

## Part 11: Recommendations

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## Part 11: Recommendations

*In an independent East Timor, the children and youth shall represent our hope in the future, and the protection and promotion of their rights shall always be a priority. Their education shall be based on cultivating love and respect for life, peace, justice and equality so that a new world can be built on the ruins of war.*

Magna Carta concerning Freedoms, Rights, Duties and Guarantees for the People of East Timor adopted by the National Council of East Timorese Resistance (CNRT), Peniche, Portugal, 25 April 1998.

*What's the point of continually collecting information from us if there's nothing to show for it?*

*Community of Lalerek Mutin, Viqueque*

### Introduction

The Commission is required to make “recommendations concerning reforms and other measures whether legal, political or administrative which could be taken to achieve the objectives of the Commission, to prevent the repetition of human rights violations and to respond to the needs of victims of human rights violations” [Regulation 2001/10, Section 21.2].

The thousands of first-hand testimonies of victims and witnesses that were given to the Commission have provided this nation and the international community with a clear picture of the intense suffering of the East Timorese people between 1974 and 1999. This suffering was primarily caused by violations against individual citizens committed by state agents particularly after 1975. It was made possible due to the climate of impunity that prevailed for most of this period due on the one hand to the absence of democratic checks and balances on the Indonesian military within the Indonesian system and, on the other hand, to the tolerance by the international community of the Indonesian government's excesses in the conduct of its affairs.

The Commission has been given the duty to make recommendations that, if implemented, will assist in preventing a recurrence of the violations of the past. As most of the human rights violations recorded in this report were committed by the state and the state has primary responsibility to uphold human rights, prevention must be focussed on ensuring that the actions of state agents do not once again become alienated from legal obligations and the will of the general population. Members of the military, police, intelligence services, judiciary and government agencies must at all times remain strictly accountable to the people, the law and internationally agreed standards. For its part the international community must not only enunciate standards but insist, through all the measures available to it, that these standards are complied with particularly at this stage when the architecture of the new state is still being developed.

History teaches us that nations recovering from long conflict face a difficult task to develop the democratic institutions and laws that can protect and guarantee human rights. Some nations fail to meet this challenge and revert to violence. It should not be taken for granted that human rights will automatically be protected in Timor-Leste. Vigilance against the kind of practices that lead to violations needs to be constant.

The need for vigilance is demonstrated by the fact that although the vast majority of serious violations examined by the Commission were committed by members of the Indonesian security forces, these perpetrators were both Indonesian and East Timorese members of the forces. Although the worst periods were during the military occupation, violations were also committed by East Timorese against their brothers and sisters during the struggle for power in the internal armed conflict of 1975 and within the Resistance especially in 1977. The proper safeguards of a democratic state need to be put in place, strengthened where they already exist, and applied and respected by all the institutions and citizens of Timor-Leste.

These recommendations have been made in the spirit of building a future for our children who must be guaranteed that the violence of the past shall not be repeated. We must learn from the past in order that every child in Timor-Leste can fulfill his and her potential.

The Commission commends the national leaders of Timor-Leste, the elected representatives who developed the Constitution, our members of Parliament and Church leaders and those in government, civil society and the business community who strive to build a nation based on the principles of the Constitution and international human rights. They are motivated by values and objectives born from our painful past which have also been given powerful expression in the Magna Carta of human rights formulated by the National Council of Timorese Resistance (CNRT) in 1998 and the policies of all East Timorese political parties. In recognition of these commitments and out of a deep conviction based on our inquiry, the Commission makes these recommendations acknowledging that this is a long-term process requiring sustained commitment and action.

The recommendations are organised as follows:

1. Timor-Leste and the international community
2. Timor-Leste and Portugal
3. Human rights in Timor-Leste: protecting and promoting all rights for all
4. Human rights in Timor-Leste: protecting and promoting the rights of the vulnerable
5. Human rights in Timor-Leste: protecting and promoting rights through effective institutions
6. Human rights in Timor-Leste: security services that protect and promote human rights
7. Truth and justice
8. Reconciliation in the general community
9. Reconciliation in the political community
10. Reconciliation with Indonesia
11. *Acolhimento* (reception)
12. Reparations
13. Follow-on institution

## Recommendations

### 1. Timor-Leste and the international community

*The relationship of Timor-Leste to other nations was defined by the nature of the political conflicts between 1974 and 1999. The conflict in Timor-Leste was not primarily an internal conflict but one of foreign intervention, invasion and occupation that caused the people of Timor-Leste great suffering and loss and violated international law and human rights which the international community was duty bound to protect and uphold. While these relationships have evolved since the intervention of the United Nations in 1999, there are a number of steps to be taken which will*

*assist the building of this new nation and its international relations and to ensure that Timor-Leste's experience is not repeated in other situations.*

The Commission recommends that:

- 1.1. This Report is given the widest possible distribution at all levels in the international community through the media, internet and other networks and particularly within the United Nations and those individual nations and institutions that are highlighted in the Report, viz. Australia, China, Britain, France, Indonesia, Japan, Portugal, Russia, US, the Catholic Church, as well as the East Timorese diaspora and international civil society organisations.
- 1.2. This Report is disseminated at all levels in the Community of Portuguese Language Countries (Comunidade dos Países de Língua Portuguesa, CPLP) with a view to it contributing to greater understanding of Timor-Leste as the newest member of the Community.
- 1.3. This Report is disseminated at all levels in each of the countries of the Association of Southeast Asian Nations (ASEAN) in order to deepen appreciation of Timor-Leste's recent history and its needs as a future member of this important regional body.
- 1.4. The Vatican and the governments of China, Britain, France, Japan, and Russia make available to Timor-Leste their classified and other archival material on the period 1974-1999 so that this information can be added to that already provided by other countries to ensure that Timor-Leste, after so many years of isolation, can build a comprehensive depository of information on its history.
- 1.5. The UN Secretary-General refers the Report to the Security Council, the General Assembly, the Special Committee on Decolonisation and the UN Commission on Human Rights, and requests that each of these bodies devotes a special session to discussion and reflection on the Report and the lessons to be learned from its contents and findings.
- 1.6. The states that had military cooperation programmes with the Indonesian Government during the Commission's mandate period, whether or not this assistance was used directly in Timor-Leste, apologise to the people of Timor-Leste for failing to adequately uphold internationally agreed fundamental rights and freedoms in Timor-Leste during the Indonesian occupation.
- 1.7. The Permanent Members of the Security Council, particularly the US but also Britain and France, who gave military backing to the Indonesian Government between 1974 and 1999 and who are duty bound to uphold the highest principles of world order and peace and to protect the weak and vulnerable, assist the Government of Timor-Leste in the provision of reparations to victims of human rights violations suffered during the Indonesian occupation.
- 1.8. Business corporations which profited from the sale of weapons to Indonesia during the occupation of Timor-Leste and particularly those whose material was used in Timor-Leste contribute to the reparations programme for victims of human rights violations.
- 1.9. All UN member states refuse a visa to any Indonesian military officer who is named in this Report for either violations or command responsibility for troops accused of violations and take other measures such as freezing bank accounts until that individual's innocence has been independently and credibly established.

- 1.10. States regulate military sales and cooperation with Indonesia more effectively and make such support totally conditional on progress towards full democratisation, the subordination of the military to the rule of law and civilian government, and strict adherence with international human rights, including respect for the right of self-determination.
- 1.11. The governments of Australia, Britain and New Zealand undertake a joint initiative to establish the truth about the deaths of the six foreign journalists in Timor-Leste in 1975 so that the facts and accountability are finally established.
- 1.12. The international Catholic Church, led by the Vatican, honours Dom Martinho da Costa Lopes and the Catholic sisters, priests and laity who were killed in 1999 seeking to protect the people of Timor-Leste.
- 1.13. The documents and any other material relating to the events of 1999 and militia activity that were allegedly removed to Australia for safe-keeping after the arrival of Interfet in 1999 be returned to Timor-Leste by the Government of Australia.
- 1.14. The Government of Timor-Leste, with the support of the United Nations, honours the contribution of international civil society to the promotion of human rights in Timor-Leste, particularly the right of self-determination, and invites civil society organisations to contribute their documentation on this struggle to the people of Timor-Leste as a tool for remembering and fostering ongoing relations and solidarity
- 1.15. Support, both practical and financial, be given by business, philanthropic bodies, corporations and academic institutions to assist key East Timorese figures and others to document their histories and experiences in order to build up the limited stock of East Timorese-generated literature for future generations

## 2. Timor-Leste and Portugal

The Commission recommends that the Portuguese Government:

- 2.1. Formally acknowledges receipt of this Report, refers it to the Parliament of Portugal and implements the recommendations relevant to Portugal that it contains
- 2.2. Supports financially and logistically the dissemination of the Report and its related products through the relevant sectors of Portuguese society and within the Community of Portuguese Language Countries (CPLP)
- 2.3. Assists the Government of Timor-Leste in the provision of reparations to victims of human rights violations from the conflicts in Timor-Leste
- 2.4. Provides copies of relevant official archival material on Timor-Leste on to the people of Timor-Leste as an essential part of our national heritage and assists Portuguese civil society organisations, the media and the Portuguese Church to provide material in their possession to Timor-Leste
- 2.5. Conducts an audit of artefacts and other cultural property of East Timorese origin currently in Portugal with a view to repatriation to Timor-Leste in order to assist in the conservation, development and diffusion of its culture in accordance with the right to cultural self-determination and the principles of the International Covenant on Economic, Social, and Cultural Rights

- 2.6. Promotes two-way relations with Indonesia, bearing in mind Portugal's long historical links with the region and the changed situation in Timor-Leste, in order to deepen mutual understanding and cooperation, particularly at the level of people-to-people relationships, and contribute jointly to Timor-Leste.

### 3. Human rights in Timor-Leste: promoting and protecting all rights for all

*The violence of war in Timor-Leste was not restricted to combatants but also resulted in violations of the human rights of civilians. Civil and political rights and freedoms were violated during the conflict, including the right to life itself and the rights to security of person, participation and the basic human freedoms essential to human dignity and development. The long period of conflict also impacted on the economic, social and cultural rights of the people of Timor-Leste including on the standard of living, health, family welfare and education.*

*Through the creation of the CNRT Magna Carta and the nation's Constitution and the ratification of the International Covenants on Civil and Political Rights and Economic, Social and Cultural Rights, Timor-Leste has demonstrated its commitment to break with the past and to promote and protect all rights for all.*

The Commission recommends that:

- 3.1.1. The Government of Timor-Leste adopts a human rights approach to governance, policy-making and development so that all decisions across the whole government system are informed by human rights principles.
- 3.1.2. The Government takes all measures necessary to ensure the implementation of the rights it has committed to uphold through its ratification of the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights and other treaties.
- 3.1.3. The Government uses its human rights treaty reporting to the United Nations as a tool to evaluate its progress in implementing all human rights for all and that these reports are made widely available for public discussion in Timor-Leste.

#### **3.2 The right to life, freedom from hunger and an adequate standard of living**

*Large numbers of East Timorese people were killed or died during the mandate period from conflict related causes, including massacres. Most deaths resulted from preventable famine during the early years of the Indonesian military occupation in violation of the "fundamental right of everyone to be free from hunger" (International Covenant on Economic, Social and Cultural Rights: Art. 11.2).*

The Commission recommends that:

- 3.2.1. Families be assisted to locate and to re-bury the remains of relatives and loved ones who perished during the conflict and that, where resources permit, exhumation according to appropriate standards is carried out to allow for identification and establishment of the cause of death.
- 3.2.2. In consultation with families and the community, significant sites of killings, or deaths be memorialised in honour of the victims.

- 3.2.3. A public register of the disappeared be established and, in collaboration with the Government of Indonesia, a systematic inquiry is undertaken to establish the whereabouts and fate of those on the list.
- 3.2.4. The Parliament determines an annual day of national remembrance of the famine of 1978-1979 in order to remember those who perished from hunger and related causes at that time and to encourage discussion, research and educational activities on contemporary food security issues in Timor-Leste, including effective disaster preparedness.
- 3.2.5. In case of a humanitarian disaster causing people to leave their homes, the Government acts according to the UN Guiding Principles on Internal Displacement (E/CN.4/1998/53/Add.2, 11 February 1998).
- 3.2.6. The Government develops and implements policies that ensure that the fruits of development are enjoyed equitably, reaching the most isolated communities, benefiting and involving men and women, children, the elderly and the disabled, and providing opportunities to those who are most disadvantaged.

