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Housing the Truth:

The Archived Legacy of Transitional Justice in Timor-Leste

A dissertation submitted in partial satisfaction of the requirements

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Doctor of Philosophy

in Asian Studies

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of the

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Committee in Charge:

Professor David J. Cohen, Chair
Professor Alan Tansman
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Abstract

Housing the Truth: The Archived Legacy of Transitional Justice in Timor-Leste

by

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Doctor of Philosophy in Asian Studies

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Based on testimony and documentation in the archives of Timor-Leste and Indonesia, participant observation and interviews with key actors in the transitional justice process, this study seeks to document and analyze the fate of the thousands of stories that were given by the Timorese and Indonesian people to transitional justice institutions established by Timor-Leste since 1999. By tracing the life of these stories and their tropes, these institutions' truth-telling processes will be assessed.

Key analytical questions include: How do transitional justice institutions create and express "truth" narratives, and how are those forms of expression relative to the local cultural context? What are victims' and perpetrators' roles in the creation, transformation and preservation of these narratives? What becomes of these stories after the institutional truth-seeking mandates end? Finally, what can the study of Timor-Leste teach us about truth-telling in other post-conflict states?

This study will document both the synchronization and discord of local knowledge with the production of universal narratives of justice in Timor-Leste through the transitional justice process. Interlocutors, referred to as narrative centers, are shown to be indispensible animators of truth-telling and loci for bringing victims' truths from the margins to the centers of national discourses.

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Map No. 4111 Rev. 10 UNITED NATIONS
April 2008 (Colour)

Department of Field Support
Cartographic Section

Abbreviations and Terms

ABRI – *Angkatan Bersenjata Republik Indonesia* – the abbreviation used for the Indonesian army prior to April 1999.

APODETI – *Associacão Popular Democratica Timorense* – One of the original political parties of East Timor founded in 1974 with a pro-Indonesian integration platform.

CAVR – *Commissão Acholimento, Verdade e Reconciliação* – The first national truth commission established in East Timor in 2002.

CNRT – *Partidu Congresu Nasional Rekonstruksaun Timor-Leste*/National Congress for the Reconstruction of East Timor – A leading political party in Timor-Leste founded in 2007. It forms the largest proportion of seats in the ruling coalition, and is led by the current Prime Minister of Timor-Leste, Xanana Gusmão. Prior to independence, an earlier organization, *Conselho Nacional de Resistência Timorense/* National Council for Timorese Resistance, also abbreviated to and known as "CNRT," existed as an umbrella political organization within the resistance movement to unite different political parties in the struggle for independence. The resistance-era CNRT was created by Xanana Gusmão in 1996.

CRP – Community Reconciliation Process – One aspect of the work of the national truth commission that allowed persons to reconcile with their communities through a formal program. The process required perpetrators make statements about non-serious crimes they had committed in 1999.

CTF – Commission for Truth and Friendship between Indonesia and Timor-Leste – the world's first bilateral truth commission, created in 2005 to conduct truth-telling and reconciliation activities between the two countries regarding the violence committed in East Timor in 1999. The commission completed its work in July 2008.

FALINTIL – *Forças Armadas da Libertação Nacional de Timor-Leste* – The Armed Forces for the National Liberation of East Timor were established on 20 August 1975 as the armed wing of the resistance movement for the independence of East Timor. FALINTIL was officially dissolved in 2001 after the nation achieved independence, and the national defense force was established.

FRETILIN – *Frente Revolucionária de Timor-Leste Independente* – One of the main political parties of East Timor since 1974. The political party was called the Timorese Social Democratic Association (ASDT), and was one of the original parties created in Timor-Leste during the Portuguese Occupation. During 1974 it was the party most strongly advocating for the complete independence of East Timor, first from Portugal, and later from Indonesia. FRETILIN claimed power as the ruling party following a brief period of civil war in August 1975, and declared unilateral independence in a ceremony in November 1975 before the Indonesian invasion. During the Indonesian Occupation, FRETILIN remained the dominant political party and was identified with the resistance movement. After East Timor gained its independence from Indonesia, FRETILIN continued to be a core political party. They presently hold a plurality of

seats in the National Parliament and formed the government in East Timor from independence until 2007.

ICTY – International Criminal Tribunal for the Former Yugoslavia – an international criminal court that is mandated to prosecute violations of international humanitarian law for crimes committed in the former Yugoslavia since 1991.

INTERFET – International Force in East Timor – the multi-national military force led by Australia sent by the United Nations to stabilize the nation after post-referendum violence, and to ensure the withdrawal of Indonesian troops.

INTERPOL – International Criminal Police

POLRES – Under the Indonesian policing system in place until October 1999, POLRES is the abbreviation for the district-level of the police command structure.

KKP – *Komisi Kebenaran dan Persahabatan Timor-Leste Indonesia* – Official name of the bilateral truth commission between Timor-Leste and Indonesia, as it is rendered in the Indonesian language. In English it was referred to as Commission of Truth and Friendship between Timor-Leste and Indonesia (CTF), as described above. The official language, and therefore the name, of the truth commission was Indonesian.

KODIM – *Komando Distrik Militer* – Term for an Indonesian District Military Command.

KPP-HAM – *Komisi Penyelidik Pelanggaran Hak Asasi Manusia di Timor* – A Commission of Inquiry mandated by the Indonesian National Commission on Human Rights (Komnas HAM) on 22 September 1999 to investigate and submit a report on human rights violations committed in East Timor in 1999.

NGO – non-governmental organization.

Post-CAVR – After the CAVR (national truth commission) completed its work in 2005, it was followed by a technical secretariat, known popularly as "post-CAVR." The Secretariat continues to occupy the offices of CAVR. Its mandate has been extended on an annual basis until present. It conducts dissemination and outreach activities related to the former truth commission's work.

RDTL – Democratic Republic of Timor-Leste – the official name of the state since 2002 when it became formally recognized as a sovereign state.

SCIT – Serious Crimes Investigation Team – a UN body operating in Timor-Leste since 2007 under the peace-keeping mission's mandate to complete investigations began under the original Serious Crimes Unit.

SCU – Serious Crimes Unit – the investigation and prosecution branch of the hybrid international tribunal established in Timor-Leste to adjudicate serious crimes, including crimes against humanity committed under the Indonesian Occupation.

Special Panels – the abbreviated name for the Special Panels for Serious Crimes established in Timor-Leste in 2000, which consisted of mixed panels of international and national judges who exercised jurisdiction to hear cases of serious crimes committed during the Indonesian Occupation of East Timor. In practice, the Panels only heard cases of serious crimes committed in 1999.

STL – *Suara Timor-Lorosae* – the only newspaper operating in Timor-Leste in 1999. The paper continues to operate since independence.

TNI – *Tentara Nasional Indonesia* – the name for the Indonesian Army since April 1999. Formerly, the army was referred to as ABRI (see entry above).

UDT – Timorese Democratic Union – The first political party founded in Portuguese Timor in 1974 after the fall of the Salazar regime in Portugal. The party originally supported continued links with Portugal, rather than full independence. After 1975, the party later formed an alliance with FRETILIN to work towards independence.

UN – United Nations

UNMISET – United Nations Mission of Support for East Timor – UN mission from 20 May 2002 to 20 May 2005.

UNMIT – United Nations Integrated Mission in Timor-Leste – UN mission in East Timor from 25 August 2006 to present.

UNPOL – United Nations Police

UNTAET – United Nations Transitional Administration in East Timor – UN mission in East Timor from 25 October 1999 to 20 May 2002. UNTAET exercised governing authority over the territory during this time period.

Babinsa- *Badan Pembina Desa* – "rural community guiding officers." The lowest level of military hierarchy in the territorial structure of the Indonesian army. Babinsa implement security operations at the village level.

Hansip **–** *Pertahanan Sipil* – a system of civilian security reserves in Indonesia. Hansip are responsible for matters concerning security and order in areas ranging from neighborhoods to villages or sub-districts. They operate under the authority of the Home Ministry but are trained by the Indonesian military.

Further Notes on Orthography and Terms

In the main text, I will use the orthography for Tetum developed by Timor-Leste's National Institute for Linguistics, which has been adopted as the official Tetum of the nation. However, many of the texts analyzed do not use this orthography, and there are also mistakes in some Indonesian language sources' spelling and grammar. I have maintained the language of all original sources whenever quoted or referenced in the text.

Throughout this text, "East Timor" denotes the territory prior to independence during the period of Indonesian Occupation. "Timor-Leste," is used to denote the state, subsequent to the conclusion of the Popular Referendum in 1999. For the sake of brevity, in this study "Timorese" indicates Timorese nationality, rather than a broader ethnic category of Timorese which could include persons in West Timor.

Although Timor-Leste did not formally acquire independence in international law until 20 May 2002 when the United Nation's ceded governing authority, this study considers independence conceptually beginning from October 1999, after the population of Timor-Leste had chosen independence during the Popular Referendum and Indonesian military forces and government officials had withdrawn.

I should also note that I sometimes refer to the current Prime Minister and historical figure, Kay Rala Xanana Gusmão, by only using part of his name, "Xanana." This is not meant to show any kind of disrespect or lack of uniformity in naming, but rather conforms to the popular usage of his Resistance-era name which has persisted in post-independence usage. He is often referred to popularly and even in some formal occasions as simply, "Xanana."

Chronology

25 April 1974 – Carnation Revolution in Portugal deposes authoritarian Salazar regime and begins democratization. Portugal begins to prepare East Timor for a decolonization process. Political parties in East Timor emerge around the debate over decolonization.

August 1975 – Internal armed conflict begins in East Timor between the armed wings of the Timorese political parties – FRETILIN and UDT. The Portuguese government flees to the island of Atauro and later evacuates all government personnel. Within weeks, FRETILIN establishes a victory and UDT and other political parties that supported options other than national independence retreat to the border areas with Indonesia in West Timor.

28 November 1975 – FRETILIN declares itself the new government of East Timor and symbolically declares national independence.

7 December 1975 – Indonesia invades East Timor.

17 July 1976 – Indonesia officially annexes East Timor and declares it Indonesia's 26th province.

1998 – Suharto resigns. In 1999 *Reformasi* begins and democratic elections for the Presidency and the national legislature are held.

27 January 1999 – Indonesia announces its willingness to hold a Popular Consultation to allow the Timorese people to choose whether they wish to remain part of Indonesia as an autonomous region or to become an independent nation.

6 April 1999 – Attack and killings at Liquica Church.

14 April 1999 – Militia groups from throughout East Timor gather and hold rally at Governor's Palace in the presence of Governor Abilio Soares and Indonesian military leaders.

17 April 1999 – Attack on house of Manuel Carrascalão and killings, including the son of Manuel Carrascalão.

5 May 1999 – Indonesia, Portugal and the United Nations set out the terms of the agreement that will govern the holding of the Popular Consultation on the matter of East Timor. The Indonesian military is granted primary authority for security during the campaign and referendum.

June 1999 – The United Nations establishes a mission in East Timor and prepares for the Popular Consultation.

30 August 1999 – Popular Consultation held.

4 September 1999 – Results of the Popular Consultation announced. Timorese voted by majority for independence and rejected autonomy within Indonesia. Human rights abuses escalated.

6 September 1999 – Suai Church massacre.

8 September 1999 – Martial law declared.

8 to 9 September 1999 – Passabe massacre.

20 October 1999 – Makelab massacre.

25 October 1999 – After the arrival of an international, peacekeeping force led by Australia, INTERFET, the Indonesian military officially leaves East Timor. The United Nations mission, UNTAET, becomes the government of East Timor.

June 2000 – Serious Crimes Unit and Special Panels established to adjudicate serious crimes committed in East Timor.

20 May 2002 – East Timor becomes the sovereign Democratic Republic of Timor-Leste.

January 2002 – CAVR established.

20 May 2005 – Special Panels process ends.

5 August 2005 – Commission on Truth and Friendship between Indonesia and Timor-Leste commences.

28 October 2005 – CAVR submits final report to President Xanana Gusmão.

2006 – From March until May 2006, violence escalates. On 26 May 2006, Timor-Leste requests international security assistance. A new UN peace-keeping mission is established.

11 February 2008 – Attack on Prime Minister and President Ramos – Horta shot. State of Siege begins and continues until 22 May 2008.

15 July 2008 – Commission of Truth and Friendship submit final report to two governments.

United Nations Missions in East Timor

UNAMET - 11 June 1999 to 25 October1999
UNTAET - 25 October 1999 to 20 May 2002
UNMISET - 20 May 2002 to 20 May 2005
UNOTIL (political mission without peacekeeping powers) - 20 May 2005 to 20 August 2006
UNMIT - 25 August 2006 to present

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Preface

If this book is to speak about truths, then I must be honest about how my own experiences and biases may have become part of my representation of the truth-telling process in Timor-Leste. Even as I strive for academic objectivity, my story is bundled in all of those I present to the reader here. The lives of those who have so generously shared their stories with me, through the archives and in person, color my perceptions.

In May 2006, I attended a conference in Thailand that was convened to discuss the legacy of the so-called hybrid "war crimes" prosecutions of the Special Panels for Serious Crimes in Timor-Leste. The aim was to assess the impact of the world's first hybrid war crimes tribunal in Timor-Leste, and determine how its lessons could apply to Cambodia, where another hybrid tribunal was getting underway. The day before the conference began, a group of former transitional justice workers with whom I had served in the Serious Crimes Unit in Timor-Leste, and I watched the television footage of the outbreak of civil conflict in Timor-Leste, called the 2006 Crisis. A few days later, we sat together in a room in Cambodia as the television broadcast images of the ransacking and destruction of the Serious Crimes archives after they had allegedly been rampaged by local gangs. This experience of witnessing the end of an archive influenced the topic and direction of this study. When I was forced to contemplate the death of the archives created by the transitional justice institutions, I came to appreciate their life.

In 2007, in the course of my research I learned that, in fact, the SCU archives were not destroyed. Instead, the items that had been raided from the SCU archives in 2006 were later mysteriously and anonymously returned to the archives. Clearly, archives were contentious. Some considered them worthy of destruction and pillage; others endeavored to access and preserve them; and many simply wanted to ignore them.

These events led me to begin my fieldwork in the archives of the national truth commission, the Commission for Reception, Truth and Reconciliation (CAVR) in 2006, in part because it was one of the only places I could go freely. During those days, the violence was still palpable in Timor-Leste. On casual, daytime walks down the capital's streets, most shops were closed and the streets were often empty. But, the CAVR remained open.

On one trip to the CAVR, my friend and I unexpectedly ran across a youth gang armed with machetes roaming down the street and we had to flee. Several months earlier a youth gang had rushed the entrance to the CAVR and stole motorbikes parked outside. They even hacked with machetes at its exterior. Unlike the Serious Crimes archives, the CAVR archives and its building were never entered by the marauders in 2006, but a fear that the CAVR could also fall prey to the violence – literally and symbolically – was present in the minds of the institution's staff and visitors. Despite this threat of extinction, I was able to work consistently here in 2006 thanks to the commitment of the Director of Research, José Caetano, and other staff members at the CAVR. Amidst the destruction ongoing in Dili, the CAVR's persistent message of peace acted as a beacon to me and many others who had become involved with this institution's work.

In 2007, I was given the opportunity to work with a team of Timorese and Indonesian colleagues through the Berkeley War Crimes Studies Center to write an independent assessment of Timor-

Leste's archival holdings that related to the legal elements of crimes against humanity in 1999. The work was to contribute to the truth-seeking efforts of the Commission of Truth and Friendship (CTF), the world's first bilateral truth commission between Timor-Leste and Indonesia. This work allowed me to return to Indonesia regularly and develop a better understanding of Indonesia's perspective on events in 1999.

Following the completion of the CTF Final Report in 2008, I renewed my personal research in the archives, and became engaged with Timorese poetry. I also conducted more participant observation, particularly on gender issues and on popular reactions to the various transitional justice mechanisms. I left Timor-Leste in October 2008 but was able to return to the archives and conduct some additional interviewing in 2009. A decade after the crimes were committed, this work tries to assess the legacy of the truth-telling that gave birth to these archives.

One influential moment during my fieldwork was when a Timorese advocate from a NGO, Alola Foundation, encapsulated in a simple anecdote many of the problems inherent in the truth-telling process of the transitional justice institutions, and the research that has followed in its wake. She told the following story about collecting information about transitional justice from women in preparation for the Women's National Congress held in Timor-Leste in 2008. She said,

> "Sometimes, *Mana*,[1] the judicial system wants a contribution from women, but they don't want to talk, because for them it is boring for them to talk about the same things so many times when there is no response. Sometimes they think that they talk, talk, talk, but nothing changes. So, I think it is all of our responsibility to ensure something happens when a woman speaks […]
>
> We had a case at our Women's Congress in Same where one woman stood up at our meeting and said: 'I am a victim. Different organizations come and take my data and talk about my case, but I don't know where my case is now.'
>
> Sometimes they look at us [NGOs] and victims say… 'Oh, you want to come and take my data too?! So you can make another program!?'
>
> And then another woman beside her [the victim] will say to them, 'No need to talk, *Mana*. We are tired of fighting about this. We are thinking about how to coach ourselves to improve our lives, and how to get rice - how to feed our children each day. No need to talk now.'
>
> So, these kinds of reactions should teach us a lot about how to create a movement for justice. We came back from meetings like this one, and I talked to my friends. We thought, 'Oh my God, what can we do?"[2]

Thus, one of the goals and methods of my study became to take the stories that have already been told and analyze them, rather than seeking out new data, stories or victims just for the sake of my research. Many stories had already been told, and at least some victims wanted a response

[1] *Mana* is a form of respectful address in the Tetum language, literally meaning "sister."
[2] Personal Communication with Alita Verdial, Alola Advocacy Officer, July 2008, Dili, Timor-Leste.

to what they had already shared. My goal is to assess what has come from this process of what she perceptively described as a great deal of talking. The fact that victims, such as this woman from Same, do not know the fate of their own cases built on the personal stories they entrusted to the state is one problem this work attempts to address.

Before we proceed further in the discussion, I should make the reader aware of the challenges of translation I encountered during the course of this research. Timor-Leste is a polylingual society with more than thirty different indigenous languages. Tetum and Portuguese are the new nation's official languages, but in practice approximately ten percent of the population speaks Portuguese, and not all Timorese speak Tetum. When I began my study in 2004, the Indonesian language was still the most widely used and understood language of those people whom I met and worked with, particularly for the recording of texts. Newspapers at that time were primarily written in Indonesian. Over time Tetum and Portuguese have become more widely used in media and by the government, although most academic works and many discussions among the younger generation of Timorese and government officials still utilize Indonesian, or a mixture of Tetum and Indonesian words.

The sources I consulted in this study used four main languages: Indonesian, Tetum, Portuguese and English. I translated all texts and interviews from Indonesian and Tetum into English unless otherwise noted. Native speakers of these languages subsequently checked my translations, and I owe special thanks to Miki Salmon, Abe Barreto Soares and Hugo Fernandes for their advice. I also read and translated some excerpts of texts in Portuguese but had to consult with translators to recover a large portion of these texts' tone and meaning. The people who assisted me with Portuguese translations are noted. Other sources were encountered in other languages, such as the Timorese languages of Fataluku, Bunak and Dawan, but I relied soley on impromptu translators to understand these sources, and cannot verify the accuracy of those translations.

I have been fortunate to travel with a host of loving guides on this journey, and I only regret that I can not name them all here: my family; José; Vlasta and Filipe; my gracious, challenging and supportive team of advisors - David Cohen, Alan Tansman, Jeff Hadler and Kathryn Abrams; all the institutions that allowed me to conduct research in Indonesia and Timor-Leste; Jacinto Alves; Judge Jacinta Correia and Judge Maria Natércia Gusmão; Cris Carrascalão; all the persons who allowed me to interview them; the village of Gildapil and the women of the *Uma Feto* in Suai; my roommates in Berkeley and Timor-Leste; Virginia Shih of the Southeast Asia library at Berkeley; the Berkeley War Crimes Studies Center and the East-West Center. Any mistakes or inaccuracy in this work are my sole responsibility.

I dedicate my dissertation to my grandmother, Phyllis Sweeney, who passed away during my fieldwork. I hope this work honors her and the many grandmothers in Timor-Leste whose lifetimes of story-telling are responsible for their offspring's imaginings of a better future and the desire to know the past.

Part I: Introduction

Chapter 1. What Happens After the Stories Have Been Told?

In the revolutionary era of East Timor's history, narrative in its multiple forms played a critical role in the dynamics of war. This book will examine the ways narrative in the form of truth-telling during the immediate post-revolutionary era has been used to constitute peace, justice and a new nation.

Drawing on testimony and documentation in the archives of Timor-Leste and Indonesia, participant observation and interviews with key actors within the transitional justice process, this study seeks to find out what has happened to the thousands of stories that were given by the Timorese and Indonesian people to the transitional justice institutions established by Timor-Leste. By tracing the life of these stories and their tropes, I will assess these institutions' truth-telling processes and their implications for the future.

Francisco Rocha's[3] story will begin our inquiry into the truth-telling process in the transitional justice context in Timor-Leste. Francisco is a locus of stories about Timor-Leste's and Indonesia's shared history of violence and their pursuit of peace. His story introduces us to the dominant narratives of the Indonesian Occupation that form the backdrop to all the new narratives we will examine, which emerged as part of the transitional justice process since 1999. Most importantly, Francisco's narrative is about narrative. He believes in the immense power stories carry in Southeast Asia and within transitional states worldwide.

Stories are valuable to him because of their ability to communicate a history with moral authority, but also because Francisco believes they are the source of political power and change. For him it is a particular type of story that is validated as an official "truth" where the successful pursuit of accountability for past wrongs of an authoritarian state lies.[4] Francisco believes that truth is the most basic component of justice. Throughout this discussion, we will examine how individual and institutional stories, like Francisco's, have contributed to the legacy of the transitional justice process in Timor-Leste.

Narratives of the Past

Francisco's story, as he usually tells it to me, begins in October 1999 inside the Red Zone. Francisco descended from the hills of Dare, and weaved through the rubble in the streets of Dili in a frantic dash towards his home.

Up until only a few weeks earlier, his house had been one of the centers of planning for the clandestine wing of the Resistance to Indonesia's occupation. Indonesia invaded East Timor's capital city of Dili in December 1975, and the population fled to the hills to try to escape the killings and looting. The cycle of violence and displacement into the hills was a continuous feature of life for the Timorese as they endured a brutal occupation for twenty-four years. In

[3] Fracisco Rocha is a pseudonym. Although I was given permission to use all the information for publication I obtained in multiple interviews conducted from 2007 to 2009 with this person, who was serving as a public official at that time, due to the personal nature of some of the material I have chosen to use a pseudonym for greater protection of the individual. The story I tell in this chapter is a compilation of the stories he told me.

[4] The Tetum word for story and history, *istoria*, is the same.

1999 the Timorese population voted for independence from Indonesia in a UN-monitored referendum. This time Francisco was returning to the capital city after yet another displacement of the civilian population into the hills when the Indonesian military and their proxy local militias committed widespread and systematic attacks on the civilian population in retaliation for their vote against a permanent union with Indonesia. This time was different because after many years of tacit support the international community had at last intervened in the violence.

As Francisco descended from the dry and dusty slopes into the flat streets of the capital city of Dili, the Indonesian troops were withdrawing instead of entering. International peace-keeping forces mostly made up of Australian troops (INTERFET) flew overhead and walked armed and camouflaged through the streets. Timorese shouted "*Viva*!"[5] and openly grafittied walls with words of welcome to the international community. Francisco hoped that the many years of violence and displacement were at last coming to an end.

During the Indonesian Occupation, the areas of the city were mapped and coded to designate their "alert level" for potential Clandestine activity or "terrorist" attacks by what the Indonesian military called the GPK, *Gerakan Pengacauan Keamanan*, or "security disrupter gangs."[6] The city was literally color-coded - Red, Orange, Yellow and so forth. These zones radiated outwards from the Governor's Palace and Military Headquarters by the downtown seaside like the aura of the sun until it reached the steep ravines of the hills. This urban "terrorist" map was known to all inhabitants of the city: ask any Dili resident and they could tell you the zone in which they lived during the Indonesian Occupation. These colors represented the state's perception of the level of potential violence and criminality of its subjects in East Timor. This schema originated in the capital city of Dili, but similar color - coded, GPK pulse maps were recreated on a smaller scale throughout the rural areas of East Timor. All Timorese areas of habitation were mapped and color – coded according to their political orientation and perceived threat. The entire Timorese population was labeled in terms of their potential to be "terrorists."

The neighborhood Francisco was returning to in 1999 was still in the Red Zone. During the Indonesian Occupation, the center of Indonesia's political power in Dili (military headquarters and the bureaucratic offices at the provincial governor's office) was under the most direct threat from the secret activities of the clandestines who were present throughout the capital city. *Clandestinos*, as they are called in the local languages, often worked as Indonesian civil servants by day and Resistance supporters at night. Farther away from the center of power in the border areas of the East and West of the province and in the mountainous, spiny central part of the island, the small number of remaining armed Resistance fighters (FALINTIL) were able to conceal themselves. After 1978 these guerilla warriors subsisted in the hinterlands with the secret support of the local population. These guerilla fighters occasionally launched attacks on Indonesian forces and their equipment. However, they were not a visible feature of the conflict in the capital city – in the Red Zone of the main streets where Francisco walked.

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[5] *Viva*! Is the abbreviated slogan for "Long Live Timor-Leste" which was the most commonly used pro-independence slogan throughout the period of Indonesian Occupation.

[6] For more information on GPK see, James Cotton, *East Timor, Australia and Regional Order: Intervention and its Aftermath in Southeast Asia* (New York: Routledge Curzon, 2004), 52. For more information and an excerpt of an Indonesian military document that describes the color-coded zones see Samuel Moore, "The Indonesian Military's Last Year's in East Timor: An Analysis of its Secret Documents," *Indonesia* 72 (2001): 13-14.

These red zones were not at the highest level of threat because they risked the physical integrity of the Indonesian state. Such an assumption would be faulty because the clandestines were mostly unarmed and their tactics were mostly non-violent. The red zones were dangerous because it was where the inability of the Indonesian occupation to conquer the minds of the Timorese was most noticeable. The psychological significance of these zones persisted throughout the Occupation. These areas in the captial's Red Zone were the invisible part of the Resistance that was operating right under the state's nose, and for that very reason these areas and their population could not be tolerated or easily defeated.

In the red zones, pro-independence youth occasionally threw rocks and planted car bombs, but mostly hurled insults at Indonesian soldiers. The war from both sides was waged with high emotions, so that entire Resistance campaigns were created to incite fear and shame in the Indonesian security forces and to draw international attention to the human rights abuses that were being committed. The Indonesian military used the same psychological scare tactics, but frequently resorted to physical acts of violence to back up their threats and to communicate their ability to dominate this political game of fear.

In Dili alone there were at least four prisons where members of the independence movement were regularly incarcerated and violently interrogated for no other crime than political opposition to the state, or more often, for simply being related to someone who was perceived as a pro-independence supporter. The majority of time this war of mutual fear was waged in the capital in the unmarked, dark shadows of "torture houses," such as the Sang Tai Ho building in Colmera. However, the red zones could also erupt into visible and audible war zones during the daylight hours. As only one example, the Santa Cruz Massacre in 1991 occurred in the Red Zone in Dili. In 1999, these urban areas that were geographically represented as "criminal" were among the hot spots for confrontations between the Timorese pro-autonomy militia groups and pro-independence supporters – mostly youth groups – who dared to confront them.

But, now in the earliest days of Timor-Leste's independence, the red zones were leveled by the burning and looting of the Indonesian military and their militia groups.[7] All boundaries on the previous color zoned map were blurred as the scale and spread of violence exceeded simple graphic representation. There was total destruction.

During the Resistance movement in these urban centers, the *Clandestinos* mounted psychological warfare on the Indonesian state with strategic minds like generals. Francisco tells stories of designing silent taunts by sending anonymous letters that tipped off the police to secret (and entirely fake) rebel operations. *Clandestinos* were known to have issued fake *apelos* (or appeals) that deliberately fell into the hands of the Indonesian state to make them think the independence movement had more money and resources than they did. Myths, rumors, words, letters, symbols – these were the *Clandestinos'* troops and arsenal. The clandestine movement executed a strategy of anti-state theatrics in its fight for independence.

[7] Over 70% of East Timor's housing and infrastructure was destroyed in the violence that preceded and followed the Popular Referendum in 1999. See World Bank, "Annex 1," *Report of the Joint Assessment Mission to East Timor*, para. 15, 8 December 1999, at www.pascal.iseg.utl.pt/~cesa/jamsummarytablefinal.pdf, accessed 18 November 2011.

The point of these theatrics was not to use real weapons, but rather to weave stories that gave the illusion of a popular power that was so consolidated that it could potentially defeat the greater numbers, technology and physical threat of the occupying state of Indonesia. In other words, the red zones were cartographies of representation generated by both sides of the conflict, rather than a statistically based map of actual, armed threats. Violence was real and imagined at the same time inside the red zones. Some stories were true, some were downplayed and others were exaggerated or fabricated. As a whole these narratives of violence carried the power to create an unsettling environment of fear that sustained both the Resistance and the Occupation on a daily basis alongside the firearms, bombers, grenades and the acts of killing, rape, imprisonment and torture.

In a hidden space in his home, Francisco had carefully concealed papers that recorded his activities as one of the leaders of the clandestine movement. He went straight to this place as soon as he could come down from the hills. When he reached for his papers, he found a pile of ash and scraps, and began to wail. All of his documents had been destroyed.

Whenever he tells this story he sinks into a long pause, and then he goes on slowly. He says that he did not cry during the seven years he was imprisoned by the Indonesian regime, although he had been painfully separated from his wife and children. It is also almost certain that he was tortured, but he never shares his pain or history of imprisonment in his narration. He claims the grief he felt in this moment was something different than the physical and emotional pains exacted from him directly by the Indonesian military. When he saw his documents destroyed he discovered the children of his mind were gone - the mind he believed had the right to remain free.

He recalls how he wept for these remnants of history that recorded the many ways he had fought and survived. Through his and many others' contributions to the Resistance, he believed the Timorese people had remade the Indonesian maps of domination and turned them from violence into what was now in 1999 positioned to become a landscape of independence. His history, their history, a shared and concealed history - had been destroyed at the exact moment when he had dreamed that it was their time to be taken out of hiding and told.

In this first part of Francisco's story, we can observe the narrative legacy of the Indonesian Occupation. State security, terrorism, mapping and surveillance, culturally and ethnically engrained criminality, imprisonment, torture, mind control and forced displacement are thematic components of the governing social narratives that resulted from Indonesia's presence in East Timor and the opposing Resistance movement. Francisco orients his life and the birth of his nation against these narratives of the past. The origins of the transitional justice system in 1999 were overlaid on top of, and in opposition to, this narrative base of violence during the Indonesian era, as illustrated by Francisco's story. In the second part of his story below, we will see how these memories and Francisco's life become intertwined with the internationalized pursuit of transitional justice and an overarching narrative of truth during the post-revolutionary era.

Truth-telling in an Independent Timor-Leste

Francisco's life after 1999 pivoted on that moment: the discovery of the ashen remnants of what he believed was both a personal and a national story. In the wake of Timor-Leste's successful realization of independence, Francisco devoted himself to the creation of the archives at the Commission for Reception, Truth and Reconciliation (CAVR), as one of the seven Commissioners appointed by a Selection Panel comprised of Timorese and international dignitaries, including former Nobel Peace Prize winners Bishop Belo and Dr. José Ramos Horta, former UN mission head Ian Martin and the well-known Indonesian activist, Munir. Francisco had traveled to Portugal, Indonesia and Japan to find the funding to nurture the collection of documents that were to become the source of the CAVR's final report and its archive. He and his colleagues contacted scholars in Australia and the United States to collect documents from their government archives and within East Timor. He negotiated and salvaged piles of disarrayed papers from individuals, the former Indonesian courts and civil society.

Simultaneously, the CAVR staff was engaged in recording new stories from villages, villagers, government leaders and internationals who had participated in East Timor's struggle for independence. In total this institution collected over 8000 personal statements, and over 300 village histories, in addition to holding eight public hearings about human rights themes that attracted national audiences. For two years Francisco spent five days per week in villages in the countryside with teams collecting stories that made up the sources of the truth-telling mandate of the CAVR. At the same time and in conjunction with the truth-telling process, the CAVR conducted a series of nationwide Community Reconciliation Processes (CRPs) that allowed former low-level perpetrators to tell their story to village audiences, ask forgiveness, and go through a series of reconciliatory acts. These processes extracted narratives of confession across the nation that were recorded and filed in local courts in exchange for stays of immunity, so that these low-level perpetrators who fulfilled the reconciliation criteria would not face legal prosecution for those acts.

Following the completion of the CAVR mandate in 2005, Francisco was appointed to a new truth commission, the Commission of Truth and Friendship (CTF) between Timor-Leste and Indonesia. This body was the world's first bilateral truth commission. Its government-mandated role was to identify the causes and nature of violence in 1999, and determine if there was institutional responsibility for human rights violations for each country. Among his many other duties as a Commissioner for the CTF, Francisco's job was to negotiate access to information in the CAVR archives and others that were not of his inspiration, such as the Serious Crimes Unit (SCU), the archives of the world's first hybrid international criminal tribunal process, which took place in East Timor from 2000 to 2005. Francisco was responsible for negotiating access to these legal archives of the tribunal that operated to adjudicate serious crimes that resulted from the violence in 1999. Once again he became the center-point for the collection of stories of the transitional justice institutions.

At the same time he was involved in these projects as a state-appointed representative, Francisco was engaged in projects with ASSEPOL – the Association for former political prisoners in East Timor. With the well-known Australian journalist, Jill Jolliffe, he collaborated to create a video

archive of testimonial interviews with Timorese who survived illegal detention, known as the Living Memory project. He also designed a research and teaching project with the University of Buenos Aires and an Australian University, to excavate pre-1999 mass grave sites, particularly the site of the burial of the bodies from the 1991 Santa Cruz Massacre. Francisco's link to this project was also personal: he had been one of the planners of the Santa Cruz demonstration, and for these acts he had been imprisoned by the Indonesian state for seven years. He survived, but he lived to help locate the remains of his colleagues who did not. The project was also designed to help train the first generation of Timorese forensic scientists.

In October 2008, despite months of excavation the project had not been able to locate a single body. For weeks families had come early in the morning to the excavation site – lining up with *tais* and photos of their lost, loved ones. Others came just out of curiosity. Witnesses had been contacted to find the exact location of the bodies, and local histories had been checked to estimate the number of bodies expected in the mass grave. Each day they dug deeper, but found nothing. They tried to expand the circumference of the search, but there were still no results. The families of those who had disappeared in the days following the massacre changed their tactic, and instead of bringing sacred, animist and Catholic burial mementos, they brought their own shovels. To the frustration of the international excavation team, individual families had begun their own digs in the middle of the site, distrustful of the scientists' high tech tractors and digital equipment, and unerring in their faith in the local stories that located the bodies there.

When I met with Francisco as I was leaving Timor-Leste in 2008, he was spending his free time acting as a mediator between the international excavation crew of archaeologists and forensic anthropologists and the families of victims. He was trying to find an agreement between the two groups on the best way to proceed. Locals had hired a *matan dook*, or spiritual medium, to speak to the ancestors and indicate the best location to dig. The scientific team was measuring depths and circumferences, and asking for archival evidence to reorient the dig. Each group was operating with great feelings of frustration towards the other. Francisco was in between – looking for new soothsayers and new scientific evidence. Somewhere between local and international and science and mysticism. The seen and the unseen. The unforgotten past and the hope for justice in the future. It is this medial space, between a homogenizing, internationally recognized, quasi-scientific "law" of truth and a local practice of truth based on story-telling, myth, custom and ritual that links the present to the past, to which this discussion of narrative and transitional justice in Timor-Leste will move towards repeatedly.

Francisco connects all these projects into a single mission and a definitive narrative. When you ask him about why he wants to work in any of these transitional justice initiatives, he always says basically the same thing, such as this instance when he passionately declared:

> "The story I want to tell is how this one small country that has been isolated from the rest of the world for so long, with nothing – no money, no infrastructure - succeeded in surviving and ultimately winning its battle against the world's fourth largest nation, and its supporting powers. It defies all logic that we could win. But, we did. And the answer to the question of how, is the power of the people. There is no other way. The armed resistance was handfuls of persons, but the spirit of resistance was in the souls of hundreds of thousands of people. And, they risked their lives and gave when they had

> nothing to keep the struggle going. It's a story of resourcefulness, and popular innovation. I will have the truth! I will not compromise on the truth. Our story will be told. This is my Life!"

It is the task of this study to examine how Francisco's "life" story, and many other Timorese who told their stories like him, was collected and transformed into "truth" by the transitional justice process, and what legacy this truth-telling has created for future generations.

What Happens After the Stories Have Been Told?

Literally thousands of Timorese citizens, like Francisco, and some Indonesians told their stories and placed their intimate and painful pasts into the state's hands for safe-keeping as they make their way towards a new, independent future. They have spoken to the courts in Timor-Leste and in Indonesia; they have spoken to investigators from the United Nations, the Indonesian Human Rights Commission and a slew of non-governmental organizations; they have spoken to two truth commissions in Timor-Leste and several commissions of inquiry. They have spoken to journalists. They have spoken to academic researchers, like me. People have spoken about Justice again, and again and again.

These words have been recorded – many for the first time in a written or audio-visual format. In the past ten years, tens of thousands of stories have passed from a collective, oral and local memory into an individually, catalogued, inscribed, national, human rights history that is stored in state archives and beyond. But, to what end?

This book traces the cumulative history of the truth-telling process and the stories it produced. To the best of my limited abilities, I will try to capture some of the particular uses of language, iconographies and power to present a portrait of this aspect of the transitional justice experience in Timor-Leste from 1999 to 2009. In sum, this book asks for the first time in the scholastic record about Timor-Leste: What happens after the stories have been told? In the following discussion, we will observe ways memories and meanings of justice have been preserved and at times, forgotten, in the context of the Timorese post-conflict, political transition.

Historical Background

Because I pose this question in the specific context of the newly sovereign nation of Timor-Leste (formerly called East Timor), what happened before the stories were told requires summation. East Timor was a former Portuguese colony. In 1974, the authoritarian regime in Portugal fell, which spawned a period of civil conflict in Portuguese Timor between political parties with different philosophies regarding decolonization and independence. Although Indonesian incursions and influence were reportedly frequent throughout this period, it was not until December 7, 1975, that Indonesia invaded East Timor. The territory continued to be ruled by Indonesia as the province of "East Timor" (referred to in Indonesian in its abbreviated form as *Timtim*) until 1999.[8] However, East Timor remained on the UN's non-self-governing territory list

[8] For further background on the political history of East Timor up to 1999 see: James Dunn, *A Rough Passage to Independence* (Double Bay, N.S.W, Australia: Lougueville Books, 2003); Brad Simpson, "'Illegally and Beautifully': The United States, the Indonesian Invasion of East Timor and the International Community, 1974-

throughout this period and continued its campaign for independence. After the fall of the Indonesian dictator, Suharto, the UN, Portugal, and Indonesia reached an agreement in May 1999 that provided for a UN-monitored popular vote to decide the sovereignty of East Timor. The Timorese population voted by majority for independence.

Although the referendum secured East Timor's independence, the popular vote was accompanied by grave violations of human rights throughout 1999, including murder, torture, sexual violence, forced transfer, deportation and illegal detention that were committed on a massive scale. The Indonesian military, police, civilian government, and their proxy local militias committed the vast majority of these crimes.[9] After October 25, 1999, East Timor was administered by the UN until May 20, 2002, when it officially gained its independence and became the Democratic Republic of Timor-Leste (RDTL).[10]

During the period of UN administration a Timorese council, which took various forms and sizes, acted in an advisory capacity to the UN and was allowed to debate proposed UN Regulations. However, the UN maintained the final authority to govern until independence. After 2002 the UN downsized its mission incrementally as part of a plan to leave the nation, but following the outbreak of violence in 2006 it reverted to a large-scale peacekeeping mission and was the executive policing authority for the state.[11] The UN no longer exercises sweeping political authority in Timor-Leste but it continues to play a significant role, particularly in the justice and security sectors.[12] The current peace-keeping mission is scheduled to withdraw from Timor-Leste in 2012.

Timor-Leste is somewhat unique among contemporaneous transitional justice settings because it has undergone a radical change in its justice regime at the same time it was undergoing decolonization. Furthermore, to understand Timor-Leste's transition it must be placed in the

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1976," *Cold War History* 5, no. 3 (2005): 281-315; John Taylor, *East Timor: The Price of Freedom* (New York, St. Martins Press, 1999)*;* Helen Hill, *Stirrings of Nationalism in East Timor: FRETILIN 1974-1978* (Oxford, N.S.W.: Otford Press, 2002).

[9] The best academic account of the history of violence in East Timor in 1999 is Geoffrey Robinson, *East Timor 1999: Crimes Against Humanity* (Geneva: United Nations Office of the High Commissioner for Human Rights, 2003). This Report was an addendum to the CAVR's Final Report and can be accessed on their website at http://www.cavr-timorleste.org. Revised versions of this work have been published by the Indonesian NGO ELSAM and as parts of his subsequent books.

[10] For further information on the post-independence period see James Fox and Dionisio Babo Soares, eds., *Out of the Ashes: Destruction and Reconstruction in East Timor* (Adelaide, S. Aust.: Crawford House, 2000); Damien Kingsbury and Michael Leach, eds., *East Timor: Beyond Independence* (Caulfield East, Vic.: Monash University Press, 2007).

[11] For further information on the Crisis of 2006 see Joseph Nevins, "Timor-Leste in 2006: The End of the Post-Independence Honeymoon," *Asian Survey* 47:1 (2007): 162-167*;* James Scambary, "Anatomy of a Conflict: the 2006-2007 Communal Violence in East Timor," *Conflict, Security & Development* 9, no. 2 (2009).

[12] For further reading on the UN administration of East Timor see: Hansjorg Strohmeyer, "Collapse and Reconstruction of a Judicial System: The United Nations Missions in Kosovo and East Timor," *The American Journal of International Law* 95, no.1 (2001): 46-63; Simon Chesterman, "Justice under International Administration: Kosovo, East Timor and Afghanistan," *Transitional Administrations* 16 (2002); Anthony Goldstone, "UNTAET with Hindsight: The Peculiarities of Politics in an Incomplete State," *Global Governance* 10 (2004): 83-98; Jaret Chopra, "The UN's Kingdom of East Timor," *Survival* 42, no. 3 (2000): 27-39; Paulo Gorjão, "The Legacy and Lessons of the United Nations Transitional Administration in East Timor," *Contemporary Southeast Asia* 24, no. 2 (2002): 313-336.

context of Indonesia's own transition from an authoritarian government to a reformist movement for democracy. In other words, there is a dual transition at play. Timor-Leste and Indonesia are in transition at the same time and these transitions are linked.[13]

Relevance to Literature on Timor-Leste

We have chronological histories of East Timor's experience of violence and passage into the transitional phase of state and peace-building, such as James Dunn's *A People Betrayed* and Geoffrey Robinson's *How Genocide Was Stopped in East Timor*. These works carefully document the human rights abuses committed from 1974 to 1999 in Timor-Leste. They complement the only comprehensive, historical tome of the Indonesian Occupation of East Timor that was generated by the national truth commission, CAVR, in its Final Report. These histories develop insight into how particular narratives and practices supported the Indonesian Occupation of East Timor up through 1999. They provide analysis of the events up to 1999, but they do not adequately explain the history of the nation's relationship to its past after 1999.

In their closing calls for justice in the form of an international tribunal, Robinson and Dunn's historical studies converge with a larger body of scholarship that focuses on the transitional justice system after 1999. The preoccupation in this legally-oriented scholarship has been with the failure of the justice process to bring senior Indonesian military leaders to trial for human rights abuses, in particular in relation to the standards of accountability for the many Timorese perpetrators who participated in both trials and truth commissions.[14] Much of this work focuses on specific institutions, and assesses these institutions based on legal standards. Most of this

[13] For more information on transitional justice processes that occurred post-1998 in Indonesia see, Hilmar Farid and Rikardo Simarmatra, *The Struggle For Truth And Justice : A Survey of Transitional Justice Initiatives Throughout Indonesia* (New York: International Center for Transitional Justice, 2004) and Priyambudi Sulistiyanto, "Politics of Justice and Reconciliation in Post-Suharto Indonesia," *Journal of Contemporary Asia* 37, No. J (2007): 73-94.

[14] See the following prominent studies on the Serious Crimes Unit and the Special Panels: David Cohen, "Seeking Justice on the Cheap: Is the East Timor Tribunal Really a Model for the Future?*" Asia Pacific Issues* 61 (2002); Caitlin Reiger and Marieka Wierda, *The Serious Crimes Process in Timor-Leste: In Retrospect*, Prosecutions Case Studies 48 (New York: International Center for Transitional Justice, 2006); Suzannah Linton, "Prosecuting Atrocities at the District Court of Dili," *Melbourne Journal of International Law* 2 (2001): 414-458; Megan Hirst and Howard Varney, *Justice Abandoned? An Assessment of the Serious Crimes Process in East Timor*, Occasional Paper Series 33 (New York: International Center for Transitional Justice, 2005); David Cohen, *Indifference and Accountability: The United Nations and the Politics of International Justice in East Timor* (Honolulu, HI: East West Center, 2006); Suzanne Katzenstein, "Hybrid Tribunals: Searching for Justice in East Timor," *Harvard Human Rights Law Review* 16 (2003): 245- 278. For studies of the CAVR process see: Patrick Burgess," Justice and Reconciliation in East Timor: The Relationship between the Commission of Truth, Reception and Reconciliation and the Courts," *Criminal Law Forum* 15 (2004): 135-158; Carsten Stahn, "Accomodating Individual Responsibility and National Reconciliation: The UN Truth Commission for East Timor, "*The American Journal for International Law* 95, no. 4 (2001): 952-966; Monika Schlicher, *East Timor Faces Up to its Past: the Work of the Commission for Reception, Truth and Reconciliation* (Aachen, Germany: Pontifical Mission Society, Human Rights Office, 2005); Piers Pigou, *The Community Reconciliation Process of the Commission for Reception, Truth and Reconciliation* (UN Development Programme, 2004); Spencer Zifcak, *Restorative Justice in East Timor: An Evaluation of the Community Reconciliation Process of the CAVR (*Asia Foundation, 2004). For studies of the Commission for Truth and Friendship see: Megan Hirst, *Too Much Friendship, Too Little Truth, Monitoring Report on the Commission of Truth and Friendship in Indonesia and Timor-Leste* (New York, International Center for Transitional Justice, 2008); Megan Hirst, *An Unfinished Truth: An Analysis of the Commission of Truth and Friendship's Final Report on the 1999 Atrocities in East Timor* (New York: International Center for Transitional Justice, 2009).

work was produced while the institutions were in progress, or immediately following their conclusion, as opposed to studies over an extended period of time.

Several academic studies have examined the impact of the transitional justice process in a broader framework. These works have mostly taken the form of victim studies. For example, a study by Elizabeth Stanley adds to our understanding of the transitional justice system as experienced by torture survivors. A recent series of publications by Simon Robbins assesses the needs of families of persons who went missing during the Indonesian Occupation, providing valuable information on victims' opinions and NGO advocacy efforts in this area.[15] Lia Kent's work has also examined the range of transitional justice processes in Timor-Leste, contrasting international and national perspectives with what she broadly refers to as survivor or local perspectives. Like mine, her study references the concept of narrative, but her methodology, sources and conclusions about some of the institutions and their narratives differ significantly from this one. Her work outlines general victim perceptions about justice and the institutions at different levels of the social and political sphere, but she does not inquire deeply into how narratives were generated from an institutional perspective.

Beyond Timor-Leste

By exploring the answer to this question, "What happens after the stories have been told?," I hope to use archival sources to assess the narrative process and legacy of the transitional institutions as they operated in Timor-Leste from 1999 to 2009. However, the confluence of local and international actors in this historical context means the significance of this study extends further than an audience who has a special interest in Timor-Leste. Scholars who study transitional justice, international politics or development may also share an interest in considering the ways political and cultural forces interact to create social narratives that ostensibly establish the "truth" and "rule of law." In particular, because Timor-Leste was the first place a hybrid tribunal was attempted, this study may be beneficial to those readers who wish to understand the unique narrative features of hybrid transitional justice processes that have been used or considered in other places such as Sierra Leone, Cambodia and Lebanon. Timor-Leste's first venture into bilateral truth commissions may also be of interest to students of transitional justice or diplomacy.

Furthermore, I hope to contribute to on-going discussions about how transitional justice programs can leave legacies. Too often transitional justice scholarship has considered the truth-telling function only within the short-term lives of institutions, while at the same time stating the dictum that transitional justice is a long-term process. I have attempted to take a longer view of the life of these institutions by considering their material legacy in archives which include many sources in addition to final reports, public hearings and the records of trial proceedings. Thus, the discussion of the truth-telling function and the legacy of archives created by the transitional justice process may be relevant to other post-conflict settings.

[15] Simon Robbins, *The Needs of the Families of the Missing in Timor-Leste* (International Committee of the Red Cross: Dili, 2010); "Challenging the therapeutic ethic: A victim-centered evaluation of the transitional justice process in Timor-Leste," *International Journal of Transitional Justice* (forthcoming).

When I began my studies, Timor-Leste was the country in Southeast Asia that was most engaged in the transitional justice process, but Southeast Asia is an area where a host of transitional justice strategies have been attempted to respond to human rights atrocities in the modern era. The most recent transitional justice initiatives have occurred in Cambodia, Indonesia, and perhaps in the future, Myanmar. Despite the unusual characteristics of the Timor-Leste case, this research is also relevant to other Southeast Asian polities that experience regime change, such as could someday be the case in Myanmar or Indonesian Papua, and has already been the case in Indonesia in the era of *Reformasi* in other areas such as Aceh. The practice of state-making in Southeast Asia and narrative's relationship to politics and justice discussed in this work may have relevance for the promotion of human rights throughout the region. Brief engagement with the concept of the House may also attract scholars who study what Levi-Strauss has coined "house societies" of Southeast Asia.[16]

Finally, I hope to engage scholars of Indonesia. Although the temporal focus of this study is on the period after Timor-Leste's independence from Indonesia, the sources for this study are drawn from archival materials that document Indonesia's political and military history as deeply as they record the Timorese struggle for independence. As Francisco's story shows, Indonesia as a state and its culture, language and peoples cannot be easily untangled from the lives and memories of the people of Timor-Leste. His story, and many of the other stories that will emerge in this text, record the history that will be told about Indonesia in Timor-Leste and abroad in the future. Therefore, in many ways this study is about understanding Indonesia's past as well as understanding Timor-Leste's future. Some of the problems and concepts applied in this study draw on the anthropological and political scholarship that has been written about Southeast Asia, and Indonesianists may find it useful to see how these concepts were applied to a setting that is at once part of, and yet entirely apart from, the Indonesian nation. On a practical level, the Indonesian language was the mode of expression for many of the original materials consulted in this study, and is therefore within the realm of Indonesian studies. It is my hope that this work will be as applicable to those scholars who seek to understand and remedy the causes and impacts of state-led or communal violence that continues today in Indonesia, as it will be to those who are seeking peace within Timor-Leste.

Objectives and Organization of the Discussion

In the following chapter, this study will address these gaps in the scholarship regarding the transitional justice process in Timor-Leste by first discussing core definitions and concepts that inform the study. In this context, the notion of "narrative centers" will be introduced as a framework to unify the survey of narratives across the variety of archives, literatures and transitional justice institutions. A brief description of the archival sources appears in the subsequent chapter to conclude the Introduction.

In Part Two, truth narratives relegated to the archives by official, state-supported institutions are examined. As Ann Stoler has explained, archives and their narrative outputs cannot be understood without first understanding the institutions that created them.[17] Therefore, each

[16] Claude Levi-Strauss, *The Way of the Masks* (London: Jonathan Cape, 1983), 172-187.
[17] Ann Laura Stoler, *Along the Archival Grain: Epistemic Anxieties and Colonial Common Sense* (Princeton: Princeton University Press, 2009), 25.

chapter outlines institutional backgrounds, functions and expectations, which are then enhanced by participant observation accounts of the institutional and archival operations. However, in each of these chapters, archives are discussed in a broader sense, so that the focus is ultimately on the archival sources and the narratives, rather than the institutions. Each chapter examines how narratives found inside "official" archives are fragments, and they rely on and interact with actors, institutions and sources beyond the archives to achieve significance. To illustrate that the dynamics of truth-telling are not homogenous, unilateral or under the full control of the state, in Part Three we will examine "unofficial" archives that will cast more light on popular understandings of truth-telling and the transitional justice process.

We will conclude by comparing and summarizing the themes and practices noted across all the archives and discuss what their legacy can teach us about truth-telling in Timor-Leste and transitional justice.

Francisco, and others who will be discussed, represent what I have come to call a narrative center.

What does it mean to be a narrative center in the context of Timor-Leste's experience of transitional justice? In the course of this discussion I will introduce a few of the individuals who I perceive as a narrative center and we will follow them as a thread that runs through different aspects of the transitional justice process. I will attempt to show the ways in which narrative centers in Timor-Leste have participated in, propelled and have the potential to ultimately determine the legacy of the truth-telling processes.

The idea of narrative centers that I propose here is broad. It encompasses people and institutions, such as the courts and truth commissions. More generally it implicates social structures, such as houses and language. The definition that I propose for narrative centers within this study is: entities that engage in the transformation of global idioms of transitional justice to produce socially and politically recognized truths in local settings. Accordingly, each chapter in this book draws attention to a different idiom of transitional justice, and a corresponding narrative of justice, that became socially recognized and politically relevant through particular narrative centers in Timor-Leste.

It is not my intention to propose narrative centers as a "model" or historical fact, which would perhaps erroneously assume a coherence or systemization in the archives and in truth-telling that does not exist. I merely wish to employ this term to better describe behaviors and results I observed in the truth-telling processes across the range of transitional justices institutions and actors I encountered in Timor-Leste. The term is meant to be descriptive of the praxis of truth-telling.

However, before I elaborate further on the concept of narrative centers, it will be helpful to define transitional justice and its relationship to the concepts of narrative and truth-telling.

Definitions

"Transitional justice" is a contested title for a field that examines an array of judicial and non-judicial responses designed to provide various forms of accountability for human rights abuses committed by previous repressive regimes. Traditionally the field has focused its study on two types of mechanisms that provide accountability – trials and truth commissions – and has drawn most extensively but not exclusively from the inter-disciplinary application of law, political science and history. However, this new field can be interpreted more expansively. Discourses on the nature of truth, memory and trauma that are deeply embedded in the fields of philosophy, anthropology, psychology, literature and cultural studies also play a prominent role in the analysis of trials, truth commissions, and a variety of other responses to human rights abuses including reparations, lustration, and memorialization.

Some scholars have objected to the term "transitional" because they suggest that the linear structure inherent in this concept of "going to" reflects hegemonic judgment (be it neo-imperial or chauvinistic) of what constitutes progress.[18] In short, the field of "transitional justice" takes an evolutionary view of justice that can erroneously link concepts of justice to highly normative views of civilization.[19]

"Rule of Law" is another contentious term that often overlaps with "transitional justice." In this discussion it refers to a nation's commitment to make government authority subservient to the regular and fair application of laws that have been endorsed by a democratically elected, representative body.[20]

"Justice" is an even more problematic and relative term. Different meanings of justice that range from procedural fairness at trial to the eradication of poverty are found in this study. It is clear that justice as it is discussed in testimony and documents in the archives of Timor-Leste employs a holistic concept that includes social, economic and cultural freedoms alongside civil and political liberties, as well as judicial accountability.[21] Along with the Tetum loan word from Portuguese, *justisa*, the Indonesian word, *keadilan*, was the most common word used to talk about justice, and can be translated as "fairness," particularly if one wishes to push a Rawlsian interpretation. [22] Michael Sandel offers a concept of justice as solidarity, based on Alasdaire

[18] For a discussion of feminist perspectives on the field of transitional justice, see Christine Bell and Catherine O'Rourke, "Does Feminism Need a New Theory of Transitional Justice?," *International Journal of Transitional Justice* 1, no. 1(2007): 23-44.

[19] Based on these critiques of the use of the term "transitional justice," this field is alternatively referred to as "post-conflict justice," but this definition is also problematic because it is exceptionalist and functionalist, meaning that conflict is seen as an aberration and something that can be eradicated, as opposed to a continuous feature of society that is to be managed. Viewing the field from the purely "post-conflict" perspective can exclude justice processes that did not occur in the context of a full-scale armed conflict, and may marginalize internal conflicts. Further, this categorization does not include the institutions and actions that are used in the pursuit of justice before and during a particular conflict.

[20] For a discussion of various meanings "rule of law" see: Ronald Dworkin, *Law's Empire* (Cambridge, MA: The Belknap Press of Harvard University Press), 93; Richard Posner, *The Problems of Jurisprudence* (Cambridge, MA: Harvard University Press, 1990), 319-20; Judith Shklar, "Political Theory and the Rule of Law" in Hutchinson, A. and Monhan, P. eds. *The Rule of Law: Ideal or Ideology?* (Toronto: Carswell, 1987), 1-16; Brian Z. Tamanaha, *On the Rule of Law: History, Politics, Theory* (Cambridge: Cambridge University Press, 2004); Thomas Carothers, ed., *Promoting the Rule of Law Abroad* (Washington D.C.: Carnegie Endowment for International Peace, 2006). For a discussion of the competing definitions of rule of law and their relevance specifically to transitional justice, see James L. Gibson, "Overcoming Apartheid: Can Truth Reconcile a Divided Nation," *Politikon* 31, no. 2 (2004): 180-183.

[21] Amatrya Sen's recent work, which expands on John Rawls' theory of " Justice as Fairness" may be worth considering as a possible fit for this concept of justice as it emphasizes social and economic rights alongside civil and political rights, and defines justice in terms of capabilities.. However, if I were to assign a theory of justice to this work, it would by my interpretation, and the diversity of opinions found in the sources themselves would not be accurately represented, and as centuries of scholarly debate over the meaning of justice have yet to determine a consensus, I will not attempt one here. For reference see Amartya Sen, *The Idea of Justice* (Cambridge, MA: The Belknap Press of Harvard University Press, 2009).

[22]Along with his concept of "justice as fairness," Rawls is usually associated with the "idealist" school of political theorists who posit that the law, which is presumed to be based on universally-held principles, has the power to transform societies from the practice of authoritarianism to a democratic, liberal system of rule. On the other end of this debate are the "realists" who attribute transformations in the political (and justice) system to the contingencies of politics rather than the normative value of liberal standards. Ruti Teitel in her foundational text, *Transitional Justice*, charts out a middle ground between these two viewpoints. She argues law in a post-revolutionary period of

MacIntyre's idea of moral agents as narrative beings, which situates meanings of justice in the context of social and familial relationships. [23] In Timor-Leste, where communities are small in population and tightly bound by familial ties and obligations based on survival during mass conflict, a theory of justice that accounts for solidarity merits consideration, and seems to be favored by some members of the nation's leadership. However, it cannot be considered the exclusive interpretation of the concept of justice in Timor-Leste. Because there is no consensus in the source materials on the meaning of justice, this study does not assume a single definition or theory of justice. However, it does assume that actors in the justice process operate with certain behaviors that drive them to define justice within narrative forms.[24]

Different transitional justice mechanisms engage in a process of accountability and paradigmatic, political shifts in different ways that constitute different forms of "justice." For example, trials pursue judicial, punitive accountability which is often characterized as "retributive" justice and truth and reconciliation commissions pursue non-judicial means of accountability that are most often described as "restorative" justice. [25] While this study wishes to challenge the approach to understanding trials and truth commissions as either retributive or restorative, distinguishing between the types of justice is critical to understanding the field, and the diversity of expectations about justice generated by transitional justice institutions.

Regardless of the format of the transitional justice mechanism or the type of justice pursued, all rely on testimony. "Testimony" within the field of transitional justice denotes the stories told by people who witnessed crimes and human rights abuses.[26] This testimony is not necessarily limited to direct victims or direct witnesses. Testimony before a court of law in the transitional justice setting is collected and heard in a regulated setting following prescribed judicial norms. It carries the weight of legal evidence. The uses of testimony in non-judicial transitional justice mechanisms are highly dependent on an institution's interpretation of its role and objectives. Because testimony used by a truth commission is not required to subscribe to judicial norms in the way that trials are, such as disclosure or cross-examination processes, it does not qualify as legal evidence but instead is usually described as historical evidence. Testimony can also be

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transition is both independently constitutive and reactive to political contingencies based on the previous experience of injustice. She describes this process as "transitional jurisprudence" and includes among its works punishment, historical inquiry, reparations, purges and constitution making. The sum of these works is meant to be a paradigmatic shift - the "transition" of political regimes and their foundations. Ultimately I find Teitel's argument most convincing, but Rawl's language of justice seems appropriate to the content of this discussion. Like Teitel I will continue to employ the conventional term "transitional justice" but with the awareness that the meaning is complex and contested.

[23] Michael Sandel, *Justice: What's the Right Thing to Do?* (New York: Farrar, Strauss and Giroux, 2009), 220-243.

[24] For other examples of transitional justice scholarship that discuss narrative in the context of transitional justice, see Lia Kent, "Justica Seidauk Mai (Justice is Yet to Come): Rethinking the Dynamics of Transitional Justice in East Timor" (Ph.D. Dissertation, 2010) and Claire Moon, *Narrating Political Reconciliation: South Africa's Truth and Reconciliation Commission* (New York: Lexington Books, 2008).

[25] For an account of the benefits of retributive justice in the transitional justice context, see Diane F. Orentlicher, "Settling Accounts: The Duty to Prosecute Human Rights Violations of a Prior Regime," *Yale Law Journal* 100 (1991). For an account of the benefits of restorative justice see, Martha W. Minow, *Between Vengeance and Forgiveness: Facing History after Genocide and Mass Violence* (Boston: Beacon Press, 1998). For a more general synopsis of restorative justice see, John Braithwaite, *Restorative Justice and Responsive Regulation* (Oxford: Oxford University Press, 2002).

[26] For a discussion of testimony in the transitional justice context see Lawrence Langer, *Holocaust Testimonies: The Ruins of Memory* (New Haven: Yale University Press, 1991).

referred to in terms of a literary genre that acts as a form of memorialization or lyrical representation of the past.[27] Hence, testimony can act in varied and simultaneous ways within a transitional justice schema: a single story can be at once a source of legal evidence, historical truth and public commemoration.

In many places in this study, I slide between two terms associated with testimony - story-telling and narrative. I often prefer the term story-telling, so as to avoid confusion with the legal usage of the word testimony, which would imply a specific type of oral performance before judicial actors. By story-telling, I mean all the forms of testimony practiced within the transitional justice context, by witnesses, institutions and the society.

By considering testimony within the transitional justice context as story-telling, I am making an ideological choice. I argue that the truth-telling function of transitional justice relies on narrative practice, as opposed to more traditional assumptions about history, truth or law as products of purely scientific, objective, unmediated reporting.

Then, my use of the term "narrative" also requires elaboration. It is the subject of an entire field, narratology, pursued across disciplines with origins in literary criticism and deep roots in modern historiography. Roland Barthes has noted that narratives can be found everywhere, and are not limited to spoken discourse or texts. Barthes contends narrative can best be identified through a structural analysis of a representation's units, defining each unit of the narrative's function and meanings.[28] Literary analysts, such as David Hermann, have created complex typologies and ideal definitions of narrative, which set boundaries on what can be considered as narrative. For example, Hermann argues a "narrative" must have specific contexts ("situatedness"), event sequencing, disruptive elements to a storyworld, and convey a particular experience. Michel de Certeau offers an analysis of history's relationship with narrative, which can help us define narrative usage. As Certeau explains, narrative distinguishes series of events and sequences them; whereas "history" first establishes "truths" (or in simpler terms, "facts") and then sequences them. Sequencing truths is more than constructing a story, although there is a narrative process at play in both. In simple terms, narrative is the telling of a story; but in fact, in the transitional justice context it is more. It is the "writing of history," particularly as it is practiced in the archives where oral testimony is transformed into inscribed truths.[29]

Hence, the study of narrative, especially within the transitional justice process, should be more than the identification and study of the story itself, but rather it should be the study of the process of its telling. More specifically, a narrative study must examine the process of choosing what is to be told, and what is to be left out. This process of selectivity shapes the story, which in turn shapes our understanding of the event or topic that the story describes. As Paul Ricoeur explains, there is no such thing as an "exhaustive" narrative.[30] If narratives were non-selective there would

[27] See Mark Osiel, *Mass Atrocity, Collective Memory, And The Law* (New Brunswick, New Jersey: Transaction Publishers, 1997), 165-168.
[28] See Roland B. Barthes, "Introduction to the Structural Analysis of the Narrative," *Theories and Methods Series Special Papers 6* (Center for Contemporary Cultural Studies: The University of Birmingham, 1966).
[29] See Michel De Certeau, *The Writing of History* (New York: Columbia University Press, 1988), 93.
[30] Paul Ricoer, *Memory, History and Forgetting*, trans. Kathleen Blamey and David Pellauer (Chicago: The University of Chicago Press, 2004), 448.

be no danger of forgetting, and no acts of memory. It is narrative's selectivity that allows individual memories to be melded into a whole story, or a collective truth.

Bodies of testimony, not limited to oral testimony, are transformed into "truth" and subsequently "history" by all transitional justice mechanisms – trials and truth commissions– to counter the effects of the repression that sustained the systems of power that were responsible for human rights violations of a previous regime.[31] The adage often used to describe this act is: "speak truth to power" but in fact the process entails speaking counter-truths that will replace the dehumanizing historical narratives of oppression that dominated during the previous period of illiberal rule.[32] For all the myths created by the repressive regime (i.e. inequality and violence are acceptable forms of governance), the transitional justice approach creates a framework of alternative "truths" and an alternative history based on universal human rights principles.

However, when dealing with any large body of testimony, stories will contain multiple and contesting versions of the truth, some of which adhere to this human rights framework and some that may not. In the process of producing its "truths" all transitional justice mechanisms survey and choose among these competing versions of the truth contained in testimony to create their own story. This provision of "truth" has become one of the key objectives of most transitional justice mechanisms - including trials and truth commissions. It is so fundamental to the field that the UN has passed a series of resolutions enshrining the "victim's right to truth."[33] Thus, understanding narrative is necessary to fully evaluate the performance and limits of transitional justice mechanisms, especially with regards to their "truth-telling" or "historical" function.[34]

The "healing" function of transitional justice mechanisms is another example of how deeply embedded these institutions are in the realm of narrative. It is the narrative process of truth-telling, and even more specifically a narrative of trauma, that has often been the basis of the claims that transitional justice mechanisms can provide healing to victims, which is sometimes

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[31] In addition to Teitel's discussion of truth-telling, see Margaret Popkin and Naomi Roht-Arriaza, "Truth as Justice: Investigatory Commissions in Latin America," *Law and Social Inquiry* 20 (1995).

