



**International IDEA  
Democracy-building & Conflict Management (DCM)**

**THE ROLE OF CONSTITUTION-BUILDING PROCESSES  
IN DEMOCRATIZATION**

<http://www.idea.int/conflict/cbp/>

**Case Study  
East Timor**

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2005**

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**“Who should harvest the fruits of victory? Constitution Building in Timor-Leste.”**

**Paper prepared for IDEA’s Democracy and Conflict Management Programme Stockholm,  
Sweden  
May 16, 2005**

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When Timor-Leste became independent on May 20, 2002, it was the culmination of a long struggle for independence stretching back to 1974. The abrupt departure of Portugal after more than 400 years of colonial rule was followed by the subsequent invasion of Timor-Leste by Indonesia. The abrupt departure of Indonesia in 1999 came after the defeat at the ballot box of the Indonesian dream of integration of Timor-Leste into Indonesia. The Tentara Nasional Indonesia (Indonesian National Military or TNI)<sup>1</sup> responded by organising an orgy of violence as a prelude to their own abrupt departure less than a month later. This left a vacuum in Timor-Leste, both legally and administratively. The challenge the United Nations inherited was to establish a legitimate and stable government for Timor-Leste in the wake of nearly a quarter century of anti-colonial struggle. Who would govern the new nation and on what basis seemed open questions.

When Timor-Leste achieved independence in 2002 it was in new circumstances, circumstances which were a legacy of both Portuguese and Indonesian colonialism and the brief UN interregnum. Many of the previous players reoccupied the political stage in 1999. Yet, given the passage of a quarter century following the initial declaration of independence in 1975, there were inevitably some new players. Both old and new tensions arose in the ranks of Timorese leaders. Still more challenging was the fact that the Timorese people were forced to rebuild their new nation in the aftermath of the near-total destruction of Timor-Leste and the abrupt disappearance of the Indonesian administrative and governmental structures. The United Nations stepped into the vacuum and suddenly found itself in a unique role as the de facto successor to the departed colonial powers.

The process leading to independence for Timor-Leste proved to be primarily a process of legitimising the outcome of a conflict already over. Writing and adopting a constitution would provide the ground rules for current and future struggles. It would have little to do with the previous conflict whose end had created the opening for a constitution building process in Timor-Leste. The Timorese nationalist movement had won, but the question remained of who among the old and new players would reap the fruits of that victory. The UN had become a reluctant colonial master, one clearly concerned about finding the quickest and least expensive exit that would still meet expected international standards and protect the UN against international criticism. While a necessary step in achieving formal independence, the constitution building process proved to be less a process of conflict resolution than a stage for the contest for power in Timor-Leste.

In order to understand how the contest for power in newly independent Timor-Leste has played out through the constitution building process it is necessary to consider the context within which the constitution building process came about. This requires a consideration of the history of colonialism and decolonisation in Timor-Leste as both had unusual characteristics. It will then be possible to consider whether the necessary prerequisites were in place for an effective constitution building process in the period 2000 to 2002. The degree of legitimacy and public support for any new constitution are critically affected by decisions about the time frame of the constitution building process, about who is to make key decisions, and about what the extent of

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<sup>1</sup> The title Tentara Nasional Indonesia and the acronym TNI were applied to the Indonesian armed forces in 1999 when military and police functions were separated. TNI will be used to refer to the Indonesian military throughout this paper for consistency.

political participation will be. Without a high degree of legitimacy and public support a new constitution is unlikely to result in a sustainable democratic order. These questions of legitimacy and public support are critical in newly independent Timor-Leste where the divisions which have emerged clearly have the potential to overwhelm the new constitution and make it a vehicle for exacerbating rather than containing social and political conflict.

### **Colonialism: Portuguese and Indonesian**

Timor-Leste has had the peculiar experience of seeing two colonial powers depart unexpectedly. Before the peaceful overthrow of more than 50 years of dictatorship in Portugal, few would have imagined that Portugal would be gone from Timor-Leste in less than two years. Similarly as late as 1998 few would have imagined that Indonesia would be gone from Timor-Leste within a similar period. In both cases the departure date had more to do with the domestic politics of the colonial powers than with events in Timor-Leste. In both cases the departure was probably predictable, though for differing reasons. While Portuguese colonialism had never driven the Timorese to revolt, Portuguese interest in Timor was never strong enough to bind the two together. In the case of Indonesia the where the military did show a strong interest in Timor-Leste, the policies of the TNI only served to stiffen Timorese resistance to Indonesian rule.

Despite more than four centuries of formal control of Timor-Leste by Portugal, few outside the capital had been much affected by Portuguese rule. Fewer than 10% of the Timorese population spoke Portuguese. By the Catholic Church's own estimates fewer than one-third of the population were Catholic.(Aditjondro, 39) Economic development in Timor-Leste was minimal and economic ties to Portugal weak. Most of the Timorese population continued to live in remote villages under the sway of traditional rulers called liurai. Fewer than 50% of primary age students were in school in 1973 and just over 1,000 students were enrolled in secondary institutions.(Dunn, 27) Only a handful could afford to attend university in Portugal or elsewhere abroad. In 1974 only 39 Timorese students were enrolled in university, up from an average of two pre-1970. (Taylor, 17) This limited development in Timor-Leste under the Portuguese left a vacuum at the top that was to be filled by Indonesian migrants under the next colonial power and a Timorese society little touched by Portuguese culture at the base.

The fate of Timor in 1975 was in great measure settled by outside events. The Portuguese desire for an early departure had led them early on to suggest that there were three options for the future of Timor-Leste, continued association with Portugal, independence, or integration with Indonesia. There are indications that Portugal communicated its possible acceptance of the integration of Timor-Leste directly to the Indonesian government.(Dunn, 52). The declaration of independence for Timor-Leste on November 28, 1975 by the Frente Revolucionaria de Timor-Leste Independente (Fretilin) was a desperate attempt to strengthen Timor-Leste's case for international support against Indonesia.

On December 8, 1975 the Indonesian TNI launched an invasion of Timor-Leste with more than 10,000 troops. The Indonesian forces quickly occupied Dili and most towns by the end of the first month, yet little progress was made in countryside where the vast majority of the Timorese lived. Frustration quickly led the TNI to terror tactics in the attempt to break the will of Fretilin to resist, tactics which included systematic use of public executions and burning of villages. (Dunn, 251) Even the newly appointed Timorese Governor wrote to President Suharto to protest

the level of violence. (Taylor, 71) Aid workers estimated that as many as 100,000 Timorese died in the first year of the Indonesian occupation.(Taylor, 71) The UN General Assembly reacted on December 23, 1975 with a resolution calling for the withdrawal of Indonesian troops and the holding of a genuine act of self-determination. Ignoring the UN resolution, Indonesia carried out a formal annexation of Timor-Leste which was marked by a ceremony held in Dili in May 1976. By the end of 1976 Indonesia had more than 40,000 troops in Timor-Leste.

Frustrated by their inability to wipe out resistance by the Forças Armadas de Libertação Nacional de Timor Leste (Armed Forces of National Liberation of Timor-Leste or Falintil) the TNI continued to target the civilian population. 1977 saw Indonesia resort to heavy bombing of rural areas and a campaign of encirclement which attempted to break ties between Falintil and the civilian population by physically severing contacts. The result was a forced resettlement of more than 200,000 Timorese into villages controlled by the TNI.(Dunn, 290) The forced resettlement of nearly half the Timorese population resulted in a drastic decline in agricultural production and famine conditions in most of the settlements. (Schwartz, 205) For Fretilin and its armed wing, Falintil, December 1978 marked the low point of the struggle against integration. Fretilin resistance continued throughout the Indonesian occupation but never again seriously threatened Indonesian control of cities and towns after 1978. Still Indonesia was forced to keep nearly 20,000 troops in Timor-Leste until the late 1980s.(Dunn, 305) More than 10,000 Indonesians had been killed by Falintil by the end of the decade.(Schwartz, 205) By 1989 there had been a total of between 140,000 and 300,000 Timorese deaths as a result of the armed conflict, in round figures nearly 25% of the population even at the low end of the estimates.(Dunn, 184-185)

1989 marked a shift in both Indonesian and Fretilin tactics. Falintil strength had dropped to only a few hundred.(Schwartz, 208) Indonesia reacted to the reduced guerrilla threat by ending the secret war in Timor-Leste and attempting to normalise the situation. The Indonesian garrison was reduced to fewer than 12,000 and the army began to take on public works projects designed to win popular support. (Schwartz, 210) Travel restrictions were lifted allowing free movement into and out of Timor-Leste for the first time since the 1975 invasion. As well, travel permits were no longer required from the TNI for Timorese and outsiders to travel within Timor-Leste.(Schwartz, 209.) For Fretilin the focus of resistance shifted from the rural guerrilla campaign to the clandestine urban movement. This also marked a shift in generations in the resistance bringing students and youth to the fore. When Xanana Gusmao was ultimately arrested in Dili in 1992 and the fact that he had been leading the resistance while hiding in Dili for more than four months, it was symbolic of this shift. From 1989 on student-led pro-independence demonstrations greeted nearly every international visitor to Dili.

