

Unfulfilled Expectations

Victims' perceptions of justice and reparations in Timor-Leste

February 2010



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Women victims resting in front of the CAVR office during
a victims' healing workshop, 2004.
Photo by Poriaman Sitanggang for CAVR.

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About ICTJ

The International Center for Transitional Justice works to redress and prevent the most severe violations of human rights by confronting legacies of mass abuse. ICTJ seeks holistic solutions to promote accountability and create just and peaceful societies.

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Executive Summary

Timor-Leste has implemented a number of transitional justice mechanisms to address the legacy of human rights violations that occurred in relation to the 1975 Timorese civil war and 24-year Indonesian occupation. These mechanisms have failed to provide victims with meaningful reparations for the harms they suffered.

According to international law, victims of human rights violations have a right to a remedy for damage suffered as a result of those violations. Timor-Leste is a signatory to a number of international treaties that explicitly recognize this right to a remedy, and such principles of international law are automatically incorporated into the domestic legal system under section 9 of the Timor-Leste constitution.

Although both Timor-Leste truth commissions recommended reparations for victims of the 1975 to 1999 conflict, there has been little progress in implementation of such recommendations. In 2008 and 2009, ICTJ and its local partners, HAK Association; the Communication Forum for East Timorese Women (Fokupers); the Baucau Justice and Peace Commission; and the NGO Forum, consulted with victims of human rights violations in order to hear their views on reparations. Victims see reparations as an integral part of 'justice' for crimes committed as a result of the political conflict. This report therefore documents victims' demands for recognition, material reparation and bringing the perpetrators of human rights violations to account.

Victims generally believe that their suffering and strength during 1975 to 1999 the conflict was instrumental in to Timor gaining independence, and therefore the state of Timor-Leste should recognize their contribution in a meaningful way. However, the long official silence and policy stagnation on victim issues has led to victims of the past conflict feeling forgotten and marginalized. The provision of government assistance to other groups such as victims of the 2006 crisis has exacerbated these feelings of marginalization.

Many victims' current social and economic vulnerability is linked to these historical human rights violations, yet they are not receiving adequate government assistance to help them overcome this vulnerability. When asked what form of reparations would most improve their lives, victims prioritized assistance with their children's education, housing repairs, and health care.

Women victims remain invisible and unable to access services needed to help them improve their lives. Communities still misunderstand the causes and consequences of sexual crimes, which results in continued discrimination.

Victims and their families feel that justice has not yet been done for crimes committed during the 1975 to 1999 conflict and that justice is a prerequisite to peace and stability. Although people have very different ideas about what constitutes “justice”, common themes include a desire to confront perpetrators, learn the truth about crimes committed, receive an apology and show remorse from perpetrators, be granted material assistance and official recognition, and see perpetrators punished.

The Timor-Leste National Parliament has taken the first step towards responding to victims' needs by recognizing their suffering, dignity and right to reparation in a recent parliamentary resolution calling for implementation of the Commission for Reception, Truth and Reconciliation (usually referred to by its Portuguese acronym, CAVR) and the Commission for Truth and Friendship (CTF) recommendations. In drafting the legislation to implement the CAVR and CTF recommendations, the parliament should consult extensively with victims to ensure that implementation will respond to victims' demands for justice and reparations.

A comprehensive national reparations program, as recommended by the CAVR report, involving a national memorialization program and a limited material reparations for the most vulnerable victims, would go a long way towards meeting victims demands for official recognition. In the meanwhile, the Timor-Leste government should open a dialogue with 1975 to 1999 victims and their communities to listen to concerns surrounding truth, justice, and reconciliation and commit resources to addressing these concerns. This dialogue can be used to find a way of addressing demands for justice for past crimes that acknowledges the needs of both victims and Timorese society as whole. Although victims generally believe that serious crimes must be processed in court, less serious crimes could be addressed via a community reconciliation mechanism similar to that employed by the CAVR.

Simple steps can be taken by the government to provide recognition to victims of the 1975 to 1999 conflict by; honoring them during national celebrations, addresses by the head of state, and by ensuring that victims can access existing government social assistance programs. Civil society organizations working at the community level can act as a bridge between victims and the government by referring vulnerable persons to assistance programs. The government should also consider establishing specific assistance programs for certain groups of victims, such as victims of sexual violence, in order to meet their particular needs.

Valorizing victims and responding to their material needs can assist Timor-Leste's nation-building project. Although not posing a significant political threat due to their lack of organization, victims of the past conflict represent a large, angry and disenfranchised group with a legitimate claim to reparation from the Timor-Leste state. By addressing victims' specific needs, Timor-Leste will combat one of the underlying causes of social disadvantage in Timor-Leste – the experience of a serious human rights violation. It will also promote an inclusive Timor-Leste society by supporting victims' ability to enjoy their rights as full citizens.

1. Introduction

Timor-Leste is still grappling with its legacy of decades of violence. A number of transitional justice mechanisms have been employed to address the human rights violations that occurred during the brief Timorese civil war of 1975 and the 24-year Indonesian occupation. These mechanisms have aided Timor-Leste's struggle for peace and justice but have fallen short of providing sustainable benefits to those who suffered violations during the conflict. Most perpetrators responsible for serious crimes have escaped justice or have served relatively short periods of incarceration. Though a national truth-seeking process in Timor-Leste provided the opportunity for hundreds of victims to speak at public hearings and thousands more to provide written testimonies, many victims still feel that there has been insufficient recognition of their suffering and contribution to independence. Also, many have yet to receive the support needed to overcome the physical, mental, and economic impact of the violations they experienced.

Over the past few years, the issue of victim reparations has gained more prominence within the national justice debate in Timor-Leste, but there has been little attention to victims' views on the matter.

