

## **“Orphans” or Veterans? Justice for Children Born of War in East Timor**

### *Abstract*

All over East Timor, one can find “orphans” whose parents still live, and “wives” who have never been married. These labels mask an open secret in Timorese society—hundreds of babies were born of rape during the Indonesian occupation from 1974 to 1999.

In juxtaposition, as a result of the 2004 UNFPA-conducted census, there is finally data available on the current population of East Timor and it has unexpectedly revealed a baby boom, perhaps in response to the emotional losses of the occupation. The fertility rate was found to be the highest in the world, at 8.3 babies per woman.<sup>1</sup> The baby as the symbol of both wound and healing is clearly at play in Timor at the present time.

Nonetheless, there is official silence on the number and treatment of the children born of conflict, a lack of attention in the transitional justice mechanisms in place in Timor in regard to the human rights violations that produced their situation, and no official policies to deal with the needs of these children or their mothers, or the discrimination they may face. The challenge posed by these children and women to the social fabric of Timor reveals important gaps and silences within the international human rights law framework which might nonetheless be addressed by some fairly straightforward policy innovations.

In this paper, I argue that status of the mothers socially and legally, as it impacts on the well-being and ability of the children to claim their rights, needs to be more fully addressed in transitional justice debates. Within Timor, there is a definite ambivalence about the idea of these women as contributors to independence during the occupation, and discomfiture regarding their status as so-called “wives” of Indonesian military. This cultural construction is both exacerbated and challenged by the ambivalent influence of Catholic teachings on East Timorese society. Nonetheless, social currents also exist that, if strategically used to reconstruct the image of these children and women, could more effectively reframe their trauma in transitional justice discourse, and contribute both to their well-being and the long-term process of reconciliation in East Timor.

The paper proceeds in two sections. First, I first provide an overview of the situation of sexual violence survivors and their children in East Timor. In the second section I discuss current approaches to the children and their mothers within the transitional justice mechanisms available in East Timor at this time. I aim to shift the current approach to children born of war in Timor from covert welfare assistance by the Catholic Church and NGOs, to a rights-based framework, where the affected children are publicly accepted with valid claims on the Government, rather than seen as by-products of a crime or sin. From this analysis it becomes clear that creative policy and legal options are required that would assist these families with integration, status and financial security. I conclude with one such proposal to improve the situation of these families: re-characterise the affected women and their children as “veterans” of the conflict, with the same status as the former Falintil guerrillas.

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<sup>1</sup> UNFPA statisticians used the latest satellite technology to record the addresses of every household to make sure everyone in the country was counted, using several thousand workers with GPS systems. (ABC 2004)

## Introduction

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### Children Born of Rape and their Mothers in East Timor

East Timor is the world’s newest State, but it has inherited some complex problems from its history as a Portuguese colony and an occupied Indonesian province. During the lead-up to the August 1999 referendum on East Timorese independence, which was organized and administered by the United Nations, militia forces backed and trained by the Indonesian military carried out a systematic campaign of violence. When East Timorese nevertheless opted for independence from Indonesia, pro-Indonesian militia and Indonesian soldiers initiated a scorched earth policy, terrorizing the population and committing widespread abuses, including the rape and sexual slavery of women and girls (Coomaraswamy 2001).

There are no accurate statistics on sexual violence during this period and consequently during the period of forced deportation and internment in West Timor. However, a wealth of anecdotal evidence shows that gender-based international crimes in Timor have been widespread since 1975 and were rife in the 1999 violence. Testimonies to this effect have been collected by the United Nations, (Security Council Mission 1999; Special Rapporteurs 1999; International Commission of Inquiry on East Timor 2000) human rights NGOs such as Amnesty International, (Amnesty International 2001) the Indonesian Human Rights Commission KPP Ham, (KPP-HAM 2000) Australian journalists, (McDonald et al. 2002) and most importantly, East Timorese NGOs themselves (Godinho 2001; Fokupers 2000).<sup>3</sup> The most comprehensive overview of sexual violence in Timor appears in Paper 7.7 of the report by the CAVR entitled *Chega!* The CAVR recorded 853 cases of sexual violence but concluded:

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<sup>3</sup> In September 1999, the office of FOKUPERS in Dili was attacked by militia, resulting in looting and burning of the premises and the staff of the organisation having to flee to save their lives.

The Commission notes the inevitable conclusion that many victims of sexual violations did not come forward to report them to the Commission. Reasons for under-reporting include death of victims and witnesses (especially for earlier periods of the conflict), victims who may be outside Timor-Leste (especially in West Timor), the painful and very personal nature of the experiences, and the fear of social or family humiliation or rejection if their experiences are known publicly. These strong reasons for under-reporting and the fact that 853 cases of rape and sexual slavery, along with evidence from about another 200 interviews were recorded lead the Commission to the finding that the total number of sexual violations is likely to be several times higher than the number of cases reported. The Commission estimates that the number of women who were subjected to serious sexual violations by members of the Indonesian security forces numbers in the thousands, rather than hundreds. (CAVR, 2005: 109)

With statistical data on rape difficult to find, there is no data at all on how many children have been born of rape, or how many orphans are in East Timor at the present time.<sup>4</sup> However, anecdotal evidence points to perhaps hundreds or even thousands of “children born of war” who have been kept and raised by their mothers despite stigmatisation and the rejection of these women and children by their families or villages. Some individual examples can be cited about forced maternity in Timor, one of the earliest being contained in a report to the UN Special Rapporteur in 1997, (Aditjondro 1997) but a full study has never been undertaken. Available evidence suggests, however, that children have resulted both from slavery-like conditions and forced marriage prior to independence, as well as mass systematic rape used as a tool of terror during the post-referendum violence that engulfed East Timor in 1999. The *Chega!* report recounts testimony from survivors about how the “branding of women and their children not only resulted in social isolation, but also often resulted in severe psychological problems within the family.” (CAVR, 2005: 100)

Prior to 1999, an unverifiable number of Timorese women were abducted, raped and impregnated by Indonesian soldiers, often kept captive under slavery-like conditions, and later rejected by their families. An example of this pattern of violence is revealed in the testimony story of Beatriz Guterres, one of fourteen East Timorese women invited to Dili by the Commission for Reception, Truth-seeking, and Reconciliation (CAVR) to participate in the Commission's third national public hearing held on 28-29 April on the theme of Women and Conflict. The proceedings were broadcast on radio throughout the territory.

