

Gender and Transitional Justice

The women of East Timor

Susan Harris Rimmer



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Gender and Transitional Justice

‘This book offers not only a rich and detailed account of transitional justice in East Timor over the last decade but also an important theoretical framework to understand the complexities of women’s lives after conflict.’

Professor Hilary Charlesworth, *Australian National University*

‘A must read for all who want to know and importantly understand the role and standing of women regarding transitional justice as it unfolds in Timor-Leste. Dr Harris Rimmer’s account brings to bear both an engaged and an academic perspective that makes it a singularly unique contribution.’

Janelle Saffin, Australian Member of Parliament:
former advisor to Dr José Ramos-Horta

‘Harris Rimmer’s *Gender and Transitional Justice* offers a rare blend of theory and empirical inquiry. It makes a well-founded critique of the debates over punishment versus reconciliation in the transitional justice field while addressing its political realities in an exceptionally nuanced and creative way.’

Ruti Teitel, Ernst C. Stiefel, Professor of
Comparative Law, *New York Law School*

Gender and Transitional Justice provides the first comprehensive feminist analysis of the role of international law in formal transitional justice mechanisms. Using East Timor as a case study, it offers reflections on transitional justice administered by a UN transitional administration. Often presented as a UN success story, the author demonstrates that, in spite of women and children’s rights programmes of the UN and other donors, justice for women has deteriorated in post-conflict Timor, and violence has remained a constant in their lives.

This book provides a gendered analysis of transitional justice as a discipline. It is also one of the first studies to offer a comprehensive case study of how women engaged in the whole range of transitional mechanisms in a post-conflict state, that is domestic trials, internationalised trials and truth commissions. The book reveals the political dynamics in a post-conflict setting around gender and questions of justice, and reframes the meanings of success and failure of international interventions in the light of them.

Susan Harris Rimmer is a Research Fellow at the Centre for International Governance and Justice, Regulatory Institutions Network, Australian National University.

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**To Marina Rae and Joshua Finn Rimmer
and to past and present survivors of conflict in Timor Leste**

War, which produces large-scale destruction of visible objects, does so even more with humans. Only some individuals, and only gradually, become aware of this type of destruction. It takes off from our faces the last mask of humanity, turns us inside out and brings to the surface some unexpected qualities, radically different from what others believed us to be and what we believed we were. Moreover, it transforms the family system and produces changes of the sanctified rules and relations, including those deemed eternal and immutable, such as gender relations.

Ivo Andrić, 'Destruction', 1948

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Permission has kindly been granted by Picture Media Australia to use in the concluding chapter the photo of 'East Timorese President Xanana Gusmão meets Indonesian Presidential candidate former General Wiranto in Badung Bali on 29 May 2004', taken by Dadang Tri for Reuters.

The map is supplied by the Geospatial and Cartographic Services Research School of Pacific and Asian Studies College of Asia and the Pacific, The Australian National University.

Abbreviations

AIHRC	Afghanistan Independent Human Rights Commission
BPU	Border Patrol Unit
CAT	Convention Against Torture
CAVR	Comissão de Acolhimento, Verdade e Reconciliação de Timor Leste (Commission for Reception, Truth, and Reconciliation, East Timor)
CIVPOL	Civilian Police
CRP	Community Reconciliation Process
CTF	Commission of Truth and Friendship
DAC	Development Assistance Committee
DAW	Division for the Advancement of Women
DDR	Disarmament, Demobilisation and Reintegration
DPR	Dewan Perwakilan Rakyat (People's Representative Assembly, Indonesia)
ETDF	East Timor Defence Force
FALINTIL	Forças Armadas de Libertação Nacional de Timor Leste (Armed Forces for the National Liberation of East Timor)
F-FDTL	FALINTIL Forças Armadas de Defesa de Timor Leste
FOKUPERS	Forum Komunikasi Untuk Perempuan Loro Sae' (East Timorese Women's Communication Forum)
FRETILIN	Frente Revolucionária do Timor Leste Independente (Revolutionary Front for an Independent East Timor)
ICC	International Criminal Court
ICIET	International Commission of Inquiry on East Timor (UN)
ICTJ	International Center for Transitional Justice
ICTR	International Criminal Tribunal for Rwanda
ICTY	International Criminal Tribunal for the Former Yugoslavia
IDP	Internally displaced person
IHL	International humanitarian law
IMET	International Military Education and Training
INTERFET	International Force for East Timor
IRC	International Rescue Committee
JSMP	Judicial System Monitoring Programme
KKR	Komisi Kebenaran dan Rekonsiliasi (Indonesian Truth Commission)