### **3.3 Right to security of person**

*The right to security of person is upheld in the International Covenant on Civil and Political Rights but for most of the period 1974-1999 the people of Timor-Leste experienced constant personal insecurity in many forms. This included arbitrary detention, torture, inhuman and degrading treatment or punishment, interrogation, invasion of privacy and unfair trials.*

The Commission recommends that:

- 3.3.1. Buildings in all parts of Timor-Leste that were regular sites of detention be recorded in a national register, along with information about those detained and the conditions of detention in these places, and that selected sites are memorialised with a name plate or in other appropriate ways.
- 3.3.2. Individuals who continue to suffer physically or mentally from torture or other forms of inhuman and degrading treatment or punishment experienced during the conflict have their condition professionally diagnosed and be assisted with counselling and other forms of rehabilitation.
- 3.3.3. Law enforcement agencies adhere to the highest standards of due process in relation to the carrying out of arrests, investigations after arrest, access to counsel and detention in custody, as required by domestic law and human rights standards.
- 3.3.4. The Government applies at all times a policy of open access to outside monitoring of all prisons in Timor-Leste, by institutions of the state, East Timorese civil society and international organisations.
- 3.3.5. The Government ensures the establishment and maintenance of proper procedures to guarantee that prisoners are held in conditions which respect their human dignity, including:

- Access to full medical care for all people held in custody
- Adequate food and water for all people held in custody
- Proper procedures for holding of child and youth prisoners, including being held separately from adult prisoners
- Proper procedures for holding women and men prisoners in separate facilities
- Provision for the worship of religion
- Development of a programme of rehabilitation of prisoners, in order to help them prepare to return to daily social and economic life and be a full, participating member of the community. Such programmes should be adequately funded
- Strict rules and procedures preventing the use of any kind of torture or sexual abuse of those held in custody
- Strict procedures for the use of solitary confinement. Solitary confinement should only be allowed temporarily and exceptionally on the basis of a court order warranting it. Strict physical and mental health procedures should be developed and implemented for those held in solitary confinement
- Development and implementation of ongoing human rights training for all corrections services personnel, including high ranking personnel.

#### **3.4 Right to security of person: a national commitment to non-violence**

*For the greater part of the conflict, the people of Timor-Leste were exposed to widespread violence. The conflict between the principal political parties in 1975 degenerated into short-term physical violence in many communities, and Indonesia used military firepower and strength of numbers to force its will on the people of Timor-Leste and maintain its presence at huge cost to many throughout the 24 years of the conflict. The effective use of power depends on cooperation. In a culture of violence and fear, however, force is the preferred way to resolve issues and maintain control and those in power can come to assume an attitude of arrogant superiority over others. Once embedded a culture of violence can become normal and corrupt relations at all levels and in many different ways including between officials and citizens, men and women, employers and staff, teachers and students, parents and their children.*

*On the other hand, the East Timorese Resistance, the Church and international civil society earned respect and support for their creative use of dialogue and non-violent strategies to achieve their goals of self-determination and independence.*

The Commission recommends that:

- 3.4.1. The people of Timor-Leste explore ways of reflecting deeply on both their negative experience of violence – its origins, uses and impact – and on their positive experience of dialogue and non-violence to achieve their political goals, and how the important lessons from these experiences can be further creatively used to promote a culture of respect, justice and peaceful resolution of conflict in all areas of life in Timor-Leste.
- 3.4.2. Political parties continue their practice of solemnly renouncing the use of violence in the political process and take the strongest possible stand against any in their midst who advocate violence, compromise the professional impartiality of the police and military, or who support groups in any way associated with violence.
- 3.4.3. The Parliament and the Government institute an inquiry into land disputes that have arisen as a result of the wide-scale resettlement programmes undertaken during the



political conflicts, with a view to promoting peaceful mediation of these disputes and avoiding violence.

- 3.4.4. The public campaign to raise awareness and support for the prevention of domestic violence be continued and intensified, particularly in the districts.
- 3.4.5. Timor-Leste uses its membership of regional and international forums to be a vigorous opponent of military aggression and a strong advocate of international principles, the UN system and dialogue and diplomacy in the resolution of conflict.
- 3.4.6. The education system in Timor-Leste, both governmental and private, promotes values in education and develops courses and teaching methods to impart skills and a culture of peace, respect, and non-violence to students, including exposure to East Timorese and other figures who achieved their goals, both big and small, peacefully.
- 3.4.7. The power of sport, music, drama and other arts in Timor-Leste are harnessed as tools to promote peace, non-violence and the building of positive values and community relations, especially among youth.

### **3.5 Right to participation - guaranteeing essential freedoms**

*The freedoms which are essential to exercise the right of participation were repressed under both the Portuguese colonial system and the Indonesian regime of occupation. Those who exercised their rights to freedom of information, opinion, movement, association and assembly during the conflict with Indonesia ran grave risks, were forced to operate clandestinely and often suffered grievously for exercising these rights. Secrecy and heavy-handed control were the hallmarks of the system. This resulted in the killing of foreign journalists and, inter alia, the massacre of demonstrators at the Santa Cruz cemetery on 12 November 1991. Only information, media, political parties and associations acceptable to the Indonesian military were tolerated and freedom of movement within Timor-Leste and abroad was monitored and restricted. East Timorese were treated as subjects not as citizens. As a result, government was not accountable, development failed and human rights violations were committed with impunity.*

The Commission recommends that:

- 3.5.1. The Government of Timor-Leste continues its policy of open government in its dealings with the community and, in the interests of promoting participation and accountability, seeks to maximise open two-way communication with the community, including through their elected representatives in the Parliament, civil society organisations and the media.
- 3.5.2. The parliament enacts legislation on national archives to ensure that official records in all parts of Timor-Leste are appropriately preserved and organised based on a standard national system and that, to enhance public participation and the accountability of public servants, the rules of access place very few restrictions on the information that can be made public and include Freedom of Information provisions.
- 3.5.3. Publishers, journalists and all sections of the media recognise that their role is vital to effective citizenship in Timor-Leste and that their over-riding professional responsibility is to provide independent and accurate news, information and alternative points of view on significant public issues to all sections of East Timorese society.
- 3.5.4. The media, institute an annual award for investigative journalism carried out by an East Timorese journalist and that this award be given in honour of journalists who lost their lives in Timor-Leste in the service of the truth during the period 1974-1999.

- 3.5.5. The fundamental importance of the rights of freedom of movement, opinion, association and assembly to the vitality and creativity of political, cultural, social and economic life in Timor-Leste continue to be recognised and upheld and, in particular, that law enforcement agencies continue to receive training on these rights and on strict procedures for the peaceful handling of public demonstrations.
- 3.5.6. Defamation laws not be criminalised, allowing for the proper regulation of these matters by the civil courts.

### **3.6 Right to participation - citizenship**

*After generations of marginalisation, the individual citizen is now the centre of the new democratic nation of Timor-Leste - as beneficiary and as actor. This shift owes much to the spirit of inclusiveness that was developed by the Resistance and that contributed significantly to its success. The opportunity to contribute remains equally important for the future – both as a right and as a duty inspired by the same sense of initiative, creativity, self-reliance and self-sacrifice that served Timor-Leste well in the past. The Commission was repeatedly reminded that the “little people” want to be able to participate fully in the life of the new nation despite the distance felt, especially in the rural areas, from the mechanisms and processes of government and decision-making.*

*Citizenship symbolises our unity as a nation. It is based on a sense of belonging to this country, national pride and commitment to our people, values and common future. It is essential to nurture the sense of citizenship through on-going public education about its importance and what it means in practice.*

The Commission recommends that:

- 3.6.1. A comprehensive civic education programme is implemented that is focussed on the structure, institutions and processes of democracy and the rights and obligations of citizens; this programme should also be taught in the schools.
- 3.6.2. All public servants, including police, military, teachers and staff in government departments, continue to receive training, periodic in-services and performance evaluation on their role as servants of the government and citizens of Timor-Leste to ensure that they carry out their duties in a politically impartial, ethical and professional manner.
- 3.6.3. A Citizenship Day is established in Timor-Leste in order to heighten awareness of the meaning and importance of citizenship and to promote and celebrate our democratic values and responsibilities.
- 3.6.4. Annual awards be established for East Timorese citizens who make a special contribution to their local community or to the nation and are recognised as models of initiative and good citizenship for the emulation of others, particularly youth.

### **3.7 Right to education and cultural self-determination**

*The International Covenant on Economic, Social and Cultural Rights (Article 15) recognises the right of all to cultural life and the related need to conserve, develop and diffuse culture including through the formal education system. Though parts of Timor-Leste’s unique way of life and culture survived, this right was denied to varying degrees under the colonial systems introduced by Portugal and Indonesia. The Portuguese system particularly neglected education for the people. Indonesia, though it addressed illiteracy and provided educational opportunities, used these as vehicles to promote integration not cultural self-determination.*

The Commission commends the Government for its commitment to universal education and recommends that:

- 3.7.1. Ways of drawing on East Timorese culture and traditions be further developed as a source of national identity and nation-building, including through the education system, and that research for this purpose is undertaken by universities and relevant agencies.
- 3.7.2. The Government and Church education systems collaborate to develop curricula and teaching methodologies which are values-based and aimed at developing key values which are appropriate to Timor-Leste's traditions and current situation and that will promote a culture of peace, non-violence, and human rights.
- 3.7.3. The Government and Church education systems collaborate to develop a human rights curriculum and teaching methodologies for use at all levels of the education system and that makes use of this Report and related materials to ensure the course is grounded in Timor-Leste's lived experience.
- 3.7.4. The Government, bearing in mind creative initiatives undertaken in 1974-75, develops special programmes aimed at eradicating illiteracy in Timor-Leste, including for adults, especially women in remote communities;
- 3.7.5. The Department of Education, teachers and academics make use of the multi-media resources created and collected by CAVR - during its work on reconciliation and its inquiry into the period 1974-1999 - as a way of enriching East Timorese content in the education curriculum and to assist in the teaching of history, political science, conflict-resolution, international relations and law.
- 3.7.6. The Government establishes a programme of repatriation for East Timorese artefacts, documents and culturally-related material currently outside the country and invites governments, institutions and individuals who have these items in their possession to return them to Timor-Leste to assist in the conservation, development and diffusion of East Timorese culture in keeping with Article 15 of the International Covenant on Economic, Social and Cultural Rights.
- 3.7.7. The Government establishes a programme to restore and preserve sites and materials of particular cultural importance damaged or destroyed during the conflict such as the Palácio das Cinzas site in Dili to serve as a reminder to future generations of the destruction of 1999 and the challenges that had to be faced by the East Timorese leadership in establishing the new state.

### **3.8 Right to health and a sustainable environment**

*The enjoyment of basic rights to health, adequate food, housing and livelihood depend on a healthy environment. Harm to the environment is not only a crime against nature it is also a violation of human rights. Timor-Leste suffers from obvious depletion of its flora, fauna and soil. This is due to many factors but includes colonial exploitation of natural resources, war damage, the disruption of land care due to the long conflict, the consuming of native plants and animals during periods of displacement, and the removal of flora and fauna as war trophies to Indonesia.*

The Commission recommends that:

- 3.8.1. The United Nations Environment Programme (UNEP), which has considerable experience in post-conflict environmental regeneration, is invited to undertake a study of the environmental situation in Timor-Leste and, taking into account excellent projects

already underway, to make recommendations for remedial activities to help Timor-Leste realise the UN Millennium Development Goal of environmental sustainability.

- 3.8.2. Regions where defoliants are believed to have been used for military purposes are researched to ensure that they are safe for local communities and that, if necessary, rehabilitation is undertaken in cooperation with the affected communities and with the support of governments and companies who were involved in the supply of military equipment to the Indonesian armed forces.
- 3.8.3. The herbal and other alternative medicines and remedies used in the interior during the war of resistance be documented and evaluated for their effectiveness with a view to continued use.
- 3.8.4. A long-term public education programme be undertaken, including through the education system, to deepen community understanding of the relationship between a clean physical environment and health, especially for children.
- 3.8.5. World Health Day, held on 7 April each year, be successively devoted to each of the above themes.