There is no doubt that the Indonesian occupation brought great changes to Timor-Leste. While the overall Timorese population did eventually begin to recover, as a result of targeted killings and exile the Chinese Timorese population never did. Their place was taken by more than 80,000 Indonesian migrants who had arrived by 1989, a mix of migrants from Java, Bali, and Sulawesi.(Schwartz, 210) Some came as camp followers of the TNI and made good use of their military connections to prosper. PT Denok, a company controlled directly by the Indonesian military, was granted a monopoly on the export of coffee, still the province's most profitable crop.(Schwartz, 206) More Javanese and Balinese migrants came as a result of the transmigration program and were settled on rice lands along the border with West Timor.(Aditjondro, 62-63) Still more spontaneous Indonesian migrants came to occupy almost

all key commercial roles in Timor-Leste. Indonesian migrants occupied virtually all mid- and higher-level positions in the public service, including those in the health and education systems. Bahasa Indonesia was made the language of education and government. A ban was placed on use of Portuguese and Tetum in schools or other public services. This ban on teaching Tetum was relaxed only in 1990 after Indonesia adopted a more conciliatory policy toward Timor-Leste, but for a generation Bahasa Indonesia became the language of literacy.(Aditjondro, 360)

In terms of economic development some progress was made in Timor-Leste. By 1989 per capita incomes had risen to five times their level under the Portuguese. Still they remained only half the Indonesian average(Schwartz, 206) and well below per capita incomes in the former Portuguese colonies in Africa.(Aditjondro, 77) Indonesia did begin a program of expanded health and education services and it is true that social indicators showed significant improvement over the Portuguese period. In comparison to Portugal's former colonies in Africa, Timor Leste outranked them all in having higher literacy rates and lower rates of infant deaths.(Aditjondro, 77) Yet at the end of Indonesian rule, Timor-Leste still ranked among the poorest countries in the world and the little growth that had occurred had disproportionately benefited the new migrants. In 1993 more than half the rural population in Timor-Leste lived in poverty and investors still avoided Timor-Leste because of the political instability.(Schwartz, 209)

From the beginning the Catholic Church in Timor-Leste refused to cooperate with Indonesia's plans for integration, opting for neutrality. Timorese bishops continued to report directly to the Vatican and not through the Archbishop in Jakarta. This maintained the Church structure that applied for all independent nations. This symbol was underlined when the Vatican insisted that the Pope's visit to Indonesia in 1989 was conditional on a stop in Timor-Leste. More important was the refusal of the Church to adopt Bahasa Indonesia as its official language when Indonesia forced the abandonment of Portuguese in 1979. Instead the Catholic Church adopted Tetum as the language of the liturgy and of its seminaries. Together with the covert support of the bishops for Timorese nationalism, these two decisions helped create the only public space in Timor-Leste not controlled by Indonesia. The result was that the Indonesian occupation actually made Timor-Leste a Catholic nation. A population which had been only one-third Catholic in 1975 was more than 80% Catholic by 1989.(Kohen, 21) Some perhaps turned to the Church in two decades of great crisis. Others may have done so simply in compliance with Indonesian law that required each citizen to choose from one of five approved religions. It is clear that many more found their Timorese identity in the Catholic Church and that the Church had come to play a central role in Timorese society.

Portuguese-born Bishop Ribeiro is said to have driven himself to nervous exhaustion by 1977 in attempting to maintain a public policy of neutrality, while counseling resistance in private. Yet Ribeiro remained suspicious of Fretilin as a movement that would oppose making the Catholic Church the state religion of an independent Timor-Leste. He was replaced in 1977 by Timorese-born Martinho da Costa Lopes. Bishop Lopes' thinly veiled support for the nationalist cause in his sermons led to Indonesia pressing the Vatican for his removal.(Jolliffe, August 29) In 1983 he was replaced by Carlos Ximenes Belo, another Timorese-born bishop. While Indonesia thought that Belo would be more strictly neutral, as Bishop he proved to be an even greater thorn in the side of Jakarta. In 1989 Bishop Belo sent a public letter to United Nations Secretary General Javier Perez de Cuellar calling for peaceful resolution of the conflict in Timor-Leste by holding an internationally supervised act of self-determination.(Kohen, 20)

Neither time nor social changes in Timor-Leste ever brought acceptance of Indonesian rule. Yet these changes inexorably gave shape to the challenges to be faced by an independent Timor-Leste in 2002. Timor-Leste found itself a society with a generation literate only in Bahasa Indonesia and a society that lacked indigenous skills and training in all areas essential to democracy and development. It faced independence as a nation bereft of entrepreneurial, technical, medical, educational, and administrative skills and experience.

## **Exit Indonesia**

In 1989 it had appeared that the integration of Timor-Leste into Indonesia might succeed. Two years later the status of Timor-Leste had become a constant obstacle to Indonesia achieving its other goals in international affairs. When the international financial crisis hit Southeast Asia in 1997 Indonesia could ill-afford to further alienate the international community. The crisis was so severe that Indonesia faced a total economic collapse if international financial support were to be withheld. After Indonesian President Suharto was driven from power, his successor Habibie found himself in dire need of international financial support in order to secure his own political future.

President Habibie sided with his Foreign Minister Ali Alatas who had once described Timor-Leste as “a pebble in the shoe of Indonesia,” (Lowry, 92) and moved to end the stalemate. Habibie announced in June 1998 that he was prepared to grant Timor-Leste autonomy providing that the Timorese would continue to acknowledge Indonesian sovereignty. (Lowry, 92) Three-way talks began in New York between Indonesia, Portugal and the UN, culminating in the New York Agreement on May 5, 1999. The New York Agreement called for a referendum to be held in Timor-Leste on August 8, 1999, a referendum that would give the Timorese a clear choice between autonomy within Indonesia or independence.

Despite TNI propaganda, Indonesians familiar with Timor-Leste knew the Timorese were unlikely to accept the offer of autonomy and that whatever happened, the possibility of violent conflict would be high. A massive exodus of Indonesians from Timor-Leste began in May 1999, beginning with wives and children of migrants heading for Bali for an indefinite “holiday.” By the end of June most Indonesian teachers and public servants were gone and there was only one doctor left in Timor-Leste.<sup>2</sup> The generals in command of the TNI were unable to admit the failure of the integration project which had been largely their own initiative. They convinced themselves, and perhaps even President Habibie, that Indonesia could win a referendum in Timor-Leste by offering autonomy. They argued that the genuine affection many Timorese felt for Indonesia, combined with a campaign of intimidation on the ground, would guarantee victory. The TNI began to reinforce and expand the militia forces that it had created in order to provide political support in the upcoming campaign against independence. (Lowry, 93) As the Consultation was to take place between the first and second rounds of the Indonesian Presidential election, the TNI could be assured of a free hand on the ground in Timor-Leste.

Under the New York Agreement the UN was to run the balloting for the Consultation, while Indonesia was to guarantee security. There was no provision for an international peacekeeping

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<sup>2</sup> Personal observation by the author. Dili, July 1999.

force, though the UN was allowed to bring in unarmed civilian police to assist with organising the ballot. Falintil agreed to a cease-fire and the cantonment of its forces in the hills near Baucau for the duration of the Consultation. The United Nations Mission for Assistance in East Timor (UNAMET) took to the field June 1, 1999 and despite some delays managed to register voters and conduct a ballot on August 30th. Despite a campaign of intimidation and the open threat of violence and destruction for Timor-Leste in the event of a pro-independence vote, turnout exceeded 98%. Despite the inability of the pro-independence forces to campaign in most of the country, the vote for independence was 78.5%. (Lowry, 100)

When the results of the Consultation were announced a wave of violence engulfed Timor-Leste. The TNI claimed this was a spontaneous reaction to a vote rigged by the UN, but its claims failed on two counts. International observers had immediately certified the vote as a true reflection of the opinion of the Timorese people and Indonesia was unable to produce any evidence to the contrary. On the question of spontaneity, not only did the TNI take no action to stop the violence, but in fact clearly orchestrated it. (Special Rapporteurs, paragraph 72) More than 1,500 Timorese were killed as the militias targeted community, political and religious leaders at the local level. (Special Rapporteurs, paragraph 37) An estimated 70% of the public infrastructure and housing in Timor-Leste was destroyed in a house-to-house campaign of arson. More than one-quarter of the entire population was forcibly displaced to West Timor in a matter of days. This in itself was an organisational feat that puts the lie to Indonesian claims of that the Timorese spontaneously fled. (Lowry, 100-101) By the time INTERFET, the hastily-organised, Australian-led international peacekeeping force arrived in Dili September 20th the militias had already finished carrying out the TNI's planned campaign of revenge.

Few Indonesians were left in Timor-Leste by mid-September. More than 100,000 Indonesian migrants had already fled in the weeks leading up to the vote on August 30th. The Indonesian backed militias had gone over into West Timor as part of the forced removal operation in the first week of September. The TNI withdrew from Timor-Leste at the time of the arrival of INTERFET, but threatened to carry on a campaign of destabilisation by backing the exiled militias operating from camps in West Timor. Indonesia's new President Wahid officially transferred the administration of Timor-Leste to the UN on October 29, 1999. Just as Portugal had suddenly left in 1975, within days of the pro-independence vote the Indonesians were gone.

INTERFET slowly consolidated its hold on Timor-Leste and secured the territory for the UN by the end of September. The clandestine resistance movement, or those who survived the violence of early September, surfaced. Falintil came down from the hills. Xanana Gusmao was released from house arrest in Jakarta on September 7th and returned to Dili on October 20th after a stop at the UN in New York. The United Nations Transitional Administration in East Timor (UNTAET) was authorised by the Security Council on October 29th. It was left to a hastily assembled UN mission to guide the transition to democracy in Timor Leste.

### **Decolonisation: the UNTAET Mission**

The October 1999 Report of the Secretary General to the Security Council set both a timetable for the political transition in Timor-Leste and goals for the process. The proposal was for UNTAET to exercise full legal and administrative authority while bringing about independence for Timor-Leste under a democratically elected government. Neither the Secretary General's

Report nor the subsequent Security Council Resolution 1272 set out any specific plans for achieving either the timetable or the goals. Developing a strategy to accomplish the goals within the time frame was left to the Special Representative of the Secretary General (SRSg).

In his initial report to the Security Council the Secretary General was clear on the question of the time frame. The report stated Annan's view that "...the process will take two to three years." (Secretary General, 1999, paragraph 27) None of the reports of the Secretary General give any insight into the reasoning behind his selection of this time frame. Nevertheless the view of most observers is that this interval was selected on the basis of the Secretary General's assessment of how much time and attention the Security Council and donor nations would be willing to devote to Timor-Leste.(Goldstone, 87) This in fact is the only possible explanation for adopting such a short time frame given the task at hand and resources available.

