

# Introduction

On 20 May 2002, the Constitution of the Democratic Republic of Timor-Leste<sup>1</sup> came into force. Some two months prior to this, the 88 members of Timor's Constituent Assembly adopted the final text and took part in a formal signing ceremony. As each member was called up to the podium, it was a time both of solemnity and celebration. Not all members had voted in favour of the final text<sup>2</sup> and the previous six months of the Assembly's operation had witnessed a number of vigorous debates. However, during the ceremonial sitting, all members signed the Constitution, displaying pride in the significance of the occasion. After a long and bitter struggle for independence, a Constitution had been adopted which detailed the way power was to be governed in the new State of Timor-Leste.

## Exploring the history of the Constitution

Unfortunately, to date there has been little in the way of publicly available documentation or analysis concerning the substantive constitutional debates. One can find a number of accounts and critiques of the Constituent Assembly election and the process of constitution making.<sup>3</sup> There are also analyses of the final text of the Constitution<sup>4</sup> and comparisons with other Constitutions.<sup>5</sup> However, there is no history of the debates on particular clauses and so a

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1 *Constituição da República Democrática de Timor-Leste* [Constitution of the Democratic Republic of Timor-Leste], 2002, as published in the *Jornal da República*, 2003, Série I, No 1, 1st Suplemento (4 June 2003), 1. Hereinafter, it is referred to as the 'Constitution'.

2 The final text of the Constitution was adopted by a vote of 72:14:1 (with 1 absence). Those represented in the 14 votes against/abstentions were drawn from the ranks of PD, PSD and UDT representatives, many of whom objected that the Assembly had not sufficiently considered the views of the public and minority parties.

3 See A Baltazar, 'An Overview of the Constitution Drafting Process in East Timor' (2004) *East Timor Law Journal* 9; M Brandt, *Constitutional Assistance in Post-Conflict Countries: The UN Experience: Cambodia, East Timor and Afghanistan* (UNDP, 2005); L Aucoin and M Brandt, 'East Timor's Constitutional Passage to Independence', in USIP (LE Miller (ed.)), *Framing the State in Times of Transition: Case Studies in Constitution Making* (USIP, 2010); R Garrison, *The Role of Constitution-Building Processes in Democratisation: Case Study: East Timor* (IDEA, 2005); DB Soares, M Maley, J Fox, and A Regan, *Elections and Constitution Making in East Timor* (ANU 2003); and J Wallis, *Constitution Making during State Building* (Cambridge University Press, 2014).

4 Timor-Leste Legal Education Project, *An Introduction to Constitutional Law in Timor-Leste*, supported by USAID, The Asia Foundation and Stanford Law School (undated); H Charlesworth, 'The Constitution of East Timor' (2003) 1 *International Journal of Constitutional Law* 325.

5 For a comprehensive analysis of the Timorese Constitution particularly vis-à-vis lusophone precedents, see Direitos Humanos – Centro de Investigação Interdisciplinar (Coordinator: Pedro Carlos Bacelar de Vasconcelos), *Constituição Anotado: República Democrática de Timor-Leste* (Empresa Diário do Minho, 2011). See too W Binchy, 'The Constitution of Timor-Leste in Comparative Experience' in W Binchy (ed.), *Timor-Leste: Challenges for Justice and Human Rights in the Shadow of the Past* (Clarus Press, 2009) 261.

paucity of material answering such questions as what was the intention of this provision; what questions were asked about this provision; were alternative formulations considered?

This study aims to remedy in part this deficit by focusing on the treatment of one particularly important subject matter: that of the protection of human rights. It examines in detail the history of debates concerning the guarantees within Part II of the Constitution entitled *Fundamental Rights, Duties, Freedoms and Guarantees*. For the sake of convenience, this study uses the generic term 'Bill of Rights' to refer to this part of Timor-Leste's Constitution. This book brings together information relating to each section within the Bill of Rights, presenting:

- a section-by-section analysis of the human rights provisions within the Constitution;
- progressive texts produced during the process of the Constituent Assembly;
- highlights of the arguments put forward within the Constituent Assembly concerning the draft provisions, including alternative proposals advanced;
- submissions made by Timorese officials, civil society and international bodies; and
- the results of consultation with the broader community before and during the constitutional process.

