



# EAST TIMOR

CAPITAL: Dili

POPULATION: 1.1 million

GNI PER CAPITA (PPP): \$4,690

<b>SCORES</b>	<b>2006</b>	<b>2010</b>
ACCOUNTABILITY AND PUBLIC VOICE:	3.77	4.30
CIVIL LIBERTIES:	4.63	4.94
RULE OF LAW:	3.77	3.58
ANTICORRUPTION AND TRANSPARENCY:	2.77	2.98

(scores are based on a scale of 0 to 7, with 0 representing weakest and 7 representing strongest performance)

## Dennis Shoemith

### INTRODUCTION

On May 20, 2002, the Democratic Republic of Timor-Leste obtained its independence following nearly 25 years of brutal occupation by the Indonesian military, whose presence culminated in widespread bloodshed and destruction following a 1999 vote for independence. Since then, the young country has struggled to establish not only a working democracy but also a functioning state. Over the past seven years, it has made significant progress but has also experienced serious political crises, including threatening episodes of armed rebellion, attempted assassination of the president and prime minister, and violent communal conflict.

Between 1999 and independence in 2002, the United Nations Transitional Administration in East Timor (UNTAET) managed the transition to independence. In August 2001, the country elected an 88-member Constituent Assembly (CA) to draft a constitution. Fretilin—the leftist Revolutionary Front for an Independent East Timor, whose armed wing waged a low-grade insurgency against the Indonesian army during its occupation—won 57 percent of the national vote. In April 2002, Kay Rala Xanana Gusmão won the presidency with 87 percent of a direct popular vote. In 2002, the Fretilin-dominated CA passed a new constitution, enshrining basic political freedoms and a bill of rights. The CA then transitioned into the regular Parliament under a Fretilin government. This first administration was characterized by a power struggle between Gusmão, Fretilin, and Prime Minister Mari Alkatiri. Beneath

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the surface, communal tensions remained between geographical groupings of “easterners” and “westerners.” “Easterners” (the Lorosae), who claimed they had led the fight for independence, were affiliated with Fretilin and held most top positions in the army. The Lorosae perception was that “westerners” (the Loromonu) had tended to collaborate with the Indonesian occupiers. The Loromonu, meanwhile, perceived themselves as sidelined in the postindependence political arrangement.

In 2006, the young country descended into violence, as these deep-seated political divisions erupted into widespread clashes in the capital, threatening civil war. The unrest began in March, when roughly one-third (600 members) of the East Timor Defense Force (Falintil-FDTL/F) were dismissed for striking in protest of poor working conditions, low pay, and claims of discrimination by officers from the east against those from the west. In late May, FDTL soldiers killed 10 unarmed police officers under UN protection, sparking broader clashes with the police, many of whom had worked for the Indonesian administration. Frustration with the government’s failure to alleviate poverty and corruption, combined with objections to its response to the turmoil in the defense force, led numerous citizens to take up arms in factions ranging from “political-front groups, veterans groups and martial arts groups, to small street corner gangs and youth groups.”<sup>1</sup> Dozens were killed in the ensuing antigovernment protests and communal violence. At the peak of the crisis, approximately 150,000 people were displaced, approximately half huddled in camps in the capital Dili, where they remained for the next two years.

An Australian-led contingent of 2,200 foreign troops was deployed to ensure security and President Gusmão assumed additional powers, declaring a state of emergency that remained in place until August 2006. Still revered as a national hero for his role in resisting occupation, Gusmão maintained public support, while the Fretilin administration was widely discredited by the violence. Alkatiri eventually stepped down and Gusmão chose Nobel Prize-winner and former foreign affairs minister José Ramos-Horta to serve as prime minister until legislative and presidential elections could be held in 2007.

The elections brought an end to Fretilin’s dominance, with Ramos-Horta elected president and Gusmão eventually emerging as prime minister. The risk of instability emerged again in February 2008, however, when former army major Alfredo Reinado led an assassination attempt against both leaders. Gusmão survived the attack unharmed, but Ramos-Horta was severely injured and flown to Australia for treatment. Reinado, who had been arrested for involvement in the 2006 uprising but escaped from prison later that year, was killed during the attack.

This is the political context in which the search for public accountability and the rule of law has had to proceed in recent years. Contributing to political crises is the country’s widespread poverty. With approximately half the population living below the poverty line, the country remains the poorest in Southeast Asia.<sup>2</sup> Despite large oil and gas revenues and generous international

aid, poverty increased between 2001 and 2007, reflecting stagnation within the non-oil economy.<sup>3</sup> That most East Timorese are experiencing declining living standards renders high-level corruption a particularly sensitive source of public disaffection.

Despite these significant challenges, progress has been made. With international intervention, the crises of 2006 and 2008 have been weathered. The elections were successfully held and a transfer of power to the Parliamentary Majority Alliance (AMP) took place, with the AMP coalition government holding thus far. Life in Dili has improved and the IDP camps have been dismantled.<sup>4</sup> With the death of Reinado and the surrender of his cohorts, the threat of military rebellion has receded. The United Nations Integrated Mission in Timor-Leste (UNMIT) has renewed its mandate and the Australian forces remain in place to provide support. By early 2009, the “security situation in Timor-Leste [had] strikingly improved,”<sup>5</sup> and signs of economic growth had emerged. The present AMP government has drawn heavily on the state’s petroleum fund since 2007, lifting per capita gross national income from US\$550 in 2006 to US\$1,510 in 2009.

Nevertheless, political polarization and the prevailing culture of impunity surrounding both past abuses and ongoing high-level corruption pose a significant threat to the country’s further economic and democratic development. As such, East Timor remains a fragile state that will need considerable international support for some time to come.

