



Beyond the Truth: Can Reparations Move Peace and Justice Forward in Timor-Leste?

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SUMMARY After hundreds of years as a Portuguese colony and then decades of Indonesian occupation, Timor-Leste (East Timor) finally became independent in 2002. Since then, Timor-Leste has been in the process of building itself as a sovereign nation, fighting to shake off its tumultuous past. Timor-Leste must now decide how best to resolve issues stemming from a brief civil war and Indonesian invasion and occupation (1975–1999), including grave human rights violations on all sides of the conflict. Human rights trials in both Timor-Leste and Indonesia have produced unsatisfying results, but two separate truth commissions recommended reparations—both intrastate and interstate—as a key element of reconciliation and healing. Critical questions remain, however, concerning the value, scope, and implementation of a reparations program within Timor-Leste or between Indonesia and Timor-Leste. Only a sincere, informed, and transparent decision-making process will result in a reparations program that could be a significant and successful part of moving peace and justice forward.

Reparations are not limited to monetary compensation; they come in multiple forms

In East Timor, the human losses suffered during more than 24 years of armed conflict from the brief period of civil war through the many years of Indonesian occupation are of immeasurable cost. Yet the newly sovereign nation of Timor-Leste and Indonesia now face political and policy decisions about the ethical ways and fiscal means to provide quantifiable compensation in the form of reparations to the victims of these conflicts.¹

In December 2009, in response to two truth commissions started between 2002–2005, the Timorese Parliament passed a resolution that asked for recommendations from its Committee A, which is responsible for human rights, to provide a basis for the first public governmental debate on a national reparations policy.² These recommendations are expected by March 2010. Additionally, forms of reparations are currently under consideration in bilateral negotiations between Timor-Leste and Indonesia. This article will explore some of the core questions that comprise the debate over what kind of new opportunities, if any, a reparations program in Timor-Leste can create to move peace and justice forward beyond the work of the previous trials and truth commissions.

Defining Reparations

The most common standards referenced when designing a reparations program are United Nations (UN) guidelines.³ A growing body of international legal and historical precedents accompanies these guidelines.⁴ For example, some reparations programs that have been implemented between states include Germany and Israel, as well as those between Japan and other Asian nations after World War II. Reparations can also be an entirely domestic program within states, such as payments made by the United States to Japanese-American citizens interned during World War II or the reparations program that resulted from the truth commission process in South Africa.

In accordance with these guidelines, reparations in the Timorese setting could be acts of redress made by an individual, institution, or state responsible for gross violations of human rights law or serious violations of international humanitarian law. The

victim(s) or victim's dependents could receive reparations, and they could be distributed individually or collectively.

But technical definitions and popular understandings of reparations can vary. As one example, reparations are often misunderstood as purely financial payments. In fact, reparations are not limited to monetary compensation; they seem to be more effective when they come in multiple forms that are symbolic and material. Material compensation may include cash payments to victims, but are also legitimate if they take the form of funds distributed to programs that address the causes or impacts of the human rights abuses. Historically, reparations payments between nations have taken many forms and have been used for purposes other than directly cultivating human rights,⁵ but if the nations adhere to the international standards referenced above, funds would need to be earmarked specifically as reparations for human rights abuses and directed to the benefit of victims. Therefore, reparations are distinct from other kinds of interstate funding that are offered purely as Overseas Development Assistance (ODA). Symbolic governmental acts are often overlooked as reparations, but they include official apologies, the provision of truth, accountability, and memorialization.

Historical Background

East Timor is a former Portuguese colony. In 1974, the fall of the authoritarian regime in Portugal spawned a series of political developments that resulted in a civil conflict in Portuguese Timor.⁶ On December 7, 1975, Indonesia invaded East Timor. The territory was ruled by Indonesia until 1999. East Timor remained on the UN's non-self-governing territory list throughout this period and continued its campaign for independence. In 1998, when the Indonesian ruler Suharto was deposed after 32 years, Indonesia began the process of reinstating democracy. As part of this democratization process, newly elected President B.J. Habibie announced his decision to allow East Timor the option of either becoming an autonomous region of Indonesia or gaining independence. In May 1999, under the auspices of the United Nations,



Timor-Leste includes the eastern half of the island of Timor, the Oecussi (Ambeno) region on the northwest portion of the island of Timor, and the islands of Pulau Atauro and Pulau Jaco. (Image is licensed under the Creative Commons Attribution-Share Alike 3.0 Unported license.)

