

ACCESS POLICY FOR CAVR ARCHIVES

1. Background

Our aim is to promote the widest possible access to the CAVR Archives but to protect the rights of individuals who have provided information to or given testimony about human rights abuses in East Timor during the period 1974-1999.

This policy has been prepared to provide direction to access of our archives under the Post-CAVR Interim Secretariat.

2. Legal framework

CAVR was established under the UNTAET Regulation 2001/10 as an independent authority, not subject to the control or direction of any member of Cabinet, whose mandate included the organisation of its “archives and records, as appropriate, for possible future reference, giving special consideration to:

- (a) whether the materials or information should be made available to the public of East Timor, either immediately or when conditions and resources allow;
- (b) The measures necessary to protect confidential information provided to the Commission under Section 44.2; and
- (c) The measures necessary to provide for the ongoing safety of individuals.”¹

Section 162 of the Constitution of the Democratic Republic of East Timor states that:

- (a) “it is incumbent upon the Commission for Reception, Truth and Reconciliation to discharge functions conferred to it by UNTAET Regulation No. 2001/10 ” and
- (b) “the competencies, mandate and objectives of the Commission shall be redefined by the Parliament whenever necessary”²

CAVR, under UNTAET Regulation 2001/10, has been given a clear direction regarding access to its archives. A post-CAVR authority will be subject to the parliament and any directions it might give in relation to access to the national archives.

Further direction is given in the Constitution under Sections 38 and 40.

2.2 Section 38 (Protection of Personal Data)

- 2.2.1 “Every citizen has the right to access personal data stored in a computer system or entered onto mechanical or manual records regarding him or her, and he or she shall have the right to demand the purpose of such data.
- 2.2.2 The law shall determine the concept of personal data, as well as the conditions applicable to the processing thereof.
- 2.2.3 The processing of personal data on private life, political or philosophical convictions, religious faith, party or trade union membership and ethnical origin, without the consent of the interested person, is prohibited.”³

2.3 Section 40 (Freedom of Speech and information)

- 2.3.1 “Every person has the right to freedom of speech and the right to inform and be informed impartially.
- 2.3.2 The exercise of freedom of speech and information shall not be limited by any sort of censorship.
- 2.3.3 The exercise of rights and freedoms referred to in this section shall be regulated by law based on the imperative of respect for the Constitution and the dignity of the person.”⁴

2.4 Defamation

Defamation provisions appear in Articles 310-321 of the Penal Code.
(<http://www.unmiset.org/legal/IndonesianLaw/index-e.htm>)

The Defamation provisions in the Penal code place significant restrictions on freedom of speech. Many statement givers chose to provide public testimony in the belief that they were free to express their opinion and name perpetrators. Some persons named in the statements may also now hold positions of responsibility in the government. The code recommends a term of imprisonment for a person who intentionally harms someone’s honour or reputation by charging him with a certain fact with the obvious intent to give publicity to that fact shall be found guilty of slander and subsequently punished. The code imposes higher prison sentences for the defamation of a public figure.

2.4.1 Recommendations:

- Public access to statements naming perpetrators is subject to the 30 year archival principle.
- Statement givers must be consulted and may be offered legal advice before any decision is made to make the statement available before the 30 year time limit under the special access provisions.
- Statement givers have the opportunity to retract information or add information to their original testimony.

3 Best Practice Recommendations

3.1 Public Access

Under overseas Archive laws, restrictions on the public normally endure either until a specific period of time has passed or a specific event has occurred or both. For example, records that contain information that would invade personal privacy could be closed for 30 years (time) or until the person’s death (event) or for 30 years or until the person’s death, whichever comes first (both). Using both a period of time and an event ensures that there is a sure date when all records will be open; that is particularly useful if it is difficult to determine whether someone is still alive.⁵ In Australia it is 30 years. In Portugal it is xxx years.

3.1.1 Recommendations:

- The public may apply for access to any CAVR or Post-CAVR Interim Secretariat records that are more than 30 years old.
- Public researchers may apply for special access on the basis that they are preparing a major work of national significance for publication.
- An application for special access form must be completed setting out the credentials of the applicant and the purpose and focus of their research.

- If the Post-CAVR agrees to approve the application, it will notify the applicant in writing that the special access application has been granted and it will outline the conditions under which special access is granted.
- The personnel records of Commission staff are closed to public access for 75 years.

