

Part 9: Community Reconciliation

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Part 9: Community Reconciliation

Yes and the perpetrators...must recognise their mistake and ask for forgiveness...the communities already told me bring them back. We will live together, we will punish them in our way, we will demand from them: "Oh, you burnt this house, help us and we will rebuild together."¹

Former CNRT President, Kay Rala Xanana Gusmão, 2001.

9.1 Introduction

9.1.1 Overview of this Part

1. One of the Commission's core functions was promoting reconciliation in Timor-Leste. This objective informed the design of all Commission programmes and the way such programmes were implemented. The Commission adopted a holistic, integrated approach to promoting reconciliation in Timor-Leste, involving all levels of society in its work. It also approached the goal of reconciliation from a variety of angles through the broad range of programmes it undertook during its operational period. It was understood by the Commission that, if it was to be truly effective, it must engage individuals, families and community groups from all sides of the conflict, reach to the highest levels of the national leadership, and continue for many years to come.

2. The Commission's main reconciliation initiative at the grassroots level was its Community Reconciliation Process (CRP) programme. This was a novel and previously untested programme designed to promote reconciliation in local communities. It aimed to achieve this through reintegrating people who had become estranged from their communities by committing politically-related, "less serious", harmful acts during the political conflicts in Timor-Leste. The underlying belief of the programme was that communities in Timor-Leste, and those who had harmed them in less serious ways, were ready to reconcile with each other. The CRP procedure was based on the philosophy that community reconciliation could best be achieved through a facilitated, village-based, participatory mechanism. This mechanism combined practices of traditional justice, arbitration, mediation and aspects of both criminal and civil law.

3. Accordingly, the Commission was given a mandate by Regulation 2001/10² to organise community-based hearings. At these hearings, victims, perpetrators and the wider community could participate directly in finding a solution to enable perpetrators of "harmful acts" to be reaccepted into the community. The regulation set out the basic steps to be followed in a CRP but did not spell out the precise procedure, allowing flexibility for the inclusion of elements from local traditional practice.

4. The CRP was a voluntary process. Hearings were conducted in the affected community by a panel of local leaders, chaired by a Regional Commissioner with responsibility for the district where the hearing was held. At the hearing the perpetrator was required to admit fully his participation in the conflict. Victims and other members of the public were then given the opportunity to ask questions and make comments on the perpetrator's

¹ During the design of the CRP, community consultations were held at which community members expressed the strong feeling that they could not reconcile with those responsible for more serious crimes, such as murder, rape and torture, until they had been formally prosecuted and tried.

statement. Hearings were often an extremely emotional experience for the participants and could continue all day and into the night. After all relevant actors had spoken, the panel brokered an agreement in which the perpetrator consented to undertake certain actions. These could include community service or the payment of reparations to victims. In return for performing these actions the perpetrator was reaccepted into the community. Traditional practices, or *lisan*³ were incorporated into the procedure, varying according to local custom.

5. Before a hearing could be conducted, the Office of the General Prosecutor (OGP)³ was required to consider the case and agree that it could proceed through a CRP rather than be prosecuted in the courts. Following the hearing the drafted reconciliation agreement could, after judicial consideration, become an Order of the Court. If the Court approved, and the perpetrator carried out his or her obligations, immunity from civil or criminal action would be granted.

6. The results of the CRP programme indicate that it has made a real contribution to community reconciliation in Timor-Leste, and the reintegration of perpetrators of past wrongs into their communities. 1,371 perpetrators successfully completed a CRP, many more than the initial target of 1,000, and many more requested that the CRP programme continue. Perpetrators, victims and other participants have reported to the Commission that the CRP programme contributed significantly to the maintenance of peace in their communities and to settling past divisions. Perhaps the most important indicator of CRP's success, however, is that, despite predictions of revenge attacks on perpetrators for their role in the violence of 1999, Timor-Leste has enjoyed a high level of peace and stability during the difficult initial years of nation building.

9.1.2 Background

The situation in 1999

7. The intense violence and destruction that followed the Popular Consultation of 30 August 1999 resulted in the internal displacement of over 300,000 people, while a further 250,000 to 300,000 either voluntarily fled or were forcibly taken to West Timor.⁴

8. Approximately 180,000⁵ of the refugees to West Timor had returned to Timor-Leste by October 1999. Among those who remained in Indonesia were many of the militia commanders, East Timorese members of the Indonesian military (Tentara Nasional Indonesia, TNI), officials of the civilian administration and pro-autonomy politicians thought to have been responsible for the serious human rights violations that occurred in 1999. The International Force for East Timor (Interfet) and then UNTAET announced that if those suspected of having committed serious crimes returned to Timor-Leste, they would be arrested and prosecuted.

9. The refugees also included people who had played only a relatively minor role in the violence and destruction. Thousands of East Timorese had joined militia groups, including many who had been forced into doing so. Many had participated in house-burning, beatings, intimidation and looting. A large proportion of the refugees were people who had played no role in the violence, but were family members of others who had, or had supported the political goal of integration but not the associated campaign of violence.

10. As the numbers of returnees grew, it became apparent that a significant number of those who had been involved in "less serious crimes", or who had simply supported

³ *Lisan* is a combination of beliefs, customs and traditions of East Timorese people. *Lisan* varies from community to community and is generally an important aspect of community life, especially in rural areas. It is often referred to as *adat* in the Indonesian language.

integration, were afraid to return to their communities. The violence surrounding the ballot had been carried out with the powerful protection of the TNI. Its victims had been unable to resist or fight back. It was widely predicted that, given the opportunity, those victims would take revenge on the people who had attacked them and their families, or even those who had been pro-integration.

11. Although the events surrounding the ballot were freshest in the minds of all East Timorese at the end of 1999, that violence was in fact inseparable from the entire history of the political conflicts going back to 1974. Many were still divided over their political affiliations during the internal conflict of 1975. Many who had supported independence during the Indonesian occupation nursed anger and resentment towards those who had collaborated with the Indonesian security forces; independence supporters, their friends and family members had suffered violations as a result of such collaboration. The Indonesian withdrawal after the ballot seemed to open up the possibility that these long-standing grievances would flare into violence.

12. This climate of uncertainty and apprehension most immediately affected the range of people who had been “on the wrong side” in 1999: those still in the camps in West Timor who had played relatively minor roles in the conflict; those who had returned to Timor-Leste but had taken shelter in the relative anonymity of major towns; and the increasing number who had returned to their villages but were living on the fringes of community life, kept at arm’s length by their fellow villagers.

13. At the same time institutional developments were both shaping thinking on, and narrowing the options for, both justice and reconciliation. UNTAET had established the Special Panels of the Dili District Court, the office of the Deputy General Prosecutor for Serious Crimes and the Serious Crimes Investigation Unit. These institutions, collectively known as the “serious crimes process”, were mandated to investigate and prosecute perpetrators of serious crimes that had been committed during the conflict. They received significant budgetary support from the UN and were largely staffed by UN international personnel.

14. The Special Panels had jurisdiction over the serious criminal offences of crimes against humanity, genocide, war crimes, torture, murder and sexual offences.⁶ Legislation provided that the Special Panels would have exclusive jurisdiction only over cases of murder and sexual offences that occurred between 1 January 1999 and 25 October 1999. Crimes against humanity, war crimes, genocide and torture are internationally recognised as crimes of universal jurisdiction, which meant that technically the Special Panels could deal with these crimes regardless of when or where they had been committed. However, due to its overwhelming workload, the Serious Crimes Unit made an internal policy decision to limit prosecutions for all of the six offences within its jurisdiction to those crimes committed during 1999. These decisions were taken because of the massive caseload arising from 1999, but they meant that serious crimes committed prior to 1999 would not be prosecuted.

15. The Ordinary Crimes Panels of the Dili District Court had jurisdiction to deal not just with new offences, but also with the potentially enormous number of “less serious crimes” committed during the political conflicts. East Timorese judges, prosecutors and defence counsel, most of whom had had little or no practical legal experience before their appointment, had responsibility for the Ordinary Crimes process.

16. Despite the best efforts of these legal professionals and those involved in the administration of the courts, it quickly became apparent that the nascent formal legal system was straining to keep up just with new crimes and those offences that came within the mandate of the serious crimes process. There was little or no possibility that the backlog of “less-serious crimes” could be investigated or prosecuted. Total impunity for these past offences would seriously hamper efforts to promote respect for the rule of law in the emerging

nation. It might also encourage vigilante justice and revenge attacks, which could easily ignite the brittle emotions of the population, sparking renewed violence.

17. In this context policy makers began seeking a solution that would require less resources and would not place further strain on the struggling formal justice sector. It also needed to be able to address a large number of cases in a relatively short period of time, assist in the reintegration of offenders into their former communities and help to maintain the fragile peace of the territory.

18. In the absence of any formal mechanisms operating at the village level, some communities had sought to resolve outstanding disputes through traditional processes adjudicated by local spiritual leaders. The Community Reconciliation Process was an attempt to draw on the high regard in which these customary practices were held, and fuse them with the legal principles on which the emerging state of Timor-Leste was founded. The resulting mechanism combined direct participation by local leaders, perpetrators, victims and community members with formal requirements involving the OGP and the courts. It was hoped that this combination would not only assist in safely reintegrating perpetrators into their communities, but also reduce the pressure on the formal justice system, contribute to the fight against impunity, and help to settle residual anger caused by the political conflict.

Traditional justice in East Timorese society

19. When the designers of the CRP decided that it should incorporate customary law, they were able to draw on a rich cultural tradition. Customary systems of law, dealing with both criminal and civil disputes, were part of the tradition of *lisan*. This tradition was well-established in Timor-Leste long before the arrival of the Portuguese in the 16th century. Both the Portuguese and Indonesian administrations recognised only the legitimacy of the formal justice systems they had created. However, the mechanisms of the formal sector were not highly developed under either regime, and were concentrated mainly in Dili and other towns. Traditional methods continued to provide the only effective means of resolving disputes for most of the population, particularly those living in remote rural areas. Reliance on *lisan* procedures became even more important during the Indonesian occupation because the formal system of justice was perceived as an instrument of selective oppression rather than a means of protection of the rights of the people.

20. Traditional beliefs continue to play an important role in the life of most East Timorese. Communities rely on traditional conflict resolution practices that allow an aggrieved person to seek resolution of a dispute through the intervention of elders known as *lia nain*⁷. These practices bring together the parties, their families and often other members of the community to participate in a ceremony to resolve a dispute. The ceremony usually takes place with the parties seated on a mat (*biti* in Tetum), hence the term *nahe biti boot* (lit: "spreading the large mat") to describe the traditional procedure for resolving disputes. The opening of the mat marks the opening of the process of seeking a resolution. Normally, the mat should not be rolled up again until a resolution has been reached.

21. Participants believe that their ancestors, who are summoned at the beginning of the ceremony, are witnesses to the *nahe biti boot* ritual and validate the proceedings. Their presence makes the process binding, and any failure to accept the outcome is believed to have serious consequences.

22. Within this system the *lia nain* play an important role as both facilitators and adjudicators. A variety of factors influence how a case is handled; including how serious the conflict is thought to be, and whether the dispute is between different families or within the

⁷ The *lia nain* (literally: keeper of the word) are considered men of law, involving an important spiritual and customary role.

same family. These factors also determine the number, position and social standing of the leaders who should be engaged in the resolution process.

23. The form of *lisan* procedures varies significantly between different regions of Timor-Leste. However, despite these variations the basic procedure of *nahe biti boot* is a cultural constant across Timor-Leste.

Nahe biti boot

A typical *nahe biti boot* ceremony takes the following form:

The *lia nain*, dressed in multicoloured woven *tais* (traditional weaving),* wearing anklets made from horse hair, and adorned with ceremonial items such as *kaibauk* (silver horns) and the chest-ornaments known as *belak*, open the ceremony by performing a dance while chanting and reciting incantations which invite answering calls from the audience. The solemn act of unrolling the mat then takes place. This marks the opening of proceedings and indicates that both sides to the dispute have agreed to sit together to try to resolve their differences. The mat should not be rolled up again until the dispute has been settled. The process usually begins in the morning and depending on the seriousness and complexity of the dispute, can continue until late into the following night.

After the mat has been unrolled, a woven straw basket (*mama fatin*)[†] containing betel nut, lime, betel leaves, tobacco, palm wine (*tua*) and other items are laid out. The parties to the dispute and the *lia nain* will chew the betel nut, leaves and lime, and drink *tua* after the dispute is successfully settled as a gesture of friendship and a sign that the conflict is over, and to publicly demonstrate that both sides are now reconnected in a peaceful relationship with each other.

“Lulik is all that is sacred...lisan wisdoms and practices...not only sacred objects. The Lia nain carry sacred objects such as a stick (rotu) or a traditional dagger representing the presence of lisan so the parties in the dispute have to submit to lisan law.”

—Father Jovito de Jesus Araújo, Deputy Chair of the CAVR.⁷

Once these rituals are complete, the parties to the dispute are given the opportunity to present their cases to the group. Generally, they are invited to give their versions of the events surrounding the dispute. The adjudicators or other participants may then question them. At a certain point, the *lia nain* or the assembled members of the community call a halt to this phase of the process and announce that the time has come to move on to the next part of the proceedings, the determination of penalties.

If the complainant has convinced the *lia nain* of the justice of his case, the penalties are usually punishment of the perpetrator or compensation of the victim, or a combination of both. Although such outcomes may have a retributive dimension, they are reached through an adjudication process that involves discussion and debate with all parties involved. This differs significantly from the formal justice system, where punishment is imposed by the state after considering evidence provided by advocates representing the prosecution and defence.

Punishment meted out under *lisan* traditionally takes one of two forms, social or physical.⁸ Social punishments include being ostracised by exclusion from communal activities, or having one's social status lowered. In the past physical punishments could range from incarceration to capital punishment. However, such punishments could be avoided by the payment of an amount of compensation acceptable to the victim or the victim's family. Where a perpetrator will not or cannot pay the agreed compensation, the perpetrator's family may take responsibility for the “sentence” or “fine”.

* *Tais* are traditionally hand woven textiles with symbols and patterns unique to the clan of the weaver.

† *Mama Fatin* is a traditional symbol of hospitality.

A defining characteristic of the *lisan* system is that it involves the wider community in the discussion about the dispute and how it is to be resolved. If an individual has been wronged, other members of that person's kin group share in the injustice. Consequently, *lisan* ceremonies focus on individuals, but they also engage the interests of wider family groups. In reaching agreements or deciding on sanctions, consideration is often given to relationships between families and between communities. This inclusive approach to justice, based on the individual's sense of the self as part of a greater whole that extends beyond the family group, has been shown to strongly motivate people to reconcile.⁹

Because of its wider communal context, public demonstrations of reconciliation through rituals and ceremonies are a crucial part of re-establishing or maintaining social stability. While practices and rituals vary across the country, certain principles remain constant. Firstly, as with most aspects of *lisan* practice, the ancestral spirits are called upon to witness and validate the process. Secondly, the perpetrator (and sometimes the family of the victim) contributes materials for the performance of the *lisan* ceremonies. These typically include betel nut and palm wine to be shared in a closing ritual – symbolising reunification. Often a sacrificial animal is brought to the meeting. It may play a variety of roles, but commonly its entrails are read to determine whether the process has been completed to the satisfaction of the ancestors. Thirdly, it is customary for a communal meal to follow the ceremony. This ritual helps to generate a binding agreement, allowing closure of the dispute that, in turn, restores social balance and unity.