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<sup>4</sup> On 28 April 2003, Mario Carrascalão, former Governor of East Timor stated in his testimony to the Commission for Reception, Truth and Reconciliation (CAVR) National Public Hearing on Women and Conflict that in 1985, there were 40,000 orphans in Timor.

In 1991 another Kopassus soldier, Prada M, had duty in Lalerek Mutin. When my friends and I were in the rice field he shot in our direction. My friends pressured me so that I would become his wife in order to save myself. Because I was ashamed I stood and said, "OK. I'll cut myself in half. The lower half I'll give to him, but the upper half is for my land, the land of Timor." They said to me, "Don't be afraid, don't run. You probably must suffer like this because your husband was murdered, whereas you are still alive. ... Our lives are the same." Then Prada M. walked with me and I answered each of his questions only with, "Ya"...I was just resigned to my fate. We lived as husband and wife and I had a child. (Campbell-Nelson 2003).

Beatriz's story contains many common elements to other women's experiences of gender-based persecution during the Indonesian occupation of East Timor from 1975 to 1999. She was targeted by the Indonesian military due to her husband's political activities and interrogated. Her husband was murdered. Her child died due to illness and she was forced into "marriage" and sexual servitude to three Indonesian soldiers over the following decade. She had two children and a miscarriage as a result and was abandoned by the soldiers. In an independent East Timor, Beatriz was then stigmatised by her own family and village, and her children were not accepted.

A more acute form of gender-based violence occurred during the post-referendum violence during 1999: the systematic rape of East Timorese women in the context of the the forced deportation of over 250 000 people into camps in West Timor. A leading women's NGO, Fokupers, has documented 46 cases of rape during the 1999 violence: nine of them by Indonesian soldiers, 28 by pro-Jakarta militias, and nine of them joint attacks by militias and soldiers. Eighteen were categorized as mass rapes (AFP 2000). "Many of these crimes were carried out with planning, organisation and coordination," a Fokupers report states. "Soldiers and militias kidnapped women together and shared their victims," (AFP 2000).

In the camps in West Timor where tens of thousands of women were forcibly deported, a fact-finding team in one study alone found 163 different cases of violence against 119 women, and noted serious impacts of sexual violence on women's health (Tim Kemanusiaan Timor Barat 2000). There is still a serious campaign by activists including the new First Lady of East Timor,

Australian Kirsty Sword Guasmo, to obtain the release of several young women in the refugee camps of West Timor who are thought to be being held against their will as “war trophies” by militia leaders<sup>5</sup> (Farsetta 2001). The Special Rapporteur on Violence against Women, during a joint fact-finding mission in November 1999 together with the Special Rapporteur on extrajudicial, summary or arbitrary executions and the Special Rapporteur on the question of torture, found evidence of widespread violence against women in East Timor during the period [from January 1999] and concluded that “the highest level of the military command in East Timor knew, or had reason to know, that there was widespread violence against women in East Timor,” (Special Rapporteurs 1999:24) and reported that,

Rape was used by the military as a form of revenge, or to force the relatives out of hiding. Much of the violence against women in East Timor was perpetrated in the context of these areas being treated as military zones ... rape by soldiers in these areas is tried in military tribunals, and not before an ordinary court of law. Under Indonesian law, for a rape to be prosecuted it required corroboration – including the testimony of two witnesses. Women lived in a realm of private terror, for any victims or witnesses who dared to take action were intimidated with death threats.

As in the cases of sexual slavery of East Timorese women during the period 1975-1999, children were born to women raped during or after the forced displacement. Sian Powell gives an example from the camps in an article entitled “East Timor's Children Of The Enemy“ published in *The Weekend Australian* on 10 March 2001.

His mother is Lorenca Martins, now 23, a wistful East Timorese woman with eyes only for her child. His father is Maximu, a militia thug and rapist. Maximu raped Martins in a refugee camp near Atambua, over the border in West Timor, where she was exiled for six months. A member of the notorious Besi Merah Putih gang (Red and White Iron), he first violated her on December 8, 1999, in broad daylight, in the jungle. “It happened to many women (in the camps),” she says. “If they saw a beautiful woman, they just took her.” ... A child of the new nation of East Timor, five-month-old Rai, is much loved by his mother. He is one of the first generation born free, yet his past will imprison him.

Rai is one of an unverifiable number of children born as a result of both the systematic sexual slavery and forced marriage of women under the occupation, as well as the mass rapes of the 1999 post referendum violence. Although no systematic attention has been given to their status and rights relative to other children affected by the political violence in East

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<sup>5</sup> Note the case of 15-year-old Juliana dos Santos in particular.

Timor, anecdotal evidence suggests such children are both at risk of abandonment to orphanages, and likely to experience ostracization and impoverishment if kept by their mothers, due to the mothers' low social status in post-independence East Timorese society.

There is contradictory evidence regarding the relative likelihood of child abandonment due to forced maternity in East Timor.<sup>6</sup> The article by Powell suggests that “No one who works with raped women in East Timor can recall a single instance of a woman abandoning a child because it is the product of rape.» It seems unlikely that the author interviewed everyone working with such women; and women who have received services and support from NGOs may not be representative of the broader population of forced maternity survivors. The *Chega!* report details there was at least once case of an unsafe abortion procured by the mother (CAVR, 2005:95). There is some anecdotal evidence of close identification and loving acceptance of the mothers with these children, despite the extremely traumatic circumstances of conception (Daniel 2002:34-35).

