

071204406 [2007] RRTA 86 (27 April 2007)

DECISION RECORD

RRT CASE NUMBER: 071204406

COUNTRY OF REFERENCE: East Timor

TRIBUNAL MEMBER: Adolfo Gentile

DATE DECISION SIGNED: 27 April 2007

PLACE OF DECISION: Melbourne

DECISION: The Tribunal remits the matter for reconsideration with the direction that the applicant satisfies s.36(2)(a) of the Migration Act, being a person to whom Australia has protection obligations under the Refugees Convention.

STATEMENT OF DECISION AND REASONS

APPLICATION FOR REVIEW

This is an application for review of a decision made by a delegate of the Minister for Immigration and Citizenship to refuse to grant the applicant a Protection (Class XA) visa under s.65 of the *Migration Act 1958* (the Act).

The applicant, who claims to be a citizen of East Timor, arrived in Australia in the early 2000s and applied to the Department of Immigration and Citizenship for a Protection (Class XA) visa. The delegate decided to refuse to grant the visa and notified the applicant of the decision and her review rights by letter.

The delegate refused the visa application on the basis that the applicant is not a person to whom Australia has protection obligations under the Refugees Convention. The applicant applied to the Tribunal for review of the delegate's decision.

The Tribunal finds that the delegate's decision is an RRT-reviewable decision under s.411(1)(c) of the Act. The Tribunal finds that the applicant has made a valid application for review under s.412 of the Act.

RELEVANT LAW

Under s.65(1) a visa may be granted only if the decision maker is satisfied that the prescribed criteria for the visa have been satisfied. In general, the relevant criteria for the grant of a protection visa are those in force when the visa application was lodged although some statutory qualifications enacted since then may also be relevant.

Section 36(2)(a) of the Act provides that a criterion for a protection visa is that the applicant for the visa is a non-citizen in Australia to whom the Minister is satisfied Australia has protection obligations under 1951 Convention Relating to the Status of Refugees as amended by the 1967 Protocol Relating to the Status of Refugees (together, the Refugees Convention, or the Convention).

Further criteria for the grant of a Protection (Class XA) visa are set out in Parts 785 and 866 of Schedule 2 to the Migration Regulations 1994.

Definition of 'refugee'

Australia is a party to the Refugees Convention and generally speaking, has protection obligations to people who are refugees as defined in Article 1 of the Convention. Article 1A(2) relevantly defines a refugee as any person who:

owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence, is unable or, owing to such fear, is unwilling to return to it.

The High Court has considered this definition in a number of cases, notably *Chan Yee Kin v MIEA* (1989) 169 CLR 379, *Applicant A v MIEA* (1997) 190 CLR 225, *MIEA v Guo* (1997)

191 CLR 559, *Chen Shi Hai v MIMA* (2000) 201 CLR 293, *MIMA v Haji Ibrahim* (2000) 204 CLR 1, *MIMA v Khawar* (2002) 210 CLR 1, *MIMA v Respondents S152/2003* (2004) 222 CLR 1 and *Applicant S v MIMA* (2004) 217 CLR 387.

Sections 91R and 91S of the Act qualify some aspects of Article 1A(2) for the purposes of the application of the Act and the regulations to a particular person.

There are four key elements to the Convention definition. First, an applicant must be outside his or her country.

Second, an applicant must fear persecution. Under s.91R(1) of the Act persecution must involve “serious harm” to the applicant (s.91R(1)(b)), and systematic and discriminatory conduct (s.91R(1)(c)). The expression “serious harm” includes, for example, a threat to life or liberty, significant physical harassment or ill-treatment, or significant economic hardship or denial of access to basic services or denial of capacity to earn a livelihood, where such hardship or denial threatens the applicant’s capacity to subsist: s.91R(2) of the Act. The High Court has explained that persecution may be directed against a person as an individual or as a member of a group. The persecution must have an official quality, in the sense that it is official, or officially tolerated or uncontrollable by the authorities of the country of nationality. However, the threat of harm need not be the product of government policy; it may be enough that the government has failed or is unable to protect the applicant from persecution.

Further, persecution implies an element of motivation on the part of those who persecute for the infliction of harm. People are persecuted for something perceived about them or attributed to them by their persecutors. However the motivation need not be one of enmity, malignity or other antipathy towards the victim on the part of the persecutor.

Third, the persecution which the applicant fears must be for one or more of the reasons enumerated in the Convention definition - race, religion, nationality, membership of a particular social group or political opinion. The phrase “for reasons of” serves to identify the motivation for the infliction of the persecution. The persecution feared need not be *solely* attributable to a Convention reason. However, persecution for multiple motivations will not satisfy the relevant test unless a Convention reason or reasons constitute at least the essential and significant motivation for the persecution feared: s.91R(1)(a) of the Act.

Fourth, an applicant’s fear of persecution for a Convention reason must be a “well-founded” fear. This adds an objective requirement to the requirement that an applicant must in fact hold such a fear. A person has a “well-founded fear” of persecution under the Convention if they have genuine fear founded upon a “real chance” of persecution for a Convention stipulated reason. A fear is well-founded where there is a real substantial basis for it but not if it is merely assumed or based on mere speculation. A “real chance” is one that is not remote or insubstantial or a far-fetched possibility. A person can have a well-founded fear of persecution even though the possibility of the persecution occurring is well below 50 per cent.

In addition, an applicant must be unable, or unwilling because of his or her fear, to avail himself or herself of the protection of his or her country or countries of nationality or, if stateless, unable, or unwilling because of his or her fear, to return to his or her country of former habitual residence.

Whether an applicant is a person to whom Australia has protection obligations is to be assessed upon the facts as they exist when the decision is made and requires a consideration of the matter in relation to the reasonably foreseeable future.

CLAIMS AND EVIDENCE

The Tribunal has before it the Department's file relating to the applicant. The Tribunal also has had regard to the material referred to in the delegate's decision, and other material available to it from a range of sources.

The applicant appeared before the Tribunal to give evidence and present arguments. The Tribunal also received oral evidence from Person 1. The Tribunal hearing was conducted with the assistance of an interpreter in the Indonesian and English languages.

The applicant was represented in relation to the review by her registered migration agent who attended the hearing. A support person also attended the hearing.

The applicant's claims were presented to the Tribunal in a submission by the applicant's adviser and are reproduced below (with minor editing).

[Information about the applicant's history amended in accordance with s.431 as it may identify the applicant]

The applicant is a woman of Lorosae ethnicity; she undertook tertiary education before she left East Timor. The applicant came to Australia because Sibling 1 was a victim of the violence that happened in the early 2000s, when the military opened fire on unarmed people in the street after the UN had attempted to negotiate a ceasefire. [Information about the applicant's history deleted in accordance with s.431 as it may identify the applicant]. The applicant has a well founded fear of persecution on the basis of her ethnic group, and the political opinion attributed to her because of her ethnic group.

The applicant is a Lorosae woman and grew up in Village A.

