

Out of the Ashes: Destruction and Reconstruction of East Timor

Abstract for chapter 18

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‘Challenges for the future’ discusses the need to develop a framework for national development and the need to forge relations with the international community.

The author examines a variety of critical issues: political differences and feuds; cultural challenges; land rights; language problems, and human rights. If East Timor is to develop, it needs internal stability. The challenges raised in this chapter are a warning that continuing conflict could recur unless attention is paid to healing the ‘hearts and minds’ of the people. East Timorese’s survival as a nation will depend on how its people endeavour to sort out problems within their own society.

Keywords

cultural challenges, human rights, land rights, language problems, national development, OJETIL, political feuds, reconciliation, RENETIL, TNI, UNAMET, unity, Xanana Gusmão

Challenges for the future

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Introduction

The new East Timor faces a number of social and political challenges particularly since differences among various factions within the resistance remain. Despite these factions' commitment to uphold a common ground – i.e., independence – they remain undecided over whether to advocate democracy first or build the country first and worry about democracy later.

East Timor must face other challenges which, if not resolved to the satisfaction of the various factions, could further heighten the divisions which have been left unresolved by past political conflicts. These challenges concern cultural values, the legal system, human rights, land rights, language and political differences. This chapter examines some of these critical challenges.

Conselho Nacional da Resistencia Timorese (CNRT) ideas for development

While frictions of the past may have little importance in future East Timor politics, issues such as reconciliation and national unity will be important once the country becomes independent.¹ On 25 August 1999,

¹ While writing this chapter, the Portuguese daily newspaper, *Diario de Noticias* (28/11/99), reported that the leaders of the East Timor pro-independence faction led by José Ramos Horta and pro-Indonesia faction led by former Indonesia's roving ambassador on East Timor, Francisco Lopes da Cruz had met in Singapore on 24-27 November 1999 to discuss ways to reconcile the East Timorese.

five days before the ballot day, José Alexandre 'Kay Rala Xanana' Gusmão, the leader of the CNRT, launched a 'blueprint' for the country's future development, outlining the fundamental issues involved in rebuilding East Timor. The six-page document containing 15 points called upon the East Timorese to forget the past and start a program of reconciliation, unity and national development for what he termed the 'transitional period' (*Diário de Notícias*, 20/10/99). The 15 points are:

- National reconciliation and unity
- The reconstruction of Timor Loro Sa'e
- The adoption of a market-oriented approach
- Social and economic development policies for the territory
- The adoption of a financial policy that upholds development
- Encouraging the inflow of capital (investment)
- Government apparatus
- Education and training
- Relations with ASEAN and Indonesia
- Relations with Portugal and CPLP (the Community of Portuguese-speaking Nations)
- Forging international and multilateral relations
- Recognition of Falintil (East Timor National Liberation Army)
- Granting general amnesty to Indonesian collaborators
- Maintaining sustainable development of the country
- Negotiations with Indonesia over political differences to forge new ties between the two countries.

There are two general objectives in this document: the need to develop a framework for national development and the need to forge relations with the international community. While the latter seems to face few problems given the support East Timor has enjoyed in the last five years, internal development will confront various challenges.

Challenges and potential conflicts

Political differences: The emergence of various political groups has coloured the contest among Timorese political parties. Reconciliation among the factions within the resistance, however, cannot be taken for granted. The rebuilding of a new 'democracy' for East Timor is still a long way ahead since the Timorese still remain divided over both ideological interests and national political orientation. Likewise,

differences among various groups or within the resistance itself remain vast. Indeed, since the early days of East Timor's struggle against Indonesia, factions within the resistance have been divided over the issue of a national ideology.²

While the resistance successfully adopted the name CNRT in 1997 to refer to the only body that represented the resistance inside the territory and abroad, divergence among them remained. Interestingly, within Fretilin itself, differences among its members have been characteristic of the party since its inception. In the early 1980s, when Lobato died in a battle against the Indonesian army that lasted for almost three days, there was a dispute between Abilio Araujo, the leader of Fretilin in Portugal, and the other leaders within the resistance. Araujo was rejected by his companions who chose Xanana as their new leader.

