

# **Making and shaping public policy in Timor-Leste: institutions, actors and the weight of political history**

This paper was prepared by Sue Ingram and the views it contains are those of the author and do not necessarily reflect the views of AusAID or indicate its agreement with or commitment to a particular position.

# **Making and shaping public policy in Timor-Leste: institutions, actors and the weight of political history**

## **1. Introduction**

This paper is concerned with the way that those outside Government engage in the public policy discourse in Timor-Leste, with a particular focus on Parliament and civil society. To examine this question, the paper looks at the formal institutions established under the Constitution to make and authorise public policy, the actors shaping and informing public policy choices and the influence of political history in positioning policies and actors. The paper is organised into the following sections:

- The formal institutions charged under the Constitution with making and reviewing public policy: the Parliament; the Government; the President; the Court of Appeal in the exercise of its constitutional jurisdiction; and the statutory oversight offices appointed by and reporting to Parliament;
- Significant actors shaping public policy: political parties; advocacy CSOs; the Church; business and professional associations; and veterans;
- Means of informing the public policy discourse: the role of government information, the media and academia;
- Entry points for citizens: community consultations; intermediaries; village chiefs; and direct action (petition and demonstration).

## **2. Methodology**

The material contained in this paper is drawn from two sources: primary and secondary documents including legislation, political speeches, government reports and academic writings; and interviews conducted in Dili and in the district of Baucau over the period 15 October to 1 November 2012 with 39 opinion-leaders including current and past members of Parliament, senior religious figures, heads of civil society organisations, newspaper editors, senior business people, public officials at national and district level and village and traditional leaders. We also requested meetings with some Ministers and Secretaries of State, but none were available. Information derived from interviews is flagged without naming the person interviewed, and documentary sources are cited.

## **3. Making and reviewing public policy – the formal institutions**

Article 67 of the Constitution specifies four “organs of sovereignty” for the Timorese state: the President of the Republic, the National Parliament, the Government and the Courts. The role of each organ in the making and review of public policy is discussed below.

### *3.1 Parliament: the representative of the people*

Article 92 of the Constitution describes the Parliament as the organ of sovereignty that represents all Timorese citizens and is vested with legislative, oversight and political decision-making powers. Whilst in theory this would seem to give Parliament considerable power over the direction of major public policy, in practice its influence is subordinate to government.

The Parliament's law-making power is neither exclusive nor exhaustive. It is exclusively empowered to make laws on matters specified in Article 95, and it *may*, through legislation, authorise the government to make laws on matters specified in Article 96. Legislation made under an Article 96 delegation goes direct from the Government to the President for approval and promulgation although it *may* be reviewed by Parliament following a petition by one-fifth of the members of Parliament (Article 98). In addition, the Government is *exclusively* empowered to make legislation on "matters concerning its own organisation and functioning, as well as on the direct and indirect management of the State" (Article 115), and Parliament has no power to scrutinise such legislation (Article 98). As a result, a significant body of legislation bypasses the Parliament altogether.

The Parliament's oversight powers are threaded through Article 95(3), and importantly include deliberation on the State Plan and Budget and its execution. The political decision-making powers are also concentrated in Article 95(3) and include ratification of treaties, grant of amnesty and authorisation and confirmation of the declaration of a state of siege or state of emergency.

As a representative body, the Parliament is constrained structurally and organisationally. Most unusually, Timor-Leste's Parliament is elected from a single constituency comprising all eligible citizens across the country, using a closed list of candidates determined by the parties i.e. each voter selects a single party, with no possibility of selecting among candidates within the party's list. This electoral mechanism is a legacy of the UN Transitional Administration in East Timor which determined, drawing on advice from a narrowly constituted National Council of prominent Timorese, that the Constituent Assembly charged with developing the Constitution should comprise 75 members selected by a single national constituency using a preferential system, plus one member selected on a first past the post basis from each of the 13 districts. (These district seats were subsequently abolished in the post-independence electoral legislation.) The enabling regulation for the election of the Constituent Assembly also anticipated that it would morph into the Parliament at independence – which unsurprisingly it resolved to do, despite opposition at the time from civil society and the minor parties.

This electoral system means that there are no local members with whom constituents can identify, to whom they can address their concerns and whom they can hold to account through the exercise of their vote. Instead, members' accountability is to the party that places them in a winnable slot on the party's electoral list.

Timor-Leste's electoral cycles have also seen a narrowing of the number of parties elected to the Parliament, and the progressive increase in the percentage of "wasted" votes. In 2001, twelve parties were elected of the seventeen which contested the election. No minimum vote share was prescribed, and some parties were represented in the Assembly with only one member. In the 2007 election, seven parties or coalitions of parties were elected, but a three percent threshold was prescribed, with the result that 8.9 percent of votes went to parties

that failed to win a seat. In the 2012 election, only four parties were successful out of 21 contesting the election, and 20.4 percent of the vote was “wasted”.

The Parliamentary schedule limits members’ capacity to travel to remoter districts. The Parliament meets in plenary on Mondays and Tuesdays, and in committee on Wednesdays and Thursdays, with all members assigned to a committee; an ethics committee scrutinises Parliamentary attendance. Fridays are for party meetings and constituency work. There is discussion of making more concerted use of the two-month Parliamentary recess for district visits.

For the stalwart constituents who attempt to speak to members at Parliament House, the precinct is forbidding and the facilities unhelpful. Getting past security is a hurdle in itself, and members do not have their own offices but are limited to committee rooms and shared party rooms for meetings. The practice I observed was for constituents to bail up members as they left the plenary.

Parliament appears to be something of a Cinderella in the booming government office and advisor landscape of Dili: its space is cramped; technical support is limited to a handful of international legislative analysts working with a small, fledgling group of national legislative trainees, there are no policy analysts of any persuasion beyond a recently established parliamentary research service; there is no written hansard; the Parliamentary library is still very limited and its material difficult to access; and MPs have no direct administrative or policy staff. All these factors severely limit the rigour with which the Parliament can perform its legislative and oversight roles.

Compounding these constraints is the very high turnover rate of Members of Parliament, a counter-intuitive phenomenon given the closed list system and the return of the major parties at the last election. Nonetheless, 45 out of the 65 members in the 2012 Parliament are new, and only four members have served the full three terms, so that experience across the Parliament is quite shallow. The generous Parliamentary pension scheme, which allows one-term MPs to retire on full salary and a range of other benefits (Law No. 01/2007, *Monthly Life Pension and Other Privileges for Former Members of Parliament*) is seen to contribute to the high turnover as it encourages parties to reward loyal cadres with “a turn” in Parliament (interview).

Another major constraint is language, where all draft legislation is presented in Portuguese and some of the most important planning and budget documents referred by the government for Parliament’s consideration are also provided in Portuguese (and often also in English, but not in Tetun) e.g. the Strategic Development Plan 2011-2030 and all the 2012 budget books with the exception of book 3 covering district allocations (which was translated into Tetun). We were informed that only one quarter of the last Parliament was proficient in Portuguese; in the current Parliament the rate has risen to one half (interview).

Parliament also finds itself constrained by the tight deadlines imposed by the government on its deliberations. For example, we understand that it was only given one week to debate the Strategic Development Plan in 2011. Budget legislation is also subject to tight deadlines leaving little opportunity for careful analysis and reflection in either committee or plenary.

There is a sense that the new Parliament may be less inquiring and less independent than its predecessor, due to a combination of factors. First, key strategists from the last

Parliament, such as Fernanda Borges and Manuel Tilman, have dropped from the Parliament with the failure of their parties to achieve the necessary three percent threshold in the 2012 Parliamentary election. PSD also fell by the wayside with the loss of other strong Parliamentary performers. Of the parties elected, those from the top of the PD and Frente Mudança lists moved into government, Mari Alkitiri and Lu'olo who headed the Fretelin list have not joined the Parliament in favour of candidates with strong district connections (interview) and other adept Fretelin strategists such as Arsenio Bano and Jose Teixeira were not included on the Fretelin ticket.

Another potentially significant factor is the tighter coalition forming the new government. Rather than juggling a coalition of six parties (or nine if the parties making up the pre-ballot coalitions are counted), the new coalition is made up of only three parties. In the last Parliament, some of the members who were notionally part of the coalition behaved with considerable independence, abstaining and in one instance crossing the floor for a vote on an important piece of economic legislation. Reports on the debate of the 2012 Rectification budget suggest that the government benches of this new Parliament were very quiet, although MPs report that they were more inquiring in the committee stage (interviews).

The opposition also appears to be weakened, with a large cast of new members from the districts and with its tactical edge blunted through the loss of its experienced operators. All six parliamentary committees are also chaired by coalition members whereas in the last Parliament the influential Committee A (constitutional matters, justice, public administration, local power and government legislation) and Committee C (economy, finances and anti-corruption) were chaired by independent-minded and very able members who took the oversight function very seriously.