## ACCOUNTABILITY AND PUBLIC VOICE

4.30

FREE AND FAIR ELECTORAL LAWS AND ELECTIONS	4.25
EFFECTIVE AND ACCOUNTABLE GOVERNMENT	4.25
CIVIC ENGAGEMENT AND CIVIC MONITORING	5.00
MEDIA INDEPENDENCE AND FREEDOM OF EXPRESSION	3.71

East Timor is an electoral democracy and experienced its first democratic transfer of power in 2007 following presidential and parliamentary elections.<sup>6</sup> Both sets of polls revealed declining public support for Fretilin, which had dominated the political scene since the country’s independence in 2002. The decline largely reflected frustration with ongoing corruption and poverty.

East Timor has a semi-presidential system, with a directly elected but largely symbolic president serving as head of state and a prime minister chosen from the parliamentary majority as head of government. In keeping with the five-year terms stipulated in the constitution, elections for the presidency and the unicameral Parliament were held in June 2007, marking the country’s first direct legislative elections since the Fretilin-dominated CA automatically became the country’s first parliament in 2002.

Under the current electoral system, voting is based on proportional representation and closed party lists. Some observers have raised concerns that

the arrangement distances representatives from the electorate, as voters have no input over the choice of individual candidates, and there is little incentive for parliamentarians to be responsive to local demands. Prior to the polls, in May 2007, several electoral reforms were adopted. The number of parliamentary seats was reduced from 88 to 65, and the 14 political parties that contested the election committed to a code of conduct honoring the free dissemination of political ideas and respect for the rights of rival parties.

Voter turnout reached 80.5 percent and some 2,750 international and local observers deemed the elections generally free and fair. Election coverage was open and detailed in newspapers and on public radio. Vote buying was not a significant problem, although there were a small number of reports of false returns. The Australian-led International Stabilization Force provided security on polling day, which was generally peaceful. The elections were nonetheless marred by violence in the period prior to and following the polls, particularly as they did not initially yield a clear victor. Two people died, approximately 100 were injured, and at least 7,000 displaced in clashes between party supporters. The greatest violence occurred in Baucau, followed by Viqueque, Oecussi, Ermera and Dili.<sup>7</sup>

In the presidential elections, Ramos-Horta emerged victorious in a runoff round, earning 69 percent of the vote and scoring a landslide victory over Fretilin's candidate. The results of the legislative polls proved more ambiguous. Although Fretilin obtained the largest number of seats (21), it fell short of a majority. The next largest party, the National Congress for Timorese Construction (CNRT), a new grouping launched by outgoing president Gusmão, secured 18 seats. In July, the CNRT announced that it would join several smaller parties to form a coalition, the Parliamentary Majority Alliance (AMP). This enabled it to attain a majority with 37 out of the 65 seats. In addition to CNRT, the AMP included the Democratic Party (PD; 8 seats) and the Social Democratic Association of Timor-Social Democratic Party (ASDT-PSD; 11 seats).

Deadlock ensued between Fretilin and CNRT, as each side sought to rely on the constitution to justify its right to form a government. The impasse was eventually broken when President Ramos-Horta, following constitutional provisions authorizing him to appoint the prime minister, asked CNRT and its leader Gusmão to form a government. Fretilin perceived the decision as biased, and violence erupted in Dili and other cities, adding to the number of displaced. Despite Fretilin's objections, its lawmakers nevertheless took their seats in Parliament by early fall. As a result, the legislative elections ultimately brought greater pluralism to Parliament and an end to Fretilin's dominance of government. Nonetheless, Gusmão's and Ramos-Horta's retention of the country's top two executive posts also illustrated the extent to which personalities and loyalties tied to the 1970s resistance to Indonesia continue to influence political outcomes more than programmatic or ideological platforms.

In 2009, reforms related to subnational government were introduced with the aim of decentralizing state services and bringing policy making closer to

local communities. In rural areas, local authority falls in the hands of village chiefs (*chefe de suco*) and below them, hamlet chiefs (*chefe aldeia*). In the 2004 local elections, citizens voted for their preferred hamlet and village chiefs, who were mostly affiliated with national political parties. For the October 2009 *suco* elections, the new electoral law enforced a closed voting list system, removing voters' ability to choose individual candidates. The village chiefs elected through the closed voting lists then select hamlet chief candidates for each *aldeia*. Voters in the aldeias thus lost their right to directly elect their own *chefe aldeia*. In February 2009, the Council of Ministers introduced a bill that would create new municipal assemblies. Reversing the ban on political party affiliation in the *suco* elections, the draft law imposes national party affiliation on all candidates for municipal assembly positions. Observers have raised concerns that should this become law, it risks re-creating at the local level the polarization present in national politics. If successful, decentralization reforms could deepen East Timorese democracy and strengthen central state legitimacy. Mismanaged, however, they risk imposing yet another layer of potentially inert bureaucracy and corrupt municipal politicians on rural communities.

The separation of powers is outlined in the constitution through a semi-presidential system and an independent judiciary. In practice, the government is dominated by a powerful political executive presiding over a Parliament of limited effectiveness. An immature judiciary is struggling to fulfill its role of holding the other branches to account. By law, the directly elected president is largely a symbolic figure, with formal powers limited to the right to veto legislation and appoint officials to certain positions. In practice, both Gusmão and Ramos-Horta have, while serving as president, played a key role in forging the country's political reality and dynamics. The Council of Ministers (the political executive) has the authority to legislate, in addition to Parliament. In recent years, this power has been used to introduce controversial decree laws, such as the 2006 penal code legislation intended to impose harsh penalties for defamation and public criticism of the government (the law, overtaken by the 2006 political crisis, was not promulgated).<sup>8</sup>

The Fretilin government that ran the country from 2002 to 2006 tended to ignore Parliament. The two transitional governments that governed after Alkatiri's resignation in June 2006 did so during periods of political turmoil, limiting their effectiveness. The installation of the AMP-led government in 2007 has thus been the first opportunity for Parliament to develop an independent role. It has begun to assert itself, with the Fretilin-led opposition regularly mounting determined criticism of the government. Parliamentarians have posed serious questions during budget sessions and in October 2009, Fretilin moved a vote of no confidence against the prime minister after he ordered the release of an Indonesian national accused of human rights abuses. The motion was ultimately defeated but only after a day of vigorous debate.