The applicant first noticed the conflict between Lorosae and Loromonu following an appeal to the government by a group of soldiers who became known as 'the petitioners'. As explained below, the soldiers, who were of Loromonu ethnicity, complained to the government that they were facing discrimination within the army, to the advantage of their Lorosae counterparts. When the government chose not to respond to their complaints, the petitioners rioted and were eventually sacked. After they were sacked, many Loromonu people sided with the petitioners and struck out against the Lorosae. There were riots in the streets around the country and a number of people were killed. Violence continued in the country as head of the military police Alfredo Reinado deserted his position in the army, taking with him a number of his troops, including several police, and weapons, to join the petitioners.

During this time, the applicant reduced her studies, as she was afraid for her safety as a Lorosae. The applicant was at her place of study when one of her friends received a phone call to tell her that 'the petitioners' were rioting in the streets, outside of government house. The applicant heard they were armed, and

reeking havoc in the city. She was afraid and so went home, where she thought she would be safe.

The riots spread around the country and also within Dili. The applicant lived with her family, in a part of Dili which is populated by a mixture of both Loromonu and Lorosae people, and as the riots began, gangs of Loromonu youths began attacking Lorosae people and vandalising and destroying property known to belong to Lorosae.

The applicant was at home one night, when she saw gangs of youths roaming the streets, armed with knives, rocks, arrows and other weapons. The youths were Loromonu, and were threatening and aggressive towards the applicant and her friends. They yelled at the applicant, calling her a bitch and a prostitute; they said that all Lorosae women were whores.

The applicant received further threats as a person of Lorosae ethnicity by telephone. The applicant was at home when she received a phone call late one evening. She was threatened and accused of being arrogant.

Over this period, the applicant was in constant [contact] with her family, to make sure they were alright. They would speak on the phone frequently, but when the applicant tried to contact one of her siblings, there was no answer. [Information about the applicant's history deleted in accordance with s.431 as it may identify the applicant].

Since the applicant left Country C, she has maintained contact with her family.

Sibling 2 was in a government organisation and until recently, was living outside of Dili. Sibling 2 was too afraid to go into Dili because he/she is Lorosae and feared being attacked. Sibling 2 was in constant fear and was worried that he/she would be targeted by those who attacked Sibling 1. Sibling 2 left East Timor in the early 2000s, for Country D. Another of the applicant's siblings, has also left East Timor, for Country E.

All the rest of the applicant's siblings have returned to Village A. They cannot work. The applicant's parents remain too afraid to leave their village for fear that they will be hurt or killed because they are Lorosae.

Sibling 3 fled Dili for Village A after narrowly escaping an attack by a group of Loromonu officials and civilians. He/she remains with the family, too afraid to return to Dili and resume work.

One of the applicant's siblings, who lived with the applicant in Dili, and who was studying before the violence began, fled back to Village A, and remains there with their parents. He/she will not return to Dili, and could not resume studies as there are few teachers willing to return to work, and it seems that the school is still not functioning properly.

The applicant's parents remain too afraid to leave their village for fear that they will be hurt or killed because they are Lorosae.

The applicant fears returning to East Timor because she is of Lorosae ethnicity. Her family have been targeted; her sibling was severely injured, and her other sibling narrowly escaped an attack. Her parents remain in their village, too afraid to travel anywhere else in the country. The applicant's house and that of her sibling have been looted and destroyed by gangs of Loromonu youths.

Further, the applicant fears persecution because of her actual or imputed political opinion or as a person of Lorosae ethnicity. She fears those who have acted against Lorosae people, and the government, such as Alfredo Reinado.

Finally, the applicant is afraid to return to Dili because the authorities cannot protect her. Despite the presence of international peacekeeping forces and police, violence in Dili continues. There is no protection, particularly at night, where nobody will leave home after 6pm for fear of attack.

The adviser's submission incorporated country information relevant to the claims. The Tribunal will refer to this in detail as and when necessary in this decision.

At the Tribunal hearing the applicant described her work history. She worked in her profession in Village A until she went to Dili several years ago and was eventually employed as local staff by an international organisation. Before she came to Australia she was working as an administrative assistant.

She stated that she feared for her life because she is a Lorosae and the Loromonu have been pursuing her in Dili. She was threatened over the telephone and gangs were roaming around her house. Since she has been in Australia her house in Dili has been looted and burned. She stated that if she were to return to East Timor she would be harmed by people of Loromonu ethnicity. This is because of the general jealousy of the Loromonu about the better employment positions obtained by the Lorosae; in general those with better education are envied by the others in East Timor. In addition the east-west differences have been accentuated in the last year and hate has been fomented for political ends. The applicant stated that even though the UN is in East Timor she has no confidence that she would be afforded protection against this harm by the Loromonu, just as they were not able to protect her sibling.

The Tribunal heard from Prof. Goldsmith. Prof. Goldsmith had provided written submissions to the Department and had also given a seminar on the issue of security and protection in East Timor to members of the Tribunal on 7 March 2007 in his capacity as an expert on the security situation in East Timor. In this case the Tribunal asked him to separate his evidence dealing with his personal knowledge of the applicant and that dealing with matters pertaining to his field of expertise. He stated that he wished to reiterate the main contentions which he had discussed at the seminar and in summary these were that: the whole issue of protection of the citizens of East Timor is at the very best patchy; there are holes and gaps in this area, despite the presence of UN and Australian troops. There are problems of detentions of criminals, gang activity related to the animosity between easterners and westerners, the prisons can't keep up with the crimes, the judicial system is fragile and things will take a long time to bed down. In a small developing country like East Timor, Dili is the place where people tend to concentrate and educated people come to Dili as the only place for employment opportunities; there are 50 to 60,000 people in Dili who are displaced. The flames have been fanned in relation to the east-west divide; people are very careful in the way

they move around, especially in Dili which is more of a western town. Since the elections the situation has continued to be unpredictable.

Background Information

The following information from the US Department of State, Country Reports on Human Rights Practices - 2006, released by the Bureau of Democracy, Human Rights, and Labour on 6 March 2007 provides general background information on the situation in East Timor:

East Timor is a parliamentary republic with a population of approximately 925,000. Its first parliament was formed from the 88-member constituent assembly chosen in free and fair, UN supervised elections in 2001. The 41-member cabinet was dominated by the Fretilin Party, which won the majority of assembly seats. Xanana Gusmao, elected in free and fair elections in 2002, was president and head of state. During much of the year, the civilian authorities did not have effective control of the security forces. There were a series of deadly clashes between the national defense force (F-FDTL) and a variety of dissident military, police, and civilian forces. Mob and gang violence in the capital was widespread and tens of thousands of Dili residents were displaced. On May 26, at the request of the government, Australian forces subsequently joined by forces from New Zealand, Malaysia, and Portugal, began arriving and assumed responsibility for security in the capital. President Gusmao assumed security powers, and on June 27, Fretilin's secretary general, Mari Alkatiri, resigned as prime minister and was replaced two weeks later by Jose Ramos-Horta. On August 25, the UN Integrated Mission for East Timor (UNMIT) took over policing responsibilities, but international military forces remained under a joint Australian-led command.