#### 4. Human rights at home: promoting and protecting the rights of the vulnerable

##### 4.1 Women

*During the conflict women played a crucial role in East Timorese society – both in Timor-Leste and in the diaspora – as the bedrock of families and communities, often left without husbands, brothers or fathers for support, and as advocates for human rights. In Timor-Leste, the conflict created conditions which limited the freedoms of women and girls who were also especially vulnerable to violations of human rights. These included rape, sexual slavery and other forms of sexual violence which, though mainly perpetrated by the Indonesian security apparatus also involved East Timorese men. Women who were victims of sexual violence were often ostracised by their community, increasing their vulnerability to new violations. Some continue to be victimised today because of their experience.*

*Through its interaction with victims and their families, the Commission observed that domestic violence was a common occurrence in the current lives of many victims. For example, some male survivors of detention and torture told the Commission that they had fallen into a pattern of violent behaviour.*

*The incidence of domestic violence and sexual assault in Timor-Leste remains high. A national commitment to the elimination of violence against women, in both the public and private domains, is essential to break the cycle of violence and fear that characterises the lives of many women and girls. This programme of action must also promote the development of a culture of equality because discrimination against women is a key contributing factor to violence against women.*

The Commission recommends that:

- 4.1.1. The diverse contributions of women involved in the Resistance – internally and in the diaspora - be more fully recognised and that additional ways of documenting and disseminating their contribution be developed, including for teaching in the schools.
- 4.1.2. The call by Komisi Penyelidik Pelanggaran HAM Tim-Tim (Commission for the Investigation of Human Rights Violations in East Timor, KKP-HAM) to the Government of Indonesia to provide rehabilitation, compensation and support to the victims of the 1999 upheaval in Timor-Leste, including women and families, be implemented.

- 4.1.3. Crimes against humanity and war crimes committed in Timor-Leste which involved sexual violence against women and girls are excluded from any amnesty provisions, in accordance with UN Security Council Resolution 1325 on Women, Peace and Security (Par. 11, S/Res/1325 2000).
- 4.1.4. Continuing prejudice against women who have been victims of sexual violation be urgently addressed by the Government, religious institutions, local communities and civil society organisations in order to uphold the dignity of those who have suffered in this way.
- 4.1.5. The Government, together with religious organisations and civil society, continues efforts to eliminate all forms of violence against women and that measures to be taken include (a) the urgent introduction of legislation on domestic violence, including emergency measures to protect victims at times of crisis; (b) the provision of more resources and training to law enforcement agencies, the judiciary and legal aid groups, in order to enable an effective response to cases of domestic violence; (c) continued support for agencies and civil society organisations providing quality services and support to victims, and to those who work with men to transform patterns of violent behaviour.
- 4.1.6. The National 16 Days of Activism against Violence against Women be continued each year and be intensified particularly in the districts.
- 4.1.7. The Armed Forces and Police Services develop strong enforceable policies which promote gender equality, outlaw sexual exploitation and violence against women and impose the strongest possible sanctions on security personnel guilty of breaches of these policies so that never again should East Timorese women have cause to fear those entrusted to protect and uphold their rights.
- 4.1.8. The harmonisation of Timor-Leste laws with the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) is continued, that adequate capacity is provided to institutions responsible for the implementation of CEDAW and reporting to the UN on Timor-Leste compliance with CEDAW, and that understanding of CEDAW is promoted in the community, particularly through the education system, the media and the Church.
- 4.1.9. Access to information and services on reproductive health care, family planning and parenting are widely available to both men and women, including through the schools, in order that decisions about reproduction are informed and the responsibilities of reproduction and parenthood are equally shared and free of coercion or violence.
- 4.1.10. Measures are taken to recognise and support the role of women in the prevention and resolution of conflicts and in peace-building, including at the local level.
- 4.1.11. The Government upgrades the Office for the Promotion of Equality to a Secretariat of State in the Office of the Prime Minister and/or provides the Office for the Promotion of Equality with an Advisory Board as a way of further promoting and mainstreaming gender equality and the full participation of women in the economic, social, cultural and political life of Timor-Leste, including through the promotion of literacy for rural women and the greater participation of girls and women in secondary and tertiary education.

## **4.2 Children and youth**

*The rights of children were violated during the years of conflict. Children saw or experienced traumatic violence, died from starvation, were displaced from their homes, orphaned, separated*

*from their parents, and were disadvantageded through lack of access to health, educational and other services. Children were also conscripted into the fighting, both during the internal armed conflict in 1975 and during the Indonesian occupation when they were used by the Indonesian military to provide logistic and other support. Some children were taken away from their families by the Indonesian military and officials, often to distant places in Indonesia, and remain separated from their families. With profound sadness, the Commission heard from East Timorese children in West Timor that they felt a dual sense of belonging to and alienation from Timor-Leste.*

*To ensure a better future for children in Timor-Leste, the Government has ratified the Convention on the Rights of the Child. In so doing, it has committed itself to protect and ensure children's rights and agreed to be accountable for this commitment before the international community. Ensuring a future for our growing youth population is one of Timor-Leste's main challenges.*

The Commission recommends that:

- 4.2.1. The process of harmonising Timor-Leste laws with the Convention on the Rights of the Child (CRC) is continued, that adequate capacity is provided to institutions responsible for the implementation of the CRC and reporting to the UN on Timor-Leste compliance with CRC, and that understanding of CRC is promoted in the community, particularly through the education system, the media and the Church.
- 4.2.2. A public education campaign similar to that already underway on domestic violence be undertaken to educate parents, teachers and the community about the effects of physical and emotional violence on children and to provide alternative forms of behavioural control and character development.
- 4.2.3. Positive role models for girls and young women, and for boys and young men, be identified and promoted.
- 4.2.4. Adequate resources be allocated to the development of sporting infrastructure and management so that the potential of sport to contribute to community relations and the holistic development of youth, including equal access for girls and young women, is realised.
- 4.2.5. Reproductive health education programmes that are accurate, balanced and comprehensive and that promote responsibility are provided to the youth of Timor-Leste in keeping with Article 17 of the CRC which upholds the right to know especially where information promotes social, spiritual and moral well-being and physical and mental health.
- 4.2.6. Measures are undertaken to ensure that the Government policy of universal education is extended in practice to all children, especially orphans, the disabled and those in remote rural communities including to guarantee that all girl children have full and equal access to education, and that more opportunities for vocational training are provided.
- 4.2.7. East Timorese children who were taken to Indonesia and remain separated from their parents and families are given the opportunity for family contact and reunion, including the option of freely returning to Timor-Leste, in keeping with Articles 9 and 10 of the CRC.
- 4.2.8. Special consideration is given to the situation of East Timorese children who have been disadvantaged educationally and in other ways because of their clandestine work and sacrifices as youth for the liberation of Timor-Leste.

5. Human rights at home: promoting and protecting human rights through effective institutions

### **5.1 An effective civil society**

*The freedoms required for the flowering of civil society were denied for most of Timor-Leste's colonial history and harshly repressed during the Indonesian occupation. Nevertheless, civil society emerged as a positive force for change both in Timor-Leste itself and in Indonesia and, together with international civil society, played an important role in the struggle for self-determination and independence. This role, the independence of civil society and the values of initiative and commitment to human rights that inspired it, are equally critical today. Outside government and political parties, civil society is the principal vehicle for the participation and contribution of citizens to nation-building. It is important that this sector enjoys an enabling environment as Timor-Leste continues to make the transition from opposition to constructive interaction between government and civil society.*

The Commission recommends that:

- 5.1.1. Support and encouragement continue to be provided to civil society in Timor-Leste so that it can adequately fulfil its role in amplifying the voices of the poorest, contributing to development and holding government and business accountable, and that the fundamental civil and political freedoms that are necessary for this sector continue to be respected and upheld.
- 5.1.2. Civil society organisations, while valuing their independence and diversity, continue to find ways of working cooperatively with other NGOs, nationally and internationally, both to ensure the best use of scarce resources and the impact of their advocacy and contribution, and to exemplify in their organisation strong community links and the highest possible standards of democracy, professionalism and accountability.
- 5.1.3. Government and civil society organisations, while respecting each other's respective roles and independence, continue to build direct channels of communication in order to foster interaction through policy dialogue, consultation, shared training, and operational collaboration.
- 5.1.4. Government and donors continue to provide financial assistance, training and other forms of support for civil society in Timor-Leste to ensure it has the capacity to take its seat at the table and fulfill its role constructively and effectively.
- 5.1.5. International organisations provide specialist training to national NGOs to enable them to contribute to the process of external scrutiny when the Government makes its treaty-based reports on human rights to the United Nations.
- 5.1.6. The Catholic Church and other faith communities continue to contribute to the building of a culture of peace and human rights in the community, to providing assistance to victims of human rights violations and to fostering reconciliation and social cohesion.

### **5.2 An effective Parliament**

*Under Portugal and Indonesia, Timor-Leste had legislative institutions but these bodies were not representative of the people or accountable to them and served the interests of those in power rather than the people. This system has been replaced with a democracy in which a parliament freely elected by the people is sovereign. This new system is characterised above all by responsiveness and accountability to the people, through both its legislative function and, on*

*behalf of the people, its scrutiny and monitoring of the executive government and public service, including the expenditure of public money.*

The Commission recommends that:

- 5.2.1. Members of Parliament have sufficient facilities and resources to carry out their responsibilities effectively on behalf of the people.
- 5.2.2. The National Parliament and individual Parliamentarians continue to strengthen their representative role and demonstrate accountability to the people through mechanisms such as regular reporting, visits to the districts and interaction with the community, public hearings, and communication through the media.
- 5.2.3. The National Parliament and its members have an on-going programme to inform and educate the community about the role of the Parliament, particularly among young people and in schools; this will help overcome the sense of alienation inherited from the past by increasing understanding about the role of Parliament on behalf of the people and will encourage participation both through voting in elections and through a more active role in politics and use of the system.
- 5.2.4. The executive government and public service acknowledge the sovereign role of the Parliament and, in a spirit of accountability and partnership, make themselves regularly available for policy dialogue, consultations and questions from members of Parliament on behalf of the people.
- 5.2.5. The National Parliament enacts legislation to meet the reporting obligations of Timor-Leste under human rights treaties that have been ratified.

### **5.3 An effective judiciary**

*An independent, functioning judicial system is essential to secure the rule of law in Timor-Leste. During the Indonesian occupation, the judicial system was seriously flawed. The independence of the judiciary from government policy was compromised, and the judicial system failed to protect the basic human rights of those accused through due process. In so doing it contributed substantially to the culture of impunity, the breakdown of the rule of law and itself was the cause of human rights violations.*

*A result of this experience is that many East Timorese people do not trust the judicial system. They know the system during the Commission mandate period was corrupt, inaccessible and politically influenced. This is a major challenge in developing a new judicial system.*

*A fair, professional, accessible and effective judicial system is a cornerstone of establishing the rule of law in Timor-Leste. Experience shows that the rights of people can only be protected when there is an effective way to hold power accountable before the law. Without this accountability, protection of human rights is virtually impossible. The development of a strong, independent judicial system in Timor-Leste is a fundamental pillar of our new democracy. It should be given appropriate priority in terms of funding and policy.*

The Commission recommends that:

- 5.3.1. The Government finalises formulation of the Penal Code and the Code of Criminal Procedures, incorporating adequate formulation of crimes against humanity and war crimes.



- 5.3.2. All the measures necessary to ensure the independence of the judiciary are put in place, including:
- administrative autonomy of the Prosecutor General's office and the courts, as well as the development of a mechanism of judicial appointments and tenure that is insulated from political pressures
  - priority being given to a sustainable programme of education and training for East Timorese judges
  - development of career paths for judges, including a system of proper remuneration and tenure in order to reduce the risk of corruption or political pressure on judges
  - development of an independent supervisory system, established by legislation.
- 5.3.3. Access to the judicial system for East Timorese citizens is guaranteed by:
- ensuring that there is an adequate number of East Timorese judges and that university law schools and other resources of a suitable standard are available
  - ensuring that there is an adequate number of well-trained judicial administrative officials to support the work of the courts
  - ensuring that courts can regularly sit in the districts
  - ensuring that East Timorese citizens coming before the courts have access to support in their mother tongue
  - guaranteeing the independence of public prosecutors
  - allocating adequate resources to defence lawyers and to para-legal support services to ensure that East Timorese citizens, accused and victims, can understand the judicial and legal system
  - ensuring that people arrested are brought before a court within the statutory time period, and that the court can convene at short notice to guarantee this.
- 5.3.4. The appellate system is strengthened in order to provide internal enforcement of the highest international legal standards.
- 5.3.5. The Government ensures that the judicial system is fully resourced to fulfill its vital functions by making it a high priority in the national budget.
- 5.3.6. The United Nations and international community continue to support the development and strengthening of the legal and judicial system in Timor-Leste to ensure accountability before the law.