Indonesia and Portugal reached an agreement that provided for a UN-monitored popular referendum to decide the sovereignty of East Timor.

The population voted with an overwhelming majority for independence. Although the referendum secured East Timor's independence, the voting process was accompanied by grave violations of human rights throughout 1999, including murder, torture, sexual violence, forced transfer, deportation, and illegal detention, which were part of a widespread and systematic attack on the civilian population of East Timor. The Indonesian military, civilian government, and their proxy local militias committed the vast majority of those crimes. After October 25, 1999, the United Nations administered East Timor until May 20, 2002, when it officially gained its independence and became the sovereign nation of Timor-Leste. The UN has remained a strong presence in Timor-Leste, particularly since its peacekeeping mandate was renewed in 2006 in response to widespread civil violence that left a large portion of the Timorese population displaced.⁷

A number of transitional mechanisms have tried to bring justice for the violations committed in East Timor from 1974–1999. Trials were held in Indonesia that prosecuted some military leaders, the former governor of East Timor, and one militia leader. However, all of these defendants were eventually acquitted. Timor-Leste and the United Nations also jointly held trials, but this process mostly targeted much

lower-level Timorese perpetrators and left over 400 cases incomplete when it ended in 2005. Both trial processes were sharply criticized for their failure to meet fundamental due process standards, and their failure to hold accountable the senior Indonesian military leaders most responsible for the human rights abuses.⁸ In 2008, the president of Timor-Leste, José Ramos-Horta, began to issue pardons to such an extent that today, only ten years after the commission of crimes against humanity in East Timor, just one low-level Timorese perpetrator convicted through the Special Panels process remains in jail.⁹ Widespread dissatisfaction with this state of impunity has been reported in Timor-Leste and abroad.¹⁰

Restorative justice measures have also been tried. First, Timor-Leste conducted a three-year intensive national truth commission process—the Commission for Reception, Truth, and Reconciliation (CAVR). As part of its healing mandate, the CAVR implemented an urgent reparations program, but this program has never been expanded to include all victims through a national plan. In addition, during the CAVR's public hearings, representatives of all the major Timorese political parties that participated in the civil conflict in 1975 apologized to the Timorese people for human rights abuses, which could be interpreted as a form of reparations. Unfortunately, the sincerity of these apologies has been called into question since the violence of 2006.¹¹

Violations of human rights in 1999 were part of a widespread and systematic attack on the civilian population of East Timor

In 2005, Indonesia and Timor-Leste created the world's first bilateral truth commission, the Commission of Truth and Friendship (CTF), to establish "the conclusive truth" about the human rights violations committed in 1999. This second truth commission conducted its work amidst great controversy because of fears that the process would entrench impunity. Indeed, this body was barred by its mandate from making any recommendations for prosecution. However, at its closing ceremony in July 2008, the president of Indonesia, Susilo Bambang Yudhoyono, made a statement that was accepted by the government of Timor-Leste as an apology for the human rights violations in East Timor in 1999.¹² This apology marked a starting point for the exchange of symbolic reparations. Other forms of reparations, in addition to this apology, are under negotiation between the two nations as a result of this truth commission process.

The Reparations Debate

There are several basic questions that provide a simple framework for an informed future debate about whether a reparations policy for Timor-Leste should be the next step towards peace and justice, one which follows through on the work of these truth commissions.

Who could pay reparations in Timor-Leste? The history of the conflict creates a complex mix of potential sources of reparations. Both of the truth commissions' reports declared all parties responsible for human rights abuses, including Indonesia's state institutions and East Timorese political parties. Intra-state reparations could be paid to victims who suffered human rights abuses at the hands of Timorese political parties during the civil conflict or as part of the resistance struggle. Interstate reparations could be provided for the larger proportion of acts committed by the Indonesian military and government and their proxy Timorese militia groups.

