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East Timor's Constitutional Passage to Independence

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In a post-conflict environment, a constitution-making process has great potential to serve as a peacebuilding and nation-building tool if it is designed to promote, when appropriate, the values of inclusion, representation, transparency, participation, and national ownership. How these values should be promoted in any given situation is context specific. There is no one way to design a constitution-making process.

However, in cases where the international community is supporting a constitution-making exercise, it should seek to support, to the extent appropriate, a process that gives life to these values. National actors should also seek to promote these values because such a process has the potential to

- facilitate conflict resolution by providing a mechanism within which a wide range of interest groups can develop consensus on how to address the past and current causes of conflict and on an appropriate framework for governance;

- address and reflect the concerns and rights of women, minorities, key stakeholders, and other marginalized members of society;
- lay the foundation for more democratic practices and public participation in governance;
- foster a more informed citizenry that respects the rule of law, questions unconstitutional governmental actions, has a sense of ownership over the constitution, and is more likely to defend the constitution.

The East Timor constitution-making process is a lesson for the international community as well as national actors designing or supporting their own constitution-building process about creating a process that fails to place these values front and center and instead focuses primarily on producing a constitution. Although there is no guarantee that a representative, inclusive, transparent, participatory, and nationally owned and led constitution-making process will achieve

the above results, the international community and national actors leading the process should strive to capitalize on the peace-building and nation-building opportunities that this unique moment in history affords or risk creating a document that fuels conflict rather than resolves it.

This chapter discusses in depth why East Timor's constitution-making process was largely a missed opportunity to contribute to a sustainable peace in East Timor; deliberative processes that promote national reconciliation, conflict resolution, and consensus building take time, a commitment to public participation, and a representative body to deliberate and adopt the constitution. The process in East Timor was rushed, did not create the conditions necessary to include the public in the process, and emphasized an electoral process that in the East Timorese context led to single-party domination of the constituent assembly and a resulting constitution that largely reflected the desires of one party rather than the aspirations of the country as a whole and even of other key elite power bases.

This chapter, first, provides a background to the constitution-making process; second, discusses why the legal framework established a foundation for a flawed process; third, reflects on how democratic representation may have been achieved through a different type of selection and election process from constitution makers; fourth, underscores the demand for public participation in the process, but ultimately the lack of commitment, time, and effective mechanisms to adequately address this demand; fifth, examines the diverse role of the international community, including the key role of the United Nations, which contributed to the rushed timetable of the process; sixth, reflects on the technical assistance to the process, which, given the structure and composition of the constituent assembly, could ultimately have little real im-

pact on improving the process or the resulting constitution; and, finally, highlights the lessons learned from the process.

Background

East Timor became the first independent state of the new millennium when its constitution came into force and independence was declared on May 20, 2002. It was a momentous occasion for the Maubere people, who have inhabited the eastern half of the island of Timor for more than five hundred years. During that long history, the Maubere had always lived under the yoke of one colonial power or another, with the exception of one brief period, beginning on November 28, 1975, when the popular resistance movement Frente Revolucionária de Timor-Leste Independente (Fretilin) declared East Timor's independence after four hundred years as a Portuguese colony.¹ Very shortly thereafter, on December 7, 1975, Indonesian troops invaded East Timor in a move that had received prior sanction from the United States.²

The invasion marked the beginning of East Timor's long and arduous struggle for independence, in which the East Timorese people endured enormous suffering and sacrifice. During the period of resistance to Indonesian rule, it is estimated that more than two hundred thousand East Timorese lost their lives. It was a struggle fought against horrendous odds, pitting a small and poor³ population of seven hundred thousand, inhabiting a small half-island with few resources, against the Indonesian Goliath, with a population of 130 million and the advantage of being viewed as geopolitically important. International attention to the East Timorese cause during most of this period was either absent or marked by duplicity.⁴ For most of the major powers in the world, East Timor is a remote island, and its remoteness was a

factor in both the neglect that characterized Portuguese colonization and the abuse that characterized Indonesian occupation.

East Timor's first brief experience with independence was preceded by a United Nations General Assembly declaration in 1960 that the Timorese territories under Portuguese control were "non-self governing" within the meaning of Chapter XI of the United Nations Charter, creating a basis for East Timor's right to self-determination.⁵ Until that point, Portugal had long considered East Timor to be one of its overseas provinces. However, in the aftermath of Portugal's overthrow of its authoritarian regime in April 1974, it adopted a constitutional law that set the course for the self-determination of its colonies and provided for a transitional administration in East Timor.⁶

In the meantime, the East Timorese had begun forming their own political parties. Three parties were formed; the first was the Uniao Democrática Timorese (UDT), which was closely aligned with Portugal and favored the Portuguese proposal for gradual transition toward independence.⁷ Subsequently, the Associação Social Democrata Timorese (ASDT) was formed; the predecessor to Fretilin, it advocated the reconstruction of East Timorese society on the basis of indigenous customs and kinship alliances.⁸ The third party formed was the Associação Popular Democrata Timorese (Apodeti), which advocated integration with Indonesia. After the ASDT became Fretilin in 1972, it undertook an ambitious program tackling such issues as health and illiteracy throughout the provinces. Its well-developed program and focus on indigenous identity earned it a wide popularity, along with its association with indigenous pride.

The months between Portugal's Carnation Revolution in April 1974 and the Indonesian invasion of East Timor in December 1975 were characterized by great political instabil-

ity. In the early part of the period, UDT and Fretilin formed a coalition, but it soon collapsed. By the end of the period, hostilities had escalated to civil war between Fretilin, which favored independence from Portugal, and a realigned coalition comprising UDT and Apodeti, which favored integration with Indonesia. On November 28, 1975, Fretilin declared East Timor's independence and the establishment of the new Democratic Republic of East Timor. Two days later, the UDT-Apodeti coalition declared independence and integration with Indonesia.⁹ These same parties would later take part in the election of East Timor's constituent assembly in 2001.

Indonesia justified its 1975 invasion as an attempt to pacify the territory. However, it later annexed the territory as its twenty-seventh province in May 1976.¹⁰ The United Nations Security Council's Resolution 384 in 1975 and Resolution 389 in 1976 called upon Indonesia to withdraw its forces immediately; from then through 1981, the General Assembly adopted resolutions annually reaffirming the right of the East Timorese people to self-determination. Though the illegal annexation was otherwise universally condemned by the international community, in 1978, Australia became the only country in the world to officially recognize it, a decision grounded in perceived geopolitical interests.

From the moment of its invasion to the end of its occupation in 1999, Indonesia maintained a heavy military presence. The military imposed brutal rule on the territory while Fretilin maintained an almost uninterrupted armed resistance.¹¹ Given the disparity of size and power between Fretilin and the Indonesian military, and the latter's persistence in its attempt to annihilate the former, the Fretilin fighters' bravery and tenacity were extraordinary. The resistance could not have been maintained, however, without

the equally extraordinary protection of the populace, which often went to great lengths to conceal Fretilin members and members of its armed wing, called the *Forças Armadas de Libertação Nacional de Timor Leste* (FALANTIL).¹² The leader of these forces, Kay Rala Xanana Gusmão, became the beloved hero of the nationalist movement, and the power of his popularity would be significant in the unfolding of the constitutional process and the country's independence. Ultimately, he was elected as the country's first president.

The Indonesian military's abuses of the East Timorese population during the occupation have been well documented.¹³ Indonesian values were imposed and East Timorese culture circumscribed. The military undertook an intensive program of forced migration and engaged in sexual slavery and forced sterilization. In its attempt to crush the armed resistance, Indonesian forces conducted saturation bombing and massacred entire villages.

During the long struggle for independence, a number of proindependence groups emerged.¹⁴ In 1986, Gusmão formed an umbrella organization called the *Conselho Nacional da Resistência Maubere* (CNRM), which acted as a shadow government with him as its leader. By then, several leading figures of the various political parties were in exile, and they also joined this umbrella organization. In 1998, the organization changed its name to the *Conselho Nacional da Resistência Timorese* (CNRT).

The grave and systematic abuses of human rights committed during the Indonesian occupation went almost unnoticed in the international community until 1991, when, on November 12, Indonesian forces opened fire on an unarmed crowd that was peacefully demonstrating at the burial of a slain independence fighter. Two hundred East Timorese were slaughtered while foreign journalists filmed the incident.¹⁵ That event

raised the international profile of the suffering of the East Timorese people.

In the following years, several of the independence movement's leading figures gained international attention. In 1992, Gusmão was captured and imprisoned by the Indonesians, who forced him to denounce his fight for independence in a televised appearance. Two others achieved notoriety in repeated appeals to the international community for support. One was Jose Ramos Horta, a vocal proponent of independence since 1974. The other was Bishop Carlos Filipo Ximenes Belo, a vocal opponent of the Indonesian occupation throughout the 1980s. In 1996, these two leaders were jointly awarded the Nobel Prize for Peace, bringing increased international attention to East Timorese pleas for independence. Nevertheless, Indonesian authorities under President Suharto remained intransigent before these appeals.

In 1998, the Asian economic crisis led to the fall of Suharto and the appointment of B.J. Habibie to replace him. Shortly after assuming office, Habibie announced that he was prepared to accord wide-ranging autonomy to East Timor. In the course of that year, under the auspices of Ambassador Jamsheed Marker of Pakistan, UN Secretary-General Kofi Annan's personal representative for East Timor, the United Nations led negotiations on the evolution toward East Timor's autonomy.¹⁶ A tripartite agreement among Indonesia, Portugal, and the United Nations was reached on May 5, 1999. Under that watershed agreement, the United Nations would supervise a "popular consultation" in East Timor, in which the East Timorese people would be given the opportunity to accept or reject the status of autonomy within Indonesia. The agreement also provided that if the people rejected autonomy, then the United Nations would assume responsibility for the territory during a transition to independence.¹⁷

On June 11, 1999, the United Nations Mission in East Timor (UNAMET) was established by Security Council Resolution 1246, in accordance with the May 5 agreement. UNAMET immediately set up operations in East Timor to prepare for the referendum on autonomy, which, according to Resolution 1246, was to take place in August. However, even before UNAMET became operational, the security situation in the territory began deteriorating. Although Habibie had consulted with the Indonesian generals in connection with the May 5 agreement, factions of the military, as well as prointegrationist East Timorese militia, were violently opposed to independence.

