An Introduction to

Constitutional Law in Timor-Leste

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ACKNOWLEDGEMENTS

Timor-Leste has much to be proud of in the wake of highly successful, fully democratic presidential and parliamentary elections earlier this year. Over the last decade, Timor-Leste has made significant progress in building a legal system and broader state committed to the values in the Constitution. But the work of state building requires at least two more decades of commitment to installing the institutions, norms and values enshrined in Timor-Leste's Constitution. This volume illuminates how the state is supposed to function under the Constitution and other foundational laws.

Constitutional law examines the fundamental rules and principles that govern the structure and organization of the state. Central to this constitutional structure in Timor-Leste are the political bodies, their competencies, and the relationships between the four sovereign organs: President of the Republic, National Parliament, Government, and the Courts. The performance of the state hinges on these institutions performing well, and not exceeding their legally authorized mandate. It is important for students to have a strong understanding of constitutional law in order to have a full appreciation for the limits and possibilities of the state.

An Introduction to Constitutional Law in Timor-Leste is the third law textbook produced by the Timor-Leste Legal Education Project (TLLEP) to critically engage the reader in thinking about the laws and legal institutions of Timor-Leste. Founded in March of 2010, TLLEP is a partnership between The Asia Foundation and Stanford Law School funded by the United States Agency for International Development (USAID) through its Access to Justice Program. The project's goal is to institutionalize ways for local actors, in close partnership with The Asia Foundation, Stanford Law School, and USAID, to positively contribute to the development of domestic legal education and training in Timor-Leste. In addition to *An Introduction to Constitutional Law in Timor-Leste*, *An Introduction to Contract Law in Timor-Leste*, and *An Introduction to Professional Responsibility in Timor-Leste*, TLLEP has completed a draft of *An Introduction to the Law of Timor-Leste* textbook. All texts are updated as the legal landscape changes. The most recent version in all three languages is always available for download online free of charge on TLLEP's website: www.tllep.stanford.edu.

The textbooks receive vital input from the National University of Timor-Leste (UNTL) faculty and staff throughout the drafting and review process including comments from Rector Aurelio Guterres, Law Dean Tomé Xavier Jerónimo, Professor Benjamin Corte Real, Professor Mieko Morikawa, Professor Maria Ângela Carrascalão, and Vasco Fitas da Cruz of the Portuguese Corporation. As always, the feedback from UNTL students on draft text was immensely helpful for the final text.

As with other texts in the series, *An Introduction to Constitutional Law in Timor-Leste* focuses on writing in clear, concise prose, and on using locally rooted hypothetical legal situations, discussion questions, and current events. Through this style of writing and pedagogy, the aim is to make these texts accessible to the largest possible audience. Published in Tetum, Portuguese, and English, all of the texts are designed to be broadly accessible to experienced East Timorese lawyers and judges, government officials, members of civil society, East Timorese students of law, and the international community.

The primary authors of *An Introduction to Constitutional Law in Timor-Leste* are Alexander Weber (Stanford Law School '12) and Kevin Lo ('11) with advice from Dennys Antonialli (LLM '11). Geoffrey Swenson ('09), TLLEP's in-country director and Access to Justice Law Program Manager for The Asia Foundation's Dili office played a crucial role in every aspect of the textbook's creation. Portuguese lawyer and former advisor to the National Parliament Ana Mónica Carvalho reviewed the texts to ensure their accuracy in both English and Portuguese and provided institutional context. Timotio de Deus likewise worked to ensure the Tetum version was technically correct. Attorney Kathryn Blair ('11) and Hogan Lovells provided invaluable pro bono assistance in preparing these materials. USAID Timor-Leste's financial and programmatic support has made the entire endeavor possible. Indeed, USAID staff has been vital to the program's ultimate success, particularly USAID Mission Director Rick Scott, Ana Guterres, Peter Cloutier, and Germano da Costa Boavida. The US Embassy in Dili, especially Ambassador Judith Fergin, has been immensely supportive.

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Brian Hoffman ('13) also provided assistance with nearly every aspect of the text. I also thank former Dean Larry Kramer of Stanford Law School for his unwavering support of this project since its inception as well as Dean Liz Magill, who recently assumed the deanship, for her support of the project.

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We hope you find this textbook useful as you build the state to which you and your forefathers aspired for many decades. I know that my students at Stanford and I are inspired by the state-building project on which you have embarked, as are our partners at USAID, the US Embassy, and The Asia Foundation.

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INTRODUCTION

CHAPTER OBJECTIVE

- To introduce constitutional law as an important structural guide for governmental authority

I. WHAT IS CONSTITUTIONAL LAW?

The Constitution of Timor-Leste is a foundational text that establishes the basic rights of the citizens of Timor-Leste and imposes basic requirements on the government. It is essentially a plan for how the state should operate. The creation of a constitution reflects Timor-Leste's values and beliefs. For example, when state officials are sworn into office, the oath that they recite includes a promise to uphold constitutional principles and when the National Parliament considers new laws, they have to consider whether the bill would violate the Constitution.

1. Why study Constitutional Law?

The study of constitutional law analyzes the fundamental rules and principles that govern the structure and organization of the state, mainly the political bodies, its competencies and the relationship between the four sovereign organs: President of the Republic, National Parliament, Government, and the Courts. In order for the government to run smoothly, each of the branches of government must be able to act effectively within its own zone, or area, of influence. At the same time, a branch of government that is given too much freedom, or discretion to do whatever it wants, can become a destabilizing force that threatens the rule of law. It is important for students to have a strong understanding of constitutional law in order to have a full appreciation for the limits and possibilities of government.

Additionally, scholars of constitutional law may choose to analyze the relationship between the state and the people of Timor-Leste. While this is not the primary focus of our textbook, the study of constitutional rights should also be a part of a lawyer's training. For

example, the Constitution of Timor-Leste establishes equality between the genders, special legal protections for children and the elderly, limits on government power even during a state of emergency, and many other rights and protections.

II. OVERVIEW OF THE TEXTBOOK

The objective of this textbook is to give students a better understanding of the different branches of government in Timor-Leste. The textbook also highlights some of the ways that the Constitution provides checks and balances so that no one part of the government becomes too strong and takes power away from other parts of the government or from the people of Timor-Leste. This textbook will answer questions such as: does the President of the Republic have any power in shaping the judicial branch? What are the roles of the President and the Prime Minister? Are members of the National Parliament directly elected by the people of Timor-Leste? These questions and more will be explored in this book.

The textbook covers the sovereign organs of the state: President of the Republic, National Parliament, Government, and the Courts. Summaries and excerpts from the Constitution of Timor-Leste, as well as the supplementary legislation, are included where the exact text is helpful. Each chapter will introduce the role of the government institution, a brief history, and the manner in which its power is distributed. They will contain explanations, sections of applicable laws, and hypothetical situations. These scenarios will allow students to think about the law in context and help them to understand the law in a deeper way.

CHAPTER ONE: THE PRESIDENCY

CHAPTER OBJECTIVES

- To explore the role of the President
- To understand how the President is chosen
- To explain the process after a President resigns or is removed
- To lay out the relationship between the presidency and the other branches of the state
- To learn what government structures make up the presidency

CHAPTER OVERVIEW

- The President of the Republic is the Head of State in a semi-presidential system.
- After the National Parliament passes a law, the President can either promulgate it or veto it. He or she can also seek preventative appraisal and abstract review of laws.
- The President has a range of appointment powers.
- The President can negotiate treaties and appoint foreign relations staff.
- The President can pardon convicted people and commute prison sentences.
- There are eligibility requirements for candidates who wish to become President.
- A President can resign or be removed from office under certain conditions. He or she has immunity for any official acts committed while in office.
- The President is assisted in his or her duties by a group of organs and services that includes the civil house (*casa civil*), the military house (*casa militar*), the personal secretariat staff of the President and the administrative board under Law 3/2011 (June 1, 2011)).

I. THE ROLE OF THE PRESIDENT

SECTION OBJECTIVES

- To learn about Timor-Leste's system of government as a semi-presidential system
- To introduce the history of the presidency in Timor-Leste

Constitution of Timor-Leste

Article 74: Definition

(1) The President of the Republic is the Head of State and the symbol and guarantor of national independence and unity of the State and of the smooth functioning of democratic institutions.

(2) The President of the Republic is the Supreme Commander of the Defence Force.

The government in Timor-Leste is considered a semi-presidential system of government. In a semi-presidential system there is a President and a Parliamentary Assembly popularly elected, and a Government that is politically responsible to the President and the Assembly. The specific characterization of the system in each country and the division of powers between the organs differs across countries.

The President is a single person political organ, a popularly elected official that represents the people of Timor-Leste. On the contrary of what occurs in a presidential system, the President doesn't take part in the Government. The Government, led by a Prime Minister, is the organ responsible for conducting the general policy of the country autonomously from the President. The Government is responsible before the President and before the Parliament and can be dismissed by a decision of the Parliament or of the President. Finally, like the President, also the Parliament is popularly elected. The Parliament is the legislative body of the state that represents all the people of Timor-Leste. The Parliament exercises important supervisory powers

over the Government which can result in the dismissal of Government. The Parliament cannot dismiss the President but the President has the power to dismiss the Parliament.

A semi-presidential system is different than a parliamentary republic, in which the President acts simply as a ceremonial figurehead and the Prime Minister holds both legislative and executive powers as head of government. A semi-presidential system is also different than a presidential system in which the President holds executive power without having to share it with a Prime Minister.

1. History

Since November 28, 1975, Timor-Leste has had five people serve as President of the Republic. The first two presidents served Timor-Leste during the war for independence from Indonesia, who had invaded and occupied the country a mere nine days after the declaration of independence from Portugal.

Francisco Xavier do Amaral

After Timor-Leste made a unilateral declaration of independence from Portugal in 1975, Francisco Xavier do Amaral was sworn in as the first person to hold the office of President. Amaral's term as President was relatively short since the Indonesian invasion forced him and other members of government to flee into the mountains in December of the same year. A founder of the Frente Revolucionária de Timor Leste Independente (FRETILIN), he was ousted from the party due to disagreements over strategy on how to best oppose the Indonesian occupation in September 1977.

Amaral was captured by Indonesian forces in 1978 and placed under house arrest in Bali and then in Jakarta until Indonesia withdrew from Timor-Leste in 1999. In April of 2002, Amaral ran against Xanana Gusmão in the presidential election and was soundly defeated. He ran again in the 2007 presidential election, and took fourth place. He also ran in the 2012 election campaign but died, following a long illness, during the campaign.

Nicolau dos Reis Lobato

Nicolau dos Reis Lobato was appointed Prime Minister of Timor-Leste in November 28, 1975. Lobato was elected President by the FRETILIN Central Committee in late 1977. He would remain President until the last day of 1978 when he was ambushed and killed by Indonesian Special Forces.

Xanana Gusmão

Xanana Gusmão was the first President of the independent Democratic Republic of Timor-Leste. His term began following the so-called restoration of independence of RDTL in May 20, 2002 and ended in May 20, 2007.

After the invasion by Indonesia, Gusmão was heavily involved in organizing resistance activities and has been credited with the ultimate success of the movement. From 1983 until his capture by Indonesia in 1992, he was the commander of the armed resistance in Timor-Leste. He founded and then served as the head of the National Council of Maubere Resistance, later renamed the National Council of Timorese Resistance until it was disbanded in 2001. Because of his role in the resistance, Gusmão was arrested in November 1992 and tried and convicted on various charges. He remained in Jakarta's Cipinang Prison until mid-1999, when he was released into house arrest in Jakarta before finally being released and allowed to leave Indonesia following the events of September 1999 in Timor-Leste.

While in prison in Jakarta's Cipinang Prison, Gusmão continued to lead the resistance against Indonesia as the President of National Council of Timorese Resistance. When he returned to Timor-Leste he was a key figure in rebuilding in war-torn Timor-Leste and a key interlocutor with the United Nations administration that governed Timor-Leste until May 2002. The National Council of Timorese Resistance was disbanded in 2001 and broke into different political parties, pursuing their own political agendas. Gusmão remained a key figure in the UNTAET transitional period and was elected to serve as speaker of the National Council, a precursor to the Constituent Assembly in October 2000. In 2002 he won the first presidential election with 82.7 percent of the vote. Prior to the 2007 election, he formed a new political party, the National Congress for Timorese Reconstruction (CNRT), which contested the parliamentary elections, CNRT secured 24% percent of the vote and was asked by the newly elected President to form a government

after they formed an alliance of parties in the newly elected parliament. When it did so, Gusmão became the Prime Minister of Timor-Leste on August 8, 2007.

José Manuel Ramos-Horta

Ramos-Horta served as the second President of Timor-Leste after independence from Indonesia, following his election in 2007. He was a co-recipient of the Nobel Peace Prize in 1996, along with the then Bishop of Dili. Ramos-Horta was a founder and former member of FRETILIN and went into exile in December 1975. He became a key figure in the resistance overseas and served as spokesperson for CNRT during the Indonesian occupation of Timor-Leste. Ramos-Horta resigned from FRETILIN in 1988 and has not joined any political party since then, but has remained a key political figure. He served as the country's first Foreign Minister, under a FRETILIN Government and as Minister of Defense in 2006. He was Prime Minister from 2006 to 2007, following the resignation of the Prime Minister.

In February 2008, Ramos-Horta was severely injured during an assassination attempt. During his recovery between February and April of 2008, National Parliament Vice President Vicente Guterres and President Fernando de Araújo stepped in as acting presidents. On April 17, 2008, Ramos-Horta took over again as president.

Taur Matan Ruak

Taur Matan Ruak came in second place in the first round of the 2012 Presidential election, ahead of Ramos-Horta but with fewer votes then the FRETILIN candidate Lú Olo. Because no candidate received a full majority in the first round, there was a second round of voting between the top two candidates. In the second round, Taur Matan Ruak won the presidency with a large majority of the vote.

Universally known by his nom de guerre "Taur Matan Ruak" or TMR (Tetum for "Two Sharp Eyes,") TMR was born José Maria Vasconcelos in the small village of Osso Huna in the district of Baucau in 1956, though he spent much of his childhood in Dili. In 1975, when Indonesia invaded Timor-Leste, TMR joined the armed wing of FRETILIN, FALINTIL, and fought with them against the invading army. In 1978, FALINTIL's last base, located on Mount Matebian, was destroyed by the Indonesians. TMR survived this defeat and was able to escape

and to regroup with other FALINTIL members to begin a new campaign of guerilla warfare. Over time he rose through the ranks and by 1998 he was the Commander of FALINTIL. After the achievement of independence he became the Chief of the Armed Forces. In this role he oversaw the integration of a large portion of FALINTIL into the new military of Timor-Leste, the F-FDTL. In October of 2011 TMR resigned his post in the military in order to be eligible to run in the election. He was formally sworn in as President at midnight on the 10th anniversary of Timor-Leste's independence, May 20th 2012.