It is designed to be useful in particular to judges and legal practitioners called upon to interpret the Constitution,<sup>6</sup> government officials and civil society actors involved in human rights work, as well as students of history and constitutional law in Timor-Leste and internationally. Knowing the genesis of provisions and contemporary understandings may also assist in informing discussions on potential amendments in the future, given that the Constitution allows for periodic amendment of the Constitution every six years.<sup>7</sup> It is hoped that its publication will also serve as a means of making more accessible some of the records of the constitutional process and may stimulate further research on these historic deliberations. As this study relies upon and presents material in a translated form, its results will necessarily be preliminary in nature and may be subject to revision by future researchers who are able to present material in its original form (whether Tetum, Portuguese, Bahasa Indonesian or English).

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6 To date, Timorese courts have not referred to the history of clauses in judgments concerning the human rights provisions of the Constitution; see, for instance, the decision of the Court of Appeal, case no. 02/2003, *Review of the constitutionality of National Parliamentary Decree 15/1/1 of 6 May 2003, concerning 'Immigration and Asylum'*, 30 June 2003; and Court of Appeal, case no. 01/2005, *Review of the constitutionality of the Parliamentary Bill of 'Freedom of Assembly and Demonstration'*, 9 May 2005. For a listing of cases in Timorese courts applying provisions of the Bill of Rights, see *Direitos Humanos – Centro de Investigação Interdisciplinar, Constituição Anotado*, above n 5.

7 Section 154 of the Constitution provides that the National Parliament may revise the Constitution after six years have elapsed since the last date on which a law revising the Constitution was published.

Further primary source material may also become available to shed light on the process. Until such time as a comprehensive documentation process is undertaken, however, it is hoped that this ‘preliminary history’ will make some contribution to illuminating the major contours of debates.

Human rights lie at the very heart of the Timorese Constitution. Its Preamble contains a solemn reaffirmation of determination to ‘respect and guarantee human rights and the fundamental rights of the citizen’. Section 1 declares Timor-Leste to be based upon ‘the rule of law, the will of the people and the respect for the dignity of the human person’. Over 40 substantive provisions providing for the protection of human rights were included in the finalised text. Its Bill of Rights embraces a wide range of rights: civil, political, economic, social and cultural rights as well as ‘third generation’ rights such as environmental rights. During the drafting process, a desire to prevent the repetition of violations that had occurred within Timor in the past was strongly evident. Inspiration was also drawn from the protection of rights in comparative Constitutions (particularly those of lusophone nations) and, to a lesser extent, the formulation of rights in international instruments. Although eschewing an explicit right to a remedy through the courts, the Assembly provided for the establishment of an Ombudsman (*Provedor de Direitos Humanos e Justiça*) to receive complaints and empowered the Supreme Court of Justice to conduct reviews of the constitutionality of measures when petitioned by certain bodies/officials.<sup>8</sup>

With the Constituent Assembly sitting in the post-conflict environment of 2001–02, its members were frequently reminded that the fight for independence was undertaken not simply to gain political independence, but also to deliver freedom and human rights for all Timorese. At the same time, representatives were critically aware of resources constraints, including Timor’s status as the poorest nation in the Asia region.<sup>9</sup> With the physical scars of 1999 still evident, the Assembly debated what realistically could be provided by the State, with concerns particularly apparent during discussions of economic and social rights. Notwithstanding these reservations, all members agreed that human rights needed to be at the heart of the new Timor-Leste.

As is outlined further in the next chapter of this study, deliberations on the substantive provisions of the Constitution took place within a short timeframe (October 2001–March 2002). Once the time taken for finalising internal working methods is subtracted from this period, this equates to some five months spent focused on the substance of the Constitution. Formal mechanisms for community

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<sup>8</sup> As noted in the discussion of s 48, there is no general clause concerning enforcement of the Bill of Rights granting, for instance, a right of recourse to the courts in the case of infringement of rights. The right to petition the Supreme Court for an abstract review of constitutionality is limited to particular bodies/officials.