9.1.3 Origins of the CRP

24. In May 2000 the UNTAET Human Rights Unit facilitated a workshop, led by two international experts, on the theme of a possible truth and reconciliation commission for Timor-Leste. Included in the report from this workshop was a recommendation that a more practical, community-based solution be devised for dealing with the large number of perpetrators of less serious crimes, particularly those committed during the period surrounding the Popular Consultation in 1999.¹⁰

25. In August 2000 the CNRT, which included representatives of East Timorese political parties and other groups that had supported a referendum, held a national congress and unanimously passed a resolution calling for the establishment of a truth and reconciliation commission. The proposal was passed to the National Council, the East Timorese consultative legislative council set up by UNTAET, and a request for assistance was forwarded to UNTAET. The Transitional Administrator, Sergio Vieira de Mello, asked the UNTAET Human Rights Section to take the lead in assisting East Timorese counterparts to conduct background research and take steps towards the establishment of a 'truth and reconciliation commission'. A Steering Committee was formed which included representatives of the CNRT, human rights NGOs, women's groups, youth organisations, the Catholic Church, the Association of Ex-Political Prisoners (Assepol), Falintil, UNTAET (through its legal and human rights sections) and UNHCR.

26. The concept of the community reconciliation procedures developed during the consultation process conducted by the Steering Committee between September 2000 and January 2001. The consultations were extensive, covering all districts and including meetings at aldeia, village, sub-district and district level. Consultations were also held with the country's main political and human rights groups. During the community meetings participants were asked for their opinions on dealing with "less serious crimes" through community-based hearings rather than through the courts.

Results of district consultations

Community views on reconciliation

Some common community views on a possible reconciliation process included:

- It should be a community-based process, during which perpetrators would be required to tell their victims and those who knew them well the truth about the violations they had committed.
- Any reconciliation process should take place at the village level. Participants expressed dissatisfaction that the reconciliation initiatives up to that point had focused on leaders. Although, it was accepted that leaders had also to reconcile, it was felt that there should also be a formal mechanism to try to resolve grass-roots level differences, whose origins lay in the conflicts of the past.
- It was not realistic to imagine that national leaders could simply command the population to reconcile. A forum was needed where those who had harmed their communities could explain their actions and apologise for them.
- It would be important that aside from victims and communities, *liurai** (chief of a village), spiritual leaders and other figures who enjoyed the respect of the community should be involved in any reconciliation procedure
- Any mechanism adopted should incorporate traditional *lisan* dispute resolution procedures, however, *lisan* alone would not be sufficient. An approach was needed which would link traditional mechanisms to the formal justice system.
- The fact that the vast majority of East Timorese belonged to the Catholic Church should be recognised and integrated into the design of the process, particularly their acceptance of the Catholic doctrine of confession and absolution.
- Anger towards those who had cooperated with the Indonesian occupation forces, particularly those who joined militia groups, remained strong in many communities. Something needed to be done to try to lessen this anger.
- Many perpetrators of "less serious crimes" had not returned to their home communities, but had settled in Dili or other places where they were not known. These persons should return to their home villages, and explain their actions to their communities.
- Pro-autonomy supporters said that there was a need to educate the population so that they understood that supporting the political goal of autonomy was not a crime, and accepted that individuals should not be punished for having taken that political position.
- If a formal programme was to go ahead, it should be backed up by a comprehensive information campaign, down to the village level.

Some common concerns raised about the proposed commission included:

- There is a risk that hearings could open old wounds, especially if the Commission's investigations went beyond recent violations back to 1974. For similar reasons some thought that the Commission's activities should be confined to reconciliation and should not include truth-seeking at all.
- The proposed Commission could not, logistically, deal with a large number of hearings in remote villages, given the difficult terrain and the shortcomings of the transport and communication systems.

* Traditional social structure is based throughout Timor-Leste on "kings" known as *liurai*. Prior to the arrival of the Portuguese, Timor-Leste consisted of numerous small kingdoms under the hereditary control of a *liurai*. The *liurai* system and other customary institutions, retain long influence in Timor-Leste, particularly in rural areas. However, we also know that this traditional system has been disrupted and factionalised by colonisation and war. For example, after the Dom Boaventura rebellion of 1911-1912, the most significant *liurai*-led revolt against Portuguese rule during the colonial period, the Portuguese administration required that all *liurai* obtain approval before taking up office.

27. Following the district consultations, the Steering Committee prepared a draft bill. After several months of discussion, the National Council approved Regulation 2001/10 on 13 June 2001. The Transitional Administrator promulgated the Regulation on 13 July 2001.

9.2 The Community Reconciliation Process

Summary of the CRP Procedure

Under the mechanism provided for in Regulation 2001/10 perpetrators of “harmful acts”, whether criminal or otherwise, could voluntarily provide to the Commission a statement. The statement included a full description of the acts they had committed, an admission of responsibility and other relevant facts. The statement would then be forwarded to the Office of the General Prosecutor, to decide whether the General Prosecutor’s jurisdiction to prosecute would be exercised or, alternatively, whether it was a case that could suitably be handled through CRP. If approved for CRP, the case would then be returned to the Commission, which had to organise a hearing in the perpetrator’s community.

Hearings were presided over by a panel of between three and five local leaders, including a Regional Commissioner of the CAVR who would act as chair. At the hearing the perpetrator was required to make a formal public admission, and could be asked questions by victims and community members. Traditional *lisan* procedures and the participation of spiritual leaders were incorporated into the process in accordance with local custom. After hearing from all parties the panel would decide what appropriate “acts of reconciliation” the perpetrator should perform in order to be accepted back into the community. These acts might include community service, an apology or the payment of reparations. If the perpetrator accepted the panel’s decision, an agreement would be drafted in simple terms. It would then be forwarded to the appropriate District Court, where it would be formalised as an Order of the Court. On completion of all required “acts of reconciliation” the perpetrator was automatically entitled to civil and criminal immunity for all actions covered in the agreement.

9.2.1 Objectives of the Process

28. Part IV of the Regulation, entitled Community Reconciliation Procedures, set out the steps to be followed in implementing a Community Reconciliation Process (CRP). The broad objective of the CRP, as set out in the Regulation, was:

[T]o assist the reception and reintegration of persons into their communities...in relation to criminal or non-criminal acts committed within the context of the political conflicts in Timor-Leste between 25 April 1974 and 25 October 1999.¹¹

29. The procedures set out in the Regulation incorporated principles drawn from criminal law, civil law and traditional mechanisms for dispute resolution.

9.2.2 The procedural framework

30. The procedural framework of CRP involved the following five steps:

Initiation of the Process

31. Any person, who had committed a “criminal or non-criminal act...within the context of the political conflicts in East Timor”, which had caused that person to be estranged from his or her community, could approach the Commission to submit a statement.

32. This statement had to include:

- A full description of the relevant acts
- An admission of responsibility
- Identification of the relationship between the acts committed and the political conflict
- Identification of others involved in those acts, both as additional perpetrators and victims
- A renunciation of the use of violence to achieve political ends
- A formal request to participate in a CRP in a specified community

33. Before accepting the statement, the Commission informed the deponent that the statement would be sent to the OGP, who retained exclusive jurisdiction over all serious crimes, and that the OGP might use the statement in future legal proceedings.¹² The CRP Division staff then forwarded the completed statement to the national office of the Commission.

Determining whether a case was appropriate for CRP

34. The CRP was not intended to impinge on the jurisdiction of the Serious Crimes Unit or the Special Panels. Rather, it was a mechanism designed to deal with “less serious crimes” and to run in tandem with the serious crimes process. This was in accordance with the principle that there could be no reconciliation without justice for those who had committed serious offences. At the same time the procedure recognised the inability of the formal justice system to deal with “less serious” violations and the need to provide an achievable solution while promoting reconciliation. This approach was confirmed by Schedule 1 of the Regulation:

In principle serious criminal offences, in particular murder, torture and sexual offences, shall not be dealt with in a Community Reconciliation Procedure.¹³

35. Under the Regulation, the OGP made the decision on whether a case could appropriately be dealt with in a CRP, after preliminary review by an internal Commission statements committee. The statements committee checked whether the case came within the Commission’s mandate and made a preliminary assessment of its appropriateness for a CRP. This assessment, together with a copy of the statement, was then forwarded to the OGP. The OGP considered the acts admitted to in the statement, and checked the name of the deponent and the events described in his statement against information in its own files. It then decided whether or not to exercise its exclusive jurisdiction to investigate the case with a view to possible prosecution. If the statements committee approved the statement and the OGP decided not to exercise jurisdiction, the CRP could proceed.

36. Schedule 1 to the Regulation set out guidelines, rather than strict rules, for the OGP to make this determination.¹⁴ The criteria to be considered included the nature of the crime committed by the deponent, the number of acts committed and the deponent’s role (whether he had organised, planned, instigated or ordered the crime, or was following the orders of others). Examples of acts appropriately dealt with by CRP were “theft, minor assault, arson,

the killing of livestock or the destruction of crops". A CRP could also deal with non-criminal actions that were considered to have caused harm to communities, such as collaboration or secretly providing information, which led to violations being committed. CRP was not designed to deal with criminal offences not related to the political conflicts in Timor-Leste.

37. By leaving the decision concerning appropriateness to the OGP, the Regulation recognised that the requirements of justice were paramount and should never be subordinated to the need for reconciliation. This kind of decision was more appropriately made by legal professionals with knowledge of the cases currently being investigated, rather than Commission staff. Decisions as to whether there is sufficient evidence to prosecute someone for a particular crime require consideration of whether the evidence supports the necessary legal elements of the crime. Such decisions involve complicated legal concepts like "common purpose", "conspiracy" and "accessory before or after the fact". In addition the only evidence available to the Commission was the relatively superficial voluntary statement given by the deponent.

38. The inclusion of guidelines, rather than an exhaustive list of offences recognised that, although compiling such a list might seem desirable, it would actually constrain the OGP from using its discretion and making the determination on a case-by-case basis.

39. The OGP had 14 days to make its determination, although it could request an extension of a further 14 days.¹⁵ The Regulation allowed the Commission to proceed with organising a CRP if the OGP did not notify it of its intention to exercise its jurisdiction over the case within two weeks of receiving the statement.

40. In notifying the Commission of its determination, the OGP used one of two standard form letters. One letter was used if the OGP intended to withhold the case, thereby exercising its exclusive jurisdiction over "serious criminal offences". It included the following language:

The following persons are currently under investigation by the Serious Crimes Unit...The Office of the General Prosecutor exercises its exclusive jurisdiction.¹⁶

41. The other letter advised that the case could be appropriately dealt with by CRP, as follows:

Based on the statements provided it appears that the following persons may have been involved in serious crimes as part of a widespread or systematic attack. However, because of the total number of cases currently under investigation, the Serious Crimes Unit will not be investigating these persons in the foreseeable future; accordingly, the Commission may proceed with the reconciliation process.¹⁷

42. As the content of these letters show, the OGP was not determining through this process whether a case involved a serious crime or not, but only whether, taking all the circumstances presented to it into account, it would exercise jurisdiction to prosecute the matter.

Preparation and completion of a hearing

43. If the Commission received authorisation to proceed with a case through a CRP, it delegated the organisation of a community hearing to a Regional Commissioner with responsibility for the community where the hearing was to take place.¹⁸ The Commissioner

was responsible for forming a CRP Panel to preside over the hearing. The panel was constituted by between three and five community representatives, with the Regional Commissioner acting as chairperson. Panel members were selected through consultations between the Commission (represented by the Regional Commissioner) and the community. No guidelines were set out in the Regulation as to how this should be done or what criteria should be used for selection, except for the requirement “to have appropriate gender representation within the panel”.¹⁹

44. The Regulation gave the panels considerable flexibility in determining their own procedures during the hearing, but required that they must hear from the deponent, victims and other community members who could provide relevant information.²⁰ The panel could question the deponent about the involvement of others in the disclosed acts, including “the identity of those who organised, planned, instigated, ordered or participated in the commission of such acts”.²¹ The panel could also determine the scope and depth of specific lines of questioning, and probe areas that it felt the deponent had not addressed adequately. Provision was made for holding closed hearings, if it was felt that the disclosure of certain information could endanger the deponent or other members of the community, as well as for information to be submitted to the panel in written form.²²

Discontinuation of a CRP hearing

45. Once a CRP hearing had begun, there were two possible reasons for adjourning it. Firstly, if the deponent refused to answer a question without justification (as determined by the panel), the hearing could be halted and referred back to the OGP.²³ Secondly, if credible evidence were given at the hearing of the deponent’s involvement in a “serious crime”, the hearing would be stopped. This evidence should then have been recorded and referred to the OGP along with notice of the adjournment.²⁴ The OGP was required to respond promptly with a determination on the credibility of the evidence.

46. If the OGP agreed that the referral was justified, the hearing had to be adjourned and official notification provided to the deponent and the OGP.²⁵ If the OGP did not think there was sufficient evidence to demonstrate involvement in a serious crime, or if the OGP failed to notify the Commission of its decision, the Commission had the authority to resume the hearing if it considered it appropriate to do so.

The Community Reconciliation Agreement

47. After hearing testimony and questions, the CRP Panel was responsible for determining an act of reconciliation “most appropriate” for the deponent to undertake. The options were community service, reparation, a public apology or “other act of contrition”.²⁶ The panel did not have the power to compel the deponent to comply with its decisions, but could only recommend that a particular act of reconciliation be undertaken. If the deponent agreed with the recommended action, the CRP Panel then drafted an official record of the agreement called a Community Reconciliation Agreement (CRA). In the event that the deponent subsequently refused to undertake the act of reconciliation, the Commission was required to refer the matter back to the OGP.

48. In cases where CRAs were successfully brokered, the Commission submitted a copy of the agreement to the District Court that had jurisdiction over the community where the hearing was held. The court then had to register the CRA as an Order of the Court, unless it considered that the act of reconciliation was not proportional to the offences admitted to, or that it would violate human rights principles. On completion of all the required acts of reconciliation listed in the agreement, the deponent received notification of his or her legal immunity from criminal and civil liability for all of the harmful acts admitted and incorporated into the CRA.²⁷

49. The Regulation imposed no legal obligation on deponents to participate in CRP hearings, or to enter into Community Reconciliation Agreements. However, once an agreement had been signed, the deponent had a legal duty to fulfil the obligations set out in it. Failure to fulfil these obligations constituted a criminal offence for which the penalty was a maximum term of imprisonment of one year, a fine of up to US\$3,000, or both.²⁸

9.2.3 CRP's reliance on both *lisan* and law

50. During the planning stages of the Commission, some people expressed the view that *lisan* alone was sufficient to deal with "less serious crimes", and that a more formal process was not needed. However, the Commission's experience of the CRP has led it to conclude that the mixed procedure it adopted gave its work a dimension which *lisan* or the formal justice sector alone would not have provided.

