

## Part 8: Responsibility and Accountability

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# Part 8: Responsibility and Accountability

## 8.1 Introduction

### 8.1.1 State, institutional and individual responsibility\*

Regulation 2001/10 provided the Commission with a mandate that included a duty to inquire into the context, causes and commission of human rights violations which occurred in East Timor from 25 April 1974 to 25 October 1999.<sup>†</sup> Within this framework the Commission was specifically given the duty to inquire into and make findings as to which persons, authorities, institutions and organisations were involved in the violations, and whether they were the result of a deliberate plan or policy by a state, political organisation, militia group, liberation movement, or other group or individual.<sup>‡</sup>

As it is not a judicial institution, the Commission has not made any findings of law. However, its findings in relation to responsibility for human rights violations have been guided by the principles of customary international law.<sup>‡</sup> The Commission has also considered political, moral and historical responsibility.

In accordance with its mandate the Commission has made findings of responsibility in respect of states, institutions, organisations and individuals

States are legally and morally responsible for the conduct of their organs and agents. This includes not only those who are officials and employees of the State, but also individuals whose actions are controlled by the State. A State will be accountable under international law when its conduct (through its organs or agents) breaches an international obligation owed by that State under treaty or international law. This can occur through the commission of positive acts. It may also occur when the State fails to prevent violations or to investigate and prosecute the individuals responsible.

The Commission has held organisations and institutions, including political parties, to be institutionally responsible for violations committed by their members or agents while acting as representatives of the organisation, institution or party.

Individuals have been held to be responsible where, in the opinion of the Commission, there is sufficient evidence to establish that they have a case to answer for crimes recognised under customary international law or domestic criminal law which was applicable at the time of the violation.

Individuals can be held to account in any of three situations. The first of these is where he or she intentionally commits, plans, orders, aids or abets the planning, preparation or execution of a crime. Secondly, an individual will be accountable for taking part in a common plan or conspiracy to facilitate the commission of a crime. Thirdly, an individual may be held responsible according to the principle of command responsibility.

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\* A full account of the laws giving rise to accountability on the part of states, organisations and individuals is found in Part 2: The Mandate of the Commission.

† See Part 2: The Mandate of the Commission, for a thorough discussion of the Commission's mandate.

‡ The mandate of the Commission compelled it to use the standards of international humanitarian law, international human rights law and domestic criminal law in deciding what constitutes the commission of a human rights violation.

Under international law a person who is in the position of a superior (either in law or in fact) and who has effective control over his or her subordinates<sup>2</sup> will have command responsibility where a crime is committed by a subordinate and the superior knew or should have known of the crime but did nothing to prevent it, or to punish those responsible.<sup>3</sup>

### **Crimes under international law**

Although it is not a court the Commission has made findings where it considers that certain international crimes have been committed and has identified who it believes to be is responsible for these crimes. Although many international crimes provide a legal remedy only against individuals who violate them, the Commission has made more general findings about the responsibility of institutions which individual perpetrators represented, including state responsibility for the actions of its agents. In making these findings the Commission has applied the legal standards which are described in Part 2: The Mandate of the Commission. These can be summarised as follows.

### **Crimes against humanity**

A crime against humanity occurs when certain prohibited acts are committed as part of a widespread or systematic attack against a civilian population. The civilian population in question may be any civilian group. It might be, for example, a group connected through ideological, political or cultural association and gender,<sup>4</sup> including civilian groups advocating liberation or supporting resistance to occupation. Prohibited acts include: murder; extermination (including by deprivation of food); enslavement; deportation or forcible transfer of population; forced labour; imprisonment; torture; rape; persecution on political, racial, or religious grounds; enforced disappearances; and other inhumane acts “of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health”. These prohibited acts must be committed as part of a widespread or systematic attack against the civilian population. “Widespread” refers to the large-scale nature of the attack and the number of targeted persons, while the phrase “systematic” refers to the organised nature of the acts of violence and the improbability of their random occurrence.

### **War crimes**

Two categories of war crimes exist in the context of an international armed conflict, such as that between the Indonesian security forces and those of the East Timorese national liberation movement between 1975 and 1999.<sup>†</sup> The first are “grave breaches” of the Geneva Conventions.<sup>‡</sup> A “grave breach” occurs when certain criminal acts are committed against vulnerable persons, namely the wounded, the sick, prisoners of war and civilians. These acts include:

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<sup>2</sup> *Kunarac Appeal Judgement*, para. 94. According to the ICTR an attack is “widespread” if it is a massive, frequent, large scale action, carried out collectively with considerable seriousness and directed against a multiplicity of victims. [Prosecutor v Akayesu, Judgment, No. ICTR-96-4-T, para. 580, Sept. 2, 1998]. The ICTR defined “systematic” as constituting “organised action, following a regular pattern, on the basis of a common policy and involving substantial public or private resources ... [T]here must exist some preconceived plan or policy.” [Prosecutor v Musema, Judgment, No. ICTR-96-13-T, para. 204, Jan. 27, 2000]. The plan or policy need not be formally articulated; it may be inferred from the circumstances, including “the scale of the acts of violence perpetrated.” [Prosecutor v Blaskic, Judgment, No. IT-95-14-T, para. 204, March 3, 2000].

<sup>†</sup> For a full discussion of the legal basis for the Commission’s finding that the conflict between Indonesian forces and Fretilin/Falintil was an “international armed conflict” see Part 2: The Mandate of the Commission.

<sup>‡</sup> Both Indonesia and Portugal ratified the Geneva Conventions of 1949 and Additional Protocol I.

- The wilful killing, torture or inhuman treatment, wilfully causing great suffering or serious injury to body or health
- Extensive destruction and appropriation of property not justified by military necessity and carried out unlawfully and wantonly
- Compelling a prisoner of war or a civilian to serve in the forces of a hostile power
- Wilfully depriving a prisoner of war or a civilian of the rights of fair and regular trial
- The unlawful deportation or transfer or unlawful confinement of a civilian; and the taking of civilians as hostages.

The second category consists of serious breaches of the laws and customs of war. These include, for example, the murder, torture, ill-treatment or deportation of civilians; the murder or ill-treatment of prisoners of war; the plunder of public or private property; and the wanton destruction of towns or villages or devastation not justified by military necessity.

In an internal armed conflict, such as that between the followers of Fretilin and UDT in 1975, war crimes consist only of the most serious violations as set out in Common Article 3 of the Geneva Conventions or under the laws and customs of war.<sup>5</sup> Serious violations of Common Article 3 are specified to include crimes committed against persons taking no active part in the hostilities, such as members of armed forces who have laid down their arms or who are sick, wounded or in detention. These crimes include murder, violence to the person, mutilation, cruel treatment and torture; committing outrages upon personal dignity, in particular humiliating and degrading treatment; the taking of hostages; and the issuing of sentences and the carrying out of executions without affording due process.

### **Genocide**

Genocide is defined as any of the following acts committed with intent to destroy, in whole or in part, a national, ethnic, racial or religious group as such by:

- Killing members of the group
- Causing serious bodily or mental harm to members of the group
- Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part
- Imposing measures intended to prevent births within the group
- Forcibly transferring children of the group to another group.

Although there has been much criticism of this definition, including that it is too narrow, it is almost universally accepted that the definition reflects the position under customary law.

The legal definition of the international crime of genocide does not include actions directed at political groups, such as a movement supporting political independence. The issue of whether the victims of the attacks of the Indonesian security forces constituted a national group seeking to uphold their right to self-determination is one which would require highly technical legal consideration by a court with relevant jurisdiction. The Commission does not consider making such highly technical decisions of international jurisprudence to be within its mandate. It has, therefore, chosen not to reach any findings on whether the actions of the Indonesian security forces did or did not amount to genocide. It has, however, reached findings on crimes against humanity and war crimes, both of which clearly apply to the facts under consideration.

*Legal killings and detentions.*

The killing and detention of combatants by members of opposing forces are not considered to be violations of international humanitarian law if they fall within the limits of acceptable methods of warfare. Such acts have therefore not been included in the definition of human rights violations used by the Commission. They do not form part of this Report, and are not included in the acts defined as violations for the purposes of statistical analysis.

### 8.1.3 The focus on institutional responsibility

The Commission was designed as part of a larger enterprise aimed at satisfying the needs both of justice for past crimes and of reconciliation after 25 years of conflict in Timor-Leste. It was created as a mechanism that would be complementary to the United Nations-sponsored Serious Crimes process. Before the creation of the Commission, the Serious Crimes Investigations Unit and the Special Panels of the Dili District Court were established, in accordance with UN Security Council Resolution 1272,<sup>†</sup> with a mandate to investigate and prosecute those responsible for serious crimes committed between 1 January and 25 October 1999.<sup>‡</sup> Because of the principle of universal jurisdiction (not limited by time or place), the Serious Crimes Investigation Unit was also given the authority to investigate and prosecute those responsible for crimes against humanity, war crimes and genocide throughout the entire period of the Commission's mandate, from April 1974 to October 1999.<sup>§</sup>

Rather than duplicate the work of the UN Serious Crimes Investigations Unit, whose focus was the investigation of individual cases, the mandate of the Commission included the duty to inquire into the broader patterns of violations, including their context and background, which had taken place during the entire 25-year period of conflict. The inquiries and deliberations of the Commission have therefore been primarily focused on establishing the truth about the responsibility of states and other institutions for broad patterns of violations, particularly those committed as part of an organised plan or programme.

## 8.2 Principal findings

### 8.2.1 A The State of Indonesia and the Indonesian Security Forces:

The Commission finds that:

The military invasion of Timor-Leste by Indonesia on 7 December 1975 was a violation of one of the most fundamental and universally accepted principles of international law - the prohibition on the illegal use of force by one state against another. The Commission holds the State of Indonesia to be accountable for this violation and responsible for its consequences.

Throughout the period of the illegal military occupation of Timor-Leste members of the Indonesian security forces committed massive, widespread and systematic human rights violations against the civilian population of the territory. The Commission is satisfied that these violations amounted to crimes against humanity and war crimes.

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<sup>\*</sup> See Part 2: The Mandate of the Commission for a summary of the principles of humanitarian law adopted by the Commission.

<sup>†</sup> Security Council Resolution 1272 (1999) established UNTAET on 25 October 1999, granting a mandate to "exercise all legislative and executive authority, including the administration of justice".

<sup>‡</sup> UNTAET Regulation 2000/16/, *Regulation on the Establishment of a Public Prosecution Service* (6 June 2000); UNTAET Regulation 2000/15, Section 22. (6 June 2000) provided that Panels of judges sitting on "Serious Crimes" cases, and on the Appeal Court, would be made up of two international judges and one East Timorese judge.

<sup>§</sup> Universal jurisdiction is explicitly granted by UNTAET Regulation 2000/15, Section 2.

Integral to the military operations designed to overcome resistance to the Indonesian invasion and occupation was official acceptance of the commission of gross violations including widespread and systematic executions, arbitrary detention, torture, and rape and sexual slavery.

The Commission finds that the Government of Indonesia and the Indonesian security forces are primarily responsible and accountable for the death from hunger and illness of between 100,000 and 180,000 East Timorese civilians who died as a direct result of the Indonesian military invasion and occupation. The Commission received conclusive evidence that between the years 1976-1979 the Indonesian security forces systematically:

- Failed to discriminate between civilian and military targets in conducting repeated large-scale bombardments from land, sea and air and other military operations which caused large numbers of East Timorese civilians to flee their homes and once having done so to flee again, often repeatedly, with the result that their capacity to make a livelihood was severely curtailed.
- Destroyed food sources by burning and poisoning crops and food stores, slaughtering herds of livestock. Forced tens of thousands of East Timorese who surrendered or been captured by Indonesian forces to move into designated settlements from which they were not free to leave.
- Failed to supply those interned in these settlements with sufficient food or medicines to ensure their survival, even though the needs of the internees were entirely foreseeable since the Indonesian forces' military campaigns had aimed precisely at achieving the outcome they did in fact achieve—namely the mass surrender of the population under Fretilin control into areas under Indonesian control.
- Denied those who had been interned in these settlements the freedom to search for food.
- Refused to allow access to international aid organisations which offered to provide food to those confined to the settlements.
- Continued to implement these policies even after thousands of men, women and children had starved to death in the camps and restricted areas.

The Commission finds that the only logical conclusion that can be drawn from these actions is that the Indonesian security forces consciously decided to use starvation of East Timorese civilians as a weapon of war, as part of its strategy for destroying resistance to the military occupation.

The Commission finds that the intentional imposition of conditions of life which could not sustain tens of thousands of East Timorese civilians amounted to extermination as a crime against humanity committed against the East Timorese civilian population.

The Commission finds that during the invasion and occupation members of the Indonesian security forces summarily executed thousands of East Timorese non-combatants. The executions included mass executions and massacres, the killing of prisoners who had been captured or had surrendered, and collective and proxy punishment for actions carried out by others who had evaded capture. Collective punishment was a central and systematic component of an Indonesian military strategy designed to overcome resistance to the military occupation. These illegal killings amounted to crimes against humanity and war crimes.

The Commission finds that throughout the entire period from the Indonesian invasion in 1975 to the arrival of international peacekeepers in 1999, members of the Indonesian security forces implemented a programme of widespread and systematic arbitrary detention, which routinely involved the torture of thousands of East Timorese non-combatants. These practices were systematic and were condoned and encouraged at the highest levels of the security apparatus

and the civil administration. The use of torture amounted to crimes against humanity and war crimes.

Throughout the period of the conflict members of the Indonesian security forces systematically raped and imposed conditions of sexual slavery on thousands of East Timorese women, often inside military facilities, police stations and government offices. Gang rape by military personnel inside military facilities was common, as was sexual torture. The Commission finds that the systematic rape of these mostly young women by members of the Indonesian security forces amounted to crimes against humanity and war crimes. The Commission bases these findings on the first-hand accounts of hundreds of individual, unrelated victims who courageously told of their experiences despite the significant personal sacrifice involved in providing such evidence.

The Commission finds that all of the major categories of human rights violations committed by members of the Indonesian security forces against adults were also committed against children. Children (persons under 18 years of age) were systematically killed, detained, tortured, raped and otherwise violated on a widespread scale by members of the Indonesian security forces inside military facilities and at other official locations.

The Commission finds that commanders and personnel of ABRI/TNI committed significant violations of their obligations under international law by using illegal methods of warfare in their campaign in Timor-Leste. Actions routinely carried out which were in violation of the Geneva Conventions included:

- The targeting of civilians in military attacks
- A failure to discriminate between civilian and military targets
- The collective punishment of civilians for the actions of members of the Resistance forces
- The killing, torture and ill-treatment of civilians who had surrendered and been taken prisoner
- The use of prohibited weapons including napalm and chemical weapons
- Large-scale forced recruitment, including of children
- The deliberate destruction of civilians' food sources.

The Commission finds that Indonesian judges, prosecutors, defence counsel, police, and military intelligence operatives collaborated to conduct sham trials of several hundred East Timorese after their arrest for engaging in pro-independence political activities. These trials involved the systematic use of torture to produce confessions, the fabrication of evidence and the manipulation of judicial proceedings. Those who participated in the preparation and conduct of these trials are responsible and accountable for the illegal imprisonment of hundreds supporters of independence for Timor-Leste.

The Commission finds that the State of Indonesia violated the right of the East Timorese to use and enjoy the benefits flowing from their own natural resources. This right was violated in a variety of ways including; by allowing the Indonesian security forces and their business associates to control the East Timorese coffee crop and to remove large quantities of resources, such as sandalwood and other types of timber, from the territory. Indonesia also violated the rights of the East Timorese people by illegally entering into an agreement with the Government of Australia to exploit the oil and gas resources in the Timor Sea.

### **The systematic programme of violations in 1999**

The Commission finds that senior members of the Indonesian military, police and civil administration were involved in the planning and implementation of a programme of mass human

rights violations intended to influence the outcome of the United Nations-organised Popular Consultation conducted in Timor-Leste in 1999. One of the main ways in which this programme was implemented was through the creation of new East Timorese militia groups and the strengthening of existing ones.

The Commission finds that the militia groups were formed, trained, armed, funded, directed and controlled by the Indonesian security forces. Indonesian military personnel served as commanders of some militia groups, senior commanders endorsed the militias, they operated from Indonesian military bases, and commonly committed atrocities in the presence of or under the direction of uniformed members of the TNI.

The programme conducted by members of the Indonesian security forces used violence and terror, including killing, torture, beatings, rape and property destruction in an attempt to force East Timorese voters to opt formally to “integrate” with Indonesia. When this strategy failed to produce the intended result, the security forces and their auxiliaries went on a rampage of violence, directed against people and property, and forcibly deported several hundred thousand East Timorese to West Timor.

The Commission finds that the massive human rights violations committed during 1999 were not the result of a conflict between East Timorese groups with different political preferences. Nor was it the result of “rogue elements” of the TNI acting out of the control of their superiors. The violations were committed in execution of a systematic plan approved, conducted and controlled by Indonesian military commanders up to the highest level.

The systematic violations that occurred in 1999 were facilitated through both the direct participation and the inaction of members of the Indonesian police force, who systematically failed to intervene to prevent the violations taking place and to punish perpetrators when they did.

Members of the local civil administration in Timor-Leste and national-level government officials, including ministers, knew of the strategy being pursued on the ground, and rather than taking action to halt it, directly supported its implementation.

The violations committed by the members of the Indonesian security forces during 1999 included thousands of separate incidents which constituted crimes against humanity. The Commission holds the leadership of the Indonesian security forces at the highest levels responsible and accountable for their role in planning and executing a strategy of which violations of human rights were an integral part, for failing to prevent or punish perpetrators under their command, and for creating a climate of impunity in which military personnel were encouraged to commit abhorrent acts against civilians known or perceived to be supporters of East Timorese independence.

### **Principal findings on the responsibility of Fretilin**

The Commission finds that representatives of Fretilin were justified in taking up arms to defend themselves and the right of the East Timorese people to self-determination in response to the actions of representatives of the UDT party during the armed movement in August 1975.

However, representatives of Fretilin responded by committing serious human rights violations against members and leaders of UDT and, on a smaller scale, of Apodeti which are inexcusable under any circumstances. In particular members of Fretilin were responsible for the arbitrary detention, beating, torture, ill-treatment and execution of civilians who were known or thought to be members of UDT and Apodeti. These acts were violations of their obligations under Common Article 3 of the Geneva Conventions, which applies to internal armed conflicts.

Representatives of Fretilin executed prisoners in Aileu (Aileu), Maubisse (Ainaro) and Same (Manufahi) between December 1975 and February 1976. The Commission finds that in addition



to local-level Fretilin and Falintil leaders and commanders in Aileu, Maubisse and Same, senior leaders and commanders, including members of the Fretilin Central Committee present in these areas at the time, were responsible for the torture and execution of prisoners in these places in late 1975 and early 1976. While accepting that the Fretilin Central Committee did not take a formal decision to commit these violations, the Commission finds that these senior leaders and commanders were either aware that they were taking place, were directly involved in deciding that they should take place, or were present when they did take place.

The Commission finds that when differences over military strategy and ideology emerged within the Resistance during 1976 and 1977-78, leaders of Fretilin belonging to the dominant faction within the party and their supporters responded in a grossly intolerant manner. This intolerance manifested itself in serious human rights violations, including the torture and ill-treatment of detainees and the execution of leaders and members of Fretilin and Falintil who disagreed with the mainstream Fretilin leadership. The victims were often treated in this way after being accused of collaborating with, spying for or otherwise acting as agents of the Indonesian security forces. The Commission finds that these accusations were often politically-motivated, and that Fretilin/Falintil condemned victims accused of these crimes were subjected to severe punishments, including indefinite periods of detention in deplorable conditions and execution, without any form of due process which in any way met international standards for procedural fairness.

The Fretilin leadership is also responsible for the detention of hundreds of persons in Renals and other detention centres established by Fretilin. The Renals were established to “re-educate” persons who differed from the leadership in their political views or whose loyalty was in doubt. Those detained included many ordinary people living in Fretilin-controlled areas who were believed, often on tenuous grounds, to be planning to surrender to Indonesian forces or to have had contact with Indonesian forces or their East Timorese collaborators. They also included those accused of common criminal offences. These people were often subjected to inhumane conditions, beatings and torture, which led to their death in detention, and many were executed.

The Commission finds that to the extent that it subjected persons it detained during the period 1976-78 to a process of “popular justice”, the Fretilin leadership within Timor-Leste was responsible for sanctioning a trial process which was grossly unfair in that it denied the accused their rights to be informed of the nature of the accusations beforehand, to be presumed to be innocent and to reply to the accusations made. As a result of these “non-trials” the accused persons were often subjected to further severe violations, including execution.

The question of whether individuals should or should not have been prevented from surrendering to Indonesian forces in the years following the invasion is complex, and some decisions are understandable when the totality of the situation is considered. However, the Commission found that the severe ill-treatment, torture, and, in some cases, killing of persons who favoured surrender was always inexcusable. Whatever the rights and wrongs of the debate over surrender, the Fretilin leaders who condoned and in some cases implemented these practices remain responsible for these extreme violations of victims’ rights, which cannot be justified under any circumstances.

The Commission finds that the actions of the members of the Fretilin, and those associated with it, in cases of detention, torture and killing of civilians, prisoners, the wounded and the sick were violations of their duties under Common Article 3 of the Geneva Conventions.

### **Principal findings on the responsibility of the UDT political party**

The Commission finds that on 11 August 1975 the leadership of the UDT party launched an armed movement, the purpose of which was to gain control of the political leadership of the territory of Timor-Leste. UDT had no legal authority to undertake this action, and by doing so

acted in violation of the rights of the East Timorese people to determine voluntarily their own political destiny.

During the armed movement UDT committed widespread human rights violations against members of the civilian population and combatants not engaged in combat, and particularly against individuals believed to be leaders and supporters of Fretilin. Hundreds of civilians were arbitrarily detained, many of whom were tortured, killed and otherwise mistreated.

The Commission finds that the actions of the members and leaders of the UDT party, and those associated with the party, in cases involving the detention, torture and killing of civilians, prisoners, the wounded and the sick were violations of their obligations under Common Article 3 of the Geneva Conventions.

The Commission finds that the leadership of UDT at the time are responsible for inciting their members to participate in an armed action without putting in place systems of command and control which could effectively regulate the behaviour of their members. They also did not prepare adequate facilities for the hundreds of prisoners who were detained. The Commission therefore finds the leaders of the UDT party at the time of the armed movement responsible for the violations committed by the members of UDT who were acting under their overall command.

The Commission finds that the local UDT leaders who incited hatred and who ordered victims to be detained, beaten, tortured or killed to be responsible and accountable for the consequences of these actions. The most extreme forms of abuse reported to the Commission occurred at the UDT headquarters in Dili, and in the districts of Ermera and Liquiça, which were UDT strongholds.

The Commission holds the UDT district party leaders in Dili, Ermera and Liquiça Districts in August 1975 to be responsible and accountable for the serious mass violations committed by those acting under their command and control. These violations included ordering or allowing the torture and summary execution of groups of unarmed civilians by party members acting under their authority.

The Commission finds the leadership of the UDT party to be responsible for contributing to the violation of the right of the East Timorese people to self-determination by contributing manpower to assist the invading Indonesian forces, inviting Indonesia to invade Timor-Leste and signing the Balibo Declaration, which helped to provide a veneer of legitimacy to the illegal Indonesian occupation and annexation of the territory.

Members of UDT joined Indonesian forces training in West Timor after September 1975 and participated in the military invasion of Timor-Leste, accompanying Indonesian military personnel and assisting them both militarily and by providing local knowledge and intelligence. The leaders and members of UDT involved in these operations are responsible for the violations in which they were directly involved and to which they contributed, both directly and indirectly.

The Commission finds that UDT leaders assisted Indonesia by presenting false and misleading information to the United Nations and its member states in the period after the Indonesian invasion. It thereby prevented members of the international community from gaining a true picture of the situation in Timor-Leste, which might have formed the basis of international initiatives on behalf of the people of Timor-Leste. By taking on this role they contributed to the suffering of the East Timorese people, for which they must be held morally responsible.

### **Principal findings on the responsibility of the Apodeti political party**

Although the Commission received significantly fewer reports of violations committed by members of Apodeti than by either Fretilin or UDT, the evidence clearly demonstrates that apart

from their direct role in violations, members of Apodeti participated in the Indonesian invasion and supported the military occupation in a variety of ways.

Apodeti members worked with Indonesian intelligence agents, both military and civilian, inside Timor-Leste and in Indonesia during 1974-75. They were responsible for undermining the decolonisation process and destabilising the situation in Timor-Leste.

Beginning in December 1974 approximately 200 members of Apodeti participated in military training exercises near Atambua, West Timor, which led to their participation with Indonesian military personnel, in covert military action inside Timor-Leste from August 1975 and possibly earlier, including the attack on Balibo on 16 October 1975. These East Timorese “Partisans” subsequently took part in the invasion of Timor-Leste, accompanying Indonesian military personnel and assisting them both militarily and by providing local knowledge and intelligence. The leaders and members of Apodeti involved in these operations are responsible for the violations in which they were directly involved and to which they contributed, both directly and indirectly. They are also responsible for the consequences of signing the Balibo Declaration, which helped to provide a veneer of legitimacy to the illegal Indonesian occupation and annexation of the territory.

The Apodeti leaders and those directly involved in compiling lists and pointing out individuals who were targeted by Indonesian forces during the invasion are responsible for the consequences of these actions, including the detention, torture and killing of those who were identified.

#### **Principal findings on the responsibility of the KOTA and Trabalhista parties**

Although members of the Trabalhista and KOTA parties were not identified as direct perpetrators of a large number of violations, they did play a role in supporting the Indonesian invasion and occupation, and therefore contributed to the mass violations committed by members of the Indonesian security forces. By taking up arms in the “Partisan” force, members of these parties are also responsible for contributing to the Indonesian military invasion and occupation.

Members of Trabalhista and KOTA also contributed to the formulation and signing of the Balibo Declaration which helped to provide a veneer of legitimacy to the illegal Indonesian occupation and annexation of Timor-Leste.

### **8.3 Methodology for identification of institutional responsibility.**

A total of 85,164 human rights violations were reported to the Commission through its statement-taking process. Each violation recorded in the statements of victims or witnesses was entered into the Commission’s database. The identity of the perpetrator, the institution to which he or she belonged, and when, where and how the violation was committed were also recorded. By combining this information, the Commission was able to generate data on, for example, the scale of violations by type and the perpetrator groups most often identified as responsible for violations. It could also break down these categories further to yield data on trends and patterns of violations, their perpetrators and victims over time and space.

Aside from this quantitative information derived from the database, the Commission also collected a large amount of qualitative information, including the detailed accounts of events provided by witnesses and victims in statements and interviews, and secondary sources. Much of this qualitative evidence is contained in the chapters of the Report in Part 7, which is devoted to specific types of violation.

Annexe 1 to this Part, entitled “Tables of reported violations”, consists of tables summarising the total number of reported violations according to the institutional identity of the perpetrators. It

contains a separate table for each type of violation, including the total number and percentage of reported cases of illegal killings, torture, rape and other violations attributed to the Indonesian security forces and their auxiliaries, Fretilin/Falintil, UDT and Apodeti. Each of these tables is accompanied by another table which gives a breakdown of the data for different components of the Indonesian security forces and their auxiliaries. This table provides figures for the Indonesian military and police acting alone, for East Timorese auxiliaries (such as Hansip and militia groups) acting alone, and for the total reported cases in which the identified perpetrators were Indonesian military and police acting together with East Timorese auxiliaries. A separate set of tables has been produced which includes only data relating to violations reported to have been committed in 1999. The tables from Annexe 1 that are relevant to particular sections of this Part of the Report are also reproduced in those sections.

The Annexe to this Part entitled “Indonesian government and security forces - micro-institutional analysis”, lists the military and other units most commonly identified in the database as perpetrators of violations and, where the information is available, their commanders and senior officers. Because of the limitations of the statement-taking process (see Part 6: Profile of Human Rights Violations), this analysis does not purport to identify definitively the units and individuals which committed the largest number of serious human rights violations. However, based on the totality of the evidence available to it, both quantitative and qualitative, the Commission believes that these units did commit large-scale violations and that where it has been possible to identify their commanders and senior officers, they should be held accountable for these actions.

In relation to the data in all tables, perpetrator groups are exclusive. That is, each violation is attributed to one and only one category of institutional perpetrator.

The following table presents a summary of the institutional affiliation of perpetrators of human rights violations reported to the Commission, based on the identification provided by the witnesses and victims who provided statements. A similar table dealing specifically with reported violations committed in 1999 appears later in this Part, in the section which deals with the responsibility of the Indonesian security forces for the violations committed in 1999.

**Table 1 - Perpetrator responsibility for violations reported to the CAVR: 1974-99**

	Total number of violations reported to the CAVR	Total violations by Indonesian military, police & Timorese auxiliaries	Total violations by	Total violations by	Total violations by	Others
			Fretilin/Falintil	UDT	Apodeti	
All violations	85,164 100%	71,917 84.40%	8,306 9.80%	2,151 2.50%	344 0.40%	2,446 2.90%
Illegal killings	5,108 100%	3,455 67.60%	1,297 25.40%	150 2.90%	41 0.80%	165 3.20%
Disappearances	833 100%	719 86.30%	71 8.50%	8 1.00%	1 0.10%	34 4.90%
<b>Torture</b>						
Detention	25,347 100%	20,779 82.00%	3,001 11.80%	831 3.30%	90 0.40%	646 2.50%

Ill-treatment	8,436 100%	6,706 79.50%	917 10.90%	379 4.50%	24 0.30%	410 4.90%
Sexual violence	853 100%	796 93.30%	27 3.20%	1 0.10%	-	29 3.40%
Forced displacement	13,967 100%	13,166 94.30%	426 3.10%	106 0.80%	86 0.60%	183 1.30%
Forced recruitment	2,157 100%	1,986 92.10%	94 4.40%	34 1.60%	1 0.00%	42 1.90%
Property/ economic violations	4,735 100%	4,096 86.50%	348 7.30%	53 1.10%	43 0.90%	195 4.10%

**Table 2 - Breakdown of Indonesian Security Forces responsibility for violations reported to CAVR: 1974-99**

Violations by:	Indonesian military, police & Timorese auxiliaries	Timorese auxiliaries acting alone	Indonesian military & police acting alone	Indonesian military and police acting together with Timorese auxiliaries
All violations	71,917 84.40%	14,704 17.30%	43,323 50.90%	13,550 15.90%
Illegal killings	3,455 67.60%	835 16.30%	1,972 38.60%	630 12.30%
Disappearances	719 86.30%	105 12.60%	494 59.30%	120 14.40%
<b>Torture</b>				
Detention	20,779 82.00%	3,005 11.90%	12,004 47.40%	5,630 22.20%
Ill-treatment	6706 79.50%	2,059 24.40%	3,341 39.60%	1,287 15.30%
Sexual violence	796 93.30%	184 21.60%	518 60.70%	89 1.40%
Forced displacement	13,166 94.30%	1,451 10.40%	10,144 72.60%	1,521 10.90%
Forced recruitment	1,986 92.10%	426 19.70%	1,221 56.60%	333 15.40%

Property/ economic violations	4096	2,256	1,032	773
	86.50%	47.60%	21.80%	16.30%

**Perpetrator identification in the human rights violations database**

Analysis of the 85,164 reported violations according to the institutional affiliation of the perpetrators leads to the following broad conclusions:

- Members of the Indonesian security forces and their auxiliaries were responsible for the overwhelming majority of all categories of violations committed during all periods following the invasion. They were identified as the perpetrators in 84.4% (71,917/85,164) of the total violations reported to the Commission.
- Members of ABRI/TNI and the police were the categories of perpetrator responsible for the most violations.
- East Timorese members of auxiliary forces, including Hansip and the militias, which were almost entirely armed, funded and controlled by the Indonesian military, were also responsible for a large number of violations, although less than ABRI/TNI. Reports of violations by the auxiliary forces were proportionally much higher in 1999 than other periods of the conflict.
- After representatives of the Indonesian security forces, members of Fretilin/Falintil were identified as next largest perpetrator group, although the number of violations they are reported to have committed is much smaller than those reportedly committed by agents of the Indonesian security forces. Members of Fretilin/Falintil were identified as perpetrators in 9.8% (8,306/85,164) of the total violations reported to the Commission.
- Most reported violations by members of of Fretilin/Falintil took place during the internal party conflict of 1975 and the years immediately following.
- The proportion of violations committed by members of UDT was significant during and after the period of the internal armed conflict in August 1975.
- The number of reported violations committed by UDT is substantially lower than those reported to have been committed by Fretilin/Falintil. UDT members were identified as perpetrators in 2.5% (2,151/85,164) of the total number of cases reported to the Commission.
- There were very few violations committed by Fretilin/Falintil or any other pro-independence group during 1999.

## 8.4 Responsibility and accountability of the Indonesian security forces

In every village there was and still is a prison and every day five to ten people are tortured, burned with cigarettes, systematically electrocuted with high voltage electricity, or become victims of the Nanggala killer knives. They pull out fingernails and squeeze testicles with pliers. They put the victims' fingers under the leg of a table, and the killer Red Berets sit on top of it. All this during interrogation to get information about people's organisations in concentration camps. Then [there are] the killings. Mass shooting executions, with the victims dying in front of the graves they dig themselves. Or they die drowned in a barrel full of water. The victims' families then are told that they "have gone to Jakarta to study". Then, as if all this was not enough, the women of the struggle or the slaughtered victims' wives, are taken for interrogation at night. They have to submit, under death threats, to pleasure the Nanggala, police, Koramil, Kodim, because these women are accused of having connections with Fretilin. The captured strugglers and Fretilin members are interrogated to gain information about the resistance with the most brutal tortures, till they die after which they are tied to the back of a vehicle and dragged around the village while the villagers are forced to watch and "welcome Fretilin's visit to the village". The women captured in the forest cannot avoid [the perpetration of] criminal acts [against them]. They are stripped naked, their hair shaved, and are told to walk among the people standing in line and forced to humiliate them.

Xanana Gusmão 14 October 1982. Letter to the 37th UN General Assembly.

#### 8.4.1 Evidence relied on in this section

In addition to the almost 8,000 statements and 85,164 reported violations, the Commission conducted interviews with witnesses, including persons who served with the Indonesian military, police and civil administration, and members of auxiliaries such as Hansip and the militia groups. Secondary materials, including official Indonesian military documents, were also consulted.

#### 8.4.2 Violations committed by members of the Indonesian security forces.

**Table 3 - All reported violations, 1974-1999**

Perpetrator	Count	Percent
Indonesian Military & Police Acting Alone	43,323	50.9
Timorese Auxiliaries Acting Alone	14,704	17.3
Indonesian Military and Police together with Timorese Auxiliaries	13,550	15.9
Resistance Movement	8,772	10.3
Other Institutions	4,167	4.9
Civilian Population	450	0.5
Pro-Autonomy Groups	198	0.2
Total	85,164	100.0

<sup>1</sup> Xanana Gusmão, *To Resist Is To Win!*, edited by Sarah Niner, Aurora Books, 2000, pp. 77-78.



### 8.4.6.1 Unlawful killings and enforced disappearances

The Commission has found that of the approximately 18,600 unlawful killings and enforced disappearances of East Timorese non-combatants were perpetrated between 1974 and 1999. The overwhelming majority, 70%, were committed by the Indonesian security forces, including East Timorese auxiliaries.\* The nature and scale of these killings and disappearances changed over time in step with the different phases of the Indonesia's occupation, reaching peak levels in 1978-79, 1983-84 and 1999. However, the Commission has found that the Indonesian military's consistent resort to killings and disappearances throughout the occupation and the impunity enjoyed by those responsible for them indicate that they were an integral part of its strategy for enforcing its control of the territory of Timor-Leste through the instrument of terror.

