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# Letter from Dili

By Mark Hunter, Darwin barrister

“This scene is like something from a Somerset Maugham short-story”, remarked Justice Virginia Bell while visiting Darwin in 2003. Her Honour was describing the inspiring sunset vista at the Darwin Sailing Club, having that day been the guest speaker at the Opening of the Legal Year lunch.

Dili is the closest major city to Darwin; it is about as far west as the town of Elliot is south of the Territory capital. But the assault upon the senses, which is part of daily life in Dili, is very unlike the inspiring Darwin experience.

The eastern half of the island of Timor is imbued with a tragic history, some of which is highly visible in Dili. Western visitors to Dili in the 19<sup>th</sup> century were appalled by the lack of colonial infrastructure<sup>1</sup>. When in 1975 the Portuguese finally left East Timor (as it was then known), only 20 kilometres of road sealing had been completed.

After 1975 East Timor struggled to navigate further difficulties; still others have arisen since Timor-Leste became the world’s newest nation in 2002. In the wake of civil unrest in 2006, and the attempted assassination of President Ramos-Horta in 2008, Timor-Leste has been described by the UN as a country facing a “human rights crossroads”.<sup>2</sup> During the three month state of siege imposed in February last year, 58 allegations, ranging from beatings to death threats, were reported to the Provedor for Human Rights and Justice - the independent, government-financed ombudsman’s office.

Approximately 20 defendants have waited on remand for more

than two years in Becora prison in relation to trials which are still pending from the violence in 2006, when tensions between the police and military resulted in 37 deaths and 100,000 internally displaced citizens. There is a backlog of approximately 5,400 cases in the Prosecutor-General’s office, and a shortage of lawyers entitled to appear in court.

The court system and police force function poorly in Timor-Leste, and a legal regime has yet to be established for the settlement of land disputes. Vigilante justice is common, and some militant groups are reportedly offering themselves as enforcers in communal conflicts and organized criminal activity.<sup>3</sup>

Timor-Leste receives substantial international support. Unlike some other countries grappling with similar problems, Timor-Leste also has a strong constitution, a democratic government, a functioning parliament and significant financial resources.

The Judicial System Monitoring Program<sup>4</sup> (JSMP) is a Timorese non-government organization and human rights watchdog. JSMP was established in 2001 to help increase the Timorese justice system’s level of compliance with international human rights standards, particularly those relating to a fair trial, and to contribute to good governance practice. In carrying out its mission JSMP acts as an advocate for law reform, and utilizes the internet and radio to disseminate relevant information to the public in Tetun, English and Bahasa Indonesia.

The broad objective of JSMP’s activities is to contribute to the development of a strong and transparent justice system, through targeted advocacy and the production of constructive recommendations based on credible research. In response to specific problems, JSMP also engages in training (police and community groups), conducts workshops, and assists victims throughout Timor-Leste to access the justice system.

In addition to ordinary crimes jurisdiction, JSMP has monitored cases involving crimes against humanity heard by the Special Panel for Serious Crimes as well as the work of the Commission for Reception, Truth and Reconciliation.

Through justice updates, press releases, thematic reports and national radio programmes, JSMP informs people throughout Timor-Leste about justice sector processes and human rights principles. JSMP is a local NGO at the forefront in Timor-Leste. JSMP advocates in support of the rule of law and the principle of the separation of powers. Recent justice updates include criticism of the President’s decision last April to pardon approximately 80 prisoners, including a former minister serving a seven year prison sentence for manslaughter and distributing weapons to a civilian ‘hit squad’ in 2006. An Australian citizen accused of being implicated in last year’s attempted assassination was subjected to house arrest in Dili without charge for more than one year. A short time after he was discharged from Royal Darwin Hospital, the President declared on ABC Radio that this Australian was “number one



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responsible”.<sup>5</sup>

Grenfell succinctly explains a major problem associated with advancing the rule of law in Timor-Leste:

*“The international community is eagerly promoting the concept of the rule of law in post conflict states such as Timor-Leste in the belief that it will lead to political and social stability. To attract international legitimacy, Timorese leaders are also keen to be seen to be invoking the rule of law although the manner in which they understand and use the concept often diverges from dominant Western understandings. The concept of the rule of law assumes that the state enjoys a monopoly of law. This article examines the resonance of the rule of law at the local level in Timor-Leste in light of the fact that customary*

*law is the type of law with which people are likely to have first and frequent contact as the state has little reach beyond the capital. It concludes by recommending that all actors promoting the rule of law in post-conflict states need to equip themselves with a strong understanding of how the population engages with legal norms in order to effectively promote the rule of law.”*<sup>6</sup> (emphasis added)

