



EAST TIMOR

Capital:

Dili

Population:

997,853

GDP:

\$440 million

GNI per capita:

\$520

Scores:

Civil Liberties: *4.77*

Rule of Law: *4.76*

Anticorruption and Transparency: *2.42*

Accountability and Public Voice: *4.72*

(scores are based on a scale of 0 to 7, with 0 representing weakest and 7 representing strongest performance)

by Ellen Bork

EXECUTIVE SUMMARY

East Timor regained its independence in 2002 after hundreds of years of Portuguese colonial rule, a quarter century of Indonesian occupation, and devastation by the Indonesian military and its sponsored anti-independence militias in the wake of the September 1999 referendum on autonomy. As a result, East Timor is at a very early stage of political and legal development and faces considerable obstacles to establishing good governance, protecting civil liberties, and developing an effective legal system.

The government of East Timor took office on May 20, 2002, succeeding the UN Transitional Authority for East Timor (UNTAET), which had administered East Timor since October 1999. East Timor's government was appointed by UNTAET from among the ranks of Fretilin, the party that won elections for 55 of the 88 seats in the constituent assembly that drafted the constitution. The constituent assembly itself

was transformed into a parliament by a provision in the constitution; no date has been set for parliamentary elections. The president was chosen by direct elections on April 14, 2002.

Despite independence, the United Nations (UN) continues to play an important role in East Timor's affairs. The United Nations Mission for Support in East Timor (UNMISET) is the lead international force, providing security and advisory services for the new democracy. UNMISET is currently scheduled to end its mission on May 20, 2004, although talks are reportedly under way with the aim of extending the mission. East Timor's parliament has passed only a handful of laws. UN regulations that have not been superseded by new legislation and that do not conflict with the new constitution are still in effect.

East Timor lacks experienced and trained personnel in virtually all fields, including the judiciary, police, prison service, executive and legislative branches, and the media. Anticorruption and transparency efforts do not have a sufficient basis in law, and East Timor has yet to create a constitutionally mandated ombudsman for corruption and human rights.

During the violence that followed the country's vote for independence in 1999, more than 75 percent of the population was displaced and thousands were killed; about 85 percent of the country's infrastructure was destroyed during the Indonesian military's withdrawal. In addition, under Indonesian rule few Timorese were allowed to rise to positions of influence, and therefore East Timor lacks skilled civil servants. The country's poverty, high illiteracy, and geographic isolation present additional development challenges; East Timor is Asia's poorest country, with per capita gross domestic product (GDP) of \$478 per year.¹ However, the country has received strong international support.² The UN sponsored the referendums for independence, twice rescheduled because of violent clashes, and international actors became increasingly involved in 1999, primarily in response to the violent atrocities committed by the Indonesian military and the acknowledgment that international forces were needed to halt further violence and maintain stability in the region.

Bringing to justice those responsible for the atrocities associated with the 1999 referendum is the top priority of the country's nascent judicial system. The Serious Crimes Investigation Unit (SCIU), staffed primarily by UN-appointed international prosecutors and judges, was established in 2000 to concentrate on serious crimes and those committed against humanity in 1999 after the referendum for independence. Approximately 50 percent of the murders have been investigated and prosecuted to date.

The courts and judicial system are a particular concern for the functioning of the new state. Excessive detention, delays, and failure to follow

proper procedure are common. Moreover, the establishment of Portuguese as an official language of the court creates further difficulties as most East Timorese, including many with responsibilities in the judiciary, do not speak it. The official languages are Tetum and Portuguese, but Tetum is more widespread, spoken by approximately 60 percent of the population.³ In addition, 15 indigenous languages are also spoken.

Considering its recent past, East Timor has a robust civil society and a healthy media climate. Still, isolation, occupation, and societal strife have deprived East Timor's people of the ingrained habits of a free and democratic society. It will take time for the rule of law, respect for separation of powers, and other notions of democracy to become entrenched in East Timor.