**Table 4 - Reported cases of unlawful killings, 1974-1999**

Perpetrator	Count	Percent
Indonesian Military Police & Timorese Auxiliaries	3,455	67.6
Fretilin & Falintil	1,297	25.4
Other Institutions	165	3.2
UDT	150	2.9
Apodeti	41	0.8
Total	5,108	100.0

**Table 5 - Breakdown of perpetrator groups : unlawful killings 1974-1999**

Perpetrator	Count	Percent
Indonesian Military & Police Acting Alone	1,972	38.6
Resistance movement	1,335	26.1
Timorese Auxiliaries Acting Alone	835	16.3
Indonesian Military and Police together with Timorese Auxiliaries	630	12.3
Other Institutions	270	5.3
Civilian Population	45	0.9
Pro-Autonomy Groups	21	0.4
Total	5,108	100.0

**Table 6 - Enforced disappearances, 1974-1999**

Perpetrator	Count	Percent
Indonesian Military	719	86.3

\* Auxiliaries comprise "civil defence" groups (including Hansip, Ratih, Wanra and Kamra), members of the local administration acting in a "security" role, paramilitary groups (such as Tonsus and the various "Teams" that were forerunners of the militia groups formed in 1998-99), and the militia groups themselves. .

Police & Timorese Auxiliaries		
Fretilin & Falintil	71	8.5
Other Institutions	34	4.1
UDT	8	1.0
Apodeti	1	0.1
Total	833	100.0

**Table 7 - Breakdown of perpetrator groups: enforced disappearances, 1974-1999**

Perpetrator	Count	Percent
Indonesian Military & Police Acting Alone	494	59.3
Indonesian Military and Police together with Timorese Auxiliaries	120	14.4
Timorese Auxiliaries Acting Alone	105	12.6
Resistance movement	76	9.1
Other Institutions	36	4.3
Pro-Autonomy Groups	1	0.1
Civilian Population	1	0.1
Total	833	100.0

*Terror and impunity*

In attempting to overcome resistance to the occupation ABRI/TNI made strategic use of terror to force the population into submission. It did so by directing and allowing personnel to be involved in horrific acts committed against any person suspected of being affiliated with the Resistance.

In every culture, particularly among members of institutions entrusted with employing physical force over others, there are individuals who derive personal gratification through the exercise of this power over defenceless victims. The commanders and senior leaders of ABRI/TNI allowed horrific practices to go unpunished and encouraged the development of an institutional culture in which torture, rape and arbitrary execution came to be accepted as standard operating procedure. Throughout the period of occupation (1975-1999) methods and circumstances in which representatives of the Indonesian security forces committed unlawful killings included:

- A common practice of slow killing of detainees by leaving them naked and alone, without sufficient food and water, in totally dark cells, following repeated and prolonged torture
- Killing prisoners in military custody by repeated and severe beatings and prolonged torture
- Execution of unarmed civilians by close-range shooting
- Random, indiscriminate shooting of unarmed groups of civilians
- Targeted killing of suspects from lists drawn up by military personnel
- Execution of detainees in detention centres, and in isolated places in the countryside, including in lakes, ravines and from bridges
- Immediate execution after capture during military operations
- Ordering of victims to dig their own grave before execution
- Ordering of victims to line up in formation, before line by line execution
- Dividing groups of unarmed civilians by sex, and then executing the men
- Throwing of grenades at unarmed groups of civilians
- Throwing live persons from cliffs, sometimes after being wounded
- Forcing of persons to kill other civilians, under severe duress and threats to their own lives
- Rape and sexual torture of female victims before executing them
- Tying victims to a moving vehicle and publicly dragging them along the ground until they were dead
- Burning people alive
- Burying people alive
- Tying up victims to a cross and then executing them
- Displaying human ears and genitals to family members of the disappeared

As an element in the creation of terror the execution of opponents was sometimes carried out in public. The fact that such executions could take place repeatedly in public places provides strong evidence that the practices were systematic and an accepted practice within the Indonesian military institution. They were either ordered or condoned by the senior levels of command, and officers could torture and kill political opponents openly without any due process or apparent reason, and without fear of being held accountable in any way. Some of the examples of public executions which witnesses reported to the Commission were:

- Beating victims to death in public
- Public beheading with an axe
- Publicly cutting off body parts of victims while still alive
- Public display of decapitated head, or severed limbs or body parts
- Public execution of a married couple, in which both were stripped naked, then hit on the back of the neck, knocking them into a grave that had already been dug
- Parading of corpses in public

### **Illegal killings related to military operations**

#### *Illegal killings before the full-scale invasion of Timor-Leste*

Before the full-scale invasion of Timor-Leste on 7 December 1975 Special Forces (Kopassandha) units of ABRI armed and trained East Timorese members of Apodeti and UDT in West Timor (Indonesia), designating them “Partisans”. Indonesian troops and “Partisans” conducted covert military operations in the territory of Timor-Leste between August and December 1975, during which they unlawfully killed dozens of civilians in Bobonaro, Covalima and Ermera Districts. The Commission finds that the Government of Indonesia, the institution of ABRI/TNI, the individual Kopassandha officers and men and the “Partisans” involved are responsible and accountable for the deaths of those civilians.

#### *Illegal killings and arbitrary executions during operations*

The invasion of Timor-Leste was a violation of international law regulating the permissible use of armed force.\* Not only was the fact that Indonesia forcibly invaded the territory a serious violation, but also the manner in which it was conducted involved mass violations against civilians, prisoners, the sick and wounded. Members of ABRI did not limit their attacks to those who resisted the occupation or were armed combatants. They frequently targeted unarmed civilians and failed to differentiate between civilian and military targets during this operation and the ensuing operations aimed at subduing the population.

In the capital, Dili, on 7-8 December 1975 Indonesian soldiers executed scores of civilians, including women, in areas of the city which had been actively defended against the armed Indonesian invasion. These areas were Colmera, Vila Verde, Matadouro, the Maloa River and Ailok Laran. They also targeted captured Fretilin members and their relatives and executed several of them on the day after the invasion.

The Commission received many reports of Indonesian forces killing civilians as they advanced into other parts of the territory during 1976-78. Sometimes those killed had been denounced as members of Fretilin, but many of the victims of these killings were randomly targeted members of the civilian population. Ordinary civilians were targeted in a variety of other circumstances: while looking for food or going about their daily activities, when encountered by Indonesian security forces on operations, in retaliation for Falintil attacks, and on suspicion of having contact with or having knowledge about Fretilin/Falintil.

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\* The principles of international law relied on by the Commission are included in Part 2: The Mandate of the Commission; see also Chapter 7.5: Violations of the Laws of War.

The Commission has found that while engaged in offensives against Fretilin/Falintil bases and attacks on their positions and in the aftermath of such operations Indonesian security forces killed civilians and others not engaged in combat, including surrendered and captured combatants. The majority of reports of this nature which it received related to the period 1977-79, when many of those who had fled to the mountains and came into the custody of the Indonesian forces through surrender or capture were summarily executed. Some of those who were executed were members of Fretilin and Falintil, who had surrendered after receiving personal assurances from ABRI personnel, other members of the Indonesian security apparatus or members of the civil administration that they would be safe on the basis of an amnesty offered first announced by President Soeharto in November 1977 and subsequently renewed.

The Commission received information indicating that violations of this kind continued to be committed after that time. For example, the Commission has found that in September 1981, at the conclusion of the *Operasi Kikis* of June-September 1981, Battalions 321, 744 and/or 745, Marine Units, and Hansip attacked Falintil forces who had gathered in the area of Mount Aitana on the Manatuto-Viqueque border and subsequently executed more than one hundred and, possibly several hundred, Falintil troops and civilians, including women and children, who were accompanying them. At the time that they were killed these victims were either at the mercy of Indonesian forces or in their custody after surrender or capture.

#### *Systematic killings and disappearances of targeted individuals and groups*

During the early years of the occupation, but in particular in 1978-1979 and in 1983-84, ABRI commanders, troops and auxiliaries committed systematic and widespread unlawful killings and enforced disappearances of persons who had been active members of the Resistance and persons suspected of having clandestine contacts with members of Fretilin/Falintil still fighting.

In most of these incidents the Indonesian security forces spread their net extremely wide to the point that it is often not easy to distinguish instances of targeted killings from the instances of collective and proxy punishment described below.

After the attacks in Dili on 10 June 1980, for example, those who were arrested, some of whom were among the 121 persons reported to the Commission as having subsequently been killed or disappeared, were persons who had taken part in the attacks; persons known to have played an active role in the Resistance before their surrender or capture but who are believed not to have taken part in the attacks; persons who had a supportive role in preparing for the attacks but who did not participate directly in them; persons who may have still have been active in the Resistance but who did not play any role in the attacks; and unfortunate bystanders such as persons who happened to have been on compulsory guard duty in places near where the attacks took place on the night of 9-10 June. The Commission notes that under international human rights and humanitarian law the right to life of all categories of non-combatant is absolute, and that therefore all unlawful killings and disappearances are illegal acts irrespective of the reason why the victim has been targeted. To the extent that it is possible to do so, it distinguishes between collective punishment and more discriminate forms of killings and disappearance not because one is more or less reprehensible than the other – both are equally reprehensible – but to establish grounds for accountability.

The Indonesian security forces and their auxiliaries carried out a widespread and systematic campaign of killings and disappearances directed at surrendered and captured members of Fretilin and Falintil in February-June 1979. The Commission found that these killings and disappearances were carried out as part of a systematic plan, devised at the highest levels of the military command structure and coordinated by the newly-created Sub-Regional Command (Korem) for East Timor under the command of then Colonel Adolf Sahala Rajagukguk, whose purpose was to eliminate surviving leaders and activists of the Resistance movement. It reaches this conclusion on the basis of a number of considerations, including the scale and widespread nature of the killings and disappearances, their known targets, their timing, the uniform treatment of the victims and other similarities in the methods used during the campaign across many districts, and the involvement of military units at all levels of the command structure.

After the breakdown of the ceasefire between Indonesian forces and the Resistance in March 1983 and the launch of *Operasi Persatuan* (Operation Unity), aimed at the total eradication of the Resistance, the Indonesian military targeted civilians involved in clandestine activity. The Commission received testimonies about the execution and disappearance of more than 250 civilians in the districts of Lautém, Viqueque, Baucau, Dili, Aileu, Manufahi, Ainaro, Bobonaro and Covalima between August 1983 and mid-1984 (excluding those killed in Viqueque in the immediate aftermath of the attack on Kraras), as well as the arrest, detention and torture and ill-treatment of many others.

While this campaign was avowedly aimed at breaking up clandestine Resistance networks, in practice it was both systematic and indiscriminate. The systematic nature of these executions is evident to the Commission from their scale and from documentary evidence received by the Commission that village chiefs and members of the civil defence forces were ordered to draw up lists of people who had been active in the Resistance in the past, which in some cases at least formed the basis for the violations that followed. In addition, as with the executions and disappearances of 1978-79, the similar operation of 1983-84 involved the mobilisation of a wide range of institutions within the security apparatus and the civil administration, including the Special Forces (Kopassus), all levels of the territorial structure, combat battalions, the civil defence forces, paramilitary teams, the civilian and military police, and local government officials.

Its indiscriminate nature is evident from what is known about some of the persons who were its victims. For example, the Commission learned that many of the approximately 40 individuals arrested in Bobonaro and Covalima who were then executed or disappeared from the Bobonaro Koramil in December 1983 had no connection with the Resistance other than a name similar to that of another person believed to have such a connection.

### **Collective and proxy punishment of civilians by ABRI/TNI**

Throughout the occupation, but in particular in the early 1980s, ABRI commanders, troops and auxiliaries committed unlawful killings and enforced disappearances of civilians to punish communities collectively that were suspected of supporting Falintil forces. The indiscriminate punishment of persons known to have previously been involved with the Resistance movement and the collective punishment of communities were particularly severe in the aftermath of Falintil attacks on military targets. The Commission finds that the illegal and immoral practices of proxy and collective punishment, targeting innocent victims for actions carried out by others who had evaded capture, was a central and systematic component of the Indonesian military strategy to overcome the resistance to the military occupation. ABRI/TNI commanders and troops carried out collective punishment directed at unarmed civilians in response to attacks by Falintil from the earliest days of the occupation. Among the incidents reported were a number in which large numbers of civilians were detained and tortured, women raped, and unarmed civilians who themselves had not taken part in the attacks by Falintil were summarily executed or disappeared.

In the weeks after a Falintil-led attack on ABRI posts and facilities around Mauchiga (Hatu Bulico) and Rotuto (Same, Manufahi) on 20 August 1982, ABRI and Hansip took massive retaliatory action aimed at punishing the whole population of Mauchiga and surrounding villages. In the course of this operation the population, the vast majority of whom had not participated in the Falintil-led attack, suffered multiple violations of their rights, including detention, torture, rape and other sexual violations, forced displacement to the island of Ataúro and other places, and executions. At all of the sites to which the people of Mauchiga were forcibly transported those detained were subjected to hunger as a form of collective punishment. The Commission compiled a list of approximately 120 people who died from hunger-related causes as collective punishment for attacks of 20 August 1982. At least 75 men from Mauchiga were summarily executed by ABRI and civil defence forces between 1982 and 1987. Many of them were killed in the most brutal fashion, both publicly and at an execution site, called Jakarta 2, at Bulico, near the town of Ainaro, where victims were hurled into a deep ravine. In a special project conducted by the Commission, it received extensive testimony that personnel from the Ainaro and Manufahi Kodims, the Dare Koramil, the 5<sup>th</sup> Combat Engineering Battalion (Zipur 5), and Hansip, including commanding officers, were implicated in these violations,

Following the attack by East Timorese Ratih (Civil Defence Force) in Kraras (Viqueque) on 8 August 1983, in which 12 Indonesian troops were killed, and their subsequent defection, the Indonesian security forces took reprisals against the population of the area in September-October 1983. These included a series of executions, including mass executions. In separate events reported to the Commissions around 270 people were killed in groups of up to 181. A wide range of military and auxiliary forces were reported to have perpetrated these executions, including members of Kodim 1630/Viqueque, Battalions 328, 501 and 745, Special Forces (Kopassus) and Hansip.

After the defection of more than 30 armed members of Hansip, with their families and members of a clandestine youth group, in Mehara (Lautém) on 9 August 1983, smaller-scale defections in Leuro in Lospalos Sub-district and Serelau in Moro Sub-district, and the discovery of a plan for a similar action in Iliomar Sub-district, Indonesian military forces detained hundreds of men and women throughout the district, executing and causing the disappearances of many of them. According to information received by the Commission, between August and December 1983 at least 28 people were executed or disappeared in the sub-district of Iliomar and another 20 in the aldeias of the village of Mehara alone. Executions were frequently held in public; in several instances reported to the Commission members of the security forces compelled villagers to kill their fellow villagers publicly or in detention centres.

In later years civilians continued to be executed in reprisal for Falintil attacks. Examples include the killing of six civilians in Gariana (Maubara, Liquiça) in January 1995 after a Falintil soldier being pursued by ABRI troops evaded capture and the killings in Alas and other parts of Manufahi District that followed Falintil attacks and executions in October-November 1998.

### **1985-1998: a continuing climate of impunity**

In the period 1985-1998 the number of killings and disappearances committed by ABRI and its auxiliaries declined relative to the earlier years of the occupation. However, the Indonesian security forces continued to kill and cause the disappearance of civilians with real and suspected association to groups resisting the occupation, including members of Fretilin/Falintil, the clandestine networks and other pro-independence groups.

Although the number of fatal violations decreased, those that occurred could not be regarded as the exceptional acts of "rogue elements". A climate of impunity permitted practices such as the following to continue to occur with virtual impunity into the 1990s:

- Opening fire into a crowd of unarmed demonstrators, as at the Santa Cruz Cemetery in Dili on 12 November 1991

- The execution and disappearance of civilians in reprisal for Falintil attacks and execution, as occurred in Alas and other sub-districts of Manufahi in October-November 1998
- The execution of civilians in place of escaped combatants, as in Gariana (Maubara, Liquiça) in January 1995
- The execution of civilians who were forcibly recruited to take part in military operations or exercises during military action
- Opening fire on a group of unsuspecting people or individuals carrying out daily activities, for no apparent reason

Responding to international and domestic pressure, the Indonesian military conducted internal investigations and brought judicial proceedings against relatively junior personnel in at least two instances cases, following the Santa Cruz Massacre in Dili in 1991 and the killing of six civilians in Gariana (Maubara, Liquiça) in 1995. In both cases court martial proceedings resulted in the low-ranking soldiers receiving light sentences, of between eight months and four years. The Commission found that these proceedings were not conducted in such a way as to establish accountability for those atrocities.

## 1999

In 1999 the Indonesian security forces and their auxiliaries conducted a coordinated and sustained campaign of violence designed to intimidate the pro-independence movement and ensure a pro-Indonesian result in the UN-organised Popular Consultation. Thousands of civilians were detained, hundreds of thousands were forcibly displaced, and 1,400-1,500 were killed or disappeared during the course of the year. The majority of fatal violations took place in April, before the signing of the May 5 Agreements, and in September-October, after the announcement of the result of the ballot.

The Commission found that during 1999 the TNI relied to a far greater extent than in earlier years on East Timorese auxiliaries, in this case militia groups, acting alone, to carry out its campaign against the civilian population. Although it was part of the TNI's strategy to encourage such an interpretation, this did not mean that that the TNI was not directly responsible for the actions of the militias, including the killings and disappearances they committed.

The Commission received overwhelming evidence that during 1999 the TNI, the police and militia groups acted in a coordinated manner. Military bases were openly used as militia headquarters, and military equipment, including firearms, were distributed to militia groups. Some TNI personnel were also militia commanders or members. TNI intelligence officers provided lists of the names of people to be targeted, and coordinated attacks. Civilian authorities openly provided state funding for militia groups and participated in militia rallies and other activities. And, the Commission found, on many occasions TNI personnel were directly involved with the militia in fatal attacks or carried out such attacks acting alone. Instances of such open involvement include:



The attack on the Liquiça Church on 6 April 1999, conducted by Besi Merah Putih militia, and troops from the local Kodim and Brimob (police mobile brigade), in which at least 30-60 civilians were killed.

The retaliatory killing by Halilintar militia and TNI personnel of at least 20 civilians in the days following the alleged Falintil killing of an TNI soldier and a pro-autonomy leader in Cailaco Sub-district (Bobonaro) on 12 April 1999.

The attack on Suai Church on 6 September 1999 by Laksaur militia and Indonesian security forces, in which at least 27 people, including three priests, were killed.

The attacks in Dili on 5-6 September 1999 by Aitarak militia and Indonesian security forces on a number of buildings and complexes where civilians had taken refuge, in at least 19 civilians were killed or disappeared.

The attacks on 8 September 1999 and succeeding days by Dadurus Merah Putih and other militias, under the command of Indonesian security forces, on persons who had sought safety in the Maliana police station (Bobonaro) and subsequently on those who had managed to flee the police station, in which at least 26 civilians were killed or disappeared.

On 12 September 1999, Laksaur militia and Indonesian security forces, during an attempt to forcibly deport villagers from the village of Laktos, Fohorem (Covalima) killed 14 men who resisted being moved to West Timor.

The random shootings by members of Battalion 745 during their retreat from Lospalos (Lautém) to Dili on 21-22 September 1999, in which at least eight people were killed.

The execution of 12 persons around 20 October 1999 by Sakunar and Aitarak militia and Indonesian security forces, while rounding up villagers from Maquelab (Pante Makassar, Oecusse) for deportation to West Timor and subsequently.

## **Arbitrary detention, torture and ill-treatment**

### *Introduction*

The Commission finds that throughout the entire period from the Indonesian invasion in 1975 to the arrival of international peacekeepers in late September 1999 members of the Indonesian security forces arbitrarily detained thousands of East Timorese on a scale and in a manner that was widespread and systematic. The Commission also found that detainees were routinely tortured. The Commission received statements from witnesses and victims which reported 20,779 cases of arbitrary detention, 11,123 incidents of torture and 8,436 incidents of ill-treatment. Thousands more incidents of torture and ill-treatment were described by witnesses during interviews, in victims' hearings, community reconciliation hearings, community profile workshops and thematic public hearings conducted by the Commission.

The picture which emerges from the analysis of this information is clear and highly corroborated. The Commission finds that there was a systematic policy and practice within the Indonesian security forces, which extended to its highest levels, that condoned and encouraged the use of arbitrary detention and torture of East Timorese who were suspected of political opposition to the invasion and occupation of Timor-Leste. Analysis of all reported cases entered into the Commission's database demonstrates that arbitrary arrests, detention and torture occurred in all districts of Timor-Leste, although it was most common in Dili and markedly less frequent in Oecusse, and in every year from 1975 until 1999. One of the challenges for the Indonesian security forces in overcoming the Resistance was a lack of knowledge of who was actively part of the clandestine pro-independence movement. A tactic used to gain access to this information was to detain arbitrarily individuals or groups of people who were either themselves suspected of being connected in some way to the independence movement, or who had family members or lived in a community that was suspected of being pro-independence. Those detained would then

often undergo the ordeals of torture and deprivation aimed at breaking their reluctance to provide information, or at convincing activist family members to cooperate.

**Cases of arbitrary detention, torture and ill-treatment reported to the Commission, 1974-99**

**Table 8 - Detention, 1974-1999**

Perpetrator	Count	Percent
Indonesian Military Police & Timorese Auxiliaries	20779	82.0
Fretilin & Falintil	3001	11.8
UDT	831	3.3
Other Institutions	646	2.5
Apodeti	90	0.4
Total	25347	100.0

**Table 9 - Breakdown of perpetrator groups: detention, 1974-1999**

Perpetrator	Count	Percent
Indonesian Military & Police Acting Alone	12004	47.4
Indonesian Military and Police together with Timorese Auxiliaries	5630	22.2
Resistance Movement	3128	12.3
Timorese Auxiliaries Acting Alone	3005	11.9
Other Institutions	1399	5.5
Civilian Population	127	0.5
Pro-Autonomy Groups	54	0.2
Total	25347	100.0

**Table 10 - Torture and ill-treatment 1974-99**

Institution	Torture & Ill-Treatment	
	Count	% Share
Indonesian Military, Police & Timorese Auxiliaries	16135	82.4
Fretilin	1713	8.7
Falintil	419	2.1
UDT	730	3.7
Apodeti	63	0.3
Other	335	1.7
Total	19578	100.0

**Table 11 - Breakdown of perpetrator groups for torture and ill-treatment, 1974-99**

Institution	Torture & Ill-Treatment	
	Count	% Share
Indonesian Military and Police Acting Alone	8890	45.4
Timorese Auxiliaries Acting Alone	4380	22.4
Indonesian Military and Police together with Timorese Auxiliaries	2880	14.7
Resistance Movement	2250	11.5
Other	747	3.8
Civilian Population	509	2.6
Pro-Autonomy Groups	157	0.8
Not Reported	27	0.1
Total	19578	100.0

*Arbitrary detention*

Of the 20,779 unique reports of arbitrary detention by members of the Indonesian security forces documented by the Commission, the victims were reported to have been subjected to torture or ill-treatment by members of the Indonesian forces in 19,559 cases. This mass of evidence has provided the Commission with a highly corroborated and reliable picture of the appalling treatment to which detainees were routinely subjected. These thousands of cases, which form the basis for the findings in this section, provide a strong and consistent account of the manner in which these violations were commonly carried out.

Arrest and detention were arbitrary in several respects. The Commission knows of no case in which persons who were arrested were informed of their rights, and it was rare for them to be told whether they were being charged, or why they were being detained. The Commission did not receive one account of a person who was detained being released on bail. Excessive force, including heavy beatings, was routinely used during the arrest of suspects. In most cases evidence implicating suspects in a crime was not presented to them, and they were often detained on the basis of information passed on by informants. In the absence of any real evidence against suspects they were then routinely tortured to try to make them confess or provide information.

*Conditions of detention*

The conditions in which those detained were kept were often deplorable. Prisoners frequently died of starvation and illness due to lack of clean water in their places of detention until the mid-1980s when the number of detainees declined and new state prisons were constructed to house those detained. Even after this time there were frequent reports of detainees being deprived of food for several days at a time or being given food that was unfit for human consumption.

Conditions in which detainees were commonly held included:

- Long periods of extreme hunger, during which the only food that was provided was intentionally inedible, being mixed with broken glass and animal faeces, badly burned or obviously rotten.
- Keeping prisoners naked for long periods of time. In some places of detention the practice was to keep prisoners naked or in their underwear, to heighten their sense of shame and vulnerability.
- Keeping prisoners in solitary confinement for long periods, sometimes of up to one year, without human contact.
- Detention centres, including prisons, police stations and military command headquarters, had “dark cells” into which prisoners would be placed. These cells had no windows, no light and poor ventilation.
- Prisoners were often kept in small cells with no toilets and were not allowed outside their cells, forcing them to sit in their own excrement or that of other prisoners. This also applied to the “dark cells”.

These abhorrent conditions were often combined. Victims gave personal testimony to the Commission about their experience being kept alone and naked in tiny “dark cells” in which there was absolutely no light, without toilet facilities and with food mixed with faeces and soapy water as their sole source of nourishment. The only time they were removed from these conditions was to be tortured by being subjected to electric shocks, beatings and other inhumane forms of treatment. In many cases these conditions were prolonged, causing the slow and excruciating physical collapse and death of the victim. The Indonesian security forces intentionally used a variety of specially designated centres to carry out interrogation and torture, some of which were specifically designed for the torture of victims. Often victims would be moved to a number of these sites during a single night, undergoing interrogation and torture at each, to increase their confusion, sense of isolation and vulnerability. Once held in detention, victims were liable to be passed from one branch of the intelligence services to another for interrogation. This tactic was routinely used to increase the sense of terror and vulnerability of the victim.

### **Torture and ill-treatment**

The striking similarity in the treatment of those held in detention, across different locations in the territory and throughout the 24-year period of occupation, provides evidence of the systematic and widespread nature of these violations and the fact that they were institutionally tolerated and encouraged. It also indicates that the institutions of the Indonesian security forces applied these practices as a standard part of their operations in Timor-Leste. The Commission finds that the systematic use of torture by the Indonesian security forces amounted to crimes against humanity.

Torture is a violation of the rights of both combatants and civilians. The Commission has received reports of the torture of Falintil combatants by members of the Indonesian security forces. However it received a far greater number of reports of torture of civilians who were not part of the armed opposition.

The totality of the evidence considered by the Commission leads it to conclude that the purpose of this systematic use of torture was:

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<sup>\*</sup> The Commission published a book on this public hearing, containing testimonies and photographs of the hearing, and historical photographs [see *Political Imprisonment: CAVR National Public Hearing 17-18 February 2003*].

- To attempt to force civilians to provide information about others who might be involved in resisting the occupation
- To demonstrate the terrible punishment that would be summarily handed out to anyone who resisted the occupation
- To demonstrate that members of the Indonesian security forces could act in an arbitrary manner and with total impunity against the East Timorese population
- To demonstrate that the East Timorese people were in a totally subjugated, vulnerable and powerless situation with no means of defending their human rights and dignity, and that therefore they must accept the occupation
- To create pervasive conditions of terror among the population in order to force them not to resist the occupation.

In the case of persons who were going to be brought to trial, written confessions were often prepared before the interrogation of suspects began. The suspect was forced to sign the confession by the use of torture during the interrogation.

In addition to the use of physical torture, other methods, such as death threats against the victim and his or her family, and deprivation of sleep, food, water and sanitary facilities, were also employed. Often interrogations ran continuously over several days in order to break the victim's will.

#### *Methods of torture*

The types of torture which victims and witnesses reported to the Commission were strikingly uniform.

On the basis of extensive corroboration the Commission accepts that the following acts of torture and other cruel, inhumane and degrading treatment were commonly used by the Indonesian security forces:

- Beating with fists or with implements such as a wooden club or a branch, an iron bar, a rifle butt, chains, a hammer, a belt or electric cables
- Kicking, usually by torturers wearing military or police boots, including around the head and face
- Punching and slapping
- Whipping
- Cutting with a knife
- Placing the victim's toes under the leg of a chair or table and then having one or more people sit or jump on it
- Burning the victim's flesh with cigarettes or a gas lighter, including the victim's genitalia
- Applying electric shocks to the most sensitive parts of the victim's body, including the his or her genitalia
- Firmly tying the victim's hands and feet and hanging him or her from a tree or roof
- Using water in various ways, including holding the victim's head under water; keeping a victim in a water tank for a prolonged period, sometimes for up to three days; soaking and softening a victim's skin in water before beating him or her; pouring very hot or very cold water over the victim; pouring very dirty water or sewage over the victim
- Sexual harassment, sexual forms of torture and ill-treatment, or rape while in detention. Women were the main victims of this kind of this widespread abuse
- Cutting off a victim's ear or ears to mark the victim as a supporter of the Resistance
- Tying the victim behind a car and forcing him or her to run behind it or be dragged across the ground, sometimes until the victim died
- Placing lizards with sharp teeth and claws on the victim and then goading it to bite different parts of the victim's body
- Pulling out fingernails and toenails with pliers
- Running over a victim with a motor-bike
- Forcing a victim to drink a soldier's urine or eat non-food items such as live small lizards or dirty socks
- Leaving the victim in the hot sun for extended periods
- Humiliating detainees in front of their communities, for example by making them stand or walk through the town naked
- Torturing and mistreating a member of the victim's family in front of them, including their children

In addition to the above methods, each of which was reported to have been committed in several cases, the Commission received reports directly from victims of many other forms of torture and cruel and inhumane treatment. The following methods of torture were reported by individual victims:

- Rubbing chillies in the victim's eyes
- Forcing the victim to carry a decapitated head around his village
- Beating two naked male victims while their genitals were tied together with wire
- Cutting off of the victim's ear and forcing him to eat it
- Tying the victim inside a sack filled with snakes
- Dousing a group of prisoners with petrol and threatening to burn them alive
- Tying a victim in a sack and burning him alive

As well as physical abuse, detainees were also subject to mental and emotional torture and cruel, inhumane and degrading treatment. Methods commonly used included:

- Keeping prisoners in detention indefinitely without access to family and friends
- Keeping prisoners for extended periods in solitary confinement or in cells with no light and little ventilation
- Taking a detainee to a place used for extra-judicial executions and pretending to the victim that they were going to be killed, even to the point of firing a shot in the victim's direction
- Verbal abuse and insults
- Forcing victims to beat each other
- Torturing a family member in an adjoining room so that the victim could hear the his or her screams, or torturing or threatening to torture a family member in front of the victim
- Blindfolding or placing a black cloth, helmet or bucket over a victim's head during interrogation and torture
- Using symbolism to humiliate and break the spirit of the victim, such as beating a detainee with a Portuguese or Fretilin flag, or tying victims to the flag-pole of an Indonesian flag
- Insulting a victim's religion such as by tearing off the victim's crucifix or tying the victim to a cross
- A team of interrogators spit on the victim

### **Rape, sexual slavery and other sexual violations**

The Commission finds that during the period of the invasion and occupation of Timor-Leste, members of the Indonesian security forces and their auxiliaries were involved in widespread and systematic rape, sexual torture and other acts of sexual violence committed against East Timorese women, which amounted to crimes against humanity.

The Commission bases this finding on its consideration of the testimony of over 850 individual victims or witnesses to rape, sexual torture and sexual slavery. Most of the evidence in relation to rape, sexual slavery and other sexual violations was given during in-depth interviews with victims. These interviews were undertaken under a cooperative arrangement with the East Timorese non-governmental women's rights organisation Fokupers, due to its expertise and experience in dealing with female victims of sexual assault.

The Commission considers the evidence of the victims to be especially reliable and compelling, because it was provided despite the significant personal and emotional cost involved in recounting such horrific experiences and because giving such evidence might well result in the social stigmatisation of the victim.

The Commission also considers it likely that because of the personal and social consequences many other victims who suffered similar experiences did not come forward to recount them the Commission. On the basis of the interviews it did conduct the likelihood of underreporting and the strongly corroborated patterns of widespread and systematic rape, conducted openly and with impunity, the Commission considers that the more than 850 victims and witnesses who did give testimonies represent a much larger number who did not come forward.

The actual reports of cases of sexual violations reported directly by victims and witnesses to the Commission are summarised in the following tables.

*Sexual violations 1974-99*

**Table 12 - Sexual violations, 1974-1999**

Perpetrator	Count	Percent
Indonesian Military Police & Timorese Auxiliaries	796	93.3
Other Institutions	29	3.4
Fretilin & Falintil	27	3.2
UDT	1	0.1
Total	853	100.0

**Table 13 - Breakdown of perpetrator groups: sexual violations, 1974-1999**

Perpetrator	Count	Percent
Indonesian Military & Police Acting Alone	518	60.7
Timorese Auxiliaries Acting Alone	184	21.6
Indonesian Military and Police together with Timorese Auxiliaries	89	10.4
Resistance Movement	28	3.3
Other Institutions	27	3.2
Civilian Population	7	0.8
Total	853	100.0

*Sexual violence inside Indonesian military installations*

On the basis of the hundreds of first-hand accounts provided by victims, the Commission finds that the following acts directed at East Timorese women took place inside official Indonesian military installations:



- The repeated rape of women detainees by several members of the Indonesian security forces. In some cases women victims stated that they could not count the number of men who raped them. Victims who gave evidence at Commission's National Public Hearing on Women and the Conflict stated that they were raped by different military officers every day during months of detention.
- Gang rape by members of the Indonesian security forces both inside and outside official military installations.
- The rape of women who had their hands and feet handcuffed and were blindfolded. In some cases women bound in this way were raped until they were unconscious.
- The mutilation of women's sexual organs, including cutting with knives, inserting sticks and bayonets into vaginas and burning nipples and genitals with cigarettes.
- The application of electric shocks to genitals, breasts and mouths.
- Forcing detainees to engage in sexual acts with each other, while watched and ridiculed by members of the security forces.
- The common practice of keeping lists of local women who could be ordered to come to the military post or headquarters so that soldiers could rape them. Lists were traded between commanders. In some cases these women were commanded to appear at the military post every morning in order to be raped by members of the security forces.
- The rape of detainees following periods of prolonged sexual torture.
- The rape of pregnant women. The Commission received repeated evidence of this, including one account in which a woman was raped only hours before she gave birth.
- Forcing victims to appear naked or to be sexually violated in front of strangers, friends and family members. In one case a woman was raped in front of her mother and later killed. More commonly victims were raped and tortured in front of their children.
- Women raped in the presence of fellow prisoners as a means of terrorising both the victims and the other prisoners.
- Placing women in tanks of water for prolonged periods, including submerging their heads, before being raped.
- The use of snakes to instil terror in naked women during sexual torture.
- Threats issued to women that their children would be killed or tortured if they resisted or complained about being raped.
- Insertion of objects, such as large batteries into a victim's vagina or anus.
- Insertion of guns and bayonets into victim's vagina or anus.
- Forced oral sex, constituting rape.
- Urinating into the mouths of victims.
- Rape and sexual violence indiscriminately inflicted on married women, unmarried women and young teenage girls.

The number of rapes and other forms of sexual violence was related to the patterns and intensity of military activity at the time. Sexual violations increased dramatically at times when major military operations were being conducted, and decreased when such operations were less frequent. For example, 64% of sexual slavery reported to the Commission took place during periods of large-scale Indonesian military operations.

#### *Rape of women who had surrendered or been captured*

Women who had surrendered to or been arrested or captured by the Indonesian security forces in connection with resistance activities were particularly vulnerable to rape and sexual torture. The mass arrests following the civil uprisings between 1981 and 1983 led to increases in the number of women who were raped or placed into situations of sexual slavery by members of the security forces.

Women who had surrendered were forced to take part in military operations, usually to cook or to perform other services. In some cases, women were subjected to torture, rape and sexual slavery during their participation in these military operations.

Women were among tens of thousands of East Timorese civilians who were forcibly recruited for civil defence activities and made to patrol around their villages. During these patrols, supervised by armed members of the Indonesian security forces, women were commonly raped or sexually harassed.

The large-scale violence during 1999 led to a significant increase in the number of women who were raped. Those who had become displaced or who were refugees were particularly vulnerable. These acts of sexual violence were perpetrated by members of the militia groups, the TNI or in some cases members of both of these groups acting together.

#### **Sexual slavery**

Throughout the occupation it was common practice for members of the Indonesian security forces to force East Timorese women into situations of sexual slavery. These activities were conducted openly, without fear of being held to account, inside military installations, at other official sites and inside the private homes of the women who were targeted often in the presence of parents, children and other family members.