#### **5.4 An effective public service**

*The public service in Timor-Leste during the Indonesian occupation had many of the negative features of the Indonesian bureaucracy of which it was a part: the system was politicised, centralised, top-down, corrupt, over-staffed, inefficient, wasteful of government resources and did not enjoy the confidence of the community. Families with connections to local elites and civil servants got faster and cheaper access to basic services. Corruption, high costs and bribes, and personal connections in public service delivery worked most heavily against the poor.*

*Today, the system in Timor-Leste, like its Indonesian counterpart, is still weak and is caught in an "institutional limbo" between the old structures and the emergence of a new institution and culture. To deliver the economic, social and cultural services to which the citizens of Timor-Leste*

*are entitled as human rights, public servants must be politically impartial, appointed and promoted on merit, and be people of integrity and professional competence characterised by a strong ethos of duty and service.*

The Commission recommends that:

- 5.4.1. Recruitment to the public service is based on equal opportunity and merit, not political affiliation, and that women are given every encouragement to apply and occupy positions of leadership in the government bureaucracy.
- 5.4.2. The training provided to public servants includes a strong emphasis on the equal rights of all citizens in Timor-Leste to services which protect and uphold their economic, social and cultural rights without discrimination and that this training is reinforced in practice through regular evaluation of staff performance, encouragement of feedback from citizens, including allegations of bribery, and the rewarding of best practice.
- 5.4.3. Government Ministers and senior public servants, including in the districts, practice accountability by informing citizens of policies and services, consulting with interest groups and being available to the media, and through regular attendance at the National Parliament to answer questions and hear the concerns of Members.
- 5.4.4. Allegations or evidence of patronage, favouritism, bribery or abuse of government property and equipment, even in small ways, are investigated and dealt with promptly, impartially and in a transparent manner, and those found guilty are appropriately sanctioned.
- 5.4.5. Budgets, expenditure and audits of government departments and agencies are published and the subject of public scrutiny.
- 5.4.6. Civil society organisations and the media inform citizens of their rights in relation to service delivery and government accountability and develop ways of acknowledging and rewarding best practice in the public service.

## **5.5 An effective Provedor**

*Timor-Leste's recent history shows how state institutions that are not respectful of the rule of law have a disproportionate capacity to contribute to human rights violations. For most of the period reviewed by the Commission, the East Timorese people lived without the protections of effective rule of law or the functioning of a financially accountable administration. Establishing these as the norm is a significant challenge for the government, civil society and the community.*

*The Commission applauds the establishment of the Office of the Provedor for Human Rights and Justice, and acknowledges the key role this independent institution has in protecting human rights in Timor-Leste including those rights at risk from corruption in the public sector.*

The Commission recommends that:

- 5.5.1. The Office of the Provedor, in order to carry out its mandate to protect human rights and to prevent corruption effectively, be guaranteed full independence and appropriate levels of funding and human resources; the Provedor conducts a review of all laws, public policies and procedures relevant to the prevention of corruption, and reports to the National Parliament on reforms required to establish a strong legal framework and mechanisms to promote government integrity and to prevent corruption at all levels of public administration.

- 5.5.2. The National Parliament adopts the legislation recommended by the Provedor, that all sections of government and the public administration implement the recommendations and that a strict monitoring regime be put in place.
- 5.5.3. The State of Timor-Leste ratifies the UN Convention Against Corruption (UNCAC) which it signed in December 2003.
- 5.5.4. The Office of the Provedor holds regular consultations with business and civil society on the issue of corruption, uses International Anti-corruption Day on 9 December to heighten public awareness of the damage corruption does to the poor, development and foreign investment, and cooperates with organisations such as Transparency International to undertake a thorough and objective report on Timor-Leste as part of its Global Corruption Report.
- 5.5.5. The Office of the Provedor works with the private sector and the Chamber of Commerce to develop an anti-corruption code of conduct for business and that resources and training are provided to all members of the Chamber.
- 5.5.6. The Office of the Provedor develops as a state institution which the people regard as close to their communities and problems and which can assist in finding quick and effective responses to potential or actual human rights abuse, including by developing early warning mechanisms in areas where violence might develop.

## **5.6 An effective Church community**

*The Catholic Church has a significant place in East Timorese history and society. Though largely compromised during the Portuguese period, the Church was a strong advocate for human rights in Timor-Leste during the Indonesian occupation consistent with Catholic social doctrine based on the dignity and value of each human person. In partnership with other faith communities, it has a responsibility and resources to continue as a major force for human rights in the new democratic era.*

The Commission recommends that:

- 5.6.1. The Church continues its mission to protect and promote human rights in Timor-Leste both through its services to the community in health, education and other areas and, where necessary, through public advocacy in defence of human rights.
- 5.6.2. The Church, through its organs for justice and peace, provides human rights training to all its personnel, including seminarians, teacher trainees, members of religious orders and catechists.
- 5.6.3. The Church reviews past practices of excluding women who were victims of sexual violence from the full life of the Church, thereby significantly increasing their experience of social stigmatisation, and addresses its responsibilities to these women.
- 5.6.4. The Church develops a programme of human rights education, which includes due emphasis on the rights and duties of citizens, for dissemination to the community through its network of parishes and schools.

## **6. Human rights at home: security services that protect and promote human rights**

*Building a new paradigm for the security services is one of the biggest challenges for Timor-Leste. It involves breaking with past models in which, particularly during the Indonesian period,*

*the security apparatus was an instrument of force rather than community service, was a major perpetrator of human rights violations, was not accountable to the rule of law or subject to civilian control and did not enjoy the trust of the people. The demarcation of roles between the armed forces and police was ill-defined and the security apparatus proliferated into an unmanageable plethora of militia, groups and networks with differing loyalties and roles. The military had a dual role (dwi-fungsi) which, in addition to regular defence and security, also legitimated its intervention in socio-political affairs. The East Timorese Resistance developed a similar policy in 1975 when it broke with the Portuguese practice of non-involvement in politics (apartidarismo) and aligned mainly with the Fretilin party until the policy was discarded in favour of political impartiality in the 1980s.*

*The Commission fully supports current government policies which are focussed on the development of a politically neutral professional security apparatus. The following recommendations are intended to reinforce this new paradigm for the sake of the protection of human rights in Timor-Leste.*

## **6.1 An accountable security policy**

The Commission recommends that:

- 6.1.1. A public education programme be undertaken to deepen community understanding of Timor-Leste security policy and the role, limits and accountability of the police and armed forces.
- 6.1.2. This education programme highlights and explains the following:
  - the democratic control of the security policy and apparatus by the civilian authorities (President, Cabinet and Parliament), as provided for in the Constitution
  - the duty of the security apparatus to uphold human rights in compliance with the rule of law as laid down in the Constitution and legislation
  - the duty of the security apparatus and their members to stand apart from political life and under no circumstances to use their resources for political purposes, as occurred in the past
  - the duty of the security apparatus to comply with national security policy as articulated by the National Parliament in order to ensure (a) that there is a clear demarcation of roles; (b) that there is no proliferation of agencies as occurred in the past (c) that there is no breakdown of coordination leading to inter-agency rivalry and abuses as in the past; (d) that there is no politicisation of the security apparatus as occurred in the past; (e) that the security budget and weapons procurement and distribution are overseen and approved by the National Parliament; and (f) that the human rights of civilians are not violated at a time of national crisis (such as a state of siege or state of emergency when extra powers are given to the security apparatus) as happened in the past
  - the rules governing arrest by the police and the rights of the public in these situations so that there is no recurrence of past practices of arbitrary arrest and detention and the potential abuses which can occur in such circumstances
  - the rules governing police behaviour during public demonstrations to ensure that there is no recurrence of the serious human rights violations that occurred in the past in these situations.

## **6.2 Police Service**

The Commission recommends that:

- 6.2.1. The National Parliament plays an active role as the final civilian oversight mechanism of the Police Service and receives regular reports from the Minister of the Interior who is responsible for the police and answerable to Parliament.
- 6.2.2. Members of the Police Service are accountable for their actions outside the law and police involved in cases of human rights abuse should be brought before a normal court of law and not shielded by police or internal procedures.
- 6.2.3. Procedures and mechanisms for reporting complaints about police behaviour are established in collaboration with the Office of the Provedor in order to reverse the practices of the past when the security enjoyed impunity and the public had little recourse to justice.
- 6.2.4. A paradigm shift in police culture is fostered aimed at replacing a past "police force" mentality with a stronger emphasis on a community service approach to policing.
- 6.2.5. In addition to technical training all police personnel, including senior officers, receive ongoing training in both the theory and practice of human rights as part of their professional development as protectors of human rights.
- 6.2.6. All police personnel, including senior officers, receive ongoing training in relation to gender-related crimes and the rights of victims of such crimes.
- 6.2.7. Specialised and ongoing training is provided on the gathering of evidence, forensic practice and appropriate methods of interrogation in order to lessen the risk that members of the police will seek to gather evidence from confessions obtained under duress.
- 6.2.8. The police respect the right of civil society organisations to monitor their work in order to ensure protection of human rights and, in collaboration with such organisations, develop procedures to ensure access.
- 6.2.9. Members of the Timor-Leste police be encouraged to join international peacekeeping operations under the mandate of the United Nations in order to increase experience of international best practice.

### **6.3 Defence Forces**

The Commission recommends that:

- 6.3.1. The National Parliament establishes monitoring mechanisms to ensure that it effectively oversees the military.
- 6.3.2. Members of the Defence Forces are treated as citizens of Timor-Leste, not a separate caste above the rule of law and norms of society as happened in the past, and accordingly will be brought before a normal court of law if involved in cases of human rights abuse.
- 6.3.3. The role of the Defence Forces is limited to external defence and assistance in the event of a non-military disaster as determined by National Parliament; the use of the military to control perceived internal threats, as happened in the past, is prohibited in Timor-Leste.
- 6.3.4. Members of the Defence Forces at all levels should play no role in political life or in business and should only take direction from the legally authorised state institutions.

- 6.3.5. The development of civilian extensions of the military through the quasi-militarised or intelligence groups be prohibited, because in the past such practices contributed to human rights violations and were a cause of major divisions in the community.
- 6.3.6. On-going training in international human rights, humanitarian law and civic education is provided to the members of the Defence Forces, including senior leadership.
- 6.3.7. Ongoing dialogue is encouraged between national human rights organisations and the Defence Forces in relation to human rights and the respective roles of civil society and a professional military in a democracy.
- 6.3.8. Members of the Defence Forces are encouraged to join international peacekeeping operations under the mandate of the United Nations in order to increase experience of international best practice.
- 6.3.9. The Defence Forces not conduct joint training exercises with armed forces that have a known and proven poor human rights record and that, if this is in question, the National Parliament decide on the appropriateness of such training.

#### **6.4 Other security agencies**

*In addition to the armed forces and the police, a plethora of community-based security groups and networks emerged on both sides during the conflict period. Those on the Indonesian side in particular were part of the doctrine of “total people’s defence” and as such were sanctioned and armed by the state and were responsible for an array of human rights violations committed with impunity.*

*To ensure these developments do not recur in Timor-Leste to the detriment of human rights, the National Parliament must take responsibility for the ultimate oversight of security issues and policy.*

The Commission recommends that:

- 6.4.1. State security bodies such as intelligence gathering agencies are strictly regulated by law, monitored and held accountable for their actions when these exceed their legal mandate.
- 6.4.2. Officers in such security agencies participate in training about the role of these agencies in a democratic country and also receive human rights training.
- 6.4.3. State intelligence and security agencies are coordinated and subject to parliamentary oversight.
- 6.4.4. Legislation is enacted by National Parliament regarding non-state security agencies which, inter alia, requires that private security companies receive compulsory training by the Police Service and in human rights and that all such agencies are registered.

## 7. Justice and truth

*Because of what took place on 20 August 1982 many of our people died, women were raped, became widows, children became orphans, many became impoverished, many are still traumatised...Do you think by taking statements from the people we can resolve [our problems] and heal our wounded hearts? Do you think by bringing people who committed crimes to the courts we can heal our wounded hearts?*

Letter from the people of Mauchiga (Hatu Bulico, Ainaro),  
31 May 2003

The Commission has listened to the voices of victims of serious violations of human rights from all districts of Timor-Leste. In recording nearly 8,000 individual statements, and listening to testimony in hearings at national, sub-district and village level, the Commission has sought to understand better the demands of the people for justice for past crimes. The Commission understands that the demands and needs of any two victims may not be the same, and that any single solution is unlikely to meet all the needs of all victims. From its relationship with victims of serious violations across the country, the Commission concludes that the demand for justice and accountability remains a fundamental issue in the lives of many East Timorese people and a potential obstacle to building a democratic society based upon respect for the rule of law and authentic reconciliation between individuals, families, communities and nations.