II. POWERS AND DUTIES

SECTION OBJECTIVES

- To understand the promulgation and veto powers of the President
- To understand the dissolution and appointment powers of the president
- To understand the powers of anticipatory or preventive review and abstract review
- To learn about the ability of the President to declare war, negotiate treaties, and appoint foreign relations staff
- To understand the ability of the President to pardon crimes and commute prison sentences
- To compare the President's pardon/commutation power with the amnesty powers of the National Parliament
- To discuss the constraints on the appointment and removal powers of an interim President

1. Legislative

Constitution of Timor-Leste

Article 85: Competencies

It is exclusively incumbent upon the President of the Republic:

(a) To promulgate statutes and order the publication of resolutions by the National Parliament approving agreements and ratifying international treaties and conventions;

…

(c) To exercise the right of veto regarding any statutes within 30 days from the date of their receipt;

Legislative powers rest with the National Parliament and with the Government. The President has no legislative powers but plays a significant role in the legislative process through the powers of promulgation and veto.

After the National Parliament passes a bill (see the National Parliament chapter for more information on this), the President has thirty days to either promulgate the bill into law or use his veto power to block the bill.

For statutes received from the Government, the President has a slightly longer period of time (forty days) to decide whether to promulgate or to veto them. Since the Government tends to have more technical and specialized laws, the additional ten days give the President some extra time to consider the bill.

Promulgation

The President is responsible for promulgating statutes after receiving them from the National Parliament or from the Government. **Promulgation** can also be known as enactment. Promulgation is the act of formally proclaiming a new law that states that the law was approved through the proper constitutional process. Promulgation is also an expression of the supervisory powers that the President exercises over (the legislative powers of) the Parliament and the Government. This supervisory power is also exercised through the power of veto. The power to veto will be discussed further in the text.

Separation of Powers

Separation of Powers is a model of political authority in which the political authority is divided into separate branches, each with its own responsibilities. In this way, no single branch can take control of the entire government.

Traditionally, this separation is between three branches: the executive (the President and Prime Minister), the legislative (the Parliament) and the judiciary (the courts). This is often referred to as the "tripartite system." Many countries around the world have a government modeled after the tripartite system, including Timor-Leste, France, and the United States.

In the tripartite system the legislative branch is responsible for drafting and passing laws; the executive branch is responsible for executing and carrying out the laws that Parliament passes; and the judiciary is responsible for interpreting the law and judging how the laws apply in a particular situation.

Checks and Balances

Checks and Balances is a system that is often employed with separation of powers and helps to prevent any one branch of the government from gaining too much control. In this system, each branch is given some power to limit the other branches.

Under the Timorese constitution each branch of the government has a way to "check" each of the other branches. For example, the President has the power to veto a law passed by the National Parliament. Therefore, the veto serves as a "check" on the power of the legislature. The courts also have the ability to check the power of the legislature. Article 126 of the Constitution provides that the Supreme Court of Justice has the power to review laws to determine whether or not they are constitutional.

The legislature and President also have a way to check the power of the courts, as the President and the National Parliament have the right to appoint one member each to the Superior Council for the Judiciary, which selects all but one of the of the members of the Supreme Court of Justice (the other being chosen directly by the National Parliament).

Finally, the courts and legislature have ways to check the President in that the legislature can initiate criminal proceedings against the President and the Supreme Court of Justice has the authority to try the President in such proceedings.

Veto

A President can also veto a piece of legislation. Veto is a significant check on Parliament's legislative power. A **veto** means that, based on substantive grounds, the President disagrees with the statute. In case of Parliament statutes, the President requests that the National Parliament make a new appraisal of the statute. If the National Parliament does not ratify the bill after the president's veto, the bill is not passed and does not become law. The President may believe that a certain law is not an important priority for the country, and may veto the bill so that the National Parliament will reconsider whether implementation of the law will best serve the interests of the Timor-Leste people.

Along with the veto, the President should attach a written explanation that provides his reasons and justifications for vetoing the law. In this veto statement, if the President agrees with

the general sentiment of the bill, but disagrees with particular parts of it, the President will likely communicate his or her desired revisions to the National Parliament in the statement. This statement is used so that it is clear what the President would like modified or changed in the law. After receipt of the official veto and veto statement, the National Parliament holds a vote to see if the president's veto can be overridden. If the National Parliament confirms its vote by an absolute majority of its members, the statute's passage is ratified and the president's veto is immaterial and irrelevant. That means that regardless of the President's veto, the statute becomes binding law and the President must promulgate the legislation within eight days of the ratification vote.

For statutes received from the Government, the President can either promulgate or veto the statute. The Constitution doesn't allow the President to request that the Government make a new appraisal of the statute. Therefore, the Government cannot override the President`s veto.

Land Laws

In February 2012 Parliament passed three laws that relate to land in Timor-Leste. These laws had many controversial and difficult provisions and were debated for nearly two years. These three laws are the Land Law (Parliamentary Decree 69/II), the Expropriation Law (Parliamentary Decree 70/II), and the Real Estate Fund Law (Parliamentary Decree 71/II).

On 20 March 2012, President Ramos-Horta returned all three of these laws to Parliament accompanied with veto letters. For each law the President listed several concerns. Many of these concerns focused on poor definitions of terms and unclear provisions. For example, the President was concerned that the Expropriations Law, which was meant to explain when the government could confiscate private property for the public good (such as in the case of building a new road): (1) lacked a definition for the term "public interest;" (2) was unclear on whether or not the state could sell or lease land it had expropriated; and (3) did not limit expropriations to exceptional cases.

For statutes concerning the topics in Article 95 of the Constitution which have been vetoed by the President, to override the veto National Parliament must confirm its vote by

Parliament must confirm its vote by having Parliament meet to approve the law with the support two thirds majority of the members present and provided that the votes in favor exceed the absolute majority of all members. As you may recall, ratification of normal laws typically only needs an absolute majority of the National Parliament. In other words, if the National Parliament has 65 seats and everyone is present to vote, a bill that does not concern the matters listed in Article 95 of the Constitution, could be ratified if at least one more legislator votes in favor of the bill than against it; for example if there are 33 votes for the bill and 32 votes against the bill. For a bill concerning matters listed in Article 95, if out of the sixty-five Members of Parliament, sixty-three (63) were present for the vote, at least (42) forty-two members must vote in favor to confirm the legislation. Because (42) forty-two (two-thirds of the Members present) exceeds the absolute majority of the Members of Parliament (33) the veto is overridden.

Most of the topics in Article 95 of the Constitution touch on essential rights of the people or on basic functions of the government. Changes to these fundamental elements of society would have drastic effects, so the elevated requirements for ratification ensure that these rights and protections enshrined in the Constitution can be modified only by a two-thirds majority.

Pocket Veto

A "**pocket veto**" is something that happens when a President does not promulgate a law, but also does not formally veto it, but instead just ignores it so that it does not become law. The writing of Article 85 of the Constitution, which covers promulgation and veto power, does not seem to leave any room for a pocket veto. The President in Timor-Leste must either promulgate a law or veto it.

Extraordinary Sessions of National Parliament

The President may call for **extraordinary sessions of the National Parliament** if there are crucial reasons of national interest justifying it. Possible reasons for extraordinary sessions may include the need to conclude important unfinished business. For example, the Parliament might require more time to finish a debate and vote on the annual budget. The Parliament might also need to make major legislative changes in reaction to current events that occur outside the normal lawmaking session. An example of this situation would be the need to adjust the budget

to account for dramatic economic downturns. The President might also call for an extraordinary session to handle emergencies. This can include natural disasters and threats like a big flood, typhoons, or war. For example, in mid-February of 2008, a few extraordinary sessions of the National Parliament were called in order to renew the state of emergency needed to deal with the aftermath of the assassination attempt on the President and Prime Minister.

Dissolution

Constitution of Timor-Leste

Article 86: Competencies with regard to other organs

It is exclusively incumbent upon the President of the Republic:

(f) To dissolve the National Parliament in case of a serious institutional crisis preventing the formation of a government or the approval of the State Budget and lasting more than sixty days, after consultation with political parties sitting in the Parliament and with the Council of State, on pain of rendering the dissolution null and void, taking into consideration provisions of Article 100;

The President can dissolve the National Parliament in cases of "serious institutional crisis" that persist for more than sixty days. For such a dramatic act, the President is required to consult with political parties sitting in the Parliament and the Council of State, but the form of consultation is not explicitly outlined in the Constitution.

Constitution of Timor-Leste

Article 100: Dissolution

(1) The National Parliament shall not be dissolved during the 6 months immediately following its election, during the last half-year of the term of office of the President of the Republic or during a state of siege or a state of emergency, on pain of rendering the act of dissolution null and void.

(2) The dissolution of the National Parliament does not affect the continuance in office of its Members until the first meeting of the National Parliament after the ensuing election.

With this possible clash between the President and the Parliament, the Constitution sets restrictions to the power to dissolve Parliament in Clause One of Article 100. These limits are that Parliament cannot be dissolved during the six months following its election, during the last half-year of the President's office term, or during a state of siege/emergency. The rationale behind these restrictions is primarily to prevent the concentration of power in the President by preserving the legislative body as a viable check on his authority. The three time periods in Clause One were seen as particularly vulnerable times for an expansion of powers. A President that finds the latest elected members of the National Parliament to be against his interests may be tempted to dissolve it before it has time to conduct any business.

Secondly, as a President approaches the end of his term (especially if he or she is not running for a subsequent term), the temptation to expand his or her mandate at the expense of the National Parliament becomes greater. Lastly, the President will already have expansive powers in a state of emergency, so the National Parliament's presence is particularly necessary as an oversight mechanism during the state of emergency. While respecting the president's need to take decisive action in a crisis situation, the legislature keeps the President accountable and mindful of limits on emergency powers.

Preventative Appraisal and Abstract Review

Constitution of Timor-Leste

Article 85: Competencies

It is exclusively incumbent upon the President of the Republic:

(e) To request the Supreme Court of Justice to undertake preventive appraisal and abstract review of the constitutionality of the rules, as well as verification of unconstitutionality by omission.

One of the President`s responsibilities is to ensure that other institutions of the state comply with the Constitution. In order to ensure compliance, if the President has doubts about the constitutionality of a legislative act enacted by the Parliament or the Government, he or she can request the Supreme Court of Justice to review its constitutionality.

When the President receives a piece of legislation from the Parliament or from the Government to be promulgated, if the President is concerned that a piece of legislation is unconstitutional he or she can request that the Supreme Court of Justice to review the legislation for constitutionality before promulgating the statute. This is called **anticipatory or preventive review** because it takes place before the statute goes into effect.

If the Court determines that the piece of legislation is unconstitutional, the President must veto the law and send the legislation back to Parliament or Government for revision. But this is not the only situation in which the Supreme Court of Justice can review the constitutionality of an act. After an act is published, the President as well as other state actors can ask the Supreme Court to review the constitutionality of a statute based purely on the text of the statute. This is the called **abstract review** because it permits the Supreme Court to evaluate the constitutionality of an act even if no individual has actually been affected by the statute (Article 126, Clause 1(a) and Article 150 of the Constitution.

It is important to highlight that the preventive review takes place in relation to legislative acts that are send for the President to promulgate. Abstract review, on other hand, can take place in relation to "legislative and normative acts" (Article 126, Clause 1(a) of the Constitution), which is a more broad definition.

The Supreme Court of Justice provides this crucial role by informing the President of anything in the rules that violates constitutional provisions. The Supreme Court of Justice also provides the President with an analysis of any constitutional problems that may arise because certain provisions of the Constitution were *not* obeyed or provided for. The President should be aware that this preventive appraisal should not be overused. He or she should reserve this abstract review for bills that are particularly important or bills that obviously implicate constitutional issues. First of all, the principle of separation of powers would be violated if the judicial branch became too heavily involved in the others branches' functions. Secondly, the courts of Timor-Leste are very busy and face human capacity resource issues. Therefore,

involving the highest court involved often in abstract review would be inefficient since it would hamper the ability of courts to provide justice to litigants in a timely manner.

Examples of laws that the President of the Republic has submitted to the Court of Appeals for preventative appraisal and abstract review include laws that address separation of powers issues and budget laws.

Question

The National Parliament passes a budget for the year and sends it to the President to sign. After an initial review, the President questions whether some of the budgeted expenditures are constitutional. For other budget items, the President simply disagrees with the policy choices made by the National Parliament.

1) What can the President do to find out whether the budget items are constitutional?

2) What should the President do if he agrees with the budget?

3) What options does the President have in rejecting the budget?

Answers and Explanations

1) The President can submit the budget items in question to the high court for **preventative appraisal**. For now, until the Supreme Court of Timor-Leste is established, these kinds of constitutionality questions are handled by the Court of Appeals. The judges on the Court of Appeals will be able to counsel the President on whether the budget items conform to the requirements of the Constitution or whether there are constitutional requirements that the budget does not fulfill or violates.

2) If the President has no doubts concerning the budget bill, he should **promulgate** it.

3) Under his or her authority under Article 85, the President has the option of rejecting the budget bill completely. This is the presidential **veto**. The President would send the bill back to the National Parliament along with a written explanation of why the bill was vetoed.

2. Appointment

Constitution of Timor-Leste

Article 85: Competencies

It is exclusively incumbent upon the President of the Republic:

(d) To appoint and swear in the Prime Minister designated by the party or alliance of parties with parliamentary majority after consultation with political parties sitting in the National Parliament;

The President has a variety of appointment powers under the Constitution. First of all, the President appoints and swears in the Prime Minister designated by the parliamentary majority. The Prime Minister is often, but not always, the leader of the majority party or the largest party in a coalition that forms a parliamentary majority. Since Timor-Leste has many political parties participating in elections, it is not uncommon for the Prime Minister's support to arise from a coalition of parties. For example, during the administration of Prime Minister Gusmão, Gusmão was the leader of the National Congress for Timorese Reconstruction (*Conselho Nacional de Reconstrução de Timor* or CNRT), which won around 24% of the vote. Although the Revolutionary Front for an Independent Timor-Leste (*Frente Revolucionária de Timor-Leste Independente* or FRETILIN) won around 29%, President Ramos-Horta invited Gusmão to form a government. Neither CNRT nor FRETILIN had an outright majority, but CNRT succeeded in forming a coalition with smaller parties to build a majority in Parliament. Under Article 86(g) of the Constitution, the President also dismisses the Prime Minister after the National Parliament rejects the Government`s program two consecutive times. The rejection of the Government`s program acts as a signal from the National Parliament of a lack of confidence in the Government.

The President is also in charge of appointing two members for the Supreme Council of Defence and Security, the President of the Supreme Court of Justice, the Prosecutor-General, five members for the Council of State, one member for the Supreme Council for the Judiciary, and one member for the Superior Council for the Public Prosecution. He also appoints the General Chief of Staff of the Defence Force, the Deputy General Chief of Staff of the Defence Force, and the Chiefs of Staff of the Defence Force. Following proposals by the Prime Minister, the President also appoints and removes Government members in general.

