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Searching for Conflict Related Missing Persons in Timor-Leste: Technical, Political and Cultural Considerations

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This paper outlines the context in which many thousands of people went missing in Timor-Leste between 1975 and 1999. The issues related to estimating the exact number of missing are discussed, followed by a review of the mechanisms implemented by the government and civil society since independence to attempt to examine and investigate the fate of missing persons. The paper then examines the technical issues involved with searching for the missing and the impact those issues have on the effectiveness of the implemented mechanisms. Further complexities related to scientific and religious and cultural beliefs when dealing with the missing are discussed. The paper concludes with questioning the to date *ad hoc* approach to the search for the missing in Timor-Leste, and providing suggestions for ways that the future search for the missing can realistically continue in light of other competing development priorities.

Introduction

Thousands of persons went missing as a result of a 25-year-long conflict in what is now Timor-Leste. Despite the importance that families place on recovering the remains of their missing relatives, only a small proportion of missing persons in Timor-Leste have been located and identified. This is due not only to Timor-Leste's limited resources, undeveloped domestic legislation and a lack of technical expertise to undertake investi-

gations to search for the missing, but also due to political reticence. The Timor-Leste political elite are conscious that the search for missing persons will raise uncomfortable questions of accountability, for both Indonesia, whose security forces are responsible for the majority of conflict-related disappearances, and members of the Timorese independence movement, including the Revolutionary Front for an Independent East Timor (known by its Portuguese acronym; Fretilin) and the Armed Forces for the National Liberation of East Timor (also known by its Portuguese acronym; Falintil). This paper summarizes the complexities associated with dealing with the missing in Timor-Leste and suggests ways forward to ensure families' right to the truth is respected.

The Missing in Timor-Leste

In 1974, Portuguese Timor was presented with the opportunity to obtain independ-

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ence. A brief and violent civil war ensued between rival political parties, which Indonesia used, in part, to justify its invasion and occupation of the territory, starting in October and culminating in a full scale invasion in December 1975. The Indonesian military occupation, resisted by an East Timorese guerrilla force and clandestine network, continued until 1999 when the East Timorese voted for independence in a United Nations (UN) sponsored referendum.

Timor-Leste's conflict-related civilian death toll has been estimated at being between 100,000 to 200,000 civilians (CAVR 2005 Part 6¹; Kiernan 2003; Staveteig 2007). There is less clarity as to the number of Timorese who went missing during the conflict and whose deaths have never been conclusively confirmed by their families. One estimate places the number of missing persons in the 'tens of thousands' (Robins 2010: 5).

'Missing persons' is a term used in international humanitarian law to apply to all people unaccounted for as a result of armed conflict or internal violence (Crettol and La Rosa 2006; see also ICRC Report 2003). In most cases families do not know the whereabouts of their family member or if they are dead or alive.

During the early years of the conflict, Timorese men, women and children went missing while fleeing Indonesian military attacks. The intensity of the attacks meant that the dead were left as they fell, making it impossible to later recover their remains. Young Timorese men and boys were recruited by the Indonesian forces as military operations assistants, many of whom, after leaving their families, were never seen again (CAVR 2005 Part 7.8). Thousands more East Timorese children were taken from their families and transferred to Indonesia. In many cases, this was done without their parents' knowledge or consent (van Klinken 2008: 65). Internal purges within Fretilin in the late 1970s also led to individuals going missing. During the Indonesian occupation, disappearance after capture or detention of individuals with sus-

pected ties to the independence movement or 'Resistance' was common. The bodies of victims would often be disposed of in a manner that made them difficult or impossible to retrieve. For example, a common execution site known as 'Jakarta 2' consisted of a sheer cliff face from which the Indonesian military would throw their victims (CAVR 2005 Part 7.2). Another common practice was to dismember or behead the body and dump it in the ocean. However, at times mutilated bodies would be placed on display in a public place in order to terrify the population (Martinkus 2001: 1–6). In some cases, families believe that their relatives are buried in known mass graves, but they do not have the resources to exhume and identify their remains (CAVR 2005 Part 7.2; KPP-HAM 2000; Tanter *et al.* 2006). Finally, a large number of Falintil and Fretilin members remain missing having either been killed and buried in the forest, or disposed of by Indonesian forces (Smith and Belo 2010). Although all parties involved in the conflict were responsible for disappearances, the primary perpetrators were the Indonesian security forces and the Timorese militia they commanded (CAVR 2005 Part 6²; Roosa 2007/2008: 572).