It was common practice for members of the Indonesian security forces to keep East Timorese women in detention on military bases for reasons which had no legitimate military objective. These women, who were sometimes detained for many months and sometimes years, were often raped daily or on demand by the officer who controlled them, as well as by other soldiers who saw them as easy targets. In addition they were forced to do menial domestic work.

The victims of this form of sexual slavery were not free to move about or travel, or to act independently in any way. It was common for the "ownership rights" over these women to be passed on from an officer who was finishing his tour of duty to his replacement or another officer. In some situations women forced into these situations became pregnant and gave birth to children several times by a number of different officers during the years in which they were the victims of sexual slavery.

In general Indonesian officers who were responsible for fathering these children through rape or situations of sexual slavery did not accept responsibility for the children's support their material well-being.

#### *Impunity for perpetrators of rape, sexual torture and sexual slavery.*

The practice of procuring, raping and torturing women was conducted openly, without fear of any form of sanction, by senior military officers, civilian officials, junior ranking officers, police officers, teachers and members of the auxiliary groups such as Hansip and the militias. When victims of sexual violence or persons representing their families complained to the legal authorities about

what had taken place, their requests for help were generally met with denial and aggression. In some cases family members who complained were beaten and otherwise punished for doing so.

The participation in and acceptance of such practices by military commanders and civilian officials, the widespread knowledge that rape and sexual torture was officially condoned, the use of military and official facilities for these purposes, and the almost total impunity for offenders led to a situation where such practices could be undertaken by members of the security forces at will. This led to an increase in sexual violence in the years following the invasion, and expanding participation by officers of lower rank and members of auxiliary forces such as Hansip and the militias, operating under the control and protection of the security forces. In some cases members of Hansip or low-ranking local civilian officials would forcibly procure women and pass them on to the military commanders in return for increased status and rewards.

The scope and nature of the violations which were being committed and the complete impunity enjoyed by all classes of perpetrators was well-known at all levels of the security forces and civil administration during the occupation. They could not have enjoyed this impunity without the knowledge and complicity of senior members of the Indonesian security forces, the police and the civilian administration.

Indonesian police officers were also involved in torture and rape, but to a significantly lesser extent than military personnel. Police officers enjoyed the same general impunity for sexual violations as was extended to other members of the security forces.

Incidents in which members of the Indonesian security forces were involved in the rape of males, including forced oral sex, and in other sexual violations against East Timorese male prisoners and other civilians, also occurred. The incidence of this type of violation was far less frequent than for East Timorese women.

In his evidence before the Commission the former Governor of East Timor, Mário Carascalão, stated that it was accepted among military commanders and government officials that they could rape young East Timorese women at will, and that women were passed around between different commanders and officials. He told of occasions when senior military commanders asked him to choose any of the young women who were attending an official function and to take them away and rape them as he desired. He refused the invitation. Mário Carascalão stated that this kind of behaviour was common, and was institutionally accepted.<sup>6</sup>

In many cases Indonesian military personnel threatened to kill and torture other members of their families or community if a desired woman did not make herself available as a sexual slave. In these cases community representatives and family members were in effect faced with an impossible choice of between allowing the woman to be repeatedly violated and suffering even worse consequences, such as the torture and killing of other members of the community, if they refused.

## **Responsibility for famine and displacement during the 1970s and 1980s**

### *Introduction*

The Commission has found that during the late 1970s and the early 1980s, massive displacement of civilians occurred in the territory of Timor-Leste. This was a major factor contributing to the creation of a famine and the death by deprivation of more than 100,000 East Timorese people.

The Commission finds that during the late 1970s the Indonesian military forces implemented a strategy containing the following elements:

- The heavy bombardment from land, sea and air of areas where members of the Resistance and the civilian population living with them were thought to be based
- The destruction of food sources
- Forcing people who had been captured or surrendered after living in Fretilin-controlled areas into settlements and restricted areas under military control
- Failing to provide sufficient food to these people to keep them alive
- Forcibly preventing them from moving freely in search of food
- Refusing repeated requests from international aid organisations to provide food to those who were starving.

These were the components of a strategy that resulted in the deaths of tens of thousands of East Timorese civilians.

The Commission considers that in pursuing this strategy Indonesia violated many of its obligations under international humanitarian law and bears state responsibility for the deaths of these civilians. It also considers that members of the Indonesian armed forces and government officials committed war crimes and crimes against humanity in formulating and implementing policies which caused mass starvation and death.

*Responsibility for massive civilian displacement*

During the initial invasion of Timor-Leste in 1975 and early 1976, thousands of civilians fled their homes to escape the actual or expected arrival of the Indonesian military. More East Timorese fled as Indonesian forces moved into other parts of the territory. The Commission has found that terror among civilians was brought about not only by the fact of the invasion itself, but by news of massacres and executions carried out by ABRI and the use of grossly disproportionate force that targeted the armed resistance and civilians indiscriminately. In this context it was entirely foreseeable that a substantial portion of the East Timorese civilian population would flee from the invasion.

The Commission considers that Indonesia must bear responsibility for the massive displacements that resulted from its invasion and gradual occupation of the East Timorese territory. The displacement of a significant portion of the population was a direct and foreseeable consequence of the means of warfare employed by ABRI, including its attacks on civilians.

Many of the civilians who fled their homes during the initial invasion and sought refuge in Fretilin base areas were subjected to a repetition of this process when those bases were targeted by Indonesian forces, often using massively disproportionate and indiscriminate forms of attack. During this period some Fretilin leaders forced their followers not to surrender to the Indonesian authorities, and they share responsibility for the consequences of their actions. Many who remained in the mountains, hiding from the Indonesian troops, perished from hunger and disease. In the light of what had happened to those who had already surrendered and their own treatment when they themselves eventually surrendered, it is unclear, however, whether they would have fared better had they surrendered.

The Commission has found that when civilians did leave Falintil-protected areas and “surrendered” to Indonesian forces they were in most cases forced into camps and tightly-supervised settlements in an attempt to prevent them having any association or contact with the Resistance. Many were forced to live in such camps for several years. Security was tight, particularly in areas where Falintil forces were thought to be present, and people were forbidden to travel, other than within a small perimeter close to the camps. They were therefore unable to search for food.

From the early 1980s the Indonesian authorities introduced new forms of displacement. On the one hand they dismantled most of the resettlement camps that had been established in the late 1970s; on the other hand were faced with the reality that a reorganised Resistance was now capable of launching localised attacks on ABRI, often with clandestine support from within the villages.

Those moved out of the resettlement camps were sent to heavily militarised strategic villages, to newly-created villages, often in areas that were not sufficiently fertile to support them, back to their own villages, or especially if they had relatives still with the Resistance, to the island of Ataúro. In all of these situations living conditions continued to be hard. Each aspect of the programme was still guided by military objectives. Even those settled in fertile areas found that restrictions on their freedom of movement continued to have a serious impact on food production and thus on their well-being. For those interned on Ataúro, the majority of whom were women and children, life on the barren island was difficult, particularly in the early years before the ICRC was permitted to operate there, and many died.

In addition to moving people out of the resettlement camps, the Indonesian authorities also displaced people in some way thought to be connected to Falintil-led attacks and uprisings, such as those in Mauchiga (Hatu Builico, Ainaro) and Rotuto (Same, Manufahi) around Mount Kablaki in August 1982 and the *levantamentos* in Kraras (Viqueque) and Lautém District in August 1983. These displacements amounted to the collective punishment of whole communities and the proxy punishment of relatives of people still fighting in the forest and mountains. Some of those detained in these circumstances were also sent to Ataúro. Others were displaced from their home villages and sent to areas where they had to rebuild their lives virtually unaided in extremely inhospitable environments. This was the fate of many of the inhabitants of the villages in Ainaro and Manufahi that took part in the Kablaki uprising of August 1982 and of the mainly women survivors of the mass executions that followed the Kraras (Viqueque) uprising in August 1983. The latter group were sent to the previously uninhabited area of Lalerek Mutin where they were left to fend for themselves under tight military surveillance. The population of Lalerek Mutin suffered sexual violations, disappearances, hunger, disease and death there. Their treatment was strikingly similar to that of the people from Ainaro who had been moved to the villages of Raifusa and Dotik the previous year.

Responsibility for these various forms of displacement and their consequences must be borne entirely by the Indonesian authorities who designed and implemented the policies. The Commission rejects any suggestion that they were carried out for the benefit or protection of the civilian population. Indonesian military documents reveal that the overriding concern was to deprive Resistance fighters of the support of the local population (see Chapter 7.3: Forced Displacement and Famine). In addition, displacements were intended to weaken the will of the population to resist the occupation and to move civilians to places where they could more easily be controlled. The manner in which these displacements were conducted leads the Commission to conclude that the effect of the displacement on the well-being of those moved was inconsequential to the Indonesian military forces. Their only concern was to crush the Resistance by removing its support base no matter what the human cost.

The Commission finds that the Indonesian civilian and military authorities are responsible for the forced displacement of hundreds of thousands of East Timorese civilians during the late 1970s and early 1980s and are therefore accountable for the consequences of these actions which were reasonably foreseeable at the time.

#### *Responsibility for famine and deaths by deprivation*

From 1976 to 1978 the Indonesian armed forces systematically destroyed or removed food crops, food stores, agricultural implements, gardens and fields, and livestock belonging to East Timorese people who had fled from their homes and villages. The Commission received

hundreds of consistent accounts of witnesses who told of their fields being burned by Indonesian soldiers, herds of animals being slaughtered, food stocks burned, water sources poisoned, and the destruction of wild food sources.

These actions were taken with the intention of punishing those suspected of supporting the Resistance, forcing the population which was dependent on this food to move into areas where they could be controlled and to ensure that no food was available to the Resistance.

Between late 1977 and late 1978 the effect of driving large segments of the East Timorese population from their homes and the destruction of food sources, as well as bombing campaigns that prevented them growing food crops in the interior where they had sought shelter from the invading army, had produced a situation of famine. Death from hunger and associated weakness began to occur on a large scale among those who had been displaced. These conditions were most prevalent among people constantly on the move because they were being harried by Indonesian forces and among those driven in large numbers into circumscribed areas where encirclement by Indonesian forces effectively prohibited further movement, even in search of food.

The Commission has examined rainfall records and other climatic data in considering whether there was an El Niño effect which could have caused severe food shortages at this time. These records show that in fact there was not a major fluctuation in rainfall causing severe drought. It is clear to the Commission that the famine was the direct result of Indonesian military policy and activities, and was not caused by drought or other conditions due to natural causes.

The starving were faced with an impossible choice between starvation in these remote areas or surrender to forces which they knew had tortured and killed large numbers of those who had entrusted themselves to their custody. Eventually many chose to surrender but not before tens of thousands of them had died.

Tens of thousands of people who had been forcibly displaced, or who had emerged from the mountains and forests to surrender to Indonesian forces, were placed in secured camps and restricted areas under the control of the military. The defining feature of these camps was insufficient food for detainees to survive and a prohibition on detainees moving around to search for food.

Already in a weakened state when they entered the camps, internees endured extended periods without access to food gardens or emergency humanitarian aid. The food that they received from the military was utterly inadequate to keep them alive. It was also often inappropriate for people already suffering severe malnutrition. Even the meagre rations that the military made available to camp inmates were distributed in a discriminatory way. In exchange for food the military and their auxiliaries extorted money, family heirlooms and other valuables, and sexual favours.

Reports of famine began to reach international relief agencies as early as April 1977, prompting requests to the Government of Indonesia from the agencies to enter the territory. A high-level visit by nine foreign ambassadors in September 1978 to resettlement camps in Timor-Leste increased international awareness of the need for a major humanitarian aid programme. The Government of Indonesia continued to refuse requests from the international aid agencies to supply food to those who were starving to death.

The scale of the famine in mid- to late 1979 and the fact that it was rapidly worsening can be seen in international aid agency reports of the time. For example, as a result of its survey in April 1979 US Catholic Relief Services estimated that 200,000 people were in a "serious or critically malnourished condition". By September 1979 it found that the number of people in this condition was closer to 300,000. The International Red Cross described 60,000 out of the 75,000 people it surveyed in July 1979 as being "in a state of alarming malnutrition" including "20,000 dying from hunger".

The Government of Indonesia refused permission for any international humanitarian aid agencies to operate inside Timor-Leste from the day of its invasion on 7 December 1975 until late 1979. There can be no doubt that the Indonesian military authorities in Timor-Leste were aware of the rising death toll due to famine in the camps under its control.

From at least late 1976 the Government of Indonesia allowed food aid to reach the people and camps under its control through the Indonesian Red Cross and the Catholic Church. All reports to the Commission show this aid was far too little or too late to prevent famine in the camps between 1977 and 1979. The efforts of the Catholic Church to provide more aid and to handle or monitor its distribution were systematically frustrated.

The refusal by the Government of Indonesia to permit international aid programmes, and to limit aid to inadequate amounts delivered by the Indonesian Red Cross and a modest supply from the Catholic Church, was clearly related to the same policies which had led to the Indonesian security forces to cause the displacement of the population, destroy their food sources, intern them in camps and not allow them to move to grow or search for food. All of these actions were undertaken with the goal of overcoming resistance to Indonesian occupation, using whatever methods were available irrespective of whether they were inhumane or in violation of international law or domestic law.

If international aid agencies had been given access to the starving they could have quickly prevented the occurrence of thousands of deaths. The Commission finds that the refusal to allow international aid to be delivered to those threatened with starvation was because the Indonesian military did not want any witnesses or impediments to its military campaign to bring the population under its control and weaken the Resistance.

The decision to permit the Catholic Relief Services and the International Committee of the Red Cross to carry out surveys in Timor-Leste, in April and July 1979, and then to allow the agencies' operations to begin only in September 1979, were not because by that time the scale of the famine had reached massive proportions - that had already been known many months earlier. What had changed by September 1979 was that the Indonesian military believed that the campaign to destroy the Resistance was essentially over. In the period between the initial requests and the final approval tens of thousands of East Timorese civilians had starved to death, both inside and outside the camps.

The international aid operation that began in late 1979 reached most of the population in the camps and others in need. It effectively ended the famine conditions prevailing across Timor-Leste.

The Commission received evidence from East Timorese people who had worked with the international aid agencies, from Church representatives and from the intended recipients of the aid, that relief aid was routinely diverted from its supposed target, either to be sold for personal gain or to be used for personal consumption.

#### *Conclusion*

In considering the responsibility of the Indonesian civilian and military authorities for the deaths of at least 100,000 East Timorese people from starvation and hunger-related disease during the period of the conflict but particularly during the late 1970s, the Commission considered the following facts, all of which were substantiated by hundreds of corroborated witness statements, interviews and secondary documents:

1. Between 1976 and 1979 members of the Indonesian military forces deliberately destroyed large quantities of food crops, slaughtered herds of animals, destroyed wild food sources, and moved the large sections of the East Timorese population who were dependent on these food sources into situations in which their lives were entirely under the control of the Indonesian military forces.
2. Those detained were not provided with sufficient food for them to survive and they were forcibly prevented from moving around to grow or search for additional food.
3. The Indonesian military must have had access to large quantities of food from government food stocks. They did not distribute this food to those under their care and control.
4. When it became obvious that large numbers of civilians were dying from hunger, there was no change in these practices - the military still did not supply sufficient food to those who were starving.
5. When international agencies requested permission to deliver large quantities of food, which would have prevented significant further deaths, they were refused.

The Commission is convinced that those on the ground who directed and conducted military operations that directly caused food shortages must have been aware that mass hunger would follow and indeed intended for this to happen. Such individuals deliberately used hunger as a military tactic to neutralise active civilian support for Fretilin. The Commission holds them directly accountable for creating famine conditions to achieve military ends.

The Commission is satisfied that the repercussions of Indonesia's military operations were also clearly foreseeable to its military and political leadership at national level. Those leaders are therefore responsible and accountable for these actions and their consequences.

The Commission however does not need to rely on reasonable foreseeability alone in holding the Indonesian leaders responsible because at some point the Indonesian leadership did indeed gain direct knowledge of the catastrophic circumstances unfolding in Timor-Leste. Once military operations were well under way, Indonesia's national military and political leadership would have received regular reports and updates from field commanders. However the causes of the famine were represented in these reports, whether as the result of drought, the already dire condition of the people who came down from the mountains or insufficient food supplies in the camps, the Commission believes that they must have conveyed the fact that thousands of people were starving, particularly in the light of increasing international concern.

At least from 1977 international aid agencies began requesting permission to enter Timor-Leste to provide relief. The Diocese of Dili made a formal request for food aid to foreign ambassadors in Jakarta in July 1977. The US-based Catholic Relief Services said that its requests to enter Timor-Leste had been "regular" throughout 1977 and 1978. The Commission can therefore safely conclude that at least by 1977 the Indonesian leadership possessed direct and full knowledge of the critical situation and was furthermore aware that their military operations had created the conditions of famine. Armed with this knowledge they failed to take steps to prevent the mass starvation which followed.

On the basis of the totality of this evidence the Commission finds the actions of the Indonesian government officials and military personnel involved in the programme of destroying food sources, interning large numbers of East Timorese civilians in camps and preventing them from receiving sufficient food to sustain themselves amounted to extermination as a crime against humanity.



## Unfair Trials

In late 1983, as an aspect of its policy of “normalising” Timor-Leste, the Government of Indonesia decided that some of the persons suspected of working for independence should be prosecuted in the courts on charges of subversion and treason. Hundreds of East Timorese people were tried and convicted of these offences during the next 16 years.

The Commission studied the court files of over 200 of these cases conducted in the Dili District Court. In addition it interviewed and received statements from scores of individuals who were directly involved in these and other cases (including trials of East Timorese arrested in Jakarta during the early 1990s), as defendants, witnesses and lawyers, both East Timorese and Indonesian. On the basis of this evidence the Commission finds that there was little relationship between justice and the conduct of these trials, which were in effect show trials. They were in fact sophisticated charades, designed to create an illusion of justice and due process. The trial process hid the reality that the trials were a instrument to ensure the conviction of political opponents to sentences of imprisonment which could have kept some of them in detention for life, while providing a sop to foreign criticism of the military’s reliance on purely extra-judicial methods.

The trials involved a range of violations of both the Indonesian criminal code and international law. Suspects were routinely tortured and intimidated into signing Records of Interview which contained confessions and evidence against other defendants. These Records of Interview were the basis for many convictions. Indonesian military and police officers consistently gave false evidence under oath in court, and intimidated other witnesses into doing the same, or into not providing testimony at all. Defendants were refused the right to select lawyers to defend them and in most cases were assigned defence lawyers who did little more than support the prosecution case. Judges ignored indications of unethical behaviour and of the fabrication of evidence, and handed down judgments of guilty in all cases. The sentences were disproportionately harsh and did not take into account the lengthy periods of time already spent in military detention. The Commission did not find a single case where a defendant was completely acquitted in any of the hundreds of case files examined. Appeal proceedings invariably rubber-stamped the tainted decisions of the trial judges.

The degree to which the trial process was corrupted to produce predetermined guilty verdicts dictated by political goals is demonstrated by the results of the first wave of political trials, conducted between 1983 and 1985.

The Commission examined 232 case files relating to these trials. These cases resulted in:

- 232 convictions on charges involving treason and subversion
- 232 defendants were represented by government appointed defence counsel
- 0 defence witnesses were called
- 0 cases of acquittal of all charges were recorded
- 0 appeals against conviction were lodged.

The Commission finds that the systematic manipulation of the judicial process to persecute political opponents in hundreds of investigations and trials was made possible through a collusive and collaborative effort involving military intelligence officers who detained and interrogated suspects, police who prepared cases, prosecutors who presented the cases before the court, defence counsel who failed to provide a real defence for their clients, and judges who presided over and controlled the proceedings - and handed down verdicts of guilty in all cases.

The Commission finds that the violations involved in the political trials were part of a planned and systematic programme which must have involved senior members of the Indonesian justice

department, senior military commanders and lower-ranking military officers, the police, judges, prosecutors and defence counsel.

*Members of the Indonesian armed forces*

Indonesian military personnel arbitrarily detained persons engaged in pro-independence activity and held them in custody for long periods, lasting in some cases for several years, before trial, even though in many cases there was little or no evidence against them. They routinely used threats, torture and intimidation during interrogation to obtain confessions to be used as evidence in trials. They also routinely fabricated material evidence, perjured themselves, failed to inform suspects of their rights, and failed to allow persons being interrogated to have access to an interpreter or a lawyer.

The Commission finds that the intelligence services of the Indonesian security forces were involved in guiding the outcome of the political trials at every stage of the interrogation and trial process. They ensured that the trial process succeeded in achieving its goal of persecuting political opponents of the occupation.

The Commission finds the commanders of the direct perpetrators of these violations are also responsible and accountable for arbitrary detention, torture, fabrication of evidence used in trials, and influencing the outcome of the trial process in hundreds of political trials.

*Members of the Indonesian police*

The Commission finds that members of the Indonesian police involved in preparation of the political trials examined are responsible and accountable for collusion with the intelligence sections and other members of the armed forces in the use of torture and intimidation to ensure that confessions were signed, for preparing falsified material evidence for use in the courts, and for working with prosecutors to ensure that evidence which supported defendants' cases was not introduced in court. They are responsible for the suffering endured by the victims of the unfair trials through years of imprisonment, ill-treatment and deprivation which followed as a direct result of their actions.

*Prosecutors*

The Commission finds that the prosecutors who presented the cases in court are responsible and accountable for collusion and conducting common purpose enterprises with military intelligence officers and police, involving serious violations. The methods used were torture, intimidation and the fabrication of evidence with a view to guaranteeing guilty verdicts against those brought to trial. They therefore failed to execute their sworn duty to act in an independent manner in the interests of justice.

The behaviour of the prosecutors cannot reasonably be explained in any way which does not implicate them in the commission of the violations. They routinely presented tainted evidence to the courts, particularly confessions which were obviously the result of torture and denial of due process, failed to cross-examine prosecution witnesses robustly or challenge fabricated evidence, and did not present any exculpatory material, which was their duty under the civil law system. They too are responsible for the suffering endured by the victims of the unfair trials through years of imprisonment, ill-treatment and deprivation which followed as a direct result of their actions.

*Court-appointed defence counsel*

The vast majority of court-appointed defence counsel in the hundreds of political trials examined by the Commission acted not in pursuance of the best interests of their clients, but as part of a

collusive effort aimed at guaranteeing findings of guilt against political opponents of the occupation. The Commission finds that there is no other conclusion which can explain the fact that these lawyers failed to call a single defence witness in any of the 232 political trials held in Dili between 1983 and 1985.

The role of defence counsel in legal systems operating under the rule of law is extremely important, as they are in a position to expose agents of the state who have violated the rights of individuals charged with criminal offences. Defence counsel are bound to act on the instructions of their clients. Counsel could not have been ignorant of the fact that their clients had been detained without due process, had been tortured, and had signed confessions under extreme duress, and that evidence presented against them had been fabricated. Through failing to carry out their duty to bring these matters to the attention of the court and to defend their clients vigorously against the serious charges they faced, with some notable exceptions defence counsel share in the responsibility for the unjust imprisonment of their own clients and the suffering through ill-treatment and deprivation they endured as a result of the trial process.

*Judges who presided over the trials.*

The panel of judges holds ultimate responsibility for the conduct of a trial. In the Indonesian civil law system the panel of judges has the power to question all witnesses, to examine all evidence and to explore the manner in which evidence presented to the court has been produced.

There is only one logical explanation of the performance of judges in the political trials which is consistent with the following facts:

- In the hundreds of trials that were conducted not a single defence witness was called
- No judge inquired whether any of the defendants had been coerced and tortured into signing confessions
- No judge questioned the validity of any of the evidence presented by the prosecution
- The judges themselves committed numerous procedural irregularities. Kd - layout, dot point list

The explanation is that the judges who presided over the trials were also active in the collusive effort to ensure that pro-independence activists were punished. The Commission therefore concludes that judges involved in the trials are responsible for betraying their sacred oaths of office, and for allowing the courts to be used as a tool to persecute political opponents of the occupation. Through these actions the judges also contributed to the institutionalisation of the practice of allowing the law to be manipulated to serve political ends.

Each of the judges who presided over what were actually political show trials is personally accountable and responsible for the suffering endured by the victims of these unfair trials through years of imprisonment, ill-treatment and deprivation which followed as a direct result of their actions.

### **Violations committed against children**

Indonesia, as the effective state power in Timor-Leste, had a clear legal duty to respect the rights of children. These duties arose under the customary law provisions of international humanitarian law as contained in Geneva Convention IV. Aside from its specific obligations, Indonesia had a general duty to protect children and not endanger them by exposing them to dangerous situations. According to international law a child is any person who is under the age of 18 years old. Even after it ratified the Convention on the Rights of the Child in September 1990, Indonesia failed to meet its legally binding obligations.

Throughout the course of the occupation Indonesia was also bound by human rights standards as set out in the Universal Declaration on Human Rights. These were consistently breached in a variety of ways, including by forcibly recruiting children to assist its armed forces, arbitrary detention, the torture and ill-treatment of children, the killing of children in a variety of circumstances, including where they or their family members were perceived to be political opponents, and the rape and subjection to sexual slavery of children by military personnel inside and outside military installations.

#### *Arbitrary detention of children*

Throughout the occupation, agents of the Government of Indonesia arbitrarily detained children and were responsible for widespread and systematic violations of the rights of children while they were in custody. The treatment of unarmed civilians who were suspected of being politically opposed to the illegal occupation of Timor-Leste made no distinction between adult and child victims. From 1975 to 1999 children were commonly bound, beaten, kicked, raped, electrocuted, burnt with cigarettes, immersed in water, held in isolation in dark cells, threatened with death and otherwise terrorised by agents of the Indonesian security forces. Some children died as a direct result of this treatment. Perpetrators of these violations were, with very rare exceptions, not subject to any form of punishment or discipline.

In the years after the invasion, children were detained on a massive scale following capture or surrender and were subsequently placed in resettlement camps. The food, shelter and healthcare they received were seriously inadequate, and their restricted movement limited their and their families' ability to supplement what little food they received. Children were sometimes also detained in formal detention centres and military facilities after surrender or capture. Children also constituted a significant portion of those detained on the island of Atauro between 1980 and 1986, either with family members or separated from them. It is estimated that thousands of children died as a result of the harsh conditions and lack of food in the resettlement camps and on Atauro.

Children were also detained because of the actions of their parents or other family members, constituting an insidious form of proxy punishment.

Students and schoolchildren were targeted for arrest and detention when public demonstrations began to be held in the 1990s. The Indonesian authorities detained children during and after demonstrations, and sometimes to prevent demonstrations taking place. Many of those detained were subjected to severe violations, including torture. Children were also arrested and detained by members of the Indonesian security forces and their militia agents during the violence surrounding the Popular Consultation in 1999. The threat of force was also used to coerce children to join militia groups.

#### *Killing of children*

Children were killed in wide variety of contexts, including during open armed conflict, in mass killings, in custody and by summary execution. In the early years of the conflict many were killed together with their families during military operations, or when caught by either side in contested areas. In later years child victims were likely to be teenagers targeted for suspected pro-independence activities.

Indonesian forces and agents killed children in the period 1975-79 within the wider context of the Indonesian campaign to bring Timor-Leste under its control. It did not distinguish children from adults in this regard. Children out looking for food, either on their own or in the company of adults, ran the risk of being shot by ABRI or Hansip members. Groups of unarmed civilians, including children, living outside Indonesian-controlled resettlement camps were in some cases randomly executed.

From 1980, children were killed when ABRI undertook wide-ranging and often indiscriminate reprisals in response to attacks by the Resistance. Children were among the victims killed in the large-scale crackdowns that followed the Falintil-led attacks on Dili in June 1980, on the Sub-district command headquarters in Mauchiga (Hatu-Builico, Ainaro) in August 1982 and on the ABRI Zipur unit in Kraras (Viqueque, Viqueque) in August 1983. In these cases, children were killed in indiscriminate attacks on groups of civilians and because they themselves were suspected of giving support to Falintil.

In 1999 children were killed during operations in search of members of the clandestine network or Falintil, in the course of militia attacks to punish communities for supporting or assisting the the pro-independence cause, or in the killings that took place after the announcement of the result of the ballot. Both before and after the ballot children made easy targets when churches and other places where people had taken refuge came under attack. The reported perpetrators were militia aligned to the Indonesian military or the TNI acting alone.

#### *Sexual violations against child victims*

The Indonesian security forces, their East Timorese auxiliaries and other persons in positions of authority used sexual violence against children, both strategically and opportunistically, throughout the occupation. Children were raped and otherwise violated on a widespread scale by members of the Indonesian security forces inside military institutions, at other official locations and even in their homes with family members present. For children, as for adults, sexual violence was perpetrated openly without fear of sanction by all ranks of the military and by East Timorese auxiliaries, as well as by persons in positions of civilian authority such as village heads.

The scale of opportunistic sexual violence towards children reflected a climate of impunity that extended from the higher reaches of the military to their East Timorese auxiliaries to civilians in positions of authority.

Many of the victims of sexual violation were young girls whose family members were suspected of supporting Fretilin/Falintil. Once violated girls became vulnerable to long-term exploitation, leading to an extended period of sexual slavery or other forms of repeated sexual violence by members of the Indonesian security forces.

Although senior members of the Indonesian and civilian hierarchies would certainly have known that such conduct was unlawful, the Commission has found only one case in which an agent of the government was prosecuted. It is noteworthy that that case involved a low-ranking East Timorese member of Hansip.

#### *Forced recruitment of children into military service.*

The Indonesian military recruited several thousand children to undertake roles as Operations Assistants (Tenaga Bantuan Operasi), as assistants to individual military personnel and units while on operations and at the bases. Although as TBOs these children worked full-time for the Indonesian security forces, they were not members of the armed forces and did not enjoy the perquisites of regular soldiers, such as a salary, a rank or a uniform.

TBOs were recruited throughout the period of the occupation but numbers peaked during the period 1976-81 when military operations were at their height. ABRI used a variety of methods to recruit children as TBOs, ranging from outright coercion to the offer of inducements. Some children enlisted as TBOs voluntarily. However, in the desperate circumstances of the time, the dividing line between voluntary and forced recruitment was never clear-cut. The Indonesian military preferred to use children as TBOs and actively sought to recruit minors as opposed to adults.

The recruitment of children by individual soldiers was known about at the highest levels of the military structure. No attempt was made to prevent it occurring. Indeed attempts to regulate the practice indicate that it was condoned. In practice there was no regulation of the treatment of child TBOs by individual soldiers.

The relationship between child TBOs and the soldiers they served was wholly unbalanced. Soldiers treated their TBOs as if they had rights of ownership over them. They controlled their movement, duties, living conditions and, ultimately, whether they lived or died. Sometimes these soldiers retained control over their TBOs after their tour of duty ended; sometimes they passed them on to other soldiers; sometimes they were simply left to fend for themselves.

Child TBOs performed tasks, which, although not usually involving them directly in fighting, exposed them to physical danger. At the very least the conditions in which they worked put their health at risk and jeopardised their educational chances.

Aside from their recruitment as TBOs, children were also enlisted with adults for military operations. In the case of the *Operasi Kikis* held during July-September 1981, in some areas children as young as ten years old were among the tens of thousands of East Timorese forcibly recruited to undertake duties accompanying Indonesian military personnel.

From late 1998 children were recruited into the militias which were organised, armed, trained and funded by ABRI/TNI. Some children joined out of their own free choice, usually because they or their families were pro-integration and agreed with the objectives of the militias. Child members of the militia were involved in the commission of grave human rights violations including killings, physical assault and rape as well as in the widespread destruction of property. In some cases recruits were paid, either with small amounts of money or with food. In the majority of cases they were not paid.

#### *Forced removal of East Timorese children to Indonesia*

East Timorese children were removed from their families and homeland to Indonesia frequently throughout the period of occupation. The transfer of children to Indonesia took many forms, ranging from abductions by individual soldiers to government-sponsored educational programmes. Although the degree of coercion exercised by persons and institutions in effecting the transfer of children varied, there was frequently an element of duress and, sometimes, outright force was used.

In the first years after the invasion, regular soldiers were the main perpetrators of the removal of East Timorese children. As in the case of child TBOs (some of whom were also transferred to Indonesia by the soldiers they had served at the end of their tours of duty), children who were removed to Indonesia were frequently treated as chattel by being removed forcibly, transported in boxes and required to perform menial tasks for the families with whom they lived.

Institutions, including hospitals and the Seroja orphanage, facilitated the removal of children by Indonesian soldiers. Although individual staff members told the Commission that they had concerns about the practice, there is no evidence that the institutions refused to take part.

Efforts to regulate the practice were instituted in the early 1980s, but the Commission heard little evidence that the regulations were followed or that there was monitoring of the way in which they were applied. Where consent was sought from parents, they were often not given complete information or were openly lied to. Further, the Commission was informed of instances where consent was extracted under threat of violence.

The Commission heard of no case in which an attempt was made to provide education to East Timorese children by people of the same nationality, language or religion. Rather the Commission

heard of many cases in which there was an explicit attempt to convert the child to another religion and transform him or her into an Indonesian child.

There is insufficient evidence to determine whether the large-scale removal of East Timorese children was official Indonesian government or military policy. Nevertheless, there is clear evidence of high-level involvement in some of its manifestations, extending to President Soeharto and members of his family.

The Government of Indonesia made no genuine attempt to regulate the practice of the removal of children through the institution of adoption policies undertaken by competent authorities according to the applicable law.

The Commission finds the Indonesian security forces failed to distinguish adequately between children and others in its military campaign in Timor-Leste. In addition, it specifically targeted children whose families were suspected of being affiliated with the pro-independence cause, resulting in their detention, torture, killing and rape. The number of reported violations committed against children, the fact that members of the senior military and government hierarchies in East Timor must have known about these violations, the direct involvement of senior military and government officials in sexual violations committed against children and the widespread and systematic use of children as largely unpaid military assistants all lead the Commission to a finding that children were violated in a widespread and systematic manner throughout the conflict. The high command of the Indonesian armed forces and senior government officials in Timor-Leste are responsible for participating in, not taking effective steps to prevent, and not punishing those directly responsible for these violations.

### **Responsibility for violations of humanitarian law committed during the conduct of hostilities**

#### *Attacks on civilians and indiscriminate attacks*

Throughout the conflict members of the Indonesian military forces systematically attacked civilians, particularly those suspected of being supporters of the independence movement. Often collective punishments were carried out against the families and the communities of people suspected of supporting Falintil. These direct and intentional attacks on civilians claimed thousands of civilian lives.

In addition, attacks were often carried out against military targets in a disproportionate and indiscriminate way, so that associated civilian deaths were unnecessarily caused. This was particularly the case during the early years of the occupation, when large numbers of civilians were still living in Fretilin bases. Where attacks were to be launched in areas containing civilian populations, no warnings were given to civilians in advance of those attacks.

#### *Destruction of civilian property*

The Commission has found that members of ABRI/TNI systematically destroyed property, including buildings and personal items belonging to civilians, as a routine part of military operations. The purpose of this destruction was to punish East Timorese for opposing the occupation, to produce a climate of terror which it was hoped would render the population easier to control, and to deter support for the pro-independence movement.

Members of ABRI systematically destroyed food sources during the late 1970s and early 1980s. They also routinely stole and looted private property belonging to those suspected of supporting Fretilin/Falintil.

### *Mistreatment of enemy combatants*

Prisoners captured by the Indonesian military forces were often subjected to torture and many were killed or disappeared. A significant number of Fretilin and Falintil members surrendered on the basis of an offer of amnesty first made by President Soeharto in 1977 and subsequently renewed, only to be executed or to disappear after surrender.

### *Unlawful means of warfare*

The Commission has found that at times ABRI/TNI used weapons which are prohibited by the international laws governing armed conflict. These included chemical weapons which were used to poison water supplies and kill crops and vegetation, and resulted in the deaths by poisoning of hundreds of civilian victims.

The Commission has also found that ABRI/TNI used napalm and other incendiary devices, which caused terrible suffering to civilian victims including the death by burning of unarmed men, women and children.