The Commission has completed its mandate to establish the truth of past human rights violations. The ability of the Commission to do this was based on its good faith with victims of human rights violations and by respecting their dignity and their right to demand justice for the crimes committed against them. The Commission considers that truth is a fundamental basis for pursuing justice and building new relationships founded on honesty and mutual respect. In addition to justice measures, the Commission believes it is important that the truth established in its Final Report be widely available to the people of Timor-Leste for generations to come, and for the governments and general public of nations who have an involvement in the story of Timor-Leste. Preservation, dissemination and development of educational materials are all important aspects to be followed up to secure the legacy of the CAVR and to honour the trust that the people of Timor-Leste placed in the Commission.

### 7.1 Justice for past atrocities

*The findings of this Report show that the human rights violations which occurred in Timor-Leste were spread across most of the 25-year period from 1974-1999. The international community demonstrated its horror at the crimes committed in 1999, when the world witnessed systematic atrocities compounded by the failure of the Indonesian authorities to honour their agreements to guarantee security. An additional factor in the international outrage was the killing of UN personnel during the violence surrounding the Popular Consultation.*

*Egregious as they were, however, the crimes committed in 1999 were far outweighed by those committed during the previous 24 years of occupation and cannot be properly understood or addressed without acknowledging the truth of the long conflict. The Commission was established during the same period as the Serious Crimes Unit and the Special Panels for Serious Crimes, as part of the fight against impunity and the struggle to achieve genuine reconciliation.*

*The Commission acknowledges the difficulties faced by the international community and the governments involved as they continue to seek resolution to the issue of serious crimes of 1999. The Commission notes that, in this process, the international community has paid little or no*

*attention to the issue of justice for the grave crimes committed in Timor-Leste throughout the 23 years prior to the 1999 atrocities. Now that the Commission has reported on the truth of these atrocities, it is its mandated duty to draw the appropriate conclusions based on concerns of international law and not on political considerations. The findings of the Commission indicate that there have been no adequate justice measures for the crimes against humanity committed in Timor-Leste throughout the 25-year mandate period. Based on its mandate founded on respect for international law, the Commission concludes that justice for past crimes must encompass the violations committed throughout the 25-year period of its mandate.*

*The legacy of this lack of justice for years of human rights violations is manifold. For both Timor-Leste and Indonesia the result is that impunity has become entrenched. Those who planned, ordered, committed and are responsible for the most serious human rights violations have not been brought to account, and in many cases have seen their military and civil careers flourish as a result of their activities. Respect for the rule of law and the organs of the state responsible for its administration, a fundamental pillar of the democratic transition in Indonesia and nation building in Timor-Leste, will always be extremely fragile in this context.*

*The conflicts in Timor-Leste were of an internal nature during the confrontation of August-September 1975, while Timor was still a non-self governing territory under Portuguese authority. When Indonesian forces invaded Timor-Leste, from October 1975, the conflict was internationalised. Independently of the nature of the conflict, however, the crimes committed over this long period reached on many occasions the threshold of extreme conduct that invokes the responsibility of the international community.*

*In addition to the nature of the crimes, serious immediate circumstances invoke the responsibility of the international community. The Commission is persuaded that our nascent and still fragile State cannot be expected to bear the brunt of pursuing the daunting task of justice on its own. It is further concerned that the State of Indonesia has never shown a genuine will to bring to book the perpetrators, not just for the crimes committed for 1999, but for any of the crimes committed during the long occupation. Therefore the Commission believes that the definitive approach to achieve justice for the crimes committed in Timor-Leste should hinge critically on the commitment of the international community, in particular the United Nations. They should provide unqualified support for strong institutions of justice, able to act independently of the political situation within and outside Timor-Leste.*

*The Commission is aware that any formula for the solution to impunity for the crimes committed in 24 years of conflict and occupation will be complex and difficult to achieve. However, a few elements should be identified. Any formula to seek justice for the victims should be based on respect for international law and guarantees of due process. Equally, any design for justice should have the practical support not just of the United Nations as such but of individual countries, ready to help the process in different ways. Finally, any response to impunity should face the challenge of how to ensure that the major perpetrators are accountable in spite of the current protection they enjoy.*

*The Commission is aware that by the time this report is published, the international Commission of Experts appointed by the Secretary-General of the United Nations to review the process of justice for 1999 will have issued its recommendations. Therefore, while we will express ideas for the cases of 1999 we will include recommendations on the crimes committed before 1999 that have received, regrettably, far less attention.*

The Commission recommends that:

- 7.1.1. The Serious Crimes Unit and Special Panels in Timor-Leste have their respective mandates renewed by the United Nations and their resources increased in order to be able to continue to investigate and try cases from throughout the period 1975-1999.



- 7.1.2. The renewal of the mandate should be based on the conditions on which these institutions were originally established – that is, directly depending on the UN and not on the nascent national judicial system in Timor-Leste which is not prepared to deal with the technical and political challenges of the cases.
- 7.1.3. In relation to the crimes committed before 1999, the work of the Serious Crimes Unit includes investigation and preparation for prosecution of the following historical cases and periods, which the Commission concludes are exemplary and of critical importance in terms of the scale and nature of the human rights violations which occurred:
- The execution of Fretilin-linked youth in Manufahi on or around 28 August 1975 by UDT-linked perpetrators.
  - The executions of UDT and Apodeti-linked prisoners by Fretilin-linked perpetrators in Aileu, Maubisse and Same in December and January 1976.
  - The reported massacre of civilians in Kooleu Village in Lautém District by Fretilin-linked perpetrators in January 1976.
  - The executions of Fretilin members and associates by Fretilin members and associates during party divisions in 1976, and especially 1977.
  - The massacres of civilians in Dili on the day of the full-scale Indonesian military invasion, 7 December 1975, and killings on following days.
  - The Indonesian military encirclement and annihilation campaigns of 1977-79.
  - The massacres of civilians by Indonesian security forces which occurred in and around Kraras Village, Viqueque District, from 1983.
  - The policy and practice of removing civilians to be held in captivity on the island of Ataúro from the early 1980s.
  - The Santa Cruz Massacre of 12 November 1991, and subsequent detention, torture and reported killings.
- 7.1.4. The renewed Serious Crimes Unit prepares indictments for these cases and that the Special Panels, after appropriate review, issue warrants for the arrest of those responsible, seeking transfer to their authority.
- 7.1.5. Those institutions of the Indonesian Armed Forces and those in positions of command responsibility named in the Part 8: Responsibility and Accountability of this Report, for crimes other than those in the above list, should be the subject of focused investigation and prosecution by Indonesian authorities.
- 7.1.6. The list of alleged perpetrators submitted to the President of Timor-Leste by the Commission be referred to the Office of the General Prosecutor for further investigation and action.
- 7.1.7. A regime of preservation and management be established by the United Nations for all evidence gathered by the Serious Crimes Unit to enable this material to be used for prosecutions as required and that ongoing technical and financial support be provided for this purpose by the United Nations.
- 7.1.8. All evidence gathered by the CAVR, Indonesia's Komnas HAM and Ad Hoc Human Rights Court on East Timor and others be preserved in a proper manner to enable this material to be used for prosecutions as required.

- 7.1.9. The international community urges and supports Indonesia to declassify information held by the Indonesian security forces so that it is available for judicial processes.
- 7.1.10. A proper system of protection for victims and witnesses be put in place as part of the justice process both for crimes committed in 1999 and crimes committed in the preceding years.
- 7.1.11. Indonesia, in an authentic spirit of reconciliation and with the aim of strengthening its own nascent democracy, be encouraged to contribute to the achievement of justice by (a) transferring those indicted who reside in Indonesia to the renewed Panels, and (b) strengthening the independence and efficiency of its judicial system in order to be able to genuinely pursue justice and revert the record of impunity that regrettably has been the norm regarding the crimes committed in Timor-Leste.
- 7.1.12. The international community demonstrates its commitment to justice and the Serious Crimes process by, inter alia:
- ensuring that their law enforcement authorities are enabled to transfer those indicted to the Serious Crimes regime established by the UN, to try those indicted themselves or to extradite them to a jurisdiction genuinely interested in trying them
  - ensuring that persons responsible for the crimes described in this report are not allowed to continue profitable careers regardless of their crimes
  - establishing a special board of investigation under the auspices of the United Nations to establish the extent, nature and location of assets held by those indicted for crimes against humanity in Timor-Leste
  - freezing the assets of all those indicted for crimes against humanity in Timor-Leste, subject to national and international laws and pending hearing of cases before the relevant tribunal
  - placing travel bans on those indicted for crimes against humanity in Timor-Leste
  - linking international aid and cooperation to specific steps by Indonesia towards accountability, such as cooperation with the Serious Crimes process, the vetting of perpetrators who continue their careers in the public sector, and the scrutinising of Indonesian members of peacekeeping missions and training courses to ensure that alleged perpetrators of violations are not included.

## **7.2 International tribunal**

The Commission recommends that:

- 7.2.1. The United Nations and its relevant organs, in particular the Security Council, remains seized of the matter of justice for crimes against humanity in Timor-Leste for as long as necessary, and be prepared to institute an International Tribunal pursuant to Chapter VII of the UN Charter should other measures be deemed to have failed to deliver a sufficient measure of justice and Indonesia persists in the obstruction of justice.

## **7.3 Commission of Truth and Friendship**

*As this Report neared completion, the Governments of Timor-Leste and Indonesia announced the establishment of a Commission for Truth and Friendship (CTF), a bilateral truth-seeking mechanism to review the crimes of 1999.*

*The CAVR believes that nothing should compromise the rights of victims to justice and redress. Accordingly it considers that any additional truth-seeking measure related to the crimes committed in 1999 should be undertaken in good faith and with a view to strengthening, not weakening, the chances of criminal justice. Similarly, although the CAVR recognises that its investigation still leaves aspects for further research, it believes that its work and the work of the Serious Crimes Unit should be respected and protected from denial. Any additional truth-seeking should be complementary, not opposite to the work that has been conducted.*

The Commission recommends that the Governments and Parliaments of Indonesia and Timor-Leste:

- 7.3.1. Guarantee that the Commission for Truth and Friendship is permitted to act independently, impartially and objectively and to make recommendations as it sees fit, including the possibility of further criminal trials and a policy of reparations to victims.
- 7.3.2. Require that the names of alleged perpetrators be cleared by the Commission on Truth and Friendship only if this is based on judicial due process consistent with international standards.
- 7.3.3. Require that the Commission on Truth and Friendship fully respects the rules governing access to information which has been given under promise of confidentiality to previous institutions, such as the CAVR or the Serious Crimes bodies, in order to safeguard the well-being of victims and witnesses.

#### **7.4 Dissemination of the Final Report in Timor-Leste**

*The Final Report of the Commission is a document of national importance for Timor-Leste and of international significance. Recommendations for its international dissemination can be found in Part 1 Timor-Leste and the International Community (above). Though it has been produced to meet the statutory obligations of the Commission, the Report will have lasting significance for future generations of East Timorese and should therefore be widely accessible.*

The Commission recommends that:

- 7.4.1. The Final Report be translated into the Tetum language and widely distributed in Timor-Leste so that current and future generations have access to its contents.
- 7.4.2. The Ministry of Education in the Government of Timor-Leste works with the post-CAVR institution to utilise the Final Report and other Commission materials in the development of curricula and other educational resources related to human rights, reconciliation, history, law, gender studies and other relevant disciplines.
- 7.4.3. The Government of Timor-Leste and international donor partners support the reproduction of the Final Report and related materials to enable this continuing education programme.

