

## Explanatory notes for Part 2

**Draft texts:** The key texts of the draft Constitution presented are:

- (1) **Thematic Committee I's text** of 7 November 2001.<sup>1</sup>
- (2) The **Systematisation and Harmonisation Committee text** presented to the Assembly on 29 November 2001, and given 'in principle' approval by the Plenary on 30 November 2001.<sup>2</sup> It was this version that was used as the basis for the plenary debates.
- (3) The **revised text** approved by the Plenary on 9 February 2002 prior to the **public consultation process**.<sup>3</sup>
- (4) The **final text of the Constitution** approved and adopted on 22 March 2002.<sup>4</sup>

As discussed in the Introduction to Part 1, the final text of the Constitution presented in this study is the official translation presented on the Government of Timor-Leste website. In relation to the other texts, the author has looked first to the Portuguese versions of the successive drafts, and has sought to provide a streamlined translation, using the official translation as the base comparator. This has involved some modification of the English language versions produced by the Assembly of the second and third texts listed above.<sup>5</sup>

**Presentation of votes:** Votes are presented in this study in order of those voting for, against and abstaining. If a vote appears as 42:10:28, it means that 42 persons voted in favour, 10 against and 28 abstained. In most votes, there were members of the Assembly who were not present (or who failed to vote), thus the totals do not necessarily add up to 88 members of the Assembly. For a measure to pass, a majority of those present needed to vote in favour. Thus if 80 members were present, a total of 41 ('40 plus 1') votes in favour was required for the matter to pass.

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1 Thematic Committee I, 'Final Report', 7 November 2001 [Portuguese]. The finalised text is contained in Annex III of the report.

2 A copy of this text in Portuguese can be accessed at [www.etan.org/et2002a/february/10-16/11etapro.htm](http://www.etan.org/et2002a/february/10-16/11etapro.htm) (accessed September 2014).

3 A copy of this text in Portuguese can be accessed at [www.etan.org/et2002a/february/10-16/11etapro.htm](http://www.etan.org/et2002a/february/10-16/11etapro.htm) (accessed September 2014).

4 The final text of the Constitution of the Democratic Republic of Timor-Leste ('Constitution') can be found at [www.timor-leste.gov.tl/wp-content/uploads/2010/03/Constituicao\\_RDTL\\_PT.pdf](http://www.timor-leste.gov.tl/wp-content/uploads/2010/03/Constituicao_RDTL_PT.pdf) (Portuguese); and the official English translation at [www.timor-leste.gov.tl/wp-content/uploads/2010/03/Constitution\\_RDTL\\_ENG.pdf](http://www.timor-leste.gov.tl/wp-content/uploads/2010/03/Constitution_RDTL_ENG.pdf) (English) (accessed September 2014).

5 For a fuller explanation of the key texts and the methodological approach taken, see the discussion in the Introduction to Part 1.

**Plenary debate:** In providing details of the debates about each section during the plenary sessions of the Constituent Assembly ('plenary debate'), the focus has been to present the major themes of debates, with illustrations drawn from individual speakers. No attempt has been made to document every comment made during the debate or to record every speaker who addressed the Assembly. Nor are interventions necessarily mentioned in the order of speaking. Instead, comments are grouped in terms of the major points made during the debate. Particular attention has been paid to documenting proposed amendments to sections.

**Submissions included:** This volume includes both submissions that were analysed by the Systematisation and Harmonisation Committee in their report concerning the public consultation process,<sup>6</sup> as well as other submissions made by civil society, government and international institutions during the constitutional process. A full listing of submissions collected and reviewed by the author is contained in Annex IV. Additional submissions supportive of human rights in general terms are to be found in the Assembly records, including a large number of submissions authored by FRETILIN District Committees. In order to focus on discussions about the choice and wording of human rights to be included in the Constitution, this study quotes only submissions dealing with the detail of the human rights provisions, and focuses on the substantive suggestions made. Many submissions were produced in several languages (including English), allowing quotation of the English language versions. In the cases where submissions were produced in Tetum, Portuguese or Bahasa alone, the translation has been undertaken (or commissioned) by the author.

**Terminology:** In keeping with the official translation of the Constitution, individual provisions of the Constitution are referred to as 'sections' ('s'). Numbered paragraphs within each section are referred to as 'subsections' ('sub-s'). At the same time, it is recognised that many contemporary actors (including the author) and subsequent commentators commonly use the term 'article' to correspond to the Portuguese term '*artigo*'.<sup>7</sup> During debates, a variety of terms were used to describe component parts of the provisions, including 'paragraphs', 'points' ('*ponto*'), 'lines' ('*linea*') or simply the number of the paragraph. For other sources such as political party projects, Portuguese law or international law, the term 'article' ('art') is used.

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<sup>6</sup> Systematisation and Harmonisation Committee, untitled document submitted to the Assembly on 12 March 2002, summarising the results of the District consultations and written submissions, and containing the proposals from the Bench of the Committee [Portuguese]. It is referred to in this study as the 'Systematisation and Harmonisation Committee's Consultations Report'.

<sup>7</sup> Many submissions written in English referred to 'articles' rather than 'sections' of the Constitution. However, in this study, other than where directly quoting submissions, the generic term 'section' is used for consistency purposes and to aid comprehension, given its usage in the official translation.

**Presentation of the sections:** The sections are presented in chronological order, grouped according to the respective titles under Part II of the Constitution. Draft texts and successfully passed amendments are presented in italics, whilst the final text is presented in bold. The underlining which appears in the Thematic Committee I text is reproduced from the original documentation.<sup>8</sup> It signified the differences between the adopted thematic committee text and the draft presented by the FRETILIN party.

**Referencing:** In Part 2, a simplified form of referencing is used due to the volume of documentation. Where the source of information is apparent in the text (for example, through a reference to one of the four versions of the draft text listed above, or the Systematisation and Harmonisation Committee's summary of the public consultations), no individual citation has been included. Submissions have, however, been individually cited (and non-sequential shortened references avoided) for the convenience of readers looking only at particular sections.<sup>9</sup>

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<sup>8</sup> Underlining relating to a change of section numbering has not been reproduced.

<sup>9</sup> All submissions cited by the author are on file with the author. The location from which they were sourced is noted in Annex IV.

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