To give one example, the Indonesian military routinely targeted the wives of guerrilla leaders to monitor any communications with the husbands in the mountains and to compromise the women as “unfaithful” wives, thereby isolating them from community support. Even the first wife of Xanana Gusmão, Emilia Baptista Gusmão, bore a child by an Indonesian army officer after one of the many interrogations she was put through to try to influence him to surrender. The child died and even after she had been forced to flee Timor for Australia and her relationship with Gusmão broken down, Emilia said publicly that she would carry the grief of the dead child all her life “because that child was my child,” (Aditjondro 1997:12).

This willingness and ability to attach to children conceived under such circumstances, rather than to define them as “of the enemy“ may be explained by the low status of Timorese women and the fact that status may only proceed from motherhood in some circumstances<sup>7</sup> (Sissons and East Timor Human Rights Centre 1997:8). It also may be due to the influence of Catholic teachings in Timor, as explored below. However, comparative work should establish

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<sup>6</sup> Future comparative work on this topic would need to establish both how prevalent child abandonment is in this context relative to other cultural contexts; and how prevalent it is for children born of forced maternity relative to other conflict-affected children in East Timor.

<sup>7</sup> Note the comment by a young refugee woman to Sissons that “Women are always second. Women are trusted only to have children and feed them.”

how representative these anecdotes are of the population and to what extent they reflect instead the particular media framing of this conflict.

Despite some East Timorese survivors' proclivity for keeping their babies born of rape, it is nonetheless clear that numerous children of rape have been abandoned by their mothers: "the orphanages are full...." A nun, Sister Maria, is quoted whispering to a journalist "a truth openly voiced in East Timorese society," is that in a Catholic orphanage "[m]ost of the children are mixed race, the babies of women raped by Indonesian soldiers." She notes that in the early years following the Indonesian invasion, orphanages were filled with "genuine" orphans: so many adults had been killed in military operations. Another complicating factor is that "genuine" orphans (the children of Timorese parents) generally are not treated well by ordinary Timorese; for example, many families take one on to work as a house slave. Now, most are children of rape.

Those children of rape or sexual slavery that have been kept by their mothers are reportedly stigmatized by the wider community. The Special Rapporteur's report asserted that "Many of the women who were raped as virgins are single mothers who have suffered stigma in their communities after giving birth to children of Indonesian soldiers."<sup>8</sup> Media reports confirm that the "victims of militia rape and sex slavery continue to bear the scars of post-ballot violence in East Timor, facing ostracism on their return home," (AFP 2000). Abuelda Alves of the Timorese NGO Fokupers said bluntly of the women who are able to return home, often with babies who are the product of rape: "They are viewed as rubbish. Their families are embarrassed. Women who were already married, their husbands reject them," (AFP, 2000). In this context, the extremely low level reporting rates by Timorese women, especially those returning from forced deportation to the West Timor camps, is unsurprising (Powell 2001). Generally women will only speak to nuns or priests, or, as lawyers assisting Timorese asylum-seekers have noted, they will not speak to anyone at all (Aditjondro 1997:2).

The pervasiveness of the stigma against rape survivors and their children in East Timorese society is demonstrated by the euphemistic language associated with the issue. According to the translator's notes for the book *Buibere*, Timorese people "speak in hints" and there is not a clear Timorese word for rape. When used regarding women, the Portuguese words

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<sup>8</sup> The well-being of children born of rape and raised by their mother is inextricably bound up with the social status of the mother herself. The Special Rapporteur's report continues: "the women are having a very difficult time, not only because of poverty, but because the sight of these children often reminds them of rape," (Coomaraswamy 2001).



*violacáo* (violation) or *estraga* (damaged or destroyed) are used. The implication is that “victims of rape have had their whole sexuality, their 'womanhood' damaged, and they will never be the same again,” (Winters 1999:36).

In part, the stigma against survivors of rape and sexual slavery in East Timor derives from the unwarranted or misunderstood association with prostitution, deeply stigmatised in Timorese society. During the occupation East Timorese girls and women were perceived to have become “prostitutes” as a consequence of rape by Indonesian soldiers, high levels of unemployment and the need to support themselves and their children, often in the absence of their men who are away fighting or have been killed (Aditjondro 1997). These women are treated as prostitutes in terms of status, but they are called “wives,” in “marriages” because under Indonesian criminal law it is not possible to rape your wife.<sup>9</sup> This characterisation also holds deeper meanings for a strongly Catholic society, which shall be examined further below. As evidenced above, another euphemism commonly used in Timor is that of “orphan” to refer to children born of rape. It is difficult to determine whether such obfuscation and use of euphemism is a strategy of denial, benevolent protection against the stigmatisation of illegitimacy or a genuine belief that marriage is not meant to be consensual. It is clear that the victims are often ascribed to have agency in a situation against all the evidence before a community. “One young woman I knew had four babies, I kept asking her why this had happened again and she just said there was nothing she could do,” (Williams and Lamont 1999).

The picture that emerges, then, is that survivors of militia rape in East Timor and children brought to term as a result are experiencing a degree of hardship specifically related to society's construction of the sexual violence and its sequelae. The physical, economic and psycho-social situation of the children is intricately bound up with the social status of their mothers, and vice-versa.

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<sup>9</sup> Article 285 of the Indonesian Penal Code (KUHP) sets out four elements essential to prove rape and provides for a maximum sentence of twelve years:

1. the offence occurred with violence or the threat of violence
2. the offender was a man and committed the offence against a woman, without her consent;
3. the woman was not the offender's wife; and,
4. the offence involved sexual intercourse.