The principle of separation of powers is enshrined in section 69 of the Constitution. In December 2008, however, the President convened a meeting in the office of the Prosecutor-General, to personally question rebels suspected of involvement in the February 2008 shooting. He reportedly told journalists that during this astonishing and deeply troubling session he pleaded with his attacker to

confess “so that others who were with you but not directly involved with the shooting of me are not penalised”.<sup>7</sup>

JSMP’s Legal Research Unit (LRU), Women’s Justice Unit, Outreach Unit and Victim Support Service comprise 20 officers and support staff – all of whom work from a modest five bedroom house in central Dili. The Australian Agency for International Development (AusAID) is one of several international donor organizations supporting JSMP projects. **As the Legal Training Officer, my work primarily concerns developing the legal analytical and written communication skills of the four Timorese lawyers who comprise the LRU.**

Bahasa Indonesia is well understood by the vast majority

of adults living in Dili, and it is designated as one of Timor-Leste's two "working" languages. Most JSMP professional staff possess qualifications dating from their time as student activists in Indonesia. I am able to communicate reasonably well with my colleagues in Bahasa, and have attended Tetun language classes. Much less understood by locals is Portuguese, which is Timor-Leste's second national language. Developing a culturally sensitive rapport with Timorese colleagues is the key to a good working relationship. Many foreigners are working in Timor-Leste, each of whom demonstrates varying levels of professionalism and cultural sensitivity.

JSMP anticipates that later this year LRU lawyers will themselves begin offering human rights training sessions for other Timorese lawyers. Upon ratification, all core UN treaties have become part of the laws of Timor-Leste, pursuant to section 9(2) of the Constitution. Since continuing legal education is not mandatory in Timor-Leste, JSMP hopes to be able to offer these training sessions for free – including lunch!

The NT Legal Aid Commission (NTLAC) also assists the important work undertaken by JSMP. NTLAC has this year made a donation to the JSMP law library and has enquired in relation to a 'twinning' arrangement with its own library, as part of the program run by the Australian Law Librarians' Association. Former NAAJA criminal solicitor Payal Saraf now manages the Access to Law project undertaken in Timor-Leste by Advocates Sans Frontiers. It is encouraging when the Territory legal fraternity demonstrates an international vision.

Upon my arrival in mid-January, the prevalence and profile in Timor-Leste of Indonesian popular culture took me somewhat by surprise. An explanation for this situation is offered by Sloman:

*(Indonesian) pop culture provides an escape from the hardship of daily subsistence and high unemployment in East Timor. There is little access to reading material, particularly in Tetun, and illiteracy is widespread. Television and most local radio stations air Timorese or Portuguese based content, but they have only limited broadcasting hours and a limited range of low-quality local radio and television productions. All of this means that there is little to keep people's attention. It makes sense that, with the increasing accessibility and affordability of 'parabola' satellite TV and the sale of cheap Indonesian VCDs and cassettes, Indonesian pop culture has remained popular over the last ten years.*<sup>8</sup>

Furthermore, approximately 3500 Timorese are studying at Indonesian universities. A working knowledge of Bahasa Indonesia therefore remains a priority for a minority of younger Timorese.

Competing conceptions abound in Timor-Leste, concerning the meaning of "reconciliation" with Indonesia. The Prime Minister has for years advocated in favour of forgiveness, forgetting and closure. But as Lia Kent observes:

*If ordinary peoples' lives had improved, and the promises of jobs, better lives and development had materialised, perhaps, as Gusmão had hoped, people would be less inclined to think about the past. Instead, poverty has worsened since*

*independence and people dwell on their losses: their loved ones who died or disappeared, their lost educational opportunities due to the conflict, the damage to their homes and livestock, their conflict-related injuries, their lack of housing and clean water and the leadership's broken promises of development. The past cannot be left behind while its effects still reverberate in the present in very concrete ways. As the human rights advocate Joaquim Fonseca puts it, 'the widow is reminded of her loss every time she sits down to the dinner table or it comes time to pay school fees'.<sup>9</sup>*

In Liquica and Suai monuments mark the sites of the two church massacres of 1999. These monuments stand as challenges to Prime Minister Gusmao and President Ramos-Horta's conception of reconciliation as 'forgetting' and 'closure.' On 4 April 2009 hundreds attended a memorial in Liquica, to mark the tenth anniversary of the day when scores of men, women and children were massacred by pro-integration militia. The President and Prime Minister were invited to this memorial; neither attended.