In April and May 2008, a number of local organizations, together with ICTJ, conducted a nationwide consultation to solicit victims' views on reparations.¹ Discussions with victims' groups were also held throughout 2009 in preparation for a National Victims' Congress. Victims see reparations as an integral part of justice for past human rights violations. Therefore any discussion of reparations inevitably involves a discussion of other forms of justice, such as criminal trials. This report provides a summary of existing programs that may contribute to addressing victims' needs, details victims' demands and concerns, and makes recommendations on how to address them.

¹ East Timor Women's Forum (Fokupers), HAK (Human Rights and Law Association) and the Commission for Justice and Peace of Baucau, ICTJ, and the Post-CAVR Technical Secretariat.

2. Assistance for Victims of Human Rights Violations

For many victims in Timor-Leste, the road to recovery since the cessation of mass violence in 1999 has been full of good intentions but has produced few tangible results. Despite recommendations for reparations by both the Commission for Reception, Truth and Reconciliation (usually referred to by its Portuguese acronym, CAVR) and the Commission for Truth and Friendship (CTF), progress in this area has been slow. This section reviews efforts to date to address the needs of victims of the 1975 to 1999 conflict as well as the government's response to other groups, such as ex-combatants, victims of the 2006 violence and displacement, and vulnerable persons, including the elderly and disabled. That other groups have received significant recognition and assistance from the state has contributed to the buildup of frustration and anger among victims of the 1975 to 1999 conflict, whose needs have not been addressed.

The Right to a Remedy and Reparations for Victims

According to international law, victims of human rights violations have a right to a remedy for the damage they suffered as a result of those violations.² Timor-Leste is signatory to a number of international treaties that explicitly recognize this right to a remedy,³ and such principles of international law are automatically incorporated into the domestic legal system under section 9 of the Timor-Leste constitution. Traditional Timorese dispute resolution mechanisms also reflect the universal values upon which the principles of reparation are based; a wronged person is generally entitled to some kind of redress from the perpetrator.⁴ Reparations are material and symbolic interventions that aim to mend, to the greatest extent possible, damage caused to an individual or community by a human rights violation.⁵

2 *Chorzow Factory Case*, PCIJ (Series A) No. 9 at 21 (1927).

3 International Covenant on Civil and Political Rights, art. 2; International Convention on the Elimination of All Forms of Racial Discrimination, art. 6; Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, art. 14.

4 D. Babo-Soares, "Nahe biti: The philosophy and process of grassroots reconciliation (and justice) in East Timor," *The Asia Pacific Journal of Anthropology*, 5:1 (2004): 15–33, 27.

5 For a detailed explanation of reparations and possible models that might be applied in Timor-Leste, see the July 2008 Concept Paper on a National Reparations Program for Timor-Leste, prepared by the Working Group on Reparations for Parliamentary Committee A.

Examples of material reparations include providing health care for people who are ill or disabled due to torture or violence; helping victims to access social assistance programs; providing scholarships, pensions, or financial support; and implementing development programs in communities severely affected by violence. Symbolic reparations may consist of an apology, efforts to locate disappeared persons, commemoration events, and other activities honoring victims.

Either a national administrative program or judicial proceedings may provide reparations to victims.

Truth Commissions and Victim Support

Although the two truth commissions related very differently to victims, both the CAVR and the CTF recommended reparations. The CAVR was mandated to investigate the human rights violations that occurred between 1975 and 1999 and distinguished itself by developing innovative approaches to assist and restore “the human dignity of victims.”⁶ A Victim Support Division was established to provide assistance to victims during truth-seeking processes, such as public hearings and the taking of statements. It soon became apparent to CAVR commissioners and senior staff that the most vulnerable victims required material assistance in order to restore their dignity. With funding from the World Bank, the CAVR designed and administered an urgent reparations program that connected 700 of these victims to health, counseling, and support services, as well as providing them with a one-off grant of \$200. In its final report, the CAVR recommended a comprehensive national reparations program be implemented by the Timorese government, with support from the international community. It proposed symbolic reparations for all victims and material assistance only for “the most vulnerable among those who *continue* to suffer the consequences of gross human rights violations which took place between 1974 and 1999.”⁷

Although the bilateral CTF was criticized for the way it dealt with the few victims who testified during its hearings,⁸ the final CTF report recommended a number of reparatory measures for victims and their families. These measures included an apology from the Timorese and Indonesian heads of state, acknowledging responsibility for past violence; survivor healing programs; investigation of the fate of disappeared persons and children separated from their parents during the conflict; and education and scholarship programs for children who were victims of the violence.⁹

Little progress has been made in terms of implementing the CAVR and CTF recommendations on victim reparations.

Upon presentation of the CTF final report, the President of Indonesia declined to issue an apology to victims' of the 1999 violence but did express his ‘regret’ for what happened

6 Section 3.1 (f) of UNTAET Regulation 2001/10, On the Establishment of a Commission for Reception, Truth and Reconciliation in East Timor. Restoring the dignity of victims was just one of the stated objectives of the CAVR, which included in addition to its truth-seeking mandate promoting human rights, reconciling perpetrators of minor crimes with their communities, and recommending how to prevent the recurrence of human rights violations.

7 *Chega! The CAVR Report*, chap. 11, recommendation 12, 2005. Report is available at www.cavr-timorleste.org.

8 Megan Hirst, “Too Much Friendship, Too Little Truth: Monitoring Report on the Commission of Truth and Friendship in Indonesia and Timor-Leste,” ICTJ Occasional Paper Series (January 2008).

9 “Per Memoriam ad Spem,” final report of the Commission on Truth and Friendship (CTF), Part 9.1, recommendations (May 2008).

in 1999¹⁰. Timor-Leste and Indonesia have held several bilateral meetings to negotiate implementation of the CTF recommendations. A draft “action plan” for implementation has been produced, and agreement has been reached, on relatively uncontroversial issues, such as more lenient visa requirements for Timorese wishing to visit Indonesia.