In spite of the sporadic violence and increasing security problems, UNAMET proceeded with its planning and supervision of the referendum after Indonesian General Wiranto presided over the signing of an agreement to cease hostilities. Violence nevertheless continued up through the day of the referendum on August 30, 1999. On that day, 432,287 East Timorese—98.4 percent of the eligible voters—went to the polls amid the violence and intimidation and cast their votes;¹⁸ 78.5 percent of them favored independence.

Prointegrationist militias supported by Indonesian forces immediately responded with a scorched-earth campaign of destruction. More than one thousand people were killed, vast portions of the population were forced to flee into the mountains and across the border into West Timor, and the UNAMET headquarters in Dili was forced to evacuate its personnel.¹⁹ In the ensuing weeks, at least 80 percent of the country's infrastructure was pillaged and burned in a carefully orchestrated program of devastation.

In early September 1999, United States president Bill Clinton severed military ties with Indonesia and insisted that President Habibie invite international intervention. In

response to a mounting wave of international pressure, Habibie agreed, and on September 15, the United Nations Security Council adopted Resolution 1264, establishing a multinational force to quell the destruction in East Timor. The International Forces in East Timor (INTERFET), acting under the direction of Australian Major General Peter Cosgrove, commenced operations on September 20. By the end of October, INTERFET had established security and was acting as a *de facto* administration in the territory. It remained in East Timor through February, when it transferred its authority to peacekeeping forces under the United Nations Transitional Authority in East Timor (UNTAET), established by Security Council Resolution 1272, adopted on October 25.

Under its mandate, the broadest in the history of the United Nations, UNTAET acted as the *de jure* transitional government of the territory, with executive, legislative, and judicial authority. Because one of the key components of the UNTAET mandate was to "consult and cooperate closely with the East Timorese people,"²⁰ one of its first steps was to consult the political leadership of the country under the umbrella of the CNRT. Gusmão took up leadership of the CNRT after his release from prison in Indonesia and return to East Timor in October 1999.²¹

UNTAET did not have a plan for devolving power to the East Timorese. Instead, the UN transitional administrator, Sergio Vieira de Mello, developed *ad hoc* approaches to devolution as he implemented and interpreted UNTAET's mandate. Initially, UNTAET acted as a caretaker government and did not bring East Timorese into the transitional administration to share governing authority. Rather, the transitional administrator governed the territory with the policy advice of a fifteen-member National Consultative Council (NCC), composed of both East Timorese, largely from the CNRT,

and foreign UN mission staff. The transitional administrator chose not to promulgate a regulation or endorse a policy unless it had been agreed upon by the NCC, giving this body practical veto power for its key members, including Gusmão.

Responding to the need to further devolve power, as well as to popular criticism of the slow pace of reconstruction, about seven months into the mission the transitional administrator dissolved the NCC and established a thirty-six-member National Council (NC) composed solely of East Timorese. The NC, with Gusmão as its speaker, was a quasi-legislature, with the power to initiate, recommend, and amend transitional regulations as well as call cabinet members to answer questions about their respective policies and programs.²² The transitional administrator created additional structures in which East Timorese leaders shared power with UN personnel, including an eight-member (half East Timorese) Cabinet of the Transitional Government²³ and a transitional administration responsible for public administration. Some functions remained directly under UNTAET's control, however, including the peacekeeping force, foreign affairs, and the implementation of the transitional process, in particular the elections and constitution making.

After national elections for a constituent assembly in August 2001, the transitional administrator retained executive authority but delegated responsibility for day-to-day governance to the transitional administration, now under the control of a fully East Timorese cabinet. Mari Alkatiri, a Fretilin member who had returned from exile in Mozambique, was chosen as prime minister.

UNTAET's final tasks were to organize the election of the country's first president and support the elaboration of the country's independence constitution. That constitution was adopted on March 22, 2002, and

took effect on May 20 of that year. On that date, chosen to coincide with the founding of Fretilin's predecessor, UNTAET brought its mission to a close and fully transferred authority to the newly created state.

Structure of the Constitution-Making Process

Debates on the Legal Framework

In establishing UNTAET, Security Council Resolution 1272 did not specify how the shift from a UN transitional administration to an independent East Timor would take place. Unlike the peace processes in Cambodia or Afghanistan (see Chapters 8 and 20), there was no peace agreement specifying that a constitution would be a component of the state-building effort. In April 2000, de Mello briefed the Security Council and underscored that UNTAET was formulating a detailed strategic plan, including benchmarks, that would lead to the phasing out of UNTAET, devolution of power to East Timorese authorities, and establishment of an independent East Timor. One of the key benchmarks in this plan was the drafting of an independence constitution.²⁴

CNRT's diverse membership met several times, in part to discuss how East Timor's hoped-for independence constitution would be created. In August 1998, CNRT members gathered to develop a set of policies for the development of the country in every sector, including constitutional, health, education, judicial, etc. Two more conferences were held in April 1999 in Melbourne and May 2000 in Tibar, East Timor. CNRT also held a National Congress in August 2000 to review its structure and vote on policy recommendations that had emerged from the conferences. Throughout these policy-planning meetings, the preferred model for drafting East Timor's independence constitution was a constitutional convention.

Over three hundred participants gathered at the CNRT conference in Melbourne, held April 5 to April 9, 1999. They recommended that a special convention be established, comprised of all social and political groups; this convention, in turn, should appoint a commission of legal professionals to assist with the drafting process. The CNRT participants at the Melbourne conference did not foresee that Indonesian armed forces and East Timorese militia would launch a scorched-earth campaign after the results of the 1999 referendum were announced. They assumed that existing structures would be in place when they began the difficult task of reconstructing East Timor. When it became clear, following the postreferendum violence and destruction, that reconstruction had to begin from nearly the ground up, the Melbourne conference recommendations needed to be reviewed in light of the new circumstances. Nearly three hundred people again gathered for the meeting in Tibar, East Timor, from May 29 to June 2, 2000, under the auspices of the CNRT to attend a conference entitled "Reconstructing East Timor: Analysis of the Past and Perspectives for the Future."

The participants restated the strategic plan to draft a constitution agreed upon in Melbourne but added that a constitutional working committee should be formed to draft the constitution, and that this committee should establish a mechanism to ensure full public consultation and participation in the process.²⁵ The CNRT and civil society stressed the importance of public participation in the making of the constitution, regardless of the model of constitution making chosen.

However, at the Tibar meeting, the Political, Constitutional, and Electoral Affairs Department of UNTAET (Political Affairs Department) announced the following model of constitution making, which did not provide for an independent commission or stress the role of public participation:

The defining events of the political transition are the adoption of a constitution and the holding of free elections. Elections will choose a Constituent Assembly which in turn will write, debate and adopt a constitution. Following its adoption, the Constituent Assembly will become the Parliament (or legislative assembly) of the new country.²⁶

This was markedly different from the model proposed by CNRT. In August 2000, participants from every district in East Timor attended the CNRT National Congress and there agreed that a constitutional commission, in consultation with the East Timorese people, would first draft the independence constitution. The draft constitution would then be submitted to an elected constituent assembly for approval and adoption. The constituent assembly would also be tasked with conducting further consultations and making any necessary amendments to the draft. These recommendations were adopted by a vote of 290 delegates in favor, 8 against, and 42 abstaining.

At the same congress, the transitional administrator addressed the CNRT delegates and suggested two different options for adopting the constitution. The first model he presented was to select a representative constitutional commission to prepare a draft constitution, with the possibility of a referendum on the draft being held at the same time as the national elections for the members of the constituent assembly. If the draft constitution were approved in the referendum, a provisional government would be formed on the basis of the system of government outlined in the approved draft. The elected constituent assembly would then serve as the interim legislature until preparation and adoption of the final constitution.

The second alternative proposed was that offered by the Political Affairs Department of UNTAET a few months earlier at the Tibar conference: to elect an assembly that would both draft and adopt a constitu-

tion. The transitional administrator stressed the need for widespread participation in the drafting of the constitution regardless of the model chosen, noting that “[t]he constitution will stand the test of time if it has been drafted in a participatory manner and has emerged from the real lives and aspirations of people.”²⁷

Approximately one month after UNTAET officials presented constitution-making options to the CNRT National Congress, the transitional administrator briefed the Security Council on September 29, 2000, describing the political transition process that would take place in East Timor. He outlined the same constitution-making approach that the director of the Political Affairs Department, Peter Galbraith, had presented at the earlier Tibar conference. Transitional administrator de Mello stated that

[t]he major elements of political transition are clear. As things currently stand, our plan is to hold national elections in the second half of next year with a view to establishing a Constituent Assembly. This Assembly will be tasked with drafting the Constitution, choosing the members of the new transitional government and serving as an interim legislature. Upon completion of the Constitution, the Assembly would become the new National Assembly of an independent East Timor.²⁸

No mention was made of a representative commission or of public consultations.

In November 2000, Gusmão, as president of CNRT, provided the transitional administrator with a political calendar outlining suggested steps towards independence. The broad framework followed the model that the transitional administrator had discussed with the Security Council at the end of September.

In addition to serving as the president of CNRT, Gusmão was also the presiding speaker of the National Council and the presiding member of its Standing Committee on Political Affairs (Standing Committee),

tasked with examining the electoral and constitutional processes for East Timor. On December 12, 2000, he submitted the political transition calendar to the National Council. It was entitled “Broad Timeline for the Process Leading to East Timor’s Declaration of Independence.” The calendar proposed that the constitution should be debated, drafted, and adopted in a period of ninety days. After a few hours of debate, the National Council determined that it did not have enough information to decide the matter and requested that the Standing Committee hold hearings and provide the council with a set of recommendations on the subject.

On December 23, in his role as presiding member of the Standing Committee, Gusmão drafted a letter to representatives of political parties, civil society, the church, and academia; he attached a copy of CNRT’s political transition calendar and requested comments on the plan. Gusmão highlighted the questions that for him remained outstanding, such as how many representatives the constituent assembly should have and the appropriate process to elect its members. It did not seek alternative views on the approach to constitution making.