<sup>9</sup> UNDP, *Ukan rasik a’an: East Timor – the way ahead* (UNDP, 2002).

input were limited, a matter attracting significant criticism by observers and NGOs at the time. Indeed, the short length of the Assembly's deliberations, the dominance of one political party (FRETILIN) and the limited nature of public participation has been the focus of much of the subsequent commentary on the Timorese Constitution. However, to conclude that the Timorese Constitution was simply a transplant from another legal system (for example, to view the Assembly as having passively adopted the Portuguese Constitution) or a *fait accompli* by one political party is to render invisible the reflections on key issues of power and governance that occurred within the community and Assembly. Through bringing to the fore more details of these debates, it is hoped that future scholars and practitioners will be in a better position to evaluate the dominant influences in the constitutional process and appreciate the ideas generated (even if not always accepted) during this period, within and outside the Constituent Assembly.

The author has a personal connection with the project in several senses. Whilst employed with the Human Rights Unit of the United Nations Transitional Administration in East Timor (UNTAET), she was involved in assisting the Constituent Assembly and other stakeholders with advice (upon request) on means of constitutionally protecting human rights. One of the great privileges of this work was to observe the deliberations of the Assembly and the constitutional process more broadly. Given the UN's desire to ensure the process was, and was seen to be, owned by the Timorese, the UN's role in providing assistance was low key. However, the author was involved in supporting mechanisms for discussion of human rights issues, contributing analyses of draft Constitutional texts, addressing several thematic committees of the Assembly, advising the UN High Commissioner for Human Rights and the Special Representative of the Secretary-General for East Timor (SRSG) on points of engagement and monitoring the process more generally. A deep personal interest in Timor-Leste and its constitutional process developed as a result of this and subsequent work in Timor-Leste. Yet, rather than presenting a personal reflection on the process, this study aims to document the history of debates in a neutral form so as to enrich the ongoing understanding of the Constitution. Recognising the potential for bias arising out of personal involvement, however, care has been taken to engage in broad research with a range of institutions and organisations holding pertinent records to provide as complete a record as possible.

## Structure of this study

This study begins with an overview of the constitutional process: explaining the context of the UN administration, the consultations carried out by the UN and civil society in the lead-up to the formal Constituent Assembly process, and the Constituent Assembly process itself. The first chapter also provides

a summary of how the human rights clauses developed during the different phases of the process, and ends with some reflections on the major influences. The second part of this volume forms the bulk of this study and presents a section-by-section analysis of the Bill of Rights – highlighting movements in the text and the nature of debates within and outside the Assembly. The discussion of each section is structured around the major phases of the Constituent Assembly proceedings: examining the evolution of the text from the thematic committee stage, through the Systematisation and Harmonisation Committee to the Plenary of the Assembly. In addition to identifying textual changes, the analysis highlights the most salient points from the plenary debates, including the nature of proposed amendments to the text, and details submissions made to the Assembly.

## Sources, methodology and caveats

Capturing the history of the text and the discussions of the Bill of Rights – both within and outside the Constituent Assembly – has involved analysis of a wide range of primary materials. Available records included the draft texts produced by the Constituent Assembly and its committees, recordings of the plenary sessions, and submissions presented formally to the Assembly or disseminated at the time of the Assembly's functioning. Contemporaneous press releases of the Constituent Assembly have also been mined, particularly in relation to cross-checking data and providing evidence of the Assembly's formal stance on issues such as timetabling and public consultation.<sup>10</sup> Much of the material used in this study has been drawn from the archives of the Constituent Assembly, now held by the National Parliament, with additional documentation coming from records of the Human Rights Unit of UNTAET, and other interested individuals and organisations, including the personal files of the Chair of the Systematisation and Harmonisation Committee (Adérito de Jesus Soares), The Asia Foundation, Oxfam, UNICEF, and Yayasan HAK. To all who have opened their files so willingly, the author expresses sincere thanks. Likewise, an immeasurable debt of gratitude is owed to those colleagues and friends who have so generously assisted in interpreting or translating material (a full listing of which appears in my acknowledgments). Before presenting the substantive results of this research, a variety of caveats relating to the nature of the source material should be acknowledged. The section below thus outlines the documentation which has been accessed, noting, as relevant, particular

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<sup>10</sup> From week six of the Assembly onwards, the Secretariat, with assistance from the international NGO Internews, commenced producing a daily press release that focused on key decisions of the Assembly: for example, adoption of sections, timetabling decisions and the reading out of particular letters received by the Assembly.

limitations of the material. It draws attention to the particular complexity of the 'language factor' in the constitutional process, and highlights particular methodological decisions that have been taken in navigating these challenges.