CIVIL LIBERTIES – 4.77

The constitution of East Timor was written under the guidance of the United Nations and approved on March 22, 2002. It was modeled roughly on the Portuguese constitution. East Timor's constitution, laws, and regulations guarantee civil liberties, including freedoms of conscience and belief, and prohibit abusive exercise of state power, including arbitrary arrest, unjustified imprisonment, and torture. The constitution "provides that all persons undertaking public duties or holding public office shall observe internationally recognized human rights standards, as reflected in the U.N. Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment."⁴ Evidence obtained through torture is excluded from judicial proceedings and no extradition is permitted to jurisdictions where there are grounds to believe an individual will be subject to torture or cruel, inhuman, or degrading treatment.

Challenges to the development of the judicial system include lack of competence and professionalism in the institutions of justice and law enforcement. Since independence, two violent demonstrations have resulted in deaths. In Baucau on November 23, 2002, one rioter was shot and subsequently died during a demonstration in reaction to police investigations after an allegation that a resident had stolen a pistol from the police station. On December 4, 2002, a violent demonstration developed out of a protest at the parliament building in Dili, and 2 students were killed and 15 injured by gunfire during a subsequent clash between security forces and rioters. According to Human Rights Watch (HRW), the police are increasingly the subject of complaints, but an effective mechanism for hearing and adjudicating these complaints does not exist.⁵ In the Baucau incident, community residents asserted that the police threatened and assaulted them while searching for suspects and gathering evidence.⁶

Excessive detention without trial is a serious problem. Regulations require systematic review of detentions and place precise limits on their duration. In practice, however, the lack of capacity in the justice sector has resulted in severe delays within the prison system. According to the U.S. State Department, at the end of 2002 pretrial detainees comprised two-thirds of the prison population, which as of April 2003 numbered 344 inmates.⁷ Approximately one-quarter of all detainees had been held beyond the date for review of their detention. According to the U.S. State Department, "Some detainees were in pretrial detention for periods longer than the maximum sentences for the crimes with which they had been charged."⁸

While excessive detention continues to be a major problem, in September 2003 the court of appeal ruled for the first time that a detention order by the special panel for serious crimes violated pretrial detention standards; it ordered the release of a defendant accused of crimes against humanity in connection with killings during the violence following the September 1999 referendum.⁹ In July 2003, a Chinese-Malaysian businessman held during investigation of criminal and border-control offenses was released on a habeas corpus petition before the Dili district court.

Periodic cross-border militia attacks by pro-Indonesia forces pose security threats for citizens, particularly in the western districts of the country. Incidents from January through March 2003—such as an attack by a group of men armed with semiautomatic weapons on a shuttle bus traveling from Maliana to the capital in February—raise concerns that former militias and armed groups are seeking to establish support within the country, especially near the provisional border with Indonesia. Currently, protection against such attacks is provided by UNMISSET security forces. In addition, the establishment of the East Timor Defence Force (Falintil-FDTL) subsequent to the 2001 UN demobilization of the Armed Forces for the National Liberation of East Timor (Falintil) guerrillas is estimated to have excluded 1,300 former Falintil guerrillas, leaving many disgruntled and constituting another potential threat. Since the Falintil-FDTL is seen as loyal to President Jose Alexandre "Xanana" Gusmao, opposition parties have been able to capitalize on this tension, fostering paramilitary activities.¹⁰ Two commissions have been created to study the issue of the former soldiers and to make recommendations.¹¹

The constitution guarantees the right of citizens, individually or in cooperation with others, to petition the state for the purpose of defending the constitution, rights, or private interests. The right is routinely exercised.

East Timor guarantees all persons equal rights and equal treatment under the law. Domestic violence against women is considered a high

priority, and the parliament is considering a draft law covering physical, psychological, sexual, and economic violence. Truth and reconciliation commissions have documented women's testimonies of rape, forced marriages, and sterilization programs during the 24-year Indonesian occupation. Dozens of women have testified to being held as sex slaves for the Indonesian military.¹² East Timor has ratified the UN Convention on the Elimination of All Forms of Discrimination Against Women. The Gender Affairs Unit created by UNTAET and maintained within the office of the prime minister under the new independent government promotes the role of women in government and civil society and offers training for women working in government.¹³ Trafficking in women and children is prohibited, although the problem is generally perceived to be growing. The UN police launched a crackdown on organized prostitution rings in the spring of 2003, partly in response to allegations that UN personnel frequent brothels.¹⁴

In practice, East Timorese society is male-dominated and patriarchal. While significant advances have been made in adopting international law and creating a constitution that guarantees human rights and the fundamental rights of the citizen, the state recognizes customary law that is not contradictory to the constitution. With the judicial system lacking capacity and concentrating heavily on serious crimes, local judicial decisions, especially in rural areas, are often based on traditional rules of conduct. Thus, those who traditionally face discrimination—women and minorities—may lack access to the equal rights declared in the new constitution.