There are a variety of important appointment issues. First, can a President simply refuse to fill a government office and leave it empty? The Constitution does not provide any legal mechanism for the National Parliament to force the President to appoint government officials. The President has an interest in the government being adequately staffed to fulfill all its functions, but he or she may delay an appointment for strategic reasons such as waiting for better candidates to emerge or using the appointment as leverage for desired actions in other government institutions. A related issue is whether or not the President can refuse to appoint an official proposed by the Prime Minister. No Timorese President so far has taken such a stance, but it might happen in the future. Since the Prime Minister has the backing of the National Parliament, a President that chooses to turn down a proposed official would have to be aware of the potential consequence. The reverse situation is equally unclear: whether or not the President can decline to dismiss an official that the Prime Minister wishes removed.

3. War and Foreign Affairs

War Powers

Constitution of Timor-Leste

Article 87: Competencies with regard to International Relations

It is incumbent upon the President of the Republic, in the field of international relations:

(a) To declare war in case of effective or imminent aggression and make peace, following proposal by the Government, after consultation with the Supreme Council for Defence

and Security and following authorisation of the National Parliament or of its Standing Committee.

(b) To appoint and dismiss ambassadors, permanent representatives and special envoys, following proposal by the Government;

(c) To receive credential letters and accredit foreign diplomatic representatives;

(d) Conduct, in consultation with the Government, any negotiation process towards the completion of international agreements in the field of defence and security.

The Constitution vests substantial powers in the Office of the President to deal with other countries both in peace and war time. The President is the Supreme Commander of the Defence Force, as well as the head of the Supreme Council of Defence and Security and the Council of State. He can declare war or states of emergency/siege after consulting the Council of State and the Supreme Council of Defence and Security and after authorization from the National Parliament. This requirement of consultation and authorization was built into the constitutional structure as a way to ensure that the President's war powers are used in a responsible and judicious manner.

An example of the National Parliament authorization can be found in Law No. 01/2008 (Authorizing the President of the Republic to Declare a State of Siege). This particular authorization was crafted by Parliament to last for forty-eight hours. To be renewed, the Council of State and the Supreme Council of Defence and Security must again be consulted and the National Parliament must again give authorization. In this authorization, the President of the Republic was authorized to suspend the right to freedom of movement in the form of a curfew between 8 pm and 6 am and also the freedom to assemble and demonstrate. The President's power to curtail liberties in these sorts of situations is substantial but it is not absolute. Some fundamental rights were guaranteed to be unaffected by the state of siege such as the right to life, the right to not be subject to torture, and others.

Foreign Relations Appointments

After proposal by the Government, the President has the power to appoint and dismiss ambassadors, permanent representatives, and special envoys to conduct foreign relations. On one hand, this appointment power could be considered largely perfunctory since the Government will expect the President to approve the proposed officials. Nevertheless, the President is the Head and Representative of the State, so the President must have a say on whether the proposed officials shall or shall not represent the Timorese state.

A President in the future might choose to test his or her constitutional ability to refuse to appoint. At that time, the courts will have to decide whether the appointment power is more than a formality. In other words, the presidential appointment power may give the President the ability to reject candidates for office who have been proposed by the Government, but it is not yet clear that it does, as this has not been legally tested.

Treaty Negotiation

The President may conduct negotiations on behalf of Timor-Leste towards the completion of international agreements on security and defense issues, in agreement with the Government. This treaty power is one that is shared with the Government. It is important to remember that the Government is the one responsible for defining the external policy of the country.

4. Pardons and Commutations

Constitution of Timor-Leste

Article 85: Competencies

It is exclusively incumbent upon the President of the Republic:

(i) To grant pardons and commute sentences after consultation with the Government;

The President may grant pardons and commute prison sentences. When the President grants a **pardon**, he or she is (1) forgiving the person of the crime, and (2) cancelling any punishment associated with that crime. Pardons have been used around the world in a variety of

situations, for example: a person is wrongly committed of a crime; a person is committed of a crime for an action that the President does not believe should be considered a crime; or continuing to hold a particular person guilty threatens national peace or progress. When the President **commutes** a sentence, he or she does not offer any forgiveness, but only reduces the penalty. This is more appropriate than a pardon if, for example, someone receives an inappropriately long prison sentence. Together these powers, as well as the power to grant a reprieve (to temporarily postpone punishment), are referred to as the clemency powers.

In Timor-Leste pardons and commutations are usually timed to occur in conjunction with a national holiday such as the Restoration of Independence celebrations on May 20. Use of this power should be carefully considered due to the potential to undermine the rule of law. For example, President José Ramos-Horta pardoned Gastão Salsinha and twenty-three other people in August of 2010 who were involved in the attacks on himself and the Prime Minister. Although the President defended his decision as a way to help Timor-Leste move beyond the pains in its past, some observers expressed concern that this would create a culture of impunity.

The constitutional text indicating "consultation with the Government" suggests that the President ought to hear advice from the Government, but does not require that the President must act according to this advice. In other countries, there is a convention that the President ordinarily acts on this advice, but this usually develops from convention and political pragmatism. No current obligation exists to listen to the Government's advice in Timor-Leste, but at a 2011 Justice Sector Monitoring Project event in Dili the Ministry of Justice and members of civil society expressed a view that there should be regulations requiring this.

It is important to distinguish these presidential clemency powers from similar Parliamentary powers. While the President may grant a pardon or commute a sentence, Parliament has the power to grant amnesty. **Amnesty** is the power to extend a pardon, usually to a group of people, and most often for political crimes, *before* they are convicted. In other words, the President's pardon/commutation power comes into play after the judicial system has convicted the person. In contrast, the Parliament's amnesty power under Article 95.3(g) allows someone to be exempted from prosecution and there will be no legal record of the crime.

5. Limited Powers of an Interim President

Constitution of Timor-Leste

Article 89: Powers of an interim President of the Republic

An interim President of the Republic does not have any of the powers specified in following items f), g), h), i), j), k), l), m), n) and o) of Article 86.

Article 86: Competencies with regard to other organs

(f) To dissolve the National Parliament in case of a serious institutional crisis preventing the formation of a government or the approval of the State Budget and lasting more than sixty days, after consultation with political parties sitting in the Parliament and with the Council of State, on pain of rendering the dissolution null and void, taking into consideration provisions of Article 100;

(g) To dismiss the Government and remove the Prime Minister from office after the National Parliament has rejected the Government`s program for two consecutive times.

(h) To appoint, swear in and remove Government Members from office, following a proposal by the Prime-Minister, in accordance with item 2, Article 106;

(i) To appoint two members for the Supreme Council of Defence and Security;

(j) To appoint the President of the Supreme Court of Justice and swear in the President of the High Administrative, Tax and Audit Court;

(k) To appoint the Prosecutor-General for a term of four years;

(l) To appoint and dismiss the Deputy Prosecutor-General in accordance with item 6, Article 133;

(m) To appoint and dismiss, following proposal by the Government, the General Chief of Staff of the Defence Force, the Deputy General Chief of Staff of the Defence Force, and the Chiefs of Staff of the Defence Force, after consultation with the General Chief of Staff regarding the latter two cases;

(n) To appoint five Members for the Council of State;

(o) To appoint one member for the Superior Council for the Judiciary and for the Superior Council for the Public Prosecution.

Under Article 89 of the Constitution, an interim President of the Republic does *not* have powers (f) through (o) of Article 86, which are summarized as follows:

- (f) dissolving the National Parliament;
- (g) dismissing the Government and removing the Prime Minister after two consecutive votes to reject the Government`s program;
- (h) appointing and removing Government members from office;
- (i) appointing members for the Supreme Council of Defence and Security;
- (j) appointing the President of the Supreme Court of Justice and swearing in the President of the High Administrative, Tax and Audit Court;
- (k) appointing the Prosecutor-General;
- (l) appointing and dismissing the Deputy Prosecutor-General;
- (m) appointing and dismissing the General Chief, Deputy General Chief of Staff, and Chiefs of Staff of the Defence Force;
- (n) appointing members of the Council of State; and
- (o) appointing a member for the Superior Council for the Judiciary and for the Superior Council for the Public Prosecution.

All of these powers denied to an interim President implicate the appointment and removal powers of a duly elected President. Since the President of the National Parliament will be the one who succeeds an absent President, Article 89 ensures that the doctrine of separation of powers continues to apply. An interim President who has extensive influence over the National Parliament as well as the appointment and removal powers of the President would be a threat to democracy and rule of law.

Questions

While the actual President is undergoing recovery from a medical procedure, José Soares is serving as the interim President of Timor-Leste. While in office, he hears about the conviction of Elias Gomes for embezzlement. After carefully reviewing the case, Soares believes that Gomes was wrongfully convicted and that there is good evidence that Gomes was merely the scapegoat.

1) As interim President, what options does Soares have at his disposal to remedy the situation?

2) What considerations should Soares have in making the decision to pardon or commute the sentence?

Answers and Explanations

1) An interim President has the power to pardon and to commute prison sentences. Article 89 of the Constitution does bar an interim President from exercising certain appointment and removal powers, but there is no mention of the pardon/commutation power. In other words, Soares can choose to offer Gomes a pardon for his conviction or he can commute Gomes' sentence to a shorter period of time.

2) Of course, Soares must be mindful that use of the pardon or commutation power should respect the doctrine of the separation of powers between the state`s branches. As a general matter, a President should not be inserting his or her judgment in place of that of the courts, unless exceptional circumstances of injustice call for it.

III. THE ELECTION OF THE PRESIDENT

SECTION OBJECTIVES

- To learn the requirements that must be met to qualify as a presidential candidate
- To understand the process of electing and inaugurating a president
- To discuss the limits on how long a President can remain in office

1. Eligibility

Constitution of Timor-Leste

Article 75: Eligibility

To stand as presidential candidates, East Timorese citizens should meet each of the following requirements cumulatively:

(a) original citizenship;

(b) at least 35 (Thirty-five) years of age;

(c) to be in possession of his or her full faculties;

(d) to be proposed by a minimum of five thousand voters.

In order to run for President, a candidate must meet the four requirements of Article 75. First of all, he or she must be an original Timor-Leste citizen. Original citizens are people who were born in Timor-Leste and its territories (as defined in Part 1, Article 3, Clause 2 of the Constitution). Original citizenship is also given to people born overseas when they have a Timorese parent (Part 1, Article 3, Clause 3 of the Constitution).

Second, the candidate must be at least thirty-five years old. The age requirement is an attempt to ensure that the President will have had sufficient life experience before taking on the demanding position. A young candidate will be unlikely to have as much experience in politics and leadership roles.

Third, the candidate must be "in possession of his or her full faculties". This requires that a candidate be mentally sound.

Fourth, the candidate must be proposed by a minimum of five thousand voters with at least one hundred signatures from each district, which ensures that the candidate has the support of at least a small constituency of voters nationwide and filters out some candidates. This preliminary screening of the candidate pool promotes the smooth and efficient operation of the electoral process and ensures candidates have a minimum level of credibility.

Additionally, the President may not hold any other political offices or public positions. (Part 3, Title 1, Articles 68 and 78). The President of the Republic may not also be the President of the National Parliament, President of the Supreme Court of Justice, President of the High Administrative, Tax and Audit Court, Prosecutor-General, or a member of Government (Part 3, Title 1, Article 68, Clause 1). In fact, an individual is not allowed to hold two or more of the listed offices *at the same time*. Holding two separate offices at *separate* times is, of course, acceptable, and many Timor-Leste politicians have served the country in various capacities. For instance, President Ramos-Horta has also been the country's Prime Minister in the past. Clause 2 of this section leaves open the possibility of additional incompatibilities to be decided by law. As more political offices are created or existing ones are changed, Clause 2 ensures that existing power structures and balances continue to be maintained. Otherwise, new offices could be combined with existing positions as a way to build up power. Article 68 works to prevent state powers from merging with each other in order to preserve the checks and balances of the government.

The President of the Republic must also refuse any private employment opportunities. This is not only to avoid conflicts of interest, but also to avoid any appearance of impropriety. The President is supposed to represent the people of Timor-Leste, so he or she cannot be susceptible to the whims of private interests. Also, on a practical level, the Office of the President is a demanding position and anything that distracts from the official duties of the presidency would come at the expense of the nation.

2. Election

The candidate that receives a majority of the valid votes becomes the President of the Republic. Every citizen over the age of 17 can cast a vote (Title 2, Article 47, Clause 1). Also, under Law No. 07/2006.[1] Timorese citizens who are being held in penitentiary institutions are entitled to vote. When no candidate receives more than half of the votes in the first round, a second runoff vote round takes place thirty days after the first vote. Only the two candidates with the two highest vote counts from the first round will participate in the second round of voting.

Supplemental law on presidential election procedures can be found in Law no. 7/2006 (Dec. 28, 2006) entitled "Law on the Election of the President of the Republic." This law covers the timing of votes, polling station procedures, and electoral observers.

3. Inauguration

Constitution of Timor-Leste

Article 77: Inauguration and swearing-in

(1) The President of the Republic shall be sworn in by the President of the National Parliament and shall be inaugurated in public ceremony before the members of the National Parliament and the representatives of the other organs of sovereignty.

(2) The inauguration shall take place on the last day of the term of office of the outgoing President or, in case of election due to vacancy, on the eighth day following the publication of the electoral results.

(3) At the swearing-in ceremony, the President of the Republic shall take the following oath:

"I swear to God, to the people and on my honour that I will fulfill with loyalty the functions that have been invested in me, will abide by and enforce the Constitution and the laws and will dedicate all my energies and knowledge to the defence and consolidation of independence and national unity."

[1] Law no. 7/2006 (Dec. 28, 2006) was amended by Law 5/2007 (May 31, 2007), by Law 5/2011 (June 22, 2011) by Law 2/2012 (Jan. 13, 2012) and by Law 7/2012 (March 1, 2012).

The President of the Republic is sworn into office by the President of the National Parliament. He or she is inaugurated at a public ceremony before the members of the National Parliament and the representatives of the others organs of sovereignty. The inauguration ceremony typically takes place on the last day of the term of the outgoing President. When a new President is elected due to the resignation, death, or permanent disability of the prior President, the inauguration takes place on the eighth day following the publication of the electoral results.

4. Tenure and Term Limits

Constitution of Timor-Leste

Article 75: Eligibility

(2) The President of the Republic has a term of office of 5 years and shall cease his or her functions with the swearing-in of the new President-elect.

(3) The President of the Republic's term of office may be renewed only once.

The President serves a term of five years and this can be renewed only once. This means that the maximum length that a particular person can hold the presidential office is ten years. A **term limit** makes it less likely that the President will consolidate too much power. The drawback to limiting the President to two terms is that the second term of the presidency may be a particularly weak one. Since the President is unable by constitutional law to seek a third term, he or she tends to have less political power since other elected officials have less reason to cooperate with an outgoing President. On the other hand, one could argue that an outgoing President also has more freedom to pursue unpopular decisions or appointments. Since the President will not be eligible for the next election, he or she will not be held accountable for the political consequences of various actions. For example, near the end of an outgoing presidential term, a President may decide to issue many pardons and to commute many sentences, even if such acts of executive clemency are unpopular or controversial.