The government generally respected the human rights of its citizens; however, there were serious problems. The most severe human rights violations took place in April and May when over 30 unlawful killings committed by security forces, rebel groups, mobs, or gangs occurred. Excessive use of force and abuse of authority by police was a problem. Problems with the justice sector often deprived citizens of due process and an expeditious and fair trial. Internal conflict resulted in the displacement of approximately 150,000 people, primarily residents of the capital. Domestic violence, rape, and sexual abuse were problems. Societal divisions based on regional origin (eastern versus western) emerged as a major problem during the year, resulting in widespread discrimination, segregation, and violence, particularly in the capital.

Role of the Police and Security Apparatus

The national police consisted of approximately 3,300 members, including specialized units. After deadly clashes involving PNTL, F-FDTL, and dissident forces in late May, the approximately 1,200 Dili-based police, including regular police and specialized units, ceased to function in any law enforcement capacity and most police posts were abandoned. The government requested international intervention, and international military and police forces began arriving on May 26 to assume responsibility for security in Dili. Under an August 25 UN resolution, responsibility for security in Dili was transferred to UN police, but international military forces operating separately from the UN also assisted in maintaining security.

UN police undertook a vetting process to reintegrate Dili-based police into police operations. At year's end over 1,000 police had registered for the process and vetting was ongoing. More than 200 police had been vetted and undergone reintegration training and were working alongside UN police as trainees. A number of police did not pass the vetting process and were on suspension pending further investigation. At year's end there was some confusion regarding the vetting process as the Ministry of Interior had begun a separate parallel vetting process. Efforts were underway to coordinate the two processes.

Each of the country's 13 districts has a district commander who normally reports to the national police commissioner; at year's end, however, district commanders were reporting to UN police headquartered in Dili. The PNTL remained poorly equipped and under-trained, and it was subject to numerous credible allegations of abuse of authority (see section 1.c.), mishandling of firearms, and corruption. The COI report noted that divisions within the PNTL were exacerbated by the former minister of interior's undermining of the chain of command by giving operational orders for personal or politically partisan reasons.

Prior to the April-May crisis, a professional ethics office within the police was responsible for tracking and investigating allegations of police misconduct, however, its effectiveness was hampered by lack of resources and political interference. The COI report noted that several officers suspected of criminal conduct during the crisis had previously been the subjects of disciplinary complaints, but no or light penalties had been imposed. In general, sanctions for police misconduct were rare.

National/Racial/Ethnic Minorities

Tensions between persons from the eastern districts (lorosae) and persons from the western districts (loromonu) were a major element in the April and May national crisis. Historically there had been some tension between East and West, but it was an occasional irritant rather than a major issue. These geographic divisions emerged as a defining factor as the crisis affected the capital, and at year's end many of Dili's neighborhoods had become essentially segregated. The causes involved dynamics within the security institutions, socioeconomic pressures in the capital, conflicting views regarding the role of different groups in the independence struggle, and increasingly bitter political divisions.

The crisis began with claims by hundreds of soldiers that they were disadvantaged due to their western identities. Loromonu made up the majority of the population in Dili, and many associated the lorosae population with the controversial F-FDTL intervention on April 28-29. The violence and divisions impacted all communities, but the lorosae population of Dili bore a disproportionate burden as the crisis progressed. Thousands of lorosae were displaced from their homes due to fear of violence, many had their houses burned, and many came under attack if they refused to abandon their homes or attempted to return.

Toward the end of the year, the lorosae-versus-loromonu dynamic had largely dissipated as an element in violent clashes in Dili, supplanted by an upsurge in fighting between competing martial arts groups. However, many Dili neighborhoods remained divided and some observers thought the reduction in lorosae-loromonu violence was a result of the segregation process having run its course.

Relations are generally good between the ethnic majority and members of several small ethnic minority groups; however, there were occasional reports of discrimination against

ethnic Chinese (who constitute less than 1 percent of the population) and ethnic-Malay Muslims.

Division between East and West

The report, dated 2 October 2006, by the Independent Special Commission of Inquiry for Timor –Leste comments on communal divisions in Timor –Leste. The report indicates that the Commission had “heard opposing views on the origin and longevity of” communal factionalism in Timor –Leste, which “is most commonly articulated in the perception that persons from the east and west of Timor –Leste discriminate against each other.” According to the report:

31. The current crisis has been created partially, but exacerbated significantly, by communal factionalism. This factionalism is most commonly articulated in the perception that persons from the east and west of Timor –Leste discriminate against each other. The Commission has heard opposing views on the origin and longevity of this cleavage. On the one hand it is suggested that it is a totally new phenomenon, as evinced by the total absence of the issue in the thousands of testimonies collected by the Commission for Reception, Truth and Reconciliation. On the other, the Commission of Inquiry has been told that it is a long-dormant issue dating from the Portuguese era. Most people interviewed by the Commission agree that the east-west phenomenon was manipulated during the crisis by groups with specific political interests.

32. In the view of the Commission the east-west division is a simplification of a far more complex issue. Timor –Leste has no modern history of concerted political violence between easterners and westerners as unified and opposing groups. However, there are sensitive divisions within Timorese society relating to notions of national and communal identity. The poorly defined national identity, particularly in the absence of a common enemy post-1999, is critical to an understanding of how the east versus west distinction has arisen in recent years. This division infected both F-FDTL and PNTL prior to 2006, as manifested in actual or perceived acts of discrimination and nepotism. Additionally, political interests and communities have become embroiled in the issue (United Nations Independent Special Commission of Inquiry for Timor –Leste 2006, ‘Report of the United Nations Independent Special Commission of Inquiry for Timor –Leste, Office of the United Nations High Commissioner for Human Rights website, 2 October, pp. 20-21 <http://www.ohchr.org/english/docs/CoIReport-English.pdf>).

In the report by the United Nations Secretary-General dated 8 August 2006 it was noted that “The communal dimension to the crisis, based on long-standing frictions between easterners and westerners in the armed forces and the police and in the neighbourhoods of Dili, has been seen by some as reflecting in part a failure of the political leadership to sustain the sense of national identity that brought Timor –Leste to independence” (United Nations Security Council 2006, ‘Report of the Secretary-General on Timor –Leste pursuant to Security Council resolution 1690 (2006)’, S/2006/628, United Nations website, 8 August, p. 8 <http://www.un.org/Docs/sc/sgrep06.htm>).

An article in the *Straits Times* dated 26 June 2006 referred to the Lorosae from the east of Timor-Leste and the Loromonu from the west as “two communities whose tangled web of allegiances and rivalries lies at the root of the country’s descent into chaos. It is a clash that dates back to the nation’s days under the Portuguese colonialists”. The article indicated that “The Portuguese fanned the bitter rivalry to stay in control. Indonesia which invaded this province in 1975 after the Portuguese, did the same, further poisoning mistrust between the two sides by forcing informers to spy on families and neighbours” (Lopez, Leslie 2006, ‘Bitter rivalries lie at root of Timor woes’, *Strait Times*, 26 June).