Customary practices discriminate against women. For example, men are given preference over women in job hiring, and in some places the right to inherit or own property is denied to women. Even rape and domestic violence cases have routinely been handled according to traditional customary law rather than the judicial system, ensuring a lack of due process.

East Timor's constitution guarantees the freedoms of religion, conscience, and worship, as well as the separation of religious denominations from the state. In addition, it contains specific prohibitions against discrimination on the basis of religion, as well as ensuring the right to conscientious objection and the freedom to teach religion.

Approximately 90 percent of East Timor's people are Roman Catholic, and the church plays an influential role in society. During the drafting of the constitution, East Timor's highest ranking Catholic official, Bishop Belo, opposed the establishment of a national religion. Minorities include a small Muslim population, comprising both the descendants

of Arab traders and Malay migrants from Indonesian islands. Chinese migrants make up less than 1 percent of the population. A Protestant population also exists as a result of the Indonesian occupation. Reportedly, the Protestant population and Malay Muslim populations declined after 1999, while the small Arab-origin Muslim population, which was well integrated into East Timor society, remains.¹⁵

East Timor's ethnic and religious minorities are guaranteed protection under the constitution. There have, however, been incidents of violence and harassment, including the November 2002 burning of the Baucau mosque and the December 2002 vandalism of the Dili mosque. Ethnic Chinese also experience discrimination and harassment. The U.S. State Department cites a lack of law enforcement resources and prison space and an emphasis on extra-legal reconciliation for nonprosecution of perpetrators.¹⁶

The state guarantees the right of association so long as "the association is not intended to promote violence, and is in accordance with the law" (Article 43.1). Armed military and paramilitary groups that promote racism, xenophobia, or terrorism are specifically prohibited. The constitution also protects citizens against forced membership in organizations. East Timor has dozens of nongovernmental organizations (NGOs) and several political parties.

East Timor's people are free to demonstrate and do so frequently. The government has adopted a labor code based on International Labour Organisation (ILO) standards, and the country became a member of the ILO on August 19, 2003. The right to form trade unions is guaranteed under the constitution and has been exercised. However, two-thirds to three-quarters of the country's workforce is engaged in subsistence agriculture.¹⁷ In 2002, East Timor's lawyers went on strike to protest the refusal of border control officials to cooperate with court proceedings in a smuggling case. In October 2003, employees of an Australian firm went on strike to protest the firing of two workers. Controversy later erupted over the arrest of an Australian union organizer by the UN police—still in authority in Dili—who claim he struck an officer.

Recommendations

Efforts should be made to address deficiencies in the legal sector, including inadequate language skills and professional training. Such efforts should include recruitment of additional prosecutors, training in administrative skills and records management, and increased funds to the office of public defenders. The East Timor government must expand legal representation for suspects through increased legal aid programs. More steps are needed to reduce detentions, including a systematic review of existing

prisoners and expedited hearings for cases that have extended beyond a reasonable standard of detention. Judges, prosecutors, legal clerks, police officers, and lawyers need more training in the processing of cases and fair treatment of suspects. In cooperation with civil society, the East Timor government should invest in workshops to promote mutual understanding among ethnic groups to reduce future conflict and address existing prejudices. High priority must be given to intensive civic education for young people both in school and in their communities. Such education should include exposure to democratic societies in the region and around the world from which, by virtue of geography and recent events, East Timor has been isolated.