Nevertheless, Parliament has yet to fully exercise effective oversight over the executive.<sup>9</sup> On the Fish-Kroenig Parliamentary Powers Index, East Timor's score

remains low, failing many of the criteria for a strong legislature. Weaknesses cited include the fact that Parliament neither appoints nor can remove the prime minister, ministers do not sit in parliament, the executive is not answerable to the legislature, and the Council of Ministers has its own independent power to issue decree laws.<sup>10</sup> More practically, Parliament continues to lack the human and financial resources needed to significantly influence policy making. Parliamentary committees struggle to perform their oversight functions. Legislative scrutiny is uneven, and until recently, review and amendment of bills has been rare. This is due in part to linguistic obstacles: the language of Parliament is Portuguese, which most MPs have not mastered, and translation of legislation into the more commonly spoken Tetum remains slow.

The task of building a competent civil service from its state of complete destruction in 1999 remains daunting. The United Nations Development Programme (UNDP) and the World Bank have voiced concerns that the processes outlined in the 2004 Civil Service Act lack sufficient procedures to ensure impartiality in decisions of recruitment and promotion.<sup>11</sup> Civil service salaries are low, increasing the potential for corruption and making it difficult to attract capable staff for senior and mid-level positions. Several ministries have, nevertheless, managed in recent years to appoint highly competent individuals to top positions. The AMP government committed to improving the situation, declaring 2008 “the year of administrative reform” and subsequently establishing a Civil Service Commission with support from international donors. The commission’s members were inaugurated in August 2009 and are generally perceived as competent. The government continues to work with the United Nations and other donors to further professionalize the civil service.<sup>12</sup>

Timorese are free to form political and voluntary organizations, and the space for a diversity of voices has expanded since Fretilin’s defeat in the 2007 elections. There are no laws currently regulating the nongovernmental organization (NGO) sector, though some have been in development in recent years. In the meantime, a self-administered registration system is in place. Local and international NGOs face challenges in their attempts to operate effectively across the divide between the social and political centers, the cities of Dili and Baucau, home to the country’s small middle class. In rural areas, where the great majority of the population resides as subsistence farmers, civil society assumes more traditional East Timorese forms. The international community is active and well represented in East Timor. Donors and funders of civic organizations are largely free of government pressure.

Local civil society organizations are gradually becoming more experienced and professional, increasing their ability to engage in effective dialogue with the government on policy and legislation. La’o Hamutuk (Walk Together), a joint East Timorese-international NGO, regularly produces well-researched critiques of government policy. Several NGOs monitoring human rights have worked closely with the Office of the Ombudsman for Human Rights and Justice (PDHJ), while a number of groups also provide pro bono legal aid and support

for victims of human rights violations. The government has generally welcomed consultations with civic organizations such as the NGO Forum. Government efforts to establish a code of conduct for NGOs are intended to improve the dialogue between the state and civil society.<sup>13</sup> Nevertheless, the government has at times reacted negatively to what it perceived as unfair criticism from NGOs. This has been especially true with regards to criticism of its decision not to prosecute individuals allegedly responsible for war crimes committed during the Indonesian occupation.

Compared to the strict censorship in place under the Indonesian occupation, today East Timor's media operate in a relatively free environment. At least five private daily and weekly newspapers publish regularly and several more appear sporadically. As nearly 50 percent of the population remains illiterate, radio is the dominant medium. Following independence, broadcast media were mainly comprised of public radio and television outlets, including Radio Timor Leste, estimated to reach over two-thirds of East Timorese. In recent years, however, community radio stations—many with international funding—have proliferated and are playing an increasingly important role in the media landscape.

Despite such improvements, both the Fretilin and the AMP governments have attempted at times to limit free speech. Some journalists have faced legal and physical intimidation for criticizing the government. Officials often seek to justify such restrictions as necessary given the immature and sometimes irresponsible nature of East Timorese journalism and the need to protect national stability. In January 2008, following the publication of inflammatory interviews with rebel leader Alfredo Reinado, the prime minister warned that journalists risked arrest if they reported “erroneous” information.

The 2002 constitution guarantees free speech and freedom of the press. Nevertheless, journalists have been prosecuted for defamation under articles in the still-operational Indonesian penal code. In late 2008, Minister of Justice Lucia Lobato relied on the law to file criminal defamation charges against José Belo, editor of the weekly *Tempo Semanal*. The charges focused on an article Belo had published that alleged the minister had improperly awarded government contracts to friends and business contacts. If convicted, Belo—who was imprisoned during Indonesia's rule for passing human rights information to foreign journalists—would face fines and up to six years in jail.

In 2006, the Fretilin government drew up a new penal code to replace the Indonesian one, which it issued as a decree law and submitted to the president for assent. The proposed law drew international and domestic condemnation because of its retention of harsh criminal penalties for defamation.<sup>14</sup> President Gusmão sent the legislation back to the Council of Ministers without signing it, and it eventually lapsed due to the 2006 political crisis and change of government. In early 2009, the AMP government drafted its own proposed media laws. The proposals would decriminalize defamation, creating instead a national media council, appointed by Parliament and possessing authority to mediate defamation cases. Its powers would include issuing or revoking licenses

of journalists, as well as the ability to impose fines of between US\$500 and US\$2,500 for individual journalists and of up to US\$10,000 for newspapers. The draft bill also provoked criticism from local journalists and international press watchdogs. The Southeast Asian Press Alliance (SEAPA) stated that it was “deeply disturbed” by the proposed laws, which would “severely damage the environment for press freedom and free expression.”<sup>15</sup>

Journalists occasionally face intimidation or physical assault. In February 2008, Mouzinho de Araujo, a senior journalist with the *East Timor Post*, was arrested and beaten up by military police. The newspaper lodged a complaint with the government, which subsequently issued a formal apology for the use of “unjustified force.” Internet access is not subject to any restrictions, though less than 1 percent of the population accessed it in 2009 due to infrastructural limitations and poverty.