Post-independence, a number of transitional justice mechanisms have been established to address the legacy of the 1974–1999 conflict. Timor-Leste's two truth commissions, the Commission for Reception, Truth and Reconciliation (CAVR) and the bilateral Commission for Truth and Friendship (CTF), were mandated to investigate conflict-related human rights violations (the latter for 1999 only). Unlike some truth commissions, the CAVR and CTF unfortunately did not systematically collect information relevant to ascertaining the fate of missing persons, such as the location of possible clandestine graves, corroborating witness statements or the collection of ante-mortem data. Instead the commissions recommended that the Timor-Leste government take steps to search for and recover persons missing due to the conflict (CAVR 2005 Part 11; CTF 2008).

High-level opposition within Indonesia to addressing gross human rights violations committed by Indonesian security forces in East Timor has resulted in negligible implementation of both truth commissions' recommendations on missing persons. Indonesia has refused to cooperate with UN and Timorese-led investigations into the 1999 violence, has failed to trial suspected perpetrators within its own jurisdiction (Cohen 2003) and, in 2009, took the extraordinary step of requesting the Timorese President to return to Indonesia a former militia leader due to be tried for crimes against humanity committed in Timor-Leste (Lao Hamutuk 2009). Even the joint Indonesia-Timor-Leste truth commission established to establish the 'conclusive truth' about the violence surrounding the 1999 independence vote met with strong resistance from within the Indonesian military, despite the Commission having presidential backing (Hirst 2008). The security forces remain a powerful force within the Indonesian state. The three leading candidates in the 2009 Indonesian presidential elections - Prabowo Subianto, Wiranto and the current President, Susilo Bambang Yudhoyono - were all former military men who served in East Timor. A political elite stacked with so many former military figures, who themselves committed atrocities in East Timor, will not accept a genuine truth telling and accountability process for actions which, they felt, were justified in the name of maintaining Indonesia's territorial integrity.

The reluctance of Timorese political leaders to delve into past crimes stems from a desire to maintain a good relationship with its more powerful neighbour, a fear of creating conflict between groups living within Timor-Leste and the involvement of resistance 'heroes' in crimes committed during the conflict.

Through bilateral negotiations on the implementation of CTF recommendations, the Timor-Leste Ministry of Foreign Affairs has made repeated attempts to discuss the establishment of a Commission on Disap-

peared Persons (CDP) with their Indonesian counterparts. Such efforts have elicited a lukewarm response, confirming the Indonesian government's lack of political will to address this issue (Indonesia-Timor-Leste Senior Official Meeting 2010).

In March 2012, the National Parliament voted to defer the implementation of select CAVR and CTF recommendations, including the establishment of an Office for Missing Persons (RDTL Bill 20/II 2009). It is yet to be seen whether the new parliament, elected in mid-2012, will be more sympathetic to the idea of victim reparations and reintroduce the relevant draft legislation.

In the absence of a systematic, national search for persons missing due to the 1974–1999 conflict, a number of mechanisms have been used to investigate cases of the missing.

International Committee of the Red Cross (ICRC)

Since 1979, the ICRC has been present in Timor-Leste receiving reports of missing persons from family members. The cases of missing persons on ICRC's list have been provided to the authorities in both Indonesia and Timor-Leste according to ICRC procedure but not to either of the two truth commissions. Responses have delivered little tangible results for the families of the missing.

The ICRC also supported a national working group on missing persons, whose work contributed to obtaining government support for a Commission on Missing Persons within the Prime Minister's Office. Draft legislation on the establishment of this Commission was finalized towards the end of 2005, but the 2006 crisis and subsequent change in government resulted in the Commission being shelved (Barbara Navara, international consultant employed to revise the draft organic law, pers. comm. 27 April 2010).