In mid-2008, the Parliamentary Committee for Constitutional Issues, Justice, Public Administration, Local Power and Government Legislation (Committee A) passed a resolution that endorsed the CAVR and CTF reports and called for joint implementation of key recommendations, including those on reparations. However, the parliament delayed plenary debate of this resolution because it called for the prosecution of serious crimes committed in relation to the political conflict. On 14 December 2009, the heads of political party benches in the parliament produced a new resolution that acknowledged the contribution of the CAVR and CTF to truth, reconciliation and justice, and recognized the suffering of the victims and their right to reparation. Via this resolution, the parliament has given Committee A three months to develop a law governing the implementation of CAVR and CTF recommendations. There is a possibility that this parliamentary process will result in the approval of a national reparations program for victims, but there continues to be strong political opposition to this idea.

Timor-Leste and Indonesia have, to different degrees, taken steps toward officially recognizing the truth about past violations. Yet the lack of immediate measures to support victims following these truth-seeking processes has become a source of disappointment for victims.

Justice and Reparations for Victims via the Courts

The United Nations Transitional Authority in East Timor (UNTAET) established the Serious Crimes Process to investigate and try those responsible for such crimes as murder, sexual offenses, and torture in 1999, and crimes against humanity, acts of genocide, and war crimes during and prior to 1999. The Special Panels for Serious Crimes convicted 81 persons of the charges brought against them, but of the 391 indictees, more than 300 remain at large.¹¹ Most of those convicted have since been freed after presidential pardons were granted to reduce their sentences.¹² In addition, via a series of fundamentally flawed trials, all 17 Indonesian military, police, and civil servants and a Timorese militia leader tried by an Ad Hoc Human Rights Court (established by Indonesia to try persons responsible for the 1999 violence) have been acquitted either immediately or upon appeal.¹³

The UNTAET regulation establishing the the Serious Crimes Unit (SCU) and Special Panels provided that a trust fund be created “for the benefit of victims of crimes within the jurisdiction of the panels, and the families of such victims.” This fund was never established.¹⁴ Additionally, the Indonesian criminal procedure code in force at the time of the Serious Crimes trials provided that anyone who suffers loss as a result of a crime may request compensation from the court. The presiding judges would determine whether this

10 “Regret but no apology yet from SBY over Timor violence,” *AAP*, July 15, 2008

11 Caitlin Reiger & Marieke Wierda, “The Serious Crimes Process in Timor-Leste: In Retrospect,” *ICTJ* (March 2006); Report of the Secretary-General on Justice and Reconciliation for Timor-Leste, *S/2006/580* (July 26, 2006), par. 9.

12 Presidential decrees 53/2008, 5/2005, 6/2005, 13/2005, 16/2005, 17/2005, 12/2004, 13/2004, 15/2004, 20/2004, 21/2004, 23/2004, and 28/2004.

13 For a detailed discussion of the Ad Hoc Human Rights Trials in Jakarta see David Cohen, “Intended to Fail: The Trials Before the Ad Hoc Human Rights Court in Jakarta,” *ICTJ* (August 2003).

14 Section 25 of UNTAET Regulation 2000/15 on the Special Panel for Serious Crimes. Section 24 further stipulates that the Special Panels take “appropriate measures to protect the safety, physical and psychological well-being, dignity and privacy of victims and witnesses”

compensation case could be heard alongside the criminal case.¹⁵ It is not clear why this provision was not used with regard to the Serious Crimes cases. Perhaps its application was unclear, perpetrators had no means to pay compensation to victims, or SCU prosecutors simply overlooked the article. The Serious Crimes Process was therefore not used as a mechanism to seek compensation on behalf of the victims and their families.¹⁶

Civil Society Initiatives

As part of the humanitarian response to the events in 1999, local NGOs, such as Fokupers (East Timor Women's Communication Forum) and HAK (Human Rights and Law Association), developed programs for victims of human rights violations. International agencies, such as the International Catholic Migration Commission and Oxfam, also targeted communities heavily affected by the conflict. However, many NGOs and church organizations have now shifted their focus to other pressing social problems, such as gender-based violence, corruption, and management of the Timor Sea oil and gas reserves. The following civil society initiatives are *current* programs that work specifically and exclusively with victims of the 1975–1999 violence:

- i) Living Memory: An NGO staffed by ex-political prisoners who seek to support and record the experiences of ex-political prisoners
- ii) 12 November Committee: An association comprised of survivors of the Santa Cruz massacre that lobbies for greater government support for the survivors and works to recover the remains of massacre victims
- iii) National Association of Victims: HAK Association, Fokupers, the NGO Forum, and ICTJ are working to support this association for victims of the 1974 to 1999 conflict. The association formed after two years of consultation and work with victim representatives in the districts. The association's goal is to promote the rights of victims of the past conflict, including their right to reparations, and to prevent conflict and human rights violations in the future.

Also, a small number of local victims' groups (particularly widows' groups) work together with NGOs and the Catholic church to organize various memorial activities at the local and national levels, generally involving ceremonies or monuments to commemorate specific events, such as massacres.¹⁷

Honoring Veterans, Caring for the Vulnerable, and Compensating the Displaced

The government of Timor-Leste has begun to implement veterans', social assistance, and compensation schemes for victims of the 2006 crisis, which influence how victims view their right to reparations.

The Timor-Leste constitution guarantees the valorization of the Timorese resistance against the Indonesian occupation.¹⁸ The constitution also guarantees the protection of vulnerable

15 Articles 98–101 of the Indonesian Criminal Procedure Code 8/1981.

16 In case no. 1/2002, the accused was given a suspended sentence with the condition that he pay compensation to the family of the victim; however, this was overturned on appeal and a jail sentence substituted.