[32] For a discussion of the interplay between truths and counter-truths in testimonial literature see, Ariel Dorfman, *Some Write to the Future: Essays on Contemporary Latin American Fiction* (Durham: Duke University Press, 1991).

[33] See A/Res 65/196, "Proclamation of 24 March as the International Day for the Right to the Truth concerning Gross Human Rights Violations and for the Dignity of Victims," March 2011; A/HRC/RES/14/7 Proclamation of 24 March as the International Day for the Right to the Truth concerning Gross Human Rights Violations and for the Dignity of Victims (2011) ; A/HRC/15/33, Report of the United Nations High Commissioner for Human Rights on the Right to the truth (2010); A/HRC/RES/12/12 Resolution adopted by the Human Rights Council Right to the truth (2009); A/HRC/12/19 Report of the United Nations High Commissioner for Human Rights on the Right to the truth (2009); A/HRC/5/7 Report of the United Nations High Commissioner for Human Rights on the Right to the truth (2007); A/RES/60/147 Resolution adopted by the General Assembly on Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law. Although these resolutions are not legally binding, for State Parties to the International Convention for the Protection of all Persons from Enforced Disappearances (2006), the right to truth for victims is obligatory (Article 24 (2)).

[34] For a discussion of the limits of truth-telling, particularly in the context of truth commissions, see David A. Mendeloff, "Truth-Telling, and Postconflict Peacebuilding: Curb the Enthusiasm?," *International Studies Review* 6, no. 3 (2004): 355-80.

referred to as closure.[35] The term "closure" is a companion to the Freudian concept of "trauma" which has been extracted from theories of psychoanalysis of individuals to apply in post-conflict situations to the society as a whole. Societies full of individuals who suffer trauma are interpreted to be in the need of a narrative closure of the collective memory to assist them in moving from melancholy to mourning, and eventually to national healing.

Thus, healing through truth-telling has become a fundamental aim of transitional justice processes.[36] However, it is difficult to ascertain the degree to which this "closure" is desirable or achievable in response to massive human rights violations. The "healing" aspect of transitional justice work cannot be studied without a thorough investigation of the narratives, including the counter-narratives and sub-narratives, produced at different levels of society.

The field of transitional justice positions itself solidly alongside a Hegelian view of history by making these claims about healing and closure because it assumes that history can only be written within the realm of law. As Hayden White has explained in his reading of Hegel, "where there is no rule of law, there can be neither a subject nor the kind of event which lends itself to narrative representation."[37] White concludes that the value of "history" depends on its relationship to the narrative process. In other words, where there is no narrative, there is no history. He further argues that our evaluation of "history" is based on a particular type of narrative form that exhibits "closure" in the form of a moral judgment. To simplify his argument, he holds that we validate histories that reach a moral conclusion through a specific narrative pattern and devalue "tellings" about the past that either do not display narrative features such as ternary plot structure or endings that do not signify a moral meaning.

Transitional justice mechanisms, such as trials[38] and reports of truth commissions, exhibit the features of "history" that White describes.[39] They collect testimony, or even chronicles and

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[35] For more background on narratives of trauma and the healing function of truth-telling, see Cathy Caruth, ed., *Trauma. Explorations in Memory* (Baltimore: The John Hopkins University Press, 1995); Shoshana Felman, "Theaters of Justice: Arendt in Jerusalem, the Eichmann Trial and the Redefinition of Legal Meaning in the Wake of the Holocaust", *Critical Inquiry* 27 (2001): 201-238; Martha Minow, "Hope for Healing" in Robert I. Rotberg and Dennis Thompson, eds., *Truth v. Justice : The Morality of Truth Commissions* (Princeton and Oxford: Princeton Univ. Press, 2000), 253; Nora Strejilevich, "Testimony: Beyond the Language of Truth," *Human Rights Quarterly* 28, no. 3 (2006): 701-713.

[36] For example, among its achievements the ICTY claims "giving voice to victims" and "establishing the facts," see the website of the ICTY, http://www.icty.org/sid/324, accessed 13 November 2011. For a discussion of the truth function across a range of truth commissions see Patricia Haynor, *Unspeakable Truths: Facing the Challenge of Truth Commission* (New York: Routledge, 2002), 72-133.

[37] Hayden,White, "The Value of Narrativity and the Representation of Reality," *Critical Inquiry*7, no. 1 (1980):16.

[38] There is a rich literature available on the relationship of narrative to the legal process, and more specifically trial structures. For example, see Catherine MacKinnon, "Law's Stories as Reality and Process," *Law's Stories: Narrative and Rhetoric in the Law* (New Haven: Yale University Press, 1998). Many of the key debates about trials and their narrative uses overlap with the field referred to as "Law and Literature." For further reading on narrative and its dual relationship to law and literary works, see Richard Posner, *The Legal Imagination* (Cambridge: Harvard University Press, 1988): Peter Brooks and Paul Gewirtz, *Law's Stories: Narrative and Rhetoric in the Law* (New Haven:Yale University Press, 1998); Richard Dworkin, "How Law is Like Literature," *A Matter of Principle* (Cambridge, MA: Harvard University Press, 1985); *The Journal of Law and Literature* (Cardozo School of Law, Yeshiva University).

[39] See also Teitel's discussion of the relationship between narrative and the rule of law in the transitional state, in *Transitional Justice*, 71-117.

annals about human rights abuses from witnesses and transform them through a narrative process into a moral tale that signifies the new authority of the law. One scholar has even argued that according to international law norms today: "a human rights abuse is characterized as an infringement on the modern subject's ability to narrate her story."[40] Through this process of narration, transitional justice mechanisms may provide their "subjects" more than a psychological form of "closure": they potentially provide historical closure. Thus, the justice that many transitional justice mechanisms aspire to provide is highly dependent on the satisfaction of narrative norms and historical forms.

However, there is an inherent limitation in this view of history, healing and transitional justice that White's work predicts.[41] Teitel refers to the same potential failing of narrative production by transitional justice institutions: she cautions that the value of truth-telling can be undermined by "telling the story too well."[42] Reality does not always comply with narrative form. The resistance of reality to historical representation is magnified in the case of the telling of events that are so violent that they block or distort memories, or defy the witnesses and the listener's abilities to comprehend their horrific nature.

Furthermore, although the construction of a unified, perfected historical narrative may contribute to societal stability following a period of political conflict, if not properly handled it may also act against the aims of establishing a democratic regime that values the tolerance of a plurality of truths. In short, the powers of history and truth-telling are limited. Yet, it is this very act of setting boundaries that provides justification for the use of narrative form in transitional justice mechanisms. Through the narrative process the uncontrollable and omnipresent forces of violence can be, albeit imperfectly, tamed, disciplined and given a "conclusion" through language that calms the human soul and supports the re-establishment of rule of law. However, problems arise when transitional justice mechanisms, the UN or states engage in this kind of "history" or "truth-telling" without cognizance of their inability to fully and accurately represent the reality of what victims experienced, and the illusory nature of "closure."

In summary, all transitional justice mechanisms engage in a narrative process in order to fulfill their obligations to create a legacy of accountability, truth and healing for victims. Theorists of narrative, such as Barthes and White, would perhaps claim that narrative is the process most suited to the transnational endeavor of defending universal human rights because narrative is in itself a universal human characteristic that transcends race, religion and culture. However, the "transitional" nature of the state in which this narrative process is ongoing also means that the narratives produced are simultaneously affected by other narrative urges that are much more localized, such as the production of foundational myths, national canons, monuments and official histories.[43] Thus, the narrative space of a transitional justice mechanism is shaped by more than the process of communicating transnational human values of justice or rights: nationalism and battles for individual and local autonomy contour transitional justice narratives at the same time.

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[40] Joseph Slaughter, "A Question of Narration: The Voice in International Law," *Human Rights Quarterly* 19, no. 2 (1997): 406-430.

[41] White explains: "I have sought to suggest that the value attached to narrativity in the representation of real events arises out of a desire to have real events display the coherence, integrity, fullness and closure of an image of life that is and can only be imaginary." 27.

[42] Teitel, *Transitional Justice*, 116-117.

[43] Osiel, *Mass Atrocity*, 4.

Development of a concept of centering

My concept of narrative centers is derived in relation to transitional justice and narrative studies, but it is also formed out of debates in South and Southeast Asian Studies about the dynamics of power between political centers and peripheries.

James Scott's book, *Seeing Like a State*, grapples with the question of why "well-intended schemes to improve the human condition have gone so tragically awry."[44] He argues that centralized plans for engineering social transformation, particularly around utopian concepts, will fail if they do not adequately incorporate local knowledge, or *metis*, and the local cultural systems that result from these networks of knowledge.

According to Scott, the process of "seeing like a state" relies on the state transforming complex, dense and even illogical cultural realities into simplified, or "legible," landscapes over which social policies can be mapped to achieve the state's desired target, for example rapid industrial growth or an increase in agricultural production. Legibility processes, or "administrative ordering of nature and society," are at the heart of implementing these utopian policies, and defining relationships between state centers and the people on their peripheries.[45]
Scott's central ideas were based on case studies mostly from the early to mid-1900s, but they remain highly relevant to the blooming of transitional states after the Cold War and the international community's virile interest in creating human rights-based regimes. This study will take Scott's thesis in order to search for new ways his ideas can explain the failure of contemporary, centralized, utopian planning schemes in post-conflict states, such as the creation of justice in the wake of modern atrocity.

How is Scott relevant to Timor-Leste? In the case of transitional states, even if the state had been thoroughly "modernized" for many years, during a period of serious conflict much of what was once "mapped" by the state becomes invisible. Knowledge is deliberately hidden or made "illegible" as a means of resisting the enemy or occupying state. Therefore, much of the work of a post-conflict regime is re-mapping the state to transform ruins and chaos into a manageable landscape for reconstruction.

Although the High Modernism in Scott's case studies is not in vogue as an economic development model any longer, its close cousin, "globalism" as practiced by the World Bank, IMF and many other types of international development entities share common characteristics with this mentality of hegemonic planning.[46] When international donors and planning agencies become primary players in the creation of transitional justice systems in developing nations such as Timor-Leste, human rights may be the relevant subset of a modernizing, universal and globalizing ideology. If, according to Scott, we know that centrally planned economic models

[44] James Scott, *Seeing Like a State: How Certain Schemes to Improve the Human Condition Have Failed* [E-reader version], (New Haven: University Press, 1998), para.11.
[45] Scott goes even further with his concept of legibility in his most recent book, *The Art of Not Being Governed: An Anarchist History of Upland Southeast Asia* (New Haven: Yale University Press, 2009).
[46] Scott, *Seeing Like A State*, 332. See also Scott's comments in an interview at "Theory Talks: Theory Talk #38: James Scott," at www. theory-talks.org/2010/05/theory-talk-38.html, accessed 14 November 2011.

based on High Modernism for developing economies are highly likely to fail, one cannot help asking why these centralized methods continue to be transferred to moral economies, such as human rights in post-conflict states. Few would argue that human rights models should not be implemented on a global scale, but the question is how they can be implemented in a way that is locally legitimate and effective.

Some scholarship has already begun to address these concerns. Sally Engle Merry's work has sought to better define the processes of cultural adaptation of so-called "universal" human rights values into local societies. She has used a concept called "vernacularization" to describe the process of local agents translating global discourse into local cultures, and then local adaptations back into global knowledge networks.[47] Mark Goodale and others have refined this concept to demonstrate that it is a more dynamic than Merry's original idea of vertical adaptation. Goodale has described vernacularization as either connotative or denotative, where the former is a superficial translation of global discourse at the local level, whereas the latter signifies a deeper level of implementation and absorption.[48] The concept of "narrative centers" I employ is similar to vernacularization and its variations. Vernacularization is practiced by what and whom I will call narrative centers. However, "vernacularization" is mainly concerned with "translation" from global to local actors, and does not sufficiently explain the process of "translation" within the state - between diverse and wildly different conceptions of the so-called "local" culture. It also relies on over-simplified categories and timelines of "global" and "local" culture, whereas it will be observed that there is often dissent and the need for "translation" of so-called global discourses within the category of international, much less to local actors.

Using Scott, this study will look more into the process of state-making through truth-telling, particularly in the Southeast Asian context, and the ways it informs "vernacularization." We will observe the ways the "local" is drawn closer to the state through "global" discourses, international actors and the transitional justice process. At the same time, we will observe the ways the "local" may resist or subvert so-called "global" processes and narratives, not necessarily because they are culturally unacceptable or have been poorly "translated," but because of a culture of resistance that seeks autonomy from the violence associated with structures of governance. This process of centering and resistance is one aspect of vernacularization in Timor-Leste.

Throughout Scott's work he compares and contrasts the state's attempts to make legible local phenomenon that resist legibility. For example, he shows how cadastral maps were created to standardize systems of land tenure, while within Southeast Asia indigenous systems of

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[47] See Sally Engle Merry, *Human Rights and Gender Violence: Translating International Law into Justice* (Chicago: The University of Chicago Press, 2006) and "Unpacking the Vernacularization Process: The Transnational Circulation of Women's Human Rights," Lecture, University of Windsor, Ontario, 5 March 2009, http://uwindsorsocialjustice.ca/socialjustice/videoconferences, accessed 14 November 2011. Engle's work complements scholarship more generally concerned with legal globalization and adaptation to local cultures. For a summary of the emerging themes and debates in this body of literature see, Marion Fourcade and Joachim J. Savelsberg "Introduction: Global Processes, National Institutions, Local Bricolage: Shaping Law in an Era of Globalization," *Law & Social Inquiry* 31, no. 3 (2006): 513–519.

[48] See Mark Goodale and Sally Engle Merry (eds.), *The Practice of Human Rights: Tracking Law Between the Global and the Local* (New York: Cambridge University Press, 2007), 1-38.

community tenure defied legibility. This concept of phenomenon resistant to legibility connects Scott to several other broad fields of scholarship relevant to my topic.

First, Scott's ideas of legibility are derivative of Foucault but are also reactions to debates within the field of Southeast Asian studies, such as "galactic polities"[49] and "exemplary centers,"[50] which theorize the ways states in South and Southeast Asia project and centralize power. Scott's works consistently display an interest in the contrast between the center and the periphery of the state, as it has been configured across Southeast Asian landscapes for centuries (centralized coastal areas versus inaccessible and more autonomous mountainous areas). Thus, East Timor during the period of the Occupation existed at the periphery of the Indonesian state and seems appropriate to understand through Scott's lens. However, as a transitional state and an independent nation, I wanted to see how new centers and new peripheries emerged, particularly in relation to the justice process.

Second, Scott's argument that illegibility often defines what is most local and authentic resounded strongly with the literature of memory and trauma that emerged from studies of the Holocaust. The final conclusion of many works of scholarship in this field, as will be this one, is that atrocity on the scale of massive and grave human rights abuses against a civilian population defies language, defies logic, and our capacities for historical and literary representation.[51] Yet, we have a moral obligation to try to preserve its memory for the sake of preventing its reoccurrence in the future. In other words, memory and trauma scholarship describes the "illegibility" of atrocity. My research regarding the transitional justice system in Timor-Leste will attempt to bring these fields into dialogue to further develop this idea of "illegibility."

Third, an aspect of "legibility" that became apparent in my fieldwork is the ways in which transitional justice institutions write, re-write and at the same time suppress gendered narratives. Women as survivors have acted as witnesses of human rights abuses on an astounding scale and in daring ways in Timor-Leste. As key providers of testimony in judicial processes and truth commission activities, women played an important role in crafting the narratives of justice that have emerged and endured in Timor-Leste, particularly from the truth commissions. Although they told many different types of stories, women's provision of testimony regarding sexual violence have played the most visible role in challenging Indonesian narratives about the conflict, as well as Timorese. Through this testimony women's bodies have become sites of national and international "truth-telling," or collectively - a narrative center. Their testimony has been simultaneously levied for the purposes of constructing national "truths," meeting

[49] This concept was debuted in Stanley J. Tambiah, "The Galactic Polity: The Structure of Traditional Kingdoms in Southeast Asia," *Annals of the New York Academy of Sciences, Anthropology* 293, no. 1 (1977): 69-97. Tambiah's work builds on other scholarship in Southeast Asian studies including, Robert Heine-Gelden, "Conceptions of State and Kingship in Southeast Asia," *Far Eastern Quarterly* II (1942): 15-30.

[50] See Clifford Geertz, "The Myth of the Exemplary Center," in *Negara: The Theatre State in Nineteenth Century Bali* (Princeton: Princeton University Press, 1980), 11-18. Although this is Geertz' most commonly cited discussion of this concept, it appeared in his work long before this publication. See also Geertz, *Islam Observed* (New Haven: Yale University Press, 1968).

[51] Some prominent examples of this kind of analysis include Lawrence L. Langer, *Holocaust Testimonies*; Dori Laub, *Testimony: Crises of Witnessing in Literature, Psychoanalysis and History* (London:Routledge, 1992); Dominick LaCapra, *Writing History, Writing Trauma* (Baltimore: John Hopkins University Press, 2001); and perhaps the most famous example, Theodore W. Adorno, "An Essay on Cultural Criticism and Society," in *Prisms*, trans. Samuel and Shierry Weber (Cambridge, Mass.: MIT Press, 1967), 34.

international human rights standards and rallying vengeance and outrage. Yet, despite the prominence and importance of all of this "telling," women have seen few results from the justice process.[52]

These observations of the gendered aspects of truth-telling resonated with the literature dominated by Gayatri Spivak about the uses of the voice of the sub-altern woman. Spivak's work and the field of post-colonial criticism teach us to be cautious when writing about subaltern subjects, or the "Other," as either repositories or conduits of transformation. She is particularly critical of the assumption that the subaltern must play a role in furthering or in hindering the incorporation of global norms into traditional societies. She writes extensively about the experience of translation and interpretation of culture between the subaltern subject, or "the local informant" and the researcher, or intellectual "expert" of alterities. In *Imaginary Maps*, she discusses this phenomenon as "the secret encounter" and warns that there is always something hidden and lost in our knowledge obtained in these exchanges between informant and expert.[53] Although I will surely not be able to distinguish all that has been lost in my own participation in this transitional justice process, throughout this study I hope we can observe how transitional justice institutions replicate the "secret encounter" and the elements of knowledge that have been lost as a result. We will also observe and debate the exploitive nature of the expert/local informant relationship especially when it is used for the sake of the acquisition of knowledge for the state, which has been depicted vividly in Spivak's translations, such as "Draupadi."[54] Spivak's work helps position the points we must read the idea of "narrative centers" against – neo-colonial exploitation and misguided, academic activism.

In her own work she uses gendered narrative figures to support her arguments, such as in her translation and discussion of the stories "Draupadi" and "Breast Giver."[55] She explicates the host of complex relationships and political and social inequities that the subaltern negotiates. Spivak herself produces narrative centers to achieve social and educational aims. On the other hand she is opposed to production of narrative centers that rely on assumptions about the homogeneity of "subaltern"s. Spivak's work raises the questions of when and why are the production of what I have called "narrative centers" justified? Does the realm of activism inherent in transitional justice institutions justify their use, as her idea of "strategic essentialism" suggests?[56] If Spivak is placed alongside the work of James Scott, one has to further question how the form of local knowledge, *metis*, should be incorporated into state projects. How do individuals within grand state projects, such as transitional justice, become part of distilling, interpreting and communicating between the realm of *metis* and global norms? In light of Spivak and Scott's work, through this examination of the complexities of narrative production, translation and communication in Timor-Leste in the field of transitional justice, it is hoped that we may gain a better understanding of the role Timorese "narrative centers" have played in the transitional justice process and what indignities, exclusions and obstacles this system may have produced.

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[52] Susan Harris Rimmer, *Transitional Justice and the Women of East Timor* (Canberra: ANU College of Law, 2008).
[53] Mahasweta Devi, *Imaginary Maps*, trans. Gayatri Chakravorty Spivak (London: Routledge, 1995), xxv.
[54] Gayatri Chakravorty Spivak, "'Draupadi' by Mahasveta Devi" *Critical Inquiry* 8, no. 2 (1981): 381-402.
[55] Mahasveta Devi and Gayatri Chakravorty Spivak, *Breast Stories* (Calcutta: Seagull Books, 1997).
[56] See Gayatri Chakvorty Spivak, "Subaltern Studies: Desconstructing Historiography," in *Selected Works of Gayatri Chakvorty Spivak* (New York: Routledge, 1996), 214.

I also have aligned Scott's work alongside the concept described by Mark Osiel as dissensus. Mark Osiel in his trilogy of books about the trials of the Argentinian *juntas* who committed mass atrocity debated the potential for and limitations of collective memory as produced by transitional justice mechanisms.[57] Osiel argues that trials as a transitional justice mechanism cannot guarantee social consensus or unilaterally decide what lessons will be learned by the general public about human rights abuses and the rule of law, but the dialectic nature of a trial process contributes to establishing the peaceful acceptance of difference within a transitional state, or dissensus. The controversial aspect of Osiel's argument is his cautious advocacy for the use of theatre (or perhaps in a downplayed version - narrative) in transitional trial mechanisms to create this desired dissensus.

Like Scott, Osiel views memory as a tool of resistance.[58] So the question arises in the transitional justice setting, how different is Scott's *metis* from Osiel's dissensus? Is *metis* the tool to be used to create dissensus, or are these practices independent, and do each reflect a proper diversity of knowledge and balance of power within the state? Can dissensus and *metis* be used as qualitative markers of a successful transitional justice project?

Both concepts argue against the state's establishment of a singular "truth" that does not sufficiently incorporate local realities and political dissent. Thus, I will take dissensus as the proper standard for the transitional justice mechanism's relationship to collective memory in Timor-Leste to see if it occurs in the same instances where *metis* was in play. At the same time, Osiel's thesis raises a question about the process of incorporating *metis*. While Southeast Asian studies' concepts such as "galactic polities," "exemplary centers" and "*negara"*[59] focus on the state's use of theatrics to communicate power, the question arises whether *metis* is also communicated through theatrics, and whether these theatrics alter the authenticity of this supposedly "local" knowledge.

Scott's companion concept of the "hidden transcript" suggests that "off stage" theatrics and narrative are key characteristics that identify the presence of *metis,* or at least the local knowledge specific to political resistance.[60] Throughout this book I hope to explore "offstage" behavior in the transitional justice process based on participant observation and popular culture.

However, the question remains: how is local knowledge (*metis*) utilized in transitional justice mechanisms? I will argue that narrative centers are the conduit of *metis* and dissensus in the transitional justice setting, and through them victims are simultaneously drawn to and resist the pull of the state. Ultimately, they determine the legacy of transitional justice.

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[57] See Mark Osiel, *Mass Atrocity, Ordinary Evil and Hannah Arendt: Criminal Consciousness in Argentina's Dirty War (*New Haven: Yale University Press, 2001); Mark Osiel, *Mass Atrocity, Memory and the Law* (New Brunswick, New Jersey: Transaction Publishers, 1997) and *Obeying Orders:Atrocity, Military Discipline and the Law of War* (New Brunswick, New Jersey: Transaction Publishers, 1999).

[58] Osiel, *Mass Atrocity, Memory*, "Introduction," 1.

[59] *Supra.*, Geertz, *Negara*.

[60] See James Scott, *Domination and the Arts of Resistance: Hidden Transcripts* (New Haven: Yale University Press, 1992).

Chapter 3. Transitional Justice Archives in Timor-Leste

The creation of the core transitional justice institutions in Timor-Leste laid the foundation for national archives. Although Timor-Leste has a special building and department classified as the National Archives, this collection is comprised of the leftover papers from previous administrations that survived the burning and looting in 1999, as well as some donations from private citizens and other governments. There is no particular archival focus for this collection: it is uncatalogued, dysfunctional and inaccessible to the public.[61] As a result, the only operational archives of the state in 2009 were tied to the three main transitional justice mechanisms (SCU, CAVR and CTF) and the privately held Museum of Resistance.[62]

Each of the core transitional justice mechanisms – the Special Panels and Serious Crimes Unit (SPSC/SCU), the national truth commission (CAVR) and the bilateral truth commission (CTF) – created archives to record the history of their institutions that have become part of the national heritage. Each archive has been the result of a combination of original research, collection by the institution and the donation of materials from other transitional justice mechanisms and activist groups within Timor-Leste and from around the world.

The Serious Crimes collection contains all of the records (administration, investigation, indictments, judgments and transcripts) of the cases heard by the world's first hybrid tribunal in relation to the human rights abuses committed in East Timor in 1999. This collection also contains the records of the investigations of all the cases indicted but not heard by the court, open investigations that never proceeded to indictment, documents seized in raids in 1999 by INTERFET of a handful of former military and militia headquarters and secondary research such as media coverage and academic research on human rights abuses committed in East Timor in 1999. Records of the court cases that proceeded to indictment are a matter of the public record according to all international standards, but remain difficult to access for the public in Timor-Leste.[63] The remainder of the archives operates under confidentiality rules to protect the integrity of any possible future legal processes. The collection also contains many of the public records from the Jakarta Ad-Hoc Trials, evidence donated by the Indonesian Commission for Human Rights and the records of low-level perpetrators who applied to participate in the community reconciliation processes of the national truth commission (CAVR). The Serious Crimes Unit Archives constitute the largest and most complete body of knowledge about the human rights violations committed in East Timor in 1999.

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[61] Personal Communication, Faustino Dos Santos, Director of the National Archives, 17 August 2007, Dili. According to the Director and from what I was allowed to observe through a window into the archives, the collection consists of piles of cardboard boxes on floors in a building that is not open except by appointment. The collection is not labeled or sorted even by box or topic, and its contents are mostly unknown. The Director did not indicate when, if ever, this collection would be restored and made available to the public. The Portuguese government has invested in a program to train Timorese archivists for its future recovery and the Ministry of Culture is taking action to establish a new building to house a national library, but no information could be obtained about the specific contents of that program or a timetable for the archives. It must also be noted that it is rare to find any staff at the archives, even during the workday.

[62] There are some archives that are in the process of being created within government offices such as Parliament and the Prime Minister and President's office, but these are not yet fully functional. Personal Communication, Helena Espadinha, Archival Advisor to the Prime Minister, 22 May 2009, Dili.

[63] The SCU website, including judgments and indictments, are maintained by the Berekely War Crimes Studies Center since its closure in 2005.

However, to date these archives have not been protected or preserved. They are housed in a trailer with no guards, no air conditioning, a single padlock, broken windows and aged, rusting filing cabinets. Some evidence and archival materials have still not been moved into the archive building and remain locked in a cargo container within the same compound. No efforts have been made to preserve or protect original evidence. The focus of the archive has been on copying witness statements taken post-1999, rather than preserving documentation of abuses prior to the arrival of the UN. The UN was supposed to have made copies of the materials relevant to the hybrid court cases when it withdrew in 2005, but the CTF inquiry in 2007 revealed that these copies were incomplete and of insufficient quality to act as a back-up, and in any case are not accessible to the public.[64] Some copies of ongoing investigations have been duplicated again from 2008 to 2009 by the revived Serious Crimes Investigation Team (SCIT) under the auspices of the current UN peace-keeping mission in Timor-Leste. However, the records they were granted access to are not in all cases originals and constitute only a small portion of the archive. Again, these records are not accessible to the public.

The archives are the property of Timor-Leste and are under the authority of the Prosecutor-General. However, the UN hires and manages the handful of staff assigned to the archives on monthly contracts. In 2009, a new Prosecutor General of Timor-Leste was appointed (Ms. Ana Pessoa) and she assumed a large, newly built office which was supposed to have contained facilities for archives. However, the SCU archives were left behind in its old compound with other temporary trailers and containers with no permanent staff or security to oversee them. In September 2011, there was reportedly a plan to move the archives to a new facility, but no move had taken place, and there was no public information available on their status.

The archives of the national truth commission (CAVR) have fared slightly better. These archives house the most comprehensive records in East Timor of the history of the Indonesian Occupation. Its collection spans the entire period of the Indonesian Occupation (1975-1999), as well as the period of civil conflict (1974-1975). This collection is multifaceted and is comprised of multiple mediums: victim, perpetrator and political leaders' testimony recorded in written, oral and video formats; written community histories; media coverage (film, photography, radio); public hearing records; the administrative records of the truth commission itself and the records of the community reconciliation hearings. Part of this collection is currently being digitized by the British Library as part of their Endangered Archives endowment. The Community Profiles are also currently classified as public record and have been scanned as a collection for electronic storage, although the originals vary in the quality of documentation and it requires special permission to view them. Various other documents that record the history of the Resistance, such as the declaration of independence by FRETILIN in 1975 and a resistance newsletter are also available in the library. However, the majority of the CAVR archives (witness and perpetrator testimony given publically and privately) are not accessible to the public. Former Commission members have commented that witness testimony will be sealed for confidentiality for 30 years[65] although many witnesses gave permission for the commission to make their testimony available

[64] Confirmed in interviews with SCIT and SCU archival staff, Dili and personal observations in the archive, 2007-2008.

[65] Personal Communication with Patrick Walsh and Rev. Agostihno Vasconsuelos, 2008-2009. See also "Recommendations for Archive Access," CAVR Library.

to the public.[66] Records that are not related to witness statements such as pre-1999 court documents and records of the CAVR's internal activities have also been barred from public access. Furthermore, the institution functions erratically in terms of administration and funding, so that one frequently does not find the archives open during its posted hours or sufficient staff or resources to access those materials which are public. The most accessible portion of the archives are a series of news clippings about the transitional justice process and a library of secondary sources about East Timor donated by the late, iconic scholar of Indonesian studies, Professor Herbert Feith. Although the institution succeeded in documenting the struggle against human rights abuses as narrated by its own citizens, much of this story is still locked away in the archives, which is ironically and literally a former cell for political prisoners. Rudimentary efforts, such as installing an air conditioning in the room, have been made to preserve the documents, but the burden of tropical heat, dust and the lack of proper cleaning and care will leave them to decay by the time the 30 years have lapsed that will render them public. The CAVR is the most diverse and largest archival collection in East Timor, but sadly it is also mostly inaccessible.

The CTF archives are the joint property of Timor-Leste and Indonesia and are the only archives that constitute a diplomatic history. Each state received a complete copy of the archives at the conclusion of the truth commission's process. Indonesia's copies were handed over to the Indonesian National Archives and East Timor's Foreign Ministry maintains possession and authority over the Timorese collection. The CTF was charged with the task of reviewing the work of all of the previous transitional justice mechanisms in Indonesia and East Timor. The Commission had agreements with various state organizations in both nations so that selected portions of the SCU, CAVR, KPP-HAM and the Indonesian Ad Hoc Human Rights Court archives are contained within the CTF. In addition the Indonesian military supplied a small number of documents to the Commission. The CTF held its own series of public hearings that constitute the part of their archive that is in the public realm. In addition the Commission conducted private interviews with approximately 180 individuals in Indonesia and Timor-Leste. In addition, the Commission's administrative and meeting records are housed in the collection. The access to these archival materials is currently not known because neither country's government has made a final or public decision on the steps that will be taken regarding the CTF's recommendations. Before its dissolution the Commission voted to recommend the sealing of the archive for a specified number of years to be negotiated as a measure to protect witness identities and as a matter of state security. Because the CTF's inquisitorial mandate was limited to 1999, the archival collection is focused on this particular year and does not add significantly to the knowledge about crimes contained in the SCU collection. However, this archive is most notable for its documentation of the differing perspectives on the same set of events by two states (Indonesia and Timor-Leste) and two different sets of Timorese political actors (pro-autonomy versus pro-independence). In years to come this archive has the potential to produce much knowledge about political movements within each of the nations as well as yield valuable information about their international relations. For the time being, the records of the Public

[66] Author's observations of the consent forms attached to "CAVR, CRP files" in the SCU archival holdings. Permission was granted to view these materials based on an MOU between the CTF and the Prosecutor-General's office. Although the deponents gave permission on these consent forms for their information to be publically accessible, even specificying permission to be placed in public archives, CAVR and its successor institution has chosen to not allow access, even to other internal government entities.

Hearings and the Commission's Final Report with amended Expert Advisor reports are the archived legacy available to the public.

The only truly functional archive in Timor-Leste has not resulted directly from a transitional justice initiative: it is the Museum of Resistance.[67] Xanana Gusmão founded this archive in cooperation with the Portuguese Mario Soares Foundation. Its archives are devoted to the history of the veterans of the Timorese Resistance movement. It is a semi-private enterprise that has grown from the donations of Timorese and foreign individuals rather than by mandated international and state initiatives, but it applies for and at times receives government funds.[68] It maintains an active collection and preservation program, as well as promotes the use of its materials online. However, some documents are vetted or edited for confidentiality or sensitivity, and this process is not transparent. Furthermore, there are limited provisions to allow scholars to copy materials so that they can be used offsite for more in-depth study.

This book interprets the term "archive" broadly.[69] In the chapter that examines poetry, a newspaper office's pile of old newspapers is the primary archival source. Internet blog-spots, public performance venues and memorials are also conceived of as both narrative and archival spaces. Lastly, the concept of the house emerges as an archival space in this study because of the way it gathers information and moral communities together to outwardly express narratives and histories of justice.[70]

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[67] An exception here is the Living Memory video archive, mentioned in the introduction. It operates as an extension of the CAVR, although it is technically independent. However, it has many of the same limitations in terms of administration and staffing as the CAVR and National Archives, with access negotiated by each individual visitor. Former journalist Max Stahl also has a video archive collection in Dili, but this is an entirely personal collection by a foreign journalist, and is not a Timorese project. Many of the most important materials in the Max Stahl archive are already found in the SCU and CAVR archives. Another relevant archival project is "The Indonesia/East Timor Documentation Project," which seeks to make materials from the United States Security Archives regarding East Timor from 1965-1999 available. It is based in the United States through a Princeton University faculty member and operates digitally. An Australian archivist, John Waddington, has also sought to make an electronic archive online of historical documents on Timor-Leste, but again this an external project that relies on much information that is already publically available at the CAVR and in the other transitional justice archives.

[68] Personal Communication, Tania Correia, Member of Executive Board of the Museum of Resistance, July 2009, Dili. See also the website of the museum at amrtimor.org/amtr/index.php?lingua=eng, accessed 14 November 2011.

[69] See discussion of what constitutes archives in, Antoinette Burton, ed., *Archive Stories: Facts, Fictions and the Writing of History* (Durham: Duke University Press, 2005) and Carolyn Stedman, *Dust: The Archive and Cultural History* (New Brunswick: Rutgers University Press, 2002).

[70] The idea of the house as a space that creates moral communities is taken from Stephen Sparks, "Introduction: The Changing Domain of the House in Southeast Asia," in *The House in Southeast Asia: A Changing Social, Economic and Political Domain* (New York: RoutledgeCurzon, 2003), 5. Sparks is elaborating on Lévi-Straus' work which described houses in house-based societies as a 'moral person.' See Claude Lévi-Strauss, *The Way of the Masks*, trans. Sylvia Modelski (Seattle: University of Washington Press, 1982), 179. There is a rich literature on the concept of the house in Southeast Asia which emphasizes the house as a symbolic medium that translates abstract concepts into physical forms. This literature is best represented by Roxana Waterson, *The Living House: An Anthropology of Architecture in South-East Asia* (Singapore: Thames and Hudson, 1997) and James J. Fox, ed., *Inside Austronesian Houses: Perspectives on Domestic Designs for Living (*Canberra: Australian National University, 1993). Anthropological studies of house-based societies of ethnic groups present in Timor-Leste include Clark Cunningham, 'Order in the Atoni House," in Rodney Needham, ed., *Right and Left: Essays in Dual Symbolic Classification* (Chicago and London: The University of Chicago Press, 1973), 204-238; Elizabeth. G. Traube, *Cosmology and Social Life: Ritual Exchange Among the Mambai of East Timor* (Chicago: University of Chicago Press, 1986); David Hicks, *Tetum Ghosts and Kin: Fieldwork in an Indonesian Community* (Palo Alto: Mayfield

The establishment and existence of each of these state institutions and their requisite archives as well as private archives have fomented the process of truth-telling in Timor-Leste. We will explore both the intended and unintended messages these institutions generated in the historical record as reflected in their archives, and beyond. In terms of truth-telling functions, the SCU and CAVR archives were meant to house internationalized retributive and restorative interpretations of transitional justice respectively, but as we will come to understand these distinctions between trial and truth commission narratives were not clear. In both cases, the institutions produced meta-narratives that were both retributive and restorative. At the same time, these institutions were responsible for producing other kinds of discourses outside of the transitional justice framework of "retributive" or "restorative" which have become their hallmarks. The Museum of Resistance and literary venues operate outside of the formal transitional justice framework, developing alternative understandings of the national past. Finally, throughout this book I will try to direct the discussion towards a better understanding of how the narratives worked collectively in an environment infused with a rich local culture and strong international influences, such as the common use of the concept of the house to create a legacy of transitional justice. Through the archives, we may be able to better observe and understand the transitional justice process.

Publishing Company, 1976); Tom Therik, *Wehali: The Female Land: Traditions of a Timorese Ritual Centre* (Canberra: Pandanus Books, 2004).

Part II: Official Narratives

Chapter 4. Ground Zero: The Voice of Judgment

In response to the UN Security Council's call for accountability for the mass atrocities committed in East Timor in 1999,[71] in 2000 the UN transitional governing body (UNTAET) established a new species of international criminal court - the hybrid tribunal.[72] This tribunal was the result of legal innovation and experiment, as well as political compromise. Criticism of the international tribunals in Rwanda and Yugoslavia and the popularity of alternative instruments of justice, such as truth and reconciliation commissions (TRCs), led some scholars and policy makers to conclude that international trials would not be sufficiently localized to be an efficient instrument of transitional justice and a tool for development to rebuild the devastated judicial infrastructure in Timor-Leste. The cost of international courts had also become a financial burden to the UN. The hybrid tribunal was designed to address these problems. By operating within a dual structure that builds and utilizes the domestic justice system as a partner in the international tribunal, in theory the court's legitimacy and capacity would be increased while the UN economized on accountability and social reconstruction. As part of this discussion, we will examine some of the ways hybridization has affected the narratives that are traditionally associated with international trials.

The establishment of the hybrid tribunal in East Timor was also a diplomatic tool for addressing international cries for justice without offending or destabilizing the fledgling democratic regime in Indonesia. Although initially an international tribunal was proposed in the Security Council, they ultimately agreed to Indonesia's proposal to conduct its own trials and Indonesia established an Ad-Hoc Human Rights Court for East Timor.[73] The results of the political compromise were meant to be the Indonesian court would prosecute the Indonesian leadership and top-level Timorese perpetrators while the Special Panels in Timor-Leste would focus on the next level of leadership. In reality, the prosecutorial targets of these two tribunals overlapped significantly. Therefore, the narrative trajectory of the trial process in Timor-Leste was not only shaped by the mixture of domestic and international legal systems, but also by the course of the trials simultaneously being carried out for the same crimes in Indonesia.

Narrative Expectations of the Trials

In terms of the narrative functions of these trials, they would theoretically be responsible for generating a public and authoritative voice of judgment. Judgment in this case implies a form of narrative that communicates a retributive message to perpetrators who violated the law and facilitates the development of the rule of law in the two states that were struggling to recover from the repressive extra-legal practices of the Suharto regime. Ideally, factual truths about past human rights abuses would be credibly established through an adversarial judicial mechanism which would then be made part of the public record and disseminated through the courts' judgments and other modes of outreach. In this way, the courts would serve a truth-telling function. Accordingly, an unequivocal and balanced retributive narrative would contribute to

[71] See Resolutions 1264 and 1272 adopted on October 15th and 25th 1999 respectively by the UN Security Council.
[72] See UNTAET Regulation No. 2000/15 adopted on June 6, 2000. The planning for the hybrid tribunal and the transitional justice model was done for the most part without consultation with the Timorese, by the UN mission (Reiger & Wierda, 18).
[73] See Republic of Indonesia Act 26/2000.

accountability by revealing the identities of the individuals responsible for human rights abuses in 1999[74] and deter future abuses through its transparent explanation of the perpetrators' transgressions and the resulting punishment.

In practice, the trial processes generated narratives that mixed a large dose of impunity with small measures of retribution and a weak basis for the truth. The Jakarta trials as an entirely domestic process were not able to produce judgments that contained a clear message of retribution for the still dominant military powers. Rather, they continued along the path of previous judicial regimes to generate more narratives of impunity – where those most responsible for human right abuses are excused rather than punished. This is not to say that the Ad Hoc Human Rights Court's judgments did not contribute to battling impunity at all. The Jakarta trials were the first time that members of the Indonesian military were brought to trial before a civilian court. In the handful of cases where the court of first instance found a defendant guilty, the initial judgments act as a permanent record of a remarkable political and legal history of failed but brave attempts to redefine justice for the military regime in the *Reformasi* era.[75] However, the judicial process in Indonesia as a whole did not produce a narrative of carefully reasoned punishment for violation of fundamental rights and laws. Ultimately, the Indonesian courts acquitted (or never brought to trial) all of those who were most responsible for human rights violations in East Timor.

In contrast, the courts in Timor-Leste tried the Timorese "little fish" (low-level militia members) and convicted nearly everyone. The high number of convictions in Timor-Leste (84 out of 87 defendants tried)[76] would seem to construct a retributive narrative, but the level of perpetration under consideration and the quality of the judgments severely impacted the production of a clear and credible retributive narrative by the Special Panels court and its prosecution arm, the Serious Crimes Unit. As we will examine below, a strong, well-reasoned narrative of judicial retribution is not the story that is likely to emerge from the archives of the trial process in years to come.

"Ground Zero"

One of the prevailing narratives that emerged in relation to this hybrid tribunal was "Ground Zero."[77] One of the senior UN officials who was involved in the implementation of the decision

[74] In 1999, the UN Security Council Resolution 1272 that established the UN's executive governing authority broadly stated that it "demands those responsible for such violence be brought to justice," (para. 15) By 2002, Security Council Resolution 1410 only refers to " ensuring that those responsible for crimes committed in 1999 are brought to justice" (para. 12).

[75] For an analysis of the impact of the Jakarta trials see David Cohen, *Intended to Fail: The Trials Before the Ad Hoc Human Rights Court in Jakarta* (New York: International Center for Transitional Justice, 2003); David Cohen, and Leigh-Ashley Lipscomb, "Transitional Justice in East Timor," in Melissa Williams, Rosemary Nagy, and Jon Elster, eds. *Nomos*, vol. LI (NYU Press, forthcoming 2012).

[76] Judicial Systems Monitoring Program (JSMP), "Overview of the Timor Leste Judicial Sector 2005," at http://www.jsmp.minihub.org/Reports/ (accessed 17 November 2011).

[77] See Hansjorg Strohmeyer, "Collapse and Reconstruction of a Judicial System: The United Nations Missions in Kosovo and East Timor." *The American Journal of International Law* 95, no. 1 (January 2001): 46-63; ----,"Policing the Peace: Post-Conflict Judicial System Reconstruction in East Timor" *University of New South Wales Law Journal* 16 (2001). See also Seth Mydans, "East Timor Stuck at Ground Zero: Lacks Law, Order and Much More," *New York Times*, 16 February 2000; and Joséph Nevins, "The Making of Ground Zero in East Timor" *Asian Survey* 42, no. 4 (2002): 623-641. See examples of subsequent scholarly works that also adopt this interpretation of East

to create a hybrid internationalized court in Timor-Leste left accounts of the early days of this transitional institution and characterized the development of formal "justice" in Timor-Leste as the offspring of the United Nations. This particular individual, Hans Strohmeyer, believed all the administrative and governing aspects of the state, in particular the judiciary, had been physically eliminated or politically tainted by the previous Indonesian regime and had to be rebuilt from scratch by the UN in order to pursue accountability. Indeed, the former court buildings in East Timor were all burnt and all the court staff fled to West Timor during 1999, so the justice system was in shambles. The description of justice in East Timor in 1999 at "Ground Zero" is seemingly apt.

The "Ground Zero" narrative is not unique to Strohmeyer. Joseph Nevins employs the term to describe the international community's willful forgetting of crimes committed by Indonesia in Timor-Leste from 1975-1999.[78] The extended use of the metaphor of "justice at ground zero" implies a rising phoenix of a justice system that will make well-ordered, sequential steps to achieve an internationally recognized "rule of law" in a space previously bereft of the structures and capacity for justice. In this narrative, justice began in East Timor in 1999 with the arrival of the international community and the institution of the so-called hybrid "war crimes" trials. The United Nations exercised governmental authority over the territory at that time and created all legislation through executive regulations that provided the legal framework for the administration of justice and government, including the Special Panels which would adjudicate serious crimes committed in 1999. Approximately 60 Timorese trainees were recruited with legal backgrounds to become the foundation of this skeleton judicial system. The remaining staffing needs were met by internationals hired by the United Nations. In most cases international staff outnumbered the Timorese staff in decision-making and key administrative positions. In the case of the Special Panels, each panel of judges was required by law to be comprised of two international judges and one Timorese judge. Although the Defense and Prosecution units initially incorporated mentoring and training programs so that Timorese lawyers would be integrated into the judicial process, within several years both of these offices were almost entirely run by international lawyers, with the exception of the decision making role played by the Timorese Public Prosecutor.[79] However, the Timorese who did play a role in the Special Panels process became the first group of judges, prosecutors and public defenders in their history: under the Indonesian and Portuguese colonial regimes Timorese were not allowed to occupy any key legal decision-making positions. Timorese had been excluded entirely from the creation of formal justice. Strohmeyer writes repeatedly about the necessity to develop these trainees and society's appreciation for justice:

> "Such training had to focus not only on conveying legal and practical skills, but equally important, on fostering an appreciation of the crucial role of the judiciary in society and the benefits of a culture of law. *In a society that had never before experienced respect for the rule of law, and in which law was widely perceived as yet another instrument for*

Timor's post-conflict justice system context as follows: Laurel E. Fletcher, Harvey Weinsten with Jamie Rowan, "Context, Timing and the Dynamics of Transitional Justice: A Historical Perspective," *Human Rights Quarterly* 31 (2009): 186-187.

[78] Joseph Nevins, *A Not-So-Distant Horror: Mass Violence in East Timor* (Ithaca: Cornell University Press, 2005).

[79] Presentation by Siri S. Frigaard, former Deputy General Prosecutor for Serious Crimes in East Timor, "Conference on Lessons Learned from the Serious Crimes Process in East Timor," 27 May 2006, Bangkok.

> *wielding authority and control over the individual the meaning of independence and impartiality of the judiciary had to be imparted gradually*."[80]

The foundational moment of the Timorese judiciary in Strohmeyer's telling occurred practically overnight in 1999, and the story of transitional justice in East Timor is one of progress from nothing to "something." In other words, the trials in East Timor are a story of "development," as much if not more than "justice." Justice has been interpreted by many such as Strohmeyer as the development of structures and institutions conveyed with international legitimacy that would evolve the Timorese "capacity" for justice. His comments belie an intention to map justice across what he describes as a wild and uncharted legal landscape.

This system of tutelage in the art of justice envisioned by Strohmeyer required Timorese participation, but with restrictions. Thus, at the same time Strohmeyer narrates a positivist story of rational development of the legal sector in Timor-Leste, he undercuts his story with an officious, patronizing tone that reserves spaces for exceptions in the Timorese context that would differ from the standards applied to the development of justice elsewhere. For example, when he makes reference to the need for a deliberately "gradual" transition, he speaks from the position of a detached authority who decides the pace at which international standards of justice can be incorporated into a foreign society. He speaks as an outsider born into the luxuries of Western democracy, whereas the Timorese people had fought strategically for more than 30 years to obtain it. It is unclear why he believed the international community, instead of Timor-Leste, holds a monopoly on the understanding of justice systems and their independence. The exclusionary nature of this perspective also became part of the international construction of the new Timorese judicial system. Thus, while the Ground Zero narrative stresses the newness of the legal system in Timor-Leste after 1999, there are continuities with previous judicial regimes when outside powers determined only limited and gradual authority for Timorese. Thus, the transition to justice in Timor-Leste as it is represented in this Ground Zero narrative combines liberal ideals of progress with undertones of what appears to be a sliding scale of justice.

This double-edged discourse of "Ground Zero" began as an outsider's interpretation of a legal system and culture of justice in a developing, post-conflict society. An outsider's lack of familiarity with indigenous legal culture, or even neo-colonial disregard, meant that this ground zero interpretation of justice focused on the need for installing completely new "international" structures and meanings of justice rather than syncretizing international and local values, histories and institutions. Despite its developmental logic, in many ways this narrative functions to set standards for justice low, so that any achievement in the justice sector could be measured against the bar of "zero" and would make it appear as if progress was the result of the international infusion of values and expertise into the local system. If a different narrative had been adopted, which concentrated on the social structures and attitudes about justice that persisted before and after the arrival of the UN in Timor-Leste, legal change since independence may not have appeared so revolutionary. By setting the starting point at zero, even the smallest of achievements would protrude to create the appearance of progress. Given the hierarchy of international "expertise" established in this narrative over local, "untrained" experiences with justice, it is not surprising that the UN and other key international actors often overshadowed or

[80] My emphasis, Strohberg, *Collapse and Reconstruction*, 55.

misunderstood Timorese actors in the transitional justice process. It is these often overlooked local actors who I have interpreted as narrative centers.

It is also not surprising that given this propensity for valuing the "international" over the "local" within the Ground Zero narrative, during the hybrid justice process the "capacity" of Timorese was often blamed for mistakes that were either collective or the fault of international actors. In the discussion of the CAVR, CTF and Museum of Resistance archives we will elaborate on some of the historical materials that reveal the basic misunderstandings of Timorese legal history that underlie these assumptions about the authority of the "international" in the Ground Zero narrative. Nonetheless, the intriguing result of the Ground Zero narrative is the way it has become embedded in the justice process in Timor-Leste over time, and the ways it is now propagated by the international community as well as the Timorese government and civil society.

The Archived Legacy

The production of the "Ground Zero" narrative can be seen in the work of the Special Panels and the Serious Crimes Unit in the way they exercised their truth-telling functions. The Serious Crimes Unit of the new justice sector was responsible for the investigation and prosecution of those suspected of having committed crimes that constituted war crimes, crimes against humanity or the crimes of murder, rape or torture. As noted in the description of the archives above, the Serious Crimes Unit became the main repository of information about the trial process including the indictments, trial judgments and transcripts, investigation files, forensic evidence, witness testimony, expert reports and internal files. The Serious Crimes Unit archive also became the repository for the sworn statements of individuals who applied for stays of immunity through the CAVR's community reconciliation program. The Serious Crimes Unit's archives now house the written historical record of the Special Panels process and contain the textual truths that form part of the "Ground Zero" narrative, among many other stories of justice.

It is clear that Strohmeyer's depiction of the transitional system as hasty and forced upon an empty Timorese palette also shaped this archival collection. For example, the archive itself was hastily constructed in a shipping container, which later evolved into a trailer that continues to house the files in a dusty, two-room space with broken windows, two outdated computers, and two part-time staff members who loyally check on the files several times a week on their own time. A single $3 Master padlock on the sliding door provides security. The archives were ransacked in 2006 by unknown rioters who scattered the contents of the archives across the floors. Several sealed metal boxes of evidence were reportedly stolen but returned unharmed within weeks. The incident appears to have had little effect on the content of the archive since the boxed files with the judgments and evidence appears to be in the same condition as prior to the attack.[81] The physical state of the archives belies how crudely and simply they were constructed from "ground zero" if you will, but also how little they developed over the course of the five years of the Special Panels process. Ten years later, the archives have not moved far beyond the "zero" standard.

[81] The author has firsthand knowledge of the files prior to and after the attack and can attest that the majority of the content of files was unchanged.

The most noticeable way in which the Serious Crimes archive is organized in accordance with and to produce the "justice from ground zero" is its temporal scope. Accounts of violence in the archive begin in 1999 with limited reference to the preceding 25 years of violence.[82] Since the archive is a function of the legal decision to prosecute crimes only from 1999, the indictments and judgments and thus the technically public portion of the archive only relate a history of violence in 1999. Thus, the deep documentary context needed to establish the historical framework within which the patterns of violence developed in 1999 is absent from this archive. In these archives, violence and justice seem to have "spontaneously" appeared in 1999.

The areas of the SCU archives that are technically part of the public record are organized around the indictments and judgments of the Special Panels. A future visitor to the archives will be able to access information by the legal case number, which were assigned chronologically by the court in the order of the receipt of their indictment. The first case filed and documented is of Joao Fernandes in 2000 and the final case is against Lieutenant Sumino who was indicted in 2004. Indictments and judgments are listed by either the Accused's name, or referred to by a particular human rights event, such as the attack on Maliana POLRES or Los Palos. Perpetrator and place names are the key nomers that will be left behind by these court records. Victims' names appear as appended indexes on some of the indictments filed with the Special Panels after a German judge at the Special Panels, Judge Schmitt, insisted on the adherence to this procedure in cases that came before her.[83] However, many of these indexes have been separated from the copy of the indictment kept in the paper files and cannot be found on the surface of the case files.[84] Although perpetrators and the geography of East Timor are the organizing principles that stand out in the archive, buried inside the many boxes of forgotten evidence are the names and stories of thousands of Timorese victims who either made a formal statement to the Serious Crimes Unit for a particular case, or whose name was remembered by witnesses to a crime. Sadly, the majority of the names of victims identified in human rights cases are unlikely to ever become part of the public record generated by the trial process, because the SCU closed prematurely in 2005 due to the termination of their mandate by the UN Security Council. When it closed it left over 400 cases incomplete and unindicted, and therefore these cases are not legally eligible to become part of the public records of the courts, unless they become indicted cases at a later stage.[85] These people's stories are inside the archive but will remain untraceable in the public eye. Beyond the identities of those who committed and suffered human rights

[82] There are a few exceptions. The archives contain one small box of information about the Kraras and Santa Cruz incidences which were donated by the UNTAET Human Rights unit, but these works do not constitute part of the public archive. Some witness testimonies also give information about crimes or context prior to 1999, but this information is limited and not catalogued in any retrievable manner.

[83] The rules of criminal procedure in UNTAET Regulations 2001/25, Section 19A require a list of victim's names on an indictment unless the Prosecution asks for special protective measures for victims. There is no evidence however, that victims names were omitted from indictments prior to Judge Schimdt's insistence based on reasons of protection.

[84] For protective purposes witnesses to cases in many instances should have had their names and other identifying markers redacted or coded for files that are part of the public record. So far there has been no process to do so internally, although agreements have been made on an individual basis to insure those who access the archives do not reveal any names.

[85] These 400 cases are eligible to be reopened and investigated by the UN Serious Crimes Investigation Unit (SCIT) until 2012. However, SCIT only has powers to investigate and propose indictments. They cannot indict a case directly. Since SCIT operations began in 2007, one case of these 400 has preceded to indictment and then trial. An additional case was adjudicated but it was based on a pre-existing indictment and arrest warrant.

abuses in Timor-Leste and the places where these atrocities occurred, below I will highlight other aspects of the historical record that exist or are censored in these archives, and the ways in which these records tell the story of truth, judgment and judicial development from the perspective of Ground Zero.

Judgments

The cornerstone of the public archival collection is the judicial judgments. In the following section, we will examine some of the highlights of the trial judgments and related documents and review their potential to contribute to the historical as well as legal functions of the justice system in Timor-Leste. In reviewing these aspects of the judgments' legacy, we will trace some of the ways the voice of judgment evolved over the course of the trial process, and how it became entwined with the "Ground Zero" narrative.

The first judgment issued by the Special Panels for Serious Crimes was in State v. Joao Fernandes (Case # 1-2000). The 22-year old, male defendant was a low-level militia member who was charged with one count of simple murder that occurred in Bobonaro District on September 8, 1999. According to the judgment, Fernandes acted with another militia member to kill the victim, who was a pro-independence village chief, by stabbing him to death inside of the Maliana Police Station where a number of civilians were seeking refuge from the post-Referendum violence. The Defendant pleaded guilty to the charge and was sentenced to 12 years. The most noticeable feature of this case is the lack of a crimes against humanity charge against the defendant, despite the existence in the indictment of the facts which require this charge. This is a severe legal flaw, but I will focus on other shortcomings that compromised the credibility of the court's voice of judgment from the first instance. [86]

In addition to the error in the charge levied against the defendant, there appeared to be a violation of the defendant's procedural rights. The judgment noted that the defendant was arrested and held in detention since July 2000, but further noted that the Court had no documentation of his arrest, detention or any detention hearings.[87] There is no commentary provided by the court on the reasons for the absence of this documentation, and more surprising in the case files there is no indication that that the court ever sought to inquire further to establish the facts of his detention to insure there were no violations of the law. Even when the case proceeded to the Appeals Court, this problem was not addressed, although other procedural mistakes were denounced.[88] This substandard legal performance could perhaps be passed off as a beginner's mistake or an administrative mishap since this was the first time Timorese judges were conducting a trial in their country. However, this would be an erroneous conclusion because the two Timorese judges who were on the panels were not allowed to preside or report on the case. In total, four international judges chosen and paid for by the UN presided over the case. The Prosecutor who filed the indictment and the Prosecutor who tried the case were also experienced, international jurists. The failure to review or even inquire into the nature of the defendant's detention violated international standards and the applicable law in Timor-Leste at the time, including nearly all subsections of UNTAET Regulation 2000/30, Section IV. Even during the

[86] For more analysis of the Fernandes case see, Cohen, *Indifference and Accountability*, 46-48.
[87] See "Proceedings," 1, para. 1.
[88] See the dissenting opinion of Judge Fredrick-Egonda Ntende.

apex of the international involvement in the conflict in 1999 INTERFET forces produced documentation of arrests and detention hearings.[89] Therefore, there are no apparent reasons for the absence of this documentation, which strongly suggests the defendant's rights were violated or the courts overlooked this fundamental violation of the legal process in their enthusiasm to proceed with the first conviction. The court started the clock at Ground Zero in their own courtroom, but by doing so left a legacy of compromised justice.

In addition to this legal problem, this judgment fostered an absence of history. In contrast to first trial judgments in some other international and hybrid tribunals, the court gave no historical context. There is not even a mention of the Popular Referendum which is the key event that determined the setting of the crime. On the surface the lack of historical information in the first judgment may appear to indicate the court does not have an interest in exercising a strong, truth-telling or historical function. There is also the possibility that the lack of historicism in the first trial judgment was deliberate and based on an ethical dedication to the legal issues of the case. However, on closer examination this lack of historical scene-setting in the indictments and judgment do not demonstrate an Arendtist's conscious emphasis on the legal function of the trials. For example, there are deliberate references to the Indonesian Occupation in the judgments, but the historical validity and circumstances are all assumed rather than supported by evidence or explained. Also, key individuals in the case who are Indonesian are discussed but not fully identified, such as the Police Chief who features as an accessory in the crime but is never named or physically described by anything other than a title, KAPOLRES. The assumptions about the Indonesian Occupation that are never explained in the judgment quickly dovetail into assumptions of Indonesian guilt that further lead to neglect in ascertaining the facts and interpreting their meaning in this case.

For example, instead of using the facts of the case to understand and explain the fundamental relationship of the Timorese militia members to Indonesian police and military units, which would be important as a basis for the jurisprudence for this case and the expected future trials, the court assumes a command relationship between militias, police and TNI without citing any substantiated evidence relevant to the case, or even introducing basic factual information about command structures in any of these three organizations. The indictment asserts, "The victim was killed on the order of TNI and Militia Commanders for being a pro-independence supporter." The judgment upholds this statement when it discusses the mitigating circumstances of the defendant's guilt. It reads, "The accused *acknowledges* that he killed the victim on the order of TNI (*Tentara Nasional Indonesia*) and Militia commander for being a pro-independence supporter."[90] I have added emphasis to the word "acknowledges" because this choice of words is telling. To the reader it implies someone else suggested that the killing occurred at the order of the TNI and the militia commander, and the defendant acknowledged rather than originally claimed it. The facts of the case appear to sufficiently implicate one militia leader in giving orders (Natalino Monteiro)[91] but nowhere in the judgment is there evidence that showed a TNI

[89] The SCU archives contain the procedural records of investigations and arrests conducted by the INTERFET legal team, which occurred mostly from October to December 1999 before the UN was sufficiently established to administer justice. These documents can be found in the files with individual cases, as well as in several files labeled INTERFET.

[90] Judgment, 15.

[91] The Judgment also mentions in the sentencing section a second Commander (Marcos Tato Mali). The sentence is ambiguous as to whether Marcos Tato Mali is a militia or TNI Commander and although this section of the

officer or police member issued such a command. There is circumstantial evidence of considerable collaboration between the militia, police and TNI, most notably when the defendant was told to go to the TNI office to paint his face black before the attack and when the attack occurred within the Police compound with the Police Chief present. However, none of this circumstantial evidence is ever explained or questioned in the course of the trial to establish the exact nature of collaboration, much less a command relationship. The defendant also asserts that the Police Chief led him to the room where the victim was, but omits any statement that he was ordered by the Police to kill the victim. In fact, no credible evidence is presented (that the Court reports to the public) which could prove beyond a reasonable doubt that the police chief or a member of the TNI ordered the defendant to kill the victim. Since it would also be reasonable to conclude that the perpetrator with his accomplice asked the Indonesian Police Chief to identify the pro-independence supporters to them, it is unclear why the Court did not make an effort to clarify these facts purely for legal, much less historical, reasons. Indeed, the defendant's accomplice (who was not charged as an accessory for reasons also not made clear in the case files) testified that the defendant was eager to kill more pro-independence supporters but he had to talk him out of it.[92] Given the defendant's alleged enthusiasm for killing, it is possible he acted with his own intentions, as opposed to at the will of others. Thus, there are a number of possible scenarios that could have led to the killing of the victim by the defendant that would each have affected the plausibility and degree of the defendant's and his alleged Indonesian superiors' guilt. Yet, the Court upheld the version of the facts stated in the original indictment without discussion, and did not pursue, explain or discredit the validity of any other scenarios. The fact that the defendant was held in jail for over six months before his trial without any records of his arrest or detention makes his "acknowledgment" of these facts about the Indonesian military's involvement suggested to him by the court process even more questionable, and therefore increased the Courts' obligation to weigh all the evidence in a judgment. Nevertheless, the Courts (both the Dili District and Appeals Court) chose to not explain when, where, how and who specifically was responsible for the order to kill.

The significance of this failure for our purposes is that from the beginning the Court is showing an interest in pursuing a very particular and singular narrative: a story of Timorese blindly following orders of Indonesians. While in some instances this narrative may be an accurate summary of what happened, it is the Court's role to establish these facts based on evidence in each case which then would lead to an accurate historical record that could eventually lead to greater accountability for those who are most responsible for human rights abuses. Instead, the Court used the first case to come before them to set up a narrative that was likely to have emotional clout within Timor-Leste and demonstrate to the broader public that the UN and the Timorese government were "doing something" about accountability for Indonesians. Unfortunately, the pursuit of this narrative lacked an accompanying commitment to the basic procedural legal standards that underpin a society based on the rule of law. The voice of judgment in this first trial is comprised of an explicit retributive message directed towards the defendant, but even more towards an absent and ambiguous Indonesia. However, the authority of this punitive voice is weakened by the Court's willingness to ignore and propagate procedural irregularities in the courtroom when they fit a convenient, narrative purpose. The purposes other

judgment asserts he gave orders to the defendant, the evidence of these orders and the nature of the defendant's relationship to Mali is never considered in the judgment.

[92] Judgment, section 19(a), 5.

than accountability to which this particular trial's narrative, and the Ground Zero narrative as a whole, may have served will become clearer in the later cases that will be discussed below.

Some scholars may recognize this kind of narrative and legal behavior as "victor's justice."[93] Victor's justice does seem to be indicated by the Court's exclusion of the defendant's rights in an effort to secure a conviction and their deliberate production of Indonesian orders in the seeming absence of correlating evidence. For example, according to the dissenting judgment in this appeals case, the President of the Appeals Court issued an order that barred the other judges on his court from asking questions regarding procedural matters of law to the attorneys in this case.[94] Such an order is explicitly at odds with the functions of an Appeals Court and seems to suggest the President of the Appeals Court did not want procedural issues to interfere with the conviction of the defendant, or jeopardize the version of the facts that ultimately held the Indonesian military and police most accountable. The President of the Court is an international judge hired and paid for by the UN and a national of Portugal, but he is ethnically Timorese and lived in exile as a result of the Indonesian invasion. His behavior in this case and identity lends itself to the conclusion that he may have used the Courts to enact punishment against former collaborators with the Indonesian regime. However, the President of the Appeals Court is only one of the decision makers in this case and he alone could not have produced judgments with this result. The "victor" in this case poses a problem for labeling the Court's legacy as "victor's justice" because the majority of convicting judges and prosecutors had no relationship of "victor" to the defendant. In this particular case, the presiding and reporting international judges in the Dili District Court that first convicted him and ignored the detention problem were Italian and Burundian. The Timorese judge on this panel who was hearing her first case actually dissented on the basis that the international Prosecutor levied an incorrect charge.

In fact, in the very next case to come before the Court (State vs. Julio Fernandes, Case #2-2000) the same panel of judges shuns victor's justice. They convicted a Timorese freedom fighter (a FALINTIL Commander) for murder and remark that the conviction is necessary precisely on the grounds that the Court cannot condone or excuse illegal acts committed against an Indonesian collaborator. I use the case of Julio Fernandes as a counterpoint to the court's behavior in this first case against Joao Fernandes to show there is intent throughout the Special Panels process that goes beyond a simplistic notion of "victor's justice." I have referred to this deeper desire in my discussion of the "Ground Zero" narrative that celebrates the rise of an international order of justice in Timor-Leste from a seemingly void landscape. In order to support this narrative of tutelage at the most superficial level required convictions and the recognition that guilt extended beyond the low level Timorese perpetrators actually on trial before the Court. In its first case the Court stretched the law to create just such a history.

After this first case, the Court's voice of judgment continues to develop. In another case filed later in 2000, the State vs. Carlos Soares, the Court made its next editorial statement that

[93] Victor's Justice as expressed in transitional justice proceedings has been analyzed in a number of studies most notably, Richard R. Minear, *Victor's Justice: The Tokyo War Crimes Trial* [paperback] (Ann Arbor: The University of Michigan, 2001) and Gary Jonathan Bass, *Stay the Hand of Vengeance* (Princeton: Princeton University Press, 2000). A recent text examines this theme from the Nuremberg trials to present. See Danilo Zolo, *Victor's Justice: From Nuremberg to Baghdad* (Brooklyn: Verso, 2009).