#### **7.5 Archives of the CAVR**

*The Commission has preserved and organised its archives in accordance with its statutory obligations pursuant to Regulation 10/2001. The archives are a unique part of Timor-Leste's national heritage and comprise thousands of multi-media records that have been entrusted to the Commission by individuals, families and communities across the country as well as national and international organisations and governments. In many instances the opportunity to gather this information and material will never come again. This archive forms the basis of what should be a*

*continuing effort to gather, restore, and make available important historical materials for further reference, research and use. Continued national and international support will be needed to ensure the preservation of the collection and its development into a first class depository.*

The Commission recommends that:

- 7.5.1. The National Parliament of Timor-Leste adopts legislation regulating the preservation, organisation and use of national archives.
- 7.5.2. The archives of the Commission be maintained at the site of the former Balide Comarca and be administered as part of the official national archives in accordance with the access policy decided by the CAVR Commissioners until national legislative provisions are determined.
- 7.5.3. The archives form an integrated part of an active human rights centre to be developed in the former Balide Comarca whose overall purpose will be to remember, honour and learn from Timor-Leste's recent human rights history.
- 7.5.4. Financial support is provided by the Government for the maintenance and development of this centre and ongoing programme of research and education.
- 7.5.5. The Government of Indonesia be asked to return to the former Balide Comarca any documents it has in its possession relating to the administration of the prison between 1975 and 1999 so that these can be added to the existing archives.
- 7.5.6. The Government of Portugal be asked to return to the former Balide Comarca any documents it has in its possession relating to the building and administration of the prison prior to 1975.

## 8. Reconciliation

*Cry of a child of the nation*<sup>\*</sup>

At that moment a whisper, melodious

Seconds to the announcement of the Timor Lorosae's  
independence

But why are the children still scattered in all directions?

Lorosae

20 May is your first day of independence

A day when you feel happiness incomparable

A day when you hear your children clapping, laughing,  
embracing

But why, among them, are there faces of sadness

You can hear their lament and suffering

Do you not feel that there is something missing, something  
lost, Lorosae?

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<sup>\*</sup> Poem read and written by Edy M Parada, a child from Viqueque living in Naibonat refugee camp in West Timor, Indonesia, played by video recording during the CAVR National Public Hearing on Children and Conflict, 29-30 March 2004 (Translated from Indonesian).

*Throughout its mandate, the Commission was painfully aware of the divisions among our people. At the time of writing these recommendations, it is estimated that many thousands of East Timorese are still living in Indonesia, mostly in West Timor, and that most of these have opted for Indonesian citizenship. Some are living in refugee camps, others have built a new life in self-exile. These divisions are not only between East Timorese living in Timor-Leste and Indonesia, but also exist within our own communities in the newly independent Timor-Leste. Although some of these differences are caused by new tensions and new problems, often the roots of conflict can be traced back to old divisions of the past.*

*The Commission addressed these splits through a multi-leveled approach. At the national leadership level, party leaders were asked to publicly explain what took place during the civil war of 1975. The 4-day CAVR National Public Hearing on the Internal Political Conflict of 1974-76 in December 2003 was a landmark in the history of East Timorese political life, and an important time for all East Timorese people to better understand the events of this tragic period and listen to leaders taking responsibility.*

*At grassroots-level, the Commission facilitated a mediation process where perpetrators who committed lesser crimes and did harm to their communities voluntarily and publicly admitted their wrong-doing so that they could be reconciled with their communities. More than 1,400 perpetrators took part in this process and successfully completed the community reconciliation process.*

*The Commission believes that to be effective a process of reconciliation in Timor-Leste must engage individuals, families and community groups from all sides of the political conflicts, reach to the highest levels of the national leadership, and continue for many years to come.*

### **Reconciliation in the general community**

*Violence occurred at the community level throughout the period 1974-1999. The violence of the civil war which started in Dili in 1975 quickly spread to other communities, pitting neighbours and even family members against each other. The Indonesian military created extensive intelligence and paramilitary organisations whose members were involved in violations of human rights against people in their communities. In late 1998 and 1999, the activities of militia groups formed by the TNI further terrorised and divided communities.*

*From our Community Reconciliation Process (CRP) programme, it is clear that there is a continuing need to assist communities to come to terms with the divisions caused through the long years of political conflict. The Commission commends village communities for the way in which they adapted the Community Reconciliation Process to their local situations. The Commission also commends the courage of those who spoke honestly and openly about the harm they had done to individuals and communities and sought to become accepted as full members of their communities once again. And the Commission extends its highest respect to those who had been wronged and yet found it in their hearts to accept back into the full life of the community those who had done the harm. The Commission also pays special respect to the traditional leaders who gave their unique support and authority to these processes.*

*From these experiences with communities, the Commission knows that reconciliation is not a simple or immediate matter. It cannot be achieved in just one step, or a single procedure, and people cannot be obliged to reconcile according to the wishes of an institution or a state. But it is also clear that communities, victims and those who have harmed their communities are often open to assistance to help them come together to resolve past problems for the sake of a peaceful future. The Commission also believes that there is more work to do to secure the peace achieved by communities across the country since the end of the conflict.*

The Commission recommends that:

- 8.1. The Government of Timor-Leste establishes a community-focussed mechanism for conflict prevention and resolution, based on the lessons learned from the CAVR community reconciliation process, that this mechanism be mandated by legislation, and be conducted by an independent national institution that works in cooperation with the judiciary, police and local authorities.
- 8.2. The basic principle of this mechanism will be to assist communities to resolve local conflicts or problems within a framework which is consistent with the rule of law and respect for human rights, including equality between women and men, but also respectful of traditional processes and the diversity of cultures in Timor-Leste.
- 8.3. This mechanism has a clear focus on the capacity building of local community facilitators of conflict prevention and resolution and on helping young people build a culture and capacity to resolve conflict peacefully.
- 8.4. This mechanism be mandated to address both past political conflicts in Timor-Leste and contemporary challenges to the peace and stability of communities.
- 8.5. The post-CAVR institution recommended elsewhere in this Report be requested to convene consultations with the Government and community on this proposal and to submit draft terms of reference to the National Parliament.
- 8.6. The Prosecutor General decides within three months of the release of this Report what action he will take in relation to the 85 cases of pending Community Reconciliation Processes held by his Office, recognising that these deponents sought the assistance of the Commission in good faith, and that he communicates his decision on each case to each deponent and his community individually.

## 9. Reconciliation in the East Timorese political community

*The Commission worked to understand the underlying causes of the political conflict in Timor-Leste and the violence committed by East Timorese and the Indonesian armed forces. It listened to victims of violence from all sides, and interviewed political leaders from all points of view, including conducting interviews in Indonesia. The Commission believes that the deep divisions in our society from 25 years of conflict, and the violence which entered East Timorese political life in 1975, remain a potential stumbling block to the development of a sustainable culture of democracy and peace in Timor-Leste.*

*Violence and intimidation have no place in political life in Timor-Leste – the cost is too great. The Commission was encouraged by the humility of political leaders who testified at the National Public Hearing on the Internal Political Conflict of 1974-76, and the positive community response to their openness. However more needs to be done to heal the deep hurt from this period and to consolidate the development of pluralistic and peaceful political life in Timor-Leste.*

The Commission recommends that:

- 9.1. All political parties ensure that the universal principles of human rights enshrined in the Constitution of Timor-Leste are fully respected in their policies and practices.
- 9.2. All political parties respect the neutral role of the Police Service, Defence Forces and other state security bodies and include a commitment to respect this principle of neutrality in their party policies.
- 9.3. All political parties make a public commitment to conduct their political activities in a peaceful and non-threatening manner and to take strong disciplinary measures against

any party member who advocates or uses the media to ferment aggression or fear in the community.

- 9.4. All political parties make a public commitment that they will never mobilise youth groups for political purposes other than in peaceful and lawful ways.
- 9.5. The five historical political parties – Apodeti, ASDT/Fretilin, KOTA, Trabalhista, and UDT – institute processes, where necessary, to address human rights violations committed in the past by their members or those linked to them, and undertake to work for the implementation of the recommendations in this Report, in particular those directed at permanently removing the threat of violence from political life in Timor-Leste.
- 9.6. The former pro-autonomy political groups still in existence in Indonesia undertake to work for the implementation of the recommendations in this Report, in particular those directed at permanently removing the threat of violence from political life in Timor-Leste.
- 9.7. Civic education programmes make use of the material in this Report to impress on the community the importance of non-violence and the appalling cost of political violence.
- 9.8. The President undertakes new initiatives to foster political, social and cultural

dialogue between East Timorese in Indonesia and Timor-Leste, and that this initiative seeks the involvement of political leaders from all backgrounds and the support of the Government of Indonesia.

## 10. Reconciliation with Indonesia

*Timor-Leste and Indonesia have demonstrated since 1999 that they want to build a new relationship. The Commission commends this forward-looking and generous attitude. The Commission believes that for this new friendship to flourish the principles of acknowledging the truth of the past, accountability for violence, and a spirit of generosity in assisting those who have been harmed by that violence, are vital. During its extensive work in the community, especially with victims of serious violations perpetrated by Indonesian soldiers, the Commission was struck by the generosity of those victims toward Indonesia. Communities in all parts of the country have made clear to the Commission their need to see justice done for the serious crimes committed during the conflict. However this call for justice has rarely been made in a vengeful or hateful way, nor generalised against Indonesia or the Indonesian people. Accountability on the part of those responsible and the competent authorities will open the way for a deeper new relationship based on genuine reconciliation.*

The Commission recommends:

*Truth as the basis for the relationship*

- 10.1. That the Government of Indonesia formally acknowledges receipt of this Report and tables it in the Indonesian Parliament.
- 10.2. That, in order to foster a spirit of reconciliation, the Government of Indonesia sends a senior delegation to Timor-Leste to acknowledge the violations committed by its representatives during the occupation and to apologise to the victims and families of victims for these violations.

- 10.3. That the Government of Indonesia undertakes a revision of official accounts and education materials relating to Indonesia's presence in Timor-Leste to ensure that these give the Indonesian people an accurate and comprehensive account of the period 1974 to 1999, including the UN conduct of the 1999 Popular Consultation, and contribute to reconciliation.
- 10.4. That Indonesia and Timor-Leste continue to develop ways of deepening people-to-people relations and cooperation in social, cultural, economic and political life.

*Recognising Indonesian military casualties and assisting Indonesian families*

- 10.5. That the Governments of Indonesia and Timor-Leste continue to cooperate in the maintenance of Indonesian war cemeteries in Timor-Leste.
- 10.6. That the Governments of Indonesia and Timor-Leste cooperate to provide information to Indonesian and East Timorese families who do not know the full circumstances of the death and/or whereabouts of the remains of family members who were members of the Indonesian armed forces in Timor-Leste.
- 10.7. That the Governments of Indonesia and Timor-Leste cooperate to assist Indonesian families to visit Timor-Leste to pay their respects to their dead and/or to repatriate the remains of loved ones to Indonesia.

*Making available full documentation of military operations resulting in human rights violations of civilians*

- 10.8. That the Government of Indonesia makes available to the Government of Timor-Leste and the international community records of military operations that resulted in civilian deaths and injuries and damage to property, including:
- Operation Seroja and the massacres of civilians in Dili on 7 December 1975 and killings on following days
  - the military encirclement and annihilation campaigns of 1977-1979
  - the Mauchiga offensive of 1982 in the district of Ainaro; the massacres of civilians in Kraras in 1983 in the district of Viqueque
  - the removal of civilians to the island of Ataúro from the early 1980s
  - the Santa Cruz Massacre in Dili of 12 November 1991 and subsequent reported killings and disappearances.
- 10.9. That the Government of Indonesia makes the following information available to the Government of Timor-Leste and the international community:



- the names and details of all ABRI/TNI personnel of East Timorese origin killed in Timor-Leste between 1975 and 1999
  - the names and details of all East Timorese children removed from Timor-Leste by the Government of Indonesia, military or related personnel or institutions between 1975 and 1999
  - the names and details of all political prisoners who died in custody between 1975 and 1999
  - all Indonesian military units which served in Timor-Leste between 1975 and 1999, including names of commanding officers
  - the formation and funding of East Timorese para-military groups by the Indonesian military and/or other state agencies between 1974 and 1999
  - all military and civilian intelligence records on Timor-Leste from 1974-1999
  - all weapons, military equipment and material purchases or donations from governments and companies between 1975 and 1999 that were used in Timor-Leste during this period.
- 10.10. That the Government of Indonesia makes available to the Government of Timor-Leste and the international community records relating to the involvement of the Indonesian administration and military in the operations of 1999 which resulted in killings and the displacement of more than half the population of Timor-Leste, including:
- Liquiça Church Massacre (6 April 1999)
  - Cailaco (Bobonaro) killings (12 April 1999)
  - massacre at Manuel Carrascalão's Dili residence in Dili (17 April 1999)
  - killing of two students at Hera, Dili (20 May 1999)
  - Suai Church Massacre (6 September 1999)
  - Maliana Police Station Massacre (8 September 1999)
  - Murder of church personnel and the journalist accompanying them in Lautém (25 September 1999)
  - Massacres in Passabe and Maquelab in Oecusse (September-October 1999)
  - Massacres in Nitibe in Oecusse (October 1999).
- 10.11. That the Government of Indonesia cooperates fully with any future international or East Timorese initiatives established to address justice for violations of human rights committed in Timor-Leste between 1974 and 1999.

