

Innocenti Working Paper

**CHILDREN AND THE COMMISSION
FOR RECEPTION, TRUTH AND
RECONCILIATION IN
TIMOR-LESTE**

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Children and Transitional Justice Working Paper Series

The Children and Transitional Justice Working Paper Series is intended to generate dialogue and consensus, and to better inform children's protection and participation in ongoing or planned transitional justice processes in diverse country situations. Based on experience, the papers document and identify challenges, dilemmas and questions for further debate and formulate recommendations to better protect the rights of children involved in transitional justice processes.

The research conducted has created broad interest and visibility, helping establish a child rights-based approach to transitional justice that addresses advocacy, policy and programme concerns within UNICEF and among partners. Key areas of focus include:

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The identification of topics and authors in this Working Paper Series was undertaken in the context of strategic partnerships with the Human Rights Program at Harvard Law School, and the International Center for Transitional Justice (ICTJ). The review of the Series was guided by a peer review oversight panel, chaired by Jaap Doek. A network of practitioners, academics, legal experts and child rights advocates participated in the peer review. The Series was initiated and overseen by Saudamini Siegrist, with the support of Ann Linnarsson.

An Expert Discussion on Children and Transitional Justice was convened by UNICEF Innocenti Research Centre (IRC) in June 2008 to provide comments to individual authors and to assess the range and coverage of the Series. A subsequent conference on Children and Transitional Justice was jointly convened by the Human Rights Program at Harvard Law School and IRC in April 2009 in Cambridge, MA USA.

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- No. 9: Children and Security Sector Reform. David Nosworthy, Independent Consultant.
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- No. 17: Transitional Justice and Youth Formerly Associated with Armed Forces and Armed Groups. Theresa Betancourt and A'Nova Ettien, François-Xavier Bagnoud Center for Health and Human Rights.

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- Chapter 1: *Child Rights and Transitional Justice*. Saudamini Siegrist, UNICEF IRC.
- Chapter 2: Basic Assumptions of Transitional Justice and Children. Alison Smith, No Peace Without Justice.
- Chapter 3: International Criminal Justice and Child Protection. Cecile Aptel, ICTJ.
- Chapter 4: Children and the South African Truth and Reconciliation Commission. Piers Pigou, South African Archives.
- Chapter 5: Child Participation in the Sierra Leonean Truth and Reconciliation Commission. Philip Cook and Cheryl Heykoop, International Institute for Child Rights and Development, University of Victoria.
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- Chapter 8: Disappeared Children, Genetic Tracing and Justice. Michele Harvey-Blankenship, Department of Pediatrics, University of Alberta; Rachel Shigane, Human Rights Center, University of California, Berkeley.
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Children and the Commission for Reception, Truth and Reconciliation in Timor-Leste

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Summary: This paper discusses children's participation and protection in the work of the Commission for Reception, Truth and Reconciliation (CAVR) in Timor-Leste. It presents an overview of CAVR's efforts to ensure children's safe participation in CAVR activities, documenting violations against children and communicating CAVR's message to children. The paper assesses the strengths and weaknesses of the CAVR and analyzes underlying causes for the results. Through elaboration of lessons learned from the CAVR experience, the paper provides recommendations for truth commissions' engagement with children in the future.

The paper concludes that despite the absence of a legal requirement in the mandate, the CAVR made a commendable effort to research and document children's experiences of the conflict. However, a lack of policy on child participation and child protection contributed to the failure to engage with children both during and after the CAVR. It is suggested that a holistic approach to the CAVR's activities could have helped avoid this missed opportunity for Timor-Leste's young generation to engage in the country's nation building and carry forward the CAVR's recommendations.

Keywords: truth commission, child rights, child participation, child protection, reconciliation

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The findings, interpretations and conclusions contained in this paper are those of the authors and do not necessarily represent, or should not be attributed to, the International Criminal Court or UNICEF IRC.

ABBREVIATIONS

CAVR	Comissão de Acolhimento, Verdade e Reconciliação de Timor-Leste / Commission for Reception, Truth and Reconciliation
CNRT	National Congress for the Reconstruction of East Timor
CRP	Community Reconciliation Process
CTF	Commission of Truth and Friendship
ETWAVE	East Timorese Women Against Violence
Fokupers	Forum Komunikasi Untuk Perempuan Timor Lorosa'e / Communication Forum for East Timorese Women
ICTJ	International Center for Transitional Justice
INTERFET	International Force for East Timor
JSMP	Judicial System Monitoring Programme
KPP-HAM	Commission of Inquiry into Human Rights Violations / Komisi Penyelidik Pelanggaran Hak Asasi Manusia di Timor Timur
NGO	Non-governmental Organization
NPWJ	No Peace Without Justice
STP-CAVR	Secretariado Técnico Pos-CAVR / Post-CAVR Technical Secretariat
UNTAET	United Nations Transitional Administration in East Timor
UNHCR	United Nations High Commissioner for Refugees
UNMIT	United Nations Integrated Mission in Timor-Leste

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1. INTRODUCTION

In times of conflict children are often both victims of and witnesses to atrocities. As active citizens they also have a crucial role to play in post-conflict processes seeking peace and reconciliation. Because of this, truth commissions addressing past human rights violations have begun to specifically consider violations of child rights, and increasingly they encourage children's active participation throughout their processes. When appropriately guided and supported, children's participation in a truth commission can be beneficial not only for the children's recovery, education and sense of citizenship, but also for the success of the truth commission.

Child participation may enhance truth-seeking and broaden the extent of community ownership over the commission's work. Communicating a truth commission's purpose and message to children is also crucial in reaching out to young people and including them in the process of peace- and nation-building. Additionally, it is of paramount importance for a truth commission to understand the extent of child rights violations and the underlying causes of these violations in order to contribute to reforms that will prevent further abuses and promote child rights in the transitional society.

However, post-conflict countries are often burdened by extreme poverty and weak institutions, and therefore the involvement of children in a truth commission can present particular challenges. This was the case in Timor-Leste,¹ where a Commission for Reception, Truth and Reconciliation (usually known by its Portuguese initials "CAVR") was created in 2001 as part of an effort to address the legacy of human rights violations and impunity left by 24 years of conflict. In the wake of the conflict, Timor-Leste suffered from limited financial and human resources as well as a shortage of partners to provide technical support and outreach. The extent of the destruction during the peak of fighting in 1999 just before independence and the end of the long-standing occupation by Indonesia meant that infrastructure and institutions had to be created entirely anew. With more than 60 per cent of the population below 18 years of age, this young generation needed to get involved in peace-building and reconciliation activities to take the country forward as a nation. And yet, questions remain about the extent to which young people have been included in Timor-Leste's nation-building process in general and the CAVR in particular.

As a contribution to the development of international standards and good practices of children's participation in truth commissions, this paper attempts to document and analyse the challenges facing the CAVR, as well as the impact on children and youth and the work of the truth commission itself. It concludes with lessons learned and recommendations for future truth commissions.

Based on a human rights approach – in particular the Convention on the Rights of the Child, with an emphasis on children's rights to protection from all forms of violence and to

¹ The eastern part of the island of Timor in the Indonesian archipelago is usually referred to as "East Timor" in English. Since its independence in 2002 the country's official name is "Timor-Leste". For simplicity this term will be used to refer to both the country and the area of its territory prior to independence.

participation in decisions affecting their lives – the paper assesses the CAVR’s work on children in the following three key areas:

1. Ensuring children’s safe participation in CAVR activities: to what extent did the CAVR engage children in its activities while at the same time protecting them from further harm?
2. Researching and documenting violations against children: how well did the CAVR uncover, understand and explain the impact of the conflict on children as part of the search for truth, and promote accountability?
3. Communicating the CAVR’s message to children: how effectively has the CAVR’s work been used as a tool for educating children and cultivating a culture of peace and reconciliation?

Research for this paper was undertaken through:

- Interviews² with former commissioners and staff from the CAVR, as well as with members of the staff and former staff of CAVR partner organizations including the International Center for Transitional Justice (ICTJ), UNICEF and Fokupers;
- A small number of interviews with CAVR participants, both victims of violations during the conflict and their family members; and
- Documentary research using the CAVR archive, UNICEF documents and the CAVR final report.

The authors have described the process in as much detail as possible to document an important part of Timor-Leste’s history from a child rights perspective but also to serve as a starting point for further research on this topic.

2. BACKGROUND

2.1 Historical Background

The territory of Timor-Leste was occupied by Portugal in the 16th century and remained a colony until 1975, when political changes in Portugal opened the way for decolonialization. In Timor-Leste political parties were formed, and disagreements between them quickly escalated into civil unrest and a high level of violence, dividing the population. In the meantime, Indonesia began territorial incursions followed by a full-scale military invasion and occupation. In 1976 Indonesia declared the territory to be its twenty-seventh province, but the United Nations never recognized Indonesia’s annexation. During the following 24 years Timorese civilians, particularly those opposing the occupation, suffered massive and systematic human rights violations.

After the fall of Indonesian President Soeharto in 1998, the Timorese people were finally given a chance to choose between independence and integration with Indonesia through a

² Interviews were undertaken either face-to-face, by telephone, or in some cases through email or online.

referendum supported by the United Nations.³ Indonesia retained responsibility for security during the voting period, and violence and intimidation by militia groups associated with the Indonesian military escalated. Nevertheless, on 30 August 1999, the Timorese people voted for independence. The announcement of this result was followed by violent retaliation. Widespread killing and destruction did not end until the arrival of a United Nations-sanctioned multinational peacekeeping force, INTERFET.⁴ Indonesia withdrew, and the Security Council established the United Nations Transitional Administration in East Timor, UNTAET,⁵ to prepare the country for its independence. This was achieved on 20 May 2002. However, a significant population of refugees from Timor-Leste remained in Indonesian West Timor. Many who had been involved with pro-integration militia groups feared retribution if they returned home. Some who had returned home faced ongoing difficulties with their communities.

On the eve of independence Timor-Leste, the poorest country in Asia, found itself with a stagnant economy and weak capacity, hampered by embryonic institutions and limited human resources. These limitations also affected the CAVR, which struggled throughout its lifespan with limited and scarce human and financial resources.

2.2 Children and the Conflict

Children, among the most vulnerable members of any society, typically suffer the most during war. In Timor-Leste children were the main casualties of famine and illness.⁶ They suffered displacement from home and disrupted schooling, and were often separated from family members, which left them even more vulnerable to violence and abuse. The general failure to distinguish between combatants and civilians led to the deaths or injuries of many children.

But children were also specifically targeted for gross human rights violations, such as rape, sexual exploitation, torture, arbitrary detention and unlawful recruitment by armed groups. Children were used by both sides of the conflict. The resistance movement involved children in the independence struggle because they attracted less suspicion from the Indonesian military, but also to ensure the continuation of the struggle over the generations.⁷ Experiencing or witnessing violations also encouraged children to join the clandestine network.⁸ The Indonesian military used children as porters, servants and assistants in military operations mainly to obtain unpaid labour, but also to control the children's loyalties and to influence them ideologically.⁹ Indonesian-supported militias recruited children, usually

³ "Agreement Regarding the Modalities for the Popular Consultation of the East Timorese through a Direct Ballot", agreed between Indonesia, United Nations and Portugal, 5 May 1999, available online at http://www.un.org/peace/etimor99/agreement/agreeFrame_Eng03.html

⁴ International Force for East Timor: Security Council Resolution 1264, 15 September 1999.

⁵ Security Council Resolution 1272, 25 October 1999.

⁶ *Chega! The Final Report of the Commission for Reception, Truth and Reconciliation (Chega!)* [Enough!/No More!], Chapter 7.8: Violation of the Rights of the Child, para. 8; and Chapter 7.3: Forced Displacement and Famine. The report is available online at www.cavr-timorleste.org.

⁷ *Chega!*, Chapter 7.8: Violation of the Rights of the Child, para. 125.

⁸ *Chega!*, Chapter 7.8: Violation of the Rights of the Child, para. 130.

⁹ *Chega!*, Chapter 7.8: Violation of the Rights of the Child, paras 45, 47.

through threats and intimidation, and forced them to commit atrocities against their own families and communities.

Children became victims, witnesses and even perpetrators during the conflict. As a consequence of the horrors they witnessed, together with the loss of close relatives, many children lost trust in adults and community members and are now likely to suffer deep emotional distress and even trauma. The CAVR Final Report concludes that “trauma is widespread among East Timorese who grew up under the Indonesian occupation and there is evidence that the incidence of trauma may be acute among those recruited as child militia in 1998-1999. In their case trauma was due not only to their exposure to extreme violence, but also to the psychological impact of forced recruitment, divided loyalties and the shame of ending up on the wrong side.”¹⁰

In the aftermath of the conflict, as the CAVR began its work, many children and young people continued to suffer this trauma, and many more faced ongoing difficulties in accessing education, health care and protection from abuse. Those approaching adulthood faced widespread unemployment. Quite apart from their urgent need for victim support and healing from the past, children represented the future generation who could take the country forward, ending the cycle of violence. It was therefore of great importance to include children in the processes of reconciliation and peace-building.

2.3 Transitional Justice Mechanisms

A number of formal transitional justice mechanisms have been established to address past atrocities in Timor-Leste. These include the following truth-seeking mechanisms:

- Two 1999 United Nations expert reports based on short fact-finding missions, one by three Special Rapporteurs from the United Nations Commission on Human Rights¹¹ and one by the United Nations International Commission of Inquiry on East Timor;¹²
- The Commission of Inquiry into Human Rights Violations (KPP-HAM) established by Indonesia’s Human Rights Commission in September 1999, which reported in January 2000;
- The CAVR, established in Timor-Leste under UNTAET and which operated from 2002 until 2005; and
- A bilateral Commission of Truth and Friendship (CTF), established jointly between Indonesia and Timor-Leste, which functioned from 2005 to 2008.

The findings of these bodies were generally in agreement, although each had some limitations. The CAVR conducted by far the most extensive truth-seeking process, both in terms of its activities and the scope of its mandate. While the other mechanisms focused only on violence committed during 1999, the CAVR was required to consider human rights violations throughout the entire period of civil unrest and occupation from 1975 through 1999.

¹⁰ *Chega!* Chapter 7.8: Violation of the Rights of the Child, para. 10.

¹¹ “Situation of Human Rights in East Timor,” UN Doc. A/54/660 (December 10, 1999).

¹² “Report of the International Commission of Inquiry on East Timor to the Secretary-General,” UN Doc. A/54/726, S/2000/59 (January 31, 2000).

Mechanisms for the investigation and prosecution of individual criminal cases were also established, but only in respect of the violence committed in 1999:

- In Indonesia, an Ad Hoc Human Rights Court for East Timor was established, following the recommendation of KPP-HAM.
- In Timor-Leste, a hybrid ‘serious crimes process’ was established using international judicial actors supplied by the United Nations within the domestic justice system.¹³ While this process had jurisdiction to deal with ‘serious crimes’ committed at any time, in practice it focused exclusively on those committed during 1999.

Both judicial processes suffered from serious deficiencies. The Indonesian Ad Hoc Court convicted 6 out of 18 defendants at first instance, but all were subsequently released on appeal.¹⁴ The process was fundamentally flawed and has been condemned as an abject failure by academics, human rights groups, the United Nations Commission of Experts, and most recently the CTF.¹⁵ The serious crimes process was unable to exercise jurisdiction over those in Indonesia most responsible for the violence. The Serious Crimes Unit, located in the national prosecution service, issued indictments against 403 individuals, but most remained outside Timor-Leste. Ultimately 84 defendants, mostly militia members, were tried. Eighty-one of these were convicted. Some have considered this a sign of success, but significant weaknesses in the investigations and trials have also been pointed out.¹⁶ In February 2008 investigations into crimes committed in 1999 were reopened by the Serious Crimes Investigations Team, a section of the United Nations Integrated Mission in Timor-Leste (UNMIT), which will refer draft indictments to the Timorese prosecution service.