[94] Dissenting Judgment, Appeals Court, 1.

revealed its interpretation of its function in fostering the rule of law through its judgments.[95] In this passage the Court explicitly defined its role as retributive, but also as preventative and restorative. Since this is the first instance where the Court engages so didactically with the public in "rule of law" discourse, this passage is worth quoting in full to give the reader a feel for the Court's voice as it has been preserved in the archives. The judgment reads:

> "The penalties imposed on persons found guilty by the Special Panels must be directed, on the one hand, as retribution of said accused, who must see their crimes punished (*punitur quia peccatur*). Over and above that, on the other hand, as deterrence, namely to dissuade for ever [sic], others who may be tempted in the future to perpetrate such atrocities by showing them that the international community shall not tolerate the serious violations of law and human rights (*punitur ne peccetur*).
>
> Finally the objective to prosecute and punish the perpetrators of serious crimes committed in East Timor in 1999 is to avoid impunity and thereby to promote national reconciliation and the restoration of peace."[96]

In this passage the Court broadly defined what it interpreted as the proper functions of the law in the transitional justice setting in Timor-Leste. These include not only retribution but also facilitating reconciliation and peace. In this passage the Court laid out the narrative course they intended to follow. The Court's portrayal of their role expanded with this case from primarily retributive in the Joao Fernandes case to include an explicit restorative message. Although they did not explain how, the Court indicated to the public that trials are a means of fostering reconciliation and peace. In their words, trials should not be considered to be a tool of reckoning alone. Retribution and reconciliation as they are described in this judgment are assumed to act in a complementary fashion. As we shall see, these objectives as they are put into practice by the Special Panels were not always harmonious.

I suggest that the narrative focus on Indonesian guilt in the absence of the type of evidence that would normally be expected at this kind of trial may have laid the groundwork for a restorative narrative to accompany the Court's necessary retributive acts. I choose to highlight this narrative development also because the Court's willingness to proffer a restorative message has often been lost in the context of an extremely high conviction rate and the work of the truth commissions that have been stereotypically described as the restorative institutions. The records of the Special Panels and Serious Crimes Unit clearly demonstrate that trials and truth commissions cannot be neatly separated into categories of either retributive or restorative mechanisms. The judgment in the Carlos Soares case reveals a broader vision for justice by the Court, which did not separate the trial's retributive function that is exercised through conviction and punishment from its restorative function in revealing the truth and reestablishing social stability.

After the Carlos Soares judgment, this passage above was featured verbatim in nearly every judgment the Court issued. This passage became the Court's sentencing mantra, and thus, served as a way of giving examples of punishment to deter violence and demonstrate equality before the law, while at the same time softening the burden of guilt on the Timorese perpetrators in an

[95] Case # 12/2000, Judgment, 31 May 2001.
[96] Judgment, 11.

effort towards reconciliation. One example of the persistence of this message is in the next case to be filed before the Court after the Carlos Soares case. The judgment in this case adhered to a similar logic as in the Soares case, even though it was not issued until the very end of the Special Panels' process in April 2005. Four years after the Carlos Soares decision, a different panel of judges at the Court restated its view of retribution and deterrence and its relevance to national reconciliation. In this trial judgment the recording judge, Sigfried Blunk from Germany, explained the decision to convict Francisco Pedro Geger in the following way:

> *"*He [the defendant Pedro Geger] must be considered a victim of circumstance, as he would not have committed the crimes without the despicable system of the Indonesian Armed Forces (TNI) of pitting one part of the local population against another, and without the campaign of militia violence unleashed by TNI after the popular consultation turned out to be unfavorable to Indonesia.
>
> However the Court was not convinced of the assertion by the Defense that he would not commit similar deeds in the future, rather the Court fears that in a similar situation of civil war he would be tempted to commit acts of violence again, wherefore a personal deterrence is required."[97]

The phrase "a victim of circumstance" is intriguing because the defendant was also a victim of circumstance in this trial, which due to administrative errors did not take place until years after his original arrest.[98] The defendant spent over a year in jail before he was released to await trial and then waited three more before the main trial proceedings began. At this stage the defendant chose to plead guilty, which the Court appears to have encouraged as indicated in the judge's remarks that his trial should be completed as soon as possible so they could finish hearing all cases by the May 2005 closing date.[99] The narrative message in the Carlos Soares case in 2001 and this judgment in 2005 were consistent in their desire to emphasize the core values of retribution and deterrence alongside reconciliation and peace. By portraying the defendant (although this portrayal was not accompanied by irrefutable evidence) as "a victim of circumstance," the Court cued an empathetic response from a Timorese audience and downplayed individual responsibility. The creation of such a narrative may have served the ends of reconciliation. Yet, despite the Court's ability to stay extremely focused on key messages such as retribution and reconciliation across time, they showed little ability to correct the most basic procedural legal problems that plagued the trials from the beginning. In fact, they go so far as to be consistent in their disinterest in upholding standards of due process that protect defendant's rights. Thus, one may be able to conclude that the judgments of the Special Panels are more intent on spinning a certain idealistic narrative of justice that enshrines collective retribution and reconciliation, rather than leaving a technical and transparent explanation of how they arrived at their decisions against specific individuals. Of course one cannot draw firm conclusions about a Court's "intentions" when a Court is made up of many actors, but nonetheless this is the likely conclusion the court's audience will draw when so many of the key procedural and legal issues – such as detention and the jurisprudence of crimes against humanity – were left inadequately explained in its historical records. It may be reasonable to conclude from the Serious Crimes

[97] Case #1/2001, Judgment, 8.
[98] Cohen, *Indifference and Accountability*, 54
[99] Ibid.

archives that in the case of the trials held in Timor-Leste, "law" was serving a narrative purpose, rather than narrative serving the purposes of the "law."

The Wiranto Indictment

The trajectory of the story of the trial process is most explicit in the Wiranto Indictment. In 1999 General Wiranto was holding simultaneous positions as the Minister of Defense of Indonesia and the Commander of the Armed Forces of Indonesia. In these roles Wiranto exercised the highest, most direct authority over the Indonesian military and the police, including in East Timor. In February 2000 Wiranto was interviewed by *Time* magazine to discuss his role in East Timor and to explain his dismissal from his military command positions following international criticism and the KPP-HAM report that named him as one of the most responsible persons for human rights abuses in East Timor in 1999. Wiranto coolly defended his actions and dismissed accusations of criminality in this interview. He stated, "I think more than anyone else, besides of course the victims, I was distraught over what happened. I had tried to build a house of peace and saw it go up in flames and myself being blamed for it. But think about it: why in the world would I sweat and labor with my own hands to build such a house only to burn it down? You tell me."[100]

It is significant that Wiranto chose the metaphor of a house to describe his role as peacemaker in East Timor. He seized on an idea of domicile and kinship to represent the rule of law – built and destroyed. The use of this particular image is clearly, in his mind, a means of gaining credibility. The Special Panel's issue of an arrest warrant against him four years later is a challenge to this statement and the story frequently told by the Indonesian military about their ability to construct and control the legal order, and the Timorese ability to "spontaneously" destroy it. Using more than 15,000 pages of evidence the Special Panels and SCU attempted to build a case against Wiranto *in absentia*, and as a result he and his former enemy, Xanana Gusmão, came to share rhetoric of peace.

Up until 2003, Wiranto's high political position and the production of several lower level scapegoats before the Jakarta Ad-Hoc Human Rights Court, such as Adam Damiri, shielded him from any legal actions. In part in reaction to criticism of his absence in the docket before the Jakarta Ad-Hoc Human Rights Court and more importantly, because of a change in the views of prosecutorial strategy by a new international, Deputy General Prosecutor (Ms. Siri Frigaard of Norway), the Serious Crimes Unit decided to issue an indictment against him and other high level military leaders in 2003. However, this indictment did not result in immediate legal action against him.

In 2003 the Court's first response to the indictment was to issue an arrest warrant for one of the co-defendants on the Wiranto indictment, Yayat Sudrajat, who was the head of the Indonesian military intelligence corps in East Timor in 1999. However, no action was taken on the arrest warrants for the others indicted including Wiranto, Zacky Anwar Makarim, Kiki Syahnakri, Adam Rachmat Damiri, Suhartono Suratman, Mohammad Noer Muis, and Abilio José Osorio Soares. Sudrajat was never arrested. After one year of inaction in 2004 a new Deputy Prosecutor

[100] "I Tried to Build a House of Peace," interview with General Wiranto," *Time Asia*, February 28, 2000, http://www.time.com/time/asia/magazine/2000/0228/indonesia.wiranto.html, accessed August 18, 2009.

General (Nicholas Komoujian, a former Los Angeles Assistant District Attorney and a key Prosecutor on the Stakic case at the ICTY) began a fresh set of inquiries into the case to determine how to evoke the Court's response. The Court informed the Prosecution that one factor in the delay in issuing the warrants was the indictment required further clarification on each of the charges of five counts of crimes against humanity. Soon after this response, the Prosecutor General of Timor-Leste, Longhinos Monteiro, requested leave to amend the original indictment, and an international team, called the National team, began the process of writing lengthy briefs that summarized both the facts against each defendant and the legal arguments most pertinent to the case. After filing the additional first brief which concentrated primarily on improving the legal argumentation of the indictment, the Court, led by Judge Philip Rapoza of the United States (now the head of the Massachusetts Supreme Court), issued an arrest warrant against General Wiranto in April 2004. He expressed a willingness to consider arrest warrants against the other defendants in the indictment but informally notified the Prosecution that more legal argumentation would be required before he could consider issuing further warrants. The struggle to move the indictment forward and bring Wiranto to justice lasted until the end of the life of the Serious Crimes process and continues today in the form of civil society calling for him to be brought before an international tribunal. Wiranto became the symbol of impunity for the Prosecution team of the Serious Crimes Unit and consequently, the Timorese populace. Below we will trace the development of this particular narrative and its impact on the legacy of the Serious Crimes process.



Figure 1 – Poster distributed by NGOs in Dili in 2007 (Leigh-Ashley Lipscomb)

My observations at the Serious Crimes Unit began several weeks after the arrest warrant for Wiranto was issued in May 2004. I was integrated into the National Team as a researcher to assist in completing a revised version of the supporting brief that stipulated the charges against the other defendants, so arrest warrants could be issued and to strengthen the case against Wiranto.

The SCU offices were in a former agricultural high school that had been spared from much of the burning and looting in 1999. The sanitation was so bad that many staff members drove more than 30 minutes into town to go to the bathroom mid-morning and at lunchtime. Mosquitoes

swarmed under our feet despite weekly fumigations, and as a result the vast majority of the staff contracted dengue fever and malaria. Power outages lasted several hours on most days and there was 1 ½ photocopiers (1/2 because most of the time only one functioned) to be shared by the entire Prosecution of ordinary and serious crimes and the only functioning morgue for the new nation. There was a shortage of cars, so staff members carpooled to and from work and investigators had to rotate vehicles to complete investigations. I counted three law books in the entire compound, all brought by individual staff members. While I was there I had to download articles from my university library for staff, because they did not have any subscriptions or funds to access legal databases that would allow them to conduct research. Investigators supplied much of their own equipment (cameras, tape recorders, paper supplies) because the UN did not supply them with any, which meant that international investigators from more affluent countries were able to conduct better investigations than those from developing countries who did not have personal means to augment the SCU's resources. The items that were standard issue were plastic bottles of water and bug repellent, which was delivered in bulk to our cubicles each week on a palette. Yet, on my tour of the facilities the staff bubbled about how much things had improved since the Norwegian government at Friigard's request had donated money to improve the office, including the provision of computers.

Security was minimal. There was a security gate at the entrance to the compound where affable, chain-smoking guards sat leisurely and were always happy to allow a woman to enter. A special security officer was stationed in our office. He often sported a bullet-proof vest and the staff blatantly ignored his security alerts, for example to not leave the building during a riot, or to not go out at night due to the possibility of civil disturbances. Once my supervisor grabbed her keys and me in the middle of one of his security announcements and we left to deliver a document to the Court, taking the Banana Road route that he had specifically prohibited. She was from Africa and she had a black belt in judo: in her opinion she could handle any problems herself better than a paper-pushing UNPOL who never lived in the Third World. I believe she was right. Most of the security measures came across as alarmist, or at least they felt that way when everyone around you was consumed in crimes against humanity investigations.

Ironically, the most valuable and endangered pieces of the legal process on the premises – the evidence and the witnesses – received minimal security. There was not even a budget allotted for a full-time witness protection unit, and for most of the life of the SCU, no vehicle to transport them. One staff member spent half of her work time to coordinate witnesses, but the entire staff complained about the lack of available resources to devote to the witnesses. The archives were maintained the best that could be expected in a trailer, but the Wiranto case files that my team worked with were in a cheap, grey metal cabinet (standard UN issue to most of the offices in the compound). Original documents that were being researched and the computer with the working Master version of the brief to support the arrest warrant applications was dutifully locked up each night by one of the prosecutors who had personally bought a chain and padlock and rigged it across his soft, balsam wood office door. Unfortunately the window in his office could not be similarly rigged for protection.

I was often amused watching this nightly lock-up ritual by the fact that the evidence that could potentially bring the world's fourth largest country's military force to its knees could be accessed with a quick clip of a pair of lock cutters. Surely no one could have mistaken the lock and chain

as a real deterrent to someone who wished to access or destroy evidence. This ritual seemed important to the prosecutor and other staff members to show respect for the law, the witnesses and the gravity of the case. If I had not been there to observe the underlying symbolic meaning of this "security measure" in 2004, I would have been more surprised that the SCU archives in 2009 were still secured with a padlock and chain that are identical.

The Serious Crimes Unit was far better equipped than the Defense Unit of the Special Panels process, which initially received no budget. Nevertheless it functioned on bare bones resources and was the polar opposite from the monumental structures in The Hague or the venue for trials in Nuremburg and Tokyo that are traditionally associated with the image of international criminal justice. The SCU gave all the appearances of what David Cohen has called "justice on the cheap."[101]

On my first day at work, I counted at least three offices where various versions of a picture of Wiranto and Xanana Gusmão in a friendly embrace occupied a prominent position. Each of the photos had different forms of "bull's eye" marked on them – an "X", a dart, a circle with a slash to indicate a prohibition. Despite their admission that the case would never go to trial, for several months I observed three dedicated lawyers on his prosecution team work every weekend and late into most nights to improve the case being made against him and his co-defendants. They were presumably working to convince the court to issue arrest warrants against all the military leaders indicted in the case. But such a goal was blatantly unrealistic in light of the fact that less than a month earlier the Timorese government as well as the UN did not forward the arrest warrant to INTERPOL that was already issued against General Wiranto. The Timorese government, the Indonesian government, and even the UN (for whom the prosecution staff technically worked) had displayed no interest in pursuing this case. To make his objection to the prosecution of the Indonesian military clear, Xanana Gusmão immediately responded to the arrest warrant by flying to Bali to meet Wiranto and embracing him warmly in front of a deliberately staged group of photographers. In pursuing this indictment the Prosecution was not only exercising its independence, it was flaunting its opposition to the official positions of the governments of Timor-Leste and Indonesia as represented by this particular photo. Despite the hybrid nature of the Special Panels process, the vision of accountability at the Serious Crimes Unit and the Special Panels was trying to bypass the Timorese government's stance that prioritized reconciliation over justice.[102]

The obvious absence of political will from any key authority figure in the transitional justice process did not stop the development of this case by the SCU. The Timorese leadership's official stance was purposefully and continuously ignored in the daily substantive proceedings of the Prosecution. Their common response to this politicization of justice included frequent jokes about Xanana and Wiranto. Much of the humor generated around Xanana and Wiranto was light-hearted, but not far beneath the surface of the office banter the SCU staff (Timorese and

[101] David Cohen, "Seeking Justice on the Cheap: Is the East Timor Tribunal Really A Model for the Future?" *Asia Pacific Issues* 61 (Honolulu East West Center, 2002).
[102] For a public statement of the Timorese government's position on this see Xanana Gusmao, "First Speech to the National Parliament: Considering a Policy of National Reconciliation," 21 October 2002 in *Timor Lives!: Speeches of Freedom and Independence* (Longueville Books: New South Wales, Australia, 2005), 97-124.

internationals) demonstrated an embittered obstinacy. They refused to give up on their efforts towards prosecution, even if the closest thing they would get was a ghost in the docket.

In the Serious Crimes Unit and the Special Panel's responses to this photographic moment in Bali between Xanana and Wiranto one can see a lack of connection between the trial process' heretofore seemingly harmonious narratives of retribution and reconciliation and theoretically "hybrid" nature of decision making. Throughout the Wiranto Indictment, the international staff that was influential in the Court structures was pursuing retribution but the elected leadership of the country where the human rights abuses occurred was pursuing reconciliation. One may wish to quickly discount the Timorese government policy by saying that it did not represent the "victim's" views, but this would be a misrepresentation. Xanana Gusmão, the most vocal opponent to prosecution, is a victim of human rights abuses personally as a political prisoner and as a survivor of the attacks made against his family.[103] Indeed, the majority of the Timorese leaders who support this stance are direct victims of human rights violations. Furthermore, by 2004 this leadership had been democratically elected to their offices in elections where they had informed the public of their platform of reconciliation and forgiveness with Indonesia. Therefore, to discount the Timorese leadership's position is to also discount a certain type of victim's view of justice. Such a position assumes that all victims must have the same perception of justice that is more closely tied to judicial retribution than reconciliation. On the other hand, some victims have publically declared they want judicial accountability for grave human rights abuses, and victims and their civil society representatives periodically announce their desire to prosecute members of the Indonesian military, especially Wiranto.[104]

In summary, each of these groups of victims, and the actors within the Serious Crimes process, all claimed that they were pursuing justice but they differed on what they perceived as the most important component of justice - truth, retribution or peace – and what mixture of these components was most likely to produce a society stabilized by the rule of law. The Wiranto Indictment was a critical moment in these public debates over the meaning of justice because it took a very particular retributive vision of justice and assigned it official, legal authority to counter the narratives of reconciliation formally supported by the Timorese government and the narrative of denials put forth by the Indonesian government. However, this legal move did not forge a consensus, but rather created a greater divide between the different values placed on judicial accountability and the rule of law itself. In the reactions to the Wiranto Indictment one can observe a narrative battle over who had the power to interpret the collective meaning of justice in Timor-Leste.

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[103] See Xanana Gusmao and Sara Niner. *To Resist is to Win!: the Autobiography of Xanana Gusmao with Selected Letters and Speeches* (Richmond, Vic.: Aurora Books with David Lovell Publishing, 2000). Video testimony from Gusmão's sister regarding human rights abuses suffered by the Gusmão family is also available upon request at the Living Memory Project, Dili.

[104] For a discussion of victim and popular views of justice and impunity see Pigou, *Crying without Tears*, 27-30; ICTJ, *Unfulfilled Expectations: Victims' Perceptions of Justice and Reparations in Timor-Leste* (Brussels: International Center for Transitional Justice, 2010), 14-16; Asia Foundation, *Law and Justice in Timor-Leste: A Survey of Citizen Awareness and Attitudes Regarding Law and Justice* (Dili:The Asia Foundation, 2009), 16. For an example of civil society campaigns for criminal prosecutions see, "On 20th Anniversary of Timor Massacre, Rights Network Urges Justice: ETAN Says U.S. and UN Must Act," www. etan.org/news/2011/11santacruz.htm, accessed 15 November 2011.



Figure 2 - Copy of the photo seen in staff offices at SCU (Reuters)[105]

Despite the clear indication that General Wiranto and the other high-level co-defendants would never be brought to trial, the Serious Crimes Unit chose to devote a substantial amount of resources to this case. The case was initially investigated for one year before an indictment was issued and another year was spent on follow-up investigations and legal preparation in pursuit of arrest warrants for the perpetrators. The SCU assigned an entire team to this task that included two prosecutors, a number of legal support staff and two full-time police investigators. What is remarkable is this case that never went to trial is the most likely case to become the hallmark of the trial process for future generations. I suggest that this narrative legacy is exactly the outcome the SCU and the Courts desired and hence an underlying motivation behind what would otherwise tactically seem to be a fruitless, legal pursuit.

All the staff members – Timorese and international - I met at the SCU appeared invested in the success of the Wiranto Indictment. The unity of the effort to support the development of this case may have been because case assignments were fluid during the life of the SCU, so some prosecutors assigned to other cases in 2004 had worked on the indictment in previous stages. The SCU staff's spirits appeared unaffected by the low probability that any of their work would come to fruition in the form of an arrest or trial. In the wake of the issue and avoidance of the Wiranto arrest warrant, I observed a contradiction between the Court and Prosecution staff's frenzy and cheerful attitude towards this essentially hopeless case in relation to their general attitude of cynicism and lethargic pace of work as a whole. The team assigned to Wiranto's case had no less enthusiasm for his prosecution than the rest of the staff, who were the ones who felt able to more openly display the graffited photo of Wiranto and Xanana. During the period I was allowed to observe at the SCU, three lawyers out of a team of four accompanied by a pair of investigators and the Deputy Prosecutor put in more hours than any of the rest of the staff who had been

[105] This photo ran in the Australian newspaper *The Age* in 2004 and was among clippings present in the offices of the SCU and in the SCU archives when the author was present. See Matthew Moore, "Gusmao embraces Wiranto despite massacre claims," *The Age*, 31 May 2004, available online at www.theage.com.au/articles/2004/05/30/1085855434569.html , accessed 30 November 2011.

assigned to a much larger volume of cases. I observed the other prosecution teams taking long coffees, leisurely lunches, and leaving the office early, while the three core attorneys on the National team ate meals at their desks and came back after dinner to keep working. There appeared to be an emotional commitment to the case that went beyond a professional calculation of the legal odds of its success in terms of likelihood of trial and conviction. Something more than just the "law" was driving them.

In an effort to understand what shaped the meaning of justice for the people who worked within the transitional justice process, I began to ask people at the SCU what this photo of Wiranto and Xanana meant to them. In fact, a conversation about the photo often occurred without any prompting on my part. Everyone I spoke with about the photo at the SCU and the Special Panels (which totaled more than 20) remarked on this photographic image with disgust. Whether the people I spoke with were internationals or Timorese, they responded the same. To them this photo represented the antithesis of justice. It quickly became apparent that in the absence of a realistic goal of prosecution against Wiranto, or any high level perpetrator, the SCU and Special Panels were laboring to leave a legacy that countered the narrative inherent in this very particular representation of justice. They were metaphorically, but also perhaps literally, prosecuting a photograph.



Figure 3 - Another version of the reconciliatory moment between Wiranto and Xanana. (Tatoli)



Figure 4 - Timorese comic version of the photograph's narrative (Timor Cartoon International)

This photographic moment acted as a lightning rod for the entire staff during my several months of observation at the Serious Crimes Unit. Emails circulated among staff about Wiranto's

presidential prospects, gests about his singing career were common conversation fare and one special staff pizza lunch previewed all the video evidence compiled against him (which of course included a shot of "the" photograph). Everyone at the prosecution gathered for this movie event in a remarkable display of interest and unity – from local drivers up to the Deputy Prosecutor who was responsible for filing the brief to support the indictment. The Wiranto Indictment harnessed an excitement about "justice" that was not as visible in the cases that went to trial.[106] For many staff members, the Wiranto Indictment seems to have represented an idealized version of the Special Panels process.

There are good reasons for the perception that the Wiranto Indictment was a synthesis of the justice process as a whole, even though it never resulted in any arrests or trials. First, the evidence being used in the case was a culmination of the evidence already collected for other indictments for some of the most egregious human rights abuses in 1999 including the massacres in Los Palos, Suai, Liquica, Oecusse, the Carrascalão House and the killings by the TNI Battalion 745. The National Team took the evidence collected for these individual incidents, the so-called "priority cases," and combined it to try to make more explicit the scale and patterns of human rights violations across East Timor. The collection of case files for these other investigations were supplemented with secondary reports by academics and journalists and a small sampling of witness statements that were termed the "high command." In truth these statements were mostly from UN officials who served with UNTAET in 1999 and a handful of Timorese witnesses who had served in various administrative capacities within the Indonesian regime and were not the result of investigation of the high command of the Indonesian government structures, or the most influential members of the Timorese Resistance. Fragments of all these different case's witness statements and this supplementary material was transformed by the National team into a single body of evidence that totaled more than 15,000 pages of evidence regarding Indonesian involvement in crimes against humanity throughout East Timor. Thus nearly all the evidence that had been collected in the SCU process and adjudicated by the Special Panels to date was folded into the Wiranto Indictment to create a single indictment that was pre-determined to be against Indonesian defendants who could not be either identified or apprehended in any of the other cases. This collective body of evidence is the source of the Wiranto Indictment and the subsequent arrest warrant against him. This evidence is technically part of the public record, and later played a pivotal role in the Commission of Truth and Friendship's mandate, but as we shall see it does not constitute an accessible truth. The most public legacy of the SCU process and this particular case is found in the other documents filed with the Court in this case – the indictment, the arrest warrant and the supporting brief – and the enduring image of the photograph.

Now let's examine the way this public, archival documentation – the indictment, arrest warrant and the supporting brief – were tailored towards a narrative, as opposed to a strictly legal outcome. The indictment against Wiranto and his co-defendants was issued on February 22, 2003. Under the authority of UNTAET Regulations 2000/16 and 2000/30 as amended by 2001/25, the indictment charged General Wiranto as the first defendant, along with other high-level, Indonesian military commanders: Zacky Anwar Makarim, Kiki Syahnakri, Adam Rachmat Damiri, Suhartono Suratman, Mohammad Noer Muis, Yayat Sudrajat and the former Governor

[106] I also observed the prosecution of the Marculino Soares case and the preparations of other cases concerning crimes in Bobonaro, Suai, Ermera and Viqueque districts.

of East Timor, Abilio José Osorio Soares with crimes against humanity in the form of murder, deportation and persecution.

From the very beginning of the indictment there is a subtle indication of its symbolic nature in the treatment of the addresses for the defendants. The SCU as required by UNTAET rules of procedure consistently featured an identifying column of information in each of its indictments. In other indictments the identifying information included the defendant's "location" which usually gave the name of the prison where the defendant was detained, or the city where he lived after he had been temporarily released to await trial. In the Wiranto indictment they followed this same basic format, but instead of location, they used the word "address." Rather than listing any specific information about the whereabouts of the defendants, the indictment reads "Believed to be in Indonesia" for Wiranto and each of the co-defendants.

None of these men were in hiding. Each of them continued to be leading public figures in Indonesia at the time when the indictment was issued and after the first arrest warrant was issued. All of their addresses, or some other more general form of location, could have been found in public registries accessible from Dili with a minimum of research, and inserted so that the Wiranto Indictment was more similar to the rest of the indictments issued by the SCU. This omission of information continued when the arrest warrants were issued: Wiranto's birthplace was recorded but there was no address listed. At the time General Wiranto was running for the presidency of Indonesia and, needless to say, was not difficult to locate. He could be seen on television every night. This subtle textual choice in the indictment and arrest warrants affects the public record of the case, so that it reads more like a fugitive narrative. The defendants' whereabouts are more mysterious and elusive when they are referred to as "believed to be in Indonesia" than when their exact whereabouts are listed, as they were routinely listed in other indictments and warrants. Although it is possible that this word choice could be the result of administrative oversight, it is doubtful that the effectiveness of this wording in terms of generating public opinion against the defendants was lost on the entire team of experienced international jurists, translators and police officers who reviewed the multiple drafts of each of these documents. Even small details of the Wiranto Indictment reveal that from the beginning the case was developing within a narrative strategy to draw attention to the impunity of high-level Indonesian commanders.

Next, this indictment reads differently from the rest of the SCU documents because it is the first time the trial process produced a pre-1999 historical narrative. The jurisdiction of the Court in practice had previously been limited to 1999. However, the Wiranto Indictment begins with its statement of facts from 1975. Although it is a hybrid tribunal, the indictment is telling in that the narrative recounts the history of the invasion from the perspective of the United Nations, through a summary of the General Assembly resolutions adopted against Indonesia's presence in East Timor. The background skips briefly through the period of Indonesian Occupation after 1976 and picks up again with Indonesia's offer to hold the Popular Consultation and featured in some detail a discussion of the May 5th Agreement. There is no mention of the regime change in Indonesia from a dictatorship to a democracy, so that the "Indonesian" government is portrayed as a continuous identity. This historical context had not been adequately explained in previous cases before the tribunal. The narrative became more detailed and directly relevant to the accused in the third part of the indictment that tells the story of "the establishment of militia

groups." This is the only instance where the trials processes referenced, however subtle and abbreviated, the fact that the human rights abuses that occurred in East Timor in 1999 rested on a much longer history of abuse. This reference was no doubt deliberate and acceptable to include in the Wiranto Indictment because there was little likelihood that the court would question its relevance or ask for evidence since it was doubtful the case would ever go to trial. In contrast, it is interesting to note that the Judge's arrest warrant for Wiranto cut all the pre-1999 references. The Wiranto Indictment in a subdued way attempted to close a chronological, truth-telling gap that existed throughout the Special Panels trials.

The most noticeably different feature of the Wiranto Indictment compared to the other SCU indictments is the bolded and capped names of Indonesian perpetrators. In other earlier indictments due to the absence of specific Indonesian individuals under investigation, alleged Indonesian "commanders" are often unnamed, and referred to by a hollow description (i.e. TNI officer, Indonesian Policeman etc.) or by their rank (i.e. Commander, General, Officer, Member). Although as the SCU's work progressed over the years, more specific names of Indonesian perpetrators became noticeable in indictments, here is one of the first and most prominent places where the individuals who allegedly were in control of the violence were named specifically. Throughout several pages of the Indictment's "introductory statement of facts" section, the names of the accused are highlighted and woven through the text as key actors of the story in 1999. This set of alleged facts about the establishment of the militia was the trial process' first attempt to establish the exact nature of the relationship between the Timorese militia groups and the TNI based on evidence. This section was critical to the indictment, and to the entire body of cases before the Special Panels, because it meant to provide the evidence that the TNI were responsible for the acts of all the militia groups in East Timor. Because both the Prosecution and the Court had failed to highlight the specific, substantial and concrete evidence of the militia and TNI's cooperation in its previous cases, but rather assumed a command-control relationship in support of the narrative that the Timorese militia acted on Indonesian orders, the burden of the entire Special Panels' jurisprudence came to rest on the Wiranto Indictment's ability to convincingly show the existence of "orders" at the high levels of command. In other words the entire trial process had up until the Wiranto Indictment operated on a top-down, superior-subordinate view of perpetration, and the Wiranto Indictment was the best opportunity to provide evidence to support that argument because it was the only time "superiors" were going to become the subject of the Special Panels jurisdiction. This first section in the introduction of facts offered up a set of meetings between Timorese militia leaders and the members of the docket of accused as evidence of the Indonesian military's close and superior relationship to a handful of militia leaders. Even though he is the first person indicted, General Wiranto's name never appeared in this crucial section that was meant to establish a command structure between the military and the Timorese militias who committed the majority of the human rights abuses charged in the indictment.

If the Wiranto Indictment did not cite substantial evidence throughout its text that linked these individuals to specific crimes, then how did this particular group of superiors become the subject of indictment, in particular Wiranto on whom they had no specific evidence? In the indictment it appeared that they are accused because of facts that came to light in the evidence gathered in the investigations into these individuals by the SCU. To a certain degree this interpretation is correct. This evidence is stated more clearly in Section V of the indictment which outlines the

responsibility and knowledge of each of the accused.[107] Yet, for Wiranto they merely have information about his rank and routine information about the duties he performed or should have performed (such as visiting East Timor and receiving briefings on the security situation). There was no specific evidence linked to him anywhere in the indictment that precisely established his knowledge of the crimes he is indicted for, or his effective control over his military subordinates and the militias. Their accusation rests on his rank alone, which could be sufficient for a case that carefully established a chain of command and followed the knowledge and effective control of troops, including militias, in this chain of command up to the highest level. However, the SCU did not take careful steps to make the "command" case in this indictment. For instance, the indictment never specifically explained or even diagrams the overall command structure that operated in East Timor in 1999. As in the earlier jurisprudence of the Special Panels, they relied on a general assumption about Wiranto's (and to a certain degree most of the other defendants') position of command to make their case. This is a significant flaw in the indictment because they had sufficient evidence to make a case against him. The facts revealed in the indictment (and as the CTF Final Report uncovers in 2008) showed a pattern of joint TNI and militia action which as a Joint Criminal Enterprise case would have been more likely to establish the military commanders' liability. These elements of co-perpetration in the cases also provided the evidence to show the required element of "systematic" to prosecute the charge of crimes against humanity. But, this aspect of the evidence was also ignored in the brief section of the indictment that alleged the widespread and systematic attack.

This absence of strong evidence against the individuals named in the indictment may be for several reasons. First, because the SCU conducted very little original, focused investigation into these particular individual's acts. The majority of evidence was collected from the statements of individuals who had been interviewed by investigators for other cases. Some witnesses were asked specifically for information about the list of defendants and about elements of the systematic funding of the crimes, but for the most part the indictment relied on evidence collected by other institutions in other cases and second hand academic and journalists' accounts that are not composed from a legal expert's perspective. Secondly, such an approach to the case and the prosecutions of the cases at SCU as a whole may have required a less forgiving assessment of Timorese perpetration. Given the evidence listed in the indictment, the Indonesian defendants were more likely to be portrayed as co-perpetrators in a joint criminal enterprise case if the focus became too clear on the evidence against each defendant. If Indonesian perpetrators began to be thought of as co-perpetrators, with less emphasis on their top-down control and authority, Timorese perpetrators may be less likely to be historically portrayed as what Judge Blunk called "victims of circumstance" who merely followed orders.

The indictment's weaknesses do not mean that there was not a basis for the charges against these individuals. Each of the accused in this indictment was specifically named in witness statements collected by the SCU, but much of this evidence was inconclusive, hearsay or circumstantial. Hence, there were likely to be other contributing factors that determined who the SCU chose to include in the indictment. Among these factors were the trials that resulted in convictions against Eurico Gutteres, Adam Damiri and Abilio Soares before the Jakarta Ad-Hoc Court in Indonesia and the evidence featured in the KPP-HAM report. These two Indonesian transitional justice processes played a critical role in the SCU's ability to compose the Wiranto case and these

[107] Indictment, 27-34.

processes' initial conclusions about Indonesian responsibility lent some credibility to the Wiranto Indictment even when it was executed poorly. The Indonesian transitional justice processes were the only sources of information the SCU could garner about the defendants' view of themselves and the crimes they allegedly committed. The transcripts from the Jakarta trials and the convicting judgments played a prominent role in the creation of the case against Wiranto. It is no coincidence that the arrest warrant against Wiranto cited the Timor-Leste's Prosecutor General's request for a warrant based on a direct quote about Wiranto's responsibility from the KPP-HAM's Final Report.

In this way, the Wiranto indictment became the narrative synthesis of all the SCU cases and the Indonesian KPP-Ham and Jakarta Ad-Hoc trial processes as well. Where they had access to documentation, the SCU gathered together all the cases already investigated and picked out the threads of the stories told against the military leadership, whether those stories were substantiated or not. Little direct, irrefutable evidence of these particular individual's involvement existed in the indictment or the briefing of the evidence that supported the indictment's statement of facts. Rather, each of these individuals appeared to be chosen based on a correlation between the brief mentioning of their name in witness testimony gathered in the investigation of other cases and a high level of command in 1999 related to East Timor. It was as if the docket of defendants was chosen first based on their prominence or escape from the Indonesian justice processes, and then the evidence was "found" in these proceedings and the SCU's own case files afterwards. In other words, the case appears to have been worked backwards in order to establish Indonesia's institutional guilt more than being led by the evidence that directly pointed to these particular individual's guilt. In this way, the SCU took these stories from other sources outside their specific investigation and in the absence of any Indonesian perpetrators, and converted them into a single, public, retributive tale that focused the sum of evidence on the guilt of the top leadership of the Indonesian military. The Wiranto Indictment as a compilation of the other cases in existence up until 2003 came to encompass the entire accountability process, or at least an ideal about the trial process. Thus, I contend that the Wiranto Indictment is first a narrative, and only second, a legal, strategy to fulfill the SCU's mandate to hold accountable those individuals most responsible who in reality were going to evade justice.

The arrest warrant was, however, a different matter from the indictment. In the Wiranto Indictment, the facts are choppy and conclusions appear contrived because they are reached without the connecting structures or concepts to demonstrate a clear picture of Indonesian command or co-perpetration. In the indictment fragments of gruesome crime scenes are placed alongside the images and positions of the high profile defendants, and guilt is largely suggested rather than elucidated. To a captive audience who was already sympathetic and well-versed in this narrative, those connections did not need to be drawn. However, for a legal document to be credible these connections and liabilities need to be explicit. The arrest warrant attempted to make up for the shortcomings of the indictment and presented a much more concise case.

Over a year passed between the time the indictment was filed against Wiranto and the arrest warrant was issued. During that time, the SCU prepared a brief that attempted to improve their legal argumentation. For reasons of space the details of this brief will not be covered here, but rather the way this brief was interpreted in the final product of the arrest warrant will be

considered. The first tightening of argumentation that occurred between the indictment and the arrest warrant was the portrait of the Indonesian military command structure. Wiranto's presence and role in East Timor was explained with reference to the way he executed command. For example, the warrant included a critical fact missing from the indictment but hidden in the evidence: Wiranto publically claimed he read daily reports on East Timor and therefore had fulfilled the legal requirement for command responsibility and crimes against humanity of having detailed "knowledge" of the crimes being committed in East Timor. The warrant also specified the way Wiranto was connected to some of the co-defendants, for example that he personally was responsible for the appointment of several of them and specified incidents of his meetings with them about East Timor. The warrant also specified exactly how many soldiers and police were under Wiranto's command and therefore makes more explicit the reasons why Wiranto could be held responsible for the anonymous slew of TNI military and police members implicated in the crimes listed in the indictment. It is interesting to note that the SCU or the Courts never took the time to total or make a list of the TNI or Police members who were under his command that were implicated directly in human rights abuses in East Timor. The arrest warrant took the suggestive portion of the indictment that described the meetings between the Wiranto Indictment defendants and Timorese militia groups and turned it into a lucid argument that explained how the Indonesian military exercised command and control over the militia groups that committed the majority of criminal acts in 1999. It highlighted one of the most implicating statements made by Wiranto: that if FALINTIL was disarmed he could "guarantee" he could have all the militias disarmed in two days.[108] Such an admission could be used to demonstrate Wiranto's effective control of the militia groups. This critical statement was absent from the indictment because it had been buried amidst the volumes of evidence that was not thoroughly analyzed until the Prosecution began compiling the briefs. Without the reformulation of the case against Wiranto in the subsequent arrest warrant, the initial indictment would have been unable to stand on its own as a legally or historically persuasive document.

The Wiranto Indictment and its evidence came to light again three years after the conclusion of the Serious Crimes process, and created a new opportunity for the voice of judgment. The Indonesian and Timorese governments negotiated to allow their joint truth and reconciliation commission (the Commission for Truth and Friendship) to review the Serious Crimes archives to reach conclusions about the institutional responsibility of all the parties involved. With access to the Wiranto Indictment files, the Commission was able to use the evidence contained in the Wiranto Indictment case files to show that the Indonesian military was indeed responsible for the crimes against humanity committed in East Timor as well as the police, the Indonesian civilian administration and the Timorese militias. Through the work of this commission the Indonesian government, including the President of Indonesia, a General who had served in East Timor, accepted institutional responsibility for the crimes listed in the Wiranto Indictment, and more. In addition to the original charges of murder, deportation and persecution in the Wiranto Indictment, the CTF persuaded the Indonesian government to take formal responsibility for the acts of torture, forced transfer, illegal detention and sexual violations as crimes against humanity committed in East Timor in 1999. Furthermore, the Indonesian government accepted responsibility for their institutions (civilian government, police and military) as well as Timorese militias. Although Wiranto and all the co-defendants remain "at large," through the work of the

[108] Arrest Warrant, 7.

CTF largely based on the archival records of the Wiranto Indictment, the narrative goal of finding the Indonesian military responsible was ultimately fulfilled.

Ironically, the institution that was able to complete this task was negotiated out of the reconciliatory moment between Wiranto and Xanana Gusmão. In this critical way, the Timorese and Indonesian leadership took the SCU archives and more specifically the Wiranto Indictment, and placed them in the position of informant to a new transitional justice initiative where they as sovereign nations exercised the primary interpretive decisions rather than the international community.

The Wiranto Indictment became the most conspicuous achievement and failure of the trial process conducted in Timor-Leste. Its place in historical memory was secured in a way that is unusual for post-conflict trials because it did not bring a "war criminal" to trial or even into custody, but it was still able to exercise its voice of judgment. In truth the indictment against Wiranto and his co-defendants was flawed and weak. The resulting arrest warrant corrected many of the indictment's flaws but maintained the tone of a symbolic purpose over a strictly legal one. The Wiranto Indictment and arrest warrant engineered accountability when all they had within their reach was a photograph.

Lessons Learned in the Archives

What can the judgments and the Wiranto Indictment teach us about post-conflict accountability processes in general? Traditionally, war crimes trials are described in negative terms as being "perpetrator-centered." The experience of working within the archives alongside SCU staff on the Wiranto Indictment suggests that trials not only are, but need to be perpetrator-centered in order to elicit the great financial and emotional investment in an international, or internationalized, trial process. The reactions to the Wiranto Indictment also reveal that not any perpetrator will do when you are dealing with atrocity on the scale of crimes against humanity. Indictments, or trials, from the perspective of local and international legitimacy need a perpetrator who reflects the magnitude of the crimes. Small-time, local thugs turned rank-and-file militia members and illiterate farmers, no matter how guilty they may be or how damning the evidence is, may not lend sufficient credence to this kind of legal process to leave an enduring historical legacy, at least from the institutional and narrative perspective. What appeared to drive the prosecution process from the inside was a perpetrator who embodied what the people who investigated and prosecuted believed to be the overall "truth" about crimes against humanity as opposed to a very specific, individual's truth.

Consequently, the Wiranto Indictment became a necessity for the international legal community to legitimize their work because they were unable to question, much less apprehend or try, perpetrators that accurately reflected the "truths" they were confronting in the field about the widespread nature of Indonesian institutions' perpetration. At the same time, the Wiranto Indictment became a necessary legitimizer for the transitional justice enterprise as a whole, especially the previous trials before the Special Panels. The case against Wiranto became necessary to support the "following orders" argument that had been made throughout the trial process. Consequently, the Wiranto Indictment is not only a legal document, but also a documentary fragment left from the search for the meaning of justice among the SCU staff

members and at least one Special Panels judge, when all around them they were confronted with the reality that the majority of perpetrators who they considered most responsible for crimes against humanity would never be brought to justice through the hybrid trial process. Accordingly, the Wiranto Indictment produces a "history" that was written as an attempt to create justice through "truth-telling", in a system that had powerfully distorted the basic standards and benefits of the rule of law. Simply put, without an Indonesian perpetrator, the Special Panels process was not legitimate, even in the eyes of those who struggled hardest to make it work. So, they produced, both in the legal and theatrical sense, a fitting perpetrator.

However, to interpret the Wiranto Indictment as an example of how trial processes only focus on the "perpetrator" would also be mistaken. It would be similarly wrong to describe the indictment of Wiranto and other Indonesian military officials as a case of "victor's justice" or a "show trial" because it is not true that the evidence was inadequate to indict. Rather, it was misunderstood or presented in an inadequate way. One must look beyond the target of prosecution and ask what motivated international staff members who formed the backbone of this indictment process to pursue the case so doggedly that a narrative purpose seemed to begin to lead the law's execution.

These staff members spent a relatively short period of time in Timor-Leste and spent the majority of their free time in the presence of other international staff members. Police investigators who were in the field as well as prosecutors were professionals whom I observed questioning witness statements and other forms of evidence with the appropriate comportment of skepticism and distrust, regardless of the national or ethnic identity of the witness. Indeed, one of the first things explained to me was to be cautious in believing someone just because they said they were a victim. In the words of an experienced Australian police officer, "Witnesses lie, even those who saw human rights abuses." They stressed the importance of corroboration, although I had great difficulty discerning from the case files when witnesses' stories were actually investigated to corroborate details of statements. Vengeance did not seem to come into play in the emotions of those who were most involved in creating the indictment and its supporting documents. At least in a direct way.

However, if one sits in the archive (which was actually just a large steel gray filing cabinet for the Wiranto case and a single-wide trailer for the rest of the prosecution materials) as I had the privilege to do along with some of the other persons who worked on the Wiranto case and the contributing case files, one comes to realize that in the daily life of an internationalized prosecution process it is not the perpetrators, but the victims who occupy center stage. This appears true even in a process like the SCU's where victims were not assigned protections or a visibly prominent role in proceedings. This phenomenon may be assumed to be true in any domestic legal system, but in a crimes against humanity case the volume of victims and the scale of the crimes make the voice of victims a powerful force to contend with for those who work on the case. For anyone who is able to examine the more than 15,000 pages of witness statements from a multitude of victims that eventually became the Wiranto case, the voice of judgment ultimately belongs to them and not the formal documents composed by the international staff. A prosecution process does not allow the reader to "look away" when a story depicts the most debased human behaviors on a grand scale, or is not told in a nice narrative format. It requires every piece of evidence be examined and analyzed thoroughly by the people who will transform individual victim's stories into a collective judicial narrative against a specific perpetrator. This

interaction with victim's stories – in the archives or in the field - strongly influences the ways the people who develop and judge prosecution cases assign meaning to "justice," and consequently translate that meaning into the legal documents that become the basis of adjudication and the institution's historical legacy. Victim's stories were at the heart of this judicial process at the Serious Crimes Unit.

After more than one month examining the many volumes of evidence left by the Wiranto Indictment, I began to notice my interaction with witness testimony was affecting me. I was emotional, sometimes crying after reading a testimony. At other times, I was impatient, agitated or angry after spending a morning in the archives pouring over victim accounts. I informally surveyed some other staff members to find out if and how the victim stories affected their work. When speaking about themselves many staff members, varying from prosecutors to translation staff to police investigators, said that victim stories motivated them to work harder and gave them a sense of purpose. When speaking about others; however, many commented on their colleagues' behaviors, such as drinking too much, engaging in high risk or "adrenaline" activities, sexual promiscuity or adultery as a result of the secondary trauma staff members experienced while working with victims. Some staff members were described in negative terms as "getting too close" to the conflict. No one I spoke with during that several months identified more specific ways in which victims were at work in their interpretations of the tribunal process.

However, as over the years I spent more time in the archives and with actors within the Serious Crimes process, I came to better understand how the indictment, the brief and the arrest warrant were arrived at through the stories of a multitude of victims. It became more plausible to me that some staff members playing a critical role in the process may have consciously or unconsciously begun to identify with Timorese victims who they perceived wanted "justice" against Indonesia. This identification may have been one of the factors that made narrative, or truth-telling, more attractive than the contingencies of a strictly interpreted legal purpose.

Although perpetrators may be the public face of a transitional justice process, the testimony of victims ultimately exerts a strong influence in the functioning of a tribunal. Unlike truth and reconciliation commissions, victims in a trial process are often kept anonymous in order to protect them and therefore, the perpetrators may seem to be at the center of the process, when in fact the dynamics of victimization and secondary "witnessing" by those who work within the court system may be at the core. Surrounded by victims' stories delivered in person or through the archives, some staff members may have found it both a professional and an emotional necessity to leave a legacy that included an object of prosecution that embodied Indonesian guilt – regardless of the lack of a forum to test the truth of the testimony of witnesses or the prospect of the case's success.

In 2004 I had this idea that intimacy with the victim's narratives could radically affect the way justice was administered and left to the public record in an international tribunal. But this theory was based on my instincts and general observations of the Wiranto prosecution in progress. I had no way of showing how this process might occur, and at that time I analyzed the empathetic response to victim statements as reinforcing a person's commitment to justice, rather than analyzing it in terms of the conflict that may result when a prosecution identifies with victims. At a conference held in Bangkok in 2006, I was interested to hear a paper by a former international

Defense Attorney for perpetrators charged by the Serious Crimes Unit that argued the entire Serious Crimes process was engineered for retribution and justified itself in terms of convictions, to the extent that Timorese defendants in the process were victimized by it. As I have similarly demonstrated in my discussion of the Joao Fernandes case above, there is a wealth of jurisprudence at the Special Panels to support this Defense Attorney's argument, and his conclusion is no surprise. He did not delve into the motivations behind this desire to convict, but I was able to note for the first time that people inside the transitional justice process were willing to publically state a bias towards conviction and how it adversely affected the lessons learned by the populace about justice as a whole. At the same conference, another participant who was deeply involved in the Wiranto case explained a difficult task for a transitional justice court is to transform a public's understanding of justice as conviction to justice as the fairness of due process. This respect for due process is precisely what was not sufficiently accomplished through the Serious Crimes prosecutions. The meta-narratives that were left by the Serious Crimes process were so focused on peace, retribution and reconciliation that the idea of due process almost completely disappeared. As former Defense Attorney Alan Gutman pointed out, the absence of this due process narrative was pervasive and strategic because the Defense was virtually unfunded compared to the Prosecution. I wondered why there was a disconnect between what international actors knew should be done to leave a legacy that encourages the rule of law through due process versus what was actually done. I continued to ask how victims may influence or be influenced by a hybrid court's commitment to producing a conviction narrative.

In 2007 I had an opportunity to return to examine the case files of the Wiranto indictment on behalf of the Commission for Truth and Friendship. This time I was able to find evidence of at least one way victims' voices were affected by the tribunal process. In a group of witness statements concerning the massacres committed at Makelab in Oecusse district, I found a pattern in statements taken from female witnesses. These women's testimony share many similarities that would be expected in a situation where these witnesses live in close proximity to one another and have had an opportunity to share their stories. Therefore, I was not initially surprised by the congruity in their testimony. However, on closer examination I noticed that in a set of approximately ten testimonies by female relatives of victims, the exact same lines are stated in the same point in the testimony of three of the witnesses. Each of these statements say the victims are "seeking justice, particularly for (inserted the name of their loved one) and I believe (insert name of perpetrator) is responsible."[109] Testimony could have been rehearsed by witnesses, but the rest of their testimonies do not bear enough correspondence to one another to suggest the witnesses had coordinated their stories amongst themselves. Statements from male witnesses did not closely resemble each other. There is the additional problem that these witnesses gave their statements in their native language of Dawan, which was then translated either to Indonesian or Tetum, and then into English. No one recorded the original testimony and therefore, it is impossible to know whether these witnesses' words were made uniform as a result of the translation process or were edited and embellished by the investigator. Either way it is clear on examination of these texts that these witnesses did not say these exact words in exactly this way. Although these witnesses may have expressed these sentiments in a general way at some point in their discussion with the investigators, the investigation team clearly took the liberty of writing their testimony down in their own words instead of the witnesses, and placed

[109] These testimonies can be found in volume 14 of the Wiranto Indictment case files.

them to add emphasis to the statement so that victims' words would support the overall Prosecution process.

The editing of witness testimony demonstrates an institution's, as represented by its staff, urge to speak "for" victims, particularly female victims, and assign their own meanings to the justice process. This is a Spivakian moment in the archives if there ever was one, where the subaltern, feminine voice is used to justify an outsider's seemingly "liberal" enterprise to improve the "native's" lives when in fact it legitimizes their own pursuits. However, beyond this observation of the cultural politics intrinsic in this moment, it offers insight into the dynamics of the prosecution in this case and others. The investigation team most directly exposed to this testimony shaped these women's words to create a unified call for retribution. Apparently the prosecution team found the women's real words inadequate for what they perceived to be the larger purpose of their investigation. We, of course, will never know from the archive exactly what the victim said or wanted. Her voice has been erased.

This moment in the archives is not representative of the way all witness statements were taken, but it does reveal that the Serious Crimes process could at times be engineered by some actors in the process at the grassroots level to tell a specific story that prioritized a homogenous, rather than a diversified, vision of justice.[110] Although testimony may have been refined for the most empathetic of reasons – for the women to achieve better results in court – such practices reveal a willingness on the part of the institution to manipulate victim witnesses and international legal norms in pursuit of the appearance of "justice" that they as individuals desired.

Hence, exposure to victims and their testimony with the degree of intensity that those people who were involved in the Wiranto Indictment experienced may offer part of an explanation of how a narrative purpose could have come to dominate, or at the very least shape, the legal process in the Wiranto case. In truth, none of the victims' thoughts and none of their emotional experiences are really captured in the dry, legal language that is meant to bring them justice. But that doesn't mean the victims' voices are not there. My observations of reactions, including my own, to the Wiranto case reflect the impact victims can have on the judicial process even when they are not given the opportunity to appear in court, or when the trials do not result in convictions. Their stories urge you to read, listen, and do something. Although the face of a tribunal may be the perpetrators,' as seen on the flashy poster that advocates for a new international tribunal, the inner life of a tribunal can center on victims. They act as a narrative force that exerts and in some ways controls the process from behind the scenes. Their collective voice influences the motivations and tactics used in the pursuit of accountability, and an awareness of the power of victim testimony at times may lead the tribunal process to try to control it in a way that enhances its own institutional objectives, rather than preserve victim's authentic voices and desires.

The failed arrest warrant in the Wiranto case was similar to the outcomes in the majority of the Serious Crimes cases. Beginning with the indictment of Eurico Guterres by the tribunal in 2002 (Case # 2a-2002) the SCU indicted Indonesian military officers and high-level Timorese militia

[110] It is interesting to note that in a case that did go to trial regarding the killings in this same district, similar problems of exact repetition were found in other witness statements. See the discussion of the trial of Umbertas Ena and Carlos Ena in Cohen, *Indifference and Accountability*, 66-68.

members who they were fully aware would not be apprehended or brought to justice. This is why in the archive as you open the majority of boxes you see the same sentence marked on a one-page judgment: "There is no final decision in this case because of the alleged absence of the defendant(s) from East Timor. Consequently, there have been no proceedings in this matter." The vast majority of those indicted by the Serious Crimes process were never arrested or brought to trial because they were out of jurisdiction. The archives are filled with nearly empty case files. Consequently, despite its high conviction rate, the voice of judgment generated by the Serious Crimes process is largely relegated to one of symbolic rather than actual retribution.

How does the Wiranto Indictment fit into the Ground Zero narrative that I have suggested is the narrative of the Serious Crimes process as a whole? First, the Wiranto case illustrates the way the trial process took the dominance of the international community in the hybrid trial process for granted. The Timorese leadership's objection to Wiranto's prosecution was diverted. This reaction to differences in prosecution strategy could be interpreted as indicative of the success of the Serious Crimes process because it maintained prosecutorial independence and upheld international human rights standards. Indeed, this may explain the best work on the case. On the other hand, this explanation of the development of the Wiranto Indictment does not account for the sloppiness of the initial indictment and the apparent presumption of guilt.

We have also noted that some victim voices were over-written in the SCU's prosecutorial fervor. The pursuit of Wiranto seems to have occurred with a certain degree of assuredness that these legal details were not as important as the overall objective. Indeed, that may have been the case from a narrative, or truth-telling, perspective if the goal was to present a persuasive, historical account of Indonesian impunity and the international community's principled pursuit of justice. However, it is precisely those details that are important to guarantee the validity of a judicial exercise meant to teach the value of the law as an impartial and fair process and to enshrine the worth of every citizen as a protected legal entity. The principled and independent pursuit of justice was also undercut by the United Nations headquarters' own unwillingness to take responsibility for the indictment and forward the arrest warrant to INTERPOL. With the flashy photograph of Wiranto and Xanana accompanied by a zealous indictment it appeared that the Timorese and Indonesian governments were the obstacles to justice, when in fact the international community also shared responsibility for blocking the prosecution of Wiranto, and not providing the appropriate resources or another venue (for example in the form of an international tribunal) for accountability.

If one examines the development and aftermath of the Wiranto Indictment, it becomes clear that the narrative is positivist and idealist in its pursuit of justice and it is undercut by instances of the international community becoming wrapped up in their own story of becoming the source of truth, and then justice. Although the Wiranto Indictment may seem to be a transformational moment in the law of Timor-Leste because an Indonesian military officer was sanctioned, from the perspective of many Timorese this moment is limited to an abstraction. Impunity remains and their experience of injustice persists despite the actions of the court.

In the Ground Zero narrative, justice is a struggle over where to draw the line in the sand. The legitimacy of the transitional justice process hinges on the power to decide when "justice" begins, and who it can include or exclude. Despite the admirable efforts of many of those who

worked within the Serious Crimes process, this issue remains largely unresolved and the clock continues to be set forward. The danger in this narrative, perhaps as best illustrated by the Wiranto case, is the arrival of each new power equals a new ground zero. Justice is adjusted by political powers to tell the story that they need to legitimate their particular agenda, rather than remaining a constant. When the workings of justice emerge out of and are taught through the image of Ground Zero, the ultimate result may be that the justice process delays the transition rather than ends it.

Although thus far I've portrayed the Ground Zero narrative as it was produced by the international community, the most telling illustration of the way the Ground Zero narrative has been adapted by the Timorese government is the issue of amnesties and pardons. The Timorese government has continued to protest new prosecutions for human rights abuses committed in or prior to 1999 most often based on the argument that it lacks sufficient judicial "capacity" or power to do so on its own. This argument can be clearly traced to the Ground Zero image painted of justice by the United Nations in 1999, particularly in the writings of Hansborg Strohmeyer. Because throughout the Special Panels process the emphasis was placed on international action versus Timorese tutelage and passive perpetration, the Timorese government has been insistent in maintaining its lack of "capacity" for justice. The leaders of Timor-Leste have, quite brilliantly and perhaps even sarcastically, turned the rhetoric of the Ground Zero narrative for Indonesian accountability into a justification to support their stance. In so doing, the Timorese leadership has acted to reset the clock of justice, initially to 2005 when the UN withdrew. At that point the governments of Indonesia and Timor-Leste convened the Commission of Truth and Friendship (CTF) which some perceived as a way of undoing the work of accountability done by the Serious Crimes process. The CTF's results in the end turned out different from this expectation and ultimately built upon the narrative legacy of the Serious Crimes process. However, despite the blocking of amnesties during the CTF's proceedings, upon the completion of its process, the less than 100 low-level perpetrators who were judged and convicted by the Special Panels were almost all released prior to the completion of their sentences by a Presidential pardon given by José Ramos Horta in 2008. In 2009, only one low-level Timorese perpetrator remained incarcerated for any of the criminal acts that constitute grave human rights abuses committed in East Timor. No Indonesians have been successfully and fairly tried for human rights abuses committed in 1999 in East Timor.

In 2006, a civil conflict embroiled Timor-Leste in violence again, and left more than 25% of the population internally displaced. This crisis required the intervention of a new international peacekeeping mission that continues until present. The Timorese government at various times has considered legislation to pardon violent crimes committed during the Indonesian Occupation and in 2006.[111]

In 2009, judicial accountability in Timor-Leste appeared to remain at Ground Zero, and the archives that record the comprehensive history of the Serious Crimes process were slipping into

[111] See Justice System Monitoring Programme (JSMP), "What will be the effect of the draft amnesty law?" (2002) at http://jsmp.minihub.org/Legislation/AmnEng.doc; "Timor-Leste: Proposed Amnesty Stirs Controversy," Code Cable from US Embassy, 12 August 2008 at http://wikileaks.org/cable/2008/08/08DILI201.html, accessed 15 November 2011.

decay.[112] The Timorese leadership literally set the clocks back and reversed the narrative so that the legacy of judicial accountability of the Serious Crimes process has been made subordinate to their persistent wish to forego prosecutions and to keep the accountability process under the ultimate control of the political leadership of the country.

Beyond the Archives

How is the Serious Crimes process remembered outside of the archives? We have already examined a few tokens of popular culture such as the poster and photographs that demonstrated the perceptions in Timor-Leste about the Serious Crimes process. In the summer of 2005, I revisited the Serious Crimes Unit as it was in the process of packing everything up, including the archives, to close the office and bring the hybrid tribunal process to a close. I asked several of them how they would like their work to be remembered. Each of them told me that the staff had reflected upon this question and collectively decided to donate a memorial. The staff members pooled their money to build a monument to the Serious Crimes process. They approached several embassies for grant money for construction costs and coordinated with donors and the UN to reach agreement on a design. The UN contributed a site for the memorial on a piece of land that the Timorese government had allotted to them in commemoration of independence in 2002. This monument to the Serious Crimes Process, and the voice of judgment, stands on the main waterfront within sight of the location where the human rights abuses at Bishop Belo's house and the Dili Diocese occurred in 1999.

[112] The majority of the judicial judgments and indictments have been digitally preserved on the Berkeley War Crimes Studies website.



Figure 5 -Memorial created by the staff of the Serious Crimes Unit, Dili, Timor-Leste (Leigh-Ashley Lipscomb)

The memorial spatially represents the pursuit of justice. Sandy, gray gravel marks the square boundaries of the lot where the memorial rests. A soccer field is to the right side. On the left is an unplanned space where fisherman and coconut sellers come to ply their goods, and a scattering of internally displaced families from the violence of 2006 squat.

The monument's form is circular in the shape of a flattened globe that signifies the international community. Inside the main circle is a second circle formed by benches in a shiny-surfaced gray tile where people can sit. In the center of this globe and the second circle is a flat, outline map of the island of Timor with the nation of East Timor marked in the color red, representing the blood lost in the violent struggle for the establishment of the nation. The map is overlaid on a crude outline of a dove with olive branches in its beak – the international symbol of peace. At the top of the memorial an open gate to the sea is constructed from classical columns that are a noticeable feature in several remaining colonial Portuguese buildings in the area. Among several of the main indigenous ethnic groups' beliefs in Timor-Leste, the sea is the honored, final resting place of the dead,[113] and it appears the memorial is designed in a way that spatially pays tribute

[113] For a discussion of the Mambai rituals that associate the dead with the sea, see Traube, *Cosmology,* 227-232. In a field visit with a community of Bunak people in Bobonaro District in 2008, they also described the sea as a final resting place for the dead. In contrast, David Hick's work describes the resting place of the dead for Tetum Terik communities in Viqueque District as the jungle.

to them. The memorial attempts to map a permanent place in a society's memory for those who searched for freedom and justice.

Text also plays an important role in interpreting the architecture. In the space between the two circles, between the benches and the outer circle, the periphery is marked with the names of each of the 13 districts that make up independent Timor-Leste, as shown in the photo below. Like the archives, the SCU memorial organizes the concept of justice through neat separation into small geographic units. I believe the intended effect is to demonstrate the power of justice reaches out from a center equally across the nation's dominion. However, the text contained in this monument makes the narrative of the architecture more explicit.



Figure 6- Each of the 13 districts that comprise Timor-Leste is marked on the inner periphery of the memorial. Ainaro district is shown here. (Leigh-Ashley Lipscomb)



Figure 7 – Memorial Inscription (Leigh-Ashley Lipscomb)

Beneath the gate structure is a bronze plaque that identifies the monument and pays homage to the donors. In translation the main inscription reads:

Peace Memorial
In honor of those who have suffered in the battle for peace and justice
"We ask sincerely that they never be forgotten"
Established by the Serious Crimes Unit (UNMISET) in May 2005

Although the memorial was specifically commissioned by the SCU to commemorate the victims and the Serious Crimes process, its inscription labels it as a monument to peace rather than justice and its textual focus is on the efforts of the international community rather than local experience. Of course justice is a core concept as can be seen from the first line of the inscription, but it is not the main narrative. There is no reference to truth either. This message is reverent and conciliatory as it collapses the meaning of justice into the framework of peace, in the same way that the map of Timor-Leste is swallowed in the larger form of the globe. There are no victim names like the Vietnam or Pearl Harbor memorials in the United States or death toll counts or historical synopses. The only point where the memorial is specific is to honor the international donors. Nevertheless, it is clear the intention of the monument is to pay homage to the victims of human rights abuses. Perhaps the vagueness of the memorial is meant to encompass many different types of victims in its meaning, including those who suffered in the pursuit of justice during the Special Panels process itself. The mostly empty space within the memorial leave its meanings open to interpretation.

Another way to read this memorial is as a house. The memorial is in the same shape and about the same size as the traditional circular homes prevalent in the Central and Western areas of East Timor, where the highest level of violence occurred in 1999. When one of these homes is burnt

to the ground, according to the witness testimony in the Serious Crimes archives, the structure would resemble the form of the memorial. All the thatched covering would be gone from the roof and sides. In many cases only the circular outline of the home would be left. In front of many sacred houses in these regions of Timor-Leste lies a "circle of stones" The "circle of stones" in terms of its design is an imprint of sacred homes that have been built and burnt in the past. The circle lies in front of a new sacred house as a symbol of the previous houses that have come before, as a tribute to those dead ancestors.[114] The SCU memorial, whether intentional or not, is built in an abstract form of a sacred house's circle of stones. If the memorial is read in this manner, the map at the center of the "house" would be in the most sacred location of the home and the emphasis is on the sacredness of the nation and those who died for it. This interpretation of the memorial speaks to the destruction that spread across all parts of East Timor in 1999 and before, and it honors the dead by simultaneously placing them at the sacred center of the nation and carrying them away from an empty and ravaged house to the peace of the sea.

In either interpretation of the memorial the structure preserves an image of destruction and attempts to transform this moment into peace. Justice is a secondary, or instrumental, means of achieving these goals. In this regard, the memorial effectively and compassionately encompasses the grand aspirations of transitional justice. Yet, during more than five years of regular observation, I have only seen one person at the memorial. In many ways this memorial preserves the quality of blankness that is inherent in the Ground Zero narrative. The memorial also helps write the Ground Zero narrative in the way that it makes an international inscription of justice over the Timorese landscape. The international community is marked in this space as the author, the melder, the builder of a house of peace. The work of justice is not yet done.

As a whole this memorial reflects how the SCU wanted itself to be remembered by others. But did those who worked within the transitional justice process remember it differently amongst themselves? Of course I cannot answer that question in any concrete way because I would presume to speak for a diverse set of individuals about a highly personal matter. However, there is one example of how those who worked within the Serious Crimes process memorialized their experience.