*Peace and stability*

- 10.12. That the Government of Indonesia continues to make clear its respect for the independence and sovereignty of Timor-Leste and takes action against any individuals or organisations in Indonesia who undertake illegal activities aimed at destabilising Timor-Leste.

*Clearing the names of those wrongly accused*

- 10.13. The Government of Indonesia expunges the criminal record of all East Timorese political prisoners tried and found guilty of crimes associated with the peaceful expression of their political beliefs during the period of the conflict.

- 10.14. The Government of Indonesia destroys all intelligence files maintained on East Timorese people relating to the period 1974-1999.
- 10.15. The Government of Indonesia expunges from Department of Immigration "black lists" the names of East Timorese and non-East Timorese human rights activists and instructs all relevant intelligence agencies and government offices to remove these names from lists and files.

#### *Reparations*

- 10.16. The Government of Indonesia makes financial contributions to the reparations trust fund recommended elsewhere in this Report.
- 10.17. Indonesian business companies which profited from war and related activities in Timor-Leste between 1974 and 1999 make financial contributions to the reparations trust fund recommended elsewhere in this Report.

### 11. *Acolhimento* (Reception)

*The 25 year period covered by the Commission mandate saw East Timorese people flee the country for reasons of personal security, political beliefs, or because they were forced to leave. Many thousands who fled in 1999 remain in Indonesian West Timor and other parts of Indonesia. Thousands more who fled Timor-Leste in 1975 and later, live in Portugal and Australia, and smaller numbers are spread across the world. East Timorese children taken to Indonesia during the war continue to be separated from their families.*

*The creation of a climate of welcome or acolhimento for East Timorese who wish to visit or return to Timor-Leste should be a national priority. This will strengthen the inclusive, democratic nature of our society and add to its capacity and security in important ways. Where East Timorese people have been involved in human rights violations, due process should apply consistent with official commitments to build a society based on accountability, rule of law and human rights.*

The Commission recommends that:

- 11.1.1. There are ongoing initiatives to promote contact and goodwill between East Timorese in Timor-Leste and East Timorese in Indonesia, particularly West Timor, with an emphasis on social, cultural and educational exchanges for children and youth, and that community leaders, the Catholic Church and other faith communities, Indonesian NGOs and the Government of Indonesia be requested to assist this process.
- 11.1.2. Ways of nurturing Timor-Leste's relationship with East Timorese who are living abroad or who have taken citizenship in other countries are developed so that overseas East Timorese people are encouraged to retain their family, cultural and other links with the country of their origin and to contribute to the interests of Timor-Leste through their activities and connections abroad.

#### **11.2 Separated children**

*Many East Timorese children were separated from their families during the Indonesian occupation of Timor-Leste, including some 4,500 in 1999. Many in the pre-1999 category are now adults and include some who are looking for their families but may not know where they come from. Most of those who became separated from their families during the violence of 1999 have either been reunited with their families or have continued to stay with caretakers. Responsibility for this category rests with the Governments of Indonesia and Timor-Leste following the signing in*

*December 2004 of a “Memorandum of Understanding Concerning Cooperation to Protect the Rights of Separated and Refugee Children”, facilitated by UNHCR.*

The Commission recommends that:

- 11.2.1. The implementation of the 2004 MOU between the Governments of Timor-Leste and the Indonesia be monitored by NGOs in both countries to ensure that the rights of separated children, particularly any whose cases have not been resolved and those in the custody of caregivers, are protected – including their right to unhindered access to identify and nationality procedures.
- 11.2.2. The Governments of Timor-Leste and Indonesia ensure that regular and free communication is maintained between the child and parents while the child remains with the caretaker or with an institution and that separated children are able to make informed decisions about their future free of intimidation or fear.
- 11.2.3. Assistance be provided, particularly for those in remote, poor areas, so that parents and adult separated children can trace each other, communicate and meet.

## 12. Reparations

Because of the war I was used like a horse by the Indonesian soldiers who took me in turns and made me bear so many children. But now I no longer have the strength to push my children towards a better future.<sup>1</sup>

### 12.1 Introduction

The Commission urges the Government of Timor-Leste to implement a programme of reparations for the most vulnerable victims of human rights violations.

All East Timorese people have been touched and victimised by the conflict in one way or another. However, in the course of its contact with many communities the Commission became acutely aware of those among us who still suffer daily from the consequences of the conflict and whose children will inherit the disadvantages their parents face as a consequence of their victimisation. They include those who live in extreme poverty, are disabled, or, who - due to misunderstandings - are shunned or discriminated against by their communities. We are all victims but not all victims are equal. We must acknowledge this reality and lend a hand to those who are most vulnerable.

The Commission believes that this recommendation is consistent with:

- The Constitution of Timor-Leste which states that “the State shall ensure special protection to the war-disabled, orphans, and other dependents of those who dedicated their lives to the struggle for independence and national sovereignty, and shall protect all those who participated in the resistance against the foreign occupation” [Section 11].
- The mandate of the Commission which requires it to assist in restoring the human dignity of victims, to promote reconciliation [Regulation 2001/10, Section 3.1(f) and (g)] and also to make “recommendations concerning reforms and other measures whether legal, political or administrative which could be taken to achieve the objectives of the Commission, to prevent the repetition of human rights violations and to respond to the needs of victims of human rights violations” [Regulation 2001/10, Section 21.2].
- East Timorese tradition, according to which a person who experienced a wrong-doing has the right to receive some measures to correct the offence.
- International human rights law,<sup>\*</sup> according to which victims of human rights violations have the right to seek redress.

A reparations programme will ensure that:

- The most vulnerable victims, who are often on the margins of their communities, will gain access to basic services and opportunities provided to the general community.
- A form of justice is delivered which directly benefits the victim and will contribute to healing, national reconciliation and a further reduction in the possibility of violence.
- The most vulnerable victims of past atrocities will be afforded recognition and the means to enjoy their fundamental rights and fulfil their potential on an equal footing with other citizens of Timor-Leste.

## **12.2 What are reparations?**

During the course of its work, the Commission defined reparations as measures to repair damages suffered by victims of human rights abuses, including rehabilitation, restitution, compensation, recognition of a truthful account of what happened, and guarantee of non-repetition of these violations. Reparations can take shape as measures directed to individuals or, collectively, to groups of victims.

The Commission places reparations in a human rights framework which includes three essential components which cannot be substituted for each other: truth, justice and reparations.

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<sup>\*</sup> Basic principles and guidelines on the right to a remedy and reparation for victims of gross violations of international human rights law and serious violations of international humanitarian law, approved by the Human Rights Commission of the UN on 20 April 2005 [UN Doc. E/CN.4/RES/2005/35, Annex].

### **Some forms of reparations**

**Compensation** which includes fair and adequate compensation through litigation or mediation.

**Restitution** which is the re-establishment, as far as possible, of the situation that existed for the beneficiary prior to the violation.

**Rehabilitation** which is the provision of medical and psychological care and the fulfillment of significant personal and community needs.

**Restoration** of dignity, which includes symbolic forms of reparation.

**Establishment of the truth** which may include public confession and apology from perpetrators, and testimonies on violations and their impact from victims and their families.

**Reassurance of non-repetition** which is the creation of legislative and administrative measures that contribute to the maintenance of a stable society and the prevention of the re-occurrence of human rights violations.

### **12.3 Legal and moral foundations for reparations**

In its inquiry into past human rights violations the Commission listened to victims of violations from all districts of the country, who suffered at the hands of all sides to the conflicts. Life has been terribly altered for many victims who survived violations. The thousands of dead due to human rights violations left behind families. Many families continue to look for loved ones who have disappeared. There are thousands of survivors of rape, torture and other gross human rights violations who still suffer consequences of these violations in their everyday lives.

As it listened to survivors, in hearings and workshops or giving statements and interviews, the Commission was struck by the humble nature of what most survivors seek. Overwhelmingly they have expressed to the Commission that they seek some kind of accountability on the part of the perpetrators, and simple assistance to enable them and their children to participate on an even footing in the new democratic Timor-Leste. For many this participation is difficult due to the severe hardships they still suffer due to the violations inflicted upon them

As Timor-Leste seeks to establish itself as a new democratic nation based on the rule of law and respect for human rights, there is a deep moral obligation to reach out to and assist our brothers and sisters who are struggling to participate in this new life. The values of our nation will be measured by our actions in this regard, not merely by the words of our new laws and leaders.

Furthermore, as a member of the United Nations, Timor-Leste has committed to uphold, respect and enforce human rights and humanitarian law standards. This includes the principle of ensuring appropriate remedies and reparations to victims of human rights violations, as stipulated in the UN Principles and Guidelines on the Right to Remedy and Reparation for Victims of Violations of International Human Rights and Humanitarian Law.

#### *Timor-Leste context*

From its inquiry, the Commission has found that all sides of the conflict were responsible for committing human rights violations. During the Commission's National Public Hearing on the Internal Political Conflict, leaders of political parties bravely and honestly testified about the violence during the period of the internal armed conflict, claiming institutional responsibility for some of the crimes of the past and their commitment to repair the harms inflicted upon victims

and their families.<sup>\*</sup> This commitment is reflected in the Constitution of Timor-Leste which obliges the state to provide “special protection to the war-disabled, orphans, and other dependents”.<sup>2</sup> Following this, the State of Timor-Leste has the moral and constitutional obligation to ensure that victims of past human rights violations receive measures of reparations.

However, the highest proportion of institutional responsibility for human rights violations falls on the shoulders of State of Indonesia, the occupying force whose agents committed most of the gross violations. Indonesia has the moral and legal responsibility to repair the damage caused by its policies and state agents.

Learning from the experience of repairing past violations in other nations, the struggle to gain reparations from an invading nation is one that may take time. In the meantime, many of the victims can no longer wait. Timor-Leste must step into the void. The international community, who looked the other way when atrocities were committed, also bears a portion of this responsibility.

#### **12.4 The Commission’s contribution**

*Not one person cared about what happened to me. I was alone.*<sup>3</sup>

As a transitional justice mechanism, the Commission had as its core focus the experience and rights of victims of past human rights violations. The Commission, in implementing its mandate, placed victims at the centre of its long-term goal of social rebuilding and reconciliation.

The Commission listened to thousands of victims and asked them what they needed to assist in this transformation. This was done during hearings at national, sub-district and village levels and at healing workshops conducted with survivors of human rights violations from all districts.

A special section in the executive body of the Commission was established to support victims who participated in Commission activities. This unit helped implement an urgent reparations programme to assist vulnerable victims with urgent medical and other matters. This programme identified 712 victims with urgent needs who were then helped to access services, were provided with US\$200 each, and in some cases, were supported to participate in healing workshops and public hearings organised by the Commission. The Commission, in partnership with NGOs, also developed a number of pilot projects on collective measures for urgent reparations in severely affected communities (see Part 10: *Acolhimento* and Victim Support).

In all aspects of its work, the Commission sought to have a reparative effect but the need for targeted reparations exceeded the Commission’s capacity in the time available. Individual victims and communities told the Commission clearly and repeatedly of the need for ongoing healing and work to repair damage caused by human rights violations.

#### **12.5 Reconciliation**

The Commission believes that lasting reconciliation cannot be achieved without establishing the truth, striving for justice, and providing reparations to victims. Reparations are necessary to restore the dignity of victims and to repair damaged relationships within our society. In East Timorese culture, the institution of *kasu sala* – a traditional mediation process which establishes who has been wronged by whom and what compensation should be given to the wronged party - sets the foundation for community reconciliation and peace-building. In the same way,

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<sup>\*</sup> Testimonies of key historical actors and representatives and members of the five political historical parties, at the CAVR National Public Hearing on The Internal Political Conflict 1974-76 held between 15 and 18 December 2003, are recorded in the CAVR Archive on video recording. The Commission also published a book on this hearing titled: *The Internal Political Conflict 1974-76, CAVR National Public Hearing 15-18 December 2003*.

acknowledging the suffering of victims through reparations is a cornerstone to lasting reconciliation in a nation that has experienced more than two decades of violence.

## **12.6 Guiding principles for a reparations programme in Timor-Leste**

The following principles will assist in the development of an effective reparations programme for the most vulnerable victims of human rights violations in Timor-Leste:

### *Feasibility*

As a new nation in the early stages of development Timor-Leste is faced with many competing needs. In order to be feasible in this context, the reparations programme should be selective and focus on the most urgent needs of the most vulnerable and, where possible, provide collective responses that are cost-effective and inventive.