However, an article in the *Financial Times* dated 10 June 2006 indicated that “Many long-term observers of East Timor say they learned only recently of the divide between the “Lorosae” (easterners) and “Loromonu” (westerners).” It was stated in the article that:

Until recently there were few signs of ethnic divides in East Timor, let alone what increasingly looks like the ethnic cleansing of entire neighbourhoods by young men wielding machetes. Many long-term observers of East Timor say they learned only recently of the divide between the “Lorosae” (easterners) and “Loromonu” (westerners). “When I was here in 1999 I never asked anyone whether they were Lorosae or Loromonu,” Ian Martin, the head of the United Nations mission that in 1999 administered the vote that led to the end of Indonesian rule, told reporters this week as he left Dili after a nine-day visit to assess the situation for Kofi Annan, the UN secretary-general.

No one quite understands the root of the divide, other than in terms of simple geography. One explanation is offered by people such as Joaquim Fonseca, a prominent Timorese human rights activist with a recent master’s degree in social policy from the London School of Economics.

He says there is a belief that as Indonesia’s 1975 invasion of the former Portuguese colony moved from west (towards the Indonesian border) to east, western districts were pacified first and the most enduring pockets of resistance were in the eastern parts of the country. There followed a perception that most of the Falintil guerrillas who led the 24-year fight against Indonesian occupation were Lorosae rather than Loromonu.

However, he says the idea makes little sense, as resistance to Indonesian rule was in fact fairly uniform across East Timor. While many of the eastern Falintil guerrillas spent years in the jungle, it was often in the west where they survived with the support of a clandestine movement dominated by westerners. (Donnan, Shawn 2006, ‘East Timor’s ethnic violence puzzles analysts The emergence of fighting has taken many by surprise after a hard-won independence campaign, says Shawn Donnan’, *Financial Times*, 10 June).

An e-mail dated 26 May 2006 on the East Timor Studies Mailing List from Andrew McWilliam, a Fellow in the Department of Anthropology at the Australian National University, provides information on the distinction between “easterners (lorosae ‘sunrise’) [firaku], and westerners (loromonu ‘sunset’) [Kaladi]” in Timor –Leste. McWilliam drew on a PhD thesis by Dionisio Babo Soares, who was “the co- chair of the Truth and Reconciliation Commission established with Indonesia.” McWilliam’s e-mail indicated that the “firaku and kaladi distinction is one that is widely recognized in Timor –Leste and provides a potent source of factional or community rivalry around by all manner of grievances can be added and expressed.”

The United States Agency for International Development reported on the problems facing East Timor and the continuing divide between Loromonu and Lorosae, particularly amongst the youth of the country in their report, *The Crisis in Timor-Leste: Causes, consequences and options for conflict management and mitigation*, November 2006:

The crisis has thus revealed the serious shortcomings of nation building since independence. The sense of a common Timorese identity appears to be fading as young people – who make up the majority of the population – are increasingly distant from the sense of common identity (and purpose) generated by the liberation struggle. As a result, marginalized young people are turning to alternative means of self-identification and searching for a sense of belonging by, for example, latching on to the lorosae/loromonu divide or involving themselves in street gangs, martial arts

groups and other social groups. These lines of divisions may become part of a new youth culture. Additionally, societal divisions have been exacerbated by the upswing in arson, looting and personalized attacks, many of which have taken on an East-West cast. In situations where trust and security are low or non-existent, it is to be expected that people will seek to increase their sense of security by identifying with one group against another...

AMPLIFICATION OF PERCEIVED DIFFERENCES BETWEEN EASTERNERS AND WESTERNERS

Manipulation and amplification of East (lorosae) – West (loromonu) identities has become a dominant and self-perpetuating feature of inter-group relations in Timor-Leste. This is significant since once these sorts of divisions have been activated and people are targeted because they belong to a particular group, identity tends to become more rigid and antagonistic. The historical record from around the world shows that once these prejudices solidify, there is likely to be little room for moderation or compromise.

Most Timorese interviewed by the team expressed a strong view that the lorosae – loromonu divide is a political manipulation rather than an entrenched fault line with substantive organic roots. However, conceptualization of problems in identity-based terms has nevertheless become ubiquitous within the broader population. This is fuelled in no small part by fear, but also by an apparent willingness on the part of many Timorese to accept the proposition that there are in fact fundamental differences between lorosae and loromonu. This new identity-based schism is therefore likely to persist as a fault line that can be manipulated as an incentive or used as an organizational means for violence in the future.

...

CONFLICT DRIVER 7: EASTERNERS AND WESTERNERS CONTINUE TO MISTRUST EACH OTHER AND ARE INCREASINGLY SEGREGATED IN DILI.

The extreme polarization of Timorese society along a geographical identity-based divide has taken many observers by surprise. It has brought into the question the commonly held view that there was a strong sense of Timorese national identity in the post-independence period. In the space of a few months, this division has become perhaps the most profound schism in the country.

While communal factionalism is not new to Timor-Leste, there is no modern history of concerted political violence between easterners and westerners as unified and opposing groups. Although the team heard many views on the origins and nature of this factionalism, it is clear that there was some level of underlying tension related to issues such as the respective roles of easterners and westerners in the resistance, and the attributes associated with those roles (e.g. aggressive vs. passive), linguistic differences, and perceived economic differences – especially in Dili. Moreover, a number of sources suggested the fault line had actually emerged within and between the F-FDTL and PNTL over the previous few years, so that, in many ways, the eruption of the crisis within the security sector earlier this year merely brought the issue to a broader audience

Gang Violence

The following news reports detail the gang violence, primarily between armed groups of youths from the Loromonu and Lorosae ethnic groups, which erupted in the country in April 2006 and which has continued to be a common occurrence in the Dili since that time:

Troops start locking up Dili gang leaders 6 June 2006 by Max Blenkin: Australian Associated Press General News

DILI, June 6 AAP - Australian soldiers have started locking up gang leaders as troops try to stamp out violence on the streets of East Timor's capital Dili.

A new military detention centre is being used to hold gang leaders and members detained in a fresh military operation launched today.

Australian, New Zealand and Malaysian troops have been frustrated in their attempts to halt gangs waging running street battles in Dili and torching the homes of ethnic rivals.

Troops have had specific powers to detain suspects but because of the lack of a proper detention centre have had to release many troublemakers back on to the streets.

"Certainly our detention facility is now ready to process people through for the consideration of the Timorese justice system," commander of the Australian infantry task group in East Timor, Lieutenant Colonel Mick Mumford said today.

Troops today launched a major cordon and search operation aimed at tracking down and locking up gang figures blamed for the continuing unrest in Dili.

"We have acted on advice provided to us by the local people and we have been looking specifically for weapons, communications devices, uniforms that have been stolen and also leaders of gangs."