Meanwhile, less serious crimes committed in Timor-Leste during the conflict were resolved through the CAVR’s community reconciliation process (CRP). Its purpose was to facilitate the return and reintegration of community members who had been involved with pro-integration militia groups and feared retribution from their communities.

¹³ The serious crimes process was different from many other so-called “hybrid” tribunals. It was not established by treaty and was entirely situated within the domestic legal system of Timor-Leste. The process is referred to as “hybrid” because of its mixture of national and international actors.

¹⁴ The last to be acquitted, infamous militia leader Eurico Guterres, was released from prison in April 2008. See ICTJ, “Overview of the Indonesian Supreme Court’s Decision in the Eurico Guterres Case”, available online at http://www.ictj.org/static/Asia/Indonesia/ICTJ_IDN_GuterresCase_cm2008.pdf

¹⁵ See David Cohen, “Intended to Fail: The Trials Before the Ad Hoc Human Rights Court in Jakarta”, ICTJ Occasional Paper Series, August 2003; Human Rights Watch (HRW), “Justice Denied for East Timor,” December 20, 2002, <http://www.hrw.org/backgrounders/asia/timor/etimor1202bg.htm>; Open Society Initiative (OSI) and Coalition for International Justice (CIJ), “Unfulfilled Promises: Achieving Justice for Crimes Against Humanity in East Timor,” November 2004, http://www.justiceinitiative.org/db/resource2/fs/?file_id=15004, pp19–33; “Report to the Secretary-General of the Commission of Experts to Review the Prosecution of Serious Violations of Human Rights in Timor-Leste (then East Timor) in 1999,” UN Doc. S/2005/458 (May 26, 2005) annex II, paras. 152–339; *Per Memoriam ad Spem: The Final Report of the Commission of Truth and Friendship (CTF) Indonesia – Timor-Leste*, pp.93-105.

¹⁶ David Cohen, “Indifference and Accountability: The United Nations and the Politics of International Justice in East Timor,” East-West Center Special Reports, No. 9 (June 2006); Caitlin Reiger and Marieke Wierda, “The Serious Crimes Process in Timor-Leste: In Retrospect,” ICTJ Prosecutions Case Studies Series (March 2006).

2.4 Recent Developments

Once hailed as the success story of United Nations peace-building, Timor-Leste has recently fallen into more difficult times. In 2006 a dispute within the nation's military escalated into a bloody political crisis. Gun battles between security institutions in the streets were eventually brought under control through military assistance from international security forces and later also UNMIT, but significant street violence persisted in the capital for nearly a year. The role of young people in this violence has been discussed widely. It is of paramount importance in analysing children's participation in peace-building and reconciliation initiatives such as the CAVR since many of those who were children at the time of the CAVR were adolescents during the political violence in 2006.

In August 2006 the United Nations Secretary-General reported to the Security Council that "[o]rganized groups of youths and criminal gangs [had] committed widespread acts of arson and looting" during the political crisis.¹⁷ Many youths believe that the political leaders started the crisis and manipulated children and youth to take part in the violence – they see themselves as having been used for the interests of others.¹⁸ The Secretary-General also noted that youth had been made particularly vulnerable to external influences through the politicization of youth organizations and martial arts groups, coupled with high rates of unemployment, limited access to education and a feeling of hopelessness about the future.¹⁹ In addition, the breakdown of law and order and the sense of impunity created opportunities to use violence to resolve existing private problems.

But underneath these external issues and triggers lay more profound factors: history, culture and values. Throughout the Portuguese colonial domination and the Indonesian occupation political differences were settled through violence,²⁰ and violent resistance was valorized among most Timorese. As a consequence, violence is now often perceived as a part of activism.²¹ In fact, many youth gangs in Timor appear to be led by former resistance figures, loyal to different factions within the security forces and political parties. These loyalties and enmities date back to the period of resistance against Indonesia.²²

Another important factor is the apparent lack of national unity and identity. In the vacuum left by the departure of the common enemy, Indonesia, old divisions such as land disputes and market domination have started to resurface.²³ New disputes about which regions participated most in the independence struggle have played on these long-smouldering

¹⁷ "Report of the Secretary-General on Timor-Leste pursuant to Security Council resolution 1690 (2006)", 8 August 2006, UN Doc. 2006/628, para.10.

¹⁸ PLAN International, "Like Stepping Stones in the River", May 2007.

¹⁹ "Report of the Secretary-General on Timor-Leste pursuant to Security Council resolution 1690 (2006)", 8 August 2006, UN Doc. 2006/628, para. 100.

²⁰ Report of the United Nations Independent Special Commission of Inquiry for Timor-Leste, 2 October 2006, para. 18.

²¹ UNICEF, Final Report: Programming with and for young people in emergency and post-emergency situations, Jan 2007, p 29.

²² Scambary, James, "A survey on gangs and youth groups in Timor-Leste", Sept 2006, pp 2, 3-4, 6, 8, Annex 1.

²³ Babo Soares, Dionisio, "Branching from the trunk: East Timorese perceptions of nationalism in transition", p 267-300.

rivalries and inflamed geographical tensions.²⁴ While the recent conflict was heightened by many factors, including economic insecurity and weak rule of law, it was made possible by a poorly defined national identity. This highlights the need for ongoing nation-building efforts.

The crucial need to include children and youth in this process has been noted.²⁵ Children can be agents of change. While many youths were engaged in violence during 2006 and 2007, many more were not. A number of youth groups are actively seeking ways to improve their lives and those of their families and communities.²⁶

With the need to include young people in peace building and nation building now more apparent than ever, it is worthwhile considering the extent to which children and young people were engaged in the process of nation-building that began in 1999. One important aspect of that process is the work of the CAVR.

3. THE CAVR AND THE ROLE OF CHILDREN

3.1 Establishment, Function and Structure of the CAVR

In March 2000, the umbrella National Council for Timorese resistance organizations, (CNRT),²⁷ put forward the idea of a reconciliation commission. In August that year UNTAET's Human Rights Unit convened a meeting involving political parties, human rights organizations and the Catholic Church. A proposal was formulated for a truth and reconciliation commission, which was subsequently endorsed at the CNRT National Congress. A Steering Committee including representatives of various national groups as well as UNTAET and the United Nations High Commissioner for Refugees (UNHCR) was established to consult with the broader Timorese community and develop the commission's mandate.²⁸ The idea was embraced by the Timorese people, and the CAVR was created by UNTAET Regulation 2001/10 (the CAVR law). The CAVR was later recognized in the Timorese Constitution.²⁹ The CAVR was headed by seven National Commissioners who were selected through a public national nomination process, on the basis of their integrity, impartiality, competence and commitment to human rights.

The CAVR had three core programme areas, although these overlapped:

- **A truth-seeking function**, involving statement-taking and interviews, receipt of written submissions, focused research and public hearings. The goal of the truth-seeking programme was to document human rights violations committed by all parties to the political conflicts between April 1974 and October 1999.

²⁴ Ibid.

²⁵ "Report of the Secretary-General on Timor-Leste pursuant to Security Council resolution 1690 (2006)", 8 August 2006, UN Doc 2006/628, para. 100.

²⁶ Scambery, James, "A survey on gangs and youth groups in Timor-Leste", Sept 2006, p 11.

²⁷ *Conselho Nacional da Resistência Timorense*, the National Council of Timorese Resistance (not to be confused with the contemporary Timorese political party also referred to by the acronym CNRT).

²⁸ See *Chega!*, Part 1: Introduction, paras 39-42.

²⁹ Timor-Leste Constitution, s 162.

- **A community reconciliation function**, including resolution of ‘minor criminal offences’ and ‘harmful acts’ committed during the conflict through a process incorporating traditional justice practices. This programme was designed to rebuild the relationship between low-level perpetrators and their communities so as to encourage reintegration, as well as the return of refugees.
- **A reception and victim support function**, including healing workshops, urgent reparations and psychosocial support to victims. The goal of this programme was to restore the dignity of victims, increase communities’ understanding of victims and repair relationships between victims and their communities.

During its work the CAVR established itself as a highly visible and important part of the nation-building process. Teams of staff worked throughout the territory, spending 3 months in each of the 65 sub-districts. Victims’ hearings were held publicly in each sub-district. Eight additional thematic national public hearings were held in the capital, Dili, and broadcast on radio and television. By the conclusion of its work the Commission had collected 7,824 statements and conducted more than 1,000 further interviews.³⁰ It resolved the cases of 1,371 individuals through community reconciliation processes.³¹ There is no doubt that for many thousands of Timorese people the CAVR played a crucial role in the transition to peace and democracy.

On 31 October 2005 the Commission’s final report was presented to the President of Timor-Leste, who then presented it to the Government, the Parliament and the United Nations Secretary-General. The report set out in great detail the CAVR’s work, findings and recommendations.

Initial responses to the report from the Timorese leadership were unfavourable. The then-President, Xanana Gusmao, was intent on ensuring good relations with Indonesia and rejected the CAVR’s recommendations for justice and reparations. On presenting the report to Parliament he accused the CAVR’s commissioners of “grandiose idealism” and said that the Commission’s recommendations “could be used to manipulate our people’s state of mind.”³² No efforts were taken to initiate a debate on the report or to implement its recommendations. When the CAVR was dissolved in December 2005 the president established by decree a Post-CAVR Technical Secretariat, which had among its tasks to assist in disseminating the report. Yet the report was never formally launched in Timor-Leste.

Since then little follow-up on the CAVR’s work has been achieved. Little has been done to publicize its work, and most Timorese citizens remain unaware of the outcomes, including many of those who participated in its activities. Additionally, the establishment of the bilateral Commission of Truth and Friendship, with a mandate to grant amnesties, risked confusing the public and the international community and weakening the legacy of the CAVR.

³⁰ *Chega!* Part 1: Introduction, paras 82 and 91.

³¹ *Chega!* Part 9: Community Reconciliation, p.29, Table 3: Result of CRP Programme by District.

³² Xanana Gusmao, Speech to the National Parliament, 28 November 2005.

After the 2006 political crises there were some initial signs of increased commitment to the CAVR. Then-Prime Minister Jose Ramos Horta expressed his support for the CAVR's work and stated the importance of the report as a historical document.³³ In October 2008, now as president, Mr. Horta called on Parliament to debate the report and its recommendations,³⁴ though soon afterward a motion to debate the report in Parliament was defeated.³⁵ Finally, on 14 December 2009, the Timorese Parliament passed a preliminary resolution dealing with the CAVR and CTF reports.³⁶ However no clear steps have yet been taken towards creating a coherent national policy for support to victims of human rights violations during the conflict.

3.2 Children in the Mandate, Policies and Procedures of the CAVR

The CAVR law provided very little guidance on the role of children in the Commission's work. It did not require the CAVR to do research specifically on children; nor did it define the areas of the CAVR's work in which children should participate. No minimum age was provided for involvement in the CAVR community reconciliation processes. The only references to children in the law state that special measures may be taken where special groups of victims, including women and children, are involved in public hearings.³⁷

It is notable that in several places the CAVR law addressed the need for policies on gender but not on children, although it is clear that the legislation enabled the creation of such policies.³⁸ Similarly, the law required the Commission to employ staff "including those with gender, human rights and legal expertise," but no specific requirement was included for the recruitment of child protection experts.³⁹

In some regards this is not surprising. At the time of the law's drafting, involvement of children in truth commissions was just beginning. Only one previous truth and reconciliation commission, in Sierra Leone, had been required by its mandate to give "special attention" to children.⁴⁰ A conference held in June 2001 on Children and the Truth and Reconciliation Commission for Sierra Leone produced important basic standards in this area, but came too

³³ "Message by Prime Minister Jose Ramos-Horta in support of CAVR and Chega!", November 2006 available online at www.cavr-timorleste.org.

³⁴ Jose Ramos Horta, Speech to the National Parliament, 9 October 2008.

³⁵ Parliamentary debate, 10 November 2008. A draft resolution was prepared by Standing Committee A of the National Parliament and approved within the Committee in June 2008. However its debate in the Parliament has repeatedly been postponed. After one such postponement in early November 2008, the opposition party Fretilin moved for the resolution (and thus the CAVR report itself) to be debated, however this motion was defeated in a vote of 29 against, 17 for, and 2 abstentions.

³⁶ Parliamentary Resolution No 34/II, 14 December 2009, Implementation of the Recommendations of the Commission for Reception, Truth and Reconciliation and the Commission of Truth and Friendship.

³⁷ UNTAET Regulation 2001/10, s 16.4 provides for support workers to accompany these victims. See also s 36.1 on victim and witness protection in the context of public hearings, which makes specific reference to crimes against children.

³⁸ UNTAET Regulation 2001/10, ss 3.4(c) and 12.1(j).

³⁹ *Ibid.* s 12.1(d).

⁴⁰ The Truth and Reconciliation Commission Act, 2000, s 6(2)(b).

late to influence the CAVR law, which had already been approved by the Transitional Administration Cabinet (in April 2001).⁴¹

The lack of detail regarding children in the CAVR law also reflects the absence of UNICEF or other relevant child-rights specialists from the CAVR steering committee. While youth groups were included, children's voices were not represented. This likely influenced the content of the committee's consultations, which seem to have overlooked issues relating to children. Certainly the core findings from this process, as outlined in the CAVR Final Report, do not mention children.⁴²

However, the lack of attention to children in the CAVR law was by no means fatal, since the Commission was able to determine its own policies, procedures and areas of research. This process began with a retreat immediately after the swearing in of the Commissioners in January 2002, which produced a set of principles to underlie the CAVR's work. It is significant that, while these founding principles included a commitment to the participation of women in the Commission's work, they made no mention of children or young people.⁴³ Nonetheless, key among these principles was that the CAVR's work as a whole would:

“...place victims of human rights violations at the centre of its work and it would create an institution that would be open and responsive to them. As such it would recognise and value their experience. It would also seek practical ways to assist them and would promote their role in nation building.”⁴⁴

This principle was to become the cornerstone of the CAVR's approach.

Early on, the Commission began discussions about the creation of a policy on children's involvement. The process was initiated by UNICEF in late 2001 with a request to meet the CAVR and discuss best practice for special procedures on children in truth commissions.⁴⁵ In early 2002 discussions began between CAVR staff and UNICEF. After the first such meeting the commissioners took a series of decisions on children, which called for creation of a draft procedure manual on children and for CAVR staff to be trained on children's rights.⁴⁶ In July 2002 the commissioners reviewed a briefing paper prepared by CAVR staff on the need for clear policies on children. In response the Commission formally decided that the final report should reflect children's experiences, that children's participation in CAVR activities would depend on creation of appropriate protection procedures and that CAVR staff should continue to consult with UNICEF and the United Nations mission on procedures for child participation.⁴⁷

⁴¹ The draft was subsequently approved by the National Council on 13 June 2001 and promulgated by the Transitional Administrator on 13 July 2001. See *Chega!* Part I: Introduction, p.48: Table 1 “Milestones of the Commission”.

⁴² *Chega!* Part 1: Introduction, paragraph 42.