United Nations Serious Crimes Process

The United Nations Transitional Authority in East Timor (UNTAET) established a Serious Crimes Unit in 2000, which was

replaced by the Serious Crimes Investigation Team (SCIT) in 2006. The two units have investigated murders, rapes and crimes against humanity committed in the context of the 1999 independence vote. To date a total of 27 individuals suspected of committing enforced disappearance as a crime against humanity have to date been indicted (Alinho 2010). Investigators have managed to exhume 293 victims and of these, identify 254 (87%) without the use of DNA testing (Alinho 2011).

Civil Society

Upon the request of veterans of the resistance struggle, Timor-Leste armed forces, working with the veterans, began exhuming known graves in the jungle (Huybens 2008: para 58). On August 28–29, 2009, the remains of 443 individuals believed to be combatants and civilians associated with the resistance were interred in the Metinaro 'Heroes of the National Resistance' cemetery and a state funeral ceremony was held in their honour (Ministry of Social Solidarity 2009). None of the bodies were subject to forensic examination and were presumably identified due to a well-marked burial site or clothes and personal effects buried with them. Sixteen of the 443 are unidentified (Virgilio Smith, President of the Commission for Tribute, Supervision of Registration, and Appeals, and Salustiano Belo, Chief of Staff for the Secretary of State for Veterans' Affairs, pers. comm. 19 May 2010).

In addition to this state-sponsored initiative, resistance leader and parliamentarian Cornelius 'L7' Gama has been working to exhume the bodies of Falintil fighters who were killed and buried in the jungle while under his command. He has recovered hundreds of bodies, the majority of which have been claimed by families. Gama and the families are waiting for the government to decide on whether these bodies should be interred in official heroes' cemeteries. Following the 2011 announcement by the Secretariat of State for National Liberation Combatants (Veterans' Affairs) a number of ossuaries have been constructed across the

country for the 1974–1999 conflict 'heroes'. Such acts may be linked to pressure from the veterans' lobby (STL 2011).

A collaborative initiative between the 12th November Committee and forensic anthropologists from the Victorian Institute of Forensic Medicine and The Argentine Forensic Anthropology Team (the International Forensic Team or IFT) worked with families of those missing following the November 12, 1991 Santa Cruz Massacre. Based on information provided by families and witnesses, exhumations were carried out at one site but showed no evidence of clandestine graves. Further exhumations were undertaken by the IFT of 19 unmarked graves in a formal cemetery. Of the 16 bodies recovered (4 graves were empty), 12 have been identified through forensic examinations of the bodies and comparison of DNA between the remains and relatives of the Santa Cruz missing (Blau and Fondebrider 2010). This project has demonstrated to families and the government how forensic science and medicine can be used to identify human remains. The results of this work prompted the government to request the IFT to conduct a forensic survey of an area long suspected to contain clandestine graves prior to commercial development on the site. Two mass graves containing a total of nine bodies have already been found and two individuals positively identified (Everingham 2010). Families with sufficient personal resources have also independently worked to locate and re-bury the remains of missing relatives.

Why is Searching for the Missing Important?

Regardless of the context and geographical location, it is the families of victims who, without information about the whereabouts of their missing relative, suffer. Not knowing the whereabouts or fate of a relative or friend has ongoing social, emotional and legal consequences (Tidball-Binz 2006). Knowing the fate of a missing relative and confirming their identity may be required to initiate mourning, perform traditional death

rituals and create a formal grave thereby allowing families and communities closure. Legally, identification may be required to aid in effective prosecution, to facilitate settlement of estate and/or inheritance issues or to allow the remaining partner to re-marry (Blau and Hill 2009).

It is culturally, spiritually and psychologically very important to recover the remains of the dead for proper burial. The CAVR reported that, 'a cause of continuing deep anguish to relatives and friends is that the victim's remains have never been recovered' (CAVR 2005 Part 7.2: para 9).. A recent 2010 ICRC study indicates that families are still desperate to learn the fate of their missing relative, and if s/he is dead, recover the body of their loved one for proper burial (Robins 2010).

