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

Susan Harris Rimmer
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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 children were born of rape during the Indonesian occupation from 1974 to 1999.

As a result of the United Nations Population Fund’s 2004 census, data is finally available on the current population of East Timor. This has unexpectedly revealed a baby boom, perhaps in response to the emotional losses of the occupation. The fertility rate was found to be one of the highest in the world, at 6.1 babies per woman.¹ Babies have become the symbol of both wounds and healing in Timor.

Nonetheless, official silence continues on the number and the treatment of the children born of conflict. The transitional justice mechanisms put in place in Timor to address the human rights violations have paid inadequate attention to the plight of these children. No official policies are in place to deal with the needs of these children or their mothers, or to combat the discrimination they may face. The challenges these children and women pose to the social fabric of Timor reveals important gaps and silences within the international human rights law framework. These gaps could be addressed by some fairly straightforward policy innovations.

I argue that the status of the mothers socially and legally impacts the well-being and ability of their children to claim their rights, and must be more fully addressed in transitional justice debates. There is ambivalence in East Timor towards the idea of these women contributing to independence during the occupation, and discomfort regarding their status as so-called “wives” of members of the Indonesian military. This cultural construction is exacerbated and challenged by the ambivalent influence

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¹ 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. United Nations Population Fund, Overview: Democratic Republic of Timor-Leste, http://www.unfpa.org/profile/timorleste.cfm?Section=1.
of Catholic teachings on East Timorese society. However, social currents exist that, if used strategically to reconstruct the image of these children and women, could reframe their trauma in transitional justice discourse. Such a reframing would contribute both to their well-being and the long-term process of reconciliation in East Timor.

The paper proceeds in three sections. First, I 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, in which the affected children would be publicly accepted as having valid claims before 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, which would assist these families with integration, status, and financial security, are required. I conclude with one such proposal to improve the situation of these families: re-characterize the affected women and their children as “veterans” of the conflict, with the same status as the former Falintil guerrillas.

### SUMMARY

I. CHILDREN BORN OF RAPE AND THEIR MOTHERS IN EAST TIMOR ..........324

II. ASSESSING EXISTING RESPONSES TO RAPE SURVIVORS AND THEIR CHILDREN IN EAST TIMOR .................................................................331
   A. Gaps in Transitional Justice Mechanisms ........................................332
   B. Role of the Church in Responding to or Exacerbating the Culture of Stigma ........................................................337

III. FROM ORPHANS TO VETERANS?: A MODEST PROPOSAL ...............340

IV. CONCLUSION .........................................................................................343

### I. CHILDREN BORN OF RAPE AND THEIR MOTHERS IN EAST TIMOR

East Timor is one of the world’s newest states, but it has inherited complex problems from its history as a Portuguese colony and an occupied Indonesian province. The August 1999 referendum on East Timorese independence was

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organized and administered by the United Nations. During the time leading up to the vote, 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.

No accurate statistics on sexual violence are available for this period or for the period of forced deportation and internment in West Timor beginning in September 1999. However, a wealth of anecdotal evidence demonstrates that gender-based international crimes in Timor have been widespread since 1975 and were rife during the violence in 1999. Testimonies to this effect have been collected by the United Nations, human rights NGOs such as Amnesty International, the Indonesian Human Rights Commission, Australian journalists, and most importantly, East Timorese NGOs themselves. The most comprehensive overview of sexual violence in Timor appears in Chapter 7.7 of the Commission for Reception, Truth, and Reconciliation (CAVR) report entitled Chega!. The CAVR documented 853 cases of sexual violence, but concluded:

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.  

With statistical data on rape difficult to find, there is insufficient data on how many children were born of rape, or how many orphans are in East Timor at the present time.  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 stigmatization and the rejection of these women and children by their families or villages. There are several examples of forced maternity in Timor; one of the earliest examples was cited in a report to the United Nations Special Rapporteur in 1997. However, a full study was never undertaken. 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 “[t]his branding of women and their children not only resulted in social isolation, but also often resulted in severe psychological problems within the family.”