From January 18 to January 23, 2001, the Standing Committee invited some of those who had received the letter to comment on the calendar at public hearings. Throughout the five-day period, the committee heard or received written testimonies from approximately twenty-six East Timorese, including representatives of political parties, civil-society organizations, the Catholic Church, and the University of East Timor, as well as two CNRT members, an UNTAET cabinet minister, and a District Advisory Council member from Liquica.

During the hearings, most of those who testified preferred that an unelected body, such as a constitutional convention or commission, consult with the population and draft the constitution, in keeping with the

earlier CNRT positions. Only five of the political parties represented agreed that an elected body, such as a constituent assembly, should draft the constitution. However, most also preferred that a constituent assembly should adopt the draft constitution. Many underscored that this two-stage process would allow for broad participation from diverse sectors of society, including technical experts. Some of those testifying were familiar with constitution-making processes that had taken place in Africa, such as the South Africa process, which had prioritized widespread public participation in the preparation of the constitution.

Aderito Soares, speaking on behalf of the Jurists Association and as a CNRT member, expressed grave concern about the proposed political transition process. He underscored that the CNRT National Congress had agreed to a constitutional convention that would consult widely with the public. He also expressed concern about the proposed structure and the short time given to complete the process. Joaquim Fonseca of Yayasan Hak, a human rights group, also noted that the process under discussion was inconsistent with the consensus reached at the National Congress. The NGO Forum, an umbrella group for non-governmental organizations (NGOs) in East Timor, raised the same issue and asked what had happened to the National Congress's recommendations.

In his role as a cabinet member, the director of UNTAET's Department of Political Affairs, Peter Galbraith, also gave his views about the process. Similar to his speech in May 2000 at the Tibar conference, he again explained that "the final phase of the Political Transition begins with the election of a constituent assembly with a mandate to prepare the Constitution for an independent East Timor." However, he also described his views about why it was important that an elected body draft the constitution. He stated that creating a constitution involves

making hundreds of decisions, and those decisions should not be made by appointed officials, but by elected representatives. He pointed out that a constituent assembly would have power to decide how it would draft the constitution, what type of constitution it would be, how it would be ratified, and how much debate should be involved in its adoption. This opinion did not reflect the history of constitution making, whereby unelected although representative bodies had often prepared or debated the constitution, as in constitutional conferences in West Africa or the two-stage processes that began with a constitutional commission preparing the draft prior to submitting to an elected body. Moreover, constitution-making bodies were often mandated to ensure widespread public participation in the process, including providing comments and suggestions on drafts of the constitution.

The director of political affairs' position also failed to account for the dominance of the Fretilin party, which was virtually assured of a landslide victory in the elections. This was a key factor in the views expressed by those favoring a more participatory and representative model of constitution making, which would have more reflected the trends and international standards of constitution making at the time. Civil society as well as other leaders in Timorese society wanted the process to be an opportunity for consensus building by allowing all of the various political voices in East Timor to be heard. They saw this as preferable to a process that would, in effect, allow one political group to decide all of the key constitutional issues for the entire country, which could lead to an illegitimate constitution that was not owned by all citizens.

After the hearings, the Standing Committee of the National Council reported back to the council and made a series of recommendations for the electoral law; their recommendations only slightly revised the political

transition calendar. Few of the suggestions made by the East Timorese who testified before the Standing Committee were incorporated, and the suggestion by most—that an unelected body draft the constitution and that sufficient time be allocated for the process—was not among them.

Although the Standing Committee had held public hearings on how the process should be structured, ultimately it was a few political elites and key UN officials who decided that an elected body should not only debate and adopt the constitution but also draft the constitution in a period of ninety days. On March 16, 2001, the National Council adopted UNTAET Regulation 2001/2 on the Election of the Constituent Assembly.²⁹

The Legal Framework

Regulation 2001/2 called for the election of an eighty-eight-member constituent assembly, seventy-five members of which would be nationally elected on the basis of proportional representation and thirteen of which would be elected on a first-past-the-post basis in each of East Timor's thirteen districts. The regulation provided that the constituent assembly should adopt the draft constitution within ninety days from its first sitting by an affirmative vote of at least sixty of its eighty-eight members.

Regulation 2001/2 also gave the assembly the option of choosing to transform itself into the nation's first parliament. That an assembly dominated by Fretilin—a foregone conclusion—would choose to do so was certain. This provision incorporated an inherent conflict of interest because the assembly would be deciding the parameters of its future powers.

The ninety-day time frame was also certain to exclude widespread public consultations on the draft constitution or a process of careful deliberations within the assembly itself. The preparation of a constitutional

process that educates the public on the role of a constitution and constitutional issues as well as carefully consults the public on constitutional issues requires time.

Even though the time frame was short, Regulation 2001/2 was skeletal; it did not contain constitutional principles, rules of procedure, or guidance on a work plan or require public participation in the process. This led to confusion throughout the process, as the East Timorese rushed to prepare a draft yet had little or no experience regarding how to go about doing so.

The Deliberations in the Assembly: Single-Party Domination

On September 15, 2001, Vieira de Mello swore in East Timor's first constituent assembly. The members faced a daunting task. Although time was very limited, the assembly spent three weeks drafting and debating the internal rules of procedure. In the end, it roughly adopted the rules of procedure of the Portuguese Assembly, but these were ill-suited to a body that should have been attempting to create a constitution by consensus rather than majority rule.

The rules established a forty-two-member systemization and harmonization committee (SHC) to agree upon the structure of the constitution, establish thematic committees, and integrate the individual articles developed and approved by the committees into the body of the constitution. Although Asia Foundation consultants who were providing technical advice suggested that the assembly take time to prepare a constitutional agenda and agree upon constitutional principles to guide the process, this suggestion was sidestepped in the rush to prepare a draft. The SHC created four thematic committees. Committee I focused on fundamental rights, freedoms, and duties, as well as national defense and security; Committee II focused on the organization of the state and political power; Com-

mittee III focused on economic, social, and financial organization; and Committee IV focused on fundamental principles, control of constitutionality, amendment of the constitution, and final and transitional provisions.

The president of the assembly, Francisco Guterres (“Lú-Olo”), told the members that they should agree upon draft provisions for their respective subject areas by referring to the few drafts of the constitution submitted by political parties. The Fretilin draft constitution had been prepared in 1998, well in advance of independence. It was largely inspired by the constitutions of Portugal and Mozambique.³⁰ The committees were also to call experts to testify on their specific subject matter at public hearings. The committees were initially given only ten days to review the parties’ draft constitutions, hold public hearings, and provide their recommendations to the SHC.

The thematic committees began meeting on October 17 and immediately began preparations for public hearings. They invited representatives of civil-society groups, international organizations, UNTAET, the East Timor Public Administration (ETPA), and the Church to prepare submissions and scheduled their appearances. In addition, the Asia Foundation provided constitutional experts to each of the committees.

All of the Asia Foundation experts noted that though many groups provided useful submissions, the committees rarely referred to them in their deliberations. Instead, the committees focused on reviewing the Fretilin draft, and by taking that draft as their point of departure, the committees failed to develop the constitution from the ground up, examining and discussing which options would be most suitable for East Timor. Also, because the focus was on the Fretilin draft rather than an agreed set of principles and goals for the nation, the discussions occasionally focused on issues that had no relevance to East Timor.

By November 30, 2001, the SHC had harmonized the recommendations submitted by the thematic committees and the plenary had agreed upon a draft constitution on which to debate. Consequently, even though the assembly had begun deliberating on the day it was sworn in, when the ninety-day period set for adopting the constitution expired on December 15, 2001, it still had over one thousand pending votes on proposed constitutional provisions. As a result, the process was extended from December 15, 2001, to March 22, 2002.

Throughout the process, the assembly’s plenary sessions and thematic committee hearings were made accessible to the public. However, the general public had little awareness of the contents of the draft. The debates in the assembly were broadcast live over the radio, but they were often difficult to follow and it was not always easy to determine what had been concluded.

For those members of the public attending the sessions, simultaneous translation was provided in English, Tetum, Portuguese, and Bahasa. Initially, it was difficult for members of the media to obtain information about developments and the agenda. In response to requests, the secretariat assisted the assembly in developing daily press briefings and posted the agenda at the entrance to the assembly. These were positive steps in making the process more accessible and open. Indeed, as the process evolved, the leaders in the assembly began to be more and more open about sharing their early drafts with the public and allowing the public to be present in nearly all its discussions and deliberations. Indeed, it was rare that a session would be closed; this only occurred if small groups were meeting to try to reach consensus on sticking points.

On February 9, 2002, the assembly approved the first draft of the constitution. Sixty-five members of the assembly voted to approve the draft, thirteen members abstained, and ten members were absent. In the

end, that document very closely resembled the original Fretilin draft. Due to the clamor for effective popular consultation, members of the assembly then engaged in one week of popular consultation during February, reviewing the recently approved draft with the population. Subsequently, the assembly made minor changes to the February 9 draft, and on March 22, 2002, the assembly adopted the new constitution by a vote of seventy-two members in favor and fourteen against, with one abstention and one absence due to illness.³¹

By its own terms, the constitution would take effect and East Timor would achieve its independence on May 20, 2002.³² The assembly chose that date because it marked the twenty-eighth anniversary of the founding of ASDT, the predecessor of the Fretilin party.³³

Democratic Representation

In the early part of 2001, the NC organized consultations to determine the structure of the constitution-making process. The results of the consultations were summarized in a document entitled "The Report on the Political Transitional Calendar compiled by the Standing Committee of Political Affairs of the National Council," referred to as the PAC report. Most all of the PAC recommendations relating to the election of the constituent assembly were incorporated into UNTAET Regulation 2001/2. That regulation set out the basic electoral rules, which included a determination of the electoral system; the issue had been discussed during the consultations that formed the basis of the PAC report. Three options were considered: a majority/plurality option, a proportional list option, and a hybrid of the two. Some advantages of each of the systems were considered. The majority/plurality option was viewed as offering the advantage of the personalization of the candidates and assuring their ac-

countability before the electorate. One disadvantage was that it would likely lead to a two-party system, which would discourage plurality. The proportional system offered the advantage of placing all voters on an equal footing and encouraging plurality. A disadvantage was the lack of accountability to constituencies. Though a preference for the proportional system was expressed because it was the system used in the continental tradition with which the East Timorese were most familiar, in the end, the regulation put in place a hybrid system.