### *Forced recruitment*

The Commission has found that ABRI/TNI forcibly recruited tens of thousands of East Timorese men, women and children to assist them in their military operations, particularly during the years 1975-81 and in periods of heightened military activity, across the entire territory of Timor-Leste. Those who refused to participate were subjected to beatings and torture. The illegal forced recruitment of civilians for military operations was carried out to provide cheap practical assistance and weaken the morale of their opposition to the occupation.

Other civilians were forced to perform duties as night-guards in their villages or to search for family members in the mountains. Some Falintil fighters who were captured were forced to join operations against Falintil, either unarmed or armed only with spears in order to ensure they did not rise up against their ABRI commanders.

## **Responsibility for violations of the economic and social rights of the East Timorese people**

### *Introduction*

The Government of Indonesia made significant economic investment in the territory of East Timor during the period of the occupation. In particular it was responsible for building many new roads, bridges, buildings, hospitals and schools an area which had been seriously neglected during the Portuguese colonial period.

However, despite these undoubted improvements in infrastructure, the social and economic rights of the East Timorese people were consistently violated throughout the occupation. Moreover, if the investment in infrastructure was intended to win the "hearts and minds" of the East Timorese people it failed because it could not offset the large-scale violations of civil and political rights which the same people were suffering.

The gross violations of the people's civil and political rights also directly affected the basic social and economic rights of the people. Time and time again impoverished East Timorese farmers, who make up the majority of the population, lost all their possessions as a result of military operations. It could take years to recover from these losses. The impact of the massive displacement of civilians for military reasons, particularly where it caused famine and death, is equally long-lasting. Whatever benefits the people of Timor-Leste derived from Indonesian investment in the territory were largely undone by the massive and systematic violence and



destruction wrought by the TNI and its militia auxiliaries after the 1999 Popular Consultation. This rampage destroyed the houses, and the possessions they contained, of approximately 60,000 families.<sup>†</sup> The Indonesian security forces and their agent militias also systematically destroyed hospitals, schools, electricity generators and water systems, and took moveable valuables and capital assets, such as the motor vehicles, computers and machines, to West Timor. The widespread destruction of housing and infrastructure during the Indonesian evacuation from the territory served no military purpose. It ensured that once again the population of Timor-Leste would be unable to feed or house themselves, and greatly increased the challenge of building the new independent nation of Timor-Leste.

The International Covenant on Economic, Social and Cultural Rights (ICESCR) recognises that because they are at different stages of economic development, states are not equally able to realise fully all the rights set out in the Covenant. The obligation on states is to take steps to achieve the progressive realisation of social and economic rights to the maximum extent that their resources allow. However, at the same time, states have core responsibilities, which they must always fulfil. These include responsibilities to provide for certain basic needs such as food, shelter, essential medicines and basic education. It is also required that states not act in a discriminatory manner in the provision of economic and social benefits and that they not take retrogressive measures that cause people's enjoyment of these rights actually to deteriorate.

The Commission finds that Indonesia violated economic and social rights at all these levels. In many instances the state took extreme security measures that were utterly at odds with meeting its core responsibilities.

Because of the excessive priority given to military imperatives, the State failed to provide for the population's basic needs, and frequently took measures that were both retrogressive and discriminatory.<sup>†</sup> At the same time the Commission has found that the State of Indonesia failed to realise the economic and social rights of the East Timorese to the maximum extent possible, and that at the end of the occupation, East Timor's development still lagged well behind that of even the poorest Indonesian provinces.

#### *Rights over natural resources*

The Commission is satisfied that trading companies with direct links to the military and the Government of Indonesia deliberately and systematically underpaid coffee smallholders, thereby abridging their right to an adequate livelihood.

The arrangements that the Indonesian authorities put in place in the coffee industry was one of several instances where Indonesia denied the people of Timor-Leste an essential component of their right to self-determination, namely their right to dispose of their natural wealth and resources freely. The Indonesian authorities committed similar violations by exploiting other resources, including sandalwood and other types of timber, without regard to sustainability, and by failing to regulate the exploitation of these resources by others. These forms of exploitation of natural resources were detrimental to the well-being of the population and were sometimes used to fund military operations, in violation of the duties of an occupying power under international law.

The Commission finds that, in a further breach of the right of the East Timorese people to dispose of their natural resources, Indonesia and Australia concluded the The Timor Gap Zone of Cooperation Treaty in 1989 without consulting the people of Timor-Leste or paying due regard to their interests.

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<sup>†</sup> World Bank, Joint Assessment Mission, 1999; and Timor-Leste Suco Survey 2002.

<sup>†</sup> Many of the violations discussed in this Part are violations of these core obligations, often involving multiple breaches of a retrogressive nature.

### *The right to adequate food*

Timor-Leste's climate and the uneven quality of its soils mean that the population's ability to support itself is precarious at the best of times. Survival is dependent on the population's ability to move freely so as to gain access to food sources. The Commission has found that the Indonesian authorities' investment programme neglected agriculture. But beyond that Indonesian authorities also took security measures that positively worsened the chances of the farming population making a living, primarily by forcibly settling them in infertile areas under conditions in which their movement was restricted. The overriding motivation of this policy was to keep the civilian population away from the Resistance and in areas where they could be easily monitored and controlled by the military.

### *Housing and land*

The Commission finds that repeated displacements, the redrawing of administrative boundaries and the non-recognition of customary land-ownership and land-use practices by the Government of Indonesia produced a legacy of landlessness and highly complex land disputes. Although security considerations played an important part in producing this outcome, the unchecked pursuit of their economic interests by military and civilian officials and their business associates also contributed greatly to these developments. The disruption of landholding and land-use patterns has had and will continue to have profoundly damaging effects on the economic, social and cultural fabric of East Timorese society.

### *Health and education*

Although Indonesian investment in health and education was significant and resulted in the physical installation of territory-wide health and education systems, the Commission found that it was ineffective in overcoming chronic public health problems or meeting basic learning needs.

Many factors contributed to this outcome. Among the side-effects of extreme violations, such as torture and forced recruitment, were ill-health and the disruption of education. The skewed economic development promoted by the Indonesian authorities created a self-perpetuating cycle in which poverty, on the one hand, and poor health and low educational achievement, on the other, reinforced each other. The highly militarised context and other structural factors, such as the lack of expertise and commitment of many of the Indonesian medical personnel and teachers assigned to Timor-Leste, resulted in services that were sub-standard and mistrusted by the local population. Basic health and educational needs were often subordinated to security considerations, as exemplified by the forced settlement of large numbers of the population in disease-ridden areas that had previously been shunned and the heavy emphasis on propaganda in schools.

The use of schools for propaganda and indoctrination severely interfered with the education of an entire generation of East Timorese youth. Education was used in this way as part of an integrated security approach whose overriding objective was to ensure that pro-independence sentiment did not take root in a new generation. In this context, teaching children the skills that would enhance their prospects and enable them to fulfil their human potential was a secondary consideration.

#### 8.4.4 Individual responsibility for widespread and systematic violations:

On the basis of the totality of the evidence available to it, the Commission finds that the following individuals were responsible for widespread and systematic patterns of serious human rights violations committed in Timor-Leste between 1975 and 1999. These individuals held command positions in the Indonesian military forces during periods when individuals under their command committed widespread and systematic violations of human rights. They were either directly

responsible for these violations or knew they were being committed and failed to prevent them, or to punish those directly responsible.

#### High-level responsibility

As already noted individuals can be held to account for a crime against humanity or a war crime in any of three situations. The first of these is where an individual him or herself intentionally commits, plans, instigates, orders, aids or abets in the planning, preparation or execution a crime. Secondly, an individual will be accountable for taking part in a common plan or conspiracy to facilitate the commission of a crime. The common plan or purpose may be inferred from the fact that two or more persons acted in unison to put into effect a joint criminal enterprise. There is no necessity for the plan, design or purpose to have been previously arranged. Knowledge of a common plan to ill-treat people may be reasonably inferred from a person's position of authority within the group.

In some cases senior officers and civilian officials were directly responsible for perpetrating illegal acts. This is clearest in the case of the incursions which led up to the full-scale invasion of 7 December and the invasion itself, which violated the fundamental principle of international law that prohibits the illegal use of force by one state against another. The main architects of this policy – Major General Ali Moertopo, Head of Opsus (Special Operations), Major General Benny Moerdani, Assistant for Intelligence in the Department of Defence and Security and Deputy Head of Bakin (the State Intelligence Coordinating Board), Lieutenant General Yoga Sugama, Head of Bakin, and General Maraden Panggabean, Minister of Defence and Security and Commander –in Chief of the Armed Forces – bear responsibility for the devising and implementing of it. President Soeharto bears responsibility for authorising it.

It is rare but not unknown for senior officers to have been directly involved in the perpetration of human rights violations.<sup>†</sup> However, both as a matter of law and as a matter of fact, responsibility for crimes of the kind that were committed in Timor-Leste extends beyond those who were the direct perpetrators.

Under international law they are responsible not just for violations which they themselves may directly have committed as murderers, torturers or rapists. As already noted in this chapter (and at greater length in Part 2: The Mandate of the Commission), persons may also be responsible as individuals for crimes against humanity if they aided or abetted the commission of the crimes or if they acted to further a “common criminal purpose”.<sup>‡</sup> They may also bear command responsibility for, and thus be held accountable for, acts committed by others. They bear this responsibility not only where they order a subordinate to commit a crime. In addition, a person who is in the position of a superior (either in law or in fact) and who has effective control over his or her subordinates<sup>7</sup> will have command responsibility where a crime is committed by a subordinate and the superior knew or should have known of crime but did nothing to prevent or punish it.<sup>8</sup> Both East Timorese and Indonesian law have incorporated these principles into domestic law.

On the basis of these principles the Commission takes the view that many individuals at the highest levels of the Indonesian military and civilian structures carry individual and command responsibility for human rights violations under international and domestic law.

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<sup>†</sup> The Commission believes that the evidence against these individuals is extremely strong for two reasons: first, because the international community plainly expressed its view that the invasion was illegal by overwhelmingly condemning it as such in votes in the UN General Assembly and the Security Council; second, because of the insight into Indonesian official Indonesian thinking and the principles involved in developing it given by the release of their records pertaining to this period by the Governments of Australia, the USA, New Zealand and the UK.

<sup>‡</sup> The Commission received several reports implicating Korem commanders directly in violations. In addition, as junior-ranking officers, individuals who subsequently rose to senior positions in the Indonesian military were reported to have been implicated in human rights abuses.

As it has stressed several times, the Commission is not a court of law. It has often not been able to establish clear lines of responsibility or to determine whether a commander was responsible as an individual for, say, “aiding and abetting” a crime or was responsible for failing in his duties as a commander. One reason for these difficulties is that the Commission was charged with investigating a conflict which resulted from an invasion and whose character was therefore unique for a truth commission. The main perpetrators were citizens of another country, who were part of a chain of command that ran beyond the borders of Timor-Leste and was opaque to most Indonesians.

Despite these difficulties the Commission believes that there are strong grounds for concluding that many members of the Indonesian military hierarchy – and some members of the civilian hierarchy – should be held accountable for violations of international and domestic law in Timor-Leste. It has reached this conclusion on the basis of a number of considerations, all of which tend to one conclusion, that systematic violations of human rights by members of the armed forces were institutionally and individually condoned by commanders at the highest levels of the military structure.

#### **The scale of violations:**

The Commission received information testifying to the massive scale of the violations perpetrated by members the Indonesian armed forces. Through its statement-taking process alone it received reports of more than 85,000 such violations, in the overwhelming majority (84%) of which members of the Indonesian security forces, including their auxiliaries, were implicated. The Commission believes that the sheer scale of the violations is evidence that they were condoned at the highest level.

#### **The pattern of violations**

Human-rights violations were at their most intense during and immediately after the large-scale military operations of 1975-84 and in 1999 during the lead-up to and in the aftermath of the Popular Consultation. All types of “physical integrity” violations, including ill-treatment and torture, rape and killings, as well as displacements, including forced displacements, were simultaneously at peak levels during these periods. At the same time the Commission has also found that human-rights violations were a persistent feature of the Indonesian occupation. The Commission received reports of violations that had occurred in every year between 1975 and 1999. These violations occurred in a systematic fashion. In many years repression was largely localised, to Dili in 1980, Ainaro in 1982 and Ermera in the early 1990s, but nonetheless systematic. Throughout the occupation a territory-wide system of detention centres in which military personnel assigned to these duties detained, tortured and ill-treated using uniform methods.

#### **Strategy**

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<sup>\*</sup> In addition to the considerations outlined below, evidence that the same practices as were employed in Timor-Leste were also employed in Indonesia itself would also be germane to an assessment of high-level responsibility. The Commission has not been able to investigate this question, although the research of others in this area is highly suggestive. See, for example, Geoffrey Robinson, *People’s War: militias in East Timor and Indonesia*, *South East Asia Research*, 9, 3, pp. 271–318.

The scale and pattern of violations indicate to the Commission that the Indonesian armed forces adopted an overall strategy which relied on the use of overwhelming force and terror to subdue the population. Elements of this strategy included: the adoption of all means at the disposal of the armed forces to defeat the Resistance, including the indiscriminate targeting of civilians; the exploitation of divisions among the East Timorese population; the use of a “repressive” rather than a “persuasive” approach; and the subordination of the welfare of the general population to security objectives. Whether, as in the late 1970s, directed at the large population concentrations which came under merciless bombardment and then surrendered, or, as in the 1980s and 1990s, at individual members of the clandestine movement, or, as in 1999, at the whole population in the campaign to win a majority for integration, these strategic assumptions were unvarying.

### **Institutional norms and culture**

The Commission considers it significant that many of the individuals who had participated in operations during which widespread human rights violations were committed subsequently rose to senior positions in the military hierarchy (see Table, below). These included officers who had participated in the incursions that preceded the invasion, in the invasion itself, in the campaigns to subdue the Resistance in the late 1970s, in the implementation of the “resettlement” programme that caused the deaths of tens of thousands of surrendered and captured East Timorese civilians, and in the operations designed to prevent a revival of the Resistance in the early 1980s. The Commission finds this phenomenon significant for several reasons. It is another indication of the impunity of armed forces during their occupation of Timor-Leste, which has been a theme of this Report. However, it also throws light on the mindsets of those who commanded those operations and of those who gained preferment as a result of them.

Against this background the Commission has taken the view that, aside from persons who were individually responsible for crimes against humanity and crimes under humanitarian law, a large number of senior members of the Indonesian military hierarchy, comprising those who held positions that gave them authority over operations in Timor-Leste during 1975-99, may satisfy the criteria for command responsibility and thus could be held accountable for the violations that occurred during that time.

These individuals may meet the relevant criteria for command responsibility for the following reasons.

#### **1) There was a superior-subordinate relationship**

Although for the reasons outlined above it is not always clear to the Commission how in practice, lines of command operated, it is clear that these lines of command converge in Jakarta in the person of the Commander –in Chief of the Armed Forces and his closest subordinates, such as his Chiefs of Staff, his Assistants for Operations, Territorial Affairs and Intelligence, and the Commander of such special units as Kopassus and Kostrad. For most of the period of the occupation the President of Indonesia was formally and in fact the Supreme Commander of the Armed Forces. The civilian arms of government and the police were subordinate to the President and the Commander –in Chief of the Armed Forces or to both. While nominal superiors in all these instances may not have had effective control over their nominal subordinates, persons vested with authority should be required to show that in fact they did not have such effective control.

#### **2) The superior “knew or had reason to know” that a crime was about to be or had been committed**

A blanket plea of ignorance by superiors of what their subordinates in Timor-Leste were doing would be difficult to sustain. In some cases, most clearly in the period surrounding the ballot in 1999, where the situation was being closely monitored by outsiders, including some such as UN

officials who were directly informing senior Indonesian military officers and civilian officials of the situation on the ground, the Indonesian authorities at least “had reason to know” that crimes were being committed. There is also documentary evidence that in 1999 subordinates in the field were sending accurate reports to their superiors on the situation. In earlier years, too, such reporting would have been going on. In addition throughout the occupation, governments, international organisations and NGOs were making their and their constituents’ concerns known to members of the Indonesian government and the military command. The problem does not seem to have been that senior officials and officers were ignorant of the situation. During the famine of 1977-79 these representations were ignored until the military’s objectives had been met.

### **3) The perpetrator failed to take “necessary and reasonable measures to prevent such acts or to punish the perpetrator thereof”**

As already noted, a marked feature of the Indonesian occupation was the impunity enjoyed by members of the armed forces. This finding is not mitigated by the two prosecutions that are known to have taken place in the 1990s, after the Santa Cruz Massacre and the killing of six people in Gariana (Maubara, Liquiça) in 1995. They were exceptions which did not alter the climate of general impunity, not least because they did not raise the question of command responsibility. It might be argued that the fact that the level of violence did moderate during the course of the occupation, and that from late 1983 detainees were brought to trial showed that the Indonesian authorities had taken “necessary and reasonable measure” to end the reliance on extra-judicial means. However, the diminution of violence did not mean an end to violence, as shown most dramatically by Santa Cruz and the events of 1999, while as described in Chapter 7.6: Political Trials, the trials became an additional weapon in the armoury of repression and did not mark the ending of the customary types of abuse.

## **Violations of international law by the Indonesian security forces**

### *Killings and disappearances*

The Commission is satisfied that the involvement of ABRI/TNI in unlawful killings and disappearances violated numerous rules of international law, giving rise to responsibility on the part of Indonesia for these violations. In particular:

- The Commission finds that through massacres and summary executions of civilians at all stages of the international conflict ABRI/TNI was responsible for violating one of the fundamental principles of customary international humanitarian law, namely the principle of distinction which protects civilians from becoming the targets of attack. Such acts also violated Article 27 of the Fourth Geneva Convention, to which Indonesia was a party, requiring the humane treatment of civilians, and Article 32 of that Convention which prohibits the taking of any measures such as to cause the extermination of civilians, including murder.
- More specifically the Commission finds that the use of collective punishments against civilians, including mass killings, violated the customary prohibition on the use of reprisals against civilians, and Article 33 of the Fourth Geneva Convention which reflects this principle.
- Although Indonesia, as the occupying power, was entitled to impose sentences for criminal offences, these, including the death penalty, should only have been passed in accordance with the principle of legality and after the holding of a proper and regular trial by a court of law.<sup>9</sup> Indonesia failed to comply with these obligations.
- The summary executions of prisoners of war by ABRI/TNI violated Article 13 of the Third Geneva Convention which requires the humane treatment of prisoners of war and prohibits acts causing the death of prisoners of war in custody. Executions without trial of prisoners of war also violated the requirements of Articles 99 to 102 of the Third Geneva Convention which require that sentences, including the death penalty, may be imposed only in accordance with the principle of legality and following a regular trial with proper safeguards against abuse.
- The killing of civilians and captured combatants by ABRI/TNI outside those circumstances in which killing is permitted by international humanitarian law amounted to violations of the right to life held by its victims. The Commission considers that that right had attained the status of customary international law well before the beginning of the conflict.

The Commission also considers that the individuals within ABRI/TNI who were involved in the carrying out of killings and disappearances were involved in the commission of war crimes and crimes against humanity:

- The willful killing of civilians during an international armed conflict constitutes a grave breach of the Fourth Geneva Convention, under Article 147 of that Convention.
- The willful killing of prisoners of war constitutes a grave breach of the Third Geneva Convention, under Article 130 of that Convention.
- The summary execution of civilians or captured enemy combatants and the perpetrating of forced disappearances constitutes a serious violation of the laws and customs of war and is therefore a war crime under customary international law.
- The widespread and systematic killing, extermination or enforced disappearance of members of a civilian population constitutes a crime against humanity. The Commission has found that these acts were carried out by the ABRI/TNI in Timor-Leste during the conflict in a widespread and systematic manner.

#### *Detention*

The Commission considers that the practices employed by the TNI for the detention of civilians and captured enemy combatants, and the manner in which such detainees were treated during their imprisonment violated international humanitarian and human rights law.

- Although as a party to an international conflict and an occupying power, ABRI/TNI was entitled to take measures necessary for security, the Commission considers that the detention of civilians not necessary for security violated the customary right to those detained to be free from arbitrary detention.
- In any event the torture and ill-treatment of civilians by ABRI/TNI, whether justifiably detained or not, violated the provisions of the Fourth Geneva Convention, by which Indonesia was bound. Article 27 of that Convention requires the humane treatment of civilians. Article 31 provides that no physical or moral coercion may be used against civilians, including to obtain information. Article 32 prohibited Indonesia and ABRI/TNI from taking any measure such as to cause physical suffering to civilians including torture, corporal punishment and mutilation.
- In addition, where civilians are detained, they must be treated humanely, including in their conditions of their imprisonment. This is required by Article 37 of the Fourth Geneva Convention, which provides that civilians who are confined for the purpose of criminal proceedings must be treated humanely, and also by customary international human rights law. The Commission considers that in many cases ABRI/TNI were involved in the violation of these principles by the provision of grossly inadequate conditions of imprisonment for those in detention.
- Similarly, while captured enemy combatants may be detained, they must be treated humanely and provided with adequate conditions of detention. In the case of prisoners of war this is required by numerous detailed provisions of the Third Geneva Convention, including under Article 21 and Chapter II of the Convention. In the case of captured combatants not entitled to prisoner of war status, customary human rights law nonetheless provides that the conditions of imprisonment must be humane. The Commission considers that the TNI violated these requirements by the housing of many captured combatants in grossly inhumane conditions.

#### *Torture and ill-treatment*

The Commission finds that the ABRI/TNI was responsible for the widespread torture and ill-treatment of captured enemy combatants and non-combatants in flagrant violation of international humanitarian and human rights law.

- In the case of prisoners of war, the Third Geneva Convention provides that prisoners of war must at all times be treated humanely, that they must not be subjected to physical mutilation and acts of violence or intimidation (Article 13), or to physical or mental torture or any other form of coercion in order to secure information (Article 17). This prohibition was violated in all cases in which captured Falintil fighters were subjected to physical abuse at the hands of ABRI/TNI.
- In the case of enemy combatants not entitled to prisoner of war status such persons may be tried but must, according to customary international law, and Article 5 of the Fourth Geneva Convention, be treated humanely and not punished other than following a fair trial. The Commission finds that even where a captured person may not have been entitled to prisoner of war status in a given case, ABRI/TNI nonetheless bears responsibility for any physical mistreatment of that person.
- In all cases the principles of human rights that guarantee all persons an entitlement to freedom from torture and cruel, inhuman or degrading treatment or punishment apply, regardless of questions of security or the status of the detainee. The Commission considers that this principle was a part of customary international law throughout the mandate period and that it was systematically and routinely violated by ABRI/TNI.

Finally the Commission also considers that there are strong grounds for concluding that the individual members of ABRI/TNI who were involved in the detention and mistreatment of civilians



and captured members of Falintil bear individual criminal responsibility for their actions. Its reasons for this conclusion are that:

- The torture or inhuman treatment of civilians constitutes a grave breach of the Fourth Geneva Convention, under Article 147 of that Convention.
- The torture or inhuman treatment of prisoners of war constitutes a grave breach of the Third Geneva Convention, under Article 130 of that Convention.
- Torture or cruel, inhuman or degrading treatment or punishment in the context of an international armed conflict constitutes a serious violation of the laws and customs of war and is therefore a war crime under customary international law regardless of whether perpetrated against a civilian, prisoner of war or an unprivileged combatant.
- The widespread or systematic commission of torture or inhumane treatment against a civilian population can amount to a crime against humanity. The Commission has found that the use by the ABRI/TNI of torture and cruel, inhuman or degrading treatment or punishment against the East Timorese population was both widespread and systematic. There are therefore strong grounds for believing that individual members of the ABRI/TNI must bear individual criminal responsibility under international law for crimes against humanity.

#### *Sexual violations*

The Commission holds ABRI/TNI responsible for many breaches of international law through acts of rape, sexual slavery and other sexual violations.

The Commission finds that in perpetrating and allowing acts of rape and sexual assault against East Timorese women, ABRI/TNI violated the provisions of the Fourth Geneva Convention, by which Indonesia was bound. Article 27 of that Convention requires the humane treatment of civilians. It requires that women must be especially protected against attacks on their honour including rape, enforced prostitution or any form of indecent assault.

In addition Article 31 provides that no physical or moral coercion may be used against civilians, including to obtain information. Article 32 prohibited Indonesia and ABRI/TNI from taking any measure such as to cause physical suffering to civilians.

By engaging in and permitting sexual violence the ABRI/TNI violated these provisions.

In addition, rape and sexual assault constitute types of torture or cruel, inhuman or degrading treatment. The Commission finds that by engaging in and permitting others to engage in this form of activity ABRI/TNI violated the rights of its victims to be free from torture or ill-treatment.

Incidents of sexual slavery, characterised by the purported exercise of any or all of the powers attaching to the right of ownership over a person, violated the fundamental prohibition on slavery contained in customary international law.

The Commission also considers that individual members of ABRI/TNI are criminally responsible for their involvement in sexual violations during the conflict.

- Acts of rape against civilian East Timorese women constituted grave breaches of the Fourth Geneva Convention, under Article 147 of that Convention.
- Rape constitutes a serious violation of the laws and customs of war and was therefore a war crime under customary international law, at least during the latter part of the mandate period.
- Where rapes or other sexual violations constituting inhumane acts, or incidents of sexual slavery, are carried out as part of a widespread and systematic attack on a civilian population a crime against humanity may have occurred. The Commission has found that there are strong grounds for concluding that throughout the conflict period ABRI/TNI was engaged in widespread and systematic attacks on the East Timorese civilian population, and therefore those involved in sexual violations as a part of those attacks may bear individual criminal responsibility for crimes against humanity.

#### *Unfair trials*

The Commission has concluded that the trials carried out during the Indonesian occupation had many substantive and procedural defects. In many cases this caused Indonesia to violate its international obligations under the Geneva Conventions and international customary law. The Commission considers that the following rules were violated by Indonesia during the trial of civilians:

- Article 64 of the Fourth Geneva Convention required Indonesia, as occupying power, to refrain from altering the existing penal law of the occupied territory other than as necessary for the maintenance of security, and to allow existing courts and tribunals to function.
- Article 71 of the Fourth Geneva Convention provides that sentence shall not be pronounced for an offence except following a regular trial. Accused persons must be informed promptly in a language which they understand of the charges against them.
- Article 72 of the Fourth Geneva Convention provides that accused persons have the right to present evidence and to be assisted by a qualified lawyer of their choosing who has the necessary facilities for preparing the defence, including the ability to visit the accused.
- Article 72 of the Fourth Geneva Convention also requires that accused persons must be given the opportunity to be assisted by an interpreter, and the right to object to the interpreter and request his or her replacement.
- Article 73 of the Fourth Geneva Convention requires that all convicted persons must have the right to appeal and must be fully informed of this right.

In respect of the trial of captured combatants entitled to prisoner of war status, the Commission finds that Indonesia was responsible for violations of various similar provisions, including the following:

- Article 84 of the Third Geneva Convention provides that prisoners of war must in no circumstances be tried by a court that does not offer the essential guarantees of independence and impartiality.
- Article 105 of the Third Geneva Convention provides that, when tried, prisoners of war are entitled to call evidence, and to have access to a qualified lawyer of their choice and an interpreter if necessary. The accused's lawyer must be given adequate facilities to prepare the defence and have the ability to visit the accused.
- Article 106 requires that if convicted a prisoner of war is entitled to appeal the sentence or conviction.

In addition the Commission has found that in many cases torture or ill-treatment were used to obtain confessions or evidence that was subsequently used in a trial. The use of such evidence was in violation of the customary prohibition on torture and the provisions of the Geneva Convention outlawing the use of torture to extract information (see above).

#### *Violations against children*

The Commission has concluded that numerous violations were carried out against East Timorese children. Many of these mirrored the violations directed at the adult population: for example killings, arbitrary detention, torture and ill-treatment and sexual violations. In respect of those violations the Commission holds ABRI/TNI and Indonesia responsible for breaches of the same principles of international law as set out above. However, further responsibility also accrued in many cases by virtue of the status of the victim as a child.

The Fourth Geneva Convention requires special treatment to be provided to children during an international armed conflict and in occupied territories. It provides, in Articles 24 and 50, for the special care and protection of children orphaned or separated through the conflict. Most significantly, it prohibits an occupying power from enlisting children in organisations subordinate to it (Article 50) and from compelling children to work (Article 51). The Commission considers that ABRI/TNI violated these provisions regularly and systematically, as it not only failed to provide special care for children affected by the conflict in the occupied territory of Timor-Leste, but actively recruited children to work as TBOs (operations assistants) and in other related roles.

In addition, the Commission notes that Indonesia ratified the Convention on the Rights of the Child on 5 September 1990. Once it was a party to that Convention, Indonesia was bound under international law to comply with its provisions. However the Commission has found that many provisions of the Convention were violated by the conduct of the ABRI/TNI in Timor-Leste. The Commission holds Indonesia responsible for breaches of the following provisions of the Convention during the 1990s:

- Article 6, which provides that every child has the inherent right to life and required Indonesia to ensure to the maximum extent possible the survival and development of the child
- Article 13, which guarantees the child the right to freedom of expression
- Article 14, which guarantees the right of the child to freedom of thought conscience and religion
- Article 15, which guarantees the rights of the child to freedom of association and peaceful assembly
- Article 37, which requires that children must not be subjected to torture or other ill-treatment or to arbitrary detention, that children deprived of their liberty must be treated with humanity and in a manner taking into account their age, and must be granted access to appropriate legal remedies including the right to challenge the detention in a court
- Article 19, which requires states to take measures to protect children from all forms of physical or mental violence or exploitation
- Article 34, which requires states to take all necessary steps to protect children from sexual exploitation and abuse
- Article 36, which required Indonesia to protect East Timorese children against all other forms of exploitation.

The Commission considers that, in particular, the transfer of East Timorese children to Indonesia during the 1990s involved the violation of various specific provisions of the Convention on the Rights of the Child, including the following:

- Article 8, which required Indonesia to respect the right of every child to preserve his or her identity, including nationality, name and family relations
- Article 9, which provided that children must not be separated from their parents against their will except where competent authorities subject to judicial review had determined that it is in the interests of the child
- Article 11, which required Indonesia to take steps to combat the illicit transfer and non-return of children abroad
- Article 20, which requires that where a child is separated from his or her family, the state must provide special protection, the nature of which shall be determined with due regard to the desirability of continuity in a child's upbringing, and the child's ethnic, religious, cultural and linguistic background
- Article 21, which requires that adoption of children must be properly regulated.

The use of children in its military auxiliaries by Indonesia was also in violation of the provisions of the Convention:

- Article 32 required Indonesia to protect children from economic exploitation and from performing work that was likely to be hazardous or interfere with their education or development
- Article 38 required Indonesia to take all feasible steps to prevent children under the age of 15 from taking part in hostilities, and to refrain from recruiting children under the age of 15.

On a more general level, the Commission finds that Indonesia made no attempt to comply with the obligation under Article 3(1) of the Convention to treat the best interests of the child as a primary consideration when taking any action concerning children.

*Displacement and famine*

The Commission is satisfied that Indonesia violated its obligations under international humanitarian law by bringing about mass civilian displacements and causing a devastating famine in the following ways:

- By relocating villages, Indonesia was in breach of Article 49 of the Fourth Geneva Convention which prohibits an occupying power from forcibly transferring civilians other than for the purpose of evacuating areas for the safety of civilians or where it is required for imperative military reasons.
- By failing to provide adequate food at resettlement camps and relocated villages Indonesia further breached Article 49 of the Fourth Geneva Convention which requires that where civilians are transferred or evacuated by an occupying power they must be provided with proper accommodation and satisfactory conditions of hygiene, health, safety and nutrition.
- By interning members of the families or communities of those suspected of resistance activities, rather than only persons who posed an actual security risk, Indonesia violated Article 42 of the Fourth Geneva Convention requiring that persons be interned only if the security of the detaining power makes it absolutely necessary.
- By failing to provide adequate food to those persons it interned, Indonesia violated Article 89 of the Fourth Geneva Convention which requires that sufficient food must be provided so as to keep internees in a good state of health.
- By engaging in a tactic of destroying civilian food and food sources so as to starve civilians in order to encourage them to surrender and prevent them from supporting the Resistance, Indonesia violated the customary principles that are reflected in Article 54 of the First Additional Protocol to the Geneva Conventions, prohibiting the starvation of civilians as a method of warfare and attacks on or the destruction of objects indispensable to the survival of the civilian population such as food and food sources or to make such objects the target of reprisals.
- The Commission is also of the view that individuals involved in Indonesian civilian and military institutions were involved in the commission of international crimes in relation to the displacements and famine.
- The Commission considers that there are strong grounds which indicate that those individuals involved in the unlawful transfer and confinement of civilians committed grave breaches of the Fourth Geneva Convention, as set out in Article 147 of that Convention.
- The Commission also considers that there are strong grounds indicating that those individuals involved in formulating policies whereby civilians would be deprived of food supplies in order to bring about their surrender and undermine support for Falintil committed grave breaches of the Fourth Geneva Convention by wilfully causing great suffering or serious injury to the body or health of civilians, as set out in Article 147 of that convention.
- The Commission also considers that there are strong grounds indicating that those individuals involved in the deliberate destruction of civilian food and food sources committed serious violations of the laws and customs of war amounting to war crimes.

- Finally, the Commission is of the view that there are strong grounds indicating that certain individuals in the Indonesian military committed the crime against humanity of extermination. The Commission considers that the series of actions taken by the Indonesian military described above are sufficient to amount to extermination<sup>7</sup> carried out as part of a widespread and systematic attack on the civilian population of Timor-Leste. The Commission considers that those who designed and implemented the policies discussed above did so intentionally and knowingly. In any event, the Commission considers that those in positions of command within the Indonesian military and civil administration must have known of the acts committed by their subordinates, but failed to take any action to prevent or punish them. On this basis the Commission considers that crimes against humanity were committed through the infliction of famine upon the East Timorese people.

*Violations of the laws of war*

In addition to the examples cited above the Indonesian security forces were also responsible for the violation of the international laws governing the conduct of warfare in a number of specific ways.

These included the following:

The Commission considers that the senior commanders of the Indonesian military forces at the time and the Government of Indonesia are responsible for violations of the fundamental principle of international humanitarian law that civilians must not be made the target of military attacks during hostilities.

The Commission finds that the senior commanders of the Indonesian security forces at the time and the Government of Indonesia are responsible for violations of the principles of the laws and customs of war prohibiting indiscriminate and disproportionate military attacks. The Commission also considers that the Indonesian security forces breached the requirement under the laws and customs of war, reflected in Article 26 of the Regulations annexed to the Fourth Hague Convention of 1907, to warn of impending attacks.

The Commission finds that the senior commanders of the Indonesian security forces at the time and the Government of Indonesian are responsible for violating the principles of the laws and customs of war that prohibit the direct and intentional destruction of civilian property, and are also responsible for breaching Article 53 of the Fourth Geneva Convention which prohibits an occupying power from destroying real or personal property except where it is absolutely necessary for military operations.

The Commission considers that the Indonesian security forces also violated the prohibition on pillage contained in Article 33 of the Fourth Geneva Convention.

The Commission finds that Indonesian security forces use of chemicals to poison food and water supplies violated the customary prohibition contained in Article 23(a) of the Regulations annexed to the Fourth Hague Convention of 1907 on the use of poison.

The Commission considers that the Indonesian security forces' use of napalm and other incendiary devices violated the customary prohibition on the use of weapons causing superfluous injury or unnecessary suffering.

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<sup>7</sup> The Statute of the International Criminal Court defines "extermination" as including the intentional infliction of conditions of life, *inter alia*, through the deprivation of access to food and medicine, calculated to bring about the destruction of part of a population. Extermination has constituted a form of crime against humanity under customary international law since at least the trials of the International Military Tribunal at Nuremberg.

The Commission considers that the Government of Indonesia and its security forces violated Article 51 of the Fourth Geneva Convention which prohibits an occupying power from compelling civilians to serve in its armed or auxiliary forces, and from using pressure or propaganda to secure voluntary enlistment; and the customary rule reflected in Article 23 of the Regulations annexed to the Fourth Hague Convention of 1907 that prohibits any belligerent from compelling nationals of a hostile party to take part in operations of war directed against their own country.