RULE OF LAW – 4.76

The independence of the judiciary is guaranteed under multiple provisions of the constitution. However, the independence and competence of the judiciary have been questioned because of poor funding, delays and backlogs, and failure to follow legal procedures. East Timor's judicial system is weak, inexperienced, and hampered by insufficient funds and the lack of trained personnel. Under the Indonesian occupation, East Timorese were not allowed to hold any civil service positions or become trained lawyers or judges; hence, East Timor's people and government officials have limited experience with administering the rule of law. The commitment to prosecute serious crimes from the period of the 1999 referendum places large demands on the criminal law sector. The establishment of Portuguese as an official language has caused serious problems, as many members of the judiciary and legal community, as well as the general public, cannot read Portuguese. Moreover, the transitions from both Indonesian rule and UN authority have created confusion and difficulties as new and inexperienced judicial authorities cope with questions of which law applies. There have been some concerns about the impartiality of the courts, and in particular a perceived bias against foreign parties in court cases.¹⁸

The parliament was scheduled to vote in October 2003 to make East Timor's applicable subsidiary law Indonesian, rather than Portuguese. The court of appeals had ruled in July that, in the absence of new legislation, Portuguese law was the *de facto* law of the country. This was then disputed by the legislature, causing confusion that hindered capacity-building efforts within the judiciary system. The new decision holds important implications for both civil and criminal law, especially in prosecuting the serious crimes of 1999.

Courts do not function in a timely and effective manner, and delays are common. Some district courts have barely functioned, and logisti-

cal problems forced one to relocate its proceedings to Dili. Improper procedures including misapplication of laws and reference to the wrong sources of legal authority cause excessive pretrial detentions. Other problems include the failure to transcribe proceedings and improper communication among judges and between judges and lawyers.

East Timor's judges are not adequately trained before assuming the bench. When Indonesian troops left East Timor at the end of 1999, very few East Timorese were qualified in law and none had experience as judges. The first judges were appointed by UNTAET for a probationary period of two years. In 2002, the parliament passed the Judicial Magistrates Law to regulate the judiciary. It creates a Superior Council of the Judiciary to oversee the judiciary and appoint, promote, discipline, and dismiss judges. The UN Special Rapporteur on the Independence of the Judiciary criticized the law as "inconsistent with the principles of judicial independence as set out in international standards."¹⁹ Concerns about the law include the vague standards of conduct and the lack of a detailed code of ethics.²⁰ Insufficient experience and training of personnel frequently results in mistakes in procedure and the law.

All persons accused of a crime are presumed innocent until proven guilty according to law. Trial proceedings are public, except that the court may exclude the public in cases in which the court determines that national security or the privacy of minors or victims of sex offenses warrants it. The constitution provides a defendant the right to be informed of charges and to contact an independent lawyer. Criminal law regulations require the state to provide a legal representative if the defendant cannot afford one. According to HRW, however, the public defender's office is "drastically under-resourced and inexperienced."²¹

Some concerns have been expressed about the attitude of the courts toward foreign investors. President Gusmao has called upon members of the legal system to "strip themselves of all kinds of xenophobia," adding that East Timor's development depends "on a policy of openness to foreign investment and on the application of a justice system that is honest, impartial and professional."²² The unexplained involvement of East Timor officials in a business dispute that led to the arrest, detention, release, and re-arrest of a Chinese-Malaysian businessman attracted concern; the businessman was subsequently released on a writ of habeas corpus.²³

East Timor is only in the early stages of establishing defense, police, and other security forces. An international force led by Australia and supported by the UN Security Council arrived in East Timor in September 1999 and was handed over to UNTAET in February 2000. Since then, UNMISSET has been in the process of transferring authority for policing and security to East

Timorese authorities, although it still retains a significant advisory role. As of September 2003, the National Police of Timor-Leste (PNTL) has trained 2,778 police officers of a projected total strength of 3,062. The constitution requires the security and police forces to be supervised by law and accountable to civilian authorities. A new internal security law has drawn criticism for delegating certain responsibilities to the executive. Meanwhile, the creation of a special police unit that would report to the prime minister is raising concerns that it might become a politicized rival force to the defense forces and police.

Both UNMISET security forces and the East Timor police have been criticized for their conduct during the December 2002 Dili riot. The riot demonstrates the potential for grave civil unrest that challenges the capacity of the new police and security forces. Paramilitary activity also poses significant challenges to the new security forces.²⁴

Much emphasis is placed on prosecuting those involved in the serious crimes and crimes against humanity committed during the 1999 withdrawal of the Indonesian military. Approximately 50 percent of the 1,300 murders recorded between August and November 1999 have been investigated and prosecuted to date, and trials for 10 priority cases and 5 widespread patterns of violence are expected to be completed by June 2004. The SCIU has indicted more than 230 people; however, a great majority of those indicted for serious crimes and nearly 90 percent of those indicted for crimes against humanity remain outside the country, primarily in Indonesia. Amnesty International has criticized the UN for not creating an international tribunal and instead allowing Indonesia to administer its own ad hoc human rights tribunal. The latter has been criticized internationally for failing to serve severe indictments; most defendants have been charged only with failing to prevent the atrocities rather than playing a direct role in them. As of August 11, 2003, the Indonesian tribunal had sentenced 6 military officers to prison and acquitted 11.

