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Amy Fallon

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## East Timor: The Struggle for Independence

The United Nations mission in East Timor has been praised as an operation that has been fielded quickly and efficiently,<sup>1</sup> but residents of East Timor, such as the Noronho family, might disagree.<sup>2</sup> The Noronho family recently ended a year-long terrifying journey that started with the destruction of their home in East Timor and continued with various forms of violent harassment in an internment camp in West Timor. They are back again in East Timor, a country currently plagued with poverty, bereavement, and burned-out homes.

When the Noronho family returned to East Timor, United Nations soldiers, or “blue-helmets” as they are commonly known, subjected them to a series of intensive searches—their bags of rice, their pig, and their rolled umbrella. The soldiers were concerned that the Noronho family might be members of a local gang or militia that the Indonesian government is using to enforce its will through terror and violence.<sup>3</sup>

The Noronho family joined the majority of the East Timorese population when they voted for independence from Indonesia on 30 August 1999.<sup>4</sup> Like many, they knew the road to independence would be rocky. However, they never imagined that Indonesian army-supported militiamen (who have been compared to the guerrillas that terrorized Cambodian refugees in Thailand in the 1970’s and 1980’s) would rape and force members of their families to perform militia service.

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<sup>1</sup> Security Council Resolution 1264 of 15 September 1999, authorized a multi-national peacekeeping force under UN Charter Chapter VII named International Force East Timor, or INTERFET. Once the predominantly Australian force secured a semblance of peace in East Timor, the UN then authorized the UN Transitional Administration for East Timor (UNTAET) to maintain order and oversee the nation-building process. See U.N. Security Council Resolution 1264, U.N. SCOR, 54<sup>th</sup> Sess., U.N. Doc. S/RES/1264 (1999); U.N. Security Council Resolution 1272, U.N. SCOR, 54<sup>th</sup> Sess., U.N. Doc. S/RES/1272 (1999). INTERFET (Australian forces) were in East Timor within two weeks of Resolution 1264’s mandate.

<sup>2</sup> See Seth Mydans, *Shattered Lives in Timor: Now, to Try to Rebuild*, N.Y. TIMES, 27 October 2000 (providing background information on the Noronho family). This report utilizes Seth Mydans’ illustration of the Noronho family’s hardships during the transition to independence. *Id.*

<sup>3</sup> See *id.*

<sup>4</sup> See *East Timor Approaches Independence*, HINDU, 20 March 2001.

World leaders, like the East Timorese foreign minister Jose Ramos-Horta, have lost patience with the UN and wonder if things will *ever* get better in East Timor. "Absolutely nothing has been delivered in terms of justice for the many thousands of victims in East Timor," he said recently at the United Nations. "The Security Council, for its own sake, for its own credibility, must now begin to move towards establishment of a war crimes tribunal for East Timor."<sup>5</sup> Amnesty International expressed similar concerns about the UN's slow pace of investigations into the crimes committed against the UN staff and refugees in West Timor, which consequently compromises the rights of individuals as well as the justice system.<sup>6</sup>

With less than one year before independence, East Timor lacks a constitution or an effective judiciary. Moreover, the police force consists of UN peacekeepers and a few meagerly trained East Timorese. Schools are slowly coming into existence, but lack the resources necessary to provide a minimally adequate education.<sup>7</sup> Indeed, Jose Alexandre Gusmao, the nation's de facto leader, said in an interview that East Timor would close a number of much-needed schools and hospitals because it could not afford to keep them open.<sup>8</sup>

The Noronhos, like most East Timorese, apart from farmers, remain unemployed — the only real economic growth seems to come from temporary foreign aid coming from UN workers. The number of unemployed, in fact, may total as much as 80 percent of the East Timorese population of 800,000. Another 100,000 East Timorese remain as refugees in West Timor.<sup>9</sup> Many of the most

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<sup>5</sup> See Seth Mydans *The World and Justice for All?*, N.Y. TIMES, 22 October 2000, at A4.

<sup>6</sup> See *Justice for the Victims in East Timor: UN Must Act at Once on Commission of Inquiry's Report* (31 January 2000), available at <http://www.amnestyusa.org>.

<sup>7</sup> See Seth Mydans, *Emerging from its Crisis, East Timor Rebuilds*, N.Y. TIMES, 18 October 2000, at A3. See also Report of the Secretary-General on the United Nations Transitional Administration in East Timor, U.N. SCOR, 55<sup>th</sup> Sess., U.N. Doc. S/2001/42, at ¶ 31 (2001) (stating that "[m]ore than 820 schools as well as the National University of East Timor are now open. Some 200,000 students and 5,000 teachers in primary and secondary schools resumed classes in October [2000]. More than 6000,000 new school textbooks, about two-thirds of the total required, have been distributed to the districts") [hereinafter "Report of the Secretary-General"].

<sup>8</sup> See Mydans, *supra* note 7.