For the national elections, parties were allowed to submit lists of up to seventy-five names; these candidates were to be elected according to a somewhat complex formula set out in Section 37.1 of Regulation 2001/2. Independent candidates, who were allowed to run for both national- and district-level seats, had to gather five hundred signatures for registration on the national level and one hundred signatures for registration for the district elections. In calculating election results at the national level, independent candidates were to be treated as belonging to a political party that only entered a single candidate.

One key recommendation in the PAC report that was not incorporated into UNTAET Regulation 2001/2 was that 30 percent of the seats in the constituent assembly should be reserved for women. The issue proved to be hotly contested; UNTAET's director of political affairs and the chief electoral officer were strongly opposed to the quota and lobbied against it; Gusmão, however, expressed strong support for it. In the end, the proposal failed to garner enough support in the NC and was rejected.³⁴

In addition to determining the nature of the electoral system and establishing rules for party registration, Regulation 2001/2 set August 30, 2001, as the date for the election and provided for the creation of an independent electoral commission, composed of three international electoral experts and two

East Timorese. The electoral commission was given broad authority over the conduct of the election, including the power to implement the rules established under Regulation 2001/2, resolve disputes arising under them, and establish rules of its own. Among the rules established by the electoral commission was that requiring parties to confine their campaigning to the period between July 15 and August 28, 2001. Some saw the rule as offering too little opportunity for new parties to develop and promote their programs. This failing was seen in turn as reinforcing Fretilin's advantage, which everyone involved in the process acknowledged as significant.

The election was held on August 30, 2001, with sixteen political parties having registered.³⁵ These parties represented a variety of interests, such as Christian values, rejection of communism, protection of landowners, economic liberalism, protection of local custom and tradition, alignment with Portugal, alignment with Indonesia, securing of reparations from Portugal, and promotion of youth and labor. Several of the parties were new, appearing for the first time in East Timorese politics specifically to compete in this election.

By June 22, 2001, near the cut-off date for voter registration, 775,602 voters had registered, and on August 30, 2001, 91 percent of the eligible voters cast ballots.³⁶ In accordance with the election results, twelve political parties and one independent member gained seats in the assembly. Fretilin won fifty-five seats. The remaining seats were divided among the others, with no other party gaining more than seven seats. The leaders of the constituent assembly included Francisco Guterres from Fretilin as president, Arlindo Francisco Marçal from PDC as a vice president, and Francisco Xavier do Amaral from ASDT³⁷ as another vice president.

Clearly, UNTAET Regulation 2001/2 provided for democratic representation in the constitution-making process. However, this

seemingly positive aspect of the process must be assessed as part of the process as a whole. The regulation established a system whereby only elected officials would be allowed to take part in the constitutional drafting process. In a post-conflict context, this type of system often advantages political elites, who are better prepared to participate in an election. Determining who drafts the constitution through an election may not lead to a representative body in all cases that ensures that all voices of the people are heard, in particular those of women or rural poor.

Because it was a foregone conclusion that Fretilin would win any election by a significant margin, structuring the process as the regulation did precluded the formation of a diverse body, without perhaps strong political ties, to consult with the public about what should be included in a draft constitution and share this with an elected body. To avoid a constitution-making process representing merely the division of spoils by elites, an emerging trend in constitution making is to have a two-phase approach to the process: the formation of an appointed, broadly representative constitutional commission to develop a draft constitutional text and adoption of a final constitution by an elected body or a body that is both selected and elected to ensure the diversity of the nation is represented.

An independent commission or technical drafting body has often been used to prepare a draft constitution because it tends to be more distanced from political agendas and may allow for greater diversity of views, improved opportunities for consensus building, input of experts, and greater public participation. Nonetheless, establishing an effective constitutional commission has been very challenging in recent constitution-making processes. In processes directed by a constitutional commission, the goal is to choose an independent and diverse group that is small enough to manage the tasks of drafting the constitution efficiently and assuring public

buy-in of the process. To achieve such ends, a commission often includes professionals, youth, women, the disabled, veterans, minorities, and other relevant groups in society who often may not have access to the formal political party system.

This observation obviously raises the question of how the commission should be selected. This is a difficult question because the answer is so closely related to the desired end, which is to create a commission that assures buy-in by the population and reflects as broad a range of political, ethnic, religious, and other groupings as possible. In most recent cases, the protagonists of the process have agreed on the general nature of the desired composition and, in some cases, have achieved it through a selection process in accordance with these principles. This, however, does not mean that the same result cannot be achieved through a carefully designed electoral process. The point here is that the emphasis is not on the mode of the selection or election, but on the desired composition and having a flexible mode of selection or election to best achieve that result. In many post-conflict contexts, where nascent political parties do not have a strong representational basis, democratically elected representation may not lead to representation of the aspirations of the people as well as the political elite.

In East Timor, the constitution-making process did not lead to a broadly based representative body either to consult with the public or prepare the constitution. With fifty-five of the eighty-eight seats in the assembly, Fretilin was just short of the two-thirds majority required under Regulation 2001/2 to adopt the new constitution, but with its close links to a few small parties, it effectively controlled the necessary votes. This meant that Fretilin did not need to build consensus or compromise for the constitution to be adopted. This factor contributed to the resulting institutional arrangements set out in the final constitution, including a weak pres-

idency and a dominant parliament—hardly the result that the population had sought during the abortive period of popular consultation (described in the next section).

In addition, the process failed to create the political space for minority voices to be heard. This state of affairs set the stage for the president, who enjoyed wide support among the population, to exercise powers beyond the narrow strictures of the constitution; it also planted seeds for future conflict. This scenario did not bode well for the nation-building process or the constitution's sustainability.

Public Participation

Debates on the Framework for Public Participation

Of all the issues that were debated in early 2001, the two most controversial were the role of public participation in constitution making and the time frame of the process. During the consultations that formed the basis of the PAC report, those testifying widely agreed that an independent constitutional commission should conduct a program of civic education and public consultation, and that the views expressed during such a process should be integrated into the draft submitted for debate and ratification by the constituent assembly. Catholic bishops advocated the adoption of an interim constitution, to be followed by the establishment of a constitutional commission that would prepare the final constitution for adoption by an elected body.³⁸ These views coincided with those put forward in earlier policy recommendations by CNRT.

UNTAET Regulation 2001/2 did not incorporate the above views, but a young East Timorese lawyer who represented Yayasan Hak, East Timor's leading human rights NGO, attempted to remedy the situation. He presented a draft regulation to the Na-

tional Council proposing the appointment of an independent constitutional commission. It would be composed of twenty-six East Timorese who had no official affiliation with the Transitional Administration of East Timor (ETTA) or with UNTAET, nor were they active members of any political party or group. The commission would be selected from diverse sectors of the society, including “representatives of the academic institutions, youth groups, representatives of religious denominations, a representative of the National Council, and the NGO forum.” Two commissioners—one man and one woman—would head an office in each of the country’s thirteen districts. Each office would be responsible for conducting consultations in their district. The commission would be assisted by a national planning team composed of nationals and foreign experts, who would coordinate the work of the commission. They would have expertise in “constitutional processes, including experience in the consultation and drafting of a recent constitution, political science, anthropology, education, particularly experience in mass education in a developing country, economics, legal drafting, human rights law, and gender.”

Section 3.2 of the proposed regulation provided the following:

- The work of the Commission will be divided into the following successive phases:
- (a) *Public Information Phase*, which will include mass dissemination of information on the Nature of a Constitution and the decisions needed to be taken for its adoption;
 - (b) *Debating Phase*, during which members of the public will be assisted in discussing the key issues under the Constitution through debates, workshops or group discussions from the national to the community level;
 - (c) *Consultation Phase*, during which members of the public will be able to

formally submit their views at public hearings held at the Sub-Districts level;

- (d) *Reporting Phase*, during which members of the Commission compile the views expressed during the Consultation process and draw recommendations for submission to the constituent assembly;
- (e) *Drafting Phase*, during which members of the Commission assist the constituent assembly with the drafting of the Constitution.³⁹

The commission’s work was to be carried out over twelve months, nine of which would be spent on the first three phases with three months devoted to the last two.

Though the proposal received wide support from civil society, it proved to be one of the most contentious events in the development of the constitution-making process. Notably, the proposed regulation was inconsistent with Regulation 2001/2, which had already been adopted. The UNTAET Political Affairs Department and Fretilin opposed it on the grounds that it required an expanded time frame to draft the constitution, it was overly complex and cumbersome, and it provided that an unelected commission would draft the constitution.

Had the proposed regulation been adopted, it may have been viewed by the UN as requiring the extension of the UNTAET mandate—a difficult proposition given that some member states in the Security Council were already questioning the enormous expense entailed in the United Nations’ administration of a country so small.⁴⁰ The resource issue should not have been a stumbling block, however, as the Security Council had already agreed to a UN support mission after the conclusion of UNTAET’s mandate. Nevertheless, it was clear that for UNTAET, early adoption of a new constitution would be a benchmark of success for the mission,

which needed to illustrate results to justify its huge costs.

The proposal was the subject of heated debate in the NC. Gusmão supported the proposal, as did the NGO community. This was a significant reversal, given that Gusmão had proposed the political calendar that called for a ninety-day time frame for the constitution-making process. Aderito Jesus de Soares, who was then a representative of the East Timor Jurists Association (he would later chair the systemization and harmonization committee of the constituent assembly), appeared before the NC and pleaded for an extended time frame for consultation. He stated: "Isn't this a process for us to teach the people of the importance of the constitution for the country?"⁴¹ When one Fretilin member of the NC characterized the proposal as political maneuvering, an angry exchange ensued, in which the ever-deepening tensions between Gusmão and the Fretilin party were apparent. The author of the proposed regulation defended his submission, arguing that democracy entails more than elections, and explained that he had submitted the proposal to empower people, not parties.⁴²

During the debates over the issue, the NGO Forum submitted a letter to the Security Council stating its case. Endorsed by twenty-eight NGOs, the letter stated:

A Constitution is a complex document embodying fundamental choices about the type of country an independent East Timor will be. This Constitution has to be a living document, which reflects how the East Timorese as a people see themselves, relate to each other, and finally, after many centuries, govern themselves.