In developments before the referendum, some members of Fretilin re-proclaimed the Democratic Republic of East Timor (*Republica Democratica de Timor Leste*: RD'TL), claiming the party was unfaithful to its basic principles. Friction among its leaders, particularly those remaining inside East Timor, was so great that attempts to reconcile them failed. The RD'TL faction refused to bow to Fretilin's leadership. Some Fretilin leaders turned their anger toward the CNRT leaders who were originally from other parties.³ Despite current developments, particularly after the post-ballot violence which helped form a favourable atmosphere for advancing national interests first, much remains to be done.

On the other hand, the political situation on the ground has yet to calm down. Differences among groups such as the Organisation of Timorese Youth (*Organisaco de Juventude de Timor Leste*: OJETIL) and the East Timorese National Students Resistance (*Resistencia Nacional dos Estudantes de Timor Leste*: RENETIL) continue. A few months before the referendum, a street battle between the two groups took place in Baucau, leaving at least one person dead (*Kompas*, June 1999). Differences also continue to exist between various groups within the

² It should be understood that since Apodeti is pro-integration, much of this account regarding differences within the resistance excludes this political party.

³ In my conversation with Leandro Isaac, a CNRT leader whose party was UDT, I was told that when attending the Algarve meeting in Portugal in October 1998, the friction among the resistance leaders remained intense and it would remain so should each political party refuse to uphold the national interest.

struggle. Some have come out and accused the Socialist Party of Timor (*Partido Socialista de Timor*: PST) of being another branch of the Timorese Nationalist Party (*Partido Nacionalista Timorense*: PNT), the party headed by the independence-turned integrationist leader, Abilio Araujo.⁴ Some even alleged that it was Araujo who negotiated the release of Salar Kosi, the spokesperson of PST in Indonesia after Kosi was trapped within the Austrian embassy in Jakarta for more than a year while seeking political asylum there.

Divergence of opinion about the future may be widening. While most East Timorese remain faithful to CNRT as the only legitimate body that commands the resistance, some political parties have come out and disagreed openly with the leadership of CNRT, threatening to go 'their own way' and not listen to CNRT's leadership. Some have warned that they may quit their current post within the Political Commission, an organ within CNRT, and withdraw their support for this resistance body, emphasising the existing differences among the political elite. If such differences remain unreconciled, democracy and peace may still be a long way ahead.

Political feuds: Another possible threat to stability is a political dispute that has continued throughout the 24 years of conflict. During these years, the East Timorese were divided between two opposing views, pro- and anti-independence. It is certain that of these two groups, the former were always subject to repression by the Indonesian army in its campaign to quell the resistance. The estimated 200 000 people killed in the first 15 years of occupation by Indonesia may have been forgotten and, as time goes by, their relatives perhaps will not feel the need to retaliate or seek compensation. Nevertheless, since the Indonesian army has been withdrawn, retaliation, if it occurs, will certainly be focused against those considered collaborators with the army in the past.⁵ Tension, therefore, will remain high.

⁴ In my recollection, the debates surrounding the emergence of this party took place on the Internet between April and June 1999, where PST was accused of advocating autonomy and fighting only for its own survival instead of the national interest.

⁵ During my visit to Darwin between 26 September and 5 October 1999, I had a chance to talk to several refugees about their experiences during Indonesia's occupation. While I did not conduct any statistical survey, it was clear that those affected by the events in the 1990s still show an eagerness for retaliation, should the opportunity present itself.

Political rivalries and wars among Timorese kingdoms were characteristic of pre-European colonisation. Likewise, the Portuguese government found it extremely hard to gain the 'hearts and minds' of the Timorese, from the time it arrived in the island in the sixteenth century up until approximately the end of the nineteenth century. In the first two centuries of European colonisation of Timor, rebellion and resistance against the colonial administration, especially in the enclave of Oecussi, cost thousands of lives including those of two governors and a Catholic bishop (Duarte 1930).⁶ The colonial government gained effective political control over the eastern part of the island in 1912 when the Catholic church was asked to intervene and convince local traditional rulers to abandon their resistance.

Part of such rivalries and wars may be attributed to the injustices that prevailed at the time; people would choose to settle disputes according to their own ways. This can partly be attributed to the inability of the colonial government to reconcile differences within the society. Dissatisfactions, which then led to possible 'blood-feuds', created disputes that involved not only the main protagonists but also their offspring and future generations. However, memories of suffering, trauma and injustice that the East Timorese have endured during the past 24 years will not just fade away quickly. They could become the hidden basis which triggers further violence should those once 'colonised' decide to retaliate in the future.

