

“I ASKED GOD”

REPARATIONS FOR SEXUAL AND REPRODUCTIVE HEALTH AND RIGHTS (SRHR) IN TIMOR-LESTE’S TRANSITIONAL JUSTICE PROCESS

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Historically, women’s sexual and reproductive capacity has been defined on men’s terms and used as a tool or instrument of conflict. The notion of citizenship in the Greek polis, for instance, determined that female slaves were used for reproductive purposes to increase the economic value of slavery; women’s sexuality was used in the service of men; and childbirth and childcare were relegated to the private sphere.¹ This paper examines the role of transitional justice in the provision of reparations and guarantees of non-repetition for sexual and reproductive health and rights (SRHR) violations in the aftermath of conflict. Based on the case of Timor-Leste, the paper analyses the exclusion of SRHR from reparation initiatives implemented in a post-conflict state. The paper argues that the lack of recognition of SRHR violations within transitional justice and the consequent denial of reparations for such violations after a conflict play a role in perpetuating the cycle of violence and discrimination against women in the new state.

This paper supports Gready and Robins’ call for radical reform of transitional justice processes to incorporate “transformative justice”: policies and approaches that pursue longer-term impact on the social, political, and economic status of a large range of stakeholders, which recognise power structures and exclusion, and refocus justice processes on people’s lives and needs.² Reflecting on how recognition of women’s mistreatment remains elusive in transitional and transformative justice processes, Ní Aoláin observes that “only when the analysis and reality of patriarchy is intrinsically integrated into justice discourses will gendered change be possible”.³ Like them, I am also concerned about power relations and the cycles of

exclusion that women face between conflict and peace. Although I refer to “women”, this paper uses the concept of gender to understand the social construction of women’s inequality, structures of power, domination and disadvantage, and how masculinity is embedded within these structures.⁴ Moreover, while the term “victims” may be seen as implying passivity and acceptance of the violation, “survivor” is used as a way of reflecting the agency, resilience and courage of women and girls subjected to violence.⁵ Because I am dealing with international standards concerning access to reparations, I used both terms interchangeably.

This paper not only contributes to the evaluation of the impact of transitional justice, particularly of the guarantees of non-repetition and the protection of women’s rights, but also highlights women’s experience of reproductive violence in a post-conflict situation. The paper also contributes to growing discussions on the protection of SRHR during the implementation of transitional justice and other (post)conflict initiatives, including the Women, Peace and Security (WPS) agenda and the Sustainable Development Goals (SDGs). On this point, as I discuss further below, my findings challenge the backlash against reproductive rights expressed during the adoption of the UNSCR 2467 on sexual violence in armed conflict.⁶

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- 1 Hillary Charlesworth and Christine Chinkin, *The boundaries of international law. A feminist analysis* (Manchester, UK: Manchester University Press, 2000), 127-128.
- 2 Paul Gready and Simon Robins, "From Transitional to Transformative Justice. A New Agenda for Practice," in *From Transitional to Transformative Justice*, ed. Paul Gready and Simon Robins (UK: Cambridge University Press, 2019).
- 3 Fionnuala Ní Aoláin, "Transformative Gender Justice?," in *From Transitional to Transformative Justice*, ed. Paul Gready and Simon Robins (UK: Cambridge University Press, 2019): 150.
- 4 Carol Cohn. "Women and Wars: Toward a Conceptual Framework", in *Women and Wars*, ed. Carol Cohn (Cambridge, UK: Polity Press, 2013): 5; Ann Oakley, "Science, gender, and women's liberation: an argument against postmodernism," *Women's Studies International Forum* 21 (2) (1998): 135-136; Jacklyn Cock, *Colonels & Cadres. War & Gender in South Africa* (Cape Town: Oxford University Press, 1991): 26; CEDAW General Recommendation No. 25: Article 4, paragraph 1, of the Convention (temporary special measures) (2004): fn 2.
- 5 International Commission of Jurists, *Women's Access to Justice for Gender-Based Violence – A Practitioners' Guide* (2016): 3-4; OHCHR, "Trauma and Self-Care (Chapter 12)", in *Manual on Human Rights Monitoring* (Geneva: OHCHR, 2011): 5.
- 6 UN Security Council Resolution 2467 (2019), S/RES/2467.
- 7 Johan Galtung, "Violence, Peace and Peace Research," *Journal of Peace Research* 6 (3) (1969).
- 8 *Ibid.*:183.
- 9 Cf. Susan Harris Rimmer, *Gender and Transitional Justice: The Women of East Timor* (Routledge, 2012).
- 10 Cristine Chinkin and Mary Kaldor, "Gender and New Wars," *Journal of International Affairs* 67 (1) (2013): 180.
- 11 Catharine MacKinnon, *Are Women Human? And Other International Dialogues* (Cambridge, Massachusetts: Harvard University Press, 2006): 185.
- 12 Yakin Ertürk, *Country mission report of the Special Rapporteur on violence against women, its causes and consequences on the Democratic Republic of Congo, A/hRC/7/6/Add.4, 28 February 2008.*
- 13 *Idem.*
- 14 CEDAW, General Recommendation No. 30 on women in conflict prevention, conflict and post-conflict situations (2013): para 76.
- 15 *Ibid.*: 74.

Next, I elaborate on the idea of the continuum of violations committed against women; second, I describe the interviews carried out during my field research and the violations suffered by Timorese women during Indonesian rule, highlighting the particularities concerning SRHR; third, I analyse the exclusion of SRHR from reparation initiatives implemented in post-conflict Timor-Leste; and finally, I assess the protection of SRHR in Timor-Leste today.

1 CONTINUUM OF VIOLATIONS AGAINST WOMEN IN POST-CONFLICT

While international law does not provide a definition of peace, Galtung argues that negative peace is the absence of armed conflict, while positive peace is the absence of structural violence (social injustice).⁷ Peace, therefore, is not only a matter of reducing violence but also advancing equality, development and the egalitarian distribution of power and resources.⁸ As I will later show, if Timorese women still suffer from personal and structural violence after the conflict, they may not be experiencing either negative or positive peace, but rather still living with violence.⁹ This paper therefore holds that there is a continuum of violations committed against women after transitional justice, and focuses particularly on violations of SRHR.