So, how are the East Timorese people to make those fundamental decisions? By ensuring that a legitimate constitutional process established. [*sic*]

To achieve this legitimacy, we need to establish a process that will provide the East Timorese people with a real opportunity to have their views on the key issues reflected in the draft-

ing of the Constitution. This process will need to balance the urgency of East Timor becoming an independent country with the essential need for the Constitution to be a document reflecting the aspirations of the East Timorese people.

For this to happen, the East Timorese people have to be provided with the information on the choices that have to be made, information on what a Constitution is, information on the options available to them on the fundamental issues. They will then need time to consider and debate so that they are able to form opinions, time to hold discussions in order to seek consensus where opinions are divided, and finally time to officially record their views. None of this can happen in three months.

The proposed timeframe being pushed by UNTAET and some East Timorese leaders would only allow consultation on the constitutional process to take place over a period of approximately three months due to the rush to hold the election on the 30th of August. This is forgetting that the very purpose of the election is to establish a Constituent Assembly that will draft the Constitution. The Constituent Assembly will not be in a position to carry out any further consultation on the Constitution with the East Timorese people. It will be under enormous pressure to deliver the document that will declare the independence of East Timor. The Constituent Assembly will have 90 days within which to prepare and adopt the Constitution.

All the legitimate constitutional processes that have taken place in recent years were carried out over a period of three to four years. The consultation process for the South African Constitution lasted over three years. A three-month process would rob the East Timorese of their right to contribute to the future of their country and it will alienate them from the very document that should voice their aspirations.⁴³

Although the pleas of civil society were compelling, the proposed regulation was ultimately defeated. Gusmão resigned as NC president because Fretilin refused to accept the regulation, which would have ensured that the process incorporate public consultation. He complained to UNTAET that the NC no longer reflected the aspirations of the people.

Civic Education and Consultation Prior to the Constituent Assembly

The debate made it clear that there was demand for popular consultation, and UNTAET felt constrained to respond. It soon issued Directive 2001/13, which established thirteen constitutional commissions to engage in civic education and conduct popular consultations in East Timor's thirteen districts.⁴⁴ The key differences between this approach and that advocated by civil-society representatives and others was that these commissions did not have a mandate to prepare a draft of the constitution and they would receive heavy guidance from UNTAET. The UNTAET directive also did not address the concerns of civil society and Gusmão (after he reversed his position) that there be adequate time to first educate the people on constitutional issues before consulting them. In addition, one of the important elements of a consultation process is that those preparing the draft of the constitution are able to travel throughout the country and hear the voices and concerns directly from citizens. This process has been very transformative for the constitutional drafters and helps set a precedent for law makers consulting the people.

Nonetheless, the transitional administrator, Sergio Vieira de Mello, announced the process, stating:

A national civic education framework has been developed in close consultation with major civil society groups. . . . This framework provides for widespread civic education through training of trainers, mass information, and multiple civil society initiatives, including village-level discussion and other interactive activities. The main themes—the basic principles of a stable democracy, constitutional issues, and voter education—will provide the foundation for an informed public engagement in the process.⁴⁵

UNTAET appointed seventy-seven commissioners under the directive. The commis-

sions' work was undertaken between June 18 and July 14, 2001, with the active support of the Political Affairs Department.⁴⁶ Groups of five commissioners conducted consultations in the districts and groups of three held sessions in the subdistricts. The commissions held 205 open hearings throughout the country, which 38,000 people attended.⁴⁷ The populace responded enthusiastically; a single hearing would sometimes bring as many as 1,000 people. At each hearing, the commissioners presented the public with basic information on a number of constitutional issues, such as systems of government, official languages, electoral systems, national symbols (the flag and anthem), defense and security, the economy, the legal system, nationality, religion, health, the environment, human rights, education, customary law, gender, and amendment of the constitution. Sometimes information on all of these topics would be conveyed in a single day. The civic education and popular consultation were conflated in a single process that sometimes occurred in a single day. After a presentation on the issues, the commissioners would consult those present about their views on these subjects.

This consultation process was not preceded by a separate, well-developed program of civic education designed to ensure the public's understanding of the role of a constitution, how the constitution would be prepared, and the role of the public. Given that so few attending understood the above, they largely spoke about issues that affected their daily lives.

In accordance with the directive's terms, a rapporteur recorded the results of the sessions, which later formed the basis of thirteen reports, one for each district. No formal procedure or questionnaire was used to ensure an accurate recording of the views; the public had to rely solely on the rapporteur for this purpose. This was problematic because the

rapporteurs had received minimal training to undertake such an important task.

In the resulting reports, it was recorded that a clear majority of the participants in the consultations had expressed a preference for either a presidential or a semipresidential system of government. Those participants wanted a strong president who would act as commander in chief of the armed forces and direct the country's foreign policy. It was clear that they envisaged Gusmão in this role. They also expressed a preference for a proportional electoral system, although some opted for a mixed proportional/majority system. Participants demonstrated a good understanding of human rights norms and strongly advocated their incorporation into the constitution. They also insisted that amending the constitution should require some form of popular consultation, such as a referendum.

As noted, the responses related very much to the concerns of the everyday lives of the people. Participants were very concerned about preserving customary cultural traditions, especially those relating to marriage and family. They wanted to preserve and reform their dowry practices and sought to abolish polygamy. They wanted to regulate gambling and cock fighting. They wanted the government's assistance in providing housing, clean water, health facilities, education, and farm equipment. They thought that the constitution should protect people's rights with respect to land and they wanted measures to protect against deforestation. They also wanted measures to prevent foreign ownership of the country's natural resources, mentioning gas and oil in particular. Finally, they thought the constitution should require reparations from Portugal and Indonesia for the destruction and abuse that occurred during their respective periods of colonization and occupation.

While UNTAET engaged in its consultation process, civil society held its own independent consultations with the public as well. The human rights community as well

as Feto Timor Loro Sae Timorese Women's Network (Women's Network) conducted consultations and provided reports, and in the case of the Women's Network, it provided a charter for the constituent assembly to consider.

Critics of the UNTAET consultation process expressed the view that the process was ineffective, in part, because it 1) attempted to conduct civic education and popular consultation at the same time and too quickly (during a one-month period), 2) was not conducted by an independent commission or elected assembly of Timorese that was tasked with preparing a draft constitution and therefore lacked national ownership, credibility, and the important purpose of connecting the drafters to the people, 3) was viewed as foreign influenced, and 4) did not have a well prepared and cohesive system for gathering, collating, and analyzing the views of the public.

In the end, it was clear that the process UNTAET designed in response to the demand for popular consultation was a far cry from the civil-society proposal offered during the debates, which was based on participatory processes that had already occurred in places they had learned about, such as South Africa, Thailand, and Eritrea.

Unlike these processes whereby the constitutional drafters had committed to an extensive process of public participation and ownership by the people of their new constitution, neither Fretilin nor the United Nations had prioritized a participatory constitution-making exercise. Only one month was devoted to civic education and popular consultation, and the two activities were conflated.

De Mello presented the thirteen reports to the constituent assembly on its opening day.⁴⁸ Section 2.4 of UNTAET Regulation 2001/2 provided that the "Constituent Assembly should give due consideration to any duly constituted Constitutional Commission or Commissions." Nonetheless, the constituent assembly, as a whole, ignored the reports,

which were viewed as an UNTAET product. Constituent assembly members stated publicly during the discussions in the assembly that they had never opened the report for this reason.⁴⁹ However, the independent reports from the human rights community were read by some of the members.

When the four political parties submitted draft constitutions to the assembly's systemization and harmonization committee at the beginning of the process, it was clear that they, too, had ignored the results of UNTAET's popular consultation.⁵⁰

Civil Society Pressure for the Constituent Assembly to Consult with the Public

Throughout the assembly's mandate, its members rarely traveled to the districts to inform the public about what was happening, even though some were selected to represent districts. The U.S.-based National Democratic Institute for International Affairs (NDI), through its Civic Forum Program, established groups in each district that discussed the draft constitution and repeatedly attempted to set up meetings with assembly members to have them brief their constituencies. Members were rarely responsive to these requests. In part, the fast pace of the process allowed them little time to travel and meet with the people. Also, because the legal framework for the constitution-making process did not stress consultations with the public as an important element of creating the new constitution, they were not a priority for many assembly members. Some members expressed the view that because they knew the views of their constituencies, there was no need for popular consultation. They felt that public participation was sufficiently assured through the electoral process.

Nevertheless, pressure developed for the constituent assembly to share a draft constitution with the public and engage in a consultation process of its own. The Asia Foundation supported an assembly moni-

toring group called Assembly Watch, which, together with other members of civil society, journalists, and some assembly members, pressed the president of the assembly to be publicly forthcoming with the draft. After much discussion within the assembly about whether members should gather and debate public comments to use as the basis for further revisions and amendments, a decision was finally made to leave open this possibility. Members then decided that a popular consultation focused on the draft constitution would be held in the last week in February.

During a weekly press conference in mid-February held by assembly leadership, Arlindo Marçal, vice president of the assembly, told journalists that the main task of the members was to "listen to the people." He also explained how the views of the public would be considered during the consultations, which were set to begin on February 25. In his view, if a certain issue was raised in all districts, then it would certainly be discussed in the assembly plenary, but if only one person raised it, then it would not be considered.

Not all the members agreed with Marçal's point of view. On February 13, 2002, the assembly members discussed the methodology for the public consultations. The proposed plan was to release copies of the draft constitution at least one week in advance of the meetings, conduct public consultations for six days, and then return to the capital to write up the results. The SHC would analyze the reports and consolidate them into one document.

The one-week public consultation process was held from February 25 to March 1, 2002, when thirteen groups of assembly members traveled to each district to gather the views of the people. Thousands of copies of the draft constitution and a magazine summarizing the drafting process and the main articles of the constitution were widely distributed and produced in four languages.