17 In 2009, community, church, and victims' groups in Liquica organized a mass and seminar to commemorate the 1999 massacre at the Liquica church. Massacres in Maliana and Ainaro were commemorated via simple rituals organized by victims' families, with the support of NGOs. The United Nations Mission in Timor-Leste's Human Rights and Transitional Justice Section supported these activities with funding. In Suai, the church was the primary organizer of commemoration of the 1999 Suai Church massacre.

18 Article 11(3) of the constitution states that, "the State shall ensure special protection to the war-disabled,

social groups, such as the elderly, the disabled, and children, and requires the government to provide social assistance and security for citizens in accordance with the law.¹⁹ The Ministry of Social Solidarity (MSS) has largely taken on the role of fulfilling these constitutional requirements.

In 2006, the Timorese parliament passed a law granting pensions and other benefits to veterans; benefits are to be calculated according to the veteran's years of full-time service as a member of either the armed, clandestine, or diplomatic fronts of the resistance.²⁰ Widows, orphans, parents, and siblings of those who died "participating in the struggle" may also be eligible to receive pensions and free access to public services.²¹ By late 2008, more than 34,000 people had been identified as possible beneficiaries under this scheme²². However, a large portion of payments have been delayed due to problems with the beneficiary verification process. For 2010, the Secretariat of State for Veterans Affairs within MSS has a budget of over USD 20 million for the payment of veterans' pensions.²³ Under the same scheme, the government will present medals of valor to approximately 75,000 people.²⁴

Although many veterans are also victims of human rights violations, the veterans' program does not encompass all the victims by any means. Women are marginalized because it was mostly men who held formal positions within the armed wing of the resistance, Falintil,²⁵ and the clandestine network.²⁶ Further, victims of violations committed by members of the resistance cannot be considered under this scheme.²⁷ Finally, some victims were not actively engaged in the Timorese resistance, and thus do not qualify as veterans.

A large amount of compensation has been paid to victims of the 2006 crisis, which resulted in approximately 100,000 persons being displaced from their homes. Each household is eligible to receive a return package ranging from \$200 to \$4,500, depending on the damage done to the home. Phase two of the recovery program will provide a one-off payment to families who suffered property damage as a result of the crisis. A total of \$35.5 million has been spent to date on recovery and reintegration packages for internally displaced persons (IDPs).²⁸ Persons seriously injured or the family of persons killed due to the 2006 violence have also received financial and practical support from the government and a local NGO.²⁹ The government deserves praise for responding to its obligation to repair the lives of those affected by the 2006 crisis. However, its actions have heightened the sense of neglect among victims of the 1975–1999 conflict.

orphans and other dependents 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."

19 Sections Articles 18, 20, 21, and 56 (1), Timor-Leste constitution.

20 Parliamentary Law 03/2006, The Statute of the National Liberation Combatants.

21 Sections 23–31 of Decree Law 15/2008 on Pensions of the Combatants and Martyrs of the National Liberation.

22 The World Bank, "Defining Heroes: Key Lessons from the Creation of Veterans Policy in Timor-Leste" World Bank Report No. 45458-TP (September 2008) p 24

23 Timor-Leste 2010 National Budget, available at www.laohamutuk.org/econ/OGE10/090JE2010.htm.

24 "Last Opportunity for Veterans to Register," *Diário Nacional*, 7 May 2009.

25 Timor-Leste National Liberation Armed Forces, in Portuguese: Forças Armadas de Libertação Nacional de Timor Leste (Falintil).

26 Only 14 percent of combatants eligible to receive pensions under the veterans' scheme are women, while 35 percent of those who have registered to receive pensions as heir of a deceased veteran are women. Statistics provided by the Secretariat of State for Veterans Affairs within MSS in June 2009.

27 Article 4 of law 03/2006 provides that "any individual who has voluntarily collaborated with the enemy against the interest of national liberation" and "FALINTIL members and civilian militants who voluntarily surrendered to the enemy with their weapons" cannot be included in the veterans' program.

28 Information provided by MSS, September 28, 2009.

29 "Report on human rights developments in Timor-Leste: The Security Sector and Access to Justice 1 September 2007 – 30 June 2008" Office of the High Commissioner for Human Rights (OHCHR) and the UN Mission in Timor-Leste (UNMIT).

In 2008, the government implemented a number of social assistance programs such as national pension programs for the disabled and elderly³⁰ and a pilot program to help vulnerable women send their children to school. Other MSS programs include assistance with funeral services,³¹ food assistance in times of shortage, and support for seriously ill patients to receive treatment outside of Timor-Leste. A pilot social housing program for certain vulnerable groups is currently being implemented.³²

These social assistance programs provide an important safety net for vulnerable persons in Timor-Leste but are no substitute for victim reparations. State-provided reparations are first and foremost a political project aimed at restoring victims' trust in state institutions and demonstrating the state's commitment to upholding human rights. Moreover, current social assistance programs fail to address the needs of certain groups within the population of 1975–1999 victims, such as women subjected to sexual slavery and rape, and children and youth who lost educational opportunities due to forced labor or imprisonment.³³ Most crucially, these social assistance programs do not provide victims with the official recognition they demand as survivors of the conflict.

In light of the existing government programs for veterans, vulnerable persons and 2006 victims, 1975 to 1999 victims have valid grounds to feel discriminated against and overlooked. The implementation of a reparations program for victims of the 1975–1999 conflict could address this inequality and contribute to long-term peace and stability in Timor-Leste.