Spiritual and religious beliefs surrounding death in Timor-Leste play a significant role in the need for families to ascertain the fate of their missing relatives. Death rituals play an important social role, binding communities and families by the creation of reciprocal arrangements, while at the same time representing a spiritual act to ensure the deceased family member can transition to the afterlife (Field 2006).

Timorese retain strong beliefs in the power of deceased ancestors (Babo-Soares 2004). The spirits of family members who suffered a violent death or were not buried with the appropriate ceremony will continue to cause problems for living relatives until the spirit is avenged or the proper ritual carried out (Rawnsley 2004) (**Box 1**). Many families perceive the recovery and identification of the remains of missing family members as vital to protecting the families' wellbeing (Robins 2010). As many of the missing are believed to have 'died for the nation' as part of Timor-Leste's struggle against Indonesian occupation, some families believe that Timor-Leste will never find peace if its leaders do not search for or provide adequate recognition to the missing³.

Because the search for missing persons touches on deep cultural and spiritual beliefs, the search process could serve as a

In 2011, four families obtained information about the alleged burial location of their relatives who were believed to have been killed by the Indonesian military in the late 1970s. The families exhumed the grave and recovered the remains themselves. Based on the recognition of clothing, one of the families ('Family 1') claimed a set of remains and buried the individual. The remaining three families sought a different approach requesting scientific validation of identity. In interviews with forensic experts, two of the three families told independent stories about how their family members were sick because Family 1 buried the wrong person. They stressed how imperative it is for their family's wellbeing that they get the right body returned to them for burial (Family members of Santa Cruz massacre victim, pers. comm. 2011).

Box 1: Putting Loved Ones to Rest to Protect the Living

powerful symbol for reconciliation in Timor-Leste. Locating missing persons will require cooperation between the opposing sides of the 1974–1999 conflict and could generate consensus on how to deal with remembering the past conflict.

Different Truths

Epistemological differences in 'knowing' are clear when considering claims of 'truth' about the location and identification of the missing in Timor-Leste. The Western scientific approach to locating the remains of a deceased person and confirming identification relies on physical proof entrenched in the principles and techniques of forensic science and medicine. These systematic methods often confront and clash with the cultural and spiritual approaches to investigating the missing in Timor-Leste. Forensic experts have met with resistance from families when providing scientific reasons for the lack of evidence for the presence of graves containing bodies. Families attributed the absence of evidence of a grave to the fact that the appropriate rituals were not performed at the correct time. Some of the families pursued their own approach to finding the bodies which involved the use of

a medium to call the spirits of the dead to guide them to potential locations of graves (Blau *et al.* 2011).

In cases where the skeletal remains of missing persons have been recovered, differences in verifying identification are evident. While physical proof in the form of fingerprints, dental records or DNA data are required for a scientific positive identification, in cases in Timor-Leste where families are convinced that the remains are those of their missing relative, physical data disproving identification may not be accepted (Blau and Hill 2009) (**Box 2**).

Another example of the clash between science and belief are the dreams that very often families mention in the interviews undertaken to collect ante-mortem information. In one example from the international forensic team's work in Timor-Leste, a family reported two brothers missing. While one skeleton recovered by the IFT produced a DNA profile, the lack of discrimination power of DNA and the limited anthropological data meant it was not possible to determine which of the family's sons had been recovered. A final conclusion was made by the father, who indicated his eldest son had come to him in a dream indicating his remains would be found.

Conducting a death ritual in the absence of a body is possible and occurs often after family members are visited by the spirit of the deceased who communicates the circumstances of their death and requests proper burial (Robins 2010). However, families who still feel ambiguity about the fate of missing relatives cannot carry out death rituals as carrying out the ritual is akin to killing the person. The famous example of this is Lu Olo, a prominent ex-resistance fighter whose family buried him 'in spirit' after they presumed he was dead. When he returned to his family after the conflict was over, they had difficulty accepting that he was alive and not a ghost because they had already carried out his death rites (Rawnsley 2004).