Sexual indecency under Article 290(2) provides a maximum sentence of seven years for a person who “commits obscene acts with someone who he knows or should reasonably presume that she has not yet reached the age of fifteen years or, it is not obvious from her age, not yet marriageable”. There are no specific articles dealing with domestic violence. These provisions have not yet been replaced by a subsequent East Timorese Penal Code, although a draft is in the process of being prepared.

Coomaraswamy's report concluded that the Indonesian state should take responsibility for these children. It is not clear what form the Special Rapporteur expected this responsibility to take, whether it be offers of citizenship, compensation or even the facilitation of paternity suits, and how this would be taken forward in the absence of willingness on the part of the mothers to identify themselves for fear of communal stigmatisation. This exemplifies the problem that despite the fact that widespread and systematic sexual violence has finally been acknowledged as prevalent in recent conflicts such as Bosnia, Rwanda and the Sudan, and gender persecution is subject to international criminal sanction, unless the crime of genocide can be established there is no clear position at international law for the offence of forced maternity on behalf of the mother, or any offence on the part of the child (Carpenter 2000).<sup>10</sup> This has resulted in a conceptual gap in the transitional justice mechanisms in East Timor, as well as a lack of appropriate programming attention by civil society actors. In the section below, I briefly overview existing responses to this issue in East Timor, before suggesting some specific policy innovations that might be brought to bear more constructively to address the difficulties faced by these women and their children.

#### Assessing Existing Responses to Children Born of War and their Mothers in East Timor

The response to rape survivors and their children in East Timor has ranged from denial and silence to efforts to respond to their acute survival needs on the basis of a welfare paradigm that has reproduced conservative cultural conceptions of mothering and domesticity. Below, I describe both the lack of recognition of gender-based violence by existing transitional justice mechanisms, and the ambivalent and somewhat problematic discourse associated with the Catholic Church's response to the children and their mothers. Both of these patterns could be constructively improved, I then argue, by incorporating a recognition of these women's and children's status as 'veterans' of the war into discourse and practice in post-conflict East Timor.

#### *Gaps in Transitional Justice Mechanisms*

The situation in East Timor has unfortunate resonances with other post-conflict societies in this regard. The plight of “children born of war“ defined as children born or rape or

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<sup>10</sup> Even in domestic criminal law there are no parallels. There have been cases of “wrongful life” suits brought against doctors for negligent advice in torts law where a sterilisation has not been successful, and there is the possibility of pursuing a father who has abandoned a child for maintenance in family law.

exploitation in an armed conflict situation is generally met with silence or avoidance by transitional governments.<sup>11</sup> A quote from Bishop Belo is paradigmatic. Belo wrote of “the path to freedom” and asked the international community to take heed of “the legacy of the past” when watching Timor struggle towards a democratic society “founded on the values enshrined in the Universal Declaration of Human Rights.” He wrote “Up to 3,000 died in 1999, untold numbers of women were raped and 500,000 persons displaced—100,000 are yet to return,” (Belo 2001) The phrase “untold numbers of women” is poignant, and literal—the story of women’s experience before, during and after the 1999 violence remains largely untold despite the extraordinary efforts of Timorese women advocates.

This silence both reflects and helps perpetuate a situation in which women are not being consulted or participating adequately in transitional justice processes. Key decisions about the transitional justice model have been determined primarily by the transfer of power between male elites with very little democratic consultation. Key questions over what type of society East Timor should be in the future have been determined so far by reference to a limited and gendered focus on the personal and economic security of men in the society. As a Timorese editorial stated in mid-2001:

Women have played a critical role in East Timor's struggle for national independence. Both inside the country and in the diaspora, they courageously challenged the Indonesian invasion and occupation, as well as the international support that made these possible. East Timorese women have survived Indonesian military campaigns of violence, including forced sterilization, rape and sexual slavery. They have shown themselves as leaders, though they are often pushed aside in political discussions. And women have continued to struggle for equality throughout the United Nation's administration of East Timor. Unfortunately, women's liberation is not a natural outcome of national liberation (The La'o Hamutuk Bulletin 2001).

East Timorese women should have been in a better historical position than other group to benefit from precedents in international criminal law. The jurisprudence of the Nuremberg and Tokyo Tribunals after World War II has been strengthened by the practice and judgments of the ad hoc International Criminal Tribunals for the Former Yugoslavia (ICTY) and Rwanda (ICTR). The Statute of Rome, which created an International Criminal Court (ICC) to try genocide, war crimes and crimes against humanity, is a reality at last. There are also several credible models of Truth and Reconciliation Tribunals, such as South Africa and Chile. There are new hybrid “internationalised” criminal tribunals such as Sierra Leone. Many states have implemented

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<sup>11</sup>As Carpenter notes in the introductory paper, this silence is also still evident within international law and the international community.

domestic legislation to cover war crimes such as genocide and are exercising universal jurisdiction, as in the case of Belgium.

In relation to prosecutions for gender-related crimes in international criminal law, the precedents have been even more revolutionary. Both the ICTY and ICTR have successfully indicted, prosecuted and convicted defendants for gender-based crimes for the first time in history, including rape as a crime against humanity and an element of genocide in the *Akayesu* case before the ICTR,<sup>12</sup> and the *Celebici*, *Furundzija* and *Kunerac* cases relating to rape as torture, sexual slavery and sexual acts as inhumane treatment before the ICTY.<sup>13</sup> Article 5(g) of the new International Criminal Court Statute explicitly enumerates rape as a crime; in his April 29, 2004 report to the Security Council, the Secretary General wrote, "In its resolution 1410 (2002), the Security Council stressed the critical importance of cooperation between Indonesia and Timor-Leste, and with UNMISSET, to ensure that those responsible for serious crimes committed in 1999 are brought to justice."

