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Surfacing Gender and the Constitution of Timor Leste

Dr Susan Harris Rimmer

Introduction

This chapter will proceed in two parts to address the question of how gender issues are relevant to the Constitution of Timor-Leste. I will first attempt a more traditional style of gender analysis that focuses on some of the explicit references to women and gender in the Constitution. The second part of the argument will focus on surfacing gender issues in the in the Constitution that are not so apparent on first reading.

Making the text hold meaning for women

Specific references to women in the Constitution include the following:

- **Section 6 Objectives of the State (j)** To promote and guarantee the effective equality of opportunities between women and men.
- **Section 16 (Universality and Equality) 1.** All citizens are equal before the law, shall exercise the same rights and shall be subject to the same duties. 2. No one shall be discriminated against on grounds of colour, race, marital status, gender, ethnical origin, language, social or economic status, political or ideological convictions, religion, education and physical or mental condition.
- **Section 17 (Equality between women and men) -** Women and men shall have the same rights and duties in all areas of family life and political, economic, social, cultural.
- **Section 39 (Family, marriage and maternity) 4.** Maternity shall be dignified and protected, and special protection shall be guaranteed to all women during pregnancy and after delivery and working women shall have the right to be exempted from the workplace for an adequate period before and after delivery, without loss of remuneration or any other benefits, in accordance with the law.
- **Section 63 (Participation by citizens in political life) 1.** Direct and active participation by men and women in political life is a requirement of, and a fundamental instrument for consolidating, the democratic system. 2. The law

shall promote equality in the exercise of civil and political rights and non-discrimination on the basis of gender for access to political positions.

I will make some general observations on how these principles have fared so far in the development of the new State. The picture I will paint is rather a bleak one. I am critical of the Constitutional drafting process because it seemed to ignore Fox's contention that elections are not an end-point but an "essential first step" to a democratic society. (1992: 270-1) UNTAET seem to have operated under the assumption that East Timor should hold Constituent Assembly elections, Presidential elections and draft a Constitution, all within the two year period before UNTAET withdrew, presumably so its democratic legitimacy could be assured on 20 May 2002, Independence Day. In contrast, the widespread demand from the Timorese population for justice for international crimes committed by the Indonesian military and militia from 1975 to 1999 were met with a lack of resources and little concrete success, as were a functional land title system and basic economic infrastructure.¹ What was the basis of UNTAET's assumption to focus on democratic process at the expense of other priorities? Was it based on an analysis of the competing rights and needs of East Timorese citizens, or instead on the uncritical liberal democratic assumptions of the UN itself and international donors? What impact did women's participation have on these crucial initial decisions?

The evidence is that the cultural and political realities of women in East Timor were and remain extremely complex and fluid. Timorese women play multiple roles, including in government, politics and transitional justice systems, which will be outlined in detail in relation to the different mechanisms. Women played an active role in the liberation movement (*Buibere* paints only one portrait)², and at times were armed fighters in the guerrilla movement and are therefore also potential perpetrators of international crimes. The equality of women occupied a central place in the liberation ideology of FRETILIN,³ and continued to be one of the party's key

¹ See further Ajiza Magno's comments (Carnegie Council on Ethics and International Affairs, 2001.)

² Rebecca Winters (ed). *Buibere: Voice of East Timorese Women*. Darwin, NT: East Timor International Support Center, 1999.

³ See for example, the Magna Carta concerning Freedoms, Rights, Duties and Guarantees for the People of East Timor adopted by the National Council of East Timorese Resistance (CNRT), Peniche, Portugal, 25 April 1998.

platforms when it gained a parliamentary majority in the 2001 elections.⁴ This is reflected in the Timorese Constitution.⁵

Despite this complexity, Timorese women's groups have identified some general problems for women in the post-conflict period, which include: the failure of domestic and international law to adequately address gender-based persecution experienced during the Indonesian occupation from 1975 to the present; the impact of poor economic and social conditions, including bars to property ownership; the failure of policy or law to provide acknowledgment or compensation for survivors of gender-based persecution or the children born of rape; the failure of domestic law to protect women from the escalation of domestic violence post-independence; obstacles to participation in pre and post-independence decision-making, including representation in formal elections; and obstacles to participation in key decisions about transitional justice mechanisms, such as amnesties.⁶

Despite the placement of women in some key decision-making positions within the transitional justice mechanisms,⁷ I argue that women in East Timor generally did not receive tangible and satisfactory results from the justice system in the post independence period. Generally, I find the problems facing Timorese women in the independence period are closely linked to the problems women faced during the occupation. Recognition and redress under the law for gender-based violence in war is linked to recognition and redress for domestic violence and socio-economic rights

⁴ For a fascinating narrative-based description of the situation of post-independence women, see Irena Cristalis and Catherine Scott, *Independent Women. The Story of Women's Activism in East Timor*. Progressio: London, 2005.

⁵ See further Organização Popular da Mulher Timor (OPMT - The Popular Organisation of East Timorese Women, or Fretilin women's arm), 'Letter to the editor: Response to Kirsty Sword Gusmão's opinion in *The Australian* newspaper dated 7 July 2006', published 8 July 2006 at Appendix D.

⁶ Susan Harris Rimmer. 'Untold Numbers: East Timorese Women and Transitional Justice'. Sharon Pickering and Caroline Lambert (eds). *Global Issues, Women and Justice*. Sydney: Federation Press, 2004: 335-366.