## CIVIL LIBERTIES

4.94

PROTECTION FROM STATE TERROR, UNJUSTIFIED IMPRISONMENT, AND TORTURE	3.88
GENDER EQUITY	4.67
RIGHTS OF ETHNIC, RELIGIOUS, AND OTHER DISTINCT GROUPS	4.50
FREEDOM OF CONSCIENCE AND BELIEF	6.67
FREEDOM OF ASSOCIATION AND ASSEMBLY	5.00

East Timor has ratified all of the core international human rights treaties, including the United Nations Convention against Torture and its optional protocol. Notwithstanding its limited resources, East Timor has largely complied with UN human rights mechanisms, and since August 2006, UNMIT has deployed human rights officers in the field. Nonetheless, a prevailing culture of impunity for past and current abuses poses a significant obstacle to better civil liberties protections and an end to the cycles of sporadic violence that have plagued the country.

On multiple occasions in recent years, reports have emerged of police and security forces using violence against detainees. A 2006 Human Rights Watch (HRW) report detailed pervasive police torture and mistreatment. Such findings, along with police participation in violent clashes that spring, led the UN Police Force (UNPOL) to assume control over national policing in September 2006. At its peak, approximately 1,500 UNPOL officers were stationed in East Timor to ensure internal security. Since then, there has been a phased transfer of responsibility back to the Policia Nacional de Timor-Leste (PNTL) intended to conclude in 2010. As of mid-2009, PNTL units were responsible for security in Lautem, Aileu, Manatuto and Ainaro. UNPOL continued to maintain a presence in these areas, however, with a special responsibility to monitor respect for human rights.

As the PNTL and other forces began to resume security responsibilities since 2007, reports of mistreatment reemerged. The U.S. State Department has detailed serious incidents of “cruel and degrading treatment of civilians” by security forces, particularly the PNTL Task Force, a rapid reaction police unit formed in December 2007. The Office of the Ombudsman, UNMIT’s human rights unit, and NGOs received dozens of complaints of excessive use of force by security personnel throughout 2008.<sup>16</sup> In the earlier part of the year, security forces attacked civilians as they sought to restore order in the aftermath of assassination attempts against President Ramos-Horta and Prime Minister Gusmão. The F-FDTL and the PNTL Joint Command force, set up after the attacks, was reportedly responsible for beatings, intimidation, and unlawful searches in rural areas.<sup>17</sup> In his report to the Security Council in early 2009, however, UN Secretary-General Ban Ki-Moon noted that by that time “allegations of ill-treatment and excessive use of force and intimidation during arrests [had] decreased.”

Conditions in the four government-run prisons in Dili, Baucau, and Gleno are reported to generally meet international standards, although they lack provisions for mentally ill prisoners and there have been some allegations of prisoner mistreatment. Police station detention cells, particularly in rural areas, do not comply with international standards. Detainees in district police cells suffer from lack of nutrition, sanitation, and bedding. The ombudsman regularly monitors prison conditions, as do international human rights observers and the International Committee of the Red Cross via occasional visits. There appeared to be no civilian oversight of the military prison operated by the F-FDTL, however.<sup>18</sup> Prison security has at times been lax, as in August 2006, when Major Reinado escaped from Dili’s main jail with 56 others after breaking down several walls on the east wing. Excessively long pretrial detention and delays in completing judicial procedures also remain problems.

As security has improved following the series of crises between 2006 and 2008, political opponents of the AMP government and peaceful activists have not been threatened by state violence. The current trial of the 28 individuals accused of taking part in the armed attacks against President Ramos-Horta and Prime Minister Gusmão is being conducted via a regular legal process before a panel of three judges.

Some avenues for redress exist for victims of human rights violations. In 2004, legislation was passed creating the PDHJ, with a dual mandate covering “Human Rights and Justice” and “Good Governance and Anti-Corruption.”<sup>19</sup> The PDHJ is an independent statutory body and has been free of government control. It has the power to conduct investigations as well as to recommend appropriate action to government agencies for preventing or redressing instances of illegality or injustice.

In 2006, the Fretilin government appointed Dr. Sebastio Dias Ximenes as ombudsman. Almost immediately and under extremely difficult conditions, he

began investigations into excessive use of force, illegal detention, and unlawful killings of civilians during the 2006 political crisis. When a state of emergency was declared after the February 2008 assassination attempts, he presented a report to Parliament, detailing cases of human rights violations by police and military personnel. The ombudsman concluded that “the Timorese state had violated the rights to freedom and physical integrity, right to liberty and the right not to be subject to torture or other cruel, degrading or inhuman treatment by members of the Joint Command—both police and military.”<sup>20</sup> By August 2009, the PDHJ had received 213 complaints of human rights violations and opened 88 cases for investigation. Most cases related to excessive use of force by the police and military, but some addressed discrimination, the right to demonstrate, and the right to freedom of expression.<sup>21</sup> The effectiveness of the ombudsman’s investigations has been undermined, however, by a lack of follow-up by other agencies. This includes the inability or unwillingness of the PNTL’s internal Professional Ethics and Deontology Unit to take appropriate action to discipline officers named in ombudsman investigations.