⁴³ *Chega!* Part 1: Introduction, paragraph 55.

⁴⁴ *Chega!* Part 1: Introduction, paragraph 55.

⁴⁵ Letter of 19 December 2001 from UNICEF East Timor, Child Protection. This letter was sent and copied to a number of key actors in the pre-CAVR structure, UNTAET and Timorese institutions. UNICEF mentioned and provided a copy of the report on the June 2001 technical meeting on children and the Sierra Leone TRC.

⁴⁶ National Commissioners' Meeting 7, 26 February 2002.

⁴⁷ National Commissioners' Meeting 27, 22 July 2002.

Over the next few months a draft policy was created by a consultant working within the CAVR, with input from UNICEF. It established principles for participation and standards of legal protections, referring to the Convention of the Rights of the Child (CRC), national legislation and experiences from other countries. It recommended procedures and processes to involve children in the different components of the CAVR that, for the most part, reflected international best practice, in particular the experience of the Sierra Leone Truth and Reconciliation Commission (TRC).⁴⁸

However, the policy was not finalized and endorsed by the commissioners, not translated from English and not disseminated or implemented. The commissioners held no further discussions on child protection or participation. Most likely this was a result of the departure of the focal points in both CAVR and UNICEF and a lack of interest in the issue among those who remained. Discussions took place regarding the possibilities for UNICEF to provide the CAVR with a consultant to work on procedures relating to children, but this did not take place.⁴⁹

In the absence of a policy on children, CAVR activities were designed and implemented with little thought to questions of child participation or impact on children. Eventually a comprehensive procedure manual was produced for CAVR's district teams. It set out key guidelines for all of CAVR's sub-district activities, including statement-taking, community profiles,⁵⁰ community reconciliation procedures and socialization. It makes almost no mention of children, and where children are mentioned they are seen not as participants but as the recipients of information or as subjects to be documented. Not surprisingly, this pattern is also reflected in the CAVR's work itself, as can be seen from the authors' examination of how children participated in the CAVR's work, how the Commission documented and responded to their experiences of human rights violations and how they were targets and beneficiaries of CAVR outreach.

3.3 The Rationale for Child Participation in CAVR Activities

Although the CAVR made a conscious decision to base its analysis of violations against children on the CRC, the same approach was not applied in relation to children's rights to participation. Article 12 of the CRC establishes the State's obligation to respect the views of the child, especially in judicial and administrative proceedings affecting the child.⁵¹ This

⁴⁸ The Commission for Reception, Truth and Reconciliation and Children: Policy procedures and processes, draft dated 12 September 2002.

⁴⁹ Internal UNICEF document on developments in the CAVR relating to children, dated 10 November 2002. Interviews with numerous former staff at UNICEF and the CAVR have failed to reveal the reasons for this. It seems possible that focus was lost with the departure of key personnel in both institutions.

⁵⁰ Community profiles were community discussions on the collective impact of human rights violations in the communities. They included mapping exercises and were seen as a complement to the individual focus of statement-taking.

⁵¹ CRC Art 12: "States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law."

fundamental rule is relevant to all aspects of the Convention and emphasizes the importance of regarding children as active rights holders. According to the CRC any participation should be in accordance with the evolving capacities of the child and should take place only when it is in the best interest of the child.⁵² Children who have been victims and witnesses of crimes have an important role in providing statements and testimony. But if children are to participate in any activities of a truth commission their physical and psychological safety must be safeguarded. On the other hand, when children are supported and guided, their participation in a truth commission can help to build their capacity for active citizenship in post-conflict transition and help lay the foundation for a more just and peaceful society.

However, in the absence of a requirement for child participation in the CAVR's mandate, policies and procedures, most CAVR activities were undertaken with little regard to children's right to participation. With only one significant exception (the children's hearing detailed below), no systematic efforts were made to encourage children to participate or to protect the children who did.

4. INVOLVING CHILDREN IN CAVR ACTIVITIES

4.1 Lack of Child Participation

In nearly all aspects of CAVR programming, the practical result of not having a clear policy on child involvement was that very few children participated. Children were usually not prevented from participating, but nothing was done to counteract a prevailing culture in which children do not speak or make decisions on their own behalf, have little or no voice in community activities, and are viewed as an unreliable source of information. CAVR staff recollections indicate that children had negligible – if any – participation in statement-taking, interviews, community reconciliation hearings, community profiles or healing workshops.⁵³

Nor was data collected concerning this question. Thus the CAVR final report, which does detail the levels at which women participated,⁵⁴ provides almost no indication of child participation rates. The ages of those giving statements are mentioned only in the annex explaining statistical analysis,⁵⁵ which shows that extremely few children participated. Yet this revelation attracts no comment, analysis or explanation. Similarly, the Commission does not explain its policy toward child participation in key activities, leaving the reader uncertain as to whether their apparent lack of participation was intentional or the result of oversight.

⁵² CRC Art 3.1: "In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration."

⁵³ Interviews with former CAVR staff.

⁵⁴ *Chega!*, Part 1: Introduction, paras 166-168, 173-181; Part 9: Community Reconciliation, para. 154; Part 10: Acolhimento and Victim Support, paras 71-73, 97, 120, 144, 181, 183, 202-205.

⁵⁵ Romesh Silva and Patrick Ball, "The Profile of Human Rights Violations in Timor-Leste, 1974-1999: A Report by the Benetech Human Rights Data Analysis Group to the Commission on Reception, Truth and Reconciliation of Timor-Leste", 9 February 2006, available at <http://www.hrdag.org/about/timor-leste.shtml>, p41, Figure 25.

Further analysis of CAVR archival material is not possible at this time, given tight controls on access.⁵⁶ However, other sources of data reveal that of the 7,668 statements processed by the CAVR, only 6 were provided by children.⁵⁷

Recollections of some former CAVR staff suggest there was an assumption that evidence from children would be less useful to the Commission in its truth-seeking work. One cited her belief that adults were more reliable than children in giving evidence.⁵⁸ Another pointed out that very often a child's parents would have been present when a child experienced a violation, and it was considered easier or better to hear from the parent.⁵⁹ CAVR staff had not been trained specifically in dealing with children, and at least some recognized that eliciting useful information from children would be more difficult than speaking with their parents, particularly when dealing with young children not known to the statement-taker.⁶⁰

In practice it seems that the absence of a policy forced the CAVR district teams to make their own judgments about who to engage in statement-taking.⁶¹ Lacking efforts to encourage child participation, it is likely that few children would have presented themselves. As one former CAVR staff commented, "it would have taken a very plucky child to come forward."⁶²

The absence of children's participation in statement-taking had a consequent impact on other kinds of participation. District teams used lists of statement-givers as a source of appropriate candidates for participation in other CAVR activities, such as public hearings, urgent reparations and healing workshops,⁶³ so groups not well represented as statement-givers were likely to miss out on subsequent opportunities for participation.⁶⁴

In some activities participants were chosen through other means. However children were rarely included, probably for the same cultural reasons that excluded them from statement taking. For example, in community profile sessions, around 25 community members discussed, debated, agreed upon and recorded the history of conflict in their village. Participants were selected by CAVR staff in collaboration with local leaders, and those selected tended to be familiar with the community's history.⁶⁵ This approach was unlikely to result in the selection of children. During its work the CAVR recognized that women's participation in these sessions had been inadequate – many women simply agreed with what

⁵⁶ The Post-CAVR Technical Secretariat is now responsible for regulating access to the CAVR archives. It has adopted its own archives policy, but in the absence of formal legislation regulating access, tends to be cautious about allowing access to researchers, and is particularly so in respect of statements and the human rights violations database.

⁵⁷ Information provided by Romesh Silva, Benetech, email of 22 February 2009.

⁵⁸ Interview with Lourdes da Silva, June 2008.

⁵⁹ Interview with Rosario Salsinha Araujo 10 Feb 2009,

⁶⁰ Interview with Rosario Salsinha Araujo 10 Feb 2009.

⁶¹ Online interview with Kieran Dwyer, 27 January 2009.

⁶² Interview with Galuh Wandita, 2 February 2009

⁶³ Interview with Galuh Wandita, 2 February 2009

⁶⁴ This was also the case with women, who represented only 21.4% of statement-givers (*Chega!*, Part 1: Introduction, para. 174) and as a result were also underrepresented in other programmes such as public hearings (*Chega!*: Part 10: Acolhimento and Victim Support, para. 120) and urgent reparations (*Chega!*: Part 10: Acolhimento and Victim Support, paras 181 and 183).

⁶⁵ Interview with Rosario Salsinha Araujo 10 Feb 2009.

had already been said by male participants – and in response began holding women-only sessions.⁶⁶ Regrettably, similar initiatives were not devised to engage children.

It seems clear that low child participation was not the result of a conscious attempt to protect children from the potential negative consequences of involvement.⁶⁷ Indeed, where children occasionally did participate in the Commission's core activities, no special measures of protection were established for them. The CAVR's victim support unit was available to assist all vulnerable persons who came into contact with the Commission. However children engaging in the Commission activities⁶⁸ were not necessarily treated as vulnerable cases requiring support.⁶⁹ In any event, CAVR victim support staff did not have experience specific to children, nor had they been trained in child protection or child counselling. This may have reflected an implicit assumption that children would not be involved in CAVR activities, but it seems more likely to have arisen simply from a failure to anticipate or consider children's special needs.

Of course many children probably attended CAVR activities, particularly public activities, with their family members. In these cases it is unlikely that children would have had an opportunity to speak for themselves. Throughout the CAVR process it was common for adults to speak about the experiences and views of their own children and children from their family or community. Children were also assisted indirectly through the urgent reparations programme. Although it did not specifically target them, a number of recipients reported using the funds on behalf of their children. In all of these cases children benefited indirectly from the Commission's work, but for the most part were not participants in their own right.

Thus in general children's engagement as participants in the CAVR's core activities was minimal. However, more detailed analysis is warranted in respect of two activities undertaken by the CAVR: the community reconciliation processes and the children's public hearing.

4.2 The Community Reconciliation Process

The main component of the CAVR's reconciliation programme was the community reconciliation process (CRP).⁷⁰ Its purpose was to reintegrate into their communities those who had committed 'less serious' criminal offences and other harmful acts.⁷¹ Such crimes included house-burning, theft and destruction of property or participation in militia intimidation,⁷² although some had merely been involved with a militia group.⁷³

⁶⁶ Interview with Rosario Salsinha Araujo 10 Feb 2009.

⁶⁷ Interviews with various former CAVR staff.

⁶⁸ Note, for example the small number who gave statements.

⁶⁹ No procedure existed requiring that, should a child give a statement, or otherwise participate in CAVR activities, they would automatically be treated as vulnerable and in need of support. CAVR, Program Procedures, 1 August 2002; Interview with Rosario Salsinha Araujo, 24 March 2009.

⁷⁰ For more detail on the CAVR's CRP process see *Chega!* Part 9: Community Reconciliation.

⁷¹ UNTAET Regulation 2001/10, s 22.1 and 22.2

⁷² *Chega!* Part 9: Community Reconciliation, p27; Piers Pigou, "The Community Reconciliation Process of the Commission for Reception, Truth and Reconciliation", UNDP, April 2004, p79; Spencer Zifcak, "Restorative Justice in East Timor: An Evaluation of the Community Reconciliation Process of the CAVR", The Asia Foundation, undated, p25.

Involvement in the CRP was always voluntary. A ‘deponent’ wishing to participate was required to make a statement including a description of the harmful acts committed and acknowledgement of his or her responsibility. A community-based public hearing would be held before a panel of local leaders chaired by a CAVR regional commissioner. The process consciously sought to incorporate elements of traditional justice and religious practice. Deponents were asked to explain their actions, and victims and community members were allowed to ask questions and make comments. The hearings ended with written agreements stipulating an act of reconciliation to be performed by the deponent. The act often consisted of community service, reparation or public apology. These agreements were registered with local courts, and compliance gave the deponent immunity from prosecution.

‘Serious crimes’ could not be addressed through the CRP; this was the most significant limitation on its mandate. Serious crimes were defined as genocide, war crimes, crimes against humanity, murder, torture and sexual offences. In theory these crimes were to be tried in the courts through the serious crimes process.⁷⁴ The CRP and serious crimes processes were thus designed to complement each other, with the former processing minor offences and the latter dealing with serious crimes. CRP statements given to the CAVR were screened by the Office of the Prosecutor-General, which prevented deponents from taking part in CRPs if there were grounds to suspect their involvement in serious crimes. Of the 1,541 deponents who applied to participate in the CRPs, at least 85 were blocked in this way.⁷⁵

The CAVR law set out baseline rules for the CRP without mentioning either a minimum age or special procedures for child participation. Considering that completed CRPs conferred immunity from prosecution, it might be assumed that the age for participation related to the age of criminal responsibility.⁷⁶ According to the law applicable at the time, the age of criminal responsibility was 12 years for murder, rape or violent crimes resulting in serious injury and 16 years for all other crimes.⁷⁷ This meant that a child responsible for a minor crime committed during the period covered by the CAVR’s mandate (1974 to 1999) would in every case be 18 by the time of the CRP, which began in 2002. Potential applicants who were still children in 2002 would have been too young at the time of their acts to be considered responsible and therefore would not gain any benefit from immunity conferred by the CRP.

However it is doubtful that most communities would have been familiar with details of juvenile responsibility provisions, so this probably did not influence young people’s participation in CRPs. Furthermore, the major incentive for participation in the CRP was not

⁷³ Lia Kent, “Unfulfilled Expectations: Community Views on CAVR’s Community Reconciliation Process”, JSMP Report, August 2004, p 11. See also Piers Pigou, “The Community Reconciliation Process of the Commission for Reception, Truth and Reconciliation”, UNDP, April 2004, pp77-78 for a case study on a female deponent who had been the treasurer for a militia group.

⁷⁴ In practice many cases of such crimes committed during 1999 had not resulted in an indictment at the time of the Serious Crimes Unit’s closure in 2005. Serious crimes committed before 1999 were not investigated at all.

⁷⁵ *Chega!* Part 9: Community Reconciliation, Table 3, p29; in a further 32 cases CRP hearings were adjourned and never completed: some of these adjournments may have been due to the discovery of evidence indicating a serious crime.

⁷⁶ Indeed this assumption seems to have been made by the author of the CAVR’s draft policy on children: The Commission for Reception, Truth and Reconciliation and Children: Policy procedures and processes, draft dated 12 September 2002.

⁷⁷ UNTAET Regulation 2001/25, s 45.1

immunity but the desire to reconcile with the community. Accordingly, the most important question for child participation related not to the child's legal culpability but to whether or not the community considered the child responsible and thus continued to bear resentment against him or her. Since CRP hearings did not involve a finding of criminal responsibility, and indeed could be held in respect of non-criminal 'harmful acts', there was no legal reason to prevent participation by those treated as minors by the law.

CAVR regulations permitted the community reconciliation process to give priority to acts committed during 1999,⁷⁸ and in fact, the great majority of cases dealt with concerned acts from that year.⁷⁹ CRPs began with a pilot in August 2002,⁸⁰ only three years after violence ended. As a result it was possible that the process would attract not only adult deponents who had committed minor crimes or harmful acts as children, but also some deponents who may still have been children at the time of their CRP. Given the participation of children as young as 10 in the pro-autonomy militias,⁸¹ it was assumed in some quarters that children would indeed participate in this process.⁸²

The CAVR's draft policy on children had attempted to find a balance between the potential desire of children to participate in CRPs and the need to protect them, based on the principle of the best interest of the child. Thus it proposed that all child applicants first be assessed independently to determine whether participation was in their best interest. It recommended providing special assistance to those permitted to participate, including access to legal counsel, accompaniment by a person of their choice and a requirement for the CRP panel to bear their age in mind when determining reconciliation measures.⁸³ However, as this policy was never finalized or adopted, it appears to have had no impact on the conduct of CRPs.