Spiritual beliefs can assist families in putting the uncertainty and pain surrounding

Francisco da Silva ('Chico') was a national bodybuilding champion and a high school student. He has not been seen since he participated in a pro-independence demonstration on November 12, 1991 that ended in the Santa Cruz Massacre. His family believe he was shot in the temple and chest and, still alive, taken to the Dili military hospital where he was subsequently stabbed by Indonesian soldiers who came into the ward (Amnesty International 1997). Chico's family obtained information that he was one of a group of individuals buried in a clandestine grave at a cemetery at Hera. According to Chico's uncle, the family had opened the grave they believed was Chico's, placed Chico's clothes over the remains and then covered the grave. When an international forensic team undertook investigations at the Hera cemetery, in the presence of members of Chico and other missing persons' families, they recovered the clothes and attempted to formally identify the remains (Blau and Fondebrider 2010). Despite the results of the DNA analyses excluding the remains from being Chico, the uncle continued to believe the remains were his nephew. The forensic proof to him was irrelevant.

Box 2: Determining the Truth: Faith or Science?

the fate of missing relatives to rest. However, any future search mechanism in Timor-Leste must find a balance between the spiritual and the scientific. Families could not ethically be allowed to claim a body based on belief alone, as this potentially denies another the right to receive the remains of their missing relative.

Practical Challenges to the Search for the Missing in Timor-Leste

The length of the conflict and high numbers of missing persons make recovery and identification challenging. For example, the majority of missing cases involve individuals who disappeared between 11 and 30 years ago. Over time, information about the details of the disappearance becomes lost or distorted and once the remains of deceased individuals are skeletonised, this limits the amount of forensic data available for identification. The

potentially huge number of missing persons, who are more than likely to be deceased, means that the establishment of any search mechanism will require a long-term and resource-intensive commitment from the Timorese government.

Currently, Timor-Leste has neither an adequate legal framework nor forensic resources to search for missing persons. Timor-Leste has not yet developed legislation to govern forensic procedures including the exhumation, identification and reburial of human remains, or promote families' right to know the truth about the fate of missing loved ones. The law applied in Timor-Leste is Indonesian law, as it stood in October 1999, until replaced by new Timor-Leste law (Article 3 (1), UNTAET Regulation 1/1999, 27 November 1999). Despite this, court actors and lawyers rarely seek out Indonesian law in order to fill gaps in Timor-Leste legislation. This paper will not examine Indonesian law as it has little practical application.

Under the Timor-Leste criminal procedure code the Office of the Prosecutor General is the agency responsible for directing criminal investigations (Timor-Leste Criminal Procedure Code 2005: Articles 48 and 57). The code provides for judges and prosecutors to request medico-legal examinations 'according to the decree regulating such examinations' (Timor-Leste Criminal Procedure Code 2005: Article 150). This decree has not yet been created. Technically, therefore, exhumations can only be authorized in the context of a criminal investigation but in practice this requirement is overlooked. An informal arrangement currently exists whereby the Prosecutor General will authorize the police and IFT to carry out exhumations of suspected burial sites on a case-by-case basis if there is cause to believe the exhumation will lead to the recovery of missing persons. The use of and access to personal information, such as genetic information collected during the search for missing persons, also remains unregulated by law. The Timor-Leste Constitution provides all citizens with the right to access personal

data about themselves and states that the law shall define 'personal data' and regulate its use (Timor-Leste Criminal Procedure Code 2005: Article 38) This legislation has not yet been drafted.

As for the disposal or storage of *unidentified* human remains, the complete absence of regulation has led to a situation where bodies recovered are typically placed in body bags or plywood coffins, taken to the morgue, and stored in unrefrigerated shipping containers (Filomena Gomes and Laura Oliveria Maia, Dili mortuary staff, pers. comm. 11 May 2010). Others killed in the 1999 violence have been buried in the Kakaulidung cemetery in Dili. Neglect caused by the lack of clarity regarding who is responsible for maintaining the cemetery has now made it difficult to distinguish the individual graves, complicating future recovery and identification efforts.