⁷ For example, the first Justice Minister was a woman (Ana Pessoa). The most prominent international General Prosecutor for the tribunal in Dili was a woman (Siri Frigaard). There was a female Timorese public defender, Lisete Quintão. The Timorese member of the Appeals court for the Special Panels is a woman (the Hon. Judge Jacinta Correia da Costa who operated the Appeals Court for one year by herself during the transitional justice period). The other most influential Timorese judge on the Special Panels was a woman (Judge Maria Natércia Perreira Gusmão S.H., now President of the Dili District Court, and was herself a survivor of the 1999 violence). The NGO FOKUPERS was consulted by the Prosecution, Defense and both truth commissions with regards to cases of sexual crimes. The CAVR specifically commissioned research about and held special programs for women who were survivors. This program was led by a woman (Galuh Wandita).

in the 'peace'.⁸ The claims made for the transitional justice mechanisms chosen for Timor were that they would contribute to building the rule of law in both Timor and Indonesia. Women in Timor generally lack political power and representation in comparison to men,⁹ and possess the worst socio-economic indicators of the Timorese population.¹⁰ One can assume that the strength or weakness of the rule of law in a new state will have a gendered impact¹¹

Women as veterans

The second, and more subversive part of my presentation will focus on the less obvious gender implications of the Constitution in relation to transitional justice outcomes, especially in relation to **Section 11, (Valorisation of Resistance), one of the Fundamental Principles** which states:

- 1. The Democratic Republic of East Timor acknowledges and values the secular resistance of the Maubere People against foreign domination and the contribution of all those who fought for national independence.
- 2. The State acknowledges and values the participation of the Catholic Church in the process of national liberation of East Timor.

⁸ The World Health Organisation supports the hypothesis that where there is war, post-war or other social upheaval there is an increased incidence of domestic violence. See G. Krug, Dahlberg L, Mercy J, Zwi A and Lozano R (eds). *World Report on Violence and Health*, Geneva: World Health Organisation, 2002. See also Mary O'Kane. 'East Timor: Return of the Revolutionaries'. *The Guardian*, London, 15 January 2001; and Elizabeth Colson. 'War and Domestic Violence' (1995) *Cultural Survival Quarterly* 19 (Spring): 35-38.

⁹ Women make up 49.4% of the population of East Timor. Fretilin won an absolute majority in the 2001 Constituent Assembly election, which became the first parliament. Several women unsuccessfully stood as independent candidates for the Constituent Assembly. Under Fretilin's leadership, 27.6% of the Members of Parliament were women, 20% of the ministers and administrators were women, 24.3% of civil servants were women and 27.6% of the village councillors were women (each council contains two women's representatives and a female youth representative). In the May 2007 Parliamentary elections, it was required of parties that one out of every four candidates on their candidate lists be for women, although the women were mostly placed fourth. Polling data was disaggregated by gender for the first time. 27.69% or 18 women were successful from a total number of 65 seats. Eight candidates stood for election as President, including Lucia Lobato as the one woman candidate. See further Manuela Leong Pereira and Jill Sternberg, 'Women's Involvement in Timor-Leste's Presidential Elections', *1325 Peacewomen E-News*, Issue 89, 24 May 2007.

¹⁰ See further Asian Development Bank and UNIFEM, *Gender and Nation Building in Timor-Leste: Country Gender Assessment*, Manila: Asian Development Bank, November 2005; and United Nations Development Programme, *Human Development Report 2006 Timor-Leste: The Path out of Poverty, Integrated Rural Development*. Dili: UNDP, 2006.

¹¹ United Nations Population Fund, *Gender-based Violence in Timor-Leste: a Case Study*. New York: UNFPA, 2005; Vijaya Joshi, *Building Opportunities: Women's Organizing, Militarism and the United Nations Transitional Administration in East Timor*. PhD thesis, Clarke University, Ann Arbor, Michigan, 2006; and Simi Daniel Schroeter, 'Senses of Violence and the Education of Senses: Gender, Body and Violence in the Independent East Timor' (2006) *Lusotopie* 13(2): 155-172.

- 3. The State shall ensure special protection to the war-disabled, orphans and other dependants of those who dedicated their lives to the struggle for independence and national sovereignty, and shall protect all those who participated in the resistance against the foreign occupation, in accordance with the law.
- 4. The law shall define the mechanisms for rendering tribute to the national heroes.

I argue that this section, and the resulting Veteran's Law which resulted, was a key opportunity to test ideas of gender equality in relation to participation in the resistance, in relation to women, children and non-military men. The phrase 'national heroes' is key. In Dili in 1999, Maria Dominggas Alves of Timorese women's NGO Fokupers demanded 'Why is it that men who are tortured by the military forces are seen as heroes, whereas women who are tortured (including rape) are seen as traitors?',¹²

My wider research has shown that where women have been recognised at all in legal processes in Timor, there is a danger that it has only led to marginalisation and stigmatisation of survivors of sexual violence. Trials have not contributed to a material rise to the basic living standards and status of women. There may also be negative consequences for survivors of domestic violence if there is no confidence in the judicial sector to acknowledge and protect women. I therefore propose one alternative way of addressing the situation of women. By moving beyond ideas of women as victims or even survivors, by redefining what it is to be a 'veteran', progress could be made as veterans receive both maintenance and status in the new State. East Timorese women themselves have continuously stressed the need for justice to encompass their ongoing economic and social rights.¹³

Part One: Formal Equality and Participation in Political Life

¹² Quoted by Oxfam Community Aid Abroad, 'Women Fight for Freedom: The Struggle for Human Rights and Independence in East Timor', May 1999.

¹³ Commission for Reception, Truth and Reconciliation (CAVR). 'Women and the Conflict: National public hearing 28-29 April 2003'. Audiensi Publik Nasional: Balide, East Timor, 2005. See also the Women's Charter of Rights at Appendix A.