However, because the process was rushed, the documents were often received the same day as the consultations or not at all. Also, because of the ad hoc approach to consultations, there was no plan to ensure that the 60 percent of the population who were illiterate could participate. Some districts received copies of the draft constitution only in Portuguese. Because the overwhelming majority of East Timorese citizens under the age of forty do not read Portuguese, this oversight excluded many youth from participating in the consultations.

Asia Foundation personnel observed many consultations around the country and the foundation supported Assembly Watch to travel to all thirteen districts and report on the proceedings. It was widely reported that women were rarely seen with copies of the constitution, and at some of the consultations, they were simply not present. At one consultation process in the district of Lautem, in the far east of the country, the consultation was held on market day when the women were not available to attend. Again, because of the rushed planning for the process, an effective gender strategy was not considered and so the largest constituency was largely sidelined.

Because distribution of the draft constitution and magazine was so tardy, some of the assembly consultation teams decided to explain the draft. This could have been useful to promote greater participation, but it left very little time for the public to provide comments. Some participants became bored and went home; others felt cheated out of their opportunity to have a say.

Selective Consideration of the Views of the Public

On March 8, 2002, the president of the assembly, Lú-Olo, officially submitted the reports on the public consultations to the SHC. The reports summarized the main recommendations on the draft constitution.

The SHC then met with each of the thirteen consultation teams and came up with proposed recommendations for amendments, to which all the political parties had to agree. This meant that only carefully selected views would come before the assembly. The proposals were then to be considered in the plenary and voted upon. On March 15, 2002, the SHC provided its provisional report to the assembly president.

In the plenary debate on the SHC report, some political parties complained that the report did not reflect the aspirations of the people. The president explained that the report was drafted after discussion with all parties and was an attempt at consensus and negotiation. Although there was some feeling that not all views were represented, the SHC did facilitate consensus, as eighty-two assembly members approved the provisional report.

However, it was also evident that sensitive issues raised by the public in nearly every district were negotiated behind closed doors and not raised in the plenary. Eight of the districts proposed that Tetum be the official language of East Timor and Portuguese be an official language for only a limited period of time. Because of Fretilin's strong position on using Portuguese as an official language, the views of many of the youth, who generally do not speak Portuguese, did not get an airing in the plenary.

Based upon a review of the changes made to the draft constitution after the public consultation process and comments by international experts, it is clear that the SHC revised the draft based more on comments from UN officials, experts in the technical secretariat, and the Asia Foundation consultants than on the views of the public.

The Role of International Law

There is no indication that the protagonists, national or international, of the constitution-

making process in East Timor felt bound by international norms relating to the process. They did, however, devote considerable attention to the role of international law in East Timor's legal system. After careful consideration of the subject, they decided to incorporate the international norms contained in international agreements to which East Timor is a party,⁵¹ thus opting for the monist approach to the subject, in keeping with many continental constitutions.⁵²

Customary international law was not so incorporated, and the approach taken with respect to these norms creates some ambiguity. Section 9 of the constitution provides that "the legal system of East Timor shall adopt the general or customary principles of international law." It does not make them superior to domestic law, however, thus leaving the question of how conflicts between customary international norms and domestic law might be resolved somewhat ambiguous.

There is no doubt that the human rights provisions of the constitution have been inspired by international law, as all internationally recognized civil and political rights and many of the economic, social, and cultural rights have been included. In addition, Section 23 provides that all human rights embodied in the constitution shall be interpreted in light of the Universal Declaration of Human Rights.

Role of the International Community

The Role of the United Nations in the Constitution-Making Process

When UNTAET was established in October 1999, it was faced with an enormous challenge. Because of Indonesia's scorched-earth policy and the inevitable loss of Indonesian civil servants who had largely run East Timor's government, UNTAET, with only a few staff in place, had to reinstate basic services, such as health care and educa-

tion; rebuild infrastructure and sustainable institutions; and establish the rule of law. The immensity of the tasks that had to be undertaken to begin the reconstruction process often appeared insurmountable.

In the face of daunting challenges and the fact that there was no blueprint for how to rebuild a nation, UNTAET responded with robust efforts and invested significant resources. UNTAET's leadership was willing to be flexible as the mission evolved, and it often rethought strategies. This was particularly true regarding the devolvement of power to the East Timorese. The road map for the political transition process emerged by trial and error and with some creativity. In the early days of the mission, the transitional administrator ruled with the advice of a fifteen-member National Consultative Council, but later determined that the East Timorese should take more political responsibility in decisionmaking and policymaking. It established a mixed East Timorese and international cabinet, along with the thirty-six-member NC, which served as a quasi-legislature. The overriding policy was to devolve more power as independence neared, and accordingly, a fully Timorese council of ministers governed the day-to-day administration of East Timor following the constituent assembly elections.

UNTAET's determinative role, and in particular that of the Department of Political Affairs, in the development of the legal framework for establishing the constituent assembly and constitutional commissions has been addressed above. However, during the drafting of the constitution, UNTAET adopted an overtly hands-off policy, to ensure that the constituent assembly did not view the United Nations as interfering in the creation of the independence constitution and to promote a homegrown constitution. UNTAET's official distancing from the process during the actual drafting was wise. Although there were accusations from the

public that the final constitution was more Portuguese than Timorese, no one saw it as having been prescribed by UNTAET.

The transitional administrator did ensure, however, that the assembly had the necessary material and human resources to complete its task. The office oversaw the budgeting and funding for the process and provided translation services, one technical adviser, and other UNTAET staff to assist with the administration of the secretariat. This support was crucial to the success of the drafting process. For example, the constituent assembly had a newly refurbished assembly hall with a modern speaker system in place from the first day of their sitting. Although the Australian government financially supported this, UNTAET staff ensured that the resources needed to run the constituent assembly and the secretariat were provided, including the provision of computers, paper, cars, and support staff.

Some of the members could not have followed the discussion without the benefit of the simultaneous translation in the four working languages of the constituent assembly, which was supported by UNTAET and the Asia Foundation. UNTAET also facilitated the public consultation process in February by photocopying copies of the draft constitution and providing transportation and security. It is a common assumption that a constitution-making process in any country would occupy a preeminent position in the nation-building process. However, in a postconflict setting, in which many nation-building tasks compete for attention, crucial funding or material support can be overlooked or delayed because of a lack of timely planning.

Despite the positive aspects of UNTAET's role, however, UNTAET was responsible for a significant failure. The mission should have supported a legislative framework for a constitution-making process that followed

what most East Timorese leaders outside of Fretilin were calling for, and which would have led to, first, the drafting of the constitution by an independent and diverse body of East Timorese, including professionals; second, a constituent assembly that would have been more representative of the diversity of the nation; and third, space for the East Timorese people to participate and feel more ownership of the constitution as a document that reflected the aspirations of the people as a whole and not largely Fretilin's political aspirations. Instead, the Department of Political Affairs pushed for a process that led to the dominance of the process by Fretilin and precluded genuine popular participation.

Provision of International Technical Advisers

The secretariat coordinated international and local technical advice and support to the constituent assembly, establishing a technical staff with five foreign parliamentary experts to assist with advice on rules and procedures, legal drafting, and substantive issues. Four of these advisers were Portuguese and one was Canadian. None of them had experience in constitution making, but they had crucial experience in parliament and parliamentary procedures; previous experience supporting the NC, East Timor's quasi-legislature; and four of them could assist with drafting provisions in Portuguese. These advisers were provided by a variety of sources: UNTAET, the Portuguese Parliament, the United Nations Development Programme (UNDP), and the Inter-Parliamentary Union (IPU). During the first week of the assembly's deliberations, UNDP and the IPU jointly organized a seminar to provide an overview of comparative constitutional processes and content.

An Asia Foundation (TAF) program also provided technical support to the process. TAF had a full-time program manager and resident adviser and local program officer to

assist the process. The TAF program was initiated through a one-week consultation process to identify the most critical needs and determine the most suitable forms of technical assistance during the constitutional drafting process. TAF met with the president and vice presidents of the constituent assembly, political party leaders in the assembly, the secretariat, members of UNTAET (including the transitional administrator), the minister of foreign affairs, and key donors, such as UNDP. During these discussions, TAF emphasized that its technical assistance was to enhance the assembly's capacity to fulfill its all-important role of drafting the constitution in the most inclusive and transparent way possible; responsibility for preparing, adopting, and implementing the constitution remained solely with the people and the assembly.

Many of the consultative meetings with assembly members were at least two hours long because before members could articulate what types of assistance they wanted, they had many questions about how the process in general would or should proceed. The president of the assembly specifically requested that TAF organize a workshop on the issue of public consultations. Some of the members also requested an immediate options paper on the constitution-making exercise, which could assist with defining the goals and strategy of the process. Following this one-week consultation period, and based on members' specific requests and suggestions, TAF provided the members with a paper on suggested methods of assistance to the assembly. The assembly welcomed these methods and, throughout the process, continued to make specific requests to the TAF resident adviser as additional needs arose, such as the provision of translators.

The consultation process was very important in gaining assembly members' trust. TAF's philosophy was not to impose a program of assistance on the assembly but to

develop it with them, and TAF remained flexible in meeting the CA's needs. TAF provided nine technical constitutional advisers, both generalists and specialists (e.g., a land and property specialist), during twelve separate visits in the seven-month constitutional drafting program. TAF experts provided constitutional advice directly to the committees and the plenary, held weekly meetings with all political parties in the assembly who requested advice, and produced over a dozen options papers on constitutional issues, such as customary law, international law, independence of the judiciary, transitional provisions, human rights, and public participation. Some of these papers were discussed during lunch-time dialogues on specific constitutional issues. TAF also supported a seminar for members on measures to increase public dialogue and plan the public consultation process for the draft constitution. Lastly, it provided substantive revisions or corrections to the draft constitution, some of which were incorporated into the final draft by the assembly.

Objectives of Technical Assistance

To provide effective technical assistance in a constitution-making process, all advisers must understand their role and work cooperatively to provide the types and frequency of technical assistance that are needed to produce a homegrown constitution. The level of technical assistance needed varies, particularly in a postconflict context in which there may be few nationals with legal experience, as was the case in East Timor; the Timorese were rarely allowed to practice law or participate in governance during the Indonesian occupation. The technical advice should always promote local ownership over the content and process of the constitution-making exercise.