51. The CRP owed its success to a combination of factors: the status of the Commission as a recognised national institution, the use of uniform procedures, and its basis in law, and its inclusion not only of the *lia nain* but also of a broader range of stakeholders that included representatives of the Catholic Church, local government and civil society. The CRP was also able to deal with a large number of cases within a relatively short period of time, in every sub-district throughout the territory, something that neither the formal justice system nor *lisan*-based dispute resolution mechanisms could have been relied on to achieve.

52. *Lisan* procedures evolved to address isolated cases at the community level. They were not designed to deal with violations and "harmful acts" on the massive scale that they occurred during the political conflicts, particularly during 1999. CRP was designed to address this abnormal situation, rather than to handle the routine disputes customarily dealt with by *lisan*. In fact a number of community leaders expressed views that the CRP had reinvigorated *lisan*. The respect which communities accorded to the CRP extended to the community and *lisan* leaders who played such an important ceremonial and mediating role in the hearings, thereby undoing some of the damage that manipulation of traditional procedures by members of the Indonesian security forces had wrought during the occupation.

53. CRP was able to offer a legal solution for "less serious crimes" which were outside the ambit of *lisan*. The role of the OGP and the registration of each successful Community Reconciliation Agreement as an Order of the Court added a degree of formality that participants appreciated and respected. In addition, the immunity from civil or criminal prosecution, which followed successful completion of the agreed "acts of reconciliation", provided a legal finality that was outside the scope of *lisan*.

9.3 Implementation of the CRP programme

9.3.1 Staff

54. Responsibility for the CRP programme was divided between the national office and field staff working at the district level. At its peak, the CRP division consisted of 47 staff. At the district level, the coordinators in each district coordinated the CRP programme. They ensured that reconciliation-related activities were synchronised with other district team responsibilities. District staff worked closely with local communities to raise awareness of the CRP programme and to encourage prospective deponents to give statements. CRP staff spent much of their time with potential deponents, explaining the process, exploring the possible benefits and drawbacks of participation, and helping them write their statements.

9.3.2 Timeline

55. According to the overall strategic plan of the Commission, district teams were to spend three months working in each of the sub-districts in their respective districts. Each team included staff working on the CRP programme as well as those engaged in truth-seeking, victim support and other activities. These teams operated between July 2002 and March 2004 (see Part 1: Introduction, for more information on the Commission’s Strategic Plan).

56. The CRP programme aimed to complete its activities in each sub-district according to the following timeline.

Table 1 - Timeline for CRP activities in the three-month operational period in each sub-district

Public education/socialising*	Initial statement taking	Processing and approval of statements at National Office & OGP*	Arrangements for CRP Hearing	Holding hearings
Month 1	Month 2		Month 3	

9.3.3 Initial challenges

57. The CRP was an untried and unfamiliar concept, both in Timor-Leste and internationally and, not surprisingly, there were teething problems. It was clear by November 2002, the end of the first three-month phase of the programme, that most communities were not yet confident or interested enough in CRP to take part in it. In particular, potential deponents were not coming forward and giving statements: in the 13 sub-districts covered by CRP teams in that phase only 143 statements had been taken and only six CRP hearings, involving 50 deponents, had been held.

58. Staff members reported that the slow beginning of the programme was due to the fact that community members did not yet understand what the CRP was and how it worked. Verbal explanations helped, but it was difficult to build sufficient support for a concept that people had not experienced. There was also some confusion about the difference between statements given for truth-seeking purposes and statements that would be used as the basis for CRP. In addition, the relationship between the Commission and the formal justice system was, for many people, unclear. Many said that the only information they had received on issues related to justice for the massive violations that had been committed came from the Commission’s education campaigns.

59. In order to overcome these problems, the CRP teams began to ask local leaders to encourage individuals in their communities to participate. A film of a CRP hearing was produced and shown to village audiences. However, the greatest spur to involvement in CRP, came from the experience of an actual hearing. News of a successful hearing travelled fast and far. Early fears that communities would not participate began to dissipate as news of the steadily growing number of hearings that had been completed persuaded more and more communities that they too should hold hearings.

60. Because the Commission had to cover the entire country within its operational timeframe, it could not extend the time spent in each sub-district beyond the three months. However, a CRP could be held only after a number of preliminary steps had been completed—the public information meeting, the collection of deponents’ statements and the

* OPG by law had a 14-day period to review statements, and the right to request an additional 14-days if required. This request, with time, became standard practice. Hence the time taken for processing (including transporting statements to and from the district and the Commission’s own review process) frequently exceeded the month shown here.

OGP approval process. These steps ate up much of the allocated three months. Consequently, in any particular sub-district, hearings were usually held at the end of the three-month period. Successful hearings then stimulated requests for others, but sadly, not all of these could be organised because it was time to move on to a new sub-district.

9.3.4 Community involvement

61. Educating communities about the CRP was essential if potential deponents, local leaders and the broader community were going to involve themselves in the process to the extent that they felt that they owned it. One aspect of this was that they not only hold the hearing, but that they contribute to its design. The Regulation set out the basic elements of the CRP, but it left much leeway for local communities to determine its precise character in accordance with local custom.

62. Local communities were also able to give the district team information about the area and helped the teams identify which villages and individual cases would be most appropriately dealt with through the CRP, bearing in mind such factors as the impact the conflict had had on particular villages and whether perpetrators had already returned from West Timor. This was essential knowledge for the teams to be able to work effectively.

63. The consultations before a CRP included meetings at the district, sub-district, village and aldeia level. The district meetings gave a general introduction to the role and legal basis of the Commission, and presented the timetable it intended to follow in the district. At the sub-district level meetings, government officials, community leaders and representatives of civil society would attend. Participants with local knowledge were also invited to raise other issues that might complicate or facilitate the CRP.

64. Further consultations were then held in the villages and sub-villages selected as locations for CRP hearings. Those attending this meeting discussed and agreed on the hearing's format, including what role local custom and traditional leaders would play. The membership of the panel for each hearing was chosen. Panel members were selected for their ability to act in a just and impartial manner, their influence and credibility in the community, and their demonstrated commitment to reconciliation.

65. The district team also arranged a series of preparatory meetings to brief participants on their roles in the forthcoming hearing. Deponents, panel members and victims named in deponents' statements were each invited to attend separate briefings. The sessions involving panel members included training in mediation and arbitration skills, and role-plays of situations that might arise during the hearing. Typically these briefings took place a few days before the CRP hearing, so that the information provided would be relatively fresh in participants' minds.

9.3.5 The CRP Hearing

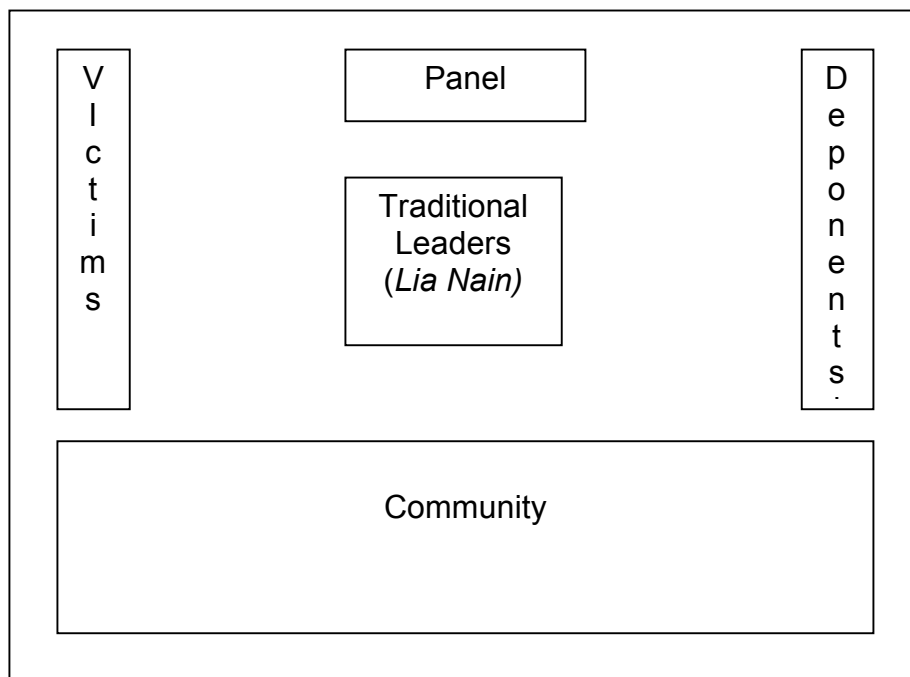
Principles for CRP hearings

- The primary aim is to assist reconciliation between perpetrators, victims and their community.
- The procedure relies on the voluntary participation of all parties.
- The methodology is facilitation of an agreement with the perpetrator, with the participation of the victims and their families, community leaders and the wider community.
- The victim and other interested parties must have an opportunity to be heard.
- The hearing should provide an opportunity for all parties to witness the perpetrator's confession.
- Hearings must be non-violent, and, in preparing for the hearing, steps must be taken to avoid the possibility of physical conflict.
- Hearings should be alcohol-free, so as to prevent emotions running out of control.
- The process should recognise the healing potential of understanding the political context that predisposed people to commit crimes.

Hearing layout

66. District teams were encouraged to conform to local community practice in setting up the CRP hearing, but typically the seating arrangement would follow the pattern shown in Diagram 2:

Table 2 - Typical seating arrangement in a CRP hearing.



67. The seating arrangement for CRP was similar to the one commonly used in traditional community dispute-resolution ceremonies, where the *lisan* leaders were present throughout the hearing and were seated in a special place between the parties to the dispute. Often they would be seated on the ground on the mat that symbolised the *lisan* process.

Commissioners and panel members took their places at the front, facing the community. Victims took their place to the right of the panel, perpetrators to the left. Persons, such as family members or Commission Victim Support staff, could sit with victims to offer support.

Procedure

Formal opening of the hearing

68. Often CRP hearings began with *lisan* rituals, which varied according to local custom. These were followed by a short speech welcoming guests and participants from the Regional Commissioner or another representative of the Commission.

Speeches

69. An opportunity was given to local leaders, such as the village head, the district administrator, sub-district co-ordinator or other government representatives, priests, nuns or other religious figures, and any National Commissioners who were present, to say a few words. These speeches generally focused on the meaning of reconciliation and its importance to the community.

Collective prayer

70. Religion plays an important role in most communities in Timor-Leste. Consequently, the recitation of a collective prayer was customary and helped to create a spirit of concord at the beginning of the hearing.

Opening of the hearing/introduction from the Chair of the Panel

71. The panel chairperson formally opened the hearing and introduced the other panel members. The panel then welcomed all guests present, and thanked them for their support and co-operation. It also extended its gratitude to the deponents, victims, victims' families and other members of the community present at the hearing.

72. The chair explained:

- The Commission's background – its origins, establishment, mandate and objectives
- The functions and objectives of the Community Reconciliation Process
- The legal context of the hearing, including a reading of the decision by General Prosecutor of Timor-Leste permitting the hearing to proceed
- The CRP statement-taking process.

73. The deponents' case summaries were then read out publicly.

Deponents' testimonies

74. Each deponent then gave an oral account of the acts for which he or she was seeking reconciliation. Deponents were asked to give as full an account as possible, and many used the opportunity to explain and put into context what had happened. Other participants were not allowed to interrupt deponents who were giving their testimony.

Questions of clarification from the Panel

75. Questions from the panel normally followed each deponent's testimony, although sometimes the panel waited until all deponents had finished testifying. The type of questions varied, from clarifying any inconsistency between the oral and written testimonies, to seeking insight into the deponent's motivation for committing the act, or identifying others involved in the acts, including the chain of command.

Questions of clarification from named victims

76. Victims were given an opportunity to make a statement about the incident and to question the deponent about what had happened. For many, this was the first time that they had had an opportunity to tell their story before the community, or confront the perpetrator about the harm they had suffered.

Questions of clarification from community members

77. The members present then had time to ask the deponents about their actions, as well as to tell the Commission about other harmful acts the deponents had committed but not disclosed in their testimonies. This was also an opportunity for other community members who had been directly victimised by a deponent, but whom that deponent had not named as victims, to make themselves known to the panel. Commission staff recorded the personal details of these community members as part of the hearing record.

78. Both victims and community members were asked to limit their questions to the acts described in the deponents' testimonies or other acts of the deponent which had not been disclosed. If a person accused a deponent of involvement in a serious crime, they would be asked to provide further information in support of the allegation. If the panel judged that the evidence indicating that the deponent might have committed a serious crime was credible, the hearing was suspended, as required by the Regulation.

Panel-moderated discussion of the acts of reconciliation

79. Following the questions, the panel called together the deponents and victims to explain the principles of a Community Reconciliation Agreement (CRA), and the requirement that it should include the "acts of reconciliation" that the deponent had to carry out. In some cases these discussions also involved *lisan* leaders. Sometimes the panel conducted these discussions in the presence of all the interested parties together. Sometimes they spoke with each group of participants separately.

80. The panel explained that the "acts of reconciliation" were intended to demonstrate to all present the sincerity of the deponent's commitment to reconciliation with his or her victims and the community at large. They were not intended to burden deponents with obligations that were beyond their means. The hearing guidelines recommended that "acts of reconciliation" take the form of an apology, a symbolic fine, an act of community service or a combination of these acts. It is evident from the hearing monitoring reports that panels followed these recommendations.

Declaration of the acts of reconciliation

81. If the deponent agreed to undertake the recommended "acts of reconciliation", the chair of the Panel announced publicly the obligations which that deponent had agreed to fulfil.

Apologies/oaths from the deponents

82. Each deponent was then obliged to apologise publicly for his or her acts, and would promise on oath not to repeat such actions. At many hearings *lisan* rituals accompanied the oaths to bind the deponents to their commitments.

Signing of the Community Reconciliation Agreement

83. The panel chairperson explained to those gathered that each deponent must sign a CRA.^{*} This document included:

- A description of the acts perpetrated by the deponent
- Any new information about violations that the deponent had neglected to include in their original statement
- A description of the acts of reconciliation determined in the hearing
- A statement that the deponent acknowledged responsibility for the acts described in the CRA, and renounced all forms of violence in pursuit of political ends.