UNTAET has been hailed as an example of peacebuilding that took women seriously.¹⁴ In establishing UNTAET, the Security Council emphasised the ‘importance of including in UNTAET personnel with appropriate training in international humanitarian, human rights and refugee law, including child and gender related provisions’.¹⁵ This was the first such reference in the mandate of a comparable body and was regarded as implementing the UN’s commitment to ‘mainstreaming’ gender perspectives in peace operations.¹⁶

Women in East Timor live within a patriarchal culture, where customary practices accord them a separate, and lesser, role in society. This was reinforced by centuries of Portuguese colonialism and Catholicism. Women had however been deeply involved in the independence struggle against Indonesia, some as combatants, indeed as commanders of guerrilla groups, and many as couriers in networks that sustained the resistance (Franks 1996).. They had suffered all types of violence, much of it because of the low status of women. Rape, forced sterilisation and sexual slavery were common in the occupation period.¹⁷ After the 1999 referendum, the Indonesian military and local militias abducted women and many individual and mass rapes occurred (ICIET 2000; Mydans 2001). Women related to pro-independence activists appear to have been targeted for sexual violence (Harris Rimmer 2004, p. 339).

A Congress of Women in June 2000 adopted a Platform of Action calling for action on the employment of women, increased representation of women in public life, the high rate of female illiteracy (two-thirds), consultation on the constitution, and the issue of violence against women. However, few East Timorese women played formal roles in the state-building process. An administrative unit devoted exclusively to gender issues was included in the original structure proposed for UNTAET in November 1999 but it was not implemented because of competing budget priorities (Whittington 2003). A Gender Affairs Unit (GAU) was eventually established after

¹⁴ For example, International Alert (2001).

¹⁵ Security Council Resolution 1272 (1999) on the Situation in East Timor, para 15.

¹⁶ See the *Windhoek Declaration and the Namibia Plan of Action on ‘Mainstreaming a Gender Perspective in Multidimensional Peace Support Operations’*, 31 May 2000.

¹⁷ *Chega! The Report of the Commission for Reception, Truth and Reconciliation in East Timor* (2006) provides significant evidence of sexual violence during the occupation (see in particular Chapter 7.7).

the intervention of senior women in the UN in April 2000. The GAU was responsible for some significant initiatives in East Timor, but the delay in establishing it seriously affected its operations. Funding that had initially been allocated for the payment of gender affairs officers was redistributed, and no program or operational budget was created even when the GAU was reinstated.

Another concern raised by the women of East Timor was that of accountability for the crimes committed against them during the Indonesian occupation and its aftermath. UNTAET established a Special Panel for Serious Crimes to try acts of international criminality occurring after the 1999 referendum. The Panel's decisions with respect to crimes against women have been criticised however (Harris Rimmer 2004) and women's groups have called, so far unsuccessfully, for an international criminal tribunal to provide greater accountability for crimes.

Overall, UNTAET's achievements relating to women were the product of uncoordinated pressures, rather than the result of long-term planning. The employment of women in UNTAET in particular suggests failures in planning and execution. East Timorese women's groups sought an assurance that one third of the East Timorese people employed by the UN would be women. A directive issued by the Transitional Administrator, after intense lobbying by the East Timorese Women's Network, REDE, stated that 'a minimum of all national and district hiring shall comprise 30% women within every classification/level of employment.'¹⁸

But in the end this commitment was not achieved: 33% of the international civilian officials working for UNTAET were women but women comprised only 11% of the UNTAET East Timorese staff. It's worth noting also that almost all the key positions in UNTAET were held by men. Women were represented in even lower numbers in the civilian police and peacekeeping force in East Timor, composing 4% and 2.4% respectively (Charlesworth and Wood 2002).

Significant in East Timor was the negative reaction of local groups to assertions of women's human rights. Traditional law and indigenous practices that disadvantage

¹⁸ UNTAET internal memo (7 September 2000).

women were reinforced by religious conservatism and also by patriotic expressions of cultural pride by male leaders.¹⁹

These types of arguments were invoked against various proposals to boost the political representation of women in East Timor by UN officials. For example, a public debate about quotas for women was ignited by a proposal to entrench in law a requirement for political parties to field women in at least 30% of their nominated representative positions for election to the Constituent Assembly which was responsible for drafting the Constitution.

Some influential UNTAET officers were opposed to the proposal, arguing that quotas infringed the concept of free and fair elections. The proposal was ultimately defeated in the National Council in March 2001. In the end 27% of the seats in the Constituent Assembly were held by women; however they were all drawn from major political parties and no independent women candidates were elected.

After broad community consultation, a Gender and Constitutional Working Group prepared a Charter for Women's Rights.²⁰ The Charter sought the prohibition of all forms of discrimination and the adoption of positive measures to promote equality. It demanded the protection of women's right to live free from any form of violence, both public and private and regulation of the dowry system to prevent violence against women. The Charter also sought a guarantee of women's participation in traditional decision-making processes. The Constitution however contains only a few traces of the Charter's provisions, for example its reference to non-discrimination on the basis of gender in access to political positions.²¹

Peacebuilding in East Timor under international auspices did not give adequate attention to the involvement of East Timorese women and has produced very limited

¹⁹ In his 2001 New Year's speech to the nation the resistance leader, then President and now Prime Minister, Xanana Gusmão, criticised what he called the 'obsessive acculturation to standards that hundreds of international experts try to convey to the East Timorese, who are hungry for values.' Available at <http://www.pcug.org.au/~wildwood/JanNewYear.htm> (accessed 15 September 2008).

²⁰ The Charter text appears in 2(5) La'o Hamutuk Bulletin (August 2001).

²¹ Section 63.

gains for them. In the first elections in 2002, women held 24 of the 65 seats in the National Parliament, but most were tied by party allegiance to Fretilin's political program. In the 2007 elections, just 18 women were elected (across five political parties). Three women are in the 13-minister cabinet.

Women are otherwise poorly represented in public life and in governmental positions; domestic violence remains at extremely high levels and women have little hope of economic freedom. UNDP reports that women receive less food than men and one third between the ages of 14-49 are malnourished; fertility rates are high, as are the rates of death in childbirth (2006, pp. 15-16).

Major issues for women presented at the Donor's Conference in 2001 included political transition, gender mainstreaming, an affirmative action policy aiming for 30% of women in the public service, health (especially counselling for victims of sexual violence and maternal health), 65% illiteracy rates amongst women, rural development and funding for civil society (Reis, 2000).