Several scholars and human rights authorities show how the change from conflict to post-conflict and/or peacebuilding situations produces particular patterns of violence against women, meaning they do not live in peace. Chinkin and Kaldor, for instance, observe that a lack of recognition of women and impunity for the perpetrators of violence against them leads to the normalisation of violence in times of so-called peace, as shown, for instance, by the high incidence of domestic violence.¹⁰ Others demonstrate what happens when

combatants return to their homes and the continuum of violence moves to the private sphere.¹¹ In her report on the Democratic Republic of the Congo, the UN Special Rapporteur on Violence against Women observes that the scale and brutality of sexual violence and the fact that civilians are increasingly among the perpetrators of rape indicate a normalisation of war-related violence.¹² She cautions that, when sexual violence associated with war is addressed in isolation, the gender-based discrimination and violence that women encounter in times of "peace" is neglected and the war on women reinforced.¹³ The Committee on the Elimination of Discrimination Against Women (CEDAW) in its General Recommendation No. 30 on women in conflict prevention, conflict and post-conflict situations also expresses its concern that violations occurring during conflict often remain unpunished in transitional justice mechanisms and are later "normalised" after the conflict.¹⁴ More specifically, connecting discrimination and violence against women in a continuum, the Committee states that:

All barriers faced by women in accessing justice before the national courts prior to the conflict, such as legal, procedural, institutional, social and practical, and entrenched gender discrimination are exacerbated during conflict, persist during the post-conflict period and operate alongside the breakdown of the police and judicial structures to deny or hinder their access to justice.¹⁵

Experience has shown that this happens:

...when States have neglected to take measures during peacetime, to: a) overcome power imbalances and inequalities based on gender roles and discrimination against women and girls; b) ensure a conducive environment where women and girls have access and non-discriminatory

exercise of their human rights, including in relation to employment, education, health (e.g. sexual and reproductive health and rights), access to land and natural resources, freedom of expression, association and assembly, and can freely develop their personal abilities, pursue their professional careers and make choices without the limitations set by stereotypes, rigid gender roles and prejudices; c) ensure accountability for violations of women's human rights, including GBV.¹⁶

The continuum of violations is the opposite of guarantees of non-repetition, which are one of the main elements of reparations provided to victims. These include the implementation of reforms that seek to guarantee that victims will not be re-victimised and that there will be no new victims.¹⁷ The Special Rapporteur on Violence Against Women has argued that non-recurrence requires a discussion about the underlying structural causes of the violence, their gendered manifestations and the broader institutional or legal reforms that might be called for to ensure non-repetition.¹⁸ She has also stated that reparations for women should aim to have transformative potential.¹⁹ In other words, rather than re-establishing the situation that existed before the violations of women's rights, transformative reparations seek to overturn the structural inequalities which led to the violations, prevent their re-occurrence and respond to women's needs.²⁰ In this regard, the CEDAW Committee has insisted that "besides providing redress to women for gender-based violations suffered during conflict, transitional justice mechanisms have the potential to secure a transformative change in women's lives".²¹

When it comes to SRHR, the Human Rights Council (HRC) in its report on human rights and transitional justice has stressed that effective remedies



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following sexual and gender-based violence (SGBV) in conflict and post-conflict "should include access to health care, psychosocial support, legal assistance and socioeconomic reintegration services for victims".²² Transformative reparations thus imply measures to improve the availability and quality of education, information and services concerning SRHR, including in zones affected by conflict.²³ More recently, the UN Special Rapporteur on the Promotion of Truth, Justice, Reparation and Guarantees of Non-Recurrence advocated for guarantees of non-repetition that involve a comprehensive review of all regulatory provisions in order to identify and amend provisions that are discriminatory against women and lesbian, gay, bisexual and transgender (LGBT) persons; to ensure the effective exercise of their rights; and to review how SGBV is addressed, including, for example, reforms that strengthen equal rights, including reproductive rights.²⁴

As this paper will show, SRHR have nevertheless been systematically disregarded in post-conflict reparations programmes. In Peru, for instance, the reparations programme that followed the Truth and Reconciliation Commission (TRC) only included victims of rape, leaving out all the victims of other forms of reproductive violence.²⁵ This meant that the effects of violations on reproductive health, such as unwanted pregnancies, sexually transmitted diseases (STDs) or sterility, were not taken into account as aggravating elements, nor were

16 OHCHR, *Integrating a Gender Perspective into Human Rights Investigations. Guidance and Practice* (2018): 39.

17 The 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, A/RES/60/147, 16 December 2005: para 23; Ruth Rubio-Marín. "Introduction: A Gender and Reparations Taxonomy", in *The Gender of Reparations. Unsettling Sexual Hierarchies while Redressing Human Rights Violations*, ed. Ruth Rubio-Marín (New York: Cambridge University Press, 2009): 116-119.

18 IACHR, *Legal Standards related to Gender Equality and Women's Rights in the Inter-American Human Rights System: Development and Application* (2015): para 59.

19 Rashida Manjoo, *Thematic report submitted to the Human Rights Council on the topic of reparations to women who have been subjected to violence in contexts of both peace and post-conflict*. Report of the Special Rapporteur on violence against women, its causes and consequences, A/HRC/14/22, 23 April 2010: para 85.

20 CEDAW GR No. 30 (2013): para 79.

21 Ibid.: para 77.

22 Human Rights Council (HRC), *Human rights and transitional justice*, A/HRC/RES/21/15, 11 October 2012: para 19.

23 Center for Reproductive Rights, *Una radiografía sobre la Violencia Reproductiva contra mujeres y niñas durante el Conflicto Armado colombiano* (2020): 38.

24 Fabián Salvioli, *The gender perspective in transitional justice processes*, Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, A/75/174, 17 July 2020: para 64

25 Center for Reproductive Rights, *Una radiografía*: 36.



My interviews with Timorese women demonstrate that the connection between their violations past and present, the lack of recognition of SRHR violations within transitional justice and the consequent denial of reparations for such violations can perpetuate the cycle of violence and discrimination against women in “peace times”, whatever “peace” means in this context.

their potential consequences, such as rejection by husbands, impossibility of getting married, and/or community stigmatisation.²⁶ In post-conflict Liberia, STDs and physical damage to women’s and girls’ reproductive organs were common, and more than ten years after the war they were still in need of acute medical assistance.²⁷ In Sierra Leone, women subjected to SGBV often experienced exclusionary outcomes compared to survivors of other forms of conflict-related violence, leaving the vast majority of those registered as sexual violence survivors without the reparations to which they were entitled.²⁸ Moreover, although the Sierra Leonean TRC recognised children of victims of sexual violence as eligible beneficiaries of reparations programmes, in practice some of the victims had to approach the Ministry of Social Welfare, Gender, and Children’s Affairs to seek meaningful assistance from the government for their children.²⁹ These are examples from other jurisdictions that illustrate the global trends concerning structural barriers that women face when accessing reparations for violations of SRHR.