## Available documentation relating to the Constituent Assembly process

### Draft texts of the Bill of Rights

Fortunately, the successive draft texts of the Bill of Rights provisions survive and can be examined in detail. Four versions of the text are extracted in this volume.<sup>11</sup> Starting from the earliest draft, they are:

(1) **Thematic Committee I's text** of 7 November 2001.

Thematic Committee I was the committee made responsible for producing the first draft of provisions on the topics of 'Duties, Rights and Freedoms; Defence and National Security'. Their text and accompanying report at the end of their deliberations was produced in Portuguese only. Annex III of the committee's report contained their finalised text, with underlining used to illustrate changes from the FRETILIN draft text.<sup>12</sup>

(2) the 'streamlined' text produced by the **Systematisation and Harmonisation Committee** and approved by the Plenary on 30 November 2001.

This text was produced following the completion of all thematic committee reports, and represented the first full draft text. It is this text which was used as the basis for plenary debates. The Portuguese version of this text was approved 'in principle' by the Plenary on 30 November, with a Bahasa Indonesian version being produced subsequently. An English version was also made available in the following week.<sup>13</sup>

(3) the revised **version used for the public consultation process**, approved by the Plenary on 9 February 2002.

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11 There were several additional interim texts generated during the process – in particular a text produced in early January by the Secretariat showing changes made by the Plenary until that date, and another created immediately after the public consultation process, showing changes which were the subject of consensus between the political party benches. Each has been used in informing the analysis presented in this study, but they are not quoted separately given their nature more as working documents rather than formal drafts.

12 Thematic Committee I, 'Final Report', 7 November 2001, [Portuguese], copy on file with the author.

13 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). For reasons explained further in the text under 'The language factor', the English version of this text presented in this study departs from the contemporary Assembly translation (also available on this website) in order to ensure consistency with the form of translation in the official English translation of the final Constitution.

This text was produced by the Systematisation and Harmonisation Committee following the plenary debate. It incorporated the changes made during the plenary session, as well as some further amendments and was approved by representatives of the thematic committees and party benches. On 9 February 2002, the Plenary approved this version for distribution for the public consultation process. The text was disseminated in its original Portuguese form, as well as in Bahasa Indonesian, Tetum and English.<sup>14</sup>

(4) the **final text** as adopted on 22 March 2002.

This text was approved and adopted by the Assembly through a roll-call vote. The original text was Portuguese, though translations were produced in Bahasa Indonesian, English and Tetum.<sup>15</sup>

As explained further in the discussion of the ‘language factor’ below, this study has relied upon the successive Portuguese texts as the ‘original text’ and presents the texts in English with a streamlined translation which uses the official English translation of the final Constitution (as used by the Government of Timor-Leste) as the base version.

## Constituent Assembly deliberations

**Thematic Committee I of the Constituent Assembly:** Thematic Committee I’s proceedings were not easily accessible for observers at the time. Nor were there any recordings of proceedings kept for posterity. Documentation of the thematic committee’s deliberations is thus largely limited to its formal Final Report presented to the Assembly. This report, however, is extremely useful in detailing the source of draft provisions and key decisions of the committee. Office holders of the committee also produced an abbreviated summary of its public hearing (in Bahasa Indonesian).

**Plenary discussions of the Constituent Assembly:** The Assembly foresaw detailed records being kept of its deliberations. Under the Internal Rules and Procedures of the Assembly, for example, the technical secretariat was tasked with preparing minutes of each plenary session and a Gazette of the Assembly, together with preparing the summary of the deliberations of the Plenary and the

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<sup>14</sup> A copy of this text in Portuguese can be found at [www.etan.org/et2002a/february/10-16/11etapro.htm](http://www.etan.org/et2002a/february/10-16/11etapro.htm) (accessed September 2014). For reasons explained further in the text under ‘The language factor’, the English version of this text presented in this study departs from the contemporary Assembly translation (also available on this website) in order to ensure consistency with the form of translation in the official English translation of the final Constitution.