Cultural challenges: One of the most challenging issues for the new country concerns that of cultural values, as for example, the preservation of traditional heritage. During the 450 years of Portuguese presence in Timor, the traditional system of organisation with its local leaders, despite being placed under the colonial administration system, was allowed to operate with a certain degree of autonomy. This was due to the fact that most of the population remained under the control of the traditional rulers (*lurai*). These traditional rulers, although subordinate to the colonial government, were given the power to direct and control

⁶ Indeed, rebellions against both the Portuguese and the Dutch took place, especially in the western part of Timor, prior to the Contract of Paravicini in 1756 which contributed to the separation of the island into two halves: East and West Timor as it is known today (see de Castro 1943).

local affairs. Not surprisingly, until the Portuguese departure from the island, this traditional system still played an important role in East Timorese social life.

During the 24 years of Indonesian administration, although the government recognised the existence of traditional institutions, traditional leaders were given no role to play as had been the case under the Portuguese colonial government. These 24 years were also characterised by a decline in the public credibility of state law. This prompted people to rely on traditional ways of solving disputes, rather than state courts. Although state courts were established in almost all regions in Timor (Babo Soares et al. 1996), the traditional legal system seems to have been the preferred means of settling non-criminal disputes. There are two further reasons for this:

1. During the first 20 years of military occupation, the credibility of state law failed in the eyes of the people due to the practise of bribery, which was commonly seen as a disease of the New Order government.⁷ The degradation of the justice system has led the Timorese to invent the saying, *Se mak iha osan nia maka manan, se maka laiba osan nia leki let*: 'Only the rich are the winners, the poor are the losers'.
2. Many East Timorese cannot afford to settle their disputes in state courts simply because they cannot afford the cost of its procedures.⁸ Rural people, who are mostly in the low-income group, prefer a judicial process that has less procedural bureaucracy and is therefore less costly and less time-consuming.

Although there is no quantitative data to distinguish accurately between those who prefer to resolve their disputes through customary courts and those who prefer to do the same through state courts, the fact that 70 per cent of the population still live in rural areas (Babo Soares et al. 1996) and have little access to the state legal system suggests that a majority of East Timorese will still be keen to settle their disputes through traditional

⁷ The New Order refers to Soeharto's regime which came into being in 1967.

⁸ Various statements regarding the poor performance of the state court have been reported by different independent organisations both inside and outside East Timor to the present day. This chapter points specifically to several independent investigations carried out by Yayasan HAK (Hukum, Hak Asasi dan Keadilan/Law, Human Rights and Justice), a local NGO which investigated various human rights abuses in the territory (1977-99).

institutions. Will the new government introduce a system that accommodates both cultural values and the need for change in social life?

It is necessary to reintroduce the 'traditional legal system' and, if possible, integrate it into the national political system in the future. To be able to do this, re-institutionalisation of traditional organisations, provision of training and education to civil administrators and both codification and unification of 'customary law' are necessary. It seems imperative to establish a national task force whose responsibility would be to undertake research about local 'customary law' and integrate it into, or develop it as part of, a legal system. In addition, acknowledging the heterogeneous nature of Timorese society and the degree of cultural variation among different social groups is important, for a national legal and political system should not leave the interests of any group in the society unacknowledged.

Land rights: During the colonial period the social system was often defined by class and status dichotomies such as rural/urban, elite/ordinary or educated/illiterate, but this is not the case in the traditional social system. The standards for social and political identification were based on 'customary law'. These standards refer to the mechanisms applied to administer local social organisation such as rules regarding the status of 'houses', land rights and other rules used to regulate social life. Traube (1977) and Therik (1995) point to such mechanisms as rules to guide the people according to the *path set by the ancestors*, which can still be found in oral narratives. 'Standards' also refer to the legal system, a system employed to determine the organisation of society based on certain acceptable categories of seniority (*primus inter pares*), place of dwelling, precedence (younger/elder), membership status in social groups (consanguinal/affinal) and so on. These principles govern the social system.

For example, in a society like that of the Tetun, a married man is entitled to a piece of land within the clan⁹ by virtue of his membership in a lineage. His children, especially males, are full members of the clan and possess the right of access to land within the clan. The traditional land tenure system recognises no private ownership of land, for land belongs to the lineage (collective rights), i.e. it is indivisible and inalienable.

