation and Reconstruction” *East Timor Law Journal* (undated), <http://www.easttimorlawjournal.org/ARTICLES/2007etlj3easttimorreconciliationand reconstruction dionisiosoares.html>.

Lack of Genuine Consultation and Failure to Respond to Criticism

From the time it was first publicly discussed, the CTF concept faced strong criticism from civil society in Timor-Leste, Indonesia, and internationally. The lack of a response from the Commission's creators to this criticism led to a breakdown in the CTF's relationship with civil society. This has substantially undermined the CTF's credibility and effectiveness.

Despite occasional public mentions of a possible international truth-seeking mechanism during 2004, no organized consultation was undertaken before the signing of the joint declaration on December 14, 2004. Between that time and the signing of the TOR, Timorese human rights groups and the Catholic Church strongly opposed the creation of the CTF.²⁰⁵ The UN Transition Working Group on the Future of the Serious Crimes Process also expressed concerns such as, "It will be important that any kind of commission be viewed as independent and not designed simply to achieve predetermined political outcomes."²⁰⁶ Yet despite public criticism and recommendations from nongovernmental organizations (NGOs) and the COE's for amendments to the TOR, no changes were made to the TOR after they became public. More disturbingly, the Commission's creators made no attempt to assess the views of victims.²⁰⁷

The failure of the CTF's creators to respond to input during this consultation period has ultimately been to the detriment of the Commission itself. International standards requiring that a truth commissions' creation be "based on broad public consultations in which the views of victims and survivors are especially sought" exist because undertaking such consultation leads to more effective outcomes.²⁰⁸ Although meetings took place with civil society groups and community leaders in Timor-Leste between December 2004 and March 2005, it appears

²⁰⁵ Jill Jolliffe, "Timorese Church Opposes Indonesian Deal on War Crimes," Agence France Presse, February 7, 2005; "'Truth Commission Framework Ready by Month's End'—FM Ramos Horta," *Lusa*, February 15, 2005. See also the Catholic Church of East Timor, "Position on Justice for Crimes Against Humanity: Presented to the Commission of Experts Appointed by the Secretary-General" (April 9, 2005), annex to "Report to the Secretary-General of the Commission of Experts."

²⁰⁶ UNMISSET, Reports of the Transition Working Groups, September 2004–January 2005, 69.

²⁰⁷ See for example joint statement from Indonesian NGOs on the Truth and Friendship Commission, "Getting away from the responsibility to prosecute!" December 27, 2004, <http://etan.org/et2004/december/26-31/30ingos.htm>; ANTI, "Open Letter to the Timorese President, Parliament, Prime Minister and Foreign Minister," February 11, 2005; also Hak Association, "Komentar Tentang Komisi Kebenaran dan Persahabatan: 'Menegakan Kebenaran atau melestarikan Impunity,'" March 28, 2005; and "Report to the Secretary-General of the Commission of Experts," para. 341; one exception was the Association of Ex-Political Prisoners, which the CTF's creators claimed as a supporter of the initiative. See for example "Identical Letters dated 22 June 2005 from the President and Prime Minister of Timor-Leste to the Secretary-General." However, it should be noted that a key figure in the Association of Ex-Political Prisoners would later be named a CTF commissioner.

²⁰⁸ Diane Orentlicher, "Updated Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity," UN Doc. E/CN.4/2005/102/Add.1 (February 8, 2005), principle 6; and Diane Orentlicher, "Report of the Independent Expert to Update the Set of Principles to Combat Impunity," UN Doc. E/CN.4/2005/102 (February 18, 2005), para. 7.

that they were not motivated by a desire to take into account the views of other relevant parties.²⁰⁹ The failure to listen and to consider the views expressed by civil society and victims during the preparation phase of the CTF caused these groups to feel alienated from and suspicious of the Commission. The failure to address issues raised during the consultations has contributed to the Commission's inability to secure the cooperation or support of key local and international agencies, such as the UN and human rights NGOs, as well as individuals it has approached for advice, testimony, or other input.

Selection of the Commissioners

Once the TOR document was signed the selection of commissioners began. In the creation of truth and reconciliation commissions, this phase is perhaps the most significant in affecting the nature and quality of a commission's work.²¹⁰

The CTF's TOR provided that the commissioners would be selected equally from Indonesia and Timor-Leste, would be chosen "among persons of high standing and competence drawn mainly from legal and human rights fields, academia, religious and community leaders," and "Following consultations, 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 Republic of Timor-Leste shall jointly appoint the ten members of the Commission."²¹¹

Although it was clear from this provision that the commissioners would be jointly appointed, the TOR did not discuss the procedure for their *selection* in detail. In the end Indonesia and Timor-Leste each took charge of selecting its own commissioners. Neither side objected to the other's choices.²¹²

Significantly, despite a requirement in Article 16(a) of the TOR for consultations, the selection procedure took place behind closed doors and without civil society input. This closed selection was at odds with the international trend granting greater participation by civil society in the selection of truth commission members.²¹³ Commonly cited examples are the truth commissions of South Africa and Sierra Leone, whose commissioners were chosen following public nominations and short-listing conducted by representative panels.²¹⁴

²⁰⁹ Meetings took place in late December 2004 with the CAVR and with the UN and international NGOs in New York. In early 2005 discussions took place with political party leaders, church leaders, and some Timorese human rights groups. The draft TOR were presented in Dili at a public meeting and at a special parliamentary session in early March.

²¹⁰ United Nations Office of the High Commissioner for Human Rights (UN OHCHR), *Rule-of-Law Tools for Post-Conflict States: Truth Commissions* (2006), 13; Mark Freeman and Priscilla Hayner, "Truth Telling," in David Bloomfield, Teresa Barnes and Luc Huyse, eds., *Reconciliation After Violent Conflict: A Handbook* (Stockholm: International Institute for Democracy and Electoral Assistance, 2003), 129.

²¹¹ TOR, art. 16.

²¹² José Ramos-Horta, interview with the author, June 7, 2007; Janelle Saffin, telephone interview with the author, August 10, 2007.

²¹³ Priscilla B. Hayner, *Unspeakable Truths: Confronting State Terror and Atrocity* (New York: Routledge, 2001), 216–17; Nahla Valji, "Ghana's National Reconciliation Commission: A Comparative Assessment," ICTJ Occasional Paper Series (September 2006), 6–7.

²¹⁴ Freeman and Hayner, "Truth Telling," 129–30; and Hayner, *Unspeakable Truths*, 216–17.

However, as good a model could have been found closer to home: the selection of the CAVR's national commissioners took place through an open process involving a representative selection panel and nationwide consultation. The failure to include some form of public consultation in the selection of the CTF commissioners confirmed and strengthened civil society's criticisms of the CTF.

The Failure to Legislate

Despite initial plans for the Commission to be established formally by legislation in both Timor-Leste and Indonesia, this never occurred.²¹⁵ Indeed, neither parliament ratified the TOR. It is likely that this put the CTF in violation of both countries' constitutions. The Constitution of Timor-Leste requires that international agreements be ratified or approved and then published in the official gazette.²¹⁶ The Indonesian Constitution requires that the House of Representatives approve international agreements that require legislative action or "that entail broad and fundamental consequences for the existence of the people because of links to the state's financial burden."²¹⁷

Even leaving aside the legal problems raised by the likelihood the CTF does not exist according to law, the failure to involve the two countries' parliaments in the Commission's creation has implications. It raises the question of whether an institution may usefully contribute to the development of democracy and the rule of law when its own creation flouts basic constitutional principles. More fundamentally, even where constitutional requirements do not demand it, parliamentary involvement is advisable in the creation of truth commissions. Parliamentary enactment is an increasingly common method of truth commission creation and can be a valuable source of legitimacy for commissions.²¹⁸ In this case, parliamentary debates, particularly at an early stage, might have addressed some of the weaknesses in the Commission's mandate, and by contributing to transparency and accountability they could have added credibility and legitimacy to the process.

The aspects of the CTF's creation highlighted above—particularly the limited and perfunctory consultation during the Commission's design—significantly contributed to the TOR's flaws.

Mandate: The TOR and Their Interpretation by the CTF

The TOR purport to create the CTF and provide its mandate. The Commission's objective was "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."²¹⁹

²¹⁵ The Timorese commissioners drafted a government decree law for this purpose, but the Timorese Council of Ministers never approved it. The records of Timor-Leste's public gazette, *Jornal da República*, show that no instruments relating to the CTF have ever been officially published. Similarly, there is no record of any relevant legislative activity in Indonesia.

²¹⁶ TIMOR-LESTE CONST., secs. 9(2), 95(3)(f), and 116(d).

²¹⁷ INDONESIA CONST., art. 11(2).

²¹⁸ See Mark Freeman, *Truth Commissions and Procedural Fairness* (Cambridge: Cambridge University Press, 2006), appendix 1: Table of Truth Commissions. Truth Commissions established with parliamentary involvement include those in South Africa, Sierra Leone, Paraguay, the Democratic Republic of Congo, and Liberia; and Hayner, *Unspeakable Truths*, 214.

²¹⁹ TOR, art. 12.

Its mandate²²⁰ is to

- Reveal the nature, causes, and extent of reported human rights violations in Timor-Leste in 1999;
- Review the documents of the four preexisting institutions, namely those produced by the KPP-HAM investigations, the Ad Hoc Human Rights Court, the Special Panels for Serious Crimes and the CAVR;
- Establish the truth concerning reported human rights violations documented by the Indonesian institutions and the Special Panels for Serious Crimes;
- Publish a report on these matters; and
- Recommend measures to “heal the wounds of the past, to rehabilitate and restore human dignity.”

Critiques of the Terms of Reference

A number of critiques have questioned the CTF’s TOR. The most high-profile critique was in the COE’s Report. It expressed “grave reservations” about several aspects of the TOR, including²²¹:

- Failure to distinguish between categories of perpetrator and crimes of differing gravity;
- Inclusion of the power to recommend amnesty, exclusion of mechanisms for accountability, and the lack of reference to reparations;
- A provision granting the Commission access to confidential evidence collected through previous transitional-justice mechanisms;
- Concerns about the independence of the Commission from the Timorese and Indonesian governments; and
- Lack of public consultation in the creation of the TOR and the apparent lack of public support in Timor-Leste for the CTF.

The COE foreshadowed the UN’s reluctance to cooperate with the CTF, warning that “the United Nations do not condone amnesties regarding war crimes, crimes against humanity, and genocide.”²²² It stated that unless the TOR were revised to meet international standards, the COE could not advise the international community to support the process.²²³

Others echoed these concerns and expressed concern that the CTF was to consider only the events of 1999 (excluding from scrutiny human rights violations committed between 1975 and 1998).²²⁴

²²⁰ Ibid, art. 14.

²²¹ “Report to the Secretary-General of the Commission of Experts,” para. 355

²²² Ibid, para. 353.

²²³ Ibid, para. 355.

²²⁴ See Leonie von Braun, “Trading Justice for Friendship: An Analysis of the Terms of Reference of the Commission for Truth and Friendship for Indonesia and East Timor,” Watch Indonesia!, March 29, 2005, <http://home.snafu.de/watchin/CTF.htm>. The tendency of many postconflict initiatives in Timor-Leste to focus on crimes committed in 1999 and exclude from consideration the period 1974–1998 has been a central failing of the Timorese transitional-justice program. The CAVR is the sole mechanism that has dealt with human rights violations dating back to 1974. The failing of the CTF is therefore representative of a wider tendency to separate 1999 artificially from its historical context of colonialism, decolonization, civil war, occupation, and resistance.