Although the consideration of SRHR violations within transitional justice has been examined elsewhere, my interviews with Timorese women demonstrate that the connection between their violations past and present, the lack of recognition of SRHR violations within transitional justice and the consequent denial of reparations

for such violations can perpetuate the cycle of violence and discrimination against women in “peace times”, whatever “peace” means in this context.

2 THE INTERVIEWS

Between 2016 and 2017 I carried out semi-structured interviews in ten of the 13 municipalities in Timor-Leste. I interviewed 123 individuals, of whom 77 were women affected by the Timorese conflict and 46 were government officials, UN or NGO employees who had a role in the transitional justice mechanisms and/or the post-conflict reconstruction of the country. I was introduced to the women by ACbit, a widely known local NGO that organises activities such as storytelling and the creation of women’s safe houses and cooperatives in Timor-Leste. The women agreed to talk to me because of their trust in ACbit. When we started the interviews, I explained that our discussions would be divided into three parts: women’s experiences under Indonesian rule; women’s interaction with transitional justice processes; and women’s post-transitional justice situation, including whether their participation had a positive effect on their lives according to their meaning of justice.

Although the main focus of my research was on women’s access to the different transitional justice mechanisms, discussions concerning women’s access to SRHR in today’s Timor-Leste made me more attentive to the stories I was hearing from Timorese women about their SRHR violations during the conflict. Cases concerning forced contraception, forced pregnancy and forced abortion were raised during the interviews: after the end of the conflict, these were and continue to be neglected.

26 Guillerot, J. “Linking Gender and Reparations in Peru: A Failed Opportunity”, in *What happened to the women? Gender and reparations for human rights violations*, ed. Ruth Rubio-Marín (USA: Social Science Research Council, 2006): 159-160.

27 Leena Vastapuu, *Liberia’s Women Veterans* (London, UK: Zed Books Ltd., 2018): 75-76, 163.

28 *What Works, Intersections of violence against women and girls with state-building and peace-building: Lessons from Nepal, Sierra Leone and South Sudan*. A report drafted by Swaine, A., Spearing, M., Murphy, M. and Contreras, M. (2018): 33.

29 Jamesina King, “Gender and Reparations in Sierra Leone: The Wounds of War Remain Open”, in *What happened to the women? Gender and reparations for human rights violations*, ed. Ruth Rubio-Marín (USA: Social Science Research Council, 2006): 258.

Violations of SRHR in Timor-Leste

While most of the violations against the women interviewed occurred during Indonesian occupation (1975-1999), a few of those cases happened during the 1999 escalation of the violence when militias, together with elements of the Indonesian security forces, terrorised and killed pro-independence Timorese supporters. Some of the women interviewed reported suffering from violations that may amount to sexual slavery: they were kept on Indonesian military premises during the night as well as in other detention facilities and were gang-raped on a daily basis over long periods, while experiencing restrictions on their movement. Those women who went through “temporary” forced marriage were usually forced to live with an Indonesian or a Hansip (a Timorese person working for Indonesians as a local security officer in a village) and were expected to carry out housewives’ duties and engage in sexual activities. Many of the women were adolescents when they were first sexually assaulted and subjected to sexual slavery and/or forced marriage.

In Lalerik Mutin, I was told that after the 1983 guerrilla offensive against Indonesian rule in the village of Kraras, the Indonesian military took revenge against the civilian population and shot everyone in their path. One woman interviewed said that she and the women of her family were caught in the mountains after escaping the shootings. The Indonesians asked them who killed the Indonesian fighters, and they replied that they did not know. She was then taken to the local unit commander and raped for over five months. The village chief then told her: “If you don’t get married with them you will be violated until you die”.³⁰ She then married an Indonesian man for one year and later had an abortion.

I interviewed 14 women in Viqueque, and most of them had very similar stories of being forced to get “temporarily married to Indonesians”. Another woman also mentioned the sexual violence she suffered, including forced pregnancy and a forced abortion. She said: “In 1997, I got “threatened” by an Indonesian Bapa, I could not do anything, I was powerless – he told me that he wanted a kid from me”.³¹ In two months she became pregnant. Then he changed his mind and gave her herbs in order to abort the pregnancy. That man, who was a Vice-Commander, came to her house once per week, and while he raped her, soldiers were standing guard outside of her house. After she became pregnant, one of her uncles asked her: “You have a big belly now, who is going to attend it?” “Your life is not valuable anymore”, she then explained to me.³²

Women who suffered sexual slavery and/or forced marriage narrated the pressure to engage in sexual activities that they received from local authorities, and even their families. I was told in several villages I visited that local authorities committed further violations against women, from pointing out the women’s houses to the Indonesian soldiers to convincing the girls to have sexual relations under coercive circumstances. One woman, for instance, said that the Indonesian Commander gave her medicines to avoid getting pregnant, but the village chief told her not to take them. She endured this for a year, until the real wife of the commander came from Indonesia. She was 15 years old.

Some of the women interviewed were impregnated by multiple soldiers and were then left on their own with the children. However, as Corcoran-Nantes argues, although a large number of Timorese women had children born out of rape, after the end of the conflict no one spoke of the single mothers of

30 Personal interview with Participant 10, Lalerik Mutin, Viqueque, Timor-Leste, 03 February 2017.

31 When Women referred to sexual violence, they used sentences like “they did wrong things to me”, “treat” and even they “search for guns”, “play”.

32 Personal interview with Participant 63, Lalerik Mutin, Viqueque, Timor-Leste, 04 February 2017.

the “enemy” children. The focus was instead on the widows and orphans of the resistance.³³ This explains why the women interviewed mentioned their personal struggles with being responsible for their children with few resources and their desire to give them an education and a proper house. In reality, these women were left alone in charge of several children born of sexual violence and in a situation of abandonment.³⁴ They had no choice to decide over their reproductive rights.