During my time at the Serious Crimes unit I was quickly initiated into the weekly staff social function. Within the institution's compound there was a small one-room modern building where an unflushable toilet, janitorial supplies and unused furniture were stored. The building doubled as a place to house witnesses and a staff lounge. On a small concrete pad behind the building the staff had built a rudimentary tiki bar which opened like clockwork every Friday after 5pm (and sometimes closer to 4). This weekly ritual was when I saw the "hybrid" nature of the tribunal come alive. Cheap Aussie beer, Timorese pop tunes played by a local staff member on an electronic keyboard in close succession to a group of men singing a Russian drinking song. There was dancing from hip hop, classic rock to what my desk mate informed me was the Timorese two-step, executed to Portuguese-African *kizomba*. During work hours, I sat beside and worked with international staff exclusively. However, in this environment there was an easy mixing between the international and local staff and between all levels and nationalities of the staff. Only in this setting was I able to observe the ways in which the other parts of the Serious

[114] For another example of a memorial in Timor-Leste that uses the symbolism of the Circle of Stones see, "Circle of Stones," http://www.suaimediaspace.org/the-documentaries/short-documentaries/the-circle-of-stones/

Crimes Unit such as translation, forensics and administration were working in hybrid teams and cultivating relationships and knowledge exchange.

The highlight of nearly each weekly gathering was a farewell ceremony. If someone who had worked at the Serious Crimes Unit, or in what they deemed to be a complementary capacity (occasionally Defense attorneys, Court staff and outside international police would attend), was leaving their position, the person would be appointed the honored guest for a specific Friday. Then, at a drum-rolled moment, the person's hands would be dipped in bright paint. They would stand on a chair and place their handprint on a special wall. The person would then be given a paintbrush to write their name and date, and would alight from the chair. Then, a pre-arranged staff member would give a speech that summarized that person's work and contributions and the person being honored would give a prepared speech to thank everyone. People chose different colors – red, yellow, green, blue – and overlapped and artistically spaced them. The back of the building looked like a swarm of colorful butterflies from a distance. Up close it looked like finger painting. The simplicity of the ritual was a striking contrast against the complexity of the task that united the people in attendance – prosecuting crimes against humanity. One might expect something more somber or moralistic in this environment where five minutes before the people who were cheering raucously were discussing the best way to excavate mass graves. The butterfly image was particularly apropos for a farewell ceremony because it visually represented the transient nature of the majority of the people who were working to instill justice through this institution.

The memorial as a physical structure that housed witnesses and as a communal ritual was comforting to all those who had experienced the reality that the justice that they had been involved in creating at the SCU was disillusioning, piecemeal, unsatisfactory and perhaps permanently stalled. Only the one image of the hand was used in this informal memorial, which suggests the ritual was designed to reflect a certain unity where no one could distinguish someone's nationality, position, age or gender. In my reading, it expressed a collective desire to believe in an indelible concept of justice which they knew to be inaccessible in the daily life of the SCU as an institution. It created a symbolic international community of justice.

After the end of the Special Panels process in 2005 the Serious Crimes compound was closed and reopened as a government building. The memorial wall was painted over and there is now no trace that it had ever existed.

How is the Serious Crimes process remembered by the Timorese outside of the Serious Crimes institution? I have found at least one way. In 2004 the three communities in Oecusssi whose men were murdered at Passabe held a memorial reenactment in the village of Tumin on the anniversary of the massacre. A filmmaker working in the area captured parts of the ceremony on film.[115] They invited Xanana Gusmão and officials of the United Nations to their local community, and the UN included in their party a group of representatives from the headquarters in New York. The head of the United Nations mission in Timor-Leste (UNMISET), Sukehiro Hasegawa, brought a gift to the ceremony: the remnants of the clothes left on the bodies of the

[115] See a description of the film and distribution information at "Passabe: What is the Price for Peace," www.passabe.com , accessed 15 November 2011.

massacre victims that had been seized as evidence by the Serious Crimes Unit.[116] The bodies had been so badly decomposed and damaged by scavenging animals that most of the bones and their personal items were never identified. These men returned to their home community in plain manila envelopes, visibly marked with black magic marker as SCU evidence with a case and evidence number. Inside were patches of the men's clothes – a swatch of sarong; a shred of an acrylic sweater; a piece of a white t-shirt.[117] In the ceremony, accompanied by traditional Timorese drumming, the community took all the fragments of clothes --- still in the SCU manila envelopes – and gently placed them in a miniature house built for them. The house was raised on a pole so it stood just above the height of the people's heads. The people placing the cloth inside had to strain their necks to put the objects inside. In this way the community around Tumin constructed their own narrative of justice and invited the international community to watch. The legacy of this community's loved ones and their collective pursuit of justice rests here, in a model of the traditional house.

[116] For official reports of this ceremony see: "RDTL's President Xanana Gusmão and U.N. SRSG Dr Sukehiro Hasegawa Visit Massacre Site and Offer Solidarity to Community," UNMISET press release, 4 October 2004.
[117] In the archives I was able to access the forensic reports that explain the pieces of forensic evidence in the Wiranto Indictment Case Files, Volume 13.

Chapter 5. *Dalan Ba Dame:* The Voice of Victims

In this chapter we will examine the legacy of the CAVR as seen through its archives. The CAVR has cultivated a reputation as a victim-centered institution, but this analysis will point out ways in which the narrative of "*dalan ba dame*" (road to peace) sets boundaries on the truth, carved out exceptions and at times prioritized victim's needs according to national and political interests. In conclusion, as with the Serious Crimes process, we will look at the ways the process is remembered by various groups and how the "road to peace" is linked to the narrative of the house as a symbol of the search for justice.

Institutional Background and Structure

The application of a truth and reconciliation commission to the problem of justice was a high priority for the UNTAET administration and the highest levels of Timorese leadership. The idea was first discussed formally at the CNRT Congress in 2000, where it was workshopped by Timorese political leaders and representatives from UNTAET. There was political support for pursuing this restorative form of transitional justice alongside a retributive institution that "would bring the Indonesian generals to trial." [118] The CAVR was conceived by the international community and the Timorese leadership as a necessary addition to the Serious Crimes process as a parallel and a counter-strategy to retributive accountability for those who did not support trials for Timorese perpetrators. Reconciliation among Timorese and truth were placed in a prominent position within the CNRT political platform that legitimized the decision of the UN to create a law that established the national truth commission.

The combination of these local and global interpretations of the value of a truth commission eventually developed into one of the CAVR's emblematic slogans: "*dalan ba dame*" or "pathways[119] to peace." The active participation of the Timorese leadership in the decision to establish the CAVR is reflected in the Commission's use of Tetum language in this particular slogan,[120] and the "*dalan ba dame*" narrative as a whole demonstrates a concern with integrating indigenous Timorese cultural norms with an international model for truth and reconciliation.

Thus, the CAVR was also a "hybrid" in its philosophy and administration although it never claimed to be. The Commission was governed by a committee of appointed, Timorese political elites and human rights activists, but was administered by a mix of local and international staff. International staff played a stronger role in advisory, research and management capacities, [121] but the majority of the staff was Timorese.

The CAVR was mandated by law to institute processes for truth-seeking, reconciliation and restoring dignity to victims of human rights abuses that occurred in the context of political

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[118] See "Outcomes of the CNRT National Congress, 21st-30th August 2000," Report of Committee III, CAVR archives, 16.
[119] *Dalan* can be translated a number of ways in addition to pathways. Alternative translations could include path, road, or way.
[120] Tetum played a key role in the work of the CAVR but the working languages of the commission were Indonesian and English. The title of their final report which is also well-known to the populace is a Portuguese word - *chega*.
[121] Anonymous interviews with former CAVR staff members, 2008 to 2009.

conflicts from April 1974 until October 1999.[122] The CAVR organized its work to fulfill these functions around the following main project areas: truth - telling, reception and reconciliation and victim support.

The Truth-telling Function

The CAVR based its truth-telling project on five main methods of inquiry: statement taking, statistical data, public hearings, document and secondary source analysis. The vast majority of this work was invested in the statement-taking project that collected nearly 8000 statements from witnesses to human rights violations inside and outside East Timor. Approximately 1000 additional statements were reportedly taken from "VIPs," including leaders in Portugal, Australia and Indonesia. Statements were given on a voluntary basis at the request of CAVR staff. Statement-taking teams covered every district and sub-district in East Timor as well as West Timor. The information collected in statement-taking was then entered into a centralized database in summary form to collect specific statistical information, such as the number of acts of priority human rights violations, or the number of human rights violations reported to have been committed by a particular individual or institution. Statements were not cross-checked systematically to verify the factual nature of their contents.

The CAVR commissioned the collection of statistical data on mortality (including a survey and graveyard census) in order to estimate death tolls over the period of their mandate from an international statistics company (BENETECH). Although this mortality information is catalogued in their Final Report, this portion of the human rights database is separate from the statistical information derived from the CAVR's statement taking process. Other "statement based" databases were donated to the CAVR for statistical analysis and fact finding, including databases from KPP-HAM, Amnesty International and the local women's NGO, Fokupers, which were used as methods of fact-finding. Additional research was conducted on documents and secondary sources collected by the Commission. These primary documents include records from the Indonesian military, the Resistance, and Indonesian court trials of Timorese.

In addition to the collection of testimony and statistical data, the CAVR conducted Public Hearings organized around themes including famine and forced displacement; political imprisonment, killings and enforced disappearances, children and conflict, women and conflict, the role of the international community and political party conflict allegedly from 1974 to 1976. The hearings were conducted in a panel format comprised of victims chosen from the pool of statement givers and several "expert" witnesses related to the theme. These hearings received widespread coverage on radio throughout the country.

The truth–seeking activities collectively formed the basis for the writing of the Commission's Final Report. The over 2000-page Final Report describes the commission's work and contains thematic chapters with findings for various categories of violations, as well as an historical overview and legal framework chapters. An additional report commissioned by the UN Office of the High Commissioner for Human Rights (OHCHR) was amended to the main body of the report that describes the context, causes and nature of human rights violations in 1999. The Final

[122] See UNTAET/REG/2001/10, 13 July 2001. This temporal mandate covers the periods from the fall of the Portuguese dictatorship in the Carnation Revolution up to the end of Indonesian Occupation.

Report records compelling witness testimony and provides the only reliable statistical analysis of the human rights violations. The CAVR's Final Report is also the first and only comprehensive account of this period of history as told from the Timorese perspective and deserves credit for reporting human rights abuses committed by Timorese as well as Indonesian parties to the conflict. Combined with other public educational and outreach activities, the CAVR's work has made a great contribution to the "truth-telling" or collective memory function of transitional justice because it recorded the first comprehensive history of human rights violations in East Timor. Following the closing of the CAVR in 2005, a "Post-CAVR" institution was created to disseminate the Final Report. It has been engaged in dissemination for nearly six years.[123]

Out of this large volume of materials that were collected by the CAVR, in the archives the public can only access the Final Report, the transcripts, commentary and booklet summaries from some of the public hearings, and some of the secondary research and reports that contributed to the writing of the Final Report. The 8,000 witness statements in all forms (paper, cassette tape and video transcripts) are closed to the public, as well as to the staff without special permission; as are the databases that compiled and catalogued all the statistical information in the Final Report. Only a small portion of the primary documents, such as a copy of the Timorese declaration of independence, were placed in the public archives. In summary, the vast majority of the victims' voices who participated in the CAVR truth-telling process are anonymous in the Final Report and inaccessible in their original testimonial form. The leadership of the Post-CAVR institution has expressed a desire to maintain these materials' confidentiality for at least 30 more years, but no legally binding policy has been adopted.[124] However, since currently there is not sufficient funding for preservation it is likely that in 30 years much of this material will have been severely damaged or destroyed.

Although this discussion's aim is to focus on the truth-telling mandate, in the archives it is impossible to separate the products of the "truth-telling" mandate and the rest of the commission's work, such as the Community Reconciliation Process and victim support activities. Information and perspectives garnered from every aspect of the commission's work are part of its truth-telling legacy. After the stories are told, in the historical records they resist neat categorization in accordance with the institutional mandate, and they become part of a collective portrait of the life and outcomes of the institution. Accordingly, we will examine sources in the archives from activities in addition to truth-telling, which contribute to the institution's overall narrative legacy.

[123]Some individuals who participated in the truth-telling process complained that they never received follow-up from the CAVR. As one example, in one set of interviews I conducted on behalf of ICTJ in 2008, a woman in Suai stated that she had given a statement to CAVR but had never seen any of the products of the CAVR's work. Two weeks later at a public viewing of the CAVR film in Dili, this same woman's testimony was featured in the film. She apparently has no knowledge that her testimony was used in the film, or of how her contribution relates to the CAVR's work.

[124] Personal Communication, Jacinto Alves, Patrick Walsh and Rev. Agostihno Vasconsuelos, 2007-2009. See also "*Kebijakan Akses Arsip CAVR: Rekomendasi*," November 2005, in the CAVR library, which recommends general access to files after more than 30 years and that information regarding any perpetrator, victim or witness names be sealed for 65 years (Section 2.4.1). Ironically, this document assigns greater protection for information about the CAVR staff members than victims or perpetrators. It recommends records containing information about the CAVR staff be sealed for 75 years.

Narrative Functions of the CAVR

It is critical to recognize that the CAVR exercised a different function from the Serious Crimes process, although it was theoretically meant to contribute to the same overarching goals of peace, justice and truth. It had no legal authority, for example to compel testimony or make determinations about a perpetrator's legal guilt or innocence. However, the CAVR may not have always recognized these limits in terms of its narration of guilt and accountability. For example it provided several lists of Indonesian military personnel in East Timor, but does not explain or document the reasons why these particular personnel should be considered responsible. They presumed guilt for Indonesian perpetrators by publishing these lists, but in the case of perpetrators dealt with in their Final Report who were primarily Timorese, names were not used in order to protect the legal presumption of innocence. Although the CAVR at times took narrative liberties that had a retributive effect when it came to Indonesian perpetrators, by law it could not create new legal powers for itself that would allow its work to impinge on the Serious Crimes process. The Special Panels process derived its legitimacy from the power of the laws it would uphold and explain in the public record of its indictments and judgments, but the CAVR's legitimacy was meant to emerge from the history it would write in its Final Report. The end goals and raw materials of witness testimony used by the two types of institutions were theoretically the same, but the tools and the final products of the two institutions were different.

The CAVR was the only institution that addressed human rights abuses that occurred before 1999. Hence, the scale of the CAVR's designated responsibilities sets it apart from all the other transitional justice institutions. No other institution dealt with such a large volume of victims and perpetrators, or cases in so many different programs or at such an intimate level--in the local communities, in former sites of atrocity, and at the direction of former victims who made up the Timorese board of Commissioners. Accordingly one would expect the CAVR process generated a vast archival legacy, but in fact the CAVR archives accessible to the public are modest compared to the total holdings of the institution and some of the other archives.

In her book *Shattered Voices*, Teresa Phelps summarizes some claims about the functions of story-telling conducted by truth commissions. First, she explains that the narratives produced by truth commissions are expected to link individuals in a polity.[125] Truth commissions provide a "plot" to an otherwise unrelated group of stories.[126] Without making reference to Benedict Anderson, she describes the expectations of a truth commission's narrative as something very similar to the "imagined communities" argument, where nation-building occurs through the medium of a text that is a compendium of stories which unites a people.[127] The printed word of a truth commission report is a means of constituting a national community. She goes on to argue that successful truth commissions must include in their Final Reports the narrative features of Bakhtin's concepts of "carnival" where stories flow freely and irrevently in an inversion of social hierarchy, and "polyphony" where there is a multitude of voices that are never over-powered by a single narrative voice or stance. In other words, truth commissions, including the CAVR, as

[125] Teresa Godwin Phelps, *Shattered Voices: Language, Violence and the Work of Truth Commissions* (Philadelphia: University of Pennsylvania Press, 2004), 63.
[126] Ibid, 79.
[127] See Benedict Anderson, *Imagined Communities: Reflections on the Origin and Spread of Nationalism* [revised] (Brooklyn: Verso, 1991).

part of their truth-telling function are expected to engage through texts in nation building and egalitarian democracy, as well as contribute to the validation of the universal value of justice.

In accordance with their "restorative" vision of justice, most truth commissions have minimized their focus on punishment of perpetrators through amnesties and public rituals of reconciliation, even though there are punitive aspects of the process such as public "shaming."[128] Attention is meant to be directed to the victims rather than the perpetrator. We will observe the ways in which the CAVR steered away from retribution at times, as well as drove head on into it. In evaluating the archives we will try to understand to what degree the CAVR was successful in balancing retribution with its reconciliation function.

Finally, much of the scholarship that theorizes the narrative function of a truth commission focuses on the argument that a truth commission can heal by restoring language to victims who were robbed of their narrative abilities by violence. Elaine Scarry is the best-known theorist of the destruction of language through violence, and her arguments have been taken up in the field of transitional justice to explain the impact of truth commissions' historical function as empowering victims. [129] Writers, such as Phelps describe truth commissions as catalysts that move people from "storyless" and passive victimization, to a state of active "morally responsible" storytellers who are agents in control of the story of their own lives. Truth-telling on the part of individual witnesses and by the Commission itself is expected to produce collective healing through the narrative process of revealing, ordering and sanctifying the truth in language.

In this chapter we will examine the many ways in which the CAVR played to and fulfilled these narrative functions. However, the CAVR's experience may also reveal ways in which our expectations about truth commissions may need correction. Observation of the role that narrative centers play in the CAVR's activities and legacy raise the question whether victims need a truth commission to "restore" their language, or to grant them the agency of a "storyteller." Such theorizing assumes that prior to or independent of truth commissions, victims will not tell their own stories in productive ways. In contrast, I will suggest that truth commissions function to protect rather than restore the power of stories.

The "*Dalan ba Dame*" Narrative

I have already referred to the "*Dalan ba Dame*" narrative as the meta-narrative of this truth commission. My choice to emphasize this narrative may be controversial because the title of the CAVR's Final Report, is Chega!, and should be the institution's enduring popular narrative. "*Chega*!" is a Portuguese word that means literally "Enough!," but loosely "no more," in close approximation of the titles of the truth commission reports in Brazil ("*Nunca Mais*"[130]) and Argentina ("*Nunca Mas*") that mean "never again." But, Tetum is more widely understood than

[128] See Tim Kelsall,"Truth Lies, Ritual: Preliminary Reflections on the Truth and Reconciliation Commission in Sierra Leone," *Human Rights Quarterly* 27, no. 2 (2005): 361-391.
[129] See Elaine Scarry, *The Body in Pain: The Making and Unmaking of the World* (New York: Oxford University Press USA, 1987).
[130] "*Nunca Mais*" is also in the Portuguese language.

Portuguese in Timor-Leste,[131] so it is not certain that *Chega!*, as a narrative, connects in a meaningful way to most communities. Another complication is the Commission did not print the complete version of the Final Report, but rather made it available in electronic format only,[132] meaning much of the population did not have access to the report, and therefore may not even be aware of its title, or its specific meaning. Hence, the Final Report in its different languages (Indonesian, Portuguese and English but no Tetum) and versions (2000+ pages full report, a 200+ page Executive Summary and 50-100 page guides) is unreadable for the majority of the Timorese population. The limited access to the Final Report led me to conclude the message "*Dalan ba Dame*" as it was disseminated in the many programs conducted by the CAVR is more likely to become the narrative legacy of the CAVR.

Furthermore, the content of CAVR's Final Report has not yet been officially accepted by the Timorese government. In accordance with its mandate, the Commission delivered the report to the acting President of Timor-Leste in 2005, Xanana Gusmão. Gusmão in accordance with the UN Regulation that established the Commission then delivered the Report to the Parliament of Timor-Leste. He gave a rousing speech about reconciliation. Then, he proclaimed the Report's Recommendations as idealistic and unimplementable and reportedly threw his copy of the Report in the trash in front of all the convened Parliamentary members. Since then, although it has been placed on the Parliament's agenda on several occasions and a resolution was passed to consider a reparations program based partly on the CAVR's recommendations, the CAVR Final Report has never been debated by the Timorese government.

The challenges to disseminating a lengthy and complex history in the form of a Final Report are not unique to the CAVR. Indeed, the CAVR's difficulties in promulgating their Final Report are commonly confronted in transitional justice settings where resources are scarce. Additionally, the degree of acceptance of a Final Report can also be relative to how many members of the transitional government could be implicated in past atrocities in the truth commission's report. Lastly, a Final Report's impact on certain audiences, such as government policy makers, may depend on the style of its narration. Whereas "victim-centered," polyphonous, or highly academic Final Reports may satisfy the demands of truth-telling, or healing, they may be unhelpful in assessing the policy steps that need to be taken in response to past violence. Hence, we will try to assess the different components of the CAVR's truth-telling function, as opposed to examining only the Final Report.

To that end, we will now turn to the most widely disseminated product of the truth commission – film. In contrast to the Final Report, one of the films made by the truth commission entitled, "*Dalan ba Dame*," is narrated entirely in the Tetum language and has been viewed by a large number of rural and urban communities in East Timor and in West Timor.[133] The film is lengthy

[131] According to the 2010 Census, an estimated 39 percent of the population are literate in Portuguese, compared to approximately 60 percent literacy rates in Tetum. See "2010 Census Summary English," website for the National Directorate for Statistics, Timor-Leste, dne.mof.gov.tl, accessed 15 Novmber 2011.

[132] In 2011, a cloth-bound version of the report was printed in a multi-volume set. The number of copies are limited but will reportedly be distributed to government office and community libraries.

[133] An audio version of the film was distributed to all the radio stations and it began to run in 2006. Broadcasting was interrupted by the 2006 Crisis, but has resumed and it continues to air on Saturday mornings. "Disseminating Chega: Report on Post-Cavr Technical Secretariat Dissemination Program," January 2007, at CAVR website http://www.cavr-timorleste.org/updateFiles/english/Dissemination/Disseminating%20Chega.PDF. By July 2011, a

(approximately three hours) and the music is redundant. However the simplicity of the film's style and format is effective. It provides a chronological history of East Timor for the span of the truth commission's mandate. In even more noticeable ways than the CAVR's Final Report, the film tries to balance the history of perpetration between the different Timorese political parties. Although much of the footage is from the donated archives of several journalists who covered the conflict in East Timor, it is often mismatched to the events being narrated to create a melodramatic effect. But these sleights of the film-making hand do not seriously impinge on the documentary film's persuasiveness. What saves the film's credibility is the testimony from witnesses who participated in the CAVR activities. In "*Dalan ba Dame*," the voice of victims leaves the lasting impression.

At the heart of the *Dalan ba Dame* narrative – in the film and as a meta-narrative – is the testimony of Timorese survivors of human rights abuses. In the film each "great event" is elucidated by the testimony of two or three people who participated in the CAVR public hearings or statement-taking. Most witnesses were filmed alone in front of a plain black backdrop with full, bright lighting. The witnesses are posed either to the right or left of the screen but never at the center. There is no makeup, no scenery and no softening of the light. The effect is a feeling of direct confrontation with the person and the story that they tell. The background is raw and bare. This environment is in sympathy with the simple language and basic chronological format of the stories that witnesses tell. The witnesses look directly and steadily into the camera and share stories of their personal experiences with torture, murder, rape, imprisonment, betrayal and hope. The rest of the testimony in the film comes from individual witnesses at the CAVR's public hearings where a similarly stark style was used for the presentation of testimony. All visual distractions are removed from the scenes to bring the narrative focus onto the survivors' faces and voices.

Unlike the testimony I have viewed from Holocaust survivors, these witnesses do not avert their eyes or take long pauses when in anticipation of or in recovery from the narration of a particularly disturbing event. The witnesses in *Dalan ba Dame* appear at ease in front of the camera even when recalling the most taboo and horrific of subjects, such as the women witnesses who tell stories of their repeated rape and torture. Some laugh, many smile, and each of them is appealing. Fear, dread and tears is entirely lacking from this film. They demonstrate no signs of trauma. The overwhelming impression that is created by the format of the film is that the "road to peace" is made up of these confident and powerful survivors' stories. The film, and the CAVR as an institution, connects these individual's stories into a larger narrative of suffering that explains the founding of the nation through the voices of its people.

Yet, the smoothness of the film and the victim testimony may be disconcerting to anyone who has heard victims tell their stories in a more personal setting. At least one of the people in the film is a person who has shared her story with me and other truth commission staff members, and in person her control over the story is much more tenuous. She has told her story many times to many different people but sometimes she still cries. Sometimes she stops and changes the

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total of 7528 people had participated in UN-sponsored transitional justice outreach activities which included the screening of the film "*Dalan ba Dame*" by the Commission of Reception, Truth and Reconciliation (CAVR), accessed 9 November 2009; Personal Communication with Post-CAVR staff, July 2009 and with Julia Alihno, Director of Outreach for SCIT, June 2011.

subject. Sometimes she walks away before the story is done. Sometimes she does not want to talk about it. One may argue that the truth commission made the completion of her narrative possible: that in that particular institutional setting she acquired the power necessary to express her own truths. However, she completed the truth commission process many years ago, and whatever healing might have come in those moments captured on film do not seem to have sustained her feelings of agency until now – at least in a narrative sense. Telling her story is easier on some days more than others. The point is that the impression left by the *Dalan ba Dame* film and the CAVR's materials as a whole is that telling these victims stories is somehow natural, and the impact is permanent. By failing to capture some of the ragged edges of these victims' testimonies, the road to peace, or the "*Dalan ba Dame*", appears to be smoother and more direct than it is – for individual survivors and the nation as the whole.

In 2005 as the CAVR was finishing its work, I interviewed the young man who was slated to become the Timorese Deputy Prosecutor General, Ivo Valente, to ask him about his interpretation of the CAVR's message to the public. He had recently viewed the film. I asked him what he thought Timorese expected to be the legacy of the CAVR, particularly in contrast to the Serious Crimes process. Valente expected the CAVR to provide a history of the conflict, but more than that he expected the institution to contribute to a feeling of solidarity among Timorese when they realized how others had also experienced the same kinds of human rights violations. In his mind, the trials had the ability to focus on individuals, but the CAVR had the capability to bring individuals together as a collective. In his view the CAVR's legacy could connect all parts of the nation's map through the story of its people.

The CAVR described its own aspirations for its narrative legacy. The passage below from their Final Report follows an extensive discussion of how the CAVR defines "truth," and is relevant to our discussion of how the institution defined its truth-telling, and/or historical functions alongside its reconciliation and healing functions. The passage reads:

> "The truth contained in this Report comes largely from the words of those who directly experienced the years of conflict. The Commission has attached special importance to listening directly to those who suffered human rights violations throughout the 25-year period, most of whom had not spoken outside the narrow circle of their family. These many voices, from across the country, have given Timor-Leste a priceless asset. They tell us who we are, what we have been through, what we have lost, and show us the value of what we have gained. From the stories of our sisters and brothers we learn that victory is not a simple matter of heroes and villains; that history is more than the listing of major events or the biographies of those who are called leaders. The experiences of "ordinary people", both the many who died and those who survived, tell us where we have come from and help us understand who we are today. From their stories we see more clearly both the extremes of human dignity and of human degradation that were manifested in our country during these 25 years. We must learn from both sides of this human story. We must acknowledge our potential for both extremes, and strive always to bring the best of our humanity into our lives and relationships - our families, our communities and our nation - each day as we build a new future."

In light of Valente's views and the materials such as the paragraph above that was disseminated by the CAVR, I have come to see the image of a road, or pathway, in the "*Dalan ba Dame*"

narrative as critical because it explains in accessible language the CAVR's role as an instrument that joins victims to one another throughout Timor-Leste. The CAVR's narrative is about taking an individual's story and using it to build a collective memory of the past that will serve the needs of the nation in the future. It is a story of belonging – to a people and a nation – that is engineered to welcome all Timorese. In this way the "*Dalan ba Dame*" narrative performs the function of "reception" and "reconciliation" that the institution's mandate required.

The common element used to link these stories was human suffering. Victim stories in the view of the Commission were beyond question and deserved official validation as the truth. Consequently, as is expected of most truth commissions, the public's attention was brought to focus on a shared source of national identity and the need for healing, as opposed to focusing on the individual guilt of perpetrators and retribution.

From the quoted passage above, it is important to note that "*Dalan ba Dame*" is a narrative not only of connections but also of progress. It makes a radical break from the past violence and forges a new way, or path, that will lead the nation to a peaceful future. A roadway is an image of peace but also modern development. As we shall see in the archives, bound up in the CAVR's "*Dalan ba Dame*" is the idea of improving socioeconomic rights in the form of infrastructures, healthcare and education. *Dame*, or "peace," does not only signal an end to violent conflict but also forms of structural violence, such as poverty. For the CAVR and much of its Timorese constituency *Dame* signifies socioeconomic development. In the words of Xanana Gusmão, the CAVR should be in pursuit of "social justice"[134] as its final destination, which it can arrive at after moving through the processes of truth, reconciliation and healing. War and violence are the starting point of the "*Dalan ba Dame*" narrative, public testimony of survivors is the climax and turning point, and the resolution and final destination of the pathway is peace and prosperity.

The image of "*dalan*," the road or pathway, is a powerful symbol of communal progress. It communicates the ideas of construction and development, but it also implies that some previous part of the landscape will be cut down to make a new path. What were some of the obstacles that the CAVR needed to clear to create a coherent and persuasive narrative that would lead to these broad and ambiguous goals of peace, truth and reconciliation and concrete measures of socioeconomic development? One of the problems for the SCU that we examined was how to make "retribution" compatible with the trial process' other stated aspirations of truth and reconciliation. The CAVR had a similar problem. Its mandate required it produce a truth that would ensure reconciliation. Whatever "truth" was revealed in theory also had to contribute to healing. In order to attain the goals of reconciliation and healing it is not surprising that "truth" would need to be kept within certain bounds to prevent emotional and political agitation. Like the SCU, we will observe how guilt is accepted by Timorese perpetrators but not to a degree that would noticeably prevent reconciliation or leave a strong narrative legacy of Timorese rather than Indonesian responsibility. In many ways the CAVR determined how far public admissions of truth would be allowed to go before it might endanger other aspects of the institution's mandate or what it perceived as the dignity of victims. As we will discuss below, the CAVR is likely to leave a legacy of a guided truth. Too great an emphasis on unearthing a fully truthful testimony could lead to a winding and nefarious way, as would be expected when dealing with such complex truths. Rather, the path was pre-determined for certain outcomes. Because truth

[134]CAVR, *Public Hearing on Political Imprisonment* (2007), 2.

was bounded in subtle but evident ways by the truth commission process, the "truth" and "reconciliation" forged by the process may ultimately prove to be more performative and fleeting than permanent.

The Archived Legacy

Some of the most noticeable materials in the CAVR archives are the books and government reports created by the Indonesian State during Occupation to demonstrate the ways they were developing and civilizing what they characterized as the warmongering Timorese. Among these resources the most memorable of these books is *Tahun Integrasi: Timor Timur kedalam Negara Kesatuan RI.*

I did not find this book completely on my own. I had the opportunity to get to know a number of former CAVR staff when I worked at the Commission of Truth and Friendship. As we were struggling to write a "shared" version of Indonesian and Timorese history, the former CAVR staff members often mentioned resources they had used when they were compiling the CAVR Final Report. Four different people on four different occasions recommended I look at this particular book they referred to as *Integrasi*, to see how Indonesians misportrayed their Occupation of East Timor. It became clear to me that members of the CAVR had been working and writing against very specific understandings of the past that they had felt were embodied by very specific objects which were deliberately placed in the CAVR archives for future generations. Like the staff at the SCU who had assigned great significance to the photograph of Wiranto and Xanana in their quest for justice, it became apparent to me that many Timorese members of the CAVR had been writing against the specific representations found in this book, *Tahun Integrasi: Timor Timur kedalam Negara Kesatuan RI.*[135]

In 2009 I was able to return to the CAVR archives and locate this book to find out what part of this history they hoped to erase with the truths generated in the CAVR process. On my first viewing of the book, I immediately knew which image people would have been working against.

[135] This book was published on 17 July 1978 by the Indonesian Government.



Figure 8 – Photograph from Indonesian government publication about East Timor (CAVR Archives)

One of the first things I learned in observing the inner workings of the Commission of Truth and Friendship was that the mere mention of the words "terrorist" or "GPK" was taboo. If either of these words were used in a description of the shared history of the two nations by anyone, the Timorese delegation would fly into a fury that could delay work for days. A Timorese Commissioner explained to me on several occasions that one aspect of history that needed to be corrected by the CTF was the image of Timorese as "terrorists," as opposed to freedom fighters. He wanted to appeal to Indonesia's pride in its historical resistance to colonialism and show that East Timor's people shared a fervent will to fight for freedom, not to make war. He described a desire to rewrite the history of the two nations that had been previously based on the dichotomous narrative that Timorese were in their hearts savage criminals, while Indonesians were in their hearts benevolent patriots. It became clear to me that there were very specific "truths" that both of Timor-Leste's truth commissions were destined to tell, and the choice of these specific truths affects the degree to which other truths can be told.

In the CAVR archives in this picture in this book is the exact characterization of Timorese that my Timorese colleagues despised. The photo is undated in the book, making it unclear if it was taken before, during or after the Indonesian invasion of East Timor in 1975. The caption on the photo reads, "A member from the terrorist group FRETILIN who was successfully arrested by the allied Apodeti, UDT, KOTA and Trabalhista parties to take responsibility for their

viciousness and baseness." The "terrorist" in the picture from the pro-independence FRETILIN political party is bare-chested. He is noticeably of a smaller stature than the other men in the picture who are positioned closer to the camera, which makes them appear larger and more foreboding than a line-up in a pure frontal shot. The "terrorist's" hair is longer and messier than the others and he stands apart from the line of the other men in bare feet. All of the men in the picture wear sarongs but only the men identified as troops from the pro-Indonesian political parties wear shirts. The photo frames this moment as an act to prevent violence among and by Timorese. There are no Indonesians in the picture, although Indonesia played the leading role in training and supplying the Apodeti, UDT, KOTA and Trabalhista troops and took these photos to create pro-Indonesia propaganda. The photograph seeks to discredit the movement for independence by identifying it as an aberrant and savage criminal who must be suppressed by other militant Timorese. The photo describes a purely internal conflict, rather than revealing the Indonesian role in encouraging and using internal political differences. Note that there is no criminal act specified as the impetus for this man's arrest and imprisonment. According to the caption, he was seized merely on account of his "viciousness and baseness": the arrest is arbitrary and based on a concept of criminality that relies on a discriminatory representation of Timorese, and more specifically, pro-independence Timorese.

Ironically, the photo appears to be taken at the Comarca prison which later became the home of the CAVR.[136] I was in the exact location where this photo was taken when I viewed it almost 30 years later. Through this photograph I began to see the way the archives contain and were constructed in this location – a former prison - to write over the history of Timorese criminality left by the Indonesian Occupation. "*Dalan ba Dame*" is not just a narrative moving towards peace; it is a narrative that is deliberately moving away from the characterization of Timorese as criminals, terrorists, and savages. Now let's examine the multiple types of truth-telling the CAVR used and how each of them related to this narrative task.

Community Reconciliation Processes

During the Community Reconciliation Processes (CRPs), the CAVR had to contend directly with how to define, portray and manage a concept of Timorese criminality so that it did not derail the larger goals of peace and reconciliation. The CRP processes were held in local communities and all the participants (perpetrators and victims) were Timorese. Perpetrators volunteered to participate after the CAVR spent several weeks explaining the process at the village level. Perpetrators were required to give a written statement to the CAVR and then to present this statement orally at a community ceremony where victims were invited to attend. CAVR staff provided support to the perpetrators and a panel comprised of Timorese CAVR staff, local traditional leaders and at least one international representative presided over the ceremonies. Victims, community members and the CAVR panel members were allowed to ask questions of the perpetrators at these meetings. Following the oral statements, the CAVR panel could determine if a perpetrator met all the legal requirements to be eligible for a stay of immunity from prosecution and would be given the opportunity to reconcile with his or her victims individually and as a community through a traditional negotiated restitution program. The

[136] The columns and position of the doorway in the background correspond to the Comarca prison as it has been restored. The Comarca prison was used by the Portuguese, Japanese and Indonesians, particularly for political prisoners.

restitution agreements (called "community reconciliation agreements" or CRAs) made between the perpetrators and victims varied greatly according to the practices of the individual communities but some forms of restitution included apologies, payment in the form of livestock, alcohol or rice, or community service. The CRPs lasted several days in each local area and were accompanied throughout the event by a variety of local rituals such as animal sacrifices, dance, recitations of oral literature and church services to sanctify the process and the reconciliation agreements. The acts of restitution and stays of immunity were recorded by the CAVR staff and were supposed to be monitored by the Timorese courts to ensure perpetrators fulfilled their agreements. The theme of "*Dalan ba Dame*" was used to promote these processes as a way for perpetrators and victims to take a proactive role in improving relations within communities where the conflict had turned neighbors and family members into enemies. The CRP process combined traditional Timorese legal customs with the truth commission's model of perpetrators speaking in front of victim. The telling of perpetrator stories was represented as a way for communities to embark on the "road to peace."

However, despite the need for the process to divide participants into the categories of "perpetrator" and "victim" to administer such a process, these terms were not used. Perpetrators were referred to as "deponents," or persons who give statements. In the archives I located a paper by former CAVR staff member, Ben Larke, who highlighted this point, which was absent from the CAVR's Final Report's chapter regarding the CRP process. Larke explained that there was a deliberate attempt to avoid the stereotypical and dichotomous language of perpetrator/victim by the CAVR during the CRP process. The Commission's decision to avoid these words was, according to Larke, influenced by the writings of Mahmood Mamdani and his concept of "survivor's justice."[137] In other words, the CRP process was not envisioned as a direct confrontation between perpetrators and victims as it may seem from the structure of the ceremonies. These interactions did occur but they were not the focus of the process and as such were mediated by a panel. Rather than recreating divisions in local communities, the CAVR sought to unite all participants in the concept of survivor, and to lay the blame squarely on a collective concept of "Indonesia." A reversal of the concept of Timorese criminality was desired and deemed justified given the long, tortuous years of the Indonesian Occupation, and the CRPs created a venue where communities could perform this act in an official and culturally meaningful way.

However, in the urge to avoid recasting Timorese criminality onto communities that were trying to make fresh starts in a newly democratic nation, the CAVR may have overlooked some victims' needs to be sufficiently recognized for reconciliation to occur. A handful of newspaper clippings in the CAVR archive about the CRPs reveal that some participants complained about the interceding presence of the CAVR staff and presiding panel of elders. One man reported he had voluntarily come to the CRP session because the CAVR had told him he could face his perpetrator. When the man discovered this interaction would only occur in a group session under the formalities and regulations of the Commission he was disappointed and felt the process was compromised. This commentator felt perpetrators were granted more time than was necessary and deserved. These commentaries reveal a desire for victims to be clearly distinguished from perpetrators, rather than a desire to explore their commonalities. Thus, although the CRPs and

[137] See Ben Larke, "'And the Truth Shall Set You Free': Confessional Trade-Offs and Community Reconciliation in East Timor," *Asian Journal of Social Science* 37, no. 4 (2009): 646-676.

their accompanying *Dalan Ba Dame* narrative promoted the CAVR as an institution that represented victims, in practice some victims felt the CAVR placed a higher priority on perpetrator's needs than their own. The CRP process sought to unify local communities through a rhetorical exercise that acknowledged but downplayed criminality, which in the immediate fervor of confession at CRP ceremonies may have worked to facilitate reconciliation. However, some victims' views about the CRPs that were aired after the ceremonies reveal the urge to treat perpetrators and victims within a harmonious categorization of survivor may have made the differences between perpetrators and victims feel more distinct. By conceptually unifying victims and perpetrators for the sake of reconciliation at the local level, the CAVR may have contributed to feelings of unequal treatment and a shaky basis for sustained peace.



Figure 9 – A deponent speaks at a Community Reconciliation Process. Photograph altered by author to protect deponent identity. (CAVR Archives)



Figure 10 – Deponents, victims and the CAVR panel negotiate restitution agreements. According to the Timorese custom of *Nahe Biti Boot* all these parties should stay on the same straw mat until agreement is reached. The banner at the CRP ceremony reads, "CAVR: the Road to Peace/ from the CRP, we come together again in the community." (CAVR Archives)

The CRP process in particular is problematic for the CAVR institution's image as "victim centered," because the CRP process was initiated by perpetrators, and the benefits were most tangibly theirs: they received immunity for prosecution without going through an extensive investigation process. Perpetrators exerted greater control than victims over the CRP process in three aspects: 1) Perpetrators initiated the process and a victim could not stop it once initiated, although they could choose as an individual not to participate in the proceedings; 2) Perpetrators self selected to participate in the process as opposed to in response to evidence or accusations from villagers. The result was that in any one village a handful of perpetrators may have chosen to come forward, but the rest of them could remain silent; and 3) The CAVR could not compel the absolute truth from perpetrators about their violations. If a particular perpetrator only told partial truths and it was accepted by the members of the community who attended the ceremony, they could still receive immunity for telling half instead of full truths.[138]

[138] JSMP, *Unfulfilled Expectations* and Schlicher. In contrast, although extremely limited in its sample size, JSMP's study of participant attitudes towards the CRP process shows perpetrators perceive they benefitted from the CRP process.

Victims' views of the process call into question to what degree true reconciliation, in terms of resolving and preventing conflict over past human rights abuses, occurred.[139] The most common criticism of the process is that victims participated in CRPs with the expectation that the judicial process would prosecute offenders of serious crimes. Without the full success of this complementary process, the victims may have given up their opportunity to prosecute the crimes that most directly affected them while receiving nothing in return. The question remains whether this process then qualifies as a legitimate form of reconciliation, and if it does, then how evenly and fairly was this kind of justice distributed to all members of Timorese society. No studies of any significant sample size have been completed that measure the degree to which reconciliation and peace resulted from these ceremonies. Thus, whether CRPs completed their objectives of fostering peace and reconciliation remains questionable.

In total 1371 perpetrators who committed what was classified as "non-serious" crimes successfully completed the process to receive a stay of immunity. However, there was a hidden element within this classification of "non-serious" crimes that concealed the fact that some perpetrators received immunity for acts that were serious violations of international law.[140] If acts such as arson, destruction of property, assault, persecution, or mistreatment were committed by the perpetrator with the knowledge that the act was part of a widespread and systematic attack against a civilian population, these could be prosecuted as a "Serious Crime" and would not fall within the jurisdiction of the CAVR. In practice, however, the CAVR and the Prosecutor-General's Office included all acts of arson, destruction of property, and so on within Community Reconciliation processes, without regard to whether in particular cases these acts might have been qualified as crimes against humanity.[141] Furthermore, the CRP processes often proceeded without considering the collective impact of a series of criminal acts by an individual perpetrator, so that whether a perpetrator burned down 100 houses or a single house he could still qualify to be processed by the CAVR if the Prosecutor General did not take up the case. The Prosecutor General never did. The word "amnesty," never appears in the CAVR literature or anywhere in the archives. Rather, the CAVR labored against the popular perception that its reconciliation program provided a venue for perpetrators to escape prosecution.

[139] Ibid.

[140] From interviews with a staff member who will remain anonymous and documentation I have identified, at least one CRP that proceeded to completion despite his admission during the CRP ceremony of acts that qualify as a serious crime. No access is currently available to the CRP records to investigate how many perpetrators received immunity for serious crimes as well as "non-serious" crimes.

[141] See "Community Reconciliation," CAVR Final Report, para. 34-42. Confirmed in interviews with former CAVR staff and Commissioners, 2008.



Figure 11 –Magazine article from the political magazine, *Talitakum*, edited by a CAVR staff member promoting the CRP process. The caption on the photograph reads, "Reconciliation is not a bridge for perpetrators and the brains behind the crimes to escape." (CAVR Archives)

Nevertheless, the CRP process removed a large number of Timorese perpetrators from the imminent and future threat of criminal prosecution. In addition, I have been able to find no evidence that any monitoring of the community negotiated restitution agreements occurred.[142] However, no stays of immunity have been lifted as a result of the failure of perpetrators to fulfill their promises to victims. Reconciliation was deemed to be a more important national priority than judicial accountability at the local level. Hence, one can argue that there has been moral accountability for many perpetrators at the local level who participated in the CRPs, and some may think that should be the limit of a truth commission's role. On the other hand, the impact of those choices was the burden of criminality was mostly passed on collectively to "the Indonesians." Because no public records are available in the CAVR archives to tell the stories of

[142] In addition to searching the archives I interviewed over 20 former CAVR staff and made inquiries of Court personnel.

the individual deponents or victims who participated in the CRP process, future generations will not know the extent of individuals' guilt, confession or forgiveness that occurred as a result of the CAVR's work. As its legacy, the CAVR archives have preserved the CRPs attempts to forge peace but in the absence of a fair and well-defined concept of criminality for either Timorese or Indonesians.

National public hearings[143]

A battle with images of criminality pervaded all parts of the truth commission's work. It was most poignantly present and most deliberately diverted in the public hearings held by the CAVR from 2003 to 2004. The transcripts and media coverage from the public hearings make up the most extensive records of the CAVR's work in their public archive. The CAVR has produced the most publications from the CAVR public hearings and these records will be preserved digitally by the British Library. Because the materials about the Public Hearings are the most accessible part of the CAVR archive, it is important to examine their content and message in order to assess the potential legacy of the CAVR's historical and truth-telling work for future generations.

The CAVR selected ten priority themes based on human rights law to explore in their truth-seeking activities. Of these themes seven became the subject of thematic public hearings.[144] The basic format was the same for each hearing. A panel of witnesses gave statements to a public audience at the CAVR headquarters in the capital. The content of the testimony was discussed with the CAVR staff beforehand and witnesses had access to the victim support unit the day prior to and following the delivery of their public testimony. In addition to the panel of witnesses there was a panel made up of the CAVR Commissioners for each hearing. The CAVR Commissioners could ask questions of witnesses and acted as facilitators and conducted official duties such as opening and closing of the hearings. In addition, an outside "guest," such as a public official like the President or Prime Minister or an international "expert" witness usually participated in giving testimony and closing the ceremony. The number of testimonies in any one public hearing ranged from 12 to 20 depending on the topic. The length of the hearings varied from one to three days. The hearings were filmed and broadcast and, in theory, they are part of the public record. However, upon last inquiry in 2009 the recordings of the public hearings required special permission and logistical arrangements, which no one at the post-CAVR facility was able to provide. As a result they were not yet available for viewing by the public.[145]

[143] This discussion focuses on the series of National Public Hearings held by the CAVR. These should not be confused with the Victim's Public Hearings held in 2002 and the Subdistrict Public Hearings held at the end of the CAVR process in 2005. These other Public Hearing formats have not been covered in this discussion because there are no records of them currently available in the public archives at the CAVR.

[144] CAVR materials usually report eight instead of seven public hearings were held. In November 2002 as part of the consultation and socialization process of the CAVR when it was beginning its work, the Commission held a public hearing at the UN headquarters for victims to tell stories and express their views. The CAVR Final Report contains excerpted quotes from this hearing but there are currently no records in the public portion of the CAVR archives of this hearing. Public Hearings occurred in the following order: Political Imprisonment (February 2003); Women and Conflict (April 2003); Famine and Forced Displacement (July 2003); Massacres (November 2003); Internal Political conflict of 1974-76 (December 2003); Children and the Conflict (March 2004) and Self-determination and the International Community (March 2004).

[145] Personal Communication, Archive Staff at CAVR, July 2009.

Public Hearings differed from the CRPs and other "truth-seeking" methods in the following significant ways. First, they were conducted on a national rather than local level. Unlike the CRPs, the Public Hearings selected groups of panelists that reflected geographic diversity, so that the pervasiveness of the kind of abuse that was the subject of the hearing could be communicated. The CRP's were meant to facilitate reconciliation at the most local of levels through a truth-telling process. The local nature of these proceedings afforded the witnesses a greater degree of intimacy with their audience. The Public Hearings aimed at facilitating a national reconciliation which rendered testimony more symbolic of the collective "truth."

Secondly, the testimony in each hearing covered the full time span of the conflicts from 1974-1999, whereas the CRPs mostly dealt with crimes committed in 1999.The broader time span meant that the Public Hearings featured testimony of violations committed between Timorese outside of the context of Indonesian perpetration. The expansion of the temporal mandate in the Public Hearings in many ways opened up the possibility for a more direct confrontation and dialogue about Timorese perpetration of human rights abuses in comparison to the CRPs. Yet, we will see how this possibility was curbed by the representation of testimony in the panels.

The public hearings also differed from the CRPs because "perpetrators" generally did not deliver testimony. Like the CRPs, the classifications of "perpetrator" and "victim" were not used. Instead, the word "survivor" was deployed. However, the majority of testimony in the Public Hearings was delivered from the perspective of a person who experienced a human rights abuse, as opposed to their experience of perpetrating one. The exceptions to this rule were less than a handful. For example, the Political Imprisonment Public Hearing included the testimony of a Timorese prison guard which would seemingly represent an insight into perpetration. One reason for the absence of what would seemingly be the "perpetrator" perspective at the Public Hearings, is the difficulty in assigning this label to people who may have perpetrated in one moment of the conflict and been victimized in another. For example, one man testified to his forced recruitment into the UDT army and the acts they made him do at the threat of death. He was held as a prisoner of war and abused at different times by multiple parties in the internal conflict – UDT and FRETILIN. When dealing with testimony that covered the entire period of conflicts, to label people as either perpetrators or victims would have in many ways obscured the truth. The testimony of political leaders involved in the civil conflict may be another exception to the general avoidance of testimony from the perpetrator perspective. We will explore this issue more below. In general, the Public Hearings enhanced the impression that the CAVR created a forum for victims to speak.

Another difference between these processes was the highest echelons of the Resistance Movement participated throughout the Public Hearings including the President, Prime Minister, President of Parliament and the organizers of the Santa Cruz demonstration. The Public Hearing combined a top-down historical perspective that was often inaccessible in the local setting of CRPs.

The Public Hearings shared with the CRPs both a confrontation with and avoidance of the problem of Timorese criminality. However, these dynamics can be more plainly seen in the archives in the case of the Public Hearings compared to the CRPs because they have remained as part of the public record. The Public Hearings, and their resulting booklets, used a small

collection of survivor testimonies to map a history of the conflict across East Timor as it was experienced by different genders, ethnic and age groups.

The impact of individual and collective testimony in the Public Hearings may have been best expressed by women survivors. These women chose to speak out publically even though revealing their histories defied the still prevalent cultural practice of women remaining silent in public forums where there were men who wished to speak. Women were witnesses in every Public Hearing. However, in the hearing devoted specifically to women's experiences of the conflict, the survivors who came forward to bear witness also risked religious, social and marital estrangement if they revealed they were victims of sexual abuse. These risks did not prevent these women from speaking and revealing the extent of their suffering and their will to survive with dignity.



Figure 8 – A witness testifies at the CAVR Public Hearing on Women and Conflict. The persons seated on the left side of the table are the CAVR National Commissioners and witnesses sit as a group at the right side of the table. (CAVR Archives Newspaper Clippings)

The Public Hearing on Women and Conflict was the second one to be held and it attracted a great deal of media attention within East Timor and abroad. Fourteen women testified and approximately 300 people attended.[146] The CAVR's mandate included a requirement that gender

[146] KOMPAS, "*Keadilan Tidak Cukup dari Perspektif Legal-Formal*," 8 September 2003, 41.

equality be exercised throughout its activities, and under the insistence and direction of Indonesian human rights activist, Galuh Wandita, the institution placed a high priority on women's equal representation in the administration and throughout all the institution's programs. The Public Hearing on Women and Conflict was the culmination of an extensive research project conducted jointly by the CAVR and the NGO, FOKUPERS to record testimony from women across Timor-Leste. The results of this research revealed that women in East Timor had been systematically targeted throughout the conflict (1974-1999) by all parties to the conflict, particularly through sexual violations. Pervasive patterns of abuse that Timorese women experienced in the context of war included rape, sexual slavery, torture, illegal detention, sterilization and sexual harassment. The witnesses for the Public Hearing were chosen from the larger body of testimony collected as part of that project.

The willingness of women to speak at times disturbed the Commissioners of the CAVR. One Commissioner and another former staff member related a story to me about a woman who sought out the CAVR and told them she wanted to make a statement. She had been a "military wife" during the Indonesian Occupation, meaning that different Indonesian soldiers posted in her area would force her into living with them, having regular sexual intercourse and cooking and cleaning for them. When their tour of duty was over they would leave her behind with no further contact with her or the children who resulted from this form of sexual slavery. This woman was described to me by my informants as adamant because despite conversations with CAVR staff who informed her of the risks of sharing public testimony, she still wanted to tell her story. She informed the CAVR that it was her right to tell her story in public and since they were an institution designated to promote human rights they had to take her statement.

When I was initially listening to this story the first time it was told to me I suspected my colleagues were offering me this story as an example of how the CAVR encouraged women to speak out as part of their programs for gender equality. Instead, they explained to me that it was an example of how the CAVR sometimes discouraged people from telling their story. One former CAVR Commissioner explained to me that as Timorese they were concerned that if this woman told her story, her children's reputation would be affected and she would be further berated by her rural community when she returned if they heard about what she had done. Several different men who worked at CAVR told me this story, and each described to me a desire to protect her and her children. They interpreted the CAVR mandates wording of one of their duties - to "restore victim's dignity" – required not always revealing the complete truth, or rather not sharing a graphic truth, about what women experienced as humiliation during the war.

The woman's response to the CAVR's warnings and discouragement was to insist that they take her statement. She told them that she had spent her life protecting others, including her children, and she needed to do this for herself. She reportedly believed that by putting her story in writing – making it an official truth held in the capital of an independent Timor-Leste– she would be restoring her honor. I interpret this woman's story to mean that she wanted to honor herself, and she interpreted that honor to be different from the notion of communal or familial "honor" that some of the CAVR Commissioners and staff seemed concerned about preserving. I was never told this woman's name or her location, or anything specific about her. Even if I did know I would not be able to locate her statement because all witness statements have been sealed from public access by the CAVR. Her story is preserved in an official archive, but no one has access

to read and understand it. Her story remains an anonymous legend at the post-CAVR, and through the archives we are not able to fully assess how many other women like her valued her story over either silence or communal approval.

However, in the Public Hearings and their records in the archives, there were women the CAVR chose who may have spoken on her behalf. The details of their abuse revealed in their testimonies are horrific and do not spare the audience or the witnesses for the sake of preserving traditional mores of modesty. One witness who testified shared a story about sexual slavery that in many ways is similar to the anonymous woman who asked for her statement to be recorded. The CAVR featured her testimony in their booklet about the Women and Conflict Public Hearing.[147]

Beatriz Miranda Guterres was captured by the Indonesian military when her husband and she were fleeing from their home village in Viqueque district in 1983. They had survived the Kraras massacre. She was pregnant and fell behind her husband when the Indonesian military captured her. Her husband was eventually captured by the military and they were imprisoned together just after her baby was born, but after several months he was summoned by a group of Indonesian soldiers and he never returned. Her baby died in captivity. She later returned to her home village which was comprised almost entirely of women since the men had either been killed or fled in the wake of the Kraras massacre. The Indonesian soldiers posted in the village forced the women to perform new conscript duties, such as cleaning, cooking and performing night patrols. She reported that during these duties the women were repeatedly harassed and beaten and threatened with torture, especially water torture, if they did not follow the soldiers' orders. The women were also forced to attend parties and dance with the soldiers. While she was still in mourning from the death of her child, an Indonesian Kopassus soldier began to harass her and forced her to attend a party and dance with him. He then brutally beat her and moved into her home where he forced her to be his wife for the remainder of his posting in the village. The other women in the village encouraged Beatriz to not resist the soldier because if she resisted he would kill and harm all the other women in the village. After the first soldier, over the years two other Indonesian soldiers repeated the same pattern of harassment and threats, followed by moving in with her and forcing her to perform the role of his wife. The soldiers all left her with nothing and she bore two children as a result of these soldiers' rapes.

In narrating the arrival of each new Indonesian soldier, Beatriz recounts the way the other people, especially the women in her village, entreated her to submit to the soldiers in order to prevent more killings, including the slaying of herself and others close to her in the village. In explaining how she became the victim of sexual slavery by the second soldier, she said:

> "In 1991 a new Kopassus soldier arrived in Lalerek Mutin. His name was B (Name Suppressed). One day, as three friends and I went to the fields, he began following us. He began shooting in our direction when we got there, so we ran back to our house in fear. My friends then started pressuring me into becoming B's wife in order to save myself. I was so ashamed. I stood up and said, 'Alright! I will tear myself in two. The lower half I will give to him, but the upper half is for my land, the land of Timor!'"[148]

[147] CAVR, *Women and Conflict: National Hearing* (2005), 24.
[148] Ibid., 25.

Rather than being celebrated for what Beatriz believed to be a patriotic sacrifice, she goes on to recall the ways the village talked badly about her and treated her as a spy because she lived with an Indonesian soldier. She was repeatedly shamed, but she also recalled the way she defended herself from their attacks. She told them that no one is able to know what she thinks, and in that way she felt that she protected herself. She kept her freedom in her inner thoughts. Now, in the context of independence, she desired to speak and tell people what she thought. She desired to be recognized not for her rape, but for what she believed was her contribution of suffering for independence. She no longer wanted the protection of silence; she wanted a confrontation with history and believed the CAVR would provide that opportunity. The day after her testimony, a front page headline in the leading national Timorese paper, *Suara Timor Lorosae* (STL), ran a story about her.[149] Her story was heard and selected as the key narrative by which to refer to the suffering of Timorese women during the long period of conflict. She was celebrated by the newspaper as a national heroine.

For Beatriz and other women who testified to the CAVR, telling her particular story was part of her personal search for peace and through the bravery of these women a new national story of peace, the "*Dalan ba Dame*," emerged. This narrative contains a record of how women uniquely suffered and how selflessly they gave of themselves for the sake of others and the creation of a nation. The records of the Women and Conflict hearings in the archive contain many photographs of scenes of lament. Women cry. They embrace and shriek. They grieve. Together. All across the archives. The prodigious photographs of women crying in the archives maps a national expression of mourning, but if one reads closely you can also see the lament is for the death of an old image of themselves. This small sampling of women's stories from the Public Hearings in the archives have created a national "women's story" that is graphic but also honorable. In this way the CAVR and its "*Dalan ba Dame*" narrative reinscribed the history of women who were victimized by rape, sexual slavery and a myriad of other abuses. They were stigmatized repeatedly for being passive victims of abuse and active sources of criminality because of their sexual pasts. The CAVR sought to transform this stigma into the respect due to national heroes.

[149] *Suara Timor Lorosae*, (title unknown), 7 May 2003. Clipping of the article is located in the CAVR Archives in the records of the Public Hearing on Women in Conflict.



Figure 13 – Timorese women in the audience cry at the Public Hearing on Massacres. They are seated under a traditional thatched roof that makes up a pavilion. This structure was built over an area that was formerly an exercise yard for prisoners. (CAVR Archives Newspaper Clippings)

The question remains, however, to what extent the CAVR allowed women to speak publically– or preserved the story of women – who wished to mourn on a more personal level. The stories of women who were selected to appear in the public record express the sentiments of patriots and do not reveal resentment. They show a desire to be included in the nation for their sacrifice, but I have not encountered any stories of women in the CAVR archives who asked why their bodies were demanded as a price for independence. There is no woman's voice that decries independence based on the destruction of her loved ones, her body or her soul. There are no stories I can find in the archives of women who truly loved an Indonesian husband and endured stigmatization for that. There are also no stories of women who turned to violence themselves during the course of war. Although I discovered from the other archives and from interviews that the CAVR did collect testimony from women who participated in pro-Indonesia militia and committed human rights abuses, their stories cannot be found in the Public Hearings or in the publically accessible portions of the CAVR archives.[150] It is common knowledge that FALINTIL

[150] Buried deep within the Community Profiles I have found one instance where a CAVR staff member recorded an instance of female Timorese militia torturing other women. When I inquired the staff had not been aware that this story existed because I was the first person to access the record. .See Community Profiles for Covalima District in CAVR archive.

used female soldiers, but the public portion of the CAVR archives does not contain those stories either.[151] These absences in the public archive suggest that a concern for "protection," whether it was protection of women's individual reputations, or a national reputation, accompanied the quest for truth throughout the CAVR's proceedings. However, this form of protection may have denied a space for women to express themselves fully outside the confines of communal and nationalist expectations.

The other Public Hearing that requires specific discussion because it is exceptional in many ways is the Hearing on the Civil Conflict. It is the only Public Hearing for which the CAVR has not published a booklet. However, the archives contain multiple copies of the media coverage and some incomplete transcripts of this particular Public Hearing. In fact, there were more copies of this Public Hearing placed in the archives than any of the others. Overall, this Public Hearing was the most visible and controversial in the press, and in its public archives it is the most noticeable legacy of the CAVR's work.

The Public Hearing on the internal conflict from 1974-1976 is conspicuous because it summoned the most prominent Timorese leaders to speak as witnesses to human rights abuses that had been committed by and against fellow Timorese. The current President, Prime Minister, President of Parliament, Minister of Foreign Affairs, the first President of Timor-Leste and a former Governor of East Timor were among the men who were chosen to speak about the conflict. No women were chosen to speak as a political leader at the hearing, although there were prominent Resistance leaders who were women, including one of the CAVR Commissioners, Ms. Olandina Caeiro. Although the men who held these offices had been united in the fight for independence against Indonesia during 1999, many of them had been bitter enemies during the civil conflict in 1974-1976. A representative from every party in the civil war was chosen to speak at the hearing to reflect the full range of Timorese political parties that participated in the conflict. However, to be chosen did not mean the persons would be willing to speak a truth that could implicate them and/or the political parties they represented in crimes against their own people.

This Public Hearing was a long time in coming. According to stories told by former CAVR members, the institution had to initially approach the political leaders individually. It reportedly took multiple meetings and negotiations to insure the participation of even one prominent political leader, much less convince representatives of all the political parties to speak. Even within parties, such as FRETILIN, there was disagreement about the need to speak to the public about the internal conflict. According to the stories shared with me, Xanana Gusmão was cautious but willing to participate while Mari Alkatari, the serving Prime Minister, was initially opposed. Among the pro-Indonesian political party representatives who were invited to attend, two declined – the former Governor of East Timor in 1999, Abilio Soares, and the former APODETI leader, Joao Tavares. Soares stated his reason for not attending was he was too busy and Tavares stated that APODETI would be represented by the witness, Tomas Gonsalves. However, it is more likely that both of these men feared arrest. They were living in West Timor in Indonesia because they were under indictment by the Serious Crimes Unit. Indeed the specter of future prosecution hung over all the potential participants' heads, although as the story was reported to me by former Timorese CAVR staff and Commissioners, the main point of

[151] Xanana Gusmão has reportedly refused to acknowledge that women participated in FALINTIL. Sara Niner, Panel discussion at "Understanding Timor-Leste: A Research Conference," Dili, 3 July 2009.

contention among those who were hesitant to participate was that speaking about that past would encourage a return to old political divisions that the unstable, new country could not afford. One way the CAVR obviated this concern was to allow the individuals the option to testify, not as representatives of the institution they currently worked for or represented, but as representatives of institutions they used to represent --- the FRETILIN Central Committee, FALINTIL, the Partisans etc. Such an option would allow the testimony to stay focused on individuals' narrower experiences in the past rather than implicate collectives or institutions that were still critical to the functioning of the new country, such as the leaders of all the major political parties or the new armed services. Every person who testified in the hearing chose this option, and at the end of their testimony when each of them expressed an apology or regret they clarified again that they could not speak in the capacity of their current position or for the nation or a party as a whole. It appears these potential witnesses and the CAVR were trying to insure the seasoned political Timorese elite who continued to occupy the majority of key leadership positions in the new nation could not be removed for crimes they committed in the past.

In late 2003 when this Public Hearing was held, the guilt of all of the Timorese political parties in the human rights abuses that occurred in 1974-1976 was already well established by the testimony given at the other Public Hearings and by the research and statement taking conducted in preparation of writing the CAVR Final Report. In the Public Hearing on Women during Conflict discussed above, witnesses provided examples of FRETILIN, UDT and Indonesian military committing rape and other forms of sexual and non-sexual abuse. In the hearing on Political Imprisonment, all the political parties and the Indonesian government were incriminated in illegal detention and torture. In the Public Hearing on Massacres, FRETILIN, UDT and the Indonesian military were each revealed to have committed mass killings. The Public Hearings collectively provide ample witness testimony to conclude that crimes against humanity and War Crimes were committed by Timorese political parties – FRETILIN and UDT – during the internal conflict from 1974-1976. Since it was obvious that Timorese shared responsibility for human rights abuses during this time period, the mantle of criminality could not be as easily shifted onto the shoulders of Indonesians as they were in many of the CRPs, which primarily dealt with 1999. In the public proceedings, multiple witnesses had already spoken out about the atrocities committed by the different Timorese political parties against civilians, but as mentioned earlier, before the Civil Conflict hearing the perpetrator's perspective on these crimes was not represented. The Hearing on the Civil Conflict would appear to present an opportunity to balance this history and for representatives of the accused institutions to provide truth as a form of accountability for these crimes.

In anticipation of the opening of the hearings the newspaper, *Suara Timor Lorosae*, ran a story that presented this particular Public Hearing as a chance to save an endangered "road" to peace and reconciliation. The head of the CAVR, Aniceto Gutteres, was quoted as the lead to the story. He emphasized the point that this hearing could be a critical moment for the institution of CAVR and its objectives. Gutteres foreshadowed the hearing by saying: "The CAVR will not close the pathway (*dalan*) as long as the parties say they are sorry to the people and from the audience where this will take place."[152] With these words, CAVR hung the balance of reconciliation on

[152] See CAVR files on the "Public Hearing on Internal Conflict," The original reads, "*CAVR la taka dalan sekarik partidus sira atu husu diskulpa ba povu liu hosi audensi nebe mak sei halao […]*." This quote reportedly also appeared in the *Suara Timor Lorosae* on page 15 the day before the public hearing.

the testimony of these political leaders. It set the expectation that political leaders would confess and make amends with the Timorese public for past wrongs, and the road to reconciliation would be cleared.

It is doubtful that the dates chosen for the hearing (15-17 December) were accidental. The hearings ran at the end of the week. Anyone familiar with local custom would know that this would be the final work week before the majority of Timorese leave the capital city to return to their home villages for several weeks of Christmas vacation. The end of the Public Hearings would begin the holiday season for most Timorese. A more appropriate time to communicate the message of reconciliation and peace could not have been chosen. The CAVR prepared multiple press releases and the *Suara Timor Lorosae* ran a story with a large portrait of Xanana Gusmão to announce the Hearing. It promised the public a star-studded cast. Anticipation for the Hearing was high.