Similarly, a manual for conducting CRPs was developed but made no reference to children or any age-related requirements for participation. Staff involved in managing the CRP process say that no special efforts were undertaken either to encourage children to participate or to screen their involvement. The result was that no children are known to have participated as deponents in the CRP process.⁸⁴ If some did participate, they were not specifically noted as children and did not receive any special treatment.⁸⁵

⁷⁸ UNTAET Regulation 2001/10, s 22.3.

⁷⁹ Piers Pigou, "The Community Reconciliation Process of the Commission for Reception, Truth and Reconciliation", UNDP, April 2004, p79.

⁸⁰ Interview with Ben Larke, 22 January 2009. Following the pilot programme further CRPs began in earnest in September 2002.

⁸¹ UNICEF, "East Timorese Children Involved in Armed Conflict: Case Studies Report October 2000 – February 2001," 2001, p18.

⁸² See for example the UN Secretary-General's 2001 Report on Children in Armed Conflict, A/56/342, S/2001/852, 7 September 2001, para. 68, which expressed the view that "[c]hildren should also benefit from the process of community reconciliation."

⁸³ The Commission for Reception, Truth and Reconciliation and Children: Policy procedures and processes, draft dated 12 September 2002.

⁸⁴ Interview with Ben Larke, 22 January 2009; Interview with Jaimito da Costa, 23 January 2009.

⁸⁵ According to former CAVR CRP staff, no deponents were recorded as being under 18 years of age at the time of their participation in the CRP process. However they acknowledge that not all deponents provided their age. Interview with Jaimito da Costa, 23 January 2009.

It is not clear why children, especially ex-militia members, did not seek to participate in the CRPs. One former CAVR adviser suggested that communities may not have blamed children for their actions, thus eliminating the need for reconciliation.⁸⁶ Another possibility is that, just as children did not put themselves forward for statement-taking, nor did they view a formal public activity such as the CRP as something directed at them. This view may have been supported by the use of traditional ceremonies in CRPs, since such ceremonies would not characteristically involve children.

Similarly, it appears that no particular mechanism was in place to identify adult deponents who wanted to seek reconciliation in respect of acts committed during their childhood. Yet it is clear that CRPs processed some cases of this kind. The CAVR's final report cites evidence from at least one deponent who participated in a CRP regarding acts he committed as a juvenile and another who sought to participate.⁸⁷ However CRP staff do not recall any specific procedures being used in these cases, such as efforts to ensure that the deponent's age at the time of the harmful conduct was taken into account when determining a reconciliation measure.⁸⁸

Of course, it was not only deponents who participated in CRPs; victims and communities were also invited to participate.⁸⁹ While many victims were frustrated by the limited role they were accorded,⁹⁰ there is no doubt that for some people the hearings were their first opportunity to speak publicly about their experiences and to receive public recognition of their suffering.⁹¹ There is some evidence that some children might have been invited as victims or community members.⁹² However no particular effort was made to include children and it is likely that few attended.⁹³ Even when children attended the hearings they rarely participated actively as victims or community members by asking questions of deponents.⁹⁴ This accords with the role traditionally accorded Timorese children, who would usually be spoken for by their adult male family members. In the absence of mechanisms to encourage appropriate participation of children this traditional role prevailed.

⁸⁶ Interview with Ben Larke, 22 January 2009.

⁸⁷ *Chega!* Part 7.8 "Violation of the Rights of the Child", paras 104 and 108.

⁸⁸ Interview with Ben Larke, 22 January 2009; Interview with Jaimito da Costa, 23 January 2009.

⁸⁹ Another important role in the CRPs was that of panel member. In some panels "youth" representatives were included, however these were never people under the age of 18 and in most cases were significantly older: Interview with Ben Larke, 11 March 2009.

⁹⁰ Lia Kent, "Unfulfilled Expectations: Community Views on CAVR's Community Reconciliation Process", JSMP Report, August 2004, pp20-35.

⁹¹ Spencer Zifcak, "Restorative Justice in East Timor: An Evaluation of the Community Reconciliation Process of the CAVR", The Asia Foundation, undated, p20.

⁹² For example, Z (then aged 14) says she received an invitation to a CRP hearing in Liquica, but was not able to attend. Interview with Z, 20 January 2009.

⁹³ Interviews with Ben Larke, November 2007 and 22 January 2009; Interview with Jaimito da Costa, 23 January 2009.

⁹⁴ Interviews with Ben Larke, November 2007 and 22 January 2009; Interview with Jaimito da Costa, 23 January 2009.

Juvenile Justice and the Serious Crimes Process: The case of X

Although no children are known to have participated in the CAVR's alternative justice mechanism, in one case a juvenile was tried in court for a serious crime. "X" was a member of the Sakunar militia. At the age of 14 years, in September 1999, he participated in the massacre of around 50 men,⁹⁵ using a machete to kill three men.

After his arrest X was held in pre-trial detention for almost 11 months before being released pending trial. Initial charges of crimes against humanity (extermination and inhumane acts) were reduced to a charge of murder⁹⁶ under a plea bargain. By this time X was 17 years old. In sentencing the Special Panel took into account X's age, stating that he was a tool in the hands of those most responsible for the violence. He was sentenced to 12 months' imprisonment, but the time served was deducted, and the remaining period of imprisonment was suspended.

At preliminary and trial hearings the court showed sensitivity to X's age, but the pre-trial process contained a litany of procedural violations that may have rendered the process illegal.⁹⁷ These were largely symptomatic of significant flaws in the serious crimes process, but they are particularly shocking in a case involving a minor. X's status as a minor was not discussed during the hearings that ordered and reviewed his pre-trial detention. Nor does his age appear to have been taken into account by the police who accepted a confession from him in the absence of a lawyer or family member. X was kept in pre-trial detention together with adult prisoners, in contravention of international standards and applicable domestic law. While separate juvenile facilities did not exist, this in itself should have been taken into account by the court in determining whether pre-trial detention was appropriate.

X's case also raised the fundamental question of whether juveniles involved in mass violence should be prosecuted at all. Practice elsewhere shows a growing consensus that prosecutions for international crimes should not be brought in cases where the suspect was under 18 at the time of the crime. This confirms the principle that children associated with armed forces and groups should be treated foremost as victims,⁹⁸ as well as the policy that international prosecutions should target those most responsible.⁹⁹ The Rome Statute expressly excludes prosecution of those who were under age 18 at the time the crime was committed.¹⁰⁰ Although the Statute of the Special Court for Sierra Leone permits the prosecution of children aged 15 or over at the time of the crime,¹⁰¹ the Special Court's Prosecutor has declared that children were not among those who "bear the greatest responsibility" for crimes and that

⁹⁵ The massacre took place near Passabe, in Oecusse District. The CAVR report puts the number of men killed at "more than 47": *Chega!* Chapter 7.2: Unlawful Killings and Enforced Disappearances", para. 861.

⁹⁶ Article 338 of the Indonesian Penal Code is given the English title of "manslaughter" but refers to intentional, unpremeditated killing. The indictment in X's case relies on article 338 but uses the term "murder".

⁹⁷ The flaws in pre-trial proceedings in X's case are set out in substantially more detail in JSMP, "The Case of X: A Child Prosecuted for Crimes Against Humanity", January 2005, available at: www.jsmp.minihub.org.

⁹⁸ Paris principles and guidelines on children associated with armed forces or armed groups, February 2007, available at: <http://www.ocrc.org>.

⁹⁹ See e.g. International Criminal Court, "Paper on some policy issues before the Office of the Prosecutor", September 2003, p7 and more generally, NPWJ, "Prosecuting Violations of International Criminal Law: Who should be tried?", NPWJ International Criminal Justice Policy Series No. 1, November 2004, available online at http://www.npwj.org/_resources/_documents/Uploaded-Files/File/NPWJProsecutorialPolicy4thASP.pdf

¹⁰⁰ Rome Statute, article 26.

¹⁰¹ Statute of the Special Court for Sierra Leone, article 7(1).

consequently he would not indict alleged child perpetrators.¹⁰² In fact, X appears to have been the first, and perhaps the only, child ever to be charged with international crimes before an international or hybrid tribunal.

Meanwhile, the determination of the Serious Crimes Unit to prosecute young suspects was not matched by a willingness to pursue those responsible for recruiting children into militias. This may have reflected a belief that child recruitment was not widespread enough to merit investigation, or that it was not as serious as other crimes. Most likely, however, it was a consequence of the failure of the Serious Crimes Unit to include war crimes in any of its indictments. Instead the SCU focused on crimes against humanity and some domestic crimes.

4.3 The Children's Public Hearing

In contrast to general lack of children's participation in the experiences described above, in one isolated case the CAVR intentionally sought the involvement of children. This was the case of the children's public hearing. In total the CAVR held 60 public hearings: a general victims' hearing in each of 52 sub-districts and an additional 8 national thematic hearings.¹⁰³ The final national hearing, held in March 2004, had the theme of Children and the Conflict. It is of particular interest because of its creative attempts to actively involve children and because it was the only public hearing in which a child testified.

4.3.1 Efforts to involve children

The children's hearing demonstrated that when efforts were made children could be engaged in the CAVR's work in a variety of ways. Perhaps drawing on experiences from other truth commissions,¹⁰⁴ the children's hearing adopted procedures designed to enable children to express their experiences without risking traumatising. For example, a nationwide art competition was arranged for which children were asked to draw pictures based on their experience of the conflict and their hopes for the future.¹⁰⁵ Their contributions were displayed at the public hearing, and the winner was brought to attend the public hearing in Dili.¹⁰⁶ Videotaped messages to children in Timor-Leste from children still residing in West Timor were shown at the hearing, and a children's band performed. At the conclusion of the hearing a number of children read out their aspirations for Timor-Leste and their requests of the nation's leaders. As the Commission's final report explains, the hearing was intended "not only [to highlight] the tragic plight of child victims, but also [to convey] the resilience and energy of the country's younger generation."¹⁰⁷

This was the CAVR's most explicit engagement with young people at any time during its work. The hearing demonstrated in practice what the Commission's draft policy had

¹⁰² Special Court for Sierra Leone, Press Release, 2 November 2002.

¹⁰³ *Chega!* Part 10: Acolhimento and Victim Support, paras 86 and 120.

¹⁰⁴ Former CAVR staff interviewed do not recall having used previous truth commissions as a model, but it is notable that similar methods were used by the South African Truth and Reconciliation Commission: *Truth and Reconciliation Commission of South Africa Report*, Volume 4, Chapter 9.

¹⁰⁵ Interview with Kieran Dwyer, 24 March 2009.

¹⁰⁶ Interview with Kieran Dwyer, 2 December 2007

¹⁰⁷ *Chega!* Part 10: Acolhimento and Victim Support, para.115.

suggested in theory: that involving children in the CAVR's work need not re-traumatize children or raise questions about the sufficiency of psychological support, since engagement did not necessarily have to focus on traumatic past experiences. While human rights violations were the primary focus of the CAVR's truth-seeking mandate, it is notable that the Commission's final report goes well beyond a discussion of such violations, including chapters on the history of the conflict, the Indonesian regime of occupation and the structure and strategy of Timorese resistance. Engagement with children need not have focused on human rights violations and could have served functions other than truth-seeking: giving children a voice, supporting them or providing them an opportunity to be part of an important national process. More than anything the children's hearing showed that greater efforts to engage children could have been made throughout the Commission's work. Specifically, the kinds of activities used in the children's hearing might have been applied in each sub-district during the Commission's field work. The Commission could also have considered a wider range of innovative approaches to indirectly involve children in hearings. Indeed it is surprising that the CAVR did not adopt more of the approaches used, for example, in South Africa, such as musical and dramatic performances and the reading of submissions by children.¹⁰⁸

4.3.2 The testimony of a child victim

Throughout the course of the CAVR's first 59 public hearings no children had been asked to testify. Children were overlooked not by policy but because hearing participants were identified almost exclusively through the statement-taking process,¹⁰⁹ and children and young people made up only a tiny proportion of statement givers.

However, one child was invited to testify at the final hearing on Children and the Conflict. Z,¹¹⁰ who had been 9 years old when her father was killed in the massacre at the Liquica churchyard in 1999, was 14 when she testified before the CAVR in March 2004. She spoke about her father's death, but mid-way through her testimony she was unable to continue. Now 18 years old, Z says that testifying at the public hearing was a positive experience for her, and she believes other children should also have had this opportunity.¹¹¹ However her mother is more cautious, explaining that while the experience of testifying was in some respects positive, Z was re-traumatized and depressed afterwards.

Z received only a limited amount of targeted support around the public hearing. CAVR staff took her statement in her home but in the absence of her family.¹¹² This was the first time Z had told her story. Later, she received three days of pre-hearing preparation in Dili, but no member of her family accompanied her.¹¹³ The preparation included sessions with

¹⁰⁸ South African Truth and Reconciliation Commission Final Report, Volume 4, Chapter 9: "Special Hearing: Children and Youth", paras 9, 10.

¹⁰⁹ The obvious exception is in relation to those who spoke at the internal conflict hearing – these were the political leaders.

¹¹⁰ Based on UNICEF Media Guidelines the authors chose not to reveal her identity, although it was revealed at the time of the public hearing, and the CAVR and STP-CAVR subsequently continued to publish her name.

¹¹¹ Interview with Z, 20 January 2009.

¹¹² Interview with Z, 20 January 2009; Interview with Y, 20 January 2009.

¹¹³ Interview with Z, 20 January 2009; Interview with Y, 20 January 2009.

counsellors from the women's organization Fokupers, but these were large group sessions, and Z was the only child.¹¹⁴ Because time was short the focus was on encouraging participants to speak at the hearing and providing practical guidelines, such as time limits, rather than on psychological support.¹¹⁵ Z's mother chose not to attend the public hearing out of concern that her presence would intimidate or constrain her daughter.¹¹⁶ The presence of another family member or a friend during the preparatory session and the hearing itself does not seem to have been considered by CAVR staff as a useful support mechanism. During the public hearing a member of the CAVR victim support unit sat with Z and encouraged her when speaking became difficult. However after the hearing no further contact was made;¹¹⁷ no follow-up visits were made to assess her psychological well-being or provide ongoing support. Nor were CAVR materials or information on the outcomes from the CAVR process provided.¹¹⁸ Z cited this lack of follow-up as the most disappointing aspect of her engagement with the CAVR.¹¹⁹

Throughout this process it is not clear whether any reference was made to the CAVR's draft policy on children, which noted the risks of allowing children to testify. The policy stated that it would be preferable for child rights organizations to speak on behalf of children and for children to participate in other ways. However it did allow that "in exceptional circumstances where a child's testimony is seen as particularly important or relevant to another individual's account, the evidence will be heard in a closed hearing and the child's identity protected." It also provided for assessments to ensure that giving evidence was in the child's best interest, accompaniment throughout the process by a person chosen by the child, briefings before and after the hearings, and counselling if necessary.¹²⁰ In addition, the CAVR's founding law expressly allowed for special measures for children testifying in public hearings.¹²¹ It also provided the option for the Commission to hold closed hearings or restrict public access to hearings to avoid harm to any person.¹²²

It seems doubtful that holding a closed hearing would have significantly reduced the impact of the hearing on Z. According to her mother it was the experience of retelling her story, beginning with the taking of her statement, rather than the public nature of the retelling, that caused her to re-live her trauma. It is also clear that Z's safety was not threatened as a result of her testimony – indeed she noted having received support from her community in response to the hearing. However, it seems possible that Z would have benefited from some of the other measures stipulated in the children's policy, especially better preparation before the hearing and ongoing attention afterwards. Ultimately it is impossible to say whether Z's

¹¹⁴ Interview with Santana Amaral Fernandes and Licinha Gonsalves, (Fokupers), 5 February 2009.