<sup>15</sup> The final text of the 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). For ease of access, a copy of the Bill of Rights in its original Portuguese form is presented in Annex I.

committees for public information.<sup>16</sup> In reality, the amount of record keeping (at least that which is currently accessible in the Parliamentary archives) appears to have been more limited. Of particular interest amongst surviving records are the:

*Recordings of the plenary debates:* No 'Hansard' exists of the plenary discussions of the Assembly. Fortunately, recordings were made of the plenary sessions in their multilingual format and these are retained on compact discs in the Parliamentary Audio-Visual Section. The recordings are not perfect. At times, handover times between interpreters, equipment failures and electricity outages created breaks in both the simultaneous interpreting and the recordings. In addition, with the passage of time, some of the recordings themselves have now deteriorated. The persistence of parliamentary staff in recovering material from corrupted compact discs was most appreciated. Notwithstanding their efforts, in some cases the damage to the discs could not be completely repaired, such that there are additional gaps in the recordings provided to the author. Contemporary notes of the author and/or other monitors have been used to supplement the record. Notwithstanding their limitations, the surviving recordings form a remarkable and valuable resource for retaining the history of the debates. It is to be hoped that in the future, transcription of these debates will be possible in the original languages and translation at least in the official languages of Timor – an epic task given the volume of debates and the language issues involved.

*Records of amendments:* Whilst the National Parliament's holdings include the text and voting records for some of the early successful amendments, the Secretariat was not able to locate records for all successful amendments, or indeed any of the unsuccessful amendments, put to the Plenary of the Assembly. Reliance has had to be placed on the information provided during the plenary sessions for these amendments. The interpreters (and some Assembly members) experienced particular difficulties when amendments were read out, for example, in Bahasa Indonesian, with the Bench on occasion being asked to provide Tetum translations for the benefit of Assembly members. In this study, translation of some of the amendments has been facilitated by noting the similarities with provisions in other Constitutions, particularly the Portuguese Constitution. Hopefully at some time in the future the written records of all amendments will be rediscovered and so be accessible to future researchers.

*Records of global votes:* The technical secretariat produced a record of the Assembly's 'global votes' on all provisions and there are partial records of the

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16 Internal Rules and Procedures of the Constituent Assembly, s 65(3).

official vote on successful proposals for amendments.<sup>17</sup> As of the time of the author's research in 2007, access was gained to an annotated version of the text before the Plenary in December 2001, with stamped votes and attached successful amendments for ss 16–48. No similar document could be found for ss 49–61.

**Systematisation and Harmonisation Committee:** The outcome of this committee's deliberations is manifest in the draft texts produced: in particular the draft texts following analysis of the thematic committee's deliberations; the completion of the plenary debates; and following the public consultation process. The specific reasoning of the Systematisation and Harmonisation Committee is not as accessible, however, given that many of the committee's deliberations took place in closed meetings. Although the author attended some of the early open sessions of the committee, no full record of the committee's proceedings or deliberations was located in the Assembly's files. Besides producing the draft constitutional texts, the Systematisation and Harmonisation Committee produced a key report summarising the results of the formal consultations (drawing together individual District reports and written submissions received) which has been used to structure the discussion of external submissions in Part 2.<sup>18</sup>

**Submissions made to the Constituent Assembly:** The Parliamentary Library and Archives have retained copies of submissions made to the Assembly, which were formally registered as received by the Secretariat. Not all submissions appear to have been captured through this formal process, so the author has supplemented this research with recourse to submissions held by other interested bodies, including the Human Rights Unit of UNTAET, The Asia Foundation, Yayasan HAK, UNIFEM, UNICEF, and the personal files of the Chair of the Systematisation and Harmonisation Committee.

### Deteriorating nature of the archival record

It is of some concern that the records of the Constituent Assembly maintained by the National Parliament appear to be languishing and in some cases deteriorating. At the time of carrying out this research, the location of records relating to the Assembly was diffuse – with some records held in the Executive office of the Secretariat, others in the general Secretariat section and others in the Archives of the Parliament. No central index of holdings existed to assist location of relevant records. During the author's second research visit, there were some instances in which previously accessible documentation could no

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17 Very occasionally, a discrepancy between the Secretariat's record of global votes and the recording of the actual vote was discovered. In these cases, the vote from the recording has been preferred and the discrepancy noted in a footnote.