The strongest criticisms have related to Article 14(c)(i), which states that the Commission may “recommend amnesty for those involved in human rights violations who cooperate fully in revealing the truth.” On the basis of this provision the UN has precluded its staff from cooperating with the CTF.²²⁵ Analyses of the amnesty provision have criticized it because of

- The lack of clear criteria for when amnesty will be recommended and a fair and transparent processes by which compliance with such criteria may be tested;
- The failure to distinguish between amnesty for serious and lesser crimes, as per the scheme adopted by the CAVR and the Serious Crimes Process, thus allowing recommendations for amnesty even for international crimes, such as crimes against humanity and war crimes.²²⁶

As explained later, the Commission made a somewhat belated attempt to address the first issue through the publication of its glossary.²²⁷

Ironically, given the adverse reactions to Article 14(c)(i), it appears likely that the Commission may not recommend amnesties. If this is the case, then the amnesty provision will have done its greatest harm not by leading to de jure impunity, but by inducing the Commission to hold hearings that have provided a platform to perpetrators to give self-serving public testimony.

Principle Weaknesses in the TOR

A number of aspects of the TOR undermined the Commission’s ability to contribute positively to transitional justice initiatives in Timor-Leste and Indonesia. Most can be traced back to the CTF’s flawed creation process. In particular, the priority given to immediate diplomatic goals led to the acceptance of a design unlikely to produce the results an objective and well-executed truth and reconciliation commission could achieve.

Exclusion of individual accountability

The TOR were clearly formulated to direct the Commission’s work, findings, and recommendations away from a focus on individual responsibility. Rather, the TOR emphasized *institutional* inculcation and individual *exculpation*. At the same time they presented criminal prosecutions as incompatible with truth, reconciliation, and friendship and rejected the former in favor of the latter.

The preamble states:

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

²²⁵ UN press release, “Daily Press Briefing by the Offices of the Spokesperson for the Secretary-General and the Spokesperson for the General Assembly President,” September 21, 2007, <http://www.un.org/News/briefings/docs/2007/db070921.doc.htm>.

²²⁶ Under the scheme used by the serious crimes process and the CAVR, “serious crimes” included genocide, war crimes, crimes against humanity, murder, sexual offenses, and torture. UNTAET Regulation 2000/15, art. 1.3.

²²⁷ See note 244 and accompanying text.

to punish the perpetrators; but it might not necessarily lead to the truth and promote reconciliation.²²⁸

Article 13(c) states, “Based on the spirit of a forward looking and reconciliatory approach, the CTF process will not lead to prosecution and will emphasize institutional responsibilities.” The implication is that pursuing individual accountability is detrimental to reconciliation. As a result the CTF may not “recommend the establishment of any other judicial body.”²²⁹

The TOR did provide that the CTF “[d]oes not prejudice against [*sic*] the ongoing judicial process with regard to reported cases of human rights violations in Timor-Leste in 1999.”²³⁰ However, the effect of this provision was weakened by the de facto absence of an ongoing judicial process and the TOR’s mention of possible amnesties.

Article 14 of the CTF’s mandate required the Commission to reveal the truth “with a view to recommending follow-up measures in the context of promoting reconciliation and friendship among peoples of the two countries.”²³¹ It was then to “devise ways and means as well as recommend appropriate measures to heal the wounds of the past, to rehabilitate and restore human dignity.”²³²

Article 14(c) paragraphs (i)–(iv) provided examples of the measures the Commission might recommend. It could

- 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.

Disturbingly, the first two of these proposed measures were directed at assisting accused perpetrators of gross human rights violations. Subarticle ii appears to have been included as a means of clearing the names of those indicted by the serious crimes process in Dili who remained in Indonesia, outside the serious crimes process’s jurisdiction, as well as those acquitted by the ad hoc trial process in Jakarta.

Absence of a focus on victims

It is astounding that none of the TOR’s suggested recommendations referred to the needs of victims. Indeed, victims did not receive a single mention in the TOR. More clearly than any other factor, this challenges the claims of the CTF’s founders that it was modeled on previous truth commissions that focused on restorative justice.²³³

The failure to provide the CTF with sufficient legal powers

Internationally it has become increasingly common for truth commissions to be equipped with legal powers to facilitate access to information. Such powers can include, for example, the

²²⁸ TOR, art. 10. The first 11 of the TOR’s 25 provisions comprise its preamble.

²²⁹ *Ibid*, art. 13(e).

²³⁰ *Ibid*, art. 13(e).

²³¹ *Ibid*, art. 14(a)(ii).

²³² *Ibid*, art. 14(c).

²³³ For an example of such claims see José Ramos-Horta’s statement to the 61st Session of the UN Commission on Human Rights, March 14–April 22, 2005.

ability to subpoena witness testimony or compel the production of evidence²³⁴ and to order the protection of witnesses. Some truth commissions have the power to conduct search and seizure operations.²³⁵ In addition, a commission might be given the power to impose penalties on persons who obstruct its work, whether through perjury or failure to comply with its orders.²³⁶

Such powers might have been of particular benefit to a bilateral commission like the CTF. It might have been able to uncover previously inaccessible documents and information, especially in Indonesia. Ultimately, however, the CTF was given extremely limited and ambiguous powers.

Article 19 of the TOR dealt with the Commission's ability to obtain information. It is headed "Right to Free Access" and provides:

- 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 all 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 Crime 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 confidentiality if necessary;
 - d. Appropriate security arrangements both by the Governments of Indonesia 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.

While it is commendable that the TOR sought to guarantee freedom of movement to persons and access to some of the documents essential to the Commission's tasks, Article 19 is nonetheless flawed in several significant respects.

- Paragraph (b), guaranteeing "free access" to documents of the previous transitional-justice mechanisms, is ambiguous and potentially too narrow in scope.

As concerns the CAVR, access is granted only to that body's final report. The CTF's guaranteed access is therefore narrower than its mandate to conduct document review, which covers "all the existing materials documented by [the four institutions, including the CAVR]."²³⁷ The CAVR collected nearly 8,000 statements, conducted more than 1,000 interviews, collected thousands of pages of documents, held public hearings, and completed community reconciliation procedures for more than 1,300 perpetrators of low-level crimes.²³⁸ Data were collected that were not reflected in the CAVR's final report. Providing access only to the CAVR's final report therefore significantly reduces the volume of relevant material available to the CTF. Further, Article 19(b)'s reference to the documents of the "Ad-hoc Human Rights Court" and the "Special Panels for Serious

²³⁴ Freeman lists 12 commissions with subpoena powers. Freeman, *Truth Commissions*, 189 and annex 1.

²³⁵ *Ibid.*, 206–07, annex 1.

²³⁶ UN OHCHR, *Rule-of-Law Tools*, 10–11.

²³⁷ TOR, art. 14(a)(i).

²³⁸ See note 179 and accompanying text.

Crimes” does not appear to include documents collected or produced by the two prosecuting authorities that were never used in court. In Timor-Leste many SCU indictments never proceeded to trial because of the absence of defendants. One of the major criticisms of the Jakarta trials was that much evidence available to the prosecutors of the Attorney General’s Office was not used at trial. Yet access to this important material was not expressly included in the Commission’s TOR.

- Paragraph (b) fails to address the protection of confidential documents held by the four relevant institutions.

Indeed, the limitations in paragraph (b) discussed above might have been introduced intentionally to protect the confidentiality of documents that thus far have been kept from the public domain, often for good reason. In particular, many statements provided to the CAVR and prosecutors were given on a confidential basis because of genuine fears of retribution. Access to such documents by an institution with doubtful independence has been a matter of some concern.

However, provisions could have been included to deal with this problem. For example, access could have been granted to all secondary material held by the institutions. Access also could have been given to statements and interviews for which the deponent had provided informed consent for unlimited future use, or to those that had been appropriately redacted before being provided to the Commission.

- The Commission was not granted any rights of access or power to demand the production of documents outside the work of the four previous transitional-justice institutions. Although the granting of such powers in Timor-Leste and Indonesia would not have assured access to documents held by the UN archive, it could have assisted in gaining access to internal documents held by the Indonesian security forces and government departments. To date these documents have not been made available to any of the truth-seeking or prosecutorial mechanisms established in Timor-Leste or Indonesia.
- The TOR do not provide a privilege against self-incrimination, any penalty for perjury, nor other mechanism that might discourage the provision of untruthful testimony.

Ultimately however, these flaws in the TOR were rendered almost irrelevant by the failure of both countries to enact legislation establishing the CTF as a legal entity with specific legal powers. Thus the CTF has never effectively been granted any powers beyond those conferred on all private individuals by the laws of Indonesia and Timor-Leste.

Ambiguity and inadequate detail in the Commission’s mandate and activities

In addition to these specific problems, the TOR are beset by a more general weakness: their ambiguity and lack of detail. With only 14 substantive provisions, the TOR are surprisingly short. They omit many details that might have been expected in a truth commission law, while their content is unhelpfully vague on other matters.²³⁹ For example, the TOR do not stipulate the CTF’s independence from the governments of Indonesia and Timor-Leste, stating only that the two foreign ministers will act in an advisory role.²⁴⁰

²³⁹ For example, the TOR contain no provisions relating to the removal of commissioners in the case of serious misconduct, and also no provision for what is to happen in the event of a vacancy in the Commission due to a resignation, death, or removal.

²⁴⁰ TOR, art. 24.

The most fundamental ambiguity in the TOR relates to the CTF's mandate and activities. The Commission's mandate in Article 14 includes the revelation of the truth about events (truth seeking) and a review of the materials of the four preexisting institutions (document review). It is never clarified whether the Commission's role is limited to the review of the four sets of documents, or whether it may use other methods such as conducting interviews, taking statements, or holding public hearings.

The Internal Rules and Strategy of the Commission

The TOR's weaknesses, a lack of legislative basis in either Indonesia or Timor-Leste, and poor consultation during creation presented the commissioners with difficult challenges. Early on the Commission agreed internally that the TOR were problematic, particularly in their ambiguity. One commissioner also mentioned concerns that the TOR paid inadequate attention to the situation of victims.²⁴¹ As a result the commissioners approached the two governments, requesting clarification or elaboration of the TOR. It is to the commissioners' credit that they did so. The governments' response was that the commissioners should interpret their mandate among themselves.²⁴²

The Commission began its work as a divided body, with commissioners representing two different countries—one accused of mass human rights violations, the other with a large victim population. According to some sources it took almost a year for the CTF commissioners to establish trust and begin to work together.²⁴³ Early attempts to secure expert assistance were unsuccessful, principally because of credibility problems caused during the Commission's creation and its flawed TOR. In such a context, reaching constructive agreement on how to interpret the ambiguities in the TOR was not an easy task.

The Commission interpreted its mandate expansively, including within its ambit of power the ability to investigate the events of 1999 by whatever means it might choose. Thus the document review process was only one of several methods of truth seeking; others would include holding public hearings and taking statements.

The Commission also produced a glossary that defined terms in the TOR, as well as other words relevant to the Commission's work.²⁴⁴ This was a commendable attempt to clear up the ambiguities in the TOR.