¹¹⁵ Interview with Santana Amaral Fernandes and Licinha Gonsalves, (Fokupers) 5 February 2009.

¹¹⁶ Interview with Y, 20 January 2009.

¹¹⁷ Interview with Z, 20 January 2009; Interview with Y, 20 January 2009. Z did subsequently receive an invitation to attend a Community Reconciliation Procedure in Liquica, but was not able to attend.

¹¹⁸ Nearly four years after the public hearing, Z had not seen the video of the children's hearing or the children's hearing booklet. She had accessed the CAVR's Final Report only when it was shown to her by her mother, who works in a human rights NGO.

¹¹⁹ Interview with Z, 20 January 2009.

¹²⁰ The Commission for Reception, Truth and Reconciliation and Children: Policy procedures and processes, draft dated 12 September 2002.

¹²¹ UNTAET Regulation 2001/10 s 16.4.

¹²² UNTAET Regulation 2001/10, s 16.2.

testimony caused her to suffer further trauma; she may have suffered from ongoing difficulties whether or not she participated. It is even possible that her participation reduced her suffering. Yet it is clear that more concerted attempts could have been made to prevent any such trauma.

To some extent these problems reflected the limitations of the CAVR's victim support programme more generally. Responsibility for it lay with the Commission's Reception and Victim Support Unit, which was responsible not only for assisting victims but also for accompanying and monitoring displaced persons returning from West Timor and acting as community liaisons during district work.¹²³ A team of 32 staff – including 2 field staff per district and 6 national staff – carried out this work. It is clear that even without the added responsibilities of reception and community liaison work, a team of this size could not hope to provide meaningful ongoing support to every victim in need encountered by the CAVR. This challenge was compounded by the complete lack of social workers and counsellors in Timor-Leste. Thus the CAVR had no staff who were professional mental health workers; victim support staff were merely carefully selected individuals who were then given some training.

The CAVR itself recognized the limitations on what it was able to achieve through its victim support programme. After reviewing its work to date in early 2003 it decided that “more intensive support” to victims was necessary.¹²⁴ In response ‘healing workshops’ were offered to the most ‘vulnerable’¹²⁵ victims. Participants were selected only from statement givers, and thus no children were invited, although it happened that some young children accompanied their mothers who participated in such workshops.¹²⁶ It appears that no thought was given to organizing special healing workshops targeted at children.¹²⁷

It is clear that human resource limitations largely outside the CAVR's control severely restricted the victim support it could provide. However when efforts were made to address this problem by focusing on the most vulnerable of victims, no thought was given to including children in this category. Thus, while it is understandable that CAVR staff were not able to provide ideal support to child victims such as Z, it is probable that victims could have received somewhat better support if sufficient attention had been given to the problem.

5. DOCUMENTING AND RESPONDING TO HUMAN RIGHTS VIOLATIONS AGAINST CHILDREN

CAVR's founding law gave the Commission wide-ranging power to research, investigate and report on human rights violations committed during the conflict. The law required the Commission to present a final report summarizing its findings and recommendations for how to “prevent the repetition of human rights violations and respond to the needs of victims of

¹²³ Interview with Rosario Salsinha Araujo, 24 March 2009.

¹²⁴ *Chega!*, Part 10: Acolhimento and Victim Support, para.137; Interview with Kieran Dwyer, 24 March 2009.

¹²⁵ Criteria for participation included the vulnerability of the victim and the judgment of district Commission staff that he or she would benefit from the process.

¹²⁶ Interview with Galuh Wandita, 2 February 2009.

¹²⁷ However it is interesting that one all-women healing workshop was held: *Chega!* Part 10: Acolhimento and Victim Support, para.142.

human rights violations.”¹²⁸ ‘Human rights violation’ was defined as violations of international human rights standards, violations of international humanitarian law and criminal acts, committed within the context of the political conflicts in East Timor between 25 April 1974 and 25 October 1999.¹²⁹ According to the definition in the CAVR law the Commission must inquire into violations of a broad range of human rights standards.¹³⁰ The Convention of the Rights of the Child was named as one of these international human rights standards but otherwise the law made no specific mention of the need to document and make recommendations in response to violations against children. However, the Commission made a concerted effort to do so.

5.1 Documenting the Impact of the Conflict on Children

Several early decisions by the CAVR commissioners had a significant impact on how the Commission undertook its truth-telling work. One such decision was the agreement, in January 2002, on the Commission’s principles, which stated that the CAVR would “place victims of human rights violations at the centre of its work.”¹³¹ Another was the identification of priority areas for research, which would later largely determine the subject matter of public hearings and final report chapters. One priority area identified was children’s rights.¹³²

5.1.1 Children and the final report

The CAVR final report, “Chega!” contains several chapters detailing the Commission’s work, some of which provide a historical overview of the conflict, including the institutions of occupation and resistance. However the bulk of the report consists of chapters documenting human rights violations investigated by the Commission, which are based mostly on victim testimony.¹³³ While these chapters have been criticized as lacking narrative and analysis of patterns of violations,¹³⁴ they do serve one important purpose: giving voice to the victims who told their stories to the Commission. In this way the text responds to the Commission’s stated intention of focusing its work on the victims.

One chapter is dedicated entirely to violations of the rights of the child. The report explains that the decision to dedicate a whole chapter to children was taken because:¹³⁵

- Violations against children are particularly reprehensible and are universally condemned;
- Children are a highly vulnerable group, particularly during conflict, because of their relative weakness and because opposing groups seek to gain their loyalty to secure their future support as adults;

¹²⁸ UNTAET Regulation 2001/10, s 21.2.

¹²⁹ UNTAET Regulation 2001/10, s 1.3.

¹³⁰ *Chega!*, Part 2: The mandate of the Commission, para.15.

¹³¹ *Chega!* Part 1: Introduction, para.55.

¹³² *Chega!* Part 2: The Mandate of the Commission, para.16.

¹³³ The main exceptions are the chapters on self-determination and economic, social and cultural rights.

¹³⁴ John Roosa, “How Does a Truth Commission Find out What the Truth Is? The Case of East Timor’s CAVR”, *Pacific Affairs*, Winter 2007/2008, vol. 80(4), 569, p573.

¹³⁵ *Chega!* Part 7, Chapter 7.8: Violation of the Rights of the Child, paras 6-13.

- Children suffered some violations that adults did not suffer – in part because, like women, children were treated as chattel;
- Children are granted special status by international and domestic law.

The material contained in the children’s chapter is based largely on focused research, statement-taking and interviews. It also used some information gleaned through public hearings, community profiles and CRP hearings. A research team was dedicated solely to collecting information on human rights violations committed against children and to clarifying the role of children during the conflict. The team based its research in part on information about children given to the CAVR through statement-taking, but it also conducted over 100 interviews with adults who had suffered violations as children.

Many truth-seeking activities did not seek out information on violations involving children, but data relating to the age of victims and perpetrators was often collected. Thus for example, forms used for statement-taking and community reconciliation processes include fields for the age or birth date of witnesses, perpetrators and victims. This meant that the data collected could later be used to identify violations involving children. Similarly, some interviews undertaken by other research teams, such as those directed at violations against women, would also have revealed some violations against children. Mechanisms not primarily directed at truth-seeking, such as the community reconciliation processes and community profiles, also served to collect data on violations against children, some of which was ultimately used in the children’s chapter. Community profiles provided a way of gathering information about entire communities rather than about individuals or families, and in many cases this included a discussion about the impact of the conflict on children.

The children’s chapter itself is structured around various types of violations committed against children: underage recruitment and participation in the conflict, detention and its consequences, killings, sexual violence and abductions or transfers to Indonesia. Like other chapters on violations, it includes an overview of the relevant standards under international human rights and humanitarian law and domestic law, in this case Indonesia and Portugal. In the chapter’s conclusion the Commission sets out its findings. Most of these relate to the existence of patterns of violations, the permissibility or illegality of certain activities, and the attribution of responsibility.

Other chapters covering violations also mention incidents involving children and the often-disproportionate effect of the conflict on them. In some of these chapters children’s experiences are highlighted in a special section or case study.¹³⁶ In this way the report documents the various ways in which children were exposed to serious human rights violations, particularly as victims and as witnesses to violence committed against their families.

¹³⁶ For example, in Chapter 7.2 Unlawful Killings and Enforced Disappearances, see pp280-281 for the box entitled “Testimony of a child survivor” which tells the story of a nine year old girl whose family was killed by militia in 1999 (from a statement provided to Fokupers). See also in Chapter 7.3 Forced Displacement and Famine, the box on p28 entitled “A young woman’s perspective on life in a *base de apoio*” and Chapter 7.7 Sexual violence, paras 351-351 concerning the discrimination experienced by children born as a result of sexual violence.

Of particular interest is the chapter on economic and social rights. The CAVR was the first truth commission to dedicate a section of its final report to these types of violations.¹³⁷ This important step reflects the Commission's awareness of the nature of the damage inflicted by the conflict period. It seems likely that the systematic violation of economic and social rights during the period of occupation inflicted damage as significant as the harm from violations of civil and political rights – and likely to be much more intractable. An important example is violations relating to education. The report states that while the number of schools increased dramatically during the Indonesian occupation, the quality of education remained poor, and schools were used as a tool for indoctrination.¹³⁸

Overall, the CAVR final report presents a strong positive example of how a truth commission can document children's experience of human rights violations. It includes explanation of the relevant legal standards and detailed examples of children's experience of human rights violations as victims and witnesses. In doing so it covers both violations specific to children and those that affected both adults and children.

The CAVR and Children Transferred to Indonesia

The children's chapter dedicated a section to the abduction and transfer of Timorese children to Indonesia. Based on reports from the International Committee of the Red Cross and UNHCR as well as anecdotal testimonies, the CAVR estimated that several thousand children were moved to Indonesia during the conflict.¹³⁹

Children were removed from their families throughout the conflict in many ways, but mostly without the consent of the family or the child. In some cases individual soldiers took children with them when they returned to Indonesia. In other cases children were removed systematically at the instigation of high-level government officials, including the Indonesian President, or were taken by charity and religious organizations or lured to Indonesia with the promise of 'education programmes'. While the CAVR did not find sufficient evidence to determine that the large-scale removal of children was an official policy, it concluded that some of the specific programmes used to remove children "had underlying political and security motivations" including "encouraging a commitment to Indonesian integration and removing possible trouble-makers from Timor-Leste."¹⁴⁰ In retrospect, it appears that children were used to further Indonesia's aspirations for political, religious and cultural control over Timorese children.

¹³⁷ Significant advances in this field had been made by some previous truth commissions, including the Sierra Leone TRC which included a chapter on mineral resources, and the Peruvian TRC which reported on violations committed against indigenous people.

¹³⁸ *Chega!*, Chapter 7.9: Economic and Social Rights, paras 114-128.

¹³⁹ *Chega!* Chapter 7.8: Violations of the Rights of the Child para. 343.

¹⁴⁰ *Chega!* Chapter 7.8: Violations of the Rights of the Child para. 439.

The treatment of the separated children varied significantly, ranging from good care and quality education to exploitation and sexual abuse. However, even where transfers had a humanitarian motive or parental consent, children were not supported in maintaining contact with their parents in Timor-Leste, and most lost all contact with their families. Once in Indonesia, it was common practice to give the children Indonesian names and teach them the Indonesian language and Muslim religion.

The illegal transfer of the Timorese children to Indonesia involved violations of many child rights, such as the rights to identity (including nationality, name and family relations), cultural identity (including ethnic, religious, cultural and linguistic background), freedom of religion and protection from abuse and violence, as well as the right not to be separated from parents.

However, the CAVR report treated these violations differently from others. For example, they were not coded for inclusion in the human rights violation database and thus were not subject to statistical analysis. This may have been because most information on separated children was obtained through interviews, whereas only data from statements were coded.¹⁴¹ In addition, one former CAVR researcher suggested that many people did not see this phenomenon as a serious violation, particularly since some parents consented to send their child away or felt responsible and guilty for having accepted goods in exchange for their child.¹⁴² In addition, the issue of the children transferred to Indonesia was, and remains, politically sensitive.

Today, most of those transferred as children remain in Indonesia. Although most are now adults, they are entitled to know the truth about what happened and to have their identity and nationality established as well as to be reunited with their families if they wish. In December 2004 a Memorandum of Understanding (MOU) Concerning Cooperation to Protect the Rights of Separated and Refugee Children was signed by the Governments of Indonesia and Timor-Leste, facilitated by UNHCR. However it has not yet been implemented. One of the CAVR's final recommendations addresses the implementation and monitoring of the MOU to ensure the rights of the separated children.

To the extent that some criticisms can be made of the report's treatment of children, many of these criticisms apply to the report more generally:

- The chapters on human rights violations, including the chapter on violations of children's rights, focus heavily on the commission of the violations; most provide minimal discussion of efforts to uphold human rights or respond to violations. This reflects the CAVR's mandate, but it results in insufficient discussion of children as agents for positive change. Other chapters take a different approach, including those dealing with self-determination, the history of the conflict and the resistance. But

¹⁴¹ Interview with Hugo Fernandes, 22 January 2009; Online interview with Kieran Dwyer, 27 January 2009.

¹⁴² Email from Helene van Klinken, CAVR voluntary researcher, 17 March 2006.

although youth resistance organizations and the student movement are mentioned, these chapters pay little attention to children.

- The report provides little insight into the role of children as perpetrators of human rights violations. The children's chapter includes a short discussion of child participation in pro-integration militias in 1999, but this is based heavily on secondary sources and mostly focuses on the recruitment process. It provides only the briefest mention of the violence committed by children. The report would have benefited from a discussion of how children were used to perpetrate violence, as well as the impact and community perceptions of this phenomenon. This would have contributed usefully to current discussions about the role of Timorese children and young people in crime and unrest.
- The inclusion of a chapter on social and economic rights was a commendable advance, but the CAVR itself recognized its shortcomings. Most significantly, the Commission did not research the effects of the conflict and occupation on cultural rights, such as how the Indonesian occupation affected the practice and survival of animism and related traditional beliefs and customs, local languages and Timorese identity. These questions may have had particular bearing on the experiences of children growing up during the conflict period. In addition, the decision to research social and economic rights came after the truth-seeking mechanisms had been designed, so these techniques, such as interviews and statement-taking, were not used to research this area. The result is that the chapter on social and economic rights depends heavily on secondary sources, making minimal use of the CAVR's own data.¹⁴³
- The statistics generated through the CAVR's database of human rights violations are of questionable usefulness, including those concerning violations against children. The report notes the identification of 2,991 victims who were under age 18 at the time of suffering a violation,¹⁴⁴ and it points out that this reflects 3.4 per cent of the total number of victims reported to the CAVR. However, the victim's age was not provided in 73.3 per cent of the incidents reported.¹⁴⁵ The CAVR did not ask statement-providers for a more general assessment of the victim's age ("was the victim a child or an adult?"). The result is that the proportion of reported violations against children is not clear.