30 Decree Law 19/2008, Support Allowances for the Aged and Disabled.

31 Decree Law 21/2009, on a Funeral Transport Service.

32 Timor-Leste 2009 National Budget for MSS, pp. 313–326; Timor-Leste 2010 National Budget for MSS Book 1, p 222; MSS Draft Social and Humanitarian Assistance Policy, parts 3.6.1, Food Safety Net, and 3.6.2, Social Housing.

33 In May 2009, ICTJ provided input to MSS on appropriate mechanisms for providing material assistance to victims of conflict-related sexual violence. It is understood that this program will begin once a suitable NGO is found to assist MSS with program implementation. There are currently no targeted programs to address children and youth's loss of work and educational opportunities due to forced assistance of the Indonesian military (children known as "Tenaga Bantuan Operasi," or "TBOs") or imprisonment for long periods of time.

3. Listening to Victims – In Their Own Voices

Acknowledging the need to investigate victims' current situation and determine whether their demands for recognition and material assistance, as voiced to the CAVR, remain the same, ICTJ, Post-CAVR, Fokupers, HAK, and the Justice and Peace Commission of the Baucau Diocese facilitated a series of discussions with victims in Timor-Leste's 13 districts. Using their existing victim networks, the organizers identified individuals to participate in this consultation. Attempts were made to achieve gender balance among participants, to involve equal numbers of victims who had and had not been involved in CAVR's urgent reparations program, and to ensure representation by victims with different experiences of human rights violations. In total, 372 victims participated (226 men and 146 women) in workshops held from March to May 2008. Each workshop involved approximately 30 survivors of human rights violations. The workshops aimed to produce a snapshot of victims' current situation and sought to elicit their views on what reparatory measures would make a real difference to their lives. A follow-up series of regional workshops were held in Liquica, Maubisse, and Baucau from October to November 2008 to further discuss networking strategies for victims. Victims identified a need to self-organize in order to put their interests on the national agenda. As a result, meetings were held throughout 2009 with victims at the district level in preparation for a National Victims' Congress, held in September 2009. These meetings involved 426 victims and provided an opportunity to confirm and modify views expressed during the 2008 consultation, which was carried out before the payment of any benefits under the veterans' and government social assistance programs.

In addition to participating in facilitated discussions, participants were asked to complete a simple questionnaire asking (1) whether they had ever received material assistance, (2) their views on prioritizing support for the most vulnerable victims, and (3) what kind of assistance they needed to improve their lives. The questionnaire was designed to indicate the extent to which victims were being supported by the state or other organizations, to identify potential beneficiary groups for a reparations program, and to determine the type of assistance victims would require in order to feel satisfied. The questionnaire was distributed first in 2008, and again in 2009. would require in order to feel satisfied. The questionnaire was distributed first in 2008, and again in 2009.

Summary of Findings

Although victims expressed a myriad of views during the consultation process, some common threads emerged from the consultations and follow-up discussions, which connected victims from Los Palos to Oecusse:

- i) Many victims' current social and economic vulnerability can be linked to the human rights violations they suffered. A majority of victims do not have access to government assistance programs.
- ii) Victims involved in this consultation prioritized their needs as assistance with children's education, housing repairs, and health care.
- iii) A large number of participants stated that, as victims of the 1975–1999 conflict, they felt forgotten and marginalized. The long period of official silence and policy stagnation on victim issues, including the lack of progress in implementing CAVR recommendations, has contributed to frustration and a sense of hopelessness.
- iv) Many of these victims believed that the suffering and strength of victims from 1975 to 1999 was instrumental in gaining independence, and therefore the independent state of Timor-Leste should recognize their contribution in a meaningful way.
- v) Participants agreed that there must be justice for past crimes. However, people have different ideas about what constitutes "justice." Victims wished to be informed about and to participate in the national debate regarding justice for past crimes.
- vi) Women victims remain invisible and unable to access services needed to help them improve their lives. Communities still misunderstand the causes and consequences of sexual crimes, which results in continued discrimination.

Survivors Not Surviving

Use of the term "Victims"

The term "victim" is used throughout this paper to describe those who experienced a human rights violation during the 1975–1999 political conflict. It serves to distinguish this group from others, such as former members of the resistance. The focus on having suffered a human rights violation allows political objectivity, because a person is a victim if he or she experienced a violation regardless of what "side" he or she fought on in the conflict.

The term "victim" is not intended to disempower those who suffered a human rights violation. Victims of human rights violations have certain rights as described in the *UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*.

The consultations revealed that participants viewed themselves as active agents, not passive recipients of government assistance. Victims of the 1975 to 1999 conflict are requesting assistance to get an education, start a small business, or improve their health, measures that would empower them to take care of themselves. They viewed their "victim" status as a temporary state that can be transformed through reparation and justice for past crimes.

The consultations suggested that many victims of the 1975–1999 conflict remain vulnerable, unable to overcome the negative impact of the human rights violations they endured. They are trapped in a cycle of poverty caused by ill health, poor education, and/or the loss of productive family members. Many feel it is unjust that those who did not take sides or who supported the Indonesian occupation are now much better off than those who fought for independence. These victims are demanding that measures be taken to bring their skills, work opportunities, and quality of life up to a level equal with those who did not suffer similar violations. The passage of time has only increased victims' feelings of dissatisfaction, frustration, disappointment, and loss of hope.

Sometimes, sitting and thinking about what we suffered makes us almost go crazy. [Female victim, Manatuto, April 11, 2008]

In 1975, during the war, it was the ordinary people who were involved; we bore arms, made difficult sacrifices and lived in the interior (of the island) without rest. But now we have been cast aside, while those who didn't struggle or suffer have come out in front. [Female victim, Maliana, May 24, 2008]

Despite the government's focus on assisting vulnerable groups, many victims of human rights violations are not eligible for government social assistance programs, and many do not qualify for veterans' subsidies. Of the 347 victims (153 women, 194 men) who participated in the 2008 survey, 80 percent claimed that they had not received any kind of assistance from the church, NGOs, or the government. This is understandable given that implementation of MSS social assistance programs began in 2008, after the survey was carried out. However, the 2009 survey involving 426 victims indicated that 60 percent of respondents had not received any assistance while 16 percent were receiving material support in the form of benefits associated with the veterans' program (32 persons) and subsidies for the elderly, disabled, and single mothers (32 persons).