Some worthwhile advances were made in the glossary. One was the decision to use international legal standards (including those in the Rome Statute of the International Criminal Court) for key concepts such as command responsibility and crimes against humanity.²⁴⁵ The glossary also appears to contain prerequisites for a recommendation of amnesty agreed by the commissioners. The glossary's definition of "amnesty" is:

Amnesty for those involved in Human Rights violations who fully cooperate in establishing the truth. Amnesty will only be recommended by the CTF if

²⁴¹ Petrus Turang, interview with the author, May 25, 2007, Denpasar.

²⁴² Information provided by Commission staff; Petrus Turang, interview with the author, May 25, 2007, Denpasar; José Ramos-Horta, interview with the author, June 7, 2007, Dili.

²⁴³ Petrus Turang, interview with the author, May 25, 2007, Denpasar; information from Commission staff.

²⁴⁴ CTF, "Glossary of Terms," January 29, 2007 (available in Indonesian language only), http://www.ctf-ri-tl.org/ctf1/index.php?option=com_content&task=view&id=86&Itemid=70.

²⁴⁵ *Ibid.*, items 21 and 10.

the following conditions are met: the suspect provides considerable assistance to the CTF in establishing the truth, and must appear and admit his role and responsibility in incidents of human rights violations.

Notes (provisions for recommendation): Amnesty will be recommended for suspects who have fulfilled the requirement of being cooperative. Suspects are obliged to make a public statement expressing regret which includes an individual apology and/or will emphasize institutional responsibilities.

The glossary defines “fully cooperative” as “whereby an invited party or voluntary party attends and provides sincere and open testimony/clarification that contributes to establishing the truth, has met all conditions and admits their role and responsibility in the human rights violations that occurred prior to and immediately after the popular consultation in Timor-Leste in 1999.”

Although it provided some assistance, the glossary did not repair the fundamental flaws in the Commission’s mandate. Nor has it resolved the Commission’s credibility problems or its poor relationship with civil society. In many places the glossary is ambiguous or creates additional confusion by mixing terms with uncertain effect. For example it states: “[T]he CTF does not support impunity because the aim of the CTF is to reveal the conclusive truth with an emphasis on institutional responsibility to promote reconciliation and friendship, as well as ensuring the non-recurrence of similar events.”²⁴⁶

This section appears to support the questionable premise that replacing individual accountability with unenforceable findings of institutional responsibility assists in the fight against impunity.

Most significantly, no public information was provided at the time to indicate to civil society that the commissioners *agreed* with at least some of the critiques of the TOR and were trying to address them. Much of the criticism of the CTF was related to the TOR, yet there was no public indication that the commissioners were still working on clarifying them. The glossary was not made public until January 2007, and even then only on the Commission’s seldom-visited Web site.²⁴⁷ Overall, then, this well-intended initiative proved too little and too late to restore the Commission’s credibility, particularly in light of the public hearings that were to follow.

- THE COMMISSION’S PUBLIC HEARINGS

Most of the CTF’s work provided little opportunity for community involvement or public scrutiny. This included the Commission’s document review, statement taking, and research (focusing on 14 priority cases). The true nature and outcome of these processes will be known only with the release of the Commission’s final report in early 2008. In the meanwhile the CTF’s most public activities—and its most controversial—have been its public hearings.

Public Hearings and the Commission’s Mandate

Although the TOR did not specifically mention public hearings, the commissioners decided to include them in their activities. The reasons for this are not clear. One possible factor might

²⁴⁶ Ibid, item 7.

²⁴⁷ A page offering updates on Commission activities shows these updates as having received between 185 and 695 hits, http://www.ctf-ri-tl.org/ctf1/index.php?option=com_content&task=category§ion_id=5&id=25&Itemid=48 (last visited December 5, 2007).

have been the involvement of three former CAVR commissioners in the CTF. These commissioners may have sought to replicate the work of the CAVR (which conducted some 60 public hearings). Most likely, however, the commissioners were induced to hold public hearings as a means of implementing their mandate under Article 14(c)(i)—that is, as a way of deciding on recommendations for amnesty.

The commissioners seemed unable to agree on or clearly formulate the role and purpose of holding public hearings. Some commissioners commented that hearings were primarily intended to raise the CTF's public profile.²⁴⁸ Others described the hearings as a means of truth seeking.²⁴⁹

The TOR should have made clear whether or not the Commission was required or permitted to hold public hearings and if so, what the purpose of such hearings would be. In the absence of such clarification, fundamental issues, such as the selection of witnesses and the type of procedures to be used, remained unclear. As a result, although the commissioners must take some responsibility for the hearings' design failures, many problems could have been averted or minimized through a clearer enunciation of the Commission's activities and objectives in the TOR.

Overview of the Public Hearings

The CTF held six public hearings beginning in February 2007. Five sessions took place in Indonesia (two in Denpasar and three in Jakarta). One was held in Timor-Leste (in Dili).

Each hearing had a mix of various types of witnesses, including military and militia commanders, public officials, and victims.²⁵⁰ All witnesses were subject to the same hearing procedures. Each witness sat at a table on the stage, flanked by the Commission's co-chairs.²⁵¹ On each side of the witness table were longer tables, one for the Timorese commissioners and one for the Indonesian commissioners.

The hearings were conducted primarily in Bahasa Indonesian, but interpretation was provided for Timorese witnesses wishing to speak in Tetum, and simultaneous translation into English was provided for the audience. The Commission took transcripts of the hearings, but these have not yet been made public.

At the outset of each hearing day, rules were read out concerning the entitlements and obligations of witnesses, the media, and the audience. In addition to these articulated rules, the Commission reached an (unwritten) consensus on hearing procedures, according to which

- Each witness was permitted 30 minutes to speak freely. The commissioners were then given an hour to ask the witness questions;²⁵²

²⁴⁸ Agus Widjojo, interview with the author, May 24, 2007, Denpasar; Jacinto Alves, interview with the author, April 20, 2007.

²⁴⁹ CTF Update, August 20, 2007, www.ctf-ri-tl.org.

²⁵⁰ See Annex for a full list of witnesses.

²⁵¹ Pursuant to Article 16(d) of the TOR, the Commission elected two co-chairs, one from Timor-Leste and one from Indonesia. The commissioners elected to these positions were Benjamin Mangkoedilaga (from Indonesia) and Dionisio Babo Soares (from Timor-Leste).

²⁵² Providing each witness with the same amount of time, regardless of the amount of information each had to share, caused some problems. Time limits were enforced inconsistently. Some witnesses were cut short and told their time was up, while others were permitted to speak for up to three times the allotted period.

- The Timorese and Indonesian “sides” were required take turns asking questions. As long as both “sides” had questions, a question from a Timorese commissioner was followed by a question from an Indonesian commissioner, and so on;
- The co-chairs oversaw the process, taking questions from the commissioners and ruling on issues of procedure, but they did not put questions to the witnesses.

Major Flaws in the Public Hearing Process

The CTF’s hearings have already been subject to significant criticism, particularly from international, Indonesian, and Timorese human rights NGOs. The primary complaint has been that the hearings provided a platform for those accused of bearing responsibility for international crimes in Timor-Leste to defend themselves without being seriously challenged by available evidence contradicting their claims. A group of Indonesian NGOs called the hearings “a stage play for human rights abusers” as well as for “liars and [the] denial of the truth.”²⁵³ Timorese NGOs similarly stated that the public hearings have provided a means to “deny the truth and promote immunity [from prosecution].”²⁵⁴

Indeed, recognition has been widespread that the hearings have failed to reveal the truth. Even the CTF’s strongest proponents, including some of its members and creators, have had to admit that witnesses have not been truthful to the Commission. José Ramos-Horta explained, “I am disappointed that Wiranto and others in Indonesia have not been able to summon [the] honesty and courage to say ‘we failed,’ acknowledge their direct or indirect responsibilities, apologize to their own people—because their actions did harm to Indonesian interests . . . and to the Timorese people.”²⁵⁵

Commissioner and Timorese Co-chair Dionisio Babo Soares was more candid: “[T]he declarations that they gave us had revised facts which can’t be changed. . . . [S]ometimes [when] the witnesses give their declarations we see their evidence as lies again. But this depends on each person’s declaration.”²⁵⁶

In defending the public hearings commissioners have downplayed their significance in the overall truth-seeking process, emphasizing that the Commission is also using other means to determine the truth.²⁵⁷ However, such an answer fails to recognize the harm done by the hearings, as explained below.

²⁵³ Joint statement issued by KontraS, ELSAM, Solidamor, HRWG, PBHI, Imparsial, PEC, ICTJ Indonesia, YLBHI, and Forum Asia, “Commission of Truth and Friendship – A Stage Play for Human Rights Abusers,” March 23, 2007, [http://www.forum-asia.org/index2.php?option=com_content &do_pdf=1&id=506](http://www.forum-asia.org/index2.php?option=com_content&do_pdf=1&id=506); joint statement issued by ELSAM, Forum Asia, Human Rights Working Group, KontraS, PEC, Solidamor, and YLBHI, “Commission for Truth and Friendship—A stage play for liars and denial of the truth,” March 31, 2007, [http://www.forum-asia.org/index2.php?option=com_content &do_pdf=1&id=504](http://www.forum-asia.org/index2.php?option=com_content&do_pdf=1&id=504).

²⁵⁴ East Timor Crisis Reflection Network, NGO Forum, Forum Tau Matan, National Alliance for an International Tribunal, and East Timor Students’ Solidarity Council, “Deklarasaun Konjunta,” May 1, 2007.

²⁵⁵ José Ramos-Horta, interview with the author, June 7, 2007, Dili.

²⁵⁶ “Audensia CVA Ba Dala Haat Iha Bali: Sasin Husi Indonezia Nega Sai Autor Krime 1999,” Timor Post, July 31, 2007.

²⁵⁷ Comments by Commissioner Jacinto Alves at East Timor Crisis Reflection Network Panel Discussion on CTF’s Public Hearings, “Reflection on violations of human rights in Timor Leste in 1999,” April 19, 2007, Dili; comments by Dionisio Babo Soares in discussion with the author and others, September 27, 2007, Dili; and Petrus Turang, interview with the author, May 25, 2007, Denpasar.

Poor Representation Among Witnesses

A fundamental flaw in the public hearing processes has been the identity of the persons providing testimony.

This problem was caused partly by the Commission's focus on eliciting testimony mainly from accused perpetrators and senior officials rather than victims. According to an analysis of witness backgrounds, of the 56 individuals who testified at the public hearings the CTF heard evidence from only 13 victims.²⁵⁸ This contrasts starkly with the other truth commissions: The CAVR heard more than 200 victims in public hearings, and the South African Truth and Reconciliation Commission heard the testimony of more than 2,000 victims.²⁵⁹ The justification provided for the relative invisibility of victims in the CTF hearings was that victims already had had a chance to speak at the CAVR, and the Commission had access to victims' perspectives through its CAVR document review.²⁶⁰ Such a rationale ignored the importance of public hearings in communicating with the general public because the public did not have ready access to the other evidence available to the Commission. Moreover, the Commission so far has obtained access only to the CAVR's final report, statistical database, and community profiles. It has not had systematic access to victims' statements or hearing transcripts.²⁶¹

Even if the CTF does eventually gain access to and make use of witness statements held by the CAVR and other bodies, this can never substitute for direct oral testimony. Listening to a victim telling his or her story directly gives the commissioners and the public an opportunity to empathize with and humanize the victims of the human rights violations under investigation.