Additionally, both truth commissions' reports suggested setting up an international trust fund to finance reparations programs. The CAVR's final report specifically recommends that permanent member

nations of the Security Council, especially the United States, Great Britain, and France, should pay financial reparations for their tacit support of Indonesia's human rights abuses.¹³ Portugal is also singled out by this report to pay reparations. Furthermore, the CAVR recommends that Australia, Japan, China, the Vatican, and others make symbolic reparations through truth provisions, memorials, or apologies.¹⁴

What might compel or prevent participation in a reparations program? In addition to what some might describe as an idealistic concern for moral and customary legal obligations, there is an existing diplomatic agreement resulting from the CTF process to implement a series of recommendations that would contribute to bilateral healing and repair. A number of motivations could lie behind the rhetoric of this agreement, such as the need to at least appear to be pursuing democratic and rule-of-law reforms, which are linked to funding and other forms of cooperation from international donors. Other economic reasons for ensuring a peaceful relationship include bilateral cross-border trading, investment, and free market zones. Finally, a reparations program that assists in addressing the root causes of violence and poverty in Timor-Leste could improve regional stability and security, as well as enhance Indonesia and Timor-Leste's shared interests within the Association of Southeast Asian Nations (ASEAN). Using reparations to strengthen a weak state and help prevent future conflicts within the region may be one of the arguments used to attract other international participants to the reparations program.

There are also some local political reasons for Timor-Leste to enact reparations. No single political party holds a majority in the legislature now. As multiple parties compete for power, the creation of state programs that are perceived as offering direct benefits to constituents, particularly financial benefits, is an increasingly prevalent, and some say dangerous, tactic for garnering political support.¹⁵ "Justice" has also become a cause célèbre among parties that seek to distinguish themselves from the ruling coalition and the executive leadership of Timor-Leste, who have continued to favor reconciliation over judicial

Both of the truth commissions declared all parties responsible for human rights abuses

accountability. Civil society in Timor-Leste has also argued that the country may be obliged to provide reparations because of its constitutional guarantees to provide protection to Timorese citizens who participated in the independence struggle, particularly women, children, and veterans. These groups also argue that Timor-Leste's signing of several international human rights agreements obligates the nation to provide reparations regardless of Indonesia's stance. However, others argue that these constitutional rights have already been violated within the state, and, therefore, there is little reason to believe that legal norms can be transformed into political leverage.

Resistance to a reparations program could be formidable. First, some forms of reparations have already been provided through previous trials and truth commission processes. Again, those concerned with international standards could counter this argument by noting that these forms of reparations are not sufficiently proportionate, equitable, or complementary to justice in a way that would deem them legitimate. Another frequent argument is that interstate reparations from other international payees have already occurred through the provision of development aid and peacekeeping forces. However, as discussed above, financial assistance without specific acknowledgment of responsibility for human rights abuses does not technically or morally qualify as reparations. A classic argument common to all post-colonial situations is that financial investment was already made by the former occupying power in the development of roads, schools, etc., and therefore reparations payments, particularly collective ones, would be redundant. Although this kind of argument is likely to carry emotional clout within Indonesia, where many people remain uninformed or skeptical about the abuses committed in East Timor, the argument is unlikely to enhance Indonesia's international reputation.

These arguments for and against reparations are not complete, but they highlight some of the mainstream ideas that are emerging around this issue.

Who could receive reparations? There are no undisputed estimates for quantifying the atrocities that need to be addressed by reparations. The CAVR

estimates that 1,500–3,000 people died during the civil conflict, but these numbers include all deaths, not only human rights abuses.¹⁶ Academic estimates consistently project that roughly 100,000 Timorese were killed by Indonesian institutions' direct and indirect combat strategies during the invasion and early years of occupation.¹⁷ In addition, in 1999 alone at least 1,500 people were killed, 250,000 displaced (25 percent of the population), and 70–80 percent of the infrastructure destroyed. Before the violence of 1999, a study by the Timorese nongovernmental organization the East Timor Women's Communication Forum (FOKUPERS) estimated that 65 percent of women in East Timor had been raped as the result of the ongoing conflict, with the national affiliation of the attackers unspecified.¹⁸ Another study conducted in East Timor in 2000 by the Copenhagen-based International Rehabilitation Council for Torture Victims (IRCT) found that 57 percent of an estimated representative sample of 750,000 individuals had experienced conflict-related torture. The identity of the perpetrators was undisclosed.¹⁹

Given the massive scale of the most serious kinds of human rights abuses within a population that was less than one million, nearly everyone could qualify for reparations. States such as Timor-Leste, where gross violations of human rights have occurred on such a scale, can either distribute reparations collectively or severely limit the victim population to meet the demands of budgetary and administrative constraints.