Mumford said soldiers had a reasonable idea who was instigating the gang violence and further operations would be conducted over coming weeks.

He said soldiers were getting better at what was basically a police job.

One manifestation was the absence of any major gang troubles yesterday near Dili's Comoro bridge - a regular scene of conflict between rival gangs from the east and west of the battle-scarred half island that became an independent nation only four years ago.

"Our methods are becoming more effective," said Mumford. "They (the gangs) are seeing the futility and they are starting to feel personally the impact of what will happen to them when we catch them and put them into detention."

Today's security crackdown, titled Operation Mandolin, involves some 350 troops, assisted by military police with explosives detector dogs and Black Hawk helicopters.

Mumford said troops had already detained a dozen people and seized some firearms and blade weapons.

Already some 1,000 guns have been recovered across Dili over the last week but it is not known how many remain on the streets.

"I have no doubt there are weapons out in the community but we are seeing less and less on the streets. Part of that is we are taking them," Mumford said.

The troubles in Dili have not entirely subsided, however.

A mob looted bags of seeds and fertiliser from a warehouse in central Dili, while scattered arson attacks persisted in neighbourhoods near the airport, where several plumes of smoke rose from buildings set ablaze by gangs of young men.

In another incident, a mob attacked an ABC film crew's car.

ABC reporter Mark Bowling said that hostility was not directed at the media but at their driver, a members of East Timor's eastern (Lorosae) community who happened to be recognised in a western (Loromonu) area.

"They threw rocks and smashed the front windscreen and shattered the back windscreen and we drove off. Everyone's fine," he said.

"It wasn't about Aussie media or anything like that."

A cat-and-mouse fight in Dili's streets ; Foreign forces sent to East Timor are pitted against shadowy gangs and arsonists Nick Squires Correspondent of The Christian Science Monitor

6 June 2006

A dark spiral of smoke twists into the humid tropical air as another home burns in East Timor's troubled capital, Dili. Popping and groaning under the intense heat, the corrugated iron roof eventually collapses, sending up a blizzard of sparks.

"There's not a lot we can do about that one," says Pvt. Chas Takiwa, one the New Zealand soldiers who came across the fire during a patrol of the hills and valleys on Dili's outskirts.

Without proper firefighting equipment, the New Zealand patrol, and the rest of the 2,500-strong force sent from Australia, Portugal, and Malaysia, are powerless to combat the arson attacks and gang violence which have erupted in East Timor and left up to 30 people dead and many more injured.

The communal hatreds and ethnic tensions which are fueling Dili's violence contrast with the ecstatic welcome the international forces receive everywhere they go in this ramshackle city. But despite Timorese goodwill and predeployment predictions of a rapid return to peace, the soldiers are finding their mission is entailing much more than just showing up.

The military commander of the Australian forces, Brig. Mick Slater, made a tacit admission Monday that his troops were struggling to impose control by calling for them to be replaced by a UN-led multinational police force. The Army, he said, had "achieved as much as we can expect to achieve." But it would take months to assemble a UN force, and for now it is the military that will have to bear the brunt of the crisis.

Monday, Australian and Malaysian soldiers, together with Portuguese police, used helicopters, armored personnel carriers, and tear gas to quell street battles between rival ethnic gangs in the explosive district of Comoro.

In another flashpoint, the suburb of Becora, the 166-strong New Zealand contingent is patrolling on foot and in vehicles from a deserted police station.

"Bon dia [good morning] Kiwi, you are No. 1," locals yelled as the troops from the 2nd/1st Battalion, Royal New Zealand Infantry Regiment, drove through smoldering neighborhoods.

The battalion has confiscated spears, knives, machetes, and lethal homemade darts, along with the cheap disposable lighters that are used by arsonists. But catching arsonists red-

handed is proving infuriatingly difficult, as the fires take just a few moments to ignite and the culprits are long gone before the troops arrive.

"As soon as we leave an area the fires start up again," said Lt. Marcus Bunn, one of the New Zealand officers.

A few miles up the road a foot patrol had detained 19 men, a rare victory in the frustrating cat-and-mouse game engaged in by soldiers as they chase looters and arsonists along back alleys and through crowded slums.

The captured men were from the western districts of East Timor and were allegedly intent on torching the homes of people from the east of the country.

"A few days ago some easterners burned their houses. Now it's payback time," says Nico da Silva, a former travel guide now working as an interpreter for the New Zealanders.

The ethnic conflict gripping the capital pitches people from the east - the Lorosae - against those from the west - the Loromonu. There is no religious aspect to this divide - both groups are overwhelmingly Catholic. They share similar languages, and intermarriage has been common for decades.

But some easterners view with suspicion the people of the west because of their proximity to Indonesia and allegations that they collaborated with Indonesian forces during the occupation from 1975 to 1999.

"The core of the resistance was always in the east," says one long-term observer, who asked not to be named. "The people of the east regard themselves as the heroes of the occupation."

Tensions between the two groups erupted into violence in April, when 600 soldiers from the east fired on a demonstration held by soldiers from the west, who were complaining that they were denied promotion in East Timor's 1,800-strong Army.

The westerners fled Dili and were soon joined by hundreds of military police, also riven by east-west tensions.

It is not just ethnic tensions that have pitched Dili into chaos and forced an estimated 100,000 people to flee their homes. Since independence, rival politicians have built up the Army and the paramilitary police force as competing power bases.

There is widespread suspicion that some within the ruling Fretilin Party are directing and exploiting the rival security groups and warring ethnic gangs to advance their own political ambitions.

"We suspect there are factions or cliques in the government who are trying to discredit the prime minister by paying criminal gangs to cause trouble and show that Dili is still in chaos," a Western military attaché says.

The theory was given credence over the weekend during a visit to Dili by Australia's foreign minister. Alexander Downer held emergency talks with East Timor's divided government as well as Australian military commanders.

But within minutes of his departure, arsonists set ablaze a nightclub on the main airport road - just as dozens of journalists were driving by, ensuring maximum attention. It was a reminder that despite the checkpoints, detentions, and patrols, shadowy players are able to launch attacks with impunity.

The nightmare scenario would be if the Army and police, currently hiding in the hills or confined to barracks, take up arms against each other again.

In a memoir published three years ago, former Australian diplomat Richard Woolcott recalls being told by a senior member of the Bush administration: "East Timor will be your Haiti." Canberra is hoping that he is mistaken.(c) Copyright 2006. The Christian Science Monitor

Professor Andrew Goldsmith from the School of Law at Flinders University, South Australia spoke to the Tribunal on 7 March 2007 and stated Dili was the centre of the gang problem, as it was an urban centre. He stated something like 50% of the East Timorese population was under the age of 15 so there was huge youth problem in the country. "The east-west gang thing seemed to be very much alive in Dili".