While the Timor-Leste National Police (PNTL) has a team of seven forensic crime scene officers capable of performing exhumations, they are based in the capital Dili and responsible for responding to crimes in all 13 Timor-Leste districts (Mouzinho Correia, PNTL Forensic Officer, pers. comm. 5 May 2010). The team is already overburdened with the workload of day-to-day crimes and has little time for exhumations related to conflict-related crimes of the past (Timor-Leste Police Development Program - TLPDP, pers. comm. 6 May 2010). The mortuary is staffed by two Timorese forensic technicians who can prepare skeletal remains for examination but who lack the forensic anthropological training to examine the remains and provide a detailed anthropological report.

While a new mortuary facility has recently been completed in Dili, the examination, analysis and potential long term storage of human skeletal remains requires specialised skills and a dedicated secure space. The resources required to develop this infrastructure have to be considered in light of the need to first develop a basic forensic capacity to deal with everyday crimes.

A third complicating factor in the search is the failure of Indonesian security forces to cooperate by providing information regarding the fate of missing persons. This is significant as the Indonesian forces were a major perpetrator of disappearances and therefore likely to hold relevant information. For example, despite Timorese leaders' appeals for the Indonesian military to repatriate the remains of former Fretilin President Nicolau Lobato, Indonesia has provided no public response (STL 2012, Murdoch 2009). The Timor-Leste government has stated that it intends the search for missing persons to be for purely humanitarian purposes, with its objective being to identify missing persons and reunite them with family, not to identify and prosecute potential perpetrators (Ministry of Foreign Affairs 2009). Even without the threat of criminal prosecutions, it is not guaranteed that the Indonesian military will assist by providing access to military records and retired personnel.

Moving Forward: A Search Mechanism for Timor-Leste

The establishment of a national program to search for missing persons will make the recovery and identification of missing persons more equitable and credible. The current *ad hoc* approach to exhuming and identifying human remains means that only those institutions and individuals with direct access to the Prosecutor General can obtain expert assistance in exhuming suspected burial sites.

Without some form of assistance or advice from forensic experts there is the risk that poor exhumation and storage practices will make it more difficult to establish cause of death and identify victims, denying families their right to the truth about the fate of missing relatives. In addition, the absence of relevant expertise will also limit the amount of evidence of serious crimes that can be collected. When the IFT exhumed the bodies of 16 Santa Cruz massacre victims in 2009, forensic analysis identified gunshot injuries in 11 bodies and recovered bullet fragments

(Blau and Fondebrider 2010). Such important evidence in ensuring accountability for disappearances and murders committed during the conflict will not be collected if exhumations are left solely to family members and the military (Robins 2010).

One of the first steps that the government could take in developing a national program is to develop legislation on forensic procedures that would specify:

- the circumstances in which forensic samples may be taken;
- what forensic samples can be taken;
- who can authorise the taking of samples;
- who can take and analyse samples;
- the conditions under which human remains may be exhumed;
- the chain of custody for human remains;
- rules governing the treatment and storage of remains once exhumed;
- maintenance of genetic databanks;
- protection of sensitive information collected during the search for missing persons.

The law could stipulate different criteria for authorizing exhumations or the taking of forensic samples for criminal investigations, and those taken for the purpose of identifying human remains in order to return them to family members.

In addition to regulating the search itself, legislating to create special civil status of 'missing due to the 1974–1999 conflict', and an expedited procedure for creating this status, may constitute a form of recognition for a family's loss and be used to identify beneficiaries of a future reparations program. Creating this special civil status will require amendments to Timor-Leste's Civil Code 2011 and Civil Procedure Code 2006. As in Peru, this new status could afford family members of the missing the same rights as though their relative was declared dead (Peru 2008).

As noted above, in March 2012 the Timor-Leste National Parliament voted to defer the establishment of the 'Institute for Memory'

that would have included a Centre for Victim Identification. Parliamentary debate of the relevant bills, however, focused mainly on a material reparations program for conflict victims, not the search for missing persons. Now the question is whether there would be sufficient political will to re-visit the legislation and support the establishment of a Centre for Victim Identification, either independent of the Institute for Memory or part of its terms of reference, and what form that center should take.