In terms of the transitional justice process so far, this aim has not been realised. There is no real prospect that Indonesia will pay reparations or compensation to the victims of the occupation from 1975 to 1999. There is hope that the truth commission process and UN trials in Dili will go some way to at least creating an accurate historical record of human rights violations in the territory, which was set back by the acquittals in the Jakarta ad hoc trials. Expectations are dwindling that the UN will create an international tribunal that could force Indonesian military to stand trial despite the recommendations by its own appointed Commission of Experts in 2005. There has been one successful verdict of rape as a crime against humanity in the Dili Serious Crimes Court, but against a low-level Timorese militia member who may soon be freed if the amnesty legislation is passed as expected as a result of the agreed Joint Truth and Friendship Commission with Indonesia. The Serious Crimes Unit finished its mandate in May 2005 having filed 87 indictments accusing 373 individuals, but most remain at large in Indonesia.

Even with this bleak prospect of justice for violations in East Timor, rape of women had become so commonplace as to be perceived almost as a non-issue. Few women have been prepared to bear the shame and horror of recounting their appalling experiences, and the fourteen women who did find that courage before the Reception, Truth and Reconciliation Commission

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<sup>12</sup> Prosecutor v. Jean-Paul Akayesu, 2 September 1999, ICTR-96-4-T

<sup>13</sup> Prosecutor v Dragoljub Kunerac, Radomir Kovac and Zoran Vukovic, Judgement, Case No. IT-96-23/1-T, 22 February 2001, Prosecutor v. Anto Furundzija, 10 December 1998, ICTY-95-17/1-T

were both brave and exceptional. So the ability of East Timorese victims of rape to gain justice remains low. As Hilary Charlesworth notes “the players in international law crises are almost exclusively male... The lives of women are considered part of a crisis only when they are harmed in a way that is seen to demean the whole of their social group.” (Charlesworth 2002:389)

Elsewhere I have analysed the Serious Crimes cases of the *Leonardus Kasa* and *Lolotae* cases, and concluded that justice for women during the period of Indonesian occupation will be hard won through the courts. In the *Kasa* case, the Special Panel of the Dili District Court declared that it held no jurisdiction on the case as the rape had been perpetrated in West Timor, in spite of the principle of universal jurisdiction, thereby precluding all further cases of women who had been forcibly removed from East to West Timor, from being tried (Harris Rimmer 2004). Indeed many initial cases seem to have been addressed by domestic rather than international law, therefore leading to narrow court decisions, and the exclusion of pioneering case precedents from the international stage. Even if there was a successful prosecution, it is unlikely that a judgment would result in the type of integration and financial outcomes that might be required for these families.

The UN could have initiated a precedent-setting trial through the Serious Crimes process where forced sexual slavery or forced impregnation was the charge as a war crime, torture or crime against humanity, and properly considered the idea of compensation or reparations for victims.

According to Articles 7 and 8 of the Rome Statute and Sections 5 and 6 of UNTAET Regulation 2000/15, the courts are entitled to prosecute the war crimes and crimes against humanity of rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilisation or any other form of sexual violence of comparable gravity. Forced pregnancy was listed for the first time as an international crime in the Rome Statute, copied by the UNTAET Regulation. It is defined as ‘the unlawful confinement of a woman forcibly made pregnant, with the intent of affecting the ethnic composition of any population or carrying out grave violations of international law’. This definition is strongly based on the practice of Bosnian Serbs forcibly raping then detaining Muslim and Croat women so they would bear Serbian children (MacKinnon. 1994). Barbara Bedont and Katherine Hall Martinez comment that the forced

pregnancy provisions were the most contentious part of the State negotiations around what should be included as an offence in the Rome Statute:

While some negotiating took place on the other gender crimes, such as enslavement and gender-based prosecution, none of them was the subject of such intense opposition as forced pregnancy' (Bedont 1999: 67)

Bedont and Martinez report further that the Vatican and a core group of Islamic states objected to inclusion of the offence due to their belief that the aim was to “criminalize the denial of abortion services”, and attempted to limit the offence to ethnic cleansing. The additional ground of violations under international law was added on the second last day due to the weight of the example that during the Second World War, Jewish women were forcibly made pregnant so that they and their foetuses could be used for medical experiments (Bedont 1999: 68).

Kelly Askin argues that the phrase “other violations of international law” could include the intent to persecute, discriminate against, or torture the victim (Askin 2005: 144). She does not address the requirement of unlawful confinement. In the case of many Timorese victims, they were not confined in a detention facility (although many Timorese women were raped while in detention).

Forced maternity in Timor was not an afterthought or unintended consequence. However proving intent under the test required under the Rome Statute may be very problematic for women unless overtly genocidal intent is present. Prosecuting forced maternity only as genocide or where some other violation that harms the group is present diminishes the fact that the violation is against the woman herself, first and foremost (Dixon 2002: 702).

An interesting idea is whether a criminal case could be brought on behalf of a child born of rape, rather than the mother, and what the possible charges could be (Daniel 2002).

The question remains, however, whether trials are the preferred outcome for women survivors of violence or children born of war. Many of the contributions to this volume raise the same dilemmas of breaking down the stigmatisation involved with making claims public. Julie Mertus notes that court trials are inherently counter-narrative (Mertus 2000), despite the best efforts of investigators and prosecutors. The purpose of a trial is to prosecute and punish the major war criminals for violations of the Geneva Conventions. Subsequently, a war crimes trial can “only do so much” (Mertus 2000). Victims of sexual violence, for instance, if they are actually chosen to give testimony at an international criminal trial, only get to tell a piece of their

story. Further, those experiences remain cloaked in secrecy given that, out of necessity for protection and safety, the court sessions are often in private. The physical and psychological wounds as a consequence of rape and sexual abuse are also not part of accepted rape testimonies, and thus women's experiences continue to be cloaked in secrecy as emotions have no place in the courtroom. Further the possibility of retraumatisation is a highly likely response within this context. Inevitably, the reconstruction of the story will entail reliving of the traumatic event and may induce retraumatisation (Herman 1992). Further, the nature of a court trial is to discredit the evidence of the witness, which may exacerbate the devaluation of raped women who have come to testify at an international criminal proceeding (Henry 2003).