How does one determine who qualifies to receive reparations if something other than a collective approach is desired? The CAVR suggested creating a special category of "vulnerable victims," defined as those who still suffer daily from the impacts of war. Once the victim population is defined by whatever technical term or category is selected, such as "vulnerable victim," a system of gradation among beneficiaries would need to distinguish different degrees of abuse to determine the kind of reparations they would receive. The problem with creating a hierarchy of victims in order to proportionally distribute services is that perceptions of victimhood are likely to be the product of highly subjective judgment.

Financial assistance without acknowledgment of responsibility does not technically or morally qualify as reparations

Therefore, there is the potential that special services or payments to one group of victims and not another would create resentment and other negative outcomes, further dividing the society. An additional problem is posed by the fact that Indonesia and Timor-Leste have only reached agreement regarding human rights abuses in 1999, and interstate reparations would not specifically be addressed to victims of the major period of conflict prior to 1999. Therefore, in determining who receives reparations, it is difficult but crucial to try to balance equity and proportionality.

The decision to make collective versus individual reparations may appear to be a choice between two evils. On one hand, collective reparations have the benefit of comprehensiveness. All victims, regardless of their political affiliation, type of abuse suffered, or ability to document the abuse, can be symbolically incorporated in the reparations program, and the total investment is large enough to produce some noticeable results, such as the construction of a new hospital. The disadvantage of a collective approach is that it dilutes the benefits felt by individual victims and may not contribute directly to their healing, as benefits are channeled to more advantaged sectors of society instead of the most vulnerable. The challenge for policymakers is to find the best compromise solution for reaching across the wide breadth of victims and making meaningful, as opposed to token, investments in their future. The solution most likely to achieve political agreement and program success is implementing both collective and individual reparations.

On the grounds of feasibility, leadership objected to individual reparations and direct pursuit of judicial accountability

Who are key players in the reparations debate and what are their positions? In his speech to parliament upon the delivery of the CAVR final report, Timor-Leste Prime Minister Xanana Gusmão singled out its recommendations for reparations as an example of the truth commission's crippling idealism. On the grounds of feasibility, Timor-Leste's executive leadership, including Gusmão and President José Ramos-Horta, publicly objected to the CAVR's recommendations for individual reparations and the direct pursuit of judicial accountability. Although these leaders have been characterized as completely opposed to reparations, their stances, in fact, are more

nuanced. During the Commission of Truth and Friendship (CTF) process, both leaders signaled a willingness to pursue forms of collective reparations²⁰ and, in instances such as educational scholarships, to earmark funds for specific classes of victims to receive individualized benefits.²¹

However, the executive leadership is only one influence on reparations policy. In 2008, the Timorese parliamentary committee responsible for justice issues, Committee A, unanimously passed a resolution that called for the debate and implementation of the CAVR recommendations, including prioritizing a national reparations program. Committee A quickly followed up on the passage of the draft resolution by traveling as a group, under the guidance of the International Center for Transitional Justice (ICTJ), to study Peru's reparations program.

During the following session of parliament in 2008, the CAVR report was placed on the calendar for debate, but was postponed indefinitely by the president of parliament, Fernando "La Sama" de Araújo. He cited concerns about the nation's political stability as the reason for delay. Despite this setback, the chair of Committee A, Fernanda Borges, and several other influential members of parliament continued to advocate for the debate of the CAVR recommendations. In December 2009, the parliament debated and passed a resolution mandating that recommendations for follow-up on the truth commission reports be submitted by March 2010.

Several advocates of the CAVR's proposals, including its international advisor Patrick Walsh, have shrewdly incorporated the CTF's recommendations into their lobbying efforts, so that the content of the two sets of proposals can be combined and implemented as a single reparations package. Fernanda Borges, the chair of Committee A and leader of the political party most closely affiliated with the Catholic Church, the National Unity Party (PUN), has shown support for this stance. Other political players, such as the secretary-general of the dominant political party in the ruling coalition, the National Congress for the Reconstruction of East Timor (CNRT), and the former co-chair of the CTF, Dionisio Babo Soares, maintain that the CAVR and CTF proposals are

entirely separate.²² Soares contends that CTF's recommendations are a diplomatic issue to be handled by the Ministry of Foreign Affairs, and the CAVR's recommendations are an internal political matter to be decided upon by parliament. José Teixeira, the spokesperson for the leading opposition political party in Timor-Leste, the Revolutionary Front for an Independent East Timor (FRETILIN), expressed his party's support for the debate of the CAVR recommendations, but doubted that either Timor-Leste or Indonesia were prepared to use the CTF recommendations for collective reparations as a basis to truly heal and mature their relationship. He explained,