When asked to prioritize their needs, participants overwhelmingly identified education for their children (51 percent of respondents), followed by adequate housing and health care. The focus on home rehabilitation may be linked to the fact that victims of the 2006 crisis have received compensation for this purpose. In the focus group discussions, health and education appeared to be more urgent needs than housing. Twenty-eight percent of survey respondents did not specify what type of assistance would make the most difference to their lives, simply stating that they required assistance to meet their basic needs. Participants also called for symbolic forms of recognition, such as monuments, certificates, and ceremonies to honor family members who had died. More than half the participants, in agreement with the CAVR recommendation, stated that material assistance should be provided only to those victims who are poor or to particular vulnerable groups, such as the disabled, widows, and orphans.

Although many people have received medals commemorating the deaths of husbands, children, and siblings, this does not help them overcome the daily challenges of meeting basic needs. Practical assistance is required to help these people eliminate their vulnerability and empower them to claim the rights provided them in the Timor-Leste constitution.³⁴

In all districts people agreed that *one aspect* of justice could be achieved if practical assistance were provided to improve the situation of victims.

My husband was killed by the militia in Makela. Because he didn't die straight away, they beat his head in. I have two children and my husband doesn't have any family so my children don't go to school. Since 1999 the government has not paid any attention to our needs. I hope the government can assist us so my children can go to school. My children are from 16 years old to the low teens and they don't go to school. [Female victim, Oecusse, May 6, 2008]

My husband suffers because he still has a bullet in his hand but no one wants to help him go to the hospital so the bullet can be removed. [Female victim, Los Palos, April 28, 2008]

34 These constitutional provisions include sections on equality that guarantee citizens equal rights and duties (16–17) and sections on the right to political participation (46), the right to work (50), the right to social security and assistance (56), the right to health (57), the right to housing (58), and the right to education and culture (59).

I received the medal from the Prime Minister. He requested that I look after the medal—not lose it, throw it away or get it dirty because it represents the blood and bones of my husband. But blood and bones cannot provide me with food or drink, support my children's education or build a house for me to live in. [Female victim, Same, May 14, 2008]

We are still waiting for the CAVR to come and explain what has happened to our data that we gave the CAVR.... We also want to tell the government that it can't forget about the "little victims," people in the villages who are still traumatized, trauma which continues to give rise to various conflicts. [Female victim, Ermera, May 24, 2008]

People felt that they had been patient, giving the leaders time to establish the new government and legal structures, and that they had done their part by providing testimony to various truth-seeking and justice initiatives. However, ten years since the vote for independence, victims are losing patience, and time is running out for elderly victims.

When we had just obtained independence and were still in a period of transition, I thought it wasn't right to ask for much. However, now that we have enough money from our natural resources, I think a little could be kept aside to improve the lives of us victims. [Male victim, Maliana, May 24, 2008]

We ask that justice and rehabilitation are implemented immediately. This rehabilitation also has to take place shortly, otherwise all the victims will be dead and they will just be rehabilitating those people who didn't make a contribution, while us victims who contributed [to achieving independence] will be treated like we were the ones who were in the wrong. [Female victim, Same, May 14, 2008]

Needing Recognition and a Place at the Table

A large number of participants stated that, as victims of the 1975–1999 conflict, they felt forgotten and marginalized. Victims have provided statements and testimony to various organizations, such as the CAVR, but they have enjoyed few or no tangible benefits as a result. They feel that their situation is less and less a priority for people, particularly the government. It was a source of much anger among participants that those in parliament and the government, who benefited from the support of victims during the Indonesian occupation, now refuse to acknowledge victims' suffering and their contribution to achieving independence.

All of us victims feel sad. Why are we sad? We are sad because our names are never mentioned in any forum. We are wondering if the government really cares or not. [Male victim, Maliana, May 24, 2008]

Victims don't have a good life at the moment because the leaders who sit in the parliament or government only care about themselves, they don't care about the victims who have sacrificed everything for independence so that the leaders can sit [in the parliament and government]. [Male victim, Liquica, May 2, 2008]

These feelings of marginalization are compounded by the government's refusal to recognize that there are victims of the struggle for independence. Instead it insists that there are only "heroes". Although many suffered terrible violations, they do not qualify as "national liberation combatants" and cannot access any benefits under the veterans' scheme. However, while participants support provision of benefits to ex-combatants, the perceived preferential treatment of 2006 victims was creating much dissatisfaction. Some victims also felt that the victims of human rights violations should be treated differently than those who are disabled or seriously ill due to non-conflict related causes.

Those in the resistance who were tortured, who suffered, should be put in a separate category. Their value is not the same as those who are just sick or disabled, these people gave everything for independence and because of this they suffered and became a victim. So you can't treat these two things in the same way, even though we see that the help they receive [from the state] is the same. [Male victim, Liquica, April 28, 2009]

The government doesn't recognize the suffering of the [1975–1999] victims. Instead it is the victims of the 2006 crisis who we see every night on the television. From the media reports we hear that they have been given money, rice and compensation to re-build their houses, but us from 1975–1999 haven't been mentioned. [Female victim, Maliana, May 24, 2008]

In 1999, my child died. He didn't die because he was a thief but none of the leaders care. I am also a widow and have received nothing. My child gave himself to independence but it is as though it was all for nothing as the state has not valued this, they haven't given us anything. [Female victim, Aileu, May 16, 2008]

One reason that victims feel so abandoned by the state is their perception of the lack of progress in attaining justice. Many participants said that they do not receive information about developments at the national level, nor are they consulted. They have no place at the table to discuss justice-related issues. Some people no longer wished to participate in transitional justice processes if they rendered no tangible result or benefit.