Of course, an outgoing President is still constrained. First of all, the President remains accountable and responsible for crimes committed in the exercise of his or her functions and for violation of his or her constitutional obligations. Secondly, most presidents are concerned with

leaving behind a good legacy of service to Timor-Leste. Citizens are drawn to the presidency as a way to give back to the country, so there is little incentive to abuse the power of the office to serve their own interests.

5. Presidential Absence

Constitution of Timor-Leste

Article 80: Absence

(1) The President of the Republic shall not be absent from the national territory without the previous consent of the National Parliament or of its Standing Committee, if Parliament is in recession.

(2) Failure to observe provision of item 1 above shall imply forfeiture of the office, as provided for by the previous Article.

(3) The President of the Republic's private visits not exceeding fifteen days shall not require the consent of the National Parliament. Nonetheless, the President of the Republic should notify the National Parliament of such visits in advance.

The President may not be absent from Timor-Leste either for official visits or for private visits for more than fifteen days, without the prior consent of the National Parliament or its standing committee. Failure to abide by this will imply forfeiture of the presidential office. Private trips under fifteen days do not require prior consent from the National Parliament but he or she is required to give National Parliament prior notification about the trip. When the head of state is away from Timor-Leste for long periods of time, he or she becomes more out of touch with government politics and the needs of the people. Even though the Prime Minister is the leader of the Government and sets the agenda, the extended absence of the President may have negative symbolic effects. For example, on September 8, 2009, the National Parliament denied President Ramos- Horta's request to take an official trip to New York, Boston, Denmark, and Germany, which would have lasted from September 20 to October 5. In two consecutive votes, a majority of the National Parliament refused to consent to the President's request, with each vote preceded by extensive and emotional debate regarding the release of Indonesian militia leader Marternus Bere, who had been accused of crimes against humanity for events in 1999.

Questions

Ligia is a 33-year-old doctor who runs a clinic in Baucau. She has had some local political experience and would like to consider running for President in the next election, which will take place in three years. She was born in Lisbon, Portugal to a Timorese father and Portuguese mother.

1) Does she meet the requirements to become a presidential candidate?

2) How many votes does Ligia need to receive to become president?

Answers and Explanations

1) To become a presidential candidate, one must meet five basic criteria. Ligia meets four of the five requirements. First, Ligia must be an **original citizen** of Timor-Leste. This means that she was either born in Timor-Leste or was born to Timorese parents. Although Ligia was born in Portugal, her father is Timorese, so she is considered an original citizen under Part 1, Article 3, Clause 3 of the Constitution. Second, a presidential candidate must be **at least thirty five years old**. Since the election is in three years, Ligia will be 36 at the time of the elections and eligible to run. The third requirement is that Ligia be **mentally sound**. As long as she is in full possession of her faculties, she can run for President. The fourth requirement is that Ligia has to find the **support of at least five thousand eligible voters** in Timor-Leste. Since she has some political experience in Baucau, she may be able to meet this requirement. However, as the final requirement is at least 100 signatures from each district, her candidacy would not be valid.

2) To become President, a candidate must receive a majority of all eligible votes cast. Every Timorese citizen over the age of seventeen can vote. When no candidate receives a majority, a runoff round between the top two vote recipients takes place thirty days later.

IV. RESIGNATION OR REMOVAL OF A PRESIDENT

SECTION OBJECTIVES

- To explore how a President can resign from office and how the vacancy is filled
- To understand presidential immunity
- To learn the process involved in removing a President from office

1. Vacancy/Resignation

Constitution of Timor-Leste

Article 81: Resignation of Office

(1) The President of the Republic may resign from office by message addressed to the National Parliament.

(2) Resignation shall take effect once the message is made known to the National Parliament without prejudice to its subsequent publication in the official gazette.

(3) Where the President of the Republic resigns from office, he or she shall not be eligible to stand for presidential elections immediately after resignation nor in the regular elections to be held after five years.

The President may resign from the office for a variety of reasons. For example, the President might deem himself or herself unable to competently perform the office's duties due to illness or family issues. Secondly, a President might anticipate an impeachment by the National Parliament under Article 79 of the Constitution. Although the impeachment process merely charges the President for various offenses, he or she may resign to avoid the public embarrassment of a trial, even if he or she has a strong claim to innocence.

The method the President uses to resign from office is through a message addressed to the National Parliament. This can take the form of a speech to the National Parliament or an open letter directed at the National Parliament. Although the audience is the National Parliament, the presidential resignation will nonetheless have the Timorese public in mind as the message is likely to be disseminated broadly. Since the President is a publicly elected official, the people of Timor-Leste will want to know why he or she is stepping down.

Once this message from the President is made known to the National Parliament, the resignation takes immediate effect. After his or her resignation, the ex-President is not eligible for the special election held after the resignation or for the regular elections held five years later. This provision acts as a way to mitigate confusion that might be caused by the recently resigned President suddenly entering the political contest for the office again. It also ensures that the President will carefully decide whether resignation would be the best course of action. Once the President gives the office up, he or she will have to wait for two election cycles before being able to run for the presidency again.

Constitution of Timor-Leste

Article 82: Death, resignation or permanent disability

(1) In case of death, resignation or permanent disability of the President of the Republic, his or her functions shall be taken over on an interim basis by the President of the National Parliament, who shall be sworn in by the interim President of the National Parliament before the Members of the National Parliament and representatives of the organs of sovereignty.

Article 84: Replacement and interim office

(1) During temporary impediment of the President of the Republic, the presidential functions shall be taken over by the President of National Parliament or, in case of impediment of the latter, by his or her replacement.

(2) The parliamentary mandate of the President of the National Parliament or of his or her replacement shall be automatically suspended over the period of time in which he or she holds the office of President of the Republic on an interim basis.

(3) The parliamentary functions of the replacing or interim President of the Republic shall be temporarily taken over in accordance with the Rules of Procedures of the National Parliament.

If the President dies, resigns, is permanently disabled, or if the President-Elect refuses to take office, or dies or is permanently disabled prior to taking office, the President of the National Parliament takes over temporarily. The same is true if the President is only temporarily impaired. The parliamentary mandate and functions of the President are automatically suspended during the period of time in which he or she is temporarily holding the office of President. This suspension of power results from the fact the President may not hold any other political offices or public positions and is intended to prevent concentration of powers in a single person. If the President of the National Parliament is unavailable, the Vice President of the National Parliament is next in the line of succession.

For example, after President José Ramos-Horta was incapacitated in 2008, Vicente Guterres, the Vice President of the National Parliament, became the interim President of Timor-Leste for two days until Fernando de Araújo, the President of the National Parliament, could return from abroad and take over the presidency.

Constitution of Timor-Leste

Article 82: Death, resignation or permanent disability

(2) Permanent disability shall be declared by the Supreme Court of Justice, which shall also have the responsibility to confirm the death of the President of the Republic and the vacancy of office .

(3) The election of a new President of the Republic in case of death, resignation or permanent disability should take place within the subsequent ninety days, after certification or declaration of death, resignation or permanent disability.

(4) The President of the Republic shall be elected for a new term of office.

Article 83: Death, resignation or permanent disability

(1) Where death, resignation or permanent disability occur in case of imminent exceptional situations of war or protracted emergency, or of an insurmountable difficulty of a

technical or material nature, to be defined by law, preventing the holding of a presidential election by universal suffrage as provided for by Article 76, the new President of the Republic shall be elected by the National Parliament from among its members within the ninety subsequent days.

(2) In the cases referred to in the previous item, the President-elect shall serve for the remainder of the interrupted term and he or she may run for the new election.

The Supreme Court of Justice has the responsibility to certify and declare a President's permanent disability or death in order to indicate that the office is vacant. Until the Supreme Court of Justice has been established, this role would be fulfilled by the Court of Appeals as the highest court available. This certification process ensures that the President's death or permanent disability actually occurred and is not the result of a political ploy.

An election to determine the new President of the Republic is held within ninety days of the certification and declaration of disability/death.

If the president's death, resignation, or permanent disability occurs during "imminent exceptional situations of war or protracted emergency" or if there are "insurmountable difficult[ies] . . . preventing the holding of a presidential election," the National Parliament shall elect one of its members to the office of the President within ninety days of the vacancy. This clause ensures that Timor-Leste will have a person that can lead the country through a time of crisis. In this situation, the newly-elected President serves the remainder of the term and then may run for the office again in the next election.

2. Removal and Presidential Immunity

Constitution of Timor-Leste

Article 79: Criminal liability and Constitutional Obligations

(1) The President of the Republic shall enjoy immunity in the exercise of his or her functions.

(2) The President of the Republic shall be answerable before the Supreme Court of Justice for crimes committed in the exercise of his or her functions and for clear and serious violation of his or her constitutional obligations.

(3) It is the incumbent upon the National Parliament to initiate the criminal proceedings, following a proposal made by one-fifth, and deliberation approved by a two-third majority, of its Members.

(4) The Plenary of the Supreme Court of Justice shall issue a judgment within a maximum of 30 days.

(5) Conviction shall result in forfeiture of office and disqualification from re-election.

(6) For crimes not committed in the exercise of his or her functions, the President of the Republic shall also be answerable before the Supreme Court of Justice, and forfeiture of office shall only occur in case of sentence to prison.

(7) In the cases provided for under the previous item, immunity shall be withdrawn at the initiative of the National Parliament in accordance with provisions of item 3 of this Article.

In performing the functions of his or her office, the President has **immunity**. This means that he or she cannot be held personally liable for damages resulting from actions within the scope of his or her office. For example, if the President places a key role in negotiating an unpopular treaty, the citizens of Timor-Leste may become upset and seek to file lawsuits against the President. Although government officials should take responsibility for their actions, the doctrine of presidential immunity recognizes that in the course of serving the country, the President will have to make hard decisions that he or she believes to be beneficial to Timor-Leste in the long run. If the President could be sued for official actions, he or she would be hesitant to make decisions that open him or her up to liability. In the spirit of separation of powers, presidential immunity provides the President with the freedom to perform the duties of his or her office without the constant hindrance of judicial interference.

However, presidential immunity is not absolute. Limits are placed on the doctrine to ensure that the President remains accountable. Specifically, he or she is answerable before the Supreme Court of Justice for crimes committed and for "clear and serious violations" of constitutional obligations. Thus, while treaty policy is unlikely to be legally actionable because it involves the President's discretion in an official duty (conducting foreign affairs), if the President commits a serious crime in a personal capacity, such as murder or embezzlement, then he or she can be held accountable in a court of law.

To initiate criminal proceedings against the President, at least one-fifth of the National Parliament must agree to propose the charges. A two-thirds majority of Parliament must then approve. Within thirty days, the Plenary of the Supreme Court of Justice must issue a judgment. If the crimes were committed in the exercise of the President's functions, conviction of the charges results in forfeiture of the presidential office and disqualification from reelection. For crimes not committed in the exercise of presidential functions, the National Parliament must withdraw the President's immunity in order to initiate charges against the President. In this case, forfeiture of the office only occurs if a prison sentence is issued. The reasoning behind the differential treatment is probably that crimes committed by the President in an official capacity are likely to be more serious and to merit heavier punishment.

CHAPTER TWO: THE GOVERNMENT

CHAPTER OBJECTIVES

- To understand the role of Government and the Prime Minister
- To learn about how the Prime Minister is chosen by parliamentary majority
- To explore the cooperative relationship between the President as Head of State and the Prime Minister as head of government
- To lay out the multiple limits on a Prime Minister's power
- To discuss what ministries, secretariats, and other governmental structures are under the Prime Minister's control

CHAPTER OVERVIEW

- The Government is a sovereign organ.
- The Prime Minister is the Head of Government.
- The Prime Minister is chosen by the majority party or a majority coalition of parties in the National Parliament.
- The Prime Minister sets government policy and works to pass legislation in the National Parliament that promotes that policy agenda.
- The Prime Minister's power is limited by statute, by the electorate, by the National Parliament, and by other members of the Government.
- The Government is organized in a large and diverse set of ministries that specialize in different areas.

Constitution of Timor-Leste

Article 103: Definition

The Government is the organ of sovereignty responsible for conducting and executing the general policy of the country and is the supreme organ of Public Administration.

Article 104: Composition

(1) The Government shall comprise the Prime Minister, the Ministers and the Secretaries of State.

(2) The Government may include one or more Deputy Prime Ministers and Deputy Ministers.

(3) The number, titles and competencies of ministries and secretariats of State shall be laid down in a Government statute.

Government is one of the four sovereign bodies of the state of Timor Leste, along with the President, the National Parliament and the Courts. The Government holds executive power by being responsible for conducting and executing the general policy of the country. In the system of government established in the Timorese Constitution, the Government is an autonomous sovereign body which means that is not subject to any direct power of direction or orientation exercised by the President or by the Parliament. Nevertheless, the Government is responsible to the President and before the Parliament for the direction and execution of the domestic and external policy of the country (Article 107 of the Constitution). Also, the Prime Minister must inform the President about all the issues related to the domestic and external policy of the Government (Article 117 (1) (a) of the Constitution). In this chapter we will discuss the relations between the Government and the other sovereign organs, namely the President`s power to appoint the Prime Minister and other members of the Government, the situations in which the President and the Parliament can dismiss the Government, the supervisory powers exercised over the Government and also how the Government is structured to pursue its constitutional competences and responsibilities.

I. THE HISTORY OF THE OFFICE OF PRIME MINISTER

SECTION OBJECTIVES

- To introduce the history of the Prime Minister's office in Timor-Leste
- To discuss the five men who have served as Prime Minister

Nicolau dos Reis Lobato (November 28, 1975 – November 1977)

After the declaration of independence from Portugal by the Democratic Republic of Timor-Leste on November 28, 1975, FRETILIN's leader Nicolau dos Reis Lobato became the first Prime Minister of Timor-Leste. Born in 1952 in Bazartete, Lobato fled into the Timor-Leste hinterland to rally the fight against the occupying forces along with other key FRETILIN leaders after the Indonesian military invaded Timor-Leste in December 7, 1975.

Lobato served as Prime Minister in an official capacity from November 28, 1975 until November 1977 when, following Xavier do Amaral`s arrest in September, he was elected President by the FRETILIN Central Committee.

On the last day of the year of 1978, Lobato was ambushed by Indonesian Special Forces and was killed at the age of twenty-six. He is a Timor-Leste national hero.

Marí bim Amude Alkatiri (May 20, 2002 – June 26, 2006)

Marí bim Amude Alkatiri was the first Prime Minister of an internationally recognized Timor-Leste after the country regained independence. He served from May 2002 until his resignation on June 26, 2006. He is currently the Secretary General for FRETILIN, which he helped to found. Alkatiri was re-elected to a seat in the National Parliament in June 2007, but does not occupy the seat.