Reparations come through conflicts where there are clear victors and clear vanquished. In the case of Indonesia, there are still many people within Indonesia, their public, that don't know what happened in East Timor. There is not necessarily a clear understanding of what happened in the conflict—and, therefore, the talk of reparations there now is likely to be a murky process. As the case of the Swiss banks and Jewish clients show, reparations come when the wrongdoer comes forward. So right now, if there is not yet a clear understanding of what happened in East Timor, a reparations process could be meaningless within the Indonesian context. East Timor remains a hidden war. But we don't have to wait for this to happen. We can begin on our side now through social justice programs. There can be reparations programs within East Timor. We have had these kinds of discussions within parliamentary committees, especially with the new draft law for veterans. We are still far from a Versailles-style reparations package.²³

Since July 2009, a compromise position to create a program for “war victims” has emerged.²⁴ Such a program would not market itself as reparations per se, but would still give benefits to some victims of the conflicts from 1974–1999. The problem with this potential compromise is that it may neglect the relationship to responsibility for human rights abuses to such a degree that it no longer qualifies as reparations. Consequently, it may not accomplish any goals that could not be fulfilled through existing government social welfare programs. A common argument heard in response to this kind of proposal is that another system of state payments, similar to the veteran's

compensation package in Timor-Leste, may lead to future economic dependency, which undermines the restoration of dignity to victims and social recovery. A consensus-based “war victims” program would need to distinguish itself as a reparations program in content, if not in name, in order to provide an effective remedy to human rights abuses.

The other important player in the reparations debates is the United Nations. Part of the impetus for the renewal of interest in the CAVR recommendations in 2007 came from a working group for reparations based out of the UN mission's Human Rights and Transitional Justice Unit in Timor-Leste. The working group and the UN in general have been criticized for their failure to include the Timorese government in discussions and their reputation for producing idealistic rather than implementable recommendations. The UN's boycott of the CTF process and its poor performance in the justice sector limit its ability to be an effective advocate for reparations. The UN is, however, the most likely player to work with the Timorese Parliament towards ensuring reparations legislation meets international standards. Whether the UN will be able to levy its expertise in this area and push for accountability, without jeopardizing its relationship with Timor-Leste and Indonesia, remains to be seen.

What are the potential costs? Until the victim/beneficiary population is defined, budgets cannot be set. There is not yet a reliable figure that estimates either the potential number of beneficiaries or the long-term costs of any of the recommended programs.

However, previous reparations programs give us some numbers for comparison. The budget for CAVR's urgent reparations program was US\$160,000.²⁵ This program granted 712 individual victims each US\$200.²⁶ Confidential sources in Timor-Leste revealed that the Ministry of Social Solidarity allotted US\$100,000 for reparations to female victims of the conflicts, although no one from the ministry has been able to confirm these reports. Another unconfirmed report from a reliable inside source said US\$200,000 was requested of the Indonesian government during

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the July 2009 bilateral negotiations to cover all the reparations programs except pension payments. These low-level budgets are not even symbolically comparable to the crimes against humanity committed in East Timor and, therefore, are unlikely to produce the desired effect of social restoration or meet international standards of proportionality.

In stark contrast, Timor-Leste spent US\$28 million in reparations programs for victims of the 2006 crisis, including direct financial payments to people whose homes were destroyed and families of police officers who were killed in the line of duty during the conflict.²⁷ Although the political context is different, Indonesia has already allocated more than US\$100 million to Aceh for cash reparations to ex-combatants, political prisoners, and other types of victims, their families, and communities.²⁸ In a more historical context, Indonesia received a series of incremental reparations payments from Japan for human rights abuses committed during World War II, including US\$223 million in free goods over 12 years and US\$400 million in private loans and investment. Japan also canceled a US\$177 million Indonesian debt.²⁹

Given these figures, a rough estimate that might serve as a starting point for negotiations and debate is a total budget in excess of US\$20 million for a national reparations program in Timor-Leste. The debate over budget prioritization is likely to be intense in two nations where poverty is endemic. However, both countries have already demonstrated an ability to find funding for other types of reparations and compensation programs. In comparison to many post-conflict areas, they are rich with natural resources, including oil and natural gas, which have the potential to fuel and sustain sufficient economic growth to support a reparations program over time. International financial support could make these costs even more feasible.