<sup>9</sup> See *id.*

important jobs are in civil service. However, few East Timorese are qualified or willing to take such positions.<sup>10</sup>

Trying to address this need, the United Nations has begun what spokeswoman Barbara Reis called Timorization. In a sort of on-the-job training on how to run a country, local leaders are playing an increasing role in the transitional administration.<sup>11</sup> Ms. Reis acknowledged the challenge the UN faces in creating an administration for East Timor and, more importantly, that the UN will likely have to play a continuing role even after its interim administration has ended. Elections are scheduled for 30 August 2001. Once an Assembly is elected and in place, they will have the duty of drafting East Timor's first Constitution within 90 days of the election.<sup>12</sup> With the draft Constitution enshrined, the Assembly will then take the form of a Parliament, which will have the responsibility of running the country and overseeing a presidential election. UNTAET will remain for at least two or three more years, according to Secretary-General Kofi Annan, to ensure that all of the elections are administered fairly.<sup>13</sup>

Mohammad Mahfud, a constitutional lawyer and *Indonesia's* newly appointed Defense Minister, disagrees with the UN's assessment of their work and attributes their involvement with the disastrous situation in East Timor. "The United Nations has failed to establish a government there," Mr. Mahfud said. "The East Timor people want to come back to Indonesia, but foreign countries that were behind the independence movement are creating violent situations to stop that from happening."<sup>14</sup> The violent situations to which Mr. Mahfud is referring are the slayings of three United Nations workers.<sup>15</sup> After militiamen linked to the Indonesian military

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<sup>10</sup> See Seth Mydans, *Ruined East Timor Awaits a Miracle*, N.Y. TIMES, 22 April 2000, at A1. Because of its colonial past, first under Portuguese and, then after the 1975 invasion, Indonesian control, East Timorese held few public offices and were not doctors, lawyers, teachers, or other civil servants. After 1975, the majority of these positions were held by Indonesians.

<sup>11</sup> See Mydans, *supra* note 7.

<sup>12</sup> See *East Timor Approaches Independence*, *supra* note 4.

<sup>13</sup> See Report of the Secretary-General, *supra* note 7, at ¶ 5. See also *Timor on Track for Independence, but Still in Need of Help: UNDP*, AGENCE FRANCE PRESSE, 19 March 2001.

<sup>14</sup> See Calvin Sims, *Indonesian Is Under Fire For Comments About Timor*, N.Y. TIMES, 24 September 2000, at 23.

<sup>15</sup> See United Nations High Commissioner for Refugees, Summary Report of the Inquiry into the Deaths of Three UNHCR Staff Members in Atambua, In-

viciously killed three United Nations workers, the United Nations withdrew its aid organizations from West Timor and has demanded that Indonesia disband its militias.<sup>16</sup>

Although the UN sent the United Nations Transitional Administration in East Timor (“UNTAET”) in February 2000 to coordinate humanitarian, rehabilitation and development assistance,<sup>17</sup> UNTAET faces many challenges. For instance, despite efforts to improve border security coordination between UNTAET and Indonesian authorities, paramilitary units from across the border in West Timor continue to shoot at UNTAET members and make incursions into East Timorese territory. Despite the fact that the United Nations-backed peacekeeping mission tripled the number of its troops along the border with the Indonesian-controlled half of the island in an effort to thwart attacks by anti-independence militias, there is still a widespread fear that militia members are lurking on the streets of Dili, East Timor’s shattered, rubble-strewn capital, ready to attack again.<sup>18</sup>

What started out as extraordinary faith by returning refugees in the new system of justice promised by the United Nations has diminished into swelling discontent in this physically and emotionally traumatized land as months and months have gone by and the country still lacks a functioning criminal justice system. There are no local police officers, no local laws or justice system and only the first rudimentary courts and trainee judges. Despite nearly total destruction of East Timor’s buildings during the struggle for independence, one small jail still stands in the capital, Dili. However, this contains only enough space for 45 inmates — the most serious criminals, such as murderers and rapists. According to one East Timorese official, other offenders are given a symbolic slap on the wrist and “are just being told not to do it again.”<sup>19</sup>

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donesia, on 6 September 2000, 8 December 2000, available at <http://www.unhcr.ch/evaluate/reports/wtsum1.pdf>.

<sup>16</sup> See *Aceh Situation Worsening, Human Rights Group Warns*, M2 PRESSWIRE, 26 September 2000 (stating that “all repatriation and humanitarian operations for over 100,000 East Timorese refugees in West Timor have been suspended since the killings”). See also U.N. Security Council Resolution 1319, U.N. SCOR, 55<sup>th</sup> Sess., U.N. Doc. S/RES/1319 (2000).

<sup>17</sup> See *supra* note 1.

<sup>18</sup> See, e.g., Report of the Secretary-General, *supra* note 7.

<sup>19</sup> See Seth Mydans, *East Timor, Stuck at ‘Ground Zero,’ Lacks Law, Order, and Much More*, N.Y. TIMES, 16 February 2000, at A11.