In a unicameral Parliament where the party or parties forming the majority effectively determine the Government, oppositions have their work cut out. As we heard in one interview, "Normally ruling parties defend the Government; opposition must defend the people". The Constitution includes some significant provisions giving leverage to even small opposition groupings. The first is the Article 98 provision which allows one-fifth of the members of Parliament to request to appraise delegated legislation made by the Government under Art. 96, with a view to amending or terminating it. The second is a power under Article 150 of the Constitution which authorises one-fifth of the members of the Parliament to request the Court of Appeal, in the exercise of its constitutional jurisdiction, to provide an abstract review of constitutionality of any legislative provision (Escola de Direito da Universidade do Minho 2011, p.472).

This power was used several times in the life of last Parliament to challenge major economic legislation. Petitions by MPs to the Court of Appeal included:

- Review of the decree law establishing the economic stability fund (judgment dated 14 August 2008);
- Review of Articles 1 and 2 of law 12/2008 of 5 August approving the amendment of the Budget Law for FY2008 (judgment dated 27 October 2008); and
- Review of decree-law 20/2008 establishing the National Petroleum Authority (judgment dated 19 June 2009).

In interview we were told of some eight cases where members of Parliament had sought a constitutional ruling on legislation. Importantly, we were also told that most of these cases had been prepared by Ana Pessoa (a jurist and now Prosecutor-General) while serving as a member of Parliament. Since her departure, it had only been possible to put together two cases, again drawing on MPs' own legal expertise (interview). This highlights the weakness of the Parliamentary Secretariat in supporting the fundamental legislative responsibilities of members in the exercise of their constitutional functions.

Parliament, as an institution, has considerable potential to calibrate and open up public policy development; as an organisation, however, it needs considerable practical support to achieve this potential.

### *3.2 Government: the power to initiate*

Art. 103 of the Constitution describes the Government as "...the organ of sovereignty responsible for conducting and executing the general policy of the country and...the supreme organ of Public Administration". Government comprises the Prime Minister, the Ministers and the Secretaries of State (Art. 104). The Prime Minister is designated by the political party or alliance of political parties commanding a Parliamentary majority, and is appointed by the President after consulting with the political parties represented in the Parliament. The remaining members of Government are proposed by the Prime Minister and appointed by the President (Art. 106). None of the members of Government sit in Parliament: where they were elected on a party list, the convention is that they step aside in favour of the next person on the list.<sup>1</sup>

The Constitution also confers a very broad power on the Government to make legislation. As discussed in section 3.1 above, Art. 96 authorises the Parliament to delegate law-making powers on specified matters to the Government, with such legislation being subject to review by the Parliament should at least 20 percent of the members so request. In addition, Art. 115 of the Constitution confers an exclusive power on the Government to make laws "on matters concerning its own organisation and functioning, as well as on the direct and indirect management of the State". This is an extraordinarily broad power, which significantly extends the narrower power contained in the Portuguese constitution authorising the government to make laws on matters concerning its own organisation and functioning. Legislation made under this power cannot be examined by Parliament, but must be referred to and can be vetoed by the President (Arts 98 and 88).

Successive governments have attracted criticism from their opponents for the breadth of matters included in subordinate legislation. Early in the life of the Alkitiri Government, President Gusmão regretted the intended reliance on the use of decrees, blaming Parliamentary disinterest in its legislative function (Gusmão 2005, p.12). During the first

---

<sup>1</sup> This may be a constitutional requirement rather than a convention. Art. 68 of the Constitution stipulates that the holding of specified offices - President, Speaker of the Parliament, Presidents of particular courts and member of the government - are incompatible. It does not expressly state that membership of the government and of Parliament are incompatible. Art.69 stipulates that organs of sovereignty, in their reciprocal relationship and the exercise of their functions, shall observe the principle of separation and interdependence of powers. As both the government and the Parliament are organs of sovereignty, this would seem to suggest that their members cannot overlap. Unfortunately the annotated constitution does not directly elucidate this point (Escola de Direito da Universidade do Minho 2011, pp.240-247).

Gusmão Government, groups of MPs on at least two occasions challenged the constitutionality of specific legislation on the grounds that it exceeded the legislative powers conferred on government by the Constitution, but in neither matter was the power read down by the Court (see Case no. 03/2008 on decree-law 22/2008 establishing the Economic Stability Fund, and Proc.01/Const/09/TR on decree-law 20/2008 establishing the National Petroleum Authority).

From the first days of independence, the policy levers have been tightly controlled by government, with Parliament generally signing off only on the more significant matters requiring legislation which exceeded the Government's exclusive or delegated legislative competence. Donors have been in a sense complicit as programming has concentrated on government while Parliament was left in the shadows receiving only minor assistance.

To improve coordination between Parliament and the government, the new government includes a Secretary of State for Parliamentary Matters. Art. 13 of decree-law 41/2012 (Organic Law of the Vth Constitutional Government) describes the functions of the Secretary of State as being to assist the Prime Minister in government relations with the national Parliament and the Parliamentary party benches, and to supervise the Parliamentary Support Office. Members of Parliament report that the Secretary of State sits in each plenary meeting and an important function is to transmit matters raised in plenary to the relevant area of government for action, although it is still too early to assess the impact or effectiveness of the initiative (interviews).

### *3.3 The President, and the power to constrain*

Timor-Leste's constitution is generally characterised as semi-Presidential, in that it has both a popularly elected fixed-term President and a Prime Minister and Cabinet responsible to the legislature (Elgie 2007)<sup>2</sup>. Under the Constitution, the Prime Minister's policy powers are those of initiation while the President's policy powers are those of constraint.

The Constitution describes the President as the Head of State and the symbol and guarantor of national independence and unity of the State and the smooth functioning of democratic institutions (Art.74). It is his responsibility to promulgate laws or, alternately, to exercise his right of veto. He is also empowered to request a ruling from the Supreme Court of Justice (or the Appeal Court pending its establishment) on the constitutionality of any legislative matter or unconstitutionality by omission (Art. 85). Where the President vetoes a bill passed by the Parliament, he must refer it back to Parliament with an outline of his reasons and a request for reappraisal. Should Parliament reaffirm its vote on the bill, the President is required to promulgate it. Where the President vetoes government-made legislation (i.e. a proposed *decreto-lei*), he must also provide reasons (Art.88). The Constitution is silent on the fate of the draft thereafter but based on discussions with several legal advisers in Timor-Leste, the

---

<sup>2</sup> There is fierce academic debate about the defining attributes of semi-Presidentialism, based on whether structural or functional attributes are determinative. Some academics focus on the scope of executive power held by the President, and Damien Kingsbury has recently argued on this basis in an ETAN blog that Timor-Leste is not semi-Presidential. The balance of academic opinion, however, characterises Timor-Leste as semi-Presidential. A more precise description, perhaps, is premier-Presidential: a refinement on semi-Presidential preferred by some academics (Shugart 1993).

government's options would seem to be either to amend and resubmit the draft in response to the President's reasons, or to resubmit the draft as a Parliamentary bill.

The President's veto may be either constitutional or political, and Presidents of Timor-Leste have used both forms of veto. The first instance of the exercise of the veto on constitutional grounds was in July 2003, following an opinion provided by the Appeal Court in response to a request from the President in relation to Law No. 15/1/1 on Immigration and Asylum. In his speech, President Gusmão observed

"This is the first time in the short constitutional history of the newly independent state of Timor-Leste that the President of the Republic has unleashed the anticipatory review of constitutionality. It is an event that must be seen as a routine in our democracy. It is a sign that the sovereign institutions are starting to function and that each of them is conscious of its own responsibilities that the Constitution ascribes to them in the collective construction of the democratic political will." (Gusmão 2005, pp. 203-204)

The most recent exercise of the Presidential veto was in March 2012 when President Horta vetoed the package of three land bills on political grounds. In three separate letters to the President of the Parliament (Horta 2012), the President set out his reasons for vetoing each of the three bills. His reasons included the excessive powers that the bills gave to the state over the interests of individuals and possible conflicts of interest and abuse of power and lack of clarity surrounding important powers.