⁹ By 'clan', I refer to members of a lineage including their families and those who are categorically defined as 'outsiders' or men who marry into the lineage and their offspring. The term 'clan land' in this context refers to the land they occupy or claim as part of a clan's rights.

In the traditional land tenure system, tenure rights are based on collective rights. The system recognises the right to use but not to own.¹⁰ Tenure of land in the traditional system grants every person in the lineage the right to use what is produced by the land, especially from land allocated to that person. Normally, land rights are granted exclusively to the descendants of a lineage. Land cannot be sold to people outside the clan. If a person dies or moves out of the community, his/her land will pass into the hands of the other members of the lineage.

Unmarried women, so long as they trace their origin through the male line and reside within the clan, also have access to land, although compared to their brothers, their portion is smaller. Regarding married women, different social groups or clans possess different ways of settling land rights, especially with regard to those who still want to reside on their natal land despite their marriage status. Generally, these women are given the rights to use of the land.

During the Portuguese period, despite being regulated by the state, societies were allowed to organise their land tenure under the traditional system. Disputes were mediated by the *lian nain* (lit., owner of words), *dato ua'in* (lit., high authority) and *macair fukun* (lit., holder of law). Nevertheless, 'customary law' was not independent of state law. Disputes were settled before state courts if one of the conflicting parties refused to accept a decision handed down at the 'traditional court'. Portuguese law regarding land only recognised 'property rights', not 'use rights'.

Under the Indonesian land tenure system, *Undang-Undang Pokok Agraria in 1965* (Law on Agrarian Reform 1965), two rights to land are recognised. These include *bak milik* (property rights) and *bak pakai* (use rights). Under this law, despite recognising the traditional land tenure system (*bak ulayat*), ownership and disputes were settled through state courts. 'Customary law' was given little room to operate. Ownership without the consent of the government (*laiba surat*, lit., 'without documentation') is not considered legal. People were obliged

¹⁰ My own experience when conducting research on 'small-scale' industries in East Timor in 1996 under the auspices of the University of East Timor and the Department of Manpower of East Timor, provided me with valuable information about land ownership. Among various social groups, traditional land ownership is regarded as 'collective ownership' and claims 'to use' land within a group must be made with the approval of the 'clan' council.

to seek land registration in order to secure their land from 'strange' claims of ownership.¹¹ Thus, land disputes had to be settled through state tribunals, a situation that often gave rise to open hostilities should the victim refuse to honour a decision made in a state court.

Land remains a hereditary issue in most parts of East Timor and conflicts over land are best solved through traditional courts before state law is imposed upon such conflicts. It is therefore necessary that the establishment of the new political system should be followed by the re-institutionalisation of the traditional land tenure system or by the careful merging of both modern and traditional institutions. Preliminary studies and plans should be of a high priority, particularly during this transitional phase, pending the introduction of a new social, legal and political system.

Language problems: East Timor is a plural society with languages that belong to two major language families, Austronesian and non-Austronesian (Trans-New Guinea phylum). The former includes Tetun, the *lingua franca* spoken by half of the island, Uab Meto (spoken in the enclave of Oecussi), Mambai, Tokodede, Kemak, Galoli, Idate, Lakalei, Waima'a, Habu and Nauti. Trans-New Guinea phylum languages include Bunak, spoken in central Timor, Makassae and Fataluku (Dagada) spoken in the eastern part of the island. These three kindred idioms are related to each other and 'to the dialects of the nearby islands of Alor and Pantar' (Hull 1996).

Despite this mix of languages, an overwhelming majority of the younger generation of East Timorese speak *Bahasa Indonesia* (Jones, this volume) and more than 2000 university graduates are fluent in Indonesian. Between 500 and 1000 East Timorese, particularly among the youth, speak moderate English. Tetun came to be the *lingua franca* in the 1960s when the Catholic church adopted it to replace Portuguese as the liturgical medium in the diocese of Dili, which covered the whole territory of East Timor (Hull 1996). *Tetum praça* or *Tetun Dili* has wide acceptance through most of East Timor.