Because of intersecting forms of marginalisation, women suffered more intense societal exclusion.³⁵ In my interviews, women said that while their rights were violated, they were also stigmatised and perceived as traitors by their communities. Similarly, the report of the Commission for Reception, Truth and Reconciliation in East Timor (CAVR) says that single mothers were stigmatised and that even the church could deny the communion to women subjected to sexual violence, leading to an increase in their suffering and isolation.³⁶ A Timorese woman narrated the process of dehumanisation she experienced when she said that she could not forget that when she got pregnant by the Indonesian soldiers, people in her village, instead of using the words “*isin rua*” for “pregnant woman”, called her “*kabuk todan*”, which is used to refer to heavily pregnant animals. Her house was also called “sacred house”, mocking the number of Indonesian men who entered the premises.³⁷ Crimes committed against Timorese women were not new, however. In fact, Timorese women who participated in the Women’s International War Crimes Tribunal on Japan’s Military Sexual Slavery, held in 2000, also revealed that Portuguese officials colluded in recruiting Timorese women as sexual slaves in order to save European women from rape.³⁸ Consequently, Timorese women suffered sexual abuse, including sexual slavery and abandonment as single mothers during Portuguese colonial rule.³⁹

The cycle of violence against and abandonment of women continued during and after Indonesian rule. Women who experienced sexual slavery, forced marriage and/or rape (including gang rape) did not receive any appropriate healthcare and suffered from sexual and reproductive health problems, even once the conflict with Indonesia was over. The Timorese TRC in its *Chega!* report had indicated that during the conflict, Indonesian health services focused on providing primary and maternal healthcare and meeting family planning targets, while ignoring sexual and reproductive healthcare.⁴⁰ It also mentions that, during Indonesian rule, women survivors of rape had nowhere to go for formal medical care, and in many cases family members treated them with traditional medicine.⁴¹ This explains why women who suffered from sexual violence mentioned during the interviews how they were forced to have an abortion and given medicines to avoid getting pregnant, including injections and herbal remedies. As a result of this situation, the *Chega!* report recognises that “specific needs around reproductive health care, like tests and medical cures for STDs or early detection of cancer or pre-cancerous cells in the reproductive system were not accessible to women”.⁴² This all meant that Timorese women during and after the conflict suffered long-term consequences, such as STDs, problems with pregnancy, infertility, vaginal problems, genital trauma such as tears and abrasions, incontinence and other serious reproductive injuries that resulted from sexual violence, forced and irregular contraception and/or unsafe and forced abortions.

The women interviewed, for instance, referred to the use of contraceptive methods which they feared would prevent them from conceiving after the conflict. A woman from Los Palos, who was a sexual slave over several years, told me how she was forced to have four

- 33 Yvonne Corcoran-Nantes. “The Politics of Culture and the Culture of Politics: A case study of Gender and Politics in Los Palos, Timor-Leste,” in *Security, Development and Nation-Building in Timor-Leste. A Cross-sectoral Assessment*, ed. Vandra Harris and Andrew Goldsmith (Routledge, 2011): 85.
- 34 Simone Cusack and Rebecca J. Cook, “Stereotyping Women in the Health Sector: Lessons from CEDAW,” *Washington and Lee Journal of Civil Rights and Social Justice* 16 (1) (2009): 56-57.
- 35 Charlesworth and Chinkin, *The boundaries of international law*, 19.
- 36 Post-CAVR, *Timor-Leste, As Mulheres e o Conflito*, 49.
- 37 Personal interview with Participant 50, Baucau, Timor-Leste, 13 January 2017.
- 38 Irena Cristalis and Catherine Scott, *Independent Women. The story of women’s activism in East Timor* (London, UK: Catholic Institute for International Relations, 2005): 14.
- 39 Post-CAVR, *Timor-Leste, As Mulheres e o Conflito*, 47.
- 40 *Chega!* means in Portuguese “enough, stop, never again.” Commission for Reception, Truth and Reconciliation in East Timor (CAVR), *Chega! Report* (2005): 2023.
- 41 *Idem*.
- 42 *Idem*.

abortions and take substances to avoid becoming pregnant. After independence, the woman insisted that her main sorrow was that after taking unknown substances over such a long time, in addition to having lost so many years of her life and already being advanced in age, she was not going to be able to conceive a child. "I asked God," she said, and he gave her the gift she desired: she became a mother.⁴³ Because transitional justice ignored SRHR violations and no reparations were granted, she could rely only on divine justice.

3 REPARATIONS PROVIDED AFTER THE CONFLICT

The United Nations Transitional Administration in East Timor (UNTAET) Regulation No. 2000/15, which established the Special Panels for Serious Crimes and the Serious Crimes Unit (SCU), contained a specific reference to the creation of a Trust Fund for victims (Section 25). However, the Trust Fund was never established. As a result, the CAVR would be the only transitional justice mechanism that established a reparations programme in post-conflict Timor-Leste. The programme consisted of five main forms of reparations: (1) monetary compensation to victims, which consisted mainly of one-off emergency grants of \$200; (2) referral of victims to services, such as urgent medical and psychological care; (3) healing workshops; (4) funds to local NGOs to provide services to persons identified through the programme, including equipment and training for the disabled; and (5) collective reparations in a small number of communities, such as establishing survivors' self-help groups, commemoration events, and the provision of tombstones for victims.⁴⁴ In its urgent reparations programme, the CAVR identified killings, disappearance, detention, torture and sexual violence as crimes to be addressed because of their severity and the longevity of their impact.⁴⁵

Unfortunately, not only did few people have access to the reparations programme, but also a disproportionately low number of these were women, despite women suffering from widespread and systematic violations. While in the whole of Timor-Leste only 82 women participated in the six three-day healing workshops held by the CAVR, the commission granted funds to support local NGOs and church groups that provided psycho-medical care (e.g. medicines, referral to district hospitals, and basic counselling and support, including home visits) to 417 victims, 95 of whom were women.⁴⁶ Beneficiaries of the urgent compensation – the one-off \$200 grant – were a small number of victims identified from among those who gave statements to the CAVR, who were supposed to use it for their "urgent needs" to meet medical costs or children's school fees; as start-up costs for income-generating activities; to repair their homes; or to purchase food and other basic needs.⁴⁷ In practice, only 712 people received the \$200 grant, of whom 196 were women.⁴⁸