Prior to 1999, an unverifiable number of Timorese women were abducted, raped and impregnated by Indonesian soldiers, often kept captive under slavery-like conditions. An example of this pattern of violence comes from the testimony 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 April 28 and 29, 2003 on the theme of Women and Conflict, which was broadcasted on radio throughout the territory:

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


13. Mario Carrascalão, Former Governor, Province Timor-Leste, Testimony at the National Public Hearing on Women and Conflict conducted by the Commission for Reception, Truth and Reconciliation (CAVR) [hereinafter Carrascalão Testimony] (stating that a survey conducted in 1985 found 40,000 orphans in Timor) (summary available at http://www.jsmp.minihub.org/News/6_05_03.htm).

14. See generally GEORGE J. ADITJONDRO, VIOLENCE BY THE STATE AGAINST WOMEN IN EAST TIMOR: A REPORT TO THE UN SPECIAL RAPPORTEUR ON VIOLENCE AGAINST WOMEN, INCLUDING ITS CAUSES AND CONSEQUENCES (1997).


16. CAVR, supra note 12, ch. 7.7, para. 346.

17. Violence Against Women, supra note 5, para. 81.
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. 

Beatriz’s story has 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.

A more acute form of gender-based violence occurred in 1999 during the post-referendum violence: the abuse of East Timorese women in the context of the forced deportation of over 200,000 people into camps in West Timor. A leading women’s NGO, Fokupers, has documented forty-six cases of rape during the 1999 violence—nine of them by Indonesian soldiers, twenty-eight by pro-Jakarta militias, and nine by joint attacks. “Eighteen were categorized as mass rapes.” The Fokupers report states that “[m]any of these crimes were carried out with planning, organisation and coordination,” and that “[s]oldiers and militias kidnapped women together and shared their victims.”

In the West Timor camps, where tens of thousands of women were forcibly deported, a fact-finding team found, in one study alone, 163 different cases of violence against 119 women, and noted the serious impacts of sexual violence on women’s health. Activists including the new First Lady of East Timor, Australian Kirsty Sword Guasmo, have been campaigning to obtain the release of several young women in the refugee camps of West Timor who are thought to be held against their will as “war trophies” by militia leaders. In November 1999, several Special Rapporteurs met, including the Special Rapporteur on Violence against Women,

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19. Id. 
20. Id. 
21. Id. 
22. Id. 

25. Id. 
26. Id. (quoting a Fokupers report, citation omitted). 
during a joint fact-finding mission together with the Special Rapporteur on extrajudicial, summary or arbitrary executions and the Special Rapporteur on the question of torture. In particular, the Special Rapporteur on Violence against women “found evidence of widespread violence against women in East Timor” 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.”

Lamont and Williams, quoting the Special Rapporteur Coomaraswamy, conclude:

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 between 1975 and 1999, children were born to women raped during or after the forced displacement. In an article entitled *East Timor’s Children of the Enemy*, published in *The Weekend Australian*, Sian Powell describes such a situation:

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.

He 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 and the mass rapes of the 1999 post referendum violence. Although no systematic attention has been given to the status and rights of these children relative to other children affected by the political violence in East Timor, evidence suggests that such children are both at risk of abandonment to orphanages, and, if kept by their mothers, are likely to experience ostracization and impoverishment, due to the mothers’ low social status in post-independence East Timorese society.

Evidence of the relative likelihood of child abandonment as a result of rape in East Timor is contradictory. Powell suggests that “[n]o one who works with raped

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32. Future comparative work on this topic would need to establish both how prevalent child
women in East Timor can recall a single instance of a woman abandoning a child because it is the product of rape."33 However, it is unknown how many people Powell interviewed, and in addition, the women who have received services and support from NGOs may not be representative of the broader population of rape survivors. The Chega! report references at least one case of an unsafe abortion obtained by a rape survivor.34 On the other hand, as Powell suggests, researchers have seen cases where mothers have accepted and chosen to care for these children, despite the extremely traumatic circumstances of their conception.35

For instance, the Indonesian military routinely targeted the wives of guerrilla leaders monitored any communications with the husbands in the mountains, and compromised the women as “unfaithful” wives, thereby isolating them from the community. The first wife of resistance leader Xanana Gusmão, Emilia Baptista Gusmão, bore a child by an Indonesian army officer during the course of several interrogations intended to influence her husband to surrender.36 The child died, but Emilia has said publicly that she would carry the grief of the dead child all her life “because that child was my child.”37

This willingness and ability to accept children conceived under such circumstances, rather than define them as of the enemy, may be explained by the low status of Timorese women and the fact that women’s social status often derives from motherhood.38 It also may be due to the influence of Catholic teachings in Timor. However, comparative work should examine whether anecdotes accurately reflect widespread practice, or the particular media framing of this conflict.