The President can also call up considerable informal power. The precedent was established by Xanana Gusmão when he held the office of President: denied the expansive executive role he had anticipated as President and frustrated by the constitutional limitations of his office, he cast himself instead as the independent voice of the people and the conscience of government. His speech-making became his vehicle for shaping the policy agenda and holding the government of Prime Minister Alkitiri to very public account. Emotionally charged dates in the annual cycle – 20 May, 28 November and the new year – were marked with major speeches. Other speeches responded to, or set off, political pressures and trigger events. President Gusmão firmly asserted his authority to play this role as a function of Presidential office:

"What is our system of government? As you all know, it is semi-presidential, allowing me to, now and then, express views about the 'smooth functioning of democratic institutions'." (Gusmão 2005, p.192)

There are early indications that President Taur Matan Ruak, who also possesses considerable moral authority as a popular leader of the armed resistance, is also using his office as pulpit. Poverty, inequality and integrity are key themes. His speech at the swearing-in of government focussed in on the first two themes:

"… poverty continues to be our greatest challenge. To build the country we dream of we have ahead of us battles so hard and stringent as the battles we have had in the past.... No one disputes that in the last ten years we have made significant progress. ... Yet as we look around us and analyse the situation of the country, what do we see? We see very low levels of income, a fragile economic fabric, high external dependence, low levels of infrastructure, unbalanced regional development,

with unruly urban growth and large differences among cities and with rural areas, low levels of wellbeing, a weak administrative structure and low technical and scientific development." (Taur Matan Ruak 2012a)

Integrity featured in another early speech marking the signal event of his declaration of assets:

"Part of my responsibilities is that I fulfil the promises of my election campaign. One of these was that I seek to set an example of clean and self-disciplined politics in Timor-Leste. Corruption is slowly and insidiously infecting our society. It undermines our moral character and weakens our institutions. In an era when we need to show discipline to achieve the national development goals there is no greater threat to our national objectives than the pursuit of corruption in the interest of oneself." (Taur Matan Ruak 2012b)

Subsequent speeches have maintained the focus on poverty, and the President is reaching out to a wide constituency in Timor-Leste through his attention to the districts. In his recent speech marking the anniversary of Fretilin's declaration of independence on 28 November 1975, the President observed "with satisfaction" that it was the first time that the occasion had been celebrated in a district outside Dili and the first time that elders from the 13 districts had been present.

### *3.4 The Appeal Court (Tribunal de Recurso), exercising its constitutional jurisdiction*

Under the Constitution, the Supreme Court of Justice administers justice on matters of a constitutional nature (Art. 124). The range of constitutional matters that it may review is detailed in Art. 126 and the office holders who may request the court to rule on constitutional matters, and the types of matter on which each may seek a ruling, are detailed in Art. 133(5) and Arts. 149-151. Depending on the matter, office holders who may seek a constitutional ruling include the President, the Speaker of the National Parliament, the Prosecutor-General, the Prime Minister, one fifth of the members of Parliament and the Ombudsman.

The Supreme Court of Justice has not yet been established, a major constraint being the constitutional requirement under Art. 127 that only career judges or jurists of Timorese nationality may become members. In mid-2003 the Court of Appeal, which had been established under UNTAET but shut down for a period of almost 18 months due to staffing problems (Marshall 005, pp.11-12), was reconstituted and assigned the constitutional jurisdiction. In his speech swearing in the President of the Court of Appeal, President Gusmão affirmed

"The Court of Appeal that Your Excellency will preside over as of today, although not the Supreme Court of Justice which does not exist for lack of human resources, is charged with all of the constitutional and electoral competencies of that institution." (Gusmão 2005, p.141)

The assignment of the constitutional jurisdiction to the Court of Appeal on an interim basis is enabled by Art. 164(2) of the Constitution which provides that, until such time as the Supreme Court of Justice is established and functioning, all powers conferred on it shall be exercised by the highest existing court (Marshall 2005, p.9).

The Court of Appeal has produced constitutional rulings on several pieces of legislation since 2003, some of which are cited elsewhere in this paper.

### 3.5 *Statutory oversight offices appointed by and reporting to the Parliament*

Two important statutory offices - the Ombudsman (*Provedor dos Direitos Humanos e Justiça*) and the Anti-Corruption Commission – have been established to oversee the conduct of government and public officials. Importantly, both are Parliamentary offices: their heads are appointed by the Parliament, and they report directly to the Parliament. The powers assigned to them allow – and indeed encourage – them to identify weaknesses in law, policy and procedure and to bring these to the attention of the appropriate authorities.

The Office of Ombudsman operates under its own legislation: Law No. 7/2004 as amended by Law No. 8/2009 which split out its anti-corruption functions when the Anti-Corruption Commission was established. The role of the Office is to prevent maladministration and promote human rights and fundamental freedoms by reviewing complaints, conducting investigations and making recommendations to the competent authorities (Art. 5). The Ombudsman is required to keep the public informed of the activity and mandate of the Office (Art. 30) and to make its annual report to Parliament publicly available (Art. 46). The Ombudsman is not limited to acting on complaints, but may also act on his or her own initiative (Art. 35). The Ombudsman is also expressly empowered under the Constitution to request a judicial declaration of the unconstitutionality of specific legislative measures (Constitution, Art. 150) as well as to request a judicial ruling on unconstitutionality by omission of any legislative measures deemed necessary to enable implementation of the Constitution (Art. 151).

In addition to its Dili office, where all complaints are investigated, the Office of Ombudsman has established sub-offices in Baucau, Oecussi, Maliana and Same which monitor and undertake public education and regularly clear the complaints boxes which have been placed in each sub-district (interviews). The Office also provides a mobile service, visiting each district once annually and covering three sub-districts or sucos on each visit, to collect information from people about the problems they face; at the conclusion of the visit, the Office prepares a report and makes recommendations to relevant Ministers (interview).

Perhaps the most prominent investigation undertaken by the Ombudsman was its mid-2009 report into tenders and contracts handled by the Minister for Justice, which found abuse of power, nepotism, corruption and conspiracy. The report was forwarded to the Prime Minister, the Council of Ministers and the Prosecutor-General for further action (*Tempo Semanal*, 4 August 2009) and the Minister for Justice has been subsequently convicted for misappropriation of Ministry funds (Radio Australia, 11 June 2012). Other successes are less visible, such as the reported decline in public complaints against PNTL since the sub-office opened in Baucau and started working with PNTL to improve its understanding of operational requirements and standards of conduct (interview). The Ombudsman's annual reports document the matters that the Office has taken up on its own motion, and some of the recommendations made to Parliament and to Ministers on changes to law, policy and procedure to remedy defects identified through the Ombudsman's investigations.

The Anti-Corruption Commission was established as an independent statutory body in 2009 under Law No. 8/2009, in the process excising the anti-corruption function from the Office of the Ombudsman and establishing a more comprehensive legislative regime for the

prevention and criminal investigation of corruption (Arts. 3-5). The Anti-Corruption Commissioner is appointed for a four-year term, renewable once (Arts. 7 and 11). Following an investigation, if there appears to be a criminal matter to answer, the Commission submits a report to the Office of the Prosecutor-General. Should a matter not involve possible criminal proceedings, the Commission may instead issue recommendations aimed at the authorities or persons under investigation to improve procedures (Art. 20). The Commission is required to report annually to Parliament on its investigations, the response of authorities to its recommendations, its preventive and educational work and any alterations to legislation which it recommends on the basis of its investigations (Art. 28).

2010 was essentially the start-up year for the Commission, and by mid-2011 it was doing district outreach (interview). In 2010 and 2011 a total of 103 cases were filed, with a further 39 in the first six months of 2012. (East Timor Law and Justice Bulletin 31.08.12). Recent media reporting has mentioned investigations into five Ministers and two Secretaries of State (Independente 20.6.12), and expressly named the former Secretary of State for the Environment (Diario Nacional, 16.05.12) and the former Deputy Minister for Education (East Timor Law and Justice Bulletin 31.08.12).

The Commission plays an important role in identifying and preventing improper conduct. For example, through an investigation it initiated, it collected evidence of a massive level of misuse of government fuel coupons. It then went on to inform the Prime Minister and held a workshop with Directors-General to brief them on the extent of the problem. It has similarly identified irregularities relating to car maintenance and is finalising a report identifying loopholes so that remedial procedures may be implemented.

As part of its preventive function, The Commission has also developed an active program of training and public outreach. It is targeting public service and police academy training and has an active program of school visits and a well-maintained website and regular email updates. To mark the global “Anti-Corruption Day” on 9 December the Commission is holding events in Dili and several districts, and running a school essay competition (interview).A national strategy for combating corruption is planned, for approval by government (interview).

One structural consideration is the absence of specific legislation detailing corrupt conduct. A draft bill was tabled in 2011 but apparently needs further work. At this stage the Commission is using the provisions of the Criminal Code for its prosecutions.

#### **4. Actors shaping public policy**

There are many actors shaping public policy in Timor-Leste, as in most democratic countries. The ones identified in the discussion below are selected because of their structural significance or degree of influence in the policy process.