The constitution guarantees equal treatment under the law for all persons and guarantees respect for private property. However, the country must resolve land disputes resulting from its recent turbulent history as a Portuguese colony, then as a territory of Indonesia, and finally as an independent nation. In addition, because of the burning of government documents during the Indonesian military's withdrawal, little public record remains of land-ownership history.

Recommendations

Improvements in the performance and professionalism of East Timor's courts and law enforcement personnel are essential. Police officers and military forces should have human rights training and greater exposure to professional security forces. Greater attention needs to be given to the training of recruits, especially in the riot-police force. The use of

Portuguese as the official language of the legal system—at least in the short term—should also be reconsidered. Moreover, the advice of some international experts to give a greater role to international personnel in the judicial system on a temporary basis should be considered, but only if care is taken to promote the transfer of skills to East Timorese. More effort needs to be directed to educating the population on new laws, and incidents of bias need to be strongly condemned.

ANTICORRUPTION AND TRANSPARENCY – 2.42

East Timor's underdeveloped legal system has not yet created anticorruption laws and practices. The constitution provides for an ombudsman, or *Provedor Direitos Humanos e Justiça*, to investigate allegations of human rights abuse, corruption, and abuse of power. A draft law creating the post has not been passed. There are concerns about a rise in corruption and its effect on the development of East Timor's economy, especially after future oil and gas revenues begin to flow in. Low-level corruption, such as demands for bribes by civil servants issuing permits and kickbacks for state contracts, adversely affects businesses.²⁵

Cabinet officers must make written declarations of their commercial and financial assets and those of their spouses. These declarations are maintained in a registry. However, according to regulation, these declarations are to be kept confidential and only made public by law.²⁶

The constitution provides for parliamentary approval of the budget, laws precluding secret appropriations and funds, and monitoring by both the parliament and specialized courts of the judiciary. Training of the parliament in oversight is a priority of the international community; however, East Timor is still at the very earliest stages of development of separation of powers and the necessary skills for monitoring public expenditure. The continued deep involvement of international organizations in distributing funds makes it difficult to assess the government's performance on many of these issues. The right to petition is guaranteed by the constitution and is freely exercised.

Recommendations

The establishment of the constitutionally mandated ombudsman, or *Provedor de Justiça*, and the resources necessary to support the office are urgently needed. If, as is the case in the judicial system, personnel are insufficiently trained, the government of East Timor should request international assistance to help run the office of the ombudsman, with a special emphasis on training East Timorese as soon as possible. The government should introduce tougher measures to address corruption and introduce protection for whistle-blowers.

Open bidding should be used in all government contracts and the terms of public contracts should be made available to the public. Strict measures should be introduced into the bureaucracy involving conflicts of interest and nepotism. The government should set up an anticorruption agency.

ACCOUNTABILITY AND PUBLIC VOICE – 4.72

East Timor's constitution provides for "free, direct, secret personal and regular universal suffrage" (Article 93). The great sensitivity to power and authority among East Timor's people, bred by decades of brutal occupation and the lingering divisions in society dating back to the 1970s, places special demands on East Timor's leaders. East Timor's executive branch was appointed by UNTAET prior to independence and is dominated by members of Fretilin, the party that won the majority of seats in elections to the constituent assembly. Mari Alkatiri, the secretary-general of Fretilin, who had served as economics minister and then chief minister in unelected bodies that advised and collaborated with UNTAET, became prime minister in the independent government. President Gusmao was elected on April 14, 2002, in balloting widely credited as being free and fair. Members of East Timor's parliament were elected as delegates to the constituent assembly in voting also widely credited as being free and fair. The elections were held under UNTAET regulations, which also established electoral offenses and a mechanism to hear complaints. New laws for future elections have not yet been passed by independent East Timor.