The waves of unrest and violence in East Timor since 2006 have led women's groups once again to appeal to the international community for support in ensuring women's involvement in decision-making, equality of access to employment, reform of the police and public service and ending impunity for human rights violations against women.²²

UNTAET and "Timorisation"

In late 1999, the U.N. Security Council passed Resolution 1272, which established UNTAET. Indonesia turned power over to ten thousand U.N. troops, military observers, and U.N. civilian police, who established their headquarters in Dili, under the authority of Special Representative of the Secretary General, Sérgio Vieira de Mello from Brazil.

²² See letter from Rede Feto (Women's Network) Timor Leste to Ian Martin, Special Envoy of the UN Secretary-General for Timor Leste (July 7, 2006).

According to Resolution 1272 (1999), UNTAET had a mandate to “establish an effective administration”, to “assist in the development of civil and social services”, to “ensure coordination and delivery of development assistance” and most importantly for the purpose of this paper, to “support capacity building for self-government”.

Regulation 1999/1 in November 1999 set out the parameters of the wide authority of the Transitional Administrator.

Section 1 states that in exercising all legislative and executive functions, the Transitional Administrator shall “consult and cooperate closely with representatives of the East Timorese people.” Notably, Section 2 incorporates internationally recognized human rights standards into the job description of “all persons undertaking public duties or holding public office in East Timor”, including the *Convention on the Elimination of All Forms of Discrimination Against Women* of 17 December 1979. The CEDAW Committee has set a minimum target of 30 per cent representation of women in decision-making positions.

To fulfil the general consultation requirement, the Special Representative set up first the 15-member mixed (Timorese and international staff) Consultative Council that functioned from December 1999 to July 2000, when it was substituted by a National Council (NC), an appointed body of 36 Timorese members, of whom 13 were women.

There have been many specific issues associated with a lack of civil society participation or due democratic process, such as the activities of the World Bank (La'o Hamutuk Bulletin, 2001a), the adoption of the \$US dollar as the currency of East Timor (La'o Hamutuk Bulletin, 2001b) and the adoption of Portuguese as one of the official languages (Dodd, 2001).

The overall UNTAET relationship with the National Council and then the Constituent Assembly has been a key focus of civil society attention. Filomena Reis of the East Timor NGO Forum noted: “...the mistaken perception that there is no Timorese capacity or that there is capacity only amongst a few” and stated that “the convenience of talking with a limited elite can not justify jumping over and undermining the institutions being created with such difficulty.” (Reis, 2000).

The Quota Debate

On 16 March 2001, the Constituent Assembly Election Regulation of East Timor was promulgated (2001/2). Section 38 provided that there should be a set quota of women on parties' candidate lists as a condition for the parties to access UNTAET funding for their electoral activities. It was reported by international observers that the UN Electoral Assistance Division in New York had refused "to set what they regard as a precedent for UN supervised elections in the future by allowing women's quotas to be a feature of the forthcoming election in East Timor", and had also threatened to "pull out of supervising the elections if the quotas are pursued." (Scott, 2001a) The reasoning for this decision is not found in the primary sources, but the comments stand in contradiction of both a UN Convention and the UNTAET mandate.

In the event, the provision was defeated by the National Council, by a coalition of male political leaders and young female councillors. Debate in the National Council ranging from the argument that such a measure would discriminate against men, that women lacked capability to hold office, to the view that quotas are tokenistic and imply lower quality of candidates. It was felt that small parties may not be able to fill this quota. (Lusa, 2001) Avelino Coelho, the Socialist Party leader, said that the article in question was unacceptable for Council members, who could never support the "commercialisation" of women. He specified that if the quotas were linked to UN support, then the parties would be "more interested in receiving UNTAET support than in East Timorese women". (LUSA, 2001)

Milena Pires responded to these arguments by saying that this provision was an incentive for parties to promote women and it avoided the UN imposing quotas on an elected body. She did agree that quotas alone were not enough to tackle women's lack of representation. (Tanaja, 2001)

Ciprianan Perreira, National Council representative of Fretilin, was reported at length in the Timor Post. She said that members of the National Council would not defend a group or an interest, but only human rights, and that she found the quota "discriminatory and negative. To put women candidate just to get financial support is

to hold women in contempt. Such a bait is contempt for women.” (Timor Post, 2001b)

A group of several dozen protesters from East Timor’s most prominent women’s rights organisations demonstrated in front of the Government Palace in Dili after the vote had failed, carrying banners which read: “Who says women are not capable”; “There is no democracy when there is no respect”; “You know we are capable”; “National Council is not representative, dissolve it.” (Timor Post, 2001a)

These women then demanded that the Transitional Administrator, Dr. Sergio de Mello, should not promulgate the law. He did so, however, stating that the law was considered to have gone through a “mature democratic process”. (Timor Post, 2001a) De Mello then reintroduced the proposal in the form of a recommendation included in the electoral law’s preamble that gave double the air-time on TV during the campaign period to parties with thirty per cent of women as candidates. The extra air-time was also contingent on the party meeting the added criteria that fifty per cent of those women were in winnable positions on their party ticket. Only three of the 16 parties managed to meet both criteria, Fretilin, KOTA and the UDT, the oldest parties (see Appendix 2)

Sergio Vieira de Mello explained his position: “...the role of women here and the emancipation of women is I think a precondition for durable peace.”