Although some East Timorese survivors elect to keep their babies born of rape, numerous children of rape have been abandoned by their mothers. Sister Maria, a nun, whispered to a journalist that in a Catholic orphanage “[m]ost of the children are mixed race, the babies of women raped by Indonesian soldiers.”39 According to Williams and Lamont, this reality is “not a truth openly voiced in East Timorese society.”40 The authors further note that “in the early years following the Indonesian invasion, orphanages were filled with genuine orphans: so many adults had been killed in military operations.”41 Another complicating factor is that even “genuine” orphans (the children of Timorese parents) generally are not treated well by ordinary Timorese; for example, many families adopt one of these orphans to work as a house slave. Now, most of the children in orphanages are children of rape.

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.

33. Powell, supra note 15.
34. CAVR, supra note 12, ch.7.7, paras. 323-24.
36. ADITJONDRO, supra note 14, at 12.
37. Id.
39. Williams & Lamont, supra note 30, at 10 (internal quotations omitted).
40. Id.
41. Id. (internal quotations omitted).
Children of rape or sexual slavery that have been kept by their mothers are stigmatized by the wider community. The Special Rapporteur’s report asserted that “[m]any 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.”  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.”  Abuelda Alves of the Timorese NGO Fokupers said bluntly of the women 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.”  In this context, the extremely low rates of reporting by Timorese women is not surprising, especially those returning from forced deportation in the West Timor camps. Generally, women will only speak to nuns or priests, or they will not speak to anyone at all, as noted by lawyers assisting Timorese asylum-seekers.

The pervasive 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 violação (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.”

In part, the stigma against survivors of rape and sexual slavery in East Timor derives from the unwarranted or misunderstood association of rape with prostitution, which is deeply stigmatized in Timorese society. During the occupation, East Timorese girls and women were perceived as having become “prostitutes” as a result 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 were away fighting or have been killed. 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. This

42. 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 states: “the women are having a very difficult time, not only because of poverty, but also because the sight of these children often reminds them of rape.” See Report of the Special Rapporteur on violence against women, its causes and consequences, Violence against women, supra note 4 at 58.
43. Scars of Vote Violence Remain Real for Many East Timor Women, supra note 24.
44. Id.
46. ADITJONDRO, supra note 14, at 2.
47. REBECCA WINTERS, BUIBERE: VOICE OF EAST TIMORESE WOMEN 36 (1999).
48. Id.
49. Id.
50. ADITJONDRO, supra note 14.
51. Article 285 of the Indonesian Penal Code (KUHP) provides for a maximum sentence of twelve years but specifies there can be no rape in marriage. 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, if it is not obvious from her age, not yet marriageable.” There are no specific articles dealing with domestic violence. These provisions were superseded by a new Timorese Criminal Code and Criminal Procedure Code passed in 2006. Timorese legislation on domestic violence has been prepared but not yet passed. Kompilasi Hukum Islam di Indonesia [KUHP] [Indonesian Penal Code], art. 25, available at http://humantrafficking.org/government_law/20. See also Judicial System Monitoring Programme, The
characterization also holds deeper meanings for a strongly Catholic society. As noted 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 euphemisms are a strategy of denial, benevolent protection against the stigmatization of illegitimacy, or a genuine belief that marriage is not meant to be consensual. Victims are ascribed to have agency, despite all evidence to the contrary: “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.”

The picture that emerges in East Timor, then, is that of rape victims and their children experiencing additional hardship deriving from society's interpretation of the sexual violence and its after effects. The physical, economic, and psycho-social situation of the children is intricately bound up with the social status of their mothers, and vice versa.

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. This exemplifies the problem that, while the prevalence of systematic sexual violence has finally been acknowledged in recent conflicts, and gender persecution is subject to international criminal sanction, international criminal law currently fails to recognize the offense of “forced maternity” on behalf of the mother, or any offense with respect to the child. These inadequacies in the scope and definition of genocide have 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 and suggest policies that constructively address the difficulties faced by these women and their children.