The 2005 draft, 'Organic Law Establishing the East Timor Commission on Missing Persons' proposed that the commission be established under the Prime Minister's office. However, a missing persons institute within government ministries may raise questions about the institute's independence as the major political parties in Timor-Leste are still somewhat defined by their leaders' positions within the Timorese independence movement. Alternatively, an independent institute under parliamentary oversight or a small unit within the Office of the Prosecutor General (OPG) would satisfy independence requirements. With the former model, the parliament will have to decide – in consultation with the government – if the institute will have the power to independently carry out investigations and exhumations, or if it will be one that works in cooperation with the PNTL and Office of the General Prosecutor (OPG).

Involving the prosecutor and police in the search for missing persons will strengthen forensic knowledge and skills within both institutions and also maintain the possibility of criminal prosecutions for disappearances by treating the collection and storage of evidence the same as though for a criminal trial. However, OPG and the PNTL cannot be expected to lead investigations into conflict-related disappearances without an increase in human and material resources. The Timor-Leste OPG is already struggling to reduce a backlog of some 5000 cases and PNTL's investigators and small forensic team are hard-pressed to deal with day-to-day crimes,

let alone those that occurred from 11 to 30 years ago (Timor Post 2011).

In South Africa, a small team of five investigators and one forensic anthropologist was established within the National Prosecutor's Office. Additional forensic expertise was contracted as required and the office receives support from student volunteers and government departments. The Argentine Forensic Anthropology Team (EAAF) has provided training to unit staff. A similar model may work for Timor-Leste, provided Indonesia is not overly alarmed by the search mechanism being located within the OPG.

If Indonesia refuses to cooperate with a search mechanism within the OPG due to fear that investigations may lead to prosecutions, an independent commission for missing persons under parliamentary oversight could be established to lead the search for missing persons. Such a commission could be supported by the PNTL, Prosecutor General and National Hospital focusing specially on the identification of missing persons (exhumations, forensic testing, and storage of human remains).

Legislation related to the work of this institute or center needs to include provisions on:

- The Institute's/Center's functions, powers and structure.
- Family members' right to know the fate of their missing relative: if alive, family members should have a right to know where their relative is, and if dead, the circumstances surrounding their death, the cause of death and the location of burial. If it is possible to retrieve the remains of their deceased relative, family members should have a right to receive the remains.
- The definition of *missing person* and *family* for the purposes of determining who will be searched for and who has a right to receive information regarding a missing persons' fate.
- What information should be contained in the central database on missing persons, and how this data should be verified

- Sanctions for the improper use of personal information collected during the search for missing persons (RDTL Draft law 20/II). Article 33 of draft law 20/II Creating the Public Institute for Memory contains a general provision on confidentiality but more specific regulation will be required.

Whether an institution or a center, the entity would be responsible for receiving tracing requests, investigating the fate of missing persons, identifying potential burial sites for exhumations, carrying out exhumations in conjunction with the national police, attempting to identify any recovered human remains with assistance from the National Hospital mortuary staff, conducting outreach to inform the public about the search, and communicating with families.

In order to fulfil the above tasks the unit will require technical staff capable of managing the missing persons database, a forensic archaeologist, a forensic anthropologist, investigators, and outreach officers. Local organizations such as the Timor-Leste Red Cross – already experienced in managing tracing requests – and other non-government organizations can be engaged to assist in collecting data regarding missing persons and provide support to families throughout the search. Individuals seconded from the national police investigative unit and former serious crimes investigative staff could fulfil the unit's investigative functions. However, the absence of local expertise in forensic anthropology means that it will be necessary to seek outside assistance in developing these skills.