### *Accessibility*

Care should be taken to ensure the programme is accessible to victims who are disadvantaged not only as a consequence of their experience but also by their isolation, lack of information and means of transport, particularly those in remote rural areas.

### *Empowerment*

The programme should empower those who have suffered gross human rights violations to take control over their own lives and to free themselves of both the practical constraints and the psychological and emotional feelings of victimhood. The delivery of rehabilitation services and other reparation measures should use a victim-centred and community-based empowerment approach.

### *Gender*

The programme should take gender differences into account because the conflict in Timor-Leste affected men and women differently. Men and women experienced not only different types of human rights violations during the conflict, but also different barriers to mitigating the impact of these violations. More men were targeted as victims of detention, torture, killings and disappearances than women. However, when women became victims of detention, torture and other violations, they suffered disproportionately from sexual violence and faced on-going discrimination as victims. Women also suffered when their husbands, sons, fathers, and other members of their families experienced human rights violations. They became the primary carer in their family, taking responsibility for the sick and wounded, and working to feed their children and other dependents when other providers in the family were detained, disappeared, killed or maimed. They also became increasingly vulnerable to sexual violence when the traditional “protector” of the family was absent. At least 50% of programme resources should be directed to female beneficiaries.

### *Prioritisation based on need*

The programme should address those most in need of support due to past violations. It is not possible for a single reparations programme to answer all the needs of all those who suffered during the conflict in Timor-Leste and the programme is not intended to take the place of long term national development, itself the major objective of the Timorese state.

## **12.7 Reparations programme**

The main aim of this reparations scheme is to assist vulnerable victims of gross human rights violations, within the scope of the mandate of the Commission, by repairing, as far as possible, the damage to their lives caused by the violations through the delivery of social services and symbolic and collective measures.

### *Rehabilitation*

The rehabilitation of victims should include medical and psycho-social care. Where this is already being provided to the general community by the Government and civil society, the programme should support victims to access these services, give service providers additional resources to reach beneficiaries and ensure quality service delivery by monitoring and providing feedback to service providers.

### *Collective measures*

The programme should also ensure that rehabilitation takes place in a community context. This means that collective measures be developed to ensure that rehabilitation of victims of human rights violations takes place in context and together with their communities. A special window should be developed through which communities or groups of victims can apply for such assistance. These measures should be determined in consultation with the victims and can take the form of symbolic recognition, as described below, and/or material support for activities or items identified by victims together.

### *Symbolic measures*

Symbolic measures, developed in consultation with victims, might include memorialisation, commemoration ceremonies, exhumations and reburials or marking and honouring of mass graves. Symbolic measures honour victims of past atrocities, strengthen the social commitment to oppose repetition of such acts, are educative and promote reconciliation.

## **12.8 Objectives**

- To identify the most vulnerable victims of human rights violations committed during the Commission's mandate period and support their rehabilitation.
- To facilitate rehabilitation of communities or groups of victims most severely affected by human rights violations during the mandate period.
- To promote recognition and respect for victims of human rights violations and to preserve the memory of past atrocities and suffering in order to ensure the non-repetition of such acts.

## **12.9 Beneficiaries**

According to the Commission's mandate "a victim means a person who, individually or as part of a collective, has suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of his or her rights as a result of acts or omissions over which the Commission has jurisdiction to consider and includes the relatives or dependents of persons who have individually suffered harm." [Regulation 2001/10, Section 1]

Taking into account the principles of feasibility and needs-based prioritisation, the Commission recommends that the programme focus on benefiting the most vulnerable among those who



continue to suffer the consequences of gross human rights violations which took place between 24 April 1974 and 25 October 1999, namely:

- Victims of torture
- People with mental and physical disabilities
- Victims of sexual violence
- Widows and single-mothers
- Children affected by the conflict
- Communities who suffered large-scale and gross human rights violations, with a relatively high concentration of victims identified above.

### **Working definitions for beneficiaries**

**Victims of torture** are those who were detained, tortured, and continue to gravely suffer the consequences of the torture they experienced.

**People with disabilities due to gross human rights violations** are those who have become permanently physically or mentally disabled, either totally or partially, as a consequence of the conflict. Examples are victims who suffered amputations, lacerations, loss of body parts, gunshot wounds; victims with bullets or shell fragments in their bodies, or who have permanent problems due to severe beatings and torture which have left them totally or partially disabled; or victims with disabling mental health problems due to past violations.

**Victims of sexual violence** are those women and girls who were subjected to acts such as rape, sexual slavery, forced marriage or other forms of sexual violence; and boys and men who suffered sexual violence.

**Widows and single mothers** are women whose husbands were killed or disappeared and who, as a result, are the primary breadwinners for their families. Also included here are women whose children were born out of rape or sexual slavery and consequently became single mothers.

**Children affected by the conflict** are defined as:

- children who suffer from disabilities due to gross human rights violations
- children whose parents were killed or disappeared
- children born out of an act of sexual violence whose mother is single
- children who suffer psychological damage.

Children will be eligible for reparations if they were 18 years of age or younger on 25 October 1999.

The Commission recommends that the reparations programme begins with a list of victims who came before the CAVR, selected and prioritised according to the criteria set out in this reparations policy. A two-year window period for further identification of beneficiaries eligible for reparations, to complement those identified by the Commission, shall be provided, in order to ensure inclusiveness to those most vulnerable who did not come before the CAVR.

## **12.10 Financing**

Indonesia should bear a significant proportion of the costs. As the occupying power which committed most of the violations, Indonesia has the greatest moral and legal responsibility to repair the damage caused by its policies and agents.

Member states of the international community, and business corporations who supported the illegal occupation of Timor-Leste and thus indirectly allowed violations to take place, are obliged to provide reparations to victims based on the principle of international responsibility recognised in the international customary law of torts.

Contributions will also be welcome from international agencies and NGOs, based on the principle of social justice.

Timor-Leste is obliged by the Constitution to "ensure special protection to the war-disabled, orphans, and other dependents who dedicated their lives to the struggle for independence and national sovereignty, and shall protect all those who participated in the resistance against the foreign occupation." [Section 11, Constitution of RDTL]. In the spirit of reconciliation, the Commission recommends that this undertaking to take care of members of the Resistance is extended to include victims of human rights violations committed by all sides.

If Indonesia is slow to respond, Timor-Leste and the international community should make their contributions while pressing Indonesia to fulfil its responsibilities. Many of the victims cannot afford to wait.

The Commission therefore recommends that the reparations scheme be jointly funded by:

- Fixed allocation (guaranteed by legislation) from the Timor-Leste national budget
- Reparations by the State of Indonesia
- Reparations by Indonesian business companies, including State Owned Enterprises, and other international and multinational corporations and businesses who profited from war and benefited from the occupation
- Reparations from the Permanent Members of the Security Council – China, France, Russia, United Kingdom, United States of America
- Contributions from governments who provided military assistance, including weapons sales and training, to the Indonesian Government during the occupation and business corporations who benefited from the sale of weapons to Indonesia

Contributions from governments, international agencies, foundations and other civil society organisations, including special funds for victims of human rights violations, such as the United Nations Fund for Victims of Torture.

The Commission recommends that a trust fund be established to receive and manage the contributions and that this fund be regularly audited.

## **12.11 Duration**

The Commission recommends that the programme functions for an initial period of 5 years, with the possibility of extension. It is recommended that the scholarship programme for children continues until the last eligible child turns 18 years old, that is, in 2017.

## 12.12 Methods

Methods for delivery of the reparations programme shall be developed in consultation with victims and victims groups and will include the following:

### *Support for single mothers and scholarships for their children*

The programme will provide single mothers, including victims of sexual violence and war widows, with a scholarship for their school-aged children until they turn 18 years old. The package will include funds for school fees and other costs and will be administered by government agencies and/or NGOs at district level. Single mothers will be expected to travel to a service delivery organisation once a month to receive the funds, and at the same time have access to other services, such as counselling, peer support, livelihood skills training, and access to micro-credit for livelihood activities. The monthly activity will also serve as a focal-point for accessing other essential services, such as healthcare.

### *Support for the disabled, widows, and survivors of sexual violence and torture*

The programme will provide widows, survivors of sexual violence (without school-aged children), the disabled, and torture survivors with social services, including rehabilitation, skills training and access to micro-credit for livelihood activities. The delivery of these services will be conducted by government agencies, specialised NGOs and community-based NGOs.

### *Support for severely affected communities*

The programme will provide support to severely affected communities who make a collective application for reparations. Applications will be required to include an account of how the community was affected by the conflict and, in general terms, the violations experienced, a concrete project to alleviate the harm suffered, and a list of beneficiaries who will be involved in the activities. This programme can also be used by government agencies and/or NGOs for activities such as healing workshops and other restorative work, including creative therapy and activities such as theatre, graphic arts, music and prayer. A gender-balance of beneficiaries is a criteria for eligibility.

### *Memorialisation*

The programme will promote national memorialisation in consultation with victims and other stakeholders including the government. The programme of memorialisation should be guided by, but not limited to, atrocities described in this Report and include commemoration ceremonies, dates, monuments, and other initiatives to honour and remember victims of human rights violations in local communities and at the national level. Memorialisation will also include the development of educational materials on Timor-Leste's historic struggle to uphold human rights, the development of popular literature, music and art for remembrance, and – as recommended elsewhere in this Report – an education programme to promote a culture of non-violent resolution of conflict.

### *Commitment to non-recurrence of violence*

As part of a national commitment to non-repetition of violence, a special education programme to mitigate the impact of 25 years of violence will be conducted together with relevant government agencies and civil society. Acknowledging the cycle of violence which continues to permeate East Timorese society, at the workplace and in our homes, the national reparations programme shall develop an education campaign to increase public awareness of the link between past abuses

and current violent behaviour. The aim of this education programme is to facilitate a change in the practice of using violence as a means to mediate conflict, at all levels of life. In order to honour victims of mass violence, we must make a clear commitment to transform this legacy from the past.

### **12.13 Implementing body**

The Commission recommends that an implementing body for the national reparations programme be established that will function for the duration of the programme. Its task will be to implement and coordinate the National Reparations Programme in cooperation with a range of relevant partners. These will include service delivery government agencies, such as the Ministry of Labour and Reinsertion, Ministry of Health, Ministry of Education, and service delivery NGOs and church-based organisations working at national and district levels.

The implementing body will engage grassroots “social workers” or facilitators at the district level, who will receive some training and transportation support. These district workers will help connect victims to services needed.

The implementing body will develop and support innovative programmes, together with NGOs, to assist victims, victims groups, and communities, to address needs and issues in a sustainable and empowering way.

The implementing body shall establish an advisory board which includes representatives of victims and victims groups, and organisations and individuals with high-standing in the community for protecting the rights of victims, as a permanent consultative body in the development and delivery of its programme.

### **13 Follow-on institution to the CAVR**

*The Commission has made a certain contribution to the nation building process of Timor-Leste in the early years of transition in our new democracy. This transition will be an ongoing and long process. It is the Commission’s view, based on three years of dialogue with local communities, that many aspects of its work should be followed up as part of the national effort to build a society based on acknowledging the truth of the past, non-violence, reconciliation and reparations. The work of recording, preserving and sharing the truth of our history, of continuing the promotion of lasting reconciliation, and of creating a society based on human rights and the rule of law can all be enhanced by the establishment of an institution to carry on aspects of the Commission’s work.*

The Commission recommends that:

- 13.1. The National Parliament supports the recommendations in this Report, takes primary responsibility for overseeing and monitoring their implementation and delegates this task to an appropriate Parliamentary Committee.
- 13.2. The National Parliament mandates an appropriate organisation to conduct a national consultation under the auspices of the President on the role, terms of reference and feasibility of a follow-on institution and, based on these findings, to make a recommendation for consideration by the National Parliament. Issues to be considered should include:

- the implementation of the Recommendations in this Report
- the need for further reconciliation in Timor-Leste
- the preservation of the ex-Balide Comarca as a heritage site and its use as a national memorial centre for victims and human rights
- the preservation and use of the CAVR archives
- the legal status of the institution.

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<sup>1</sup> CAVR Interview with a victim of sexual slavery in Uatu-Lari, Viqueque, 18 September 2003.

<sup>2</sup> RDTL Constitution, Section 11, 2002.

<sup>3</sup> HRVD Statement 06400.