The five CTF hearings held in Indonesia provided an opportunity to present to the Indonesian public the testimony of some of the thousands of victims who provided evidence to the CAVR. Instead the few (10) victim testimonies heard in Indonesia were drowned out by far more testimonies from accused perpetrators who provided accounts vastly different from those of victims. Moreover, the Indonesian public was ill-equipped to discern the truth about alleged perpetrators' self-serving accounts, as citizens were not provided with available evidence directly contradicting those accounts.

²⁵⁸ See Annex.

²⁵⁹ *Chega!*, part 10, 26, para. 120; Lists of victims who gave evidence and transcripts from the victims' hearings are available online at http://www.doj.gov.za/trc/trc_frameset.htm (select "amnesty hearings decisions & transcripts").

²⁶⁰ Jacinto Alves, interview with the author, April 20, 2007.

²⁶¹ Permission has been granted informally for the Commission to conduct limited document review of the community profiles and to have access to the CAVR's human rights violation database. Information about the community profiling process is in *Chega!*, part 10, 46–62, paras. 194–220. No permission has been given to date to obtain victims' statements or hearing archives. However, interviews with victims appearing at the hearings reveal that in some cases the CTF has been provided with witnesses' CAVR statements—indicating that in at least a small number of cases, Commission members or staff have entered the CAVR archive without permission (this would have been easily achieved given lack of clear procedures for access at the archive and the fact that several CTF members and staff maintain contacts at the CAVR).

When victims were included in hearings there were sometimes grounds for concern regarding how they had been selected. These concerns particularly relate to three victims from West Timor who spoke about crimes committed by pro-independence groups. Two of them became the center of a minor controversy when Timorese Commissioner Olandina Alves sought to ask one how she had come to testify before the CTF. Although the witness was instructed not to answer the question by Co-chair Benjamin Mangkoedilaga, it appears that they were identified and brought to Jakarta by Indonesian military staff.²⁶² The production of witnesses by a party centrally implicated by the evidence before the Commission is a matter of serious concern.

Politicized victim selection reached its apex during the fourth hearing, with the introduction of testimony from Domingos Alves, identified in the printed hearing program and press release as a victim of threats and intimidation by pro-independence actors.²⁶³ During Alves's public testimony and subsequent commissioner questioning, no mention was made of the fact that Alves had been indicted by the Serious Crimes Unit for crimes against humanity (including torture, murder, and extermination) he had allegedly committed as a subdistrict militia leader.²⁶⁴

In addition to victims, the Commission neglected other persons with expertise and knowledge about the events of 1999 as potential witnesses. Only a very small number of NGO workers and electoral observers were asked to testify, and no journalists who reported from East Timor in 1999 or former members of KPP-HAM were invited.

A further factor influencing the composition of the CTF's witness pool has been the nonattendance of some key invitees. Several former UNAMET staffers were invited to give evidence but have not appeared.²⁶⁵ The UN has indicated that its officials will not testify at the CTF hearings because of concerns about the TOR's amnesty provision.

The terms of reference of the CTF envisage the possibility that that body may recommend amnesty, and do not preclude it from making such a recommendation in respect of acts that constitute a crime against humanity, a gross violation of human rights or a serious violation of international humanitarian law. The United Nations' policy, however, is that the

²⁶² Information provided to the author by Commission staff.

²⁶³ CTF public hearing, July 24, 2007, Denpasar, Bali. Domingos Alves was introduced as a victim at the hearing and also described as such in the hearing program and a subsequent press release. CTF Update (August 20, 2007), www.ctf-ri-tl.org.

²⁶⁴ Case No. 4/2004, Indictment of Vasco da Cruz et al, filed on November 29, 2004, <http://www.jsmp.minihub.org/Court%20Monitoring/SpecialPanels/Documents/2004/04-2004%20Vasco%20da%20Cruz%20et%20al/04-2004%20Vasco%20Da%20Cruz%20et%20al%20Indictment.pdf>. Among other things, Alves was accused of playing an organizing role and participating in the massacre at the Suai Church. The number of people killed in that massacre is estimated from 40 to 200. Those known to have been killed there include three Catholic priests and at least 10 children under age 18. See Robinson, *East Timor 1999*, 185.

²⁶⁵ Those invited include Ian Martin (special representative of the secretary-general for UNAMET), Alan Mills (head of UNAMET's civilian police contingent), David Savage (a UN civilian police officer during UNAMET who subsequently worked in the SCU) and Rezaqul Haider (UNAMET's chief military liaison officer). Information provided to the author by Commission staff.

Organization cannot endorse or condone amnesties for genocide, crimes against humanity, war crimes or gross violations of human rights, nor should it do anything that might foster them.²⁶⁶

As a result the UN has said it will refuse all support to the CTF, “[u]nless the terms of reference are revised to comply with international standards.”²⁶⁷

Other invitees have also declined to participate in hearings, in some cases because of misgivings related to CTF’s credibility as a genuine truth-seeking mechanism.²⁶⁸ At least one victim refused to testify because of his lack of faith in the CTF process.²⁶⁹

The nonparticipation of some invitees, combined with the CTF’s policy for selecting invitees, has resulted in public hearings dominated by senior Indonesian government officials, members of the TNI, and former militia commanders. The 56 witnesses heard in public sessions included 28 persons from the Indonesian security apparatus and their militias (13 TNI personnel, three members of the Indonesian Police, and 12 former militia members). At least one of the preexisting transitional-justice mechanisms accused 24 of these personnel of criminal responsibility for abuses. In contrast, the Commission heard only 14 victims or direct witnesses from the Timorese community and three witnesses from human rights or electoral monitoring groups. The focus on perpetrators and senior officials also created a distinct gender imbalance among witnesses. Only five of the 56 public witnesses were women.²⁷⁰

This witness pool presented clear problems. The views presented were heavily skewed toward the perspective of the institutions represented (including the TNI, Indonesian police, and the Indonesian government), with no alternative viewpoint or response provided by representatives of the UN and disproportionately little from victims. This problem was exacerbated by the fact that many accused witnesses had significant motivation to mislead the CTF, either to protect their own reputation, job or personal security, to avoid institutional retribution, or to uphold their loyalty to their institution and commanders.

Failure to Encourage or Induce Truth Telling

The difficulties arising from a witness pool dominated by implicated institutions were compounded by the lack of any effective mechanism for inducing witnesses to tell the truth. This was a result of the design of the hearings as well as the Commission’s inadequate organization and preparation.

Amnesty as an incentive for truth telling

The CTF’s amnesty provision was intended to encourage perpetrators of human rights violations to confess the truth to the Commission.²⁷¹ However, this approach has been an

²⁶⁶ “Secretary-General Says UN Officials Will Not Testify at Timor-Leste Commission, as Terms of Reference Include Possible Amnesty for Human Rights Violations,” SG/SM/11101, July 26, 2007, <http://www.un.org/News/Press/docs/2007/sgsm11101.doc.htm>.

²⁶⁷ Ibid.

²⁶⁸ Both the Carter Center and Hak Association (a Timorese human rights NGO) were invited to give evidence at the CTF but neither accepted the invitation. Information supplied to the author by Commission staff, José Luis Oliveira (director, Hak Association), and by Jacinto Alves, interview with the author, April 20, 2007.

²⁶⁹ José Nunes, discussion with the author, September 29, 2007.

²⁷⁰ See Annex for a list of those who testified at the CTF.

²⁷¹ In an interview with ABC Radio Australia, José Ramos-Horta explained, “Because they believe that the Truth and Friendship Commission will not lead to prosecution,

unqualified failure as an incentive to truth telling. In fact, some witnesses accused of responsibility for violations have themselves refused potential amnesty recommendations from the Commission.²⁷²

The most significant factor in the failure of the amnesty approach has been that no benefit was to be gained from a *de jure* amnesty for crimes committed in East Timor in 1999. Several of the CTF's witnesses had been formally acquitted of charges brought in the ad hoc trials in Jakarta. They are now protected from further trial, at least in Indonesia, by the principle of double jeopardy (*ne bis in idem*).²⁷³ Others, who have never been indicted in Indonesia, are aware of the lack of political will for prosecutions, and they know that—except in the event of a seismic political shift—they are unlikely ever to be charged in Indonesia for crimes committed in East Timor.

Even in Timor-Leste prosecutions for crimes committed in 1999 have become rare. Since the closure of the SCU in May 2005, only one new indictment has been issued for a serious crime.²⁷⁴ Of approximately 300 individuals indicted by the SCU who had not been tried at the time of its closure, only one has since been tried.²⁷⁵ Although the serious crimes investigations are being reopened by the current UNMIT mission, the new investigating team does not have the power to instigate prosecutions. The issuance and pursuit of indictments remains in the hands of the Timorese prosecutor general. Even high-level political figures have expressed the view that prosecutions are unlikely to result from the new investigations.²⁷⁶

Owing to the effective cessation of accountability mechanisms in Timor-Leste and Indonesia, alleged perpetrators have little fear of prosecution. Therefore they have no incentive to cooperate fully by divulging the truth in exchange for a recommendation of amnesty, particularly given the risks (personal or career-related) involved in speaking openly about the serious crimes.

[military people who allegedly committed crimes] might step forward and be honest, cooperate fully by telling the truth [about] their actions in the violence in '99." "East Timor: Truth Commission will not prosecute guilty," ABC Radio Australia Asia Pacific, August 5, 2005.

²⁷² Kiki Syahnakri publicly rejected the possibility of amnesties for members of the TNI. CTF public hearing, October 24, 2007, Jakarta.

²⁷³ This principle provides that a person acquitted of a crime may not subsequently be charged again in respect to the same conduct. It is expressed in article 76 of the Indonesian Penal Code and Article 14(7) of the International Covenant on Civil and Political Rights.

²⁷⁴ Alberto da Silva Mali was indicted in July 2006 and acquitted of all charges in September 2007. Dili District Court Proc. 01/CG/TDD/2006, September 19, 2006. Information provided to the author by the Dili District Court and the Timor-Leste Prosecution Service.

²⁷⁵ Manuel Miai returned to Timor-Leste in August 2005. He was eventually acquitted in August 2006. JSMP, "War Crimes Suspect Returns to Timor-Leste," August 8, 2005; JSMP, "Weaknesses in the Prosecution of a Serious Crimes Suspect," August 7, 2006. Information about the absence of other prosecutions and trials provided to the author by the Dili District Court and the Timor-Leste Prosecution Service.

²⁷⁶ José Ramos-Horta, interview with the author, June 7, 2007.

In such a context, only persons already convicted and serving a sentence have a real incentive to seek a recommendation for amnesty.²⁷⁷ Only two such witnesses presented testimony to the CTF. Both made some statements against their interest, but neither appeared to “cooperate fully,” as required by the TOR for a recommendation of amnesty.²⁷⁸ Thus even those with something to gain from an amnesty have not been sufficiently encouraged to cooperate by telling the complete truth. This may have resulted from fears for their safety if they implicated others, a lack of clarity in the criteria for amnesty, or the lack of certainty of being granted amnesty by the relevant government even if the CTF recommended it.