José Manuel Ramos-Horta (June 26, 2006 – May 19, 2007)

In the wake of Alkatiri's resignation, José Manuel Ramos-Horta was appointed to be Prime Minister on a temporary basis by then-President Xanana Gusmão until a successor could be named. Two weeks later, on July 10, 2006, Ramos-Horta himself was sworn in officially as

the Prime Minister of Timor-Leste. Horta ran in the April 2007 Presidential elections, which he won in the second round.

Estanislau da Conceição Aleixo Maria da Silva (May 19, 2007 – August 8, 2007)

Estanislau da Conceição Aleixo Maria da Silva took over as acting Prime Minister from May 2007 to August 2007. As a member of FRETILIN since 1974, Da Silva had served on the diplomatic arm of the Timor-Leste resistance during the years that Indonesia had occupied Timor Leste. He had previously been appointed as the country's first Minister for Agriculture, Forestry, and Fisheries. Da Silva had served also as the First Deputy Prime Minister of Timor-Leste.

Xanana Gusmão (August 8, 2007 - Incumbent)

After the June 2007 parliamentary election, Xanana Gusmão became Prime Minister on August 8, 2007. He had previously been the first President of Timor-Leste after restoration of independence, serving from May 2002 to May 2007. Gusmão decided to not run for another term in the presidential election of April 2007. Instead he spearheaded the launch of a new political party, National Congress for Timorese Reconstruction (CNRT), in the parliamentary elections later that year. Although CNRT placed second behind FRETILIN and took eighteen parliamentary seats, CNRT was able to form a coalition of parties that would hold a majority of seats in the National Parliament. After a few weeks of dispute and negotiation between this coalition and FRETILIN, recently-elected President Ramos-Horta agreed that a CNRT-led coalition would form the Government, paving the way for Gusmão to become Prime Minister on August 8, 2007.

Parliamentary elections were held in Timor-Leste on July 7, 2012 for sixty five seats in parliament. The elections were seen both domestically and international as free and fair. Twenty one parties were on the ballot. A total of 471,419 valid votes were cast. Four parties surpassed the three percent vote necessary to get a seat in parliament. According to the final results certified by the Court of Appeal on July 17, 2012, CRNT won the most votes with 172,908 for 36.68% of the votes and 30 seats in parliament. FRETLIN won 140,905 votes, which translates into 29.89% of the votes and 25 parliamentary seats. The Democratic Party (PD) won 48,579

votes, which was 10.3% of the vote and 8 parliamentary seats. Finally, Frente Mudança received 14,648 votes for 3.11% of the total and 2 seats in parliament.

After negotiations, CRNT, PD, and Frente Mudança formed a coalition government with a total of 40 seats in parliament. Incumbent Prime Minister Kay Rala Xanana Gusmão was once again elected to the post of Prime Minister.

II. SELECTION

SECTION OBJECTIVES

- To understand how the Prime Minister is chosen by parliamentary majority

Constitution of Timor-Leste

Article 106: Appointment

The Prime Minister shall be designated by the political party or alliance of political parties with parliamentary majority and shall be appointed by the President of the Republic, after consultation with the political parties sitting in the National Parliament.

While the President is chosen by universal suffrage and thus derives his power and authority from the citizens of Timor-Leste directly, the Prime Minister is only indirectly chosen by the people. As is common in parliamentary systems, Timor-Leste citizens vote for a preferred party. Parties determine lists of candidates in advance and whether a particular candidate is elected to Parliament depends on his or her position on the list.

For example, in the 2007 parliamentary elections, fourteen political parties participated in the election for sixty-five seats in the National Parliament. Seven parties ended up winning positions, with the leading parties being FRETILIN (29.02% of the vote), CNRT (24.10%), a coalition of the Timorese Social Democratic Association (ASDT) and the Social Democratic Party (PSD) (15.73%), and the Democratic Party (11.30%), as well as A.D.-KOTA-PPT, PUN, and UNDERTIM. This resulted in the electoral commission distributing parliamentary seats as follows: 21 for FRETILIN, 18 for CNRT, 11 for ASDT-PSD, 8 for the Democratic Party, 3 for the National Unity Party, 2 for the Democratic Alliance (KOTA-PPT), and 2 for UNDERTIM.

For more information on the electoral process, see the chapter on the National Parliament. The three main acts governing the operations of the National Parliament may also be

useful: Law on Election of the National Parliament, Law No. 6/2006[2] (Dec. 28, 2006), Rules of Procedures (Nov. 11, 2009) and The Organic Law of the National Parliament, Law No. 15/2008 (Dec. 24, 2008).

From the perspective of a political party in Timor-Leste, the ideal situation is to hold enough seats in the National Parliament for a legislative majority on its own. In this case, the party's agenda will be easily made into law without much viable opposition. Even with internal power dynamics and intraparty disputes, the party has a strong chance of passing legislation without needing to make many concessions. In general, a political party will have members that have similar ideologies and ideas about how to best run Timor-Leste. As a result, there are fewer barriers to promoting loyalty within the party which ensures that most votes follow party lines. However, in a fragmented political system like Timor-Leste where there can be more than a dozen separate parties vying for seats, it is unlikely that one party will control the National Parliament on its own.

In many parliamentary elections (like the elections of 2007 and 2012), no single party has a majority in the National Legislature in number of seats held. When this happens, the Prime Minister will be selected by the coalition of political parties forming a majority in the National Legislature. In other words, if a political party has a large number of legislative seats, but not enough to be the majority party, it can reach out to smaller parties to form a coalition majority. This coalition majority is also known as a winning coalition because it succeeds in amassing enough parliamentary seats to "win" a majority.

It is not necessarily the case that the party with the largest plurality, or number of seats, will succeed in forming a winning coalition. A winning coalition can be made up of any of the parties that have sufficient seats for a parliamentary majority. For example, on July 6, 2007 after the elections, even though FREITLIN had a larger plurality of seats in the National Parliament, the CNRT, the ASDT-PSD, and the Democratic Party formed a majority coalition led by Gusmão and the CNRT. This combined the parliamentary seats held by the four parties into a

[2] Law 6/2006 was amended by the law 6/2007 (May, 31, 2007), Law 7/2011 (June, 22, 2011) and Law 1/2012 (January, 13, 2012)

winning coalition. The coalition held a total of thirty-seven seats, which is more than sufficient for a majority in the sixty-five seats National Parliament.

Although smaller parties have less representation in Parliament, the few seats that they can offer to a potential parliamentary coalition can become a tangible political gain for them when they do join a coalition. Since Timor-Leste is often governed by a majority coalition, however, smaller parties become essential partners in achieving a winning coalition. In this way, the issues important to a minority might be added to a coalition's legislative agenda in order to get the smaller party as a parliamentary ally. Parties can form a coalition both before and after an election. Alliances between parties can be put into writing in what is known as an accord. This document memorializes the official cooperation between the parties.

A Prime Minister necessarily belongs to the majority party or the majority coalition of parties. In contrast, a President may differ in party affiliation from the National Parliament majority party in power, a situation called cohabitation. Cohabitation can result in more challenges and delays to passing legislation or setting national policy. Cohabitation can result in an effective system of checks and balances, or a period of tense obstruction if neither group cooperates with the other to get work done. Whether cohabitation has positive benefits for state administration depends on the attitudes of the Prime Minister and President, the ideologies of their respective parties, and the demands of those who voted for them.

Once selected by the majority party or coalition, the candidate for Prime Minister is then appointed by the President. This final step of appointment by the President in which the President largely just confirms into office whomever the parliamentary majority decides to be its candidate. A President would be unlikely to refuse to recognize a Government without a very good justification. For example, the President might refuse to appoint a Prime Minister if he or she were presented with credible evidence that the selection of the Prime Minister by the parliamentary majority was somehow achieved through bribery or corruption. The President certainly may not refuse to appoint a Prime Minister simply based on a disagreement of politics or policy.

Questions

In a parliamentary election, political parties A, B, C, D, and E have all won seats in the National Parliament. Although parties A and B each hold around 33% of the parliamentary seats, neither obviously has sufficient numbers to form a majority on its own. The remaining parties C, D, and E hold the remaining 33% of the seats equally between them. In other words, each of the remaining parties has approximately 11% of the total parliamentary seats.

1) Which political party will get to select the Prime Minister?

2) What incentives do the smaller parties (C, D, and E) have in forming a coalition with A or B?

Answers and Explanations

1) The selection of the Prime Minister depends on which party or coalition of parties holds a parliamentary majority. In this hypothetical, no one party holds enough seats to have a majority on its own. Thus, a coalition of two or more political parties must then be formed. It does not matter whether a party has a bigger plurality. Ultimately, the coalition that achieves a majority in the National Parliament will be the winning coalition.

Parties A and B could certainly combine to achieve a significant parliamentary majority with two-thirds of the National Parliament united in a coalition. However, because the two largest political parties are often very different in political approach and have different visions for Timor-Leste, coalition between them is unlikely. The most likely situation is that either A or B will succeed in convincing the smaller parties (C, D, and E) into joining with it to form a coalition. At least two of the smaller parties in this situation must combine with either A or B to form a majority coalition.

For instance, parties B, D, and E could combine to hold around 55% of the seats in the National Parliament (33% + 11% + 11%). After forming the majority coalition, the Prime Minister would be chosen from among the parliamentary members in those three political parties. In practice, the candidate most often chosen for Prime Minister will be the leader of the political party contributing the most seats to the coalition. In the prior

example, party B's leader will probably be selected as the coalition's candidate for Prime Minister. Other coalition partners are also possible such as a coalition of A, D, E or coalition of A, C, E.

Of course, all three of the smaller parties could join A or B in a coalition. In other words, a strong parliamentary majority could be formed from the joined forces of A, C, D, and E or of B, C, D, and E. In both of these coalitions, 66% of the seats would be accounted for. Similarly, a candidate for Prime Minister would be chosen from among the leaders of the coalition parties.

2) The smaller parties of C, D, and E are incentivized to form a coalition with either A or B in order to have a voice in government. On its own, each of these parties only has 11% of the parliamentary seats, which will not mean much in attempting to reach its legislative goals. As part of the coalition Government, the smaller parties will have the chance to help set the priorities of the government. In return for joining the coalition, members of the smaller parties are also often offered Government positions by the larger political party.

III. THE ROLE OF THE PRIME MINISTER

SECTION OBJECTIVES

- To understand the role of the Prime Minister as the head of Government
- To understand the differences between the powers and responsibilities of the President and the Prime Minister

Constitution of Timor-Leste

Article 117: Competencies of members of the Government

(1) It is incumbent upon the Prime Minister:

(a) To be the Head of Government;

(b) To chair the Council of Ministers;

(c) To lead and guide the general policy of the Government and co-ordinate the activities of all Ministers, without prejudice to the direct responsibility of each Minister for his or her respective governmental department.

(d) To keep the President of the Republic informed on matters of domestic and foreign policy of the Government;

The Prime Minister is the head of Government. As used here, the term "Government" refers to the specific group of legislators and administrators who run Timor-Leste by enforcing existing laws, legislating new laws, and setting state policy. The Prime Minister provides leadership and direction to Government with the help of other members of the Government.

As the chairperson of the Council of Ministries, he or she oversees all the activities of the Government ministries and sets the agenda at meetings. The Prime Minister selects the members of the Government by considering the interests of Timor-Leste.

As leader of the majority party in the National Legislature (or the majority coalition), the Prime Minister must always be sensitive to the national and regional needs of his or her party.

The Prime Minister must be able to explain the need for certain policies and programs, and be able to put them into action. The Prime Minister, together with the other members of the Government, has to implement the Program of Government, which means he or she has to retain the confidence of the majority of the members in the National Parliament. This political connection between a Prime Minister and the majority coalition means that the Prime Minister must continuously attempt to appeal to a large constituency of voters in Timor-Leste. To keep the majority coalition in line, the Prime Minister may make political appointments to reward loyal and influential coalition members.

The Prime Minister often works with the President to ensure that governance of Timor-Leste runs smoothly. The Government, led by the Prime Minister, conducts the domestic and foreign affairs of the country, but the President's constitutional powers may aid the Government and the Prime Minister in his or her duties. For this reason, Article 117, Clause 1(d) of the Constitution of Timor-Leste makes it an explicit duty of the Prime Minister to keep the President informed of any matters related to Government`s domestic and external policy.

1. Prime Minister and the Structure of the Government

Each election cycle, the Government may issue legislation controlling its own structure. At the time of writing, the most recent draft of such legislation was the Organic Law of the Fourth Constitutional Government (Decree Law No. 07/2007),[3] which was put in place in 2007. A similar law will probably be passed sometime in 2012. We will use the Organic Law of the Fourth Constitutional Government and its amendments as an example and as a way to more fully explain the powers of the Prime Minister though of course a new law will be passed after the parliamentary election held in July 2012.

[3] Decree Law 7/2007 was amended by the following decree laws: Decree Law 5/2008 (March 5, 2008), Decree Law 26/2008 (July 23, 2008), Decree Law 37/2008 (October 22, 2008), Decree Law 14/2009 (March 4, 2009) Decree Law 11/2010 (August 11, 2010) Decree Law 15/2010 (October 20, 2010) and Decree Law 17/2012 (April 4, 2012).

Structure of the Fourth Constitutional Government

Article 6: Prime Minister

(1) The Prime Minister has his own competence and competence that is delegated upon him pursuant to the Constitution and the law.

(2) It is incumbent upon the Prime Minister in particular:

(a) To lead the Government and preside over the Council of Ministers;

(b) To direct and guide the overall policy of the Government and its actions;

(c) To represent the Government and the Council of Ministers in their relations with the President of the Republic and the National Parliament;

(d) To nominate lawyer to represent the State in lawsuits.

(3) In his quality as head of Government, the Prime Minister has the power to issue instructions to any member of Government and to make decisions on matters included in the areas of responsibility of any Ministry or Secretariat of State, as well as to create permanent or temporary committees or workgroups for any matters under the Government's purview.

(4) The Prime Minister also has powers regarding the services, bodies and activities under the Presidency of the Council of Ministers that are not the responsibility of the other members of Government that are part of it.

(5) The Prime Minister may delegate on any member of Government the powers referred to in the previous paragraph, as well as those that legally bestowed upon him.

Article 6 of the Decree-Law 7/2007 that approves the Structure of the Fourth Constitutional Government mostly repeats Article 117, Clause 1 of the Constitution of Timor-Leste. Clause 3 of Article 6 emphasizes the breadth of the Prime Minister's power since he or she has the ability to direct the actions of members of the Government. He or she can also make any decision within any of the Ministries or Secretariats. For anything that the Prime Minister would like further research or insight into, he or she can also create working groups and temporary committees.