UNTAET faced an immediate humanitarian emergency as more than half of the Timorese population had been displaced, with nearly one-quarter living in makeshift camps in West Timor. UNTAET had few local resources to work with given the massive destruction of infrastructure and the exodus of virtually the entire upper levels of the administrative and public service systems. UNTAET was also expected to take over responsibility for security in Timor-Leste as soon as possible. Thus a single UN mission had been given responsibility for humanitarian relief, rebuilding administrative and public services, and guaranteeing security, while also guiding the transition to independence. Given the Timor-Leste context, UNTAET faced both an ambitious mandate and a tight timetable.

Adding to the complexity of the tasks at hand was the requirement that UNTAET involve the Timorese in carrying out its mandate. Security Council Resolution 1272 specifically required that UNTAET, "consult and cooperate closely with the East Timorese people in order to carry out its mandate." (Resolution 1272, para. 8) Yet two assumptions informed the Report of the Secretary General and the early decisions of his Special Representative in Timor-Leste which made cooperation more difficult to achieve. One of these was that UNTAET was primarily a peacekeeping mission. The other was that there was a political vacuum in Timor-Leste. As a result of these two assumptions, responsibility for the Timor mission was given to the UN Department of Peacekeeping Operations (DPKO) rather than the UN Department of Political Affairs which had had responsibility for the 1999 UN Consultation.(Suhrke, 6) The conflict between peacekeeping and peacebuilding conceptions of the UNTAET Mission was never fully resolved at a policy level, but the assignment of the mission to DPKO decided the matter in practice.(Conflict Group, para.21-23)

The peacekeeping model presumed that there was still a major threat of ongoing conflict between the parties that had brought the UN into the picture. This was clearly not the case in Timor-Leste. Indonesia had left and the only "peacekeeping" responsibility which remained was protection of Timor-Leste from outside interference. The threat that the TNI would use the militias in West Timor to attempt to destabilise Timor-Leste was real, but if the displaced could be persuaded to return home it would become a minor threat. Adopting the peacekeeping model meant that the mission risked assembling the wrong skill sets and operating from the wrong mindset. Many of the UNTAET personnel, including the Secretary General's Special Representative Sergio Vieira de Mello, came directly from the United Nations Mission in Kosovo. The structure for UNTAET was virtually a carbon copy of the arrangements for Kosovo where the threat of a resumption of

hostilities between the two sides remained the principal challenge. This meant that UNTAET was launched as a mission dependant on international staff and with power centralised in the hands of Vieira de Mello, a design more appropriate for areas of ongoing local conflict. Thinking of the UNTAET Mission as a peace building mission might have resulted in a closer relationship between the UN and Timorese leaders and a different conception of the structure and resources required by the mission.

The second assumption, that there was a political vacuum in Timor-Leste,<sup>3</sup> had even more serious consequences. While there was certainly an administrative and legal vacuum in Timor-Leste, there was clearly no political vacuum. The Concelho Nacional da Resistancia Timorese (Timorese Council of National Resistance or CNRT) had existed since 1998 as a broad popular front representing all political factions and in 1999 served as the umbrella for those who worked together to achieve a victory in the referendum campaign. It had in fact been officially recognised as representing the independence forces by UNAMET during the 1999 Consultation. The CNRT flag was used to represent the pro-independence campaign and the flag had even appeared on the ballot next to the independence option. Several political groups under the CNRT umbrella had long histories of organising in Timor-Leste before and under Indonesian rule. Fretilin and Falintil had particularly deep roots in the community as a result of their leadership in the resistance movement. An active civil society existed as well, with the Catholic Church as the prime example.

In October 1999 the CNRT met in Darwin to re-organise itself for the new circumstances ahead. The CNRT view was that it would be governing Timor-Leste under UN supervision in the transition period. (Walsh, 1999) The result was the creation of a seven member Transitional Council which the CNRT thought would be the Timorese dialogue partner with the UN mission in some kind of co-governance model. The CNRT sent their proposal to the UN planners in New York, but it was ignored in favour of a more traditional peacekeeping plan for UNTAET. (Suhrke, 9-10) Though CNRT leaders had initially thought in terms of a five to ten-year time frame for a transition to independence, as relations with UNTAET deteriorated the CNRT began to support an early end to the transition period.(Conflict Group, para. 301)

UNTAET's assumption that the task at hand was peacekeeping in a political vacuum meant that much time and many opportunities were lost. In a peacekeeping mission the UN has to be careful not to side with any of the "factions" until political structures can be created that will be acceptable to both sides. By definition nothing could be done on constitution building until elections had been held. (Conflict Group, para. 294) Since the CNRT was not a sovereign authority, then in UN peacekeeping thinking it was automatically a faction. As a faction the CNRT had to be kept at a distance and therefore ideas such as power-sharing or dual governance structures could not be considered. (Chopra, 997) The refusal of UNTAET to deal with the CNRT as a partner denied the organisation a viable role in the transition. This in turn may have undermined the very existence of the CNRT and contributed to its demise by August 2000 when the two most important parties, Fretilin and the UDT, ended their participation.

Until the election of the Constituent Assembly in August 2001 all power in Timor-Leste

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<sup>3</sup> This is a view that is often echoed by academic observers but disputed in the analysis to follow in this paper. See Beauvais, 1104.

remained in the hands of Sergio Vieira de Mello as the Special Representative of the Secretary General. For Vieira de Mello consulting the Timorese meant appointing a 15-member National Consultative Council in early December 1999. Seven members were from the CNRT. One member was from the Catholic Church and three from political groups which had supported integration with Indonesia. UNTAET staff occupied four seats, including Vieira de Mello as chair. This group was assigned responsibility for reviewing and commenting on UNTAET proposed policies and regulations. It had neither powers of initiation nor veto. It was criticised from the beginning for having too narrow a membership to be representative and for being too secretive in its deliberations. Nevertheless some critical decisions were taken in this period including the extension of the Timor Gap Treaty with Australia, the decision to dollarise the economy, and key decisions on the organisation of the justice system. Members of the National Consultative Council were left in the position of merely commenting on policies, while responsibility for their design and implementation remained with UNTAET staff.

The glaring contrast between the resources of UNTAET and its international staff and ordinary Timorese, combined with the UNTAET's apparent failure to do much more than provision itself and provide emergency relief, led to a situation which one observer has labeled a crisis of legitimacy.(Beauvais, 1124) Negotiations between the SRSG and the CNRT led to an agreement in June to restructure the National Consultative Council. A new East Timorese National Council was appointed October 20th, 2000, composed exclusively of Timorese members and chaired by Gusmao. Thirteen of its members were drawn from political parties. Thirteen were selected as district representatives. Seven were from civil society organizations and three from religious groups. (UNTAET, October) Vieira de Mello asked for nominations for the positions on the new National Council, but made the final decisions on all appointments himself.(UNTAET, August) The composition of the new National Council was in fact an acknowledgment that there was no vacuum in either politics or civil society in Timor-Leste. While the creation of the National Council gave Timorese leaders a forum under local control for venting their frustration with UNTAET, it transferred no powers to them.

Shortly thereafter Vieira de Mello announced the restructuring of UNTAET into a support mission for a new East Timor Transition Authority.(UNTAET, August) A cabinet of nine ministers was appointed, though Vieira de Mello retained the chair.(UNTAET, July 12) The portfolios of Foreign Affairs, Social Affairs, Economic Affairs, Internal Administration, and Infrastructure were allocated to Timorese ministers, leaving all key posts in UNTAET staff hands. This was seen as advisable as the departments of Political and Constitutional Affairs, Justice, Finance, and Police and Emergency Services were seen to be sensitive positions. Ministers were described as being "answerable" to Vieira de Mello and by December four of the five Timorese Ministers were threatening to resign. They claimed that UNTAET failed to consult the Cabinet on major decisions and said that UNTAET staff "...interfere too much in every portfolio and make all decisions without letting us know." The Ministers went on to describe themselves as "...caricatures of ministers in a government of a banana republic."(Dodd, December 5)

The shifts Vieira de Mello made toward a shared governance model in late 2000 were a classic case of too little, too late. Gusmao summed up the criticism of the performance of UNTAET in a now famous speech when he said, "We are not interested in a legacy of cars and laws, nor are we interested in a legacy of development plans for the future designed by people other than East

Timorese.”(Dodd, October) Yet in one area of constitution building the frustrations of the Timorese political leaders matched up with the agenda of UNTAET. Holding elections and drawing up a constitution were two prerequisites for granting independence to Timor-Leste. Both local politicians and UNTAET favoured a timetable which was based on minimum delay. Vieira de Mello had briefed the Security Council in June 2000 suggesting that the elections might be held as early as August 30, 2001 with independence being granted by the end of 2001 if certain criteria could be met.(Security Council, Press Release)

### **Prerequisites for Constitution Building**

For a successful democratic constitution building process to take place, certain minimum conditions must be met. Observers agree that these include freedom of speech, freedom of assembly, security of the person, and social inclusion.(Hart, 11) It is clear that the formal conditions of freedom of speech, freedom of assembly and personal security were met very quickly by UNTAET, but the question of social inclusion proved more problematic. The Secretary General reported to the Security Council that UNTAET had managed to establish general conditions of freedom of movement and personal security by January 2000.(Secretary General 2000, para. 14) Though Indonesian law remained in place in Timor-Leste, those sections which had restricted personal freedoms and political activity were declared void by Vieira de Mello in his capacity as the Transitional Administrator.(UNTAET Regulation 1999/1).

It is obvious that not all Timorese were able to participate in the constitution building process as many remained in refugee camps in West Timor. By March 2001 well over two-thirds of those who had been displaced had returned home, but still 50,000 to 80,000 refugees remained in West Timor.(UNTAET, Human Rights Unit) This means that some 5 to 10% of the population of Timor Leste were excluded from the constitution building process simply as a result of their absence from the territory. It is also clear that many of those who had not supported the independence option for Timor-Leste faced significant obstacles to participation in the constitution building process. Both the United Nations High Commissioner for Human Rights and Amnesty International reported cases of violence and intimidation directed against returning refugees and those alleged to have had links with the Indonesian security forces as an ongoing problem in 2001.(UNHCHR, 2001, para. 38, and Amnesty International, 2002.) Low levels of literacy were another obvious obstacle to full participation in the constitution building process. As well, the selection of Portuguese as the working language of the constitution building process did little to promote inclusion in a country where less than 10% of the population spoke Portuguese.(ABC and Schulz) A final obstacle to participation in constitution building was simple logistics. The limited development of Timor-Leste combined with the destruction of infrastructure in 1999 left significant practical obstacles to participation for those outside Dili in terms of transportation and communications.