There are no educational institutes in Timor-Leste offering studies in forensic medicine. Experts such as the ITF could be contracted to provide further training to medical and mortuary staff, while others are supported to study forensic archaeology and anthropology overseas. If an agreement is concluded with an international forensic science/medicine institute, it should contain clear capacity building benchmarks to ensure

that local skills are progressively developed over time. In Kosovo, the UN established an Office on Missing Persons and Forensics (OMPF) which was not just mandated to determine the fate of persons missing due to the Serbian-Albanian ethnic conflict, but also to develop local expertise in medico-legal examinations (UN Mission in Kosovo nd). The Timor-Leste government could consider giving an office for missing persons in Timor-Leste a similar role. Any international forensic staff assisting the Office could also be used to train additional police and mortuary staff in forensic procedures relevant to resolving present-day crimes, create and also advise on the acquisition of appropriate laboratory or mortuary equipment.

As for the possibility of DNA testing, the government has made it clear that developing local DNA testing facilities is not a priority as long as Timor-Leste still lacks the capacity to carry out basic toxicology tests. Although very expensive, DNA testing may be required to identify human remains where forensic anthropological methods fail. Provided there are adequate storage facilities in Timor-Leste for DNA samples, analysis of blood and bone samples could be carried out by a laboratory overseas. DNA testing of the 16 Santa Cruz massacre victims was carried out in Argentina and Australia and was subject to a memorandum of understanding (MOU) specifying how the samples and the test results could be used (Blau pers. comm. 2010).

Although under current conditions the establishment of a national mechanism to search for and identify missing persons in Timor-Leste is a daunting task, if a staged approach is taken to the search – establishing a series of pilot projects surrounding a particular event, such as the August 1983 Kraras or the November 1991 Santa Cruz massacres – experience and skill can be developed gradually. Investigators will have a finite number of victims and families so there will be greater chance of positively identifying any bodies recovered.

Conclusion

Discovering the truth about the fate of missing persons is of great importance to the families of missing persons and their communities. In addition to the fundamental right of families to learn the truth about what happened to their disappeared relatives, many Timorese believe that failure to lay their relative's spirit to rest will cause problems for the living, and even pose a barrier to peace in Timor-Leste.

There are a number of variables which make the search for missing persons in Timor-Leste challenging: these include the scale of the investigations (that is, the large numbers of persons who went missing), the time lag between disappearance and investigations, the circumstances in which persons disappeared and Indonesia's reluctance to disclose information about disappearances. Coupled with the absence of a legal framework and minimal technical capacity to address the issue of missing persons, the infrastructure needed to undertake a search for missing persons will require significant, long-term investment.

However, provided the process of searching for missing persons effectively involves the families of victims and other relevant parties (which may include witnesses, perpetrators and their communities), and manages, in collaboration with other agencies, to respond to the different community and government needs, there is a real potential that the search for missing persons can contribute to reconciliation in independent Timor-Leste.

Although Indonesia's involvement is important in obtaining information about the fate of persons disappeared by Indonesian security forces and their militia, there is much evidence in Timor-Leste that can be collected and preserved to assist in the search for persons missing due to the 1974 – 1999 conflict. While justice in the form of prosecutions remains unlikely at present, the systematic and ongoing collection and storage of information pertaining to missing persons is vital for families who need the truth. It will

also contribute towards establishing a historical record of the conflict in Timor-Leste.

Time is running out as family members and witnesses alike grow older, their memories of the disappearances fading and finally being lost forever with their death. If the Timor-Leste government does not act soon to record information that can help with the location and identification of missing persons it may become too late. Such inactivity has significant social implications not only for those individuals affected but also for the creation of an accurate historical record for Timor-Leste.

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Notes

- ¹ Part 6 of the report, *The Profile of Human Rights Violations*, para 8 estimates civilian death toll at a minimum of 102 800 +/-12 000.
- ² The statistics in the CAVR report can only provide a general overview of human rights violations perpetrated as the data sample comprises of those people who chose to testify to the CAVR and is not representative of the Timorese population. Only the mortality survey, aimed at estimating the total number of conflict-related deaths, applied proper statistical techniques in reaching its final estimate of 102 800 +/-12 000 deaths.
- ³ Views expressed by a father whose son went missing after the 1991 Santa Cruz massacre at the launch of ICRC's report, "Needs of Families of the Missing in Timor-Leste", 17 May 2010.

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
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