¹¹ The lack of recognition of the traditional land tenure system has had severe consequences for some East Timorese. Many people found their lands transferred into the hands of new owners who came and settled in East Timor after 1975 simply because these newcomers were able to produce 'chapters' which indicated their right of ownership to the land. Although there is no official record of this, the fact that a number of complaints have been addressed to NGOs and human rights groups in the territory provide evidence of this situation.

The question is, which language will be used as the national and official language of a new East Timor?

Cox and Carey (1995) argued that perhaps only 0.25 per cent had received formal (Portuguese) education until late 1975. From 1975 onwards, the Indonesian educational curriculum was introduced throughout East Timor. Schools were built and under the government's program, illiteracy was to be eradicated. All Portuguese curricula and training schools were abolished, including those run by the church. As a consequence, during the 24 years of Indonesian occupation, the main language spoken in schools, government institutions and privately-owned institutions was Indonesian (*Bahasa Indonesia*). Now, in 1999, Portuguese-speakers in East Timor number only a few hundred and not all of them are fluent in writing and speaking. *Bahasa Indonesia* is the widest spoken language, second only to *Tetum praça*.

In April 1997, a decision was made at the first CNRT conference in Portugal to adopt Tetun as the national language and Portuguese as the official language in an independent East Timor. It is understood that this decision was partly made because of the historical and emotional ties between East Timor and the Portuguese people. In part, the decision was taken because of the desire to eradicate *Bahasa Indonesia* from East Timor and return to Portuguese.¹²

Nevertheless, questions have been raised as to the value of using Portuguese in the long-term. These questions are based largely on geographical and economic concerns and issues of national interest. Some politicians endorse the Portuguese language as a means of avoiding the 'cultural domination' of Indonesia over East Timor.¹³ Others would argue from a cultural point of view that *Bahasa Indonesia*, which has its origin in the Malay language, was the language of traders and was spoken throughout eastern Indonesia prior to European colonialism of South-east Asia.¹⁴ Malay had its influence in East Timor, which was located within a complex trading network. Not surprisingly, the word *malae* which in *Tetun* is used to refer to 'foreigners' is probably derived from the word for Malay.

¹² Pers. comm., José Ramos Horta, 1998, Sydney.

¹³ Ibid.

¹⁴ A speech by Prof. James J. Fox at the Canberra Workshop of the East Timor Study Group, 27-28 April 1999, supported and sponsored by Centre for Democratic Institutions, the Research School of Pacific and Asian Studies, and the Faculty of Asian Studies, at the Australian National University.

Most East Timorese Indonesian-speaking graduates have reacted to the CNRT decision with caution. This does not necessarily imply that this group, which could constitute a strong pressure group in an independent East Timor, rejects the imposition of Portuguese as the official language. Cautious measures need to be taken and decisions on sensitive issues such as language need to be handled carefully because these could become a source of negative feelings in a still-traumatised society.

Human rights: In the lead-up to the ballot, certain sections within the East Timorese society, who were disappointed with President Habibie's decision, tried to derail the referendum through a well-orchestrated and systematic campaign of violence. The period between December 1998 and August 1999 saw the emergence of various militia groups in East Timor and the mass 'elimination' of pro-independence supporters by these groups. It is undeniable that the Indonesian military or some sections within the military worked together with the militia to undermine the referendum as well as to eliminate supporters of the independence movement.

Indeed, various reports of atrocities and first-hand accounts from eyewitnesses have been recorded. Different human rights organisations, non-governmental organisations, international observers¹⁵ and UNAMET itself documented much of the violence which occurred in East Timor during the period before the 30 August ballot. Although the referendum was successful, the anti-independence group, who represented only 21 per cent of voters, still tried to reject the process. They argued that misconduct had occurred during the balloting and, instead of remaining neutral, the UN had cheated on the whole process. The anti-independence group spearheaded by figures such Francisco Lopes da Cruz, Domingos Soares, Armindo Mariano, Basilio de Araujo, Tito Batista, João Tavarez and the notorious militia leader Eurico Guterres accused UNAMET of taking sides with the pro-independence group.

The UN decided to appoint a commission of inquiry into the killings and the forced evacuation of the civil population into West Timor. Such developments, however, did little to ameliorate the situation on the ground. In the meantime, former militia leaders such as Tomas

¹⁵ Several international organisations accredited by the United Nations Assistance Mission in East Timor such as the IFET (International Federation for East Timor) and the Carter Center were among these international observers.