Although the CTF’s use of amnesty recommendations is said to have been modeled on the South African “truth for amnesty” formula, its implementation was not based on advice or learning from the South African experience. The South African amnesty process has contrasted most starkly with the CTF’s amnesty procedures in the following ways.

- The South African Truth and Reconciliation Commission (TRC) established a distinct Amnesty Committee, composed entirely of legal professionals, to oversee the amnesty process, as well as an Amnesty Department, which at one stage had as many as 94 staff;²⁷⁹
- Applications for amnesty were open to anyone (not just persons approached by the TRC). An application form was distributed throughout the country in 11 languages;²⁸⁰
- To corroborate each applicant’s statement, dedicated investigators conducted investigations with assistance from the TRC’s Research Department, a process that could take up to several months to complete in some cases;²⁸¹
- Special amnesty hearings were convened quite apart from the TRC’s victims’ hearings. The public amnesty hearings (held in cases of gross violations) resembled a form of trial in some respects:²⁸²
 - Amnesty applicants were able to call witnesses to support their application;
 - The applicant’s victim or victims were permitted to give evidence and call witnesses;
 - The Amnesty Committee could call further witnesses, including at the request of interested persons;
 - The Amnesty Committee could permit cross-examination of any person giving evidence by any interested party or that party’s lawyer;
 - The applicant or his or her lawyer was entitled to address the Amnesty Committee after the hearing of all evidence.

²⁷⁷ Although it is technically a pardon rather than an amnesty, the Commission has taken the view that such a recommendation falls within their mandate. Jacinto Alves, interview with the author, April 20, 2007, Dili.

²⁷⁸ For example, both Eurico Guterres and Joni Marques refused to answer some questions and would not name those responsible for providing weapons, training, and other support to the militias.

²⁷⁹ *Truth and Reconciliation Commission of South Africa Report* (March 21, 2003), vol. 6, sec. 1, ch. 5, para. 11 and ch. 2, para. 12. In contrast, the *entire* staff of the CTF has been never been larger than 30 persons, including a maximum of 18 professional staff.

²⁸⁰ *Ibid.*, ch. 2, para. 27.

²⁸¹ *Ibid.*, paras. 42–45.

²⁸² *Ibid.*, para. 57.

- Decisions on amnesty were based on pre-established and well-known requirements: whether applicants made “full disclosure” and whether their crime was associated with a “political objective.” The latter requirement was clarified by specified criteria;²⁸³
- The Amnesty Committee had the power to *grant*, not simply recommend, amnesty. Thus applicants had some certainty that if they met the criteria they would receive amnesty;
- Genuine efforts were being made to prosecute persons who had committed apartheid-era crimes, providing an incentive for perpetrators to seek amnesty.

Even under these relatively favorable circumstances, only around 7,000 applications for amnesty were received.²⁸⁴ Many were from members of the resistance.²⁸⁵ Few senior government officials from the apartheid era sought amnesty.²⁸⁶ Most of the amnesty applications were received from persons who had already been convicted of an offense and were serving time in jail.²⁸⁷

In contrast the CTF lacked a specific process to make use of the “amnesty for truth” concept. The option of applying for an amnesty recommendation was not open to the public but only to persons approached by the Commission to give evidence. Investigations were not undertaken to examine the evidence of accused perpetrators. Special amnesty hearings, involving victims’ representatives and effective cross-examination, were not convened. Clear criteria for amnesty were not publicized. Moreover, no threat of prosecution existed. In these circumstances it is not surprising that the TOR’s amnesty provision proved an insufficient inducement to truth telling.

Commissioner questioning

The CTF sought to employ traditional questioning and examination techniques to test the veracity of witness testimony. However, because of a combination of design and implementation flaws, attempts to bring out the truth through questioning failed almost entirely.

The CTF’s hearing procedures were poorly designed for effective questioning. The rule that the Indonesian and Timorese “sides” must take turns asking questions prevented commissioners from pursuing a line of questioning with a witness and insisting on an answer. In many cases witnesses could ignore a commissioner’s question, or part of it, since follow-up questions were not permitted. At times commissioners sought to circumvent the questioning limits by asking two, three, or even more questions at once before giving the witness an opportunity to begin answering. This contributed to the disjointed nature of the evidence collected. Questions (and thus answers) jumped from topic to topic. The result was that no

²⁸³ Set out in the Promotion of National Unity and Reconciliation Act No. 34 of 1995, art. 20(3).

²⁸⁴ *TRC Report*, vol. 1, ch. 10, para.3. This figure compares poorly with almost 38,000 violations reported to the TRC by deponents. *Ibid*, ch. 6, appendix 2, para.22.

²⁸⁵ Carnita Ernest, “A Quest for Truth and Justice: Reflections on the amnesty process of the Truth and Reconciliation Commission of South Africa” (paper presented to the conference, “Ten Years of Democracy in Southern Africa: Historical Achievement, Present State, Future State Prospects,” University of South Africa, Sunnyside Campus, Pretoria, August 23–25, 2004). This was a study of amnesty hearings and decisions, but it excluded the large number of applications (nearly 5,500) rejected at a preliminary stage for failure to comply with fundamental amnesty criteria. It appears that no study of the full pool of initial amnesty applicants has yet been published.

²⁸⁶ Hayner, *Unspeakable Truths*, 99.

²⁸⁷ *TRC Report*, vol. 5, ch. 3, para.18.

clear picture was built up, lines of questioning to ensure that all details were collected were not pursued, and witnesses easily avoided answering questions. In fact, some witnesses managed to speak for the allocated hour-and-a-half (or longer), yet provide almost no relevant information.

The reason CTF hearings were poorly designed to accommodate the effective examination of witnesses may have been a mistaken use of the CAVR model of conducting public hearings. The CAVR public hearings model had been designed to allow victims to give public accounts of their experiences. In addition, key witnesses and experts also provided public testimony. This CAVR model, which did not include substantial opportunity for rigorous questioning to help determine the accuracy of a witness's testimony, was less appropriate in hearings dominated by testimony from alleged perpetrators, who could have been expected to try to deny responsibility and present alternate, self-serving scenarios. In using the CAVR's victim-based model for accused perpetrators, the CTF gave them an opportunity to present largely unchallenged public testimony. It is doubtful that the CTF foresaw or intended this consequence, but once it had become apparent, the Commission appeared unwilling to make the fundamental changes required to improve its public hearing process.

The hearings' design flaws were compounded in practice by the commissioners' poor preparation and lack of skill or training in the art of effective witness examination. Questions tended to be long-winded and often confusing—making them difficult for a well-intentioned witness to answer and easy for an uncooperative witness to evade.

When questioning witnesses the commissioners made little use of the significant amount of other available evidence. Despite work by CTF staff before hearings to create dossiers on each witness, including suggested questions and specific documents relevant to particular witnesses' evidence, the commissioners rarely challenged them with material contradicting their testimony. This failure to effectively utilize existing evidence is particularly ironic given that the four institutions had already collected large quantities of evidence that the CTF was mandated to review, and this evidence was readily available to the commissioners.

These problems partly resulted from most of the commissioners' lack of experience. Effective questioning of uncooperative witnesses is a difficult task. However, some of the problems observed were also attributable to the Commission's failure to link its other research methods to its public hearings. The document review process was not completed before the hearings began, and even research relevant to individual witnesses was not completed before each witness gave evidence. In the case of Domingos Alves, mentioned above, it appeared that at the time of his public testimony the commissioners were unaware of his indictment by the SCU, even though that information was in the SCU archive, in a list of indicted persons annexed to the CAVR report, and could have been found through various publicly available Internet sites.²⁸⁸

Ultimately then, evidence that might easily have been challenged and shown to be flawed was left uncontradicted in the public hearings. Worse, in many cases commissioners appeared to endorse testimony that clearly contradicted established documentary evidence, either by nodding in agreement as witnesses spoke or by thanking them obsequiously for their truthful and very helpful testimony. Commissioners might have been aware that evidence contradicted a witness's testimony and perhaps saw giving thanks as a matter of etiquette, but to those watching such behavior appeared to confirm that the witness's evidence agreed with what the commissioners already knew and believed to be true.

²⁸⁸ *Chegal*, part 12, annex 3, "Indictment Summaries," 26.

Witness protection and the use of closed hearings

In an attempt to ensure security conditions conducive to truth telling, the CTF undertook some limited efforts at witness protection. The Commission's TOR included provisions for "[a]ppropriate security arrangements both by the Governments of Indonesia and Timor-Leste to . . . persons interviewed by the Commission and persons who provide information and documents to the Commission . . . without restricting their freedom of movement."²⁸⁹

However, in practice witness protection extended only to the provision of security for the duration of each hearing session. Witnesses traveling to attend hearings were offered accompaniment throughout their trip, and security measures were in place at hearing venues. Such measures were not always adequate or appropriate. During one hearing a policewoman assigned to provide security asked a victim for a copy of her statement to provide it to an Indonesian intelligence officer attending the hearing.²⁹⁰ More significantly, security measures failed to address ongoing threats against a witness providing sensitive testimony. The Commission had no means to ensure ongoing witnesses protection *after* a hearing.

The lack of ongoing protection was a factor preventing witnesses from speaking freely in public hearings. Witnesses themselves pointed this out. Witness Cancio Lopez da Cruz, former commander of the Mahidi militia, made the following statement: "But since this is only a public hearing I can't tell you much. If I tell you a lot . . . this is not a court . . . if I tell you too much I will face difficulties, I will be in trouble. . . . Let's just let everything flow and when there is a court everything will be told there."²⁹¹

Both Cancio Lopez da Cruz and Timbul Silaen, commander of the Indonesian police in East Timor in 1999, indicated to the CTF after their testimony that they would like to appear before it again, but in closed session. According to information provided by members of the Commission, both these closed hearings were successful in eliciting useful information witnesses had not supplied in public because of security concerns.²⁹²

Despite the compelling reasons for witnesses to refrain from truth telling at public hearings in Indonesia, the CTF made limited use of closed hearings there. In addition to the two persons mentioned above, only one other witness—former president B.J. Habibie—testified in closed session in Indonesia. The failure to make systematic use of closed hearings resulted from the Commission's confusion regarding the purpose of its hearing process. Some commissioners viewed the public aspect of the hearings as more important than the veracity of evidence produced in them, at least in Indonesia.²⁹³ The result was a lack of clarity regarding the purpose of closed hearings. In Timor-Leste closed hearings were apparently convened *not* because of security concerns but to avoid causing offense to Indonesia through the testimony of senior Timorese officials implicating the TNI.²⁹⁴

²⁸⁹ TOR, art. 19(d)

²⁹⁰ "KKP Hanya untuk Elite: Seharusnya Korban Lebih Diperhatikan," Kompas, May 1, 2007, <http://www.kompas.com/kompas-cetak/0705/01/Politikhukum/3491987.htm>.

²⁹¹ CTF public hearing, May 5, 2007, Jakarta. Direct quotations from CTF public hearings are from the notes of the ICTJ's monitors, who attended the hearings and listened to simultaneous English translations. As a result, they may not be word-for-word transcriptions of what was said.

²⁹² Jacinto Alves, discussion with the author, July 5, 2007.

²⁹³ Agus Widjojo, interview with the author, May 24, 2007, Denpasar; Jacinto Alves, interview with the author, April 20, 2007, Dili; and Petrus Turang, interview with the author, May 25, 2007, Denpasar.