However, not everyone anticipated good results. Civil society was planning protests for this particular Public Hearing before it even began. Groups who claimed to represent 350,000 Timorese victims who had lost their families in the conflict publically objected to the hearing. One group's organizer, Antonio Aitahan, brought 130 people to the CAVR headquarters on the opening day of the Hearings to demonstrate outside. He explained his group's objection to the Hearing as follows:

> "This we do not accept. Their meeting that is taking place over four days about our political leaders who before killed people and tortured this people. The People do not accept this because those who killed, there are seven. Of the killing parties there are five like FRETILIN, UDT, APODETI, KOTA and TRABALISTA. All together they were killing – five of them. And with these five parties there was another to make six. The other one who killed was Indonesia's. All together there were seven, for when they killed all over this place it was because the United Nations itself with all of the other continents could not make a decision quickly. Because of that so many people died."[153]

He goes on to say that the five parties should be subject to popular justice (*justisa popular*) but he does not go on to specify how popular justice is different from other kinds of justice.[154] This man and the group he represents demonstrate a significant level of anger existed among the population towards the political leaders of all parties before the hearing began. He appears to interpret the CAVR's presentation of these men as witnesses as a means of excusing or obviating their crimes. With his rhetorical comments he also raises the issue of the complicity of the international community in human rights abuses. Despite the CAVR's great efforts to market its process as one that incorporates traditional or local justice, this individual and his followers demonstrate that in the case of the Public Hearings, this form of justice was considered by some

[153] "*Nee la simu ami nia inkontru nebe mak halao durante loron 4 nia laran kona ba ami nia ulun boot sira nebe mak uluk oho ema no istraga ema nee. Povu sira la simu tanba mate nee iha 7, I mate ida partidu 5 mak hanesan FRETILIN, UDT, APODETI , KOTA dan TRABALISTA nee hamutuk mate 5 I partidu lima nee hamutuk mate 6 i hotan mate Indonesia nian hamutuk mate hitu I mate hirak nee tamba ONU rasik ho nia kontinente sira seluk la hola lalais desizaun tanba nee mak ema mate barak".*

[154] "*Parte ida nebe mak halo salah povu mak sei indika laos ulun bot sira deit mak mai halo dame iha CAVR I husik hela ema vitima sira terus nafatin iha nee'ba. Maibe povu vitima sira nee ijiji liu mak tenki iha justisa popular."*

to be offensive to local norms.

Despite these public protests, the hearing ran smoothly. As foreshadowed by Aniceto Guterres' comments, all of the political leaders who attended apologized in some form and the hearing produced multiple scenes of teary-eyed reconciliation among the Timorese political elite. The headlines that ran in the papers the next day were mostly about Xanana's emotional display of remorse. STL's lead story for the first day of the hearing was "*Xanana husu diskulpa ho mateben*" or "Xanana Apologizes with Tears." The caption was accompanied by a photograph of "Unity" where the political elite and the CAVR are all holding hands in triumph. There are smiles and euphoria in the wake of the public hearing. It appeared to be a resounding success and the surest sign that the political leadership of Timor-Leste had moved beyond conflict and was on its way to peace. As Francisco later told me, this was the moment he was most proud of during his work at the CAVR. He had been worried that the hearings would break down or people would refuse to participate but in the end this photographed moment of unity gave him genuine hope for the future. He believed it proved to the leadership and his nation that truth and reconciliation can coexist.



Figure 14 – "Unity." The Timorese political elite and CAVR National Commissioners celebrate their moment of official reconciliation at the CAVR's Public Hearing on the Internal Conflict from 1974-1976. (CAVR Archives Newspaper Clippings)

In the face of previous testimony that implicated some of the senior levels of the Timorese leadership in the most serious of crimes, how was the CAVR able to forge such a persuasive reconciliatory message? This photographed moment took even the CAVR by surprise. As it turns out, they had little to worry about because if one examines the rhetoric of the proceedings, this reconciliatory moment had been predetermined. Xanana introduced the script when he said early in the proceedings:

> *"*This sorrow and the inner support of these parties will have already eliminated the fractures within them, that before made it so very difficult for them to forgive themselves. Within this process I myself am at fault, truly faulted as a person – as a human. But with these wrongs it will reopen our wounds and tears, with the courage of the leaders of the parties to sit together and tell of our mistakes and preserve unity. And they will not show again violence against one another and I can say that this process is unique among all those in the world*."*[155]

He predicts what will happen. There were still two more days of hearings left when he said this and many more testimonies to go. Perhaps these comments merely reflect Xanana's wishful thinking, but I suggest another possibility: just by participating the witnesses had already agreed to a reconciliatory conclusion. The leaders of the political parties and the public already knew the truth about the political parties' commission of human rights abuses, so there was little reason to participate in revealing what everyone already knew. They were guilty – at least in the capacity of representatives of the parties whose members had committed crimes. Xanana did not open the door to truth as much as he began a ritual of forgiveness.

What did the political leaders have to gain if they asked for forgiveness? With an apology these leaders had an opportunity to enhance their political legitimacy by providing enough truth to receive popular and even personal absolution. If the reconciliatory script of "*Dalan ba Dame*" was followed, everyone stood to gain, but this could only occur if the apologies were convincing enough to overpower the truths that were revealed about perpetration. Xanana and the other participants understood that the hearings did not require all the truth or just any apology, but a masterful performance of apology to counter the raw, factual nature of the truths that would be selected from the many horrors that begged to be told. In this regard, the Timorese leadership delivered. Repeatedly during the hearings the witnesses seized on the image of the brotherly embrace, not dissimilar to Xanana's pose with Wiranto, to communicate the intention of the Timorese elite to unite in the practice of forgiveness and peace.

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[155] "*Dolorozu nee mos tane partidu sira nia laran atu halakon tiha fragxisme iha sira nia laran nee'be uluk susar teb-tebes atu perdua ba malu. Iha prosesu nee nia laran hau rasik mos sala, sala loos hanesan ema (humanu). Maibe ho sala sira nee atu loke fali ita nia kanek, no mataben ho korajen lider partidus sira atu tuur hamutuk konta sira nia sala no kaer metin ba unidade no sira la hatudu tan liman ba malu no hau bele dehan prosesu nee uniku iha mundu tomak*."



Figure 15 – "*Dame Malu*" or Make Peace. Two former enemies, Prime Minister Mari Alkatiri, a FRETILIN party leader, and Joao Carrascalão, a former UDT party leader embrace. In the background other witnesses who testified embrace in front of the cameras.

Although the newspaper headlines initially drew the most attention to Xanana's words, it was Rogerio Lobato's testimony that brought the hearings to a climax and led them to their success. At the time Lobato testified at the Public Hearing, he was the serving Minister of Interior. Lobato is one of the leading figures of the Timorese Resistance. He is bellicose and rumored to have repeatedly clashed with others in the Resistance leadership whom he believed relied too heavily on time-consuming, diplomatic solutions that depended on the international community. He is known to have preferred direct action. He comes from the leading political family in Resistance lore: his brother, Nicolau Lobato, was considered to be the leader of the Resistance before he was killed by the Indonesian military and Xanana took over. During the course of the internal conflict and the Indonesian Occupation his entire family was killed for political reasons including his mother, wife and his siblings. Following the Indonesian invasion, Lobato fled to Africa where he joined other Timorese Resistance leaders in exile in Mozambique including Mari Alkatiri, Ana Pessoa and José Ramos Horta. He is presumed to be his nuclear family's sole survivor.

Lobato spoke approximately mid-way through the hearing and by all media and observer accounts he delivered the most moving testimony about the internal conflict. In 1975 he was the Head of the Timorese armed Resistance forces (FALINTIL). During the hearing Lobato dove directly into the fray by saying he would accept responsibility for the acts committed by FALINTIL members in the course of the internal conflict. However he qualified the degree of his responsibility in several ways. First, he said he would accept "moral" responsibility which carefully distinguishes his testimony from an admission to any form of judicial accountability. Second, he claimed that he never ordered or condoned any human rights abuses but he would accept responsibility based on his position as leader. He described himself as taking "command responsibility" although he never made it clear in his testimony what specific acts he accepted

responsibility for other than the generalized act of killing. He named no names or incidents for which he accepted specific responsibility. He also did not discuss to what extent he had knowledge or reason to know of these acts by FALINTIL soldiers. He simply said he would accept responsibility for all the acts and this required no further elaboration for the crowd to be convinced. With his persuasive and expansive apology he appears to have postponed their need for the fine details of truth.

Along with this acceptance of responsibility, Lobato wove a story of victimization. He shifted the tables of the public hearing by declaring at length that he was there to grant forgiveness to those who killed *his* family. He repeated the words, "to grant forgiveness", in a string of sentences so it began to slip into the background like a chorus. At one point he exclaimed, "I forgive those who committed these evils against my family, even murdering my mother, my older sibling and my younger sibling and my wife that I so loved, I forgive them."[156]

The newspapers seized on this statement in the articles covering the hearing the next day. The *STL* dramatically quoted these same words and added that "he said [it] with a trickle of tears and the Public Hearing made an opportunity to stop for several minutes." Without leaving the seat where he declared his responsibility, Lobato shifted himself into the role of the victims in the audience and made a show of granting the forgiveness he wished them to grant to him. Before he broke into tears he declared to the audience his interpretation of truth. He concluded, "If you want to be honest, I am one of the victims of the process of independence of the nation RDTL."[157]

Francisco Rocha recalls Lobato's testimony with respect and awe. He remembered Lobato "roused them to anger, and then had them laughing. The next minute he led them into despair and the people were crying and then he raised them up to a place where they could love again. He held them in a trance and brought them through the full range of emotions with him. He brought them to the place of forgiveness." In Francisco's telling of the hearing, Lobato emerged as an unexpected guide on the "*Dalan ba Dame*."

Judging from the media commentary placed in the CAVR archives, Lobato's testimony was as effective as Francisco remembers it. With his dramatic testimony Lobato managed to level the hierarchies of suffering between the common people (*povu kiik*) and the elite (*ema boot*). He shed his Spartan persona by displaying the same emotions that the members of the audience displayed. In an interview with the newspaper, *Timor Post*, one commentator, now the Secretary of State for Defense Julio Tomas Pinto, claimed that among all those who testified it was only Rogerio Lobato who made a full apology to the family of victims of the internal conflict and the Timorese people.[158] Pinto went on to say that the other leaders did not tell the full truth and only used the public hearings to legitimize what they did in 1975 and never recognized their mistakes. The *STL* also ran an editorial (*Konsiensia*) which singled out Rogerio Lobato as the star of the Public Hearings. Out of all the witnesses who spoke, the paper endorsed his testimony alone. The

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[156] "*'Saya memaafkan mereka yang berbuat jahat kepada keluarga saya hingga membunuh ibunda saya, saudara tua dan saudara muda saya, isteri saya yang sangat kucintai saya memaafkan mereka,' katanya dengan linangan air mata dan audiensi publik sempat berhenti beberapa menit*."

[157] *"Kalau kita mau jujur, saya salah satu korban dari proses kemerdekaan negara RDTL."*

[158] "*Rogerio Lobato Tunjukan Kesatria*", *Timor Post*, 20 December 2003, 2.

Editor wrote:

> "Rogerio Lobato, You are honored and a true hero because you have accepted responsibility for the position you held in the past. Because to ask forgiveness from these people caused this process [of reconciliation] in Timor-Leste. This person recognizes his wrongs in direct or indirect practice during the time when he had assumed responsibility. People must pay homage to Rogerio Lobato who deserves to obtain something because he has already reconciled appropriately."[159]

In contrast, the papers ran several critical essays on the content of the other witnesses' statements. The *Timor Post* and *STL* both stated that very little substantive truth was revealed in the hearings and that the CAVR would need to use other mechanisms to find an objective and deeper truth. As generous as the media was with their praise of Lobato, they were equally harsh in their criticisms of the rest of the hearings. One article bitterly accused the leaders of running away from, instead of facing up to, responsibility.[160] If the Public Hearing on Internal Conflict was considered a success in its immediate euphoric aftermath, it appears to have been because of the testimony of Rogerio Lobato. The records in the archives effectively capture both the hope and disappointment that resulted from the Public Hearings on the Internal Conflict.

However, to fully assess the legacy of these Public Hearings in the archives, one needs to look beyond 2003 and into 2006. In a completely different area of the CAVR archives one can find the media coverage of the post-independence violence that left at least a quarter of the Timorese population homeless and displaced for a period of more than three years. In the investigations that ensued into this violence, at least three of the men who testified at this hearing were initially implicated in instigating the 2006 Crisis: Xanana Gusmão, Mari Alkatiri and Rogerio Lobato. Ultimately, only Rogerio Lobato was arrested, tried, found guilty and sentenced to seven years for his role in the violence, which included distributing arms to civilians and inciting them to violence. Despite the grandiose promises made before the CAVR to practice unity, reconciliation and peace, these very same leaders within less than three years had allegedly reverted to behaviors not dissimilar to those that spawned the civil conflict in the 1970s. The fact that the figure who acted in greatest accordance with the narrative of "*Dalan ba Dame*" during the CAVR proceedings was judged by courts to be most responsible for the violence in 2006 seriously calls into question the durability and depth of any reconciliation that was forged as part of the truth and reconciliation commission's work.

However, it was not only Rogerio Lobato who strayed from the "*Dalan ba Dame*." The other key figure considered responsible for the violence in 2006 and its aftermath was Major Alfredo

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[159] "*Rogerio Lobato Ita honradu no eroi (heroi) teb-tebes tamba ita mos bele asumi responsalidade ba kargu nebe ita kaer uluk hodi husu deskulpa ba ema nebe kauzadu iha prosesu TL nia. Ema nebe rekoinese sala nebe pratika direitu ou indireitu iha tempu nia asumi responsabilidade, ema tenki hetan homenagem boot ida I Rogerio Lobato merese hetan buat ne'e tamba nia rekonsilia ona ho nia propriu*."

[160] *STL*, "*Kebenaran Tertunda.*"

"*Banyak retorika untuk membenarkan langkah langkah politik yang diambil dari tahun 1974-1976 karena tidak muncul sesuatu yang spesifik menyangkut proses politik dari massa itu. Ada kecenderungan untuk membenarkan tindakan yang diambil dan ada pula yang berusaha untuk menyuci diri dan berusaha melepaskan diri dari konflik massa lalu. Dan pula yang mengatakan bahwa korban dalam konflik itu adalah bagian dari proses itu sendiri (Vas parte do proceso) dan ada pula lari dari tanggung jawab terhadap korban akibat dari konflik masa lalu itu*."

Reinaldo. Reinaldo had also played the part of star witness for the CAVR when he testified at their Public Hearing on Children and Conflict. He was recruited as a *Tenaga Bantuan Operasi* (TBO), or civilian porters to military officers, by the Indonesian military when he was a young boy and he testified to the necessity of accountability to ensure a peaceful and safe future for Timorese children. The first time I entered the CAVR archives was during 2006. The staff was preparing for an exhibition to raise money for dissemination efforts. As part of the exhibition, the staff had printed out the photographs of witnesses at the public hearings and excerpts from their testimony as it appears in the Public Hearing booklets. Then, the words and the survivor images were attached to traditional Timorese textiles, or *tais*, and hung from the ceiling throughout the room. One of the *tais* contained a large picture of Reinaldo and his story of victimization as a child. The director of research at post-CAVR in 2006, who also served as the head of research during CAVR, José Caetano, gave me a tour of the archive and brought me over to this particular *tais*. He asked me to read it and share my thoughts. My initial reaction was to believe I was mistaken in thinking the rebel leader Alfredo was the same as the CAVR witness. Caetano quickly explained that the border between perpetrator and victim of violence in Timor-Leste could be very thin. He looked down to the ground and shook his head in dismay, and said: "All of this," pointing to the testimony of suffering hanging all around the room, "and he [Alfredo Reinaldo] still has not learned. We have not yet learned the real lessons of the CAVR."

What prevented the men who participated in this great show of reconciliation in Public Hearings from internalizing the pathway to peace they so frequently warned the population that they must follow for the sake of their nation? There are many ways in which the CAVR constructed a special route for the elite to pursue reconciliation that avoided the issue of perpetration. What these leaders faced is quite different and required less admission than what the perpetrators at the local level faced. In the format of the Public Hearings none of them were subjected to the open and relatively unrestrained commentary of an audience of their peers and extended family the way that perpetrators who testified at the local level experienced. The questioning of these public leaders was minimal in comparison to the questions asked of local perpetrators by former victims and the CAVR panel. There was no discussion of reparatory acts beyond an apology, whereas perpetrators at the lower level had to discuss compensation with their victims directly as well as with a CAVR panel. Local perpetrators agreed to pay compensation from their own pockets: although these measures may seem small such as livestock or alcohol, for impoverished farmers these compensatory measures required a real sacrifice. Furthermore, there was never any direct discussion of or structure put in place to classify the degree and nature of the criminal acts potentially committed by these leaders. Although the CAVR Final Report explains the framework of human rights and humanitarian law and acknowledges Timorese political parties' perpetration, there is no discussion as to who could be responsible within Timorese institutions for these acts revealed in the Public Hearings, whereas there is discussion and lists of people suggested as responsible for Indonesian acts. Section Eight of the CAVR's Final Report on "Responsibility and Accountability" does not include any discussion of accountability for Timorese leaders, even anonymously or in terms of position, who could be potentially responsible for the human rights violations it records in other parts of the report. In contrast, local perpetrators went through an extensive process of detailing their involvement so they could be excluded from prosecution measures. In conclusion, at the Public Hearings on Civil Conflict, amnesty for the Timorese leadership was implicitly exchanged for apology along with a scattering of general truths. The gap between what was required of Timorese at the local level

and what the CAVR required of these elites at the national level to reconcile is vast. The "truth" that leaders revealed was minimal in comparison to what village-level perpetrators were required to divulge. Had there been a single measure of reconciliation or justice regardless of a perpetrator's socio-economic and political position (if such a thing is even possible), one wonders if the lessons learned from the CAVR would have been different.

The final result of this different interpretation of "speaking the truth" was no one person or institution could be held accountable based on the Public Hearing testimony. In collective guilt they found a way to symbolically satisfy the CAVR's requirements for justice – truth, reconciliation and healing. But at the same time these symbolic acts satisfied a popular need for a narrative of peace and unity. These Public Hearings successfully diverted any real examination of these leaders' individual or institutional responsibilities in the past. In the wake of the 2006 Crisis, it appeared that these political elite felt genuinely able to reconcile in 2003 at the height of the emotions stirred by the sharing of testimony.Yet, their unique positions placed them in a position that was ultimately above the full truth and beyond judicial justice. Indeed, throughout the Public Hearings and the CRP processes we have seen both the positive and negative impacts when the narratives of victimization and reconciliation overpowered the narratives of truth and responsibility. The end result of the Public Hearings, in particular the Hearing on Civil Conflict, is that the CAVR as an institution capably provided a national performance of truth, reconciliation and healing, but this performance cannot be assumed to be the same as creating a sustainable foundation for the road to peace.

In relation to how the CAVR Public Hearings measured up to the theoretical expectations about truth commissions, the Civil Conflict Hearing in particular raises questions about the theory that truth commissions have the ability to heal where there are the elements of "carnival" and "polyphony." In the Public Hearing on Civil Conflict, there were elements of carnival, such as when Rogerio Lobato reversed roles with the audience and sheds the privilege and distance of his position. There are spontaneous shows of emotion – such as tears and embraces - in a space that would normally be reserved for formality. Multiple leaders spoke and gave different accounts of history and their personal roles in it to create a feeling of dialogue and multiple voices. While it does seem that these Bakhtinian elements may have brought healing in that enclosed setting for that brief period of time, if one looks into the archives where there are victims' reactions to the hearings and the subsequent history of allegations of these same leaders' involvement in subsequent crimes, it appears the truth commission provided a venue for the performance of national reconciliation and truth, but the sincerity of the performance of those narratives was later called into question, complicating the national healing process.

Community Profiles

The collection of the Community Profiles is another body of knowledge about human rights abuses compiled by the CAVR that has not yet been converted into a publication. Like the records of the Civil Conflict proceedings, these records are not sealed. However, in comparison these transcripts of village narrated histories are somewhat hidden in the public archives. They are available by special request and one must specify the names of districts and/or villages to examine. One reason for their obscurity is that this project was not conducted by the truth-seeking team but was carried out by the Victim Support team as part of their Healing Workshop

activities. This project fell outside of the standard truth-seeking mandate, so it is given a less prominent place in the archives.

Over 300 villages and thousands of victims participated in these focus group discussions that led to the first public recording of village-level histories in Timor-Leste. From individual statements given in the CRPs and in the Public Hearings, observers of the CAVR view history from the perspective of biographies, or autobiographies. From the Public Hearings and the CAVR's Final Report, a public macro-history of the conflict emerged. The Community Profiles represent a completely different approach to the CAVR's truth seeking function: they record micro-histories of the conflict. Whereas the majority of the materials produced by the CAVR operate from a top-down perspective, the largest portion of the Community Profiles records a bottom-up history.

The Community Profiles were not originally planned by the CAVR but emerged as a reaction to the CAVR staff's observations of the CRP and statement taking processes. The staff at CAVR felt that another forum was needed to supplement these two truth-telling mechanisms because those formats were not able to capture the impact that human rights violations had on a collective community, as opposed to an individual, level.[161] Furthermore, the staff noticed that these forums were concentrating too heavily on 1999, and there was the need for a format that encouraged witnesses to discuss incidents prior to 1999. Kiernan Dwyer, a former, international CAVR staff member who helped oversee the program, characterized the community profiles as distinct from other truth-telling formats because from the beginning it was process rather than outcome oriented. The focus of these histories was not on gleaning specific kinds of information but rather on making communities feel ownership in the CAVR process by creating a forum dedicated primarily to "listening." Hence the Community Profiles were a way of demonstrating to communities that the CAVR was including victims' voices in the CAVR's national history writing project. The atmosphere in Community Profile sessions was also different from the other forums because it did not use either intense one-on-one question and answer formats, or an interceding panel of elders from the local village or the national CAVR headquarters. Instead, Community Profiles were executed in a format similar to a focus group where one CAVR Commissioner and two staff members from the victim healing unit and research team took turns recording what the villagers said when prompted about what happened during each year of the conflict. The flow of information was less formal and interruptions were less frequent in comparison to some of the other public forms of truth-telling. Dwyer summarized the differences between the Community Profiles and other CAVR programs by saying, "We aimed to create smaller groups for greater interaction. We were looking for an experience of truth that would allow a greater expanse of both space and time." He described the Community Profiles as a "Development approach to truth-telling" that was not originally envisioned as part of the CAVR mandate.

Because their approach to truth-telling was distinct from the other programs, the Community Profiles have several unique features that contributed to the CAVR's overall message of "*Dalan ba Dame*." First, the individual community histories that are recorded in the archives are the

[161] I am grateful to Keirnan Dwyer for these insights. Mr. Dwyer helped oversee the administration of the Community Profiles and other programs at CAVR and provided me with information about the planning, management and objectives of the Community Profile Program. He shared the majority of this information during an interview on 9 June 2009 in Dili, Timor-Leste.

versions recorded by the CAVR staff members after each village's group of participants had reached a consensus on the facts they wanted to record. Because in theory each group of participants had to agree on the history that was going to be recorded, the Community Profile sessions were seen as contributing to "conflict resolution" skills. These were places where a contentious history could be debated and finalized into a single narrative that theoretically everyone in the village could know and understand within a setting that was devoid of violence. Accordingly, the language used to record the Community Profiles is simple and accessible, and village histories were recorded in either Tetum or Indonesian according to the villagers' preference. Because of the group dynamics involved, the Community Profiles were meant to contribute to the aims of reconciliation. These forums also gave villagers a chance to record the names of their loved ones who had been killed or disappeared and to try to gather information about their loved ones from other villagers. Hence, the Community Profiles exercised memorial as well as truth-seeking and reconciliation functions. It was also assumed by the CAVR that by telling these stories in a safe setting that emphasized the dignity of victims and did not include perpetrators, villagers could experience healing. In summary, the positive roles that the act of narration is assigned in the *Dalan ba Dame* story also played an integral part in the Community Profile program. However, the Community Profile method also produced some of the same challenges to the positivist trajectory of the "*Dalan ba Dame*" message that accompany the other CAVR programs.

One problem with this group history method is that the Community Profiles produced a truth to which everyone ostensibly agreed: there are a myriad ways that the truth could have been diluted or glorified to reflect a specific community's aspirations or fears. There are also no archival records of the points of history communities did not agree on and it is impossible to assess the overall group or individual biases that would shape the histories from the name rosters of participants that are attached to the profiles. No fact checking was conducted by the CAVR on the Community Profiles. However, staff members who conducted the Community Profiles sessions recall that facts were often "checked" within the sessions by the participants themselves. In what they characterized as "good" Community Profile sessions the different members of the group all felt comfortable to speak and if one participant disagreed or remembered an event differently they spoke up and the group pooled their memories and perspectives in the final version.[162] However, not all Community Profiles sessions went this smoothly. All staff members and Commissioners I spoke with recalled that in many sessions a few individuals would dominate the narration, such as a *chefe do suco* (village head) or *tokoh adat* (traditional elder). Although the Community Profile recruitment efforts emphasized the need for equal gender representation among the participants, staff reported that it was often difficult to get women to contribute in sessions where there were a number of male participants. Therefore, although in the records it appears the Community Profiles created histories that reflect great socioeconomic and gender diversity, there is no way to determine to what degree diversity and disagreement were truly integrated into the histories that were recorded and became the archived historical legacy. The CAVR staff is aware of these methodological problems with the Community Profiles and exercised caution in using them to write the Final Report. To date they have not been used to produce any other form of a national or institutional publication. Furthermore, the post-CAVR administration continues to feel a need to protect the names of individuals mentioned in the

[162] Personal Communication, Rosario Soares, July 2008 and Personal Communication Lulu Ximenes, July 2008, Dili.

profiles because they do not wish individuals to be stigmatized by reports that have not been legally or academically verified.[163] However, since the Community Profiles were promoted and conducted as open forums, the institution is obligated to include these documents in the public records. In many ways their consensus-based methodology has caused the village-level histories contained within the Community Profiles to be overlooked.

On a more practical level, the Community Profiles were administered in an extremely inconsistent manner across the country, which makes them less accessible than some of the other research conducted by the CAVR. All of the profiles record a chronological history and include short, sporadic lists of names of victims throughout the narration, but otherwise there are few structural similarities. The majority of the profiles are handwritten and they were never transcribed or translated. The languages used include Indonesian, Tetum and Portuguese, and occasionally the languages are mixed within the same profile or incorporate non-standard spellings or vocabulary unique to the community involved.

On the other hand, because the Community Profiles have been obscured, they fulfill some truth-telling and historical functions effectively. Foremost, unlike the rest of the materials that are available in the public archives, the Community Profiles have not been edited by the CAVR as a national institution.[164] In this way the Community Profiles stand out among all the other records from the Public Hearings, CRPs and the Final Report. Small details emerge in the Community Profiles, such as what foods villagers ate to survive in hiding for years at a time that escaped or were less emphasized in the more structured forms of truth-telling such as the public hearings. As we will observe, this is not to say that editing or guided narration did not occur at the village level to encourage the profiles to fit a national model of truth and reconciliation. There is a noticeable conscious effort in the profiles to record a village's contribution to a "national" Timorese history in every Community Profile, but the communities stay "on message" for the writing of a national reconciliatory history far less often than the other records in the public archives. Despite the consensus based methodology that produced them, the inconsistent formatting and great variety in style in many ways render them more authentic and less homogenized than the more polished publications and records of the CAVR.

What messages do the Community Profiles consistently convey? The sheer volume of the histories (over 300 villages, or *aldeias*, that are usually 10-12 pages each) clearly communicate the magnitude and systematic nature of the atrocities that were waged across Timor-Leste for a prolonged period of time. There are differences in the degrees that certain communities suffered, but every community out of the 300 experienced multiple and severe human rights abuses. The volume of abuses is communicated more effectively and differently in the Community Profiles than some of the other testimonial truth-telling forums, because they record not only one kind of abuse (such as keeping their message focused on a particular Public Hearing theme), but all acts the community perceived as abusive. In addition to scale, the Community Profiles as a collection reveal systematic patterns of abuse. The same types of violations were committed in extremely similar ways across all of these communities. As we will examine in some more detail below, the most pervasive patterns of attack that was discussed by communities were murder, arson, forced

[163] Personal Communication, Rev. Agostihno Vasconsuelos, August 2008.

[164] From the remaining records it is impossible to know to what degree the profiles were edited between the discussion and the recording process at the actual Community Profile session.

transfer, illegal detention, torture, sexual violations and the destruction of cultural property. The fact that becomes clear in reading the profiles is entire communities, not just individuals, were systematically targeted by these abuses for specific military and political objectives by all the government entities and political parties in the conflict repeatedly over time. In the Community Profiles, it is impossible to contain the horrifying scale or deeply systematic nature of human rights perpetration committed against civilians by Timorese and Indonesian political and military institutions for more than twenty-four years.

How to capture this scale of atrocities in a communal setting, as opposed to the recording of a testimony of an individual, presented a research and truth-telling challenge to the CAVR. The Community Profile sessions were limited in time and resources yet they needed to attempt to record the cumulative impact of atrocities on each community where there were often more than 15 spokespeople at any one session. The CAVR used several different tactics to describe these impacts including estimating the number of violations committed against each community, and totaling an estimated number of people affected by each violation, but it is clear that most of these numbers are conjectures on the part of the participants, particularly the farther in the past the violation occurred. For example, the group would try to recall how many people were displaced from their homes by the civil conflict in 1974, when the narrative description of the session simply read that the whole village moved to live in the jungle. The numbers for this kind of scenario are often in the hundreds, but there is not usually evidence such as specific names or number of households that is able to invest these numbers with sufficient credibility to be determined as precise. In contrast, the Community Profiles appear to have estimated the number of murders committed very effectively, because the names, ages and many times occupation and family affiliations of each person murdered was usually listed along with a detailed account of their death in the narrative that accompanied the quantitative assessment. In addition to numeric approaches to truth-telling, some Community Profiles also include statements where the CAVR staff member evaluated the overall social, political and economic impact of all the violations committed in a single community. The most commonly listed impacts were loss of education and employment, lack of food and medical care leading to illness and malnutrition, lack of health care, the destruction of culture including language and traditional rituals and sacred objects, and the destruction of family life through the separation of parents and children and the birth control program of the Indonesian government. What becomes clear when one reads the collection of community profiles together is that these impacts were not just incidental outputs of the conflict, but rather were foreseen and intentional strategies used for political domination of Timorese civilians. Accordingly, in addition to the criminal acts such as murder, torture, rape and arson, the Community Profiles recorded the massive scale of social and cultural destruction and poverty that resulted from the many years of conflict through these various forms of impact statements.

The most consistent method of representing the scale of human rights abuses experienced by communities was mapping. Every Community Profile contains a map that is meant to represent a village area's experience of human rights abuses. Some maps are more detailed than others, but each features landmarks such as the TNI post or headquarters in the area and posts of the other military forces of political parties who had occupied the area at one time or another including FRETILIN, UDT and Apodeti. Schools and churches are always denoted along with roads, rivers and mountains. Laid over these most basic features of a community are markings that show where murders occurred, where houses were burnt and sometimes when the community fled.

Murder, forced displacement and the burning of multiple houses appears in nearly every community's map and thus, emerges as the most common types of crimes that appear to have targeted communities during the conflict. Now let's turn to some specific examples to illustrate the Community Profile's truth-telling methods and how they fit into the overall *Dalan ba Dame* narrative.

One map from a community[165] shows how a village was wracked by violence and destruction since 1975. On its self-constructed map, the community showed that the TNI post from 1975 is elevated above the rest of the landscape, although the elevations are relatively minor compared to the usual steep hillsides of the rugged Timorese landscape. All along the roadway traditional houses (*uma adat*) and living quarters were burnt in 1975. A government building flying the Indonesian flag was burnt in retaliation in the same year. These destroyed buildings are denoted as distinct from the many houses burnt in similar campaigns of destruction later in the 1970s, 1980s and in 1999. By depicting them in this way, after the start of the violence in 1975 the attacks are represented as continuous. Soldiers dot the landscape with firing weapons. These figures mark the different directions from which the village encountered TNI attacks throughout the period of the Indonesian occupation. The location of the post of the TNI after 1975 is also marked as an integral part of the community, and in an attached map the community showed the CAVR how their village was encircled by military headquarters on both sides of the conflict. FALINTIL hide-outs and posts lay on its eastern borders and multiple TNI posts lay to the north and west. The pictures of planes are meant to represent the Indonesian bombing campaigns in the late 1970s aimed to force the civilian population to surrender to Indonesian troops. The attached narration never mentions the presence of planes or bombings from the air,[166] but the community records it when they say they formally surrendered (*rende*) as a village to the Indonesian forces in 1979. The rivers and riverbanks are filled with symbols that denote locations of murders that resulted from the conflict. The focal point of the map is the road through the village that was surrounded by violence on all sides for many years.

Yet, the ubiquity of violence recorded on this map does not in any way capture the complexity and sheer volume of the human rights abuses that occurred in this compact area. The narrative attached to the profile records a very different kind of history from what is visually mapped. First, the violence predated 1975, which are the earliest recorded dates on the map. The villagers describe with reverence the traditional kingship system that governed the daily life in the area during the Portuguese colonial period, but mixed with their description of their local king's benevolence ("*nia hare ami diak*," or "he looked after us well")[167] they note he used the local population as forced labor and those who did not satisfy the king would be detained, tortured or exiled.[168] This profile claims that a debate about politics began among the "learned" and elites

[165] Although the Community Profiles are technically public information, they contain information that is still highly politically sensitive in Timor-Leste. For that reason I have chosen to exercise caution and remove the identifying information of the particular villages discussed. Scholars conducting future research can, however, locate all the village profiles discussed in the CAVR Archives. It is also important to note again that all the information in the Community profiles are allegations, and can not be interpreted as undisputable fact.

[166] The narrative attached to the maps does mention the use of grenades, which can sometimes be translated as bombs, but what type of grenade or bomb was used is never explained.

[167] Community Profile [village name redacted], 1.

[168] The term used in the original is "*kastigo*" which can be translated as torture. However, *kastigo* can cover an entire range of abuse from verbal abuse and a mild beating to the most severe forms of torture.

(*matenek*) within their village in 1974. Uncharacteristically for the usually patriotic CAVR testimonies, this community profile dutifully notes that there were some in the village who perceived an armed independence movement as advocated by some of the revolutionary elites as a danger to the local people. They feared that if there was a war for independence the local population (*povo*), like themselves, would be the ones forced to "commit big crimes" and "be killed."[169] These fears about the affect of the impacts of the war on the villagers, and the town's close proximity to the border with Indonesia may help to explain why this village initially chose to predominantly support the UDT and APODETI parties who advocated for inclusion in the Portuguese and Indonesian states respectively. APODETI had the largest number of supporters in the village in 1974. With the arrival of these political parties into the village, the community had already begun to experience the early stages of conflict in 1974. The profile's narrative recounts the ways the various political parties used violent forms of persuasion, such as arrests, forced labor and beatings, to try to win supporters. In fact, within the CAVR's temporal mandate, it was actually FRETILIN, not Indonesian forces, that committed the first acts of violence against these villagers in retaliation for their pro-Indonesian leanings.

The violence allegedly committed against civilians in this village by the pro-independence party, FRETILIN, and its military arm, FALINTIL is extensive. According to the profile, in 1974 FRETILIN came and captured a group of villagers who were thought to be APODETI supporters, and forcibly marched them to the next subdistrict and capital of the district. The group was detained in a FRETILIN member's house where they placed a lit grenade in the center of the group to threaten them to become FRETILIN members or die. In fear of their lives the group agreed to sign up as FRETILIN members and were subsequently released and allowed to make their way back home. Within the same year after the civil war had begun, FALINTIL captured and tortured a group of villagers again whom they suspected of trying to flee to Indonesia to escape the violence. After a week of detention and torture these villagers were given arms and forced to "do work" for FALINTIL.[170] Villagers also vividly described other acts of torture by FALINTIL towards civilians they suspected as sympathizers with Indonesia that occurred in 1976 and again in 1977. In 1977 the FALINTIL attacks included burning traditional houses and they shot two elderly women who were inside one of the sacred houses. In 1978 a different FALINTIL commander assaulted the village and in this attack killed a pregnant woman fleeing with her husband and her five-year-old child. They left the child to cry over her dead parents for two days before their bodies were taken away by FALINTIL for burial. There is no indication as to what happened to the child. The village was targeted in this attack so that FALINTIL could use it as a launch point for incursions against the nearby TNI posts. In summary, violence did not arrive with the Indonesians as it appears on the map but rather was a sustained impact of multiple factors including traditional kingship systems, Portuguese colonialism and the politics of decolonization, guerilla warfare and lastly the Indonesian Occupation. Yet despite the villagers' narration of this full range of human rights violations, in the mapping exercise intra-Timorese violence or violence prior to 1975 was not specifically

[169] The text in the original reads, "[…] *se iha funu nee ita alo krime boot e povo barak mak sei mate tanba funu*," or [transitional phrases], "if there would be war, we would make a great crime and it would be many common people who would die because of the war."

[170] The profile does not specify what kind of acts FALINTIL required these villagers to do. The original wording reads, "*Sira obriga ami tenki tama hotu FALINTIL: […a list of villagers names…]. Ami simu hotu kilat hodi halao serviso ho FALINTIL iha [redacted]*." In translation this reads, "They forced all of us to enter FALINTIL: […] . We all received weapons to work with FALINTIL in [redacted]."

indicated at all. Hence, the mapping leads to one type of narrative (truth and accountability for Indonesian abuses) and the story told by the village leads to another (truth, accountability and reconciliation for all abuses). In combination the map and the narrative are consistent with the overall "*Dalan ba dame*" narrative communicated by the CAVR as an institution, which acknowledges intra-Timorese violence but often takes opportunities to simplify or downplay its impacts across the span of the conflict. What is not clear is who – the CAVR staff member, the villagers themselves or both– chose to obscure these crimes by pro-independence groups from the mapped landscape.

Not all of the Community Profiles neglected to locate crimes committed by Timorese political parties in their mapping. Another community in a district in another region of Timor-Leste mapped abuses committed against a village by three different political groups – the Indonesian military and the Timorese political parties, UDT and FRETILIN. The villagers' homes were destroyed by UDT and the TNI at various points during the conflict. FRETILIN, according to this mapping exercise, massacred a group of civilians in 1981. However, unlike the previous village that in 1974 had a substantial number of APODETI supporters who favored integration with Indonesia, this village reports that from 1974 the majority of villagers supported FRETILIN. In this case, the local UDT leaders in the area targeted villagers for their pro-independence leanings in 1974. Later in the conflict in the 1980s, FRETILIN[171] attacked the village, despite its loyalty to the pro-independence cause and frequent reports made clandestinely to FALINTIL, and burnt multiple houses and killed at least four civilians in the suspicion that they were going to attack them as part of *Operasi Kikis*, or the Indonesian's fence of legs campaign that used civilians to locate and attack FALINTIL members. The village reports that the plan by FRETILIN was to eliminate the entire village, but they were stopped by the villagers themselves who had hid weapons to defend themselves against attackers on all sides of the conflict. After the attack by FRETILIN, other surviving villagers were then arrested by the TNI and were beaten and imprisoned, on the suspicion that they sympathized with FRETILIN. The point that can be taken from Community Profiles such as this one where violations are mapped by multiple parties, is it did not matter which political cause civilians in East Timor supported: they were likely to be the targets of violent attacks on all sides. Their homes were destroyed and their loved ones were killed for the sake of military objectives, regardless of the political identity of the attackers or their personal political preferences. For most Timorese from 1974 to 1999 every road led to more violence.

What is noticeably absent from this village's map is the violence in 1999. The village narrates 1999 and talks about some villagers' participation in the pro-autonomy militia groups. The profile explains seven people from the village joined a pro-autonomy militia group who were chosen by the village *babinsa*. It does not explain how these seven were chosen, but notes that they were initially sent away to the capital city of the sub district to serve with the militia. *Hansips* from the same village were also active. They were reportedly already in West Timor in training. Since the villagers who were recruited to participate in armed support of the autonomy cause were all sent away from the village, the profile explains that the *babinsa* (a Timorese

[171] FRETILIN is the overarching political party that the villagers identify, but the military wing – FALINTIL – actually carried out the attack. The villagers by choosing to identify FRETILIN instead of FALINTIL as the attacker may be implying that others participated in the attack or in its planning besides the armed guerillas, such as unarmed party members.

appointed by the Indonesian military) daily tried to force the villagers to vote for integration with Indonesia. The profile records that two of the seven militia members from the village (who they do not name) were actually pro-independence *clandestinos*. They were the only two to return to the village after the vote in 1999. The villagers hid for two days after the Referendum vote, but were able to return and experienced no other violence that they reported. This profile and its map are interesting because it gives little emphasis to 1999 in contrast to the majority of the other truth-telling forums and instead focuses on the events further in the past. Rather than wanting to record what is in most recent memory, this village seemed intent to mark the intricacies of a past that may soon be forgotten amidst the violence that occurred in other parts of the country in 1999.

Another point of interest in this particular profile is it is one of the rare ones that recorded some members of this community's reactions to the CAVR and this truth-telling exercise. This village had complicated reactions to the CAVR, which suggests that truth-telling provided them with both relief and confusion. One villager gave heartfelt thanks to the CAVR for coming to their remote area to record their story (*istoria*) which they had been waiting to tell for 24 years. This individual said he believed the recording of this history was for their children (*anak kami*), and what they told the CAVR was all that they knew. This individual seems to have embraced the Community Profile exercise as a form of closure that he wished to preserve and guard as it was to be passed down to future generations. However, another participant responded to the CAVR purely with questions. He asked the CAVR why their mandate was only two years, how the program would be carried out among Timorese in West Timor and how the CAVR planned to collect new information that had not yet been given. This individual clearly doubted the "*Dalan ba Dame*" message of closure, and suggested that truth-telling of this kind would surely be incomplete and reconciliation would depend on efforts made in West Timor and Indonesia as well as within villages in Timor-Leste. Finally, a third individual took a position between these two. He said the village had been waiting to unload the weight of this secret history for 24 years, but he told their story with hesitation. He agreed to speak because it was in accordance with the mandate of CAVR.[172] He expressed relief to tell this story but also he wanted note that they are telling this story because it is part of a government mandate. He sensed that there was a power exchange involved that is different from a purely historical and voluntary exercise. He noted that the government has asked for the village to give up its secrets, and his hesitation seems to indicate that there is something more to CAVR's truth-telling mandate than just fulfilling the objectives of healing. This village's response to the Community Profiles shows that although there was a consensus reached within the village about what truth would be recorded about them for a national record, there was no consensus about the value and benefit of such an exercise. Using the term of Mark Osiel, this exercise created dissensus about the truth-telling or historical function of the truth commission within this community.

One aspect of the Community Profile that may have simultaneously challenged and healed participants is that the exercise required them to visually as well as orally represent a state of continuous community. Through the process of narration, in maps and in prose, the participants were required to locate the community throughout a 25 year span, when in reality communities in East Timor were separated, dispersed and entirely dislocated during that time period. The

[172] *"Yang kami tunggu: supaya kami bisa bongkar secara rahasia selama 24 tahun. Kami kisah ragu dengan mandat CAVR."* Community Profile [village name redacted], 14.

exercise brought a community together in a process of narration that placed it in a single plane of space and time, when in fact these communities were nomadic, fragmented and scattered across space and time. In the previous village, as in many others, there are slight indications of the ways communities were dislocated when the maps note *kampung lama* and *kampung baru*, or old and new village. In these instances new settlements were built out of the community members either because the previous area was destroyed or under threat, or they were forced to move or rebuild by the Indonesian military. Representing this constant state of dislocation and fragmentation was approached in different ways by different communities. Yet, these different techniques seldom yielded a visual or narrative expression that could fully capture the impacts that the absence of a "village" had on a community.

For example, one village's narrative reported that in 1999 the village was once again burnt by the local pro-Indonesian Timorese militia group. Casualties from the 1999 violence in the village were limited because the entire village hid in the jungle and then fled to the main city in the district under the protection of a pastor. When the village was burnt in 1999, according to this profile, no one was there. So what is mapped is the destruction of an empty village which no one in the village actually witnessed. In fact, during much of the time of the conflict the village that is represented as the locus of the community was a hollow shell. Prior to 1999, most of the village population had been forcibly relocated at least twice and spent many years in hiding or relocating themselves in other parts of the district to avoid the violence and to find shelter after their homes and possessions had been destroyed by fire. In 1974, the profile stated their community scattered all across the district to flee the violence. In 1976 some of the villagers surrendered to the TNI and others created a new community in hiding in the jungle for several years. Eventually much of the community ended up in camps created by the TNI where they could receive some food. In 1979 many of the villagers returned to their home area along with people from other displaced villages in the area to the site that is mapped. For one year multiple villages lived together in this single site. By 1980 the villagers not native to the area had mostly returned to their home villages and the profile reported that the village was again occupied by its original inhabitants. However, by 1981 violence had returned. The village said that it began to be involved with the Clandestine movement and contacted FALINTIL to seek protection from potential Indonesian military threats. The TNI subsequently found out about the village communications with FALINTIL and began to arrest, torture and kill a long list of villagers (12 people in 1981 alone). These attacks culminated in a test of the village loyalty by the TNI in 1982 when they removed all the able bodied males from the village (76 in total) to participate in attacks against FALINTIL in *Operasi Kikis* that lasted two years. During this period some other suspected villagers were forcibly transferred to the prison island of Atauro. In 1985 the entire village was forcibly relocated by the TNI and military posts were established to watch the village which had previously been too remote for them to monitor carefully. In 1987 the TNI established more posts in its area and built more houses, but also increased the number of arrests to obtain information. The majority of villagers appeared to live in houses rebuilt by the Indonesians in 1987. In 1999 much of the village population went to West Timor but returned to rebuild houses with the help of an NGO. The map for this village portrayed the loss of homes only in 1999, but it is meant to represent the illegible destruction and absence of the community's village over the entire 24 years.

A different community represented its displacement in another way. Like the previous community, the village was destroyed and threatened and residents were forced to relocate for years at a time. The community's movements away from the central road and houses of its original location are mapped by arrows that show where they fled and re-established communities. It is important to note that they reported the village fleeing *en masse*, with 420 people, to hide in the jungle. According to the profile, their community did not splinter off into groups, but stayed intact as a single unit of refugees. These relocations include at least one period of time when residents were forcibly held in camps by the TNI, which the residents refer to as "concentration camps". The community was forced there in 1977 after they surrendered to the TNI forces that invaded their makeshift refugee camp in the jungle. They remembered constant threats until 1978 when they were released and allowed to return to their original village that is depicted by the row of houses on their map. However, the release from the camp appeared to have been a strategy for the TNI to alleviate their responsibility for feeding the camp inhabitants. The village remembered being released and being given permission by the TNI to try to overcome the famine by being allowed to once again raise their own gardens. During this extended time of displacement 32 members of the community died from hunger and lack of medical care. The community continued to experience threats and abuses by the TNI after their return to the village but they were able to stay there until 1999 when the majority of the community (57 households) fled to escape the violence. From a seaside town most of these families were transported to Kupang in West Timor where they continued to be threatened and abused by the militia groups in the camps. The profile does not explain when, how or why many of the community's original inhabitants returned from West Timor. This narrative attempted to capture the movement of a community while at the same time it tried to establish the contours and essence of the village where the community originated. This tension between transience and permanence of communal life can be felt throughout the Community Profiles.

The reality that was so difficult to capture within this exercise of mapping a village was that these communities were not living in the traditional image of a village, but rather in a constant state of "camp" where at any moment they had to be prepared to leave. They were constantly monitored and forced to stay or go according to an outside authority. Whether these civilians were literally in the camps created by the Indonesian military, their own hiding places or back in their original location, the way of life of a traditional village as a community was in suspension. Community was defined by the shared skills of survival rather than a permanent place on a map.

In addition to impermanence, a woman's experience of war defied mapping in the Community Profiles. In the first village we discussed, the narrative described the rape of three women, including their names and the name of one of their perpetrators. Yet, this abuse appears nowhere on the map. One of the women in this village publically testified about her rape to the CAVR, therefore I was surprised by the absence of the rape on the map. I surveyed the rest of the profiles and discovered that none of the communities mapped sexual abuses, even though a great number of the communities reported them in their oral narrative.[173] Only one community mapped a church where the military allegedly attempted to rape a group of women but were unsuccessful because villagers say they fended off the attack. The site was marked as a place of attempted

[173] See profiles with file numbers: EAP032_001325 032_001331, EAP032_001332 eap032_001333; 032_01131; 032_001171.

rape. Yet, in its narrative the same village recorded the rape of two women in a different period of the conflict which it did not map. As mentioned earlier, the Community Profiles deliberately tried to encourage women's participation in the Community Profile sessions and a great number of women participated in the program. Yet, their representation and stories apparently did not produce a desire to mark these kinds of crimes in an indelible way. From the archives we are not able to know if women asked for these crimes to be hidden from the mapping, or if the CAVR staff or other participants who drew the maps chose to delete them. We do not know if these were not represented as an act of preserving women's privacy or protecting them or out of shame. We can conclude that in certain kinds of narration, such as mapping a community, truth-telling will encompass the hiding as well as the discovery of certain types of knowledge related to women.

In conclusion, as a whole the Community Profile collection in the archives shows how people in East Timor live with what they collectively remember, and not with what one sees. These maps reveal an experience of violence that is engrained in a landscape that may be invisible to an outsider, but is always present in the eyes of community members. Maps and narratives such as these simplify the representation of the conflict: they pin places and people down into finite groupings, visible locations and final destinations. In other words, the narrative purpose of a map and this kind of communal exercise is even more dedicated to closure than individual testimony. To locate is an act of progress away from the state of impermanence. There is an innate authority in the quasi-scientific representations of a map with compasses, dates, symbols. Yet, the often contradictory content of these profiles show that actual transitions through time and memory for a community are much slower, indirect and fragmented than the shift in powers and place that come with independence and a short-lived transitional justice process such as the CAVR. Ultimately, the Community Profiles can only offer us a glimpse of the Timorese collective experience of violence, rather than a history.

What the Community Profile collection and its mapping do, however, is reconnect a multiplicity of communities, even if this unity is overly constructed. They take a past that was invisible and create a national memory map at the village level. The villages' stories connect them to one another like a road. The "*Dalan ba Dame*" message assumes this process of narration and connection will bring peace. That a roadway made of words rather than weapons will transport villages away from violence and into peace; from refugees to free and independent citizens.

Yet, one villager who spoke in the Community Profiles candidly challenged the CAVR's idea that this kind of representation exercise could lead to true change. He asked the CAVR to record his remark as follows: "Tell them Independence is no different – they all keep pissing on us like dogs." In hindsight this man's cynicism was insightful. The continual poverty, destruction and displacement of villages, lack of food and shelter, repeated itself in 2006. The capital city of Dili became the home of more than one quarter of the Timorese population who lived in camps for internally displaced persons (IDPs). The villages that had been mapped by the CAVR as a road to peace had once again been displaced and dissolved by violence.

Memorialization

In the previous discussion of the Serious Crimes Unit we examined the way the institution memorialized itself, its constituents and how Timorese communities in turn interpreted their legal narrative of justice through its own memorials. In the case of the CAVR, memorialization was part of the day-to-day life of the institution. Because the CAVR housed itself in a former prison, in its every activity it sought to transform a place that was once the home of violence into a place of peace. Indeed, if one takes the CAVR's over-riding message to be "the road to peace," it appears that this path began and leads back to the CAVR institution itself, and the Comarca Prison Memorial in Balide. I suggest that the CAVR's greatest act of memorialization and its most sustainable legacy is the transformation of this prison into a sacred space.

As has been the case throughout our discussion of the transitional justice process, Francisco Rocha played a key part in this memorialization process. On more than one occasion he showed me the various places he had been imprisoned within the Balide complex where his office as a CAVR and later a CTF Commissioner was housed. He showed me how in one small cell, prisoners would take turns standing on the shoulders of each other to try to catch a glimpse of sunlight, or a family member, through the slits in the bars on the far outside wall. Then, he told me about his trip to Japan to fundraise for the restoration of the building. Several times he walked me to the cement pad where prisoners were supposed to be exercised but were more often beaten and tortured – many times to the point of death. Then, in the same spot we would talk about a work issue for the upcoming week. A group of former female prisoners had now taken that area and planted a garden that they called the "garden of peace." I drank morning coffees there. He explained to me that former prisoners, such as these women and him, now have the opportunity to come here on their own terms and, if they want, tell people what really happened. When he gives these kinds of tours, his stature is tall and his demeanor is proud. In his words and actions in this place, time past and present is tangibly intertwined. Instead of being in hiding, the horrors of the past are continually exposed and part of each day he is here. He says it was a dream of his to create a memorial in this way.

In fact, Francisco is not the only former political prisoner to work inside the place where they were once imprisoned. The construction company that restored the building was owned and run by another former political prisoner. The security guards who sign visitors in at the gate are all former political prisoners. The gentle, kind woman who brings guests coffee and oversees the cleaning is a former political prisoner. The people who cut the grass and coax the plants to grow outside of the building are also former political prisoners. These people were always the first people I would see when I arrived in the morning and the last people I would see to go home. None of these people who daily make the CAVR, and its successor institutions, the CTF and post-CAVR, function on the most basic level announce or publicize the fact that they are former prisoners. The office of the Association of Former Political Prisoners (ASSEPOL) that houses the Living Memory project in the front of the building does not even have a sign. They quietly inhabit the place that once imprisoned them. But, they also will not shy away from telling you that they were once imprisoned there if you ask. They will tell you matter of factly: I was a prisoner here. One international human rights activist who had worked with the CAVR and in other local NGOs once said to me in frustration, "Francisco and the other former political

prisoners will never leave that building. They will be there forever. They think it belongs to them."

The frustration behind this comment was over the opaque archival policies and limited access to the documents produced by the CAVR. There seems to be a tension between those who want the truth commission's work to be thoroughly free and open, and those who are interested in something more private and contained. It is true that at times the CAVR building and the truth's commission's archives and legacy activities feel more closed than open. There was many a day when I went to offices that were supposed to be open at the post-CAVR and they were closed. It also took many months before I could get through the front gate without an explanation, even though I had an office there assigned by the Timorese government. I worked in public archives but I was watched constantly and carefully by the staff for more than one year. Despite the fact that it is a truth commission that has a mandate with a public function, unless you are with a one-day tour group, as a visitor or even an employee the environment can feel obstructed. For all the testimonial mapping that occurred during the CAVR, its legacy institution appears to unmap some of its work to make the process more illegible. Yet, this closing of the institutional ranks to outsiders may have little connection to the former prisoners, and may have more to do with fears about the institution closing in the future, or a lack of consensus between the institutional leadership and staff about what part of the institution's legacy should be public and what part should be private.

I will argue that the building does belong to the former prisoners as the guardians of the legacy of the CAVR, more than the Timorese state or the international community and its appointed advisors. The inhabitance of this place by former political prisoners can be interpreted as the most enduring and successful memorial, but also truth-telling act, accomplished by the CAVR. The stories told here have made it a place to stay rather than flee.



Figure 16 - The memorial garden planted by former prisoners at the Comarca Balide Prison builidng where the CAVR's headquarters and archives are housed. The original prison doors have been preserved, such as the one above and staff offices are in the majority of cells where prisoners were once housed. (Leigh-Ashley Lipscomb)

The largest room where prisoners were held is now the location of the main holdings of the archives. Where prisoners once stood shoulder to shoulder, filing cabinets are placed in neat lines. On the inside wall of this room, low to the floor, are five lines written in Portuguese: *"Queremos a Liberdade, para por fim, os lemites, que frustram, os nossos a seios, a genumas aspirocoes. [redacted]."*[174] In a booklet that was commissioned by the CAVR about the prison,

[174] We want freedom/To put an end/To the limits/That frustrate/Our deepest thoughts/And genuine aspirations.

Francisco explained how he interpreted the messages left by prisoners on the building's walls. He said, "the graffiti is our manuscript."[175]

What is important to note about this public disclosure is that it indicates before the political transition ever occurred in 1999, prisoners had collectively begun the process of truth-telling in this building and deemed this act of narrating their own experiences essential to their personal and national liberation. The CAVR as an institution, and more specifically the revitalized Comarca memorial building, was a continuation, rather than the beginning of the truth-telling process that the prisoners themselves had started long ago. Hence, the idea that a hybrid truth commission as an institution or an abstract notion of "government" would possess the building and the truth, must seem out of place to those who were once imprisoned there... To those who once scribbled on the walls there as an act of survival. As one walks through the building today, the small patches of inscriptions made by prisoners in dark corners, unnoticeable edges and uneven areas of wall are each covered with a form of plexiglass for preservation. The building itself has been an archive all along, and this legacy has been dutifully and beautifully preserved.

I initially found it strange but brave the way Francisco, and other prisoners who work there, would smile when they remembered and told a story about what happened in the prison. Until I realized they feel a sense of ownership - of the prison and the stories. There is an uncanny but apparently comforting sense of belonging in this place that had previously defined inclusion by "criminality" and cruelty. Since independence, Francisco, and the other former prisoners, have chosen to come back to it freely. They have adopted it and instead of prisoners, now they are asserting their roles as guardians. To inhabit this space is quite different from being imprisoned by it. Their daily presence there reorganizes the geography of violence. Each time they move it creates new spaces of freedom where once they were confined. This truth commission has created a legacy through words, but this space and the people who inhabit it also physically represent the *Dalan ba Dame*.

I suggest the former political prisoners' tenacious occupation of the CAVR prison's space is not about the security of the building itself or the provision of a job for themselves, but rather, they see themselves as the caretakers of their fellow prisoners' memory. The prison itself is a manuscript which they believe is a statement of truth. An emotional and patriotic truth. In short, these people who bring the CAVR's, and its successor institution, most basic functions alive each day, inhabit a place that at least in its mandate is dedicated to truth and the "*Dalan ba Dame*," rather than violence.

One should not conjure up images of pundits, neat uniforms, plumed hats or changing of the guard for the narrative centers of this institution. With the exception of Francisco, they do not have important titles or decent salaries. Most of them loaf around and go unnoticed for most of the day. They keep watch in a sometimes friendly and sometimes obstinate way. These men and women can be rough and rude. They can be shy or boisterous. They can sneak up behind you or fall asleep on the job. I've seen them beg and insult people. They can also be exceptionally generous and friendly. They sometimes offer you a drink of water or coffee, when they have no obligation to do so. Occasionally one of them reeks of alcohol. If you are a woman, you might

[175] Emma Coupland, *The Balide Comarca Prison: 'A Sacred Building,'* Post-CAVR Technical Secretariat (2008), 10.

expect some under-the-breath lewd comments when they think you are not listening. They are not glorious in stature or decorated by the state to guard the polished obelisk of national memory contained in the CAVR. These are everyday people. They are ordinary and hidden in plain sight. They are proud survivors, and in that way, are extraordinary.

People often mistake the building of the Balide Comarca Prison as the memorial to the CAVR and the emblem of the truth-telling process, but I suggest it is not the place which is the memorial. It is the former prisoners who greet you at the front gate or clean the office who are the living memorials. They stand vigil over their pasts as a way to enact and ensure a new kind of law. They guard their prison as if it were "a sacred building," in the words of one of the former prisoners.[176] This prison turned into the image of a sacred house is one way in which the CAVR has been remembered from within. But the people who "own" this house are in themselves memorials. They are most fitting, although too often they are overlooked.

How do others remember it? What kind of legacy does this institution continue to create in public memory? The post-CAVR Secretariat that was created to disseminate the institution's Final Report and design legacy activities opened a public exhibition at the Comarca Prison memorial in November 2008. Here, the public can tour the premises and visit the public portion of the archives that are housed in a room different from the one where the majority of the CAVR's materials are catalogued. In this room and a public meeting room a series of stand up panels explains the basic content of the Final Report in English and in Tetum. In the same archive room the *tais* with pictures and terse excerpts of selected witness' testimony that I viewed in 2006 still hang from the ceiling. In the corner of this room in 2006 when I first came to the public archives a stack of stones had been piled that were painted and left in memorial to the process, but they have since been removed. Now what separates the public archive area from the memorial exhibition is a chalkboard. On this chalkboard visitors to the CAVR can write their reactions to the exhibit and the institution. It is already full, and there appears no intention to erase it to make more room for new comments. The chalkboard has become a public memorial to the CAVR and yet another place where we can examine the narrative of "*Dalan ba Dame*."

[176] Ibid, 1.



Figure 17 – Chalkboard Memorial in CAVR Archives (Leigh-Ashley Lipscomb)

Prominent figures participated in the making of this memorial and their thoughts about the process – as political leaders, Timorese citizens and victims – are preserved here. Alongside the other messages, José Ramos Horta, the acting President of Timor-Leste and Nobel Peace Prize Laureate wrote in Tetum: "This exhibit has to be out as one road (*dalan*) for us to walk along to reflect."[177] His comments suggest an interpretation of the institution's truth-telling function as one that must create both collective memory and private introspection. He appears to be interested in the revelations of the CAVR: its ability to "out" the truth to a general, unidentified public (*ita*). The other prominent citizen to leave his mark on this memorial is the Commander of the Timorese military, now and during the Resistance, Taur Matan Ruak. He also chose to write in Tetum: "I ask to the People of Timor-Leste that they cannot give a way (*dalan*) for suffering to return and come again!"[178] Ruak's comments demonstrate the effectiveness of the CAVR's ability to communicate suffering. However, Ruak's comments are directed entirely internally to other Timorese. Although the majority of the public aspects of the CAVR's work recorded human rights violations that were portrayed as the result of Indonesia's presence, Ruak's comments hone in on the potential for violence among the Timorese people after so many years of suffering. His words demonstrate his concern that violence only begets violence

[177] "*Exibit ida nee tenki sai hanesan dalan ida ita lao para halo reflexaun." RH.*
[178] *"Husu atu Povu tLeste la bele fo dalan atu terus fila hikas mai dala ida tan!" tMRuak"*

and that Indonesia's removal is not sufficient to guarantee peace. Both men's words appear to interpret CAVR's legacy in terms of its ability to communicate stories that could have a preventative power. There is a noticeable absence in their comments of any of the key words and functions of the CAVR - reconciliation, justice or truth, but they both employ the metaphor of "*dalan*" and focus their comments simply on an aspiration for peace.

Another noticeable aspect of this space is it contains writings in multiple languages – Tetum, English, Japanese, Korean, and Portuguese. There is an international flavor to this monument that belies the hybrid nature of the institution and the way its message has been tailored to create a legacy beyond an audience of victims in Timor-Leste. One international visitor wrote: "It is so important that your story is told. And you have done it with power, strength, courage and beauty. Thank you. Jenny." It is not entirely clear from Jenny's comments to whose story she refers. Is it the story of the CAVR, or the stories of witnesses hanging on the *tais* in the room, or the story of the nation? The obvious answer is she is referring to all of these stories, because the "*Dalan ba Dame*" message equates these three – the institution, the witness and the nation. After an examination of what is accessible as the truth in the archives, and what is not, it appears less certain that any institution could be equally committed to these three things – its own independent truth-telling mandate, the witness and the political demands of a nation. The question is how they are balanced and transformed.

The "*Dalan ba Dame*" message prioritized the goal of creating a place of refuge for all Timorese witnesses - victims and perpetrators. The refuge was the institution, but also in the stories themselves. They defined the power to narrate in terms of a place where safety and protection could be found – the CAVR. The nation needed a place to recover its past. Stories that endangered refuge for members of the Timorese community, particularly prominent members of the community, then have a dangerous power. The CAVR did not seek to prevent these truths from emerging, but it does seem in some instances there was an inclination to keep these truths obscured or at the very least, difficult to access. When they created a road to peace it paved over certain transgressions and certain types of stories, but as one observer commented on this chalkboard, like justice, "Peace is patient." Since the CAVR completed its work in 2005, the final destination of peace has yet to have been reached. The journey along the road continues.

Lessons Learned in the CAVR Archives

As one can see the scope of the CAVR's work was vast. It engaged more types of truth-telling, reconciliation and healing programs than any other truth commission that has existed to date. Although much of this work had been summarized and preserved for posterity in the CAVR's Final Report, the archives offer a much more complete and contested view of the institution's legacy. Through the archives we have a better idea of what happened to the stories given to the CAVR once they were told, and we see a real dissensus, or public dialogue, emerging around the truth commission's activities which would not be as apparent from reading the Final Report or attending the Public Hearings alone.

Yet, many of those stories told to the CAVR remain hidden. The overwhelming majority of testimony given to the CAVR is inaccessible to the public now and to date there have not been proper provisions made to preserve them until the end of the time period that has been

theoretically set to release them. These individual's truths have been melded into the commission's collective "*Dalan ba Dame*" story and we are not likely to ever know how they fit or do not fit into the commission's version of the truth. They are literally and figuratively, locked in a prison cell.

Why? In concert with the Commission's commitment to producing a united story of progress and peace for the future, there seems to be a deep desire to protect the past. This is a past that evokes fear about unleashing the stories that could reveal some of its most ominous and confusing chapters that may undermine some of the heroic myths of the Resistance. Unfettered stories also have the potential of disrupting gendered roles in local communities and in the national "story." In contrast to what we have come to expect from truth commissions' narrative healing powers, the CAVR reveals that some truth commission narratives also have the power to generate exclusions, distrust, disingenuity and overall truths that can be as disturbing to a national polity as they are therapeutic. To unravel the master narrative of the previous oppressive regime, including the narrative of Timorese criminality, it required all the threads to come undone, which can be extremely disorienting and threatening to a new regime. To dislodge Indonesia's narrative legacy completely, ultimately would have to mean dislodging the Timorese Resistance narrative. Truth-telling in its final institutional formats then is a guided exercise that seeks to dislodge certain images of the past, while preserving others.

If we are to return to our overarching theoretical discussion of "seeing like a state" we can see both the processes of *metis* and dissensus at work in this institution. As mentioned above, the CAVR generated a genuine discussion about the meanings of truth, reconciliation and justice through its multitude of activities. In its archives exists a legacy of a complex truth. But, to reach this complexity one must dig deep and work through the "omniscience" of the archive. The public aspects of the truth commission's work as might be seen by the majority of casual observers of the CAVR were less successful in generating dissensus. Rather, they were designed – in line with institutional goals and state-building objectives – to produce consensus as a way of reaching a state of peace through internal reconciliation.