Komnas HAM	Komisi Nasional Hak Asasi Manusia (National Human Rights Commission Indonesia)
Kopassus	Indonesian Army Special Forces
KPP HAM	Komisi Penyelidik Pelanggaran Hak Asasi Manusia di Timor Timur (Commission of Inquiry on East Timor)
KUHP	Kitab Undang-Undang Hukum Pidana (Indonesian Criminal Code)
NGO	Non-governmental organisation
OPMT	Organização Popular da Mulher Timor (The Popular Organisation of East Timorese Women)
PDO	Public Defenders Office
PKF	United Nations Peacekeeping Force
PNTL	Polícia Nacional de Timor Leste
POLRI	Indonesian National Police
SCIU	Serious Crimes Investigation Unit
SPSC	Special Panels for Serious Crimes
SRSG	Special Representative of the Secretary-General
TNI	Indonesian National Army
TRCA	Indonesian Truth and Reconciliation Commission Act
UNAMET	United Nations Mission in East Timor
UNCHR	United Nations Commission on Human Rights
UNHCR	United Nations High Commissioner for Refugees
UNMISSET	United Nations Mission of Support in East Timor
UNMIT	United Nations Integrated Mission in Timor Leste
UNOTIL	United Nations Office in Timor Leste
UNPOL	United Nations Police
UNTAET	United Nations Transitional Administration in East Timor

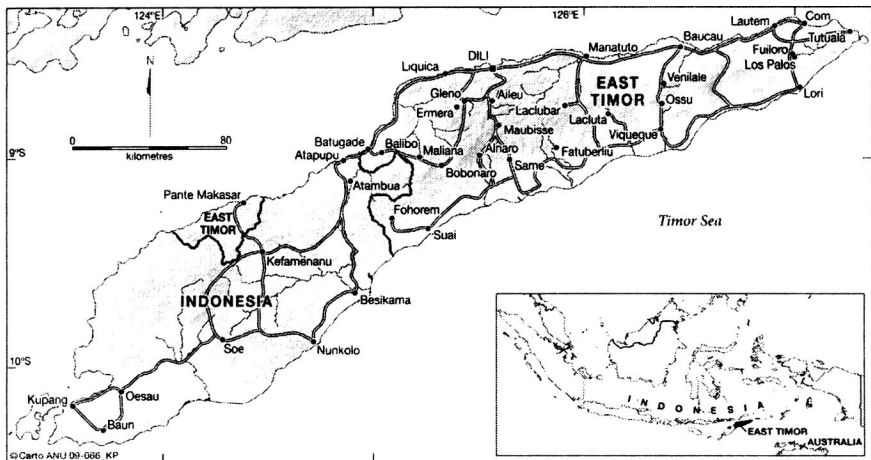


Figure 1 Map of East Timor (Source: Geospatial and Cartographic Services Research School of Pacific and Asian Studies College of Asia and the Pacific, The Australian National University).

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1 Introduction: *A luta continua!* (The fight continues!)

One of the bravest but least known acts during the East Timorese¹ resistance to Indonesian occupation occurred in November 1998 when over 20 Timorese women told their stories of surviving sexual violence² to crowds of hundreds at a public meeting in Dili. The stories were collated into an English language book called *Buibere*,³ which means 'woman' in Mumbai, the second most common Timorese language after Tetum. It was written only in English, published in Australia, and intended as an advocacy document for the international community. Between 1975 and 1999, there had only been four short but searing reports from international non-governmental organisations (NGOs) about gender-based persecution of women in East Timor, and no official United Nations (UN) comment.⁴ But the persecution, as described first-hand in these collected testimonies, was intense, and included rape, torture and other inhumane acts.

In November 2001, in an independent East Timor, the local women's rights NGO FOKUPERS⁵ released a second version of *Buibere* in Tetum at a public event, with many of the women who contributed stories to the book present. The second edition is intended to formally respect and honour the contribution of East Timorese women to independence and the high price they paid during the Indonesian occupation.