Several factors explain women's low participation in the few reparations schemes provided. A statement-taking process was used to identify beneficiaries for the urgent reparations scheme, but only 1,642 of the participants in that process were women (21.4 percent).⁴⁹ Those subjected to forced use of contraception were not included because the number of incidents documented by statement-takers and research units was negligible.⁵⁰ Moreover, as confirmed during an interview with a former employee of this scheme, the urgent compensation would also be carried out as a "silent programme" rather than making this a public call in order not to create a bias in the truth seeking process – so not many victims knew about the grant.⁵¹ When I asked the same employee about the reasons for the significant disparity between men and women who received urgent compensation, he said that "men were

43 Personal interview with Participant 55, Los Palos, Lautém, Timor-Leste, 12 January 2017.

44 CAVR, *Chega! Report*, 2538; Galuh Wandita, Karen Campbell-Nelson, and Manuela 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-Marín (USA: Social Science Research Council, 2006): 302-305.

45 Wandita, Campbell-Nelson and Pereira, "Learning to Engender Reparations in Timor-Leste": 302-303.

46 CAVR, *Chega! Report*, 2539; Wandita, Campbell-Nelson and Pereira, "Learning to Engender Reparations in Timor-Leste", 305.

47 CAVR, *Chega! Report*, 2528, 2541; Wandita, Campbell-Nelson and Pereira, "Learning to Engender Reparations in Timor-Leste", 304.

48 CAVR, *Chega! Report*, 2539.

49 CAVR, *Chega! Report*, 1517.

50 Wandita, Campbell-Nelson and Pereira, "Learning to Engender Reparations in Timor-Leste": 303.

51 *Ibid.*: 301.



If the immediate and long-term needs of victims are to be priorities after a conflict, reparations concerning access to healthcare and education should be central to justice for women as well as the sustainability of reconstruction efforts.

the most affected”.⁵² Although the Urgent Reparations Programme was supposed to include reparations for victims of sexual violence, in practice it was easier to go to the communities and see who had been tortured and/or left with visible injuries.

The problem is that women’s experiences in conflict are very complex and violations against them – particularly of SRHR – may not be visible. Ross observed something similar in the South African TRC, where those considered victims were those who were subjected to bodily injury crimes, i.e. those having “traces on the body”.⁵³ Consequently a large number of South African women, who may have been eligible to make statements, were not recorded as victims by the TRC and were not eligible for individual reparation.⁵⁴ The assertion that men were most affected because their injuries were visible contradicts the Chega! report’s recognition that “untreated, sexually transmitted diseases may cause a relatively quick death from severe pelvic infection or long-term reproductive health problems, including cancer and sterility”.⁵⁵

When the Chega! report was published, the CAVR suggested a large range of reparations for victims as well as public policies for the optimal human rights performance of the new state. Avoiding individual financial assistance, the CAVR favoured collective and symbolic reparations which were mainly focused on rehabilitation and satisfaction of victims, including the delivery of social services and material assistance for

the most vulnerable, who continued to suffer the consequences of violations after the conflict: for example, victims of torture and/or sexual violence, people with mental and physical disabilities, widows and single mothers.⁵⁶ As part of measures to ensure non-repetition, it recommended an education campaign to increase public awareness of the link between past abuses and current patterns of violence.⁵⁷ Moreover, in its reparations programme there were calls for the protection of women’s rights; rehabilitation and compensation for victims of 1999; initiatives to eliminate violence against women and address prejudices against women victims of SGBV, including discriminatory practices by the church.⁵⁸ The CAVR further recommended that “access to information and services on reproductive healthcare, family planning and parenting are widely available to both men and women, including through the schools, in order that decisions about reproduction are informed and the responsibilities of reproduction and parenthood are equally shared and free of coercion or violence”.⁵⁹ Furthermore, it recommended:

reproductive health education programmes that are accurate, balanced and comprehensive and that promote responsibility are provided to the youth of Timor-Leste in keeping with Article 17 of the Convention on the Rights of the Child (CRC) which upholds the right to know especially where information promotes social, spiritual and moral well-being and physical and mental health.⁶⁰

Following the Chega! report, a draft law that focused on the creation of the national reparation programme was submitted to the Timorese Parliament in July 2010. Because the draft law was not approved, the reparations programme was never implemented. This means that following sexual violence and torture, psychological damage and moral injury

52 Personal interview with Participant 120, Dili, Timor-Leste, 10 November 2017.

53 Fiona Ross, *Bearing Witness. Women and the Truth and Reconciliation Commission in South Africa* (London: Pluto Press, 2003), 12.

54 *Ibid.*: 163.

55 CAVR, *Chega! Report*: 2023-2024.

56 Wandita, Campbell-Nelson and Pereira, “Learning to Engender Reparations in Timor-Leste”: 308-310; Pat Walsh, “Shining Chega!’s Light into the Cracks”, in *Flowers in the Wall: Truth and Reconciliation in Timor-Leste, Indonesia, and Melanesia*, ed. David Webster (Calgary, Alberta, Canada: University of Calgary Press, 2017): 68; ICTJ, *Unfulfilled Expectations victims’ perceptions of justice and reparations in Timor-Leste* (2010): 6.

57 CAVR, *Chega! Report*: 2621.

58 Wandita, Campbell-Nelson and Pereira, “Learning to Engender Reparations in Timor-Leste”, 316-317.

59 CAVR, *Chega! Report*: 2586.

60 *Ibid.*, 2587.

against Timorese women, there was no medical or social support provided to the victims beyond the limited urgent measures taken by the CAVR. In this regard, as Naraghi-Anderlini argues, “there is a need to hear and respond to the voices of the victims”, and if the immediate and long-term needs of victims are to be priorities after a conflict, reparations concerning access to healthcare and education should be central to justice for women as well as the sustainability of reconstruction efforts.⁶¹ However, in the case of Timor-Leste – as is usual in post-conflict situations – SRHR did not receive the attention they deserved during and after the implementation of the different transitional justice mechanisms provided. I therefore argue that the violations of SRHR against Timorese women are framed within a continuum from conflict to peace: violations can return in a new form.