##### *4.1 Political Parties*

The Constitution makes express provision for political parties: as participants in the organs of political power; as having the right of democratic opposition; and as having the right to be informed on the progress of the main issues of public interest (Art. 70). In many countries,

political parties are an important entry point for citizens wishing to engage in shaping the public policy discourse. But particular factors come into play in Timor-Leste where political parties have a distinctive and charged political history.

Political parties first emerged in Timor in the months following the military coup that toppled the conservative dictatorship in Portugal on 25 April 1974 and started the process of accelerated decolonisation across the Portuguese colonial empire. In the early stages of party development in Portuguese Timor the two dominant parties – Fretilin and UDT – briefly formed a coalition but it disintegrated acrimoniously within a matter of months (CAVR 2006, Part 3-p.31). In August 1975 UDT attempted to seize power by force, Fretilin fought back, the Portuguese administration and military withdrew in disarray and Fretilin swiftly gained control of the territory. UDT leaders and some 40,000 followers fled into Indonesian West Timor and in December 1975, under duress, formally requested the Government of Indonesia to free the territory from “Fretilin’s reign of terror” (CAVR 2006, Part3, p.57).

Around 1500-3000 people lost their lives in partisan clashes, the killing of prisoners and reprisals against civilians in the four months between the UDT coup and the Indonesian invasion (CAVR 2006, Part 7.2, p.8). This number was dwarfed by the estimated 84,000-183,000 who died during the period of Indonesian occupation, mainly in the first few years, as a result of military action and the effects of mass population displacement (CAVR 2006, Part 7.3, pp.143-4). For many Timorese, the roots of this suffering lay in partisan conflict, and there was widespread unease about the re-emergence of political competition in Timor-Leste during the transition to independence. That sentiment is captured vividly in a report of consultations held in early 2002:

“The legacy of the 1975 civil war, begun as a struggle for power between the two leading political parties at that time – FRETILIN and UDT – remains. A peaceful election campaign in July-August 2001 has not erased the memories of this trauma from the collective memory of East Timorese. Fear of violence caused by political activity remains one of the most prevalent issues when political parties are discussed – even among people not born at that time. The pain, suffering and consequence of this conflict, when being a member of the wrong political party could mean summary execution, has been passed down through the generations and it may take several more peaceful election cycles to begin to dissipate this fear.” (National Democratic Institute 2002, p.17)

The fear of extreme violence associated with political competition came to the fore again in 2006 when Timor-Leste was again racked by politically motivated violence.

Within days of the August 1975 coup, Fretilin formed an armed wing, Falintil, which subsequently led the armed resistance to Indonesia. From the early 80s, the armed resistance was progressively decoupled from Fretilin as a political party and assumed an increasingly nationalist character. The first step came in 1981, when Xanana Gusmão was named both political commissar and military leader of the resistance, and formed the Revolutionary Council of National Resistance as a way of encouraging non-Fretilin members to join the resistance effort (CAVR 2006, Part 5, pp.27-8). Over the next few years Xanana and other leaders reached out to the Catholic Church and other political parties, and abandoned Marxism. These policies were not welcomed by Fretilin hardliners and in 1984 there was a bitter split in which Xanana prevailed. In 1987 Xanana separated the armed

resistance force, Falintil, from Fretilin and resigned from Fretilin himself, the following year establishing the National Council of Maubere Resistance as the highest political body of the resistance (ICG 2006, p.4). In 1998 this was replaced by the all-inclusive National Council of Timorese Resistance (CNRT) which brought together all the old political parties including UDT (which had previously stood apart), NGOs and the church under a single umbrella.

The tension between CNRT as a body above party politics and Fretilin as a well-organised political party ran through the period of the UN Transitional Administration. At the CNRT Congress in August 2000, Fretilin pulled out of CNRT, freeing it to start campaigning at the village level, stealing the march on its political opponents (Ingram 2012, p.9). Gusmão, as President of CNRT, railed against the political mobilisation underway in an open letter to the people of East Timor in December 2000:

“...some political groups have already begun to confuse the people by starting to register the population, others compel them to sign up for membership and threaten them with retaliation by FALINTIL. Some groups recruit recently returned militia members with promises of exemption from legal action if such groups ever reach power....Violence, lies and the psychological and emotional abuse of our people is starting to occur. The existing political tension reminds us of the democratic awakening of 1974. We see that the present race for power by the parties who are already trying to control the population may next year lead to a repetition of the events of 1975.” (Gusmão 2000)

While Xanana Gusmão struggled to hold CNRT together in the lead-up to the election for the Constituent Assembly in 2001, UNTAET was clearly uncomfortable with a single supra-party entity and anxious to see party pluralism emerge. The UNTAET approach has been characterised as a “clash of paradigms” between the international model of a liberal, democratic state and the indigenous framing of traditional political legitimacy (Hohe 2002a). The inclusive form that CNRT adopted aligned with the traditional belief that, to achieve peace, one had to create unity between opposing elements (Hohe 2002b, p.82) and the break-up of CNRT in June 2001 in the lead-up to the election of the Constituent Assembly was viewed with apprehension by district and sub-district representatives:

“The idea of dismantling the unity, which had carried the last years of the resistance struggle, in favour of promoting the creation of parties, was difficult to accept for many of them”. (Hohe 2002b, p.71).

The UN mission hailed as a positive achievement the election of 12 political parties to the Constituent Assembly. Immediately after the election the Special Representative of the Secretary-General commented

“I wish to congratulate Fretilin for its strong showing, and believe the significant returns attained by other political parties attests to the healthy state of East Timor's young multiparty democracy” (Vieira de Mello 2001).

The presumption of party politics flowed into the machinery for the Presidential election to be held in April 2002, immediately prior to independence. UNTAET regulation 2002/01 “On the Election of the First President of an Independent and Democratic East Timor” included extensive machinery provisions for the registration of political parties to facilitate nomination of presidential candidates, although there was also provision for an independent candidate

or a candidate nominated by more than one party. The regulation envisaged the use of a party logo on the ballot paper and in the educational materials.

The party political character of the presidential election was fiercely opposed by Xanana Gusmão, who threatened not to stand if party symbols were included on the ballot paper. At the eleventh hour he did register as a candidate with the support of nine political parties, having won the battle of party symbols. His only opponent was Xavier do Amaral, who was backed by two parties but who agreed not to use their symbols on the ballot paper.

Gusmão's deep suspicion of political parties continued to play out after independence. In a speech on 28 November 2002 which was fiercely critical of Fretilin's appropriation of the political narrative and its domination of the political stage, he observed

“Here, inside Timor-Leste, we took the first steps in politics, making ourselves even more vulnerable, as a nation, as a people....We lost the sense of being a Nation because we became attached to the interests of political parties.” (Gusmão 2002).

Once Gusmão decided to transition from the Presidency to the Prime Ministership via the Parliamentary election of 2007, he needed a political party, and established a new party in March 2007 whose name reconstituted the potent acronym of CNRT. There is a common view that the party is his platform, that it has little substance outside of the electoral cycle and that it may not survive his departure from politics (interviews). The 2007 election saw a major shake-out of the political parties, many of which are more personality than platform based. Of all the parties, Fretilin appears to have the strongest internal organisation and nation-wide network of members and supporters (down to the author observing men wearing Fretilin blazers in a small rural town). However not even Fretilin has internal sectoral policy committees (interview), one entry point for citizen engagement in the policy process in many democratic states.

#### 4.2 Advocacy CSOs

Civil society organisations (CSOs) proliferated in Timor after the Indonesian exodus, jumping from 14 registered with the newly formed in NGO Forum of Timor-Leste (FONGTIL) in 1998 to 231 in early 2002. By 2006 the number had risen to 332, although around half of these were thought to be inactive. The growth in CSOs since 1999 was a response both to donor business models and to opportunities created by the flood of development assistance funding (ACID 2008, pp.2-3). Most CSOs are concerned with service delivery in some form, with a small number focussing on advocacy. The latter group includes:

- La’o Hamutuk
- Luta Hamutuk
- Belun
- JSMP
- Fundasaun Mahein.

Some of these grew directly out of development assistance programs and were initially created to fulfil a specific purpose within those programs, although they may since have taken on a broader remit and diversified their funding. FONGTIL also plays an advocacy role.

Advocacy CSOs engage at various points in the policy process:

- Upstream: influencing policy while it is being developed within government, or attempting to persuade government to alter an existing policy;
- Midstream: working with Parliament on draft legislation;
- Downstream: urging the President to veto legislation that has been referred to him for promulgation.

Advocacy CSOs have had an identifiable impact in the specific areas on which they focus e.g. La'o Hamutuk on monitoring and analysis of the economy and natural resources and, to a lesser extent, justice; Luta Hamutuk on participative and accountable development processes; Belun on understanding the causes of and preventing conflict; JSMP on the operation of the justice sector; and Fundasaun Mahein on the performance of the security sector. They engage broadly with government, the presidency and parliament, picking their entry points to match the policy issue and the stage it has reached.