Some of the problems that continue to face the women of East Timor were graphically outlined by advocate Sister Maria de Lourdes Martins Cruz at the launch:

'A luta continua!' she said, and described how the women of East Timor were still second-class citizens in their own land. 'A luta continua!' and she described how girls still don't receive the same educational or employment opportunities as men. 'A luta continua!' and she told of domestic violence still rampant, women still serving as slaves in their own homes, women bought and sold like commodities under the tradition of bride price, and men leaders still unwilling to accept East Timorese women as equals. Ovation after ovation shook the hall.⁶

Given the serious nature of the crimes outlined in *Buibere*, Sister Maria's speech is striking in that in the eyes of those survivors present that day, independence did not necessarily mark the end of violence against women, just a new manifestation

2 *Introduction*

of violence and subordination. There appeared to be a clear linkage between the gender-based political persecution and violence by invading forces, understood as the burden of the feminine face of resistance, and endemic gender-based violence and inequality experienced by women as citizens in the transitional Timorese society.

ARGUMENT

This book seeks to answer the question of what role international law has played in relation to East Timorese women engaged with transitional justice processes from 1999 to 2009. 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. I assess what women can demand and expect from transitional justice processes, and how transitional justice models can be revised to achieve these results.

I focus on a feminist examination of the role of international law within the overall framework of transitional justice interventions designed for the violations of human rights in East Timor. I limit my inquiry to an analysis of the treatment of gender-based violence⁸ experienced by East Timorese women in the period from 1975 to October 2007 as highlighted within the formal transitional justice processes that occurred between 1999 and 2009.

My analysis shows there are still gaps and silences in the categorisation and prosecution of gender-based violence under international law as experienced in Timor. The question is whether feminist analysis needs to question the obligation to prosecute imposed by international law, especially the imperative to immediately hold criminal trials.

Reopening debate about the timing and manner of trials in a post-conflict state is important because I contend that Sister Maria was correct in stating that the problems facing Timorese women in the independence period are 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 in 'peace'.⁹ 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,¹⁰ and possess the worst socio-economic indicators of the Timorese population.¹¹ One can assume that the strength or weakness of the rule of law in a new state will have a gendered impact.¹²

The vulnerable situation of women in East Timor in the post-independence period has several implications. There is a growing consensus in donor countries that international interventions should seek to at least do no harm, a proposition derived from the Hippocratic oath and increasingly applied to humanitarian interventions.¹³ Put simply, transitional justice interventions should seek to be inclusive of women's experiences of the conflict and post-conflict periods and not

undermine any progress for women. If this cannot be achieved at the outset of the post-conflict period, I argue that other strategies should be pursued to gain material benefits for women, even if the goal of combating impunity can eventually be met in substance by holding gender-sensitive trials.

Even if perfect trials and truth commissions were held which achieved all the traditional goals of transitional justice mechanisms, there may be limitations on what law, especially international law, can achieve to benefit women. Katherine M. Franke argues that transitional justice outcomes for women should be judged on whether they provide *recognition* and *redistribution*.¹⁴ Recognition deals with establishing facts and identities, such as who are the victims and perpetrators of criminal practices. Redistribution deals with redistributing money and land, but also shame or symbolic and cultural resources.¹⁵

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.¹⁶

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, as described in the call to arms by Sister Maria. Despite some important efforts to include women and their experiences in the justice mechanisms established in East Timor since 1999, Timorese women such as Sister Maria may indeed have cause to be disenchanted.

1.1 Parameters

The scope of the book is bounded by several factors. The most important limitation is that I try to measure the impact of international law on the women of East Timor, which can only be a partial and contested enterprise. In analysing the impact of international law on Timorese women, I am cognisant of my own writing position as an Australian academic, and the immense diversity of the female population of Timor.¹⁷ The aim of the book is to be exploratory and ask the question 'where are the women'¹⁸ in the transitional justice processes for Timor.¹⁹ The quotation by Ivo Andrić prefacing the book invites us to think more broadly about masks of humanity ripped away from survivors of armed conflict and see the reality or complexity of what might be exposed underneath.²⁰ It also asks us to think about men and women wearing different masks, as fighters, victims, survivors, citizens, veterans.²¹