4 REPRODUCTIVE RIGHTS IN POST-CONFLICT TIMOR-LESTE

Crimes related to SRHR remained invisible during the implementation of transitional justice mechanisms and were later normalised once the conflict was over. As stated by the CEDAW Committee, Timorese women who suffered sexual violence committed during Indonesian rule “continue to experience social stigma and ostracism, resulting in feelings of shame, and have limited access to medical, psychological, reproductive and mental health services or treatment”.⁶² The new generation of Timorese girls and women – at all levels of society – are being affected disproportionately by early pregnancy and their lack of access to reproductive rights and education.

Data suggests that the teenage pregnancy rate is 24 per cent and nearly one in four girls and young women have had a child before the age of 20.⁶³ Among the group aged 15-19 years, 50 per cent already have more than one child.⁶⁴ In Timor-



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Leste, “the risks of health complications related to teenage pregnancy are extremely high, and maternal mortality rates in 15-19 year-olds are 1,037 per 100,000 live births, meaning they are twice as likely to die as older women”.⁶⁵ Among several causes, this is because early pregnancy brings “a heightened risk of vesico-vaginal fistula (VVF) or recto-vaginal fistula (RVF) and potential death during childbirth of the mother or the baby, or in some instances both”.⁶⁶

There is also a connection between early pregnancy and a lack of information and education. Not only are women and girls denied access to condoms or a reproductive health adviser to explain contraceptive choices to them when they go to a rural clinic, but there are instances where women are asked where their husbands are before they are provided with help. Timorese women are denied the ability to exercise their reproductive rights based on the prejudice that they are incapable of making healthcare decisions in their own interests. This shows not only women’s subordination in their families and societies, but also the denial of their intellectual capacities and moral agency and the effects of this lack of recognition on their access to health services. Cusack and Cook observe that, because the health sector tends to be very hierarchical – men generally fill the higher positions (e.g. medical doctors), and women the lower positions (e.g. nurses) – there is a tendency to privilege men’s medical decision-making and

61 Sanam Naraghi-Anderlini, “Women and Peace Through Justice”, *Development* 48 (3) (2005): 103-10; *The World Bank, Gender, Justice and Truth Commissions* (2006) <https://documents1.worldbank.org/curated/pt/306291468298154907/pdf/376060GenderJustice01PUBLIC1.pdf> (accessed 3 March 2022).

62 CEDAW, *Concluding observations on the combined second and third periodic reports of Timor-Leste*, CEDAW/C/TLS/CO/2-3 (24 November 2015): para 18.

63 Plan International, *Timor-Leste’s proposed family planning policy will deny girls their rights*, accessed 24 August 2021.

64 *Idem*.

65 *Idem*.

66 Fareda Banda, *Women, Law and Human Rights: An African Perspective* (Oxford: Hart Publishing, 2005): 187. Cf. CESCR art 12(2)(a); CESCR General Comment No. 14 on right to the highest attainable standard of health (2000): para 14; CEDAW General Recommendation No. 24: Article 12 of the Convention (women and health) (1999): para 27.



The stereotype of women as primarily mothers has been applied in the reproductive health context, denying or impeding women's access to safe and lawful abortion and contraceptives, including emergency contraception, and family planning information.

ignore women's interests and needs.⁶⁷ As a result, the stereotype of women as primarily mothers has been applied in the reproductive health context, denying or impeding women's access to safe and lawful abortion and contraceptives, including emergency contraception, and family planning information.⁶⁸

But even when there are condoms available in a private local establishment, women in the municipalities – Timor-Leste's total population is nearly 70 per cent rural – are particularly affected because they cannot afford them.⁶⁹ As a consequence, not only has there been an increase of STDs, but because many girls and women have inadequate knowledge about reproduction, they learn about their pregnancy at an advanced stage.⁷⁰ Moreover, restrictions on SRHR not only lead to a high rate of child marriage in the country – 19 per cent of young women between 20-24 years old are married before 18 – but to girls dropping out of school.⁷¹ Early pregnancy, together with gender-based violence (GBV) and the lack of adequate sanitation for those who reach puberty, contribute to the rate of school drop-out among Timorese girls remaining very high at almost 50 per cent between the primary and secondary levels, especially in rural areas.⁷² Girls who get pregnant may not be permitted by their schools to continue with their studies, and face difficulty obtaining school documents and/or transferring to other schools, circumstances which are against the best interests of the child.⁷³ From all perspectives, early pregnancy

has harsher consequences for girls than for boys. While initial attendance rates for boys and girls are similar, women and girls end up having lower rates of education than men and boys.⁷⁴ As a consequence of the lower level of education, cultural norms and stereotypes, these girls who eventually become women are put in a disadvantaged position when pursuing job opportunities in Timor-Leste.⁷⁵ Protection, or lack thereof, of SRHR greatly impacts women's participation in the public space.

Violations of SRHR are also inflicted on women with disabilities. In one case, a woman with disabilities was raped and subsequently became pregnant. "After she delivered the baby the victim was sterilized without being asked for consent because she cannot speak or move her limbs. The family gave consent, following the doctor's advice".⁷⁶ As established by Article 23 of the Convention on the Rights of Persons with Disabilities (CRPD), people with disabilities have the right to decide on the number and spacing of their children and other reproductive rights. Although this case was reported, in Timor-Leste there are very low reporting and conviction rates for cases of domestic and sexual violence against women as well as limited medical, psychological and legal assistance available to them.⁷⁷ The system put in place furthers violations against women.

When the Timorese parliament discussed an amendment to the Criminal Code in 2009, there was political pressure to make abortion law more liberal and the government considered making an exception in cases of rape and incest. The amendment of the law, however, made it more restrictive. Just as CEDAW draws a connection between the denial/criminalisation of abortion and torture, the Committee Against Torture later noted its concern that in Timor-Leste abortion is a criminal offence in all cases, including those in which a pregnancy may result in a woman experiencing severe pain and

67 Cusack and Cook, "Stereotyping Women in the Health Sector": 66-67.

68 Ibid.: 59-60.

69 Cf. the CESCR General Comment No. 22 on the right to sexual and reproductive health (2016); CEDAW GR No. 24 on women and health: para 28.