3.2 Privacy

Best practice privacy principles are recommended to protect the privacy of individuals. The principles cover the collection of personal data, its security, access to it, correction of it, transborder dataflows and sensitive information.

3.2.1 Recommendations

- Individuals have a right to know about what records are held on them.
- Individuals have a right to see information held on them provided that it does not invade the privacy of a third party.
- Individuals have the right to contest and correct or amend information held on them.
- Individuals have the right to tell CAVR and a post-CAVR body that their information may be made public.

3.3 Copyright

All records created in the course of business by commissioners and staff are the records of the CAVR and may not be taken away by an individual when the CAVR or other post-CAVR body closes.⁶

3.3.1 Recommendations

- Photographs taken by employees of the CAVR, who have been asked to take photographs as part of his/her job (no matter what the job title is) are considered the copyright of the CAVR. Such images should be acknowledged in all published documentation in the following manner:
E.g. ©CAVR, photographer: Jim Smith
- Photographs taken by employees using their own equipment outside CAVR work time are considered the copyright of the photographer. The photographer could give the photographs and donate the copyright to the CAVR or could donate the photographs for use in CAVR publications and exhibitions but retain the copyright
e.g. ©CAVR or ©Jim Smith

3.4 Copying for Preservation and Access

The materials held in the CAVR Archives are in immediate danger of physical destruction from heat, humidity and pests. A copying project would help ensure their longevity, provided that access rules are defined before any such project proceeds.

A project for digitising the records of the CAVR has already been proposed.⁷ This project may result in a copy of the records of the CAVR held in an alternative location.

3.4.1 Recommendations

- The original collection must always remain with the CAVR or post-CAVR organisation.
- Duplicate collections must be governed by the same access principles.

- Authentication of copies required for compensation claims or tribunals by any other organisation.
- The CAVR Archive must remain intact. If records are required outside the organisation, copies must be made.
- In copying these records, it should be stated from the outset whether or not these copies are to be returned to CAVR.
- Individuals have a right to request a copy of their information and/or to view the information in a private room.
- Copies may be provided to users where the original document is fragile and should not be exposed to light or excessive handling.
- Charges for copying may be set by CAVR or the post-CAVR body.

3.5 Chain of Custody

It is important to understand that when the CAVR finishes, its records clearly pass to the custody of the post-CAVR Secretariat and then onto a future post-CAVR permanent body which has a specific mandate to manage the archives. It is important that the original collection stays together and is preserved or access to the collection becomes less than it should be.

3.5.1 Recommendations

- The Archives are clearly acknowledged and included in any terms of reference or legislation for post-CAVR bodies.
- Future budgets to include a reasonable amount for archives preservation, management, access and promotion.
- Future budgets to include a reasonable amount for training of staff members in archives management and preservation.

4 Access Principles

The following principles are based on the existing legal framework and international archival best practice

- 4.1 That all records of the Commission and post-CAVR bodies will, at some time in the future, be open for public access and research. However, to protect the rights of privacy and the confidentiality of decision-making some records must be restricted from public research at present.
- 4.2 Such restrictions apply to types of information wherever found; for example, sensitive information from a victim statement that is found discussed at a Commission meeting needs to be restricted both in the statement and minutes of the meeting.
- 3.2 Such restrictions apply to all types of media, such as statements made on audio cassette and entered in electronic databases or other electronic documents and paper reports.
- 3.3 That all records already made public or records of public events should remain open and not subject to any length of time before access is granted.
- 3.4 That all records that would invade the privacy of an individual are withheld from public access for a period of 30 years and or when the individual dies. (Or whatever length of time is specified in the Archives Act)

- 3.5 That an individual has (i) a right to see information that he or she provided to the CAVR and post-CAVR body, (ii) a right to see other information on him or her that has been assembled by the CAVR and post-CAVR body long as that information does not invade the privacy rights or place in jeopardy any other person, (iii) a right to contest information about himself or herself that is in the hands of the CAVR and post-CAVR body, and (iv) a right to tell the CAVR and post-CAVR body that the information provided by him or her can be made available to the public.⁸

4 User categories and types of records

Users can be characterized by their relationship to the Commission and to its records.