The broader issue of holding accountable those responsible for serious rights violations in 1999 and again in 2006 remains largely unresolved, however, further contributing to the country’s cycle of impunity. The Indonesia-East Timor Commission on Truth and Friendship handed down its final report in July 2008, concluding that the Indonesian government and military directed the scorched-earth campaign that took place after the 1999 independence vote. The presidents of both countries accepted the results, but little effort has subsequently been made to hold those responsible for the abuses to account. On the contrary, President Ramos-Horta used the 10-year anniversary of the UN-supervised vote for independence to announce that “there will be no international tribunal.” This provoked a wave of criticism from both East Timorese and international advocacy groups. President Ramos-Horta has defended the decision by insisting that East Timor and Indonesia should put the past behind them. The handover of Maternus Bere, a former Indonesian militia leader awaiting trial on charges of crimes against humanity, to protective custody in the Indonesian embassy in August 2009 prompted the UN High Commissioner for Human Rights to write to President Ramos-Horta expressing his “deep concern” at the decision: “It would seem to violate article 160 of Timor-Leste’s Constitution.... You will equally be aware of the United Nation’s firm position that there can be no amnesty or impunity for serious crimes such as war crimes, crimes against humanity, and genocide.”<sup>22</sup>

A UN Independent Special Commission of Inquiry published its findings on the May 2006 violence in October of that year. It recommended the prosecution of then minister of the interior Rogério Lobato for supplying two armed groups with weapons and instructing them to attack F-FDTL soldiers. The report also blamed Prime Minister Alkatiri for the outbreak of violence. While charges against Alkatiri were dropped for lack of evidence, Lobato was tried and convicted in March 2007.<sup>23</sup> He was sentenced to seven-and-a-half

years in prison. In May 2008, however, President Ramos-Horta pardoned him along with 94 other prisoners. In June 2007, the still Fretilin-dominated Parliament passed a clemency law enabling criminals to apply for clemency for crimes committed between April 2006 and April 2007.<sup>24</sup>

A majority of East Timorese males are members of martial arts groups that were involved in the communal violence of 2006–07, aligned either with “easterners” or “westerners.”<sup>25</sup> Gang violence has fallen, but robberies have grown in frequency and martial arts groups remain active, particularly in Dili. Though organized crime does not have a significant presence in East Timor, some networks are involved in petty racketeering.<sup>26</sup> Human trafficking, mostly of Chinese and Indonesian women, has emerged as a problem in recent years. The government has taken some steps to address it, with police arresting 10 members of an alleged human trafficking syndicate in July 2009, most of them Chinese nationals.

Under the constitution, women are guaranteed equal rights “in all areas of family, political, economic, social and cultural life.” Electoral laws require that party lists in parliamentary elections include a woman as at least every fourth candidate. As a result, female representation in the national legislature is one of the highest in Asia, though women still only fill 18 of 65 seats. One political party is led by a woman, Fernanda Borges of the National Union Party (PUN), who also chairs the parliamentary committee overseeing constitutional, justice, and human rights issues. Nevertheless, women remain underrepresented in senior civil service positions.

Women occupy a disadvantaged position in the subsistence economy, with twice as many men as women engaging in paid labor. In cities, unemployment is significantly higher among women than men, and women are more concentrated in lower-income-generating occupations.<sup>27</sup> Domestic violence remains an entrenched problem. Only a marginal fraction of cases are reported to the police, and even fewer are prosecuted. Due to the weakness of the legal system, customary law is followed by some rural communities to address accusations of sexual violence, offering limited justice to victims. In a positive development, the new 2009 penal code criminalizes domestic violence as a public crime, authorizing police to arrest a suspect without a complaint by the victim. In September 2008 the government launched a Say No to Violence against Women public education campaign.

East Timor is a signatory to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). The AMP government has committed to mainstreaming gender in socioeconomic development programs, with priority given to the education, health care, justice, and law enforcement sectors. The PDHJ works with the East Timor CEDAW Committee to address domestic and sexual violence against women. Nonetheless, there exists no comprehensive domestic legislation for the elimination of discrimination against women or prohibiting sexual harassment. Abortion laws remain contentious in a society with a strong Catholic tradition, on the one hand, and high rates of

maternal mortality, unsafe abortions, and unwanted pregnancy, on the other.<sup>28</sup> Following international pressure and despite opposition from religious leaders, the new penal code permits abortions when the mother's life is endangered. Medical practitioners terminating a pregnancy under other circumstances continue to face potential imprisonment of up to three years.<sup>29</sup>

The constitution and other legislation prohibit all forms of discrimination and the state generally does not discriminate on ethnic or religious grounds. However, a policy adopted under the Fretilin government for Portuguese to be the official language of the courts and state agencies has left many Timorese disadvantaged. As of 2002, only 5 to 6 percent of citizens spoke fluent Portuguese, though some estimates place the current ratio closer to one-third. Although Tetum, a widely spoken local language, is a second official language, the state lacks resources to translate all government materials. As a result, many Timorese continue to be marginalized economically, socially, and politically by the Portuguese language policy,<sup>30</sup> generating resentment particularly among those educated in Indonesian during the period of occupation.

Under the constitution, disabled citizens are entitled to equal rights as well as state protection. In practice, however, in a society already struggling to provide its citizens with basic services and livelihood, the disabled are severely disadvantaged. The lack of accessibility to buildings, partly the result of the absence of legislation mandating such access, limits employment and educational opportunities for many.

East Timor is a secular state, but the Roman Catholic Church plays a central role, as 98 percent of the population is Catholic. The government is attentive to the views of the two Catholic bishops and sensitive to their opposition to some policies and laws, particularly on marriage, prostitution, and abortion. At times, the Church has organized public protests to force the government's hand on a particular issue.<sup>31</sup> Religious education is compulsory in public schools; an extensive Catholic school system also operates alongside the state-run structure. The constitution guarantees freedom of religion and the state does not attempt to interfere in the internal affairs of religious organizations or restrict religious observance. In recent years, there have been no significant clashes among different religious groups. The country has a small Muslim minority, and the current leader of the Fretilin opposition is a Muslim. Many Timorese continue to practice indigenous rituals, despite the dominance of the Catholic faith.

The rights to join trade unions, to bargain collectively, and to strike are protected in the constitution and labor code. However, written notice must be given 10 days in advance of a strike, and foreigners are not permitted to join unions. Unionization rates are low, as few Timorese are formally employed (an estimated 88 percent of the working population are self-employed or subsistence farmers). Enforcement of the labor code is weak and union leaders have complained that government inspectors favor employers in their monitoring and reports. A Labour Relations Board was established in early 2004 to hear disputes but has been largely inactive. On November 18, 2008, the president of the Timor-Leste

Trade Union Confederation (KSTL) and the secretary of the General Workers' Union were arrested by police and detained for several hours after taking part in a peaceful protest against a Singaporean employer who disregarded a Department of Labour directive to reinstate three dismissed workers.