This leads us to question whether a war crimes tribunal is the appropriate context for sexual violence survivors per se, let alone mothers of children born of war. Given the inherent limitations of a war crimes trial, that a women's story is only partially told, that most survivors do not have access to this forum, that retraumatisation is a common response,<sup>14</sup> and that those who do may face ostracism upon return to their communities, this indicates that a war crimes trial is not in fact the appropriate context for sexual violence survivors to reconstruct their stories and thus recover from their traumatic experiences. However, on the other hand testifying at an international criminal proceeding is potentially an empowering process for survivors given that it constitutes a measure of justice because of its legal weighting and it is, after all, an international proceeding that is broadcast to the whole world (Stanley 2003). There is mixed evidence presented in the CAVR report of the healing power of testimony, most of the testimony in fact being given under false initials, although the courage of the fourteen women who testified at the National Public Hearing on Women and Conflict in April 2003 was applauded (CAVR 2005:5).

Moreover, the outputs of a prosecutorial system are sentencing and reparations which usually focus on the offence of rape itself, not even on the offence of forced maternity, and do not relate to the status and maintenance issues faced by the mother and child in the longer term.<sup>15</sup> Reparations may be capable of being geared towards the future needs of children born of war

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<sup>14</sup> See the KRCT study concerning witnesses from the Kosovo population regarding the possibility of their retraumatisation during the trial process of Milosevic in The Hague.

<sup>15</sup> For example, on 12 April 2006, a domestic court in the Democratic Republic of the Congo made history by convicting seven soldiers to life imprisonment for rapes treated as crimes against humanity based on the application of the Rome Statute provisions. The court fixed an amount of \$5 000 reparations payable to each victim of the rapes. On the evening of 21 December 2003, the FARDC battalion based in Songo Mboyo raped at least 119 girls and women. (Justice Memo 2006)

(Wandita et al, 2006). There are excellent recommendations in Part 11 of the final CAVR Report dealing with reparations which specifically identify as priority beneficiaries 'children born out of an act of sexual violence whose mother is single' (CAVR 2005: 35-44 at 41). It is prefaced by this anonymous quotation from a CAVR interview with a victim of sexual slavery in Uatu-Lari, Viqueque, 18 September 2003:

Because of the war I was used like a horse by the Indonesian soldiers who took me in turns and made me bear so many children. But now I no longer have the strength to push my children towards a better future. (CAVR 2005: 35)

*Role of the Church in Responding to or Exacerbating the Culture of Stigma*

Since 1999, the Church has carefully defined its role in Timorese politics. Bishop Belo stated in a circular on 11 February 2001 that “[t]he whole process of formation of this people as a nation, all the problems which it will meet, all the challenges it will face, are the problems and challenges of the Church. The Church is one with the people in the gigantic task of building a new East Timorese nation,” (Walsh 2001).

That the Church has played and, given its influence, is likely to continue to play an important role in shaping the culture of the newly independent country is undoubted. The question of the extent to which that influence will be of benefit to women is far more controversial. In many ways the struggle that the women of East Timor face in their dealings with the Church is a microcosm of the complex way in which the Catholic Church generally both supports women against certain types of oppression, but aids in perpetuating other forms of oppression. Since the Second Vatican Council in the 1962-1965 (if not earlier) the Church has increasingly been prepared to criticise governments for abuses of human rights. This is particularly the case when a predominantly Catholic population faces domination by a non-Catholic regime—a situation faced in Catholic Poland by the current Pope during his younger days and a situation in which the East Timorese found themselves during Indonesian occupation.

But while the Church and its leadership has been prepared to call upon leaders acting in the public sphere to behave in compliance with human rights, it has been far more ambivalent in respect to abuse visited on women within the private spheres of Church and home, where women have generally been exhorted to be passive and patient in response to their suffering.

Both of these phenomena can be seen in East Timor. Where women’s suffering under Indonesian occupation can be equated with that of men, the Church has been responsive and



supportive of justice for victims. The Church has stood in solidarity with those who suffered so greatly under the occupation and has resisted the attempts by the government to ignore past injustices. Yet when women's oppression has been gender specific—involving rape by occupying forces or domestic violence in the home—the Church has often sided itself with the violators rather than the victims. This demarcation between the public and private realms to the detriment of women is reinforced by the response of international law to the transitional justice process in East Timor.

Thus, sexual offences against women is an area in which the Church's influence has been ambivalent. On one hand, Church leaders have advocated the importance of reparations for women who have been raped. They have also stood against the notion that women are to be regarded as sinful or impure by virtue of being raped. One member of the Commission for Reception Truth and Reconciliation is a Catholic priest Father Jovito and he has consistently sided with women who were victims of the occupation. By his participation in the Commission, he and the Church can offer pastoral care and also learn about the gendered experience of occupation. One participant in the Women and Conflict hearings expressed concerns about the status of her marriage since her rape by a militia commander in 1999, and was reassured by Father Jovito that rape cannot nullify her marriage (Campbell-Nelson 2003). Such reassurance by a leading Catholic priest on the question of law and morality could prove invaluable for the particular woman, but the story should also bring home to the Church hierarchy the concern many women feel about these issues.

This understanding has spread to some of the population as well. A story reported from a “women to women” visit from 23 June-1 July 1999 of the World Council of Churches and the Christian Conference of Asia details a horrific set of rapes, assaults, destruction of property and constant fear for the wife of a Falintil soldier, and then notes:

Fortunately her husband understands that it was not her fault. He told her that they all face risks for the sake of freedom, and that she too, as a woman, needs to face risks.