I have never seen women play as negative, as destructive, as unhelpful a role as men have either as causes of the conflicts or in perpetuating conflicts or in the post conflict era in making conciliation as difficult as possible. That as a rule has been the privilege of men, and I can say that with some authority because I’m a man myself. Therefore when I say that here in particular, in East Timor, women are the most solid basis we can find for the new institutions we are creating, for the sustainability, for the consolidation, for in the medium and longer term, a peaceful and prosperous democracy in East Timor. I truly mean what I say. And perhaps the best proof that I may be right is that I don’t recall seeing one single female militia in 1999 killing, raping, burning and destroying. (Tooth, 2001)

Campaigning began on 16 July 2001. The election results meant that Fretilin won 55 seats in the assembly, followed by the PD (Democratic Party) with seven and the PSD (Social Democratic Party) and ASDT (Timorese Social Democratic Association) with six each. Remaining seats were split among eight minor parties and one independent candidate. The new 88-seat Constituent Assembly has a total of 24 women members, or 26%. The full breakdown on female representatives gives the Fretilin party 17, the PSD three, the ASDT one and the PST and PNT one apiece. The party with the lowest female representation is the second-placed PD, which elected no women candidates (see Appendix 4).

One woman from Fretilin was elected as the District Representative for Dili, when Fretilin gained 12 out of the 13 District Representative seats. None of the three women standing as independent candidates was elected. Notably Fretilin's manifesto contains a strong statement on women's rights after targeted lobbying.

The purpose of the 2001 election was to elect representatives to draft the Constitution as noted. If women's objectives as stated by the Women's Charter of Rights were found in that document, then that may be a far better measure of impact than numbers of women as candidates or elected.

The Constituent Assembly

Timor's leading human rights NGO Yayasan HAK noted that this election was to prepare the first Constitution and serve as a framework for future elections, so its success should be measured not by a high turn-out or lack of violent incident alone, but by whether it served its special purpose. They note "this election has been portrayed as a model for democratic transition by UNTAET." (Yayasan HAK, 2001) Therefore, the NGO judged the lack of Constitutional debate during the campaign as a weakness that went to the heart of the project: "The votes cast will reflect the choices of political parties or person to represent the electorate in the Constituent Assembly. However, they cannot be viewed as the voice of the people in the formation and adoption of the Constitution." (Yayasan Hak, 2001).

These concerns were borne out by an Asia Foundation survey carried out by members of 21 NGOs, published in May, but carried out in February/March 2001. The survey of 1,558 Timorese in the districts revealed that while 94% wanted to vote, only 5% knew that the vote is to elect a Constituent Assembly; 35% did not know the date of the elections, and 16% did not even know there was going to be an election (Asia Foundation, 2001: 4). International NGOs confirmed that even on election day, many voters did not understand that the vote was to choose Constituent Assembly members and/or the function of the Constituent Assembly. (IFET, 2001)

Yayasan HAK also called for “democracy beyond the act of voting”:

For hundreds of years, the East Timorese people have been excluded from democratic governance and control of their own affairs. This cannot simply be reversed by people exercising their rights to vote. Avenues for participation and an ability to have active input in the decision-making processes are vital to ensure that the East Timorese people have a voice in governance which they have been denied for so long. (Yayasan HAK, 2001)

A summary of concerns with the election was that the timetable was unrealistic, that civic education started late because UNTAET initially failed to consult East Timorese on its design, that the Constitutional Commissions in each district had only 45 days to educate a mostly illiterate public on complex constitutional issues and gather input, and that the political parties provided little information about their views on constitutional issues during the campaign. Capacity-building measures were seen as weak. (IFET, 2001; East Timor Observatory, 2001)

A series of focus groups run by the National Democratic Institute for International Affairs found that the people of East Timor “have many well-developed ideas about democracy and the form of government they would like to see in their emerging nation. They seek proof that they are being heard and demand active participation in the development of this new nation. To ignore the demands of the East Timorese people will only add to the burden of their frustrations.” (NDI, 2001)

The focus groups found that those who knew of UNTAET’s National Council did not regard it as being a representative body, (ET NGO Forum, 2000) and that East

Timorese from the districts believe the existing political process is dominated by a Dili-based elite and that they have been left out of it.

It was also noted with concern by international election monitors that the structure of the Assembly, as well as the regulatory encouragement for it to evolve into East Timor's first elected legislature, may pre-empt decisions on the structure of the legislature, as it was predicted that the elected members are unlikely to relinquish their positions to stand for another election. (IFET, 2001) This was, in fact, exactly what came to pass in May 2002. (UNTAET, 2002)

Finally, IFET noted that approximately one-tenth of the East Timorese population is excluded not only from registration and voting, but from the entire nation-building process, as approximately 80,000 East Timorese people were still trapped in refugee camps in West Timor (IFET, 2001).

Part II: Valorisation of Resistance: Women as Veterans

Within Timor, there is an ambivalence about the idea of women as contributors to independence during the occupation, even though women made up more than 60 per cent of the clandestine movement. One simple but perhaps far-reaching proposal is to expand the definition of veteran in the Veterans Law of East Timor, in order to re-characterise female survivors of violence and their 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.

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, with special discomfiture reserved for those seen 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 offspring of these unions 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.

The issue of proper support for veterans and the question of who is a veteran has been hotly debated in Timor since independence and is enshrined in Section 11 of the Constitution. 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.²³

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

23 Joe Havelly, ‘Timor’s army marches out of the jungle’. *CNN.Com*. 19 May 2002.

occupation, and are nearly all male combatants. Tensions about the long process led to a demonstration outside the Parliament dispelled by tear gas, led by Cornelio Gama (known as L7) of 120 veterans on 19 July 2004.²⁴ 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.'

[INTERVIEWER] 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.'²⁵

²⁴ See also the *Progress Report of the Secretary-General on the United Nations Mission of Support in East Timor (29 April to 13 August 2004)* UN Security Council S/2004/669, 13 August 2004, at para 5.

²⁵ ABC Radio Australia Asia-Pacific. 'EAST TIMOR: First Lady calls on PM Alkatiri to respond to L-7' Broadcast, 6 August 2004.

The situation for veterans is still fraught. In April 2006, more than one-third of the country's armed forces had been discharged over a mutiny linked to claims of poor service conditions and biased promotion.²⁶ Violent riots ensued, particularly in Dili.