Security situation

In the United States Agency for International Development report on the crisis in East Timor the deficiencies in the basic elements of the State and severe inadequacy of the justice system were identified as two of seven potential conflict drivers which posed a serious risk to the future peace and stability of the country:

CONFLICT DRIVER 2: MANY OF THE BASIC ELEMENTS OF A FUNCTIONING AND REPRESENTATIVE STATE ARE STILL IN THE EARLY STAGES OF DEVELOPMENT; THEY FREQUENTLY FAIL TO FUNCTION PROPERLY AND ARE VULNERABLE TO PARTISANSHIP.

The Timorese nation-state is new and still has a very limited capacity to govern effectively. State institutions have limited ability to deliver basic services, including, as recent events have shown, basic security and justice. At the same time, the State is also highly centralized and characterized by FRETILIN domination of most of the state apparatus. Checks and balances within the political system are relatively weak, and governmental and non-governmental capacities to ensure transparency and accountability are still in the early stages of development. As a result, many Timorese view the State as essentially partisan in nature. At best, this combination of weakness and politicization limits the ability of the State to play a leading role in conflict mitigation. At worst, the weakness and politicization of state institutions may contribute to future conflict.

...

CONFLICT DRIVER 3: SEVERE INADEQUACIES IN THE JUSTICE SYSTEM INFLAME GRIEVANCES AND FEED A CULTURE OF IMPUNITY, LAWLESSNESS AND RETRIBUTION.

There are two distinct, but related aspects to the failures in the justice system. The first aspect is the near total failure of the justice system to date to credibly adjudicate important substantive and symbolic legal cases. For instance, interlocutors in the justice sector claimed that a number of corruption investigations undertaken by the Office of the Inspector General and then submitted to the Prosecutor General's Office have not been adjudicated. This lack of resolution on corruption cases contributes to a widespread sense of impunity and the perception of the lack of accountability in both politics and government.

The second aspect is the very limited accessibility of the formal justice system to the average citizen. Non-Portuguese speakers are disadvantaged and disempowered within the judicial sector as a result of the language policies without adequate translation services. The formal justice system also remains dependent upon a relatively small number of Portuguese-speaking foreign judges, lawyers and advisors in order to function. Moreover, there are only four District Courts, and one Court of Appeals. Consequently, the courts and prosecution services are overburdened by cases and are generally unable to process cases in a timely manner. Further, it is difficult, time consuming and expensive for many people to get to court.

Absent a formal justice system willing or able to dispense “high” and “low” level justice in a credible way, it is not surprising that many Timorese are inclined to forgo formal legal channels and ‘take justice into their own hands’. At a community-level, the justice “gap” has been filled to some extent by traditional and non-formal dispute resolution mechanisms. However, these have not been resourced or legitimized so that their full potential remains largely untested.

An article in the Sydney Morning Herald dated 14 February 2007 (East Timor asks for help as street violence escalates, Lindsay Murdoch, February 14, 2007

<http://www.smh.com.au/news/world/east-timor-asks-for-help-as-street-violence-escalates/2007/02/13/1171128973952.html>) reports on calls made by Prime Minister Jose Ramos-Horta to bolster security in East Timor as existing forces struggle to deal with the violence on the streets:

THE East Timorese Prime Minister, Jose Ramos-Horta, has urged the United Nations to bolster security in his country as Australian and other forces in the capital, Dili, struggle to stop violent street attacks.

Dr Ramos-Horta told the UN Security Council in New York that security in the country was "still fragile and precarious" less than two months before presidential elections scheduled for April 9.

He urged the UN to approve sending more police from Portugal to join 1313 international police already in East Timor.

The call comes amid growing fears in Dili that groups are plotting to disrupt campaigning before the elections. Some people in the capital were told this week to pay protection money or their businesses would be destroyed.

Even though some key gang leaders have been arrested, teenagers are being killed in street fighting almost every day. In the past 48 hours a 13-year-old boy was stabbed three times and a 17-year-old died after being attacked with a machete.

One group is planning rallies to protest against the former prime minister Mari Alkatiri being cleared of allegations he was involved in providing weapons to a hit squad set up to eliminate political opponents.

Angela Freitas, a 38-year-old East Timorese who was educated in Australia, announced yesterday that she would contest the presidency. Dr Freitas, who is in Darwin, described the situation in East Timor as "shameful".

Professor Andrew Goldsmith from the School of Law at Flinders University, South Australia advised the Tribunal at the March Seminar that there continued to be problems in policing in East Timor, as well as in terms of the criminal justice system overall. Professor Goldsmith stated that in his view UNPOL’s response to the crisis in East Timor was very much a fire brigade response to much of the difficulties there, with people rushing around trying to contend with public order outbreaks on the street and so on. There were also issues in relation to the capacity of the prosecution service, the capacity of the gaols to hold people and the capacity of the Court to process the cases. Other justice system issues also had an impact on the general sense of security, such as witness protection, which was a huge issue. Although the UN and the Australian contingent were of the view they were keeping a lid on things, Professor Goldsmith was of the opinion the pot was boiling away very vigorously and

obviously things were spilling over. The unpredictability and inconsistency in the response from the UN and Australian forces, as well as the East Timorese authorities, meant there was inadequacy in the protection that was afforded to East Timorese.

The following DFAT travel warning was downloaded from the DFAT website and was current as at 27 March 2007:

- We strongly advise you not to travel to East Timor at this time because of the volatile security situation and the high risk of violent civil unrest. The situation could deteriorate further without warning. Following recent deaths there is an increasing likelihood that Australians and Australian interests may be specifically targeted.
- The Australian Government has authorised the voluntary departure of dependants and non-emergency staff from East Timor because of the increased violence.
- We advise Australians in East Timor to depart.
- Australians seeking to depart East Timor should contact their airline directly. Flights may become heavily booked and access to the airport could be disrupted.
- Australians are advised to restrict movement in the western districts and maintain extreme caution.
- Credible reports suggest Australians may be targeted at places known to be frequented by foreigners, including hotels, bars, nightclubs and restaurants.
- On 9 March 2007 the UN mission in East Timor (UNMIT) advised that foreigners using taxis within Dili may be at increased levels of risk. You should avoid using local taxis.
- Since 4 March 2007, there has been an increase in security incidents, including anti-Australian protests in Dili. Violent disturbances could also occur in the western districts and provincial centres. Further protests across East Timor are likely over coming days.
- Australians who decide to remain in East Timor should ensure that they have personal security measures in place.
- If you decide to stay in East Timor, you should avoid all unnecessary movement, particularly at night. Movement by Australians in Dili, including in the vicinity of Comoro Airport is increasingly likely to draw a hostile reaction from street gangs and displaced persons. Travellers may also experience unauthorised roadblocks.
- You should exercise extreme caution when moving around Dili. You should maintain a high level of personal security awareness and avoid any minor disputes or other incidents that may occur as they have the potential to escalate.
- Violent civil unrest has occurred in the vicinity of Dili's Comoro airport. The areas near the airport including the airport road and the areas around IDP camps may be subject to ongoing violence which could break out without notice. There have also been recent disturbances around food storage sites. You should exercise extreme caution if passing through these areas.
- There have been continuing incidents of gang related violence, robbery, arson and vandalism in Dili. Australians and other foreigners have been caught up in recent incidents of armed robbery and assault. Some gangs in Dili have attacked cars with potentially lethal stones and darts fired from slingshots, particularly during the early evening and at night.
- Staff of the Australian Embassy have been advised to take additional practical security measures, and avoid all unnecessary local travel, particularly at night.
- East Timor is moving towards a period of elections, beginning with the Presidential elections on 9 April 2007. This could lead to a heightened phase of demonstrations and other public protest activity which could turn violent and deteriorate without warning. You should avoid any demonstrations, street rallies and public gatherings as they may turn violent and Australians could get caught up in attacks directed at others.