²⁹⁴ Information provided to the author by Commissioner Jacinto Alves and Commission staff.

Although the testimonies given at the public hearings covered many topics, one version of events appeared fairly consistently throughout the testimony of those implicated or indicted by earlier mechanisms. Some key parts of that version of events were:

- UNAMET was institutionally biased in favor of pro-independence groups and perpetrated widespread electoral fraud that successfully influenced the outcome of the popular consultation. UNAMET then moved the date for announcing the result from September 7, as pre-arranged, to September 4, giving security forces inadequate time to prepare for the population's spontaneous anger on hearing the outcome.
- The acts of violence that occurred before and after the popular consultation were the result of a "horizontal conflict" between various Timorese groups with a culture and history of violence dating back to Portuguese times.
- Indonesian security forces did not participate in or sponsor the violence but rather tried their best under difficult circumstances to stop it.
- After the result of the popular consultation was announced, many people feared violence from pro-independence groups and fled spontaneously and voluntarily to West Timor. Some burned their own houses so that pro-independence groups would not occupy them. Indonesian forces helped provide transport and security to the refugees.

During the hearings some witnesses also alleged that UNAMET staff were involved in serious crimes, including torture. Some former UNAMET staff, including senior UN officials, were individually named as involved in fraud or illegal activities in terms that would be defamatory by most standards. No notice was given to these individuals that they would be named in the hearings, nor did officials make any systematic attempt to contact the individuals named, to give them an opportunity to respond to the allegations made publicly against them.

The testimonies of implicated witnesses strongly contrasted with those of victims and other nonimplicated witnesses, who provided evidence generally consistent with the findings of previous transitional justice mechanisms. These other mechanisms had concluded that the violence resulted from a systematic attack orchestrated, directed, and funded by Indonesian security forces.

Michael Ignatieff's often quoted (and somewhat pessimistic) observation, "All that a truth commission can achieve is to reduce the number of lies that can be circulated unchallenged in the public discourse," is of particular interest in the context of the CTF's work.²⁹⁵ The CTF's public hearings provided an officially sponsored opportunity for accused perpetrators of crimes against humanity to publicly deny the accusations against them, without providing the Indonesian public with information about the strong evidentiary basis of the accusations. As a result the CTF's public hearings amounted to a public advertisement for a version of events fundamentally contradicted by the findings of the vast majority of material in the four bodies of documents the CTF was mandated to analyze. Thus, in contrast to Ignatieff's view of other truth commissions, the CTF's public hearings may have *increased* the number of lies that can be circulated unchallenged in Indonesian public discourse regarding the events of 1999 in East Timor. And although the CTF's work is not yet complete, it is questionable whether its public hearings process has advanced the transitional justice agenda in Indonesia and Timor-Leste.

The Failure of Hearings to Empower Victims

In other truth commissions a key rationale for public hearings has been to give a voice to victims and to publicly acknowledge their suffering. In contrast, the CTF's public hearings did not fulfill minimum standards of support and respect for victims.

²⁹⁵ Michael Ignatieff, "Articles of Faith," *Index of Censorship* 25:5 (1996), 113.

Minimal support was provided to victims before and after their testimony. The Commission did not give victims information in advance about what would happen at the hearing or provide support or counseling afterwards.²⁹⁶ Staff accompanying victims to the hearings in Indonesia did not have special expertise or training in victim support.

The most unfortunate aspect of victim involvement was the Commission's tendency to treat them as belonging to a certain side. In one disturbing example two pro-integration witnesses located by the TNI were introduced at a hearing. There was no doubting the suffering of these two women who spoke of the deaths of their husbands. Yet the semi-public dispute between the Timorese and Indonesian commissioners about the women's appearance before the Commission presented them as mere pawns in the Commission's internal political battles.

Language and cultural barriers presented problems as well. Although interpretation was offered, the CTF process tended to encourage witnesses to speak in Indonesian. One victim who was not confident speaking Indonesian explained that the Commission gave him a copy of his statement to read at the hearing, but only in Indonesian, and he had to request a Tetum version.²⁹⁷ In some hearings in Indonesia the audience laughed at victims' attempts to speak Indonesian or at aspects of their testimony.²⁹⁸

Despite these weaknesses, victim participants' views of the hearings vary. Some reported they were happy to have had the opportunity to testify.²⁹⁹ Others were unhappy with the treatment they received from the CTF.³⁰⁰

Location of the Hearings and Composition of the Audience

While the CTF was mandated to investigate crimes committed in East Timor, its hearings were conducted mostly in Indonesia. The first four hearings and the final (sixth) hearing took place in Denpasar and Jakarta. Only one hearing took place in Timor-Leste, despite the Commission's own recognition that hearings in Indonesia were problematic.³⁰¹ The preference for hearings in Jakarta and Denpasar reflects the CTF's focus on senior officials and accused persons (most of whom live in Indonesia), rather than on victims (most of whom live in Timor-Leste).

The Jakarta and Bali hearings

Holding hearings in Indonesia further weakened the CTF's links with victim and human rights groups in Timor-Leste. Timorese organizations that might have been interested in attending could not do so because of travel costs. This increased Timorese NGOs' distrust of

²⁹⁶ Fres da Costa, interview with the author and Manuela Pereira, August 21, 2007, Suai; Esmeralda dos Santos, interview with the author, Manuela Pereira, and Sara dos Reis Afonso, August 20, 2007, Suai; and Emilio Bareto, interview with the author and Manuela Pereira, October 2, 2007, Dili.

²⁹⁷ Fres da Costa, interview with the author and Manuela Pereira, August 21, 2007, Suai.

²⁹⁸ For example, during the testimony of Augusto Dato Buti, CTF public hearing, May 2, 2007, Jakarta, and that of Luisa Alves Almeida, CTF public hearing, May 4, 2007, Jakarta.

²⁹⁹ Nunato Soares, interview with the author, June 2, 2007, Dili; Emilio Bareto, interview with the author and Manuela Pereira, October 2, 2007, Dili.

³⁰⁰ Esmeralda dos Santos, interview with the author, Manuela Pereira, and Sara dos Reis Afonso, August 20, 2007, Suai.

³⁰¹ After the hearing in Dili, the CTF's Timorese co-chair told the press, "In Indonesia we can say there was manipulation, but in Timor there wasn't any." Dionisio Babo Soares, quoted in "Sei hato'o relatorio CVA Fulan Fevereiru 2008," *Jornal Nacional Diario*, October 1, 2007, 6.

the Commission, particularly when information about the nature of the hearings filtered back to them.

Holding hearings primarily in Indonesia also had a significant impact on the composition of audiences and the nature of the hearings. In Indonesia audiences composed largely of Indonesians, with little knowledge of or interest in East Timorese history, oscillated between uninterest and amusement. Accused persons who made light of violence were at times greeted by laughter and clapping.³⁰² Worse still, some victims recounting traumatic events were also subjected to audience laughter.

A perpetrator's knowledge that the audience is sympathetic to him and ignorant of, or even amused by, the events he is recounting, affects his testimony. Even notorious militia leader Eurico Guterres (the only person eventually convicted for crimes against humanity in the Jakarta Ad Hoc Human Rights Court) appeared to acknowledge in his testimony that the truth would not be found in the absence of victims:

I think this [process] is not for seeking the truth, because I don't see here the victims' families, who can say to me that I killed their families, or committed violence to their father or their family and at that place or that time. Those who want to say I killed people, if there are people who know, they can stand to say that to me. If there aren't any here, I think we question this truth.³⁰³

The Dili hearings

One short public hearing session in Dili was scheduled for late September 2007. This was a positive development given some suggestions that the CTF might limit its hearings to Indonesia because of time constraints. However, this hearing session proved disappointing, with the CTF presenting only six witnesses in public.³⁰⁴

To some extent the Dili hearings were an improvement over those held in Indonesia. Witnesses did not appear to feel intimidated about speaking openly of the involvement of the Indonesian military or government in militia activities, with several witnesses implicating high-level officials.³⁰⁵ Thus the Indonesian media could report truthful testimony concerning these subjects.³⁰⁶ For the most part audiences were respectful of victims and were able to listen to their testimony in their chosen language of Tetum.

In other respects the hearings were flawed. A number of witnesses were evasive but not challenged to provide clear information. Commissioner questioning was again ill-prepared and disorganized. The co-chairs appeared unable to control the proceedings. Despite potentially greater local interest in Timor-Leste, turnout was low.³⁰⁷ The CTF claimed that

³⁰² When Cancio Lopez de Carvalho, former leader of the Mahidi Militia, was asked about training provided to his militia by the TNI, he replied jokingly, "Why would we need training? You can shoot a person; no training is required." This was greeted by laughter from the audience. CTF public hearing, May 5, 2007, Jakarta.

³⁰³ Testimony of Eurico Guterres, CTF public hearing, March 28, 2007, Jakarta.

³⁰⁴ Two additional witnesses who had agreed to participate failed to attend.

³⁰⁵ Testimony of Thomas Goncalves, CTF public hearing, September 25, 2007, Dili; testimony of Francisco Lopes de Carvalho, CTF public hearing, September 26, 2007, Dili.

³⁰⁶ See "Truth Body Told Poverty Fueled Militias in Timor Leste," Jakarta Post, September 27, 2007.

³⁰⁷ Commission records indicated that total of 91 persons attended the first day of the hearings, and 106 attended the second day; records provided to the author by CTF

this was because live TV and radio broadcasts allowed people to watch or listen at home.³⁰⁸ However, equally or perhaps more important were the lack of publicity for the event, the lack of public interest, and the boycott of the process by civil society groups.³⁰⁹

Meanwhile, three high-level officials, including current Timorese Prime Minister Xanana Gusmão, testified in closed hearings. Public statements claimed that these hearings were closed because the officials could not attend during the three days scheduled for public hearings.³¹⁰ Yet in private discussions it was readily acknowledged that the closed hearings were intended to prevent the adverse diplomatic consequences that might result from senior Timorese officials publicly testifying about the TNI's role in the 1999 violence.³¹¹ That this was considered an adequate reason to set aside transparency and accountability angered human rights NGOs.³¹² It demonstrated again that the CTF prioritized maintaining "friendship," even when this required forgoing public acknowledgment of the truth.

Division and Adversarialism Among the Commissioners

A final significant flaw in the hearing processes was the divided and adversarial role played by the commissioners. To some extent this was a necessary consequence of the CTF's procedural format. Attempts at cross-examination, taking of turns between Indonesian and Timorese questioners, and divided seating arrangements all exacerbated what might have been a natural tendency to approach issues from different standpoints. Although it was always likely that Commission members might start out with polarized views, well-designed hearings might have minimized the extent or visibility of that polarization rather than amplifying it.

The commissioners' behavior reinforced the image of the CTF as divided. Both "sides" demonstrated a tendency to treat witnesses as aligned with one side or the other and to tailor their questions accordingly. Thus the Timorese commissioners questioned military, police, militia, and Indonesian government officials about the veracity of their evidence while the Indonesian commissioners spoke to them encouragingly with questions that tended to reaffirm the witnesses' prepared statements.³¹³ Conversely, the Indonesian commissioners questioned victims (or at least victims of pro-autonomy crimes) and NGO representatives with skepticism or hostility, and the Timorese commissioners barely challenged them.