### **The Constitution Building Time Frame**

On December 2, 2000, Gusmao presented the National Council with his own timetable for Timor-Leste’s transition to independence. There was much dissension in the National Council over Gusmao’s failure to consult his colleagues on the proposed timetable before it was formally presented. Gusmao threatened to resign and thus managed to force approval of the draft

timetable on December 12th.(Dodd, December 2) Public hearings were held in Dili from January 14 to 24, 2001, but no changes in the timetable were made. The timetable was formally adopted by the National Council on February 23rd and was quickly accepted by Vieira de Mello since it was much the same timetable that he had presented to the Security Council in June 2000.

This timetable in fact entailed several key decisions with regard to the process of constitutional development for Timor-Leste and for its future constitutional regime. The timetable specified that the Constituent Assembly would produce a draft Constitution with 90 days of its election. This provided no time for an alternative model for drafting such as the use of a broadly representative Constitutional Commission as had been proposed by the NGO Forum.(NGO Forum, March 2001) It ruled out the idea of adopting an Interim Constitution to allow for more extensive civic education and consultation as some in the NGO community had suggested.(Soares) It presumed adoption of the constitution by a vote of the parties in the Constituent Assembly and not by a popular referendum. The short time frame also assumed that the Constituent Assembly would transform itself into the first national parliament without further elections. The NGO community attempted to mount an international lobbying campaign to force the UN to reject the proposed timetable.(NGO Forum, March 2001) Indeed all these broader issues were raised in the January public hearings, though still no changes were made in the proposed timetable as a result of public input.(Tanaja, "Transition")

### **Participation in the Constitution Building Process: The Primacy of Parties**

Once the constituent assembly model was adopted for drafting and adopting a constitution, political parties became the key decision-makers in the constitution building process in Timor-Leste. Civil society organisations and anyone else wishing to have influence would be forced to make their input known through political parties. The power of parties was reinforced by the National Council's decision to elect members to the Constituent Assembly on a system of proportional representation that strongly favours central party organisations. With only a single member of the Assembly being elected on a plurality basis in each of the 13 districts, the proportion of members able to act relatively independently of a party organisation would be small. The other 75 members of the Assembly owe their position to the party who placed their names on its list, thus reinforcing party discipline.(Tan)

Political development in Timor-Leste had been limited in the years of the Salazarist dictatorship. In Timor-Leste its membership remained small and its leadership confined to mestizo families and families of the traditional liurai. The peaceful Carnation Revolution in Portugal in April 1974 opened the door to politics in Timor-Leste, a door which previously had been kept tightly shut. Though the regulations against founding new political parties were never rescinded (Dunn, 52), the political turmoil sparked by the coup in Lisbon led to the rapid formation of three political parties, plus a number of other smaller, largely personal or extended family-based, organisations. Curiously, almost all of these parties re-emerged in 2000.

First out the gate was the Union Democratico Timorese (Timorese Democratic Union or UDT). It was organised at a meeting on May 11, 1974. Its leaders were a mix of mid to high-ranking colonial officials and coffee growers, almost all mestizo. Mario Carrascalao and his brother Joao, two younger members of one of the wealthiest mestizo landowning families, played a prominent role. Three of the UDT's original leaders were former members the Provincial Assembly

representing what was previously the only legal party, the neo-fascist Accao Nacional Popular (ANP). The UDT originally looked toward some sort of ongoing integration of Timor-Leste into a wider Portuguese-speaking federation. However, as events in Portugal moved in favour of rapid decolonisation, the UDT came to see federation as an intermediate step toward independence.(Dunn, 52-3 and Taylor, 26-27)

The Associacao Social Democrata Timorese (Timorese Social Democratic Association or ASDT) was formed a week later on May 18th. The ASDT brought together a mix of teachers, students, and lower level public officials. 37 year-old Francisco Xavier do Amaral, a graduate of the Dare seminary, a former teacher, and then a customs agent, became the first president. Others prominent in the ASDT had experience in the Portuguese military, including Vice-President Nicolau Lobato who had left the military after an eight-year career with the rank of sub-lieutenant.(Dunn, 56-57). Jose Ramos-Horta, a mestico graduate of Dili's private secondary school who had spent two years in exile in Mozambique for his criticism of the colonial administration, became ASDT's international envoy. As events pressed the Portuguese revolutionary junta toward an early end to colonialism, the ASDT shifted its rhetoric and its name, becoming the Revolutionary Front for the Independence of Timor-Leste or Fretilin in September 1974. Yet for all its revolutionary rhetoric, Fretilin's key demand was gradualist, calling only for an immediate declaration from the Portuguese that eventual independence was the goal.(Dunn, 56-57 and Taylor, 27.)

The third party set up in April 1974 was the Associacao Popular Democratica Timorese (Timorese Popular Democratic Association or Apodeti). It was significantly smaller than the other two as it brought together those who favoured autonomous integration with Indonesia. Apodeti was made up of a small group of planters, ranchers, and government officials, plus two traditional liurai. Indonesia's military intelligence program had made early contacts with Apodeti and offered both encouragement and financial support. (Taylor, 30-31) Arnaldo dos Reis Araujo, Apodeti's first president later became Indonesia's first governor of Timor-Leste.(Dunn, 63)

Another of the new political groupings, Kilbur Oan Timur Aswain (Sons of Mountain Warriors or KOTA), was also targeted by the TNI for winning over to the cause of integration. KOTA was set up by several liurai and called for Timorese independence under the control of its traditional rulers. KOTA was led by Jose Martins, son of a liurai from the Ermera district, who had spent most of his life in Portugal.(Dunn, 66) It was the only political group with a Timorese name and the clear goal of emphasizing the unique Timorese character of the proposed new state. Timorese independence was to be protected by a joint agreement between Australia, Indonesia, and Portugal.

In terms of popular support the contest in 1975 was clearly between the UDT and Fretilin. Both were essentially Catholic, social democratic parties. Both began with a similar base with each claiming supporters in the 80,000 to 100,000 range.(Dunn, 61) In the face of growing pressure from Indonesia for integration, the Portuguese governor pushed Fretilin and the UDT into a coalition that lasted from January to May 1975. The coalition collapsed as students returning from Portugal helped turn Fretilin to the left at the same time as the UDT began to suggest a possible compromise with Indonesia might be necessary. The Portuguese government invited the UDT, Fretilin, and Apodeti to attend talks in Macao in June 1975 to set a date for elections to decide the future status of Timor-Leste. Fretilin boycotted the Macao talks because of presence

of Apodeti, arguing that a group with little popular support and a program of re-colonisation by Indonesia should not be a participant in decolonisation talks. (Dunn, 84) Instead Fretilin concentrated on building its support in the countryside by emphasizing its more radical social and economic programs. This further alienated the UDT with its base among landholders and liurai. (Ramos-Horta 1987, 38)

The Portuguese failed to arrange a lasting compromise between the UDT and Fretilin and seemed to be indifferent to the fate of Timor-Leste. Portuguese indifference, combined with the growing strength of Fretilin and the hostility of Indonesia to independence under Fretilin leadership, prompted UDT leaders to take matters into their own hands.(Taylor, 50) August 11, 1975 saw a coup by the UDT consisting of the seizure of key points in Dili including the police headquarters and the radio station. The police then joined forces with the UDT.(Taylor, 50) The subsequent arrest of Fretilin activists in Dili and word of the killing of Fretilin organisers in Same sparked armed conflict. (Taylor, 51) While Portuguese senior officers stood idly by, the vast majority of the rank and file of the 3,000 member Portuguese army, almost all Timorese born, rallied to Fretilin. The result was a brief civil war lasting three weeks and costing 2,000 to 3,000 lives according to the Red Cross.(Schwartz, 203) The quick victory of Fretilin drove the UDT leadership to withdraw across the border into West Timor along with some 10,000 to 15,000 of their supporters.(Dunn, 161) Supporters of Apodeti and KOTA also fled to West Timor.

Indonesian pressure on Timor-Leste intensified throughout 1975. The TNI took a keen interest in the integration project, perhaps motivated as much by opportunities for promotions and plunder as by genuine concerns for national security. The TNI exaggerated the radicalism of Fretilin, turning an anti-colonial nationalist movement into a communist threat in a bid to justify intervention.(Dunn, 149) A disinformation campaign began alleging that Timorese were fleeing the territory in fear for their lives alongside a program of provocations and military incursions designed to stir up those very fears. These incursions and provocations had become a full-fledged covert military action by mid-October.(Taylor, 58-59 and Dunn, 103-104) When the invasion finally came Indonesia was able to use statements from the leaders of the UDT, Apodeti, and KOTA to justify intervention against Fretilin, claiming to be protecting a pro-integration majority from persecution by Fretilin.(Taylor, 53)

Why is this 1974-75 period so crucial for a constitution building process in Timor-Leste that took place 25 years later? For many Timorese the independence of Timor-Leste is dated from the declaration made November 28th, 1975, a date now enshrined in the constitution as the official date to be celebrated. As well, the constitution building process saw the re-emergence in 1999 of many of the same players and some of same tensions as in 1975. For many Timorese the 1974-75 period offered a powerful lesson, that political party factionalism could lead to violence and civil war.

### **New politics in the nationalist camp**

Fretilin had gained dominance in the chaos following the collapse of Portuguese rule on the basis of a program that was nationalist and social democratic. It had led the long resistance to Indonesian rule, both within and outside Timor-Leste. In 1999 Fretilin had played the key role in the nationalist coalition which secured victory for independence in the 1999 United Nations Consultation. This gave Fretilin a high profile claim to leadership in an independent Timor-Leste.

However within Fretilin tensions had emerged between the veterans of guerrilla warfare, the organisers of the urban clandestine resistance, and those who had spent nearly a quarter century as political exiles.