Clause 4 of Article 6 seems to be a catch-all provision, which means that any powers that are not clearly given to members of the Council of Ministers can be exercised by the Prime Minister. This makes sense since the Prime Minister is already explicitly allowed to make any Government decision and instruct any Government official. If a power or responsibility is not already delegated, it would be the Prime Minister who would take it up. Similarly, Clause 5 of Article 6 gives the Prime Minister flexibility to structure his or her Government. Although he or she can make any decision of government, the practical constraints of time and limited knowledge make it necessary for the Prime Minister to delegate responsibilities.

Structure of the Fourth Constitutional Government[4]

Article 1: Structure

The Government consists of the Prime Minister, two Deputy Prime Ministers, the Ministers, Deputy Ministers and Secretaries of State.

Article 2: Deputy Prime Ministers

The Government features two Deputy Prime Minister, who depends directly from the Prime Minister and who follows him in the hierarchy.

Article 4: Composition of the Government

(1) The Prime Minister is assisted in his functions by the following members of Government, who are part of the Presidency of the Council of Ministers:

(a) Deputy Prime Minister for the Coordination of Social Affairs;

(b) Deputy Prime Minister for the Coordination of Affairs relating to the Administration of the State;

(c) Secretary of State for the Council of Ministers;

(d) (Revoked);

(e) Secretary of State for Youth and Sports;

[4] As amended by Decree Law 14/2009 (March 4, 2009) - 4th Amendment to the Organic Law of the Fourth Constitutional Government

(f) Secretary of State for Natural Resources;

(g) Secretary of State for Energy Policy;

(h) Secretary of State for Vocational Training and Employment;

(i) Secretary of State for the Promotion of Equality.

The Prime Minister has a lot of responsibilities, but he or she has a lot of advisors to depend upon. The Prime Minister benefits from the assistance of two Deputy Prime Ministers and six Secretaries of State. Each of the officials on the Council of Ministers acts as the head of a separate part of Government. The individual responsibilities and duties of these members of Government will be discussed later in the chapter. The challenge for every Prime Minister requires him or her to successfully coordinate the policies and efforts of different departments in the Government to fulfill a coherent plan for running Timor-Leste. For example, in establishing environmental policy, a Prime Minister would work closely with both the Secretary of State for Natural Resources and the Secretary of State for Energy Policy. A coordinated approach would avoid any wasted efforts and make any government initiatives more efficient and effective.

2. A Comparison Between the Powers of Prime Minister and President

In understanding the authority of the Prime Minister, it might be useful to look at how the Prime Minister's role contrasts with that of the President as the head of state. The Government is an autonomous sovereign body, responsible for defining and executing the general policy of the country. The President of the Republic is not the head of the Government and therefore cannot define its organization and policy. This means that the presidential influence on the day-to-day operations of the Timor-Leste government is limited. In comparison, the Prime Minister, who leads the Government, sets major policy decisions, makes many of the bureaucratic decisions and handles the political brokering essential to run the country. He or she must be heavily involved in the daily politics required to keep the Government passing legislation, and also in guiding the members of Parliament to synchronize policy goals so that they fit the government's overall vision.

Even though the Government led by the Prime Minister doesn't depend on the President, the Government is still responsible to the President (politically responsible) for the definition and execution of the domestic and external policy of the Government. Although the President doesn`t have direct power over the implementation of the policy of the country, the President's political power should not be underestimated, since the President's impact on public opinion can be significant, depending on his or her popularity with the people of Timor-Leste. As a directly elected representative of the people of Timor-Leste, the President has the power to address messages to the country and he or she can make strong appeals to voters to vote a certain way or to highlight issues in government.

The President has a major role in ensuring the regular functioning of the democratic institutions, which means that he or she is responsible for monitoring how the Government (and the Parliament) manages policy and the country. Also, the President has important supervisory powers over the Government`s action like the power of veto and has the power - in order to ensure the normal functioning of the democratic institutions - to dismiss the Government.

Each leadership role has its own motivations, goals, and interests. Most of these overlap with the other, but certainly some of their interests will clash with the other. In general, it is important to remember that the Prime Minister runs the Government and the President doesn`t, but given his powers the President can bring helpful checks and balances to the country`s development. Nevertheless, the constitutional principle of the separation of powers between the President and the Prime Minister's Government requires extensive collaboration between the two critical leadership roles in running the country effectively.

Questions

1) According to the Constitution of Timor-Leste, what are the four major duties of the Prime Minister?

2) What parties support and assist the Prime Minister in fulfilling the duties of his or her office?

Answers and Explanations

1) According to Article 117, Clause 1 of the Constitution of Timor-Leste, the Prime Minister acts as the Head of Government, chairs the Council of Ministers, coordinates the general policy of Government through his or her Ministers, and keeps the President of the Republic informed on matters of domestic and foreign policy.

2) Under Article 1 of Decree Law 7/2007 (as amended by the fourth amendment to the Structure of the Fourth Constitutional Government), the Prime Minister is supported in his or her duties by two Deputy Prime Ministers, as well as the Ministers, Deputy Ministers and Secretaries of State. Article 6, Clauses 3 through 5, provide the Prime Minister with the ability to make decisions on any area of governance, as well as to delegate those powers as he or she sees fit. The Prime Minister may also create temporary working groups and committees to assist him in research and policy development.

IV. POWERS AND DUTIES OF THE PRIME MINISTER

SECTION OBJECTIVES

- To learn about the role of the Government and the powers held by the Prime Minister
- To understand the importance of the Program of Government
- To understand the Prime Minister's role in establishing a Program of Government and a Budget

Constitution of Timor-Leste

Article 115: Competence of the Government

(1) It is incumbent upon the Government:

(a) To define and execute the general policy of the country, following its approval by the National Parliament;

(b) To guarantee the exercise of the fundamental rights and freedoms of the citizens;

(c) To ensure public order and social discipline;

(d) To prepare the State Plan and the State Budget and execute them following their approval by the National Parliament;

(e) To regulate economic and social sector activities;

(f) To prepare and negotiate treaties and agreements and enter into, approve, accede and denounce international agreements which do not fall under the competence of the National Parliament or of the President of the Republic;

(g) To define and implement the foreign policy of the country;

(h) To ensure the representation of the Democratic Republic of Timor-Leste in the international relations;

(i) To lead the social and economic sectors of the State;

(j) To lead the labour and social security policy;

(k) To guarantee the defence and consolidation of the public domain and the property of the State;

(l) To lead and co-ordinate the activities of the ministries as well as the activities of the remaining institutions answerable to the Council of Ministers;

(m) To promote the development of the co-operative sector and the support for household production;

(n) To support private enterprise initiatives;

(o) To take actions and make all the arrangements necessary to promote economic and social development and to meet the needs of the Timorese people;

(p) To exercise any other competencies as provided by the Constitution and the law.

(2) It is also incumbent upon the Government in relation with other organs:

(a) To submit bills and draft resolutions to the National Parliament;

(b) To propose to the President of the Republic the declaration of war or the making of peace;

(c) To propose to the President of the Republic the declaration of the state of siege or the state of emergency;

(d) To propose to the President of the Republic the submission to referendum of relevant issues of national interest;

(e) To propose to the President of the Republic the appointment of ambassadors, permanent representatives and special envoys;

(3.) The Government has exclusive legislative powers on matters concerning its own organisation and functioning, as well as on the direct and indirect management of the State.

Government is the sovereign organ within the Timorese state responsible for defining and executing the general policy of the country. Article 115 of the Constitution enumerates Government`s competences, both in domestic and external policy, including its competences in relation to other organs, such as the power to initiate legislation to be approved by the National

Parliament and the power to propose that President of the Republic declare war and make peace. Finally, the Constitution determinates that the Government has exclusive legislative competence to define its organization and functioning as well as in regard to the direct and indirect administration of the state.

The Prime Minister is responsible for setting and coordinating Government policy across all its departments. While there may be practical or political reasons that a Prime Minister may choose to allow a minister to pursue a policy that he or she disagrees with, the Ministers and Secretaries of State can all have their decisions cancelled and over-ridden by the Prime Minister. This means that the Prime Minister's potential impact on policy-making can be enormous since he or she can make policy decisions on local government, education or any other key areas. He or she has the power to issue instructions to any member of Government or to make decisions on matters falling within the purview of any Ministry or Secretariat of State.

Although the Prime Minister consults with lots of people and must seek the approval of the Council of Ministers, he or she is ultimately responsible for all Government decisions. While this constitutional authority could theoretically result in the Prime Minister controlling every small aspect of government, in practice the heavy burden of running the national Government demands widespread delegation of authority. The Prime Minister leaves much of the work of running Government in the hands of the Deputy Prime Ministers, Ministers, Secretaries, and civil servants. Without effective delegating of tasks to discretionary agents, the Prime Minister would quickly find himself or herself unable to handle all of the tiny details of governance.

The Prime Minister's role requires that he or she provide leadership in coordinating the different ministries and secretariats. To this end, he may establish both standing and ad hoc working groups and committees to investigate and address matters falling within the authority of the Government. These groups and committees provide a streamlined flow of information to the Prime Minister, filtering out a lot of the political noise that might distract him or her from the bigger policy goals. The groups and committees also function as a way for the Prime Minister to further delegate power and to examine legislation and policy proposals for mistakes and omissions. Otherwise, the Prime Minister would have to personally check the mundane details of each decision made by the Government as a whole, which would be incompatible with the Prime Minister's broad mandate and the pace of government would become very slow.

1. Passing a Program of Government

Constitution of Timor-Leste

Article 108: The Program of the Government

(1) Once appointed, the Government should develop its program, which should include the objectives and tasks proposed, the actions to be taken and the main political guidelines to be followed in the fields of government activity.

(2) Once approved by the Council of Ministers, the Prime Minister shall, within a maximum of thirty days after appointment of the Government, submit the Program of Government to the National Parliament for consideration.

After being appointed to office, the Government puts together a **Program of Government**. The Program outlines the agenda that the Government would like to pursue. The framework of the Program typically corresponds to the legislative agenda of the majority political party or majority coalition. It consists of the major goals that the Prime Minister envisions for each Ministry. For example, in the Program appraised by the National Parliament in 2008, the creation of a civil service commission was set as one of the major goals of Government.

The Program outlines the major milestones that achieving each goal will require meeting, as well as an accounting of the significant current challenges facing Timor-Leste. This official proposal provides the Prime Minister with the opportunity to set the tone of his or her administration and gives members of Parliament a sense of what policy goals their upcoming legislative work will be striving towards. During the term of his or her office, the Prime Minister spends his time guiding the law-making process with the goal of enacting each part of the Program.

Constitution of Timor-Leste

Article 109: Consideration of the Program of Government

(1) The Program of the Government shall be submitted to the National Parliament for consideration. Where the National Parliament is not in session, its convening for this purpose shall be mandatory.

(2) Debate on the program of the Government shall not exceed five days and, prior to its closing, any parliamentary group may propose its rejection or the Government may request the approval of a vote of confidence.

(3) Rejection of the program of the Government shall require an absolute majority of the Members in full exercise of their functions.

After the Council of Ministers approves the Program, the Prime Minister presents the proposal to the National Parliament. The National Parliament then has a maximum of five days to debate the merits and weaknesses of the Program. If members of Parliament feel particularly strongly that the Program does not reflect accurately the needs of Timor-Leste, they may motion and cast votes for its rejection. Rejection of the Program requires an absolute majority of the members of the National Parliament. A decision on whether to accept or reject a Program is a major one because it reflects a de facto referendum on the Government's legitimacy and power.

Constitution of Timor-Leste

Article 86: Competencies with regard to other organs

It is incumbent upon the President of the Republic, with regard to other organs:

(g) To dismiss the Government and remove the Prime Minister from office after the National Parliament has rejected the Government`s program for two consecutive times.

If the Program is rejected by the Parliament, the Prime Minister has another opportunity to work with the other members of the Government on a revised proposal. Built into the Constitution is a strong incentive for the Government to take into account the feedback and

critiques articulated in the rejection vote and accompanying debates. Otherwise, a second failure to pass a Program will have significant consequences for the Government in power. Under Article 86, Clause G of the Timor-Leste Constitution, the President will remove a Prime Minister from office and dismiss the Government after two consecutive rejections of the Program. It is a dismissal that affirms the National Parliament's refusal to accept the Prime Minister's authority. The act of dismissing the Prime Minister symbolically references the presidential role as head of the state.

Two rejections of the Government's Program are unlikely to ever happen. Since the Prime Minister leads the majority party or coalition of parties in the National Parliament, the fact that Parliament would reject a Program twice already indicates a failure of government. As a result, the President's subsequent dismissal of the Prime Minister as an ineffectual leader of Government would just be an official acknowledgement of a well-established and known fact.

The National Parliament typically works very closely with the Government on developing and negotiating a Program. Any particular conflicts between Parliament members and the Prime Minister or other Government members usually come to light before any official vote, as well as any provisions that individual members would like to see in the proposal. Barring any miscommunication or dramatic power plays, the process of deliberating a Program should run smoothly since Parliament members and the Prime Minister have a well-informed sense of how far they can push each other without risking failure of Government. An effective Prime Minister will be able to steer the general agenda of the Program in his or her desired policy directions while making sufficient compromises to members of the National Parliament to ensure that it will be successfully approved.

Question

1) What are the consequences of the National Parliament rejecting a Program of Government?

Answer and Explanation

1) The consequences of the National Parliament rejecting a Program of Government depend on whether it is the first or second time a Program has failed to pass. The first time that a Program does not pass, the Government makes revisions to the proposal based upon feedback from the National Parliament in hopes that the second submission of the Program will be accepted. Under Article 8, Clause G of the Constitution of Timor-Leste, the second time that a Program is rejected means that the President will dismiss the Prime Minister and his or her Government. A new Government will have to be formed that has the confidence of the National Parliament.

2. Passing a State Budget

Constitution of Timor-Leste

Article 145: State Budget

(1) The State Budget shall be prepared by the Government and approved by the National Parliament.

(2) The Budget law shall provide, based on efficiency and effectiveness, a breakdown of the revenues and expenditures of the State, as well as preclude the existence of secret appropriations and funds.

(3) The execution of the Budget shall be monitored by the High Administrative, Tax and Audit Court and by the National Parliament.

Although the Government's Program sets the goals and intended plans of each Government and the Prime Minister that leads it, it is the budget proposal that provides the financial backing of what is feasible for implementation. The Prime Minister is responsible for the defense and implementation of budget statements and Government policy generally. This means that the Government takes charge of writing a budget that adequately funds the key points of the Program while ensuring that the revenue sources for Timor-Leste are sufficient and accurately accounted for. The State Budget should be extensive and detailed, such that any

money spent or received by the government should be enumerated openly. This budget proposal must then be passed by the National Parliament.