- 4.1 Government employees on official business that requires the information found in the Commission's records can see any record that relates to their official duty. (Question for the legal people!!What will be our relationship with the Truth and Friendship Commission including foreign government officials accessing CAVR records – see SCU Access Protocol 4.4 – 4.6⁹)
- 4.2 Former Commissioners and staff of the Commission can see the records they created and received during the course of their employment; they can also have access to their own employment file (personnel file) for the purposes of proving their employment history.
- 4.3 Persons who gave interviews and statements can have access to their statements.
- 4.4 A person can see a file compiled on himself or herself, except if the information contained within the file would invade the privacy rights or endanger another living individual; the person can also designate another person to have access on his behalf, such as a lawyer or social worker or another family member.
- 4.5 Staff of future museum or memorialization projects can see records that are pertinent to their official research.
- 4.6 Authorised public researchers preparing a major work of national significance such an official autobiography may be granted special access to records less than 30 years old.
- 4.7 Citizens of Timor Leste can see all records except those restricted on the ground of privacy or confidentiality of decision-making within the prescribed timeframes and according to the general access principles.
- 4.8 Citizens of foreign countries can see any records that can be made available to all citizens of Timor Leste within the prescribed timeframes and according to the general access principles.¹⁰

5 What records are restricted?

The following categories of records are restricted from general public release for the prescribed period (30 or 75 years).

- 5.1 Records whose disclosure would invade the privacy of a living individual (alternatively, the restriction may also last for a period after death).

- 5.2 Records whose disclosure could endanger the health or safety of a living individual.
- 5.3 Personnel records of the Commissioners and staff members of the Commission.
- 5.4 Records of executive sessions of the Commission and of meetings where matters of privacy, safety or personnel were discussed or where confidential legal advice was given.¹¹

6 Where will the records be available?

The records will be made available on the premises of the CAVR or post-CAVR Secretariat; they should not be loaned. Researchers should always be watched while they are using the records; this is particularly important with sensitive records such as those of the Commission.

If the researchers are using records that are not released to the general public, such as a government official reviewing records for the purpose of government business, they should be seated in a separate area where researchers without such authorization cannot accidentally view the records.

Records that are made available to the general public may be photocopied, photographed, scanned and digitized.

If the records are not available to the general public and are to be copied for a person who has special access, the custodian should mark the copies (stamping, for example) to show that this is a copy from the records of the Commission but it is not publicly available.

7 Conditions of access

All persons seeking access to the archive, irrespective of whether the documents that they request are non-restricted, restricted, or contain personal information, must complete a *Request for Personal Access* form showing:

- Name
- Address
- Occupation
- Subject of enquiry
- Material made available
- Date of access
- Authority of access (where applicable), and an undertaking to fulfil the requirements of the access rules.

General access is granted on the proviso that a written submission has been made in advance, the Request for Personal Access Form has been completed. Special access may be granted to authorised researchers upon receipt of a written application. Archives Staff will supervise the researcher while examining the records.

7.1 Care of Records

Depending upon whether a person accesses an original record or a copy, appropriate instructions in the care of records must be given at the time of access.

7.1.1 Recommendations:

- If the original record is accessed, the user must wear gloves.
- No annotations are allowed on documents.
- No further copying or scanning of documents is permitted.
- Pencils must be used within the access area.
- No food or drink is allowed into the access area.
- Rules will be clearly displayed in the reading area.

8 Appeals Process

If the user lodged a written application for access to records in the CAVR or post-CAVR Secretariat and the Senior Archivist refuses access, users may apply for a review of the decision.

Firstly, users may appeal, in writing, to the Director of the National Archives and ask for an independent decision on access to the records in question. Users may apply for an independent decision in the following circumstances:

- if the record you have applied to see is 30 years old and it has been wholly or partially exempted from public access;
- if access to the record is refused (or is granted subject to conditions) to ensure the record's safety and preservation;
- if the record has been made available to you in a form (eg a photocopy) other than the form you requested (eg the original); or
- if the record cannot be located.

The letter must clearly identify the records and provide an address.

Applications should be lodged within 28 days of notification of the decision to refuse or restrict access. Applicants will be advised in writing of the result of the application for internal reconsideration as soon as possible. If the decision is upheld the applicant may then appeal to the Office of the Provedor.