All the CSOs with which we spoke, including service delivery CSOs in the districts, reported that Ministers and Secretaries of State were very approachable. They had no difficulty getting a hearing, although that may be where the matter ends. One CSO reported that they had more success where the government was developing its position, but it was difficult to shift the government's position where this was already formed. Recent examples of successful upstream efforts to influence policy include La'o Hamutuk's work with the Environment Directorate on the development of an environment framework law, where they succeeded in arguing for a different approach. A very current example is Belun's work with government and with Parliamentary Committee B on border tensions in Oecussi arising from disputes over land usage. Luta Hamutuk's support to local communities to monitor government service delivery has led in some instances to implementation of improvements. FONGTIL lobbying of the Ministry of Justice led to the reissue of NGO registration guidelines in 2012 removing a provision that barred many NGOs from qualifying for registration.

CSOs regularly engage with Members of Parliament and Parliamentary Committees and, again, the experience of access has been generally positive. One CSO did flag with us that, in the new Parliament, Committee C had not sought input from relevant CSOs on the Rectification Budget as had happened in the past when Budget bills were examined. More recently, however, Committee C has invited CSOs to testify at a public hearing on the Court of Appeal opinion on the General State Accounts for 2011, which is quite critical of government. Again, access does not necessarily translate into action, and the prospect of achieving changes to draft legislation in a unicameral Parliament will fluctuate according to the coherence of the coalition and the phase in the electoral cycle. One positive outcome reported to us was Parliament's vote against the allocation of \$200M to the Timor-Leste Investment Company in the 2012 Budget Bill, following advocacy by La'o Hamutuk.

CSOs have on a number of matters been successful in persuading the President to contemplate the exercise of his veto. In some cases, their influence can be traced independently through website records of their written critiques of controversial legislation and subsequent Court of Appeal judgments and/or statements of Presidential reasons for exercising the veto power. Examples over the last several years include:

- JSMP's approach to the President on the Immigration and Asylum law, which was passed by the Parliament on 30 April 2003 but which attracted wide public concern as conflicting with many basic human rights guarantees and the civil and political rights of non-citizens. The President sought an opinion from the Court of Appeal in May 2003 and the Court found sections of the draft law unconstitutional in its opinion of 30 June 2003;
- JSMP's approach to the President on the Parliamentary Bill on "Freedom of Assembly and Demonstration", which the President then referred to the Court of Appeal. In that matter the Court did not find unconstitutionality in its decision of 9 May 2005.
- JSMP's approach to the President on the law passed by Parliament "On the Juridical Regime Governing Private Legal Profession and Lawyers' Training"; the President subsequently exercised his political veto over the offending provision which was then amended by the Parliament to address the concern.
- La'o Hamutuk's letter of 4 February 2011 to the President raising concerns about the constitutionality and legality of aspects of the 2011 Budget law, including the mechanism for creating and financing two special funds. The President sought an opinion from the Court of Appeal on 7 February which, in its judgment of 11 February found no unconstitutionality.
- La'o Hamutuk's ongoing analysis of the package of land bills, which was finally passed by Parliament in February 2012 despite a silent demonstration of opposition by civil society in the plenary. The President used his political veto in March 2012 citing, *inter alia*, the evident lack of consensus in civil society around elements of the legislation.

With the wind-back of international development assistance in Timor-Leste, the financial situation of at least some of the advocacy CSOs is likely to become more precarious. Several CSOs with which we spoke have recently lost or are about to lose substantial funding, and none are currently receiving assistance from the government's civil society fund. Some, as a matter of policy, are reluctant to apply for funding from this source as they are concerned that it could compromise, or be perceived to compromise, their independence. The one CSO which had applied to the civil society fund did not receive a response. It is impressive just how much can be achieved on a shoestring budget: La'o Hamutuk, for example, has a budget of \$133,900 for 2012. But even the most frugal organisation needs a basic level of funding to stay afloat.

Another risk is loss of core personnel. Several people outside the CSO sector mentioned to us that the highly effective advocacy CSOs generally depend heavily on a few key people and their departure would leave the organisation very exposed. Given the reportedly high salary differential between government and voluntary sectors, and the stream of CSO personnel moving into government, the risks are apparent.

#### 4.3 *The Catholic Church*

The Catholic Church established a presence in Timor almost two hundred years before the Portuguese state. Catholic missionaries first arrived in the region around 1512, travelling in the wake of Portuguese traders lured by the spices and sandalwood of the eastern

Indonesian archipelago. In 1556 Dominican friars established a permanent base on the neighbouring island of Solor, and over the next century they set up 10 missions and 22 churches across Timor. It was not until 1701 that the Portuguese state despatched a governor to administer the territory, who made his base in Lifau (Oecussi) in 1702.

While the Church as an institution in Timor was aligned with the colonial regime, its clergy and religious also defended the people against some of the excesses of Portuguese traders and officials, and offered some limited medical care and education. Under a 1940 Concordat between the Vatican and the Portuguese government, the Church was given principal responsibility for education in the colonies. In sum, "...the Church's activity was the most significant factor in social development during the Portuguese era" (Smythe 2004, p.35).

During the Indonesian occupation, the Church became a rallying point for the resistance. In the first and most brutal decade, it was the one institution able to speak out against the atrocities and, in the words of Bishop Martinho in a letter in 1984, the one organisation that the East Timorese people trusted (Smythe 2004, p.38).

"Church membership became a symbol of Timorese identity to such an extent that there was a fusion of the religious and the secular, a merging of Catholicism and nationalism." (Smythe 2004, p.48)

After the resistance movement was opened up and morphed into a broader nationalist struggle from the early 1980s, the church also became a direct partner in the struggle. Xanana Gusmão has described the process of rapprochement with the Church at that time:

"We contacted the church....without the role of the church, from that time onwards, we would have collapsed....During the process of talks, the priests would say: 'we cannot enter politics, we cannot join FRETILIN. Give us room and you can count on us.' ...The true concept of national unity appeared when the real reconciliation on the ground started to take place....And that was done and accomplished in a way that allowed us to start sending messages to the outside world through the church and the priests." (Gusmão 2005, p.101).

Ironically, the Church was a major beneficiary of the policies of the Indonesian state while also a thorn in its side. The Indonesian government requirement for citizens to register as one of the six officially recognised religions massively swelled the percentage of the population identifying as Catholic, from around 30% in 1975 to around 90% in 1999. National policies providing direct support for recognised religions through the Indonesian Ministry of Religious Affairs ensured a flow of assistance to the Church in Timor (interview), and reportedly significant land transfers were made by the Indonesian authorities to the Church in this period (interview).

In the last decade of the resistance struggle, as the focus of action shifted from armed resistance to non-violent demonstration, two watershed protests had the Church as their backdrop. During the visit of the Pope to Timor-Leste in 1989, a group of protesters grabbed headlines around the world when they unfurled a pro-independence banner at a massive open-air mass. In 1991, a young man located with a group of independence activists in Dili's Motael church was shot and killed by Indonesian troops. Following a memorial service for him at Motael a fortnight later, a crowd of several thousand walked to Santa Cruz cemetery, pulling out banners along the way. At the cemetery, a group of about 200 Indonesian

soldiers appeared and began shooting into the crowd, resulting in at least 250 East Timorese deaths. The filming and global transmission of the slaughter at Santa Cruz put Timor-Leste's struggle back on the international agenda.

In the period of the UN Transitional Administration, the Church was treated as an important dialogue partner. A representative of the Church was included amongst the ex officio positions on the National Consultative Council and its successor body, the National Council, and in the appointment of Timorese to Cabinet posts in the transitional government, the first Minister for Education was a Catholic priest. Popular commitment to the Church during this period was unswerving. The pivotal role of the Church loomed large in district consultations held around Timor in the process of developing the text of Constitution. The consultation reports from most districts included proposals to make express reference to the Catholic Church in the Constitution and one district went as far as proposing the recognition of Catholicism as the official religion. This overwhelming popular advocacy is reflected in Art. 11 of the Constitution, in which "The State acknowledges and values the participation of the Catholic Church in the process of national liberation of East Timor".

Since independence, senior church leaders continue to be called in, and called on, by elements of the government and the Presidency where the Church's authority and independence of the political process would seem to project a spirit of national unity or compromise. One month after independence, President Gusmão spoke about having begun a consultation with political parties and the church as part of his concept of 'Open Presidency', and further referred to a general agreement "that the church can, and should, play an important role in mobilising our people for a better understanding of the process" (Gusmão 2005, p.15). Following the demonstration in Dili on 21 August 2002 involving CPD-RDTL and former Falintil, Nobel Peace Laureate Ramos Horta convened a meeting between demonstrators and leaders including President Gusmão, the Bishop of Dili and a reluctant President of the Parliament. Media reports also referred to a meeting between President Gusmão and the two bishops to discuss the political situation and how to neutralise it (UNMISSET media summary for 22.08.02). Following the Parliamentary election in 2012, Bishop Ricardo of Dili joined Ramos Horta in a call for a government of national unity.