For example, the 2011 State Budget of $985 million was passed by the National Parliament with a vote of 43 in favor, 21 against, with one absentee. This budget corresponded to the Government's Program through major investments in Timor-Leste's infrastructure and labor force in an attempt to further develop the nation and to reduce poverty. Particular items of note included a $166 million fund to continue the national project for electrical power generation and a $25 million Human Capital Development Fund to provide professional and technical training.

After a budget is passed, the National Parliament continues to monitor governmental expenditures through periodic audit reports. Parliament is assisted in this task by the High Administrative, Tax, and Audit Court. As the High Administrative, Tax and Audit Court hasn`t been established yet, Parliament is assisted by the Audit Chamber (within the Court of Appeals) established by the Law 9/2011 (August 17, 2011). Any discrepancies in spending that give rise to concerns about propriety may lead to the opening of investigations of whether there is Government corruption or embezzlement.

V. CONSTRAINTS ON THE PRIME MINISTER'S POWER

SECTION OBJECTIVES

- To understand how the Prime Minister's power is constrained by the Constitution, statutes, the electorate, and the National Parliament

As discussed previously, the Prime Minister wields an immense amount of governmental power. His or her office's mandate and scope encompasses almost every aspect of Timor-Leste political life. However, the Prime Minister's authority has important formal and informal limitations. While it may appear obvious, it is important to note that the Prime Minister is not above the law. The Prime Minister must follow the provisions of the Constitution, as well as the directives passed in legislation by the National Parliament.

In addition, the Prime Minister's power is limited in a structural sense. While he or she has many important functions in the legislative and executive arenas, the Prime Minister has no control over other branches of the state. For example, the judicial branch is insulated from orders and direct influence by the Prime Minister. He or she cannot command the courts to achieve a certain result or to avoid taking a case.

1. Limitations by Constitutional Law and Statute

Constitution of Timor-Leste

Article 67: Organs of Sovereignty

The organs of sovereignty shall comprise the President of the Republic, the National Parliament, the Government and the Courts.

Statute of the Holders of Sovereign Bodies

Article 1: Scope of Application

(2) For the purposes of the present law, the following are considered holders of sovereignty bodies:

(a) The President of the Republic;

(b) The President of the National Parliament;

(c) The Prime Minister;

(d) The President of the Supreme Court of Justice.

(3) For the purposes of the present law, members of the Government are considered members of sovereignty bodies.

Along with other major leaders of "organs of sovereignty," the Prime Minister is a holder of a "sovereignty body." As established in Article 67 of the Constitution and elaborated upon by Statute of the Holders of Sovereign Bodies, Law No. 7/2007 (July 17, 2007), holders and members of sovereign bodies may not act in certain ways. This, according to the preamble, is so that they can (1) perform the full functions that they were elected or appointed to do; (2) maintain the dignity and legitimacy of the governmental positions; and (3) safeguard the independence of a holder of sovereignty against undue influences. In most cases, Law 07/2007 imposes restrictions on activities and associations that a holder of sovereignty can engage in while in political office, but occasionally, the limitations will extend for a reasonable period of time beyond leaving office.

Statute of the Holders of Sovereign Bodies

Article 2: Exclusivity

(1) The holding of the offices indicated in the previous article is incompatible with any other professional functions, whether or not remunerated, as well as with the integration in social bodies of any profit legal persons.

(2) Functions or activities derived from the office, and those who are exerted by inherence, are excluded from the dispositions of the previous paragraph.

(3) The holders of sovereignty bodies may not, because of the exercise of their functions, be harmed in their placement or permanent job; they shall also interrupt every public or private professional activity they had been exercising before entering into office for the duration of their mandate.

The Prime Minister may not serve in a professional capacity in either public or private companies. This is to prevent the appearance of favoritism or corruption by a Government officer. Even if the Prime Minister is not paid money or compensated in other ways with goods and services, business interests may still want to engage or invest in companies that a Government officer is actively involved with. Potential customers and members of the public might confuse a Prime Minister's participation in a business as a sign of a Government approval or backing. Since a Prime Minister or other holders of sovereign bodies will be considering and promulgating legislation that directly impacts corporate interests, a requirement to interrupt any of these non-governmental functions before taking office is a reasonable one. An effective Prime Minister wants to avoid even suspicions of corruption.

After leaving office, however, the Prime Minister may resume any professional positions he or she had been holding before.

Statute of the Holders of Sovereign Bodies

Article 4: Refereeing and Expertise

(1) The holders of sovereignty bodies may not serve as referees or experts, whether for free or remunerated.

(2) This impediment remains until one year has elapsed since the end of the respective functions.

The Prime Minister may not serve as an expert, such as an expert witness in a court proceeding, even if he or she is not paid for this service and time. This applies to any proceeding until a year has passed after the end of his or her term. Although he or she may be well-versed in the subject matter in question, the official nature of the office may lend an importance to the testimony that could unfairly bias the proceedings. The time period of one year may perhaps be

enough time for people to consider the ex-Prime Minister far enough removed from an official capacity to testify without putting too much weight on what he or she has to say simply because he or she used to hold such a respected position.

Questions

Before becoming Prime Minister the Prime Minister was a forceful champion for workers' rights and for pushing through legislation on occupational safety. A non-profit organization that works on improving the working conditions of hotel staff in Dili wants to have the Prime Minister serve as a consultant for a piece of legislation they are drafting to submit to the National Parliament. The Prime Minister is happy to help since it is a social issue she cares strongly about, but she is concerned that her work with this non-profit will violate the Constitution.

1) As the Prime Minister's legal advisor, what would you tell her about the limitations on what she may and may not do with this group?

2) The Prime Minister has made it clear that she will not accept any money or gifts from the non-profit group in return for her consulting services. Does this make a difference for the constitutional restrictions?

Answers and Explanations

1) The Prime Minister is included in the Statute of the Holders of Sovereign Bodies, specifically under Article 1, Clause 2(c). This law governs what holders of sovereign organs may or may not do in relation to third party interests builds on Article 67 of the Constitution of Timor-Leste.

Article 2 of the Statute of the Holders of Sovereign Bodies indicates that the Prime Minister may not in fact serve in a professional capacity as a consultant. Even if the Prime Minister had been providing these services before taking office, she is obliged

to resign from the position before taking on her official role. Article 4 builds on this prohibition and makes it clear that the Prime Minister may not serve as an expert on the legislative issues.

Article 2's prohibition on holding professional offices ends upon the Prime Minister leaving her office. Article 4's prohibition on serving as an expert or referee persists for a year after.

2) Both Articles 2 and 4 of the Statute of the Holders of Sovereign Bodies make it clear that it does not make a difference if the Prime Minister will not be compensated by the non-profit group. The law is concerned with even the appearance of collusion or corruption between third party groups and high government officials, so the fact that the Prime Minister will be offering her services at no cost to the non-profit workers' rights groups does not make it legal.

2. Limitations by Electorate

As the face of the Government, the Prime Minister is pragmatically constrained by the public responsibility he or she would incur for any major mishap that happens during the term of office. When policies go well, the Prime Minister can take credit for the Government's activities, but the opposite is of course also true. He or she is the most well-known member of the Government, so it is natural that the public hold the Prime Minister accountable for when things go badly. The Prime Minister's duty is to coordinate the Government's efforts to run Timor-Leste smoothly. Even though a Prime Minister is not elected directly by the people of Timor-Leste, he or she should still remain aware of what the populace may be concerned with both during and after the parliamentary elections.

The National Parliament's interactions with the Prime Minister also respond to public pressure since each member of Parliament has been elected on their party platform. The confidence of the public is reflected in its opinion of the Prime Minister's actions and policy choices. In deriving political power from the National Parliament's support, a Prime Minister must of course remain in touch with the major and minor issues facing the people of the country.

As explained before, popular sentiment decides which political parties hold seats in the National Parliament. A Prime Minister who takes action in ways that are out of touch with the views of voters will end up hurting his or her coalition's ability to stay in power. Staying relevant with regard to the needs of the people of Timor-Leste makes it more likely that those Government policies will be supported by the public and thus run smoothly. The Prime Minister is typically motivated to seek reelection of his or her parliamentary coalition members.

Incentives for continuing as Prime Minister may include a desire to further progress made on the Government's Program, to build on political lessons learned in the earlier term, and to continue serving the people of Timor-Leste. For the Prime Minister, maintaining high popularity and approval rates within the parliamentary majority that brought him or her to power is certainly important for reelection, but preserving his or her credibility in the public eye may be equally crucial.

3. Limitations by the National Parliament

Constitution of Timor-Leste

Article 107: Responsibility of the Government

The Government shall be accountable to the President of the Republic and to the National Parliament for conducting and executing the domestic and foreign policy in accordance with the Constitution and the law.

The Prime Minister's powers are carefully balanced and constrained by the National Parliament. If he or she loses the support of the political party or parties that put him or her in power, the position of Prime Minister becomes much weaker. In contrast, the President of Timor-Leste does not generally have to answer directly to the National Parliament, unless he or she has committed an illegal act. The backing of Parliament members is obviously more relevant on a day-to-day basis for the Prime Minister than the President. A Prime Minister who pursues an agenda without the support of the National Parliament will not be able to pass the necessary legislation.

Constitution of Timor-Leste

Article 111: Vote of No Confidence

(1) The National Parliament may, following proposal by one-quarter of the Members in full exercise of their functions, pass a vote of no confidence on the Government with respect to the implementation of its program or any relevant matter of national interest.

(2) Where a vote of no confidence is not passed, its signatories shall not move another vote of no confidence during the same legislative session.

If members of the National Parliament feel that the Government no longer adequately represents their interests in implementing the Government's program or any other issue of national interest, they may formally express this dissatisfaction with a **vote of no confidence**. A vote of no confidence may also be known as a censure motion, in the sense that it is an official expression of severe disapproval for the Government's actions and policies.

Since a vote of no confidence has such profound effects if it passes, a significant proportion of the National Parliament members have to be in agreement to even propose it. Under Article 111, Clause 1 of the Constitution of Timor-Leste, at least a quarter of the National Parliament's members must agree to propose such a vote. To pass the vote of no confidence, an absolute majority of the members of the Parliament must vote in favor. If the vote of no confidence falls short of the numbers needed to pass, the National Parliament members who proposed the failed vote may not move to hold another vote in the same legislative session. This once per legislative session limit was clearly intended to prevent National Parliament members from obstructing the operation of Government. If any number of votes of no confidence could be proposed by the same people, it would be a dangerous stalling tactic. Debates about whether or not a Prime Minister should be replaced inevitably evoke strong emotions from members of Parliament. These discussions tend to last for long periods of time, displacing normal legislative matters. When this happens the Government of Timor-Leste will essentially come to a stop.

For example, a vote of no confidence was proposed in October 2009. Angry at Prime Minister Xanana Gusmão's decision to release Maternus Bere, a pro-Indonesia militia leader charged with war crimes, the opposition FRETILIN members of Parliament and other members initiated a vote of no confidence. Opposition members accused the Government of interfering inappropriately with the judicial process. After twelve hours of intense debate, the vote of no

confidence failed to pass. Supporters of the Government voted 39 to 26 against the censure motion lodged against the government. If 33 legislators had approved the motion, the Gusmão government would have collapsed.

From a pragmatic standpoint, votes of no confidence may be proposed by the National Parliament even if it has no realistic chance of passing. Even when a vote of no confidence does not pass, the mere proposal of such a vote can be a way for Parliament members to signal to the Government and the Prime Minister that he or she may be losing their support. The closeness of the vote would be an indicator to all parties involved as to how cohesive the Government coalition is.

The vote itself can be an opportunity to demand that the Prime Minister take a more responsive posture on certain governmental issues. Nonetheless, it is still a dramatic course of actions, so a prudent National Parliament would typically reserve votes of no confidence for situations where its members feel that it is the only way it can get the Prime Minister's attention in a public way. Otherwise, if the National Parliament were to threaten votes of no confidence all the time, it would simply become an empty threat. In addition, members of Parliament should consider the public impact of votes of no confidence. The more often these votes are considered, the more unstable and shaky the Government's authority seems the people of Timor-Leste and to international donor countries. This in turn can have a negative impact on development.

Constitution of Timor-Leste

Article 110: Request for Vote of Confidence

The Government may request the National Parliament to take a vote of confidence on a statement of general policy or on any relevant matter of national interest.

Alternatively, when the National Parliament is asked to pass a vote of confidence and fails to do so, it has the same effect as a vote of no confidence that makes it through and gathers enough votes for a majority. A vote of confidence is a statement of support by a majority of the National Parliament for the Government`s policy or for a specific matter of national relevance. In contrast, a vote of no confidence is a statement by a majority of the National Parliament that they

no longer believe the current Prime Minister and the Government should continue running Timor-Leste. The constitutional language of Article 110 is broad enough such that a vote of confidence can encompass essentially any matter. Namely, "any relevant matter of national interest" touches on any issue before the National Parliament since it is a representative body for the whole nation of Timor-Leste. Like with the National Parliament's ability to propose votes of no confidence, the strategy of requesting votes of confidence also cannot be used too often by the Prime Minister. The National Parliament will eventually call the Prime Minister's bluff and actually reject a vote of confidence.

If a vote of no confidence is successfully passed or if a vote of confidence fails, the President will remove the Prime Minister from office and dismiss the Government. Although Parliament can be dissolved, the President will typically "suspend" his or her decision of dissolution. This means that the President will give the members of Parliament a certain amount of time to try and form a new Government. The Parliament then works quickly to try to reactivate and to reestablish a new Government that will have the confidence of a coalition majority. For example, in June of 2006, in the wake of the resignation of Prime Minister Alkatiri that led to the dissolution of Government, the President set a thirty day timeline for the inactive Parliament to set up a new Government. In this thirty day period, Government business was handled by an interim Government and a caretaker cabinet made up of some of the members of Alkatiri's former cabinet.

Questions

After a number of severe disagreements between members of the National Parliament and the Prime Minister, there has been a lot of discussion about putting forth a vote of no confidence.

1) In a sixty-five member National Parliament, how many members must agree to propose the vote of no confidence?

2) How many members must vote in favor to pass it?

3) The vote of no confidence fails by a margin of three members. After the vote fails, a few more members change their minds and now want to vote in favor of removing the Prime Minister. Can another vote of no confidence be brought in that legislation session?

Answers and Explanations

1) Under Article 111, Clause 1 of the Constitution of Timor-Leste, one-quarter of the National Parliament must agree in order to propose the vote of no confidence. In a sixty-five member Parliament, at least seventeen members must agree with the proposal.

2) A majority of the members of the National Parliament who are eligible to vote need to approve to pass the no confidence motion. In a sixty-five member Parliament, at least thirty-three members need to vote in favor.

3) Even though the proponents of the vote of no confidence now have sufficient numbers to carry the motion, the failure of the previous vote means that unless they can get seventeen members of Parliament that were not signatories to the first vote to move for a vote of no confidence, they cannot have another no confidence vote this session (anyone who voted for the first motion may vote for the second motion, but no one that was a signatory for the first motion can make up the one-quarter of the National Parliament that proposes the second vote). Because a vote of no confidence is usually given priority over all other matters, Article 111, Clause 2 allows only one vote of no confidence per session by a given set of signatories as a way to prevent members of the National Parliament from using it as a protest or stalling tactic.