The letter must be lodged within 28 days of receipt of the National Archivist's decision. It should clearly state the history of attempted access the record and provide a contact address.

The Office of the Provedor will review both the legality of decisions (eg whether the National Archivist misinterpreted the legislation) and will assess all prior decisions on their merits. It may uphold, modify or reverse a decision.

9 Training considerations

Training in archives management will need to be provided to staff. The Senior Archivist will carry the responsibility of determining whether or not a particular record is available for access. Training should cover the various forms of copying and digitisation across all media; access principles and procedures established by the National Archives; the legislative framework for Archives management and data management and retrieval.

The Senior Archivist and the deputy archivist of the CAVR and the post-CAVR Secretariat need to be authorised by the Government to examine records and make decisions as to whether information is withheld or released according to the relevant legislation and the access principles.

APPENDIX 1

Categories of material and related incidence of sensitivity

The following guide to the material held in the CAVR Archives may assist archives staff in making decisions about access to the material. The Access Principles form the basis on which any final decision on access is made.

1. Truth Seeking Archives

There were 3 main data collection points within the truth seeking process, (i) the national statement taking campaign, (ii) the retrospective mortality survey and (iii) the graveyard census.

The statement taking process was entirely voluntary and may have been made by a victim, a perpetrator, a witness, or a family member or colleague of a victim. No information was taken anonymously. Personal details regarding deponents are kept confidentially with CAVR. Statements were coded and entered into a Human Rights Violations Database.

Statement givers were asked to sign a consent form regarding the disclosure of information. This was only introduced into the process once several hundred interviews had taken place.

Data was collected via a sampling of households for a Retrospective Mortality Survey. A Graveyard Census was also conducted. These results of these surveys were entered into a database and were used to determine the number of deaths in the period 1974-1999. This information will be drawn on extensively in the Final Report and should be available for approved research.¹²

Issues: The consent form provides a relatively clear-cut statement from deponents on whether or not their data may be used. However, this is a small country and deponents are highly visible. Third parties were named in these statements and deponents gave consent without the benefit of legal advice and without a clear understanding of potential ramifications. Some persons named in the statements may also now hold positions of responsibility in government. Finally, persons named in the statement, in particular victims, have not given their personal consent to be named so when making a statement public their right to privacy must also be taken into consideration.¹³

With this in mind, it is important to define which users may have access to Human Rights Violations statements and the Human Rights Violations Database. The Senior Archivist will exercise his/her judgement, on a file by file basis, to determine whether or not the file may contain material harmful to individuals. If this may be the case, the archivist will redact¹⁴ certain names from a copy of the document to be shown to the user.

Unauthorised statements should remain closed for the statutory access period unless the statement giver is contacted and gives permission for the statement to be made public.

2. Reconciliation Process Archives

Many of the events that occurred during the period 1974-1999 involved crimes of a non-serious nature. Many perpetrators who came forward and admitted to such crimes were not prosecuted

but were channeled into community reconciliation hearings. These hearings were open to the local community. This resulted in 6 categories of documents:

- The original CRP statements submitted by perpetrators.
- The CAVR statements committee form, including a summary of the statement.
- The letter providing the OPG decision (approving that the process can go ahead or exercising its jurisdiction).
- The signed Community Reconciliation Agreement
- Court Registration Documents
- Orders of the Courts.¹⁵

Issues: All documents and materials held in the CAVR Archive that resulted from a community meeting are already in the public domain and, according to the access principles, should remain open to the public. The archivist should, however, examine each file requested for general access, and satisfy himself that it does not contain harmful information.

All documents and materials held in the CAVR archives that pertain to cases that were not able to be resolved through the CRP need to be withheld from the public domain due to the inconclusiveness of the hearing. These include original CRP statements which were withheld by the OPG for being potentially serious crimes. However, the appropriate retention period needs to be applied in accordance with the retention period established by the National Archives.

CAVR is not in sole possession of these records. The originals are all held at the relevant District Court and additionally copies of some records in the first three categories are kept within the Serious Crimes Unit. Accordingly, policies for public access developed by CAVR need to be shared with these other institutions to ensure that access is uniform.

3. Research Material

The CAVR investigated and collected background data and solicited and acquired submissions on 11 major research themes, including:

Large massacres such as Santa Cruz (1991) or Suai (1999).

Other killings; torture and assault; abduction and disappearance; detention.