In 1975 circumstances created an immediate division in ranks of the nationalist forces. Most of Fretilin's organisers fled Dili and took to the hills converting themselves from a political party to a guerrilla resistance movement. A few were outside the country when the Indonesian invasion came. Mari Alkatiri, Minister of Political Affairs, Rogerio Lobato, brother of the Vice-President, and Jose Ramos-Horta, Minister of Foreign Affairs had all been sent abroad by Fretilin to try to build international support for Timorese independence. They were trapped in exile along with many students who had been studying abroad. As the Indonesian occupation endured, a third group arose, a new generation which built an effective clandestine movement in the urban areas of Timor-Leste.

Falintil's initial success in holding off Indonesia clearly could not be sustained in the long run, but for nearly three years Falintil controlled secure bases and was able to offer some protection to the civilian population. By 1978 heavy losses had begun to take a toll on Falintil, culminating with killing of Fretilin's second president, Nicolau Lobato, by the TNI in December 1978. These losses necessitated rebuilding Falintil with new recruits and new leadership. Falintil re-emerged phoenix-like in 1981 under the leadership of Xanana Gusmao, a Jesuit-trained poet and nationalist who described himself as having been politically naive when he joined the armed resistance.(Shoesmith, 239)

While there had always been a left wing within ASDT, the original program of the party was explicitly social democratic and nationalist. Ramos-Horta took credit for inventing the idea of "Mauberism," a vague, populist form of social democracy named for a Portuguese insult referring to the common people of Timor-Leste. Ramos-Horta had always rejected Marxism as inappropriate to the underdeveloped conditions of Timor-Leste.(Ramos-Horta: 1987, 37) Despite Indonesia's attempt to use fear of communism against the radical sounding Fretilin, Marxism was never the ideology of the majority of its leaders before 1977. At that time the Fretilin Central Committee, meeting in hills above Dili in the absence of many of its founders, declared the adoption of Marxism-Leninism as Fretilin's official ideology. President Amaral, who strongly disagreed with this decision, was expelled from Fretilin and his supporters purged from its Central Committee.(Shoesmith, 239) Gusmao remained on the Fretilin Central Committee and began his own study of Marxism which led him to conclude that something less doctrinaire was a better fit to the conditions in Timor-Leste.(Shoesmith, 239-240)

The resurgence of guerrilla activity in Timor-Leste resulted in a cease-fire negotiated locally in 1983 between Falintil represented by Gusmao on one side and the TNI commander Colonel Poerwanto and newly appointed Indonesian Governor Mario Carrascalao, leader of the UDT, on the other.(Dunn, 301) This agreement called for the withdrawal of Indonesian forces and their replacement by a UN peacekeeping force to be followed by a consultation on the future of Timor-Leste. The national government in Jakarta rejected the deal, recasting it as an amnesty offer to Falintil requiring their immediate surrender.(Dunn, 302) The successful rebuilding of Falintil, followed by the local propaganda victory in the cease-fire negotiations, consolidated the leadership of Gusmao despite his ongoing conflict with the Fretilin Central Committee over ideology.

From this point Gusmao insisted that a re-organisation of the resistance movement was necessary to broaden its appeal, including overtures to the former UDT leaders. In 1985 Gusmao engineered the formation of a new umbrella organisation to include all those opposed to integration, the Concelho Nacional da Resistancia Maubere (National Council of Maubere Resistance or CNMR). The UDT declined to join, still fearing ongoing dominance of the new organisation by the left wing elements of Fretilin.(Shoesmith, 240) In a statement to the Timorese people on December 7, 1987 Gusmao announced his departure from Fretilin taking Falintil with him. He declared Falintil would not be in the service of any one political group within the nationalist resistance.(Shoesmith, 240) This shift was formalised in December 1988 with Falintil officially becoming the armed wing of the CNMR, rather than Fretilin.(Shoesmith, 241)

Up to 1989 the nationalist resistance was successful in imposing a constant military burden on Indonesia. From 1989 the resistance movement shifted tactics moving to more political and diplomatic offensives as part of an increasingly urban-based campaign. Paradoxically the 1992 capture of Gusmao actually increased his profile and effectiveness as a coalition leader. Speaking out during his trial and later from his prison cell in Jakarta, Gusmao became more accessible to the media, to the international diplomatic community, to other Timorese leaders, and even to the other wings of his own movement. In 1998 Gusmao succeeded in getting the UDT to join the broad nationalist coalition and the CNMR was transformed into the CNRT.

An underground urban-based support movement developed over time in Timor-Leste, originally with the goal of supplying Falintil intelligence, along with food and supplies. By 1989 this clandestine front had become the central focus of resistance in Timor-Leste as its activities broadened to include public demonstrations against Indonesian rule. Women, youth, and students played a large role in the clandestine movement which included many who worked for the Indonesian government or military and yet continued to support the resistance. Particularly effective were the student organisers of the Resistencia Nacional dos Estudantes de Timor Leste (National Resistance of the Students of Timor-Leste or Renetil), founded in 1988 by Timorese students studying in Indonesia. Within Timor-Leste many of the acts of the student organisers were brazen, if not foolhardy. Yet they always caused acute embarrassment for Indonesia as these were the acts of Timorese who had grown up under Indonesian rule and were Bahasa Indonesia speaking graduates of the Indonesian education system. At the end of the mass celebrated by the Pope in Dili in October 1989 students claimed a spot on the world stage by unfurling pro-independence banners, for which they were beaten mercilessly by the TNI while the world was watching.

In November 1991 several thousand Timorese youth marched to Santa Cruz Cemetery from Motael Church where a funeral had been held for Sebastiao Gomes, a student activist shot by TNI on the grounds of the church two weeks earlier. The funeral procession quickly became a pro-independence demonstration. When the crowd reached the cemetery the TNI opened fire killing at least 271, with more than 300 others counted as wounded or missing, in what became known as the Dili massacre.(Pinto, 201) The few westerners present got word out immediately and eventually a video of the shooting was smuggled abroad. Revulsion at the killings became a turning point for Indonesia diplomatically. The network created by the clandestine movement later became the basis for organising the pro-independence forces during the UN consultation. Its activists became the chief targets of violence from the TNI.

The events at the Santa Cruz cemetery were quickly capitalised on by what the Timorese referred to as “the diplomatic front.” Years of patient work by Timorese living in exile had kept the issue of Timorese independence alive despite the diplomatic inactivity of Portugal. Jose Ramos-Horta continued to act as Fretilin’s Foreign Minister from his base in Australia. Through his tireless campaigning and what proved to be keen diplomatic skills, Ramos-Horta managed to keep Timor-Leste on the UN agenda and to prevent the UN from recognising the Indonesian annexation. Mari Alkatiri, in Africa at the time of the coup, remained in Mozambique where he completed a law degree and cemented the ongoing close relations between Fretilin and the former Portuguese colonies in Africa. The only nation to recognize the Indonesian annexation of Timor-Leste was Australia, either out of self-described realism or out of greed for potential profits from offshore oil in the Timor gap. In effect Australia traded recognition of Indonesian sovereignty over Timor-Leste for generous exploration rights in what should have been Timorese waters.

While the number of Timorese living in exile during the Indonesian occupation was probably always less than 10,000, with some 4,000 in Portugal and another 3,500 in Australia (Aditjondro, 38), the influence of the exile community far exceeded their numbers. The Timorese community in Portugal kept the Timor issue alive in Portuguese domestic politics and thus prevented Portugal from relinquishing its formal sovereignty over Timor-Leste. Active communities in Mozambique, Brazil, Macao, Australia, and the United States also helped ensure that support could be found on all continents. Many of those abroad were student radicals, others former supporters of the UDT. But by 1992 a unified solidarity network existed that could respond quickly to events in Timor-Leste.

In the wake of the 1991 Dili massacre the European Community, at the time chaired by Portugal, condemned the killings. Within weeks the Dutch, Danish, and Canadian governments had all suspended aid to Indonesia.(Schwartz, 213) In June 1992 the US House of Representatives cut off US military assistance to Indonesia.(Schwartz, 216) Not only had the exile community been successful in keeping the fate of Timor on the international agenda and in keeping the idea of independence alive, they had finally managed to inflict a heavy blow on Indonesia for its actions in Timor. If Indonesia hoped that time was on its side after the Dili massacre and that the world would soon forget Timor-Leste, then the awarding of the 1996 Nobel peace prize jointly to Bishop Belo and Jose Ramos-Horta must have come as a bitter blow to those hopes.

As a result of the re-emergence of the old parties and the new divisions within Fretilin, a total of sixteen parties registered to contest the elections for the Constituent Assembly which were held August 30, 2001. A multiparty system did not produce the disastrous outcome that some had feared. Polling day passed without violence or disruption. Nor does it seem that the controversies over the consultation process and election timetables affected public attitudes toward the vote. As 91% turned out to vote, one could argue that the public demonstrated high levels of support for the constitution building process based on their participation in the elections for a constituent assembly. As well, international observers certified the election results as meeting international standards for being free and fair.(Carter Center, 11)

Some observers questioned the sophistication of Timorese voters and levels of public understanding of the constituent assembly process. The Asia Foundation conducted a survey in the period from February to March 2001 that found some confusion about the purpose of the

elections to be held in August.(Asia Foundation) The negative findings of the survey are mitigated by the fact that the survey was done far in advance of the elections, in advance of the campaign, and in advance of the voter education and information campaigns. Analysis of voting results by US political scientist Dwight King showed that voters in fact cast their ballots in quite sophisticated ways, taking full advantage of the opportunities offered by a mixed member system. (King, 756)

### **The Constituent Assembly Election Results**

Not only was there a high rate of participation, but the Constituent Assembly elections also produced a clear victor. Fretilin won 57.3% of the national vote and a clear majority of the seats, 55 of 88. (UNTAET, September) A Fretilin majority was not surprising given the prestige remaining from its leadership role in the independence struggle and given that it was the only party with a strong grassroots organisation throughout the country.(King, 747 and Tan) Some observers have commented on the surprisingly poor performance of Fretilin, though perhaps only because Fretilin itself set such high expectations. Its leader Mari Alkatiri had suggested that the party would receive over 80% of the vote.(King, 750)

Closer analysis of the results shows that the popular vote was not as fragmented as the fact that 12 parties won seats might suggest. Nor did Fretilin do as poorly as it might seem on first glance. On the question of fragmentation it is important to note that four parties together took 81.9% of the national vote and therefore all but 14 of the 88 seats.(UNTAET, September) Fretilin could take comfort in the fact that it won all of the district seats<sup>4</sup> and that its candidates in the districts generally polled higher than Fretilin did in the proportional voting nationally.(King, 751) This seems to indicate that another electoral system might have produced an even greater victory for Fretilin. Fretilin could also take comfort in the fact that it did very well in the two largest urban centres, winning 82% of the vote in Baucau and 66% in Dili.(King, 754.)