This group of veterans has links with the leadership and the ability to make itself heard,²⁷ but women survivors and their war babies do not. And yet, why should the needs of ex-combatants necessarily be prioritised over these women and children? Too many Timorese women have gone from being refugees herded over the border into West Timor in 1999 to internally displaced within their own country in 2007.

Policy proposals that would reconstruct women as wartime veterans, rather than current labels which produce 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 Timorese civil society 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.

I argue for an approach that would focus on gaining the full participation of women in peace negotiations and key decisions about transitional justice processes and the development of a justice sector, and preserving evidence and acquiring data in relation to international and domestic gender crimes for the day when fair trials can be held. The obvious starting point in East Timor would be to assist the implementation of the National Action Plan 2005-2008 formulated at the Second National East Timorese Women's Congress 27-31 July 2004. The Plan includes a proposal for a special women's tribunal, similar to the Tokyo Women's Tribunal dealing with justice for comfort women held in 2000.²⁸

²⁶ International Crisis Group, *Resolving Timor Leste's Crisis*, Asia Report No. 120. Brussels: International Crisis Group, 2006.

²⁷ Edward Rees, *Under pressure: Falintil - Forças de Defesa de Timor Leste: three decades of defence force development in Timor Leste 1975 -2004*, April 2004.

²⁸ Second Women's Congress National Action Plan July 2004, Dili. See further Galuh Wandita, Karen Campbell-Nelson, and Manuela Leong Pereira. 'Gender and Reparations in Timor-Leste', Ruth Rubio-

Efforts could be focused on keeping women safe from post-conflict spikes in domestic violence and improving basic standards of living through interventions based on a rights-based approach to development.²⁹ Advocacy for access to a victims fund or reparations that did not rely on a lengthy legal process could be beneficial. But as well as these defensive manoeuvres, feminist theory should try to imagine some creative alternatives that seek to provide justice for both the individual and communal harms women experienced in war and peace, to fulfil the call for Timor's women to be treated as heroes.³⁰

Female non-combatant survivors of armed conflicts should be accorded veteran status. Improving the material position of women and pursuing strategies that make trials better will not rectify the core problem of providing material long-term assistance to survivors of the conflict and improving their status in society. A perennial question facing feminists is how to recognise the scope in reality of the harms visited upon women without characterising them as victims.³¹ In particular, women in a transitional justice process need to be offered a script which does not cast them only as victims of sexual violence.³²

Franke's conception is that in the first dynamic stages of transition, different narratives of the past are battling for dominance, including masculinised and feminised narratives of the conflict and the future. She presents the idea that the deaths or absence of many men can create a feminised society which then can be

Marin (ed). *Engendering Reparations: Recognising and compensating women victims of human rights violations* New York: International Center for Transitional Justice, 2006.

²⁹ See further Jane Hearn and Susan Harris, 'Debating the relationship between human rights and aid in Australia', (2002) *Development Bulletin*, Development Studies Network 59: 77-81.

³⁰ Second Women's Congress National Action Plan July 2004, Dili.

³¹ 'We have grappled with the dilemma of describing the atrocities experienced by women in war in a way that will not [only] ascribe to women the characteristics of passivity and helplessness. Women are everything but that. But as with all groups facing discrimination, violence and marginalization, the causes and consequences of their victimization must be addressed. If not, how will preventive measures ever focus on women? How will the resources and means to protect women be put in place? How will the UN system, governments and NGOs be mobilized to support women? [It is important to keep writing about the ways women experience conflict as marginalized because] so far, not enough has been done.' Elisabeth Rehn and Ellen Johnson Sirleaf, *Women, War and Peace: The Independent Experts' Assessment on the Impact of Armed Conflict on Women and Women's Role in Peacebuilding*, New York: UNIFEM, 2002 at p. 2.

³² Katherine M. Franke, 'Gendered Subjects of Transitional Justice' (2006) *Columbia Journal of Gender and Law* 15(3): 813-828 at p. 823.

confronted by a strong 'remasculinisation' of culture, of which domestic violence is a part.³³ As Sheila Meintjes has expressed:

... women do gain from the shifts in gender relations during the war, they may lose their wartime gains in the cusp, in the period between war and peace. Thus the transition from war to peace emerges as a critical moment in the shifting terrain of gender power.³⁴

In this light, perhaps much more creative ideas about women in transitional societies need to be entertained, such as the controversial concept of according female non-combatants the status of veterans. Such a move would take away an exclusive focus on sexual harms, and refocus attention on violations of women's economic social and cultural rights during and after armed conflict.³⁵

The second benefit is such a measure might focus on patterns of behaviour that surface the gendered dimensions of violence occurring to men in armed conflict, especially non-combatant men.³⁶ As Franke puts it:

The reduction of gender to the sexual and the ignorance of how men can suffer gendered violence is, to be most generous, a form of overcompensation for the years of ignoring women's place in humanitarian law.³⁷

Since the World Wars the concept of a veteran has come to mean many different things in different contexts,³⁸ but at the core of the term it has three benefits. A

³³ Katherine M. Franke, *ibid*, at p. 824.

³⁴ Sheila Meintjes, 'War and Post- War Shifts in Gender Relations'. S. Meintjes, M. Turshen, and A. Pillay (eds). *The Aftermath: Women in Post- Conflict Transition*, London: Zed Press, 2001, at p. 64.

³⁵ Fionnuala Ni Aolain and Catherine Turner, 'Gender, Truth and Transition' (2007) *UCLA Women's Law Journal* 16: 229-79, at p. 239.

³⁶ R. Charli Carpenter, *'Innocent Women and Children': Gender, Norms and the Protection of Civilians*, Ashgate: Hampshire, 2006, at p. 2-3. See also Brandon Hamber, 'Masculinity and Transitional Justice: An Exploratory Essay' 1 (2007) *International Journal of Transitional Justice* 3: 375-390.