Sexual violations

Displacement and resettlement and famine

Destruction and looting of property

Military and police

International actors

Political prisoners and the law

Militias and armed political movements

Children/young people

Data for research was available from international human rights organisations, orally (human rights abuse statements and interviews with major players), secondary source material (books, journal articles, conference papers, theses), court records, legal opinions, bibliographies, public submissions, surveys (e.g. of gravestones), census data and official Commissions' of Inquiry.

Data collection resulted in statistical data and graphs produced from database reports, unpublished reports, timelines, bibliographies, and interviews.

Issues: A final analysis of all this material is available in the Final Report. The secondary source material is in the public domain and should be made available to the public; all other material should be subject to the official access period.

4. Community Profiles

Community profiles were constructed for 5 villages per sub-district leading to a total of 325 community profiles. They provide general information on the movement of people and on the broader social impact of human rights violations within communities and subsequent impacts on education, local markets and family life.

In constructing the community profiles, the researchers organised a meeting within the local community and then led the people through a year by year discussion on what took place within the community.

The profiles were used to help determine communities most in need of assistance. They were also used as a starting point for the investigation of particular themes to be covered in the Final Report.

Issues: Information in the community profiles was gathered at public meetings and should, theoretically, remain open. However, some community profiles are quite detailed and do name perpetrators of human rights violations. Reports will need to be examined on a file by file basis to ensure that any harmful information is not released.

5 Administrative archives

Personnel records should be maintained with the records of the Commission and the Archives should handle them, for purposes of access, in the identical way the central government handles the records of its civil servants.

Financial records should be maintained with the records of the Commission and the Archives should handle them, for purposes of access, in the identical way the central government handles all financial records.

The records of executive sessions of the Commission could be restricted for a fixed period of time, assuming those records do not contain information restricted by the other provisions. Here the Commission is seeking to ensure the passage of time such that the decisions made and reported in the final report are not undermined and reconciliation is not impeded by the release of records of internal deliberations. What length of time is required will have to be determined by the Commissioners, based on the conditions at the time the report is released.

All background research collected during the life of the Commission should be maintained with the records of the Commission and the Archives should handle them, for purposes of access, as public information accessible by all categories of users.

6. Library material

The CAVR developed a small library during its course of operation. The library holds about 2300 books, reports and articles on various matters relating to human rights. Much of this material came from the personal library of Herb Feith, an Australian academic with a life long interest in Indonesia and East Timor. The library contains copies of all publications produced by the CAVR and post-CAVR institutions.

Issues: The library material is not subject to the access restrictions of the archives. Researchers are welcome to use the library but access is by prior appointment.

APPENDIX 2

GUIDE TO ACCESS

(The Access Principles form the basis on which any final decision on access is made)

Types of Users	What can they see	Level of Access	Principles	Level of Copy
Government employees on official business	Truth Seeking Records	Immediate		Original or Authenticated copy
	Reconciliation Process	Immediate		Original or Authenticated copy
	Research Documents	Immediate		Original or Authenticated copy
	Community Profiles	Immediate		Original or Authenticated copy
	Administrative records	Immediate		Original or Digital access
	Personnel records	Immediate		Original or Digital access
Former Commissioners and Staff	Truth Seeking Records	30/Immediate if public	3,4,5	Digital access/Redacted copy
	Reconciliation Process	30/Immediate if public	3,4,5	Digital access/Redacted copy
	Research Documents	30/Immediate if public	3,4,5	Digital access or original
	Community Profiles	30/Immediate if public	3,4,5	Digital access/redacted copy
	Administrative records	30 years	2,4,5	Original or Digital access
	Personnel record	Immediate	6	Original or Digital access
Individual statement givers; access to files which contain their name	Truth Seeking Records	Immediate if personal/30 years	1,2,3,5,6	Authenticated/redacted copy
	Reconciliation Process	Immediate if personal/30 years	1,2,3,4,5,6	Authenticated/redacted copy
	Research Documents	30/Immediate if in public domain	1,4,5,6	Digital access or original
	Community Profiles	30/Immediate if public	1,3,4,5,6	Original, digital/redacted copy
	Administrative records	30 years	1,2,3,5,6	Original or digital access
	Personnel records	75 years	6	Original or Digital access
Individuals with information about them on file	Truth Seeking Records	Immediate if personal/30 years	1,2,3,4,5,6	Authenticated/redacted copy
	Reconciliation Process	Immediate if personal/30 years	1,2,3,4,5,6	Authenticated/redacted copy
	Research Documents	Immediate if in public domain/30	3,4,5,6	Digital access or original
	Community Profiles	30/Immediate if public	1,2,3,4,5,6	Original, Digital/redacted copy
	Administrative records	30 years	1,6	Original or Digital access
	Personnel records	75 years	1,6	Original or Digital access
Staff of the future organisation	Truth Seeking Records	Immediate		Original or Digital access
	Reconciliation Process	Immediate		Original or digital access
	Research Documents	Immediate		Original or digital access
	Community Profiles	Immediate		Original or digital access
	Administrative records	Immediate		Original or Digital access
	Personnel record/s	75/Immediate if personal	1,6	Original or Digital access
Researchers, journalists, academics.	Truth Seeking Records	30/immediate if individual agreed	1,2,3,4,5	Original, Digital/redacted copy
	Reconciliation Process	30/Immediate if public	1,2,3,4,5	Original/Digital/Redacted copy
	Research Documents	30/Immediate if in public domain	1,2,4,5	Digital access or original copy