*Economic and social rights*

The International Covenant on Economic, Social and Cultural Rights (ICESCR) recognises that because they are at different stages of economic development, states are not equally able to realise fully all the rights set out in the Covenant. The obligation on states is to take steps to achieve the progressive realisation of social and economic rights to the maximum extent that their resources allow. However, at the same time, states have core responsibilities, which they must always fulfil. These include responsibilities to provide for certain basic needs, such as food, shelter, essential medicines and basic education. It is also required that states not act in a discriminatory manner in the provision of economic and social benefits and that they not take retrogressive measures that cause people's enjoyment of these rights actually to deteriorate. The Commission believes that Indonesia violated economic and social rights at all these levels.

In many instances the state took extreme security measures that were at odds with meeting its core responsibilities, and that had retrogressive and discriminatory impacts. Examples of rights violated as a result of such measures and policies are the following:



- Rights to health (International Covenant on Economic, Social and Cultural Rights (ICESCR) Article 12, Convention on the Rights of the Child (CRC) Article 24) were violated in political prisons and through the use of torture and in the deplorable conditions of the relocation camps. In 1999 the TNI and the militias damaged 77% of health facilities and virtually all of the country's medical equipment and medicine was looted or destroyed.<sup>10</sup>
- Rights to education (ICESCR Article 13, United Nations Declaration on Human Rights (UNDHR) Article 26, CRC Articles 28-29) were violated for those forced into resettlement camps and into military service as "operations assistants" (*Tenaga Bantuan Operasi*, TBO).
- Rights to work freely chosen (ICESCR Article 6, UDHR Article 23, International Covenant on Civil and Political Rights (ICCPR) Article 8(3a), CRC Article 32, 38(2)) were violated by forced recruitment into military operations as TBOs, civilian militia or human shields and by forced labour of other kinds.
- Rights to housing (ICESCR Article 11, UDHR Article 25) were violated through forced evictions and mass destruction of houses.
- Rights to an adequate standard of living (ICESCR Article 11, UDHR Article 25, CRC Article 27) were violated in the displacement of civilians to squalid detention camps.
- The right of the East Timorese people to freely dispose of their natural wealth and resources (ICESCR Article 1(2), ICCPR Article 1(2)) was violated by the forcible extraction of a variety of agricultural commodities and natural resources, including coffee, sandalwood and other types of timber. The Timor Gap Zone of Cooperation Treaty signed between Indonesia and Australia dividing proceeds of lucrative oil and gas fields without consultation with the East Timorese people or their interests being taken into consideration.

At the same time the Commission has found that again largely because security was its overriding preoccupation, the State of Indonesia failed to realise the economic and social rights of the East Timorese people to the maximum extent possible. Thus its investment programme in the territory was heavily skewed towards sectors, such as transport and communications and public administration, which could directly enhance security, at the expense of other sectors, such as agriculture and health, which might have alleviated poverty and increase the people's welfare. In addition the Commission received much evidence that the funds that were allocated to sectors such as health and education failed to enhance the welfare of the East Timorese for a number of reasons, including the highly militarised context in which they were delivered.

Finally, whatever economic advances had been made during the occupation were largely undone by the comprehensive destruction after the ballot in 1999 by the TNI and the militia groups of assets, ranging from public buildings to irrigation projects to power stations, in which the Indonesian state had invested. To describe this orgy of violence as "retrogressive" is plainly grossly inadequate to its scale and mean-spirited vindictiveness (see Chapter 7.9: Economic and Social Rights).

## 8.5: Responsibility and Accountability of the East Timorese political parties

*I initiated the 11 August movement [of 1975]...There was no control. Who is at fault? I am at fault. I accept this. You do not need to look for many people to blame. So many people killed...we forgot our biggest responsibility...I did wrong, because I did not understand the Timorese people...*

*It is important that we have tolerance in our hearts, reconciliation in our hearts. I do not believe that Timorese people wish to take justice into their own hands...if we recognise (our mistakes), we do not forget in order to forgive...We should look at the past, to see who did wrong, who did bad things, but analyse this with one intention – so that in the future we understand what was bad and do not repeat this.*

João Carrascalão, testimony to the CAVR National Public Hearing on The Internal Political Conflict of 1974-76, 15-18 December 2003 (speaking in his capacity as President of the UDT)

*I say that the massacres by Fretilin [in Aileu and Same], Fretilin as an organisation must take responsibility...Fretilin as an organisation must take responsibility...and I do not run away from this...When I hear people who come to me say “my brother, my father, my family was killed by Fretilin who accused them of being traitors. Are we now traitors or not? We want to know this.” When we hear this...we know that we need to resolve this, that it cannot go on like this.*

Mari Alkatiri, testimony to the CAVR National Public Hearing on The Internal Political Conflict of 1974-76, 15-18 December 2003 (speaking in his personal capacity as an Historical Actor).

The issue of responsibility for the outbreak of hostilities during the period of internal conflict in Timor-Leste in 1975 is complex for a number of reasons:

- After the Carnation Revolution a number of factors blunted the effectiveness of successive Portuguese Governments in their handling of the Timor-Leste question: politics in Portugal were highly fluid and unstable, including at crucial moments during the period leading up to the Indonesian invasion of Timor-Leste; there were many competing power centres in Lisbon which were unable to develop a coherent policy on the future of the territory; and the succession of governments that came to power after the revolution saw the decolonisation of Portugal's African empire as a primary responsibility. Although Portugal did eventually devise a broadly acceptable timetable for the decolonisation of Timor-Leste, all of these factors contributed to its failure to do so in a timely fashion. Moreover, it did not seriously attempt to offset its weak position vis-à-vis Indonesia by making a firm commitment to the principle of self-determination or by taking steps to internationalise the issue.
- Due to centuries of arbitrary rule and the exclusion of the East Timorese people from participation in government, the legacies of Portuguese colonialism included weak respect for the rule of law and poorly developed state institutions.
- A host of factors neutralised the colonial army's capacity to intervene in events. These included: low morale among the Portuguese-born conscripts in the territory, the running down of troop strength, the determination not to shed another drop of blood for the colonies, the ambivalence of some conscripts and men to the principle of political neutrality at a time when the colonial wars in Africa and the revolution in Portugal had had the effect of radicalising the Portuguese armed forces and the politicisation of East Timorese conscript and regular soldiers
- The political inexperience of the Fretilin and UDT leaderships prevented them from seeing the dangers of a descent into violence and the urgency of finding common ground. Instead the youthful leaders of these political parties used violent rhetoric against their political opponents, encouraging their members to resort to actual physical violence.
- The absence of key institutions, including those of civil society and an independent media, and the failure of existing non-governmental institutions, including the Catholic Church, to rise above politics meant that where they played any role at all it was to exacerbate rather than calm tensions.
- Indonesia's role in destabilising the situation in Portuguese Timor from 1974 through a range of actions that included assistance to Apodeti and the manipulation of internal politics through its contacts with elements in the UDT leadership further heightened tensions.
- For a variety of reasons, of which the most important was a desire not to alienate Indonesia, all the international and regional actors who might have restrained Indonesia refused to make it clear from the beginning that a forcible Indonesian takeover of Portuguese Timor would be an unacceptable violation of the principle of the right to self-determination.

All of these factors had already helped create a highly unstable and unpredictable situation by August 1975. However, the Commission finds that UDT is responsible for irreversibly changing that situation when it launched its armed movement on 11 August 1975.

This armed movement introduced large-scale armed violence as an element in the political conflict which led to a response in kind by Fretilin. It definitively ended already slim hopes that the Portuguese plan for decolonisation might work. The subsequent defeat of UDT when Fretilin launched its armed insurrection led to the flight of its leadership over the border into Indonesian West Timor where it aligned itself with Indonesian aims. Furthermore this series of events gave the Indonesian Government a pretext for intervention, allowing it to claim that it was doing so to put an end to an intra-Timorese conflict that was threatening regional stability.

The eventual result of this resort to violence was the death of thousands of East Timorese people, and a polarisation of the population the legacy of which continues to the present day. The ICRC reported that a total of 3,000 persons were killed during the main period of violent “civil war”.

Although Fretilin launched its general insurrection in response to UDT’s illegal action, the Commission finds that members of Fretilin involved in the insurrection were responsible for significantly more unlawful killings and other violations against civilians, prisoners, the sick and wounded than had been committed during UDT’s armed movement.

Members of the Apodeti, KOTA and Trabalhista parties share in the responsibility for the invasion of Timor-Leste by Indonesia by their political actions in the signing of the Balibo Declaration and for their participation as “Partisan” troops in the Indonesian invasion of Timor-Leste.

### 8.5.1 The responsibility and accountability of Fretilin/Falintil.

*The Commission received reports of over 5,000 human rights violations committed by members of Fretilin/Falintil during the whole period of conflict from 1974 to 1999.*

#### **Unlawful killings**

Witnesses and victims of violations identified representatives of Fretilin/Falintil as the perpetrators in almost half of all reports of unlawful killings of civilians during 1975, including those by ABRI and its auxiliaries. This figure dropped significantly to approximately 16% during period which included the internal purges, 1976-84. In later years the proportion of all reported unlawful killings which were perpetrated by Fretilin/Falintil fell again sharply, to about 4% during the years 1985-1998.\*

During the mass violence in 1999 less than 1% of all the executions reported to the Commission were committed by representatives of Fretilin/Falintil. The very low percentage of unlawful killings attributed to Fretilin/Falintil in 1999 is consistent with the qualitative information received by the Commission about Falintil’s strategic response to militia and TNI violence. The Falintil Commander in Chief, Xanana Gusmão, ordered his troops not to retaliate against militia and TNI attacks, and in early August Falintil took the further step of unilaterally “cantoning” its troops at four separate regional sites. The goal of this policy was to neutralise any Indonesian attempt to explain away the violence as a purely intra-Timorese affair and to avoid giving the TNI a pretext for openly which matter.

**Table 14 - Fretilin/Falintil responsibility for unlawful killings and enforced disappearances (cases reported to CAVR)**

1975	49.0%	(561/1145)
1976 –1984	16.6%	(563/3398)
1985 –1998	3.7%	(18/488)
1999	0.6%	(5/898)

\* In 1987 Falintil was separated from Fretilin. As Commander in Chief of Falintil, Xanana Gusmão, resigned from Fretilin. The following year he became President of the National Council of Maubere Resistance (Conselho Nacional da Resistencia Maubere, CNRM), the more broad-based successor to the Conselho Revolucionaria da Resistencia Nacional (CRRN) and the forerunner of even more broad-based the National Council of Timorese Resistance (Concelho Nacional da Resistencia Timorense, CNRT), which was formed in 1998. Reflecting the leading role of the armed front of the resistance, as represented by Falintil, from the early 1980s the overwhelming majority of violations attributed to Fretilin/Falintil, though much smaller in number than in the early years of the Resistance, were perpetrated by Falintil. See Part 4: Resistance: Structure and Strategy.

## Violations committed in 1975

### *Detention and torture*

The Fretilin reaction to the armed movement by UDT involved the arbitrary detention of hundreds of UDT leaders and supporters. Fretilin detained the largest number of UDT supporters in the first week of the armed general insurrection, 20-27 August 1975. Many UDT leaders and members fled the territory into West Timor as Fretilin controlled the territory. Leaders of the Apodeti, KOTA and Trabalhista political parties were also detained. Sometimes family members of these victims were detained as well.

Members and supporters of Fretilin and Fretilin forces inflicted widespread cruel, inhumane and degrading treatment on the prisoners they detained during the internal armed conflict. These acts occurred in every district of Timor-Leste except Oecusse but were concentrated in the districts of Ermera, Dili, Manufahi, Bobonaro, Liquiça, Manatuto and Baucau.

Many former detainees of Fretilin report being heavily beaten and otherwise tortured. Representatives of Fretilin also actively engaged the civilian population in the punishment of UDT members. Many detainees died or were killed while in detention. After the Indonesian invasion, Fretilin continued to hold up to several thousand of people, depriving them of food and water but making them perform forced labour such as carrying heavy goods and cultivating fields. Some prisoners died in these conditions and others were executed.

Evidence provided to the Commission included reports of the following methods of torture committed by representatives of Fretilin during this period

- Heavy beatings by hand or with an implement including a rifle, an iron bar, wooden sticks, bamboo, rattan, car-brake cords, a helmet, a pestle, nails and a barbed whip. Some detainees were beaten to death or until they were unconscious, blind or deaf.
- Prisoners ordered to beat each other, including prisoners who were related to each other
- Stabbing
- Whipping
- Tying detainees up before beating them so that they could not defend themselves
- Dragging detainees along the ground until they were torn and bleeding
- Stripping detainees naked and forcing them to sleep on the rough ground

In the immediate aftermath of the Indonesian invasion most of Fretilin's prisoners were concentrated in Aileu. To prevent them from joining forces with the Indonesians or supplying them with information, those prisoners who were not executed in Aileu (see below) were moved *en masse* either west to Ainaro or south to Maubisse and then to Same Town (Manufahi). The prisoners taken to Ainaro were released when they reached there. With Indonesian forces also advancing along the southern route and from the southern coast, their captors and local Fretilin leaders and supporters succumbed to vicious resentment towards those suspected of collaborating with the invaders, who became the victims of further violations.

### *Arbitrary executions*

The Commission finds that before the UDT armed movement of 11 August 1975 members of the Fretilin and UDT parties were involved in a number of violent confrontations in the districts of Dili, Ainaro and Ermera. After the armed movement by UDT, Fretilin's armed insurrection involved not only the detention of UDT supporters but also the summary execution of individuals suspected of affiliation with UDT, and a lesser number who were affiliated with Apodeti.

The killings occurred largely in Liquiça, Aileu, Ermera, Dili and Manufahi. In most cases these killings were committed against specifically identified UDT leaders and individuals who had been involved in violent acts during the armed movement. However there were also some random killings and instances of mass executions of prisoners, such as in Aileu and Manufahi. Over one hundred detainees were executed by Fretilin forces in Aileu, between December 1975 and January 1976.

Evidence given to the Commission included reports of the following methods used by members of Fretilin in the execution of civilians and captured combatants:

- Beheading
- Ordering detainees to line up and then executing them by shooting
- Tying prisoners to flag poles and then executing them by shooting
- Beating civilians and detainees and then executing them
- Random shooting of groups of civilians in communities suspected of political opposition
- Failing to treat the wounds of those captured, which resulted in death
- Execution of prisoners and civilians using traditional weapons, such as machetes, spears and knives
- Mass execution of detainees by throwing a grenade into a group of non-combatants
- Tying of victim to a tree then beating to death

Victims and witnesses reported that the following incidents involving serious violations against prisoners by persons identified as being affiliated with Fretilin took place between August 1975 and February 1976 in the districts of Aileu, Ainaro, Ermera, Liquiça, Manatuto and Manufahi.\*

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\* Further details of each of these killings are provided in Section 7.2.3 of Chapter 7.2: Unlawful Killings and Enforced Disappearances.

- On 7 August 1975 Fretilin forces attacked the aldeias of Maleria, Lumluli and Usululi in Maulau Village (Maubisse, Ainaro), killing scores of civilians and destroying property and livestock.
- On 20 August 1975 Fretilin captured eight men in Fatisi (Laulara, Aileu) on suspicion of being UDT spies; all of these men were subsequently killed by Fretilin forces.
- On 20 August 1975 Fretilin members captured and detained 40 UDT members in Asumanu (Liquiça, Liquiça). Eight persons from this group were subsequently killed by Fretilin in the aldeia of Hatumatilo.
- On 20 August 1975 Fretilin abducted seven members of UDT in Kaitugloa (Liquiça), the men were taken to Darulete (Liquiça, Liquiça) and executed.
- On 22 August Fretilin forces entered Paramin village (Atsabe, Ermera) and killed 11 people on suspicion of being Apodeti supporters.
- On 22 August 1975 a Fretilin member shot and wounded a UDT supporter in Maubisse (Ainaro). Family members of the victim believe he was later executed in Aisirimou (Aileu) on 26 August 1975.
- On 27 August 1975 Fretilin forces detained and executed an Apodeti leader, Celestino da Silva, in Same (Manufahi).
- On 30 August Fretilin forces killed a UDT member in Tokoluli (Railaco, Ermera).
- Some time in August 1975 Fretilin forces, armed with arrows and spears, captured eight persons in the village of Selo-Malere (Aileu, Aileu). The victims were tied up and dragged along the street, one man was severely beaten during the attack.
- On or around 3 September 1975 Fretilin forces killed four persons in the district of Aileu.
- On 4 September Fretilin forces attacked the village of Hatuconan (Laclo, Manatuto) and arrested 12 members of UDT. Fretilin forces subsequently executed nine of these men in a place called Makati.
- On 7 September in Fretilin forces shot and beheaded another man in Laclo (Manatuto).
- On 15 September Fretilin forces entered the village of Katra Kraik (Letefoho, Ermera) and executed seven UDT supporters.
- On 25 September two members of Fretilin shot a UDT Commander in Ermera. The victim had been subjected to a Fretilin-led Commission of Inquiry hearing in Ermera the same day.
- Some time in September 1975 Fretilin forces executed one person in Railaco (Ermera) who was part of a group of 50 UDT supporters who had surrendered to Fretilin troops.
- In December 1975 Fretilin forces killed ten detainees held at the Fretilin prison in Aisirimou, Aileu, including the former chief of the Portuguese police, lieutenant Colonel Rui Gouveia Maggiolo. Fretilin troops, armed with G-3 weapons, ordered the prisoners to stand in a line and shot them.
- In December 1975 Fretilin forces executed up to 160 prisoners in Manifunih Hun, Aisirimou (Aileu).
- In December 1975 Fretilin forces shot up to 26 prisoners in Aisirimou (Aileu).
- On 28 December 1975 Fretilin forces executed six prisoners in Maubisse, Ainaro.
- On or around 27 January 1976, Fretilin forces took eight persons out of detention in Hola Rua (Same, Manufahi), including the Secretary General of Apodeti, José Fernando Osório Soares, and executed seven of them in a place nearby called Hat Nipah.

- On 29 January 1976, Fretilin forces transferred 34 detainees from Hôla Rua to an elementary school building in Same where they were held with ten other detainees. Nine detainees managed to escape while being transported from the school to a “public hearing”, though two others were killed. In apparent reprisal for the escape, Fretilin forces opened fire on the remaining prisoners held in the school building. Approximately 30 people died in this incident and four survived.

## 1976-99

### *Detention and torture*

After the Indonesian invasion Fretilin continued to detain people across the territory within the Fretilin controlled “liberated zones” (*zonas libertadas*). The Fretilin Central Committee routinely used detention to maintain discipline and to punish persons known or suspected of political opposition or contact with the occupying forces. In practice any political or non-political act or suspected act that Fretilin leaders or officials disapproved of could be denounced as a breach of Fretilin rules.

Detainees were held in primitive structures such as enclosures resembling pig-styes and chicken coops, bamboo huts and holes in the ground. In the beginning these were simply places in which people were detained, but in 1977 many detention centres were turned into national rehabilitation camps, known as Renals.

Renals were nominally established for the purpose of the political “re-education”. In some Renals detainees did in fact receive political “re-education” and literacy training as well as being required to work in communal fields. In others, however, the regime was extremely harsh: detainees told the Commission of heavy forced labour, minimal food rations and frequent beatings. Many detainees died as a result of these conditions.

Sentences of imprisonment were theoretically indefinite (until a detainee was deemed rehabilitated) and periods of detention often lasted until Indonesian forces captured or forced the abandonment of the base where the Renal was located.

Evidence considered by the Commission included witness accounts of the following methods of torture and ill-treatment commonly suffered by victims:

- Heavy beatings by hand, with a rifle, with thorny branches or other pieces of wood
- Burning the victim’s flesh with heated iron rods, cigarettes, or burning pieces of wood
- Whipping
- Tying victims to a tree or pole and leaving them in the sun for long periods
- Tying victims in a way that their movement was highly restricted and they could not feed themselves or go to the toilet
- Urinating on victims
- Placing victims in a hole filled with ants
- Kicking with heavy military boots

Detainees were subject to a layered practice of justice (*critica-autocritica, justo correctivo* and *justiça popular* – see Part 5: Resistance: Structure and Strategy) with different procedures depending on the gravity of the offence.

Those accused of the most serious offences, such as treason, had to submit to *justiça popular*, which did not recognise even the most basic safeguards for procedural fairness. The accused



was not informed of the nature of the accusations before “trial”, was not presumed to be innocent and had no right of reply to the accusations made. Many of the accused were detained for months before being subjected to the process of “trial”. The people attending the “trial” were asked to give their verdict. There was no appeal against decisions or punishments. Sentences were decided on by senior Falintil or Fretilin officials, often the same ones who had been involved in the initial arrest, and were often harsh and disproportionate to the crime alleged, commonly including death by execution.

#### *Arbitrary executions*

The Commission heard extensive testimony about the killing of non-combatants perpetrated by Fretilin and Falintil during the period February 1976-79. During this period leaders and members of both organisations were implicated in fatal violations in most districts across the territory. Senior Fretilin leaders and Falintil commanders ordered many of the killings reported to the Commission, and in some instances themselves perpetrated them. Although some of those killed were civilians previously associated with UDT and Apodeti, who were collaborating with the Indonesians, most of those who killed, disappeared or died of deprivation or other kinds of ill-treatment during this period were themselves members of Fretilin or Falintil or members of the civilian population living in Fretilin bases.

Between 1980 and 1999 the scale of reported killings by Falintil was far lower than in 1976-79. Moreover the pattern of killings was very different from the earlier period. The victims were persons who were not part of the Resistance but who were working with the Indonesians (sometimes against their will) and the random casualties of Falintil attacks.

The Commission heard of a number of killings committed by Fretilin in 1976-79 against persons who were associated with other parties, most of the victims known to the Commission being associated with UDT. The killings tended to occur in areas, such as the districts of Ermera and Manatuto, where support for both UDT and Fretilin had been strong and the level of violence during the “civil war” had been particularly intense.

In some instances UDT members were killed by ordinary Fretilin members motivated by feelings of revenge. In other cases, such as the killing of at least nine people in Venilale (Baucau) between 1 and 12 February 1976, there is evidence of higher-level involvement. The Commission also received reports of the killing of former UDT members who were suspected of spying for the Indonesians and of persons who were executed because they had allegedly been in contact with UDT relatives in the Indonesian-controlled areas.

In 1976-77 around 60 people were executed or died in detention, as a result of conflicts within the Resistance. They included:

- Aquiles Freitas, commander of the Bero-Quero Command in Quelicai (Baucau), and several of his chief associates, including Ponciano dos Santos, Antonio Freitas and João Teodoso de Lima were executed at Lobito (Vemasse, Baucau) and in Bagaia (Bagaia, Baucau) in December 1976-January 1977.
- Francisco Ruas Hornay and at least 14 of his followers, who were executed in Iliomar (Lautém) in November 1976
- The former Falintil Deputy Chief of Staff, José da Silva, and possibly 40 of his followers, who were executed or died in detention between October 1976 and August 1977 after being arrested in Ermera District in October 1976

In the Fretilin internal conflict that erupted in 1977 several hundred followers and suspected followers of the Fretilin President, Francisco Xavier do Amaral, were executed or died as a result of torture and ill-treatment in detention. The purge was concentrated in Alileu, and Manufahi in

the North Central and South Central Sectors, and to a lesser extent in Quelicai in Baucau District and Uatu-Carbau and Uatu-Lari in Viqueque District in the in the Central Eastern Sector and Covalima and Ermera in the South Frontier and North Frontier Sectors. Those targeted included members of the Central Committee, senior military commanders and middle-level cadres of Fretilin and its affiliate organisations as well ordinary Fretilin members, Falintil troops and members of the civilian population living in the Fretilin bases.

Many of the victims of these purges died in horrific circumstances, including:

- In public mass executions conducted with the utmost brutality
- As a result of severe deprivation in extremely primitive in detention centres and Renals where the food, shelter, sanitation and medical treatment that prisoners were given were grossly inadequate, their inadequacy seemingly being an intrinsic part of the prison regime
- As a result of severe torture in detention involving such methods as burning with hot irons, repeated heavy beatings, hanging the victim from a tree and the cutting of the victim's body.

The Commission finds that the senior Fretilin leaders not only knew of and approved these practices, which generally occurred at or near places where the Fretilin Central Committee and the Sectoral and Zone administrations had their bases, but in many instances were themselves direct perpetrators.

In addition to the killings and deaths related to political conflict within Fretilin there were other circumstances in which Fretilin/ Falintil committed these violations. Among the categories of victims reported to the Commission to have been executed or to have died of deprivation or other kinds of ill-treatment while in detention were the following:

- Civilians who were suspected of planning to surrender, were in the process of surrendering, or who had actually surrendered
- Local Fretilin or Falintil leaders or members who had encouraged the civilian population to surrender
- People who broke away from the main population concentrations were captured and some or all of their members executed.
- Detainees killed as Indonesian forces closed on the areas where they were detained
- Villagers suspected of or actually belonging to “pro-integration” parties killed as Indonesian forces advanced on an area
- Persons holding dissenting ideological views
- People who after surrender were ordered by ABRI, Hansip or members of the civil administration to return to the jungle to try to persuade people still holding out to surrender
- Persons who rejoined the Resistance after previously surrendering or being captured by the Indonesians
- The relatives of collaborators, as well as collaborators themselves
- Persons blamed for failed Fretilin attacks on Indonesian bases and successful Indonesian attacks on Fretilin and Falintil bases
- People living in Fretilin bases who had been in contact with people in Indonesian-controlled areas
- People living in the resistance bases, under Indonesian control or in areas not fully under the control of either side who were found looking for food or going about their daily activities
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While acknowledging the intense pressure created by indiscriminate Indonesian offensives against their bases, particularly in the later years of this period, the Commission holds the Fretilin/Falintil leadership of the time responsible for creating an atmosphere of violence and ideologically-based intolerance which provided the preconditions in which this extraordinarily wide range of killings occurred. In addition the Commission finds that Fretilin/Falintil leaders and commanders were responsible for ordering or directly perpetrating many of these killings.

### **1980-99**

Between 1980 and 1999 there was a sharp drop in the number of killings attributed to Falintil. Because East Timorese society became so heavily militarised during this period, the status of many of the civilians who were killed by Fretilin/Falintil was often ambiguous. These included people who were forcibly put in harm’s way, whether as Hansip, as persons forcibly recruited as TBOs (*tenaga bantuan operasi*, operations assistants) or to take part in the various *Operasi Kikis*, persons required to perform night-guard duties or as unwilling recruits to the militia groups. The Commission believes that responsibility for deaths in these circumstances should rest primarily with those who put the victim in harm’s way, namely the Indonesian security forces. In addition many of the victims of Falintil killings were Hansip, village chiefs and other members of the civil administration, holding positions that, unlike in most of Indonesia, had become highly militarised in occupied Timor-Leste.

Because the dividing line between combatants and non-combatants was often blurred and because it is not always clear from the available information that a particular victim was a specific target, it has not always been possible for the Commission on the basis of the information

available to it to judge whether a violation has in fact occurred, and if it has, where responsibility for it lies.

The downward trend in unlawful killings by the Resistance, which was particularly marked during the final decade of the Indonesian occupation, is explained by several related developments. A new policy was adopted shifting the focus of the struggle to urban protest. Although Falintil remained alive and militarily capable, this policy shift gave greater prominence to public protests in the towns than to Falintil's previously favoured tactic of demonstrating that it was a force still to be reckoned with through shows of force in the countryside. This trend was accelerated by the Indonesian decision in late 1988 to "open" the territory partially to outsiders. At the same time the decision to pursue the National Unity strategy and to build as broad as possible a base of support for the resistance, including by winning over East Timorese who were collaborating with the Indonesians, probably also contributed to the decline in violence in these years. As a part of this strategy in 1987 the armed Resistance, Falintil, was formally separated from Fretilin.

During this period 1980-98 Falintil killed civilians in the following circumstances:

- During attacks on military-controlled settlements in early 1980s, which were apparently intended to demonstrate to the population now under Indonesian control that Falintil had survived
- During Indonesian military operations for which East Timorese had been recruited, usually forcibly
- During attacks on villages in mid-1980s, which were apparently in response to major Indonesian operations and intended to show that Falintil still retained a military capacity to launch such attacks; village guards and Hansip were particularly vulnerable to be killed during such incidents
- During attacks launched at particular times, including anniversaries (such as Indonesian Independence Day and the anniversary of the founding of Falintil) and during national elections, when they could be expected to attract attention internationally and in Indonesia and Timor-Leste

These killings occurred in the context of military operations and as noted above, the Commission often found it difficult to establish whether civilians killed in these circumstances were specifically targeted.

There were reported instances of targeted killings reported during this period, where, for example, Falintil killed civilians who had been ordered by ABRI/TNI to search for relatives in the forest on their own, when it assassinated members of Hansip and other collaborators and before and after the Popular Consultation in 1999. In at least some of these cases the Commission received credible information that the Falintil High Command did not institutionally condone these violations.

#### *Forced displacement and famine*

The massive programme of bombing and execution of civilians by the Indonesian security forces during and after the invasion caused hundreds of thousands of East Timorese to flee their homes and villages. In response Fretilin declared a policy of evacuating the civilian population to safety and of organising a national liberation movement in the mountains.

In many Fretilin-controlled areas living conditions in the months after the initial flight were extremely difficult. Their problems were somewhat alleviated once structures had been established to support activities such as communal farming and to provide for the needs of the most vulnerable. However, even where such organisation was in place the death rate continued to be abnormally high.

As the Indonesian military campaign intensified, Fretilin and the population under their control were forced to move into more isolated areas. Food became increasingly scarce and the question of whether the civilians who accompanied Fretilin should surrender became a major issue. Those affected were in a dire predicament. They had heard that those who surrendered to the Indonesians were placed in camps, and often tortured or killed. They knew, however, that if they remained in the mountains they were likely to starve to death. The issue of surrender was not able to be discussed openly, for fear of reprisals from the Fretilin leadership.

The Commission recognises the extremely difficult decisions faced by the Fretilin leadership at this time. The survival of those under their command was their direct responsibility, as was the survival of the entire Resistance movement. There was a real danger that persons who surrendered would, either under duress or voluntarily, divulge the whereabouts of those who remained, either under duress or voluntarily. If this happened those remaining in the jungles and mountains would be likely to come under attack. At the same time individual families also needed to make life-and-death decisions. They were faced with the prospect of starvation and death if they did not surrender, and an uncertain future with quite possibly the same outcome, if they did.

Although the issues surrounding surrender are complex, it is clear that inexcusable decisions to inflict severe ill-treatment and torture, and in some cases to kill of people who wanted to surrender were taken. The Fretilin leadership at the time remain responsible for extreme violations of victims' rights entailed by their decisions, which cannot be justified under any circumstances.

## **1999**

During the period before the ballot in 1999, Falintil exercised genuine restraint, including through the cantonment of its forces. In general they acted with extraordinary discipline, in the face of widespread killings of civilians conducted by the Indonesian security forces and their auxiliaries.

### **Violations of principles of international law by Fretilin/Falintil**

The Commission holds the Fretilin party institutionally responsible for violations committed during the internal armed conflict. For the period 1976-99 it has used the term Resistance, which comprised armed combatants<sup>†</sup> and civilian members of the clandestine movement some of whom were members of Fretilin.<sup>†</sup>

#### *The internal armed conflict*

During the period of the internal armed conflict Fretilin's conduct violated the standards set out in Article 3 common to the Geneva Conventions. This Article prohibits certain types of behaviour directed at civilians or combatants who have laid down their arms because of capture, wounding or another cause. Prohibited conduct includes:

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<sup>†</sup> Described in this Report as "Fretilin/Falintil", due to difficulties to accurately distinguish between the membership of the party and the Falintil combatants.

<sup>†</sup> Because international human rights law imposes obligations on states rather than non-state organisations such as political parties and liberation movements, Fretilin cannot be responsible under international law for breaching such standards. However, international humanitarian law imposes obligations not only on states but also on non-state organisations, such as Fretilin.

- Killing
- Violence to the person, including torture or cruel treatment
- Humiliating or degrading treatment or other outrages upon personal dignity.

The Commission finds that Fretilin's conduct during the period of the internal armed conflict included multiple and repeated prohibited acts. Executions of civilians, as well as suspected or known UDT supporters or members were clear violations for which Fretilin was responsible under international law.

While the detention of civilians and enemy combatants is not specifically prohibited by Common Article 3, the torture, beating and other cruel treatment of those detained are in violation of that provision. The Commission finds that in this regard Fretilin is also accountable for numerous violations of humanitarian law. In addition the Commission finds that the treatment of those held in detention by Fretilin was often degrading or humiliating, in violation of the principles of humanitarian law.

*The international armed conflict 1976-1999*

During the international armed conflict the rules contained in the Geneva Conventions of 1949 and those that were part of customary international law were binding on Fretilin/Falintil as a party to the international conflict. The Commission has found that Fretilin/Falintil's conduct was at times in violation of these rules, giving rise to legal responsibility on the part of Fretilin/Falintil.

The Commission has found that Fretilin/Falintil's forces perpetrated executions, arbitrary detentions, and torture and ill-treatment of civilians and held many detained civilians in inhumane conditions. All such conduct is prohibited by Article 27 of the Fourth Geneva Convention which requires that civilians be treated humanely and with respect for their persons and honour, and that they particularly be protected against violence or threats of violence. While the Convention provides that the parties to a conflict may take steps in respect of civilians that are necessary for security as a result of the war, this could never extend to practices such as unlawful killings, and torture and ill-treatment. Such conduct is expressly prohibited by Article 32 of the Fourth Geneva Convention along with any act that causes the physical suffering or extermination of civilians. The use of physical or psychological torture to extract information from civilian prisoners is expressly prohibited (Article 31 of the Fourth Geneva Convention), and the Commission finds that members of Fretilin/Falintil in some cases violated this principle in an attempt to gather intelligence from known or suspected supporters of Indonesia.

Although Fretilin/Falintil was entitled, according to Article 5 of the Fourth Geneva Convention, to deny some of the protections of humanitarian law to those who were engaged in activities hostile to it, it was required nonetheless to treat those persons with humanity, and to provide them with the rights to a fair trial. By failing to guarantee that those suspected of betraying Fretilin/Falintil were entitled to a fair and regular trial and humane treatment, members of Fretilin/Falintil breached this obligation in every case in which these suspects were subjected to unfair trials, or summarily beaten, tortured, subjected to inhuman treatment or killed.

*Responsibility of Fretilin/Falintil leadership and members*

The armed conflict between combatants fighting in support of Fretilin and UDT was of sufficient severity to fulfil the definition of an "internal armed conflict" according to the body of international law which governs the conduct of war (see Part 2: The Mandate of the Commission). Parties to such a conflict are obliged to comply with international law, in particular, Common Article 3 of the Geneva Conventions. Legitimate acts of warfare committed against opposing combatants are not violations of these obligations. However, the killing, torture, and other mistreatment of civilians, prisoners, the sick and wounded is strictly prohibited.

The Commission finds that the actions of the members of the representatives of the Fretilin/Falintil in hundreds of cases of detention, torture and killing of civilians, prisoners, the wounded and the sick were violations of their duties under Common Article 3 of the Geneva Conventions.

The Commission has received a number of eyewitness accounts from victims and witnesses that members of the Fretilin Central Committee were directly involved in or witnessed the torture and killing of prisoners during and after the internal armed conflict and took no action to halt it.

The evidence before the Commission is insufficient to establish that these killings and atrocities were carried out in compliance with a directive from the Fretilin Central Committee. However, it had ultimate authority over its members and its armed forces which were deployed at its direction. Members of the Fretilin Central Committee certainly at least knew that widespread atrocities were taking place and did not take sufficient steps to halt them. They also did not take steps to discipline or punish those who were directly responsible for the torture, executions and other serious mistreatment. They are therefore responsible for the consequences of creating a disciplinary framework for the treatment of these prisoners, even when it became apparent that horrific violations were being committed against unarmed and defenceless prisoners and civilians.