An examination of the party system shows that support for what might be called the Fretilin “family” of parties in fact reached three-quarters of the popular vote. Tensions which existed in the resistance movement before independence have been reflected in the new party system. Two groups who felt that Fretilin was too dominated by those who had returned from exile formed splinter parties. Francisco Xavier do Amaral, Fretilin’s first President who was expelled in 1977 for being insufficiently radical, founded a new party in 2001 which revived the original name of Fretilin, ASDT. Amaral’s version of a more authentic Fretilin managed to attract 7.8% of the vote and win six seats. Many members of the clandestine movement, and especially student organisers from Renetil, felt that their contributions to the independence struggle had not been recognized by the Fretilin hierarchy and so also broke away. Their leader Fernando Araujo had spent nearly six years in the same prison in Jakarta as Gusmao. Their new Partido Democratica (PD) finished second to Fretilin with 8.7% of the vote and seven seats. A third breakaway from Fretilin, one of self-styled leftists, formed the Partido Socialista de Timor (PST) which won 1.8% of the vote and one seat.

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<sup>4</sup> The district member elected for Oecussi was technically elected as an independent due to the failure of the official Fretilin candidate to file nomination papers. For all practical purposes the independent member for Oecussi can be counted as a Fretilin member, giving Fretilin 56 seats.

The UDT, Fretilin's rival from before the Indonesian occupation, left the CNRT in August 2000 at the same time as Fretilin. Shortly after, the UDT split with the Carrascalao brothers each leading a separate faction. The new Partido Social Democrata led by former governor Mario Carrascalao won 8.1% of the vote and six seats. His brother Joao's faction kept the name UDT but won only 2.3% of the vote and two seats. Other parties who had opposed Fretilin in 1975 did poorly. A revived KOTA, still emphasizing the indigenous Timorese character of Timor-Leste, received 2.1% of the vote and won two seats. Finally a revived Apodeti, the only group which had opposed independence but which was now claiming to accept the outcome of the referendum, received only 0.6% of the vote.

### **Public Consultation in the Constitution Building Process**

Many observers have pointed out that there has been a recent shift in understanding of what constitutes participation in constitution building processes, a shift toward broad public discussion and participation in the actual drafting process rather than seeing public participation as simply a matter of casting a vote in elections for a constituent assembly. In the case of Timor-Leste the NGO movement clearly shared this conception of the importance of a participatory process that has been described as "new constitutionalism." (Hart, 4) The NGO Forum had suggested an alternative process to the election of a Constituent Assembly. They had proposed a single National Constitutional Commission on the South African model, a commission with broad representation from all sectors of civil society, with adequate resources, and with a one-year time frame for consultations.(NGO Forum, April 2001) Gusmao was eventually won over to this position. He resigned as President of the National Council when that body rejected the NGO Forum proposal and threatened to quit politics altogether.(BBC) It is clear that Fretilin and the other parties close to Fretilin felt that the public would be sufficiently consulted by holding of elections for the Constituent Assembly.(Conflict Group, para. 317.) Further consultation seemed unnecessary.

UNTAET had suggested the creation of a Constitutional Commission in each of Timor-Leste's 13 districts to operate in the run up to the Constituent Assembly elections. These mini commissions were to be tasked with conducting civic education on the transition process and with gathering input on content for a constitution from citizens in each district.(UNTAET Regulation 2001/2) The input from the district commissions would then be made available to the Constituent Assembly when it was elected.(Carter Centre, 44) Both Fretilin and the NGOs objected to the undemocratic nature of the process as the local commission members were to be selected by UNTAET and to the very heavy dependence on international staff to carry out the program.(NGO Forum, April 2001)

UNTAET proceeded with its public education and consultation process despite the fact that both Fretilin and the Timorese NGOs rejected the UNTAET plan. The district commissions held more than 200 public hearings with at least one hearing in each of Timor-Leste's 65 sub-districts. More than 38,000 people participated in the district meetings during the period from March 15 to July 14, 2001.(UNTAET, "Executive Summary") Each of the district commissions compiled their findings and forwarded them to the SRSG who passed them on to the Constituent Assembly. Fretilin members felt that they could ignore the reports from the UNTAET district commissions as these had not been elected bodies.(Carter, 44) Requests from district commissioners to present their findings directly to the Constituent Assembly were rejected.(Baltazar, 3) No reference was

made to any of the district reports in the plenary debates in the Constituent Assembly.(Carter Center, 44) The district commissions were for all practical purposes ignored. The only additional consultations which were held were managed by the Constituent Assembly and took place after the drafting of the constitution was completed.

### **The Drafting Process**

For Fretilin the election results for the Constituent Assembly indicated that they had a clear mandate to proceed with writing a constitution and with governing the new country. When the Constituent Assembly began its work on a new constitution, five parties submitted draft texts. Fretilin had already adopted a draft constitution at its party congress in Melbourne in 1998 and this Fretilin draft was adopted as the basis for discussion.(Baltazar, 5) The Constituent Assembly organised itself into four thematic committees to work its way through the draft, but in the end little of substance was changed. Neither the team of five international constitutional experts brought in by UNTAET, nor the input from public consultations, nor drafts presented by four other political parties brought any serious modifications of the Fretilin draft.<sup>5</sup>

The Constituent Assembly extended its schedule to allow for public consultations at the district level. Six minority parties proposed that the consultation period extend over one month, but the Fretilin majority imposed a shorter ten-day period.(Baltazar, 6) These consultations were led by Constituent Assembly members and took place from February 24 to March 2, 2002. The Constituent Assembly's consultation process was marred by its tight time frame and by a lack of information for the public in advance of the meetings. A particular problem was that the draft constitution initially existed only in Portuguese. Tetum and Indonesian versions were completed late in the process and were generally not available in advance of the meetings. Often the supposed consultations were more about providing information about the content of the draft constitution than a process for hearing input.(Baltazar, 4 and Carter, 44-45) Still a wide variety of issues were raised. Primary among these was the role of the Catholic Church, with many arguing to restore the Church's status as the state religion. Also of concern were the questions of language, the question of whether there would be fresh elections, and questions regarding national symbols such as the date of independence, the name of the armed forces, and the choice of a national flag.(Carter, 44) These were in fact many of the same issues raised in the earlier district consultations.(UNTAET, Executive Summary)

When the final draft was approved it had seen only a few changes. Bishop Belo had expressed his concerns about two articles, one explicitly adopting the separation of church and state and the other mentioning divorce. Both of these references were removed. (Jolliffe, February) As well, Assembly members voted by a large majority to remove protection against discrimination on the basis of sexual orientation from the draft.(UNTAET, December). On the question of language, the text of the original draft was changed to make both Portuguese and Tetum official languages, while a new section was included recognizing English and Bahasa Indonesia as "working" languages for so long as necessary. This was a concession to the objections to the privileged status proposed for Portuguese from a generation of youth who rarely speak Portuguese and are

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<sup>5</sup> These observations on changes to the Fretilin draft are taken from an interview with Aderito de Jesus Soares, Chair of the Systematisation and Harmonization Committee of the Constituent Assembly, conducted in Dili February 9, 2005.

literate only in Bahasa Indonesia.<sup>6</sup>(Agence France Presse)

Adopting a process that privileged parties in the constitution-making process necessarily marginalized others. Bishop Belo was able to make his voice heard as a representative of the most powerful civil society organisation in Timor-Leste simply by writing to the leaders of the Constituent Assembly. Others did not find it so easy to be heard. No formal attempt was made to consult the more than 1,300 ex-combatants of Falintil who had special concerns about their status in an independent Timor. As a gesture toward the ex-combatants the draft of the constitution was modified to add the name Falintil as a preface to the name of the new national army making it Falintil-Timor-Leste Defense Force (F-FDTL) as an acknowledgement of Falintil's service to the nation.(UNTAET, November) Similarly a section was included in the constitution specifying that youth must be a special priority, but no special measures were taken to involve youth in the constitution building process. There were some young members of the Constituent Assembly but their presence was a result of the adoption of proportional representation based on party lists. They were not there as representatives of youth per se.(Carter Centre, 46-47) Non-government organisations made a special effort to include themselves in the constitution drafting process. When their efforts at formal inclusion through the creation of a Constitutional Commission were rebuffed, they responded by setting up an informal monitoring group called "Assembly Watch." Members attended the debates of the Assembly and issued regular reports to NGOs and to the public via press releases.(Carter Centre, 46.)

The question of participation of women in the constitution building process in Timor-Leste is more complex. The adoption of a proportional representation system, combined with financial incentives to parties which filled certain quotas of women as candidates, meant that as individuals women were fairly well represented in the process. Twenty-four women were elected to the Constituent Assembly making up 27% of the total. (UNTAET, September 6). When the second Transitional Cabinet was appointed two of its eleven members were women and they held the important portfolios of Justice and Finance.(UNTAET, September 20) However, attempts to advance the interests of women as a group generally failed. When the National Council was set up in 2000, REDE, a network of 15 grassroots women's organisations, submitted the names of three women to the SRSG as possible members. Vieira de Mello ignored their suggestions.(Marshall) REDE members came together to draft a Women's Charter of Rights and managed to get 10,000 signatures on a petition asking the Constituent Assembly to incorporate the Charter into the new Constitution. It was ignored.(La'o Hamutuk, 1-2 and Whittington, 1287) UNTAET refused to support the idea of a quota which would have required parties to have a minimum of 30% women candidates. (Whittington, 1287) While individual women did play influential roles in the drafting process and a gender equality clause was included in the constitution, women's organisations still feel that their concerns were not adequately addressed.<sup>7</sup>

By any standards the time allocated for drafting and adopting a new constitution for Timor-Leste was very short. The original timetable gave the Constituent Assembly only six months to write and adopt a constitution. This was ultimately extended by the Constituent Assembly to seven

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<sup>6</sup> Interview with Aderito de Jesus Soares, Chair of the Systematisation and Harmonization Committee of the Constituent Assembly, conducted in Dili February 9, 2005.

