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## Book Review: Daniel Fitzpatrick, Land Claims in East Timor

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## BOOK REVIEW

KAREN M. SMITH

Daniel Fitzpatrick, *Land Claims in East Timor*.

In August 1999, the East Timorese populace voted by an 80% majority for independence from their Indonesian occupiers.<sup>1</sup> Following this vote, the Indonesian military rampaged throughout the countryside, destroying infrastructure and displacing the populace.<sup>2</sup> Besides the human tragedy, there is a little-considered effect of this wholesale destruction - that of the destruction of a system of land ownership.<sup>3</sup>

East Timor has had a varied history. For several hundred years, it was a Portuguese colony.<sup>4</sup> In 1975, the Portuguese left East Timor in response to pressure from the United Nations.<sup>5</sup> As a result, rival East Timorese factions battled for control of the tiny country.<sup>6</sup> When it became clear the Uniao Democratica Timorese and Apodeti parties were losing their bid for political control of East Timor, they petitioned Indonesia for military assistance.<sup>7</sup> In response, Indonesia invaded and subsequently occupied East Timor, claiming it as a subject state.<sup>8</sup>

Currently, the East Timorese government is being administered by the United Nations Transitional Authority in East Timor (UNTAET).<sup>9</sup> UNTAET's mission includes that of establishing an interim land claims administration.<sup>10</sup> However, making this mission more difficult is that there are many subtle issues involved in untangling the web of land claims in East Timor. First, there are claims by the traditional occupiers of land, those who were dispossessed by the Portuguese colonials in the early 1700s.<sup>11</sup> There are also the claims of both native East Timorese and Portuguese, who own land under Portuguese title.<sup>12</sup> During the 24-year Indonesian occupation, Indonesian land law was applied, and thus there are many individuals, both Indonesian nationals and

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1. DANIEL FITZPATRICK, *LAND CLAIMS IN EAST TIMOR* 1 (Asia Pacific Press 2002).

2. *Id.*

3. *Id.*

4. *Id.* at 33.

5. *Id.* at 49.

6. *Id.*

7. *Id.* at 49-50.

8. *Id.* at 50, 198.

9. *Id.* at 3.

10. *Id.*

11. *Id.* at 35.

12. *Id.* at 33-34.

native East Timorese, who own land under Indonesian title.<sup>13</sup> Finally, there are the current occupiers of property. This category includes those who have adversely possessed abandoned property since the military action of August 1999, and also those, such as foreign humanitarian aid groups, who entered into land transaction contracts with one purporting to be the owner of the property in question.<sup>14</sup>

"Land Claims" considers the claims of each of these competing groups, taking an unbiased look at the position of each. At first blush, it would seem that the claims of the Indonesian nationals would bear little consideration. After all, Indonesia was a hostile occupier. However, Indonesia claims they were asked to intervene by the government of East Timor, and thus were not a hostile occupying force.<sup>15</sup> Much of the world community discounts this argument, as the request for Indonesian intervention was made by a political faction, not by the populace at large or even by the ruling government.<sup>16</sup> However, Indonesia, in negotiating with East Timor regarding reparation for the damage done by its occupation, refuses to move from its stated position, and this has, in turn, stalled the creation of a land claims administration system.<sup>17</sup>

Equally problematic are the claims of current occupiers of property. Fitzpatrick gives an example of a hotel in Dili, the capitol of East Timor.<sup>18</sup> The hotel, during Indonesian occupation, was used as an army barracks. After the United Nations took over the administration of East Timor, a foreign company entered onto the hotel property and made many improvements to the property.<sup>19</sup> The foreign company claims it is lawfully occupying the land under a lease executed by an agent of the Portuguese titleholder.<sup>20</sup> However, the status of the Portuguese title is unknown, as is the date of the lease.<sup>21</sup> The foreign company had, in reliance on the purported lease, made several million dollars worth of improvements to the property, and is unsurprisingly resisting UNTAET's attempts to evict them.<sup>22</sup>

Finally, there are the claims of traditional holders of land. East Timor, before Portuguese colonization, had a patriarchal, clan-type

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13. *Id.* at 44-45.

14. *Id.* at 65.

15. *Id.* at 198.

16. *Id.* at 49-50.

17. *Id.* at 198.

18. *Id.* at 161-62.

19. *Id.* at 161.

20. *Id.* at 162.

21. *Id.*

22. *Id.*

society, with "liurai"<sup>23</sup> at the heads of the clans.<sup>24</sup> The clans held tracts of land, which were administered by the liurai as head of the clan. However, at the time of Portuguese occupation, the colonials evicted these clans from their ancestral land, taking the rich farming land for the creation of plantations.<sup>25</sup> Today, these clan groups are asserting ancient claims to the land.<sup>26</sup> Their claims, while clearly worthy, are nearly impossible to prove by conventional means, as there was no written deed or other proof of ownership of the land.<sup>27</sup>

The business of life goes on, even in countries as unstable as East Timor. The transfer of land for myriad purposes is part of that business. East Timor's lack of an effective and permanent system of land administration has slowed, but not halted, land transactions. As illustrated by Fitzpatrick, there are no easy answers to the land claims problems facing the fledgling East Timorese government. The United Nations has refused to establish a land claims commission, citing concerns that the regulation of private land transactions is a decision best left to a democratically elected government. "Land Claims" presents the problems and possible solutions for resolving these land claim issues in East Timor, in a clear and unbiased manner.

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23. "Liurai" translates loosely as "king" or "lord." *Id.* at 29.

24. *Id.* at 29-30.

25. *Id.* at 35.

26. *Id.* at 204-05.

27. *Id.*