The Commission finds that some members of the Fretilin Central Committee in December 1975 share in the responsibility for the premeditated and planned execution in Aileu in December 1975 and in Same in January 1976 of possibly as many as 200 UDT and Apodeti supporters whom Fretilin had taken prisoner. It has been able to ascertain that certain individual members of the Fretilin Central Committee took part in the decision to execute at least some of these prisoners and sometimes in the executions themselves. The Commission was informed that the killings in Aileu and Same were with some exceptions carried out according to a set routine in which lists of victims were drawn up, graves prepared and the executions carried out by squads under the command of specific individuals. The Commission considers the employment of such a consistent *modus operandi* is itself evidence that the killings were carried out systematically. It also believes that other Fretilin Central Committee members, including some of the most senior, who were present in the areas where the executions took place must have been aware that they were being carried out.

The Commission has learned of instances between August 1975 and January 1976 where Fretilin leaders did intervene successfully to stop the mass execution of detainees. This indicates to the Commission that these leaders, who included members of the Central Committee, could have put to stop to the killings on other occasions. It seems that it was the intervention of middle-level Falintil commanders from other areas, who had rushed to Same in late January 1976 after hearing of the killings there in late January 1976, that did in the end put a stop to the killings. This suggests to the Commission that more senior leaders could have ended the killing earlier, had they been so inclined. Fretilin's treatment of UDT and Apodeti supporters varied between districts. The Fretilin commanders in the districts personally knew the UDT and Apodeti leaders in their area and many were responsible for identifying those who should be detained. The most brutal treatment of detainees occurred in the *Quartel Geral* in Taibessi (Dili) and in Aisirimou (Aileu). Prisoners held in Baucau said that they were beaten regularly but only by the guards after their superiors had left. In the districts of Manufahi and Aileu however, Fretilin leaders were present at the torture of UDT and Apodeti leaders and not only allowed it but sometimes incited the community to attack members of UDT and Apodeti.

The number and nature of the violations committed lead the Commission to find that members of the Fretilin Central Committee, senior Falintil commanders and Fretilin district level leaders in the districts of Aileu and Manufahi were either directly involved in the systematic perpetration of violations against civilians, or knew that these violations were being committed by those under their command, and failed to take effective steps to prevent further violations or to punish those responsible. These people were therefore responsible, either directly or indirectly, for the arbitrary detention, torture and execution of prisoners. Some of these individuals are included on the list of

multiple perpetrators of serious human rights violations which has been forwarded to the Office of the Prosecutor General with a recommendation for investigation and potential prosecution, and to the Office of the President of the Democratic Republic of Timor-Leste, with a recommendation that they be barred holding certain strategic or senior public offices in Timor-Leste.

### 8.5.2 The responsibility and accountability of the UDT political party

The Commission considered hundreds of interviews and witness statements provided by victims and witnesses who had themselves been the victims of human rights violations or had witnessed others being victimised by members of UDT. On the basis of this evidence the Commission finds that:

On 11 August 1975 the leadership of the UDT party ordered an armed movement the purpose of which was to take control of the political leadership of the territory of Timor-Leste. It is unclear whether this purpose was clearly enunciated in the early stages of the armed movement. However, this was the clear import of the demands made by UDT to the Government of Portuguese Timor within hours of launching its movement.

UDT had no legal authority to undertake this action, and by doing so acted in violation of the rights of the East Timorese people to determine their own political, social and economic destiny. The party's action also violated the fundamental freedoms of political belief, freedom of expression and freedom of movement.

During its armed movement UDT resorted to perpetrated widespread human rights violations against the civilian population, particularly individuals known or believed to be leaders and supporters of the Fretilin political party. Hundreds of civilians were arbitrarily detained, of whom many were tortured, killed and otherwise mistreated.

As the armed conflict between combatants fighting in support of Fretilin and UDT was of sufficient severity to fulfil the definition of an "internal armed conflict" according to the body of international law which governs the conduct of war, UDT was obliged to comply with international law in the same way as Fretilin during this conflict (see above). The Commission finds that the detention, torture and killing of civilians, prisoners, the wounded and the sick leaders and supporters by UDT violated Common Article 3 of the Geneva Conventions as well as applicable Portuguese law.

#### **Arbitrary detention, torture and mistreatment**

Members of UDT and UDT forces detained victims in every district of Timor-Leste except Oecusse in 1975. Of the cases of detention attributed to UDT which were reported to the Commission, 25.6% (243/950) occurred in Ermera District, 23.0% (218/950) in Dili District and 16.3% (155/950) in Bobonaro District.

Of these detentions 20.1% (191/950), were reported to have occurred on the first day of the UDT armed movement, 11 August 1975, and 20.5% (195/950) occurred in the 10 days immediately following.

The leadership of UDT failed adequately to plan their action and kept those detained in deplorable conditions, without food or water. Some detainees died as a direct result of the conditions imposed on them. The reported cases of ill-treatment attributed to UDT were overwhelmingly concentrated in Dili District (36.7% (95/259)), Ermera District (20.9% (54/259)) and Bobonaro. (25.9% (67/259)) District.

The victims of arbitrary detention by UDT reported to the Commission were predominantly male, of military age and believed by the perpetrator to have an association with Fretilin. Sometimes



family members of these victims, including their wives, parents and children, were arbitrarily detained. In general prisoners were not mistreated in order to extract information, but as a form of punishment in a general climate where violence had become the norm.

Most of the victims detained by UDT were kept in buildings near the place of arrest, including warehouses, schools, private houses, a former Portuguese prison, military barracks and pens resembling chicken coops. It also established central detention centres at its headquarters in Palapaço, Dili and in the mill (*descascadeira*) and the *pousada* in Baucau, to which both persons arrested locally and detainees arrested in other districts were brought.

Periods of detention were short because the armed movement was brief. Most detainees were released within two weeks but some were held for longer than one month. While in detention, detainees were regularly forced to perform such work as cooking for other detainees and cleaning detention centres, building roads or carrying rocks and wood. UDT released some detainees of its own accord but most were abandoned when Fretilin forces attacked an area where detainees were being held and UDT forces fled.

UDT made no or inadequate provision for feeding the people whom it detained. Detainees from the main UDT detention centres reported being deprived of food; some received no food for up to nine days. At least two people died due to the conditions in detention. The severity of these conditions amounted to cruel, inhumane and degrading treatment.

Witnesses reported that members and supporters of UDT committed the following acts of torture and ill-treatment against those persons who had been illegally detained:

- Heavy beatings by hand or with a rifle, by one perpetrator or sometimes by a group of perpetrators
- Whipping
- Being tied up for long periods, sometimes for more than one week
- Cutting the victim with a machete or razor blades
- Slapping and kicking
- One victim reported being burned with lit cigarettes

#### *Unlawful killings*

UDT members and supporters conducted widespread unlawful killings between August and early September 1975, targeting persons who were known or suspected of being members of Fretilin in Liquiça, Dili, Ermera, Manatuto, Manufahi, Bobonaro and other districts.

UDT killings of persons identified as being affiliated with Fretilin occurred in a variety of circumstances. In the immediate aftermath of launching of the armed movement, Fretilin supporters were captured, killed and often beheaded in Manufahi, Liquiça and Ermera, sometimes by UDT mobs acting on the orders of their leaders. Prison guards killed individual detainees in UDT detention centres, sometimes, as in Palapaço (Dili), on their own initiative and sometimes, as in Aifu, Ermera, on the orders of party leaders. In late August and early September 1975, persons who had been detained in the days after UDT launched its armed movement were executed in Manufahi and Ermera as Fretilin forces advanced on these areas. The victims of these unlawful killings by UDT were predominantly men of military age with a real or suspected association with Fretilin.

Methods of unlawful killings included:

- Armed groups of UDT members shooting unarmed civilians in groups
- The execution of civilians using traditional weapons, such as machetes, spears and knives
- The holding of ritual ceremonies before and after killing
- Beheadings, and display of the decapitated heads as trophies
- The severing of body parts, such as hands, and disembowelment
- The display of corpses in front of homes of Fretilin members
- The disposal of dead or fatally wounded bodies in gorges and rivers
- The execution of detainees in detention centres, and in isolated places in the countryside, including coffee plantations. Some detainees had their hands tied with wire at the time of execution. Others were brought out of detention centres in small groups and then executed.
- Beating before to execution
- Disappearance

*Incidents of serious violations*

Incidents reported to the Commission in which the perpetrators were identified as being members or representatives of the UDT party included the following<sup>\*</sup>:

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<sup>\*</sup> For further details, see Chapter 7.2: Unlawful Killings and Enforced Disappearances, Chapter 7.4: Detention, Torture and Ill-Treatment and Chapter 7.8: The Rights of the Child.

- During August 1975 UDT forces detained at least 70 persons in the Ermera Prison; the detainees were beaten and starved while in detention. Scores of victims were also tortured and while detained in smaller detention centres throughout Ermera.
- The Commission received a number of reports indicating that detainees suffered torture and ill-treatment while imprisoned in the *pousada* and the *descascadeira* in Baucau in August 1975 when they were being used as detention centres
- During August 1975 UDT members from Turiscai (Manufahi) killed six members of a family perceived to be Fretilin supporters, including three children aged seven, six and five years old respectively
- On 11 August 1975 UDT forces killed one male Fretilin supporter in Lete Foho (Same, Manufahi).
- Between 11 and 13 August 1975 UDT members killed at least 13 people in the sub-district of Liquiça (Liquiça); in separate incidents in the villages of Asumanu, Darulete, Dato and Leotela (all in Liquiça Sub-district), three of the victims were beheaded. The head of one of them was displayed in front of the house of a Fretilin leader, while the head of another victim was displayed in front the house of a UDT leader.
- Between 11 and 15 August 1975 in Ermera UDT members killed three Fretilin officials in separate incidents in the sub-districts of Railaco, Ermera and Hatulia.
- After the armed movement of 11 August 1975 UDT members detained about 70 members of Fretilin in a rice barn in Corluli (Maliana, Bobonaro) for about two months. The detainees were deprived of food and drink while in detention, as a consequence of which two of them died.
- On 11 August 1975 a number of UDT leaders and members arrested a former Fretilin delegate and detained him in Same Prison (Manufahi). The detainee, along with several others, was severely beaten and was not allowed to leave his cell for two weeks.
- During August 1975 (date not specified) UDT members arrested 11 men in Lolotoe (Bobonaro) and detained them in a room for three days without food and water
- On 14 August UDT members detained three Fretilin members and at the home of a UDT leader in Guda (Lolotoe, Bobonaro). The men were beaten heavily and detained for one week.
- On 14 August UDT forces killed one man in Aitutu (Same, Manufahi).
- After the UDT armed movement 100- 200 members of Fretilin were detained at the Palapaço detention centre of whom many suffered severe ill-treatment. During this time three detainees, a member of the Fretilin Central Committee José Siqueira, Domingos Conceição and José Espírito Santo, were shot dead by their UDT guards.
- Some time in August 1975 all but three members of an 11-person Fretilin peace delegation sent by Francisco Xavier do Amaral to negotiate an end to the cycle of revenge killings that was engulfing the Laclubar-Soibada-Turiscai area were captured and killed in Fatmakerek (Soibada, Manatuto) on the orders of local UDT leaders.
- On 20 August 1975 an East Timorese woman was gang raped by members of UDT in Maubara Town (Maubara, Liquiça) .
- On 27 August members of UDT captured a Fretilin *delegado*, Antonio Salsinha, who had escape from the UDT detention centre in Aifu (Poetete, Ermera). They kicked and beat him and then shot him. He did not die immediately, so the UDT members buried him alive.
- On 27 August, as Fretilin forces approached Same, UDT members took 11 members of the Fretilin youth group, Unetim, who had been detained in Alas and Same since 11 August, to the Meti Oan beach in Wedauberek (Alas, Manufahi) and shot them dead.

- On 28 August four members of UDT arrested a number of Fretilin *delegados* and 14 other men from the village of Guda (Lolotoe, Bobonaro). The men were taken to Maliana (Bobonaro) and subsequently severely kicked by UDT members.
- On 1 September 1975, as Fretilin forces were poised to enter Ermera Sub-district from Leorema (Bazartete, Liquiça) and the Hatulia Sub-district (Ermera), UDT forces killed at least 30 detainees in the villages of Klaek Reman (Ermera, Ermera) Aifu (Poetete, Ermera, Ermera) - four deaths in Klaek Reman and at least 26 deaths in Aifu.

*Responsibility and accountability of UDT personnel*

The perpetrators of arbitrary detention were predominantly UDT leaders at the district level and those acting under their command. These leaders knew the population in each district and were able to effectively target members or supporters of Fretilin. Both the district leaders and those who directly committed these violations are responsible for them.

The Commission finds the local leaders who incited hatred and who ordered victims to be detained, beaten, tortured or killed to be responsible and accountable for the consequences of these actions.

The Commission finds that the members of the UDT Central Committee are responsible for the consequences caused by inciting their followers through radio broadcasts and other direct orders, to “purge communists”. When the leadership of UDT planned the armed movement, it plainly gave no thought to ensuring that those whose detention it ordered should be adequately fed and cared for. Nor did it instruct its members to treat detainees with restraint.

The most severe forms of abuse reported to the Commission occurred at the UDT headquarters in Dili, and in the UDT strongholds of Ermera and Liquiça. UDT leaders were reported to have been present when killings and other violations were being committed and with rare exceptions either ordered them to take place or did not take any steps to prevent them from happening.

The Commission holds the UDT district commanders of the districts of Ermera, Manufahi and Liquiça in August 1975 responsible and accountable for the serious mass violations, including torture and summary executions of groups of unarmed victims, which were committed by persons who were under their command and control. Some of these individuals are included on the list of multiple perpetrators of serious human rights violations which have been forwarded to the Office of the Prosecutor General with a recommendation for investigation and potential prosecution, and to the Office of the President of the Republic of Timor-Leste, with a recommendation that they be barred holding certain strategic or senior public offices in Timor-Leste.

The actions of the members of the UDT Central Committee and other leaders directly brought about a situation in which large numbers of civilians were forcibly detained without a legal basis. The leaders failed to ensure that detainees were held in appropriate conditions. They became aware that widespread violations were being committed by persons under their overall command and control, but rarely took steps to halt the violations and in no instance known to the Commission did they punish the perpetrators. The Commission finds that the leadership of the UDT party at the time of the armed movement are morally, politically and historically responsible for the violations committed by members of UDT during the internal armed conflict, and the instability which followed. This, however, does not absolve Fretilin leaders and members of responsibility for committing violations against members or supporters of UDT in reprisal for the latter's abuses.

## **Violations of principles of international law by representatives of the UDT party**

The Commission finds that UDT's conduct during the civil war period was in many cases in violation of international humanitarian law.

During the civil war, as a party to that internal conflict UDT was required to comply with the standards set out in Article 3 common to the Geneva Conventions. This Article prohibits certain types of behaviour directed at civilians or combatants who have laid down their arms because of capture, wounding or another cause. Prohibited conduct includes:

- Killing
- Violence to the person, including torture or cruel treatment
- Humiliating or degrading treatment or other outrages upon personal dignity.

The Commission has found that in violation of Common Article 3, UDT killed, tortured and otherwise mistreated civilians and captured members of Fretilin. This conduct was in violation of UDT's obligations under international humanitarian law and UDT accordingly bears legal responsibility for its actions.

### **8.5.3 The responsibility and accountability of the Apodeti party**

Although the Commission received significantly fewer reports of violations committed by members of the Apodeti party than by either Fretilin or UDT, the evidence clearly demonstrates that apart from having a direct role in the commission of violations, members of Apodeti also played a role in the Indonesian invasion and supported the military occupation in a variety of ways.

The Commission has found that from September 1974 members of Apodeti were in contact with Indonesian military officers. From December 1974 they participated in military training exercises in Atambua, West Timor (Indonesia). This training was undertaken for the explicit purpose of preparing for military action within Timor-Leste, although it is unlikely that the members of Apodeti were aware of the exact details of Indonesian plans. Approximately 200 Apodeti cadres participated in this training. When the Portuguese colonial authorities travelled to Atambua in January 1975 to try to persuade the members of Apodeti to return to Timor-Leste and play a constructive role in the decolonisation process, they refused and instead continued with their military training.

Members of Apodeti worked with Indonesian military and civilian intelligence agents inside Timor-Leste during 1974-75, undermining the decolonisation process and destabilising the situation in the territory. The actions of members of Apodeti during this period included providing information to the Indonesian military. Some of this information was used in Indonesian radio propaganda whose purpose was to increase the level of instability by undermining relations between Fretilin and UDT.

The military training in Atambua led to participation of the members of Apodeti, known as "Partisans" with Indonesian military personnel in covert military action inside Timor-Leste from August 1975, and larger-scale military operations that resulted in the Indonesian occupation of towns and territory from October 1975. During this period members of Apodeti participated in Indonesian military actions which included the attack on Balibo on 16 October 1975.

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<sup>7</sup> As explained above, because international human rights law imposes obligations on states rather than non-state organisations such as political parties, UDT cannot be said to any legal responsibility breaching such standards. However, international humanitarian law imposes obligations not only on states but also on non-state organisations, such as UDT.

Leaders of Apodeti party helped formulate and then signed the Balibo Declaration, which helped to provide a veneer of legitimacy to the totally illegal Indonesian occupation.

Members of Apodeti participated in the full-scale Indonesian military invasion of Dili and Baucau in December 1975, travelling on Indonesian warships from Indonesian ports to Timor-Leste. They then accompanied Indonesian troops on operations following the invasion.

Following the invasion members of Apodeti collaborated with the Indonesian forces in a subordinate role. However, they allowed themselves to be portrayed for propaganda purposes as constituting, with members of UDT and other parties, an East Timorese military force which was bearing the brunt of the war against Fretilin. It thereby fell into line with the programme of misinformation produced by the Indonesian military and government. This described the conflict as essentially an intra-East Timorese affair, when in fact it was the result of an unprovoked Indonesian military invasion. The Commission has also received evidence that some members of the Apodeti party also helped Indonesian intelligence to draw up lists of Fretilin leaders, members and sympathisers, and pointed out individual members of the Fretilin party to the invading Indonesian forces. As a direct result of these activities individuals were detained, tortured and in some cases executed.

Throughout the military occupation members of Apodeti worked within the Indonesian security apparatus and the civil administration and continued to do so well after it was abundantly clear that the Indonesian military forces had no intention of allowing the East Timorese people to determine their own political and economic future. By supporting the right of the Indonesian military to occupy and govern Timor-Leste, they share responsibility for the denial of the right to self-determination of the East Timorese people.

Members of the "Partisan" force, many of whom were Apodeti members and sympathisers, continued to participate in Indonesian military operations well after the 1975 invasion. They were recruited as members of the TNI, police, Hansip and later as members of militias. In addition some played the role of informers, passing on information to Indonesian military personnel. In all of these capacities members and former members of Apodeti committed serious human rights violations against pro-independence supporters throughout the entire period of the conflict.

In summary, representatives of the Apodeti party are responsible for contributing to serious human rights violations committed before, during and after the military invasion of Timor-Leste. They did this by training and participating in military operations with ABRI, and later becoming integrated into the various organs of the Indonesian occupation regime, in which roles they were directly responsible for a significant number of serious violations, as well as supporting the mass violations by the Indonesian security forces.

#### 8.5.4 The responsibility and accountability of the Trabalhista and KOTA parties

Although members of the Trabalhista and KOTA parties were not identified as direct perpetrators of a large number of violations, they did play a role in supporting the Indonesian invasion and occupation, and are also responsible for playing a role in the polarisation of East Timorese society.

Members of Trabalhista and KOTA contributed to the formulation and signing of the Balibo Declaration which helped to provide a veneer of legitimacy to the totally illegitimate Indonesian occupation. Following this members of these parties also supported the lie that the East Timorese people wished to remain part of Indonesia in communications to the United Nations. Some members of these parties supported the Indonesian administration and became members of the Indonesian security forces and auxiliaries, including Hansip and the militias. In these roles they were involved in serious human rights violations.

Although the Trabalhista and KOTA parties were smaller in size and the importance of their role in the conflict was less significant than the other political parties their members were implicated directly and indirectly in human rights violations. They also played a significant role in supporting the illegal Indonesian occupation and are responsible, together with the other political parties, for contributing to the polarisation of East Timorese society and the continued cycle of violence which this contributed to.

## 8.6: State responsibility

### 8.6.1 Responsibility of the State of Indonesia

#### **Violation of the right to self-determination**

The Commission has found that the Republic of Indonesia was responsible for grossly suppressing the right of the East Timorese people to self-determination and subjecting them to a military occupation characterised by repression and violence, against their will.

The Commission finds that by 1974 the Government of Indonesia had decided that Timor-Leste should be incorporated into Indonesia. It set out to achieve that goal using various tactics including propaganda, intimidation, subversion, and ultimately, military force. This process ignored the wishes of the East Timorese people and their right to self-determination.

The Commission finds that the session of the “Popular Representative Assembly” held on 31 May 1976 did not constitute a genuine act of self-determination. The process was orchestrated by Indonesia with the goal of lending legitimacy to its unlawful invasion. The assembly was not representative of the East Timorese people and did not provide those who were involved with a real and informed choice between various options. The Commission finds that the process did not accord with the requirements set out in General Assembly Resolution 1541 for the integration of a non-self governing territory into a pre-existing State. It did not allow the East Timorese people to freely express their wishes, did not occur in a context in which Timor-Leste had attained a sufficiently advanced state of self-government to properly express those wishes, and did not take place in a relationship of complete equality between the two parties involved. The Commission finds that the “Popular Representative Assembly” was organised by Indonesia for the purpose of justifying its invasion rather than for providing the East Timorese people with a real choice about their future.

Indonesia maintained its unlawful presence in the territory of Timor-Leste until 1999. During this period Indonesia was responsible for continuously suppressing the right of the people of Timor-Leste to self-determination. It forcibly suppressed advocacy of self-determination within Timor-Leste, and sought to neutralise East Timorese, Indonesian and international civil society advocates of self-determination. The Commission finds that this constituted a gross violation of the right of the East Timorese people to self-determination as well as a violation of other fundamental human rights such as the right to freedom of expression, opinion and association.

During the occupation Indonesia further violated the right of the East Timorese people to self-determination by exploiting the natural resources of the territory for its own benefit rather than allowing the East Timorese people control over the disposal of those resources. Agents of the Indonesian state removed significant quantities of timber, sandalwood and other resources from Timor-Leste, and the Indonesian security forces forcibly implemented a programme under which East Timorese coffee growers receive much less than the full value of their crops. The treaty entered into with Australia in 1989 for the disposal of the resources of the Timor Sea (The Timor Gap Zone of Cooperation Treaty), which was concluded without consultation with or due regard to the interests of the people of Timor-Leste, also violated those rights, particularly as in its

eagerness to reach an agreement Indonesia settled on terms that were far less favourable to the state than was normal in its own territory.

### **State responsibility for violations committed by members of the Indonesian security forces and government representatives**

Under international law a state is responsible for conduct carried out by its organs (Article 4, ILC Articles on the Responsibility of States for Internationally Wrongful Acts). This includes the conduct of the army, police as well as the organs responsible for civil administration. Accordingly the Commission holds Indonesia responsible for the actions of ABRI (as well as the TNI and the police in 1999) as well as the actions of the civil components of the Indonesian government.

States are also responsible under international law for the actions of private individuals where the state has effective control over those persons, or where those persons are acting on the directions or instructions of the state (Article 8, ILC Articles on the Responsibility of States for Internationally Wrongful Acts). The Commission is satisfied that militia groups within Timor-Leste, which may not have formally constituted organs of the State of Indonesia, nonetheless acted on the directions and instructions and under the effective control of Indonesia. Indonesia is therefore responsible for violations carried out by those militia groups.

The invasion by Indonesia of Timor-Leste constituted violations of a number of principles of international law, including:

- The prohibition under customary international law of intervention in the affairs of other states<sup>11</sup>
- The peremptory norm contained in Article 2(4) of the United Nations Charter, as well as under customary international law, on the unlawful use of force against the territorial integrity of another state
- Indonesia's obligation under customary international law to respect the right of the East Timorese people to self-determination.

Indonesia also violated its obligations under the agreements entered into on 5 May 1999 between Indonesia, Portugal and the United Nations. Under these agreements Indonesia was responsible for "maintaining peace and security in East Timor in order to ensure that the popular consultation is carried out in a fair and peaceful way in an atmosphere free of intimidation, violence or interference from any side".<sup>12</sup> Indonesia was also responsible under the agreements for ensuring a "secure environment devoid of violence or other forms of intimidation" and "the general maintenance of law and order", including by ensuring "the absolute neutrality of the TNI and the Indonesian Police".<sup>13</sup> The Commission finds that Indonesia failed grossly in meeting these obligations and was therefore in breach of its treaty obligations under the 5 May Agreements.

The Commission finds the State of Indonesia to be responsible and accountable for the violations of international human rights law, international humanitarian law and international criminal law which were committed by members of the Indonesian security forces and their auxiliaries, including civil defence groups such as Hansip and Ratih, the militia groups which were controlled by the Indonesian security forces, government officials, police, and other individuals who committed violations under the direction of State organs. This responsibility covers multiple incidences of crimes against humanity, including extermination; war crimes, including grave breaches of the Geneva Conventions; tens of thousands of serious human rights violations; and overall responsibility for the deaths of at least 120,000 East Timorese people who died as a result of the systematic programmes of violations which accompanied the 24-year long illegal military occupation of Timor-Leste.



The nature and scale of the violations which fall within the ambit of the responsibility of the State of Indonesia are discussed in detail in the various thematic chapters of this report, and in particular in the section on the responsibility of the Indonesian security forces, earlier in this Part.

## 8.6.2 Responsibility of the State of Portugal

The Commission finds that under successive governments Portugal violated the right of the East Timorese people to self-determination.

### Historical context to the violation

- For almost the entire period of its rule in Timor-Leste Portugal created an environment that was utterly inimical to the realisation of the right to self-determination. No effort was made to achieve an even minimal level of East Timorese self-government, and democratic values were not upheld either in theory or in practice. Under the Salazar-Caetano regime, Portugal: Neglected the Timorese economy and thereby helped create an international perception of Timor as an economically unviable territory that would be incapable of subsisting as an independent state
- Failed to prepare the East Timorese people for self-government by permitting broad-based political participation or otherwise instilling democratic values
- Refused to recognise that Article 73 of the United Nations Charter applied to Timor as a non-self-governing territory and failed to comply with its obligations under that provision.

After the Carnation Revolution of 25 April 1974 and the subsequent commitment to decolonisation of the governments that followed it, some improvements were seen. In particular, the last Governor of Portuguese Timor, Colonel Mário Lemos Pires, began a programme of reforms and attempted to build a consensus around a decolonisation programme, which was eventually embodied in law. However, despite his efforts conflicting signals by successive governments about their true intentions created mistrust towards the Portuguese administration in Timor and amplified already existing suspicions among the main parties. Governor Lemos Pires received insufficient support from the Portuguese Government for his programme of reforms. In addition to the denial of his requests for additional Portuguese troops in the face of rising political tensions, a military force sufficient only for the protection of Portuguese nationals was maintained in the territory. As a consequence, on the outbreak of violence in August 1975 Portugal found itself ill-equipped to intervene. Such a small troop presence provided little deterrence to the Indonesian security forces and their strategists at a time when Indonesia's intentions were becoming increasingly clear through its propaganda, its training of East Timorese in Atambua and its covert activities inside the territory. Portugal declined to involve the United Nations directly in the decolonisation process despite increasing tensions in the territory. This was despite recommendations made by the Portuguese administration in Timor and the Governor to internationalise the process particularly through the United Nations.

In addition, Portuguese diplomatic engagement with Indonesia served to encourage rather than discourage Indonesian aspirations for the integration of Timor. At the meeting between Indonesian and Portuguese officials in Lisbon in October 1974, while Portugal's official position was that the East Timorese people should be entitled to determine their own future, the Indonesian Government was given to understand that the Portuguese Government's preference was for the territory's integration into Indonesia. Portuguese officials conveyed a similar message to their Indonesian counterparts at the London meeting in March 1975.

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<sup>7</sup> Article 73 required Portugal to promote to the utmost the well-being of the East Timorese people, including by ensuring, with respect for the Timorese culture, their political, economic, social and educational advancement, their just treatment, and their protection from abuses; and developing Timorese self-government, including by the development of free political institutions.

The Commission considers that Portugal must be held accountable for its actions during this period. In particular Portuguese policy had the effect of heightening tensions by encouraging Indonesian integrationist ambitions and by explicitly acquiescing to Indonesian support for Apodeti thereby fuelling the inter-party political conflict. Inadequate steps were taken to prevent the escalation of political tensions, and little or no preparation was made in readiness for the possible outbreak of civil war.

Following meetings in Rome on 1 and 2 November 1975, Indonesia and Portugal jointly called for the restoration of peace in Timor but no reference was made to Indonesia's military incursions into the territory. Almost a month later, on 29 November, when rejecting Fretilin's declaration of independence, Portugal condemned Indonesia's military intervention, but maintained that in finding a resolution of the political differences between Fretilin, UDT and Apodeti, "the legitimate interest of Indonesia's geopolitical territory" must be taken into account. It was only after the full-scale Indonesian invasion on 7 December that Portugal referred the situation in Timor to the United Nations Security Council, requesting United Nations assistance.

In the Commission's view Portugal took insufficient steps to ward off an Indonesian invasion that was clearly imminent. Although it eventually sought assistance from the international community, Portugal could have done so earlier. To this extent the Commission finds that Portugal fell short of meeting its obligations as the administering power, including its obligation to protect the people of Timor-Leste from harm.

Throughout much of the Indonesian occupation Portugal made little diplomatic effort to address the situation in Timor-Leste, whether bilaterally or through the United Nations. Although it maintained the official position that it remained the administering power in Timor-Leste, it took few steps to carry out the responsibilities entailed by this role. It was not until 1982 that it began to raise the question of Timor-Leste in international fora, and even after that time the steps that it did take were insufficient to compete with Indonesian diplomacy. The Commission finds that Portugal, although committed in theory to the right of the East Timorese people to self-determination, took insufficient steps to assist in the realisation of this right during the period of Indonesian occupation.

### 8.6.3 Responsibility of the State of Australia

The Commission finds that Australia contributed significantly to denying the people of Timor-Leste their right to self-determination before and during the Indonesian occupation. Australia was well-placed to influence the course of events in Timor-Leste. Rather than playing the role of honest broker, between April 1974 and December 1975 it tilted sharply in favour of the Indonesian stance on Timor-Leste, justifying this position by the need to maintain good relations with Indonesia, whose "settled policy" it understood to be the incorporation of the territory by any means. It took this position even though it violated Australia's obligations under international law to support the right of the East Timorese people to self-determination.

After the Carnation Revolution the Government of Gough Whitlam made it clear to President Soeharto that it shared the Indonesian Government's preference that Timor-Leste be incorporated into Indonesia. In his conversations with President Soeharto Whitlam said that Australian policy towards Timor was guided by two principles: its belief that Timor should become part of Indonesia; and its desire that this should happen with the consent of the people of the territory. When it became apparent that these two components of its policy were at odds with each other, the second was sacrificed to the first. Although its contacts with officials in Jakarta and intelligence gathered on the ground in Timor-Leste both made it clear that, if necessary, Indonesia intended to take control of the territory forcibly, Australia raised no objection. Its appeasement of the Soeharto Government extended to a muted response to the deaths of its own nationals in Balibo (Bobonaro) on 16 October 1975 and in Dili on 8 December 1975.

The Commission finds that Australian policy towards Indonesia and Timor-Leste during this period was influenced not only by an interest in maintaining good relations with Indonesia, but also by an assessment that it would achieve a more favourable outcome to the negotiations on the maritime boundary in the Timor if it was dealing with Indonesia rather than with Portugal or an independent Timor-Leste on the issue.

The Commission also finds from its examination of the documentary record that that Australia's presentation of its stance confirmed the Indonesian Government in its resolve to take over the territory of Timor-Leste. Australia's indifference to Indonesia's actions in pursuit of its goals, including its incursions into the territory, almost certainly had a similar effect. Conversely had Australia given greater weight to the right of the East Timorese to self-determination and to the inviolability of its sovereign territory in its dealings with Indonesia, it may have been able to avert the Indonesian use of force. The Commission finds that during the Indonesian occupation successive Australian governments not only failed to respect the right of the East Timorese people to self-determination, but actively contributed to the violation of that right. After supporting the first resolution in 1975 it abstained from or voted against subsequent General Assembly resolutions recognising the right of the East Timorese people to self-determination. It refused to receive José Ramos-Horta or other Fretilin representatives, and even banned their entry to Australia for a number of years. In 1978 it recognised *de facto* Indonesian control over Timor-Leste, and implicitly gave *de jure* recognition in 1979 when it began negotiations with Indonesia for the delimitation of the maritime boundary between Australia and Timor-Leste. In 1985 it unequivocally gave *de jure* recognition to the integration of Timor-Leste into Indonesia, and in 1989 concluded the Timor Gap Zone of Cooperation Treaty with Indonesia. Australia also provided economic and military assistance to Indonesia during this period and worked as an advocate for the Indonesian position in international fora.

Australia played a leading role in the Interfet force that ultimately ended the violence surrounding the ballot in 1999, and has consequently tended to portray itself as a liberator of Timor-Leste. However the Commission finds that even when President Habibie was moving towards his decision to offer the East Timorese a choice between remaining part of Indonesia and independence, the Australian Foreign Minister, Alexander Downer made it clear that his Government believed that it should be several years before the East Timorese exercised their right to make that choice and that it would be preferable from an Australian point of view if Timor-Leste remained legally part of Indonesia. The actions of the Government of Australia in supporting Indonesia's attempted forcible integration of Timor-Leste was in violation of its duties, under the general principles of international law, to support and refrain from undermining the legitimate right of the East Timorese people to self-determination<sup>14</sup> and to take positive action to facilitate the realisation of this right.<sup>15</sup> According to the Human Rights Committee:

States must refrain from interfering in the internal affairs of other States and thereby adversely affecting the exercise of the right to self-determination.<sup>16</sup>

Australia's actions during the period of Indonesia's illegal military occupation of Timor-Leste did, in fact, adversely affect the East Timorese people's ability to exercise their right to self-determination.

#### 8.6.4 Responsibility of the United States of America

The Commission finds that the United States of America failed to support the right of the East Timorese people to self-determination, and that its political and military support were fundamental to the Indonesian invasion and occupation. The support of the United States for Indonesia was given out of a strategically-motivated desire to maintain a good relationship with Indonesia, whose anti-communist regime was seen as an essential bastion against the spread of communism in South-East Asia. President Gerald Ford met President Soeharto twice in 1975.

The second meeting was in Jakarta on 6 December, the day before the Indonesian invasion of Dili, when the impending invasion was discussed. The Commission finds on the basis of the available documentary evidence that the United States was aware of Indonesian plans to invade and occupy Timor-Leste. It also finds that the United States was aware that military equipment supplied by it to Indonesia would be used for this purpose. However, in the light of the its assessment of the importance of good relations with Indonesia, the United States decided to turn a blind eye to the invasion, even though US-supplied arms and military equipment were sure to be used.

US-supplied weaponry was critical to Indonesia's capacity to intensify military operations from 1977 in its massive campaigns to destroy the Resistance in which aircraft supplied by the United States played a crucial role. These were the campaigns which resulted in severe suffering and hardship to tens of thousands of civilians sheltering in the interior at the time. The campaigns forced the mass surrender of tens of thousands of civilians, whom it then held in the highly restrictive conditions of the resettlement camps where thousands of civilians died from starvation and illness. During the famine of this time US administration officials refused to admit that the primary reason that East Timorese were dying in their thousands was the security policies being pursued by the Indonesian military. Instead they maintained that that the deaths were due to drought, an argument which the Commission finds to have been without merit.

Successive administrations, even those such as the Carter administration which made much of its commitment to human rights, were driven by hard-nosed realism in their policy towards Timor-Leste: they all consistently stressed the overriding importance of the relationship with Indonesia and the supposed irreversibility of the Indonesian takeover, even as they acknowledged that the people of Timor-Leste had been denied their right to self-determination.