In any event the statistics suffer from more significant defects. One is that only the data on fatal violations was 'cleaned' to remove multiple reports of a single incident. Another is that the data were based on a sample that was not representative of the general population, and thus cannot speak to the number of violations overall or what proportion of these involved children.¹⁴⁶ It may also be that statistics generated on

¹⁴³ Of some 144 endnotes fewer than 25 give CAVR data as a source, and most of these relate to the right to food, already dealt with extensively in the chapter on displacement and famine.

¹⁴⁴ *Chega!* Art 7.8: Violation of the Rights of the Child, para.19.

¹⁴⁵ *Chega!* Art 7.8: Violation of the Rights of the Child, para.19. Of the cases in which the victim's age was known, 10.2% of violations were committed against children: *Chega!* Part 6: The Profile of Human Rights Violations in Timor-Leste, 1974 to 1999, para. 135.

¹⁴⁶ *Chega!* Part 6: The Profile of Human Rights Violations in Timor-Leste, 1974 to 1999, para. 98; Romesh Silva and Patrick Ball, "The Profile of Human Rights Violations in Timor-Leste, 1974-1999: A Report by the Benetech Human Rights Data Analysis Group to the Commission on Reception, Truth and Reconciliation of

victim age are even less representative than other data, because very few children gave statements. Violations committed in 1999 against young children would only have been reported to the CAVR by a third party,¹⁴⁷ whereas violations committed during earlier periods could have been reported by the victims themselves. This may have contributed to the results showing only a relatively small number of violations against children in 1999.¹⁴⁸ On the other hand memories from 1999 were fresher, and thus those testimonies were likely to be more precise. However, the report does not mention the possibility that these figures might have been influenced by the CAVR's approach to statement-taking.

- The Commission's failure to include children in statement taking also meant that it had access to less qualitative information about children's experiences in 1999, and the information it did have was almost exclusively second or third hand.¹⁴⁹ No doubt this forced the Commission to rely largely on secondary sources when discussing the participation of children in pro-integration militias.¹⁵⁰ It was difficult for the Commission to reach clear conclusions about the extent of this phenomenon, and the report's discussion of this subject is somewhat contradictory and confusing.¹⁵¹
- In general the violations chapters, including the children's chapter, contain minimal analysis of the impact of violations. This is most likely the result of the Commission's reliance on truth-seeking activities which tended to focus on the violations themselves, rather than their consequences.
- The report would have benefited from some discussion of what constitutes childhood and adulthood. The Commission's use of an international standard for adulthood (18 years)¹⁵² is understandable, but citing it alone without further discussion fails to acknowledge the importance of local customs about when a child becomes an adult.

Timor-Leste", 9 February 2006, available at www.hrdag.org/about/timor-leste.shtml, p.20; See also John Roosa, "How Does a Truth Commission Find out What the Truth Is?" footnote 134 above, p572.

¹⁴⁷ This would most frequently have occurred where family or community members reported violations they had witnessed against children. However, the CAVR also collected and coded information about violations in 1999 provided by the local women's NGO Fokupers, including some testimonies provided by children.

¹⁴⁸ *Chega!* Chapter 7.8: Violations of the Rights of the Child, graphs. Based on these results the Commission concluded that "the number of adult victims relative to child victims is larger in the latter part of the conflict": *Chega!* Part 6: The Profile of Human Rights Violations in Timor-Leste, 1974 to 1999, para. 99.

¹⁴⁹ Some valuable child testimonies were provided to the Commission by NGOs which had been documenting human rights violations. In particular the local women's NGO Fokupers shared the data it had collected from interviews with women and some children about the violence they suffered in 1999.

¹⁵⁰ Especially the UNICEF report, "East Timorese Children Involved in Armed Conflict: Case Studies Report October 2000 – February 2001", 2001.

¹⁵¹ Despite the limitations of its statistical data, the CAVR cited a figure of 6.2% of child recruitment cases being attributable to pro-autonomy militias and commented: "These figures do not suggest that children were targeted for recruitment into the militias. However, neither do they suggest that children were given sufficient protection from recruitment." No mention is made in this context of the fact that young children recruited to militias may not have been given an opportunity to provide statements to the CAVR, or that many of those involved in pro-integration activities remained as refugees in West Timor and thus had less opportunity to provide statements. (Only 90 statements were collected in West Timor, well below the Commission's target of 272 or 1% of the refugee community there: *Chega!* Part 10: Acolhimento and Victim Support, para. 52). These and other factors (such as the possible reluctance of pro-integration returnees to participate in CAVR activities) may all have been mentioned as explanations for why the CAVR's data is apparently at odds with the information cited from UNICEF, Yayasan HAK and other sources which referred to high levels of child recruitment by pro-integration militias: see *Chega!* Chapter 7.8: Violations of the Rights of the Child paras 99-102.

¹⁵² *Chega!* Chapter 7.8: Violations of the Rights of the Child para. 192 and para. 5.

Despite these points, it remains significant that the CAVR comprehensively documented violations of children's rights despite time and resource limitations and without an explicit legislative requirement to address the situation of children. This in itself was a notable achievement.

5.1.2 Children in the public hearings

The CAVR's final report was not the Commission's only documentation of the experiences of children during the conflict. Victims' hearings provided another opportunity. Fifty two sub-district victims' hearings took place, but it is not clear how many of them involved speakers who had suffered violations as children. The main purpose of the Commission's thematic hearing on children in March 2004 was to share the results from the truth-seeking process on violations against children with the public through emblematic testimonies from each period of the conflict.¹⁵³ In addition to the testimony provided by the child 'Z', testimonies were presented by three expert witnesses and ten adults who had suffered violations as children or spoke about family members.¹⁵⁴

5.2 CAVR Recommendations Relating to Children

5.2.1 Creation and content of the recommendations

The development of the CAVR's recommendations was a deliberately consultative process. Six stakeholder workshops were held, each focusing on a specific topic.¹⁵⁵ The Commission also referred to the views of those who had participated in the CAVR's work in various ways, such as through statement-taking and public hearings. During this process the Commission actively sought input on the creation of recommendations relevant to children. One of the stakeholder workshops focused specifically on children,¹⁵⁶ with participation by UNICEF and international NGOs working with children.¹⁵⁷ Many of the suggestions made by statement-givers about appropriate recommendations also touched on policies directed at children.¹⁵⁸ This process might have been strengthened further had avenues been opened for children to provide input directly. The children's public hearing was the only forum in which children had an opportunity to provide input on recommendations, and only for a limited number.¹⁵⁹ Thus developing the recommendations suffered from the same lack of child participation as other parts of the CAVR's work.

Nonetheless, the recommendations are strong. They come from a strong human rights perspective and cover a wide range of important subjects. Although Timorese political

¹⁵³ Interview with Kieran Dwyer, 2 December 2007

¹⁵⁴ A list of participants from the public hearing on children and the conflict is included in *Chega!* Annex 4: Acknowledgments, p. 7. The testimony of all but one of the witnesses is summarized in the booklet *Timor-Leste Children and the Conflict*, produced by the STP-CAVR.

¹⁵⁵ *Chega!* Chapter 1: Introduction, para.200.

¹⁵⁶ Rezumo Workshop Labarik iha Konfliktu (Summary of the Workshop on Children and the Conflict), 15 July 2004, CAVR Archive.

¹⁵⁷ Interview with Kieran Dwyer, 24 March 2009.

¹⁵⁸ Information provided by ICTJ based on research done in the CAVR human rights violations database by STP-CAVR.

¹⁵⁹ Interview with Kieran Dwyer, 24 March 2009.

leaders criticized the report after its submission for including “unrealistic and overly idealistic recommendations”, this criticism related to a small number of recommended reforms. In fact, the Commission struck a balance between recommendations that were feasible in the short term and relatively uncontroversial and recommendations that might not gain high-level support in the short term but are important as longer term objectives.

In addition to general recommendations on basic rights and freedoms, the CAVR’s final report also contains specific recommendations on children and youth. These include harmonization of national legislation with the CRC, public information campaigns on positive parenting, positive role models for girls and boys, allocation of resources to sporting infrastructure, reproductive health education, universal education, family reunions for separated children and special consideration for children who lost educational opportunities because of their clandestine work in the struggle for independence. Implementation of the 2004 MOU between Timor-Leste and Indonesia on separated children is recommended, as is incorporation of the CAVR’s findings into school curricula.¹⁶⁰

The CAVR also called for a programme of reparations targeting the most vulnerable victims of the conflicts, which includes certain children. The Commission recommended that child victims sufficiently vulnerable to receive assistance would include those suffering from disabilities or psychological damage due to gross human rights violations, those whose parents were killed or disappeared, and those born out of sexual violence whose mother is single.¹⁶¹ The Commission also recommended support for single mothers and scholarships for their children.¹⁶²

5.2.2 Implementation to date

Since ratifying the CRC in 2003 the Government of Timor-Leste has placed child rights high on its agenda. In most cases it is not clear whether government initiatives have been influenced by the CAVR’s recommendations; it appears that recommendations were influenced by efforts underway in order to reinforce positive processes that were already taking place.

Two initiatives are highlights of implementation efforts: one to establish a National Commission for Children with a mandate to support implementation of the CRC and monitor progress, and one to develop a Children’s Code. The Government is also prioritizing the development of new laws on children addressing juvenile justice, adoption and children in institutional care. A law on basic education was passed in late 2008 providing for nine years of free education for all children. A nationwide HIV/AIDS campaign was also carried out in 2008 that included education on reproductive health. In line with the spirit of the CAVR’s recommendations, the Government contributed to a study on child abuse and positive

¹⁶⁰ *Chega!*, Part 11: Recommendations, 3.7.3, 3.7.5, 7.4.2, 11.2.1-11.2.3.

¹⁶¹ *Chega!* Part 11: Recommendations, p41. According to the proposal only children who were 18 years of age or younger on 25 October 1999 would be eligible for reparations, however it is not clear what the rationale would be for such a cutoff and it has not been followed in more recent attempts to advocate for implementation of the CAVR’s recommendations on reparations. See “Concept Paper on a National Reparations Program for Timor-Leste: Prepared by the Working Group on Reparations1 for Parliamentary Committee A”, July 2008.

¹⁶² *Chega!*, Part 11: Recommendations, p43.

disciplinary measures¹⁶³ and developed a series of cartoons as role models for girls and boys. The characters, Marta and Atoy, have been used in various campaigns, including encouraging children to return to school in the aftermath of the political violence and warning them about being used for political purposes in the electoral campaign.

Other areas have seen less progress. The MOU between Timor-Leste and Indonesia on separated children has not yet been fully implemented. The Timorese Government has made efforts to solve outstanding cases of separated children, including having border meetings between children in West Timor and their parents in Timor-Leste. However, bilateral efforts have been scarce both due to the tsunami in Indonesia in 2004 and the civil unrest in Timor-Leste in 2006, as well as to overall weak commitment to the MOU, in particular from Indonesia.¹⁶⁴

The CAVR's findings have not yet been included in the school curricula, although efforts are now underway to bring this about (see below). Recommendations for a national programme of reparations for highly vulnerable victims have still not been addressed. Civil society groups, in collaboration with the STP-CAVR, Ombudsperson for Human Rights and Justice, UNMIT and ICTJ have begun talks with the government, including Parliament, on options for a reparations programme, but so far there has been little official interest.

Overall the picture is one of piecemeal implementation efforts, likely due more to pre-existing government priorities than to the CAVR recommendations. The advances made are admirable, but a holistic and systematic approach to implementing the CAVR recommendations is still lacking. This has resulted in a lack of progress on some of the most important and difficult or politically contentious recommendations, such as those relating to reparations and separated children. Efforts at initiating a systematic approach to implementation involving all sectors of government have so far been stalled by a lack of political will around the most sensitive recommendations, particularly those relating to prosecutions. A draft resolution calling for coherent implementation of the CAVR recommendations was proposed by Parliamentary Standing Committee A in June 2008.¹⁶⁵ Debate on the resolution was repeatedly postponed in response to concerns among key Timorese leaders about the resolution's reference to prosecutions. Finally, a toned-down version of the resolution which omitted references to prosecutions was adopted on 14 December 2009.¹⁶⁶ The resolution required a Parliamentary Committee to propose concrete measures for the implementation of the CAVR recommendations, including the establishment of an institution for this purpose, within three months. It remains to be seen what progress

¹⁶³ "Speak Nicely To Me!: A Study on Practices and Attitudes about Discipline of Children in Timor-Leste", UNICEF, 2006.

¹⁶⁴ Email from former UNICEF Consultant Sandra Thompson, Social Work Mentor for the Division of Social Services, then Secretariat for Labour and Social Solidarity (currently the Ministry of Social Solidarity (MSS)), 4 June 2009.

¹⁶⁵ Draft Resolution on the Implementation of the Recommendations of the Commission for Reception, Truth and Reconciliation; National Parliament Press Statement, "Committee A Unanimously Approves Parliamentary Resolution on the Implementation of the Recommendations of the Commission for Reception, Truth and Reconciliation (CAVR "Chega!" Report)", 5 June 2008.

¹⁶⁶ Parliamentary Resolution No 34/II, 14 December 2009, Implementation of the Recommendations of the Commission for Reception, Truth and Reconciliation and the Commission of Truth and Friendship.

might then be made on achieving the political support necessary for systematic implementation to begin.

6. COMMUNICATING THE CAVR'S MESSAGE TO CHILDREN

6.1 Outreach to Children

During the CAVR's peak operational period it undertook coordinated efforts to inform the Timorese people about its mandate and activities. Information was also shared on issues relevant to the Commission's work, such as reconciliation and refugee returns.

At the core of its outreach strategy were the Commission's decisions to undertake a community-based approach and to appoint regional commissioners across the country.¹⁶⁷ Outreach approaches included the use of television and radio, production of simple written materials and socialization sessions in villages where the Commission was carrying out its work. This ensured that the majority of commission activities occurred within communities, where they were accessible and visible. Overall this outreach strategy was one of the CAVR's notable successes. Despite the enormous challenge in spreading public information in Timor-Leste at that time,¹⁶⁸ the CAVR became one of the country's best-known institutions.

Children and young people were among those targeted and reached. CAVR's procedure manual, which explained operations for field activities, mentions children as a target in respect of some outreach activities. Youth were identified as a target group for the socialization sessions, including for disseminating information about the CRP process.¹⁶⁹ The manual also explained that students and teachers should be invited to attend the final information sessions at the conclusion of the CAVR's work in each sub-district.¹⁷⁰

It is clear that a number of CAVR activities reached children. CAVR district team reports show that children were frequently present at sub-district activities, including socialization meetings, community profiling sessions, CRP hearings and victims' hearings.¹⁷¹ In some cases as many as 10 to 20 per cent of participants were children, and at times more children were present than women. Even where children did not actively participate, they had an opportunity to watch and learn from the events.

However, the CAVR did not conduct any activities directed specifically at communicating with children, nor did it design outreach processes and materials with children in mind.¹⁷² Thus discussions and materials were not framed for a child audience, and they may have been

¹⁶⁷ Chega! Part 1: Introduction, paras 201-205.

¹⁶⁸ Timor-Leste is mountainous and its population is concentrated in rural areas, with low levels of literacy. Road and transport systems are poor. At the time of the CAVR's work, communications infrastructure had been destroyed.