II. ASSESSING EXISTING RESPONSES TO RAPE SURVIVORS AND THEIR CHILDREN 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. Those survival needs are based on a welfare paradigm that has reproduced conservative cultural conceptions of mothering and domesticity. In this section, I describe both the lack of recognition by existing transitional justice mechanisms of gender-based violence, and the Catholic Church's ambivalent and somewhat problematic response to the children and their mothers. Both of these patterns could be improved by
incorporating a recognition of the status of these women and children as “veterans” of the war leave as is in post-conflict East Timor.

A. Gaps in Transitional Justice Mechanisms

The situation in East Timor has unfortunate similarities to other post-conflict societies such as Bosnia, Rwanda, and the Sudan. The plight of “children born of war,” defined as children born of rape or exploitation in an armed conflict situation, is generally met with silence or avoidance by transitional governments.55 Bishop Belo, writing of East Timor’s path to freedom, 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.”56 “[U]p to 3,000 died in 1999, untold numbers of women were raped and 500,000 persons displaced—100,000 are yet to return.”57 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’s advocates.

The silence of these victims both reflects and perpetuates a situation in which women are not being consulted and are not 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.58 Key questions about East Timor’s future as a society have been determined so far by focusing exclusively 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.59

East Timorese women should have been in a better position 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

55. As Carpenter notes in the introductory paper, this silence is also still evident within international law and the international community. See id.
57. Id.
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 those conducted in post-conflict South Africa and Chile. Hybrid international criminal tribunals are emerging, such as the Special Court for Sierra Leone. Many states, including Belgium, have implemented domestic legislation conferring universal jurisdiction to their national courts in order to prosecute war crimes.

Precedents have been even more revolutionary in international criminal law for prosecutions of gender-related crimes. Both the ICTY and ICTR have successfully indicted, prosecuted, and convicted defendants for gender-based crimes, marking the first time in history that such crimes have given rise to international criminal responsibility. In the Akayesu case before the ICTR, rape was recognized as a crime against humanity and included as an element of genocide. The ICTY in Celebici, Furundzija and Kunerac characterized rape as torture, and included sexual slavery and sexual acts within the definition of inhumane treatment.

Article 5(g) explicitly lists rape as a crime. The Secretary General wrote, in a April 29, 2004 report to the Security Council, “In its resolution 1410 (2002), the Security Council stressed the critical importance of cooperation between Indonesia and Timor-Leste, and with UNMISET, 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 realized. There is no real prospect that Indonesia will pay reparations or compensation to the victims of the occupation from 1975 to 1999. Many hope that the truth commission process and UN trials in Dili will assist in creating an accurate historical record of human rights violations in the territory, a process which was set back by the acquittals in the Jakarta ad hoc trials. Expectations are dwindling that the UN will create an international tribunal to force members of the Indonesian military to stand trial, despite the recommendations by its own appointed Commission of Experts in

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62. Strategic Choices in the Design of Truth Commissions, http://www.truthcommission.org/ (follow “Background”; then follow either “South Africa” or “Chile” from the pull-down menu).
63. The Special Court for Sierra Leone, http://www.sc-sl.org/.
2005. There has only been one successful conviction of rape as a crime against humanity in the Dili Serious Crimes Court; that charge was brought against a low-level Timorese militia member. He may soon be freed if the amnesty legislation is passed as expected, resulting from 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, most of whom remain at large in Indonesia.

The prospect of justice was bleak for rights violations in East Timor, with rape of women so commonplace that it was perceived almost as a non-issue. Few women were prepared to bear the shame and horror of recounting their appalling experiences. The fourteen women who did recount their experiences before the Reception, Truth and Reconciliation Commission were both brave and exceptional. 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.”

The ability of East Timorese victims of rape to gain justice remains low.

Elsewhere I analyzed the Serious Crimes cases of Leonardus Kasa and Lolotae, and concluded that justice for women during the period of Indonesian occupation will be difficult to achieve through the courts. In the Kasa case, the Special Panel of the Dili District Court declared that it had no jurisdiction as the rape had been perpetrated in West Timor. This decision ignored the principle of universal jurisdiction, and precluded all further cases of women who had been forcibly removed from East to West Timor from being tried. Courts have applied domestic rather than international law in many cases, which has narrowed the scope of these decisions and ensured the exclusion of pioneering case precedents from the international stage. Even with a successful prosecution, it is unlikely that a judgment would influence international law or provide the financial recovery needed by the families of the rape victims.