- Demonstrations can occur at or near symbols and institutions of the Government of East Timor, including the Palacio do Governo (government buildings), the Court, the Prosecutor General's office, the Presidential Palace, the National Parliament and houses belonging to prominent politicians. You should closely monitor the media and other local information sources for information about possible new safety or security risks.
- On 27 February 2007 Indonesia temporarily closed its border with East Timor.
- Violent disturbances have also occurred in some of East Timor's districts and provincial centres. You should avoid armed irregular groups including martial arts groups.

The Timor-Leste: Weekly Situation Report No.1, dated 23 February 2007 (<http://www.reliefweb.int/rw/RWB.NSF/db900SID/EVOD-6ZFFC9?OpenDocument>) published by the United Nations Office for the Coordination of Humanitarian Affairs (OCHA) provides the following information regarding the security and human rights situation in East Timor:

One of the key events during the reporting period was a meeting of the UN Security Council, held on 12 February 2007 to discuss Timor-Leste and attended by 23 member states. Among other matters the meeting decided on the extension of UNMIT's mandate (1) for twelve months.

The Inter-Agency Standing Committee (IASC) and the Simu Malu group met to discuss humanitarian issues of concern in each sector. The representatives of donor countries were briefed by the DSRSG / RC / HC, the Ministers of Labour and Community Reinsertion and the Minister of Development.

There is currently an acute shortage of rice in the markets in Timor-Leste which has led to security and protection concerns and looting of warehouses. In addition, El Nino effects resulting in late rains have impacted on the general food security situation in some districts. In the meantime, as El Nino seems to be over, we should expect a delayed but still normal rainy season

The presidential elections will be held on 9 April 2007. UNMIT is supporting the preparations with 472 staff dedicated to this process including 250 UNVs and 170 national staff. Voter registration commenced on 29 January 2007 and will end on 16 March. The final date for the presentation of candidates for the presidential elections is 28 February. Five candidates have been proposed. Parliamentary elections are still to be scheduled.

In this context there has been an escalation of violence in Dili in the last two weeks, exacerbated by inter-gang rivalry. There are increased reports of incidences of assault, group fighting, gun shots, illegal check-points, arson, public disturbance and property damage including a tendency to target particularly UN and Government vehicles. In two weeks the security incidences increased from 95 to 113, with several houses set ablaze and some reported deaths, mainly in Dili. Bairo Pite, Fatuhada, Santa Cruz/Taibessi and Kampung Baru are the places with higher incidences of violence. In the districts incidents were reported in Liquica (2 houses burnt), Ermera (one person killed and two injured) and Baucau (one person injured).

As a result of the security incidents, at least 5,000 people have been displaced to new locations or to existing camps since January 2007, leading to significant overcrowding of camps and straining particularly the water and sanitation services.

Within the context of the preparations for the elections, field visits were undertaken to all districts by the DSRSG/RC/HC. Humanitarian partners used the opportunity to monitor the evolution of the humanitarian situation in four districts (Ainaro, Viqueque, Manatuto and Liquica). The partners on the ground, including local Government and beneficiaries, reported food insecurity across all districts, water and sanitation, shortage of rain and looming drought, health, education and livelihood as the key issues of concern. There is also a sense of

unfairness amongst those who do not receive humanitarian assistance despite facing similar problems as IDPs and host families. Separate field visits indicated a significant deterioration of the humanitarian situation throughout the country, particularly in Baucau IDP camps, which needs to be urgently addressed. Mission reports are available

It is generally assumed that there is no immediate solution to the IDP issue, as it will take time to resolve the root causes of the crisis such as impunity, sense of security, land property and house rehabilitation. Although efforts will continue to facilitate the return and relocation of those who can and wish to do so, the humanitarian community should be prepared to face longer-term displacement in all 13 districts. The Operational Plan for Durable Solutions for IDPs approved by the Inter-Ministerial Committee in November 2007, continues to be the basis for planning of IDP assistance throughout the country. As stated by the inter-agency Consolidated Appeal 2007 for Timor-Leste, there is a need to prepare a mid-to-longer term strategy to address the issues at stake and prepare the transition to more sustainable interventions

The estimated 100,000 IDPs (10% of Timor-Leste's population) remain displaced as a result of violence in Dili in 2006, and are staying with host families in the districts and in IDP camps in Dili and Baucau. In addition, following recent security incidents since January 2007, particularly during the last two weeks, 5,000 people have sought refuge in existing camps as well as in four new locations as follows (see attached map)

Although quick surveys have been undertaken in the new and old camps that received new IDPs, there is an urgent need for a comprehensive inter-agency assessment of all IDP camps to ascertain their current most critical needs, particularly in the new sites and in those at risk of flooding. The increase in number of IDPs in some of the existing camps is leading to overcrowding and straining services. There is a need to refocus our attention to all IDP camps instead of concentrating on the return and relocation of IDPs. Field visits indicated that most IDPs who had relocated or returned to the districts came back to Dili only a few days later and moved into other IDP camps.

The subsequent Timor-Leste: Weekly Situation Report No.2, 13 March 2007, suggests security in the country was not improving:

The reporting period was marked by a significant increase in security incidents compared to the previous weeks, which led to restricted movement of humanitarian personnel. On 23 February an incident occurred at the airport camp between Internally Displaced Persons (IDPs) and the International Stabilisation Force (ISF), which resulted in two deaths and one injured. There was a shortage of rice in the market throughout Timor-Leste, to which the Government responded with sales of rice to the population at 0.40 US\$ per kg. The continued shortage is an issue of concern in view of the upcoming presidential elections scheduled for 9 April and the lean season. During the height of the rice crisis, Government vehicles were targeted by individuals throwing stones, resulting in more than 100 damaged official vehicles. During the night of 3 / 4 March 2007, four of the armed supporters of fugitive Alfredo Reinaldo were killed in Same after a one week stand-off. Reinaldo's supporters had ransacked border police posts and seized 17 rifles and ammunition. When the news about the operations in Same reached Dili, Reinaldo supporters blocked roads with burning tires and large objects, and protested violently. Two Government buildings in Dili and Gleno were burnt, stone throwing and looting of warehouses and the Ministry of Education occurred. Since the middle of last week the security situation has calmed considerably. The appeal by the President of the Republic for peace and calm, and the sentence in the Lobato trial may have contributed to this positive development.