Dissensus exposes a sticky, uncomfortable, messy truth. Following Scott's argument *metis* also counters urges by the state to oversimplify the truth, even for the sake of societal progress. Again, in reaction to the CRPs, the public hearings, and the community profiles, we see *metis* at play in the archives when victims demand to have their story told, when there is criticism of the public leaders, and when communities map the ways they were violated by a multitude of different political entities. *Metis* here is a way of local communities tying themselves to a national story. The CAVR effectively incorporated local traditions and local knowledge in its overall activities. What is not as clear is whether victims were really that dependent on the CAVR for telling the stories. An understanding of *metis* would tell us that local knowledge exists independent of an institution like a truth commission, and at times it is not clear if the CAVR as an institution understood how story-telling was pervasive before and will continue to be pervasive afterwards as an autonomous healing process. Truth-telling is indigenous and will continue to counteract mono-narratives including those of justice, peace and reconciliation, including the CAVR's own "*Dalan ba Dame*" narrative.

Metis is also at play when stories are hidden or transformed by the institution. However, the reasons for the seclusion of these stories do not appear to necessarily be ominous or conspiratorial. This is a past that is treated with reverence as much as fear. In nearly every testimony that has emerged from the CAVR there is a deep sense of respect communicated about the sacrifices made by victims. This is part of the *Dalan ba Dame* message. There appears to be a need on the part of the living to preserve some of the dead's silence. Healing appears to come not in a carnival-esque, theatrical moment of the revelation of truth, but rather in the soft, quiet perseverance of survivors that precedes and outlives the truth commission itself.

In conclusion, I suggest that dissensus is created out of theatre and thus can be temporary, but *metis* is lasting. *Metis* is a deeper kind of intellectual diversity that can transcend generations. Truth-telling as a form of justice is likely to be interpreted by local constituents as a battle that requires diversion and sacrifice, like independence. Accordingly, justice is more likely to be pursued and achieved by narrative centers in what may seem like indirect, nefarious and opaque ways over a long trajectory. Narrative centers may use the open theatre that gives birth to dissensus but they are likely to also use illegibility – hidden memorials – to guide the process of justice to their individually perceived and desired destinations. In the case of the CAVR, the institution has mostly benefitted from the narrative centers such as Francisco and the former prisoners who operate within the traditions of *metis* to protect illegibility as well as to promote the theatre of dissensus. However, there are sacrifices in the depth of truth that can be obtained whenever there is this dual urge within *metis* to reveal and conceal the past directly under the state's gaze.

Chapter 6. The [in]Conclusive Truth: The Voice of Two Nations

The audience was in an uproar. There were cheers and whistles from the rows in front of me where a group of old men with good posture and weathered faces were listening to retired Indonesian General Kiki Syahnakri's testimony at this final Public Hearing of the Commission of Truth and Friendship. On the right-hand side of this hotel's ballroom was another group of supporters who showed more reserve by simply clapping. Syahnakri was a truth commission witness and he had just declared that mass rape never happened in East Timor because it was against Indonesian soldiers' religion.

I watched carefully as this small legion of Indonesian military supporters rallied amidst luxury hotel splendor and a reserved, polite group of commissioners participated in this unusual kind of truth commission. I wondered: what kind of productive legacy could come out of this? In defiance of what is generally expected of truth commission rhetoric – that is confessions and apologies – this witness exclusively spoke in denial and was an affront to the dignity of every Timorese victim, but particularly women. And he was being applauded for it! He was the last of a long string of perpetrators who gave similar unrestrained performances. The Commission of Truth and Friendship between Indonesia and Timor-Leste appeared to be to be a perpetrator-centered truth commission, in stark contrast to the efforts made by the CAVR and many other truth commissions around the world to act victim-centered. The spectacle that was unfolding seemed like the anti-truth commission.

The CTF throughout its process was out of line with public expectations for its work, but it is precisely because it exercised a unique approach to truth-telling that it is important to examine it as a brief case study of how the narratives of justice in Timor-Leste, and consequently Indonesia, developed over time. What has happened to the stories told by the two nations about each other? Through the public archival records of the CTF's Public Hearings and their Final Report we will touch upon some of the areas where the two nations have chosen a form of official narrative closure, and other areas where they decided to leave their work incomplete.

Institutional Background and Structure

As the CAVR's work was nearing completion, the governments of Indonesia and East Timor together created the bilateral Commission of Truth and Friendship (CTF) in 2005 through a negotiated diplomatic agreement. The mandate of the Commission was granted by the authority of the presidents of the two countries at the time of its establishment - Xanana Gusmão of Timor-Leste and Susilo Bambang Yudhoyono of Indonesia. The Commission's members were appointed by the two Presidents and consisted of political elites from both countries representing, on the view of the two governments, civil society, victims' groups, the Foreign Ministries, the legal community and the militaries. The Timorese delegation to the CTF contained a number of former CAVR Commissioners and local staff. All functions of the Commission were bilateral meaning that there were an equal number of Timorese and Indonesians appointed not only at the Commissioner level, but also for the substantive staff positions. The exception to the even split between responsibilities was in funding. Both countries contributed to the budget but Indonesia's Foreign Ministry paid for the vast majority of the Commission's work. Accordingly, the Commission based its headquarters in Bali, Indonesia where it was housed within a government

compound donated by the Balinese local government, and functioned with a small satellite office in Dili that was housed in the Balide prison memorial that continued to be the base for the legacy institution of the CAVR. Over a period of more than two years, this truth commission reviewed the work of all the previous transitional justice mechanisms in both countries and conducted its own truth-seeking process. Its work was completed in July 2008 when the Commission formally presented their Final Report to the Presidents of both countries, and each President on behalf of their country accepted the Commission's findings without exception and publically expressed regret[179] for the human rights committed in 1999.

From a theoretical perspective the Commission was meant to be a mechanism to normalize and deepen diplomatic relations based on a mutual acceptance of facts about human rights violations. For Indonesia and Timor-Leste the Commission's work would form a platform for what conflict resolution specialists call a "positive peace" in contrast to a "negative" peace that is upheld primarily by the terms of peace agreements and on-the-ground peacekeepers.[180] A sustainable peace was the modeled goal. Through the mechanism of this truth commission "positive peace" would be established on the basis of the Commission's establishment of 1) an agreed upon "conclusive truth" about human rights violations in 1999; 2) recommendations for institutional responsibility for those human rights violations; and 3) recommendations for healing, which was interpreted by the Commission as recommendations for collective reparations. Thus, the commission's goal and structure emphasized a truth commission's truth-telling, or historical, function and gave nod to the usual truth commission assumption that the establishment of an accepted, shared narrative could lead to the benefit of "healing" on a collective level.

The Commission possessed a full range of truth-telling powers. Its strongest inquiry or truth-telling power was its access to the records of all of the previous transitional justice mechanisms[181] that would allow it to conduct a thorough Document Review of KPP-HAM, the Jakarta Ad-Hoc Trials, the Special Panels, SCU and the CAVR. Truth-telling mechanisms also included statement taking from victims and perpetrators in Indonesia (primarily West Timor) and East Timor. Public Hearings were the most conspicuous part of the Commission's truth-telling mandate. In this series of six public hearings held in different locations in Indonesia and one in Timor-Leste, prominent figures implicated in the violence of 1999 and some victims made timed statements before the panel of Commissioners with a limited question and answer session. As in the case of the CAVR Public Hearings, there was no opening of questions to the floor or direct confrontations between victims and their specific perpetrators. Only Commissioners could ask questions and this was conducted in a bilateral fashion so that each country's delegation took turns posing questions. In addition to Public Hearings, the Commission also held a limited number of Closed Hearings for witnesses who requested privacy or for those whom the Commission believed could be endangered by the provision of public testimony. Expert and voluntary submissions were also collected within the inquiry process. In order to enhance its

[179] There is controversy over whether the statements issued by the two countries can qualify as apologies. Formally, each government accepted the statements as apologies but some journalists and civil society members continue to debate this issue. See Sahil K. Mahtani, "SBY's Timorese Triumph," *Far Eastern Economic Review,* 21 July 2008, http://testfeer.wsj-asia.com/international-relations/2008/july/ sbys-timorese-triumph (accessed 17 November 2011).
[180] See Johan Galtung, "Violence, Peace and Peace Research," *Journal of Peace Research* 6, no. 3 (1969): 167-191
[181] There is an exception here. Because the UN refused to cooperate with the Commission, the CTF was not given access to any documents held by the UN, including information produced by two inquiries, the first conducted in 1999, and the second in 2005, known as the Commission of Experts.

ability to extract the truth, like most truth commissions, it was granted the power to recommend amnesties and legal rehabilitation, meaning the ability to call for the review of judicial cases that the Commission believed falsely accused individuals. However, in its Final Report, the Commission chose to not grant any recommendations for amnesties or rehabilitations. Compared to the CAVR, the CTF had fewer venues to express its truth-telling powers, but it had more robust powers because it could draw on previous institutions and cross borders. Meanwhile, truth-telling operated under the usual constraints of a non-judicial process that could not subpoena witnesses or evidence, or give punitive sanctions to institutions or individuals who were uncooperative. Furthermore, the Commission's mandate narrowed the scope of the truth by allowing it to only consider human rights abuses committed in 1999 and by prohibiting the use of names of perpetrators or a discussion of individual responsibility.[182]

In addition to the function and objective of truth-telling, the other objectives of the Commission were prevention and healing. Both of these objectives were presumed to be met through the Commission's ability to tell the truth and make recommendations. Recommendations about institutional responsibility and prevention were formulated primarily based on the analysis of the truth-seeking activities. Healing recommendations were formulated from workshops and consultations with civil society groups, recommendations by representatives of communities in the border areas, expert opinions and consultations with the political leadership of both countries. The Commission's mandate prohibited it from recommending prosecutions or interfering in the legal processes in either country. There was no guarantee that recommendations would be followed, so the only autonomous function of the commission was truth-telling. Indeed, there were no other complementary programs pursued by this Commission in addition to the truth-telling function: there were no victim healing programs, no ongoing reparations or memorials, no local reconciliation events and virtually no outreach. The brunt of its purpose was to produce an official "conclusive" truth, which in itself implies a narrative truth.

Narrative Expectations

The Commission of Truth and Friendship was the world's first bilateral truth commission, meaning that it was sponsored and administered by two sovereign nations as opposed to being an internal state affair, a United Nation's initiative or a hybrid of these two. As a new breed of truth commission, we must consider how expectations of it differed compared to more traditional mechanisms like the CAVR.

From its start public expectations for this truth commission were low. It was by far the most controversial mechanism within the transitional justice schema in Timor-Leste. It was denounced by local and international human rights activists as a sham at its inception and throughout its process. They portrayed it as a guise to hide back-door agreements and political trade-offs between the elite political leaders in both nations to end all efforts at accountability. Some talked about it within the common transitional justice discourse of truth vs. justice, where truth

[182] The CAVR's mandate did not make this prohibition, but it also chose to not name perpetrators in the text of its Final Report and discouraged witnesses from including names in public testimony. The unexplained exception to this policy is the list of Indonesian military perpetrator names that appears in its Final Report.

essentially buys out justice. Others claimed there was neither truth nor justice.[183] The United Nations took this stance, ironically since it sponsored the CAVR that effectively exchanged truth for justice for many Timorese perpetrators. The UN refused to participate in the process. It also barred some of its employees from participating as private individuals. These criticisms of the Commission initially may have been justified because its mandate contained specific prohibitions against recommendations for prosecution, and enabled it to recommend both amnesty and rehabilitation for perpetrators. Since neither the Timorese nor Indonesian leadership demonstrated any political will to follow through on the arrest warrants issued by the Special Panels for senior members of the Indonesian military, the fear was the Commission for Truth and Friendship would amnesty or clear the name of those most responsible for grave human rights violations in East Timor in 1999.

After the Commission began, it undertook few public outreach programs and displayed little transparency which only contributed to its reputation as a corrupt, disingenuous truth commission. It also failed to complete its work within the original allotted timeframe which sparked critiques of inefficiency and nepotism. In short, the Commission for Truth and Friendship had the potential to undo all the work that had supposedly been achieved by the other trials and truth commissions towards peace, justice and reconciliation and at high dollar for two developing nations. Scenes such as I described at the Public Hearings only further encouraged the public to expect a narrative of lies rather than truth.

In other words, the CTF did not strike the chords of legitimacy for the international community or Timorese and Indonesian civil society. First, it looks like we do not expect truth commissions that engage former enemy nations– as opposed to individuals - to be able to produce a popularly accepted truth. This assumption is somewhat counter-intuitive since truth commission tropes project healing collectively. It is not entirely clear why at its initial inception truth could not also be perceived as broadly collective across national borders as it has been thus far assumed to be within national borders. Whereas categories of perpetrator and victim have often been collapsed into a single concept of survivors in national truth commissions, it appears this consolidation was not going to be easily accepted if applied to the two nations. Legitimacy in the minds of much of the protesting populace – including the United Nations - still seemed to depend on an identification of a perpetrator and a victim nation, in a way that was often present in both the SCU's and the CAVR's narratives. Nations, it seems, were expected to be either enemies or friends, but not "survivors." This distrust towards the CTF may also reflect what we have come to know about the politicization of truth commissions. Much of the truth commission literature demonstrates the ways national politics can dominate the truth process, even at the expense of certain categories of victims, including our discussion of the CAVR. If single nation truth commissions are heavily politicized, than the presence of two nations' interests in one commission may have appeared to double the risk of politics over-riding the pursuits of truth and justice.

[183] For example, see Timor-Leste National Alliance for International Tribunal (ANTI), " An Open Letter in Response to the CTF Report," 15 July 2008, www.etan.or/news /2008/07anti.htm; TAPOL, "Burying the Past in Impunity: Backgrounder on the Indonesia/Timor-Leste Commission of Truth and Friendship, at tapol.gn.apc.org/reports/ctfbackgrnd.html, accessed 17 November 2011; Hirst, *Too Much Friendship*.

Second, it appears that the international community as represented by the United Nations and international NGOs had come to expect transitional justice processes should be internationalized in order to be legitimate. At least in the case of Timor-Leste, hybridity had come to be expected. When the two nations declined the UN's offer for assistance, it appears the organization assumed the worst instead of applauding the two nations for taking peacemaking into their own hands. Since the UN created the other two main transitional justice mechanisms in Timor-Leste (the SCU/Special Panels and the CAVR) and governed the country for over two years, a sense of ownership over the justice process appears to have emerged. When the two nations established their own truth commission, the UN and much of the Timorese populace interpreted this act to mean that the Commission intended to act completely independent of international standards of justice and defy the international community as opposed to interpreting the Commission as the nations' right to exercise sovereignty and establish justice in terms that they saw legitimate.

These concerns about internationalization may have also been fueled by the persistent lobbying by civil society groups in Timor-Leste for an international tribunal. With the two nations' independent establishment of a truth commission, civil society groups perceived a turn away from another international judicial justice process. However, what is misleading about this interpretation is that the establishment of an international tribunal is a decision that ultimately rests with the UN – not the two countries – and the UN itself had long foregone the establishment of another international tribunal before the CTF ever came into existence. Nonetheless, the perception in this Timorese context appears to have been that a formal international presence in a transitional justice process confers greater legitimacy.

Another element of legitimacy is transparency. Here, the CTF failed astoundingly. Although there were a handful of public relations initiatives – almost exclusively in Indonesia – the Commission and the leaders who created it made relatively few efforts to consult or explain to the populace the role of the Commission in the transitional justice system as a whole, or to update them on their ongoing work. In comparison the CAVR's outreach program had been a well-oiled promotional machine that incorporated national, regional and village-level campaigns in a variety of audio-visual mediums. The populace of Timor-Leste and the international community had come to expect a more public truth commission process. The hushed diplomacy that characterized much of the truth commission's work did not confer credibility.

Confronted with these expectations of failure, I had to wonder what motivated the CTF Commissioners to accept a role on the Commission. Among them were the Timorese truth Commissioners who were victims themselves and had formerly served as the leadership of the CAVR, such as Jacinto Alves, Aniceto Gutteres (a winner of the prestigious Magsaysay International Human Rights award given by the Philippines), and Olandina Caiero (a well-known women's rights activist). For Indonesia, I was curious to know what drove Syamsiah Achmad (a seasoned Islamic women's rights activist who served with the UNIFEM for a number of years) and Antonius Sujata, an esteemed and highly professional jurist who reportedly in the past had served on a prosecution team to adjudicate a case against Suharto for corruption. Additionally, among the Timorese appointed staff were a number of human rights activists who had worked for the CAVR. One Indonesian commissioner, a Professor from Gadjah Mada University respected by the Timorese delegation, resigned early in the life of the Commission in protest to

its politicization. Although this resignation was kept quiet, it did not bode well for the moral or political credibility of the Commission.

Whatever the public expectations were, there were those on the Commission from both delegations who held tightly to some private hopes. I was not able to understand all of these personal aspirations by working for the Commission, but one Commissiner, Francisco, was willing to speak with me about it and go on public record. It is in response to my question of what he or she personally expected to get out of the CTF that I first came to hear the words that would be repeated to me on a number of occasions. Because it became somewhat of a mantra in my observations, I think it bears repeating in its proper context here. Francisco said: "I work for this Commission of Truth and Friendship with Indonesia now, and I've said I will work with you to find a peaceful way for our countries to work together. I may have to make compromises on recommendations, or on procedural issues. But, I will have the truth! I will not compromise on the truth. Our story will be told. This is my Life."

Francisco's words highlight an aspect of the CTF that was often overlooked in assessments of its potential. No doubt it was a gamble, but the Commission allowed Timorese victims, such as Francisco, to confront the highest echelons of power of the country that once imprisoned them (literally in the case of Francisco and some of the other commissioners) and make them listen to their story. The Timorese commissioners and staff were now put in the position to write a piece of *Indonesia*'s history, or if they did not agree, veto it. The tables had turned. This position of narrative power does seem enticing and in line with what we generally intend for truth commissions to do, that is provide narrative, or poetic, justice. All the classic benefits of a truth commission – creating a space for conflict to be solved by words instead of violence and an opportunity for victims to be heard - were there. However, these benefits were going to be distributed narrowly and invisibly, mostly to the Timorese Commissioners and staff. I came to understand that many of them did not see their work at CTF as separate from their work at CAVR, but rather a continuation. It may well have been the next step for them: it was a chance to garner a confession from the nation of Indonesia. It was an opportunity for the validation of and improvement on their previous work as activists for the truth commission and as former members of the Resistance.

As for Indonesian Commissioners, this was the first truth commission, with the exception of KPP-HAM, to move forward substantially in Indonesia.[184] Its ability to sustain itself throughout its mandate was due in large part because it had direct political backing from the President. It stood in contrast to the truth commission established to investigate the crimes that occurred in Indonesia from 1965-1966, which never completed its work. Through the CTF, there was a chance for Indonesian Commissioners to contribute to the reform agenda in Indonesia, since the CTF's report would be the first substantive historical revisionist narrative to be underwritten by the state in post-Suharto Indonesia. They too could play a part in writing a new kind of history – one that validated *Reformasi*. One Indonesian staff member shared with me his frustrations over what he felt was the Timorese delegation's inability to accept that Indonesian perspectives on the truth were as credible as theirs. He shared, "I was imprisoned by Suharto for my political beliefs

[184] A truth commission about the killings in 1966 was never completed and a truth commission in Aceh mandated by the Helsinki Peace Agreement has not yet moved past the consultation phase.

too! For more than seven months! Timorese were not the only victims of Indonesia's past. They need to see that we have also been victims and can write the truth from that perspective too!"

The retired senior Indonesian diplomat on the Commission, Wisber Loeis, stressed his goal of writing a credible report. The retired three-star General on the Commission, Agus Widjojo, repeatedly echoed a similar sentiment and insisted that the report must take an academic, or scientific approach, so that the conclusions that were reached could be clearly traced back to facts. These two Commissioners wanted something they could stand behind that was not propelled by nationalistic myth or pure propaganda: they wanted a kind of history that exceeded expectations and could be defended as an objective truth.

The Timorese delegation's assessment of the truth appears to have placed high value on a moral and subjective truth, while the Indonesian commissioners expressed a desire for something closer to a forensic style of truth. What is important to note here is that the Commission was comprised of individuals who held genuine personal convictions about truth-telling, in addition to whatever political interests or fiscal motivations they may have brought to the table. Of course, a credible scientific approach to truth would help regain Indonesia's international reputation that had been damaged by its unwillingness to hold its military accountable, and a moral, subjective truth would help increase Timor-Leste's bargaining power for economic cooperation and other forms of settlement as well as continue Xanana Gusmão's and José Ramos Horta's public agenda of intra-Timorese reconciliation. It is hard to define where these truth commissioners' national commitments and private interests began and ended. However, key individuals on the Commission in both delegations appeared to have had personal stakes in reversing the public's expectations of failure, and producing an account of truth-telling that would be accepted by both nations.

These two differing views of the truth – subjective and objective - had to be balanced and combined in order for the Commission to reach consensus to produce the Final Report. In this regard the Commission knew that it would have to find a narrative that could incorporate multiple meanings. It is doubtful that the Commission ever expected to agree on the kind of black- and-white version of the truth that civil society and some victims were preparing to denounce. Commissioners on both sides appear to have expected from the beginning that they would wrangle for their ideals of truth. Public expectations of the Commission perhaps focused on old versions of national stories that had been part of SCU and CAVR narratives and did not account for the progress made towards *Reformasi* in Indonesia, or the personal investment some of the Commissioners on both sides had in writing a new narrative that replaced particular Suharto-era practices and tropes.

Distinct Aspects of CTF within the East Timor Transitional Justice Scheme

As referenced earlier the CTF was different from the previous transitional justice mechanisms not just because it was bilateral but also because it was not heavily internationalized[185] and had

[185] By not internationalized I mean the Commission did not derive its authority from an international mandate or permanently employ any internationals or allow any internationals decision-making powers. During the final year of the Commission's work, three international advisors, one international staff member (myself) and three international

the firm political support of both countries' executive political leadership. It also had a unique truth-telling power: the power to incorporate all the previous transitional justice mechanisms' truth-telling research into its own. All of these factors added up to greater access to high level perpetrators than any of the other previous transitional justice bodies. The CTF chose to emphasize its ability to incorporate these perpetrators into its truth inquiry, and accordingly the process was marketed and perceived as perpetrator rather than victim-centered.

In many ways the appearances of a perpetrator-centered process proved to be true. Far more perpetrators were interviewed in statement taking, private sessions and public hearings by the Commission than victims.[186] They were allowed to speak without any threat of prosecution even though a number of them had been indicted by the Serious Crimes Unit. The Commission seemed to place a high value on a trial-like scenario of fact-finding where the accused have a chance to respond to the allegations against them. However, what was not publically seen was the number of victims whose statements factored into the Commission's consideration of the facts through the document review. The extensive evidence gathered from victims by the SCU, KPP-HAM and the pre-trial investigations for the Jakarta Ad-Hoc Human Rights cases, as well as the public portions of the CAVR archives were weighed against the evidence provided in the public forums by perpetrators. In terms of numbers this meant that thousands of victims' stories were presented to the commission in comparison to several hundred perpetrator accounts. For the sake of confidentiality, victim and other witness names from SCU and other legal investigations were all redacted before they reached the CTF, so this group of victims' stories was for the most part invisible in the proceedings and anonymous. As we observed with the SCU, although a process may appear to be perpetrator centered, only in the archives of evidence that the commission considered privately before its Final Report was released can one find the voices that exert the most influence over the outcomes of the truth. However, because the inclusion of these selective, elite and often combative perpetrator testimonies in the public aspects of the Commission's work contradicted the large numbers of victim statements collected in the confidential part of the Commission's work, it meant that the Commission placed itself in a position of having to choose among truths and make a judgment. Judgment, then, became a primary aspect of the truth-telling function, even though truth commissions' historical and truth-telling functions are often more conventionally described in terms of validating and healing.

Judgment is an action usually attributed to trials rather than truth commissions, but the Commission's distinct characteristics ultimately placed itself in the position of having to judge between perpetrator and victim truths to construct a single narrative, rather than validating all witness testimony in an effort to heal. This does not mean there were pronouncements or even suggestions of individual guilt, such as the CAVR's list of Indonesian military officials. Judgments were made exclusively about institutions, and the credibility of certain testimonies. Below we will consider how the Commission handled Kiki Syahnakri's Public Testimony in order to see how it took perpetrator-centered testimony and interpreted its truth. Through this case we will assess the archived legacy of the Commission of Truth and Friendship.

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part-time translators were employed as independent contractors but none of these contracts were made on a permanent basis.

[186] CTF Final Report, 139 and 335-341.

The Archived Legacy

In comparison to the other transitional justice processes, the CTF's archived legacy is the smallest. Only the incomplete transcripts of the Public Hearings and the Final Report itself are accessible now.[187] These access policies limit our understanding, however these modest archives can still allow us to glimpse key moments of the Commission at work. For example, when it tried to inspire healing; when it chose to make judgments; and when it chose to leave ambiguities in its final narrative. The topic of rape that became highlighted in Syahnakri's testimony is one example of where the Commission tried to make some of its more conclusive findings and where we can observe some of this truth commission's narrative dynamics.

First, we will put General Syahnakri's testimony about rape in its context. Syahnakri was one of many TNI representatives to testify before the Commission. His testimony was considered particularly crucial because he was the military commander in charge of the post-referendum period of martial law after 7 September 1999. A large proportion of the human rights abuses committed in 1999 occurred in this time frame and he was the highest formal military authority in charge on the ground in East Timor at that time. In addition, Syahnakri prior to this post in East Timor in 1999 had served as Assistant of Operations (Asops) at TNI headquarters where he allegedly participated in meetings to supply funding, arms and moral support to Timorese militia groups. He held a position that would grant him privileged information about the Indonesian military's role in both the commission and prevention of human rights abuses. Therefore, he had the capacity to provide the CTF with unique and valuable information. It also gave him a chance to respond to the legal accusations made against him, although Syahnakri specifically stated that his attendance and provision of information was not to "defend himself and our institution."[188] He eschewed what he referred to as subjective and emotional truths, and instead presented testimony delivered in a quasi-academic style, citing psychology and sociology literature and articles from reputable newspapers. He also spoke with tact and Javanese smoothness during most of his testimony, for example when he elegantly praised the high aims of truth and friendship. Yet, he was incensed rather than cool when he delivered the testimony about rape.

The topic of sexual violations had been a thematic interest of the Commission's, which sprang from its initial investigations into the KPP-HAM priority cases that included rape and a large number of alleged rapes in refugee camps in West Timor. Syahnakri's inclusion of a statement about rape was in direct response to an earlier expert witness who testified before the Commission, Indonesian human rights activist Galuh Wandita, who provided testimony about research conducted by the CAVR and other organizations into sexual violence in 1999, including those priority cases. In Indonesia and Timor-Leste, Wandita is seen as an authority on this subject based on her many years in the field as an advocate for women's rights. She is also the daughter of one of Indonesia's most esteemed diplomats. Perhaps her presumed credibility within Indonesia is why Syahnakri singled out her testimony by name to discredit, even though there was another witness at a Public Hearing who vividly corroborated Wandita's testimony.

[187] They can be accessed through Indonesia's National Archives, but in East Timor these files have not been designated a home yet. They are currently held at the Ministry of Foreign Affairs and are not part of an archived collection.

[188] "*Tidak bermaksud melakukan 'pembelaan diri dan institusi kami' secara subjecktif, apalagi emosional belaka*." Submission of Kiki Syahnakri to the Public Hearing, 24 October 2007, 1.

In order to be accurate in analysis we must consider Syahnakri's exact statement as recorded in the archives. The archival record matches my notes from observing this hearing. Syahnakri stated the following:

> "The experience of the journalist above strengthens my counter-argument that the statement of Ms. Galuh Wandita in the CTF's hearing previously that said 'already/in the past there had occurred mass rape in East Timor,' that is made more from 'imagined reality' or 'a bunch of stories' that are constructed in the style of the Western media or by the groups that want the victory of their struggle's agenda. Probably there were one or two rapes (that until now have not been proven), but it cannot be generalized [from those] as if it occurred on a massive scale. In connection with that I have to explain that Indonesian soldiers are not free from the religious context that shapes this [situation], moreover it is very much limiting. For example, before just parachute jumping soldiers that have not yet performed sholat[189] will even pray for protection, much less in a war situation or real chaos. They will avoid it or think with their hearts and souls so they will not commit an anti-religious or anti-moral act. In summary: the issue of mass rape is nothing more than rumor that has no basis and because of that has become "cheap gossip."[190]

Rape is described here as a politicized narrative of the Resistance movement or the Western mass media and not indigenous to Indonesia. Only one to two rapes in a conflict situation would be, for him, a conceivable amount. He seems to be suggesting here that rape is not a common military tool of conflict. Although he cites many scholars in his testimony, he does not address the broad array of research that would support Wandita's research and journalists' interests. This field of research illustrates the presence of rape as a strategy and consequence of armed conflicts all over the world.[191] His testimony would have perhaps seemed more plausible if he had approached it from the perspective that rape on a large scale usually occurs in conflict situations, but in East Timor that was not the case because of particular actions taken by the military. In some ways he tries to argue such an exception by citing religion. However, religion is an aspect of every culture and rape is forbidden by all the world's major religions but that has not prohibited such acts in the past. He goes even farther by saying that especially in conflict or

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[189] Ritual Islamic prayers.

[190] "*Pengalaman wartawan di atas sekaligus memperkuat kontra-argumen saya bahwa pernyataan Sdr. Galuh Wandita dalam sidang KKP beberapa waktu lalu bahwa 'pernah/telah terjadi perkosaan massal di Timor timur', itu lebih merupakan 'realitas imajiner' alias 'cerita karangan' yang dikonstruksi secara tendensius oleh media Barat atau oleh pihak-pihak yang ingin memenangkan agenda perjuangan mereka. Mungkin saja terjadi satu-dua perkosaaan (yang hingga kini tidak terbukti), tapi tidak boleh digeneralasi seolah terjadi secara massif. Dalam kaitan itu saya perlu tegaskan bahwa prajurit Indonesia tidak lepas dari konteks religiusitas yang membentuknya, meskipun sangat terbatas. Misalnya, sebelum terjun payung saja para prajurit yang tidak pernah sholat sekalipun akan berdoa mohon keselamatan, apalagi dalam situasi perang atau chaos yang sesungguhnya. Mereka akan menghindari atau berpikir dengan 'hati dan nalar' untuk tidak melakukan tindakan yang anti-religius atau anti-moral. Kesimpulan: isu perkosaan massal tidak lebih dari rumor yang tidak berdasar dan karena itu menjadi 'gosip murahan.'*"

[191] For example see the key article by Catherine A. MacKinnon, "Rape, Genocide and Women's Human Rights," *Harvard Women's Law Journal* 17 (1994). Perhaps one of the "stories" referred to regarding rape was one that appeared in the New York Times in 2001. See Seth Mydans, "Sexual Violence as Tool of War: Pattern Emerging in East Timor," *New York Times*, 1 March 2001.

chaos situations Indonesian soldiers are not capable of committing rape, as opposed to concluding that pressures from conflict might push some soldiers to act in a way they would not during peacetime. Syahnakri also fails to acknowledge that not all Indonesian soldiers practice Islam, or the fact that there are always variances in devoutness across any population of religious practioners. Later in his testimony he states that Indonesian soldiers did not fail to prevent, by omission, any human rights abuses, which can be interpreted to include rape.[192] But, his narrative is not really about the likelihood of mass rape in the context of war, but rather it is about Indonesian soldiers as moral agents. Although he stated he is not interested in defending his "institution," on close reading it appears he is trying to defend Indonesian soldiers as a group. In the end his statement comes across as an honor narrative, where the issue at stake for him is the reputation of Indonesian soldiers, as opposed to a debate about the truth of rape. The dignity of alleged perpetrators as members of a national institution, rather than victims, is at stake for him. He nationalizes rape.

Clearly Syahnakri is not aware of, or failed to acknowledge, that four women's rapes had already been successfully prosecuted by the Special Panels in Dili. One of the men found guilty was a Timorese militia leader who acted with a Javanese TNI officer, in criminal acts that included rape, abduction, torture and forcibly injecting one of the victims with a form of birth control.[193] This TNI officer was never adjudicated because he was out of jurisdiction in Indonesia. A Timorese TNI soldier was convicted of a rape that occurred in Dili while Syahnakri was martial law commander. He was sentenced to four years for the crime.[194] The Commission had already been briefed about some of these cases and many others in the Document Review through the Expert Advisor's Report[195] and therefore, Syahnakri's public testimony from the start must have sounded weak in comparison to the unseen work of the truth commission in the Document Review that considered a number of legally documented rape cases. While Syahnakri sought to discredit Wandita's specific testimony, he was in fact in need of refuting the testimony of dozens of victims and witnesses whose stories the Commission had examined.

However, as distasteful as Syanakrie's testimony may have seemed to people like me in the audience who approached his statements from the perspective of the CAVR and SCU, his testimony raised some valid issues for the Commission to consider in their ongoing investigation of rape as a crime against humanity. First, he made a distinction between the acts of rape and mass rape. He did not define what he meant by "mass" rape, meaning whether a large number of women were raped at once or a significant number of women were raped during the course of the violence in 1999. He seemed to be trying to make a distinction between acts of rape and rape as a crime against humanity. Indeed, there are differences because mass rape, if it qualifies as a crime against humanity, must not only be committed against multiple women, it must be committed with the knowledge of the perpetrator that it is part of a larger on-going attack. Syahnakri perceptively sought to draw the Commission and public's attention to the difference between systematic or widespread rape and individual acts of rape that are disconnected from armed

[192] Testimony transcript, 6.
[193] See Case #4/2001c, The Prosecutor v. Jose Cardoso, Judgment. The Indonesian officer indicted in this case was. Lt. Bambang Indra. See Case #4/2001, The Prosecutor v. Lt. Bambang Indra and Francisco Noronha, Indictment.
[194] See Case #14/2001, The Prosecutor v. Francisco Soares, Judgment.
[195] See David Cohen, Aviva Nababan and Leigh-Ashley Lipscomb, *Seeking Truth and Responsibility: Expert Advisor Report to the CTF*, 17, 37-38, 167, 221-223, 317-345 ; David Cohen and Leigh-Ashley Lipscomb, *Seeking Truth and Responsibility: Expert Advisor Report to the CTF: Part II,* 10-12; 39-59, 92, 128, 140.

conflict. He was also correct to point the Commission's awareness to the fact that journalists' and other reports about East Timor could have exaggerated the numbers of incidents that occurred in 1999. This scenario is a genuine possibility which needed to be considered given the history of mutual manipulation of numbers and media by both sides of the conflict. The Clandestine movement used stories to pursue and win their political objectives, as did Indonesia. Even the pro-autonomy militia used tales of rape to pursue their objectives and to highlight what they perceived as their heroism. At the CTF's Public Hearing in Dili a month earlier, Joni Marques, a key militia leader in the conflict in 1999 who was found guilty and imprisoned for a massacre of a group of clergy in Los Palos among other crimes, testified that he had saved a group of 100 women from being raped by the TNI. His comments were known to have been untrue according to multiple investigations of events in the location at the times he described, but this did not prevent him from taking the public stage to try to regain some societal respect by using a story of rape. Syahnakri correctly warned against the political manipulation of stories of rape.

Syahnakri suggested one or two rapes could have happened within the context of the violence, but that Indonesian soldiers are incapable of committing rape due to their religious upbringing. Here he challenged the Commission to put the truth about human rights abuses in a religious and cultural context, as opposed to focusing on politicized claims about what Indonesian soldiers did. Rather than cold-hearted perpetrators, he presented Indonesian soldiers as moral actors, not unlike the way many truth commissions have aimed to avoid the label of perpetrator. Yet, sexual violence, honor and heroism are in an uncomfortable proximity in these stories, which gave the Commission good reasons to scrutinize testimonies of rape. Syahnakri raised another issue that is often not discussed by theorists of truth commissions, which is, just because a story is told in public, does it mean it is true?

In relation to this question, there was another witness whose testimony was publically tested before the Commission about rape, whom Syahnakri specifically ignored. Like him she was applauded, but unlike him she was questioned intensely. Syahnakri would have no doubt been aware of her testimony because she testified the same day in the same forum as Wandita. His testimonial debate about rape was detached from the only victim of rape who came before the commission – Esmeralda dos Santos.

Esmeralda was one of the two Timorese women to participate in the CTF's Public Hearings. She was approached by the CTF Commissioners because she had previously testified publically to the CAVR.[196] Her story was already known in Timor-Leste, but as the Commissioners allegedly told her, her story was not yet known in Indonesia. Esmeralda is a young woman from Covalima District who had never left the area of her village before she was forcibly moved and deported to Indonesia in September 1999 as a result of the post-referendum violence. She testified about how she was repeatedly raped by a militia member, as well as testified about rapes she witnessed or heard about from other women who were illegally detained with her at a school building after the mass killing at Suai Church. She eventually fled from West Timor to escape her attacker because he continually beat and raped her, even after she became pregnant with his child. She said she fled to save her unborn child. Esmeralda gave eyewitness testimony about TNI soldiers who

[196] See Esmeralda's photograph and public statement in the CAVR booklet, *Rona Ami Nia Lia*. No page numbers in the publication.

watched and knew about the rapes but failed to take any actions to stop or prevent them. Her story depicts the way rape was used as a weapon during the conflict against civilian women with the Indonesian military's knowledge and tacit approval. She travelled to Jakarta to testify so that in her words, "What I experienced, my children must not."[197] Her narrative then, in contrast to Syahnakri's institutional and cultural defense, is one of prevention. Through her testimony it appears she speaks not to heal herself, but to prevent the rape of others in the future.

The environment she testified in shifted between supportive and inquisitorial. Initially the female members from both delegations of the Commission asked for clarifications that appeared simple and straight-forward. They asked her how many women were raped, by whom and who transported her to West Timor. She was asked if one man raped her throughout her period of transfer and stay in West Timor, or if there were others. She was asked to identify her perpetrator by the Indonesian female Commissioner, Syamsiah Achmad. Since she had already identified the perpetrator by his institution in an earlier question, this gave Esmeralda the opportunity to identify him by name, which she did promptly. Since perpetrator names were not to be part of the CTF's Final Report and individual responsibility was not allowed to be considered by the Commission according to its mandate, this moment of naming the perpetrator is significant. It is also significant because the CAVR encouraged their witnesses in Public Testimony to refrain from using names. It appears that Esmeralda and the Commissioner who asked the question saw an opportunity to include a name in the historical narrative and for a victim to make a public accusation that was narratively empowering. At the behest of an Indonesian Commissioner, his name is now part of the permanent historical record.

The next line of questioning by a female Timorese Commissioner asked her about who tried to prevent the rapes and sought to confirm in a public forum what Esmeralda had already said: Indonesian soldiers and police were present at the time of the rapes, were informed about them by the women and specifically declined to help them. All of these questions were meant to elicit confirmations of the testimony Esmeralda had already delivered. Then, an Indonesian Commissioner's question began to change the tide of the hearing. He asked her if she had heard about other women being raped in other parts of East Timor, to which she plainly replied no. At this point in the hearing the atmosphere changed. As this question was clearly in contradiction to the argument that mass rape occurred, a Timorese Commissioner quickly asked her a question to qualify her answer, so that it was clear she had never left the village and had no opportunity to hear about other rapes. Several exchanges of questions on both sides tried to unsuccessfully produce a statement about mass rape from Esmeralda. She stuck to the story of her own rape and those of her friends who were confined with her. The hearing was becoming a cross-examination until the Bishop of Kupang, one of the Indonesian Commissioners, intercepted and changed the line of questioning. Questions returned to being less controversial for several minutes but another combative group of questions from the same two Indonesian and Timorese Commissioners occurred again when they tried to get her to repeat information about whether she or others were targeted for rape by pro-Indonesian perpetrators. Commissioners Achmad and Alves stepped in this time to intercept what appears to be the beginning of heated questioning between the two Commissioners with Esmeralda in the middle. Achmad and Alves go on to ask her to clarify who failed to prevent the rapes and to ask Esmeralda why the witnesses – including military and

[197] "*Harapan saya ke masa depan itu, saya akan tidak mau berulang-ulang lagi pada anak – anak saya. Apa yang saya alami itu anak-anak jangan begitu. Pokoknya saya tidak mau begitu lagi*." Transcript, 5.

police personnel – did not stop her rape. She sadly replies to their questions saying, "to this day I still do not know."[198]

Esmeralda was a strong witness for the Commission. She answered questions directly and simply. She did not try too hard to say the "right" answer the Commissioners were fishing for in some of their more aggressive lines of questioning. She was lucid throughout her testimony, despite the traumatizing nature of the events she recalled. She did not use the hearing as a platform to denounce Indonesia or the political nature of the conflict. She only denounced her specific perpetrator.

It seemed at some points as if the Commission was intent on trying to lead her into a statement about peace between the two countries. For example, later in the hearing the following exchange occurred between her and Achmad.

> Sjamsiah Achmad: Thank you m'am (*ibu*), I know that you have come here at the invitation of the CTF and I also know that you don't want [those events] to happen again in the future. Therefore, what is your opinion about what has to be done by us for the friendship of Indonesia and Timor-Leste, that hope of yours so that we can work together to prevent its reoccurrence. Because m'am you also have a child that also we want to raise, and the feelings of friendship between Indonesia and Timor-Leste, what approximately are your hopes for that, m'am?[199]
>
> Esmeralda: The ties between Timor-Leste and Indonesia, ours [should be] in fraternity, safety and peace, that is my meaning. We, yes…. Yes, we [would] return to being brothers.[200]

Her story of personal violence was being translated into a narrative of international diplomacy before the public's eyes. She was becoming the Commission's mouthpiece.

There were also moments when the Commission seemed protective of her. Commissioner Jacinto Alves interrupted at one point in her testimony when she was asked to confirm and describe whether her family was forced to witness her rape. After the question was asked by a female Timorese Commissioner, Jacinto stopped the hearing because he felt the question could place an extreme hardship on Esmeralda. He informed her that testifying was voluntary and she

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[198] "*Sjamsiah Achmad: Mengapa mereka [milisi, TNI, Polisi] tidak berbuat apa-apa?*
Esmeralda: Memang mereka tidak berbuat apa-apa karena [pause] saya tidak tahu sampai disitu."

[199] "*Terima kasih ibu saya tahu ibu datang ke sini atas undangan KKP dan saya juga tahu bahwa ibu tidak mau terjadi lagi di masa depan, oleh karena itu apa pendapat itu yang harus dilakukan kita sebagai sahabat Indonesia dan Timor-Leste, itu harapan ibu supaya kita bekerja sama untuk mencegah terjadinya lagi oleh karena ibu juga punya anak yang juga kita bangun dan rasa persahabatan Indonesia dan Timor-Leste apa kira-kira ibu cita-cita ibu?"*

[200] "*Hubungan antara Timor-Leste dengan Indonesia, kita sebagai persaudaraan aman dan damai, maksud saya, kita ya, ya kita bersaudara kembali*." *Persaudaraan* can also be translated as friendship. *Bersaudara* is generally translated as brotherhood, but in Indonesian it does not express a gender in the relationship. It could imply sisterhood and/or brotherhood.

could refuse to answer any question she wished.[201] Then Esmeralda declined to answer the question. Her testimony was simultaneously guided, debated and protected by the Commissioners during the hearing. At the end of her questioning, the audience clapped. Commissioners closed the session commenting on her great courage and saying that through Esmeralda's testimony Indonesia and Timor- Leste face a bitter past that is brutal but shared between the two nations. Once again a personal story of rape was nationalized.

So, what happened to Esmeralda's story after it was told? And what happened to Syahnakri's story that potentially contradicted it? Both testimonies were placed in the archive with the many others transcripts of others who testified and are now housed in the Indonesian National Archives and the Timorese Ministry of Foreign Affairs. Her story and his story are official documents in Indonesia's and East Timor's diplomatic history. However, Esmeralda's story does not appear prominently in the Commission's Final Report. Neither does Syahnakri's analysis of rape. Yet, these two figures' stories are implicitly there and the force of each of their public testimonies is perhaps one of the reasons the Commission chose to respond in depth to the allegations of rape of women in East Timor.

The Commission's analysis of the evidence about rape was academic and lengthy compared to the discussion of some of the other crimes committed. On pages 119-122 of the CTF's Final Report the Commission discusses its analysis of the evidence received about sexual violence during the Document Review. The testimonies of six different anonymous women are featured and all of their stories corroborate Esmeralda's public testimony. In Chapter VII when the Commission explains its comparative analysis of its private document review, the testimony given in the Public Hearings and independent fact-finding missions, they revisit the stories of the rapes committed against women in Covalima after the Popular Consultation vote and conclude that these women's stories provide evidence that supports findings of institutional responsibility for sexual violations by the TNI, Indonesian Police and pro-autonomy militias. On page 283 of its Final Report, they make a "conclusive" finding that rape and other forms of sexual violence occurred in East Timor as a Crime Against Humanity. On p. 298 they make a specific recommendation to create a program that trains police, military and civil officials to prevent and stop sexual violence and other forms of violence against women and children. Consequently, at the ceremony where the two governments officially received the Final Report on 8 July 2008, the President of Indonesia expressed remorse and accepted institutional responsibility on behalf of the Indonesian military, police, civil government, and the Timorese pro-autonomy militias for commission of crimes againt humanity that specifically included rape and other forms of sexual violence committed in East Timor in 1999.

In the Final Report, Esmeralda's name only appears in a footnote with no commentary and in the list of people who testified. But symbolically she is ever-present. It cannot escape notice that the Commission chose to officially validate her testimony along with other rape victims. In so doing the Commission endorsed a new narrative of honor: one that accepts responsibility for rape rather than denies it when it is proven by substantial factual information to be true. Through the weighing of Esmeralda and other victims' stories against the testimony of elite figures in

[201] "Jacinto Alves: *Saya berpikir bahwa ini satu kejadian yang sangat berat saya mungkin sebelum mengajukan pertanyaan kepada ibu Esmeralda saya mau tanya apakah anda mau menjawab pertanyaan ini. Anda memang punya hak untuk menjawab atau tidak menjawabnya, kalau ini terlalu berat bisa tida menjawabnya*."

Indonesia, including Syahnakri and Wandita, the Commission chose to proclaim a conclusive truth about the commission of rape in East Timor in 1999, and place it in the archives.

Lessons from the Archives

In a Public Hearing centered on direct victims' stories, which was the majority of hearings by the CAVR, there is a tendency for every witness' story to be validated, but when testimony is mixed with alleged perpetrators' there is not a shared moment of consensus. The truth is told in a contested, rather than a healing, way. Like a trial, different accounts of the incidents involved are tested and the credibility of testimony is questioned. Even victim testimony is not spared from inquisition. Because there is no absolute and immediate validation of witness testimony, this kind of truth commission proceeding lacks a public catharsis.

However, to dismiss this form of disruptive truth-telling could be a mistake. If a Commission's primary aim is victim healing, then it is unlikely that Public Hearings of this kind would produce results directly. However, if the production of a specific kind of objective, narrative truth (that may or may not lead to victim healing) is the goal, then this contested form of truth-telling may provide better results. By incorporating the testimony of perpetrators who do not necessarily abide by a pre-determined, reconciliatory truth, a Commission can prove itself to be more credible by weighing and judging all versions of the truth equitably. However, this kind of truth validation requires the public to look beyond the engaging, subjective drama of Public Hearings and into the dense and dry language of a Final Report. Bilateral truth commissions, such as the CTF, may present opportunities for what Osiel may describe favorably as dissensus – where public, theatrical, highly guided transitional justice performances of disagreement are used to ultimately foster a more sustainable peace.

But, the Commission's aim was to produce a "conclusive" truth that reflects a diplomatic agreement, not a disagreement. Although Osiel's dissensus might be attractive from a theoretical perspective, in practice at least the countries of Indonesia and Timor-Leste felt they needed a narrative that they could tangibly and publically agree on in order to produce peace. The post-colonial Revolutionary experience of both of these nations, or *metis*, was grounded in the use of stories to secure the cooperation or obedience of vast numbers of the population to a national agenda. Perhaps this is why it cannot escape one's notice in the archives that throughout this truth-telling process Esmeralda's story lost much of its personal dimensions, while it achieved national standing and a political breakthrough. She became a national subject. The CTF, the CAVR and many other truth commissions today engage in the mapping of women's intimate lives for the purposes of nationalistic agendas. No matter how noble some of the intentions are for gathering these stories and placing them in a visible place in all its details, one must wonder how healing that kind of process of nationalizing consensus and internationalizing gender can be for the victims themselves.

Beyond the Archives

What is *in*conclusive about what happened to Esmeralda's story? To begin with, she did not receive a copy of the Commission's Final Report or a copy of her testimony. She was not informed what was done with her testimony or of the President's admission of institutional

responsibility or expression of remorse. After I had completed my work at the Commission, I discovered she had not been informed about the outcomes of the process. In a personal capacity, I approached a women's support group in Dili that I knew worked with her to see if they would be willing to provide her with information about the outcomes of the Commission. I was informed that Esmeralda was not interested in speaking with anyone from or about the truth commission again and she was enraged. She had purportedly told this women's advocacy group that she wanted a confrontation with her perpetrator, and felt that was what she had been promised by the Commission and they did not deliver. She had reportedly become the object of village jealousy because she had taken a trip to Jakarta and gone shopping there. She was disappointed and as one advocate told me, "Her story is told, but her house is still falling apart. What good does that do her?" Not only was Esmeralda not properly informed about the "conclusions" reached by the two nations due to her testimony, she had not found personal peace.

The Commission's work is concluded and conclusive, but its outcomes for participants and victims such as her are entirely inconclusive. Although she was a catalyst for the finding of a conclusive truth for the two nations and the official truth now validates her testimony, the process does not appear to have produced any closure for her personally. In light of Esmeralda's experience, one must ask to what degree truth commissions fulfill their truth-telling mandates at the expense of a victim's ownership over a highly personal truth. More research needs to be done on the ways that truth commissions impinge on a victim's autonomy as well as the ways they link victims together in a narrative that leads to a presumably more peaceful community. Beyond the archives it appears that what may be a deemed as an official, credible, collective truth for all is not truth or justice for at least one.

In August 2009, I also had an opportunity to do some follow-up interviews on behalf of the International Center for Transitional Justice (ICTJ) with Timorese women who were members of victims groups supported by the non-governmental organization, Fokupers. As part of this research I provided them with a briefing on the CTF, which included the information about Indonesia's President making a statement of remorse. In response to this information, the women said they literally, could have cared less. An apology was meaningless to them, until they saw a change in their lives and figured out a way to support the children whom they had to care for without their husbands. The members of this group were spouses of those killed in the Liquica Church massacre in April 1999. I asked them how they felt about the Report's recommendations for various kinds of collective reparations and potential memorialization projects. One woman laughed and told me, "*Mana, we make memorials on our own*." She smiled proudly. Then, another woman explained: "*We learned we couldn't count on them*." I asked who "them" was, and the response was "the government." They would like help, but they explained to me that they prefer the memorials they make on their own. An apology? An official truth? It never registered with them as a significant act. From examining a small segment of the CTF's work in the archives and anecdotes of its impact beyond, its narrative legacy is likely to be one of an inconclusive truth among victims in Timor-Leste, even where there are step forwards in both nation's long search for justice and democratic reform.

Part III. Unofficial Narratives of Justice

Chapter 7. The Guardians: The Voice of Resistance

In the introductory discussion of the archives of Timor-Leste, I pointed out that although the Museum of Resistance is not a transitional justice institution, it also plays a truth-telling role because it supports and acts as a counter-narrative to the other archives. Because it is by far the most publically accessible collection of information about Timorese history, it is able to fill in some of the knowledge gaps for the public that were left open by the other institutions. Hence, the discussion of the Museum as an archival space will cast the narratives of justice fostered in the formal transitional justice processes in relief and provide us with an example of a "national" narrative that is not required by a legal mandate to pay lip service to the internationalized narratives of justice. The Museum of Resistance gives us a point of comparison to assess how truth-telling occurs outside of the transitional justice process.

Institutional Background and Structure

The Museum of Resistance is a semi-private initiative under the leadership of Xanana Gusmão in cooperation with the Portuguese private institution, the Mario Soares Foundation. Although formally it is a non-governmental institution, it receives funding and other forms of support from both the Timorese government and other international aid funders. Therefore, it is important to note that even in truly "national" institutions in Timor-Leste, there is an international presence. It has a formal relationship with the Veteran's Association of Timor-Leste, of which Xanana Gusmão is the head. The staff is Timorese, but they work cooperatively with the Portuguese management and staff of the Mario Soares Foundation. The museum is advised by an international board, but final decision making powers rest with its Timorese leadership, and specifically Xanana Gusmão. It opened in Dili in 2005. It is a sleek, modern, well-organized and well-managed museum that is comparable in design and technology to similar kinds of institutions in developed countries.

The majority of the museum's work is publically accessible. The largest portion of the museum's space is devoted to a public exhibition that offers a multi-media chronology and overview of the Resistance movement from 1974 to 1999. Two computers allow the public access to digitized holdings of the museum that includes a large number of original documents and photographs. A portion of the collection that is housed on the computers in the museum has recently been put online so the public can easily access certain documents, including PDF versions for personal use. The museum has also produced a CD-ROM of a portion of the documents and a brief documentary about the Resistance, which has been taken on tour so that communities far away from the capital can still have an opportunity to access the museum's collection.[202] In addition to these documents, some undigitized files and artifacts such as weapons, uniforms and secret message containers are housed in a room that is also occupied by the museum's Director (who is a FALINTIL veteran). Many of these undigitized materials can be accessed onsite with the Director's special permission and oversight. These documents that are now housed at the museum underwent a significant archival preservation process in Portugal before many of them were digitized and transported back to Timor-Leste. Large parts of the collection still have not been digitized, in part because they continue to receive new documentation. On my last visit in 2009, the number of the museum's holdings was not available, but I was told that the staff was

[202] See the website of the museum at amrtimor.org/amtr/index.php?lingua=eng, accessed 14 November 2011.

working at full capacity and there were still more documents waiting to be assessed for preservation needs and processed.

All materials in the museum reportedly go through a vetting process by East Timor's political leadership, including but not limited to Xanana Gusmão. This vetting process is not transparent, and it is not clear what is done with materials that are deemed inappropriate for public access. Therefore, although a large volume of materials (hundreds of documents) are available to the public; it does not appear that the collection is entirely open.

The museum built its collection through public appeals and private donations, and in many ways it begins to link up with our discussion of truth-telling and its local interpretations. The acquisition process of the Museum of Resistance itself reveals a great deal about the way knowledge was created, preserved and transformed during the Resistance and how those experiences may impact the way truth-telling functions in the post-independence transitional justice sector.

First, there is the physical location of the museum. It is housed in the former Portuguese-era Ministry of Justice. The Timorese government dedicated this site for the purpose of the museum. The site was chosen with its symbolism in mind. Like the former prison in Balide, the building itself is a memorial. It exudes a quiet irony, because the place where Timorese were once judged as unequal subjects in a colonial regime is the place that now houses the material legacy of their struggle for independence. Xanana Gusmão is often portrayed as saying, "Justice is Independence," and this building as a museum physically represents that narrative.

The majority of the materials held at the Museum of Resistance were donated by Timorese members of the Resistance that range from the highest levels of political leadership to members of the smallest unit of resistance structures, the sub-village cells. The Museum sent out a call for materials and conducted a socialization campaign in local villages throughout the country which helped identify multiple, hidden stores of Resistance documents. Like Francisco, many Timorese people had documented their activities as resistors to the Indonesian Occupation and had hidden these traces of history in their homes. However, many were more fortunate than Francisco. They were able to salvage their documents from the violence that destroyed a majority of Timorese people's homes in 1999. A large number of individual's private collections have now been donated to the Museum of Resistance.

These archival collections were hidden for many years. The allure of secrecy and seclusion surrounds them, even now as they are being made public. Resistance documents were usually kept underground in subterranean nooks or tunnels that doubled as spaces for people in hiding from the Indonesian regime, and these hiding places are now artifacts in themselves. The museum's website features a slide tour of some of the locations where archival documents and artifacts were found, including hiding spaces beneath toilets, wells, and shrines. Now that independence has been achieved these formerly invisible archives are being revealed.

The Museum of Resistance documents the will of the Timorese people to preserve their history for the purposes of truth-telling, long before any political transition and independent of any transitional justice initiatives. Individuals who saved these fragments of their nation's history

intended all along to write an autonomous history. The museum collects the historical efforts of a number of individuals who viewed themselves as narrative centers of the Timorese Resistance prior to independence. They have continued this practice of truth-telling post-independence through the archives of the Museum of Resistance. The museum's success in locating, negotiating and opening up its collection to the public reveals a deep popular interest in recording history as one dimension of seeking justice. To be more precise, the museum makes claims to telling a story of Resistance, but this history is specifically framed to its donors as synonymous with a "human rights history."[203] The narrative legacy and success of the Museum of Resistance is its ability to house these indigenous truth-telling acts in their original forms in a way that simultaneously discloses and contains the past.

Narrative Expectations

The Museum of Resistance collection demonstrates several key expectations about historical knowledge prior to the transitional justice institutions' arrival:

1) History needs to be physically documented in addition to preserving histories in the narrative realm;

2) History and the truth sometimes need to be submerged or hidden in order to protect the knowledge and those who are the keepers of this knowledge, and

3) History is lodged in the structure of the home, even when keeping such a history could endanger one's family.

The Museum of Resistance archive (and the other archives) demonstrates how these expectations have been embedded in its truth-telling, or historical, function in a number of ways.

A Comparative View of the Archived Legacy

1) Documentational versus Testimonial Truth-telling

The Museum's largest accessible resource to the public is documents. The documents include military and clandestine routine communications and administrative paperwork, political party manifestos and organizational planning, personal letters, cassettes of songs and messages to the public, and press releases. Although there is a brief narrative chronology in the public wall exhibit, this collection is drastically different from the accessible portions of the CAVR and SCU archives that rely largely on narrative forms of witness testimony. As we have discussed, the CAVR's and CTF's collection was built mostly around the recording of oral testimonies that were strung together in a single narrative in a Final Report or in a selected group of panelists' representative testimonies. The Serious Crimes Unit/Special Panels investigations also focused on using a witness statement strategy to build a collection of evidence to pursue justice, although some other forms of documentary and forensic evidence were collected on a limited basis that is not accessible to the public. The Museum of Resistance collection contains a great deal of documentation about human rights abuses that were committed and also about Indonesian and

[203] *Supra.*, museum website.

Timorese military structures, but none of these documents were ever used or searched for by the Serious Crimes investigation process. The CAVR also collected documents, but in comparison to the witness testimony this documentation comprised a small portion of their resources and remains almost entirely inaccessible to the public. In contrast, the Museum of Resistance relies on the material culture of the Resistance to construct its institutional narrative – letters, secret messages, to do lists, drawings of crude maps, guns, and receipts. People's private and intimate stories have thus far not been featured as a key component of this museum, although visitors can have a glimpse of some of their private stories through reading internal Resistance correspondence.

There is an overriding nationalistic message communicated in the museum's name, exhibit and by the staff that act as docents, but in comparison to the transitional justice institutions, the work of weaving a coherent and complete narrative is mostly left up to the visitor. Visitors to the archives have the opportunity to build their own narrative from the fragmented remnants of the Resistance's history in a way that is distinct from the guidance provided by testimony and the official reports and indictments in the CAVR, CTF and SCU collections. The Museum of Resistance archives supplement the testimonial truths of the transitional justice institutions, and do so in a way that allows more room for personal interpretation.

The documentation at the Museum of Resistance is the missing link in corroborating and interpreting much of the CAVR's and some of the CTF's report. Where information in the truth commission reports are often drawn from stories that cannot be easily corroborated, the physical documents of the Resistance often can provide evidence that backs up or contradicts the claims made by individuals and institutions in their stories.

As only one example, let us consider the ways the documented truth at the Museum of Resistance acts as a counter-narrative to the Ground Zero narrative. In the Ground Zero narrative, the portrayal of the state of justice in East Timor is one of a *tabula rasa*. In a more cynical reading of the internationalized narrative, one may suggest the Ground Zero narrative paints the pre-1999 state of justice as "uncivilized" or non-existent. The CAVR, but more so, the archives of the Museum of Resistance demonstrate how entrenched systems of justice were within the Timorese population throughout the period of the Indonesian Occupation.

The CAVR's Final Report sometimes contradicts this interpretation of the blank state of justice prior to 1999 when it discusses the ways the Resistance structure administered justice in its base camps in the jungles in the late 1970s.[204] The CAVR's Final Report explains that FRETILIN in conjunction with FALINTIL created and operated its own justice system that depended on a system called "popular justice," by which Timorese who committed offenses would be given a trial.

In theory the system proceeded as follows: For the commission of what they called "serious crimes," the military commander who arrested the individual would act as Prosecutor and would state charges and evidence against the individual. A group of civilians would act as a jury and would decide by majority vote whether the individual was guilty. A FRETILIN political commissar would then act as judge and hand down a punitive sentence according to the jury

[204] See CAVR Final Report, "Resistance Structure and Strategy," 12-14.

verdict. Prisons, called *rentals*, were used to detain suspects during the investigation process and to punish those found guilty. There was no Defense function described in the CAVR's Report for this process. "Serious Crimes" were described as acts of treason such as spying, making contact with the enemy or giving away the location of civilians to Indonesians. Other crimes were considered "non-serious" (such as stealing, swearing and harassing women)[205] and were handled in a format called "auto-criticism." Parties guilty of non-serious crimes (i.e. crimes not committed against the nation) were required to publically commit an act of confession and remorse. In these forums, perpetrators would plead guilty to their alleged wrong doings in front of a public audience in a manner that is, for those who are familiar with China, similar to Maoist auto-criticisms. These perpetrators would be given a short-term community service act to perform which upon completion would signal penance and the perpetrator would be welcomed back into the community.

This justice system was administered by Timorese and for Timorese during some of the most intense periods of conflict. Justice was not only a continuous concept in East Timor throughout the Indonesian Occupation; it was a formalized system which operated completely independent from the Indonesian Courts that were destroyed in 1999. This is not to say that it was a perfect or fair system, but the Ground Zero narrative failed to recognize any indigenous system of justice. Accordingly the Timorese population's familiarity with and support of trial processes, and the indigenous experiences with investigating and adjudicating crimes even amidst destruction and in the height of conflict, were never drawn upon as resources or recognized as significant.

All of this information about the justice system in the CAVR's Final Report was extracted from personal interviews, which are cited by name in their Report. Those who informed the CAVR about these practices during the Resistance period included Francisco and Xanana Gusmão. However, there is no way of verifying how accurately this system was portrayed by the CAVR or how the system was administered differently in areas outside of the knowledge of this handful of personal accounts. The Museum of Resistance, however, is able to fill some of this gap. In its collection of digitized documents, any visitor to the museum can find examples of the administration of justice by Timorese throughout the period of armed conflict. In fact, the justice system administered by the Resistance appears to have become more formalized, bureaucratic and concerned with human rights then what the CAVR's account of a rather loose and spontaneous form of justice implies.

For example, Document #07109.014 shows a series of communications between a Clandestine Resistance leader at the village level (NUREP) and a villager, as well as a "commander" about a murder committed in 1999. A villager's son was shot and killed in a dispute over a goat. In addition to the case being about murder, the perpetrator of the murder allegedly made a statement in support of the pro-autonomy (pro-Indonesia) option on the Referendum. It is not clear from the documentation how the dispute was finally resolved because the documentation is incomplete, but there is evidence of the Resistance leadership conducting a formal investigation at the villagers' request and it is clear the village had vested the Resistance, meaning FALINTIL and the political leadership of the Resistance, with the authority to make a decision about the proper course of justice in the matter. From the documents we can also find evidence of another investigation that was conducted in 1999 by the Resistance into the burning of a traditional house

[205] Ibid.

by other villagers. The documentation in both of these cases includes bureaucratic forms for taking witness statements and reporting the facts of the case to superiors. Communications indicate the investigator tried to collect information on all sides of the conflict so that the perpetrator's guilt could be fairly assessed.

There are also a number of original documents in the Museum of Resistance collection that are reports written by all levels of the Resistance membership about human rights abuses in styles ranging from longhand, expositions to statistical data collection and photographs. These documents show a human rights history and a national legal case was in the making long before transitional justice institutions arrived in Timor-Leste, and these documents demonstrate the skill and experience Timorese developed in recording and telling stories about human rights abuses and justice throughout the Indonesian Occupation.

These documents supply evidence that the Resistance, as a political movement that was institutionalized as an informal shadow government, administered its own justice system used by Timorese for all levels of offenses throughout the conflict. These practices and foundations of justice were not destroyed in 1999 because they were practiced outside of the Indonesian courts. They persisted and were recognized as legitimate by what appears to be at least part of the local population and the Resistance leadership, but this system was not formally recognized by the authorities who constructed the post-independence justice system. Although the CAVR's Final Report as a truth-telling mechanism is able to record some of this history of justice, the Museum of Resistance is able to physically show this system at work and create a narrative that communicates the continuity of justice over time, instead of its stark and sudden arrival with the international community.

In fact, instead of justice being leveled at Ground Zero, the Timorese justice system has persisted largely intact from its pre-1999 precedents. Although these two pages about the Timorese justice system out of the CAVR's 2000+ page Final Report never draws the readers' attention to it, this justice system was in many ways resurrected by the CAVR as a "reconciliation" ceremony instead of a formal, bureaucratic justice process. Although the CRP sessions incorporated some traditional *adat* practices at the local level, the basic structure of these sessions repeated the auto-criticism sessions created by FRETILIN and FALINTIL that were administered throughout the conflict up through 1999.[206] In this context, it appears the structure of the CRP's were modern constructs much more than what is more often claimed to be a "traditional" Timorese justice system, or *adat*. Furthermore, the transitional justice system in East Timor after 1999 as a whole replicated the pre-1999 Timorese system of dividing crimes into serious and non-serious offenses. In all the literature I had read, this distinction was attributed to the Indonesian criminal code[207] when in fact it has a much stronger precedent in the FRETILIN justice system. Sadly, the transitional justice system after 1999 has also replicated the absence of due process guarantees, such as a thorough Defense and illegal and extended detentions that were part of the Resistance justice system during the Indonesian Occupation. In other words, the CAVR Final Report's small section on the Resistance justice system calls into the question the degree to which a true

[206] These processes may have continued throughout 1999 because in a murder case heard by the Special Panels, the act of murder occurred after an auto-criticism or traditional justice session was conducted by a local FALINTIL commander and village head. See case #3-2000, Prosecutor v. Carlos Soares Carmone.
[207] For example, see Linton, Prosecuting Atrocities.

transition in systems of justice has occurred since independence, as well as to what degree the international influence in the trial and truth commission processes was responsible for conjuring justice from a blank landscape.

In summary, in terms of a truth-telling function the Museum of Resistance enhances the quality of the narratives of the other transitional justice mechanisms. It provides public, material evidence that can be interpreted with a lesser degree of subjectivity than witness testimony alone. The documents have an undeniable physicality and permanence that differs from the experience of truth-telling through public, more theatrical settings such as a trial or public hearings. Through its mostly open-ended style of truth-telling and its attention to non-testimonial forms of truth-telling, some of the differences and limitations of the truth-telling functions of the other transitional justice institutions can be observed.