The UN could have initiated a precedent-setting trial through the Serious Crimes process where forced sexual slavery or forced impregnation was defined as a war crime, torture or crime against humanity, and it could have 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, courts are entitled to prosecute war crimes and crimes against humanity of rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization 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
This definition was developed in response to the practice of Bosnian Serbs forcibly raping and detaining Muslim and Croat women so they would bear Serbian children.\textsuperscript{75} Barbara Bedont and Katherine Hall Martinez comment that the forced pregnancy provisions were the most contentious part of the State negotiations concerning 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.”\textsuperscript{76}

Bedont and Martinez further report that the Vatican and a core group of Islamic states objected to the inclusion of the offence due to their belief that the aim was to “criminalize the denial of abortion services.”\textsuperscript{77} These states attempted to limit the offence to ethnic cleansing.\textsuperscript{78} The additional violations under international law were added on the second to last day of the tribunal. That Jewish women were forcibly impregnated during WWII so that they and their fetuses could be used for experiments influenced the decision to expand the scope of the violation.\textsuperscript{79}

Kelly Askin argues that the phrase “other violations of international law” could include the intent to persecute, discriminate against, or torture the victim.\textsuperscript{80} She does not address the issue 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 by the Rome Statute may be very problematic for women unless overtly genocidal intent is present.\textsuperscript{82} Prosecuting forced maternity as genocide or only as it relates to a violation harms the ethnic group and diminishes the fact that the violation is primarily against the woman herself.\textsuperscript{82} An interesting consideration is whether a criminal case could be brought on behalf of a child born of rape, and what those possible charges could be.\textsuperscript{83}

The question remains, however, whether trials are the preferred outcome for women who survived the violence, or their children born of war. Julie Mertus notes that court trials are inherently counter-narrative,\textsuperscript{84} despite the best efforts of investigators and prosecutors. The purpose of a trial is to prosecute and punish the

\textsuperscript{74} Rome Statute, supra note 61, art. 7.2(f); UNTAET Reg. 200/15, supra note 72, sec. 5.2(e).
\textsuperscript{75} Catherine A. MacKinnon, Turning Rape into Pornography: Postmodern Genocide, in MASS RAPE: THE WAR AGAINST WOMEN IN BOSNIA-HERZEGOVINA 73 (Lincoln A. Stiglmayer ed., 1994).
\textsuperscript{76} Barbara Bedont & Katherine Hall Martinez, Ending Impunity for Gender Crimes under the International Criminal Court, 6 BROWN J. WORLD AFF. 65, 67 (1999).
\textsuperscript{77} Id. at 74.
\textsuperscript{78} Id.
\textsuperscript{79} Id. at 68.
\textsuperscript{81} Rome Statute, supra note 61, art. 7.2(f).
\textsuperscript{83} Daniel, supra note 35.
major war criminals for violations of the Geneva Conventions. Subsequently, a war crime trial can “only do so much.” \textsuperscript{85} Victims of sexual violence, for instance, only get to tell a piece of their story, if chosen to give testimony. Further, those experiences remain cloaked in secrecy given that court sessions are often in private out of necessity for protection and safety. The physical and psychological wounds resulting from rape and sexual abuse are generally not an accepted part of rape testimonies, and thus women’s experiences continue to be excluded; emotions are assumed to have no place in the courtroom. Further, retraumatization is a likely possibility within this context. Inevitably, the reconstruction of the story will entail reliving the traumatic event. \textsuperscript{86} Moreover, discrediting the evidence and testimony of the witness is a routine part of the trial process, which may exacerbate the devaluation of raped women who have come to testify at an international criminal proceeding. \textsuperscript{87}