84. Typically, the CRA was read out to those assembled. The deponent and all panel members then signed the CRA. The chairperson explained that the CRA documentation, including the deponent's original statement, would be submitted to the relevant District Court, where it would be reviewed. After all the acts of reconciliation had been completed, the CRA would be registered as an Order of the Court. This, it was explained, would bring legal finality to the matter.

Closing of the CRP hearing

85. Usually, CRP hearings concluded with closing words from either a local leader or a CAVR Regional Commissioner or staff member. The day's events were then summarised and a moral teaching presented on the theme of togetherness, the objective of the day.

^{*} For an analysis of the CRA, see sub-section 9.1.4.

Caicasa Community Reconciliation Process hearing

This CRP hearing was convened on 30 January 2004 in the Village of Caicasa, Maubara Sub-District, Liquiça District. The hearing involved 20 deponents, all men, who were former members of the Red and White Iron (*Besi Merah Putih, BMP*) militia group. Caicasa, a sprawling community in the hills to the south west of Liquiça town, was the birthplace of the BMP, one of Timor's most notorious militia groups.

Because of the large number of deponents and the nature of the acts committed, four hearings had been planned for Caicasa. The first had been successfully completed the previous week. This was the second hearing.

Once the deponents, panel members and victims were all present, the formalities began. The Commission's district co-ordinator for Liquiça explained how the day's proceedings would unfold. The village chief then made a statement in which he asked those assembled to remain calm and listen quietly to what people had to say. He pointed out that there would be an opportunity later to ask questions and seek clarification.

The Regional Commissioner chairing the CRP panel then set out the procedures in more detail, providing a thorough explanation of the importance of the process in both local and national contexts. The Commissioner encouraged the community to speak out if they felt that the deponents had not made full disclosures, but stressed that they must allow the deponents to explain themselves first. The Commissioner said that deponents and other participants should speak in the language with which they were most comfortable. For the majority, this was the local vernacular, Tokodede, although many also understood Tetum and Indonesian.

The Regional Commissioner then read out the official letters from the Office of the General Prosecutor, written in Indonesian, which provided authorisation for each deponent's case to proceed by way of CRP.

Summaries of the 20 deponent statements were then read out by CRP staff members. The deponents in this hearing had been grouped together because a common theme in their statements was the claim that they had been forced to participate in the militia group, had not held positions of responsibility in the group and had admitted to only minor offences. (Statements dealing with more serious acts had been allocated to the other three hearings scheduled for the village.)

The deponents were then given the opportunity to make an oral presentation to the victims and the assembled community. Many were plainly nervous, having trouble with the microphone and having to be gently coaxed to face the victims and their community. The length and quality of the oral testimony varied from several minutes of animated story-telling to a few seconds of mumbled apology. In several cases deponents listed the violations for which they were not responsible: "I did not kill. I did not intimidate anyone. I did not burn houses or steal."

Many were low-level militia members who had been drafted into the BMP and had performed menial tasks. Some deponents had information to share about well-known incidents, such as the Liquiça Church Massacre of 6 April 1999; others had been present at the militia rally in Dili on 17 April 1999, which had been followed by the killings at the house of Manuel Carrascalão. One deponent had been present at a militia meeting attended by General Wiranto, but claimed he could not understand what was being said as it was conducted in Indonesian. Some of the deponents clearly found giving their presentations difficult and distressing.

After the oral testimony, panel members, victims and community members were given an opportunity to comment and put questions to the deponents. Questions ranged from requests for specific details, such as the dates when deponents joined the BMP and the names of others involved in specific attacks, to more general inquiries about, for example, how people who were involved in the clandestine movement could be forced to work with the militia.

One victim put several questions to his nephew, who was one of the deponents, requesting more detail about an attack on his home that had resulted in the killing of his livestock. He felt that the version that had been presented at the hearing was not consistent with what he had heard privately about the attack from some of those involved. Some questions were not directed at any particular deponent, but were comments on or an account of other acts that the speaker felt should be taken into consideration.

When deponents denied allegations against them, sections of the assembled community sometimes voiced their disapproval. Some deponents were clearly unable to remember the details of events, while others were plainly being evasive. The chair of the panel intervened to remind the deponents that presenting the truth of what had happened was a precondition for reconciliation. It was not the Commission's role to punish them, but it was a criminal offence to give false information in a CRP hearing.

Several questions were directed at a particular deponent, D, about the disappearance and murder of a villager called B. D was known to have been with a man called F, who had tied B up before he was taken away. Community members assumed that B had been killed. F had also applied to participate in a CRP, but his request had been rejected by the OGP, presumably because the evidence indicated that he might have been involved in a "serious crime".

F was still living in the community. He had not been arrested and indicted, and his file remained with the Serious Crimes Unit. Members of the community felt that F also needed to explain what had happened to B, but he was not at the hearing. In his absence they questioned D about the case. Having denied complicity in B's presumed murder, D was persuaded by the panel to explain in more detail exactly what he believed had happened.

Another deponent was asked about the murder of an old man. The deponent was clearly familiar with the matter and responded angrily that he was tired of being accused of responsibility for the murder. He acknowledged that he had been present when the killing had taken place. He said that he had already given what information he had about the case to the authorities, and that he now wanted an end to the allegations against him. As more questions were directed at him, he countered by accusing one of those who questioned him of himself being an informer for the Indonesian security forces. As tempers flared, CRP staff intervened to calm the situation.

In this situation, as in many others, it was clear that the CRP provided an opportunity for deponents not only to admit what they had done, but also to state what they had *not* done, by responding to and clearing up allegations based on rumour and unreliable information.

Although the deponents provided much information to the families of victims and the wider community, their answers sometimes appeared to be calculated more to avoid acceptance of responsibility or blame than to provide the truth. Many of the answers given by deponents appeared to be accepted by those attending the hearing, but some clearly were not. They were greeted with loud protests and other vocal responses from the community.

The Commission's representatives were also asked questions, chiefly about "unfinished business". People wanted to know what would happen to other perpetrators who wanted to come forward after the Commission had finished its work. There were also questions about whether there were plans for a process of reconciliation with the refugees in Atambua in West Timor.

Eventually there were no more questions, and each deponent was given an opportunity to make a formal apology, ask for forgiveness and commit himself not to repeat his mistakes. Most of the deponents were applauded by those gathered, although a few were not.

The panel chairperson asked for ideas and input on what would be appropriate “acts of reconciliation”. After consultation with the victims and the traditional leaders, the panel decided that the deponents had demonstrated that they should be re-accepted into the community, and that they should be required only to make a public apology to the victims and their community.

The *lisan* leaders then asked the deponents to participate in a traditional ceremony, at which several chickens were slaughtered, and their entrails examined for blemishes. Of the four chickens examined, one had blemished entrails, leading the traditional leaders to conclude that some of the deponents had not told the whole truth, and to proclaim that they would have to live with the consequences of this. Their finding accorded with the impression of observers at the hearing that members of the community were content with most of what they had heard, but had found some of the deponents’ statements unsatisfactory. Particular individuals were not picked out for criticism, but there appeared to be a common understanding among those gathered which deponents had not told the whole truth.

Despite the fact that it did not completely satisfy community members, the hearing was clearly an important local event. Over 200 community members, men and women from all age groups, attended the hearing. Many displayed their sense of the importance of the occasion by wearing traditional attire. Those who attended included the families and friends of deponents and victims. The most common observation of participants at the end of the hearing was one of appreciation, qualified by reservations about the way a few of the deponents had conducted themselves. Participants stated that they were happy that a significant number of former militia members who had joined in the campaign of violence against the community had been publicly shamed for their actions and had apologised. They also said that the hearing had helped the entire community understand what took place during the conflict.

9.3.6 The role of *lisan* in the hearings

86. The Regulation set out the basic steps for CRP hearings. In addition, the Commission drew up procedural guidelines to ensure a minimum degree of uniformity across all districts. These guidelines, however, provided much flexibility for inclusion of other steps or practices, and the Commission encouraged communities to employ local cultural practices in order to promote a feeling of ownership.

87. The extent to which *lisan* rituals were actually used and the form they took varied greatly between communities. Despite this, some practices were common to most CRP hearings. In particular, the ceremony of *nahe biti boot* was part of most CRP hearings.

Marking the formality of the occasion

88. *Lisan* rituals were often performed in preparation for the CRP hearing and then again to mark its opening. Spiritual leaders, dressed in traditional clothes and carrying *lulik* (sacred) objects, danced, while chanting and reciting monologues, often to the accompaniment of drums. In Timor-Leste drums are usually played by older women who, at the same time, dance in short lines revolving around a common centre like the spokes of a wheel. The women hold their slender drums under one arm while beating swift, complex rhythms with both hands.

89. The opening fostered the feeling that the CRP was not just being held for the benefit of the individual perpetrators seeking readmission to community life, but as a community

event of significance for the entire village. The chants and recitations of the *lisan* leaders were intended to be heard not just by the living audience but also by the custodians of the community, the ancestors, who, it was believed, would also be witnesses to the hearing that was about to begin. The colourful clothes and the *lulik* (sacred) objects and other ceremonial paraphernalia, the chanting, the drumming and dancing heightened the excitement of the event and the interest of the audience and participants. The CRP therefore had a dual aspect: it brought to the surface painful memories of past wrongs as part of a difficult search for truth and accountability, but it was also an event that the community found absorbing and at times entertaining. This combination enabled it to become a reaffirming experience that could dispel past antagonisms and bring the community together.

90. Following the opening was often the solemn unfurling of the mat on the ground in front of the table at which the panel would sit. *Mama fatin* were placed on the mat, together with betel nut, tobacco and other objects that would be used in the ceremony. The *lia nain*, perpetrators and victims would chew betel nut together after settlement of their dispute.

91. Early in the proceedings it was made clear that the CRP would draw on both customary procedures and ones associated with modern government, such as speeches made by people connected to the government, and reading the letters from the General Prosecutor authorising the hearing. It was the experience of the Commission that the formal aspects of the procedure, whether based on *lisan* or on modern legal principles, added significant weight to the respect that the communities gave to the CRP.

Lisan and the Regulation

92. It was often not possible to separate the *lisan* elements of the CRP from those elements sourced in the Regulation. The drafters of the Regulation consciously drew on *lisan* principles. For example, the Regulation's requirement that deponents admit their actions publicly is a *lisan* principle. However, the Regulation did not require deponents to apologise publicly to victims, although this is a practice sanctified by *lisan*. Both *lisan* and the Regulation also enable victims and the community offer their points of view on the matters at stake.

93. A major difference between the two systems was that in *lisan* proceedings, it is the *lia nain* who decide what sanction should be imposed on the perpetrator. In the CRP it was the panel that was authorised to propose suitable "acts of reconciliation" to the deponent, after hearing the views of all interested parties, including victims, the community and the *lia nain* themselves. In the CRP the deponent participated voluntarily and could refuse to agree to undertake the proposed "acts of reconciliation". (In such cases the matter would be referred back to the OGP.) Under pure *lisan*, the perpetrator is compelled to accept the sanction that the *lia nain* decide.

94. Another difference between *lisan* and the CRP was that in traditional *lisan* hearings the victim must agree with the proposed solution for it to be acceptable to the *lia nain*. In the CRP the Panel was required only to consider the views of the victims in making its determination of what "acts of reconciliation" would be suitable. This aspect of the procedure ensured that cases could be completed where a perpetrator's actions had affected many victims in several communities. In such cases gaining the agreement of all the victims would have created insuperable logistical problems. It would also often have been difficult to identify the victim whose consent would have been required. For example, if a perpetrator burned three houses, each home to 15 persons, the formal consent of each of those individuals would be required, possibly as well as that of, for instance, any other person whose possessions may have been inside the house at the time.

95. Despite the fact that the CRP did not formally require the consent of victims, in practice the agreement of the principal victims was required for the hearing to proceed to completion. Local communities often regarded this fundamental principle of *lisan* procedure as binding and thus believed that no deponent should be re-accepted into his community without the consent of the victims. In a small number of cases victims did not consent to accepting back deponents and the panel decided to refer the case back to the OGP. In a number of these cases the victims stated that the deponent had not come to them “with an open heart” as evidenced by his reluctance to tell the entire truth about what had occurred. In these circumstances the victims could not accept that the apology was genuine.

Similarities and differences in *lisan* practices

96. Some *lisan* procedures were specific to individual communities, while others were common to a large number of hearings. Even where particular *lisan* practices were common in different parts of the country, the interpretation and significance attached to these practices could vary. Thus, coconut water sprinkled on deponents and observers in a ceremony in a village in Maliana might signify the “cooling” of the “hot” emotions associated with past acts, whereas in Liquiça the same act might signify the purification and cleansing of the participants.

97. In many cases the perpetrators made their apologies or oral commitments in front of *lulik* objects, the sacred objects revered by members of the community as links to their ancestors. Doing so was a sign of the depth of the deponents’ commitment to their declarations, since they had been witnessed by the community and ancestors. In other hearings different rituals, such the drinking of palm wine mixed with the blood of an animal, were performed to convey the deponents’ sincerity.

98. The custom of taking “blood oaths” to affirm that a commitment was binding had been manipulated and thus significantly weakened during the Indonesian occupation. Realising the power of this ritual for the East Timorese people, members of the Indonesian security forces had coerced and encouraged individuals to “drink blood” to show their deep commitment to integration with Indonesia. A number of participants in the CRP programme commented that during the occupation the power of *lisan* rituals had diminished because of such manipulation. They also said that the prominence given to *lisan* within the CRP, including the element of official recognition had helped to restore its place as a unifying force within communities.

Where lisan was not involved

99. *Lisan* played a significant part in about three-quarters of CRP hearings. One of the reasons for the absence of *lisan* in the remaining cases was that the CRP sometimes involved parties belonging to different *lisan* groups. Finding a way of involving all the *lisan* leaders with a stake in the case would have been an impossibly demanding task for district staff who were under pressure to complete one set of sub-district hearings before moving on to the next. In such cases the CRP procedure, which applied equally to all individuals regardless of their customary allegiances, was applied without the assistance of *lisan*.

The case of V

V was a deponent from Fatululik in the district of Covalima. He had declared in his statement that, as a member of the Laksaur militia, he had threatened fellow villagers with a gun. At the time Laksaur was trying to drive people across the border to West Timor. In his statement, V also gave an account of the killing of a cow belonging to a resident of a neighbouring village, Fatuloro. He identified as victims of his actions both his home community and the individual from Fatuloro.

Lisan would have allowed the elders of his community to facilitate a hearing between him and his community, but because his actions harmed members of two separate communities, the negotiations would have had to involve both sets of *lisan* leaders or risk being perceived as biased in favour of either the deponent or his victims. The Commission made a judgement that involving both groups would lead to confusion and potential conflict. Consequently it decided to proceed without the participation of either group of elders. A resolution was reached in a hearing in Fatululik on the 14 February 2003. At the hearing V made a full confession and a public apology which was, after questioning, accepted by the victim. He also donated a cow that was slaughtered and eaten at a communal meal after the hearing.