The right to freedom of association and assembly is guaranteed in the constitution. Nevertheless, the Law on Freedom of Assembly and Demonstration promulgated in January 2006 requires that public protests be authorized by police four days in advance. The law also prohibits demonstrations within 100 meters of government offices, diplomatic missions, political party headquarters, prisons, or key infrastructure sites, such as airports or telecommunication facilities. In practice, demonstrations are permitted to take place without advance notification and the 100-meter regulation is rarely enforced. The government temporarily suspended the right to demonstrate during a state of emergency declared in February 2008 after assassination attempts against the president and prime minister, but the right was restored in full three months later.

## **RULE OF LAW**

**3.58**

INDEPENDENT JUDICIARY	3.40
PRIMACY OF RULE OF LAW IN CIVIL AND CRIMINAL MATTERS	3.40
ACCOUNTABILITY OF SECURITY FORCES AND MILITARY TO CIVILIAN AUTHORITIES	3.50
PROTECTION OF PROPERTY RIGHTS	4.00

In recent years, East Timor's fledgling justice system has been moderately strengthened, though it remains weak, particularly in rural areas. A government-UNDP partnership has borne fruit in technical improvements, and more native judges have taken a seat at the bench. At the same time, the government's apparent abandonment of any intention to pursue retributive justice for rights violations committed by Indonesian forces and a series of presidential pardons for perpetrators of more recent abuses has reinforced the country's cycle of impunity.

East Timor's legal system is a hybrid one that combines Indonesian law, UN regulations, and a growing body of legislation introduced by the Parliament and the Council of Ministers. Both the Fretilin and AMP governments have pursued an ambitious legislative agenda to establish the fundamentals of a national legal framework. Between 2002 and 2006, Parliament passed an average of 11 laws a year, while the Council of Ministers enacted over 80 decree laws. Some observers have raised concerns that this trend risks undermining parliamentary authority and limits public debate on key issues facing the country.<sup>32</sup> The government is currently considering the incorporation of customary law into the national legal framework.

The Court of Appeals is the country's highest tribunal and also performs the function of constitutional review until the establishment of a supreme court.

It therefore has the authority to rule on the legality of “acts by the organs of the State.” Under it are four district courts in Dili, Baucau, Suai, and Oecussi. Customary law and local dispute adjudication continue to operate in rural areas.

The constitution provides for judicial independence, stating that court decisions are binding “and shall prevail over the decisions of any other authority.” In practice, the establishment of a competent and independent East Timorese judiciary has proved to be a significant challenge, exacerbated by security crises and a dearth of qualified individuals to fill key judicial posts. Judicial functions still rely heavily on international judges, although the role of East Timorese jurists is increasing. Since independence, international justices from Portuguese-speaking countries have presided over district courts and the Court of Appeals, alongside two East Timorese judges.<sup>33</sup>

In recent years, the Court of Appeals has asserted its independence, ruling against the government on key constitutional and policy issues. Of particular note was a November 2008 ruling that a mid-year budget based on the withdrawal of US\$290 million from the national Petroleum Fund was above the permissible limit for withdrawal outlined by law and therefore unconstitutional. Moreover, it found that another deposit of US\$240 million into a newly established Economic Stabilization Fund violated several articles of the constitution. The president of Parliament appealed, but the court reaffirmed its ruling in December. Parliament was subsequently obliged to reduce the budget transfer from the fund back to the limits set by the relevant legislation.

Although the government complied with the court’s decision, the ruling also prompted somewhat of a backlash, particularly against the foreign judges serving on the Court of Appeals. President Ramos-Horta was quoted as saying that the international judges on the court did not understand the “reality of Timor and Timorese culture . . . and only follow European thinking.” The president of Parliament was similarly reported to have said it was “time the government brought the Court of Appeals into line.”<sup>34</sup>

The Superior Council for the Judiciary (SCJ) oversees the appointment and dismissal of judges. As of the end of 2008, the council was headed by Dionisio Babo Soares, secretary-general of Prime Minister Gusmão’s CNRT party. On the day of the above-mentioned budget ruling, the SCJ decided that one of the three judges who had made the ruling, Justice Nelson Rosa, would not be reappointed to his position.<sup>35</sup> The decision raised concerns among some observers that the council’s independence had been compromised. Justice Rosa appealed the decision not to reappoint him to the Court of Appeals, which then suspended it. He nevertheless returned to Portugal in March 2009.

Slow progress has been made in training native East Timorese, but the judicial system continues to suffer from an extreme shortage of qualified personnel, particularly outside the capital. The first round of Timorese judges and prosecutors appointed after independence lacked the requisite legal training and experience, with most failing qualification exams. A UNDP-supported Justice System Strengthening Programme, in partnership with the Ministry of

Justice, has produced better-trained judges and public prosecutors.<sup>36</sup> Parliament also passed legislation in September 2008 creating a new regulatory framework for legal training, setting up a code of conduct and process of formal accreditation after 15 months of obligatory training. By mid-2008, there were 13 East Timorese judges, 13 national prosecutors, and 11 national public defenders assigned to various courts, the prosecution, and public defender offices.<sup>37</sup> Nevertheless, international legal professionals continued to fill a large number of positions at every level of the system.