On January 31, 2002, the constituent assembly voted to convert itself into a full parliament. The term of office was not decided, and no further elections are scheduled. Nevertheless, the constitution prohibits the holding of any political office for life or for an indefinite period.

A public service commission, established by UNTAET in March 2000, oversees the appointment and operation of the civil service. A bureau based in the prime minister's office is concerned with extending opportunities for women.

Although official information is made public, the methods of publication are not adequate. East Timor's official gazette disseminates laws and other material mainly in Portuguese, which only a tiny percentage of East Timor's people understand, and many UNTAET regulations are not available in Tetum or even in Portuguese. East Timor's government and NGOs provide information and in many cases the text of draft laws. However, often material is available only in languages not spoken by the vast majority of East Timorese, such as English and Portuguese.

East Timor's independent civic sector is active; the government does not interfere with it in any obvious way. Prior to independence, there was some

consideration given to regulations on noncommercial organizations, but no action was taken. However, the Immigration and Asylum Law contains provisions that could limit the rights of foreigners involved in NGO activities, especially those organizations active in promoting democracy and training political parties.

The constitution provides and government regulations guarantee freedom of speech, information, press, and the media. The constitution has been criticized for a provision declaring the right to inform and be informed impartially as a violation of the prohibition on censorship. Concerns have also been expressed about the constitution's provision allowing suspension of rights of freedom of expression to protect human dignity.

East Timor has daily newspapers, weekly magazines, and state radio and television stations, which operate freely in general. East Timor's television and the council of administration that governs it are officially government-funded, but in practice they are overwhelmingly supported by contributions from international donors. Some journalists fear intimidation from the ruling party through complaints about their reporting. There have been no reported incidents of violent intimidation of journalists, but the judicial system is still dealing with the murders of journalists in East Timor during the referendum violence of 1999. Some powerful state and non-state actors have engaged in criticism of the media for the content of their reporting, but this has elicited strong declarations from top East Timor officials rejecting censorship or other actions against journalists.

Government criticism and interference with media are a matter of some concern. A letter dated August 4, 2003, from a cabinet-rank official to the supervisory authority of the public broadcasting board criticizing journalists for "a lack of ethics" in reporting that he claimed was irresponsible and partial elicited criticism from the opposition and from the broadcasting board. The letter stated that reporters of the public broadcasting authority "cannot transform the same body into an instrument of propaganda against the government or other sovereign body, let alone broadcast rumors and misinformation with a view to agitate the population."²⁷ An opposition lawmaker called the letter a dangerous attempt to control the public media, and the president of the public broadcasting system and interim director of Radio and TV Timor-Leste rejected any effort at interference as incompatible with the regulation on broadcasting.²⁸ On another occasion, Archbishop Belo called for the deportation of a correspondent of the Portuguese news service, Lusa, for being "against the Timorese people and against the Catholics of Dili."²⁹ Both East Timor's prime minister and foreign minister countered the cleric's remarks with statements of support for freedom of speech, press, and information.³⁰

Recommendations

Top priority must be given to setting a date, or date range, for the first parliamentary election and to passing laws to govern the electoral process. The government should set up a professional independent body accountable to parliament to administer the election. The new election body should evaluate the previous election to highlight specific problems that need to be addressed. In addition, East Timor's leaders must be extremely vigilant about their conduct and their respect for separation of powers, the independence of the judiciary, and freedoms of speech and media. The strength and independence of weaker parts of the political system—judiciary, parliament, and the media—need to be enhanced through precedents and new initiatives. For example, a journalists' media commission should be encouraged in order to provide a voice for the media, and laws to protect journalists should be introduced. Transparency, accessibility, and rigorous respect for the different branches and functions of government, as well as the role of the media in a free society, are essential to the success of East Timor's democracy.

Ellen Bork has worked on and written about democracy in Asia in several positions including at the International Republican Institute, the Senate Foreign Relations Committee, and most recently the Project for the New American Century.

Notes

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²⁷ UNMISSET Local Media monitoring, courtesy ETAN.

²⁸ Ibid.

²⁹ East Timor Annual Report (Paris: Reporters Without Borders [RSF], 2003).

³⁰ East Timor Annual Report.