Special cases

100. A number of deponents had committed acts that affected many victims or several communities, and yet practical constraints dictated that there could be a CRP hearing in only one of these. Commission teams developed two different approaches to this issue. The first was that reflected in the above example where a hearing was run in which no *lisan* leaders were involved. The second approach was for the Commission teams to conduct the hearing and involve the *lisan* leaders who represented the community with which the deponent said he wished to reconcile. In these cases a judgement was made that it was too difficult to combine several sets of *lisan* procedures and personnel, but it was better to include at least one of these groups than none at all. Victims and community representatives from all the affected communities were welcome to participate.

The case of M

M gave testimony in a hearing in his home community of Ediri Village in Liquiça District on the 11 March 2004. In his testimony, as in his earlier statement, he told of his forced conscription to the BMP militia and his rise to the position of local commander. He admitted that he had taken part in, and ordered, the confiscation of livestock. He also said that he had witnessed the capture of a local youth who was later killed by two of M's subordinates, though not, he claimed, on his orders. As a commander, he had taken part in operations in a number of neighbouring villages, but he had identified the victims of his actions as coming only from his home community.

The Liquiça team organised the hearing, which ran for a whole day, and featured a series of *lisan* ceremonies and rituals. The ceremonies included calling in ancestors to witness the proceedings, and confirm through the reading of pigs' entrails that the truth had been spoken. The deponents' negative acts were bound into a coconut, which was subsequently removed and disposed of by the deponent in the forest. He returned to the site of the hearing bearing a second coconut representing his positive acts, which he presented to those assembled.

101. On occasions when the deponent had identified a community outside his own that he wished to reconcile with, the CRP made arrangements with the leaders and *lia nain* of that community to enable a hearing to take place according to that community's customs. Reports indicate that it was not uncommon in such circumstances for *lisan* representatives of the deponents' own community to attend as observers, rather than as customary authorities, as the case was effectively outside their "jurisdiction".

CRP hearing in Lela Ufe, Oecusse, 22 November 2002

The people of Lela Ufe, a village in the enclave of Oecusse, first came into contact with the Community Reconciliation Process through the work of a Commission team that visited them in September 2002. The team found a community eager to embrace the process and quickly secured applications from many members of the community wanting to apply to take part in a hearing. The proceedings that followed provide a good example of how the richness of the local *lisan* traditions was incorporated into the CRP Programme.

From the aldeia of Bebu alone, 31 people applied to participate in the CRP. Those applying generally did so because of acts committed as members of the Oecusse-based Sakunar (Scorpion) militia. Most of these acts had been committed in 1999, and included intimidating fellow community members, burning houses, destroying livestock and participating in operations under the instruction of the Indonesian military.

All of the community members who had applied were given approval to participate by the Office of the General Prosecutor, and the hearing date was set for the 22 November 2002. To prepare them for the hearing, Commission staff briefed the deponents, victims and panel members. They also consulted with community leaders about which customary ceremonies should be performed and which local leaders should be invited to participate.

On the night before the hearing, many of the participants gathered together to perform an invocation ceremony. The ritual of *hadeer ai-riin* (Tetum: "waking the post") takes its name from the belief that a wooden post used in the ritual is a contact point between the worlds of the living and of the ancestors. The post is "woken", and contact established through the ritualised sacrifice of an animal. Calling on the ancestors in this way and making offerings to them in advance of an important ceremony is thought to ensure that the ceremony goes smoothly.

The following morning, proceedings got underway. As people gathered together at the place that had been designated for the hearing, Commission staff ensured that all deponents and victims were present and welcomed those who had come to witness the proceedings. Before formally beginning the hearing, the *lia nain* performed the opening ceremony in an area close by.

The elders had prepared the *ai-riin*, in this case a post made from a wood known locally for its power to recall those who have become lost. The post stood at the centre of a circle of stones. The stones represented the spirit of unity, Within the circle lay other objects—coconut water, a large fan-like leaf, a machete and betel nut—each of which represented principles to be upheld in the hearing: the coconut water and the leaf were there to cool the tempers of people who still felt the "heat" of anger; the machete symbolised the power and strength of the ceremony, while its presence on the ground in the circle was a reminder that weapons were to be laid to rest by the process; and the betel nut, which would later be shared by the participants, symbolised the community's reunification.

At the close of the *lia nains'* introductory ceremony, two *tais* were laid out. The first was a *tais mane* or man's *tais*, representing qualities of transparency, of allowing things to be seen as they truly are, in order that good can be distinguished from bad. The second was a *tais feto*, or woman's *tais*, which is believed to hold powers of balance and measurement, that allow events to be weighed against one another. The two *tais* were laid on the ground, together with mats woven from palm leaves, in the area where the panel were to sit. Once again, this was an act that was rich with symbolism. The spreading of the mats (*nahe biti boot*) represented the opening of the issues which had divided those who were to speak. The mats would not be rolled up again until these issues had been resolved. As the opening ceremonies drew to a close, the *lia nain* sounded a gong calling all present to come and bear witness to the process, and the panel took their seats.

Around 700 people attended the hearing. Chiefs of 18 of the surrounding villages had come to observe, along with representatives of the church and local and international NGOs. Many of the ordinary villagers who came to the hearing had walked long distances to be there.

The process lasted for the entire day, and the dedication and the proceedings ran smoothly and to the apparent satisfaction of the community members watching. One deponent's case was adjourned after accusations that he had been involved in a "serious crime" were deemed to amount to "credible evidence". The cases of the remaining 30 deponents proceeded to their appointed conclusion with the communities saying that they were ready to accept them back. Acts of reconciliation were decided after consultation with the victims, the community leaders and the deponents themselves. They ranged from a simple apology to the donation of *tais* and other ceremonial objects to victims.

The *lia nain* had requested that before the acts of reconciliation were made public and the proceedings formalised by the signing of the Community Reconciliation Agreement, they be given time to perform further rituals to close the proceedings.

A cow, bought for the occasion by the deponents, had been slaughtered. The *lia nain* read the entrails to verify that the ancestors were happy with the outcome and that all had spoken the truth during their testimonies. The message of the entrails was favourable. Some of the animal's blood was taken and mixed with coconut water before being sprinkled over the deponents as together they held on to the ceremonial post and received the blessing which marked their re-entry into the community and the purification of their past acts.

After the customary ceremonies were over, each deponent in turn apologised publicly for their past acts and swore never to harm their communities again. They then signed the Community Reconciliation Agreements. At the close of the hearing relief showed on the faces of the participants, particularly the deponents'. All signs of the tension and anger that had sometimes been evident during the hearing were gone, and the atmosphere became festive. Those who had attended celebrated with a feast in which, as a token of good will, the cow brought by the deponents was eaten. Community members continued to sing and dance into the early hours of the morning.

Over a year later, when the Regional Commissioner for Oecusse revisited the area to return the court-registered agreements, he observed how the previously divided community now enjoyed extremely good relations. Deponents and victims from the hearing had formed a co-operative to grow cassava and maize.

9.4 Results of the CRP programme

9.4.1 Overall

102. In summary, during the operational period of the CRP programme:

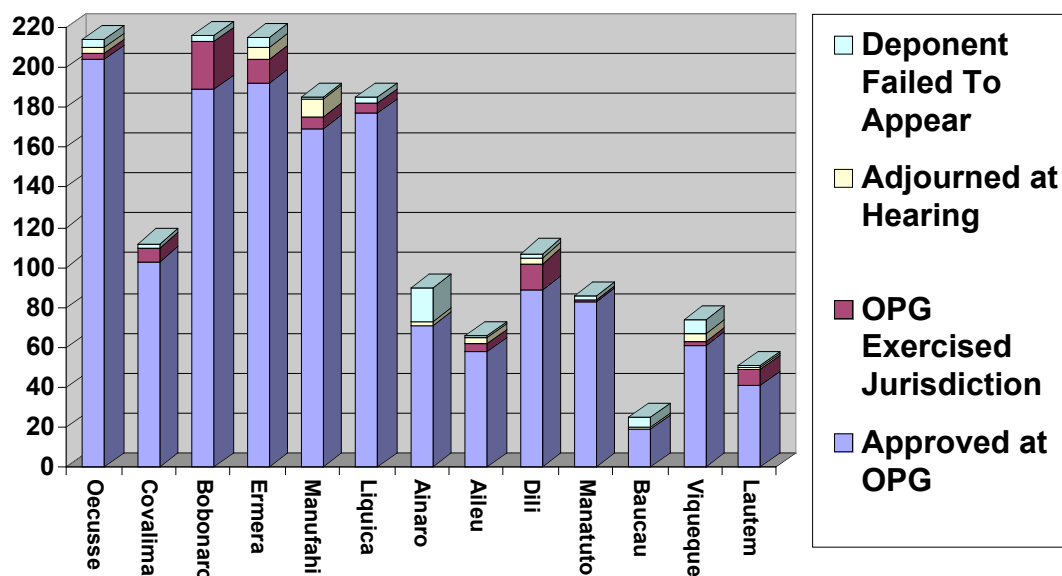
- The Commission received a total of 1,541 statements from deponents requesting to participate in CRP, all of which were forwarded to the OGP.
- Cases involving 1,371 deponents were successfully completed through CRP hearings.
- The OGP did not grant approval for 85 cases to be proceeded with by way of CRP. These cases were retained by the OGP.
- Thirty-two cases were adjourned during the hearing because credible information came to light, which indicated that the deponent might have been involved in a “serious criminal offence”, or because communities refused to accept the deponent.
- These figures show that nearly 90% of all cases received proceeded to completion. The remaining 10% were cases where the deponent did not attend the scheduled hearing, the hearing was adjourned, or the OGP did not consent to them proceeding by CRP.

103. The statistics below provide an overview of the work carried out through the CRP programme.

Table 3 - Result of CRP programme by District

District	Total Statements	RESULT AT OPG		APPROVED FOR CRP		Deponent Failed To Appear	Total No of CRP Hearings	
		Approved	OPG Exercised Jurisdiction	CRP complete	Adjourned at hearing			
Oecusse	207	204	3	197	3	4	18	
Covalima	110	103	7	101	0	2	12	
Bobonaro	213	189	24	186	0	3	26	
Ermera	204	192	12	181	6	5	24	
Manufahi	175	169	6	159	9	1	20	
Liquica	182	177	5	174	0	3	27	
Ainaro	71	71	0	52	2	17	10	
Aileu	62	58	4	54	3	1	19	
Dili	102	89	13	84	3	2	17	
Manatutu	84	83	1	81	0	2	14	
Baucau	19	19	0	13	1	5	9	
Lautem	49	41	8	39	1	1	12	
Viqueque	63	61	2	50	4	7	9	
Total	1541	1456	85	1371	32	53	217	
		Total Statements Taken					1541	
		Total Who Failed to Complete CRP					170	11.03%
		Total Who Completed CRP Hearings					1371	88.97%

Table 4 - Results of applications for CRP



Variations in results between districts

Statements received

104. The Regulation specifically provided that the CRP should prioritise acts committed in 1999 as one of the CRP's goals was to reduce the anger in communities fuelled by the recent events. The violence during 1999 had been most intense in the districts closest to the borders with Indonesia—Oecusse, Bobonaro, Ermera, Covalima and Liquiça. Not surprisingly these were the five districts from which the largest number of deponents applied for a CRP. The average number of deponent statements taken in all 13 districts was 119, but the number from this western region averaged over 180 per district. By contrast the average number of statements received from the four most easterly districts (Lautém, Viqueque, Baucau and Manatuto) was only 54 per district.

105. The figures for Covalima District were anomalous. Although the number of statements taken there was only just below the average, that was lower than would have been expected considering that Covalima is a border district and was severely affected by the violence in 1999. The district team responsible for Covalima considered that the relatively low rate of participation was due to the fact that less perpetrators of harmful acts had returned to Covalima from West Timor compared to other districts. National staff monitoring reports on the district also found a lack of cohesion among the district team members, which affected the implementation of the CRP public information programme.

106. The district that provided by far the lowest number of statements was Baucau. A number of factors may have contributed to this result. Baucau had not been subjected to the same level of destruction following the ballot as other areas, and that in part was a reflection of the fact that the militia group there was neither as well-organised nor as militant as in the districts that suffered worse in 1999. It seems likely then that animosities generated by the events of 1999 in Baucau were less intense than in most other districts. At the same time the

performance of the district team, which was hampered by a lack of cohesion and personality clashes, probably also contributed to Baucau's relatively weak showing.

Exercise of jurisdiction by the OGP

107. Dili and Bobonaro Districts each had well over twice the national average percentage of cases in which the OGP exercised jurisdiction (the national average was approximately 5%). An examination of these cases found that the OGP exercised its jurisdiction in these districts not only more frequently but also more consistently over the course of the programme than it did in other districts. The Commission also found that the higher rate is not explained by a higher prevalence of serious acts in those two districts. The acts declared in the rejected statements were generally of the same nature as acts admitted by deponents from other districts, whose applications to proceed through a CRP were approved.

108. One possible explanation for this is that individual prosecutors within the Serious Crimes Unit of the OGP, each assigned to work on particular districts, took different approaches to dealing with CRP cases. The absence of clear guidelines for making decisions introduced a large element of discretion into the process and some prosecutors may have decided that borderline cases, in which the statement of the deponent alone did not clearly establish that the crime was serious enough to prosecute, should be dealt with through a CRP. On the other hand, other prosecutors may have decided not to approve cases in which they felt further investigation was needed to ensure that a CRP was appropriate.

Deponents failed to attend

109. The districts of Viqueque and Ainaro recorded the largest numbers of deponents who failed to attend their hearings, despite having submitted statements and received official permission to proceed. The high figure for Ainaro District is explained by the non-appearance of a single group of deponents. They did not attend after community leaders objected to the hearing because it would deal only with those involved in relatively minor crimes and harmful acts. A significant number of perpetrators from this community remained in West Timor, and the community leaders decided that a hearing that focused on past violence should not be held until they returned. The reason for the high non-attendance rate in Viqueque is unclear.

9.4.2 Number of deponents in a CRP

110. The number of deponents who participated in a one-day hearing ranged between one and 31. Hearings were generally conducted in a single day for logistical reasons, as well as to allow community members to attend without seriously disrupting their everyday lives. Some people had to walk for an entire day to attend a hearing and they were not provided with accommodation or food, so extending a hearing over a number of days would have made their attendance difficult. In the one hearing that took place over several days, a three-day hearing held in Passabe, Oecusse District, 55 deponents testified.

9.4.3 Actions dealt with by CRP

111. The vast majority of deponents in the CRP were males aged between 25 and 35 years at the time they committed the acts deposed. Affiliation and participation in militia groups, arson, assault, illegal incarceration and the destruction of property were the acts most often included in deponents' statements. A smaller proportion of cases concerned deponents giving support or supplying information to the Indonesian occupying forces, and unresolved issues arising out of the political conflict of 1974-76. The CRP did not deal with any cases in which the deponent directly participated in murder, rape or torture. However, a

small number of cases were proceeded with in which deponents admitted to being present at the time in which “serious crimes” were committed.