Aquino Goncalves and Rui Lopez, who defected to Macau, provided evidence on TNI-militia collusion. There were thus a number of significant indications suggesting that the TNI's scorched earth policy was well planned in advance.

Since the army-backed militia rampage, none of the militia leaders has been brought before any court. Many of the militia leaders predicted in advance that there would be a flood of blood and a situation worse than 1975 if the pro-autonomy supporters lost the referendum. This, too, indicates that they knew in advance what was going to happen. A lot of home-made weapons were in the hands of these militia and there are indications that they had received some training in making weapons. While the militia killed with impunity, the military stayed motionless. That the relatives of the militia were brought to West Timor before or soon after the ballot also suggests that they knew in advance the consequence of a pro-autonomy loss.

Other developments that suggest that the violence had been planned in advance are as follows: All pro-autonomy leaders were flown to Jakarta by special planes arranged within hours after the result of the ballot was announced. The subsequent militia rampage around Dili involving the killing of pro-independence leaders, forced evacuation and looting with impunity were not dealt with by the security forces, despite the fact that martial law had been declared. UNAMET officials and foreign journalists were forced to leave East Timor at gunpoint (*Canberra Times*, 5 September 1999). In addition, burning of property and transportation of goods looted from burned houses accompanied the withdrawal of TNI, soon after the arrival of the Multinational Force in East Timor.

It is necessary for the United Nations to initiate immediate measures to bring all the parties to this conflict together to solve the issue once and for all. Despite current developments indicating that the militia threat will fade as democratic changes occur within Indonesia and that Indonesia will seek to establish good relations with the government of East Timor, steps need to be taken to prevent further violence and the loss of lives from taking place again in the territory. For this purpose, in addition to addressing economic and cultural issues, there is a need for the new government:

- To establish a South African-style 'Truth and Reconciliation Commission' in order to initiate a reconciliation process and to consider the evidence on the violation of human rights committed in the past.

- To set up a judicial system, a police and a court system to enable the government to investigate atrocities and killings in the past.
- To grant amnesty, pardon and abolition from prosecution based on legal, moral and humanitarian grounds for certain individuals. This, for example, could be based on the type of political crimes committed and on the circumstances in which these crimes were committed.
- To restart the relationship with any future Indonesian government and resolve past disputes in a peaceful manner. It is hoped that this relationship would allow the East Timorese and Indonesian governments to work on the basis of an understanding for their mutual benefit.
- To apply for UN membership as well as to become an active player in both the South Pacific Forum and ASEAN. Given its geographical location, East Timor will surely benefit from joining both the UN and these two regional organisations so as to strengthen its links with the international community.

Closing remarks

East Timor needs internal stability if it is to develop. However, the challenges raised in this chapter are a warning that continuing conflict could recur unless attention is paid to healing the ‘hearts and minds’ of the people. The introduction of ‘democracy’ in its first years will be a challenge to both the new government and the East Timorese people. Arguably, apart from reconciliation among the East Timorese, efforts need to be made to redress moral and material disadvantages, which the East Timorese have suffered during the years of political turmoil. Thus, alongside the points made in Xanana’s development blueprint, the following concepts need to be considered as well:

- Emotional recovery needs to proceed along with material development among the people.
- Counselling and trauma healing are necessary in the short-term in order to avoid vengeance, blood-feuds or reoccurrence of long-standing disputes among the East Timorese. Negotiation and conflict management are both of considerable importance to this process.
- The establishment of a South African-style Truth and Reconciliation Commission seems imperative to heal past wounds.

- Selective amnesty by the government is necessary, while ‘criminals’ should be given a chance to experience justice.
- Economic development should be based on egalitarian principles to avoid widening the gap between the poor and the rich.
- Checks and balances should be put in place on all government activities.
- Combating corruption, collusion and nepotism among the elite should be of high priority in order to keep the economy going and to keep people satisfied with their expectations and the political system.
- Adopting a legal system that upholds the *rule of law* must be a priority.
- Most importantly, attention should be given to traditional East Timorese leaders and to customary practice. Ways of integrating local traditions into the nation’s political and legal/practice system should be explored.

A nation will survive not because of forces from outside; its survival will depend on how its people endeavour to sort out problems within their own society.

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