³⁷ Katherine M. Franke, 'Gendered Subjects of Transitional Justice' (2006) *Columbia Journal of Gender and Law* 15(3): 813-828 at p. 822.

³⁸ Marita Sturken, 'The Wall, the Screen, and the Image: The Vietnam Veterans Memorial' (1991) *Representations*, No. 35, Special Issue: Monumental Histories (Summer), pp. 118-142. Most of the literature around veterans is medical in nature or historical description. See for example Matthew J. Friedman, 'Veterans' Mental Health in the Wake of War' (2005) *New England Journal of Medicine* 352(13): 1287-1290.

veteran receives maintenance and entitlements from the State, for life. The veteran has a certain status and standing when it comes to transitional justice decisions. If not always consulted, veterans are at least considered central to the process. Society is called upon to reflect on the contribution to the overall welfare of society that a veteran has made.³⁹ Article 11 of the Timorese Constitution is entitled 'Valorisation of Resistance' and guarantees 'special protection to the war-disabled, orphans, and other dependents of those who dedicated their lives to the struggle for independence and national sovereignty, and protect all those who participated in the resistance against the foreign occupation'. The idea of veteran as fighter could be displaced and replaced with the idea of veteran as survivor.

Feminist international relations scholars alert us to a possible fourth benefit of thinking of women survivors as veterans as a transitional justice process. In a post-conflict context, the historical record of the conflict produced by trials and truth commissions is also a nationalist narrative, which employs deeply gendered discourse. Pettman notes that the nation 'is often called up in familial language - motherland, kin, blood, home - language that is strangely different from the Realist representations of power politics and rational self-interest. In a complex play, the state is often gendered male and the nation female'.⁴⁰ The nation is often represented as a woman under threat of violation;⁴¹ and sexual harms can be directed at eliminating the integrity of the individual woman's community.⁴² The 'complex politics between actual women's bodies and the dangers they experience in wars and identity conflicts on the one hand, and nationalist discourses using representations of women's bodies to mark national or communal bodies on the other'⁴³ was made very clear in the Jakarta trials.

Policy proposals that would construct women as wartime veterans might therefore have the effect of redistributing shame and changing the nationalist discourse. It may

³⁹ Christine Chinkin and Hilary Charlesworth, 'Building women into peace' (2006) *Third World Quarterly*, 27(5): 937-957 at p. 946.

⁴⁰ Jan Jindy Pettman, *Worlding Women: A Feminist International Politics*, St. Leonards, NSW: Allen & Unwin, 1996 at p. 49.

⁴¹ Jan Jindy Pettman, *ibid.*

⁴² Fionnuala Ni Aolain, 'Rethinking the Concept of Harm and Legal Categorisations of Sexual Violence During War' (2000) *Theoretical Inquiries in Law* 1(2): 1.

⁴³ Jan Jindy Pettman, *Worlding Women: A Feminist International Politics*, St. Leonards, NSW: Allen & Unwin, 1996 at p. 51.

at least provide a language and a framework—a new script—which may be validating to the survivors 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 women and their children. It may also focus attention on women as development actors. I explore this idea further in my book in relation to the female survivors of armed conflict in Timor, particularly those who bore children from forced maternity. Money from the international community earmarked for victim funds could become veterans' programmes.⁴⁴

This has not been the case in East Timor so far for female survivors of violence. Recent 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, 2001) Abuelda Alves of Fokupers said 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, 2001) Maria Dominggas Alves, also of Fokupers captured a crucial feminist quandary: “Why is it that men who are tortured by the military forces are seen as heroes, whereas women who are tortured (including rape) are seen as traitors? Doesn't this show there is a double standard for women?” (Oxfam CAA, 1999)

Conclusion

The danger for East Timorese women now is what I term the ‘changing the curtains’ phenomena—that fundamental changes in the sovereignty of the State in the form of independence may mean that the basic conditions of women's lives, or their potential to claim their legal rights, does not change in any meaningful sense. Despite some important efforts to include women and their experiences in the justice mechanisms established in East Timor since 1999, despite the key provisions in the Constitution, Timorese women may indeed have cause to be disenchanted. The inability to interpret section 11 to include non-combatants is part of this struggle.

⁴⁴ For example, the International Criminal Court Trust Fund for Victims or the UNIFEM Trust Fund in Support of Actions to Eliminate Violence Against Women.

When Natércia Godinho-Adams addressed the UN Security Council on behalf of Timorese women's networks, 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. [...] 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.⁴⁵

While in many ways East Timor remains a patriarchal and traditional society, the Report allowed public space for the suggestion that women could start to play a greater role in post-conflict reconstruction and governance. As one survivor told the CAVR:

I will not... hold office like these important men who once fought together with us. All I ask for is my right to a decent life as the family member of a fighter. I got this way because my husband and children disappeared. The important men are not permitted to forget us [just because they] now have a strong chair stuck on the ground. In the past, when their positions were not yet certain, we fought together.⁴⁶

The question is whether Timorese 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 free from violence.

45 Natércia Godinho-Adams, 'UN Security Council 'Arria formula' meeting on the implementation of Security Council Resolution 1325', 30 October 2001.

46 BK from Fatubessi, quoted by Galuh Wandita, Karen Campbell-Nelson, and Manuela Leong Pereira. 'Learning to Engender Reparations in Timor-Leste: Reaching Out to Female Victims' Ruth Rubio-Marín (ed), *What Happened to the Women?: Gender and Reparations for Human Rights Violations* New York: Social Science Research Council, 2006, at p. 319.

Prime Minister Xanana Gusmão (then President) stated in 2002 that '[w]e must do our best to eradicate all sentiments of hatred, of revenge. If you still feel like this, then you are living with the ghosts of the past.'⁴⁷ Bishop Belo countered: 'I hear the voices of widows, the complaints of raped women, of orphans. They don't like to live together and meet in the street their perpetrators.'⁴⁸ The 'ghosts of the past' for many women are living threats. These contrasting attitudes, State versus Church, male versus female, capture neatly one of the key dilemmas of transitional justice—who is to bear the cost of the compromises made for peace?