What she said sounded like a theological statement:

This experience has given me a new perception of my womanhood and my power. I know that almost every other woman in my village has had a similar experience of violence. I am determined to fight for the life of other women. Men may fight with guns, but as a woman I will fight with the power that I have gained out of my suffering, by raising my voice. (World Council of Churches (WCC) and Christian Conference of Asia (CCA 1999)

However, while the official position of the Church is not to blame women for the sexual crimes committed against them, the Church nonetheless has some degree of complicity in creating a culture in which victims of sexual crimes, as well as children born of such violence, are mistreated. It is reported in one village, for example, that Church workers refused to allow baptisms for the babies born of rape, or confessions for their mothers (Mydans 2001). More generally, the conservatism of Timorese Catholic society, particularly in relation to issues of sexuality, is partly generated from a religion in which sexual purity, particularly for women, is given such significance. In light of this, it is understandable that Ms Abrantes of Fokupers notes that the culture of East Timor is in large part to blame for the reluctance of rape victims to speak out, as the publicity means shame and humiliation. "Our culture does not allow women to speak out. For some it is very, very difficult. They feel great shame, they are shy and cry," (Asia Human Rights News 2001)

Thus, while the Church has the potential to catalyze a progressive response to victims of rape and their babies, in reality it has played a role in contributing to the culture of East Timor more generally that leads to women being blamed for their victimhood and discouraged from being assertive of their rights to physical integrity. While the Church has officially encouraged women to stand up to those linked to the occupation who committed sexual violence, it has discouraged women from standing up to abuse and violence (including rape) within the home and family. The Church is itself a patriarchal institution wedded to ideas of hierarchy and obedience and has supported the patriarchal structure of East Timorese society. Despite the genuinely heroic struggle of the Church against the occupation and the fight by the Church for the rights of all victims of the occupation, it must accept some responsibility for creating a society in which women grow accustomed to violence and are blamed when they try to escape from abusive relationships. In such circumstances it is hard to tell women who have been encouraged to subservience in their private lives to suddenly stand against the violence of the occupiers.

This failure to understand the often grim realities of women's lives reflects at a more general difficulty in the Church coming to terms with the role of women outside the family—the concept of the woman as more than wife and mother. The Church does not permit the ordination of women and women are excluded from its leadership and decision-making hierarchy (Offices of the Congregation for the Doctrine of the Faith 2004).

This concept of womanhood resonates deeply with segments of East Timor's patriarchal population and serves to legitimate male control and dominance of the household, including the use of violence to perpetuate that control. Even Father Jovito has admitted that Catholic doctrines can be mistaken in supporting the idea that men are dominant and that women should be "spiritual law educators" (Conway 1998). Yet the potential for the Church to play a positive role in helping to transform East Timorese society remains significant:

The Catholic faith is indeed deeply ingrained in the culture of East Timor. This makes the Church and its leaders, if not the strongest political entity, certainly the strongest moral authority in the land. With its non-partisan voice, the Church could do much in the struggle to end violence between youth gangs, between political parties and within homes. Or, it could continue to prioritise dogmatic ritual and emphasize the spiritual while largely ignoring the physical. How the Church chooses to use its enormous power in East Timor will be one of the great determining factors in the future of this nation (Gabrielson 2001).

At times the Church and women's groups have spoken in unison, particularly on the issue of justice for victims of the occupation. Sadly it seems that, despite this coalition, the likelihood of formal justice for crimes under the occupation is beginning to look remote (see CAVR 2005: 101-102).

Yet, despite the end of the occupation, violence against women continues in East Timor. And when the Church has been faced with husbands and fathers rather than occupying military or militia as the abusers, its response has been muted. It has been more concerned about shaming women who leave their husbands than in asserting the rights of those women to physical integrity and safety. However powerful a voice for women the Church might have been over justice issues, its interests are not always the interests of women. Groups such as Fokupers recognize the need for women to speak with their own voices and through their own groups rather than relying solely on the Church. Strategic alliances can and have been made between the Church and women's groups but until the Church is prepared to see women as independent citizens and holders of rights in all contexts—including the home—then the positions of the two groups are likely to continue to diverge over time.

#### *From Orphans to Veterans? A Modest Proposal*

Given these gaps and silences and the specific needs of this population, there is a need to explore creative legal and policy options that would have as their aim the long-term integration, improved status and financial security of these affected mothers and children. This in turn may

have important benefits for the future of East Timor itself. Arguably, integration of these families into Timorese society, and a transitional justice process that is durable and inclusive, are critical to avoiding generational conflict. In the end, it could be that by following such a course of action, the Government is more able to achieve its goal of economic survival in a sustainable manner. The image of a Timorese baby may come to symbolise a secure future rather than a tragic past. Likewise, the Catholic Church faces an opportunity to transform itself to oppose abuse and violence in all its form and to re-conceptualize the role of women in East Timorese society. Should it seize this opportunity, this could have an enormously beneficial impact on the women of East Timor for whom religion and the Church continue to play an important personal and spiritual role.

Yet what are the available policy options in this regard, given the conservative nature of Timorese society, the cultural ambivalence toward women's sexual involvement with foreign troops, and the cross-cutting nature of the harms to be addressed? One simple but perhaps far-reaching proposal might be to expand the definition of veteran in the draft legislation currently before Parliament to re-characterise both the affected women and children as “veterans“ of the conflict, with the same status as the former Falantil guerrillas. This would serve the purpose of both providing a pension and acknowledging the status and contribution these women made through their bravery to independence. It would also have the effect of putting the situation of these families squarely into current transitional justice debates in Timor.