The Church has weighed in with considerable effect on matters of public policy that threaten its doctrine or its mission. One of the most contested areas has been government policy on matters of reproductive health, which over the last thirty years has repeatedly brought Church and state head to head. In 1980 the Indonesian Government introduced its nationwide family planning program, known by its acronym KB (*Keluarga Berencana*), into Timor-Leste. It encountered strong and concerted resistance from the Church, led by Bishop Belo who in 1985 and again in 1993 issued pastoral letters criticising family planning policy in uncompromising terms. Despite its aggressive promotion, the program had a lower take-up rate in Timor than in any other province of Indonesia and Catholic health centres provided an alternative for women fearful of being coerced into contraception at government clinics.

Early in the life of the UN Transitional Administration, the UN also ran afoul of the Church over the distribution of condoms by one of the UN agencies, and Bishop Belo wrote a very strongly worded letter to the head of the Interim Health Authority which brought an immediate change of practice. After independence, maternal health was high on the agenda of the new Ministry of Health, and in March 2004 the Government approved a family planning policy which committed to providing family planning information, counselling and

services. Importantly, the Church was formally consulted in the development of the policy and a formula was reached that allowed the policy to proceed unchallenged (Ingram 2008, p.166). More recently, the Church has come into play again over the reproductive health service operated by Marie Stopes International in Timor-Leste.

The most dramatic confrontation between Church and state in Timor-Leste occurred in 2005, over religious education in government primary schools. Summarising the comprehensive account provided by David Hicks (Hicks 2011), the trigger was a government announcement in late 2004 that the teaching of Catholic doctrine would no longer be included in the core curriculum. The bishops responded with a pastoral note which mobilised parents and upped the pressure on government. Within days of Prime Minister Alkitiri accusing the bishops of behaving like a political party, a large demonstration was staged in Dili calling for the Prime Minister's resignation. Over the following days, the demonstrations grew with people trucked in from the districts; they were brought to an end after 17 days with the signing of an agreement by the Prime Minister and the two bishops in the presence of President Gusmão which left Catholic instruction to continue on much the same basis as before. Extra clauses were added providing that the penal code then being developed should define abortion as a crime, and voluntary prostitution and exploitation of children would also be classed as crimes.

Despite policy tensions, the Church is more often positioned as an important partner to Government, a significant provider of education and primary health care, and an important arbiter of social justice. Government is understood to provide substantial support from the Budget for Church infrastructure and social services. While it has not been possible in the time available to develop anything approaching a comprehensive and reliable picture, the following fragments give a sense of the likely type and scale of support:

- The Ministry of Education reportedly provides direct assistance to the Church for teachers' salaries, minor capital and operating expenses in basic and secondary education. Evidence of assistance of this sort, dating back to 2005, comes from a government media release issued during the 2005 confrontation with the Church, which refers to around 1000 teachers on the government payroll teaching at Church schools, and references additional assistance for textbooks and other requirements, as well as the rent-free use of government properties (Horta 2005). Direct payment of salaries would explain the fact that the Ministry of Education budget for 2012 makes no provision for public grants (Orçamento Geral do Estado 2012, Livro 4b, p.269);
- The Church is reportedly a significant beneficiary of the Government's Civil Society Grants administered through the Office of the Prime Minister. A total of \$10.5M was appropriated in 2012 for the program. We understand that a component of this is disbursed as grants of up to \$25,000 each to CSOs, with Church organisations reportedly receiving considerable assistance. Government has also provided funding for a number of church renovations, including Motael church and Dili cathedral, and the construction of Suai church to memorialise the brutal massacre there on 6 September 1999.

#### *4.4 Business and professional associations*

Business and professional associations have not formed part of the author's research but are flagged here in the interests of referencing the spectrum of actors. A few fragments of information are included below; this could be an area of possible future research.

At least two groupings of professionals emerged from the wreckage of the workforce after the popular consultation in 1999: the East Timor Health Professionals and the East Timor Lawyers Association. The former was already in existence when UNTAET deployed and joined with UNTAET's own personnel to form the Interim Health Authority which later morphed into the Ministry of Health. The medical profession subsequently formed the Timor-Leste Medical Association which reportedly takes a close interest in the operation of the health sector. The East Timor Lawyers Association is also evidently active around public policy issues which affect the profession, protesting to the government in July this year about the policy permitting the testing and registration of foreign legal advisers.

In 2010 the business sector, with assistance from the International Finance Corporation (World Bank Group) and start-up funding from government, formed a Chamber of Commerce and Industry to coordinate with government on private sector development, develop the capacity of businesspeople, provide advice and facilitate micro-companies through technical support and training. The Chamber claims a large membership – exceeding 1000 – although many will be very small businesses. It also includes major enterprises such as Timor Telecom, ANZ Bank and Conoco Phillips. The Chamber is very positive about the openness of government to consultation on policy matters, and points to changes in the proposed tax law as a result of its advice (interviews).

#### *4.5 Veterans*

Two generations of Timorese were forged through the resistance struggle and, from the time of political transition to the present day, a powerful narrative of resistance surfaces at critical junctures in the political cycle to underline – or undermine – political legitimacy. In the year leading up to the Constituent Assembly election in August 2001, Fretilin portrayed itself as the main resistance organisation and put the resistance figure Lu'olo out in front as its figurehead (Chopra and Bowles 2008, p.279). Resistance credentials were again at work in the 2012 election campaigns, with both TMR and Xanana Gusmão depicted in military fatigues on their campaign posters. Where resistance credentials are not a point of distinction, seniority comes into play. In the early stages of the 2012 Presidential campaign TMR characterised Lu'olo, his main competitor, as "younger brother", a comment not on the men's relative ages (Lu'olo is the older by two years) but their relative standing in the armed struggle.

Xanana Gusmão, in speeches given at moments of heightened tension during his four years as President in unhappy cohabitation with Prime Minister Alkitiri, repeatedly returned to the history of the resistance struggle and the separation of the armed wing from Fretilin, and to the legitimacy of those who resisted over those who now ruled. This reached a bitter crescendo in his 9000 word speech delivered on 22 June 2006, at the height of the political crisis, in which he threatened to resign should PM Alkitiri not step down. In the speech he describes Mari Alkitiri as "busy caring for his rabbits and chickens in Maputo" and Rogerio Lobato as trafficking diamonds in Angola "while we were still struggling with war and the

suffering of our people in our own land”; even Lu’olo as a member of the armed struggle is described as “hiding in Builo” while Xanana travelled the country to reorganise the resistance. Of those overseas, “we noticed that instead of focusing their attention on the suffering of the people, they fought each other for the position of President of Fretilin, and then tried to lead the war from overseas. In the jungle, no one tried to occupy a seat, we only wanted to serve by continuing the struggle...”.

Against the background of the dominant resistance narrative, those who took part in the struggle are accorded a special place. They are honoured in the Constitution, which pays tribute to “the contribution of those who fought for national independence” and commits the State to protecting those who participated in the resistance and ensuring “special protection to the war-disabled, orphans and other dependants of those who dedicated their lives to the struggle for independence” (Art. 11). From the time that Indonesia withdrew in 1999 to the present day, the status and wellbeing of veterans has been a central part of the political discourse, and at critical points they have directly entered the political stage.

Following the dissolution of CNRT in June 2001, Xanana Gusmão focussed on the development of the Association of Resistance Veterans (ARV), an organisation that encompassed the members of the clandestine network and which aimed to create the conditions for their future participation in the country’s development process (Gusmão 2005, p.xxiii and p.9). The ARV has been described as the organisational home for the vast majority of CNRT members who did not join Fretilin (Rees 2004, p.49). A second organisation, the Foundation of FALINTIL Veterans, was established to promote the wellbeing of the former fighters under the leadership of then Brigadier TMR (Gusmão 2005, p.9). Its membership has been described as limited to those who served in FALINTIL between 1979 and 1992, and as being closely linked to President Gusmão and the opposition parties (Rees 2004, p.49).

In parallel, an Association of Former FALINTIL Fighters emerged under the auspices of Rogerio Lobato who noted that its establishment was enshrined in the statutes of Fretilin (Gusmão 2005, p.9). According to Rees this organisation, which he refers to as the Association of Ex-Combatants, also included many clandestine veterans and it was loosely connected to various other “political security groups” including Sagrada Familia (led by former Falintil leader L7) and CPD-RDTL (Rees 2004, pp.49-50). In the days before independence, Lobato staged a series of marches on Dili by two to three thousand alleged ex-Falintil veterans – a thinly veiled threat that he could mobilise the numbers if not given a share of political power. It was sufficient to secure him a place in government as Minister for the Interior (Rees 2004, pp.51-52).