18 In Part 2 of this study, it is noted whether submissions were included in this summary report, or were otherwise received by the Assembly.

longer be found (for example, the copy of the text being considered by the Plenary annotated with the amendments adopted for ss 16–48 located in 2007). Whilst resources limitations may present a real challenge, it is to be hoped that in future years, renewed efforts will be taken to preserve and organise this historic material as an important part of Timor's legal history.

## The 'language factor' of the Constituent Assembly

The most evident complexity in compiling and analysing information related to the Constituent Assembly might be termed the 'language factor'. The Internal Rules and Procedures of the Assembly designated Portuguese and Tetum as the languages to be used in the Constituent Assembly. Provision was also made for members to use Bahasa Indonesian or English.<sup>19</sup> In reality, Tetum was the most commonly used language for expressing opinions, followed by Portuguese. A few members spoke in Bahasa Indonesian, particularly when proposing amendments (most frequently members of the Democratic Party (PD)). It was not uncommon, however, for members to use several languages in the course of their interventions. Proposals that were put forward from the floor of the Assembly were largely in Portuguese, though a few were submitted in Bahasa Indonesian. Written texts of the draft Constitution were produced first in Portuguese and then translated into Bahasa and English, and sometimes Tetum. It was the Portuguese version of the draft text, however, that was regarded as the original version throughout the drafting process.

Many of the younger members of the Constituent Assembly were not fully conversant in Portuguese,<sup>20</sup> whilst some members of the Assembly (including the President of the Assembly) did not speak Bahasa Indonesian. As part of the UN support for the process, simultaneous interpreting of plenary sessions was offered, though there were days when the absence of staff meant that no interpreting was available. Interpreting facilities were only offered in the main room of the Constituent Assembly and were not available for committee deliberations. Submissions were also made to the Assembly from officials and civil society groups in varying languages: Tetum, Portuguese, Bahasa Indonesian and English. Unless an individual/group provided translations of their submissions, these submissions remain available only in the original language.

As a predominant English speaker, the author has relied heavily on translated and interpreted material. In the course of navigating the available sources and making decisions on what to include in this study, some specific methodological decisions have been taken which are outlined further below.

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<sup>19</sup> Internal Rules and Procedures of the Constituent Assembly, s 5.

<sup>20</sup> At an early stage of proceedings, 31 members of the Assembly indicated that they would like the Bahasa Indonesian version of the draft text.

## Some challenges in using translated and interpreted material

**Translations of the draft texts:** In relation to the written documentation left by the Assembly, in particular, the draft texts produced by committees or adopted by the Plenary, differences are apparent in the Assembly translations of successive texts. This means that, for instance, one can look at contemporary English versions of successive draft texts and believe there has been a change in the language, when recourse to the same texts in Portuguese reveals no such change. In such cases, the variance in the English versions relates to a difference in translation (or an error in translation), rather than an amendment to the text. Particularly common in this respect were matters such as *'todo o cidadão'* being wrongly translated as 'everyone' rather than 'every citizen' in the distributed English text. At other times, variations occurred in the ordering of terms. Some differences were relatively benign and relate most probably to individual translators' preferences, or a refinement of the translation over time. On a few occasions, phrases or whole subsections were incorrectly retained or omitted in the process of translation. This was an irritant for Assembly members – leading to sporadic debate over whether clauses had been adequately translated, in particular, whether the Bahasa Indonesian version was identical to the Portuguese text being debated. These translation issues also raise particular issues for recreating the drafting history.

There are also two versions of the final text in English, albeit reflecting relatively minor differences. One translation appears in a pamphlet produced by the Assembly. The other version, incorporating some minor refinements, is presented on the Government of Timor-Leste's website as the official English version and appears in the United Nations compilation of laws for Timor-Leste.<sup>21</sup> Having recourse to what was gazetted in the *Jornal da República* unfortunately does not resolve the issue since the Constitution was published only in Portuguese and Tetum in that source.<sup>22</sup> However, the website of the *Jornal da República* links to the United Nations compilation of laws version for laws made during the UNTAET period (including the English version of the Constitution).<sup>23</sup> In light of its continued usage by the Government of Timor-Leste, it is this second-mentioned text that has been used as the official translation of the Constitution.