In connection with the rainy season, which has now started, there is a potential for flooding and landslides. On 7 March 2007, a landslide blocked a road in Ermera province. Conditions in the camps will need to be monitored closely to prevent health and safety risks associated with flooding. Other potential hazards for Timor-Leste include Avian Influenza, earthquakes, and tsunamis.

Contingency Planning for new Emergencies

The security situation remains volatile and it is likely that spikes of violence will continue to occur with a potential to increase before the elections. The unresolved situation of fugitive Alfredo Reinaldo as well as continued rice shortage could cause protection and security concerns. The fault lines and motivations for violent demonstrations or fights seem to be changing. While as of November the East–West divide that had caused mass displacement last year seemed to lose importance and martial arts gang fights dominated, the recent violence seems to have united members of rivaling martial arts groups. A national contingency plan for potential new displacements due to civil unrest is being established under the leadership of the National Disaster Management Office (NDMO) and the Ministry of Labour and Community Reinsertion (MTRC).

It is assumed that around 100,000 persons remain displaced, out of which around 70% stay mostly with host families in the districts, and around 30% in IDP camps in Dili. The high mobility of the displaced populations complicates the establishment of exact baseline data. Around 5,000 persons have been newly displaced during January due to violence and arson mainly in Bairo Pite, Dili

Humanitarian Access.

With deterioration of the security situation, humanitarian access for NGO and UN operations had been significantly reduced, which raised serious concerns. The provision of essential services to IDP camps as well as movement to districts and rice deliveries to address the rice shortages in the markets had been limited. Due to the improvement in the security situation, operations resumed during the course of the week. The potential for further violence raises concerns regarding humanitarian access, security and protection for both IDPs and humanitarian staff.

FINDINGS AND REASONS

The applicant is a female of Timorese ethnicity. She travelled to Australia accompanying Sibling 1 with a permit to return to East Timor. The above documentation is sufficient for the Tribunal to find that the applicant is a citizen of East Timor and will consider her claims against that country.

The essence of the applicant's claims is that she fears persecution on the basis of her ethnicity being a Lorosae (easterner).

The Tribunal has had regard to the copious independent evidence (some of which has been cited above) which attests to the development or exacerbation of ethnic differences, mainly manifested in the different language traits, between the easterner Lorosae and the western Loromonu of East Timor. The Tribunal notes the evidence which points to these differences being fanned by particular political circumstances in the recently established state, especially since the early 2000s. The Tribunal finds that the evidence pointing to these ethnic differences leading to attacks, rapes and general hatred between the two groups is compelling. This kind of harm, the Tribunal finds, is serious harm in terms of the Convention. The Tribunal accepts that the applicant is a Lorosae and that she was threatened as claimed. The harm to which she would be subjected, would be perpetrated by both state and non-state agents, for example the military or the gangs as illustrated above. In addition the Tribunal finds that particular characteristics of this applicant, such as her level of education and her full-time employment increase the risk of harm for her.

In considering whether the applicant could obtain state protection from this harm in East Timor, the Tribunal refers to independent evidence cited above and finds that the security situation is best described as unpredictable. The institutions of a state which usually provide protection to its citizens are either not functioning or are in parlous state in East Timor. The

intervention of UN and other troops has restored some semblance of order, however, the evidence shows that the protection which the ordinary citizen might obtain from the state structures cannot be considered to be adequate, given the resourcing, the corruption and the competence of some of these structures. The Tribunal is not satisfied in light of the evidence that the applicant could obtain adequate protection, in accordance with international standards, from serious harm from the state.

The Tribunal therefore finds that, in considering the reasonably foreseeable future, there is a real chance that the applicant would face serious harm, amounting to persecution, for reason of her ethnicity as a Lorosae should she return to Dili where she was previously residing.

The Tribunal must now consider the availability of protection in other parts of the country in relation to this applicant.

In *Randhawa*, (*Randhawa v MILGEA* (1994) 52 FCR 437 at 442) the Court laid down the “reasonableness” test, with Black CJ noting that the reasonableness principle has been implicitly recognised in the UNHCR *Handbook on Procedures and Criteria for Determining Refugee Status* (the *Handbook*). Paragraph 91 of the *Handbook* states:

The fear of being persecuted need not always extend to the *whole* territory of the refugee’s country of nationality. Thus in ethnic clashes or in cases of grave disturbances involving civil war conditions, persecution of a specific ethnic or national group may occur in only one part of the country. In such situations, a person will not be excluded from refugee status merely because he could have sought refuge in another part of the same country, if under all the circumstances it would not have been reasonable to expect him to do so.

In *Randhawa*, Black CJ held that given the humanitarian aims of the Convention, the question to be asked is not merely whether an applicant could relocate to another area, but whether he or she could “reasonably be expected to do so”. His Honour stated:

... a person’s fear of persecution in relation to that country [of nationality] will remain well-founded with respect to the country as a whole if, as a practical matter, the part of the country in which protection is available is not reasonably accessible to that person.[at 451]

Justice Beaumont agreed that relocation must be a reasonable option, stating:

... that is to say, if relocation is, in the particular circumstances, an unreasonable option, it should not be taken into account as an answer to a claim of persecution.[at 443]

If it is not reasonable for a person who has a well founded fear in part of a country to relocate to another part, then the person’s fear of persecution in relation to the country as a whole is well founded. Conversely, if it is reasonable for the applicant to relocate to another part of the country then that applicant’s fear is not well-founded.

In the present case the Tribunal finds that relocation for the applicant could not be considered to be “reasonable” in the *Randhawa* sense. The following lead the Tribunal to this conclusion: the applicant is an educated woman who was well established in her employment in Dili as part of an international organisation, she could not obtain comparable employment in a small town like Village A, where her family now resides. The applicant does not have close family members anywhere else in East Timor. The applicant has completed part of her tertiary education and requiring her to relocate would deprive her of the opportunity to finish

such education. The threats to her as a Lorosae with the above characteristics, are not confined to a particular area of East Timor, thus, given the above factors, the Tribunal is satisfied that relocation to another part of East Timor would not be reasonable for the applicant.

The Tribunal finds that the applicant's fear of persecution extends to the whole territory of East Timor and her fear of persecution for a Convention reason is thus well-founded.

CONCLUSIONS

The Tribunal is satisfied that the applicant is a person to whom Australia has protection obligations under the Refugees Convention. Therefore the applicant satisfies the criterion set out in s.36(2) for a protection visa.

DECISION

The Tribunal remits the matter for reconsideration with the direction that the applicant satisfies s.36(2)(a) of the Migration Act, being a person to whom Australia has protection obligations under the Refugees Convention.

I certify that this decision contains no information which might identify the applicant or any relative or dependant of the applicant or that is the subject of a direction pursuant to section 440 of the *Migration Act 1958*.

Sealing Officer's ID: ntrevva