At various stages over the next few years, Dili was again disturbed by serious demonstrations involving elements identifying as veterans. In August 2002, a demonstration by former Falintil and CPD-RDTL led to mediation talks with the President, Bishop Belo and senior government figures. On 4 December 2002, Dili was rocked by violence as demonstrations outside the Parliament and Police headquarters got out of control. According to Edward Rees who witnessed the rioting, “the violence was planned and implemented by CPD-RDTL, Sagrada Familia and other members of veterans groups” (Radio Australia, 4 Dec 2003). Anti-government demonstrations by former veterans, led by L-7, again occurred in July and August 2004, leading to high level talks brokered by the President.

Making some provision for veterans was on the public policy agenda from the early days of independence. Various commissions were established to register the different categories of veterans (armed and clandestine) and to record their contributions. Over 76,000 were registered in the first phase. A second phase of registration was opened in 2009 which resulted in a further 121,570 claims (Nolan 2012). On 5 April 2006 legislation was promulgated establishing a regime for the recognition, valorisation and social protection of those who were part of the armed or clandestine resistance for more than three years (Law Number 03/2006). In 2012, the total appropriation for payments to veterans jumped to \$106.7m, 2.4 times the budget for health and 1.2 times the budget for education. There is growing unease about the social consequences of the veterans' benefit, with President TMR reportedly calling for its wind back last October (Jakarta Post, 26 November 2012).

Veterans are an iconic category in Timor-Leste and, according to one seasoned observer, the legacy of the resistance struggle is growing more prominent, rather than receding, with the passage of time (interview). Arguably the registration programs and the benefits and standing attaching to veteran status will have intensified this. Over the last decade groupings of veterans, or those adopting the mantle, have been marshalled as foot-soldiers in larger political manoeuvres; to what extent they are an organised force in their own right is less clear but numbers alone underscore their potential as political actors.

This potential may be consolidated with the formation of the proposed Veterans' Council (*Concelho dos Combatentes da Libertação Nacional*), envisaged in Law 02/2011 as the sole representative body of former combatants. Although a number of high level discussions have been held, the Council has yet to be formed, and the Program of the Vth Constitutional Government speaks rather of Veterans Councils at district level being established swiftly.

## **5. Informing the public policy discourse**

There are two dimensions to informing the public policy discourse: the first is public access to information about policy development, allowing those with an interest to then engage; the second is bringing an evidence-base to bear in the development of public policy options. At this stage Timor-Leste appears better served on the first dimension.

The Government provides considerable information about major policy through its own websites, which give access to the documentation for the annual Budget, all legislation, major policy documents such as the Strategic Development Plan and the Program of the Vth Constitutional Government, Prime Ministerial and Presidential speeches, decisions of the Council of Ministers and media releases. A flagship website is the Transparency Portal, which leads into four portals on the Budget, aid, eProcurement and government results. The President's office, as well as maintaining a website, has moved into social media, with interactive facebook and twitter accounts.

Parliamentary plenary debates on draft legislation, which are open to the public, provide another window onto major new policy as it is developed. Currently only major presentations in Parliamentary plenary debates are broadcast and committee hearings are never broadcast, but the Parliament is now considering the broadcast of all its plenary sessions. Hansard is not available at this stage: while plenaries have been recorded since the outset of the Parliament, the tapes have not been transcribed.

The expansive donor engagement in Timor-Leste since 1999 has spawned a massive array of research and policy analysis, although an issue from the outset was government capture and storage of all this material. An effort was made by the National Planning and Development Agency in late 2001 to obtain and establish an electronic and hard-copy repository, but even this concerted attempt was limited in its results. Public access to this kind of material is extremely limited at best, and dependent on an informed and determined navigation of donor websites.

Timor-Leste has a vibrant media, including several independent newspapers, government television and radio and some community radio. Newspapers are operating valiantly on very small circulations, and within their very limited resources those that we spoke to are attempting to explore public policy issues, and can provide convincing examples of stimulating policy debate through their reporting. But they are walking a fine line where criticism of government could frighten off advertisers or see any substantial government subscriptions terminated. A major limitation identified by the print media is the impact of small budgets on their capacity to cover stories outside Dili. For Timorese with access to computers and the internet, there are several blog-spots inviting policy commentary.

A segment of Timor-Leste's tertiary education sector is positioning itself to support policy development through research, although they are also realistic about current resource and capacity constraints. The National University of Timor-Leste has created seven faculties, each of which is regarded by the University as relevant to the business of government. The university is keen to build stronger linkages with government ministries as a centre of excellence providing analytical inputs to government. Although this has yet to happen, the university is already collaborating with particular government departments in the development of curriculum to support labour market requirements. In 2011 UNTL introduced higher degree studies at both masters and PhD levels, largely at this stage focussed on its own statutory requirement that academic staff hold at a minimum masters' degrees. An offshoot will be the strengthening of the university's research capability.

Dili Institute of Technology already has a track record in policy research, with a substantial portfolio of work undertaken for donor agencies including the World Bank, USAID, AusAID and UNICEF and implementing partners including Democracy International, Asia Foundation and Norplan. It also has partnership arrangements with universities in Indonesia and Australia. A handful of CSOs are also undertaking impressive policy analysis in their focal areas.

## **6. Entry points for citizens**

Across the board, the voices of ordinary citizens are very muted. There is a sense in some quarters that decentralisation is the answer to giving citizens greater voice and encouraging more responsiveness from government, although international experience does not necessarily bear this out. The main vehicles which currently exist for citizens to make their voices heard are public consultations on major policy, working through institutional intermediaries and direct action. There is little evidence, however, to suggest that such steps often lead to substantive shifts in policy direction.

Successive governments have undertaken some form of public consultation as a prelude to introducing major policy. The first example was the nationwide consultation undertaken by Xanana Gusmão in early 2002 as part of the preparation of the National Development Plan which “...gave thousands of East Timorese, from school children to elderly people, the opportunity to think about the kind of future they want for themselves and for future generations” (Planning Commission 2002, p.xvi). More often, however, consultation seems to be fairly narrowly based, targeting specific stakeholders.

Where extensive popular consultation does take place, it has come to be perceived more as socialisation than as a genuine exploration of policy options. The nationwide consultations on the Strategic Development Plan have come in for strong criticism, being spontaneously raised with us in several interviews two years after the event. The view is that the consultations started well, but became tightly scripted as criticisms began to emerge, and as a result there is now less appetite in government for public consultation.

Equally, the failure of major policy is attributed to inadequate consultation, with the Presidential veto of the land law package and the paralysis of Parliamentary action on the local government legislation being touted as prime examples.

In the course of this study, we came across some interesting examples of outreach into the districts to hear and take up the concerns of citizens. For example, as discussed in section 3.5 above, the Ombudsman has instituted a range of measures to engage with citizens in the districts, and the Anti-Corruption Commission currently has staff in the districts speaking with concerned citizens. We also heard about how one CSO is creating a bridge between central government and local communities through the use of focal points and monitoring committees at district and sub-district levels. Some members of Parliament also visit focal districts regularly and raise the concerns of constituents in the plenary, although the extent of outreach by MPs overall is reportedly patchy.

Traditionally village chiefs have been the intermediary between villagers and government, dating back to the days of the Portuguese administration, and this is given formal expression in Law 3/2009 on *Community Leadership and Their Election* which, in Art.11, describes the functions of the village chief as coordinating with the municipal administration and government representatives, calling in the security forces if necessary and undertaking other functions assigned by government or the municipal administration. Village chiefs represent – but can also filter – the voices of villagers. In discussing the Prime Minister’s sub-district consultation on the Strategic Development Plan with one village chief, he explained how he and his fellow chiefs from other villages determined which questions would be put to the Prime Minister. The consultation attracted an enormous turn-out, but only the chiefs spoke.

Article 48 of the Constitution confers on a citizen “the right to submit, individually or jointly with others, petitions, complaints and claims to organs of sovereignty or any authority for the purpose of defending his or her rights, the Constitution, the law or general interests”. Members of Parliament, the office of the President and the Ombudsman all report distressed citizens arriving at their offices to make complaints. It is harder to identify the use of petitions. The most celebrated example is the petition sent to President Gusmão in January 2006 by 159 soldiers complaining about discrimination against westerners in the management of the armed forces (ICG 2006, p.6). Their action gave the name to the expanded group of

dismissed soldiers known as “the petitioners” at the centre of the 2006 turmoil. On the one occasion that a petition was lodged with the Court of Appeal by an elite group of citizens referencing their constitutional right under Art. 48, the Court found that they did not have standing to seek a judicial ruling on the action of the President in the absence of enabling legislation.