	Community Profiles	30/Immediate if public	1,2,4,5	Original, Digital/redacted copy
	Administrative records	30 years	1,5	Original or Digital access
	Personnel records	75 years	1,5	Original or Digital access
Citizens of Timor Leste	Truth Seeking Records	30/immediate if individual agreed	1,2,3,4,5	Original, Digital/redacted copy
	Reconciliation Process	30/Immediate if public	1,2,3,4,5	Original, Digital/redacted copy
	Research Documents	30/Immediate if in public domain	1,2,4,5	Digital access or original copy
	Community Profiles	30/Immediate if public	1,2,4,5	Original, Digital/redacted copy
	Administrative records	30 years	1,5	Original or Digital access
	Personnel records	75 years	1,5	Original or Digital access
Citizens of Foreign Countries	Truth Seeking Records	30/Immediate if individual agreed	1,2,3,4,5	Original, Digital/redacted copy
	Reconciliation Process	30/Immediate if public	1,2,3,4,5	Original, Digital/redacted copy
	Research Documents	30/Immediate if in public domain	1,2,4,5	Digital access or original copy
	Community Profiles	30/Immediate if public	1,2,4,5	Original, Digital/redacted copy
	Administrative records	30 years	1,5	Original or Digital access
	Personnel records	75 years	1,5	Original or Digital access

Footnotes

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¹ Regulation 2001/10: East Timor's Commission for Reception, Truth and Reconciliation. Dili, CAVR, 2001: p 63

² Constitution of the Democratic Republic of East Timor. (2002)

³ Constitution of the Democratic Republic of East Timor. (2002)

⁴ Constitution of the Democratic Republic of East Timor. (2002)

⁵ Huskamp Peterson, T (2005) Considerations for an access policy for the records of the Commission on Reception, Truth and Reconciliation of Timor Leste. Washington, 2005.

⁶ Long Term Contract Employment Agreement between CAVR and the employee.

⁷ Robinson, Geoffrey (2005?) Preserving East Timor's Archives: a preliminary project proposal submitted to the Endangered Archives Program of the British Library.

⁸ Huskamp Peterson, T (2005) Considerations for an access policy for the records of the Commission on Reception, Truth and Reconciliation of Timor Leste. Washington, 2005.

⁹ Draft Protocol Governing the Access to the Serious Crimes Records, 2005.

¹⁰ Huskamp Peterson, T (2005) Considerations for an access policy for the records of the Commission on Reception, Truth and Reconciliation of Timor Leste. Washington, 2005.

¹¹ Huskamp Peterson, T (2005) Considerations for an access policy for the records of the Commission on Reception, Truth and Reconciliation of Timor Leste. Washington, 2005.

¹² Barnes, S (2004) Statements and related archive materials of the Truth Seeking data collection activities.

¹³ Ibid

¹⁴ Redaction is the action of editing a copy of an image or document to render confidential information unreadable. It usually involves blanking out particular words in the text.

¹⁵ Larke, B (2004) Statements and Related Archive Materials of the Community Reconciliation Process.