2) Hidden Histories

However, this is not to say that the Museum's message is objective. The museum's narrative legacy is edited by the Resistance leadership, and there is no requirement of balance. It is supported and administered by parties with subjective and clear intentions for history: the museum is tangibly patriotic and highlights the armed Resistance's preeminent contribution to Timorese independence. The Museum's chronology and media materials also reflect Portugal's version of the history of the conflict, and material written in Portuguese are favored for public access and description in the archive.[208] In its promotional materials on its website, Indonesia is singled out as the only perpetrator in what it describes as the museum's documentation of a human rights history, and the period of internal conflict from 1974-1975 does not appear in the document collection that I have been able to locate to date. Unlike the CAVR, there is no overt attempt to demonstrate the commission of human rights abuses by Timorese groups, including FALINTIL, against other Timorese. There are also no attempts to present human rights abuses that may have been committed by FALINTIL against Indonesian civilians or armed forces. As one would expect from a semi-private initiative supported by veterans, the intended message of the museum is entirely nationalistic. Although there have been documents submitted to this private institution that occasionally reveal uncomfortable truths about Timorese commission of human rights abuses, these documents are submerged within the fragmented body of documents and left for the public to piece together for themselves rather than writ large.

The SCU and CTF rarely but occasionally delved into this uncomfortable aspect of truth-telling. The CAVR confronted this task regularly, but at times the impact of the truth-telling efforts in this area appeared diluted. The Museum of Resistance as an institution either avoids it, or deletes it. All of these institutions demonstrate the limits of public, institutional truth-telling. As the Museum of Resistance demonstrates, the most traumatizing truths lay hidden deep within the archives or remain outside the archives all together.

However, there is at least one aspect of the Museum of Resistance collection that demonstrates greater openness in truth-telling than the transitional justice institutions: its ability to name. The museum occasionally redacts but not with consistent parameters. The vast majority of

[208] Some Tetum and Indonesian documents appear but in fewer number, and in 2009 they were not catalogued with any descriptors or titles.

documents are unredacted and names of both victims and perpetrators can be found throughout the collection. Since to date neither of the truth commissions have printed any kind of registry of victims (as Chile and South Africa did as part of their truth commission reports) and the victim registries compiled as part of the legal cases remain confidential or inaccessible, the Museum of Resistance is the only place where naming occurs on a national and public basis.

For example, Document # 05001.195, is a nine page list of FALINTIL commanders that were assassinated by the Indonesian military from 1975 – 1991. The list includes information about each person's birthplace, military post, place of capture and place and date of death. It is a standard piece of military book-keeping that was recorded by hand in a small notebook (author unknown). From its informality it may not be a complete or a master list, but it is clearly an on-going registry, that was likely prepared for the planned visit of a Portuguese government delegation to East Timor in 1991. However, this information is not listed anywhere else in Timor –Leste where the public can currently access it. It is recorded in an administrative rather than a memorial style with no details that would give someone a sense of what was individual, as opposed to collective, about these person's deaths. On the other hand, this kind of information has the potential to be extremely personal because of the specificity of the names. At present veterans and family members have no other place to access or seek this kind of information about their friends, family or ancestors who may have died in the service of FALINTIL.

In another case, the museum contains documentation written by the Indonesian government officials prior to independence with names of Timorese members of pro-autonomy militia groups in 1999. Here perpetrators are named with or without their agreement because it is an official government document from a previous, pre-independence regime. The transitional justice institutions' various concerns about legal implications of naming, jeopardizing reconciliation and witness protection, have mostly removed names from the public record, particularly the naming of individuals involved in abuses prior to 1999. There is no collective list of victims or perpetrators generated by the Museum of Resistance but through the fragments of documents this kind of truth-telling can occur, where it has been removed from the public narrative elsewhere.

In other words, while the nationalistic, semi-private nature of the Museum of Resistance obscures certain types of truths, it opens up other kinds – such as naming – in a way that the transitional justice institutions did not. This dynamic between revealing and hiding the truth is more visible than in the transitional justice institutions because the museum's collection has been mostly relegated to a display of fragmented documents, as opposed to a unified, public narrative like a Final Report. By maintaining the physical form of the original documents as disconnected, unarranged and unnarrated, the Museum honors what appears to be a local and familiar practice of submerging truths at the same time one opens them.

3) Housing the Truth

It is also telling that so many of those individuals who kept these private histories have chosen to hand them over to a museum rather than a transitional justice institution. I began to ask why Timorese individuals would prefer to channel their personal truth-telling legacies to a body outside of the transitional justice system and not fully enfolded within the new national

government. In pursuit of the answer to this question, I attended a ceremony in 2008 where former members of the Resistance were handing over documents to the museum.

Late in the afternoon of September 13, 2008, the then Prime Minister, Xanana Gusmão, shouted to the crowd from the podium of the Museum of Resistance in a repetitive chant: "*Uma nee, ita nia uma*!" (This house, is your house!).[209] The "house" he was referring to was the museum. The occasion for this rousing speech was a ceremony where former members of RENETIL, the wing of the Clandestine movement for Timorese independence comprised of Timorese students who operated mostly in Indonesia,[210] could donate their personal collections of documents and other artifacts from the Resistance to the museum's archives.

The ceremony was outside. Tables were set up behind and to the side of the podium for individuals to place their artifacts in the keeping of a team of Portuguese and Timorese dignitaries and museum staff. Individuals would be called to deposit their holdings by either Gusmão or an imminent Portuguese history professor. They were summoned by their Resistance code names which added an air of excitement to the ceremony because people would wait with anticipation after each name was called to see exactly who would be revealed as the real person behind this encoded identity. Unusually long pauses would stretch the ceremony as everyone waited to see if a person was going to stand to be recognized and thanked by Gusmão, the Supreme Leader of the Resistance and founder and executor of the archives. Although some code names were openly associated with certain Resistance leaders, others' code names continued to be disassociated from real identities. Code names were designed to evade the enemy and protect Resistance members' anonymity during the Occupation, but after independence old codes and symbols continued to sometimes render even long time acquaintances anonymous to one another. It was up to the willing individual to come forward and decipher the code for the crowd. This occasion dedicated to the collection of archival material not only contributed to the creation of a national identity. It also unmasked the identities of persons who had been rendered invisible during the movement for independence.

When the table became too full of the newly donated archival material at various points during the ceremony, staff members would pick up piles of documents and other artifacts (uniforms, firearms and other miscellaneous objects) and walk down the red carpet in pairs and carry them into the dark inner room of the building. There were several moments of tension when a participant placed what appeared to be an aged grenade on top of his stack of documents on the table. Staff members visibly but silently were disputing who would be the person to carry the grenade down the red carpet and into the archives as Gusmão stood in front of them at the podium continuing to call names. The rest of the crowd, including Gusmão and his legions of security, looked unperturbed and his voice continued to thunder through the thickness of the humid September air. These were relics of the Resistance and they were coming home to a place where they no longer could pose a hidden danger. The archives were literally disarming the Resistance.

[209] Author's fieldnotes from attending the ceremony.
[210] For a more information on Renetil see, Gunn, Geoffrey C. *Historical Dictionary of East Timor* (Plymouth, UK: Scarecrow Press, 2011), 153.

Violence is on the surface of this event: violence defined the armed Resistance as its constitutive means, as well as its enemy and destroyer. The urge to surrender these artifacts to the archives simultaneously honors the Resistance's call to arms in the past, and the passionate desire to make violence impossibility in the future. As people hand over their weapons, the archive validates the history of the armed Resistance in East Timor. Disarmament produces knowledge about the past and prevents violence in the future.

The surrender of weapons by former clandestine members has the potential to also invalidate certain myths of the Resistance, such as the depiction of the Resistance as comprised of three separate and distinct wings: armed, unarmed and diplomatic. Traditionally, FALINTIL is assigned the role and responsibility for the armed resistance. The surrender of these weapons shows individuals involved in the Resistance combined armed and peaceful tactics to achieve their political goals and to protect their families as opposed to making black and white choices to either use violence or non-violence as a means to achieve independence. Clearly, FALINTIL did not have the exclusive power to conduct armed attacks on the Indonesian state when Clandestines come forward with stocks of weaponry. Thus, even though the overall master narrative of the museum is one of nationalism, the knowledge contained in these weapons that will now become part of an archive has the potential to both construct and deconstruct the past in ways that impact the understanding of future generations of the meaning of violence in Timorese history. The archive simultaneously ravels and unravels itself as the state disarms its old foundations of Resistance and creates new, ostensibly democratic ones at the center of its national history. The focus of this archival knowledge is the collection of what were once hidden sources of violence.

Gusmão explicitly identifies the archive in his speech as a house, just as Jacques Derrida describes the origins of the meaning of the archive as "a house, a domicile, an address, the residence of the superior magistrates, the *archons*, those who commanded."[211] In keeping with Derrida's portrait, Gusmão has even chosen the former Ministry of Justice as the site for the collection he guards. Following Derrida's logic and historical precedent, these archives could be interpreted as part of a larger design that will allow the archival process to construct a particular type of "law," or a specific kind of narrative of justice.

Derrida explains the role of the *archon* as follows:

> "The archons are first of all the documents' guardians. They do not only ensure the physical security of what is deposited and the substrate. They are also accorded the hermeneutic right and competence. They have the power to interpret the archives. Entrusted to such archons, these documents in effect speak the law; they recall the law and call on or impose the law. To be guarded thus, in the jurisdiction of this speaking the law, they needed at once a guardian and localization. Even in this guardianship or their hermeneutic tradition, the archives could do neither without a substrate or a residence.

[211] Jacques Derrida, *Archive Fever: A Freudian Impression*, trans. Eric Prenowitz (Chicago: University of Chicago Press, 1998), 2.

> It is thus, in this domiciliation, in this house arrest, that archives take place. The dwelling, this place where they dwell permanently, marks this institutional passage from the private to the public, which does not always mean from the secret to the nonsecret."[212]

Thus, although Gusmão's appeal to the crowd of less than 100 former *Clandestinos* is far removed from the high theoretical rhetoric of Derrida and the Greek historical tradition on which he derives his argument, Gusmão implicitly understood the critical linkages between the creation of a regime of knowledge, the rule of law, and domicile. He conjures an image that simultaneously communicates the violent destruction and reconstruction of the Timorese past – the house. A sacred house.

Throughout our examination of how legacies of the transitional justice institutions have been communicated and preserved, the image of the sacred house has been recurrent. However, none of them declared their function in terms of a house as directly as Gusmão. One of the appeals of building a truth-telling legacy through this museum instead of through the transitional justice mechanism is evident in Gusmão's speech: he promises a home which is at once an origin and a place of permanence for the future. Permanence, however, does not appear to be the same thing as narrative closure. From these events and the nature of the museum itself it does not appear the public expectation is one of closure, but rather protection. History is entrusted here to those who protect the past and interpret the timing of when and how its hidden secrets will eventually be released. Truth-telling seems to be understood in conjunction with guardianship and in a long continuance with time. In other words, truth-telling is not portrayed as part of a "transitional" environment: truth-telling is foundational, familial and a place of origin as well as a place of the future. I suggest that it is this appeal of origin, or a "home," represented by the archonic figure of Xanana that has compelled so many to divulge their truths to the Museum of Resistance.

Lessons Learned in the Archives

Derrida's argument about the violence inherent in the quest for archives is evident in this event at the Museum of Resistance. Derrida recognizes the constitutive aspects of the archival project as an essential act in the establishment of the rule of law. But he also points to the ways in which the ingenuous, or forced, establishment of law (and the archives) obscures aspects of the truth and ultimately results in more impassioned violence. Like Plato, Derrida points to the fictions that accompany the truths upon which the "rule of law" is established. This ceremony described above at the Museum of Resistance underscores the timeless phenomenon of archives being used as a means of contouring national understandings of the past.[213]

As an institution the Museum of Resistance acts as a counter-point to the official archival sources of knowledge about history and justice in the country and it does so without the authority of the formal state as a new legal or even quasi-legal institution, such as the case of the truth commissions in East Timor. In this instance described above, the institution's legitimacy is explained in terms of a familial relationship through the image of a sacred house and a ruling lineage that supersedes the political transition. The Museum projects a story of a nation into the

[212] Derrida, 2-3.
[213] See Antoinette Burton, ed., *Archive Stories: Facts, Fictions and the Writing of History* (Durham: Duke University Press, 2005).

past in contrast to the trials and truth commissions that attempt to build a functionalist narrative that will explain the nation's evolution towards the future. Each archive – the trials, the truth commission's and this private museum - stress a different aspect of truth and approach history differently according to their institutional aims. The museum tells a story of continuity and the trials and truth commissions attempt to make a radical break with the past.

In other words each archive in this study arranges their institution's records to preserve a certain type of "story" – or meta-narrative – which is composed of the organization of the countless number of individual's stories which were given to the institutions for safe keeping. These meta-narratives as well as the many sub-narratives become in turn a legacy of the transitional justice process. This section has examined the ways specific archives in Timor-Leste – the SCU collection, the CAVR collection, the CTF collection and the Museum of Resistance's collection - have been created, organized, and made accessible or inaccessible in various attempts to leave a legacy of truth, justice and peace.

In each archive we have also noticed ways certain prominent figures, such as Francisco and Xanana, but also less prominent actors – such as the guards at the CAVR and Esmeralda - have variously acted as interpreters to communicate messages of truth, nation but also private memorial. If one takes the local understanding of truth's symbol within the realm of justice to be the house, then in every house there will be a guardian.

In the following chapter, we will turn our attention to another kind of truth-telling – the literary arts. We have examined what has happened when stories about human rights and justice have been handed over to institutions. We have traced the processes of truth-telling within these institutions and how they work together and at times against each other to narrate a collective truth that is meant to contribute to justice, peace and nation. Now we will ask what happens when stories are told and they are kept outside of institutional intervention.

Chapter 8.The Voiced and the Unvoiced: Poetics and Accountability

Cancio "Cassimata" Ximenes is a soft-spoken and humble poet who sits most days in a dark, dusty room of a former prison. The blue metal door at his office entrance is the same one that opened and closed to the prison officials' rooms during the Portuguese and Indonesian regimes when Timorese numbering in the thousands were held there as political prisoners. He is employed by the successor of the national truth and reconciliation commission (CAVR) to produce and broadcast radio programming that disseminates their Final Report. Cancio has worked with the CAVR and its legacy institution for over eight years.

For the post-CAVR he reports facts about the commission's activities in his weekly audio broadcasts, but in his spare time he writes fiction and political commentary and submits it to the local newspapers. He signs each of his works with a pen name that is a combination of his real name, his nickname and Resistance code name, Cassimata, and a tag line stating he formerly worked for the CAVR (literally, "*ex-CAVR"*). I first read one of Cancio's stories in 2005 in the *Timor Post*.

Three years after I read his first short story I met him in 2008. I had passed by him many times before during those three years because my office where I had worked in various capacities for the truth commissions was just three doors down the corridor from him. I had been completely unaware that he was the same man whose stories I looked for in the paper each week. The themes I first noticed in Cancio's short story in 2005, such as silence, abandonment and estrangement, I found in many other works written since 1999 by Timorese poets. Even before I had found Cancio and interviewed him, I had already identified an uncoordinated, disjointed but consistent imagery and language of injustice that ran through the collection of Timorese written literature I had assembled from friends, poets, colleagues, newspapers, books and archives. I discovered Cancio is part of a new generation of Timorese writers who are quietly and independently creating literary memorials to victims of human rights abuses. In doing so, these writers are defining the language and legacy of transitional justice.

Previous publications that examine Timorese literary traditions have mostly used an anthropological or linguistic approach to describe and analyze oral narratives that were recorded prior to the Indonesian invasion,[214] or were highly censored and politicized reports commissioned by the Indonesian government's Department of Education and Culture during the Occupation. The first and only article to specifically address written literature in an independent Timor-Leste was published by Anthony Soares. He sketches the dynamics of post-independence

[214] See Artur Basilio de Sà, *Textos em Teto da Literatura Oral Timorense* (Porto: Grafica, 1957); David Hicks, *Tetum Ghosts*; ----, "Literary Masks and Metaphysical Truths: Intimations from Timor," *American Anthropologist* 90, no. 4 (1988): 807-817; Elizabeth G. Traube, *Cosmology*; Duarte J. Barros, *Timor: Ritos e Mitos Ataúros* (Lisbon: Instituto De Cultura e Lingua Portuguesa, 1984); Artur Marcos, *Timor Timorense: Com suas Línguas, Literaturas, Lusofonia (*Lisbon:Ediçoes Colibri, 1995). Elizabeth Traube has also recently published an article that draws comparisons between an oral narrative she collected in pre-Occupation East Timor versus a more contemporary version she encountered after the 1999 Referendum. See "Unpaid Wages: Local Narratives and the Imagination of the Nation," *The Asia Pacific Journal of Anthropology* 8, no. 1 (2007): 9 – 25. For a brief discussion of the metaphor of slavery as it appears in Timorese poetry written in Tetum see, Douglas Kammen, "Master-Slave, Nationalist-Traitor, Opportunist Oppressed: Political Metaphors in East Timor," *Indonesia* 76 (2003): 69-85.

Timorese poetry by examining the works of several contemporary Timorese poets who write in Portuguese.[215]

My approach to understanding contemporary Timorese literature differs from his and previous anthropological works in several ways. First, it includes poetry written in multiple languages (Tetum, Indonesian, and Portuguese) as opposed to limiting my analysis to writings in a single language or composed by a single ethnic group. Second, it includes short stories (the genre known as *cerpen* in Indonesian and *isba* in Tetum) as well as poetry.[216] Third, it focuses on the published, secular (rather than sacred) literature most available to the Timorese public in the post-independence era.

The issue of access to literature is one that has important implications for the results of this study, and for anyone who wishes to gain an understanding of the development of the post-independence Timorese cultural and political landscape. Prior to independence all publications in East Timor were subject to severe censorship during the periods of both Portuguese and Indonesian rule. The newspapers and the handful of locally published books in Timor-Leste are no longer subject to routine censorship. Furthermore, there are a wider variety of publications available in East Timor since independence, with at least three major competing daily newspapers[217] and 3-4 weeklies in a mixture of languages (English, Indonesian, Portuguese and Tetum). To date there are only a handful of bookstores in East Timor which are all located in the capital of Dili. These stores mostly deal in second-hand Indonesian-language agricultural and technical college texts, and a small sample of Portuguese-language texts focused on local university curriculums for law and public service. The costs of these books is highly inflated, with the prices on Indonesian books often three to four times the cost of the same text if bought new in Indonesia. The lack of available books means the local populace that is literate is largely dependent on these newspapers for political information and commentary[218] and as a forum for literature. Newspapers are the most widely available reading material other than the Bible, and a children's magazine called *La Faek* in Timor-Leste and even newspaper distribution is largely concentrated in the capital of Dili and district administrative centers.

The limited reach of this new print news media and low literacy rates in Timor-Leste seem to suggest that written literature would be far less important than oral literature to any study of post-independence Timorese culture. In fact, when I first arrived in Timor-Leste in 2004, I was told by several well-educated individuals that researching Timorese literature was an impossible task, because it did not exist. One in particular who worked at the Special Panels who had a Master's degree in English literature said that, "There's no culture here. Looking for literature – a poem or a text – is a waste of your time. It doesn't exist."

It is true that there is not a large volume of Timorese literature being produced since independence, and what is being written has not been recognized as canonical. In the local

[215] Anthony Soares, "The Poets Fight Back: Timorese Poetry as Counterdiscourse to Colonial and Post-Colonial Identities," *Romance Studies* 24, no. 2 (2006).
[216] An area of contemporary Timorese literature that I have not explored in this article is autobiography. There are several autobiographies available written by Timorese members of the Resistance.
[217] During the Indonesian Occupation there was one major local newspaper, the precursor to the *Suara Timor Lorosae* (STL). During the Portuguese rule there was also only one newspaper.
[218] Radio remains the most available and popular media source.

communities that were able to preserve fragments of their culture despite the many years of violence and dislocation, oral literature remains the most practiced form of poetics. However, as this study will show, Timorese literature in a textual form does exist and has survived the heavy restrictions of the Indonesian Occupation. Timorese literature is growing alongside the birth of an independent media and the increasing access to technology.

In fact the development of a written literature plays a key cultural and political role, because now is the first time that Timorese writers can publish their works inside their country without the direct threat of censorship. Therefore, a study of written poetry in post-independence Timor-Leste has the potential to reveal a great deal, not only about the aesthetic aspects of the development of a national literature, but also about Timorese attitudes towards political change, democracy and the rule of law.

While studying published literature excludes the literary life of many rural Timorese who cannot access textual sources or newspapers from Dili, it brings into sharper focus the intellectual life of contemporary, urban, Timorese and their perceptions of specific features of the political transition. It is also the most productive site for research if one wishes to understand what Timorese in Timor-Leste are reading and writing about now, as opposed to studying the traditions of communities in exile in Australia or Portugal.

For example, although one of the poets discussed in Soares' study of Timorese literature, Celso Oliveira, has been featured in the local newspaper, the remainder of the works discussed in his article cannot be purchased, borrowed or located in Timor-Leste. At the time of this writing, this Portuguese language literature is available only outside of Timor-Leste where the poems and books were published in Portugal or through other international venues or personal connections.[219] Therefore, Soares' recent study may tell us more about what a certain segment of Timorese are writing abroad, rather than accurately reflecting the development of Timorese literature within Timor-Leste. His study also demonstrates what writers feel comfortable writing and having read abroad, as opposed to what writers feel compelled to have readers understand within Timor-Leste. In other words, the target audiences of the poetry examined in Soares' study versus this one are different, and therefore may affect the conclusions one can draw about Timorese literature and its relationship to memory and politics.

Soares' study emphasizes the fragmented and potentially divisive nature of post-independence Timorese poetry compared to pre-independence literature. This study will affirm some of Soares' analysis, but in contrast to Soares' approach, the focus in this chapter is on poetry popularly consumed in Timor-Leste. This more diverse set of writings has yielded some different results from Soares. Because I will examine both Indonesian and Tetum language poetry and short stories that are in the form of written texts, the poetic sensibility of the young generation of Timorese intellectuals and activists, popularly known as the *Geração Foun,* will play a prominent role in my analysis, whereas Soares' study's reliance on Portuguese literature may

[219] I attempted to locate these works in East Timor for over three years, and they could not be purchased or borrowed in any of the stores that regularly sell books, libraries, universities etc. I also inquired to see if they were available to students studying in Portuguese curriculums at the primary, secondary or tertiary level and I was informed that no books with Portuguese poetry written by Timorese poets are currently being used in the schools, although there are plans to include them in the curriculum in the future.

have brought into focus the aesthetic works of an older generation of Resistance leaders. The inclusion of other languages, new authors and other venues of literature (i.e. newspaper and poetry readings instead of published books) in this study has produced evidence of unifying cultural themes to emerge in addition to the evidence of fractured identities that Soares' study portrays. One of these unifying themes is an appeal to justice as an idealized political paradigm reminiscent of the older, Timorese "liberation poets" but executed in a style that is distinct from pre-independence works.

Overall, this chapter will examine the production of literary accounts of justice and injustice in post-independence East Timor. How and why has this literary theme emerged, and what relationship does it have to the past? What meaning and motivations do these writers assign to their works? How does this newest generation of Timorese poets characterize justice and injustice: through what images, through what mediums, and through what language? What conclusions can be drawn from the commonalities and differences in their works? Finally, what do these unofficial histories contribute to our understanding about the transitional justice system as a whole and its impact of these institutions on the historical memory of Timorese citizens? Through the analysis of a selection of both pre- and post-independence literary works, I will attempt to answer these questions in a way that will expose a broader audience to Timorese literary works, while stimulating discussion about the ways in which cultural legacies of transitional justice institutions are forged.

Post-Independence Timorese Literature

Cancio's short stories and poems have appeared more often than any other Timorese writer in the local newspaper, the *Timor Post.* Most weeks the *Timor Post* runs one page in the Saturday paper's "Culture and Literature" section. It is the only regular, public forum where one can find literary works written by Timorese poets, although most weeks the content is dominated by a story or poem taken from the Indonesian news service, Joyo. Since its first publication in 2001 the *Timor Post* has published over 100 poems and short stories by Timorese writers. The only way to find these works as a collection is to go to the storage room of the newspaper's office and go through the three, four-foot stacks of unsorted and detoriating newspapers.

According to the editor, no one had ever been through all the papers until I came. In my time researching in this room, I met several Timorese college students who came to find articles for their thesis research. They found it strange that I wanted to spend my time looking through all of the stacks, especially for poetry. One student asked me, "Why not just take the ones on top?" I include this anecdote to describe the environment in which Timorese literature is being written, preserved and received. The only way to survey this collection of East Timor's emerging national canon is to spend many hours in this backroom flipping through the weekly news, and yet these local writers are persistent. Year after year they have sent their poems to this paper for publication, although they have received no pay and little popular recognition for their work. The majority of the writers who published one piece in the paper, continued to submit works over time and many of them have been published more than three times. In sum, despite many challenges, Timorese literature endured the great political changes of independence and civic turmoil in 2006. It is growing and developing, but it remains under the radar, unlike the glossy

reemergence of Timorese visual and performing arts under the tutelage of internationally-led NGOs, *Arte Moris* and *Bibi Bulak*.[220]

The Portuguese language has been favored by the government and was previously the language of the Resistance, or "liberation"[221] poets. Xanana Gusmão and Francisco Borja da Costa are the most well-known of these writers. Since independence the government's requirements for Portuguese language skills for jobs in the bureaucracy and in official proceedings has alienated many of the younger generation of Timorese intellectuals who were college educated in the Indonesian language and were active in the Resistance who are loosely referred to as the *Geração Foun*.[222] Although pre-independence written literature was mostly composed in Portuguese, the *Geração Foun* writes in Indonesian, Tetum, Portuguese, local dialects and combinations of all of them. In fact, the fewest number of poems in the *Timor Post* collection of Timorese works are written in Portuguese.[223] Most are written in Indonesian or in Tetum. The *Timor Post* has also published several editorials written in the style of artist manifestos that argue for the establishment of an autonomous Tetum Literature that honors but is distinct from Portuguese and Indonesian literary traditions.[224] Indeed, all of the writers I interviewed discussed the great influence of Timorese cultural practices and their desire to highlight them in their work, including animist practices (*lulik*), traditional story-telling and mediation practices of *lia-nain*, cock-fighting, dancing, singing, house-building and death rites. Although "official" culture in East Timor is confined to the Portuguese language traditions and Tetum, literary culture is diverse and perhaps as a backlash to these policies, makes conscious efforts to embrace all languages.

Besides the newspaper there are other places to find poetry in East Timor including informal readings, artists' gatherings and the internet. The non-profit organization *Luta Hamutuk* has held monthly poetry readings since 2002. Their staff members have built an electronic archive of their work along with poems that appeared in East Timor's first political magazine, *Talitakum*, and the collection of poems written by Borja da Costa. The readings are held outside, sometimes in the national Peace Park down the street in Farol that is named after Borja da Costa, and are open to anyone who wishes to recite a poem. This organization that is full of amateur poets told me the

[220] *Arte Moris* is a nonprofit organization in East Timor dedicated to the cultivation of local artists. Its programs center around a residential art school in Dili run with international guidance and support. Paintings by Timorese artists in their program are regularly exhibited in East Timor and abroad. For more information see www.artemoris.tp. *Bibi Bulak* is another nonprofit organization that is housed in the same space as *Arte Moris*, but sponsors programing and education in the performing arts. It is best known for its production of public information dramas that tour throughout the rural areas as well as in Dili. *Bibi Bulak* has sponsored one short-term poetry program in its curriculum.

[221] Anthony Soares uses this terminology to describe pre-independence Timorese poetry and its authors.

[222] For more information on the *Geração Foun* and the origins of this term see Peter Carey, "Third-World Colonialism, the Geração Foun, and the Birth of a New Nation: Indonesia through East Timorese Eyes, 1975-99," *Indonesia* 76 (2003): 23-67. Carey credits the origins of this term to Fernando "La Sama" de Araujo, as reflected in James J. Fox and Dionisio Babo Soares, eds., *Out of the Ashes: Deconstruction and Reconstruction of East Timor* (Adelaide: Crawford House, 2000), 108.

[223] In my search through the paper's archives I could only find three (out of approximately 100) pieces of literature written by Timorese writers in Portuguese.

[224] See, "*Perlu digali sastra dan budaya asli TL*," *Timor Post*, 23 October 2004; and Joao Damas, "*Presiza dezenvolve Kultura original*," *Timor Post* (date unknown). See also the interview with Abe Barreto Soares, "*Abe: Seniman itu butuh keseriusan*," *Timor Post* (date unknown)

readings are a hobby and a deliberate distraction from the often dismal, local political scene about which they monitor and report. They have created their own electronic archive of their poems and collected poems by the early Timorese revolutionary poets as inspiration. They consider this collection open to the public although they could not remember anyone other than me inquiring about them previously. It is an unpublicized, in-house collection. This small collection of poems (they were able to give me copies of 25 of the poems) is sequestered on an aged, beat-up desktop computer in a back room of their office that remains in use with the broken windows, melted iron and black marks of the fires that leveled Dili in 1999.

The most prolific and well-known group of poets in Dili are coordinated by a poet, professional translator and musician named Bernabe ("Abe") Barreto Soares who is the most recognized of East Timor's young artists. Barreto along with several other poets founded a group known as "Sanak Barak Suli Ba Ida" to showcase Timorese artists so that the "world can see that there is much more here than destruction. There is a world of hope."[225] This group of Timorese artists creates coffee-house style events several times a year where various performers and artists can display their work. All languages and nationalities are welcome at these poetry jam sessions, but the groups focus remains on encouraging the production of works related to or inspired by life in Timor-Leste. Several members of this group have been invited to the Northwest Territory's Writer's Festival in Australia and their works have appeared in a collection of poetry by writers from the Indonesian archipelego.

Barreto is also the most prolific of East Timor's first generation of blogging poets. His most popular blog "*Lia Murak-Lia Midar-Lia Matak Malirin*"[226] contains regularly updated works across a host of styles, languages and themes. Other Timorese poets I encountered in my study visit this site and post comments. Together these blogging poets are rapidly constructing Timor-Leste's first online literary community. In addition to Barreto's site dedicated to the new generation of Timorese poetry, homage is paid to the Portuguese language, revolutionary poets and features several poems written by expatriates who worked in East Timor on a site sponsored by the FRETILIN political party, called "Maubere Poems."[227] Access to technology and the ability to assemble freely in public places for cultural performances (both of which were heavily restricted under the Indonesian Occupation) are playing a role in the development of literary venues in an independent Timor-Leste.

Of this newest generation of Timorese writers, in addition to Barreto one of the other writers who gained international notoriety is Hugo Fernandes. His first book of poetry was accepted to be published in 2009 in Indonesia, but Fernandes has been featured in multiple publications in Indonesia, Australia as well as Timor-Leste. He also operates his own blog, "Nahabere." He was the founder of the short-lived Timorese political magazine, *Talitakum*, and the Editor of the CAVR's Final Report, as well as the Head of the Timorese research and writing team at the Commission for Truth and Friendship. Although the content of his poems range widely from romance to economics, a large proportion of his published works have told the story of witnesses

[225] Comments to audience by Abe Barreto Soares. Launch Party for *Terra*. Dili, November 2007. The author was in attendance.
[226] See http://www.lianainlorosae.blogspot.com, accessed 19 February 2009.
[227] See http://www.geocities.com/CapitolHill/Senate/7112/poems_00.htm , accessed 19 February 2009.

or places of atrocity he encountered in his work with the two truth commissions.[228] In fact, his office was formerly right down the hall from Cancio's and mine. Regarding his upcoming book, he commented, "I think all the poems published [are] talking about injustice and also about being a victim."[229] In addition to Cancio Ximenes and Hugo Fernandes, the CAVR has spawned at least three other poets who publish periodically in the Timorese papers or online in blogs and poetry sites. Although much of the content of these poems can be recognized as inspired by their experiences working within the truth and reconciliation processes, none of their poetry appears in the CAVR or CTF publications or has been formally commissioned by the CAVR.

These writers, along with other poets who did not work for the CAVR or other transitional justice institutions, are publishing private reflections on justice and injustice in Timor-Leste. They have processed their views and memories of the post-independence politics of justice on their own accord. Of the poems and short stories that have been published in the *Timor Post* newspaper alone, approximately 30 address the theme of injustice. Even though the thematic and aesthetic similarities among these writers are noticeable, they have written about their experiences with justice in post-independence East Timor with little feedback from one another. Despite publication of cultural manifestos in the *Timor Post*, none of the poets I interviewed wished to identify themselves with any particular literary movement or ideology.

At the same time many of these writers advocate for the rediscovery (or invention) of local tradition in Timorese literature, all of the poets I interviewed expressed a desire to write in a way that reflected their wide range of international literary influences and addressed global problems. The most common literary influence writers mentioned was the Indonesian writer, Pramoedya Ananta Toer, which is not surprising given that all the writers I interviewed were educated in the Indonesian language from primary through tertiary education. However, he appeared to be the *only* influence these writers have in common. None of the writers I interviewed cited the Portuguese language literary greats, Camoes and Fernando Pessoa, as inspirations although nearly all of them have some reading competency in the Portuguese language. Several of the writers did, however, cite some African writers who wrote in Portuguese as influences. The poet Abe Barreto was the most widely read of the writers I interviewed: his literary and musical influences include Khalil Gibran, Carl Jung, Nietschze, William James, Marx, Stephen Crane, Abraham Lincoln, Agostihno Neto, Octavio Paz, Tracy Chapman, Thomas Merton, Janis Joplin and Henry Nguyen to name only a few. All of the writers I spoke with mentioned non-Timorese and non-Indonesian writers among the artists who most inspire them. In other words, this new generation of Timorese writers self-consciously describes their work as "world literature" at the same time as they are embracing local traditions. Barreto explained his interest in creating an internationalized Timorese literature as such:

> "I embrace World Literature because we are all saying the same thing, just in different ways. My passion is reading poetry from all nations – so I can learn to listen to the inner heart of the world. As human beings we share life.

[228] Hugo Fernandes, Personal Communication with Leigh-Ashley Lipscomb, Dili, May 2009.
[229] Email correspondence with Leigh-Ashley Lipscomb, 2 March 2008.

> Being on a spiritual path – it's like climbing Ramelau.[230] You climb from Hatubulico[231]; I climb from Ermera; another from somewhere else. But we all meet on top and there is the place where we tell stories."

Abe's comments display, along with all the writers I spoke with, the idea that Timorese literature must encompass diversity in order to succeed in its narrative task. But underlying this diversity is a common purpose – the need to tell stories that reflect the universal human experience and that demonstrate the humanity inherent in Timorese culture. Narration itself, then, is the justification for incorporating other forms, languages and styles of story-telling into the newest generation of Timorese literature. To tell a Timorese story, for these writers, also means to tell a story of the world. Cancio Ximenes has also written about the theme of embracing differences to create a whole using the same language as Barretto (and without knowledge of Barreto's use of the same words)[232] in his poem "Sanak Barak, Suli Ba Ida" (2005). It appears that the *Geraçao Foun* of Timorese writers place a high value on the ability to weave a story from multiple languages, influences and perspectives, but do not view this diversity as a threat to cultural unity, but rather a source of cultural strength.

Each writer I interviewed was aware and complimentary of other Timorese writers' works, but did not express a specific desire to work closely together to develop a certain language or system of aesthetics around the theme of justice, or even a single, classifiable Timorese style. In interviews they reported that they mostly write alone. Therefore, I hesitate to leave the impression that the body of literature, and its subset of writings about justice I have found, is intentionally either a national literary or political movement. However, I do wish to inquire into why certain themes and images, such as of justice and injustice, are persistent in the literature when the writers profess they are not trying to coordinate or create these patterns. It is my argument that these patterns are the result of the legacy of the pre-independence Timorese poets of the Resistance and also reflect, among other historical events, the shared experience of transitional justice by this group of poets and their desire to share and interpret the meaning of those experiences.

Cancio is not a member of any network of poets, although he is aware of the other writers' activities and praises their work. Cancio writes alone in his office after his workday and during the lunch periods. He says he is solitary in his inspiration, except for the stories he has heard during his work with the CAVR and his fondness for reading Indonesian literature. He confesses sometimes he writes as pure fantasy, although the realism in his works is one of his hallmarks. He weaves together the voices of the past that he is surrounded by daily in the former prison with his hopes for the future. In an editorial written to the *Timor Post* on Valentine's Day 2007 called "A Love Letter to Xanana" he assumed the voice of the common people of Timor-Leste, or the *povo*, and wrote a public, poetic lament replete with the imagery of teardrops, blood and dust. In one sentence in this piece he summed up one of his main motivations for writing: "*Hau tanis*,

[230] Mt. Ramelau is the highest mountain in East Timor, and prior to decolonization, the highest point in the Portuguese empire. It is considered sacred in Timorese cosmology and is the most famous Timorese pilgrimage site.
[231] Hatubulico is one of the base points for climbing the mountain in Ainaro district. Another option is to climb from another side that originates in Ermera district.
[232] Personal Communication with Leigh-Ashley Lipscomb, August 2008.

Timor-Leste mos tanis no lelir simu hasoru hau lian," meaning "I cry. Timor-Leste also cries. And these tears caress each other when they meet with my words."

Post-independence Timorese literature, like Cancio's, often expresses collective feelings of great injustice despite the multiple transitional justice mechanisms that have been applied there and the majority of these writers' very personal engagement with them. I suggest that these literary works can be interpreted as one barometer of the success and failure of the transitional justice system, particularly in the transitional justice system's ability to affect the desired outcomes of historical legacy and the establishment of the rule of law. In short, as a body of works post-independence Timorese poetry contains not only the cultural legacy of the Resistance but also the past ten years of the transitional justice system. This poetry goes beyond merely voicing visceral emotional dismay, or "trauma", that is the result of generations of suffering human rights abuses. This new generation of Timorese literature also exercises a hidden form of accountability and an autonomous, diverse yet unifying voice of national memory which may be in some ways more "truthful" about the atrocities in East Timor than the mainstream narratives produced by the transitional justice institutions.

The Legacy of the Pre-independence Poets: the Unheard and the Unseen

One of the poems featured on the "Maubere Poems" website and on numerous East Timor related sites and current, active Timorese blogs expresses the classic post-colonial literary theme - the voicelessness of the subaltern subject. This poem, "*Povo Sem Voz*" (People without a Voice, 1992) written by the current Prime Minister of Timor-Leste and former leader of the Resistance within East Timor, Xanana Gusmão, is representative of the dominant images that run through the pre-independence as well as post-independence Timorese poetry – images of the the inaudible, the invisible and the unspeakable.

A People Without A Voice

Our cry and silence
As time goes by
And the time and the blood
In the silence of the world!
Listen, worlds!
Listen, people of politics!
You invaded our Homeland with Suharto
You isolated Timor-Leste in the cold war
and you tortured us with the difference
and you killed us with the complicity
Listen, listen to your guilt!
You disengaged our cause with Jakarta
You minimized our rights in the UN
and you tied us with yen
and you massacred us with dollars
Our time and the silence
In the changes of the world
and the blood and the price
in the worlds of silence
Listen, worlds!
Listen, peoples with power
you blessed the killings with Cathedrals
you buried the tragedy in the investments
and you challenged our conscience
and repressed our will
Listen, listen to your guilt!
you betrayed your own principles
you manipulated your own rules
and you jailed us in the realpolitik
and you killed us like you killed human rights
We are a People Without a Voice
soul without borders with pain
body in slavery open to time
Homeland – a cemetery of interests
Our struggle …
is the history
of the power of silence

Translated by José Alberto Sousa

The tone of this poem is outraged and didactic. The punctuation is mostly exclamatory and the verbiage is replete with commands and demands: "Listen, World!" The style is direct with few metaphors and the language is more political than literary. Dialogue is impossible as a form of literary engagement here because the premise of the poem is there is no one listening and thus, the Timorese voice is unheard and unincorporated into the world's knowledge. Logically, then, the poem's perspective is unilateral, or in one direction without a shift of speaker or viewpoint. There are no references to native Timorese symbols (such as Mount Ramelau) or figurative uses of language that would resonate with a Timorese audience. The language of composition (as are most of Gusmão's published poems) is Portuguese, with no interjections of languages native to Timor-Leste. The use of imagery and repetition in the poem is limited to blood, silence, power and an entreaty to listen. None of this imagery is unusually poetic in its ability to describe the situation of war or colonial occupation, but is instead rhetorical. Nonetheless, the simplicity of these particular images and their charged associations with violence create a striking and dramatic effect, especially when set to the marching rhythm of this verse filled with long, guttural and enunciated vowels (o's and u's). Although the main theme is silence, this poem is anything but quiet.

The irony of silence amidst this emphatic language and style is an effective tool for making the poem's underlying argument that the poetic genre represents the best opportunity to persuade the world outside to listen to the suffering of the Timorese people. And respond. Poetry in this instance is a means of giving the voiceless a voice. Poetry is perceived to be able to accomplish what truly voiced utterances by Timorese (i.e. speaking out or screaming) have failed to do; that is, generate a voiced reaction in response to the violence they have endured. This poem argues that whereas the aesthetic rendering of "Timor" has the potential to be "voiced" and "heard" by the outside world, the raw sound of Timorese screams that represents the reality of the world within East Timor remains unheard.

This poem illustrates the way poetry operated as a political tool for the liberation poets. But, poetry for them is also a conscious compromise: aesthetic dressings are applied to the authentic Timorese voice to achieve the goals of the Resistance, and to create a response to the suffering of the Timorese people. In the works of the liberation poets they assume the guise of poetry in a Western, free-verse poetic style using the language of the former colonizer (as opposed to indigenous forms of narration and poetry) and in doing so they give Timorese a voice. However, this voice is one that is altered from everyday speech and their reality of horror. In response to Spivak's classic post-colonial question, 'Can the Subaltern Speak?', the Timorese liberation poets might agree with her and reply sarcastically, "Apparently only when we assume a literary guise that Western academics and activists like to hear." Poetry for Gusmão here is a genre that simultaneously grants and denies a people their authentic voice.

The fact that pre-independence Timorese poetry was contraband within East Timor and Indonesia also affected the structure and uses of the poetry. These poems mostly began circulation abroad. Within East Timor and Indonesia, the works of the liberation poets circulated underground along private, Resistance channels until they could find a forum for use as part of a demonstration, personal correspondence between Resistance leaders and supporters, or as part of a political speech. For a Timorese person within East Timor to possess such poetry would have immediately identified him or her as an independence supporter. The political content of the

poem was only one rebellion: the subversive nature of the poetry was underscored by the fact that the use of the Portuguese language was illegal in East Timor during the Indonesian Occupation and used extensively as a code language by the Resistance. To possess poetry in the Portuguese language by the liberation poets would have carried the imminent risk of imprisonment or other forms of abuse if it was discovered by the Indonesian occupiers.

However, the fact that the poetry was textual and in Portuguese necessarily meant it was limited to an elite Timorese audience who could read Portuguese. Much of the available published poetry was composed by the highest echelons of the Resistance leadership, such as Xanana, who were political prisoners. In other words, poetry during the Resistance was not an art of leisure or scholarship: it was written for immediate impact and fast digestion for a targeted and mostly elite audience. To people in East Timor during the Indonesian Occupation, the production and consumption of their own written poetry was wholly political, secretive, and a dangerous act. To read poetry was a silent act; to write poetry was a silent act, to possess poetry was a silent act. Poetry as an art form within East Timor prior to independence was in itself the voice of silence.

When this poetry was exported abroad to Portugal, Australia or other foreign centers of Resistance and activist activity, it spoke in different ways. It evaded the Indonesian censors, but the sacrifice it required was the language and the form had to be accessible to a wider audience. Overall, pre-independence Timorese poetry by necessity was a calculated political move as much as a form of individual and cultural expression.

Hence, the limitations placed on the post-colonial (an ill-fitting term since East Timor was still a non-self governing territory while post-colonial literary theory was at its peak) subject's "voice" by imperial, cultural and nationalist politics shaped the style of pre-independence poetry. These limitations may account for the narrow range of poetic and linguistic techniques employed in much of the liberation poets' works, such as in Gusmão's poem. Many of the works read like political speeches in stanza form. The emphasis on technique appears to be more rhetorical than lyric. In fact, Gusmão's poem often plays on legal language and rhetorical techniques. It reads like a popular indictment in the way that it makes charges against a presumably guilty party, and its poetic representation adds to its emotional persuasiveness:

> you blessed the killings with Cathedrals
> you buried the tragedy in the investments
> and you challenged our conscience
> and repressed our will
> Listen, listen to your guilt!

The intent of this poem is clearly to communicate judgment about a reality the poet finds unjust. To that end he uses simple, clear and universal language that eschews more than it embraces complicated poetics and local traditions. It lists offenses, bears witness, names the perpetrators and assigns guilt. Like this poem, much of the pre-independence Timorese poetry can be characterized by its lack of "poetry" in its literary sense and is easily identified by its voice of judgment. In the absence of any access to uncensored, democratic mediums for free speech or fair judicial mechanisms for educated Timorese in the pre-independence era, poetry was a means of judgment and thus, played the role of speaking "truth" and telling unspeakable histories in an environment of injustice.

Memorialization

In addition to judgment, pre-independence Timorese poetry often acted as a form of memorial. A pre-independence poem featured on the websites frequented by some of the *Geração Foun* (New Generation) poets and in the Luta Hamutuk collection exemplifies this function and theme. One excerpt from the second verse of "*Um Minuto de Silencio*" by Borjas Da Costa reads:

Be silent
canes and bamboos
bushes and eucalypts
palms and grasses
endless verdure
of tiny Timor
be silent
be silent
your silence, our silence
FOR ONE MINUTE
It is a time for silence
for the silenced time
for the lifetimes lost
the lives given […]

Here, silence is a tribute to those who had fought for independence and suffered. Its language throughout the poem is unabashedly revolutionary and nationalistic. It describes the landscape as a technique to emphasize that the land belongs to the Timorese people, and not the foreign occupier. The use of the natural imagery in the poem also conforms to animist practices that evoke nature as a container for ancestral souls who occupy the land of East Timor along with its people. The poem elongates the timeline of the poem and increases the number and volume of silent voices it contains. In these commands of silence to the landscape, the poet is able to show the sacrifices made by many generations of Timorese. This confluence of silence and nature is synonymous with the sacred. The trees and bushes and fields are consecrated as sacred. When the poet lists them, he simultaneously endows the deaths that are the subject of this poem with honor and the landscape with sacred, Timorese blood.

The naming of places (the different trees and grasses) recalls the traditional Timorese funerary practice of reciting all the places the body will go, or have gone, on its journey home to the sea for its final resting place. To name places in the landscape across Timor in a poem is to draw a map of the future nation and the past journey of its dead. Mapping the landscape here is a way to construct a silent memorial in a time when many traditional funerary rites were denied because the massive nature of the deaths under the Indonesian Occupation, and the prohibition against some forms of traditional, Timorese cultural practices. Funerals during the Indonesian Occupation were opportunities for political demonstrations and were monitored closely by the Indonesian military intelligence. Poetry operated as a specific kind of memorial under the Indonesian Occupation, when Timorese could not always openly mourn the loss of their loved ones who fought for independence. Poems were deliberately imbued with the rituals and language of mourning in a time when the political environment placed limits on their expression.

Yet, at the same time that this poem evokes Timorese imagery in a way that Gusmão's does not,

the language in this poem is not entirely Timorese in its sensibility. The poem is general enough to be communicable to any reader, and it evokes silence as a symbol of memorial. The use of this seemingly universal theme is surprising for those acquainted with many Timorese ethnic groups' belief that the proper way of accompanying the dead to a peaceful repose is with a great uproar of drums, dancing and gongs rather than silence. Thus, this is a poem and a form of memorial more likely meant to be seen and noticed from the outside, rather than a private expression of Timorese mourning. It is a "silent" memorial within East Timor, but it is meant to be "heard" abroad.

The narrow range granted to the Timorese voice in the pre-independence era endows the theme of silence with multiple meanings. While on first reading Gusmão may seem to express the powerlessness inherent in the state of silence, beneath the exterior of the poem's judgmental tone and the post-colonial literary theme of "voicelessness," which has the tendency to express the victimization of the colonial subject, is another message. Silence here is also a source of power for the Timorese people. Because in silence there is the dignity of speaking authentically for oneself, as opposed to speaking in a poetic fashion for the consumption of a foreign audience. In silence there is privacy and autonomy from the surveillance of the state. It is with many meanings that Gusmão wrote: "Our struggle …/is the history/of the power of silence."

In East Timor, speaking, much less writing, entailed threats to one's personal safety. Personal expression required constant monitoring and modification to satisfy an audience of outsiders. Within this context, forms of artistic expression, including poetry, attempted to deliver a message to Timorese themselves. Silence in this environment of great injustice simultaneously signifies oppression and empowerment. Perhaps more than any other aspect of pre-independence poetry, this dynamic of silence has influenced the newest generation of Timorese poets.

Post - Revolutionary Silence and Sounds

In analyzing post-independence Timorese poetry it is crucial to understand the influence of the liberation poets and the practice of poetry during the Indonesian Occupation, while at the same time it is important to consider how independence changed these dynamics. The new generation of Timorese poets continues to describe their poetry as a means of speaking for the voiceless, even though the lifting of censorship and the achievement of national soveigntry removed some of the harshest restrictions on the Timorese voice. In this way the revolutionary themes of the pre-independence poets, like silence, have persisted. Abe Barreto Soares stated this point directly when we discussed his motivation for writing poetry. He explained, "As a poet I'm a solitary figure who is in solidarity with the voiceless."[233] Unity continues to define the meaning of writing for many Timorese even though the cause of independence has now dissipated.

Hence, literature may provide a useful lens to see potential sources of solidarity among Timorese now and in the future, and to inquire into what beliefs and values are being pursued by the new generation of poets to fill the political vacuum and the literary imagination of the goal of independence. At the same time this literature is useful as a means to understand the diversity of identities that are constructing an independent Timor-Leste. As these works will demonstrate, the greatest change in post-independence poetry's use of the themes of silence is in the audience.

[233] *Supra.*, Personal Communication.

While there still may be occasional poetic appeals written for a non-Timorese audience, this poetry records a narrative of the struggle for people to be heard within Timor-Leste by other Timorese. It appears that while many writers' works depict the aftermath of the Resistance and the subsequent political fragmentation of the Timorese people, I argue these artists are writing against these divisions and searching for new ways to consolidate a diverse, national voice.

For example, Father Armindo Brito published a poem in Tetum, "*Oan Kiik Nia Halerik*" (2008) in reaction to the events of February 11, 2008 when the President of Timor-Leste, José Ramos Horta, and the Prime Minister, Xanana Gusmão were attacked and a state of emergency was declared. His poem echoes the theme of "*Povo Sem Voz*." His first stanza reads,

Ohin ami tur hananu	Today we sit and sing
Tur hananu no halerik	Sit to sing and lament
Halerik netik ami nia mate	To lament hinders our death
Karik iha rona nain.	If there are people who listen.

This poem once again depicts the Timorese voice as unheard. *Halerik* is a word that literally means "to groan, weep and scream," It is collectively associated with lamentations. It connotes the raw sound of a person's reaction to the death of a loved one. It is not a pretty or subtle word in its sound (a hard, aspirated "ick" at the end) or meaning in contrast to *hananu,* which denotes singing and can also be used as the verb for reciting poetry. The use of these particular words (the contrast between the soft *hananu* and the hard *haleri*k) and the imagery of mourning suggest that an authentic Timorese voice is a mixture of these two modes – speaking and singing – and for these "voices" to be fully expressed and heard is a cathartic act. A mixed and fully voiced sound is a source of power and health. This realization of a mixed voice – poetic *and* raw – exists in the post-independence poetry in a way that was not fully expressed in pre-independence works, but the theme of silence persists.

The subject taken for this poem is the *oan kiik*, or small children. The perspective is paternal and religious, which is synonymous with the author who is a male priest. He writes in his own voice. There is a play on words that allows the subject of the poem to shift. The subject of the poem appears to be Timorese children whose future is jeapodized by the nation's internalized violence, but the poem resolves itself in a way that plays on the usage of the term *oan* as it is popularly used to mean "child of the nation," or Timorese (*Timor oan*). The poem metaphorically addresses all Timorese by taking the subject of a child. In doing so, the author reflects on the youth of the nation and the behaviors that were born out of the Resistance movement and its struggle against the previous colonial occupations. He argues that Timor was born out of violence. He resolves the poem by using another shift in the meaning of *oan* to imply that the Timorese are God's children, and probably (*karik*) he will hear them. But unlike the liberation poets, this poem is written in Tetum for an exclusively Timorese audience, as signified by the word "*ami*" (we) in the lines above.

Later in the poem he writes:

Oan kiik terus nain	Little childen[234] are people who endure
Oan kiik mate nain	Little children are people who die
Oan kiik mate ba nafatin	Little children die endlessly
Karik oan timor oho nain	If the people of timor are ones who kill

Like the liberation poets, Brito's tone is replete with judgment. He is less concerned with poetics than making a political and moral statement. In this poem he calls for a transition from violence to peace in the nation, and does so through the imagery of a child's lament. He recalls the injustices of being silenced in an earlier era, and passes judgment on the communities that have failed to make this change after independence. His poem suggests the most vulnerable and voiceless are the children of Timor, who are emblematic of all the victims of violence in Timor-Leste, whether that violence was perpetrated by previous foreign regimes or Timorese themselves.

Although this poem says nothing directly about the justice system, it speaks eloquently to the eight years of the justice system's failure to prevent violence, and its inability to provide full truths about violence between Timorese themselves instead of just the violence waged at the hands of the Indonesian regime. This poem is indicative of a transition that has not yet been completed in Timor-Leste.

Another poet who has carried on the tradition of writing on behalf of the voiceless is Joao Damas. Although his poetry is written in Indonesian, his poem is perhaps most like the liberation poets in its style and use of poetry. He is blatantly political in his language, judgmental in his tone, univocal in his perspective and rhetorical in style. I will briefly share his poem "*Suaraku tak terdengar*" (2005) to illustrate the similarities to and differences from the pre-independence poetry of silence.

Suaraku Tak Terdengar	**My Voice is Unheard**
Ketika engkau membutuhkan	When you need
Ku, suaraku engkau dengar	me, my voice you hear
Saat engkau tak	The moment you don't
Membutuhkanku lagi, suaraku	need me anymore, my voice
Tak engkau hiraukan	isnt paid attention to by you
Ketika aku memerlukanmu dan	If I need you and
Memanggil	Call
Engkau seperti tuli dan buta	You are like the deaf and the blind
Oh… Tuhan suaraku tak ter	Oh… Lord my voice isn't
Dengar.	Heard.
Aku serperti sampah yang tak	I am like trash that isn't
Diperlukan lagi	needed anymore
Suaraku seperti ditelan dan	It is like my voice has been swallowed and
Dihempus angin laut	Scorned on the ocean winds

[234] *kiik* literally means "little", but it is also associated with other meanings, such as in *povo kiik*, which can be translated as the common people and is equivalent to *rakyat kecil* in Indonesian. In other words *kiik* can have connotations of socio-economic class, in addition to having a diminutive usage.

Aku tak kuasa, dengan semua itu	I am not powerful, with all that
Gedung putih yang berdiri kokoh	White building that stands sturdy
Seakan ikut menahan suaraku	So that my voice will be defended
Oh…percuma aku berteriak	Oh…if only I could scream
Suaraku terhalang oleh gedung	My voice is obscured by the building
Putih	White
Engkau yang dulu selalu berada	You that before was always there
Dekat denganku	Close to me
Kini menghilang dan	You disappeared and
Bersembunyi dibalaik gedung	hide behind the building
Putih	White
Aku lelah dan benci pada	I am weary and despised by
Diriku.	My own.

The most noticeable and daring aspect of Damas' poem in comparison to previous Timorese writing is his seeming denouncement of the former Resistance leaders that have now moved into positions of power after independence. He expresses this disillusionment with Timor-Leste's current political establishment by using the image of the "white building" that is immediately recognizable to Timorese as the *Palacio Governo* on the capital's main thoroughfare where government offices are located facing the waterfront and the national Parliament meets in the back. The *Palacio Governo* has been the seat of governance and the dominant mark on the landscape of Dili since the Portuguese colonial era. The choice of this imagery and language conflates all those who are currently in office with those who have occupied those same offices in the past. It is in front of the same white building in 1999 that the militia groups held their April rally and began their rampage around Dili that ended in the massacre at the Carrascalão home. It is in front of this same white building that the canons of the first ships of the Portuguese who arrived in Dili are displayed as a reminder of an even earlier era of oppression. In the post-independence era, the reversals of power from the colonized to the sovereign could be celebrated by the use of the white building imagery. But this poet refers to the "white building" as an obstruction rather than a liberation. He argues that the current government is separated from the voices of those people who suffered in the past for the sake of independence. This author accuses the leaders of East Timor who once were "always there close to me" of abandoning the many Timorese people who they depended upon as the lifeblood of the Resistance.

Like the liberation poets, Damas writes for a political purpose so that people who have power will hear the complaints of the voiceless and take action. What do the voices of the voiceless sound like after independence? The sound of the poem is cutting and heavily aspirated with a plethora of "k" sounds. To balance these sharp sounds, the poet uses a number of low "d"s and "g"s in close proximity to the "k"s. The effect is a plodding, heavy rhythm pierced by sharp breaths and high "I" sounds ("*gedung putih yang berdiri kokoh*"). Assonanance is a consistent feature, in particular the use of the "ah" and "ooh" sounds. As in *Povo Sem Voz*, Damas equates these sounds and the authentic voice of the Timorese people with a scream, but he asserts that in the independence era even screams cannot be fully voiced or heard.

His choice to write in the Indonesian language provides us with another clue about the voice of the Timorese. Language is not yet freed from the history of Occupation: the common people who

lived most directly under the Indonesian regime are separated from the voice of their Portuguese speaking leaders by government language policy. Furthermore, his use of the pronouns "I" and a familiar, emphatic "you" (*engkau*) are in stark contrast to the preference of the liberation poets for the use of "we" and "us" for references to Timorese, and an unspecified "you" (you is from the conjugated verbs and is not an emphasized subject) for an outside world. Throughout the poem although stylistically he is similar, his artistic choices indicate a break with the previous language of the Resistance. According to Damas the Timorese voice has not yet been set free by independence. It has been silenced again, but this time by those who once heard it and have now forgotten its call. Damas depicts a more alienated portrait of post-independence Timor-Leste than Brito in his poem.

Poems like this one lend credence to Antonio Soares' analysis of post-independence Timorese literature, which states current literary narratives display fragmentation within Timorese politics and society and harbor divisiveness rather than unity. However, what is shattered in this poem is not necessarily the solidarity between the majority of the Timorese people, but rather the romantic notion of unity created by the Resistance between the Revolutionary elites and the common people. Damas' poem reveals a problem with the pre-independence poetry of voicelessness, in that the liberation poets' spoke *for* the Timorese people. The poet's voice was the "national" voice prior to independence, and could act as a gatekeeper to manage the internal language of dissent and mask the heterogeneity of the population. The so-called unified voice of liberation poetry identified by Soares' in his analysis of Timorese poetry may in fact be more correctly read as a representation of the same kind of voicelessness that exists in the post-independence era. In other words, the frustration of contemporary Timorese poets may be continuity rather than a disruption in the people's identity since independence.

Prior to independence only a few chosen leaders wrote as poetic mouthpieces for the many. They were narrative centers for the cause of independence. After independence this condition could not continue unaltered because the din and diversity of the *vox populi* was no longer contained by the Occupation's restrictions on speech and assembly. However, the leaders, at least in the interpretation of this poet, have continued to speak for the people, without the consultation required to speak on behalf of the people. The unity expressed in the poems by the liberation poets as described by Soares may not have corresponded to a homogenous popular voice, but rather indicated a limited number of poetic outlets that could not accommodate the diversity of popular voices. Rather than being new, the divisions between both Timorese and their leadership may have been hidden behind the poetry of the pre-independence era all along.

The transition in silences between the pre- and post-independence era in Timor-Leste is more distinct in another poem by Zevonia Vieira. In her work, "*Kebebasan Tanpa Arti*" (Freedom without Meaning) from the 3rd stanza she writes:

Bertahun-tahun rakyat Maubere	For years the people of Maubere
Diam membisu tak bersuara	kept silence, mute without voice
Ditindas, dijajah…	tortured, colonized
Rakyat Maubere tidak pernah	The people of Maubere never
Merasakan kebebasan	felt freedom

Ya…sekarang rakyat Maubere	Yes… now the people of Maubere
Telah merasakan kebebasan	have felt freedom
Telah merasakan kemerdekaan	have felt independence[235]
Mempunyai bendera sendiri	have their own flag
Mempunyai symbol sendiri	have their own symbol
Rakyat Maubere bersatu	The people of Maubere are united
Tapi sekarang apa yang terjadi?	But now what has happened?
Rakyat Maubere mau berpisah	The people of Maubere want to separate
Hanya karena ego antar insani	Just because of the ego among humans
Suara tembakan berdatangan lagi	The voice of gunfire comes again
Door…door…	Drrr…Drrr….
Darah berceceran…	Blood dripping…
Ini darah siapa?	Whose blood is this?
Ini bukan darah penjajah	This not the blood of the coloniser
Kenapa saudara kita harus mati?	Why must our brothers die?
Kenapa kita membunuh saudara kita sendiri?	Why do we kill our own family?

Vieira's poem echoes many of Damas' observations and recalls the problem of silence that characterized East Timor before independence. As Soares' study has described, she has written a poem that explicitly deals with the divisions within Timorese society. Yet, she explains Timorese unity as something that was supposed to occur after independence. To refute Soares' argument, Timorese unity, at least as it is described by this poet, was a promise of the Resistance but not a reality even before independence.

On the other hand, her poem explicitly states there are continuities. Like Damas she uses open-ended questions to end the poem in a reflection on the continuity of violence, and the failure of independence to provide a resolution to the past. Instead of the silence there was the voice of violence – as symbolized and heard in the sound of gunfire. Unlike our other poets who have used sounds and imagery that was subdued, Vieira is the first one to directly engage in onomatapeia ("*Door….door*"). Her direct use of sound contrasts her to the other poets, even as she writes about the same theme of silence. She suggests in this poem that Timorese have a voice in the post-independence era, but unfortunately it is the same voice as the colonizer used – the voice of gunfire ("*suara tembakan*"). The colonized speaks as the colonizer, and new victims and silences are generated.

This poet turns our attention to another theme that is more pronounced in the post-independence poetry – noise, sound, cries. The abundance of sound in post-independence poetry suggests there has been a break with an oppressive past and progress has been made in the work of national mourning and reconciliation. An examination of the prevalent sounds in post-independence poetry may provide insights into potential sources of Timorese solidarity and the legacy of other aspects of transitional justice.

[235] The majority of this translation matches the English translation of the original Indonesian version in the anthology, *Terra*. However, there were several places, such as the deletion of this sentence in their version, which I have corrected or changed.

The Work of Mourning

One of the most prevalent images in post-independence poems is song. Images of song appeared in some of the poems above in contrast to the silence, such as in Brito's "*Ohin ami tur hananu/Tur hananu no halerik" (Today we sit and sing/Sit to sing and lament).* Antonia Carmen da Cruz, another former CAVR staff member, also used the imagery of song to represent healing and to encourage reconciliation in her poem "*Ohin Kedas*" (Today Quickly, year unknown): "*Ohin O tenki hananu./ Karik ksolok bele hakma'an O nia susar*." (Today You have to sing./ If the happiness can assuage Your troubles). In Cancio Ximenes' poem "*Sanak Barak, Suli ba Ida*," he writes: *Hakmatek ba…Halerik wain, kesi ba knan anuk ksolok nian/ Hakmatek ba/ Tanba... Sanak barak, suli ba ida*" (Go in peace…/At the time of mourning, go bind yourself to the people who sing songs of happiness/ Go in peace/ Because…many streams, flow into one). Song is associated with both diversity and unity by this poet and is described with images of fluidity. Earlier in the poem, the poet distinguishes between words and songs. He explains, "*Liafuan sanak hafahe ema*" (Many words divide people). He argues that ritual and lyrical language have the potiential to heal rather than the destructive powers of other forms of language.
Another common set of sounds in the post-independence poetry is the Timorese traditional drums and the sound of the feet of dancers accompanying them. In his poem "*Lutu Karau Ruin*" (Mourning Water Buffalo Bones, 2007) Father Adri Ola penned a memorable third verse that describes the relationship between the sounds of mourning and Timorese hope for the future:

Café iha folin	Coffee has its price
Babadok mos lian	The drum too her voice
Ita bidu iha lutu laran	You dance the *bidu* in your mourning
Abu-abu taka	Fog covers the
Se, los maka bele loke ita	Church, you can open your
Matan	Eyes
Atu bele hare naroman foun	So you can see the new light

He uses regular patterns of rhyme (*laran/matan/naroman* and *taka/maka*), even though the poem is free verse. His turn of line is compelling: he builds a crescendo with the elongation and step - like quality of his length of line, and then drops it suddenly by isolating "matan" in a single line. He resolves this abrupt change through a long final line full of soothing, stretched dipthongs ("ouh" sounds in "*naroman foun*"). He enjambs the fourth and sixth lines for emphasis, which draws attention to their binary images of closing and opening. By enjambing the fourth line he also draws attention to the image of the church, which is key to his poem's argument that the solace of traditional rituals alone are insufficient, and the Church is a source of rejuvenation and solidarity. During the post-independence revival of traditional mourning practices, the Church is reasserting itself as a source of solidarity, and poetic language is one means.

Abe Barreto Soares also uses these sounds in relation to mourning but explicitly ties them to the CAVR's community reconciliation program. He takes the sounds of the drum and dance and uses them as representations of peace. Sound in this poem is the opposite of silence, and is associated explicitly with truth-telling, reconciliation and accountability.