What kinds of benefits could victims receive? The potential forms of reparations described in the recommendations of the two truth commissions—the CAVR and the CTF—can be summarized in four categories: (1) preventative measures, (2) access to truth, (3) victim healing, and (4) access to justice.

These four areas, in combination, are meant to produce a form of justice that is fair in both the retributive and restorative sense.

The area with the greatest potential for implementation is *preventative* reparations. In order to ensure peace in the future, the CTF placed the most emphasis on collective reparations that would fulfill the need for institutional reform in both Indonesia and Timor-Leste. These measures could include, but not necessarily be limited to, the following:

- Training for military, police, intelligence service, and civil servants
- Strengthening the national human rights commissions in both countries
- Training on gender issues for the police and military
- Separating completely and permanently the command between police and military
- Reforming the security sector, including abolition of armed civilian groups
- Instituting educational reform, including a national human rights curriculum
- Creating joint border programs to provide training and development of security personnel and safe, visa-free crossings for divided communities along the borders of the two countries

In addition to provisions to extend and improve the dissemination of the two truth commissions' reports, other recommended forms of *access to truth* reparations include:

- Creation of a permanent documentation center to house archives and promote local and international research on conflict resolution
- Repatriation of cultural artifacts and documents
- Creation of a bilateral Commission for Disappeared Persons

Among victims, the most popular reparations are scholarships, particularly for Timorese students to attend university in Indonesia.³⁰ Diplomatic negotiations at the executive level are rumored to have already secured agreement on this and other *healing* forms of reparations, including:

A rough estimate for a national reparations program in Timor-Leste might be US\$20 million

- Teacher and student exchanges
- Resources for Indonesian-language education
- Health-sector development

The CAVR and its follow-up institution have shown the most support for a program of individual payments combined with a national memorial program.

Among the four categories of reparations, *access to justice* is the least secure. The CAVR recommended extensive justice measures that extend beyond the powers of Indonesia and Timor-Leste, such as the creation of an international tribunal and international sanctions on arms sales and military cooperation with Indonesia. The CTF, in contrast, was explicitly prevented from recommending these kinds of reparations, other than institutional reform for the judicial sector. However, if a reparations program is to attract any international support, or to qualify as a legitimate reparations program in the eyes of victims, a place for justice will need to be found.

Moving Peace and Justice Forward in Timor-Leste

The reigning state of impunity in Indonesia and Timor-Leste affects perceptions about the potential benefit of reparations. As one victim and human rights advocate exclaimed to me, “Justice cannot be exchanged for reparations!”³¹ Thus, while there is a great deal of enthusiasm about reparations, especially among victims’ advocacy groups and former truth commission participants, there is also trepidation that accepting reparations will further sacrifice justice. In Timor-Leste, reparations tend to be perceived as either a panacea or as blood money. Finding a consensus about reparations policy will require a conception of reparations that reconciles these two extremes. Below are a few possibilities, however imperfect, that may arise in discussions on how to better align peace and justice through reparations.

Ideally, both nations would honor their noninterference agreement by prosecuting those perpetrators who come into their respective jurisdictions, while still maintaining peaceful and prosperous relations. Neither country has shown any willingness to follow this agreement with regard to justice, although they

maintain a consistent and vocal commitment to peace. Timor-Leste cites its geopolitical vulnerability and weak judicial sector as an excuse, while Indonesia is concerned about its insufficient judicial sector and the instability that could be created if the most senior Indonesian military commanders were tried. It is likely Timor-Leste, under the leadership of Gusmão and Ramos-Horta, will maintain its stance that no Timorese should be prosecuted until senior Indonesian leaders are held accountable. Indonesia also continues to take no action against Timorese militia harbored within its borders or its own military leadership.

For instance, two of the people deemed by multiple human rights bodies to be most responsible for human rights abuses in East Timor, Generals Wiranto and Prabowo, recently ran on separate tickets for the office of vice president of Indonesia. They both ran against the ticket of incumbent President Susilo Bambang Yudhoyono, popularly called SBY, who made the first public admission of Indonesia’s human rights abuses in East Timor. In contrast, Wiranto and Prabowo continued to make denials. SBY’s reelection is likely to be a positive factor in future reparations negotiations, even if Indonesia does not abruptly change course and agree to further prosecutions.

However, even under SBY’s leadership, the prospects for judicial justice as a form of reparations are remote, especially in light of the failure in September 2009 to prosecute a low-level militia leader, Maternus Bere, who had been under arrest in Timor-Leste for crimes against humanity committed in 1999 and has now been released. There is a strong possibility that reparations could be made internally and bilaterally, while ignoring judicial accountability. The likelihood of this position prevailing will largely depend on the degree of popular and international political support each nation is willing to risk.