<sup>7</sup> Interview with Manuela Pereira, Executive Director of Fokupers, conducted in Dili February 8, 2005.

months. Even if the broader process of constitution building is dated from the original debate on the timetable which began in December 2000, the entire process was remarkably short. Only fifteen months elapsed from the debate on the timetable to the adoption of the Constitution by the Constituent Assembly in March 2002. However this was a time frame that continued to suit both Timorese desires to end the UN transition process as soon as possible and the UN's desire to be rid of the responsibility for Timor-Leste before the patience of the great powers expired.

### **Launching a New Nation**

When the Constitution for Timor-Leste was approved on March 22, 2002, Timor Leste was one big step closer to the independence that had been delayed so long. The final vote on adopting the Constitution was 72 in favour and 14 against, with one abstention and one absence.(UNTAET March) This proved to be a “yes” vote high enough to be beyond immediate challenge. In order to reach the sixty votes required for ratification, Fretilin had had to find at least one ally in the Constituent Assembly. In the end Fretilin did better than that and was able to keep some of its political family on side for the ratification vote. Thus, the claim can be made that the Constitution of Timor-Leste was adopted with multi-party support, despite opposition from the PD, PSD, and UDT.

At the same time the “no” vote was high enough to cause concern. It was not just that most parties represented in the Constituent Assembly voted no, but that they said they were doing so because they felt the process had been dominated by Fretilin and produced a “Fretilin constitution.”(Carter, 41) If that argument proved to have either substance or credibility, then both democracy and independence could be in question in Timor-Leste. It would be a threat to democracy because this could cause some to feel that they could resort to force rather than being bound to play by “someone else’s” constitutional rules. It could prove to be a threat to independence as instability in Timor Leste might goad one of its more powerful neighbours into intervention once again.

There seems little substance to the charge that the Constitution somehow gives Fretilin an unfair legal advantage. While the Timorese Constitution pays homage to the resistance struggle, it does nothing to penalise those who might have supported integration of Timor-Leste into Indonesia. However tempting it might have been to disqualify some from political participation, this has not been done in the new Constitution. While the system of government and electoral representation institutionalised in the new constitution do require party governments and do favour strong, disciplined parties, they do not favour Fretilin in particular over any other party. Certainly the constitution adopted for Timor-Leste is the one that the leaders of Fretilin wanted, but that can still be judged a democratic outcome. After all, Fretilin did win a clear majority in the Constituent Assembly and they did so in free and fair elections.

The advantages that Fretilin does enjoy under the Constitution flow from history and symbolism, rather than legal provisions. The advantages it enjoys as a party are those any party with broad popular support and a strong grass roots organisation would enjoy. History has left Timor-Leste with only one such party. Most observers agree that the role of Fretilin in the resistance has also left Fretilin with great deal of legitimacy and moral authority with the public which serves to solidify its hold on power. (Leach, 346 and Smith, 293) However, enshrining November 28,

1975 as independence day for Timor-Leste and making versions of Fretilin's flag and anthem national symbols entrenched in the constitution were an attempt by Fretilin to capitalize on its historic role in the independence struggle.(Babo-Soares, 15)

Despite the narrow opportunities for public participation in the constitution building process and despite concerns about one party dominance of that process, the signs of public acceptance of the Constitution are positive. Both the Constituent Assembly elections and the presidential elections have been free of allegations of fraud and corruption. Turnout for the Presidential election held in April 14, 2002, fell to 86% from the enormously high 91% in the Constituent Assembly elections in August 2001. Yet, in both cases these are very high levels of participation and a strong endorsement of the process by any standard.

UNTAET did succeed in delivering an independent Timor-Leste with a new constitution and a democratically elected government in a very short time frame. It did so quickly in large measure because its interest in a short timeline coincided with the interests of Fretilin. A longer time frame might have allowed for a more consultative process such as a Constitutional Commission before independence. Similarly a decision might have been made to proceed with independence on the basis of an interim constitution, thus allowing for a more participatory constitution building process after independence. Lingering questions about the legitimacy of the constitutional regime might potentially fuel future conflicts based on other challenges faced by Timor-Leste.

### **Divisions as a threat to stability**

Divisions emerged quickly during the transition period in Timor-Leste. The imminent achievement of independence raised high expectations in the public and among the leaders who had coalesced to support the pro-independence vote during the UN Consultation. The frustration of the expected partnership between the UN and the CNRT during the transition period contributed to the collapse of the CNRT as an umbrella organisation in August 2000 and thus to the emergence of political competition for dominance.(Chopra, 997) Gusmao remained so concerned with maintaining national unity that he attempted to achieve consensus among the parties on basic issues. The parallel efforts of UNTAET, Bishop Belo and Gusmao resulted in the signing of a "Pact of National Unity" in July 2001. All but two minor parties of the total of sixteen registered parties signed the pact.(UNTAET, July 4)

A gap emerged in the nationalist leadership, one based on divisions stretching back to the 1980s but one which had been kept under wraps in the interest of unity in the struggle against Indonesia. On one side stood Xanana Gusmao, leader of the armed struggle in the hills for 14 years and an advocate of a broad front strategy that privileged no party or platform. On the other side stood Fretilin, the party with a mandate to lead Timor-Leste on the basis of their clear majority in the Constituent Assembly. Gusmao split openly with the Fretilin leadership in March 2001 when he resigned as National Council President over the issue of consultation during the constitution building process. From this point on Gusmao tried to assume a neutral position above the competition among political parties. For Gusmao, Fretilin, and the other political leaders in Timor-Leste the constitution building process had become a question not only of how best to

create the conditions for sustaining democracy and independence, but also a question of whether to legitimise Fretilin's claim to leadership

When it came time for the Presidential elections, Gusmao insisted on running as a candidate endorsed by nine opposition parties, rather than as an independent candidate as urged by the Fretilin leadership.(Shoesmith, 243.) Mari Alkatiri, Fretilin General Secretary and Prime Minister in the Transition Administration, announced that he would be casting a blank ballot and senior Fretilin leaders were seen lending their support to Francisco Amaral, Fretilin's first president and Gusmao's only opponent in the Presidential race.(McDonald) Gusmao's victory in the Presidential election with 83% of the vote created a dynamic of competition between the President able to claim a popular mandate and Fretilin with a majority in the Constituent Assembly.

Public divisions between the President and Prime Minister continue to surface providing an ongoing element of instability to the new institutional arrangements. Gusmao publicly sided with the minority parties in calling for new parliamentary elections following independence, rather than the conversion of the Constituent Assembly into the first parliament as allowed in the Constitution.(Land) Prime Minister Alkatiri dismissed the idea as simply representing the dreams of those who were unhappy with the previous election results. (Land) Gusmao used his powers as President to delay implementation of Fretilin's first budget and has publicly called for the resignation of Fretilin Cabinet Ministers on more than one occasion.

As a party Fretilin suffered other divisions early on in the transition period. Many resented the fact that those who returned from exile often occupied high positions in the transition administration and dominated Fretilin leadership positions. At one point it was even suggested in the National Council that those who hold dual citizenship should be barred from standing as candidates for the Constituent Assembly.(Tanaja, "Constituent Assembly") The question of language became a major issue of division in that those who had been in exile were from a generation educated in Portuguese and had continued to function in Portuguese, whether they had been in Mozambique, Portugal, Macau, or Brazil. The original Fretilin draft of the constitution designated Portuguese alone as the official language of Timor-Leste. Making Portuguese the official language limited participation in the constitution building process where documents and debate were often conducted in a language few members of the Assembly were comfortable with.(Schulz) More importantly for the young, making Portuguese a requirement for employment in government jobs limited access to paid positions for a generation literate only in Bahasa Indonesia.(ABC) The Constitution only recognises Bahasa Indonesia as a transitional working language alongside English. As a result many younger Fretilin supporters shifted their support to the PD, while others opted for a more radical version of Fretilin re-founded as the ASDT by Amaral.

Perhaps the most serious division in Timor-Leste has emerged over the question of the status and treatment of ex-Falintil fighters. Falintil had been sidelined during the UN consultation by being placed in cantonment near Baucau in attempt to avoid clashes with the Indonesian military. After the arrival of the international peacekeeping force and UN civilian police, Falintil was excluded from any security role in Timor-Leste. The UNTAET assessment of defense needs called for a Timor-Leste Defense Force (FDTL) for an independent Timor-Leste of only 1,500. This meant that in the first round of recruitment, only 650 of more than 1,300 ex-Falintil fighters found a

place in the FDTL.(Shoesmith, 246) This recruitment took place before independence and selection of members was left in the hands of Gusmao loyalists in Falintil.(Shoesmith, 246) As most of the ex-combatants had low levels of education and lacked skills necessary to take up paid employment, the situation of those excluded quickly became dire despite some modest material assistance to demobilised veterans under an internationally funded program. (Amnesty International, 2003, 21) Renaming the force Falintil-FDTL did little to address the concrete problems faced by veterans.