It is important for us that the justice process continues. There needs to be information provided to victims [about] how justice processes are going. If not, efforts to obtain justice may stall and we will continue as victims. There is not any follow-up to the information that we have provided already. Who is going to give information to us? At the village level there isn't any information. [Female victim, Maliana, May 24, 2008]

I am also a victim but I don't want to relate my experience because many people have told their story but we still haven't seen any results, everything remains the same, so I don't have the energy to speak anymore. [Female victim, Liquica, May 2, 2008]

We don't care about justice that just wastes money and doesn't fulfill victim needs like housing, livelihood, daily needs and health and education for their children. [Male victim, Maliana, May 24, 2008]

Justice

In all districts, participants agreed that “there must be justice” for past crimes. However, people have very different ideas about what constitutes justice. Requirements for justice included (1) official channels for victims to tell their stories in a continuation of the CAVR statement-taking process, (2) the recovery and identification of the remains of missing family members, (3) the provision by perpetrators of information about crimes committed, (4) criminal prosecutions, and, as noted above, (5) practical assistance.

Justice hasn't been done for the victims' families at the grassroots-level because generally data collection activities haven't reached many families who live in the villages. [Female victim, Ermera, May 24, 2008]

I want my husband's remains to be returned to me so that I can bury him properly. [Female victim, Los Palos, April 28, 2008]

There is already a forensic team which is digging for the remains of the 12 November [victims]. There should also be efforts to find others who were made to disappear. We still don't know where they were buried... We know who the criminals were who took these

persons. They are all now living in Indonesia. We ask the government and the parliament to find a way to contact them so that we can find our family members' graves. [Female victim, Viqueque, April 15, 2009]

Recurring themes included the sense of injustice felt by victims over the absence of any negative consequences for perpetrators of crimes and victims' anger at the perpetrators' lack of remorse. It was strongly believed that victims' suffering must be balanced by perpetrators taking responsibility for their crimes. This was viewed as a prerequisite for reconciliation and peace in Timor-Leste.

I feel angry because the perpetrator lives with us in the same suburb. People who killed and tortured our family have never admitted fault about what they did. [Male victim, Los Palos, April 28, 2008]

For me, justice has not been advanced because the reality shows that if we carry out reconciliation between the victim and the suspect, there is still not one suspect who has come to us and asked for forgiveness, this makes us feel very offended. [Female victim, Dili, March 29, 2008]

For those of us who have lost our husbands, justice has not yet been done. If there is not justice, we will continue to hate each other. There has to be justice also for ordinary people. [Female victim, Los Palos, April 28, 2008]

We cannot forget truth and prioritize only friendship, otherwise the perpetrators will repeat their crimes and they will consider their actions as right. [Male victim, Ainaro, April 16, 2008]

I think that, looking at our domestic courts, they aren't able to put the perpetrators in prison. We need an international tribunal to come carry out an evaluation. The CAVR report is already published, now we need an international court to be established here to put people in jail, especially those leaders who are running around Indonesia. Only an international court can bring them here [to Timor-Leste]. Our national courts will never call them to come here. [Female victim, Maliana, May 24, 2008]

In Viqueque we are waiting for justice. When will justice be realized? Do we have to wait until we are all dead? Wait for the approval of more money? Through this forum I would like to say that the budget was approved, and I am also included in this budget because I am a public servant and my salary has been increased. I am happy with this but I would like to ask the Ministry of Justice that, if there is a program for justice, for it to be sped up. The people are waiting for justice. They are thirsty and hungry for justice. [Female victim, Viqueque, April 15, 2009]

The President has already granted amnesty to the perpetrators [of crimes], so what are the leaders going to give to us [the victims]? If [the leaders] don't give any assistance to us then the President should create a law to punish the murderers and so we can have some satisfaction. They have strong motivation to provide amnesty to criminals but their neglect of us has increased our sense of suffering. [Male victim, Maliana, May 24, 2008]

Women Victims Marginalized

Women's experiences during the Indonesian occupation differed from those of men. By choosing to valorize the armed and clandestine sides of the resistance movement, the state has marginalized the role of women during the civil war and Indonesian occupation. Men held most of the formal positions within Falintil and the clandestine network, and this is reflected in the higher proportion of men rather than women who have registered as national liberation combatants. Women supported the resistance movement via other means, such as providing food and shelter or by passing messages to resistance members. Although the

veterans' legislation to some extent provides for such contributions to be recognized,³⁵ this has not resulted in a high registration of women under the veterans' scheme. The recent amendment to the veterans' legislation to provide a one off payment to those who participated in the Timorese resistance for a period of four to seven years, may result in greater numbers of women gaining benefits under the veterans' scheme.³⁶

The CAVR concluded that the Indonesian military and their auxiliaries used sexual violence against Timorese women as a tool of war, to subdue the population and break resistance to Indonesian rule.³⁷ Often women were targeted because of their family relationship with members of the resistance, but others were violated simply because they were women. Female victims questioned why their sacrifices for independence are not deserving of recognition and compensation.