Some new options may arise in efforts to include judicial justice in the scope of reparations. First, instead of a blanket refusal to prosecute, agreement could be reached between the two countries on specific people who would not be exempt from legal proceedings if they reentered Timor-Leste. Since the international community is still intact to assist with judicial processes in Timor-Leste, the Special Panels structure could be used when a trial is necessary. A

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Indonesia and Timor-Leste could table the issue of prosecution while other forms of reparations are implemented

glimmer of hope remains for smaller justice measures like these because it appears that a case-by-case consideration is at least informally continuing in Timor-Leste. For example, a case from 1999 has recently been scheduled to begin court proceedings in Dili in January 2010.³² However, for a targeted prosecution agreement to be feasible, it would need to be limited to a handful of perpetrators, which raises troubling questions about equity and fairness. Furthermore, the Special Panels process would need monitoring and significant improvement in order to prevent the breaches of due process that previously occurred.

Another possibility is that Indonesia and Timor-Leste could agree to table the issue of prosecution for five to ten years while other forms of reparations are implemented. Setting this most problematic issue to the side could buy time for both nations to strengthen their relationship. More importantly, their economic, security, and judicial infrastructures would be in a better position to implement a package of reparations for access to justice at a later time. Cambodia is a recent example of a nation that has implemented such a strategy. With time, judicial justice initiatives may become more feasible if both countries work together to improve their ability to comply with international human rights standards. The deleterious aspect of this compromise is that victims are denied

a judicial remedy, while perpetrators are allowed to enjoy their freedom even longer. Some victims may be further traumatized or even deceased if justice continues to be waylaid.

More remote possibilities include a diplomatic agreement that would allow each country to conduct additional independent internal inquiries (such as a military tribunal or parliamentary inquiry), which might lead to sanctions or lustration policies. In the absence of prosecutions, victims may find some comfort in knowing those persons deemed most responsible for human rights abuses by lustration proceedings could not hold public office. Litigation concerning civil suits or international torts and alternative dispute-resolution mechanisms for lower-level perpetrators could also be possibilities in both nations.

In conclusion, if thoughtful, transparent, and fully democratic decisions are made about a reparations program, Indonesia and Timor-Leste both stand to gain international credibility that will further distance them from their tragic past. Responsible and informed public debate of questions about reparations, such as the ones suggested above, are crucial for ensuring that these decisions will lead to a brighter future for victims of human rights abuses, rather than miring them further in the political malaise of injustice that has been a feature of their lives for too long.

Notes

¹ The Democratic Republic of Timor-Leste (RDTL), or Timor-Leste, is the official name of the country since independence. Prior to October 25, 1999, the country is referred to as East Timor.

² The full name is the Committee for Constitutional Affairs, Judiciary, and Public Administration.

³ Office of the United Nations High Commissioner for Human Rights, "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," <http://www2.ohchr.org/english/law/remedy.htm>. Some interpret this document as aspirational rather than definitive.

⁴ Legal precedents include the Permanent Court of International Justice in the *Chorzow Factory* case, its advisory opinion in the *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, and its ruling in the case concerning *Armed Activities on the Territory of the Congo*. The Rome Statute of the International Criminal Court reaffirms the right of victims to reparations.

⁵ For example, President Suharto used some reparations payments from Japan to build the Inna Grand Bali Beach Hotel in Bali.

⁶ Unfortunately, the space allotted does not permit a thorough discussion of the history of East Timor. See James Dunn, *East Timor: A Rough Passage to Independence* (Double Bay, NSW: Longueville Books, 2004) and Geoffrey Robinson, *If You Leave Us Here, We Will Die: How Genocide Was Stopped in East Timor* (Princeton, NJ: Princeton University Press, 2009).

⁷ See Joseph Nevins, "Timor-Leste in 2006: The End of the Post-Independence Honeymoon," *Asian Survey* 47, no. 1 (2007): 162–167.

⁸ See David Cohen, *Intended to Fail: The Trials before the Ad Hoc Human Rights Court in Jakarta* (New York City: International Center for Transitional Justice, 2003); David Cohen, *Indifference and Accountability: The United Nations and the Politics of International Justice in East Timor* (Honolulu, HI: East-West Center, 2006); Caitlin Reiger and Marieka Wierda, *The Serious Crimes Process in Timor-Leste: In Retrospect*, Prosecutions Case Studies Series 48 (New York: International Center for Transitional Justice, 2006).