Recruitment for the Timor-Leste National Police (PNTL) was also completed before independence. The Police Commissioner, Paulo Martins, had been one of the few Timorese officers in Polri, the Indonesian police force during the occupation. Martins, advised by UNTAET, set recruitment qualifications for the new national police based on fitness, skills, and experience. This meant that 340 former Polri found places in the 1,300-member PNTL despite concerns about the human rights records of all former Polri members.(Amnesty International, 2003, 20) At the same time few ex-combatants were selected. Martins specifically rejected a demand from veteran's organizations that a list of 500 ex-combatants be incorporated into the national police force.(Shoesmith, 250)

In a sense the current situation in Timor-Leste replicates the situation under Indonesian rule. Under the new Constitution Gusmao controls an armed force essentially loyal to him as a person, while Fretilin remains the dominant political force with its majority in parliament. Yet the Constitution has created a second armed force, the PNTL, which is under the control of Fretilin as the national police report to the Interior Minister, Rogerio Lobato. In a more mature political system such arrangements might lend comfort as a division of powers which could prevent abuses by either side or an inordinate concentration of power in the hands of either. (Shoesmith, 232). In Timor-Leste it has led to a confusion of roles as illustrated by the arrests of more than 90 people by the F-FDTL in January 2003, an action for which there was no legal authority.(Amnesty International, 2003, 40) It has also led to clashes between the police and the military (Shoesmith, 249) and between police and unemployed veterans seemingly backed by the F-FDTL. (Far Eastern, 12) When police in Baucau killed one protestor in November 2002 at a demonstration of ex-combatants protesting their exclusion from the police service, President Gusmao publicly called for the resignation of the Interior Minister. (Shoesmith, 250) As a compromise in March 2003 150 ex-combatants were incorporated into the PNTL despite lacking appropriate skills and having questionable human rights records of their own. (Amnesty International, 2003, 21)

The People's Defense Committee of the Democratic Republic of East Timor (CPD-RDTL) has taken up the cause of veterans. This is a group that emerged in 1999 calling itself "the real Fretilin," rejecting both UNTAET authority and the dominant role of exiles in Fretilin and the transitional government.(Jolliffe, January) Clashes between CPD-RDTL and Fretilin youth occurred before the 2001 elections.(Dodd, March) The anti-Fretilin riots which broke out in Baucau and Dili in March 2002 were widely seen as having been incited, if not organised, by the CPD-RDTL. In Dili rioters targeted the residences of Prime Minister Alkatiri and his family, as well as the mosque.<sup>8</sup> Three protesters were allegedly killed as a result of police action.(Amnesty

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<sup>8</sup> The attack on the mosque is generally seen as a result of the fact that Prime Minister Alkatiri is a Muslim, rather than as an ethnic clash. (Smith, 2004, 279)

International, 2003, 9) In July 2004 the same elements organised a demonstration which occupied Timor Leste's parliament buildings to demand immediate new elections.(The Age, July) One month later the leader of demonstration emerged from hiding at a meeting of disgruntled veterans chaired by President Gusmao and attended by senior members of Falintil-FDTL. (Jolliffe, August 24). Combining what had been a fringe political group with disgruntled veterans, and then adding public support from the President and members of the armed forces, creates a serious potential threat to the constitutional order in Timor-Leste.<sup>9</sup>

The other major potential for instability in Timor-Leste comes from the limited success of reintegration of former members of Indonesian-backed militias and other pro-integration forces into Timorese society. Support for Apodeti, the party that had favoured integration into Indonesia dropped to only 0.6% in the 2001 Constituent Assembly elections, down from 22% in the 1999 referendum. This probably indicates that many of those who supported integration into Indonesia are not participating in the political system, whether through lack of trust or through intimidation.

While 28,000 refugees remained in West Timor in March 2005, with 16,000 of those still living in camps along the border, more than 90% of those displaced across the border in 1999 have returned to Timor-Leste. The status as "refugees" of those remaining in West Timor officially ended at the end of 2002. (UNHCHR, 2005) It is estimated that only another 3,000 are considering return. Those remaining have been offered Indonesian citizenship and eventual resettlement in West Timor.(Knezevic, 25). While incidents of violence and intimidation against returning refugees have been low in the post-independence period (Knezevic, 26), many still fear retribution if they return and others continue to experience ongoing discrimination and exclusion. The 90 people illegally detained by the F-FDTL in January 2003 were vaguely accused of having links to the TNI-backed militias still active along the border with West Timor. (Amnesty International, 2003, 41)

Timor-Leste adopted a two-pronged approach to dealing with the violence dating from the period from 1975 to 1999. Serious crimes, including rape and murder, were to be investigated and prosecuted through the formal legal system. A Commission for Reception, Truth, and Reconciliation (CAVR) was established to deal with less serious matters, providing both sides in the dispute agreed to submit the matter to the Commission. The CAVR reported that it had dealt with more than 1,400 cases by July 2004 and it is due to wrap up its work by July 2005.(CAVR, 7) The progress made by the CAVR is counterbalanced by the perceived failure to deal with more serious crimes.

The formal legal system in Timor-Leste has suffered from lack of trained local personnel and a serious lack of resources. Of more than 600 serious crimes cases outstanding, the Serious Crimes Unit had investigated and prosecuted less than half by January 2004.(JSMP, 7) Concerns remain about the future of the Serious Crimes Unit. As a hybrid unit with support and personnel from both UNMISSET and the Timorese government, its future is unclear once the UNMISSET Mission

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<sup>9</sup> One potentially encouraging note is the tendency of the PST, the smallest of the Fretilin family of parties, to act as the political voice of the CPD-RDTL reported by Neven Knezevic. If this continues it might provide an avenue for pulling this dissent into the political system in the next parliamentary elections.

comes to a close. In the interim the Unit has had to focus its limited resources on priority cases. Further investigations have ceased in order to focus on prosecution of priority cases. This means that some serious crimes will never be investigated and even all those which have been investigated will probably not be prosecuted before time and resources run out. Failure to process serious cases through the formal legal system provides an ongoing obstacle to reintegration of both the innocent and the guilty and an invitation to ongoing local conflict where scores are settled outside the formal legal system.

### *Sustainability of the new constitutional regime*

Though Timor-Leste became independent on May 20, 2002, it still faces two enormous challenges. It remains one of the poorest nations in the world with enormous gaps in its capacity for development that are a legacy of its colonial past. At the same time it is a nation where achieving independence has raised very high expectations in terms of economic gains. Both the army of unemployed youth and most of the ex-combatants have yet to see the personal benefits of democracy and independence. Nor for that matter have the vast majority of Timorese who remain rural subsistence farmers seen any change in their lives. The second challenge that Timor-Leste faces is to come to terms with the violence of its recent past. It remains unclear whether an answer can be found that will accommodate the legitimate demands for justice without destroying the hope for reconciliation.

Tackling problems of this magnitude demands a unity of purpose difficult for any society to achieve. Both the lack of economic progress and the incomplete reconciliation process offer potential fuel to the forces of division within the political elite in Timor-Leste. Conflict within an independent Timor-Leste now has its own dynamic. Despite Timor-Leste's long and painful struggle for decolonisation, UNTAET did manage to create conditions for an effective constitution building process to take place. Whether the new constitution and the institutions it has created can survive the challenges Timor-Leste faces remains an open question. Perhaps a constitution building process that was more inclusive and therefore built greater loyalty to the new regime might have served Timor-Leste better. Yet a constitution that received the support of the representatives of three-quarters of the voters may in the end serve Timor-Leste well enough and allow the Timorese to harvest the fruits of victory in their long struggle for independence.

## **APPENDIX 1: Timeline Timor-Leste Constitution Building Process**

1975 November 28	Democratic Republic of Timor-Leste declared independence
1975 December 7	Indonesian troops invaded Timor-Leste
1983 March 24	Local Ceasefire negotiated in Timor-Leste, rejected in Jakarta
1989 February 6	Bishop Belo called for UN Consultation on Timor-Leste
1991 November 12	Dili massacre
1996 December 10	Nobel Peace Prize for Bishop Belo and Ramos-Horta
1998 April	Founding of National Council for East Timorese Resistance (CNRT)
1998 July 23	Indonesian President Habibie offered autonomy to Timor-Leste
1998 August 4-5	UN, Portugal, and Indonesia began talks on Timor-Leste
1998 August	Fretilin Draft Constitution approved at Australia Congress
1999 January 27	Habibie announced ready to relinquish Timor-Leste if vote is no
1999 May 5	New York Agreement for UN Consultation signed
1999 August 30	UN Consultation ballot: 78.6% for independence
1999 September 15	INTERFET: International Peacekeeping Force authorised
1999 October 20	Indonesian Peoples Assembly approved transfer of Timor-Leste
1999 October 25	UNTAET authorised by UN Security Council Indonesia transferred administration of Timor-Leste to UN Sergio de Mello appointed Special Representative of Secretary General for Timor-Leste
1999 December 2	Timor-Leste National Council appointed
2000 February 24	UNTAET assumed security responsibilities from INTERFET
2000 June 21	UNTAET and CNRT agreed on structure for new National Council
2001 July 12	Joint Cabinet appointed for East Timor Transitional Administration
2000 August 21	CNRT Congress: Fretilin and UDT withdrew from CNRT

2000 October 20	New Timor-Leste National Council appointed
2000 December 12	National Council adopted draft timetable for transition
2001 January 14-24	Public hearings on draft timetable
2001 January 31	UNTAET mandate extended to January 31, 2002.
2001 February 23	Constituent Assembly elections set for August 30, 2001
2001 March 28	Gusmao resigned as the head of the National Council
2001 May 7	Political party registration began
2001 June 18-July 14	UNTAET Constitutional Commissions hearings in districts
2001 August 25	Gusmao announced candidacy for president
2001 August 30	Constituent Assembly elections held: Fretilin majority
2001 September 15	Timor-Leste's new Constituent Assembly sworn in
2001 September 20	Mari Alkatiri appointed head of Cabinet of ETTA
2001 October 22	Constituent Assembly requested independence on May 20, 2002
2001 November 30	Constituent Assembly approved draft structure for constitution
2002 January 31	UNTAET mandate extended to May 20, 2002 Constituent Assembly voted to forgo new elections to become parliament on independence
2002 February 9	Draft Constitution approved by Constituent Assembly
2002 February 24- March 2	Public consultations held on draft Constitution
2002 March 22	Timor-Leste's Constituent Assembly approved Constitution
2002 April 14	Gusmao elected President as independent with 83 percent of vote
2002 April 26	UNMISSET authorised to succeed the current UNTAET
2002 May 20	Independence for Timor-Leste

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