"Subur Tanpa Akhir" (2006)[236]	**Flourish Everlasting**
Segalanya akan hancur	Everything will be crushed
Segalanya akan pecah	Everything will be broken
Segalanya akan menjadi debu	Everything will become dusty
Tunas batu akan muncul, suburkan tanah datar	New buds will appear, the flat land flourishing
Kita akan memohon	We will pray
Kita akan menyanyikan nyanyian nenek moyang	We will sing the songs of ancestors
Kita akan tebe	We will tebe
Kita akan bidu	We will bidu
Mengitari batu-batu rumah adat	circling the stones of the sacred house
Tikar besar akan degealrkan	A big mat will be spread out
Kita semua akan duduk	We all will sit down
Kepala kita akan dingin	Our heads will cool
Hati kita akan mencair	Our hearts will be soft
Beberkan kebenaran	telling the truth
Tuturkan kesalahan	recounting the wrongdoings
Kebahagiaan kasih akan muncul	The happiness of love will appear
Keindahan damai akan menghijau	The beauty of peace will be green
Subur dan subur	Flourish and flourish
Subur tanpa akhir	flourish everlasting

Barreto's poem tells the story of the way in which truth, reconciliation and accountability could emerge in local communities after the destruction of 1999. Collective sound rather than silence is the anecdote for suffering that is suggested by this poem. The author's use of *kita* (the 1st person plural marker specifically designated in Indonesian to include the speaker and listener, or here the reader and writer) is a key element to understanding the intended audience, message and aesthetics of this poem. The subject of the poem is "we" – an intrinsically inclusive view of Timorese identity that does not distinguish between political or ethnic identities. His use of *kita* is also notable because it eschews the commonly used terms of victim and perpetrator (*korban* and *pelaku*). He avoids these labels, even though he is writing in this poem about reconciliation meetings where perpetrators and victims would face each other. The implication of this diction is that accountability is and should be a collective concept that does not emphasize differences. There are not multiple subjects in this poem (i.e. us and them). *Kita,* the collective, will speak of wrongdoings. This subtle word choice is important and powerful because it implies that only when truth is told by all parties of the conflict, will East Timor establish peace and flourish. Barreto's poem is an allegory for collective Timorese accountability and peace.

Silence and the traditional sounds of mourning are themes that have the potential to spawn

[236] This poem and translation are from the version published in *Terra*. The same poem has appeared in Tetum and in Indonesian in the *Timor Post.*

narratives of collective victimization. The poetics of voicelessness can be used to describe the negative effects of the Indonesian Occupation and the global indifference to Timorese peoples' suffering. These themes can also describe the post-independence governments' shortcomings. Mourning reaffirms Timorese identity through the use of traditional rituals in the wake of the degradation of their native culture by the violence of foreign occupations. These themes are in many ways legacies of the pre-independence era. However, the poems above from the post-independence era are more complex, because they use silence and sounds to express *collective accountability*, not only victimization.

Silence, in poems such as Damas', may be a calculated choice of words and theme that implicates the people of Timor-Leste in past and present human rights abuses. Poems such as Viera's exercise accountability by denouncing the ways in which Timorese are responsible for replicating the violence of the Indonesian era. Poems such as Barreto's act as allegories for ways in which collective accountability can lead to healing and prosperity in the future. In summary, post-independence poetry is indeed reflecting upon the fragmented nature of Timorese society as Soares' study suggested, but this diversity of voice and political opinion does not necessarily indicate political weakness or changes in Timorese unity, but rather may represent continuity in aesthetics, a heterogeneous national identity, and systems of oppression. At the same time, these poems contain reflections on future sources of solidarity for the Timorese people, including the continued pursuit of justice, healing and reconciliation.

Amidst this poetry of silence and sound there is another dynamic that deserves reemphasis, which is the shift in the political and social environment that Timorese writers publish and Timorese speak. One of the most moving works to make this point is a short story, "The Hand," by Melchior Dias Fernandes.[237] The writer relates a memory of meeting her unrecognized uncle who was a FALINTIL solder from the perspective of an adult in an independent East Timor who is attending university in Indonesia. The narrator's perspective in the story shifts between a child and an adult. The vivid image in the story is a cut-off hand of a *Bapak* (term used for Indonesian civilian officials during Occupation) who was wearing a large watch. The first and only time the narrator remembers meeting her uncle, the FALINTIL fighter, he pulled the bloody, severed hand from his backpack. The protagonist remembers him removing the watch and carelessly tossing the hand out of a window. The story is poignant and unusual because it includes images of violence that implicate the Resistance, in particular FALINTIL, as well as the Indonesian Occupation. The most memorable paragraph in the story follows:

> "I never told anyone about meeting my uncle or about the hand. For one, I didn't think anyone would believe the story. Secondly, my grandmother had taught me about secrets. Children's business is okay; you can tell anyone what you've been up to in the playground. But grown-ups' business, especially about life and death in war, one must keep to oneself."

By writing this story from the perspective of a child, Fernandes is writing against this culture of silence. This author proclaims, along with these other writers of the *Geraçao Foun*, that now is the time to speak. This story stretches the narrative boundaries of that nation. Like Fernandes, many of these poets from the *Geração Foun* write to remove taboos, so that speaking, and not

[237] See *Terra*, 327-329.

silence will become a source of Timorese identity, even if this means speaking about memories that confront diverse identities and uncomfortable truths about the past. Literary expression has changed from an *unvoiced*, silent, predictable political art to a *voiced* but unpredictable art in the independence era.

In its ability to write about taboo subjects, such as violence committed by FALINTIL soldiers and the abandonment of families, Timorese literature in the past ten years has proven its ability to write around the politics of the Resistance and the Indonesian Occupation that have frustrated most of the transitional justice enterprises. In so doing, contemporary Timorese literature has absorbed and extended the project of national truth-telling. The fact that many of these writers played an integral role in the administration of these transitional justice mechanisms underscores the way that they act behind the scenes to fill in the gaps and the inequities of justice, as well as their desire to celebrate the successes of the truth-telling that they have witnessed. I suggest these writers, although mostly unrecognized and anonymous to their readers and their co-workers, are acting as new narrative centers that could ultimately be one factor in the legacy of truth and justice in Timor-Leste.

The Voices of Justice

The poems we have considered so far have mostly demonstrated an indirect relationship to the transitional justice system through their use of themes, such as silence and sound, to explicate the narratives of collective victimization and accountability. One may wish to argue that the interpretations I've provided could be written about any political system, and are not specific reflections by the poets on the Timorese system of transitional justice, but rather express vague, political malaise. However, my readings were made in the context of the multiple other poems I found that unambiguously take up the theme of justice. The following poems are examples of direct complaints about the justice system in Timor-Leste. They express what one poem calls a "thirst" for truth and justice. What I find most interesting about these poems is why the poets wished to speak so directly about their frustrations with justice in a poem.

These samples of Timorese literature suggest that poetry has credibility in Timo-Leste that other forms of expression do not. Poetry in itself is acting as a silent tool of accountability and a check on the claims of achievement by the transitional justice system. Themes of victimization and accountability are common in these poems, but here victimization is often expressed as the product, or absence of, the justice system.

A poem by Jojo Damas places the theme of victimization and sacrifice center-stage with its title, "*Jangan korbankan aku*," or "Don't sacrifice me." The most stunning lines from this poem read,

Dari sudut yang gelap	From a dark corner
Kumencoba mencari kebe	I try to look for the name of
Naran	truth
Namun dalam kebenaran	Yet within the truth
Yang ketelusuri	that is followed
Kutemui diriku terkapar dalam	I find myself right in the middle of
Permainan kotor	the dirty game

Damas ends his poem with self criticism (I find myself…). The critiques of the government are so harsh in tone that it surprises the reader when the criticism is turned inward. This shift in subject creates a successful finale and resolution to the poem. Through an intrinsic play on words, the poet draws attention to the simultaneous ability of the concept of sacrifice (*pengkorbanan; korbankan*) to create and denigrate meaning. However, in this particular stanza the poet draws our attention to the limitations of truth-seeking and truth-telling. This poet raises questions about to what extent the "truth" of the past can be pursued without uncovering, and then covering back up, uncomfortable truths. Truth, according to this poet, is part of a game. This is a surprising indictment of the search for truth written at a time when one truth commission was ending and another was beginning. This poet expresses a cynical disbelief in the nation's ability, including himself, to produce pure truth. Truth is followed in the current environment of injustice: it is not diverse or questioned.

The most striking poetic technique in the poem is the isolation and enjambment of the third line, which emphasizes the poem's subject – truth (*kebenaran*). The poet splits the word and the line graphically (kebe/naran) on the page so that the word, "naran", or "name", is isolated in a single line. This split of the word, *kebenaran*, appears to deliberately draw attention to a certain aspect of truth and justice, which is naming. The lack of naming of perpetrators in both truth commission's reports (CTF and CAVR) has been a sensitive political and legal issue. Both truth commissions for different reasons made decisions to not include the names of specific perpetrators in their reports, which significantly limited the degree of satisfaction victims might derive from seeing these individuals formally held accountable at least in a non-judicial manner of naming for their human rights abuses. The absence of names highlights the transitional justice system's limited success in establishing individual accountability for specific human rights abuses in East Timor. Thus, once again this poet draws our attention to the exercise of collective accountability, specifically the search for truth. However, this poet in a subtle but effective counter-narrative points to the dynamics of collective accountability that collaborate to overshadow the unspeakable acts of specific individuals. According to this poem, truth remains an unnamed, unspecified mystery in Timor-Leste. It has not been completely found. "Don't sacrifice me" is a poem with a dark and strident tone, which is reminiscent of the pre-independence poets declarative politics, but in this case the poet is directing those tactics to an internal audience. The dirty game he describes is inside Timor-Leste.

Another poem that is similar in its forceful, denouncement of the transitional justice system is "Jangan" by Santina, or simply, "Don't!" (2005)

Jangan	**Don't!**
Jangan berbicara tentang keadilan	Don't talk about justice
Mari kita menghitung berapa	Let's count how many
Banyak	Many
Batu nisan yang tersebar di	gravestones there are spread across
Loro-sae	Loro'sae
Jangan berbicara tentang	Don't talk about

Rekonsiliasi	Reconciliation
Mari kita berdebat tentang berapa	Let's debate about how much
Real estate yang akan kita bangun	Real estate that we will develop
Diatas batu nisan manusia	Over the gravestones of human beings
Yang berkorban demi keadilan	Who were sacrificed for justice
Jangan bicara tentang kenyataan	Don't talk about facts
Mari kita berdiskusi tentang	Let's discuss about
Apakah pembantaian itu fiktif	whether that slaughter was fictitious.

Above all, the feeling of this poem is uncomfortable. There is no rhyme and no meter. "Don't!" is a harsh command. There is assonance of the "a" (ah) sound throughout the poem that mimics the sound of an angry outcry (Aaaah!). The assonance is balanced by the consonance of the "b" sound, which enhances the tones of disgust and sarcasm in the poem. For emphasis and resolution in the final lines of the poem, the poet breaks this pattern with the use of the word "fiktif." The "f" contrasts with the dominant "b" sounds, and the "i" contrasts with the "ah" sounds.

This poem of dissent is directed specifically at the justice system, and more specifically to the politics of reconciliation. The poet speaks with sarcasm and rage to one of the main narratives of justice in Timor-Leste propounded by Xanana Gusmão as political leader, and the eponymous figure of the liberation poets. This poet writes in response to this narrative of independence as justice. He accepts that sacrifices were made for justice, and justice was the cause of independence before 1999 ("Over the gravestones of human/beings/Who were sacrificed for justice"). But, this poet denounces the post-independence extension of the equation, so that independence = justice = reconciliation. He argues that reconciliation is not honoring the purpose of the pre-independence sacrifices of life. His poem posits the sacrifices of life for independence are now being sold out in the guise of reconciliation for the sake of economic gain ("Don't talk about/Reconciliation/ Let's debate about how much/Real estate that we will develop"). Reconciliation, for this poet, is a fictitious form of justice that is not equivalent to the real sacrifices of life made by people for the sake of independence. If the deaths were fictitious, then perhaps reconciliation would be appropriate as a form of justice. But, in now what is an identifiable common technique of Timorese literary closure, the poet uses a rhetorical question to resolve the poem and challenge the reader. He raises questions about what degree the distinction between "fact" and "fiction" can be made in the context of the politicization of justice in Timor-Leste. He questions whether "justice", as decided by Timor-Leste and Indonesia's political leaders, can provide an authentic, truthful, complete, and memorial account of the past. He questions whether justice will be based on facts or fictions. The context within which this poem was published in the *Timor Post* was the announcement of the convening of the Commission of Truth and Friendship (CTF), and his questions about the meaning of justice appear to be directly related to the anxiety and anger at the creation of this transitional justice institution.

A more blatant poetic protest to the transitional justice system, and specifically to the CTF, appears in a poem by an author mysteriously called Dordio. X.

Keadilan telah mati di persada Lorosae	***Justice is dead in the homeland Lorosae***
Kalau hari ini keadilian ada	If today there is justice
Bakal keletakan diatas telapak tanganku	Future clacks on the palms of my hands
Agar musuh keadilan tak mengepung kita	So the enemies of justice won't surround us
Namun hari ini keadilian tak ada	Yet today justice there isn't
Dan kemunafikan berkabar dari Lospalos ke Oecusse	And the hypocrisy spreads from Lospalos to Oecusse
Bahwa keadilan telah mati di persada Lorosae	That justice is already dead in the homeland of Lorosae
Sejak rekonsiliasi dan CVA menampar wajah kita	Since reconciliation and the CTF are a slap in our face
Memang keadilan telah mati di persada Lorosae	Surely justice is already dead in our homeland of Lorosae
Dan musuh keadilan kukuh memuluk kita	And the enemies of justice strongly bombast us
Tapi tak usaha berduka karena telapak tanganku	But it is of no use to suffer because the palm of my hands
Masih sanggup mengusap air mata pencari keadilan	Already are able to wipe the tears of the seekers of justice

The strongest image in the poem is hands. In the second line, the poet refers to the historical practice of corporeal punishment in East Timor, or *palmatória*, which dates from the Portuguese era. Colonial administrators and collaborating traditional kings of East Timor, the *liurai*, used wooden paddles with holes cut through them to beat the palms of the hands of villagers who could not pay the head tax (*imposto)*, or if someone committed a minor infraction. The small number of children of *liurai* and mestizo families who were allowed to attend schools run by the Church in the Portuguese era also received *palmatória* as punishment. The holes in the paddles caused them to make a sharp, cracking sound and increased the sting of the blow. This image is symbolic of retributive punishment. Surprisingly given the violence of the image, the poet argues that punishment would be tolerated from a government authority if justice was the result. He echoes the logic of the Resistance era that sacrifice is necessary for justice. He defines his view of justice as retributive. But, he says, neither punishment nor justice has occurred. He specifically blames the national policy of reconciliation. By closing the poem with the repetition and shift of the hand image, he vividly describes a failure of restorative justice to break the cycle of violence that is embedded in the national memory. In both representations of hands in the poem, the beaten palm and the tear-stained hand, the Timorese are depicted as victims of a justice system that is not fair. Retribution after independence is evasive, and this poet draws attention to the power of the Timorese people to console one another as they continue their search for justice.

Another poem (author unknown) directly critiqued the justice system and its relationship to political and economic corruption.

Excerpt from
"Povo Timor"

Ami nia isin sei krekas
nafatin,
Ami nia ruin sei nurak hela,
Ami nia ran seidauk nakonu,
Maibe…
Ema barak maka bokur ona,
Ema balun ran mean nakonu
tiha ona
Ami barak sei hakilar
Ami barak sei halerik
Hakilar hodi husu
Halerik hodi tanis
Ema barak hakilar lori povo nia naran,
Ema wain halerik bodik
Povo nia susar
Maibe…
Sira maka diak
Sira maka bokur no sira
Maka goza…
Karik ami sei terus
Nafatin
Timor…O riku…
Timor O furak…
Maibe O nia riku
O nia furak ba ema balu
Deit…
Ba ema sira nebe hatene
Ba ema sira nebe
Matenek…
Hatene kose, matenek
Naok…
Sei goza ba nafatin
Timor… O rai ida lulik tebes…
Tetu-ba, hare tok ba.
Ami ata oan sira
Justisa…
Karik justisa sei iha maibe
Tribunal justisa sei laiha.

The People of Timor

Our bodies will be frail
forever,
Our bones will go on being long
Our blood is not emptied yet
But…
many people are already fat
Many people's red blood is
already empty
Many of us will scream
Many of us will wail
Scream to ask
Wail to cry
Many people call out in the people's name,
People when they shout for the sake of the
people's troubles
But…
There are those who are good
Those who are fat and those
who enjoy…
If we go on
forever
Timor… You are rich
Timor You are beautiful
But Your riches
Your beauty goes to some people
Only…
To people who know
To those people who are
smart…
They know greed, cunning
laziness…
To go on being enjoyed forever
Timor…. You are a country that is very
magical
Going to and fro
Us slave children
Justice…
If there was to be justice but
A Court of justice there will not be.

The poet describes a very specific vision of justice (an international trial) but also a broad one that incorporates aspects of social and economic justice. Unlike some of the other poets we have examined who prefer to emphasize the inclusive nature of the Timorese identity, this author uses the exclusive first person plural pronoun – *ami* – to describe the Timorese people. His choice of this voice is appropriate to his poem that argues that the nation's resources are not being shared by all. He describes this inequity as related to the Timorese people's exclusion from justice. The absence of justice is characterized by the contrasting images of frailty (poverty and suffering) and corpulence (fat bodies and greed).

This emphasis on the ideal of justice is underscored by the poet's use of form. To describe the current state of injustice, he chooses an uneven structure for his poem. Lines are irregular in length, rhythm, rhyme and syllables. The graphic and aural effect is ragged. In addition he packs the poem into a single stanza even though there are several places in the poem where the reader yearns for a break. In these places the poet uses conjunctions (i.e. *maibe*), but appends ellipses to them so that the poem continues to trod on without a stop, even though the reader's breath and the images call for a rest. He replicates the feelings of endurance, survival and weariness that he witnessed in those whose statements he recorded in the national truth-telling exercise. His focused and repetitious use of the future tense (*sei*) stresses the feeling of continuity of injustice, but also the continued desire to move forward. The poem reads like an exhausted march towards justice (*Karik justisa sei iha maibe*), where the possibility is open ended with the use of the conditional word, *karik* (which can be translated in multiple ways included probably, possibly, if). But, again, the goal of justice is evasive. This marching quality is brought to a sudden halt by the resolution of the poem with a full stop, where the opportunity for justice is stalled, and possibly foreclosed (There will be no tribunal).[238] The images and language in the rest of the poem are emotional, figurative and descriptive. But in conclusion, a concrete image of justice is used (tribunal) and the aestheticized, distant tone of the poem is shattered with a hard reality.

All of these poems engage in direct political commentary on the transitional justice system. They define what justice used to be (independence) and what it is not to them now (ever greater sacrifices, reconciliation without retribution, socioeconomic inequity). Poetry is their chosen venue of dissent to express their disillusionment with the outcomes of independence and the transitional justice system. They write in a way that claims to represent the "voiceless" (those who sacrificed their lives, or the frail bodied survivors) among their own compatriots. They write in response to attacks on what these poets perceive as justice within and by their own community in the post-independence era. Accordingly they choose to write in languages and poetic forms that speak to Timorese, by using the Indonesian and Tetum languages, and not the international community. They turn the tradition of Resistance poetry on its head by using poetry as a way to critique those very poets who invented these literary forms of activism, but who are now political leaders. These poets choose literature for its credibility gained as a tool of the Resistance, and for its aesthetics that enhance their vision's persuasiveness. In this way, poetry acts as a vessel for people's views on transitional justice in Timor-Leste and comprises an independent and hidden form of assigning meaning to the experience of injustice and to exercise accountability for the past and for the present circumstances of violence within East Timor. In so doing all of these poems depict the unifying cause of the Timorese people before and after independence as the

[238] "*sei la iha*" is sometimes used to refer to an action that is in the present, but will extend into the future. Therefore, some might translate this line to mean "there still is no court" rather than there will be no court.

search for justice.

The Wounded Witness

Another common motif in the post-independence Timorese literature is the wounded protagonist. This figure is the narrator who tells a story in an effort to heal, but in each case the protagonist discovers the wound remains and the text reopens it. The text brings the wound to life again, and places it in a public, visible place. As the text flows, so do traumatizing memories and emotions. Cancio Ximenes' poem, "*Luka berdarah*" (Bleeding Wound) is the most memorable of these representations.

Luka Berdarah	**Bleeding Wound**
Luka masa laluh masih memerah Luka-luka itu masih terbalut perban kesedihan Tapi… Dengan tingkahmu Engkau ukir luka baru di atas luka lama Hingga luka masa lalu kian berdarah Dan semakin berdarah-darah	The wound from the past still reddens Those wounds are still bandaged with guaze and sadness But… With your deeds You engrave a new wound on top of the old wound Until the wound of the past bleeds And all the more it bleeds and bleeds
Luka berdarah, darah-darah pun terluka Darah terluka, luka-luka pun berdarah Luka mengangga Darah mendanau Laksana kubangan Tempat luka-luka berkubang	The wound bleeds, blood and blood it is ever wounded Blood of the wounded, wounds and wounds they are ever bleeding The wound gapes The blood pools Resembling a puddle The spot where the wounds are muddied
Kapan luka-luka itu disembuhkan? Kapan kubangan darah itu kering? Kapan luka masa lalu itu membekas? Tanyakanlah kepada luka yang berdarah-darah	When will these wounds be healed? When will these puddles of blood dry? When will that wound of the past leave a trace? Ask the wound that bleeds and bleeds.

This poem is striking because of its well-developed use of rhythm. The majority of the poem is written in neat trochees, with particular lines conforming to set patterns for emphasis. The first two lines set the metric flow of trochees (/u/u/u/u/u/), then the rhythm reverses into iambs (u/) and returns in the 6th and 7th line. The two lines where the rhythm is broken are the places in the poem where the poet makes accusations, and the wound reopens. In the second stanza, the poet uses rhythm most deliberately for an aesthetic effect. Lines 3,4 and 5 are written in identical meter (/u/u/u) for greater impact and to contribute to a feeling of constancy. The final line of the second stanza is written the same as the last line of the first stanza (/u/u/u/u/). Overall, the regularity and patterned constructions contribute to the flow of the poem. This metric regularity is aesthetically pleasurable, which keeps the reader's attention even though the poem describes a scene that is grotesque and unpleasant. The rhythm of the poem pumps and throbs violently like blood from an open wound, but its regularity also pulls the reader towards its signification of survival. The meter represents the flow of life.

Where the poem's meter is highly irregular, it expresses the protagonist's vulnerability. The final line of the poem is the most irregular (/u/u-uu//uu/u/u/). Ximenes shows the same preference for ending poems in questions as many of the other poets we have examined, but this flip of the question is the most interesting one encountered thus far. It is a demand to question – to ask – but the question is redirected to the wound itself. The wound is personified, which is made more explicit by the use of the word *kepada*, which indicates an action directed to a person. Here the poet makes the cycle of violence terribly visible and absurd: he asserts the effect of violence – the wound itself – holds the answers to healing. The symptom is the solution, but the solution is the symptom in an unbreakable cycle. This poet suggests the effect of violence covers the source, and depicts the impossibility of reaching its origins. Violence begets violence and so on, until there is no answer to the violence, but only a remaining question that tries to push further and further into the past. The wound remains open and vulnerable even as the poem ends.

Complementing this regular use of rhythm are various techniques of repetition. The assonance of "a"s and "u"s throughout the poem, and particularly at the end of lines creates aural symmetry in the poem without the triteness of an overly regular rhyming scheme. The poem uses both alliteration and consonance. The first line is fully alliterated (*Luka masa laluh masih memerah*)." "D" sounds are also repeated throughout the poem for example in the line "*darah mendanau*". This alliteration and consonance enhance the repetition of the words *luka* and *darah* throughout the poem. *Luka* and *darah* are repeated to create a feeling of volume (a plurality of victims and/or a multitude of violent acts committed against individual victims) and continuity. The repetition of these two images is also mnemonic: repetition creates memory. The writer wants the blood and the wound to be seen and remembered. This desire is explicated in the next to the last line when he asks when the wound will leave a trace. The point the writer makes is despite all this bleeding, the blood remains invisible, so that people continue to wound the same place (*tempat*) again. The writer uses the poem to ask the audience when the violence of the past will have meaning. Only when the wound is a scar - a trace – it will have stopped bleeding, and the healing will be complete. He writes to make the wound visible. The text is a stab to let blood that will be noticed. It does not denote "closure." For this poet, the wound must be seen and its visibility in itself will endow the wound with meaning – not the impossible task of identifying its origins or erasing it forever.

A Poetic Legacy

These excerpts of Timorese textual literature were developed out of a rich, revolutionary history of politics and poetry as well as the experience of these writers witnessing human rights abuses on a massive scale – as victims themselves, as witnesses to other people's suffering and as workers within the transitional justice systems that sought to provide recompense for the past. These common sources of culture and history have resulted in patterns of language that include silences and sounds that have been used to portray both the victimization and the need for accountability for human rights abuses amongst Timorese people. Many of the literary works act as permanent memorials to the people who shared their testimonies in public "truth-telling" forums such as the trials or truth commissions, or in a more personal manner with the writers in the form of stories related as a friend, family member or client. These literary works also act as forms of political protest or intellectual critiques of the choices made for the justice system by the Timorese leadership and the United Nations. Some writers also seek to support and contribute to a spirit of reconciliation in the nation. In short, contemporary Timorese literature has gone beyond touching on these themes of justice and accountability tangentially. Literature is being used actively by Timorese writers as a means of commentary on the transitional justice system in Timor-Leste and to act to correct some of its limitations. The transitional justice processes provided a mechanism for a new generation of Timorese writers to be exposed to a broad swath of Timorese voices in a short period of time, particularly the voices of victims through the programs run by the CAVR. These writers collectively are taking those experiences and going far beyond and around them by exploring and shaping the narratives of justice that will continue to resonate and spread within Timorese society even after these transitional justice institutions have closed.

The clear preference of this new generation for literary variety - multiple languages, multiple genres, multiple writers, and multiple political opinions – and confronting taboos suggests the need for presenting a united Timorese cultural front for the sake of the "nation" may have subsided. At the same time these writers have also demonstrated that solidarity is still a feature of, and project for, Timorese literature. However, difference is not viewed by these writers as a threat to national or even international solidarity, but rather a source of strength. I have argued throughout this chapter, that the over-riding source of this solidarity as represented by these writers is the search for justice.

But, why does it matter what Timorese artists write about the transitional justice system or social solidarity? Is there a relationship between artistic expression and the outcomes of transitional justice mechanisms? Are the insights of poets meaningful and important to creating better justice institutions?

Mark Osiel in his works has suggested that successful transitional justice systems result in a state of "dissensus" which is a source of social solidarity. The term "dissensus" is a challenge to the assumptions that transitional justice institutions either are 1) built on a pre-existing social and moral consensus, or 2) are responsible for generating a consensus on what constitutes truth, justice and the rule of law. Dissensus, in contrast to these forms of consensus, is a process and a state of a desirable level of *disagreement* in a society after the experience of mass atrocity about core values such as justice. Dissensus allows for multiple views, but at the time sets sufficient

rules of discourse and behavior to allow for the exercise of the rule of law and respect for human rights. He explains,

> "But we are united in the hope of ultimately achieving a measure of agreement on certain issues – if not now, then at some future point. As seasoned participants report this process of solidarity through dissensus happens routinely in democratic politics. Such solidarity can happen in the courtroom, or through a process of discussion initiated there but continued elsewhere."[239]

Therefore, the fractures and fissures that the literary scholar, Soares, identified in Timorese literature as emblematic of a grave political problem, could in fact also be read as a positive development if viewed from the perspective of dissensus. The literature we have examined reflects the ability of these writers to achieve a state of dissensus where public debate over the meaning of justice is occurring within the boundaries of peaceful, tolerant discourse to create a feeling of solidarity. This dissensus may indicate the gradual but promising shifts in society that create the necessary conditions for better systems of democracy and restitution in the future.

The concept of dissensus was developed from Osiel's concern with trials that adjudicate human rights abuses, such as Nuremburg, Eichmann and the trials of the Argentinian junta. He studied their efforts to perform history and truth-telling functions, and the many obstacles to these goals. He advocates for judges and prosecutors to pay attention to the "poetics" of legal story telling in order to foster social solidarity, which is a necessary foundation for the rule of law. He argues "To maximize their pedagogic impact such trials should be unabashedly designed as monumental spectacles."[240] However, he noted that there can be many blockages to achieving an agreed upon "justice." Among these obstacles is the nature of collective memory, which can not necessarily be constructed neatly and in a controlled manner over such contested and subjective topics as history, truth or justice.

This chapter is not about trials, but about literature and its relationship to a number of transitional justice institutions. Osiel's argument does not sufficiently account for the multiple institutions and actors that may act in addition to trials to design their own spectacles of justice, many of which may contradict or complement the trial processes. In other words, it may not be possible to isolate the effects of a single transitional justice institution's didactics to accurately determine its particular impact on local memory or values. The literature we have examined is the culmination of unofficial, rather than the official efforts towards justice which are the concern of Osiel and his concept of dissensus. If Osiel argues that legal story telling can have salubrious effects on societies recovering from mass atrocity, then can story telling that is often legalistic – but not legal – also serve a similar social function? How can these poetics of justice "behind the back" of transitional justice institutions (i.e. produced in private time by these institution's employees, clients and observers) enhance truth-telling, and more broadly, justice or the rule of law?

Osiel assumes trials, or the transitional justice system as a whole, must teach peaceful means of dissent, disagreement, discord but in a way that still communicates authority and unity. He calls this task and method "dramatic didactics," and even briefly references Clifford Geertz' *Negara*

[239] Osiel, *Mass Atrocity*, 41.
[240] Osiel, *Mass Atrocity*, 3.

as an example of the ways states can perform this task. Indeed, the trials held in Timor-Leste engaged in these dramatic didactics, as did the CAVR and CTF in its public hearings and community profile sessions. However, our discussion has often pointed out ways in which "dramatic didactics" have led to a distortion of the truth-telling and historical functions of the trials and truth commissions. It appears that these institutions may not always be the best "teachers" to foster social solidarity on which to build justice or the rule of law. The content of the literature in this chapter reveals a great deal of confusion and dissension about the results of the formal justice institutions which may indicate serious shortcomings in the exercise of justice, most especially in its ability to use dramatic performances of justice to establish the truth and battle impunity.

This chapter has examined a literature of protest, memorial and advocacy that is written in a variety of languages, modes and opinions. It may demonstrate that societies emerging from mass society may not necessarily need transitional justice institutions to perform a didactic role which can then lead to a state of dissensus. Dramatic didactics are in fact what many of these societies that are emerging from a period of oppressive rule, such as Timor-Leste, are already well trained and accustomed to as a force of survival and resistance. These Timorese writers drew on pre-existing, revolutionary models of poetry and literature and rewired them to adapt to their needs to tell their own truths in an independent Timor-Leste, and rewrite the history of justice. Although the stories which emerged at trial and within the truth commission may have been the inspiration of the majority of these writers, the actual process of creating dissensus within Timorese popular culture is occurring independent from these transitional justice institutions without the tutelage of international advisors, institutional planning or support or at the behest of a unified, Timorese leadership. I suggest that Osiel's concept of dissensus accurately describes what these writers are achieving in terms of transitional justice, peaceful means of engagement with uncomfortable truths and political difference, but they have not needed to be "taught" this process.

Dissensus, in this case, is a product of multiple factors, many of which are entirely independent of the transitional justice institutions. Some of the most important contextual factors include the lifting of censorship, the growth of independent media outlets, a changed political environment where a centralized Resistance structure cannot dominate literary production and a revival of local languages and traditions. Dissensus as it has been achieved through the mechanics of literature is a product of local innovation hidden from any possible design or intention of the transitional justice institutions. Osiel's argument about monumental didactics (meant as a correction to post-modern romanticization of heterogeneous counter-narratives) downplays the fact that these techniques are not the exclusive enterprise of the state or its institutions but rather entails a knowledge of power that people who are the audience of such didactics, such as the Timorese, are already expert. Monumental didactics that are born out of the Resistance to a state (as opposed to a state's own monumental didactics) as we have seen them expressed in this literature written about justice may be in fact one of the areas which Scott would identify as *metis*.

It is true that Scott's description of *metis* explicitly states that oral literature, and not textual literature, is an example of *metis*.[241] I suggest, however, this literature also falls within the realm of *metis*. Much of the mechanics of this writing has been educated, studied, imitated, highly

[241] Scott, Seeing Like a State, 322-323.

structured and technical, and therefore may demonstrate features of epistemic knowledge. The objectives of this literature – witnessing, memorial, protest and solidarity – however are projects that require knowing how to use language to evoke certain emotions and reactions. How to make someone feel outrage, pity, disgust, empathy, joy, relief towards a fictional character or a national collective takes skills that can not necessarily be "studied" but can only be learned from practice, particularly when the language and format being used is in a transition from a culture of resistance to independence, and from oral to textual. I believe these writers are akin to the practioners of *metis* celebrated by Scott.

Further, for this *metis* to be significant to the transitional justice scheme, it must be a type of knowledge that has mostly been overlooked or oversimplified by institutional planners and a type of knowledge that is necessary for the successful completion of the idealistic goal – in this case transitional justice in its myriad forms of ending impunity, truth-telling, and healing. I contend that the following types of knowledge are contained in the emerging body of Timorese literature, but were lacking from the transitional justice institutions in Timor-Leste:

1) *How to use fiction*: These writers have the knowledge of how to transform the hard facts, or "truths," revealed in transitional justice proceedings into language and forms that are digestible enough to garner attention, but also unpleasant enough to mobilize support among Timorese for future justice initiatives. They understand that the institutional modes of conveying human rights knowledge, such as formal legal judgments, long reports, documentaries and even booklets of the literal testimony of victims of human rights abuses will not always express or evoke the need for justice and the experience of injustice in locally legitimate ways. These writers know how to shape fiction to fulfill the goals of truth-telling, in the form of legitimizing certain facts and human rights values. These literary texts signal their knowledge of *when* to use this unofficial format, and when to rely on other forms of official truth-telling or justice.

2) *How to mourn*: These writers have the ability to create permanent textual memorials through the use of language and poetic ritual that is meaningful to Timorese. Although memorials can and have been erected by the transitional justice institutions, state erected grand monuments rarely have the fluidity or reach that a published text does. For example, a single poem that memorializes the Santa Cruz massacre as published annually in the paper, can reach thousands of Timorese without requiring anyone travel to a particular place, or know the time of a ceremony. In addition, literary memorials can be written in multiple languages that embrace the language or rituals of mourning that are indigenous to any number of Timorese ethnic groups. Finally, writers have the ability to embrace all victims, or a single individual, in a memorial text. Writers have the knowledge of how to mourn many and individuals at the same time. These writers simultaneously personalize and generalize mourning. The numbers of texts that can be written are endless, and therefore these writers can extend the mourning across generations. These Timorese writers are able to mourn in locally legitimate ways without restrictions placed on the time, space or volume of their laments.

3) *When to speak*: A predominant theme in the writing that we have examined has been the willingness of the new generations of Timorese writers to speak out against taboos. As literary texts appear in public they signal the places and the boundaries within Timorese culture that people can now feel safe to speak. These writers demonstrate an understanding of how far and

how much they can say publically to achieve their objectives – political and aesthetic. They signal to their audiences when and how Timorese can speak, and where the places of silence may still be important to preserve or combat. Since speaking is the foundation of the truth-telling function, these writers play an important role in defining the scope of truth that will be available to future generations.

4) When to hope: Timorese literature's preoccupation with the themes of justice signal a reluctance to accept the conditions of injustice, and a desire for something better. The failure of the transitional justice system to remove the barriers to impunity and to prevent the reoccurrence of large scale violence in the nation in 2006 gives victims many reasons to dismay and resign themselves to silence. The act of writing is a refusal to be silent, and in itself is a method of cultivating hope.

In summary, Timorese writers have demonstrated their expertise in the emotional life of the law.[242] Transitional justice as a concept and as a system is oriented towards what is often described as the emotional goal to calm the desire for vengeance. If the taming or cultivation of emotions (i.e. trust, solidarity and obedience to the rule of law) is at the heart of the transitional justice project, then surely the kinds of skills and knowledge contained in the arts, including this body of literature, should be of interest to transitional justice practicioners. As narrative centers, this group of writers will ultimately extend the life of the law beyond the confines of the institutional mandates and into the lives of their communities – now and in the future. Hence, it was a great oversight when the observers at the Special Panels, for instance, refused to acknowledge the extent of Timorese cultural life that was occurring right under their noses. Not only does Timorese literature exist, these writers could have been their partners in building the legacy of their institution. Local "culture" (meaning the myriad forms of the arts regardless of their so-called traditional or modern expressions) is both partner and participant in transitional justice systems, whether transitional justice systems include them in their planning or not.

In closing, I want to include a poem which is not about justice but rather about the writing process itself. I end with this move away from the core of my argument about justice as a way of acknowledging the limits of my portrayal of Timorese literary culture. To focus on the single theme of justice may be excluding other important readings of these same works which can bring to light other gendered, political, social and literary complexities. Timorese writers explore a much broader landscape than justice alone.

To make her argument about non-elite approaches to analyzing representations in subaltern literature, Spivak relies on the metaphor of mapping. She explains that writing is a map of what

[242] For more discussion of literature's ability to exercise the emotional life of law in the transitional justice setting see Nora Strejilevich, "Testimony: Beyond the Language of Truth," *Human Rights Quarterly* 28 (2006): 701-713. She has argued that in fact fiction (not specifically poetry) is the best genre for communicating certain truths about human rights abuses. She critiques the commodification of testimony by institutions such as trials and truth commissions that determine testimonial accounts' value by their ability to convey juridical truths, or "facts", or "history" – meaning their ability to accurately give data/facts. In terms of providing accurate information about exactly what happened, the "truth", she claims testimony is not well suited to this task. She argues what is given to trials or truth commissions for the instrumental purposes of "truth" should be called depositions, rather than testimony. Witness testimony, however, is the best way to convey other kinds of "truth" – a collective one and an emotional one.

is beyond our Other self. It is way of searching for our intuitive and hidden knowledge of the Other that is simultaneously external and internal to ourselves. She goes on further to explain that "knowledge is played out or mapped out on the entire map of the speaking being, […]."

Throughout these pages, we have traced these maps of areas of speaking and silence in Timor-Leste today and they do not lead to a single destination. In other words, even as stories map knowledge through the act of voicing, especially internal knowledge, valuable readings of these texts will recognize they also unmap knowledge as the writer struggles to expose certain parts of the self and unexpose herself so that the writing process will retain an authentic, personal, non-instrumental use. Art will remain art. In silence, un-mapped politics can occur. All that needs to be said won't be said, as an act of resistance and a measure to withhold an inappropriate and potentially exploitive level of intimacy. The unvoiced may be a more legitimate space of power for the "subaltern" subject than the speaking that inevitably brings knowledge, but possibly misunderstanding, "shame" and a host of other unpleasant discoveries.

In "*Tinta dan Kertas*" Cancio Ximenes writes a different kind of narrative than the ones we have examined above, which I think is perhaps a way of mapping and unmapping some of the ground our argument has covered. There is no testimonial or historical fiction. The poem is more preoccupied with its aesthetics than the tasks of "justice." He describes the dance between the voiced and the unvoiced in his craft of writing, but perhaps also within the Timorese nation. His poem suggests that writing Timorese literature, despite its task of bringing together oppositions in an environment of uncertainty, is an art that unites – the words, the language, the paper and the ink, and people. This poem speaks to the experience of working within transitional justice – a place consumed by the narratives of violence, vengeance, truth and reconciliation. It shows how this experience can also transform one's understanding of the arts. Justice follows art, as art follows justice in Timor-Leste. For all the speaking, in the end the truth remains a mystery.

Tinta dan Kertas	**Ink and Paper**
Tinta hitam dari mata penaku	Black ink from the tip of my pen
Membasahi kertas putih suci nan polos	soaks the paper white, clean and smooth
Tinta melekat	Ink sticks
Kertas ternoda	The paper is stained
Tertoreh barisan puisi cinta	Etched with a line of love poetry
Nampak indah menusuk sukma	It appears a lovely stab into the soul
Kurangkai kata-kata indah	I tie together beautiful words
Kunikahkan tinta dan kertas	I marry off the ink and the paper
Kubiarkan mereka menyatu	I leave it to them to unite
Satu dalam dekapan bisu	One in an unvoiced embrace
Diam dalam makna yang terpenjara	Silent in a meaning that is imprisoned
Tarian jari-jemariku di atas kertas	My fingers in a dance on top of the paper
Tiba-tiba terhenti	Suddenly stopped
Nyanyian kalbuku tak bersenandung jua	My heart's melody can hum nothing at all
Diam…	Silence
Diam dalam kesunyian	Silence within solitude
Diam dalam hening	Silence within crystalline quiet
Diam dalam keindahan	Silence within beauty
Bagaikan tinta dan kertas	Like the ink and the paper
Menyatu dalam kebisuan yang penuh tanya	Coming together in the voicelessness that is full of questions

Hitam, warna tinta penaku	Black, the color of the ink of my pen
Hitam pula warna hidupku	Black also the color of my life
Putih, warna kertasku	White, the color of my paper
Putih, juga warna hidupku	White also the color of my life
Hitam dan putih	Black and white
Tinta dan kertas	Ink and paper
Adalah kehidupan bisu	Is the life of a mute
Yang penuh misteri	that is full of mystery

Part IV: Conclusion

Chapter 9. Housing the Truth:
The Archived Legacy of Transitional Justice in Timor-Leste

Timor-Leste has undergone a decade of truth-telling since the popular referendum that established the basis for its independence. This national exercise in truth-telling has been carried out through the means of official, governmental mechanisms such as trials and truth commissions, non-governmental organizations with political support such as the Museum of Resistance and completely private initiatives such as popular literature. In terms of the number of official mechanisms and different programs used to perform this truth-telling function of transitional justice, Timor-Leste stands out in the world as one of the most prolific truth-tellers since the end of the Cold War. In transitional political settings, truth-telling is often described as synonymous with the creation of history. Both the primary materials and tools for truth-telling, or performing the historical function in transitional societies has been the collection, transformation and creation of stories. Throughout this discussion, I have tried to trace what has happened to the stories that have been told in the transitional justice setting in Timor-Leste in the first ten years of independence, and attempted to assess its immediate legacy.

What happens after the stories have been told? First, I have approached answering this question literally through the lens of institutions and their archives. Most of the stories given to government entities or semi-private institutions such as the Museum of Resistance have been relegated to the archives of various institutions, and only some of them remain in a testimonial form that is available to the public. Although relatively few of the tens of thousands of stories that were told have become part of an accessible, national historical record in their personal, testimonial form, the sum of these stories have become part of each institution's narrative attempt to foster peace, reconciliation and various interpretations of the meaning of justice. These institutional narratives are distinct and individually foster different understandings of the past and the meaning of justice through various approaches to truth-telling.

Serious Crimes Process

The Special Panels/Serious Crimes Unit archival collection reflects a legalistic approach to truth-telling as one of the forms of justice. Trial mechanisms are generally described as retributive institutions that are perpetrator-centered. Although trials exercised a tangible retributive function through judicial punishment based on an adversarial truth-telling exercise in the courtroom in Timor-Leste, this function was limited to cases against low-level perpetrators for crimes committed in only one year of the period of conflict. Considering the overall scale of the conflict, the concrete retributive function of the Court was limited, especially since all but one of the perpetrators who were sentenced have been released from jail early by a Presidential pardon. The more sustained legacy of the trial process has been its use of narrative retribution. Using tens of thousands of pages of witness testimony given to the Serious Crimes Unit, the Wiranto Indicment, and the subsequent arrest warrant, is the most enduring symbolic legacy of what has happened to the stories that were told to the Serious Crimes Unit and Special Panels Courts.

On its surface it may appear that the trial process and its historical legacy focused society's attention on the perpetrators of crimes, especially when a persona like Wiranto has come to occupy such a prominent place in popular memory. In contradiction to this assumption, I have

suggested some ways that trial processes may actually be more focused on victims, in both negative and positive ways. I considered ways that the stories that have been told may affect those who work within the trial process to try to construct both a legal and historical legacy. I concluded that in order to see the ways victims play a central role in the legacy of trial processes; one must look to the archives and beyond the most visible expressions of a trial in the indictments and judgments.

Hence, the ability of a trial process to create a legacy on behalf of victims is greatly dependent on the institution's foresight and willingness to preserve archives in a manner that is as accessible as legal protections of individuals will allow. Sadly, the archives of the Serious Crimes Unit/Special Panels continue to slip into neglect and thus, their institutional truth-telling and historical legacy for future generations of Timorese is likely to be severely limited. This discussion of victim versus perpetrator centered transitional justice processes acted as our entry into thinking about what I suggested were narrative centers in the transitional justice process and how paying attention to narrative centers – as institutions and groups such as victims - may shape the truth-telling legacy of transitional justice institutions.

Tracing the fate of the stories that were told to the SCU and Special Panels in Timor-Leste also demonstrates the ways trials are not exclusively retributive. The archival collection held by the SCU features multiple examples of the courts trying to leave a so-called restorative legacy alongside a retributive one. Peace, reconciliation and healing are also parts of the trial process that are built on the basis of stories about individual legal cases. I entitled the master narrative conveyed by this trial process as "Ground Zero," and attempted to trace its development, execution and impact on the collective transitional justice narrative in Timor-Leste today. However, I also drew attention to the way mapping schemas and the image of the house emerged as narrative representations of the history and meaning of the trial process in Timor-Leste.

CAVR

The CAVR was the institution most intricately linked to the task of truth-telling in Timor-Leste. Its legislated mandate as a truth commission placed this historical function at the core of its objectives, and all of this institution's programs were involved in the process of truth-telling. The tangible legacy of this extensive truth-telling initiative was expressed in a number of different ways: a Final Report in multiple versions, films, and publications about Public Hearings, a prison memorial and an on-going public exhibition. These materials produced by the Commission are accompanied and supported by an extensive archival collection that contains the testimonies, documents and secondary research materials that were used to compile the Final Report and these other publications. A newspaper collection with commentary about the CAVR and transitional justice process as a whole is another part of this institution's truth-telling legacy. In addition to these research materials, the archives contain the records of the Community Reconciliation Processes. All of these stories from different venues have been woven into what I have suggested is the institution's master narrative and truth-telling legacy– *Dalan ba Dame*, or the Road to Peace. As I noted throughout the discussion, although there is a useful, public archive maintained by the state to continue the CAVR's legacy, the majority of the stories told to the CAVR are inaccessible to the public and remain locked in a former prison cell in another part of the prison memorial building that housed the CAVR. Thus, I examined how stories given

in different parts of this truth commission's work were used, but also at times downplayed, in order to convey this message of peace and reconciliation to the Timorese public.

Generally, the CAVR like most truth commissions has been viewed as implementing restorative justice in Timor-Leste in contrast to what was perceived as the SCU and Special Panels retributive form of justice. However, in this institution's Final Report and archives we noted different ways this institution mixed retributive and restorative approaches. I suggest that as a result of the legacy of the narrative of Timorese criminality, the CAVR levied a retributive tone against Indonesian perpetrators, while an entirely restorative approach was taken towards Timorese perpetrators. I also noted how this restorative approach was calibrated among different levels of Timorese society, so that what was required for reconciliation at the local level by low-level perpetrators differed significantly from the acts high-level perpetrators within the current Timorese political leadership were required to engage in for reconciliation at the national level. I noted ways in which the narrative message of the truth commission – *Dalan ba Dame* – in some ways pre-determined these public truth-telling acts so that they were exercised in a performative way, which may have ultimately jeopardized the authenticity and sustainability of the peace fostered by the CAVR process. In other words, what happens to the stories that are told in terms of societal impact is dependent on how they are delivered.

During the discussion of the Serious Crimes Unit archives we first very briefly touched on the way stories by women were used by the transitional justice process, but through the archives of the CAVR we were able to gain more insight into the special dynamics that occur when a woman tells a story to a state institution. Women's stories were celebrated and placed center-stage by the CAVR in contrast to their negligible use by the SCU/Special Panels. At the same time the archives reveal the great narrative force that women's stories conveyed on behalf of the truth commission's mandate and as a contribution to the nation's history, we also noticed some of the unique challenges women encountered in making their stories heard and recorded exactly in the manner that they – as individuals – wished. Women's words appear to have activated personal and institutional desires to protect, and at times keep silent, certain types of stories or certain aspects of these stories. In other words, what happens to women's stories once they are told appears to be more guided and controlled by institutions than what happens to men's. Even though those intentions may be benevolent, one cannot help but notice that women play a unique truth-telling function.

The CAVR's Community Profiles program also opened up a new element of discussion which asks what happens when stories are told by a community. One of the first things we noticed is truth-telling at the community or micro-level reveals details often left out of other truth-telling formats – such as what communities ate, what their dwellings were like, and how they used traditional medicines. These details yielded insights into the long-term impacts of armed conflict on life at the societal level such as poor nutrition, education, joblessness, loss of language and local traditions and weakened family ties. Through the profiles a form of truth-telling occurred that drew more attention to abuses of economic, social and cultural rights during conflict, whereas many of the other truth-telling formats focused on violations of civil and political rights. At the same time, community truth-tellings also were most effective in communicating the massive scale of gross human rights violations that occurred relentlessly throughout Timor-Leste during the entire span of the armed conflict. They vividly portrayed the way politics were

practiced at the village level and how civilians were targeted as collectives by all the parties to the conflict – Timorese and Indonesian – regardless of individuals' actual political beliefs. Although the consensus-based format of the profiles have the potential to obscure many truths, the stories of over 300 communities told to the CAVR also contain some of the most authentic moments of truth-telling about all sides of the conflict that occurred during this ten year period.

Mapping was one technique the CAVR used in the Community Profile program to unify the stories that were told about violence in a particular village. The maps try to visually represent the volume and scale of abuse in a particular locale, as well as to commemorate the event of communal narration. Mapping as a form of truth-telling proved to be problematic in many ways because it required the depiction of a false continuity and unity within any particular village, when in truth communities were scattered, disrupted and frequently destroyed. The destruction of community is a truth that resisted representation within the *Dalan ba Dame* narrative and this form of truth-telling, but this visible resistance and inaccuracy in mapping actually belies an authentic understanding of the past. Through the CAVR archives, we were able to see how the true impact of human rights abuses in a society lies in what cannot be mapped.

The discussion of mapping led to another kind of spatial truth-telling narrative created by the CAVR – the Balide prison memorial. This form of living memorial once again returned us to the motif of a sacred house and how this image seems to convey a meaning of justice that emphasizes protection as much as truth. The prison memorial led us to develop further the idea of narrative centers through the discussion of specific persons who inhabit an archived space. The CAVR's memorial building and archives act as a narrative center which is in itself a legacy, but this legacy was determined not by the truth commission during the transitional period alone. Beyond an institutional narrative center, there are persons who occupy a longer continuum of time: these narrative centers, like Francisco, are the more enduring, sustainable legacies of the truth commisions' work as opposed to its public, performative activities captured in its Public Hearings and Final Report. I suggest the power of the institution over time will be determined by the people who remain in the place as guardians and interpreters after the stories are told.

CTF

The CTF gave us an opportunity to observe another kind of truth commission to determine what happens when stories are told in a more contested, less supportive public environment that includes a former enemy nation. Like the CAVR, this process demonstrated both restorative and retributive functions. Even though it could not find individuals responsible it could declare institutions guilty which led to the two governments making the restorative gesture of apology. Unlike the CAVR, public validation of witness testimony in hearings was not a key feature of its truth-telling process. Rather, truth-telling took a more inquisitorial style and led to the Commission making judgments about individual testimonies in the course of arriving at its final conclusions.

The CTF's truth-telling function was its primary aim compared to the more varied roles the other transitional justice institutions were expected to play. Its mode of truth-telling highlights the distinctions between the work that occurs behind a commission's closed doors and the performances in the public arena. Despite the great deal of attention given to the theatrics of

truth-telling in the Public Hearings and the Final Report, the brunt of the Commission's task was completed outside of the public eye in the statement taking and Document Review, and this lack of transparency actually allowed it to delve deeper into the truth and arrive at a more credible, "conclusive" truth. The CTF's work points to the advantages of progressive truth-telling approaches, where previous truth-telling mechanisms are formally incorporated into a later, new institution. This interplay between private and public truth-telling highlights the way a truth commission's legacy is ultimately a negotiated one. Different types of truth (subjective and objective) are valued differently among those who decide a truth commission's narrative and these values are balanced through private negotiation, rather than act as immediate public absolutes.

Indeed, the CTF is a study in truth commissions' inability to establish absolutes, especially a conclusive truth. Although the truths agreed to by the two nations through this process are settled on a final basis in a diplomatic forum, even for those who participated most directly in the truth-telling process closure is illusive. In continuation of the discussion of what has happened to women's stories and how narrative centers operate, we looked at the experience of one woman whose story became a catalyst for finding the truth about rape. However, she faces certain exclusions within the process. Victim reactions, such as Esmeralda's, to this truth commission draw our attention to the limits of the impact of narrative forms of justice. The figure of the house emerged once again, but in its most physical form. It appears that the stories told are deemed to be of great value by society, but do not express a complete vision of justice when the structural violence of poverty persists. Esmeralda's story in the state's hands has not yet led to the satisfaction of victims' personal or physical needs that are represented by the image of the house.

Museum of Resistance

The Museum of Resistance acts as a counter-study to the formal transitional justice institutions' truth-telling. As a non-governmental body it is able to freely indulge in nationalistic truth-telling without any requirement of balance or adherence to international human rights standards. Yet, the Museum of Resistance still chooses to frame its story as a "human rights history" and in many ways acts as a complement and supplement to the transitional justice initiatives. The museum collection is able to more clearly show how local, indigenous practices of history function and how the construction of narratives and procedures of justice through truth-telling long preceded the transition to independence.

In addition to its ability to be freely nationalist, the museum's approach to truth-telling differed from the other institutions in several ways: 1) it is more accessible to the public and technologically advanced, 2) it relies on documentary truth-telling more than testimonial forms, 3) its style of truth-telling is more fragmented and open to personal interpretation than the other collections, and 4) it unapologetically seeks to hide some truths, while opening up others bound by legal conventions in the transitional justice processes.

The Museum of Resistance's approach to truth-telling once again brought the image of the sacred house and the issue of narrative centers to the fore. The museum was described in literal terms as a house that belonged to those who deposited their pieces of history within it. This

house has a clear patriarch – Xanana Gusmão. By housing the truth, Xanana employs the metaphor of family to stand for the nation, and the past is converted into an ancestral origin. Nation building is inextricably tied to the archives at the Museum of Resistance. In this way, Xanana acts as a narrative center meaning that he is an *archon* who guards and has the power to interpret a collective truth as a form of constructing the parameters of the rule of law. We explored the theoretical potential for this kind of power to create peace and violence at the same time. In other words, truth-telling is as likely to bring danger and destruction in the future as it is to exert a closing, or healing effect. However, this discussion of archons led us to review some of the other types of narrative centers that emerged in the survey of institutional narratives. I suggested that narrative centers are not limited to eponymous figures such as Xanana or Francisco or the memorials created by institutions, but also include more secluded truth tellers like the victims who gave testimony to the SCU, women such as Esmeralda and the lower level resistance leaders who secreted away scores of documents in hiding places in their private homes.

To summarize, we have identified more than one kind of narrative center who acts within institutional settings to create a legacy of truth and justice. The truth relies on something not so distant from the Resistance network and structure, where there is at once a highly concentrated and organized center with figureheads, policies and official conclusions and a decentralized, network of people committed to their own methods of collection and preservation of a more private set of truths. These two sets of narrative centers are linked and need to be in conjunction for a truth to be told. Building the truth by Timorese within the transitional justice system has been a collective process with these narrative centers acting as the many pillars that support a common "house" of truth. Whose law do these archons make? Timorese are in the process of constituting their own truths and laws even amidst great international intervention, guidance and presence. The house is a symbol of a local and abiding law that protects a nation's secrets as well as celebrates and creates its independent foundations.

Literature

In the final section, we examined in more depth how decentralized, unofficial truth-telling is used to construct a societal narrative of justice. I discussed the means by which the literary arts, in particular poetry, is another form of truth-telling that is simultaneously linked to and made independent from these formal, national truth-telling processes by the writers who act as yet another kind of narrative center. In this realm many of the institutional and nationalistic restraints are lifted from truth-telling and there is greater leeway for criticism, subjectivity and emotional truths. We looked most closely at the works of Cancio "Cassimata" Ximenes, but all of the writers' works illustrate what happens once stories are told: they are remembered, recreated and memorialized by those individuals who listened. Ximenes and these other writers exercise the power of narrative centers because they are particularly attuned to the power of these stories and struggle. They show us what happens when people listen to the stories that are told and how the experience of being "keepers" of these stories can change people's political worldview and their very personal daily interactions with aesthetics. As in all parts of this discussion, aesthetic forms of truth-telling illustrate a predilection for hiding or silencing truths as much as shouting out or expressing them. Yet, an examination of these post-independence literary works also demonstrates what the other institutional discussions have not: there is great

change going on in the narratives of justice in Timor-Leste. While continuities with the past are cultivated, a new aesthetics of truth and justice are developing to make breaks with the past and create new possibilities for the future. Poetry and other forms of art cannot be contained within an archive, but perhaps as the most bold and unfettered form of truth-telling its powers are equally creative and potentially destructive to official truths.

Narrative Centers and *Metis*

In conclusion we have covered a broad range of approaches to exercising the truth-telling function in a transitional justice setting and had an opportunity to assess the benefits and disadvantages of each of these methods within various institutional and non-institutional settings. But what have we been able to learn about what I have called narrative centers and how they have the potential to determine the legacy for a transitional justice system as a whole?

The limits and exclusions of even the most ambitious and thorough truth-telling acts have been apparent throughout this discussion. Although moments of truth-telling occurred in Public Hearings or in public indictments or speeches, I have argued that these are pre-determined, performative truths and ultimately cannot be linked to sustainable impacts on peace, reconciliation or healing even though they can symbolically serve the purposes of change. The kinds of truth on which peace, or the rule of law, is more likely to be built seem to be exacted more slowly, delicately, incrementally and progressively, rather than in cathartic, Bakhtian or theatrical "great" moments. Theatrics may serve the needs of endorsing public dissensus, as Mark Osiel has described as the state of tolerant disagreement or difference, but they seem less likely to lead to a peaceable stasis of dissensus. Most transitional justice institutions are too short-lived and too under-resourced to conduct anything beyond these staged moments of truth, and the final outcomes like a Final Report are often insufficiently accessible to reveal truths to a broad-based and diverse set of a nation's constituents in a way that can bring both full acceptance and evoke long-term change. In looking beyond these theatrical moments into the legacy built in the archives of transitional justice institutions, I have tried to identify possible venues for sustaining truth-telling after the stories have been told and the institutions have closed their doors. I have focused on how truth-telling is linked to justice beyond the life of transitional justice institutions.

I argued that in every truth-telling process in the transitional setting certain people play the role of both pushing the limits of the truth and protecting certain truths. I have identified these figures as narrative centers, and showed that these people can include public figures but also anonymous participants in truth-telling processes. Narrative centers can be at the center and the periphery of a truth-telling process, but in each case they play an active role in guiding the truth-telling process. Some of these guides act in large and visible ways, like Francisco and Xanana, whereas others like the prison memorial guards are more subtle or subdued in the control they exercise over the truth. I have identified these narrative centers because they have demonstrated that they outlive the immediate truth-telling moments and have a commitment to stay with the task of truth-telling for a much longer period of time. Narrative centers are the truth-telling continuums that pre-date and outdate transitional justice institutions. I suggest we need to look for more ways to work with these individuals if we are to improve the quality of truth and justice in transitional justice systems in the future. Even within the realm of narrative, the legacies that are produced

exceed language and ultimately reside in human action. It is the people who are produced by the truth-telling process, not the final reports, symbolic indictments or poems, who decide the future of justice.

How do narrative centers relate to our broader theoretical concerns? Throughout the discussion I have set up a comparison between Osiel's dissensus and Scott's *metis*, to help us decipher how narratives are "mapped" across a society. A comparison of the different forms of truth-telling led to the conclusion that these two ideas are distinct and that Scott's idea of *metis* which emphasizes unmapped spaces and local knowledge plays a more significant role than dissensus in the transitional justice sector in East Timor. *Metis* is the form of knowledge and practice that narrative centers use in constructing narratives of justice.

The Archived Legacy

As a final reflection on the question of what happens once the stories have been told, I would like to draw the reader's attention to the ways many of these stories have acted as hidden but living memorials. The majority of stories that were told remain outside of direct public discussion and memory, but I hope I have shown the contributions these obscured truths have made to an understanding of Timor-Leste's past and how they have helped forge a path towards the future.

In the Introduction I described one of the scenes I encountered in Timor-Leste as I was leaving in 2008. Francisco was mediating between a team of Western-trained, forensic scientists who were using tools to dig for remains of those killed in the Santra Cruz Massacre, and locals had hired a soothsayer and begun to dig randomly on their own.

Stories do not provide factual knowledge alone. They act as memorials and preserve emotions. Perhaps after this lengthy discussion it is more apparent why the local population had faith that the truth about their loved ones' deaths were buried with their bones in a space that science could not prove existed. They believed in what could not be seen and that truth could be found in what are unmapped spaces.

Like Francisco, I suggest the best of our transitional justice truth-telling must occur between these two poles of objective, scientific skepticism that doubts complete truths can ever be found; and a magical faith. Powerful, individual truths may be hidden in carefully guarded spaces, only to reemerge.

This has been made clear in the archives themselves, for example when the SCU archives were looted during 2006. While it may be historically unsurprising that marauders directed their political malaise towards an organization that had been identified with "internationals" and failures of justice, it is unusual that the looting did not result in the destruction of evidence.[243]

[243] I am indebted to Professor Jeffrey Hadler for this insight. He pointed out that attacks against colonial record-keeping institutions are common in the history of peasant revolts, but these riots usually involved total destruction. While the literature on peasant revolts is too extensive to cite here, and is a potential framework for further research, it is relevant to note that as in the study of the peasant revolts in Banten, Indonesia during the colonial era, the 2006 marauders of the archives were not necessarily a well organized group with a distinct set of demands or principles.

Although it is not clear exactly who absconded with the evidence during the riot, whether they were alleged perpetrators, youth protestors or urban "peasants," it would have made more sense to burn the documentation to either protest or obstruct court processes. If evidence was strategically taken from the archives and not destroyed, that would imply a desire to know what the files contained - a desire to possess the truth to satisfy either political or personal needs. It would have been predictable for this evidence to at least disappear, if it was not destroyed. This did not happen. The order of the archives was publically destroyed but then, weeks later after it was presumed the knowledge has been lost, the evidence mysteriously emerged again. The looters reportedly returned it in a neat box to the place where it had been originally stored. No further investigation ensued. Although many interpretations of this event are possible, it is reasonable to conclude that whatever the identity of the rioters, they placed limits on violence, and for whatever reasons, these limits meant a refusal to destroy the stories that had been told during the transitional justice process. The stories were returned for safe-keeping. Although the reprisal of violence in 2006 and in 2008 call into question much of the work towards peace and justice by all the transitional justice institutions, what was not undone was the high value placed on finding and keeping the truth.

In Timor-Leste, this understanding of truth, history and justice has been expressed repeatedly through the image of the house. The narrative of the house maps the spaces of justice and truth across the nation, but also reserves autonomous spaces for local communities. In 2008, high in the mountains of Bobonaro District, I found an example of one such space.

In the village of Gildapil, approximately six hours from any city and near the border with Indonesia, I attended preparations for a traditional house building ceremony. One of the village elders who greeted me stood in the doorway of his clan's new traditional house. Inscribed on the door were images common in traditional Timorese carvings on houses, including graphic squares, breasts and water buffalo horns.[244] The horns, which can also evoke images of the moon or a boat, are the same motif carved in silver that many traditional elders or bridal couples wear for ceremonies throughout Timor-Leste. However, something else caught my eye. At the apex and tips of the water buffalo graphic were etched scales of justice.

As in Kartono's study, they seemed to have had "a vague desire to overthrow the government" (page 3). Unlike some other peasant revolts that sought to specificallydestroy records, often related to taxes or property, out of revolt against a government, such as the Mapilla Uprisings in Malabar India in the 1920s, this uprising in 2006 did not appear to extend to the records of testimony. If these acts can be classified as peasant revolts at all, the logic behind these events may be more fruitfully examined through further consideration of James Scott's work on the "moral economy" of the peasant. For further readings see Sartono Kartodirdjo, *The Peasants' Revolt of Banten in 1888: Its Conditions, Course and Sequeal. A case study of social movements in Indonesia* (The Hague:Martinus Nijhoff, 1966); Harry J. Benda, *Peasant Movements in Colonial Southeast Asia* [reprint] (New Haven, Conn.: Yale University, Southeast Asia Studies: 1966); Robert L. Hardgrave, "The Mapilla Rebellion, 1921: Peasant Revolt in Malabar," *Modern Asian Studies* 11 (1977), 57-99; Gerrit Huizer, *Peasant Movements and their Counterforces in South-east Asia* (New Delhi: Marwah, 1980) and James C. Scott, The *Moral Economy of the Peasant: Rebellion and Subsistence in Southeast Asia* (New Haven, Conn.: Yale University Press, 1977).

[244] For examples and analysis of similar images found in other examples of Timorese artworks see Ruy Cinatti, *Motivos Artísticos Timorenses E A Sua Integração*. Lisboa: Instituto de Investigação Científica Tropical Museu de Etnologia, 1987.



Figure 18 – Door of traditional house with scales of justice motif and a traditional elder (Leigh-Ashley Lipscomb)



Figure 19 – Scales of justice overlaid on graphic image of water buffalo horns (Leigh-Ashley Lipscomb)

I had never encountered this kind of image in Timor-Leste or in other Southeast Asian contexts. Through a translator I interviewed the traditional elder who agreed to be photographed but declined to be named. I asked the meanings of the individual symbols on the door, and without my prompting he confirmed that the image I interpreted as scales represented justice. I asked the origins of the image, and he said they were a matter of old traditions, but were ultimately the

decision of the artist who carved the door. I also asked why this motif was displayed on the door, and he responded that it was because the traditional house was the place of justice. A female guardian lives full-time in the house to ensure that its relics are protected and revealed only to those who have the permission of the clan and who have proven their knowledge of the proper rituals. Ancient traditions have absorbed internationalized symbols of justice, and re-interpreted them to serve their own local needs and understandings.

The image of the house resonates with international concepts of justice as well, such as when Hannah Arendt characterized the courtroom where Eichman was tried as "The House of Justice." A house expresses the communal ideal, national soveigntry, and in its skeleton or absent form, it signifies injustice. In Timor-Leste, the remnant of the acts of truth lie unseen and within the sacred house, but the exterior contains both a shared and autonomous history of the pursuit of the ideals of justice.

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