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 woman’s story is only partially told; that most survivors do not have access to this forum; that retraumatization is a common response; \textsuperscript{88} and that those who testify may face ostracism upon return to their communities, this indicates that a war crimes trial is not the appropriate context for sexual violence survivors. However, testifying at an international criminal proceeding might be a potentially empowering process for survivors, given that it constitutes a measure of justice backed by legal sanction that is broadcast to the whole world. \textsuperscript{89} The CAVR report presents evidence of the healing power of testimony, applauding the courage of the fourteen women who testified at the National Public Hearing on Women and Conflict in April 2003. The report also points to the trauma-inducing effect of testifying, noting that most of the testimony was given under false initials. \textsuperscript{90}

Moreover, the outputs of a prosecutorial system are sentencing and reparations, which usually focus on the offense of rape itself, not on the offense of forced maternity. These outputs do not relate to the status and maintenance issues faced by the mother and child in the longer term. \textsuperscript{91} Reparations could be geared towards the future needs of children born of war. \textsuperscript{92} Part 11 of the final CAVR Report offers

\textsuperscript{85} \textit{Id.}

\textsuperscript{86} JUDITH HERMAN, TRAUMA AND RECOVERY: THE AFTERMATH OF VIOLENCE FROM DOMESTIC ABUSE TO POLITICAL TERROR (1992).


\textsuperscript{88} Scri Enver Cesko et al., Study with the Clients Treated at the KRCT, from the Witnesses and the Kosovo Population Regarding the Possibility of their Re-Traumatization During the Trial Process of Milosevic in Hague 1-9 (2002) (copy on file with author).

\textsuperscript{89} Elizabeth Stanley, Torture Silence and Recognition, paper read at Activating Diversity and Human Rights Conference, Byron Bay, Australia (July 1-4, 2003).

\textsuperscript{90} CAVR, supra note 12, ch. 7.7, para. 30.

\textsuperscript{91} For example, on April 12, 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 December 21, 2003, the FARDC battalion based in Songo Mboyo raped at least 119 girls and women. UN News Centre, UN Welcomes Life Sentences On Soldiers Accused Of Massive Rape, WAR CRIMES PROSECUTION WATCH (Apr. 17, 2006) available at http://www.publicinternationallaw.org/warcrimeswatch/archives/wcpw_vol01issue05.html#sl1.

\textsuperscript{92} Galuh Wandita et al., Gender and Reparations in Timore-Lest, in ENGENDERING REPARATIONS: RECOGNISING AND COMPENSATING WOMEN VICTIMS OF HUMAN RIGHTS VIOLATIONS (Ruth Ruble-
excellent recommendations for dealing with reparations which specifically identify as priority beneficiaries “children born out of an act of sexual violence whose mother is single.” 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.

B. 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 February 11, 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.”

The Church has played and, given its influence, is likely to continue to play an important role in shaping the culture of this newly independent country. However, the extent to which that influence will benefit 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 1962-1965 (if not earlier) the Church has increasingly been prepared to criticize governments for abuses of human rights. This is particularly true when a predominantly Catholic population faces domination by a non-Catholic regime—the situation endured by Pope John Paul during his younger days in Catholic Poland during Nazi Poland and faced by the East Timorese during Indonesian occupation.

While the Church has been prepared to call upon leaders acting in the public sphere to comply with human rights principles, it has been far more ambivalent in respect to abuse visited on women within the private spheres of church and home. In those instances, women have generally been exhorted to be passive and patient in response to their suffering.

Marined., 2006).

93. CAVR, supra note 12, part 11, para. 12.9.
94. Id. part 11, para. 12.
96. See CAVR supra note 12, ch. 7.7, para. 351 (describing the Church’s support of victims of rape while at the same denying children baptism if born out of wedlock).
The Church’s differing responses to human rights violations can be seen in East Timor. When 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 greatly under the occupation and has resisted the attempts by the government to ignore past injustices. Yet it appears that when oppression has been gender specific—involving rape by occupying forces or domestic violence in the home—the Church does not support the victims as strongly as when the violence is public in nature. In addition, this detrimental demarcation between public and private realms is reinforced by the response of international law to the transitional justice process in East Timor.