In East Timor, most assembly members welcomed the technical assistance, and as

they gained trust that the advisers to the process were respectful of the members' roles, the requests for advice and discussions increased. In-country advisers from both the technical secretariat and TAF were available to all members and parties. Although some parties had private technical advisers, the advisers openly assisting the process did not favor one party over another.

Close coordination between the technical secretariat advisers and TAF advisers contributed to providing effective technical advice. Some of the advisers met regularly to share information and discuss options for the constitution. Comparative constitutional experts learned more about the specifics of the East Timorese context, and Portuguese legal experts learned more about innovative constitutional provisions and procedures from other countries. Technical advisers commented on the draft constitution, as did representatives of international organizations, including Mary Robinson, the UN high commissioner for human rights, and UNTAET's transitional administrator. The assembly's harmonization committee largely welcomed the input and revised portions of the draft based on advice from foreign commentators. Nearly all of the advisers raised the problem in the draft constitution of rights being afforded only to citizens. The appropriate provisions were revised to adhere to international human rights standards, thus affording rights protection to all persons in East Timor.

The technical advice and support affected not only the substance, but also the process. Internews, TAF, and staff from UNTAET worked together to help the secretariat produce materials for the public consultation process. UNTAET provided a graphic artist and Internews oversaw the publishing process. A technical adviser as well as a local adviser from TAF assisted in the development of a constitutional magazine to explain the draft constitution to the people in clear and

simple terms; 50,000 copies of this magazine were distributed. NDI also developed easy-to-understand descriptions of the draft constitution in Tetum and distributed these through its civic forum program. All of these activities contributed to a greater emphasis on public participation in the process. In the end, the technical assistance relating to the process served to increase the receptivity to public participation of many members of the assembly who initially resisted it. However, this could not overcome a rushed process or lead to the desired objective of public participation, which is to promote ownership and legitimacy of the constitution.

Conclusion

The process of developing, drafting, and adopting a constitution is beyond a doubt a critical phase in any political transition, requiring careful planning to ensure that it is done in a representative, inclusive, participatory, transparent, and nationally owned and led manner. This is especially true in a post-conflict context. The process of how the constitution is prepared is as important as the content of the resulting constitution because it can lead to a more legitimate constitution, as well as a social contract reflecting the aspirations of the people. In East Timor, despite the clear demand from diverse leaders in civil society for public participation and a representative and inclusive process, pressure from the international community and a few elite actors who wanted to take power quickly resulted in a process that focused on hastily producing a constitution and not on establishing democratic practices and precedents.

Although each constitution-making process is unique and lessons learned from one process are not always transferable to another, there are a few key lessons from the East Timorese process that may prove useful to future constitution makers, other national actors, and those within the international

community who support and contribute to the process. This conclusion does not summarize all lessons learned and good or poor practices highlighted throughout the paper, but focuses on a few key flaws that should be avoided in future processes.

The Legal Framework

The legal framework in East Timor was skeletal. Skeletal frameworks can be useful when there is not broad agreement by key stakeholders on the objectives of the process, when key actors are still outside of peace processes, or where the situation remains volatile. However, East Timor was a fairly stable society at the time and a more detailed framework would have better served the process. The framework in East Timor created a very rushed timetable (ninety days to draft, debate, and adopt the constitution), did not mandate public participation in the process, and created a structure for the process that precluded a broadly representative group of constitution makers.

The legal framework should be carefully prepared to promote the principles and values discussed above. It should allow sufficient time to plan and implement a participatory process that includes nationwide civic education before, during, and after the adoption of the constitution. This should be combined with a genuine and inclusive consultation process that may also occur during several different phases, including before and after the draft of the constitution is produced. It should establish mechanisms for electing or selecting a group of constitution makers that does not merely represent elite political interests (which are important) but also includes broader societal interests.

Public Participation

For the East Timorese, who had largely been excluded from the political life of the country during the Indonesian occupation,

to have participated meaningfully in a nationwide and inclusive civic education process would have served several purposes. It would have facilitated an understanding of the process by which the new constitution was to be made, of the role of a constitution in a society, of key constitutional issues, and of democratic practices and principles. It also would have allowed citizens to reflect upon what they wanted in the constitution. The one-month UNTAET-led civic-education and -consultation process was not sufficient; it was mere window dressing for what these types of civic-education components in a constitution-making process typically are designed to achieve. It conflated civic education and consultation, sometimes in a single day, and this did not provide the time needed to achieve any of the purposes civil society had been requesting throughout the consultations on the structure of the process.

Moreover, the structure of the UNTAET-managed public consultation process lacked legitimacy and impact because it was seen as an UNTAET process rather than a nationally owned and led campaign. The constitution makers themselves were not required to travel to all areas of the country and hear firsthand from the public about their concerns and aspirations. This was a major flaw in the process. The constitution makers also had little contact with the public, outside of some civil-society groups that presented papers at committee hearings. Consultation processes are often very transformative for constitution makers because they hear concerns from everyday people, and often this leads to more focus on issues that may not have received attention otherwise. It also sets up an important democratic precedent for representative democratic practices, whereby representatives meet with their constituents and are accountable. In East Timor, the constitution makers, the delegates of the constituent assembly, were simply handed the

reports of the constitutional commissions, but members were skeptical of the methodology and the contents and rarely, if ever, referred to the documents. The consultations may have boasted tens of thousands of participants, but the consultations had little impact on the content of the constitution, and the assembly was not required to consider the views or report back to the public how the views were taken into account.

After the draft was prepared, both the media and civil society demanded that the assembly engage the public in a meaningful consultation process, and the leaders, including the assembly's president, felt compelled to respond. However, it was too little, too late. Few of the members of the public could read or learn about the contents of the draft constitution before the consultations. Some members of the public did not get a chance to speak because a few consultation teams wanted to speak rather than to listen. There was no uniform methodology for the process, and even when views were gathered in the process, it was unclear what weight to give those views. In the end, the process was rushed and few of the views were debated and discussed by the assembly. It became readily apparent that only the views that did not require any kind of compromise from Fretilin would be incorporated.

The lesson learned from the East Timor process is that public participation is not merely an exercise in public relations. It serves very important purposes and carrying it out takes time, adequate resources, and direct engagement by the constitution makers. It should be carried out at several phases of the process.

Democratic Representation

As noted in this chapter, the political transition period witnessed ever-deepening tensions between Fretilin and Gusmão. In a move designed to check Gusmão's burgeon-

ing de facto power and capitalize on its own organizational strength and popular legitimacy as a resistance party, Fretilin put forward a constitution that limited presidential powers. Immediately preceding the presidential elections under UNTAET, Gusmão expressed reluctance to run because, as he explained to reporters, the only powers accorded the president under the draft constitution were the powers "to eat and sleep." In the end, Gusmão ran for the office nonetheless and won as predicted.

In short, East Timor's independence constitution reflects the political power that Fretilin enjoyed as the preeminent political organization left in the wake of Indonesia's withdrawal. Thus, the constitution's shape was heavily influenced by Fretilin's significant popular support because of its primary role in the previous liberation struggle.

It may be that the split between Fretilin and Gusmão was not widely recognized, and those who voted for Fretilin did not expect that these votes would assist Fretilin to limit Gusmão's power in his expected role as the future president. That most people who voted for Fretilin also voted for Gusmão for president and that the consultation process raised public aspirations for a strong president indicate some of the contradictions in the process. Using an elected constituent assembly ensured that the constitution reflected the interests of the most powerful political party, but the lack of a competing political organization that reflected the public's desire for Gusmão as a strong president meant that the constitution-making system could not balance or lead to negotiations between the main power bases in the country.

Because Fretilin dominated the elected constituent assembly, and the assembly was tasked with drafting, debating, and adopting the constitution, the constitution largely reflected the views of this single political party and was not seen as a consensus-based constitution. Because the process was rushed,

other stakeholders had little time to push for more inclusion in the process or to even prepare to do so.

Fretilin leaders were not inclined to consult the public on the draft because they felt they had garnered such a high percentage of the votes during the elections that they had a mandate to represent the people and could make decisions on the constitution without public consultation. Indeed, they arrived at the constituent assembly with a draft in hand, modeled after the Portuguese constitution, and the final text did not stray far from this initial draft. Although the public may not have been initially aware of the origins of the initial draft, the foreign flavor of the constitution is one of the rallying points of its critics, which has detracted from the constitution's legitimacy.⁵³

Certain UN actors and political elites argued that a constitution should only be prepared by a democratically elected body. However, it is common for drafts of a constitution to be prepared by a group of selected members, who then carry out broad consultations with the public and have an elected body debate and adopt the text. This was the process civil society had demanded but did not get.

In a post-conflict context, where nascent political parties are weak, rarely put forward fully articulated constitutional platforms, and do not have strong representational bases for their positions, certain parties or individuals thrive based on their past roles during the conflict and not what they claim to achieve in the future. Elections in and of themselves may not necessarily be a sufficient conduit for the expression of the people's constitutional aspirations. These aspirations, however, must inform not just the choices about who should govern for one term but the blueprint for society itself. Hence, a strictly democratic electoral model dependent on representation through the ballot is usually insufficient to capture public preferences in

post-conflict constitution-making exercises. Groups that have been marginalized or did not participate in the conflict may be excluded from participating. While elected bodies do in some cases contribute to legitimacy, other mechanisms also can be used to ensure that the constitution is a product of consensus building and that the concerns of the diversity of the nation are represented.

Impact of the Process on Conflict in East Timor

With the passage of time, some of the events that have unfolded reflect the effects of the failings of the constitution-making process. The violence of 2006⁵⁴ and the divide between the president and prime minister have shown that the constitution has not facilitated a unified sense of national identity or provided the means for effective and non-violent resolution of political conflict. The weaknesses of the process and the charter that resulted from it have led many to call for constitutional reform; since the adoption of the constitution, the public has grown increasingly critical of Fretilin's role in drafting it and of the flaws in the constitution itself. This has tarnished both Fretilin and Gusmão. As a result, the failings of the constitution have emerged as a favorite rallying point for whatever political forces are trying to gain favor among the population, and the charter appears to be sorely lacking in legitimacy.