¹⁶⁹ CAVR "Program procedures: Operational Manual", p. 25.

¹⁷⁰ CAVR "Program procedures: Operational Manual", p. 54.

¹⁷¹ Although some district teams collected data on child participation, it does not appear that this was required, and it was not done uniformly.

¹⁷² Interview with Kieran Dwyer, 24 March 2009.

less accessible to children as a result. The lack of child-friendly outreach materials also raises protection issues since some information and discussions might have been inappropriate for children.

6.2 Communicating the Findings and Recommendations to Children

The task of communicating a truth commission's findings and recommendations is difficult. Findings may be lengthy and complex, and often involve technical or legal issues. The affected populations may have limited education and literacy. These challenges are magnified with children. Not only are children likely to struggle with the report's language and concepts, but the inherently violent nature of the events described raises additional difficulties. These issues explain in part why the commission's recommendations and findings have so far been only minimally communicated to the Timorese population in general, and to children in particular.

6.2.1 The CAVR's role in communicating findings

The CAVR law required the Commission to produce a report summarizing its findings and setting out its recommendations¹⁷³ and to make the report "immediately available to the public",¹⁷⁴ but it did not set out a mechanism for doing so. Dissemination was not a task specifically assigned to the Commission, nor did the law specify the format of the report or any associated materials. It provided for the Commission's mandate to last for a period of up to three months after submission of the final report, but this time was to be used for organizing the Commission's archive and records.¹⁷⁵

The Commission produced a report of 2,500 pages in three languages, an executive summary containing key findings and recommendations, a film documenting the history of the conflict and shorter documents such as booklets documenting the public hearings. It was clear that there would be significant challenges in translating these products into meaningful community education and outreach. Many of the challenges applied not only to children but to Timorese communities more generally:

- The report is extremely long. This reduces its accessibility, particularly given low levels of literacy in Timor-Leste.
- The report was produced only in Portuguese, English and Indonesian. Literacy in English and Portuguese remain relatively low. Most of the population has some knowledge of Indonesian, but these skills are being lost as regular Indonesian usage has ceased. Use of the Tetun language has significantly developed, particularly in written form, and it is clearly dominant as the national language. However only the report's executive summary was produced in Tetun.
- The documentary film, *Dalan ba Dame* (Road to Peace), provides an excellent overview of the history of the conflict period reviewed by the CAVR. It is narrated in Tetun and is highly accessible, but a possible copyright dispute has limited its

¹⁷³ UNTAET Regulation 2001/10, s 21.2.

¹⁷⁴ UNTAET Regulation 2001/10, s 21.3.

¹⁷⁵ UNTAET Regulation 2001/10, s 43.2

distribution. Clear challenges were also presented in showing the film to remote communities that lack access to televisions and DVD players.

These problems all apply equally to children. Further challenges in bringing the report's message to children include:

- The report is not crafted for a child audience. It is complex and contains discussions of extreme violence, including sexual violence.
- Children who began their schooling since independence know little or no Indonesian. While Portuguese is now taught in schools, there are indications that children's literacy in Portuguese is low.¹⁷⁶ They are likely to be most literate in Tetun, but the full report was not produced in that language.
- The film *Dalan ba Dame* is principally directed at adults and contains significant violence. At two hours and twenty-five minutes in length the film also demands a substantial attention span.

The Commission was clearly cognizant of at least some of the challenges that lay ahead in communicating the report to a wide audience and recommended steps to enhance its accessibility. In particular, the Commission recommended translation of the report into Tetun followed by wide distribution "so that current and future generations have access to its contents".¹⁷⁷ It also recommended use of the final report and other materials produced by the CAVR in the development of educational curricula.¹⁷⁸ This was to be a joint responsibility of a "post-CAVR institution" and the Ministry of Education.¹⁷⁹ These initiatives would, however, be left up to government and other agencies after the Commission's closure; they had no guarantee of implementation.

6.2.2 The Work of the post-CAVR technical secretariat

After the CAVR was dissolved in December 2005, the country's then-president Xanana Gusmao issued a decree creating the Post-CAVR Technical Secretariat (STP-CAVR). The Secretariat's mandate was to preserve the CAVR building and its records and "support the President in distributing the final report."

Despite this apparently limited mandate the STP-CAVR has worked on a broader programme to disseminate information about the CAVR and its findings and recommendations. It has produced a 50-page guide summarizing the report's main findings and has continued the hearing booklet series initiated by the CAVR. It has begun working with a publishing company on a complete Indonesian version of the report. It has engaged in discussions with the Ministry of Education about the need to include the CAVR's findings and material in school curricula and has begun work to create an accessible audio version of the report for radio broadcast. The Secretariat staff have also engaged in outreach in some districts, including public meetings, workshops and showings of the film *Dalan ba Dame*. In late 2008,

¹⁷⁶ Interview with Lotte Renault, February 2009; Ken Vine, "Pilot Study of Learning Achievement in Grades 3 and 5 in Mathematics, Tetun and Portuguese", February 2007.

¹⁷⁷ *Chega!* Part 11: Recommendations, recommendation 7.4.1

¹⁷⁸ *Chega!* Part 11: Recommendations, recommendations 7.4.2, 3.7.3, 3.7.5.

¹⁷⁹ *Chega!* Part 11: Recommendations, recommendations 7.4.2.

the Secretariat opened an exhibition in the former CAVR building (a rehabilitated prison) presenting the history of the conflict and the work of the CAVR.

Yet the STP-CAVR has not significantly increased children's exposure to or understanding of the CAVR's key messages. This is largely because:

- The STP-CAVR has not conducted dissemination activities or produced documents targeted at children. Thus, while Secretariat staff have at times included children in its activities, there has not been recognition that tailored efforts are needed to substantively educate young people about the CAVR's work and findings. Secretariat staff have no special training in working with children and have not developed formats for engaging with them as part of outreach strategy. Child-friendly written materials have not yet been created. Nor have child-friendly versions of the documentary been produced.
- Efforts by the STP-CAVR to participate in developing national school curricula have not yet been fruitful, largely due to factors outside its control. The first national primary school curriculum was developed while the CAVR's work was underway, so the opportunity to collaborate was missed. The pre-secondary curriculum (grades 7-9) is currently being developed, and there are also plans to revise the primary school curriculum in light of the new basic education law. The STP-CAVR is being consulted in this process, but given its human resource limitations and a shortage of educational expertise, the success of this initiative is uncertain.
- In general the STP-CAVR's outreach programme has been insufficient to achieve significant popular understanding of the CAVR's work, findings and recommendations. Outreach activities have been haphazard, involving relatively minimal and superficial engagement with communities. This is in stark contrast to the CAVR's mode of operating, which involved spending three months in each sub-district. As a result, citizens in rural areas frequently complain that they have not heard anything about the result of the CAVR process.¹⁸⁰

The Secretariat has produced a 40-page Tetun language version of its *Plain Guide on the CAVR report*, a commendable start. But simpler materials are still needed. In collaboration with ICTJ the Secretariat has started to work on a 'popular' version of the CAVR report, combining cartoons and text which will be principally aimed at children. This is an extremely worthwhile project which should make the work of the CAVR and its findings accessible to current and future generations of Timorese children.

Recently the Secretariat has put significant resources into creating a public exhibition. However, while the exhibit includes a section discussing violations against children, it has no components created for a child audience. Although the Secretariat plans to encourage school groups to visit the exhibition, it recognizes the need to produce special materials to support their understanding of it. Some parts of the exhibit may be disturbing for children, and they will have to be bypassed or removed from view during school visits.

¹⁸⁰ Information provided by Manuela Leong Pereira, based on ICTJ field research with victims during 2008.

Efforts are clearly needed to produce materials appropriate for young people of various ages and levels of literacy. Given the shortage of locally relevant educational materials it seems likely that educators would welcome such materials. But care is needed to ensure that the needs of children and illiterate adults are not conflated and that materials designed for children are appropriate for their ages and literacy levels.

7. CONCLUSIONS

7.1 Strengths and Weaknesses

The Commission's most comprehensive achievements in relation to children lay in its documentation of children's experience of human rights violations. Despite the fact that violations against children were not explicitly mentioned in its mandate, the CAVR:

- Conducted detailed research on violations against children;
- Assessed children's experiences against the standards set out in the Convention on the Rights of the Child;
- Included a special chapter on violations against children in its final report and commented on children's experiences throughout the report;
- Included discussions on the impact of conflict and occupation on social and economic rights, including children's right to education;
- Held a successful public hearing dedicated to the experiences of children during the conflict.

In part based on this research, the Commission was able to formulate extensive recommendations relating to children. Unfortunately, many have not yet been implemented or have been implemented in an ad-hoc manner outside the context of the complete set of CAVR recommendations.

Children's participation in the CAVR's activities was more problematic. Despite early attempts to create a policy encouraging appropriate and safe child participation, efforts dwindled, and child participation appears to have been largely forgotten. As a result, very few children participated in most core CAVR activities. This was the case with statement-taking, CRPs, community profiles, and most of the public hearings. Without planning for children's participation, no special mechanisms were put in place to support them.

The one exception to this pattern was the children's public hearing. On the one hand it highlighted the risk of harmful consequences in the absence of appropriate staff training and sufficient support. On the other it showcased some of the positive ways in which children could engage with the Commission's work.

Attempts during and after the CAVR's mandate to communicate its work and results to children have been mixed. Children were among the recipients of information about the CAVR during its working period, even though neither the messages nor the communication methods were designed specifically to address them. However, most Timorese citizens, especially children, have not had access to the final report's message, findings and

recommendations. Information campaigns have generally been weak, and child-specific materials and strategies have not been developed.

In some areas the weaknesses noted in this paper reflected broader problems, such as the Commission's inability to provide comprehensive victim support or to lay the foundation for an effective post-CAVR communication strategy. However these problem areas had particular impact in relation to children. The CAVR tended to position children as subject matter and sometimes as recipients of information or instruction, but not as active providers of data, ideas or decisions. This reflects the classic view of children, which presents the perennial challenge to child participation. However it is surprising and disappointing from a human rights body, and specifically one that had consciously determined to focus its work on victims.

7.2 Impact

The CAVR's failure to engage children as active participants in its work had adverse consequences for the Commission's own work as well as for Timorese children and youth.

It is difficult to say with certainty that participation in statement-giving, public hearings, community profiles or other CAVR activities would have contributed to healing for young people. This depends on personal psychology and the mode of participation. However it is possible to say with some confidence that other benefits accrued to those who participated in CAVR activities. For example, deponents who completed CRPs reported improved circumstances in their communities as a result.¹⁸¹ According to the CAVR, participants in healing workshops reported satisfaction with this process; some said it had alleviated their suffering.¹⁸² More generally, participation in CAVR activities – including statement-giving and speaking at public hearings – was a way for victims to feel a sense of official recognition from the state.¹⁸³ Children and youth largely missed out on these benefits.

Perhaps more significantly still, the failure to engage with children on a significant scale meant that children felt no connection to the CAVR or its work and no ownership over the process. They are now less likely to be among those taking an interest in the Commission's findings or calling for implementation of the recommendations. By leaving children out of one of the significant institutional processes for nation-building – one that proposed a national identity built on human rights and historical understanding – a crucial opportunity may have been missed to ensure that young people are invested in that vision for Timor-Leste.

¹⁸¹ Piers Pigou, "The Community Reconciliation Process of the Commission for Reception, Truth and Reconciliation", Report for UNDP Timor-Leste, April 2004, p 81; Lia Kent, "Unfulfilled Expectations: Community Views on CAVR's Community Reconciliation Process", JSMP Report, August 2004, pp 11-13; Spencer Zifcak, "Restorative Justice in East Timor: An Evaluation of the Community Reconciliation Process Of the CAVR", The Asia Foundation, undated, p25.

¹⁸² *Chega!*, Part 10: Acolhimento and Victim Support, paras 162-164.

¹⁸³ Lia Kent, "Truth Seeking and Contested Memories in East Timor", Conference Paper, Asia Pacific Week, Australian National University, January 2008, p5. In fact, given some of the deficiencies which have been noted in the research value of the statement-taking process, this other function was arguably the most valuable aspect of the CAVR's statement-taking. See John Roosa, "How Does a Truth Commission Find Out What the Truth Is? The Case of East Timor's CAVR", *Pacific Affairs*, Vol. 8(4), Winter 2007/08, pp 571-574.

It is true that engaging children in truth commission activities is not without risks. Participation in CAVR's core activities could have exposed children to further trauma. Given the challenging circumstances in which the Commission operated it would not have been able to provide professional psychological support. Since CAVR staff did not receive training on interacting with children and were not supported by child protection specialists, it is perhaps fortunate that more young people did not volunteer to participate in Commission activities. Had the Commission engaged with children on a substantial scale through the mechanisms designed for adults, it could have had destructive consequences. However, it is regrettable that the Commission did not seek safe and suitable avenues for child participation.

The failure to engage more effectively with children was also detrimental to the CAVR's own work and findings. Just as it recognized the need to engage with women to get a fuller picture of how people were affected by the conflict, so too would children's voices have contributed to the picture painted by the CAVR's research. While the Commission spoke with many adults who had suffered violations as children, inputs from those who were still children could have contributed new understandings. They certainly would have enriched the Commission's understanding of violence against children during 1999 – since many victims of this violence were not yet adults at the time of the CAVR's work.

Despite these weaknesses, the CAVR managed significant achievements documenting children's experiences of human rights violations, largely through speaking with adults about their experiences as children. The Commission also made good recommendations directed at preventing future violations of children's rights. Unfortunately these efforts have achieved little impact. This has largely been the result of factors beyond the CAVR's control: The lack of political will among the Timorese leadership to debate the report and implement its recommendations has held back a systematic attempt to implement its recommendations. Instead some of the child-specific initiatives recommended by the Commission have been carried out in an ad-hoc manner by various government agencies, often with UNICEF support, but without any link to the CAVR report. Due to weak outreach efforts, the Commission's excellent research on children's experiences during the occupation has not been widely accessed. Children in particular know little about the Commission and less about its findings and recommendations. This represents a missed opportunity for the CAVR and STP-CAVR, and worse, an important oversight for Timor-Leste more broadly.

More than 60% of the country's population are under 18,¹⁸⁴ and communicating CAVR's message to them can make or break the relevance of the CAVR. If young people learn about its recommendations and demand their implementation, this goal may eventually be achieved. If not, the report risks being marginalized by other, apparently more immediate, concerns. Children are the future voters and leaders of Timor-Leste. They have the power to strengthen the country or destroy it through violence. While numerous recent projects have been initiated to strengthen civic participation by young people and to enhance their employment prospects, less attention has been given to ensuring that children and young people are taught their nation's history and its lessons. Such teaching would assist young citizens to responsibly participate in developing Timorese democracy; it would assist them in understanding those

¹⁸⁴ "At a glance: Timor-Leste", www.unicef.org/infobycountry/timorleste.html, updated 4 Feb 2010

who lived through the civil war and occupation and inform their views on what steps should be taken to prevent future violence.

Finally, CAVR had a chance, through its work, to encourage families, communities and the State to see children as valid participants in civic activities and to listen to their voices. In this respect the failure to engage with children was an opportunity missed to contribute incrementally to changing prevailing views about children in Timor-Leste.

7.3 Lessons Learned

Having considered the strengths and weaknesses of the CAVR's approach to children and its impact, it is useful to consider what factors lay behind these results. This will help future truth commissions to learn from the CAVR experience.