⁹ United Nations Integrated Mission in Timor-Leste (UNMIT), “Rejecting Impunity: Accountability for Human Rights Violations Past and Present,” *Report on Human Rights Developments in Timor-Leste: 1 July 2008 to 30 June 2009* (UNMIT, 2009): 13–14.

¹⁰ Ibid. See also Amnesty International, “*We Cry for Justice*”: *Impunity Persists 10 Years on in Timor-Leste* (London: Amnesty International Publications, 2009).

¹¹ For example, Rogerio Lobato apologized for acts committed by FALINTIL (The Armed Forces for the National Liberation of East Timor), but was later convicted for crimes during the 2006 crisis.

¹² The media has debated whether SBY’s statement constitutes an apology. See Sahil K. Mahtani, “SBY’s Timorese Triumph,” *Far Eastern Economic Review*, (July 2008).

¹³ Committee for Reception, Truth, and Reconciliation Timor-Leste, “Recommendations” in *CAVR Final Report* (Timor-Leste: CAVR), 3, 42.

¹⁴ Ibid.

¹⁵ See International Crisis Group, “Timor-Leste: No Time for Complacency,” *Asia Briefing* No. 87 (9 February 2009).

¹⁶ Committee for Reception, Truth, and Reconciliation Timor-Leste, “Killings and Disappearances” in *CAVR Final Report* (Timor-Leste: CAVR), 8.

¹⁷ Robinson cites 100,000 as a conservative average that includes deaths that resulted from armed confrontations and directly from the Indonesian government’s forced detention camps and famine policies (p. 40). Amnesty International and the Catholic Church have consistently cited a higher figure of 200,000 deaths as the result of the Indonesian government’s human rights abuses for this time period (Robinson, p.258; Dunn, p. 278). The CAVR did not provide a number isolated to this time period and by perpetrator but estimated in excess of 100,000 deaths were caused deliberately by the government’s forced detention and famine policies during this period (Final report, Part 6, p. 13). The 1999 figures are the tabulations compiled in the course of the Serious Crimes investigations and Special Panels trials.

¹⁸ Mira Martins da Silva and Susan Kendall, “Issues for Women in East Timor: The Aftermath of Indonesian Occupation” in *Expanding Our Horizons: Understanding the Complexities of Violence Against Women* conference proceedings (Sydney: Australian Domestic and Family Violence Clearinghouse, 2002), 3.

¹⁹ International Rehabilitation Council for Torture Victims, “Health and Human Rights: Torture and Trauma in Post-Conflict East Timor,” *Lancet* 356, no. 9243 (18 November 2000): 1763.

²⁰ Personal communication with President José Ramos-Horta, July 2008.

²¹ Personal communication with CTF commissioners and staff, January-July 2008.

²² Personal communication, June 2009, Dili, Timor-Leste.

²³ Personal communication, June 2009, Dili, Timor-Leste.

²⁴ Personal communication, July 2009, Dili, Timor-Leste. This source wished to remain anonymous.

²⁵ Galuh Wandita, Karen Campbell-Nelson, and Manuela Leong Pereira, “Learning to Engender Reparations in Timor-Leste: Reaching Out to Female Victims” in *What Happened to the Women?: Gender and Reparations for Human Rights Violations*, ed. Ruth Rubio-Marin (New York: Social Sciences Research Council, 2006), 4.

²⁶ Ibid., 4, 332.

²⁷ Personal communication, ICTJ, Dili, July 2009. ICTJ received this data from the Ministry of Social Solidarity of Timor-Leste.

²⁸ International Crisis Group, “Aceh: Post Conflict Complications,” *Asia Report* No. 139 (4 October 2007): 8–13.

²⁹ Larry A. Niksch, *Japan’s World War II Reparations: A Fact Sheet*, Congressional Research Service Report, U.S. Government Foreign Affairs and National Defense Division, 7 March 1991, <http://digital.library.unt.edu/govdocs/crs/permalink/meta-crs-13:1>.

³⁰ Community profiles records, CAVR archives. See also Wandita, p. 299.

³¹ Personal communication, July 2008, Dili, East Timor.

³² Personal communication, Serious Crime Investigation Team (SCIT) communications officer, 12 January 2010.

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