Some of Timor-Leste's problems, especially the demographic crisis, can appear to be overwhelming. Approximately 50 percent of the total population of 1.1 million are aged less than fifteen years, and a similar proportion of young adults are unemployed. In excess of 95 percent of Timorese are Roman Catholic. The world's highest birth rate (7.8 children per woman) and very high maternal mortality persist in Timor-Leste. The rate of infant mortality in 2007 was almost six percent. If the population continues to grow at the current rate of 3.2 percent, the population is projected to

double by 2026.

Many residents in the districts feel that some of their basic needs are ignored by the national government. Gender based violence remains a deeply entrenched and major problem in Timor-Leste, despite some support from the Government for relevant education initiatives. A groom usually pays a substantial *barlake* (bride-price) and a wife will almost inevitably be economically dependent upon her husband. Domestic violence is perceived as a private issue and is rarely the subject of an official complaint; a complaint which would be tantamount to seeking a divorce. A disturbing Timorese idiom is: "*bikan ho kanuru kona malu*" ("a dish and spoon will hit each other").

The security situation in Timor-Leste is not easily assessed from week to week without expert knowledge. Large numbers of Timorese again feel confident to socialise along the Dili waterfront. I suspect, however, that serious civil unrest could again flare in this country.

In one of Asia's poorest countries, 43 percent of the population is either food insecure or highly vulnerable to food insecurity. In excess of 40 percent of non-Dili residents live below the national poverty line of US\$0.55 per day. Although 80 percent of Timor-Leste's population directly depend upon agriculture for their livelihood, the budget of the Ministry for Agriculture, including agricultural research, is only *four* percent of the total Government budget.<sup>10</sup>

It is against this backdrop that JSMP is this year seeking support for an inaugural and national human rights art award for Timor-Leste. This project will be loosely modelled upon Darwin's annual *Rights on Show* art award and will offer substantial cash prizes. The exhibition will tour from Dili, throughout the districts of Timor-Leste. This project will promote human rights awareness, engage youth in a constructive manner, and enhance the capacity of citizens to communicate with their Government. I expect, however, that the global economic crisis will have a severe impact on funding for development assistance projects by donor organizations.

Not all is bleak, however. I have made the acquaintance of many kind-hearted Timorese, some of whom have become good friends. The implementation of imaginative and sustainable development projects in Timor-Leste can be subject to less 'red-tape' than in a developed country. Unlike in Darwin, fine coral can be found close to Dili, and easily viewed with snorkelling equipment. On weekends I also enjoy bushwalks outside the smoky metropolis of Dili. There are plenty of Somerset Maugham vistas to be enjoyed in the nearby districts of Timor-Leste!

#### Footnotes

1. For example, Wallace A.R., *The Malay Archipelago* (1869), Periplus Classics, p 150 ff
2. UNMIT/UNHCHR, Report on Human Rights Development in Timor-Leste: The Security Sector and

Access to Justice (1 September 2007 - 30 June 2008).

3. See generally, Scamary J., *Trapped in the legacy of the past*, Inside Indonesia, Issue 96 (4-6/2009).

4. [www.jsmp.minihub.org/Language\\_English/index\\_english.html](http://www.jsmp.minihub.org/Language_English/index_english.html) To subscribe send a blank email to: list-subscribe at jsmp.minihub.org (Daily News and JSMP Publications); jsmpreports-subscribe at jsmp.minihub.org (JSMP Reports); justiceupdate-subscribe at jsmp.minihub.org (JSMP Justice Updates); media-subscribe at jsmp.minihub.org (JSMP Press Releases)

5. "Ramos-Horta points finger at assassination attempt masterminds" *The World Today* (28 March 2008) <http://www.abc.net.au/worldtoday/content/2008/s2201603.htm> (viewed 26 March 2009)

6. Grenfell L., Promoting the rule of law in Timor-Leste, paper delivered 19 September 2008 at Flinders University workshop: "Timor-Leste: Security, Development and the Nation-Building Agenda", Abstract.

7. Murdoch R., "28 charged over East Timor attacks", *The Age*, 4 March 2009.

8. Sloman A., A hybrid popular culture, Inside Indonesia, Issue 96 (4-6/2009).

9. Kent L., The politics of remembering and forgetting, Inside Indonesia, Issue 96 (4-6/2009).

10. UNMIT, Thematic Report on the Right to Food in Timor-Leste (2008) [http://www.ohchr.org/Documents/Countries/UNMIT2008\\_Dec.pdf](http://www.ohchr.org/Documents/Countries/UNMIT2008_Dec.pdf). (viewed 26 March 2009).

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