The presumption of innocence is constitutionally guaranteed. However, extreme shortages of magistrates and public defenders, particularly outside the capital, often undermine this right. As a result, police carry out arrests without warrants and retain suspects in custody longer than the permitted legal limit. In addition, long delays and a backlog of cases—reaching 4,700 criminal cases by 2008—contributed to the “culture of impunity” and weakened the standing of the court system in the eyes of the public.<sup>38</sup> Courts generally upheld the legal requirement for trials to be held in public. However, other obstacles undermined the impartiality of legal procedures. Witnesses were often hindered from attending trials due to logistical errors or lack of transportation. Linguistic and financial barriers continue to pose a challenge for improving access to justice. The language of the courts, and nearly all legislation, is Portuguese, which is insufficiently understood by some judicial officials and many litigants, defendants, and witnesses. The Asia Foundation has provided funding to translate legislation into English and Tetum, while trials are also conducted in Tetum; however, the quality of translation reportedly varied widely and was at times insufficient to fully ensure defendants’ rights. Court costs outlined under the new 2006 civil procedure code are too expensive for most Timorese. As a result of these impediments, many communities have no recourse but to fall back on customary methods of dispute resolution.

Prosecutors act independently of political interference. Prosecutor General Ana Pessoa, a former justice minister in the Fretilin government, was appointed in March 2009 and has extensive legal experience as a magistrate in Mozambique. Nevertheless, the prosecutorial services also suffer from shortage of quality personnel, contributing to the country’s case backlog.

Respect for the rule of law is undermined by a lack of political will to pursue justice against those responsible for serious human rights abuses.<sup>39</sup> The government has emphasized reconciliation over justice in its response to 1999 crimes involving senior Indonesian military officers. Apart from Rogerio Lobato’s trial and conviction, no senior government official has faced prosecution for abuse of office or criminal actions. Allegations that surfaced in 2008 and 2009 of fraud at high levels of government have not led to prosecutions.

Security sector reform remains vital to state building in East Timor and has only been moderately successful. Under the Fretilin government, the security forces were politically aligned: the army with President Gusmão and the police with the Fretilin-controlled Ministry of Interior. In March 2006, 594 soldiers

were dismissed for desertion and by April the F-FDTL was divided into warring factions, the dismissed “Petitioners,” broadly identified with the western districts, and loyalists identified with the east.<sup>40</sup> These divisive loyalties exploded in May 2006, when army units turned on the police, in one incident killing 10 unarmed police officers under UN protection. The situation was eventually normalized with international intervention after the police force was relieved of its duties and the rebel soldiers arrested. Nevertheless, the combined collapse of the PNTL and rebellion in the army ranks threatened the very survival of the state.

As of mid-2009, civilian control over the police and security forces had largely been reestablished. The UNPOL mission largely succeeded in restoring security to the country, but has yet to effectively complete the process creating a professional, apolitical, and competent PNTL.<sup>41</sup> Similarly, Special Representative Atul Khare warned the Security Council in October 2009 that the root causes of the 2006 violence remained and that East Timor continues to require international security assistance.<sup>42</sup>

Human rights education programs have been put in place for police and security personnel, but instances of abusive behaviour continue to be reported. A UN analysis in August 2008 reportedly found that abuses by the PNTL had shown a “notable increase” over the previous year. Tensions between UNPOL and the PNTL have arisen over the reported involvement of some police in smuggling, extortion, and martial arts gangs or clandestine societies.

Property disputes present a significant policy challenge for the state and contributed to communal violence in 2006. A lack of records and legal framework for resolving conflicting claims has exacerbated the problem. Establishing title is complicated by competing Portuguese, Indonesian, and customary law-based claims, as well as a shortage of land records, which were taken by Indonesian forces on their departure. In rural areas, disputes may be resolved by customary methods, a remedy unavailable in many urban centers. Recurrent displacement has further provoked conflict over property and disturbed customary land use patterns. During the Indonesian occupation, entire villages were resettled as part of a counterinsurgency strategy. In the 1999 violence, some 200,000 Timorese fled inland, while tens of thousands were forcibly deported into Indonesian West Timor. In 2006, over 100,000 people were again forced to flee their homes, which were then occupied by others. In some instances, gangs evicted mostly “easterner” families and then seized or set fire to their homes. Over two years later, IDP encampments in Dili were able to be dismantled thanks to an assisted resettlement program.

The absence of a legal framework for determining property rights and resolving disputes has also inhibited foreign and local investment. A foreign donor-supported land law project begun in 2003 has sought to address the problem by establishing a land registry and encouraging the drafting of a land law. In June and September 2009, the government released drafts of a land law for public consultation. The bill, expected to be passed by Parliament by the

end of 2009, takes a three-pronged approach: adopting the principle of recognition based on possession before title; compensating claimants who can demonstrate a prior right to title; and recognizing community land.<sup>43</sup> Investment, banking, and insurance codes still await legislation.

<b>ANTICORRUPTION AND TRANSPARENCY</b>	<b>2.98</b>
ENVIRONMENT TO PROTECT AGAINST CORRUPTION	2.75
PROCEDURES AND SYSTEMS TO ENFORCE ANTICORRUPTION LAWS	3.00
EXISTENCE OF ANTICORRUPTION NORMS, STANDARDS, AND PROTECTIONS	3.00
GOVERNMENTAL TRANSPARENCY	3.17

Despite growing transparency in parliamentary budget debates, neither the Fretilin nor the AMP governments have administered the state with sufficient transparency to reassure citizens of governmental competence and integrity. Citizens are highly conscious of what was known during the Indonesian occupation as KKN (*korupsi, kolusi, nepotisme*; corruption, collusion, and nepotism) and there is a perception that KKN has taken hold in an independent East Timor. The sharing of ministerial responsibility among five coalition partners under the AMP government has further complicated executive control over policy making when compared to the highly centralized Fretilin administration.

Transactions with government departments remain marred by opaque regulations, clumsy bureaucracy, and arbitrary administrative procedures. The World Bank's *Doing Business 2010* report for East Timor notes significant improvement in tax collection and procedures for starting a business but still ranks the country only 164th out of 183 for overall ease of doing business. The country scored the lowest possible on 3 of the 10 criteria (registering property, enforcing contracts, and closing a business).<sup>44</sup> East Timor ranked 145th out of 180 on Transparency International's 2008 Corruption Perceptions Index.