70 Lusa, East Timor: Minister removes recommendation to use condoms in anti-AIDS campaign, <https://www.macaubusiness.com/east-timor-minister-removes-recommendation-to-use-condoms-in-anti-aids-campaign/> (accessed 3 December 2021).

71 Secretariat of State for Youth and Sports, UNFPA and Plan International, *Teenage Pregnancy and Early Marriage in Timor-Leste* (May 2017): 4.

72 CEDAW, *Concluding observations on Timor-Leste*: para 26.

73 U.S. Department of State, *Timor-Leste 2019 Human Rights Report. Bureau of Democracy, Human Rights and Labor* (2020).

74 *Idem*.

75 U.S. Department of State, *Timor-Leste 2018 Human Rights Report. Bureau of Democracy, Human Rights and Labor* (2019).

76 United Nations Mission in Timor-Leste (UNMIT) and the Office of the High Commissioner for Human Rights (OHCHR), *Report on the Rights of Persons with Disabilities* (2011): 28.

77 CEDAW, *Concluding observations on Timor-Leste*: para 16.

suffering, such as those related to rape, incest or severe fetal impairment. The only exception in the law relates to situations in which it is necessary to protect the life of the mother.⁷⁸ Not only do women in rural areas have limited access to control the status of their pregnancies and to know how these will affect their lives, but even in that very limited exception envisaged in the provision (141(4)) conceding an abortion to protect the life of the mother, there is a reference to “and/or” the consent of the spouse, which may facilitate discretionary – and stereotyping – decisions of judicial and medical actors.

While travelling in the municipalities, I was also warned about continued cases of sexual violence, particularly of sexual abuse against children, including incest, and how their disclosure was taboo in these communities. This is in line with the concerns of the Committee on the Rights of the Child (CRC) about the widespread sexual abuse – including incest – of children in Timor-Leste.⁷⁹ Few cases of violence and even fewer cases of sexual abuse against children go to court because the law places primary responsibility on parents to initiate criminal cases following sexual abuse of a child under 15 years of age, trapping the child when the alleged offender is a parent.⁸⁰ Moreover, while the Timorese government is reluctant to criminalise incest as well as marital rape as specific offences in the Criminal Code, in 2020 the National Parliament approved the draft Resolution No. 59/V(3a) on preventative measures in cases on infanticide and the neglect of babies and children.⁸¹ It is of concern that women may be the only ones charged for these crimes.

Although Timor-Leste is a secular state, Catholicism became a proxy expression of national identity against Indonesia – 98 per cent of the population is Catholic – and the church has been valorised by the state for its participation in the process of national liberation.⁸² As a result, “the

hierarchy of the Church continues to wield “active” power through its political interventions, particularly in the area of sexual and reproductive health”.⁸³ Timorese society and its politicians may also apply strict Catholic views, to the extent that one of the main political parties, the People’s Liberation Party (PLP) – considered to be progressive – is headed by a couple considered to be the most devout leaders the country had. Politicians may strategically rely on Catholicism to get the political support of the masses, as shown by the visit in 2021 of the national hero Xanana in support of a defrocked priest on trial for child abuse. Furthermore, human rights activists and local NGO employees may rank traditional family values higher than women’s rights, including accepting domestic violence in order to keep the family united, discriminating against LGBT people and being dismissive of SRHR. As such, in a society where there is hyper-masculinisation and very conservative Catholic views, it is still taboo to speak about contraception. As a former UN employee told me, “the word “condoms” became uncomfortable” for the leadership.⁸⁴

Furthermore, after the end of the conflict there has been a resurgence of Timorese traditions. Hicks attributes this to the fact that, under Indonesian rule, sacred houses, artifacts and other concrete representations of traditional culture were destroyed and people did not have access to them because of displacement and Indonesian centralisation.⁸⁵ A re-traditionalisation of Timor-Leste will, however, reinforce the accordance of women’s value to their fertility, which may contribute to local health providers stereotyping womanhood by centring women’s universe around motherhood, limiting their reproductive and sexual choices. This re-traditionalisation is similar to what has happened in other states: Banda claims that after the independence of African countries, women were not

78 Committee against Torture (CAT), *Concluding observations on the initial report of Timor-Leste*, CAT/C/TLS/CO/1 (15 December 2017): para 32, 34; CEDAW, *Concluding observations on Timor-Leste*: para 16. Cf. CEDAW General recommendation No. 35 on gender-based violence against women, updating general recommendation No. 19 (2017): para 18.

79 CRC, *Concluding observations on the combined second and third periodic reports of Timor-Leste*, CRC/C/TLS/CO/2-3 (30 October 2015): para 36.

80 OHCHR, *Summary of stakeholders’ information. Working Group on the Universal Periodic Review, A/HRC/WG.6/26/TLS/3* (17 August 2016): para 30.

81 JSMP reports 271 cases of family neglect (2015-2020), 21 cases of infanticide (2018-2020) and 34 cases of incest (2018-2020). Judicial System Monitoring Programme, *Press Release*, 28 October 2020.

82 Michael Leach, *Nation-building and national identity in Timor-Leste* (London: Routledge, 2017): 88, 137.

83 Esther Richards, “A gender perspective on the Catholic Church and reproductive health rights in Timor-Leste,” in *Women and the Politics of Gender in Post-Conflict Timor-Leste. Between Heaven and Earth*, ed. Sara Niner (Oxon: Routledge, 2017): 171.

84 Personal interview with Participant 82, Dili, Timor-Leste, 09 November 2017.

85 David Hicks, “Community and Nation-State in East Timor: A View from the Periphery,” *Anthropology Today*, Royal Anthropological Institute 23 (1) (2007): 14.



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well served by the version of customary law that took form after colonialism.⁸⁶ Reflecting on the legacy of colonialism in Africa and the subsequent period of nationalisms, Mamdani suggests that custom was enforced and chiefs were sanctified while women were silenced, with a view of custom that cannot be changed.⁸⁷ The embrace of nationalist and conservative agendas has an effect on women's enjoyment of their SRHR.