The one form of direct action by citizens that has been used to powerful effect in Timor, both before and after independence, is public demonstration. Demonstrations and sit-ins were staged throughout the 90s by the resistance movement, including a succession of Embassy occupations in Jakarta. In the immediate lead-up to independence and for several years thereafter a succession of demonstrations and marches were staged, often ostensibly around security sector concerns, but seemingly designed to destabilise or to shift the distribution of power with participants caught up, knowingly or unknowingly, in a complex power play.

## 7. Conclusions

Under Timor-Leste’s constitution, policy making is not the exclusive preserve of the government: all four organs of sovereignty – Parliament, President, Government and the Court of Appeal in its constitutional jurisdiction – are assigned important and complementary roles in shaping and reviewing major policy, in particular where this is expressed in legislative form. The four organs together make up a system, and balanced capacity across that system is vital for its effective operation. Although Parliament sits at the centre of the system as the representative of the people and government is formally accountable to it, it appears very unevenly matched relative to government to deliver on its mandate, distorting the constitutional scheme.

Non-state actors shape public policy through quiet influence and overt pressure, with the latter seemingly in inverse relationship to the former. Advocacy CSOs by their nature operate in the public domain, holding a mirror up to government in the areas they cover and providing an important conduit between government and the people. The print media performs a similar role. While their impact relative to their resources is impressive, both CSOs and the print media are under severe financial pressure in an environment where, for CSOs, donors are contracting their operations and local private fundraising is negligible at best and, for the print media, circulations are small and advertising revenues modest in a country where few people can afford newspapers.

It appears that government is reasonably accessible to civil society, but not necessarily responsive. Across the board, members of CSOs report being able to meet easily with members of Parliament and with senior members of the government, and of receiving a good hearing. Access itself may be a function of broader societal standing. As one CSO director observed, it was easy for him to contact senior members of government, but it was a function of his networks and not his position. Access, however, does not necessarily equate with influence: that is more narrowly determined, and it is where the shadow system comes into play. This all points to the highly personalised character of government. In a small and tightly networked society (Braithwaite et al 2012), personal relationships are the trusted

medium at the expense of impersonal systems and processes that in theory at least do not depend on relationships.

The general populace is largely mute – but not indifferent – in the policy discourse. Small initiatives such as the localised monitoring of government services led by an advocacy CSO demonstrate the interest of local people and their willingness to engage where the opportunity is presented.

Much contemporary guidance on post-conflict statebuilding emphasises an understanding of context. Institutions are shaped by their complex political histories and cultural drivers, and are not necessarily as they may seem on the surface. In seeking to better understand the policy process, this dictum applies with considerable force.

### **Author Notes**

Sue Ingram has worked extensively in public policy and governance: as a senior executive in the Australian government, as a member of United Nations and regional peacekeeping and assistance missions, and as a consultant. Sue has a long association with Timor-Leste: she undertook anthropological research in Portuguese Timor in 1974-75, and was appointed to the United Nations Transitional Administration in East Timor in 2000. She held various posts with the UN over several years, including as administrator of Aileu district (where Falintil was cantoned), as director for transition planning in the Office of the Special Representative of the Secretary-General, and as Chief of Staff in the post-independence UN Mission in Support of East Timor. Sue subsequently headed the Machinery of Government pillar of the Regional Assistance Mission in Solomon Islands and served as AusAID's principal governance adviser. She now works as an independent consultant and researcher.

### **References**

Australian Council for International Development 2008, 'Timor-Leste Civil Society Analysis', [http://www.acfid.asn.au/what-we-do/docs\\_what-we-do/docs\\_countries-regions/docs\\_timor/Timor%20CivilSociety%20Analysis%20for%20ACFID\\_AWigglesworth.pdf](http://www.acfid.asn.au/what-we-do/docs_what-we-do/docs_countries-regions/docs_timor/Timor%20CivilSociety%20Analysis%20for%20ACFID_AWigglesworth.pdf) accessed 16 November 2012

Bowles, Edith and Chopra, Tanja 2008, 'East Timor: Statebuilding Revisited', in Charles Call (ed.) *Building states to build peace*, Lynne Reiner Publishers, Boulder and London.

Braithwaite, John, Charlesworth, Hilary and Soares, Aderito 2012, *Networked governance of freedom and tyranny: peace in Timor-Leste*, ANU E Press, Canberra.

Commission for Reception, Truth and Reconciliation in East Timor (CAVR) 2006, *Chega! The report of the Commission for Reception, Truth and Reconciliation in East Timor*, Dili, Commission for Reception, Truth and Reconciliation in East Timor.

Elgie, Robert 2007, 'What is semi-presidentialism and where is it found?' in Robert Elgie and Sophia Moestrup (eds) *Semi-presidentialism outside Europe: a comparative study*, Routledge, London and New York.

Escola de Direito da Universidade do Minho 2011, *Constituição Anotada da República Democrática de Timor-Leste*, Empresa Diário do Minho, Braga.

Gusmão, Kay Rala Xanana 2002, 'Speech by H.E. President of the Republic Kay Rala Xanana Gusmão at the official ceremonies commemorating 28<sup>th</sup> November', Dili, 28 November 2002.

Gusmão, Kay Rala Xanana 2005, *Timor lives: speeches of freedom and independence*, Longueville Media, Alexandria NSW.

Hicks, David 2011, 'Church confronts state – the 2005 Manifestasaun in Timor-Leste', in Galina Lindquist and Don Handelman (eds), *Religion, politics and globalization: anthropological approaches*, Berghahn Books, New York.

Hohe, Tanja 2002a, 'The clash of paradigms: international administration and local political legitimacy in East Timor', *Contemporary Southeast Asia*, vol.24, no. 3, pp.569-589.

Hohe, Tanja 2002b, 'Totem polls: indigenous concepts and 'free and fair' elections in East Timor', *International Peacekeeping*, vol. 9, no. 4, pp. 69-88.

Horta, Jose Ramos 2005, 'Foreign Ministry reacts to Apostolic Nuncio's statement'  
<http://www.etan.org/et2005/march/20/24relig.htm>

Horta, Jose Ramos 2012, *Letters to the Speaker of the Parliament*,  
<http://www.laohamutuk.org/Agri/land/2012/VetoLandLawsEn.pdf>

Ingram, Sue 2008, 'The political determinants of public health in Timor-leste: foreign domination and the path to independence', in Milton Lewis and Kerrie MacPherson (eds), *Public Health in Asia and the Pacific: historical and comparative perspectives*, Routledge, London and New York.

Ingram, Sue 2012, 'Building the wrong peace: reviewing the United Nations Transitional Administration in East Timor (UNTAET) through a political settlement lens', *Political Science*, vol. 64, no. 1 pp3-20.

International Crisis Group 2006, 'Resolving Timor-Leste's Crisis', *Asia Report No. 120*, International Crisis Group.

Marshall, Shane 2005, 'The East Timor judiciary: at the threshold of self-sufficiency?', *Address to the Conference of Supreme and Federal Court Judges*, Darwin, January 2005 (downloaded from the internet on 14 November 2012)

National Democratic Institute and the Faculty of Social and Political Sciences of UNTL 2002, 'Carrying the People's Aspirations: a report on focus group discussions in East Timor', copy held by author.

Nolan, Cillian 2012, 'Recognising Timor-Leste's veterans', International Crisis Group, <http://www.crisisgroup.org/en/publication-type/speeches/2012/nolan-recognising-timor-leste-s-veterans.aspx> accessed 5 Dec 2012

Planning Commission, 2002 *National Development Plan*, Dili.

Rees, Edward 2004, 'Under pressure: Falintil-Forças de Defesa de Timor Leste, three decades of defence force development in Timor Leste 1975-2004', Working Paper no. 139, Geneva Centre for the Democratic Control of Armed Forces (DCAF).

Shugart, Matthew 1993, 'Of presidents and parliaments', *East European Constitutional Review*, vol. 2, pp30-32.

Smythe, Patrick 2004, *'The heaviest blow' – The Catholic Church and the East timor issue*, Lit Verlag, Munster.

Taur Matan Ruak 2012, 'Address by H. E. President Taur Matan Ruak on the inauguration of the Vth Constitutional Government', <http://presidenttimorleste.tl/2012/08/speech-full-text-inauguration-of-the-new-government/> downloaded 13 August 2012.

Vieira de Mello, Sergio 2001, 'Near verbatim transcript of SRSG Sergio Vieira de Mello statement today following the announcement of the final results of the 30 August election', <http://www.un.org/en/peacekeeping/missions/past/etimor/DB/060901.htm>