This does not mean that women and children should become combatants in the traditional sense of taking up arms. It means instead that the idea of contributing to the independence of the nation should be defined by more than the holding of a weapon or formal commission, especially when the protection of non-combatants is breaking down. It is clear in assessing the patterns of sexual violence in Timor that rape was not a personal, sexual crime committed by individuals in an opportunistic manner. Mario Carrascalão, former Governor of East Timor was asked by the Chair of the Commission for Reception, Truth and Reconciliation (CAVR) National Public Hearing on Women and Conflict what he thought the objective of violence against women was. He replied simply: “The aim of this violence against women was to reduce the power of the resistance.”<sup>16</sup>

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16 Testimony given 28-29 April 2003, Dili.

The issue of proper support for veterans and who is a veteran has been a hot debate in Timor since independence. The main source of tension is that the UN Mission did not convert the majority of Falantil veterans into the new standing army or reserve. Instead, the East Timor Defense Force (ETDF) is small but well-trained, consisting of 1500 regulars (31 of whom are women) and 1500 reservists. Over 7000 people applied for the last round of 428 places, leaving many disgruntled veterans without a position (Havely 2002).

On 8 June 2004 President Gusmão formally presented to the National Parliament the report of the Veterans Commission, which recommended forms of recognition and material benefits to the veterans identified through a long registration process. More than 37,000 people have been registered as having fought for independence during the occupation, and are nearly all male combatants. Tensions about the long process led to a demonstration led by Cornelio Gama (known as L7) of 120 veterans on 19 July 2004 outside the Parliament, dispelled by tear gas (UNMISSET, 2004). An August 2004 interview with President Gusmão shows a Government willing to empathise and negotiate with this group:

GUSMAO: "I can understand the position of those former veterans, you know they previously were very clear about who the enemy was, it was the Indonesian military. They had a role as heroes in fighting against that enemy. Nowadays who are they? You know they haven't been given any special recognition from government, they're not clear about what their role is in determining the future of their country. So I think it's very understandable that they are feeling marginalised now and disgruntled with the government and expressing that through demonstrations."

WERDEN: Well what do you think the government should do with people like L-7?

GUSMAO: "I think it's really important that the government sit down and listen to what they're saying and really make a special effort to respond in some way, either with training or employment opportunities for these people, not just because they have the potential to disrupt stability in the future, but because they really are genuinely deserving of attention and special support," (ABC Radio Australia 2004).

In short, this group of veterans has links with the leadership and the ability to make itself heard, but children born of war and women survivors do not. And yet, why should combatants be prioritised over these women and children?

Such a proposal, if implemented, could work to counter the prevailing inertia and patriarchal attitudes that account for much of the hardship these survivors and their babies face, while drawing strategically on other nationalist imagery currently at a premium in post-independence East Timor. In part, the reluctance to incorporate a concern with gender-based violence into existing mechanisms for legal redress in East Timor is due to the ambivalence

about the idea of women as fighters for independence during the occupation, and discomfiture regarding their status as “wives” of Indonesian military. The language still used to describe these women is filled with euphemism and the assumption of consent through formal rituals such as “marriage” and “wives”—even more pronounced than terms like “comfort women.” Likewise, the language used to describe the babies is, at worst, one that invokes shame and illegitimacy, and at best one that evokes pity for their status as “orphans” despite the fact that they may be in the custody of their mothers.

Policy proposals that would reconstruct these mothers and their children as wartime veterans or symbols of post-conflict reconciliation, rather than shame and stigma, will not resolve their situation overnight. However it may provide a language and a framework in which women's groups and progressive elements within the Church can engage in work to promote greater social inclusion for these families, and such terminology may be validating to the survivors and their children themselves. In addition, a step such as this would go a long way toward meeting some of the economic, as well as social needs of the women and children.

### Conclusion

This paper argued that the well-being and ability of children of rape to claim their rights is related to the status of their mothers socially and legally, and this status needs to be addressed in transitional justice debates. Within Timor, there is a definite ambivalence about the idea of these women as contributors to independence during the occupation, and discomfiture regarding their status as so-called “wives” of Indonesian military.

This could be changed by simple policy choices: one discussed above would be to redefine “veteran” status to include victims of rape and sexual slavery and children born as a result. Other solutions might be to convene a special hearing of the Truth Commission (or its successor) or the Parliament to deal with the rights of children born of rape. The Government of East Timor, with international donor funding and encouragement, might also institute a special assistance program for affected families that included a public anti-discrimination campaign. There is a precedent for such a campaign in the domestic violence program run last year. International donors and humanitarian organizations working in East Timor could help to advocate for such an initiative.

The first imperative is to gain qualitative and quantitative data on the situation of these children and their mothers. Such work should endeavour to shift the approach from a covert welfare to a rights-based framework, and to approach the children as rights-bearers and the subjects of analysis, rather than by-products of a crime or sin.

The position of the women of East Timor is not static and there are some causes for optimism. When Natércia Godinho-Adams addressed the UN Security Council, she pointed out that whilst the Indonesian occupation had been a tragedy for the women of East Timor, the crisis had also created a number of new opportunities for them:

...Men's and women's roles changed substantially during the years of conflict and social disruption since 1974. A significant number of women assumed active roles in the clandestine liberation front and the armed resistance. They were soldiers, they smuggled medication, food, armament, and information to the resistance movement hiding in the mountains. [...]  
In the absence of the male household head, women assumed new responsibilities in traditional male income generation. East Timorese women want to build a society that will respect their newly acquired post-conflict roles, and will not force them to return to traditional powerless roles (Godinho 2001).

Thus the position of women and, correspondingly, of their children is fluid. While in many ways East Timor remains a patriarchal and traditional society, there are social forces that suggest that women could start to play a greater role in post-conflict reconstruction and governance. The question is whether the society can shed the euphemistic veil that lies over a substantial social and moral issue in East Timor—that of the reintegration and acceptance of women who have suffered human rights violations and the right of their children to a future.

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