9.4.4 Acts of reconciliation

It's important to involve a payment, not necessarily to punish the deponent, but so that everyone can see the deponent giving and admitting responsibility, and then see the victim accepting the object and so accepting that person.²⁹

112. In general, the “acts of reconciliation” that deponents agreed to fulfil were relatively lenient. Communities consistently stressed the importance of deponents telling the complete truth to the gathering and demonstrating a real sense of remorse. The hearing itself was often a difficult and painful experience for deponents. If it was felt that the deponent’s admission and apology were complete, open and sincere, often the community was satisfied with only symbolic acts of reparation or community service. Community service, for example, usually consisted of a task performed once a week over a set period that was usually no longer than three months. Examples of required tasks included: the repair of public buildings, tree planting, the erection of a village flagpole, and cleaning of church grounds or other facilities.

113. Sometimes the victims and the wider community joined the deponent in carrying out the agreed task. In such cases, the perpetrator did the work as a compulsory part of his or her agreement, while the victims and community members participated voluntarily as a demonstration of their good faith and belief in the process. The joint participation of perpetrators and victims in a common community service project was a graphic demonstration of the power of the CRP to bring previously polarised parties together.

114. Community Reconciliation Agreements sometimes included a requirement that the deponent make reparations to victims. Reparations varied from payments in cash or in kind, which sought to reimburse the victim for goods lost, stolen or destroyed, such as livestock, to more symbolic payments with a ritual value. Thus, in a number of hearings, particularly ones held in rural areas and the enclave of Oecusse, deponents gave victims ceremonial objects such as *tais* (hand-woven textiles), *belak* (chest ornaments) and *morten* (coral necklaces).

The power of apology

The number of cases in which the deponent was required only to make a public apology was far higher than had been expected. On the whole public apologies were given and received in a spirit of solemnity, especially when made in the context of a *lisan* ceremony.

Some may find it surprising that many villages required only a full and open apology as a prerequisite for reconciliation, and did not demand reparations, community service or other acts that might be considered punitive. One factor which helps to explain this phenomenon is the close-knit nature of East Timorese communities. It can be highly emotionally demanding to freely and openly admit past faults, apologise and ask for forgiveness when the audience includes family members, the local religious and political leaders who will influence your future life, and the entire community whom you will face and interact with the following day, and every day thereafter. By comparison, the public admission of guilt and apologies in front of strangers whom you will not encounter again would carry rather less weight.

Although many apologies were delivered and received with suitable solemnity, some were delivered in a cursory manner that failed to satisfy victims and community members. Possibly, some deponents lacked sincerity because they were not convinced that they were responsible for any harm done. This was more common where the young men were forced into joining the militias and saw themselves to be victims. In other cases individuals may have felt pressured by local hierarchies to participate in the CRP, even though they had not reached the point where they felt genuine regret for their actions.

9.5 The effectiveness of the CRP programme

115. To assess the effectiveness of the CRP programme, the Commission conducted two internal monitoring and evaluation surveys during the implementation phase. The assessments sought to evaluate the level of satisfaction of participants in the process, and identify issues of concern that could be addressed in future hearings. The assessments were based on responses to a standard set of questions by people who had participated as deponents, victims, or members of the panel or local community.

116. The first evaluation, conducted in March-April 2003, was based on interviews with 40 participants—ten deponents, ten victims, ten panel members and ten community members—who came from five districts. Each of the interviewees had attended a CRP hearing in the preceding three months.

117. The second evaluation was undertaken in August 2003 by district teams in each of the 13 districts. A total of 116 persons who had participated in CRP were interviewed in this assessment.

9.5.1 Reintegrating perpetrators into their communities

I feel very happy with the process because now we can live in peace. Before I couldn't really talk to the [deponents]. I wanted them to declare what they did. I felt I said what I needed to say. Now I feel freer. I feel close to the deponents.

Victim - Aileu³⁰

Before the [CRP] I felt ashamed to walk around the village. Now when I walk around, I feel freer. People didn't talk to me sometimes before. Now I feel that people are more open. Before I felt a weight on me when I went to work in the fields.

Deponent – Aileu³¹

Before I took part [in the hearing], when we met each other in the street we still felt hatred towards each other. We had not genuinely given our selves to each other. We Timorese can hold our anger for a long time.

Deponent - Lospalos³²

Now I've got my job back as a high school teacher. They called me back to work because they saw that I declared everything in the hearing. Everybody is now moving on with their lives. I can move about freely again.

Deponent – Dili³³

We attended two biti boot meetings—one at the Aldeia and one at the village level. They were good because through reconciliation we could confess everything that we had done—fighting, burning houses—including the one belonging to the head of the village. Through the process we could apologise and they forgave us. We fixed the roof—it wasn't a punishment but a sign of reconciliation. After reconciliation we felt better, because in the reconciliation process we agreed that nobody could say that we are refugees—the case is closed.

Deponent - Aileu³⁴

118. The research conducted by the Commission showed that deponents, victims and community members all felt that the CRP process had made a major contribution to reconciliation. Almost all deponents interviewed stated that their relationship with their community had improved significantly as a direct result of participating in a CRP hearing. Ninety-six % of all persons interviewed said that the CRP had achieved its primary goal of promoting reconciliation in their community.

119. One reason given for the positive response is that the CRP provided a forum for an open exchange of information. This allowed both perpetrators and victims to release emotions that had been bottled up. Although the exchanges could arouse raw emotions, anger and tears, if it was felt that deponents had made a real effort to provide the truth and were genuinely remorseful, victims and community members could accept them in a way that had not been possible before the CRP.

Concerns over the fragility of reconciliation

Who is going to look after our problems in the future? What is going to happen if someone hits me in the future? Who is going to monitor this? We have not yet received the letter back from the court. We need the letter and we also need others to monitor the situation in the future. If new problems arise, how are we going to resolve them?

Deponent - Ainaro³⁵

120. Although there was a feeling that the CRP had assisted in promoting reconciliation and cooling community anger, many villagers continued to express concern that the new-found peace in their communities was fragile. Some deponents worried that the community acceptance that the CRP had granted them might not always protect them against revenge attacks or social isolation. However, the fact that the CRP programme was anchored in legislation and had a connection to the formal justice process was seen to be important.

9.5.2 Restoring the dignity of victims

121. Whatever their reservations, most victims were ready to forgive deponents. Victims usually said that because deponents were willing to participate in the CRP, they in turn were willing to forgive. All 21 victims interviewed by the Commission in its internal evaluation reported the maximum rating of forgiveness. However, a number of victims expressed frustration that those who had killed or raped their family members remained free in West Timor, and could not be brought back to face their communities or the courts. In many cases, victims of less serious offences were also victims of serious crimes. Although they expressed satisfaction with the results of the CRP, they were dissatisfied with the progress that had been made towards achieving comprehensive justice.

9.5.3 Establishing the truth about human rights violations

I'm not like these others [two other deponents in the scheduled hearing, both militia members]. I did nothing wrong, I didn't commit any crimes. I can live with the community and if people want to avoid me, that's their business. I want to take part in the CRP because I don't want my children and my grandchildren to have problems one day. It's important to me that this stops here.

Deponent - Dili³⁶

I was not obliged to go through the CRP but as a citizen I wanted to go ahead. I felt I needed to give my statement about 1999...I was a lurai (traditional king) during the occupation and my work was very public. I made contact with Falintil and I assisted them with money...A new organisation was formed soon after called the FPDK [Front Persatuan Demokrasi dan Keadilan, United Front for Democracy and Justice]. My name was put there by the camat (Sub-district administrator). I didn't go along to any activities. As a lurai, I was asked to give them the names of people who should join the Darah Merah (militia group) by the camat. I had to put forward 20 names from this village. If I didn't give any names to the camat there would have been much suspicion of me. We all had to live with "ulun rua" (two faces) in those days in order to survive. In 1999, after the referendum, the FPDK was disbanded. It didn't really do anything bad.

Deponent - Ermera³⁷

122. The CRP provided deponents not only with an opportunity to admit to victims and their peers the details of what they had done, it also allowed them to clarify what they had not done. The conflict had often been chaotic, and information had been distorted, exaggerated and invented. Because there was no way of determining the truth, rumour became a substitute for the truth. It was common for deponents in CRP hearings to admit responsibility

for certain acts, and then be accused by the community of committing other acts as well. In many cases, deponents were able to provide detailed rebuttals of these allegations. In this way deponents were able to limit the accusations against them to those based on fact, and challenge convincingly those based on false rumour.

123. Many deponents stated that they had been forced to participate in militia activities during 1999. Communities accepted that this type of duress was common during the conflict and that many young men had been forced to guard militia posts and take part in other militia activities. The CRP gave the opportunity to victims and others to question whether the acts committed by the perpetrators had in fact been coerced, or if this was just being offered as an excuse.

124. In other cases, deponents accused of collaboration with the security forces or of other harmful acts provided explanations that they had in fact been working under the direction of clandestine leaders, and that their collaboration was only a cover for their real role.

CRP hearing in Fafelebo, Liquiça,

29 October 2002

Preparations for a CRP hearing in the village of Fafelebo were undertaken on the assumption that the procedure would be relatively short, simple and straightforward. The only deponent to testify had already admitted that he had taken part in the beating and humiliation of another member of the community and his statement had been corroborated by the victim.

However, as the hearing progressed, a story emerged that illustrates how “perpetrator” and “victim” are often inadequate terms to describe the complex roles which individuals played during the political conflicts. One of the positive attributes of the CRP was its capacity to expose and clarify these complexities, so that the participating community was able to gain a fuller understanding of what had taken place.

The deponent, P, began his testimony by recalling events that had occurred in May 1999. At the time he had been the police officer responsible for the village and had been contacted by J, the local *Babinsa* (TNI non-commissioned officer assigned to a village). J informed P that a pair of boots belonging to an Indonesian soldier had been stolen and that he suspected a local man, D, had carried out the theft in order to send the boots to Falintil fighters in the forest.

The person suspected of stealing the boots, D, was summoned. When he was brought before the group D was first punched and kicked by the *Babinsa* before P intervened to separate the men. At this point P slapped and kicked the victim and pushed him to the ground, demanding he perform ten push-ups in front of the group, and then crawl on the ground. Following his ordeal D was left lying on the ground.

Initially, on hearing the description of events outlined in P’s testimony, the panel considered sentencing him to three days labour, repairing the local school’s doors and windows. However, P then proceeded to explain his motivation for participating in the beating and humiliation of D.

P explained that at the time of the incident militia activity was intense and uncontrolled. On hearing that D was suspected of stealing the boots to supply to Falintil, P was afraid that D might be killed or his village attacked in retaliation. P further stated that he was related to D and wanted to protect him. He had intervened in the hope that by humiliating him in front of the others they would be satisfied and he would thereby save D’s life.

The local community recognised that at that time there was a real risk that D might be killed for stealing the boots. D accepted P’s explanation of what had happened and that he had acted not to persecute him but to save him. In consultation with the panel he, as the victim, offered to participate in the community service sanction to demonstrate that what had transpired between them in the past was now laid to rest and their relations restored.

A ritual slaughter of a chicken and pig and a communal feast followed the hearing. At the close of the hearing a representative community elder stated that in many circumstances individuals and communities had been divided and separated by the political conflict, which had forced them to act in ways they would never have chosen. The causes for these divisions had now been removed.

9.5.4 Promoting reconciliation

125. According to those who took part in it, the CRP programme made a major contribution to building reconciliation at the individual, sub-village and village levels. It provided a forum in which individuals were able to give expression to beliefs and emotions

that had previously been suppressed, to share anger and regret, and resolve to leave the violent past behind. The political conflict created a legacy of mistrust and resentment that was felt through every level of East Timorese society. By giving communities an opportunity to explore historical events, CRP helped to disentangle the web of suspicion that had been seriously impeding reconciliation.

126. The CRP programme was one of a variety of reconciliation initiatives undertaken by the Commission, however. Whereas CRP targeted grass-roots level tensions, the Commission also sought to defuse long-standing tensions at the national level. In the public hearing on the Internal Political Conflict of 1974-1976³⁸, for example, “agents of the process”, including political leaders who had led the political parties at the time of the internal conflict, as well as the present-day representatives of those parties, spoke to the nation. They publicly accepted responsibility for their actions, expressed regret for the harmful acts they or the institutions they represented had done, and at the end of the four-day hearing affirmed their solidarity in a moving closing ceremony. At this extraordinary event, held before a packed audience and broadcast across the nation, Timor-Leste’s political elite gave a public demonstration of how past differences can be put aside in order to strengthen the new nation.

127. Other public hearings aired the experiences of victims from all sides to the conflict and so contributed to a more balanced and accurate public perception of shared history. Victims’ Hearings and Healing Workshops helped restore the dignity denied to individual victims, and dispelled some of the residual anger that fuels continuing division. Community mapping exercises promoted a village-level exploration of the past and helped to develop a collective version of events. The weekly radio programme produced by the Commission encouraged reflection and debate on reconciliation. Through the information campaign in West Timor, refugees became aware of the work of the Commission, including the CRP programme for those that returned to Timor-Leste, and that they could give statements that could contribute to a balanced Final Report. It is hoped that this Report will also foster reconciliation by producing a version of events that is based on careful and objective research rather than limited information and rumour.

128. The Commission recognises, however, that the goal of reconciliation is far from being fully realised and that it must remain a major component of national policy for many years to come. Only through the continuation of practical, grass-roots programmes, further historical clarification and education, and constant recognition that the challenge has still to be fully met can the people of Timor-Leste hope to free themselves of the divisions created by the past. The Commission recognises that some of these divisions were the product of manipulation by foreign actors, particularly Indonesia. However, the people of Timor-Leste themselves accept a degree of responsibility. The past must be faced, faults on both sides admitted, and politically-related hatred and violence recognised as bringing only misery. Continuing to pursue reconciliation is of fundamental importance, not only for those now living within the borders of Timor-Leste, but also as part of the quest of rebuilding trust and a common understanding with those who share our East Timorese heritage but remain in West Timor.

9.5.5 Lessons learned

129. As the CRP programme was unique, the Commission could be guided by the experiences of institutions engaged in similar work in other countries, but could not simply replicate them. In undertaking this new and untested programme, the Commission achieved more than it set out to do, but there was often a gap between reality and what had been conceived on paper. Some valuable lessons can be learned from the experience of the planning, preparation and implementation of CRP, both for any future community reconciliation programme in Timor-Leste, and for others considering similar programmes.

Implementing the programme

130. Firstly, preparing the ground for the CRP programme to begin was a much larger, more complex and more time-consuming task than had been expected. Before the first hearing could be held, procedures had to be agreed and set down, the roles of the participants decided, training manuals written, staff trained, a public information programme organised, an outreach programme to influential figures in the districts implemented, support and transportation provided for staff working in the sub-districts, hearing sites made ready, perpetrators' statements taken, procedures for working with the OGP settled and many other tasks completed. The strategic plan did not anticipate all the challenges that would occur at this preparatory stage, and this meant that the hearings began later than expected.