Sexual violence against women is an area in which the Church’s influence has been ambivalent. On one hand, Church leaders have called for reparations for women who have been raped, and they have also argued against the notion that women are to be regarded as sinful or impure as a result of being raped. On the other hand, church policies have negatively impacted women. Catholic priest Father Jovito, a member of the Commission for Reception Truth and Reconciliation, has consistently sided with women who were victims of the occupation. Through his participation in the Commission, he and the Church can offer pastoral care and learn about the gendered experience of occupation. For instance, one participant in the Women and Conflict hearings was concerned that the status of her marriage had been denigrated because she had been raped in 1999 by a militia commander. She was reassured by Father Jovito that the rape cannot nullify her marriage. Such reassurance by a leading Catholic priest on the question of law and morality could prove invaluable for the particular woman. But this story should also demonstrate to the Church hierarchy the concerns women feel about these issues.

This understanding has spread to some of the general population of East Timor as well. The story of one wife of a Falantil soldier details a horrific set of rapes, assaults, destruction of property, and constant fear:

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:

100. See CAVR supra note 12, ch. 7.7, para. 350.
102. See generally CAVR supra note 12, ch. 7.7, para. 351.
105. Id.
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.

While the official position of the Church is not to blame women for the sexual crimes committed against them, the Church has nonetheless some degree of complicity in the creation of a culture in which victims of sexual crimes, as well as children born of such violence, are mistreated. For instance, in one village it is reported that Church workers have refused to allow baptisms for babies born of rape, or confessions for their mothers. More generally, the conservative nature of Timorese Catholic society, particularly in relation to issues of sexuality, is partly the result of a religion in which sexual purity, particularly for women, is given significance. Ms. Abrantes, a member of Fokupers, takes the position that the culture of East Timor is in large part to blame for the reluctance of rape victims to speak out is understandable. Publicity results in 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.”

Though the Church has the potential to inspire progressive response to victims of rape and their babies, it has also contributed to the culture in East Timor, which has led to women being blamed for their victimhood and discouraged from asserting 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 struggling against the occupation, the Church for the rights of all victims of the occupation, it must accept some responsibility for creating a society in which women are accustomed to violence and blamed when they try to escape from abusive relationships. In such circumstances it is difficult for women that have subservient in their private lives to forcefully oppose the violence of the occupiers. Failure to understand the 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.

110. 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, Letter to the Bishops of the Catholic Church on the Collaborations of Men and Women in the Church and in the World (May 31, 2004), available at http://www.vatican.va/roman_curia/congregations/cfaith/documents/rc_con_cfaith_doc_20040731_collabora
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 mistakenly understood to endorse the idea that men are dominant and that women should be “spiritual law educators.” Yet the potential for the Church to play a positive role in transforming 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.

At times the Church and women’s groups have spoken in unison, particularly on the issue of justice for victims of the occupation. Even with this coalition, the likelihood of formal justice for crimes under the occupation looks remote.

Despite the end of the occupation, violence against women continues in East Timor. And when the Church has been faced with husbands and fathers as abusers rather than occupying military or militia, its response has been muted. The Church 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 frequently diverge from 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, the positions of the two groups are likely to continue to diverge.

III. FROM ORPHANS TO VETERANS?: A MODEST PROPOSAL

Given these gaps and silences coupled with 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, would be

113. Id. at 2.
114. CAVR, supra note 12, ch. 7.7, paras. 101-02.
critical to avoiding generational conflict. It could be that by following such a course of action, the Government is better 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 Church has an opportunity to transform itself to oppose abuse and violence in all forms, and to recast the role of women in East Timorese society.

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 possible proposal is to expand the definition of veteran in the draft legislation currently before Parliament to recharacterise both the affected women and children as “veterans” of the conflict, with the same status as the former Falantil guerrillas. This would both provide a pension and acknowledge 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.

Recharacterizing women and children as “veterans” does not mean that women and children should become combatants in the traditional sense of taking up arms. Rather, 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 East 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 simply replied: “The aim of this violence against women was to reduce the power of the resistance.”

The issue of proper support for veterans, including defining who is a veteran, has been contentiously debated in East 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.

On June 8, 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 July 19, 2004 outside the Parliament, dispelled by

118. Id.
tear gas. An August 2004 interview with President Gusmão shows a Government willing to empathize 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.”

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.

IV. 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.\(^{121}\)

In the absence of the male household head, women assumed the traditionally male role of earning an income sufficient to support a family. East Timorese women do not want to return to the powerless roles they occupied before; instead they want to build a society that will respect their newly acquired post-conflict roles.\(^{122}\)

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122. Id.
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 rights violations and the right of their children to a future.