Although the United States suspended its military cooperation programme with Indonesia after the Santa Cruz massacre in 1991, its policy on Timor-Leste on that and other occasions was reactive rather than proactive. In response to the massive violations that occurred in Timor-Leste in September 1999 President Clinton threw the considerable influence of the United States behind efforts to press the Indonesian Government to accept the deployment of an international force in the territory, demonstrating the considerable leverage that it could have exerted earlier had the will been there.

In the Commission's view, the support given by the United States to Indonesia was crucial to the invasion and continued occupation of Timor-Leste. This was so not only because weapons and equipment purchased from the United States played a significant role in Indonesian military operations in Timor, but also because it never used its unique position of power and influence to counsel its Indonesian ally against embarking on an illegal course of action.

The actions of the Government of the United States of America in supporting Indonesia's invasion of Timor-Leste was in violation of its duties, under the general principles of international law, to support and refrain from undermining the legitimate right of the East Timorese people to self-determination<sup>17</sup> and to take positive action to facilitate the realisation of that right.<sup>18</sup>

#### 8.6.5 Responsibility of the United Nations

The Commission finds that the United Nations took inadequate action to protect the right of the East Timorese people to self-determination during the period of the invasion and military occupation.

The General Assembly passed a resolution on the situation in East Timor every year from 1975 until 1982. During this period the texts of the resolutions became increasingly weak and the number of countries voting in favour of them steadily diminished until in 1981 only about one third

of the member states voting on the resolution supported of that year's resolution.<sup>\*</sup> In 1982, in a calculated move designed to keep the question of Timor-Leste alive at the United Nations amid unmistakable signs of growing member-state apathy, the overseas representatives of the Resistance and their supporters at the United Nations narrowly managed to secure the General Assembly's approval of a resolution referring the question to the "good offices" of the Secretary-General who was to consult "all parties directly concerned". Although this mechanism almost entirely excluded East Timorese voices and its direct impact in securing the right of the people of Timor-Leste to self-determination was negligible, supported by the efforts of members of the UN Secretariat staff and latterly of the Secretary-General, Kofi Annan, it did contribute to keeping the question of Timor-Leste on the United Nations' agenda, which was to prove particularly important in 1998-99.

The Security Council, as the organ of the United Nations with primary responsibility for the maintenance of international peace and security (Article 24(1) United Nations Charter), was best placed to address the situation in Timor-Leste. Although the Security Council condemned the Indonesian invasion in 1975 and again in 1976, it did not find a violation or threat to international peace and security. The Commission considers that there is no question that it would have been entitled to do so under Article 39 of the United Nations Charter and therefore would have been entitled to take enforcement action under Chapter VII. After 1976 no further Security Council resolutions were passed on the question of East Timor until May 1999, when the Council endorsed the 5 May Agreements between Indonesia, Portugal and the United Nations.

Under Article 24(2) of the United Nations Charter the Security Council is required to act in accordance with the purposes and principles of the United Nations set out in Articles 1 and 2 of the Charter. Those purposes and principles include the following:

- The maintenance of international peace and security (Article 1(1))
- The development of friendly relations among states based on respect for the principle of equal rights and self-determinations of people (Article 1(2)), and
- The promotion and encouragement of respect for human rights and fundamental freedoms (Article 1(3)), and
- The sovereign equality of all member states (Article 2(1)).

The Commission finds that by failing to take any enforcement action, and by taking no further action between 1976 and 1999, the Security Council failed to act in accordance with the principles and purposes of the United Nations, and with the specific duties set out in the Charter of the organisation.

Moreover, the Commission finds that for most of the period of the Indonesian occupation the five permanent members of the Security Council – the United States, the USSR/Russia, China, the UK and France - as well as states, such as Japan, which were non-permanent members at crucial times during the mandate period, put economic and strategic interests above the purposes and principles of the United Nations, which as members of the Security Council they had a duty to uphold. Like the United States, by sanctioning the sale to Indonesia of arms which were used against the Resistance and the civilian population in Timor-Leste, the UK and France were directly involved in supporting an illegal occupation and suppressing the right of the people of the territory to self-determination.

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<sup>\*</sup> See the chart which represents General Assembly voting on East Timor resolutions, in Chapter 7.1: The Right to Self-Determination.

# Annexe 1: Responsibility of the Indonesian security forces for the mass violations committed in 1999.

## Introduction

The historical background to the 1999 Popular Consultation is dealt with in detail in Part 3 of the Report: The History of the Conflict.

### Evidence considered

Statements from victims and witnesses received by the Commission reported 15,681 human rights violations committed in Timor-Leste in 1999. In addition the Commission considered evidence provided in interviews with victims and witnesses, including former serving officers with the TNI, the Indonesian police, former militia members and Indonesian government officials. The Commission was also given access to specific files and statements it requested from the Serious Crimes Unit, which was established by the UNTAET mission and has been under the authority of the Prosecutor General of Timor-Leste since independence. These documents included files and statements used in drawing up indictments for crimes against humanity committed in Timor-Leste during 1999. The UNTAET and UNMISSET Human Rights Unit also cooperated with the Commission by providing access to materials relevant to violations committed during 1999.

The Commission also closely considered the submission provided by the United Nations Office of the High Commissioner for Human Rights (OHCHR), entitled *East Timor 1999: Crimes Against Humanity, a Report Commissioned by the United Nations High Commissioner for Human Rights*, written by Dr Geoffrey Robinson of the University of California, Los Angeles (USA) at the request of the OHCHR. Dr Robinson had access to the files of the UNTAET mission's Human Rights Unit, the statements and other documents compiled by the Deputy Prosecutor for Serious Crimes, the collection of documents recovered from burned-out TNI installations and other sites by the leading East Timorese human rights NGO Yayasan HAK (The Rights Foundation), as well as himself conducting interviews with victims, witnesses and other sources. The Commission has also had access to much of the documentary material considered by Dr Robinson and has reached many similar conclusions based on these sources, and drawn significantly on the evidence presented in his report. The Commission finds the methodology used in compiling the submission from the UN High Commissioner for Human Rights to be thorough, objective and highly professional. The "Robinson Report", referred to in this Report generally as "The Robinson, OHCHR Submission to the CAVR", is reproduced in its entirety as an annexe to this Report.

A summary of perpetrator responsibility according to the human rights violations reported to the Commission by witnesses and victims is included in the following Table. A complete set of tables showing the number and percentage of violations attributed to various institutional perpetrators is annexed to this Part of the Report as an Annexe.

**Table 15 - Reported violations by major perpetrator groups, 1999**

	Total Number of violations reported to the CAVR	Total Violations by Indonesian Military, Police & Timorese Auxiliaries	Total violations by Fretilin/Falintil	Others

All violations	15,681 100%	14,922 95.20%	129 0.80%	630 4.00%
Illegal killings	840 100%	761 90.60%	31 3.70%	48 5.70%
Disappearances	60 100%	51 85.00%	2 3.30%	7 11.70%
Torture and ill-treatment	4,324 100%	4,083 94.4	52 1.20%	146 3.40%
Detention	2779 100%	2,634 94.80%	24 0.90%	121 4.40%
Ill-treatment	2,098 100%	1,982 94.50%	8 0.40%	108 5.10%
Sexual violence	142 100%	136 95.80%	2 1.40%	4 2.80%
Forced displacement	2111 100%	2070 98.10%	0	41 1.90%
Forced recruitment	392 100%	390 99.50%		2 0.05%
Property/economic violations	2,766	2,673 96.60%	9 0.30%	84 3.10%

(Note: Because more than one perpetrator group may have been involved in a particular violation the percentages may not total 100%)

**Table 16 - Breakdown of responsibility of Indonesian security forces, according to reported violations, 1999**

	Total Violations by Indonesian Military, Police & Timorese Auxiliaries	Timorese Auxiliaries acting alone	Indonesian Military & Police acting alone	Indonesian Military and Police acting together with Timorese Auxiliaries
All violations	14,922 95.20%	8,827 56.30%	2,198 14.00%	3,822 24.40%
Illegal killings	761 90.60%	417 49.60%	84 10%	258 30.70%
Disappearances	51 85.00%	29 48.30%	15 25%	7 11.70%
Torture and ill-treatment	4,083 94.4	2,310 53.40%	805 18.60%	968 22.40%

Detention	2,634 94.80%	1209 43.50%	529 19%	890 32%
Ill-treatment	1,982 94.50%	1,173 55.90%	341 16.30%	465 22.20%
Sexual violence	136 95.80%	93 65.50%	31 21.80%	11 7.70%
Forced displacement	2,070 98.10%	1,264 59.90%	187 8.90%	607 28.80%
Forced recruitment	390 99.50%	283 72.20%	32 8.20%	71 18.30%
Property/economic violations	2,673 96.60%	1,910 69.10%	32 8.20%	563 20.40%

*(Note: Because more than one perpetrator group may have been involved in a particular violation the percentages may not total 100%)*

### **The responsibility of Indonesia for maintaining security and protecting the population**

Under the agreements of 5 May 1999 between Indonesia, Portugal and the United Nations, Indonesian security forces were given responsibility for “maintaining peace and security in East Timor in order to ensure that the popular consultation [was] carried out in a fair and peaceful way in an atmosphere free of intimidation, violence or interference from any side”.<sup>19</sup> The agreement further stated that:

A secure environment devoid of violence or other forms of intimidation is a prerequisite for the holding of a free and fair ballot in East Timor. Responsibility to ensure such an environment as well as for the general maintenance of law and order rests with the appropriate Indonesian security authorities. The absolute neutrality of the TNI (Indonesian Armed Forces) and the Indonesian Police is essential in this regard.<sup>20</sup>

Although under the 5 May agreements, sole responsibility for the maintenance of law and order was given to the Indonesian police service,<sup>21</sup> in practice the police remained subordinate to the TNI even after the restructuring of 1 April 1999.\*

Following the announcement of the result of the ballot on 4 September 1999, the TNI once again assumed control over security in Timor-Leste.<sup>22</sup> On 6 September the Indonesian President, B J Habibie, ordered the imposition of martial law, to begin at 12 midnight on 7 September.<sup>23</sup> After that time the TNI had complete responsibility for the maintenance of law and order in East Timor. This responsibility did not end until the arrival of the UN-sponsored multilateral force, Interfet, on 20 September 1999.

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\* On 1 April 1999 a decision on the restructuring of the Indonesian security forces came into force. Its effect was formally to separate the three branches of the armed forces (the army, the navy and the air force) from the police. ABRI therefore formally ceased to exist, and the three armed services were jointly named the Tentara Nasional Indonesia (TNI). However, the Minister of Defence (at the time General Wiranto) retained authority over both the TNI and the police, and as noted in the text, the separation of the police from military services did not in fact end its long-established subordination to the army, as was evident in Timor-Leste during the following months of 1999.



### *Perpetrators of violations*

Members of the Indonesian military, police and East Timorese auxiliaries of the TNI (including militia groups) were identified as the perpetrators in 14,922 (95.2%) of all violations reported to the Commission as having been committed in 1999.

For the purposes of determining responsibility the Commission has grouped together the violations committed by the TNI, the Indonesian police and East Timorese auxiliaries, including the militias, because of the overwhelming evidence that the TNI played a major role in creating the militia groups, and was responsible for arming, funding, directing and controlling them. The evidence supporting this finding is set out in detail below.

Only a small proportion of violations were committed by persons identified by their affiliation to Fretilin, Falintil, UDT, Apodeti or other groups.\*

### Responsibility of the TNI for the violations

Members of the TNI were involved in the overall planning and coordination of the violations committed in 1999. They were also frequently involved in their direct perpetration. In addition they were responsible for the actions of the militia groups which they directed and controlled.

### Members of the TNI as direct perpetrators of violations

Major incidents in which members of the TNI were directly involved, acting either alone or with the militias they commanded, included the following.

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\* Although the political parties UDT and Apodeti were no longer formally in existence in Timor-Leste after 1976, many people continued to identify perpetrators as affiliated to those parties, even up until 1999].

- On 6 April 1999 approximately 2,000 civilians who had sought refuge in the Liquiça Church were attacked by Besi Merah Putih militia, together with soldiers from the Liquiça District Command (Kodim) and members of the police mobile brigade (Brimob). Between 30 and 100 civilians were killed, many of whose bodies were taken away and disposed of in secret locations.
- On 12 April 1999, in retaliation for an alleged Falintil killing of a TNI soldier and a pro-autonomy leader, hundreds of civilians in the villages in the sub-district of Cailaco (Bobonaro) were rounded up and required to attend the funeral of the pro-autonomy leader. At least seven suspected pro-independence supporters were executed by TNI soldiers and Halilintar militia at the Sub-district Military Command (Koramil) post 100 metres from the mourners. At least another 13 men were executed in various locations during the following weeks.
- On 17 April 1999 a pro-autonomy rally was held in front of the Governor's Office in Dili attended by the Governor, the District Administrator of Dili, the Sub-Regional military commander for Timor-Leste, Colonel Tono Suratman, the Assistant for Operations to the Army Chief of Staff, Major General Kiki Syahnakri and four other senior military officers. During the rally the East Timorese leader of the Aitarak militia group publicly urged his followers to kill pro-independence supporters. Immediately after the rally members of the militia and the security forces went to the nearby house of a prominent pro-independence figure, Manuel Carrascalão, where approximately 150 displaced persons had sought refuge. They killed at least 12 unarmed civilians who were seeking shelter in the house.<sup>24</sup>
- On 6 September 1999 members of Laksaur militia, together with members of Indonesian security forces, attacked thousands of refugees who had sought safety in the Suai Church in the district of Covalima. At least 40 and possibly as many as 200 people were killed, including three priests.<sup>25</sup> The bodies were burned, and some were transported across the border to be buried in West Timor, Indonesia.
- Following the massacre at the church in Suai, approximately 125 surviving women and children were detained by Laksaur militia with the assistance of members of the TNI. Many of the women were raped. The survivors were forcibly deported to West Timor where many more were raped or subjected to sexual slavery.
- On 5-6 September 1999 Aitarak militia, together with members of the TNI, attacked hundreds of people who had sought refuge at a number of sites in Dili, including the house of Nobel Laureate Bishop Carlos Ximenes Belo, the Diocesan Offices, convents, and the Dili office of the International Committee of the Red Cross. At least 19 civilians were killed or disappeared from these places of refuge. The previous day, on 4 September, the TNI and militia carried out attacks in the community in Becora, a pro-independence neighbourhood in the east of Dili, killing at least seven men.
- On 8 September 1999 Dadurus Merah Putih and other militias, under the command of Indonesian security forces, attacked people who had sought refuge in the Maliana police station. Before the attack, leaders of the pro-independence umbrella organisation, the CNRT, pleaded with members of the Indonesian police to protect them. But the police remained sequestered in a section of the building and ordered them to go away. At least 26 civilians were killed or disappeared, mostly local CNRT leaders and suspected pro-independence supporters, including one 12-year-old boy. They included people who had escaped from the police station but who had been hunted down and killed in the following days. The bodies were transported to a secret location and disposed of.
- On 10 September 1999 the Sakunar militia, acting under the direction of the TNI, brought civilians from three villages in Oesilo, Oecusse to West Timor, Indonesia, on the pretext that they would be safer there. Once inside Indonesia TNI and militia separated 50-70 young men who were selected on the basis that they had received some high-school education. The victims were tied together and brought back into Oecusse, where they were lined up and executed in a river-bed in Passabe.

- On 12 September 1999, Laksaur militia and members of the TNI attempted forcibly to deport villagers from the village of Laktos (Fohorem, Covalima) to West Timor, Indonesia. Fourteen men who resisted were killed.
- During 20-21 September 1999 TNI soldiers from Battalion 745 randomly shot civilians during their retreat from Lospalos (Lautém) to Dili. At least 21 civilians, including a Dutch journalist, were killed or disappeared by members of Battalion 745 as it retreated through Lospalos, Baucau, and Dili.
- On 23 September 1999, members of the Mahidi militia, supported by the TNI, opened fire on a group of villagers from Maununu Village, Ainaro District, whom they had rounded up for deportation to West Timor, killing 11 persons, including women and children.
- On 20 October 1999 Sakunar and Aitarak militias and members of the TNI, while rounding up villagers from Maquelab (Pante Makassar, Oecusse) for deportation to West Timor, separated and executed a total of six men in the Maquelab market. Another six were killed later during an attack on the village.

In addition to these major incidents, the Commission received a large number of reports of individual violations perpetrated by members of the TNI, either acting alone or with East Timorese militiamen. Among these were reports of numerous rapes, sometimes carried out repeatedly over a period of days, in the context of the general campaign of terror before and after the ballot or during forced deportations after the ballot. The Commission received more than 4,000 reports of torture and ill-treatment carried out by or with the involvement of the TNI or Indonesian police. It received some 731 separate reports of property damage or other economic violations carried out with the involvement of the TNI and police (see Chapter 7.4: Detention, Torture and Ill-Treatment).

The evidence provided by victims and witnesses in interviews with the Commission, and the statistics compiled from statements compiled by the Commission strongly support the finding that members of the TNI were directly involved in a large number of serious violations during 1999.

### The responsibility of the TNI for the actions of militia groups

TNI responsibility for the actions of militia groups has three bases. First the TNI was involved in designing, recruiting, funding, arming and training militia groups. Secondly it participated in joint operations with militia groups. And thirdly, knowing the nature and scale of the violations being committed, it failed to take effective action to prevent further violations or to punish the perpetrators.

### **The role of the TNI in creating and supporting the militias**

In creating the militias the TNI drew heavily on the variety of East Timorese auxiliary forces that it had developed over the years since 1975. Several of the militia groups had in fact been in existence for a decade or more. Other militia groups recruited their leadership from officially-sponsored "civil defence" and pro-integration groups such as Wanra, Hansip and Gadapaksi. A military document dated April 1998 shows that 12 paramilitary "teams", covering every district of Timor-Leste except Dili and Oecusse, were then in existence. The pre-existing structures greatly facilitated the formation of new groups and the expansion of existing ones, and help explain the speed with which the militias were mobilised in 1999.

Senior Indonesian army officers were involved in the planning, formation and recruitment of the militias. Three senior commanders who played a significant role in forming the militia groups were Major General Adam Rachmat Damiri, the commander of the Udayana Regional Military Command (Kodam IX/Udayana) which covered several provinces of central and eastern Indonesia, including Timor-Leste, Colonel Suhartono Suratman who was the TNI Commander of

the Sub-Region (Korem) of Timor-Leste, and Lieutenant Colonel Yayat Sudrajat a Kopassus officer who was the commander of the intelligence task force Satgas Tribuana VIII which was deployed in Timor-Leste in early 1999. The Commission was given access to materials collected by UN international investigators working for the Serious Crimes Unit in Dili. The Commission believes the witness statements taken by the UN investigators provide highly reliable evidence. It is satisfied that the statements of eyewitnesses and participants at meetings between pro-integration figures and senior members of the TNI and the central and local governments are accurately summarised in the following passages from the indictment of eight senior Indonesian officials filed by Timor-Leste's Deputy General Prosecutor for Serious Crimes in February 2003.<sup>26</sup>

1. In or about August 1998 [the commander of Region IX Udayana, Major General] Adam Rachmat Damiri arranged for a pro-Indonesian East Timorese leader to fly from East Timor to Denpasar, Bali for a meeting. At this meeting, Damiri told the East Timorese leader to establish a group to promote integration.
2. In or about August 1998 Damiri travelled to Dili and met with TNI commanders and pro-Indonesian East Timorese leaders. [The commander of Korem 164, Colonel] Suhartono Suratman was present at this meeting. Damiri told the group that international attention was focused on East Timor and this was a problem for Indonesia. He told them that they needed to come up with a plan for creating organisations that would spread pro-Indonesian sentiment throughout East Timor. He told them that they must form a solid civil defence force based on previous TNI-supported models and that this force should be expanded and developed to protect integration.
3. In or about November 1998 Damiri travelled to East Timor. During this visit he again met with pro-Indonesian East Timorese leaders in Dili, including individuals who later became leaders of militia groups. Damiri asked the men to join together and assist TNI to fight the pro-independence group Revolutionary Front for an Independent East Timor [Frente Revolucionaria de Timor Leste Independente, Fretilin]. During this meeting with pro-Indonesian leaders, Damiri praised future militia leader Eurico Guterres as being a young man eager to fight for integration and said that he was willing to give Guterres 50 million rupiah to begin his work.
4. In or about November 1998 Suratman met with pro-Indonesian East Timorese leaders at his headquarters in Dili. [Tribuana commander, Lieutenant Colonel] Yayat Sudrajat was present at this meeting. Suratman told the group that he wanted future militia leader Eurico Guterres to form a new organisation to defend integration similar to the pro-Indonesian youth organisation Gadapaksi.
5. In early 1999 [Major General] Zacky Anwar Makarim [who was head of the armed forces intelligence agency, BIA, until January 1999] received the founding members of the pro-Indonesian East Timor People's Front [Barisan Rakyat Timor Timur – BRTT] at his office in Jakarta. During the meeting he said that guerrilla warfare would be necessary to overcome independence supporters if the autonomy option lost at the ballot.
6. In or about February 1999 Damiri met with pro-Indonesian East Timorese leaders at Regional Military Command IX headquarters in Denpasar, Bali. Damiri told the men that TNI was ready to give secret support to pro-Indonesian forces. He explained that it must be secret in order to avoid international scrutiny and criticism. Damiri asked the men to gather East Timorese who had served in TNI. He told them that they should meet with Suratman for further instructions.
7. In or about February 1999 Suratman met with a pro-Indonesian East Timorese leader in Dili. He told him that because TNI was under a reformist regime, it could not take part in open operations against the independence movement. Suratman asked the pro-Indonesian leader to form a militia group. Suratman said that TNI was willing to provide any form of assistance required by militia groups.
8. In early 1999 [the Governor, Abilio] Soares encouraged the District Administrators [Bupati] to form militia groups in their districts. Some of these District Administrators became militia leaders.<sup>27</sup>

In early 1999 the then TNI East Timor (Korem) Chief of Staff, Lieutenant Colonel Supardi, was quoted as saying that the TNI had recruited 1,200 militiamen and would continue recruitment until March.<sup>28</sup> In addition to using financial incentives to encourage recruitment, the TNI used threats and coercion. Targets were established for the recruitment of militia members in each district, of approximately 10 men per village.<sup>29</sup> There are approximately 450 villages in Timor-Leste.

#### *TNI endorsement of the militias*

Members of the TNI and Indonesian administration conferred official status on the militias. They did this, for example, by attending and addressing audiences at militia inauguration ceremonies and rallies throughout Timor-Leste. The Sub-Regional Korem commander, Colonel Suratman, met and gave "guidance" to members of the Besi Merah Putih (BMP) militia at the Liquiça District Military Command (Kodim) headquarters on 16 April 1999, ten days after the massacre of civilians by members of the BMP, TNI and police at the Liquiça Church, and one day before the militia attacks in Dili in which BMP militia also took part.<sup>30</sup>

As already noted, the East Timor Sub-Regional Military Commander, Colonel Suratman and other military officers, including the then Assistant for Operations to the Army Chief of Staff, Major General Kiki Syahnakri, were present at the rally in front of the Governor's Office in Dili, on 17 April, at which militia leader Eurico Guterres addressed militiamen and encouraged them to kill "those who have betrayed integration".<sup>31</sup> The subsequent killings are also referred to above.

TNI officers attended and participated in militia inauguration ceremonies were in Cassa (Ainaro) on 12 December 1998; Same (Manufahi) on 11 March 1999; Viqueque (Viqueque) on 11 March 1999; Dili (Dili) on 17 April 1999; Maliana (Bobonaro) in April 1999; Suai (Covalima) in mid-April 1999; Oecusse, (Oecusse) on 1 May 1999; Lolotoe (Bobonaro) on 10 May 1999; Laclubar (Manatuto) on 18 May 1999; and Gleno (Ermera) in April or May 1999. The District TNI commander, district police commander and district administrator attended and participated in these ceremonies in their respective districts.

#### *The recognition of militias as part of the formal security structure*

In addition to these public demonstrations of support, the Indonesian authorities gave the militias official endorsement by treating them as part of the formal auxiliary military structure. In official internal communications, militia groups were regularly referred to as being part of existing civil defence groups, Wanra, Hansip or Ratih. A letter signed by a Kopassus officer in the district of Baucau, dated March 1999, refers to the militia groups Saka, Sera, and Alfa as "Ratih".<sup>32</sup> From April 1999, militia groups were also officially recognised as Pam Swakarsa (voluntary civil security organisations).<sup>33</sup> Classifying the militias as officially-recognised civil defence groups was intended to provide a legitimate basis for TNI and government support to them. In fact it provided evidence that the TNI and Indonesian government recognised the militia groups as official organisations acting under the authority of the government.

The official recognition of the militia groups extended all the way up to the Commander of the Armed Forces, General Wiranto, who described the militia forces as consisting of an "armed force" with a larger supporting base of "militant supporters". The degree of control exerted by the TNI over the militias is reflected in its knowledge of the exact number of weapons they possessed. General Wiranto was cited in the Report of the Indonesian Commission on Human Rights in East Timor (Komnas HAM) as saying:

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<sup>28</sup> See, for example, Kodim 1631/Manatuto, Secret Daily Situation Report, May 12, 1999 [Yayasan HAK Collection, Doc No. 23].

*The armed force is about 1,100 people with 546 weapons of various kinds, including assembled (home-made) weapons; they are joined in pro-integration organisations. The mass of militant supporters is 11,950 people, joined in opposition organisations like Besi Merah Putih, Aitarak, Mahidi, Laksaur Merah Putih, Guntur Kailak, Halilintar, Junior, Team Pancasila, Mahadomi, Ablai and Red Dragon [sic].<sup>34</sup>*

*Participation of TNI personnel in militia groups.*

The close connection between the TNI and the militias is most clearly demonstrated by the overlap in their memberships. Many militia members were enlisted TNI soldiers, a fact that has been confirmed through official Indonesian military and government documents.

- In August 1999, UNAMET officials issued a formal complaint to the chief of the Indonesian government task force responsible for liaising with the UN mission, Agus Tarmidzi, and to Major General Zacky Anwar Makarim, the military representative on the task force, that TNI personnel, specifically two named sergeants serving in the Bobonaro District Command, were also serving in the Dadurus Merah Putih (DMP) militia group. Major General Makarim acknowledged that the two men were indeed members of both the TNI and the DMP militia. In answer to the UNAMET complaint he stated that the two men had been confined to barracks. UNAMET officers stationed in Bobonaro found that this was in fact not true.<sup>35</sup>
- A 1998 document which lists 49 members of the Makikit militia in the district of Viqueque stated that six of the militia members were also members of TNI Infantry Battalion 328.
- A letter from the Aitarak militia leader, Eurico Guterres, to the TNI Dili Military District Commander (Dandim) openly requested that a particular TNI intelligence operative, 1<sup>st</sup> Sergeant Elizario da Cruz, be given permission to serve with the Aitarak militia for an indefinite period.<sup>36</sup>
- An official list entitled “List of Members of the Pusaka Special Company, Kodim 1628/Baucau”, from the District Military Command in Baucau (Kodim 1628/Baucau), dated 3 February 1999, shows that all 91 members of the Team Saka militia group in the district of Baucau were TNI soldiers, and gives their military rank and serial numbers. The list refers to the militia group as a “special company” of the TNI Baucau District Command (Kodim 1638). The commander of this militia group, Joanico Césarío Belo, was concurrently a sergeant 1<sup>st</sup> class in the Special Forces (Kopassus) and the Regional Commander of Sector A of the national militia umbrella group the PPI (Pasukan Pejuang Integrasi).
- A document setting out the wages paid to members of the Aitarak militia in Dili, dated 24 August 1999, describes payments made to 96 members of the militia group who were either TNI members or government civil servants.<sup>†</sup>
- The Commission received evidence that the following militia groups were commanded by TNI personnel, most of them linked to Kopassus:
  - DMP (Dadurus Merah Putih), based in Bobonaro, was commanded by Sergeant Domingos dos Santos
  - Team Alfa (also known as Jati Merah Putih, JMP), based in the district of Lautém, was led by Kopassus Sergeant Syaful Anwar and Lieutenant Rahman Zulkarnaen (Kopassus commander for Lautém District)
  - Team Saka, based in the district of Baucau, was commanded by Joanico Césarío Belo, who was a Kopassus sergeant
  - Team Morok, based in the district of Manatuto, led by TNI member Filomeno Lopes da Cruz.

*Violations committed by members of the TNI together with militia groups*

The Commission received strongly corroborated evidence demonstrating that it was common practice for members of the TNI to accompany militias during operations and that on many of these occasions the TNI officers ordered members of the militia to commit violations. In most cases the militia members obeyed these orders. In a smaller number of reports witnesses stated that when militia members did not obey the orders of the TNI to commit a violation, the TNI members carried out the act themselves.

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<sup>‡</sup> Sergeant Domingos dos Santos and Sergeant Julião Gomes were named in the letter as being active in the militia.

<sup>†</sup> According to the report, the 96 were each paid Rp.120,000. [See: Memorandum from Treasurer to Eurico Guterres concerning Aitarak budget, August 28, 1999 9SCU Collection, Doc #79].

Victims and witnesses provided testimony in statements to the Commission of over 2,000 different violations in which they identified members of the TNI and militia members acting together, as perpetrators. The cases reported included 761 cases of illegal killings, 968 cases of torture and mistreatment, 883 cases of arbitrary detention, 553 cases of property and economic violations and 11 cases of sexually-based violations.

Drawing on the testimony of rape survivors whom they interviewed during a field visit in late 1999, the combined team of UN Special Rapporteurs reported in late 1999 that:

[O]n many occasions no distinction could be made between members of the militia and members of the TNI, as often they were one and the same person in different uniforms.<sup>37</sup>

An East Timorese former TNI soldier told the Serious Crimes Unit that during the attacks after the announcement of the results of the ballot:

Combined Aitarak militia and TNI burned houses down in Metinaro Sub-district. The houses were burned down at random...That was because we were not allowed to leave anything from Indonesia behind in favour of the East Timorese pro-Independence people...The orders were still the same: if autonomy lost, East Timor would go back to zero...I knew that things were bad in Dili because we saw [an] enormous [amount of] smoke above Dili. We couldn't identify anymore who was TNI and who was militia, the militia were using the same weapons as the TNI.<sup>38</sup>

#### *TNI directing the actions of the militias*

In addition to the TNI soldiers who were members of militia groups many officers had roles in directing the militia. The Commission received many reports that members of the TNI who accompanied militia members during incidents in which victims were killed, tortured or suffered other violations, were directing the militia. The Commission accepts the evidence provided by many eyewitnesses, including former members of the TNI and militias, that the TNI directly controlled the actions of militia groups. The Nobel Peace Laureate, Bishop Carlos Ximenes Belo, described the attack on his house on the morning of 6 September:

*Then at approximately 9.15 a Lieutenant Colonel from Kostrad arrived...He asked: "How is the situation here?" I answered that we wanted protection to stop the militias from attacking...but others in my house heard the Lieutenant Colonel...arriving at the end of the road...He shouted at the militias that were waiting there: "Attack now, attack now! If you don't, I'll kill you." At approximately 9.30 they started to ride around my house on motorcycles, screaming and throwing stones...The youth at my house later told me the police themselves threw gasoline on the fire at the time.<sup>39</sup>*

#### *TNI arming of militias*

The TNI also provided the militias with training, weapons and operational support. The role of the TNI in arming and training militias has been confirmed by numerous sources including Indonesian government and military documents and highly corroborated eyewitness testimony.



In early February 1999 the Army Chief of Staff, General Subagyo Hadisiswoyo, said that the army was arming “Wanra” auxiliaries to help the armed forces secure East Timor.<sup>40</sup> In mid-February the armed forces spokesman in Jakarta, General Sudradjat, confirmed that guns had been distributed to the militias but insisted that “we only give weapons to those we trust”.<sup>41</sup>

At about the same time the leader of the Mahidi militia in the district of Ainaro, Cancio Lopes de Carvalho, told journalists that the TNI had given his group 20 Chinese-made SKS automatic weapons in late December 1998, which had then been used to carry out a number of deadly attacks on nearby villages.<sup>42</sup>

The list of the 91 members of Team Saka militia in the district of Baucau referred to above also detailed the type and registration number of the weapons assigned to members of the group. The weapons listed include: 1 PMI/Pindad, 19 G-3s, 56 SP-IIs, 10 SP-Is, 1 FNC, 1 M16A1, 1 AK, and 1 Mauser. The document is signed by Joanico Césarío Belo, who is identified as a First Sergeant and Commander of the Pusaka Special Company.<sup>43</sup>

A document entitled “List of Team Makikit Members Authorised to Carry Weapons,” prepared by the TNI District Military Command (Kodim) in Viqueque, lists more than 49 members of the Makikit militia and specifies the type and registration number of the weapon assigned to each member. The weapons listed include 3 M16A-1s, 35 SP-1s, and 11 Garands. Although there is no date on the document, a note in the margin states that it was found at the Kodim headquarters in Viqueque on 28 October 1998.<sup>44</sup>

In April 2000 a leader of the Sakunar militia group in Oecusse, Laurentino Moko, reportedly testified in an Indonesian court that he had been given guns in 1999 by two Kopassus officers.<sup>45</sup>

In his trial for crimes against humanity before the Special Panels of the Dili District Court, the Team Alfa militia leader Joni Marques testified that he had been trained by Kopassus since 1986, and had received weapons from Kopassus officers after the 30 August ballot.<sup>46</sup> Marques and others were convicted of crimes against humanity for the killing of nuns, priests and others on 25 September 1999. In its judgment in the case the Dili District Court concluded: “Kopassus Special Forces provided weapons and training to the members of Team Alfa”.<sup>47</sup>

#### *TNI training of militias*

In a telegram to all TNI District Commanders dated 13 April 1999 and marked “secret” , Colonel Suratman, the Sub-Regional (Korem) commander for East Timor recognised that the militias (referred to as “Ratih”) were being trained by TNI personnel in all districts. This provides strong evidence that the programme of support of the militias was being controlled and conducted from at least the level of the East Timor Command. Colonel Suratman ordered the District Commanders to:

Carry out security precautions and activities in the context of each Ratih training session to ensure that such activities proceed smoothly [and] insist on strict order and discipline in order to prevent any losses, physical or non-physical, inside and outside the training unit.<sup>48</sup>

In another document, identified as a TNI intelligence report from the Liquiça District Military Command (Kodim), dated 18 April 1999, the writer described a visit by Colonel Suratman to that district. The document states that Suratman addressed a large gathering of Besi Merah Putih militia members who had gathered at the TNI Sub-district Military Command (Koramil) post at Maubara (Liquiça) only two weeks after members of the same militia group, together with TNI and police, had killed scores of unarmed civilians in the Liquica Church compound.

On April 16, 1999 at 1400 hours, the Dan Rem 164/WD [Commander of the Sub-Regional Command, Colonel Suratman] and his entourage arrived at the Kodim headquarters in Liquiça. Later he visited Koramil post 1638/Maubara in order to offer words of guidance to some 500 BMP members there.<sup>49</sup>

*Official use of TNI installations by militia groups*

In a telegram dated 18 April 1999 the TNI Commander of the Dili Military District Command (Dandim), Lieutenant Colonel Endar Priyanto, reported to his superior officer, Colonel Tono Suratman, that:

At 1315 hours on April 18, 1999 one element of the Aitarak forces finished their cleansing operation and returned to Company B of Battalion 744/SYB where they joined the other Aitarak groups who had gathered there earlier. They then returned to the Tropical Hotel.<sup>50</sup>

This report is dated just one day after the militia rally in front of the Governor's Office in Dili where the militia leader Eurico Guterres, in the company of senior TNI and government officials, exhorted members of the militias to kill independence supporters. The report refers to militia using the TNI base as an assembly point before and after "cleansing operations" just one day after the deadly attacks carried out after that rally, in which militia killed at least 12 people at the Dili home of Manuel Carrascalão.

In the district of Lautém Kopassus (Special Forces) shared its headquarters with the Team Alfa militia group and provided it with logistical support and transportation.