131. The national CRP office also underestimated the time and effort needed for communities to become familiar with what was an entirely new concept. As familiarity increased during the life of the field programme, so did the level of community participation.

The role of victims

132. Further, although all categories of participants in the CRP programme, including victims, indicated that they had benefited from participation, more consideration could have been given to the role and contribution of victims. The Commission recognises that no process can hope to heal victims' wounds or compensate them for what they have lost. The CRP gave victims a voice and some degree of accountability for harmful acts that otherwise would not have been dealt with. However, the "acts of reconciliation" required of perpetrators in general delivered only token reparations. Some victims also reportedly felt indirect community pressure to reconcile with the perpetrator.

133. The role of victims in any justice process is a complex issue. As far as the CRP is concerned, it must be put in the context of the Commission's guiding principles when it designed the programme. The Commission wished to finalise a large number of cases, while respecting community social structures by giving a powerful role to local leaders, recognising that communities wished to heal local divisions and symbolically close the period of conflict, and that in Timor-Leste the concept of individual identity is closely entwined with the individual's sense of belonging to a community. Amid this complicated mix of objectives and constraints, the suffering of victims and their right to a remedy must be honoured and remembered at all times. Guidelines establishing a right of victims to a say in the decision on what "acts of reconciliation" the perpetrator should perform, and a stronger place for victims in the formal decision-making structure of the CRP would have helped to ensure that their interests were not overlooked.

Acts of reconciliation

134. One surprising outcome of the CRP was that the "acts of reconciliation" that perpetrators were asked to undertake were, in general, significantly less onerous than the Commission had expected. In many hearings involving low-level offences, the perpetrator was not asked to undertake any further action; a complete acknowledgement of the truth and a public apology were held to be sufficient. The type of "act of reconciliation" also differed between districts.

135. For example, deponents in Oecusse were more likely to be asked to pay financial compensation, and deponents in Bobonaro were more often required to undertake community service. This aspect of the programme was influenced by local custom and, in some cases, the views of the local leaders who sat on panels. On the one hand, this was a positive result in that the hearing format was flexible enough to accommodate local views. On

the other, it meant that there was a lack of uniformity in dealing with similar offences. A set of guidelines suggesting what “acts of reconciliation” would be commensurate with what offence would have assisted in achieving uniformity.

The relationship between the Office of the General Prosecutor and the Commission

136. Over the course of the CRP programme community interest, and with it requests for hearings, increased dramatically, resulting in a caseload that was 50% higher than the Commission had initially planned for. This unexpected level of demand put great pressure on both the Commission and the OGP.

137. Under the tight schedule of three months per sub-district, the Commission needed the OGP to process cases quickly if they were to be heard before the district teams moved on. In the early stages of the programme, the OGP was frequently unable to meet the 14-day deadline for the turnaround of cases and sought the 14-day extension in almost every case. A major cause of delay was the need for translation. The Serious Crimes Unit was staffed largely by United Nations international personnel whose working language was English, whereas all CRP statements were in either Tetum or Indonesian. Some individual prosecutors also took a very cautious approach to their responsibilities.

138. These initial problems were resolved through closer co-operation between the two institutions, achieved through regular communication and information sharing. As the demand for CRP hearings grew, particularly towards the end of the operational period, the workload of both institutions increased dramatically. Due to hard work and a more pragmatic attitude on both sides, the programme was ultimately completed within the timeframe.

The relationship between the CRP and the courts

139. Each of the 1,371 Community Reconciliation Agreements had to be considered by the District Courts and, if approved, issued as an Order of the Court. As the end of the operational period approached, completing the certification process proved to be a serious challenge. The courts were already overburdened with a large backlog of cases. To clear the backlog the Commission assigned a CAVR staff member to work in the registry of each District Court. Once measures to expedite the review of CRAs were in place, cases passed through the courts relatively quickly. A decision to give Commission staff members the responsibility for notifying deponents of the courts’ decisions removed another bottleneck.

140. Although viewed from one angle the CRP cases added to the workload of an already strained legal system, the programme may also have lightened its load. Some, if not all, of the cases handled by the Commission through the CRP programme may have been taken to the police by victims and perhaps even prosecuted. The programme effectively averted the need for police investigation, the preparation of indictments by prosecutors, judicial hearings, and an expanded court administration and prison system to deal with those cases.

9.6 Broader impacts of the CRP programme

9.6.1 CRP as a symbol of the end of the conflict

Today is the end of 24 years of suffering, violence and division for our community. In 1999 we saw the Indonesian soldiers and militia leave. On 20 May 2002 we celebrated our independence as a nation. But it is only today that we as a community can be released from our suffering from this terrible past. Let us roll up the mat, and this will symbolise the end of all of these issues for us. From today we will look only forward. Let us now eat and dance together, and celebrate the future.

Community leader – Maliana³⁹

141. Besides giving communities the opportunity to explore and find solutions to problems between individuals in dispute, for many communities the CRP provided a symbolic closure to the long period of conflict. Although the formal objective of hearings was to allow deponents to gain readmission to the communities by telling the truth and performing “acts of reconciliation”, in fact the give-and-take between deponents and other participants often produced a more rounded and more accurate version of events that was of wider benefit to the community.

142. It is likely that the CRP performed this important function because it gave communities their first chance to focus on their own particular experience. Moreover, it gave them this opportunity in a contained and safe forum within which they could open up old wounds before declaring, on the basis of a broadly acceptable resolution, that the wounds should now be closed.

9.6.2 Contribution to the fight against impunity

143. After the end of the conflict in October 1999 national leaders and representatives of the international community repeatedly told the population of Timor-Leste that they should not seek to avenge past wrongs and must rely on formal justice mechanisms for solutions. This faith in the rule of law was unfamiliar to most East Timorese, as during the occupation the law had come to be seen as an instrument of oppression or simply irrelevant. However, for various reasons there was little progress in achieving justice for past offences in the three years after the end of the conflict. Considered in this context, the success of the CRP was an example for the new nation of the value of the rule of law. This was particularly so because the programme reached into remote parts of the country, and many participants reported to the Commission that the CRP was their only experience of any official legal mechanism since the departure of the Indonesian military.

144. In addition to buttressing the rule of law, the CRP held many perpetrators of “harmful acts” accountable, who would otherwise probably have enjoyed complete immunity. Although these persons were not forced to undergo trials or imprisonment, their experience in the CRP and their subsequent “acts of reconciliation” were often painful and humiliating. Follow-up interviews indicated that the admissions and apologies that deponents made frequently had a lasting effect on their lives.

145. In this manner the CRP, together with the increasing number of successful prosecutions for “serious crimes” in the Special Panels, demonstrated that there was not complete impunity for past offences. It also served to weaken the case for an amnesty for past offences. Community members who had experienced the CRP found it difficult to accept

the argument that amnesty was the only option for dealing with the massive number of unresolved “less serious crimes”. Moreover, the proposal simply to drop the cases against perpetrators of such crimes seemed unfair after other perpetrators had been required to go through the painful process of a CRP.

The failure to bring those most responsible to account

We were just ordinary people. We were forced to join the militia. Why should we go through this process while the big people continue to be free?

Two of our family members were killed during the violence. Those who killed them have not yet come back from Atambua. While my wife was still pregnant with our first child, I was jailed in West Timor from 1997 to 1999 because I was involved in the clandestine movement. I was beaten many times and thrown into the sea. Until now my eyes are dizzy and I cannot see very well. During 1999 our house was also burned and our things destroyed.⁴⁰

Victim, Suai

146. The Regulation clearly prohibited the CRP from dealing with offenders who were most responsible for serious violations. There was a perception that this category of offender had evaded justice of any kind and that they remained free and unrepentant. This sense of injustice was expressed in different ways at almost all CRP hearings. The Jakarta Ad Hoc Tribunal had not yielded any tangible results and the Serious Crimes Process was unable to reach the majority of perpetrators of gross violations, who remained in West Timor or other parts of Indonesia. Further, because of resource constraints, the Serious Crimes Unit had still to investigate a number of persons suspected by their communities of being responsible for serious crimes, even though they had returned to Timor-Leste. In a number of cases these individuals had not returned to their original villages but remained in Dili. Community members commonly expressed frustration and anger that they had not been held to account for their actions in any way.

147. Even within the category of offender eligible for CRP, many individuals who were suspected of committing “less serious crimes” or other acts did not choose to participate in CRP hearings in their villages. The voluntary nature of the process meant that if these persons did not choose to give a statement, they could not be forced to. Although in theory they remained liable to arrest and trial, the likelihood that this would happen diminished as the legal system became increasingly overburdened with new cases.

148. The result of this uneven treatment of offenders was that often communities expressed appreciation of the actions of those perpetrators who stood before them and accounted for their actions, but they were clearly dissatisfied at the apparent impunity enjoyed by more serious offenders who, for whatever reason, remained beyond the reach of the formal justice system.

⁴⁰ Justice System Monitoring Programme, *Unfulfilled Expectations: Community Views on CAVR’s Community Reconciliation Process*, Lia Kent, Dili, August 2004, p. 15. (available at www.jsmp.minihub.org.) This is not an actual quotation from a deponent, but JSMP reported that it was a “common refrain” heard from deponents in the CRP. The JSMP report added that “[t]he perception is that those most responsible live comfortably, and with impunity, whether in West Timor or in Timor-Leste”.

9.6.3 CRP's contribution to capacity building

149. One indirect benefit of the CRP was the skills and experience in dispute resolution and reconciliation mechanisms that members of staff, panels and communities acquired during the programme.

150. All CRP staff received training before beginning their work in communities, which was supplemented by further courses during the implementation of the programme. Training focused on developing the range of skills needed to conduct CRP hearings. These included skills in:

1. Mediation
2. Achieving solutions acceptable to parties in disagreement
3. Dealing with aggrieved victims
4. Special issues relating to victims of sexual assault
5. Conflict resolution and the dissipation of anger or violent reactions
6. Role-plays and problem-solving exercises based on the kinds of situations staff members were likely to face in the CRP hearings
7. Chairing meetings or panels
8. Basic legal principles relating to natural justice and procedural fairness
9. The legal requirements of CRP, as set out in Regulation 2001/10.

151. In addition to this training, staff and Regional Commissioners participated in many hearings throughout the life of the programme, allowing them to develop these skills. In total more than 50 East Timorese completed this training and were thereby equipped with skills that could have wider application.

152. Panel members also received training before they presided over hearings. Their training was primarily aimed at preparing them for the forthcoming hearing, and included imparting a general knowledge of methods of mediation and dispute resolution. A total of over 1,000 East Timorese Panel Members received this instruction and participated actively in at least one hearing in which they were required to utilise the skills they had learned. As panel members were community leaders drawn from each of the 65 sub-districts of Timor-Leste, this training should enhance local capacity to resolve disputes throughout Timor-Leste.

153. The methodology of the CRP, which included conducting proceedings in a calm, respectful manner and giving space for the views of all affected parties, also provided a valuable model for communities to draw on in resolving other disputes. It is estimated that over 40,000 East Timorese (almost 5% of the population) attended and participated in CRP hearings. This widespread experience of confronting difficult problems and seeking to resolve them in ways that were agreeable to all parties made a valuable contribution to maintaining peace during the volatile and emotionally fragile period following the end of the conflict.

154. The Commission closely followed the Regulation requirement that a minimum 30% of all Regional Commissioners be women,⁴¹ and that panels have "appropriate gender representation".⁴² As Regional Commissioners and panel members, women played an active role in the hearings, which can only have had a beneficial role on gender equality in Timor-Leste.

9.6.4 CRP: a unique approach to justice

155. The different systems of formal prosecution through the state legal system and the CRP programme were developed for different reasons, and made different contributions to justice. The formal criminal justice system has developed over centuries to deal with the ordinary type and level of crime that occurs in a relatively stable society. It deals with cases on an individual basis in an objective manner, with a view to their decision being generally applicable to other perpetrators of the same offence. The formal justice system is the power of the State condemning anti-social behaviour.

156. The CRP, by contrast, was designed to address a particular caseload, arising from a specific situation, where violence and human rights violations had occurred on a massive scale, and where whole communities had been torn apart by what had occurred. It was in this extraordinary post-conflict context that the CRP was designed to address both justice and reconciliation.

157. Certainly, the CRP was not able to offer the same depth of investigation, legal certainty, uniformity of application and guarantees of due process and fairness that the courts can provide. However, the diverse legal and other traditions brought together to constitute the CRP gave it dimensions that fall outside the purview of the formal justice sector.

158. The CRP was able to finalise a far greater number of cases than would have been possible if the same amount of resources and time had been devoted to the formal justice sector alone. It was also able to focus on repairing community and individual relationships, and tailor sanctions to suit each case.

159. Participants often expressed their appreciation that the CRP hearings were held in their home communities. Victims and community members had an opportunity to participate in a full sense. By contrast, court hearings are usually held in major centres and villagers who attend court hearings face formidable economic, logistical and psychological obstacles. The participation of the general community and the role of traditional leaders, church leaders and other respected persons, also added a strong sense of ownership to the CRP. Agreements reached had the force of all of these respected local institutions behind them as well as that of the law.

160. In a court hearing, victims may or may not give testimony, and if they do, they have to limit themselves to what they experienced. They are unable to express opinions or to address the perpetrators directly and tell them how they have suffered as a result of their actions, ask them to clarify questions, or explain why they committed the crimes. Feelings of remorse have no bearing on the guilt or innocence of the accused, only on the severity of sentence. Whether a victim is satisfied with a perpetrator's explanation, or if they accept or forgive the perpetrator is irrelevant. Only lawyers are allowed to ask questions of witnesses and community members, who may know the context well, are prohibited from speaking. In CRP, however, all of these factors were a normal part of the procedure.

161. Participation in formal justice mechanisms is often a humiliating procedure for victims. They must give evidence alone, may be closely questioned or cross-examined on details of their experience and are forced to relive painful memories. In contrast victims in the CRP hearings were afforded a place of honour. They were accompanied by family or friends as well as trained the Commission support staff. The victims were able to express their feelings and had a direct role in deciding the fate of perpetrators. Victims interviewed by the the Commission reported feeling that their community held them in higher esteem as a result of the CRP.

CRP hearing in Holsa, Maliana, Bobonaro

30 June 2003

Of the 1,371 deponents who completed CRP hearings over the 18 months of the programme, no two had the same story to tell. The reasons for participating varied greatly, reflecting the many faces of the community tensions that grew out of the political conflicts. While most of those who appeared before their communities spoke of their collaboration with the Indonesian regime and the militias associated with it, the nature of that collaboration was diverse.