## **Reliance on the Portuguese 'original text' and streamlining the translation of draft texts to the official translation:** In order to reflect the clauses being

21 This version can be found on the government's website 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).

22 The Portuguese and Tetum versions of the Constitution appear in the *Jornal da República*, 2003, Série 1, No 1, 1st Suplemento (4 June 2003) 1.

23 For the link to the Constitution in the UN's compilation of laws for East Timor from the website of the *Jornal da República*, see [www.jornal.gov.tl/lawsTL/RDTL-Law/index-e.htm](http://www.jornal.gov.tl/lawsTL/RDTL-Law/index-e.htm) (accessed September 2014). Whilst the UN website includes a general disclaimer that its translations have no official status, its adoption by Timorese authorities (through the *Jornal*) has been taken into account in this study.

debated, primary reliance has been placed on the successive Portuguese texts as the 'original texts'. Translation of these texts into English for presentation in this volume has been 'streamlined' according to the form of translation employed in the official translation of the final text. Thus where the Portuguese text of a clause did not change from one text to the final text, the official English language version of the final text is reproduced. At times this has involved departing from the contemporaneous Assembly translations of draft texts submitted to and approved by the Plenary.

Replicating verbatim the Assembly translations of draft texts without exception was considered. However, in the course of analysis, it became apparent that this approach risked leading either to an overestimation of changes made by the Assembly in some cases (where the Portuguese text remained consistent, but the English translation changed), or an underestimation of changes (where the English translation failed to mirror changes in the Portuguese text), or might otherwise prove misleading (where significant errors were made in the translation). As the primary purpose of this study is to assist in the ongoing understanding of the Constitution, a 'streamlined' approach to translation using the official English translation as the base standard, seemed to better reflect the major contours of debates. This decision has also been taken against the background that only a minority of participants and observers were looking at the English version of the text. Assembly members, for instance, were using primarily the Portuguese or Bahasa texts as the basis of their deliberations. Many of the changes made for the purpose of streamlining are minor. Yet where significant changes have been made to an Assembly produced translation, these changes are noted.

Using the official translation of the final Constitution means that some phrases reproduced in this study may appear awkward or grammatically questionable to the native English speaker. Readers familiar with both Portuguese and English who compare the final Portuguese text and the official translation may consider that an alternative form of wording might have been preferable on occasion, and may pick up some inconsistencies in the official translation. However, with the exception of a few instances in which either clarifying words have been added in square brackets to assist understanding (for example, inserting 'ethnic' after 'ethnic'), a phrase overlooked in translation has been reinserted or an extraneous space has been removed, the translation preferred in the official English version of the Constitution has been retained.

**Interpretation of plenary debates:** The highlights of the plenary debates presented in this volume rely heavily on contemporary or subsequent interpretations. Fortunately, on many days of the Assembly, simultaneous interpreting into English was available through the sound system to observers and it has been captured on the recordings. The UN-employed interpreters

performed well in a demanding environment, but there was some unevenness in the quality of interpretation provided. Interpreters had not necessarily been specifically trained for simultaneous work. In general, interpreters had been hired to translate from one language into another (for example, from Tetum to English). When Assembly members themselves used a variety of languages in their interventions (for example, Tetum and Portuguese, or Tetum and Bahasa), interpreters were not always able to follow proceedings. As noted earlier, handover times and equipment failures created breaks in both the simultaneous interpreting and the recordings available. On several days of the Assembly's sittings (particularly in the days leading up to Christmas 2001), no English interpreters were present.

In relation to these days (and in relation to gaps or significant ambiguities encountered in the interpretation on other days), the author has benefited profoundly from the generous assistance of many colleagues and friends in listening to the recordings and providing summarised interpretation. Whilst all care has been taken in using this material, the potential for error or misunderstanding in using these interpretations (rather than verbatim transcripts) must be acknowledged. Should any such errors be noted, comments would be most welcomed by the author. Finally, the focus has been on faithfully presenting the major points of interventions, even if at times this results in some awkwardness when presented in the English language.

Notwithstanding these caveats, this 'preliminary history' is offered to assist those seeking the details of Timorese constitutional history and to stimulate further research in this field. Ultimately, it is hoped that this volume will do justice in highlighting the aspirations voiced both within and outside the Assembly during the constitutional process, and that reflecting on these aspirations will in turn assist to nurture the ongoing commitment to translating these human rights guarantees into reality.

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