I was imprisoned various times in Bobonaro so why should just my husband as a veteran receive money? I have suffered a lot, giving birth to a child in the jungle—not even having a sling in which to hold the child, not even a plastic bag... no house, sleeping on the ground... but this doesn't matter because we did this all for our country. Today those who had an easy life back then are now enjoying themselves, we who fought day and night have not yet got anything, because of this, we ordinary people are not satisfied. [Female victim, Maliana, May 24, 2008]

My mother died of stress after I was detained. When I returned home, I told her that I had been raped for independence. My mother became stressed and after two days died. Until today I have no parents, all my male siblings have gotten married, who will take care of me? [Female victim, Maliana, May 24, 2008]

Many consultation participants stated that the government should pay special attention to victims of sexual violence, particularly those who had a child as a result of that violation. In addition to having suffered rape and/or sexual slavery, these women—and their children—continue to suffer discrimination within their communities.

Sometimes children become frustrated because they are called an "Indonesian child" or a "military child." Sometimes the mothers also become frustrated and stressed when people say, that one is a military wife. [Male victim, Ainaro, April 16, 2008]

Many violations occurred... There were women who the military used as their wives, giving them two or three children. [The community] calls these women rude names like "feto nona" ["mistresses"] but they are victims of the consequences of war. What kind of protection, what kind of rehabilitation can be carried out to address this problem? [District administrator, Baucau, April 17, 2009]

35 Article 3(2) of Law 03/2006 provides that Timorese who were not affiliated with the formal structures of the resistance but provided "logistical, humanitarian, messaging and information" services to the resistance or Falintil can be considered national liberation combatants. This status, however, doesn't necessarily attract benefits under Decree Law 15/2008.

36 Article 26 A First amendment to law number 03/2006 (Statute of the National Liberation Combatants) July 7, 2009

37 *Chega!*, chap. 7.7, "Sexual Violence," Findings, paragraph 366, points 23–25.

4. Conclusions and Recommendations

Ten years after Timor-Leste's vote for independence, victims' expectations of justice for crimes committed against them are as yet unfulfilled. Having invested resources in truth and justice mechanisms, with varying results, Timor-Leste needs to provide material support to those who suffered human rights violations and who continue in a downward spiral of victimization and poverty.

The government's policy of assisting veterans and the 2006 victims, without any corresponding assistance for victims of the 1975–1999 conflict, has become a source of resentment. Some expressed concern that these perceived injustices would act as a trigger for future conflict within communities.

It is vital that policy makers listen to the concerns of victims and their communities surrounding truth, justice, and reconciliation and commit resources to addressing the concerns voiced. This will not only serve to prevent conflict, it will also help restore victims' trust in the state, damaged by the absence of meaningful recognition of their suffering.

It is important to note that victims across Timor-Leste articulated a multidimensional understanding of the term "justice," involving recognition of truth, bringing perpetrators to account, creating equality of opportunity between those who supported independence and those who didn't, rehabilitating victims, and caring for particularly vulnerable groups, such as victims of sexual violence. An adequate response to the issue of justice for past human rights violations will need to be equally multi-dimensional. There is no single way to address Timor-Leste's legacy of past violence but there are immediate steps that can be taken to demonstrate good-will, on the part of the parliament and government, to address victim concerns.

Recommendations

To the Timorese Parliament:

- When developing the legislation for implementation of CAVR and CTF recommendations, prioritize implementation of their recommendations on victim reparations.
- Consult extensively with victims in developing the legislation for CAVR and CTF implementation to ensure that the final result satisfies, to a large extent, victims' demands for justice and reparations.³⁸

38 A concept paper on a CAVR/CTF follow-up institution has been developed by the Working Group on Reparations,

To the Timorese Government:

- While awaiting an in depth debate of CAVR and CTF implementation in the parliament, provide practical assistance to vulnerable victims to overcome disability, mental trauma, social discrimination, and other challenges resulting from the human rights violations they suffered. This material assistance could be provided through existing government programs by adapting their criteria to include a greater number of 1975 to 1999 victims or by creating targeted programs for the most vulnerable victims of human rights violations.³⁹
- In parallel to this material assistance, extend symbolic recognition to victims by acknowledging their suffering and contribution to independence via official commemorations, presidential addresses to the nation, and memorial projects dedicated to victims.
- In cooperation with women NGOs and women's groups, develop a special program for female victims, including victims of sexual violence, that would provide psychosocial support, economic projects, and other empowerment initiatives. The program should also deal with changing community perceptions about women victims of sexual violence.
- Devote more resources to ensuring that information about government programs reaches people in the districts.
- Consider establishing an additional mechanism to bring perpetrators to account for their crimes, through a process that acknowledges the needs of both victims and Timorese society as whole. Victims are demanding the truth, an apology and admission of guilt by perpetrators, some form of compensatory action, and, in some cases, punishment. There was widespread consensus among those consulted that serious crimes should remain the responsibility of the courts. However, less serious crimes could be resolved at the community level, perhaps through a procedure similar to the CAVR Community Reconciliation Processes.

To Civil Society:

- Dedicate resources to ensure that information about government and non-government programs reaches people in the districts, with special outreach targeted to victims and their communities.
- Carry out more in-depth research to determine *how* victims of human rights violations are vulnerable and whether the government's existing social programs can address these vulnerabilities.
- Support and assist the newly established *victims'* network to become a strong, viable, and independent forum, a place where victims' voices can be heard.

which involves representatives from HAK, Fokupers, the Ombudsman for Human Rights and Justice, the Post-CAVR Technical Secretariat, the U.N. Mission in Timor-Leste, and ICTJ.

39 The CAVR definition of "vulnerable victims" could be used to determine access to such a program. They are defined as "the most vulnerable of those who continue to suffer the consequences of gross human rights violations which took place between 24 April 1974 and 25 October 1999, namely: Victims of torture; People with mental and physical disabilities; Victims of sexual violence; Widows and single mothers; Children affected by the conflict; Communities who suffered large-scale and gross human rights violations, with a relatively high concentration of victims identified above." CAVR Recommendation 12.9.



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