For instance, in 2017, there were a series of measures proposed by a conservative former minister of health, under the alleged influence of a Catholic Bishop in Maliana. In November of that year the minister made a decision to promote in a HIV/AIDS community awareness and prevention campaign only the "A (Abstinence) and B methods" (Be faithful). She excluded the "C method" (use of condoms) for the general public, with the exception of those considered to be "at risk" such as the LGBTI community and prostitutes (and even for them, condoms were limited to existing stocks).⁸⁸ The HIV/AIDS Focal Point in the ministry said the decision was taken after several discussions with the National Commission to Combat HIV/AIDS (CNCS), with religious organisations, government agencies and relevant institutions that work in this area. The former Executive Secretary of the CNCS in Timor-Leste, a Protestant pastor himself, also said publicly that education aimed at behavioural change was the

only solution to combating HIV in Timor-Leste, not condoms, because condoms do not provide 100 per cent protection from the virus. More specifically, he said that "it can protect, although not 100 per cent, this can be dangerous therefore, as a Timorese, I do not want to teach my people to use condoms when it is not a 100 per cent protection from the virus".⁸⁹

In the same year, the former Minister of Health also presented as a family planning proposal the "Billings method", a natural technique that encourages women to identify their fertility patterns by examining the appearance of vaginal discharge as the leading form of contraception, while access to other forms of contraception were to be granted only to those who were married.⁹⁰ The proposals of the minister were rejected by parts of civil society, including by young women's rights activists and international organisations, and consequently disregarded. However, this type of violence against women does not seem to improve with time either. In 2020, the current Minister of Health ordered the removal of the "use of condoms" from World AIDS Day posters distributed throughout the country, citing her opposition to what she called "free sex".⁹¹ Extremely conservative values have therefore left a footprint on the local implementation of international standards and programmes in Timor-Leste.

At the global level, the UN Security Council adopted Resolution 1325 on Women, Peace and Security in 2000 in order to recognise and respond to women's experiences in conflict. Between 2000 and 2019, nine further resolutions have been adopted, including Resolution 2122 (2013) which recognises that more must be done to ensure that transitional justice measures address the full range of violations and abuses of women's human rights, and the differentiated impacts of these violations and abuses on women and girls. The same resolution

86 Banda, *Women, Law and Human Rights*: 18-23.

87 Mahmood Mamdani, "Beyond Settler and Native as Political Identities: Overcoming the Political Legacy of Colonialism," *Comparative Studies in Society and History* 43 (4) (2001): 651-664.

88 The Dili Weekly, *Timor-Leste does not Promote Condoms to the General Public*, accessed 27 November 2021 (<http://www.thediliweekly.com/en/news/14934-timor-leste-does-not-promote-condoms-to-the-general-public>).

89 From the registered data, he said that some 700 people are infected with the HIV virus through sexual relations (*Idem.*).

90 Plan International, *Timor-Leste's proposed family planning policy*.

91 Lusa, *East Timor: Minister removes recommendation to use condoms in anti-AIDS campaign*, accessed 3 December 2021, <https://www.macaubusiness.com/east-timor-minister-removes-recommendation-to-use-condoms-in-anti-aids-campaign/>

also recognises the need to “ensure humanitarian aid and funding includes provision for the full range of medical, legal, psychosocial and livelihood services to women affected by armed conflict and post-conflict situations” and notes “the need for access to the full range of sexual and reproductive health services, including regarding pregnancies resulting from rape, without discrimination”.⁹² At the local level, the resolutions require states to draft National Action Plans (NAPs) which set the commitments and review the progress of the policy implementation. When the Timorese NAP refers to sexual and reproductive rights, it only focuses on improving women’s access to facilities for voluntary testing and counselling for HIV and AIDS, leaving out other fundamental issues, such as the use of contraceptives.⁹³

When it comes to the UN Sustainable Development Goals (SDGs), although there has been much discussion in Timor-Leste about them, the UN Special Rapporteur on Indigenous Rights in 2019 urged the government to assign adequate resources to its 2017 SDG Roadmap so they are truly implemented.⁹⁴ Even at a more programmatic level, despite the fact that the SDGs represent enormous progress for women’s SRHR⁹⁵, sexual and reproductive health and reproductive rights are not mentioned in Timor-Leste’s Roadmap for the Implementation of the 2030 Agenda and the SDGs.⁹⁶ Guidelines that are based on gender stereotypes deny women dignity and rights, particularly with regard to their right to choose. The Timorese state is therefore failing in its obligation to respect, protect and fulfil SRHR of Timorese women and girls.

5 CONCLUSION

Although transitional justice has become one of the central policy options advocated in post-conflict societies, it may nevertheless ignore the particularities of violations against women. SRHR keeps being excluded by conservative and



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religious actors, which shows that a focus on law and policies alone by post-conflict initiatives may ignore patriarchal socio-cultural dimensions. As a result, despite the prevalence of violations of SRHR within the context of armed conflicts, this type of violence is still under-analysed and forms of violence such as forced contraception, enforced sterilisation, forced pregnancy, and forced abortion are seldom recognised by domestic or international justice systems. Because in this paper I argue that the lack of recognition of SRHR violations by transitional justice mechanisms leads to their repetition, if a transformative justice approach to transitional justice is to make a difference, this will need to dig deeper into the complex harms of SRHR violations, including their effects in the long term for victims, as well as to ensure a sociocultural change in society and consequently that there are guarantees of non-repetition for the new generations.

This leads us to the present. The lack of recognition of Timorese women’s suffering, together with conservative religious beliefs and a resurgence of traditional values have impacted health narratives and undermined the protection of women’s and girl’s reproductive rights and freedoms today. SRHR are a necessity and Timorese women and girls deserve to have them recognised and protected.

92 UN Security Council Resolution 2122 (2013), S/RES/2122.

93 Ministry of Interior of Timor-Leste, *National Action Plan on United Nations Security Council Resolution 1325 (2000) on Women, Peace and Security (2016-2020)*, accessed 30 November 2020, <https://www.wpsnaps.org/app/uploads/2019/09/Timor-Leste-NAP-2016-2020.pdf>

94 Victoria Tauli-Corpuz, *Press Release of the UN Special Rapporteur on the rights of indigenous peoples: Timor-Leste’s commitment to customary justice and conservation sets examples for other countries* (16 April 2019).

95 cf. Target 5.6 “ensure universal access to sexual and reproductive health and reproductive rights” of Goal 5 on gender equality.

96 Cf. SDGs *Timor-Leste Roadmap*, accessed 12 September 2021, <https://www.adb.org/sites/default/files/linked-documents/51063-001-sd-02.pdf>.



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