These aspects of the hearings had several undesirable consequences. One was the public perception that the commissioners were divided into two irreconcilable factions based on nationality. This was problematic regardless of whether it accurately reflected the CTF's internal politics. Far from presenting an example of bilateral "friendship," the hearings

staff. But many did not stay for the duration of the hearing, and for most of the hearings the audience size was probably closer to 50 people, mainly Commission staff and the staff of the Post-CAVR Technical Secretariat in whose building the hearing took place.

³⁰⁸ Comments to the author by Jacinto Alves and Dionisio Babo Soares.

³⁰⁹ Publicity was almost nonexistent until one or two days before the hearings. Banners placed around Dili to indicate the hearing dates did not mention the venue.

³¹⁰ Dionisio Babo Soares, quoted in "ONG Sira Kontra Audisaun Taka Ba Publika," Timor Post, September 26, 2007, 11.

³¹¹ Discussions with Commission staff and some commissioners.

³¹² "ONG Sira Kontra Audisaun Taka Ba Publika," Timor Post, September 26, 2007, 11.

³¹³ The latter tendency did diminish over the course of the hearings. By the fourth hearing Indonesian commissioners treated TNI witnesses with noticeably greater skepticism.

created an impression that the CTF was engaging in an internal competition for the dominance of one side's preexisting historical view. This underlined concerns about the bona fides of the Commission's truth-seeking project.

Although the TOR regrettably did not expressly require the commissioners to be independent or impartial, objectivity and a public perception of impartiality are necessary for the CTF's credibility and effectiveness. Even so, some commissioners used the public hearings to make contentious statements in the guise of questioning witnesses. For example, Indonesian Commissioner Antonius Sujata put the following "question" to Agus Tarmidzi, (former chair of the Indonesian P3TT committee responsible for liaising with UN representatives in Dili in 1999):³¹⁴

The deviations, the bias, in the holding of the popular consultation did indeed spark violence relating to the security. I would like to dig deeper into the violations committed by UNAMET because these contributed also to sparking the violence. Many things sparked the violence and you have said earlier that this was one of the catalysts.

So there were many things—it was widespread. It was individual but there were many individuals so it was widespread. And it happened during the stages of the popular consultation—it was during the registration, campaigning, and in the announcement. If it is done in these stages it would be systematic. So it was widespread and systematic because it was so big and this became a catalyst in terms of security.

What did you do?

Indonesian Commissioner Achmad Ali asked the same witness:

The Commission for Truth and Friendship has been mandated by the Government to reveal the conclusive truth about the cases in 1999 and a lot has been revealed. It has been revealed that UNAMET, in addition to having committed cheating and fraud, at least on the individual level committed violence. We know when they did these acts. Human rights violators must be held accountable. Not just the apparatus or the so called militias. It is no excuse that UNAMET no longer exists—KODIM [military district command] also doesn't exist any more.

So my question to you: A lot has been revealed about the violence committed by UNAMET or INTERFET. You have diplomatically said that anywhere in the world people would sympathize for the underdog. What I want to ask is, while you were the head of P3TT, were you ever aware that certain individuals from UNAMET arrested pro-integration people, took them to their headquarters, and tortured them? Did UNAMET have authority to detain, much less to torture people of East Timor?

Such statements contributed to a lack of public confidence in the CTF in Timor-Leste, especially among human rights groups that were already suspicious of the Commission.

Justifications for, or Potential Benefits of, the Public Hearing Process

Given these significant flaws, why did the CTF persist with its public hearing process? Although the Commission has never formulated a clear rationale, the foremost reason commissioners provided for holding public hearings was their perceived outreach value:

³¹⁴ Testimony of Agus Tarmidzi, CTF public hearing, May 4, 2007, Jakarta. Geoffrey Robinson's report explains that the body "also served as a cover for the coordination of covert Indonesian government and military strategy." Robinson, *East Timor 1999*, 29.

Hearings were seen as a vehicle for raising the CTF's profile and educating the public.³¹⁵ This may explain the focus on holding hearings in Indonesia, where ignorance and misconceptions about East Timor and the events of 1999 remain widespread.

The goal of raising awareness in Indonesia about human rights violations in East Timor in 1999 is worthwhile. In addition to contributing to seeking accountability, it could make a real contribution to Indonesia's ongoing democratization. Reform of state institutions, including the military, requires public acknowledgment of the consequences that may result from systemic flaws in these organizations. Public outreach in Indonesia about events in East Timor also provides a potential benefit to victims and communities in Indonesia that suffered similar violations by the Indonesian security apparatus, particularly during the New Order period. Communication among these victims' communities allows the exchange of ideas and experiences and enables understanding of wider patterns of illegal behavior by implicated institutions.

Unfortunately, the CTF hearings have not facilitated these goals. Alleged perpetrators were overrepresented in the witness list and allowed to provide evidence largely unchallenged; victims were underrepresented and treated poorly; the UN did not provide any public response; and preparation for commissioner questioning was grossly inadequate. As a result the information provided to the public through these hearings is likely only to exacerbate existing ignorance and misconceptions in Indonesia about events in East Timor in 1999. Therefore the hearings have failed, as both a source of truthful testimony and a form of public education.

Finally, one justification sometimes expressed by commissioners and CTF staff for holding public hearings is the belief that "everyone is entitled to be heard."³¹⁶ According to this theory, public hearings are worthwhile because they redress an existing imbalance, whereby to date only victims have had a chance to speak publicly on the events of 1999. It is clearly important for truth commissions to hear from accused perpetrators as well as victims, but many commissions, including the CAVR, *consciously* privilege victim testimony. This is done partly as a form of healing and partly as a means of achieving justice through recognition of victims and their suffering. A greater focus on victim testimony constitutes an attempt to counter their marginalization through oppression. Adopting a policy of giving accused perpetrators a public platform without confronting them with available contradictory evidence, or at least actively providing contradictory evidence so the public can make an educated judgment about the veracity of the witnesses' testimony, may negatively affect the truth and reconciliation process.

- CONCLUSIONS AND RECOMMENDATIONS

Overview of the CTF so Far

An analysis of the CTF's establishment, TOR, and hearings reveals that many criticisms from human rights groups have been well founded. The CTF appears to have been established more out of concern to enhance bilateral diplomatic relationships than to contribute substantively to truth telling or national reconciliation between the peoples of Timor-Leste and Indonesia. With a creation process conducted behind closed doors with minimal consultation and no expert involvement, this intention contributed to the operation of deeply flawed TOR that fell short of international standards and the local transitional justice needs of both Timor-Leste

³¹⁵ Agus Widjojo, interview with the author, May 24, 2007, Denpasar; Jacinto Alves, interview with the author, April 20, 2007, Dili; Petrus Turang, interview with the author, May 25, 2007.

³¹⁶ Petrus Turang, interview with the author, May 25, 2007; and Discussions with Commission staff and Jacinto Alves.

and Indonesia. The Commission's subsequent internal attempts to resolve ambiguities in its mandate and restore its credibility have been weak and ineffective.

More important than the Commission's mandate was the way it conducted its work. The CTF's activities have largely been conducted in private. Its hearings have been the only substantial public activity undertaken to date. Unfortunately, the public hearings were tainted by weaknesses in the TOR and by the way they were conducted. The TOR's ambiguity and focus on alleged perpetrators provided a basis for poorly designed hearings that prioritized accused perpetrators' accounts over those of victims and experts. Despite the fact that these accounts contradicted the findings of highly respected official investigations and commissions, they were presented without contradiction to the public and the media.

Because the CTF has not yet released its final report, it is not clear how important the public hearings will be to the Commission's findings. Yet the hearings' public nature means that they have had an impact of their own. Some might be inclined to dismiss it as minimal in light of the facts established through the work of the serious crimes process, the CAVR, the Indonesian National Human Rights Commission, Geoffrey Robinson, and others. But the hearings' potential importance should not be overlooked. They provided an unbalanced platform for the denials of high-level accused persons. This may have reinforced claims that legitimate doubts remain about the source and nature of the crimes committed in East Timor in 1999, or indeed about whether crimes were committed at all. Ironically then, despite the Commission's mandate to "establish the conclusive truth," its public hearings have instead served to render some already conclusive truths *inconclusive*.

Potential Future Developments

It is important to remember that the CTF's work is not yet complete. Despite the damage done by its public hearings, the Commission has not yet published its final report and thus may still be able to redeem its credibility to some degree.

Some grounds remain for wary optimism that the Commission's final report will not be as disastrous as its public hearings. One is Commission members' acknowledgment that the evidence presented by many witnesses in Indonesia is untrue.³¹⁷ Another is the fact that during 2007 the Commission received assistance in its document review research from David Cohen (director of the Berkley University War Crimes Studies Center) and a team of researchers working under him. Cohen and his team are not only independent and impartial but also bring technical expertise that the CTF has been lacking.

Of course, it is doubtful that the CTF's final report will yield anything new, since most of the credible material on which it will be based comes from the CAVR, SCU, KPP-HAM, and the Indonesian attorney general's office, and much is publicly available. The important thing is that the report may lead to acceptance by both the Indonesian and Timorese governments of the truth regarding responsibility for mass human rights violations in 1999. However, if the report significantly contradicts the evidence on which it is supposed to be based, both international and national observers will reject it.

Furthermore, it will be difficult for the Commission's final report to counter the negative effects of the public hearings. The Indonesian public may be unconvinced if the report contradicts much of the publicly aired testimony by senior military figures. Thus, through the public hearings the CTF may have undermined its own goals and work. However, the fact that the hearings presented a distorted body of evidence to the public makes it even more important for the final report to be strong and credible.

³¹⁷ Author's discussions with Commission staff and some commissioners.

Finally, in addition to the Commission's report and findings, a significant opportunity for the CTF to make a substantive contribution to the future of Timor-Leste and Indonesia lies in its recommendations. If the CTF formulates its recommendations independently and carefully and bases them on findings supported by credible evidence, it still has an opportunity to make a positive contribution to transitional justice in Timor-Leste and Indonesia in the long term and to repair some of the damage done through the public hearings.

Recommendations

Based on the issues identified above, the ICTJ recommends that the CTF

- Take all possible efforts to rectify the public record by correcting apparently untruthful evidence given at CTF hearings by
 - Carefully scrutinizing the evidence given at the public hearings, especially accounts by accused persons that are contradicted by corroborated documentary evidence or statements of witnesses such as victims who have no apparent motive to fabricate their testimony;
 - Making substantial renewed efforts to gain responses to allegations made in the public hearings against the United Nations;
 - Expressly rebutting in its final report any significant allegations made in public hearings that are found to be untrue;
 - Identifying and naming in its final report witnesses who were dishonest in the CTF's public hearings.
- Work to regain the confidence of Timorese, Indonesian and international stakeholders and observers by
 - Making a determination that no amnesties will be recommended and publicizing this decision as soon as possible;
 - After that announcement, actively seeking input from victims and undertaking to prioritize this input in formulating its recommendations.
- Ensure complete independence from the governments of Timor-Leste and Indonesia in its working methods, particularly in regard to the formulation of recommendations;
- Review recommendations of the CAVR and consider using these as a basis for its own recommendations.