It is easy to empathise with Gusmão in his publicly articulated dilemmas over pursuing the best future for his country. East Timor is poor, with a giant, hostile neighbour and vulnerable borders. Within Timor, peace is fragile, as shown by the April-May 2006 Dili riots and 2007 election violence.

However, the question of compromise for peace cannot be answered by a democratic society, or a society that hopes to become democratic, without properly considering the perspective of women.

The situation for East Timorese women in 2008 reflects what I termed the 'changing the curtains' phenomena — that fundamental changes in the sovereignty of the State in the form of independence may mean that the basic conditions of women's lives, or their potential to claim their rights, does not change in any meaningful sense. Recognition is flawed and partial and there has been no redistribution of the benefits of peace, not even redistribution of shame.⁴⁹

Unless international law can confront and make itself relevant to that potential for gender justice in a post-conflict setting, not only may opportunities for the betterment of women's situation be lost, but the interventions may worsen their situation. To the call by Sister Maria de Lourdes Martins Cruz of 'a luta continua (the fight

⁴⁷ Associated Press, 'Revenge is Low on the List of Priorities', *The Weekend Australian*, 18-19 May 2002, p. 15.

⁴⁸ Associated Press, *ibid.*

⁴⁹ Katherine M. Franke, 'Gendered Subjects of Transitional Justice' (2006) *Columbia Journal of Gender and Law* 15(3):813-828.

continues)', international law should respond to violations against women with a resounding 'chega' (enough).

Appendix 1

Women's Charter of Rights in East Timor

Article 1 Equality

1. The Constitution must prohibit all forms of discrimination.
2. The State may implement positive measures to promote equality between men and women.
3. Men and women are guaranteed equality before the law.

Article 2 Right to Security of the Person

1. The Constitution must protect women's right to live free from any form of violence.

Article 3 Political Rights

The Constitution must guarantee equal rights of women in political activities and public life as follows:

1. The right to vote and be elected.
2. The right to participate in government policy decision-making.
3. The right to participate in organisations concerned with communal and national politics.

Article 4 Right to Health

1. The Constitution must protect all people's right to basic health care of the same quality.
2. The State must provide reproductive health care for women.

Article 5 Right to Education.

1. The Constitution must guarantee equal rights to formal and non-formal education for men and women.
2. Women must have equal opportunity to study, and have equal access to scholarship opportunities and literacy programmes.

Article 6 Social Rights

1. The Constitution must guarantee the rights to livelihood, shelter, sanitation, electricity, water, transportation and communication, health and education.
2. Women must participate in development programmes at every level.
3. The right to social security in case of sickness, unemployment and incapacity to work.

Article 7 Labour Rights

1. The Constitution must guarantee equal pay for equal work.
2. Women must have a right to maternity leave without loss of salary, job or position.
3. Women's health needs must be protected in the work place.
4. Women have the right to safe working conditions.
5. Dismissal must be prohibited in cases of pregnancy or maternity leave.

Article 8 Tradition and Women's Rights

1. Equal rights to inheritance.
2. The Constitution must regulate the dowry system to prevent violence against women.
3. Women must be guaranteed participation in traditional decision-making processes.

Article 9 The Right to Freedom from Exploitation

1. The Constitution should prohibit prostitution and slavery.

Article 10 Children's rights

The Constitution must protect children's basic rights:

1. Rights to food, shelter and social services.
2. Right to be cared for by parents and family.
3. Right not to carry out work beyond the child's age capacity.

Appendix 2

Extracts from the Constitution of the Republic of East Timor.

<http://etan.org/etanpdf/pdf2/constfnen.pdf>

PREAMBLE

Section 6

(Objectives of the State)

The fundamental objectives of the State shall:

j) To create, promote and guarantee the effective equality of opportunities between women and men.

GENERAL PRINCIPLES

Section 16

(Universality and Equality)

1. All citizens are equal before the law, shall exercise the same rights and shall be subject to the same duties.
2. No one shall be discriminated against on grounds of colour, race, marital status, gender, ethnical origin, language, social or economic status, political or ideological convictions, religion, education and physical or mental condition.

Section 17

(Equality between women and men)

Women and men shall have the same rights and duties in all areas of family, political, economic, social and cultural life.

Appendix 3

Table of women candidates in political parties in 2001 elections

(Source: Catholic Institute for International Relations, Observer Mission - East Timor Constituent Assembly Election, 30 August 2001.

<http://www.ciir.org/content/advocacy/documents/ETmissionreport2001.doc>)

Political party	Total number of candidates	Number of female candidates	Female candidates, percentage of total
PNT	60	29	48%
UDC/PDC	75	29	39%
Fretilin	75	26	35%
KOTA	75	24	32%
UDT	72	23	32%
PSD	75	21	28%
ASDT	75	21	28%
PDC	75	20	27%
PST	75	17	23%
PDM	55	14	25%
PPT	71	12	17%
PTT	33	9	28%
Apodeti	15	8	53%
PD	74	8	11%
PL	32	4	12%
Parentil	53	2	4%

Appendix 4

Table of seats won by women per party in 2001 elections

Source: UNIFEM East Timor page. Accessed 14 July 2002. <http://www.unifem-eseasia.org/easttimor/easttimor1.htm>:

Party Seats	Seats Won	Percentage	Women Elected
FRETILIN	43	57.37	16
PD	7	8.72	0
PSD	6	8.18	3
ASDT	6	7.84	1
UDT	2	2.36	1
PNT	2	2.21	1
KOTA	2	2.13	0
PPT	2	2.01	0
PDC	2	1.98	0
PST	1	1.78	0
PL	1	1.1	0
UDC/PDC	1	0.66	0
Totals	75	96.34	22

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