The Noronho family had no way of knowing that as recently as December 2000, the UN emphasized the need for urgent action as the country began its transition to independence. Specifically, the United Nations Security Council called for:

- decisive action to disarm and disband militia and end their activities;
- action to allow international relief agencies to return to West Timor and security for the staff on these agencies;
- action to improve the flow of information to refugees and cooperation to that effect among the Indonesian Government, the UNTAET, and the UNHCR;
- a credible, apolitical and internationally observed registration of the refugees, carried out in close cooperation with the United Nations agencies and other relevant actors.<sup>20</sup>

It is uncertain whether the December 2000 UN objectives or Security Council Resolution 1338, “commending the work of the UNTAET, encouraging support for the steps taken, reiterating its endorsement, underlining its concern, and recalling the relevant principles contained in earlier reports,” will remedy the various injustices in East Timor.<sup>21</sup>

It is certain that families like the Noronho family will continue to live in fear for their safety unless East Timor quickly establishes a rule of law domestically, and in conjunction with a UN-sponsored international tribunal, to sentence those who are accused of serious violations of fundamental human rights and international humanitarian law. Certain impediments, however, remain in the way. First, it is unlikely Indonesian authorities, nationalistic and still uneasy about East Timor’s succession, will hand over responsible parties currently taking refuge in Indonesia.<sup>22</sup> Second, the UNTAET

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<sup>20</sup> *Security Council Says Planning Should Begin For Strong International Presence in East Timor Following Independence*, reprinted in Security Council Press Release, U.N. Doc. SC/6972 (6 December 2000).

<sup>21</sup> U.N. Security Council Resolution 1338, U.N. SCOR, 55<sup>th</sup> Sess., U.N. Doc. S/RES/1338 (2001).

<sup>22</sup> See, e.g., *Indonesia: Killers’ Jail Terms Anger U.N.*, N.Y. TIMES, 5 May 2001, at A6 (stating that the Indonesian authorities issued 20 month sentences for the six men responsible for killing the three UN aid workers). The UNHCR sharply criticized the sentences as “a mockery.” *Id.*

has treated many cases as common crimes rather than internationally recognized crimes against humanity or war crimes. An employee of Human Rights Watch said, "there has been no evidence—either in Jakarta or Dili" of a systematic strategy to prosecute the top militia commanders or the Indonesian officers behind them."<sup>23</sup>

For example, Joao Fernandes, a member of a militia group that participated in one of the worst massacres following East Timor's vote for independence from Indonesia, was sentenced to a mere 12 years (as opposed to the 25 year maximum) for participating in a violent killing rampage that included hacking the limbs of 40 men as women and children were forced to act as witnesses.<sup>24</sup> Still, some believe that the joint East Timorese-UNTAET tribunal's sentences have corresponded to those handed by war crimes tribunals in Rwanda and Yugoslavia and is a just punishment.<sup>25</sup>

Few people share this sentiment, however. In fact, the UN has been the target of criticism over the pace of the prosecutions particularly since the militia has destroyed more than 85 percent of the territory's buildings, has killed hundreds or even thousands, and has turned as many as 150,000 East Timorese into refugees in the past several years. These critics do concede that the successful ability to investigate, arrest and fairly adjudicate charges of crimes against humanity is difficult due to logistical problems and lack of cooperation from the Indonesian authorities.<sup>26</sup>

Despite apparent shortcomings, the joint East Timorese-UNTAET judicial system is improving. East Timor's legal system has investigated over 180 cases, settled over 240, and filed 42 indictments as of 16 January 2001, and probably many more since then.<sup>27</sup> Moreover, there were only seventy East Timorese lawyers in the entire country at the time of independence — hardly enough to constitute a legal system. Therefore, UNTAET has begun the process of training East Timorese legal personnel. This includes "on-the-

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<sup>23</sup> See Mydans, *supra* note 5.

<sup>24</sup> Dan Murphy, *Conviction in East Timor falls short of calls for justice*, CHRISTIAN SCI. MONITOR, 30 January 2001, at 7.

<sup>25</sup> See *id.* (pointing out that Mohamed Chnade Othman, the UN's Chief Prosecutor at the tribunals for Yugoslavia and Rwanda, is also Chief Prosecutor in East Timor).

<sup>26</sup> U.N. Prosecutors Issues War Crime Indictments Against 11 in East Timor, 17 INT'L ENFORCEMENT L. REP. (Jan. 2001).

<sup>27</sup> See Report of the Secretary-General, *supra* note 7.

job training and mentoring . . . for 25 judges, 13 prosecutors, 8 public defenders, 25 court clerks, and 131 prison officers.”<sup>28</sup>

Nonetheless, looking at the totality of the circumstances, the United Nations democracy-building effort in East Timor leaves much to be desired: there is vast room for improvement in safeguarding justice, individual rights and most importantly, safety. In short, the UN’s mission to establish an interim government in East Timor has proven challenging and complex, its success depends on increased international and domestic efforts and financing,<sup>29</sup> reconciliation, and, most importantly, time.

*Amy Fallon*

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<sup>28</sup> *Id.* at 4.

<sup>29</sup> See U.N. Security Council Resolution 1338, *supra* note 21 (calling upon “international financial institutions, the United Nations funds and programmes, and bilateral donors who have committed resources . . . to fulfil their commitments and to accelerate disbursements . . .” and “urg[ing] the international community to provide financial and technical assistance to the creation of an East Timor Defence Force.”).