The testimonies of the three deponents who participated in a CRP hearing in the village of Holsa, on the edge of the town of Maliana, highlighted clearly the different ways in which people had been drawn into the conflict and the often complex nature of their acceptance back into their communities.

At the beginning of the hearing, which took place at the end of June 2003, certain differences were immediately obvious from the appearance of the deponents. JR, a member of the national police force of Timor-Leste, had arrived wearing his uniform, but after a request from the Regional Commissioner, he changed into his civilian clothes and sat erect at one end of the row of seats reserved for the perpetrators. Next to him sat JM, wearing the *lipa* (sarong) and long beard, signs that he was an elder. At the far end of the row sat the youngest of the three, G, casually dressed in shirt and jeans.

JR spoke first and in his testimony outlined his reasons for testifying to the CRP. Before the Popular Consultation of 1999 he had served in the Indonesian police (*Polri*) for many years, and it was his long experience in *Polri* that had led to his selection for the East Timorese force. He was finding, however, that because of his past people found it hard to accept him. He was regularly taunted by the local youth as *polisi milisi* (a militia policeman) the implication being that as a member of the Indonesian police force, he had been complicit in militia attacks and other violence against the population.

JR described how he had tried during his years of service in the Indonesian police to protect the communities he had worked in. He had warned them of impending military or police operations and deliberately failed to pass on information to his superiors about the location of Falintil fighters and their clandestine supporters. Through his participation in the CRP hearing, JR was hoping to clear his name as a collaborator and become a respected police officer.

The next to testify was JM. He said that he was a member of the *lisan* community and that was the reason that he had been targeted by a local militia group, *Dadurus Merah Putih* (DMP). He described how one evening in May 1999 two armed men had taken him from his house to the house of the local DMP commander. He was told that he must perform *lisan* rituals for the militia the next morning at seven o'clock.

JM's protests were ignored, and the next day he went to attend the ceremony, together with a local nun who had also been forced into coming. He performed the rituals that the militia told them to. These included administering a "blood oath" to bind the militia members to their leaders. JM described the loss of status he suffered as an *lisan* elder as a result of performing sacred rituals for the militia, but protested that he had had no choice but to comply with their demands. He hoped that by explaining his actions to the CRP, he would be accepted back by the local *lisan* community.

The final testimony of the day came from G. He described how, in April 1999, he and his friends had been summoned by the local battalion commander to attend a roll-call at the military post. During the roll-call, they were told that they were going to take part in a military operation. They left after the roll-call was finished, and proceeded to the nearby village of Raimaten where they were instructed to burn two houses. Another man, who was still living in West Timor at the time of the hearing, carried out the burnings. After house-burnings some members of the group, including the deputy commander of the local TNI battalion, stole property belonging to other villagers. G described how the commanders of the operation did not consider him and his friends “fierce” enough to join in the burning and looting. He was able to identify all of those who had ordered and coordinated the action. Community members were aware that the alleged perpetrators had all gone to West Timor after the referendum and not returned. G wanted to resolve suspicions in the community that he had been actively involved in the theft of property and the destruction of the two houses. He answered all questions from victims and others and satisfied them of the truth of his explanation.

The three deponents, although from different backgrounds and with different reasons for participating in the CRP, all expressed satisfaction with the outcome of the hearing. The owner of the burnt houses accepted G’s version of events. JM’s account of the circumstances in which he had been forced to carry out *lisan* ceremonies for the militia allowed the other *lisan* leaders present to understand why he had acted as he had, and to forgive him.

On the day of the hearing it was unclear whether the community had found JR’s account of his true role as a member of the Indonesian police persuasive. However, in an interview with Commission staff several months later, he said that he felt that community attitudes towards him had changed for the better since the CRP hearing.

9.7 Reflections

9.7.1 Conclusion

162. The CRP programme was devised to address the need to reunite communities that the political conflicts had divided. As there was no precedent for this kind of programme, the prospects for its success were uncertain at the time the Regulation was passed.

163. Implementing the programme posed logistical, administrative, educational, political and legal challenges. These challenges ranged from reaching some of the remotest villages in the country, to establishing working relationships with the OGP and the courts, to attracting the support of local leaders and community members, to handling emotionally charged disputes between perpetrators and victims. All of these challenges were met, through a great deal of hard work and dedication on the part of the staff, advisors and Commissioners of the CAVR.

164. In addition to the large number of individuals who were successfully reintegrated into their communities, the CRP produced a number of other benefits.

- It created a mechanism for communities to explore their own part in the history of the conflict and to clarify the role of individual perpetrators and victims in these events.

- It gave communities an opportunity to celebrate an end to hostility and division, and symbolically close the conflict.
- It trained a number of East Timorese, from every district, in the principles and practice of mediation and arbitration, and offered a model of peaceful dispute resolution to tens of thousands of participants.
- It reinforced the value of the rule of law, and contributed to the fight against impunity by resolving a significant number of cases that could not realistically have been dealt with through the formal justice system.
- It helped the formal justice system to find its feet in the vulnerable period of its infancy by relieving it of the burden of having to deal with a significant number of outstanding cases.
- Together with other, complementary programmes, it encouraged a general attitude of support for forgiveness and reconciliation among community members.
- It sent a clear message to East Timorese refugees in West Timor that if they returned to Timor-Leste, a specific mechanism was in place which would assist them to reintegrate, and that communities strongly supported this non-violent approach to settling past differences.

9.7.2 Unfinished business

165. The Commission recognises that transitional justice mechanisms established following massive violence and upheaval can never hope to provide closure for all the crimes and human rights violations committed. Timor-Leste, through the work of the SCU and CAVR, has been more successful in finding effective responses than many other countries facing similar situations. However, the substantial body of cases that have not been processed in any way at all remains an obstacle to reconciliation in Timor-Leste.

166. From the initial planning phase of the CRP the Steering Committee recognised that the Commission could not deal with all cases of “less serious crimes” committed between April 1974 and October 1999. It set itself the more modest objectives of finalising a significant proportion of these cases and thereby making a contribution to reconciliation, dispelling some of the anger that permeated life in many communities and averting revenge attacks.

167. The programme achieved these goals but, having done so, created the new expectation that everyone who wanted to take part in a CRP would have an opportunity to apply. This clearly was not possible within the time the Commission had to complete its work. Despite a target of approximately 1,000 individual cases, and the actual completion of almost 1,400, the CRP Division estimated that at least 3,000 additional perpetrators could have participated in a CRP had the programme been able to continue. Communities were disappointed that so many cases that could have been dealt with through the CRP had not been, and were overwhelmingly in favour of extending the programme or replacing it with something similar.

168. Another area of unfinished business was the more than 100 cases that the OGP had retained. The OGP had decided to hold these cases for further investigation because evidence indicating involvement in a serious crime had arisen either in the OGP’s own files, in a deponent’s statement or during a hearing.

169. The Serious Crimes Unit has continued to struggle with a larger caseload than it can manage and, as of the date of publication of this Report, the OGP had not proceeded with any of the CRP deponent statements that it had decided to retain. If the OGP eventually finds

⁷ If such evidence was presented during a hearing, the Regulation required that the hearing be adjourned, and the case be referred back to the OGP (UNTAET Regulation 2001/10, section 27.5).

no grounds for proceeding with these cases, their diversion will have deprived perpetrators who had been willing to participate in a CRP of an opportunity to settle issues from their past with their communities, or to provide additional information clarifying their involvement.

170. The under-resourcing of the SCU has had broader repercussions on the work of the CRP. The SCU has limited its investigations and prosecutions to crimes committed in 1999. At the time of writing it has completed less than half of the cases of serious crimes reported and is expected to cease its operations in May, 2005.^{*} This has resulted in a situation in which, the vast majority of human rights violations committed during the whole period of the political conflicts have yet to be dealt with in any fashion. The fact that many perpetrators have voluntarily participated in the painful and often humiliating experience of a CRP hearing, while those guilty of more serious crimes seem unlikely ever to be held to account, has produced a situation of unequal accountability and a perceived justice deficit. This imbalance and the institutional factors that underlie it must be addressed when considering future strategies and needs in the area of reconciliation and justice.

9.7.3 The future of the CRP

171. The success of the CRP programme has generated much debate about whether the programme should continue, either in its existing or in some other format. At the time that CRP was designed, it was unclear whether communities would find it acceptable. The results clearly show that communities throughout Timor-Leste found the CRP to be extremely valuable and, as mentioned, at the end of the operational period there was a high level of unsatisfied demand for the process.

172. On 7 July 2004, the Commission hosted a one-day workshop entitled "Resolving the Past to Embrace the Future". The workshop identified what needs to be done to foster reconciliation in the future. Participants in the workshop included members of the National Parliament, judges, lawyers, representatives of local and international NGOs and civil society groups, as well as the CAVR's National Commissioners.

173. The main conclusions and recommendations of the workshop were:

^{*} As preparations were being made for the delivery of this Final Report to the President of Timor Leste in July 2005, the United Nations had placed a Moratorium on the closure of the Serious Crimes Unit, pending consideration of the report of the Commission of Experts. In September 2005, the future of the Serious Crimes Unit remained unclear.

- The process of community-based reconciliation should continue. Any successor to the CRP should also focus on the resolution of lesser crimes and have among its fundamental objectives the restoration and repair of community relations.
- The CRP has served as a model for reintegration of community members who committed “harmful acts” in 1999. Demand for the service that the CRP provided for this group will continue to be strong, coming from perpetrators who have already returned to Timor-Leste as well as those who have yet to return. The workshop recommended that cases arising from events that occurred in 1999 should be dealt with separately from those that occurred between 1974 and 1998.
- The government should create an independent institution to facilitate the community reconciliation processes post-CAVR. The institution that undertakes this work should do so within a framework of clearly defined objectives and responsibilities. It was generally agreed that the systems and modus operandi of the CRP provided a model for how its successor could be implemented.
- Any subsequent community reconciliation initiatives should retain the relationship between the customary and the formal justice systems.⁴³

174. It is clear that grassroots demand for the continuation of the CRP is strong and that there is a determination in many sectors of East Timorese society that that demand should be met. The main obstacles to doing so are largely institutional. They include finding an appropriate institutional home where the work of the CRP can be carried on, and reformulating the relationship between this successor institution and the formal justice system at a time when the future of “serious crimes” prosecutions is uncertain. The Commission’s own recommendations in this area are contained in Part 11: Recommendations.

¹ Peter Mares, interview with Xanana Gusmão for “Priorities for the New Nation”, ABC Radio *Asia Pacific* (Australia), 10 October 2001.

² United Nations Transitional Administration in East Timor (UNTAET) Regulation 2001/10 on the Establishment of a Commission for Reception, Truth and Reconciliation in East Timor, 13 July 2001.

³ As referred to in UNTAET Regulation 2001/10, Section 1(g).

⁴ Dolan, C., Large, J. and Obi, N., *Evaluation of UNHCR’s Repatriation and Reintegration Programme in East Timor, 1999-2003*, Geneva: UNHCR, Evaluation and Policy Analysis Unit, February 2004, p. 12.

⁵ East Timor National NGO Forum Working Group on Refugees and Returnees. A letter to Ruud Lubbers (UN High Commissioner for Refugees), Dili, 8 September 2001.

⁶ Regulation 2000/15 of 6 June 2000, Section 1.1.

⁷ Father Jovito de Jesus Araújo, Deputy Chairperson of the CAVR, 9 March 2005.

⁸ Dionisio Babo Soares, *A Brief Overview of the Role of Customary Law in East Timor*, a paper presented at a Symposium on East Timor, Indonesia and the Region, organised and sponsored by Universidade Nova de Lisboa, Portugal, 1999, p 11.

⁹ Tanja Hohe and Rod Nixon, *Reconciling Justice: ‘Traditional’ Law and State Judiciary in East Timor*, Final Report compiled for United States Institute of Peace, January 2003, pp. 20-23; See also Dionisio Babo Soares, *Nahe Biti: The Philosophy and Process of Grassroots Reconciliation (and Justice) in East Timor*, Working paper for conference “The road to peace,” Bergen, Norway, 11-12 April 2001.

¹⁰ “Establishing a Commission for Truth, Reception and Reconciliation in East Timor: Operating Principles and Mandate”, Working Concept paper given to the UNTAET Human Rights Unit, 2 November 2000. Quoting Workshop Report.

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- ¹¹ Regulation 2001/10, Section 22.1.
- ¹² Regulation 2001/10, Section 23.
- ¹³ Regulation 2001/10, Schedule 1, as amended by Directive on Serious Crimes, 2002/9.
- ¹⁴ Regulation 2001/10, Schedule 1, as amended by Directive on Serious Crimes, 2002/9.
- ¹⁵ Regulation 2001/10, Section 24.7-24.8.
- ¹⁶ Taken from OGP memo – “Cases Sent to the Office of the General Prosecutor for Vetting”.
- ¹⁷ Taken from OGP memo – “Cases Sent to the Office of the General Prosecutor for Vetting”.
- ¹⁸ Regulation 2001/10, Section 25.
- ¹⁹ Regulation 2001/10, Section 26.1.
- ²⁰ Regulation 2001/10, Section 27.1
- ²¹ Regulation 2001/10, Section 27.3.
- ²² Regulation 2001/10, Section 27.2.
- ²³ Regulation 2001/10, Section 27.4.
- ²⁴ Regulation 2001/10, Section 27.5.
- ²⁵ Ibid.
- ²⁶ Regulation 2001/10, Section 27.7.
- ²⁷ Regulation 2001/10, Section 32.
- ²⁸ Regulation 2001/10, Section 30.2.
- ²⁹ CAVR Regional Commissioner Oecusse District.
- ³⁰ CAVR Interviews conducted during internal assessment of CRP2004.
- ³¹ Judicial System Monitoring Programme (JSMP), *Unfulfilled Expectation: Community Views on CAVR's Community Reconciliation Process*, Lia Kent, Dili, Timor-Leste, August 2004, p 14.
- ³² CAVR Interviews conducted during internal assessment of the CRP, 2004.
- ³³ CAVR Interviews conducted during internal assessment of the CRP, 2004.
- ³⁴ Ruth Hubscher, notes of interviews submitted to the CAVR, June 2004.
- ³⁵ JSMP, Kent 2004, pp 15-16.
- ³⁶ Comments from CRP deponents briefing, Hera, Dili, Nov 2002.
- ³⁷ JSMP, Kent, 2004, interview.
- ³⁸ CAVR National Public Hearing on The Internal Political Conflict 1974-76, December 15-18, 2003.
- ³⁹ Community elder, Speech given at CRP hearing in Maliana, Bobonaro District, November 2003
- ⁴⁰ JSMP, Kent, 2004, interview.
- ⁴¹ Regulation 2001/10, Section 11.1.
- ⁴² Regulation 2001/10, Section 26.1.
- ⁴³ CAVR, Key Recommendations from CAVR Workshop, *Resolving the Past to Embrace the Future*, Dili, 7 July 2004.