ANNEX: TABLE OF WITNESSES WHO APPEARED BEFORE THE CTF

Name of Witness	Description	Type of Hearing	Type of Witness	Gender	Named as perpetrator or indicted?
Denpasar, February 19-20, 2007					
1	Ali Alatas	Former Indonesian foreign minister	Public	Indonesian government	Male -
2	Emilio Bareto	Victim/witness, Liquiça church attack, April 6, 1999	Public	Victim	Male -
3	Mateus Carvalho	Former village head of Hera, Aitarak unit commander	Public	Militia	Male Indicted by SCU
4	Manuel Ximenes	Former village chief and victim/witness, attack in Cailaco, April 12, 1999	Public	Victim	Male -
5	Florindo de Jesus Brites	Victim/witness, attack on the house of Manuel Carrascalao, April 17, 1999	Public	Victim	Male -
6	Francisco Lopes da Cruz	Former head of BRTT (<i>Barisan Rakyat Timor Timur</i> , East Timor People's Front), a Timorese pro-integration group	Public	Timorese pro-integration figure	Male -
Jakarta, March 26-30, 2007					
7	Bishop Belo	Former bishop of Dili	Public	Catholic Church	Male -
8	Domingos Maria das Dores Soares	Former district head, Dili, former head of FPKD (<i>Front Persatuan, Demokrasi dan Keadilan</i> , Forum for Unity, Democracy and Justice), a Timorese pro-integration group, closely linked to militias)	Public	Militia	Male Named by KPP-HAM; named in Robinson report
9	Martinho Fernandes	Former district head, Viqueque, commander of 59/75 Junior Paramilitary Group	Public	Militia	Male Named in Robinson report; indicted by SCU
10	B.J. Habibie	Former president of Indonesia	Closed	Indonesian government	Male -
11	Sera Malik	Former commander team Sera Militia	Public	Militia	Male -
12	Joanico Belo	Former commander team Saka Militia	Public	Militia	Male Indicted by SCU
13	Eurico Guterres	Former commander Aitarak Militia	Public	Militia	Male Named by KPP-HAM; indicted by SCU; convicted by Ad Hoc Court
14	Zacky Anwar Makarim	Former security adviser, P3TT task force (<i>Satuan Tugas Pelaksanaan Penentuan Pendapat Mengenai Timor Timur</i> , Task Force for the Implementation of the Popular Consultation in East Timor)	Public	TNI	Male Named by KPP-HAM; named in Robinson report; named in Dunn report; indicted by SCU

15	Edmundo Conceicao	Former district head, Lautem; adviser to BRTT and FPDK, guardian of Tim Alfa Militia	Public	Militia	Male	Named by KPP-HAM; named in Robinson report; indicted by SCU
16	Nonato Soares	Victim, Dili Diocese	Public	Victim	Male	-
17	Esmeralda Dos Santos	Victim, Suai Church	Public	Victim	Female	-
18	Galuh Wandita	Former human rights activist in East Timor in 1999 and former CAVR staff member	Public	NGO	Female	-
19	Suhartono Suratman	Former military commander, East Timor in 1999	Public	TNI	Male	Named by KPP-HAM; named in Robinson report; named in Dunn report; indicted by SCU; tried and acquitted by Ad Hoc Court
20	Adam Damiri	Former regional commander, East Timor in 1999	Public	TNI	Male	Named by KPP-HAM; named in Robinson report; named in Dunn report; indicted by SCU; tried by Ad Hoc Court and found guilty at first instance, acquitted on appeal
21	Adelino Brito	Victim, Maliana Police Station	Public	Victim	Male	-
22	Fares da Costa	Witness/victim, Suai Church	Public	Victim	Male	-
23	Mateus Maia	Former mayor of Dili, member of BRTT	Public	Timorese pro-integration figure	Male	-

Jakarta, May 2-5, 2007

24	Camilo dos Santos	Former platoon commander, Battalion 745, Los Palos	Public	TNI	Male	Indicted by SCU
25	Simao Coreia	Member, Battalion 744	Public	TNI	Male	-
26	Luis Dos Santos	Member, Battalion 744	Public	TNI	Male	-
27	Muflizar	Election observer from Asia Network for Free and Fair Elections	Public	NGO	Male	-
28	Agusto Dato Buti	Witness, killing of Mauhudu	Public	Eyewitness	Male	-
29	Hulman Gultom	Former local chief of police, Dili	Public	Indonesian Police	Male	Named in Robinson report; indicted by SCU; tried by Ad Hoc Court and convicted at first instance, acquitted on appeal
30	Noer Muis	Former commander, Subregional Military Command, East Timor	Public	TNI	Male	Named by KPP-HAM; named in Robinson report; Named in Dunn report; indicted by SCU; tried by Ad Hoc Court and convicted at first instance, acquitted on appeal
31	Armindo Soares Mariano	Former head of the regional Parliament, East Timor	Public	Timorese pro-integration figure	Male	-
32	Alianca Goncalves	Witness, case of Ana Lemo	Public	Victim and eyewitness	Female	-

33	Jacob Sarosa	Former commander, Battalion 745	Public	TNI	Male	Named by KPP-HAM; named in Robinson report; indicted by SCU
34	Agus Tarmidzi	Former chief, P3TT task force	Public	Indonesian government	Male	-
35	Koesparmono Irsan	Former member, KPS (<i>Komisi Perdamaian dan Stabilitas</i> , Commission on Peace and Stability)	Public	Indonesian government	Male	-
36	Berta dos Santos	Victim	Public	Victim	Female	-
37	Gatot Subiyaktoro	Former local chief of police, Covalima	Public	Indonesian Police	Male	Named in Robinson report; indicted by SCU
38	Timbul Silean	Former regional chief of police, East Timor	Public and Closed	Indonesian police	Male	Named by KPP-HAM; named in Robinson report; Named in Dunn report; tried by Ad Hoc Court and acquitted
39	Luisa Alves Almeida	Victim	Public	Victim	Female	-
40	Wiranto	Former commander-in-chief, TNI	Public	TNI	Male	Named by KPP-HAM; named in Robinson report; indicted by SCU
41	Cancio Lopez da Carvalho	Former commander, Mahidi Militia	Public and Closed	Militia	Male	Indicted by SCU

Denpasar, July 23-24, 2007

42	Leoneto Martins	Former district head, Liquisa, founder Besi Merah Puti Militia	Public	Militia	Male	Named by KPP-HAM; named in Robinson report; indicted by SCU; tried by Ad Hoc Court and acquitted
43	David Ximenes	Former deputy leader of CNRT (<i>Conselho Nacional da Resistência Timorese</i> , National Council of Timorese Resistance), Timorese pro-independence group	Public	Timorese pro-independence figure	Male	
44	Asep Kuswani	Former commander district military command, Liquiça	Public	TNI	Male	Named in Robinson Report; indicted by SCU; tried by Ad Hoc Court and acquitted
45	Yan Rizal	Electoral observer, Forum Rektor	Public	Electoral observer	Male	
46	Simao Lopes	Former commander, Sakunar Militia	Public	Militia	Male	Indicted by SCU
47	Jose Estavao Soares	Founding member, BRTT	Public	Timorese pro-integration figure	Male	
48	Domingos Alves	Alleged pro-integration victim/Mahidi Militia subdistrict deputy commander	Public	Militia ³¹⁸	Male	Indicted by SCU

³¹⁸ Although Domingos Alves was identified by the CTF as a victim in its program, introductory comments, and press releases, he has been indicted by the Serious Crimes Unit and accused of involvement in numerous crimes against humanity as a deputy commander of the Mahidi Militia.

49	Yayat Sudrajat	Former commander, SGI (<i>Satuan Tugas Intelijen</i> , Intelligence Task Force) and Task Force, Tribunal VIII	Public	TNI	Male	Named by KPP-HAM; named in Robinson report; named in Dunn report; indicted by SCU; tried by Ad Hoc Court and acquitted
Dili, September 25-27, 2007 (closed hearings September 24, 28)						
50	Xanana Gusmão	Former Falintil commander, current prime minister of Timor-Leste	Closed	Falintil	Male	
51	Tomas Goncalves	Former leader of Apodeti (Timorese pro-integration party from the civil war period)	Public	Timorese pro-integration figure	Male	
52	Sancho Ramos de Reisoreicao	Victim	Public	Victim	Male	
53	Joni Marques	Former commander, Team Alfa Militia	Public	Militia	Male	Named by KPP-HAM; indicted by SCU; convicted by the Special Panels
54	Francisco Lopes de Carvalho	Initiator and founding member of BRTT	Public	Timorese pro-integration figure	Male	
55	Marcus Baquin	Victim from Passabe	Public	Victim	Male	
56	Mario Goncalves	Victim from Lolotoe	Public	Victim	Male	
57	Teotonio de Assis	Former finance officer for Dili District	Closed		Male	
58	Taur Matan Ruak	Former Falintil commander, current commander of Timor-Leste Defense Force	Closed	Falintil	Male	
Jakarta, October 24, 2007						
59	Aris Martono	Former commander, Battalion 621	Public	TNI	Male	
60	Kiki Syahnakri	Martial law commander, East Timor, September 1999	Public	TNI	Male	Named in Robinson Report; named in Dunn report; indicted by SCU

Shading indicates that testimony was given only in a closed hearing.

ABBREVIATIONS AND TERMS

ASEAN	Association of South East Asian Nations
BRTT	Barisan Rakyat Timor Timur (East Timor People's Front), a pro-integration group formed in 1999
CAVR	<i>Comissão de Acolhimento, Verdade e Reconciliação</i> (Commission for Reception, Truth, and Reconciliation)
CNRT	<i>Conselho Nacional da Resistência Timorese</i> (National Council of Timorese Resistance)
COE	Commission of Experts to Review the Prosecution of Serious Violation of Human Rights in Timor-Leste (then East Timor) in 1999
CTF	Commission for Truth and Friendship
FPDK	<i>Front Persatuan, Demokrasi dan Keadilan</i> (Forum for Unity, Democracy, and Justice), pro-integration group formed in 1999 in East Timor and closely linked to militias
ICTJ	International Center for Transitional Justice
KPP-HAM	<i>Komisi Penyelidik Pelanggaran Hak Asasi Manusia</i> (Commission of Investigation into Human Rights Violations)
KPS	<i>Komisi Perdamaian dan Stabilitas</i> (Commission on Peace and Stability), Indonesian government body created in 1999 in East Timor
NGO	Nongovernmental organization
P3TT task force	<i>Satuan Tugas Pelaksanaan Penentuan Pendapat mengenai Timor Timur</i> (Task Force for the Implementation of the Popular Consultation in East Timor), Indonesian government body created in 1999 in East Timor
Serious Crimes Process	Process established in 2000 for prosecuting serious crimes within the Timorese justice system, with assistance from the United Nations; components are Serious Crimes Unit, Defense Lawyers Unit, and Special Panels for Serious Crimes.
SCU	Serious Crimes Unit
TNI	<i>Tentara Nasional Indonesia</i> (Indonesian National Armed Forces)
TOR	Terms of Reference (of the CTF)
TRC	Truth and Reconciliation Commission (South Africa)
UN	United Nations
UNAMET	United Nations Mission in East Timor (June 11, 1999–October 25, 1999)

UNMIT	United Nations Integrated Mission in East Timor (August 26, 2006–present)
UNTAET	United Nations Transitional Administration in East Timor (October 25, 1999–May 20, 2002)