Financial disclosure procedures are inadequate for preventing conflicts of interest among public officials. This has contributed to recent scandals involving high-ranking AMP government officials, a phenomenon that had also arisen under the previous Fretilin administration. Reports have emerged of a petroleum contract awarded to the husband of Justice Minister Lucia Lobato, as well as accusations that US\$8.8 million were "lost from government accounts" and "unauthorized bank accounts held by senior government officials."<sup>45</sup> In 2009, Fretilin politicians accused Finance Minister Emilia Pires of allegedly appointing friends with dual East Timorese-Australian citizenship to highly paid international adviser positions within the ministry. The World Bank became involved as the salaries in question were paid from the budget of the institution's Public Finance Management Capacity Building Project (PFMCBP).<sup>46</sup>

Senior members of the government, as well as the ombudsman, appear to have taken the allegations seriously, though prosecution has been absent. In

April 2009, Deputy Prime Minister Mario Carrascalão, charged with fighting corruption within the government, was reported to have called allegations against Justice Minister Lucia Lobato “very grave,” while acknowledging signs of high-level corruption in the Ministry of Finance.<sup>47</sup> Finding the allegations against the finance minister to be credible, the ombudsman forwarded the case to the public prosecutor. The prosecutor general’s office, however, has yet to take decisive action. Under the Alkatiri administration, no major case of official corruption involving senior politicians or officials was prosecuted before the courts. So far, this trend has continued under the current government.

Several agencies are tasked with auditing and overseeing government actions. The main anticorruption watchdog, the Office of the Inspector General (OIG), has been active in recent years. According to official sources, in addition to hosting anticorruption-related seminars, between 2006 and 2008 the OIG conducted and published 25 reports auditing a range of government projects. Although a majority of reports were submitted to the prime minister, several were forwarded to the prosecutor general.<sup>48</sup> In May 2008, the government announced that it would be reforming the OIG’s mandate to increase its powers and independence, including having it report to a parliamentary committee rather than to the prime minister.<sup>49</sup>

In addition to addressing human rights complaints, the ombudsman is also mandated to respond to allegations of corruption from members of the public. During 2009, the ombudsman launched several investigations into allegations against high-ranking officials, including the prime minister and justice minister.<sup>50</sup> While the former case was dismissed after additional evidence clarified that there had been no improprieties,<sup>51</sup> the ombudsman recommended that the prosecutor general initiate legal proceedings against both the justice and finance ministers. This provoked a rebuke from the AMP government. A government spokesman accused the ombudsman, appointed in 2006 by the previous administration, of being partisan to Fretilin. Fretilin, for its part, protested that such statements sought to discredit the findings of an independent investigation into ministerial corruption.<sup>52</sup>

In 2009, the government took steps to establish an Anti-Corruption Commission (ACC). In June, Parliament considered a draft decree law and, in a rare example of bipartisanship, rejected the draft and passed its own anticorruption law instead. The powers and composition of the proposed ACC have yet to be finalized, however. The Finance Ministry announced in July 2009 that it would set up a new performance budgeting system intended to apply strict auditing procedures to the use of government funds. The constitution provides for a High Administrative, Tax, and Audit Court to monitor public expenditures and audit state accounts, but it is not yet operational.

Allegations of corruption receive wide airing in the media, though some journalists have faced intimidation or harassment in return, contributing to occasional self-censorship. Public access to government information is restricted

primarily to reporting in the print and broadcast media. Journalists are still liable to prosecution for defamation under the Indonesian code. The proposed media law strengthens access to information, but there are ongoing concerns that while the law will decriminalize defamation, the proposed national media council will be used to punish journalists who criticize public officials. Until this is clarified, there continues to be weak protection for whistleblowers. Limited resources dedicated to providing the public with state information, including translation of Portuguese documents into Tetum, remains the main impediment to greater public access to information.

Parliamentary procedures are becoming more transparent. Budget debates are thorough and reported on extensively over community radio and television, arousing public interest throughout the districts.<sup>53</sup> Parliamentary rules of procedure provide for all standing committees to examine the draft budget and submit their opinions to a committee tasked with preparing a consolidated final report on the budget before the draft law is debated and voted on by Parliament. In August 2009, a bill was submitted to Parliament clarifying the role of the executive and the legislature in the budget process, as well as introducing new procedures for financial management and accountability.

Financial systems within ministries are poorly administered, and departments routinely fail to track budget expenditures. The AMP government has attempted to improve budget performance and expenditure reporting. According to the government, the rate of effective use of ministerial funds has risen from a very low 49 percent in 2006–07 to 79 percent in 2008–09.<sup>54</sup> Nevertheless, in an audit report on the 2008 budget, Deloitte Touche Tohmatsu found they had insufficient information to assess government expenditures for the period.<sup>55</sup> As indicated by the above-mentioned scandals, tendering procedures for government contracts have attracted strong criticism and require greater oversight and transparency.

Procedures for the fair administration of foreign assistance are generally effective and monitored by international development partners. The recent controversy over lucrative World Bank–funded contracts in the Ministry of Finance, however, suggests that international funds are not fully immune from corrupt practices.

## RECOMMENDATIONS

- The government should comply with and follow up on rulings of the Office of the Ombudsman for Human Rights and Justice, particularly with regards to disciplinary action against police and security personnel, including special units, for human rights abuses.
- The government should firmly address the issue of corruption in public office by establishing the proposed independent Anti-Corruption Commission and granting it powers to refer cases to the Office of the Public Prosecutor.

- The government should strengthen financial disclosure procedures, and develop a system of open and transparent tendering for government contracts.
- The proposed media law should firmly establish defamation as a civil and not a criminal matter and ensure that the proposed national media council proactively promotes and protects the independence of the media.
- The government should accelerate efforts to publish all public information, including court proceedings, in Tetum, the most widely understood language in East Timor.
- The government and Parliament should finalize passage of the draft land law and take immediate action to begin implementation of its provisions on titling and compensation.

## NOTES

For URLs and endnote hyperlinks, please visit the *Countries at the Crossroads* homepage at <http://freedomhouse.org/template.cfm?page=139&edition=8>.

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