Active steps are needed to encourage child participation

In a number of cases CAVR activities were undertaken apparently without considering whether or not children would participate. While children were not prohibited from participating, neither did the Commission actively encourage them to do so. The result was that nearly all children stayed away. This was most clearly seen in statement-taking and CRPs. It is clear, then, that where child participation is desirable (taking into account the protection issues discussed below), it cannot be assumed that children will voluntarily participate. Social norms in Timor-Leste usually exclude children from active participation in community events and decision-making and dictate that parents are the natural spokespersons for their children. Active steps are therefore necessary to ensure child participation.

Interestingly, while the CAVR made no such active efforts in respect of children, it did take proactive measures to engage with women. These efforts were based on a recognition that women were otherwise unlikely to participate in the Commission's activities. Some of the laudable efforts undertaken were: a requirement for every CRP panel to include one female member; active efforts to seek out and encourage women to give statements, including through innovative approaches implemented by women staff members; interviews with more than 200 women; and women-only community profile sessions and healing workshops.¹⁸⁵ These efforts showed that the participation of marginalized social groups could be achieved when it was encouraged and supported.

Where children participate, their protection must be assured

Although the CAVR did not actively encourage child participation, in some cases children did participate. The most high-profile example was the testimony given by Z at the children's public hearing. But some children also provided statements and participated in other activities. Unfortunately, the CAVR was ill-equipped to provide tailored support to these children to ensure their protection from possible re-traumatization. CAVR staff had not been provided with specialist training for dealing with children and external specialists were not available. General victim support services were available from CAVR but were not sufficient to provide ongoing monitoring or support.

¹⁸⁵ *Chega!* Part 1: Introduction, paras 169-181

In this context it may have been better for children not to participate in activities likely to expose them to risks. This is difficult to assess in retrospect, as it is hard to determine whether weak protection measures were the result of inadequate capacity or perhaps simply resulted from inadequate attention to this issue.

It would have been preferable to first assess the CAVR's capacity to provide appropriate support to children, and then use this as an important factor in determining the extent and nature of child participation in CAVR activities. Taking a cautious approach to protection need not have resulted in zero child participation; rather it should have led to a careful balance involving the provision of appropriate protection¹⁸⁶ and the use of alternative, safe child-participation mechanisms (see below). Where a need for child protection specialists was recognized, such specialists could also have been hired, seconded or contracted through other organizations.

Unfortunately, the pattern of paying inadequate attention to protection has continued since the CAVR completed its work. Materials used to communicate the findings of the CAVR and the history of Timor-Leste have been created with good intentions but with little thought to their impact on potential child audiences.

Alternative approaches to participation should be developed

It is tempting to assume that the CAVR had no realistic alternative to the course it took. With a large victim population, competing priorities, limited resources and minimal specialist expertise, ensuring a comprehensive supportive relationship with children would clearly have presented enormous challenges.

However, just as similar challenges were not a reason to give up on engagement with women victims, nor should they have precluded efforts to work with children. Some of the problems discussed above could have been minimized through the use of innovative mechanisms designed specifically for children. If child participation in core CAVR activities (statement-taking, CRPs etc.) was not able to occur in a way that guaranteed child protection, alternative activities could have been developed. For example, as the CAVR draft policy on children recognized, forms of participation could be devised to focus on children's positive experiences as active community members or broader recollections of the Indonesian occupation, without focusing on human rights violations.

In fact the CAVR's public hearing on violations against children itself provided some good examples of alternative forms of participation. Drawing competitions, music and poetry performances and statements about their hopes for the future gave children a chance to reflect on the past and the future in an unthreatening way. Unfortunately these sorts of activities were not widely implemented throughout the Commission's district-based work.

In other areas working with children would not have presented significant difficulties. Indeed, in many cases the problem appears to have been one of oversight, such as in the failure to produce outreach materials and strategies directed at children. Outreach activities explaining

¹⁸⁶ Where appropriate through partner organizations.

the CAVR's work could have been designed specifically for children. The production of child-friendly versions of the CAVR's findings need not have been particularly onerous and could have had a significant impact in an education system starved of locally produced and accessible resources.

At the most fundamental level, what was required was consistent attention to children as an important sector of the Timorese community. This would clearly have been facilitated by the adoption and implementation of the CAVR's draft policy on child participation. Given that the CAVR was a victim-centred mechanism and had many staff members with strong human rights backgrounds, it is probable that such a policy on children would have been sensitive to the issues noted above. In fact, the draft policy dealt with all of these issues commendably. This is demonstrated also by the Commission's admirable approach in documenting children's experiences.

Clear legislative obligations to consider children's issues should be established

In one sense the failure to adopt clear and appropriate policies on children was the result of the failure to address this question in the CAVR law. While it required a policy on gender, it did not address children. This was understandable given international practice around the time the CAVR law was drafted. But in retrospect it seems that requiring policies and procedures to encourage child participation while ensuring child protection would probably have resulted in better outcomes.

Child rights expertise should be deployed to the truth commission

The CAVR had no commissioners, staff members or advisers with a strong child rights background. This allowed children to be mistakenly treated as a special interest group whose involvement in the commission was optional and could be dependent on resources. Traditional attitudes toward children thus prevailed: children were seen as passive; they could be spoken about but could not speak for themselves.

A similar problem has afflicted the STP-CAVR in its attempts to communicate the findings of the report. Although more than half the Timorese population is under age 18, the Secretariat has made minimal attempts to target this age group. The absence of staff with expertise in child participation has enabled the Secretariat to overlook children as a target of outreach activities. Meanwhile, where expertise is required, for example in producing educational materials for use during student visits to the exhibition, it is not at hand. The difference between materials for adults with limited literacy and materials for children has not been understood or considered.

Of course, this raises the question of why the CAVR and the STP-CAVR did not seek out expert staff skilled in dealing with children. No doubt resource shortages have played a role, particularly for the Secretariat, which has been poorly resourced through most of its existence. Until the second half of 2007 it was entirely dependent on donor funding.¹⁸⁷ The small size of its staff has clearly limited its ability to undertake extensive outreach activities

¹⁸⁷ Information provided by Pat Walsh, STP-CAVR.

throughout all areas of the country. Given these limitations the Secretariat cannot have been expected to retain full-time child education experts. However, this made the need for fruitful partnerships all the more apparent.

Yet resource shortage is not in itself a sufficient explanation, especially in the case of the relatively well-staffed CAVR. Given the Commission's numerous advisers skilled in human rights, law and gender issues, the absence of staff with expertise in children's issues reflects priorities. In the absence of any legislative requirement to appoint such experts (as existed for women's issues), the Commission may not have realized the importance of this skill set. In part, its failure to identify this need was due to weaknesses in the partnerships it formed in the child rights sector, since other organizations could have identified this need.

Partnerships with child rights organizations must be established

In the absence of internal expertise on child rights, building partnerships with other organizations became even more important for the CAVR. Unfortunately, despite some positive efforts, strong and lasting partnerships in this area were never formed.

Local NGOs with child rights experience were sought, but not found.¹⁸⁸ This contrasted notably with the CAVR's experience of working on gender issues. Strong local women's groups¹⁸⁹ were already operating when the CAVR began its work, and the CAVR was able to secure their input and collaboration. No equivalent organizations existed to provide input on children's rights.

In the absence of local civil society input, assistance from international agencies and government was crucial. However partnerships in this area suffered significantly from the conditions in Timor-Leste at the time. Following Indonesia's exit, the country had to be rebuilt entirely. Government agencies were created from scratch, and with them national systems for child protection and education. This meant that many of the agencies with which a truth commission would ordinarily have partnered, such as child protection networks, did not exist. It also meant that existing national institutions, such as the ministries for education and social services, and international agencies such as UNICEF, were significantly overloaded with the pressing task of creating new systems. UNICEF made some efforts to provide input into the CAVR process and instigated discussions within the CAVR on creating a policy for safe child participation. However, contact was sporadic and eventually ceased as a result of staff turnover at both the CAVR and UNICEF.

International partnerships, such as one with ICTJ, provided assistance in some areas but did not manage to affect the Commission's work relating to children. It seems likely that ICTJ had not yet developed significant experience with children and child rights. At the same time UNICEF was only beginning to develop its expertise in transitional justice. In this context it

¹⁸⁸ Internal Report, CAVR Research Division (from CAVR Archive); interview with Galuh Wandita, 2 February 2009.

¹⁸⁹ Most notably Fokupers (*Forum Komunikasi Untuk Perempuan Timor Lorosa'e* or the Communication Forum for East Timorese Women) and ETWAVE (East Timorese Women Against Violence) which were both closely involved in the CAVR's work.

was easy for child participation in the CAVR process to slip through the cracks between the guidance provided by these organizations.

Truth commission activities require a holistic approach

An additional explanation stands out for the CAVR's relative neglect of children: how the Commission and its staff conceptualized the purpose and outcomes of their various activities.

In particular, some former CAVR staff mentioned that the Commission had decided to focus its attention on the violations committed during the earlier parts of the conflict and occupation, and thus seeking child participation in truth-seeking work was not seen as important,¹⁹⁰ partly because the victims of these violations were adults by the time of the CAVR's work. This reasoning suggests a view of statement-taking as principally a research activity, with the objective simply of gathering information. It seems clear that children were deemed inferior targets for this purpose.

Despite extensive consultation with the population before establishment of the CAVR, the Commission did not always appear sufficiently cognizant of the potential positive impacts of truth telling for the victims. It would be misleading to suggest that truth-telling benefits all victims, or that it does so in a uniform way. However in Timor-Leste victims who have participated in CAVR truth-telling activities, especially statement-giving, have generally reported satisfaction and gratitude that their story was heard. For many, providing a personal history to the CAVR was an important opportunity for civic participation, an avenue towards recognition and even a form of symbolic reparation.¹⁹¹ Conversely victims who did not manage to access the CAVR continue to complain that they were denied an important opportunity.¹⁹²

Some former CAVR staff suggested that the Commission had tended to over-compartmentalize its work. Hence the truth-seeking unit, responsible for statement-taking, interviews, public hearings, and research, did not think enough about the reparative or healing aspects of its work. Conversely, activities such as the community profiles and CRPs, which were undertaken by other sections, were insufficiently used as a source of information for the final report.

This may have contributed to the CAVR's failure to systematically engage with children. Where 'truth-seeking' activities were seen as having only an information-gathering value, it

¹⁹⁰ The rationale given for this was that much more was already known about more recent events, specifically those in 1999. It was also suggested that violations specific to children were more notable or severe during earlier periods of the conflict. However this latter explanation does not appear to be borne out by the report's own analysis of children separated from their parents in 1999 and nor is it clear how the Commission could have been confident of this if it did not focus its research on child experiences in 1999.

¹⁹¹ ICTJ research with victims, 2008 (unpublished) – information provided by Manuela Pereira. Other research has suggested that in some cases this sentiment has been mitigated by the "lack of results" flowing from the CAVR, particularly the failure to implement recommendations and provide reparations: Lia Kent, "Truth Seeking and Contested Memories in East Timor", Conference Paper, Asia Pacific Week, Australian National University, January 2008, pp 6-7.

¹⁹² ICTJ research with victims, 2008 (unpublished) – information provided by Manuela Pereira.

followed that those without a historical memory of most of the conflict would be seen as largely irrelevant.

This phenomenon cannot entirely explain the absence of children from CAVR's work; their absence from other CAVR activities, most notably the CRPs, speaks of a broader phenomenon. However it is possible that a more sophisticated understanding of the roles and impacts of various truth commission activities – and especially of their multifaceted and interrelated nature – would have made the Commission more open to engaging with various sections of the Timorese population, including children.

7.4 Recommendations

Based on the lessons learned set out above, it is possible to formulate some specific recommendations for future truth commissions to follow in designing and implementing programmes.

Mandate

1. The law/decrece establishing the Truth Commission should specifically mention children, and the mandate related to children should be broad and based on the Convention on the Rights of the Child.
2. The mandate relating to children should include the following requirements:
 - Documentation of all aspects of children's role in the conflict: as victims, perpetrators, witnesses, human rights defenders and agents for social change;
 - Child-friendly activities that meet the dual goals of child participation and child protection;
 - Specific policies and procedures for children's participation and protection and for communication with children;
 - Development of an outreach/communication strategy directed to children, including for dissemination of the final report;
 - At least one commissioner with a child rights background, who should be responsible for all activities related to children throughout the process;
 - A team of dedicated staff including individuals with expertise in child rights, child protection and human rights education.

Procedures

3. Before designing truth commission procedures on child participation, an assessment should be undertaken of the commission's capacity to provide various forms of support and protection to child participants. The results of this assessment should be taken into account in determining the extent and nature of child participation in commission activities.
4. Truth commissions' policies and procedures should include:
 - The definition or definitions of 'child' used by the commission, taking into account international standards and local values;

- Where relevant, minimum ages for participation in commission activities, taking into account factors such as age of criminal responsibility and the nature of the activities in question;
 - Clear provisions on which activities children can participate in, and under what circumstances;
 - Reference to the possibility of using special approaches for working with children, and the need to consider specialist support.
5. If it intends to allow any children to give statements, testify in a public hearing or otherwise recount traumatic experiences, the commission must be able to guarantee:
 - Psycho-social support before, during and after the testimony;
 - The physical safety of the child;
 - An individual assessment of each child;
 - Informed consent by the child and the parent.
 6. High priority should be given to developing innovative approaches that encourage children to speak while minimizing risk. These could be focused on the future, or could emphasize story-telling rather than human rights violations, and could engage children in groups with their families or peers. Alternative ways of participating such as drawing, poetry and music could be considered.

Training

7. Early in the commission's work orientation in child rights and child protection should be provided for commissioners in order to facilitate strategic thinking and forward planning for the entire process.
8. Policies and procedures must be supported with training on basic child rights and child protection for all staff working with or interacting with children, in particular with statement takers. Training should be ongoing and monitored to ensure consistency.
9. Commissioners from previous truth and reconciliation commissions could be brought in to give advice and provide lessons learned, together with other child protection specialists.

Partnerships

10. Commissioners and staff should make efforts to establish and maintain strong partnerships with national child protection, education and juvenile justice agencies; civil society, including media; and international agencies, including UNICEF.
11. These potential partner agencies, particularly UNICEF and ICTJ, should also make concerted efforts to provide input and assistance to truth commissions, including on appropriate approaches to engaging with children. Input should preferably begin early in the process of creating a truth commission and formulating its policies and procedures.

Outreach

12. The commission's outreach strategy should include a specific strategy for children. It should incorporate child-friendly methods as well as messages. It should also involve engaging with partners, including educational institutions.
13. Early in the commission's work it should develop and disseminate materials directed at children to educate them of the commission's work and inform them of how they can participate.
14. From early in the process of deciding on the structure, style and language of the commission's final report, consideration should be given to its accessibility to children, and if necessary the need to produce special materials for children.
15. Consideration should be given to producing child-friendly versions of other materials produced by the commission, such as films.

Report and Recommendations

16. The experience of children in the conflict should be documented throughout the final report, which should include sections dedicated to children.
17. Final reports should draw on international legal standards relevant to children, especially the CRC.
18. Commissions should consider investigating and documenting in the final report violations of social, economic and cultural rights, including their impact on children.
19. Methods should be developed and implemented to encourage child input into commission recommendations.
20. Commissions should make recommendations specific to children. These should address past violations against children as well as strategies for establishing better conditions for children in the future.
21. Reports should explain what role children played in the work of the commission, including for example the commission's policies and practices on child participation and the challenges faced in implementing them.