Nevertheless, even though the constitution called for a review process in 2008, the moment came and went with a great deal of rhetoric and debate but no reform. Meanwhile, the institutions of government have evolved much more in response to political realities than to the strictures of the constitution. The country has seen two presidencies since the adoption of the constitution, that of Gusmão and that of Jose Ramos Horta, and many critics assert that each of them have exercised powers above and beyond those which the constitution has granted to them.

These observations underscore the dangers of a failed constitution-making process and clarify that that process was a missed opportunity. Although the East Timorese rejoice that at long last, they have achieved the freedom and independence that they had struggled for, the creation of the constitution as part of that process has failed to contribute to the peace and stability that they hoped for. As a result, the future is marked with uncertainty on many levels, and many questions remain unanswered. Will those who serve as president and prime minister eventually conform to the demands of the constitution, or will the powers they exercise continue to be more likely determined by the politics of the moment? Will new conflicts emerge that will be resolved by force rather than by law? Will there be the momentum and political will required to clearly identify the weaknesses of the constitution and address them, or will the issue of constitutional reform continue to be a pawn in the game of politics? Will a constitutional reform process be developed that leads all key stakeholders and society to feel that the constitution belongs to them and encourages them to defend it? These questions remain unanswered for the present, but if the project of constitutional reform moves forward, the missed opportunity of 2002 will be a stark reminder of the need to afford the time to ensure a process that is inclusive, transparent, representative, and participatory, so that the constitution as amended will benefit from consensus building and from the legitimacy it currently lacks. Perhaps then the people of East Timor will finally have a government that offers them the peace and stability they have known too rarely.

Notes

1. Peter Carey and Carter Bentley, eds., *East Timor at the Crossroads: The Forging of a Nation* (Honolulu, HI: University of Hawaii Press, 1995), pp. 3, 33.

2. U.S. embassy cables have shown that “Suharto was given the green light” prior to the invasion. In fact, hours before the invasion, President Suharto had been entertaining President Gerald Ford and Secretary of State Henry Kissinger at an official state visit in Jakarta. Noam Chomsky, “Introduction,” in Matthew Jardine, *East Timor: Genocide in Paradise* (Cambridge, MA: Odonian Press, 1995), pp. 6, 10.

3. East Timor ranks among the poorest countries in the world, with an annual per capita GDP of an estimated \$800 in 2005. *CIA World Factbook*, available at www.cia.gov/cia/publications/factbook/geos/tt.html#Econ.

4. One of the best-known histories of this period is James Dunn, *A People Betrayed* (San Jose, CA: The Jacaranda Press, 1983).

5. Ian Martin, *Self Determination in East Timor: The United Nations, the Ballot, and International Intervention* (London: Lynne Rienner Publishers, 2001), p. 15.

6. Martin, *Self Determination*, p. 15.

7. Carey and Bentley, *East Timor at the Crossroads*, p. 33.

8. Carey and Bentley, *East Timor at the Crossroads*, p. 33.

9. Martin, *Self Determination*, p. 16.

10. Irena Cristalis, *Bitter Dawn: East Timor, a People's Story* (London: Zed Books, 2002), p. 286.

11. Prior to 1978, Fretilin had been able to maintain control over certain areas of the territory. It lost that control when it incurred devastating losses in 1978, but it managed to regroup by 1981. See Carey and Bentley, *East Timor at the Crossroads*, p. 36.

12. Cristalis, *Bitter Dawn*, p. xi.

13. See, e.g., Carey and Bentley, *East Timor at the Crossroads*, p. 38.

14. Carey and Bentley, *East Timor at the Crossroads*, p. 8.

15. ETAN/US, “The Santa Cruz Massacre: November 12, 1991,” East Timor and Indonesia Action Network, <http://etan.org/timor/Snta-CRUZ.htm> (accessed April 16, 2009).

16. Although the United Nations had been brokering talks between Portugal and Indonesia since 1983, little progress was made in the talks prior to 1998. Moreen Dee and Michael Smith, *Peacekeeping in East Timor: The Path to Independence* (London: Lynne Rienner Publishers, 2003), p. 39.

17. Dee and Smith, *Peacekeeping in East Timor*, p. 43.

18. Cristalis, *Bitter Dawn*, p. 288.
19. Dee and Smith, *Peacekeeping in East Timor*, p. 18.
20. United Nations Security Council Resolution 1272 (1999), UN Doc S/RES/1272, para 8.
21. Dee and Smith, *Peacekeeping in East Timor*, p. 66; Cristalis, *Bitter Dawn*, p. 288.
22. See generally, UNTAET Regulation 2000/24, "On the Establishment of a National Council," July 14, 2000, available at www.un.org/peace/etimor/untaetR/Reg2400E.pdf (accessed on April 16, 2009).
23. See generally, UNTAET Regulation 2000/23, "On the Establishment of the Cabinet of the Transitional Government of East Timor," July 14, 2000, available at www.un.org/peace/etimor/untaetR/Reg2300E.pdf (accessed on April 16, 2009).
24. *Security Council Briefed by Sergio Vieira de Mello, Special Representative of the Secretary General for East Timor*, UN Doc SC/6850, April 27, 2000.
25. "Reconstructing East Timor: Analysis of the Past and Perspectives for the Future Conference," Final Report (Tibar Document), Tibar, East Timor, May 29–June 2, 2000, p. 23 (unpublished paper on file with the authors).
26. Remarks by Peter Galbraith, Director, Office of Political, Constitutional and Electoral Affairs for UNTAET, at the Conference on Reconstructing East Timor: Analysis of the Past and Perspectives for the Future, May 29, 2000 (on file with the authors).
27. Address by Sergio Vieira de Mello, Special Representative of the Secretary General and Transitional Administrator, August 21, 2000, First CNRT Congress, Dili (on file with the authors).
28. *Militias Root Cause of Problems for UNTAET and Indonesia in East Timor*, Sergio Vieira de Mello, Special Representative of the Secretary General to East Timor and Transitional Administrator, UN DOC SC/6928, September 29, 2000.
29. For a description of the major features of this regulation, see the section of this chapter on democratic representation.
30. Jim Della-Giacoma, "Results Over Process, Analysis of the Creation of the East Timor Constituent Assembly," p. 12 (unpublished paper on file with the author).
31. See KITLV, Royal Netherlands Institute of Southeast Asian and Caribbean Studies, "East Timor: Constitution OK'd But Ramos Horta Critical of Dissenters," press release, March 22, 2002, available at www.etan.org/et2002a/march/24-31/22consti.htm (accessed on April 16, 2009).
32. Constitution of the Democratic Republic of East Timor, preamble.
33. See "East Timor: Assembly Slates 20 May 2002 for UN to Hand Over Sovereignty," United Nations UNTAET Report, www.un.org/peace/etimor/news/01oct22.htm (October 22, 2001).
34. Della-Giacoma, "Results Over Process."
35. These parties included the following: Partido Democrática Cristao (PDC); Uniao Democrática Timorense (UDT); Partido Democrático (PD); Associação Popular Democrática Timorense (Apodeti); Frente Revolucionária de Timor Leste Independente (Fretilin); Klibur Oan Timor Asu-wain (Kota); Partido Republika Nasional Timor Leste (PARENTIL); Partido Nasionalista Timorense (PNT); Partido Trabalhista Timorense (PTT); Partai Demokratik Maubere (PDM); Partido Social Democrática (PSD); Partido Democrática-Cristao de Timor (UDC/PDC); Partido do Povo de Timor (PPT); Partido Socialista de Timor (PST); Associação Social-Democrática Timorense (ASDT); and Partai Liberal (PL).
36. See United Nations UNTAET Report, "Nearly 96% of East Timorese Registered in Advance of August Elections," press release, June 22, 2001, available at www.un.org/peace/etimor/news/01jun22.htm (accessed on April 16, 2009); see also United Nations UNTAET Report, "Following First-Ever Elections, East Timor Begins to Count Ballots: UN Mission," press release, August 22, 2001, available at www.un.org/peace/etimor/news/01aug31a.htm (accessed on April 16, 2009).
37. As noted above, ASDT was the original name of the Fretilin party. However, during the UNTAET period, a new party bearing the same name was constituted apparently in an attempt to signify a harkening back to the values espoused when the original Fretilin party bore the name.
38. Della-Giacoma, "Results Over Process," p. 13.
39. See Aniceto Gutierrez, "Proposed UNTAET Regulation," 2001 (unpublished proposal on file with the authors).
40. The International Policy Institute, *A Review of Peace Operations: A Case for Change* (London: King's College, 2002).
41. Della-Giacoma, "Results Over Process," p. 13.
42. *Ibid.*, p. 13.

43. East Timor NGO Forum, "Letter to Members of United Nations Security Council," March 17, 2001, available at www.pcug.org.au/~wildwood/01marushed.htm.

44. See UNTAET Directive 2001/13, available at www.eastimorlawjournal.org/UNTAET-Law/Directives/Index.html (accessed July 18, 2009).

45. See "Strategy to Promote Public Participation in the Constitutional Development Process," Statement by Sergio Vieira de Mello, Special Representative of the Secretary General and Transitional Administrator, March 29, 2001.

46. See *UNTAET: A Report of the National Constitutional Consultation in East Timor, June–July 2001*, Constitutional Affairs Branch, Department of Political Affairs and Timor Sea, p. 4.

47. *UNTAET: A Report of the National Constitutional Consultation*, p. 4.

48. Della-Giacoma, "Results Over Process," p. 15.

49. Telephone interview with Aderito Jesus de Soares, former chair of the systemization and harmonization committee, fall 2002.

50. Telephone interview with Aderito Jesus de Soares, former chair of the systemization and harmonization committee, fall 2002.

51. Constitution of the Democratic Republic of East Timor, sec. 9.

52. Graham Nicholson, "Observations on the East Timor Constitution," *Alternative Law Journal*, vol. 27, no. 5 (October 2002), p. 206.

53. Interview of June 1, 2009, with Edward Rees of Peace Dividend, an NGO doing business in East Timor since the adoption of the constitution.

54. See "East Timor Conflict," available at www.reliefweb.int/rw/rwb.nsf/db900sid/EK0I-6-QS3AJ?OpenDocument (accessed July 18, 2009).