In at least two sub-districts in the district of Covalima the Laksaur militia headquarters were located inside the sub-district military headquarters (Koramil). A UNAMET team visited one of these militia bases inside the official TNI compound in June 1999.<sup>51</sup>

In Liquiça, the Koramil in Maubara also served as the Besi Mera Putih militia headquarters.

Militia groups used official TNI headquarters as their bases across the entire territory.<sup>52</sup>

Weapons were provided, and control over their use maintained by the TNI.<sup>53</sup> The Commission received many reports of militias being armed with modern weapons of the same make and model used by Indonesian military and police.<sup>54</sup>

The Commission reviewed and accepted evidence in witness statements and documents collected by the Deputy General Prosecutor for Serious Crimes in Timor-Leste concerning a meeting in March 1999 whose participants included Colonel Suhartono Suratman and Lieutenant Colonel Sudrajat, the Kopassus officer who was in command of the intelligence task force Satgas Tribuana VIII, and the civilian governor Abilio Soares.<sup>55</sup> At the meeting Abilio Soares told pro-autonomy leaders that the TNI and he would supply them with weapons and funding. Weapons were subsequently delivered to militia by Lieutenant Colonel Sudrajat.

In April 1999 Major General Zacky Anwar Makarim, who was the military representative on of the PT33 task force assigned to provide liaison with the UNAMET mission, offered to supply militia groups with automatic weapons and gave instructions to Colonel Suratman for this to be done. Colonel Suratman ordered Lieutenant Colonel Sudrajat to organise the distribution of firearms. Weapons were subsequently supplied to the militias by Kopassus personnel.<sup>56</sup>

*Provision of financial and material support by the TNI and other agencies*

There is substantial evidence indicating that the Indonesian civilian and military authorities funded the militias and provided resources for their use. An estimated US\$5.2 million was spent on the “socialisation” programme aimed at convincing the population that they should vote to remain with Indonesia. Approximately US\$400,000 was allocated per district. A portion of this amount was set aside for the payment of militia groups through the Indonesian civilian administration.<sup>57</sup> Standard budgets for the “socialisation of autonomy” were drawn up by each district, containing allocations for the militias, and submitted to the Governor for approval.<sup>58</sup> Additional funds were provided through other arms of the Indonesian government and the TNI.

The Commission has inspected a number of documents which contain budgets and militia claims, signed by militia leaders, addressed to both government officials and TNI officers. It is satisfied that the funding for the militia groups was drawn substantially from the allocation of funds from the World Bank “social safety net” programme, which was supposed to be delivered to vulnerable groups.<sup>59</sup>

There is also evidence that the pro-integration political groups, the FPKD (Forum Persatuan Demokrasi dan Keadilan, United Forum for Democracy and Justice) and the BRTT (Barisan Rakyat Timor Timur, People’s Front of Timor-Leste), both of which had close ties to the civil administration, were used to channel funds from the government and the military to the militia (see Part 4: The Regime of Occupation).<sup>60</sup>

The FPKD was chaired by the district administrator of Dili, Domingos (Koli) Maria das Dores Soares, while the BRTT’s chairman was Francisco Lopes da Cruz, the former UDT president who had been Deputy Governor of East Timor in the early years of the occupation and who in 1999 was a roving ambassador with a brief to promote Indonesia’s case on East Timor internationally.<sup>61</sup>

*Ability of the TNI to control the militias and the level of violations committed*

The supreme commander of the TNI, General Wiranto, himself appeared to indicate on a number of occasions that the TNI were in a position to order the immediate disarming of militias if they wished to do so. In his statement to the Serious Crimes Unit, the Special Representative of the UN Secretary-General in the UNAMET mission, Ian Martin, stated that during a meeting on 7 July 1999 in Jakarta:

*I clearly recall General Wiranto telling me that if Falintil was ready to surrender its weapons to the Indonesian police, he could guarantee that the militia would be disarmed within two days...I believe this was not the only occasion General Wiranto said this.*<sup>62</sup>

A member of the United Nations Civilian Police during UNAMET, Stephen Polden, gave evidence to the Serious Crimes Unit that he had observed a plainclothes TNI officer’s apparent ability to call off a further militia attack on the Maliana UNAMET compound on 29 June 1999.<sup>63</sup>

The large body of witness and documentary evidence demonstrating that the militias were under the control and direction of the TNI is corroborated by the fact that the TNI was able to bring about a lull in militia violence at particular times before the poll, notably during visits from international dignitaries and, particularly important, monitoring agencies.

On 28 January 1999 Colonel Suratman issued an order to all of the TNI District Commanders in which he clearly assumed that the TNI commanders in each district had control over the militias, including their weapons, and that they could recall the militias and confiscate their weapons at

will. The order also indicated that the TNI commanders had a role in ensuring that the militias were armed appropriately when undertaking combat operations and other tasks. The terms of the order refer to recent killings by militia and then directs TNI officers to prevent militia from carrying and using weapons which were under the control of the TNI during the forthcoming visit by representatives of the UN Human Rights Commission. It is notable that the reference to the killings is not in the context of any action taken against those militia involved in the killings, only that their programme should be halted during the visit by the human rights group.<sup>64</sup>

In the official order Suratman referred to “the planned visit by the UN Human Rights Commission to East Timor on February 9, 1999” and “a number of cases that have occurred in East Timor involving Wanra (that is, militias) that resulted in the loss of life.” It then stated:

In connection with the foregoing, you are ordered to...withdraw the weapons held by Wanra and Ratih [militia] members when they are not conducting special tasks or combat operations in your respective Kodim areas.<sup>65</sup>

In another example, on 12 April, Colonel Suratman issued an order by telegram in response to the planned visit by various “foreign guests – including Military Attaches, Ambassadors and NGOs – to East Timor, and specifically to Liquiça”, stating that “in order to avoid criticism of our territorial operations by these foreign visitors, for the time being activities should be limited to base security operations.”<sup>66</sup>

#### *Failure of the TNI to prevent militia violence*

The TNI maintained high troop levels in Timor-Leste throughout 1999 until its withdrawal in September. Troops were stationed at the district, sub-district and village level across the territory. Despite these facts, and the fact that members of TNI were present at numerous scenes of serious human rights violations, the TNI failed to prevent militia violence.

One example was the refusal of TNI commanders to intervene to prevent the massacre at Manuel Carrascalão’s house in Dili on 17 April 1999. Senior TNI officials had been present at the rally preceding the massacre, where Eurico Guterres spoke and indicated that militia were about to begin “cleansing” Dili of those opposing integration. They witnessed the militia rampage through Dili. Later that day when Manuel Carrascalão went to Colonel Suratman’s house to seek his urgent assistance in preventing the militia attack on those taking refuge in his house, Suratman refused to take any action.<sup>67</sup>

Another example of a failure to provide effective security was when the TNI refused to take any steps to prevent the ill-treatment and deportation of civilians in Dili on 5 and 6 September, despite personal requests made by Bishop Belo directly to General Wiranto, the East Timor Chief of Police, Colonel Timbul Silaen, and the East Timor Military Commander, Colonel Noer Muis. Rather than take steps to prevent the deportations, TNI personnel took an active role in organising and transporting those being forcibly deported.

The Commission considers that there is no substantial evidence to support the proposition that the Indonesian security forces were unable to prevent the violence of the militia groups. Further, the Commission considers that there is a large body of strongly corroborated evidence to support a finding that they could easily have stopped the violence but chose not to do so. In fact it was not an issue of preventing the violence, as the Indonesian security forces were in fact orchestrating and participating directly in it. There is no other plausible explanation for the widespread failure of TNI soldiers to attempt to disarm militia members who violated the Indonesian law and presented a serious threat to security by carrying weapons openly in public.

A former United Nations international staff member of the UNAMET mission gave evidence about his request to a TNI soldier to arrest militia members carrying grenades after the imposition of martial law:

*He [the soldier] said to me: "We don't have orders to do that." I was shocked by that, and placed a great deal of significance on that...[T]o me it meant that they had orders not to arrest them, because it was illegal to carry arms. You wouldn't need orders to arrest people who were carrying arms, but you would need contrary orders not to arrest them.<sup>68</sup>*

In August 1999 there were 17,941 regular TNI troops stationed in Timor-Leste. In addition, there were more than 6,500 Indonesian police on active duty. The TNI are a modern army, equipped with modern weapons with the readily available backing of aircraft, helicopter gunships, artillery and other heavy military hardware. The Indonesian military had demonstrated its willingness to use the full array of this equipment in Timor-Leste throughout the 24-year period of occupation. The police also were equipped with modern weapons, tear gas and other equipment suited to controlling illegal behaviour. The militia groups were a relatively untrained, hastily formed group of largely uneducated East Timorese, many of whom were very young.

If there had been any serious attempt by the Indonesian security forces to control the violent acts committed by the militias, then, at the very least, there would have been armed confrontations between the members of the Indonesian security forces and militia groups and large numbers of arrests made by the police. There were no such confrontations, nor were there large numbers of arrests, despite the presence of thousands of police and the commission of thousands of offences under the Indonesian criminal code. The Commission finds the explanation that a force of over 20,000 organised, well-armed military and police could not control a much smaller group of non-professionals to be totally implausible, made even more so by the absence of any evidence of any serious attempts to prevent the violence or punish those responsible.

#### TNI knowledge, threats and warnings before the mass violence in September 1999

Several warnings issued well before the ballot foreshadowed the destruction and violence that followed the announcement of the result. The TNI military commander for East Timor, Colonel Tono Suratman, told an interviewer for an Australian television programme three months before the vote:

*I want to give you this message: if the pro-independence side wins, it's not going to just be the Government of Indonesia that has to deal with what follows. The UN and Australia are also going to have to solve the problem and well, if this does happen, then there'll be no winners. Everything is going to be destroyed. East Timor won't exist as it does now. It'll be much worse than 23 years ago.<sup>69</sup>*

In addition the Serious Crimes Unit received evidence that in June 1999 Colonel Suratman held a meeting in Dili at which he told TNI soldiers and militia that if the East Timorese people opted for independence in the Popular Consultation everything that Indonesia had given Timor-Leste would have to be destroyed, that a scorched earth policy would be carried out so that an independent Timor-Leste would have to start with nothing, and that these orders would have to be carried out by all forces in Timor-Leste.<sup>70</sup>

The extent to which these warnings represented a fixed government policy on the consequences of a vote for independence rather than mere threats designed to secure a pro-integrationist result

is not clear.<sup>\*</sup> However, the fact that they were issued by a senior military officer after the signing of the 5 May Agreements at the very least demonstrates a partisanship that was at odds with Indonesia's obligations under the agreements. Moreover, the fact that the warnings were indeed borne out in the violence and destruction committed by the TNI and its militia allies after the ballot indicates that they were not simply empty threats.

#### The failure of the TNI to punish perpetrators/ institutional rewards to those involved

The Commission considers that the TNI's almost total failure to investigate or discipline any of its members for their actions in Timor-Leste in 1999, despite ample evidence of the direct involvement of TNI troops in violations, indicates that the senior levels of the organisation did not consider that these violations should be punished. Taken in combination with the other evidence of direct and indirect participation discussed above, the Commission concludes that the TNI personnel who committed violations were not punished because in participating in the violence they had been acting in accordance with, not in contradiction to, their orders.

According to the principle of command responsibility, the failure of the senior TNI commanders to prevent those under their command and control from committing violations and to punish those responsible, when they had direct knowledge that the violations were being committed makes them responsible and accountable for the violations committed.<sup>†</sup>

Not only were the perpetrators and their commanders not held to be legally accountable, they were not even punished through institutional mechanisms. It would be expected that the failure of commanders to maintain security despite being provided with more than sufficient resources to control the situation would at least damage their careers. In fact the opposite was true. A number of senior commanders were rewarded with promotions shortly they had played a prominent role in the events in Timor-Leste. The Commission considers this to be further evidence that the senior levels of the TNI did not disapprove of the role which these officers played, but in fact approved of it.

Senior TNI officers who won promotion after the events of 1999 included:

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<sup>\*</sup> A report written by Major General (retired) H R Garnardi in July 1999 for his superior, the powerful Coordinating Minister for Political and Security Affairs, Lieutenant General (retired) Faisal Tanjung, at the very least indicates that the destruction of facilities and infrastructure was being discussed in high official circles at the time. The widely-circulated "Garnadi document" does not, however, provide conclusive evidence that a well-articulated "scorched earth" policy had already been developed by July [see also Robinson, *East Timor 1999*, OHCHR Submission to CAVR, Chapter 5.3].

<sup>†</sup> The principles of command responsibility are summarised earlier in this Part, and in detail in Part 2: The Mandate of the Commission.

- Major General Kiki Syahnakri, who as the Assistant for Operations to the Army Chief of Staff and then as Martial Law Commander played a prominent role in Timor-Leste in 1999, was promoted to Deputy Army Chief of Staff in November 2000
- Major General Adam Rachmat Damiri, who was Commander of the Udayana Regional Command (Kodam Udayana/IX) during 1999, was promoted to Assistant for Operations to the Chief of the General Staff TNI in November 1999 and has since worked on TNI operations in Aceh
- Colonel Suhartono Suratman, who was the Commander of the Timor-Leste Sub-Region (Korem) during most of 1999, was promoted to the rank of Brigadier General in August 1999 and appointed Deputy Head of the TNI information centre
- Colonel Mohammed Noer Muis, who succeeded Colonel Suratman as Korem Commander in August 1999, was subsequently promoted to the rank of Brigadier General and has served as the Deputy Governor of the Military Academy in Magelang
- Lieutenant Colonel Yayat Sudrajat, the head of the Tribuana Task Force, was subsequently promoted to the rank of Colonel and continues to serve with Kopassus.<sup>71</sup>

The supreme commander of the TNI, General Wiranto, indicated during the trial of the head of the provincial police force in Timor-Leste during 1999, Timbul Silaen, in the Ad Hoc Human Rights Court on East Timor in Jakarta, that he considered his senior officers had performed their duties well:

*I evaluate all my subordinates, the Regional Police Chief, the Regional Military Commander, and from my observations from the reports I received, because they were chosen from the best people in the police and the army, they carried out the directives I had outlined.*<sup>72</sup>

#### The role of members of the Indonesian police

The Commission has found that throughout 1999, both before and after Indonesia signed the 5 May Agreements, the Indonesian police failed to prevent or intervene in acts of violence carried out by militia groups, and only on very few occasions took action to investigate or punish such acts after they occurred. Despite the fact that there were thousands of violations committed during the period, the only action against militia groups appears to have been taken in response to international pressure, when several men were arrested and charged over the attacks on the Maliana UNAMET headquarters on 29 June and on the humanitarian convoy in Liquiça on 4 July, when UN officials were present. However, despite the seriousness of these offences, those accused received only short sentences, most of which were suspended, and the general pattern of police inaction did not change. In addition in some cases police were actively involved in violations perpetrated by militia groups and members of the TNI. The police force's elite paramilitary component, the Mobile Brigade (Brimob), were most frequently reported to have been active perpetrators of violations.

Reports of violations to the Commission indicate that during 1999 police involvement in killings, arbitrary detentions, and torture and ill-treatment reached their highest levels for the entire period 1974-1999. This is despite the fact that the 5 May Agreements had specifically given the police responsibility to maintain security for the Popular Consultation.<sup>\*</sup>

In the Commission's view the inaction of the police was not due to their inability to control the violence, but rather to their subordinate relationship to the TNI. In view of this relationship and knowing that the militiamen had the support of the TNI, and in some cases were themselves

<sup>\*</sup> CAVR Graph: gppol100x1000B400x600.pdf

members of the TNI, the police were unlikely to intervene to control their activities. The fact that the thousands of police officers all ignored widespread serious criminal offences on a daily basis is strong evidence for accepting that they were issued with orders not to intervene to arrest militia or TNI members involved in serious violations. The only logical conclusion which can be drawn from this systematic refusal to carry out normal duties is that the Indonesian police were either tacitly or explicitly involved in an arrangement with the TNI in a plan to use violence and intimidation to secure the desired result in the ballot.

Although the police were formally separated from ABRI on 1 April 1999, in practice the TNI continued to dominate the police. A former member of the Indonesian police stated:

*I saw him [the Kapolres, the Indonesian District Police Chief] as a military Indonesian officer like the Bupati and the Dandim. I say military, in fact Polri [the police force] was separated from ABRI on 1 April 1999, but that was only administratively. When it came to the work in the field nothing changed after that date*<sup>73</sup>

### Collaboration and participation of officials of the Indonesian local and central government

Indonesian government officials both in Timor-Leste and at central government level were involved in the systematic violations that occurred in 1999 in a number of ways. At the local level officials from the Governor downwards had responsibility for administering and implementing the programme for the “socialisation of autonomy”, which aside from its ostensible objective of convincing people to vote for integration, was also one source of militia funding. A number of District Administrators (*Bupati*) worked closely with the militia groups in their districts, and some at least were listed as “sponsors” of these groups on official documentation. Many Sub-district Administrators (*Camat*) were also militia commanders. The general climate of intimidation extended to the civil administration. Many witnesses provided testimony to the Commission that government employees were informed by their superiors that they must support the pro-autonomy programme or forfeit their jobs.

Central government ministers played a variety of roles during the period surrounding the Popular Consultation. Some of these roles were peripheral to programme of violations conducted by the TNI and their militia allies.<sup>\*</sup> However, others were central to the overall strategy pursued both before and after the ballot. Examples include:

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<sup>\*</sup> The Ministry of Foreign Affairs, for example, is reported to have provided funding to send a group of Indonesian NGOs to Timor-Leste to act as observers during the Popular Consultation. The UNAMET Electoral Division refused to give them accreditation on the grounds that they lacked the necessary neutrality.



- The attendance of the then Foreign Minister, Ali Alatas, at a meeting in Denpasar, Bali in April 1999 at which the role of the militias in the forthcoming months was discussed.
- The reportedly key role of the Ministry of Transmigration and Resettlement, headed by Lieutenant General (retired) Hendropriyono, who had had several tours of duty in Timor-Leste as a Kopassus officer, in the preparation of plans for the deportation of East Timorese to West Timor after the ballot.
- The involvement of Lieutenant General (retired) Faisal Tanjung, the Coordinating Minister for Political and Security Affairs, in developing the strategy for winning the vote, as well as the contingency plans in the event that the strategy failed.

*Command responsibility within the TNI*

The Commission has found that senior officers of the TNI actively participated in organising and directing the programme of mass violations. In addition there is abundant evidence that these commanders are responsible and accountable according to the principles of command responsibility. The definition of command responsibility adopted by the Commission provides that persons in positions of authority – whether military or civilian – who had effective control over the direct perpetrators of violations, and who knew or should have known of the violations, themselves become responsible when they fail to take steps to prevent or punish those violations.<sup>†</sup>

The Commission considers that those in senior positions in the TNI knew or should have known of the crimes that were being committed in Timor-Leste. This information was available through the hierarchy of the TNI itself. For example, General Wiranto gave evidence at the trial of Colonel Timbul Silaen in Jakarta that he (Wiranto) regularly received reports on the situation in Timor-Leste from various sources, including the Military Commander of Udayana/IX Region Major General Adam Damiri, the Sub-regional Military Commander responsible for East Timor, Colonel Suhartono Suratman, and the Regional Police Chief, Timbul Silaen.

In addition General Wiranto himself, as well as others, repeatedly visited Timor-Leste during 1999. On his five visits to Timor-Leste Wiranto was directly informed by senior UN officials, the media and East Timorese leaders of the acts of violence being carried out by TNI and militia groups. Following the arrival of UNAMET in June, the Special Representative of the UN Secretary-General, Ian Martin, made regular reports to Indonesian officials, and to the TNI leadership in particular, which included information concerning the involvement of the TNI and links between TNI and militia groups.<sup>74</sup> In his sworn evidence at the Commission's National Public Hearing on Self-Determination and the International Community, he said:

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<sup>†</sup> The fact that the "Garnadi document" discussing such strategic questions (see footnote, above) was addressed to General Faisal Tanjung partially confirms the latter's key role.

<sup>†</sup> Command responsibility is discussed briefly in the introduction to this Part and in more detail in the Annexe to Part 2: The Mandate of the Commission.

*I and my colleagues were constantly putting our information and concerns to the civilian and military members of the Indonesian Task Force. We met often with Major General Zacky Anwar Makarim, who General Wiranto had told me was his personal representative on the ground. Our civilian police and military liaison officers did the same, in Dili and in the districts. Information and protests were directly conveyed to General Wiranto's advisors and to the Foreign Ministry (DEPLU) by UNAMET's office in Jakarta. The diplomatic community watching East Timor from there was kept well informed. After attacks on UNAMET's office in Maliana and on a humanitarian convoy in Liquiça, I flew to Jakarta to put directly to General Wiranto our evidence of the relationship between the TNI and the militia, in a meeting on 7 July. International concern at this time led President Habibie to send his ministers to Dili, where I and my colleagues put the same concerns to Foreign Minister Alatas.*

*The Security Council was briefed regularly on the basis of our reporting, and it applied pressure on Indonesia through Presidential statements, and through meetings of its President with the representative of Indonesia. The Secretary-General's concern was conveyed repeatedly at many levels, by his Personal Representative, Ambassador Jamsheed Marker, and by senior officials. Key member states, including the USA and Australia, were kept informed in New York, in Jakarta, and when senior members of their governments visited East Timor. I do not know all the details of the various pressures which were applied by individual governments on Indonesia, but they were many.*

*The central role of Major General Zacky Anwar Makarim*

From May 1999 Major General Zacky Anwar Makarim was officially a member of the Task Force to Oversee the Popular Consultation in East Timor and from July 1999 he was Head of the Special Team/Adjutant General's Task Force. However the Commission finds that in an unofficial capacity Makarim was involved in the organisation and direction of East Timorese militia groups from at least March 1999 and most likely earlier.

Statements by former pro-autonomy leaders to the Deputy General Prosecutor for Serious Crimes indicate that the Assistant for Operations to the Army Chief of Staff, Major General Kiki Syahnakri, told East Timorese pro-autonomy leaders in March 1999 that Makarim was the person who would be responsible for organising activities in the lead-up to the Popular Consultation.

Statements of former pro-autonomy leaders to the Deputy Prosecutor for Serious Crimes also indicated that Makarim was responsible for organising the supply of weapons including automatic firearms to militia groups, through Colonel Suhartono Suratman, who was Commander of Sub-Regional Military Command in East Timor until 13 August 1999.

## Findings and conclusions:

The Commission finds the following:

1. Senior TNI officers formed the militia groups, gave them assurances that they would be funded, armed and otherwise supported by the TNI, and told them they would be used against pro-independence supporters.
2. Senior TNI officers publicly endorsed the militia groups at rallies and other public meetings.
3. TNI personnel served in these militia groups. Some militia groups were commanded by TNI personnel.
4. The TNI funded the militias. Government funds were also diverted to pay militia members. Regular payments made to thousands of militia members required significant planning, administration and coordination, involving both military and civilian officials.
5. The TNI armed the militias, and were able to withdraw the arms at will.
6. The TNI trained the militias, at official TNI bases and other sites.
7. The TNI allowed militia groups to use military headquarters as their bases, including at times immediately before and after major human rights violations involving the mass execution of civilians.
8. Members of the TNI frequently committed violations together with members of militia groups, as part of a common enterprise.
9. The TNI were able to regulate the incidence of violence at will, including the actions of the militia.
10. With very few exceptions the TNI took no action against militia members who committed violations, despite the fact that it was commonplace for militia to carry arms openly, and to kill, torture and otherwise mistreat civilians in the presence of TNI personnel.
11. Senior TNI personnel issued threats and warnings that massive violations and the destruction of property would take place after the ballot, if the independence vote won. The violence and destruction did in fact take place following the ballot, in accordance with the warnings.
12. Senior Indonesian government officials were advised to make a contingency plan which included mass evacuation and destruction of facilities and key assets, six weeks before those exact acts were carried out by TNI and militia.
13. The level of violence and destruction increased significantly after the TNI was given wider powers over events in East Timor, following the declaration of martial law on 7 September 1999.
14. Members of the TNI, police and government officials involved in the violations were not arrested or disciplined for their role as perpetrators.
15. Almost no action was taken to stop the violations, despite repeated requests from the UN and governments, and the obvious capacity to overcome any militia resistance due to vastly superior numbers and weapons used by the TNI and police.
16. A number of senior TNI officers who held command positions over troops in East Timor at the time of the violations were rewarded through promotion for their actions in Timor-Leste, despite the fact that troops under their control were involved in mass violations and failed in their duties relating to provision of security in the territory.

#### Conclusions:

The Commission finds that senior members of the Indonesian security forces were involved in the planning, coordination and implementation of a programme which included widespread and systematic human rights violations committed against East Timorese civilians amounting to crimes against humanity. These senior commanders hold both direct and command responsibility for the crimes against humanity committed.

The Commission finds that the initial purpose of the plan that was implemented was to ensure that a majority of East Timorese voted to remain part of Indonesia in the Popular Consultation

conducted in August 1999. An integral part of the plan to achieve this goal was the use of East Timorese militia groups as agents of the TNI, in an attempt to deflect charges of responsibility from the TNI itself. The TNI is institutionally responsible for forming, arming, funding, directing and controlling the actions of the militia groups. In addition a significant number of violations were directly perpetrated by serving members of the TNI, both alone and in company with militia groups. Members of the Indonesian police and civilian government officials were also involved both directly and indirectly in the systematic commission of violations. The TNI, the police and the Indonesian Government were all involved in protecting the perpetrators from accountability for their actions.

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<sup>1</sup> Regulation 2001/10 Section 13.1 (i).

<sup>2</sup> See *Prosecutor v Zejnil Delalic, Zdravko Mucic, Hazim Delic and Esad Landzo* , ICTY Case No IT-96-21, Appeals Chamber Judgment, 20 February 2001, paras 196-198.

<sup>3</sup> See eg Article 7(3) Statute of the ICTY; Article 6(3) Statute of the ICTR; and Article 28 Rome Statute for the International Criminal Court 1998.

<sup>4</sup> See Article 7(1)(h) of the ICC Statute.

<sup>5</sup> *Prosecutor v Tadic*, Appeals Chamber decision on Jurisdiction, para 134.

<sup>6</sup> CAVR Interview with Mario Carascalão, Dili.

<sup>7</sup> See *Prosecutor v Zejnil Delalic, Zdravko Mucic, Hazim Delic and Esad Landzo* , ICTY Case No IT-96-21, Appeals Chamber Judgment, 20 February 2001, paras 196-198.

<sup>8</sup> See for example Article 7(3) Statute of the ICTY; Article 6(3) Statute of the ICTR; and Article 28 Rome Statute for the International Criminal Court 1998.

<sup>9</sup> See in particular Article 68 of the Fourth Geneva Convention.

<sup>10</sup> Joint Assessment Mission, *East Timor-Building A Nation, A Framework for Reconstruction and Development*, November 1999, p. 20.

<sup>11</sup> See the Case Concerning Military and Paramilitary Activities in and against Nicaragua ( *USA v Nicaragua*), which is discussed in Part 2, The Mandate of the Commission.

<sup>12</sup> Article 3, Agreement between the Republic of Indonesia and the Portuguese Republic on the Question of East Timor.

<sup>13</sup> Article 1, Agreement between the United Nations, The Republic of Indonesia and The Portuguese Republic Regarding Security.

<sup>14</sup> Article 1(3) ICCPR and Article 1(3) ICESCR.

<sup>15</sup> Human Rights Committee General Comment 12, para 6.

<sup>16</sup> Ibid.

<sup>17</sup> Article 1(3) ICCPR and Article 1(3) ICESCR.

<sup>18</sup> Human Rights Committee General Comment 12, para 6.

<sup>19</sup> Article 3, Agreement between The Republic of Indonesia and the Portuguese Republic on the Question of East Timor

<sup>20</sup> Article 1, Ibid

<sup>21</sup> Article 4, Ibid

<sup>22</sup> Robinson, East Timor 1999, OHCHR Submission to CAVR, p 256, footnote 17.

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- <sup>23</sup> Ibid Chapter 11.
- <sup>24</sup> Ibid Chapter 10.3.
- <sup>25</sup> See Robinson, *East Timor 1999*, OHCHR Submission to CAVR, Chapter 10.10
- <sup>26</sup> Timor-Leste, Deputy General Prosecutor for Serious Crimes, Indictment of Wiranto *et.al.* February, 2003.
- <sup>27</sup> Indictment for Wiranto and others, 22 February 2003.
- <sup>28</sup> “Lt. Col. Supadi,” *Masters of Terror*, <http://yayasanhak.minihub.org/mot/booktoc.htm>
- <sup>29</sup> Robinson, *East Timor 1999*, OHCHR Submission to CAVR, p. 98.
- <sup>30</sup> See *Report of the Indonesian Commission of Inquiry into Atrocities Committed in East Timor in 1999* (KPP HAM), 31/01/2000, para 51.
- <sup>31</sup> Film footage of the event viewed by the Commission, CAVR Archive.
- <sup>32</sup> See: Komandan Satuan Lapangan-A, Satuan Tugas Tribuana VIII, to Kepala Dinas Kesehatan Tingkat-II, Kab. Baucau, “Permohonan Dukungan Obat Bulanan Pos Dan Kes Satlap-A,” (Commander of field unit A, task force Tribuana to the head of the health service Baucau district. “Request for monthly medical supplies for Field unit A health Commander” March 1999 (Yayasan Hak Collection, Doc #14).
- <sup>33</sup> Robinson, *East Timor 1999*, OHCHR Submission to CAVR, p. 94.
- <sup>34</sup> Wiranto, cited in Report of the Indonesian Commission on Human Rights in East Timor (Internal), Jakarta, January 2000, paragraph 40.
- <sup>35</sup> Document written by Ian Martin, June 1, 2003. Robinson, *East Timor 1999*, OHCHR Submission to CAVR.
- <sup>36</sup> See: Komando Pasukan Aitarak Commander of Aitarak Milita Sector B (Eurico Guterres) to Dandim 1627/Dili (Koramil 1627/Dili Commander) and others. Letter No. 46/PD/MK-AT/VI/199 concerning “Permohonan Dispensasi,” (request for dispensation) June 22, 1999 (Yayasan Hak Collection, Doc #31).
- <sup>37</sup> United Nations, *Situation of Human Rights in East Timor*, December 10, 1999, p. 12.
- <sup>38</sup> Statement of former East Timorese member of the TNI to the Serious Crimes Unit. Cited in brief of support for arrest warrants for those indicted in the ‘National Indictment.’ pp. 58-59.
- <sup>39</sup> Statement of Bishop Carlos Ximenes Belo to the Serious Crimes Unit. Cited in brief of support for arrest warrants for those indicted in the “National Indictment”. p. 59.
- <sup>40</sup> “KSAD Jelaskan Soal Sipil Dipersenjatai,” (KSAD explains why Civilians were given arms) *Media Indonesia*, February 2, 1999.
- <sup>41</sup> Cited in ETISC, *Indonesia’s Death Squads*, p. 13.
- <sup>42</sup> “Crossbows and Guns in East Timor,” *Economist*, v. 350 n. 8106 (February 13, 1999), p. 40.
- <sup>43</sup> Kodim 1628/Baucau, “Daftar: Nominatif Kompi Khusus Pusaka, Kodim 1628/Baucau,” (List: Nominative members of the special *Pusaka* company) February 3, 1999 (Yayasan Hak Collection, Doc #9).
- <sup>44</sup> Kodim 1630/Viqueque, “Daftar: Nominatif Pemegang Senjata Team Makikit,” (Nominative list of people issued with weapons for Team Makikit)” undated, but found at Kodim 1630/Viqueque on 28 October, 1998 (Yayasan Hak Collection, Doc #4).
- <sup>45</sup> Karen Polglaze, “Timor militia leader back in court,” *AAP*, April 10, 2000.
- <sup>46</sup> Dili District Court, “Judgement,” Joni Marques *et. al.*, p. 58.
- <sup>47</sup> Dili District Court, “Judgement,” Joni Marques *et. al.*, p. 53.

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- <sup>48</sup> Danrem 164/WD to Dandim 1627-1639 and others. Secret Telegram No. STR/44/1999, April 13, 1999 (Yayasan Hak Collection, Doc #10).
- <sup>49</sup> Perwira Seksi Intelijen Kodim 1638 (Office of Kodim 1638 Intelligence section) to Kepala Seksi Intelijen Korem 164/WD (Head of the Koramil 164/WD Intelligence Section), Dan Sektor B (sector B commander), and others, “Laporan Harian Seksi Intelijen Dim 1638/Lqs Periode tgl. 16 s/d a7 April 1999,” (Daily Kodim 1638/Liquica Intelligence section daily reports from 16 to 7 April 1999. April 18, 1999 (Yayasan Hak Collection, Doc #11).
- <sup>50</sup> Dan Sat Gas Pam Dili to Dan Rem Up. Kasi, Intel Rem 164/WD (Dili Security task force Commander to Commander Korem for the attention of the Korem 164/WD Intelligence section head and others. Secret Telegram No. STR/202/ 1999, April 18, 1999 (Yayasan Hak Collection, Doc #17).
- <sup>51</sup> See Timor Leste, Deputy General Prosecutor for Serious Crimes, Indictment against Herman Sedyono, *et.al.* Dili, April 7, 2003, p.12. Also Statement of UNAMET Political Affairs Officer.
- <sup>52</sup> Robinson, *East Timor 1999*, OHCHR Submission to CAVR, Chapter 7 p. 105.
- <sup>53</sup> Robinson, *East Timor 1999*, OHCHR Submission to CAVR, pp. 106-113.
- <sup>54</sup> *Ibid.*
- <sup>55</sup> See Table 2 in the Robinson Report, *East Timor 1999*, OHCHR Submission to CAVR.
- <sup>56</sup> See Timor-Leste, Deputy General Prosecutor for Serious Crimes, Indictment against Wiranto and others (the ‘National Indictment.’)
- <sup>57</sup> Robinson, *East Timor 1999*, OHCHR Submission to CAVR, p. 129.
- <sup>58</sup> Several such budgets are in the CAVR’s possession. CAVR Archive.
- <sup>59</sup> See Robinson, *East Timor 1999*, OHCHR Submission to CAVR Chapter 8 – Militias: Funding and Material Support.
- <sup>60</sup> *Ibid.*, pp. 125, 129.
- <sup>61</sup> *Ibid.*, p. 36.
- <sup>62</sup> Statement of Mr Ian Martin to the Serious Crimes Unit, *Ibid* p 54.
- <sup>63</sup> Statement of Stephen Polden provided to the Serious Crimes Unit. Cited in the brief in support of the application to the Special Panels of the Dili District Court for arrest warrants for those persons indicted in the ‘National Indictment’ p 54.
- <sup>64</sup> See: Danrem 164/WD to Dandim 1627-1639 and others. Secret Telegram No. TR/41/1999, January 28, 1999 [Yayasan Hak Collection, Doc #7]
- <sup>65</sup> *Ibid.*
- <sup>66</sup> See: Wakil Danrem 164/WD (Col. Mudjiono) for Danrem 164/WD, to DanSektor A and B, and others. Secret Telegram No. STR/43/1999, April 12, 1999 (Yayasan Hak Collection, Doc #12).
- <sup>67</sup> Statement of Manuel Carrascalão provided to the Serious Crimes Unit.
- <sup>68</sup> Statement of former UNAMET officer (name withheld) to Serious Crimes Unit, cited in Brief in support of the ‘National Indictment’ *ibid*, p 77.
- <sup>69</sup> Ross Coulthart, “Timor on the brink”, *Sunday* programme, Channel 9, Sydney, Australia. Screened June 1999.
- <sup>70</sup> Statements provided to the Serious Crimes Unit, cited in the Brief in support of the National Indictment of the SCU p. 58.
- <sup>71</sup> Brief in support p. 60.
- <sup>72</sup> Brief in support p. 84.

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<sup>73</sup> Statement given to Serious Crimes Unit, included in the Brief in support of the National Indictment of the SCU, p 40.

<sup>74</sup> Ian Martin, testimony to the CAVR National Public Hearing on the Self-Determination and the International Community, 15-17 March 2004.