4. Limitations by the members of the Government

A Prime Minister's authority may also be limited by the members of the Government. As the leaders of each Ministry, the Ministers will be experts on their particular area of governance.

While a Prime Minister will rely on their expertise for ideas and insight on challenges facing Timor-Leste, the approaches preferred by the Ministers on how to address issues may differ from that of the Prime Minister. This is particularly the case when specific Ministers represent political parties other than the PM's party.

In Governments formed by a coalition of parties rather than one majority party in Parliament, the Government may be made up of appointees from the different factions of the coalition. This is a way for the coalition's minority parties to maintain a presence in the Government and may form a part of the negotiations involved in forming the coalition in the first place. In other words, a coalition Government may coalesce based on an understanding that certain ministerial seats will be reserved for particular party members of the coalition.

As a result, the Prime Minister may in fact have to amend his or her ideal policies to please key members of the Government. Any Government plan will inevitably benefit certain groups or individuals more than others, so competition between members of the Government for influence over what becomes the proposed Program to the National Parliament can potentially be contentious. The Prime Minister will certainly have his or her own agenda to push as well, so the dynamics between the members of the Government and the Prime Minister can be complicated.

Membership in the Government depends on the Prime Minister and each Minister can be dismissed at any time, though he or she can remain an MP after being dismissed if he or she sat in Parliament beforehand. Ministers might disagree with the Prime Minister's decision on how a particular Ministry's policy should be set, but this is part of the Council's function in providing the Prime Minister with options that challenge government policy for the better. However, it is a possible source of political friction in more extreme cases where a Minister refuses to follow a Prime Minister's directives or is otherwise hampering the Prime Minister's ability to smoothly run the government.

As discussed before, a Prime Minister is free in his constitutional powers to dismiss Ministers. In reality, the Prime Minister would prefer to negotiate or talk down any conflicts with his Ministers in an effort to keep a coalition Government together. Even offending a minister or making a particular minister feel marginalized can have broader repercussions on the stability of a coalition. Likewise, firing a minister creates the risk of fracturing the party or coalition. It may ultimately cause the Government to collapse.

A Minister or Secretary of State who feels that he or she cannot work with the Prime Minister might consider resignation from the post (or at least threaten to resign), a move that could potentially make the Prime Minister look bad to the public. While resigning from office in protest is certainly an option, ministers (particularly ones representing minority political parties within a coalition Government) may be reluctant to resign since doing so puts them out of office. On an individual level, a minister who resigns from his or her post faces the prospect of ending his or her own political career. In addition, resignation as a form of protest against the Prime Minister's directives only works effectively to shape Government policy in the long term if the minister in question can realistically expect the Prime Minister or the electorate to value the loss.

Resignation of a ministry position may create an unstable mentality within a coalition Government, such that instability or conflict from one party in the coalition causes the remaining members to question whether or not the political alliance will continue to be viable in the next election season. Since so much of coalition Government relies on trust and interdependency, it is important for the Prime Minister to assuage any tensions that may arise within the Government before it can spread to the rest of its members. To a lesser extent, a Prime Minister may also be limited by public perceptions of the dismissal of a Minister or Secretary of State. In other words, since the Prime Minister was the one who originally chose these members of Government, a subsequent dismissal of a Minister could potentially send a signal of bad judgment in appointing that person to the office in the first place. The Prime Minister also might not want the opposition political parties or the general public to know that he or she is having trouble with members of the Government.

Although the Prime Minister has a great deal of political power, this power is balanced by assorted considerations and limitations. While a Prime Minister has the backing of a parliamentary majority, his position is secure. If he loses the support of the public or member of the Government, the Prime Minister becomes less able to effectively pursue his agenda.

VI. LEAVING OFFICE

SECTION OBJECTIVES

- To understand the ways in which the Government is dismissed and the Prime Minister might leave office: (1) at the start of a new legislative term; (2) through resignation; (3) through death or disability; (4) through parliamentary removal (5) through Presidential removal.

Constitution of Timor-Leste

Article 112: Dismissal of the Government

(1) The dismissal of the Government shall occur when:

(a) A new legislative term begins;

(b) The President of the Republic accepts the resignation of the Prime Minister;

(c) The Prime Minister dies or is suffering from a permanent physical disability;

(d) Its program is rejected for the second consecutive time;

(e) A vote of confidence is not passed;

(f) A vote of no confidence is passed by an absolute majority of the Members in full exercise of their functions;

A Prime Minister's term in office can be indefinite. Without term limits like those imposed on the presidency, a Prime Minister can serve as head of Government for as long as he has the support of a majority in Parliament. However, there are a variety of situations enumerated in Article 112 of the Constitution of Timor-Leste where the Prime Minister may be replaced or dismissed by the President.

1. New Legislative Term

Article 112, Clause 1(a) provides for the dismissal of Government upon the eve of a new legislative term. In many cases, however, the Prime Minister will be reappointed as the head of

Government. If the majority party led by the (former) Prime Minister continues to dominate the Parliament after the elections and the incoming members of Parliament continue to support him or her, he or she will be reappointed as Prime Minister. In this way, a Prime Minister who can serve for multiple legislative terms can provide a wealth of institutional knowledge and political experience. He or she has weathered the initial stages of building trusting relationships with new legislators and can account for the diverse interests and quirks of more seasoned members of Parliament. At the same time, the people of Timor-Leste may decide that it is time for a new policy direction for the country. In that event, a new slate of people might be elected into the National Parliament. With a new coalition in power, a new Prime Minister would likely assume office.

2. Resignation by the Prime Minister

Under Article 112, Clause 1(b) of the Constitution, a Prime Minister may resign from his or her post by submitting a resignation to the President of Timor-Leste. The acceptance of resignation by the President seems to be a largely ceremonial gesture since the President does not really have a right of refusal. The Prime Minister might tender a resignation to the presidential office, but ask that the President not officially accept the resignation until a replacement candidate is selected by the coalition. While this delay in the Prime Minister's resignation is not officially provided for in the law, it is a pragmatic act. This provides an assurance of continuity in the power structure until a newly selected Prime Minister can take office.

Resignation is generally motivated by a number of political concerns. For example, a Prime Minister who is faced with a vote of no confidence from the National Parliament may take the preemptive step of leaving office before the embarrassment and spectacle of an official public ousting can take place. Alternatively, a Prime Minister who has had his or her popularity plummet among Parliament members or the Timor-Leste public might be asked by his or her own coalition supporters to resign before a parliamentary election. This is so that the coalition can field a more popular candidate with a better chance of pulling together a dominant majority in the election. Mari Alkatiri, for example, resigned as Prime Minister in 2006 during a period of internal conflict and instability in Timor-Leste. Although his party convened and made a statement confirming their continued confidence in his ability to lead the Government, Alkatiri

recognized that his continued service as Prime Minister would be difficult because of his increasing unpopularity, and would be difficult on his party in the next election.

3. Death/Permanent Disability

Of course, under Article 122(c), when a Prime Minister dies or is otherwise incapacitated in office, a replacement will have to be chosen. If the coalition Government remains stable, the parties within the coalition will convene to select a new leader. During this selection process, an interim Prime Minister may serve temporarily.

4. Parliamentary Removal

Articles 122(d) through 122(f) delineate situations when a Prime Minister qualifies for dismissal from office through parliamentary removal. In this chapter, we have already extensively looked at these three removal situations: (1) failure of two attempts to pass a Program under Article 112(d), (2) failure of a vote of confidence under Article 112(e), and (3) success of a vote of no confidence.

Constitution of Timor-Leste

Article 112: Dismissal of the Government

(2) The President of the Republic shall only dismiss the Prime Minister in the cases provided in the previous item and when it is deemed necessary to ensure the regular functioning of the democratic institutions, after consultation with the Council of State.

Article 112, Clause 2 of the Constitution of Timor-Leste provides limitations on the President's removal power. The President has no direct power over the Government in the way it conducts the general policy of the country and therefore cannot remove the Prime Minister and dismiss the Government when he or she wishes, even if the President has different political views. First of all, the President shall remove the Prime Minister and dismiss the Government under one of the six enumerated situations set out in Article 112 Clause 1 of the Constitution occurs. Secondly, the President may also remove the Prime Minister and consequently dismiss

the Government when it is of his or her understanding that such a decision is the only possible one to ensure the normal functioning of the democratic institutions. The decision of removing the Prime Minister and dismissing the Government is a personal and exclusive decision that depends on the evaluation the President makes of a particular context or situation which the country may be facing. Nevertheless, the President shall consult previously the Council of State prior to taking this decision.

For example, imagine that a Prime Minister has been asked by his or her own coalition to step down from office. A Prime Minister could essentially ignore a de facto withdrawal of support until the sufficient votes necessary to pass a motion of no confidence can be gathered. In a situation like this, the President could be of the opinion that the Prime Minister no longer has the conditions to lead the Government and take the necessary measures for the country, and therefore remove him or her from office.

Of course, in practical politics, as discussed earlier in the Chapter, Prime Ministers work very closely with the National Parliament and so is unlikely to ignore them. Especially in a small nation like Timor-Leste, interpersonal relations and professional reputation are of paramount importance for any politician within the government

Question

1) When can a Prime minister and his or her government be dismissed?

Answer and Explanation

1) Article 112, Clause 1 of the Constitution provides six situations in which the Prime Minister and his or her government may be dismissed by the President. These include when a new legislative term begins, when the President accepts the Prime Minister's resignation, upon the death or disability of the Prime Minister, when the government's Program has been rejected twice, when a vote of confidence fails, when a vote of no confidence is passed. Also, under Article 112, Clause 2 of the Constitution, the Prime Minister can be removed by initiative of the President if such a decision is deemed necessary to ensure the regular functioning of the democratic institutions.

VII. DEPUTY PRIME MINISTERS

SECTION OBJECTIVES

- To understand the roles of Deputy Prime Ministers in the Government

Each Constitutional Government generally passes its own **foundational law**. This section looks at the Fourth Constitutional Government as example. Under that law, after the Prime Minister, the next two most powerful members of the Government are the Deputy Prime Ministers. One is in charge of social affairs in Timor-Leste, and the other one focuses on state administration issues. Whenever the Prime Minister is absent or otherwise unavailable, either of the Deputy Prime Ministers can be designated by the Prime Minister as a temporary replacement in coordinating the Government (under either Article 7, Clause 3 or Article 7A, Clause 3).

Structure of the Fourth Constitutional Government[5]

Article 2: Deputy Prime Ministers

(1) The Government features two Deputy Prime Ministers, who depend directly from the Prime Minister and who follow him in the hierarchy.

Article 4: Composition of the Government

(1) The Prime Minister is assisted in his functions by the following members of Government, who are part of the Presidency of the Council of Ministers:

(a) Deputy Prime Minister for the Coordination of Social Affairs;

(b) Deputy Prime Minister for the Coordination of Affairs relating to the Administration of the State;

[5] As amended by Decree Law 14/2009 (March 4, 2009) - 4th Amendment to the Organic Law of the Fourth Constitutional Government

1. Deputy Prime Minister for the Coordination of Social Affairs

Structure of the Fourth Constitutional Government[6]

Article 7: Deputy Prime Minister for the Coordination of Social Affairs

(1) The Deputy Prime Minister for the Coordination of Social Affairs assists the Prime Minister in supervising the Government's general policies in social areas. It is specifically incumbent upon the Deputy Prime Minister to oversee the work and activities of the following Secretariats of State:

(a) Secretary of State for Youth and Sports;

(b) Secretary of State for Vocational Training and Employment;

(c) Secretary of State for the Promotion of Equality.

(2) In case of natural disasters, the Deputy Prime Minister for the Coordination of Social Affairs takes responsibility for inter-ministerial coordination.

(3) The Deputy Prime Minister for the Coordination of Social Affairs coordinates the Government in the absences and impediments of the Prime Minister, whenever designated by the latter.

The Deputy Prime Minister for the coordination of social affairs oversees Government policy in social areas. Specifically, he or she is responsible for the activities of three Secretariats of State: Youth and Sports, Vocational Training and Employment, and the Promotion of Equality. In these three areas of youth sports, jobs, and equality, major social policies are set. With the Deputy Prime Minister's guidance, the Prime Minister does not have to frequently check into the activities of the three Secretariats.

If a natural disaster strikes Timor-Leste, the Deputy Prime Minister for the Coordination of Social Affairs becomes the central person for coordinating the relevant Ministries in organizing relief efforts.

[6] As amended by Decree Law 14/2009 (March 4, 2009) - 4th Amendment to the Organic Law of the Fourth Constitutional Government

2. Deputy Prime Minister for the Coordination of Affairs relating to the Administration of the State

Structure of the Fourth Constitutional Government[7]

Article 7A: Deputy Prime Minister for the Coordination of Affairs relating to the Administration of the State

(1) The Deputy Prime Minister for the Coordination of Affairs relating to the Administration of the State assists the Prime Minister in the management of State Administration. It is specifically incumbent upon the Deputy Prime Minister to oversee the work and activities of the following entities:

(a) Office of the Inspector General;

(b) Government's Audit Office.

(2) It is further incumbent upon the Deputy Prime Minister for the Coordination of Affairs relating to the Administration of the State:

(a) To oversee the management of the ongoing review of processes at Ministries, namely as regards procurement and tendering;

(b) To ensure supervision of the implementation of projects regarding the State's physical infrastructures;

(c) To ensure good inter-ministerial coordination;

(d) To coordinate activities with the Secretariat aimed at establishing the Civil Service Commission;

(e) To coordinate the decentralisation process;

(f) To ensure cooperation with the Anti-Corruption Commission.

(3) The Deputy Prime Minister for the Coordination of Affairs relating to the Administration of the State coordinates the Government in the absences and Impediments of the Prime Minister, whenever designated by the latter.

[77] As amended by Decree Law 14/2009 (March, 4, 2009) - 4th Amendment to the Organic Law of the Fourth Constitutional Government

The Deputy Prime Minister for the Coordination of Affairs relating to the Administration of the State is responsible for the work of the Office of the Inspector General and the Government's Audit Office. This Deputy Prime Minister oversees procurement processes at Ministries, which is how the Government acquires and pays for needed supplies and materials. He or she supervises projects that improve or expand the Government's physical buildings and other infrastructure projects throughout Timor-Leste. His or her role under Article 7A, Clause 2(c) and (e) is to facilitate efficient working relationships between the different Ministries and Secretariats to ensure that tasks are being delegated to the appropriate parties. The Deputy Prime Minister also works on setting up a Civil Service Commission. He or she serves a watchdog function under Clause F in ensuring that the Anti-Corruption Commission has access to the information it needs to investigate any allegations of bribery or embezzlement.

VIII. MINISTRIES

SECTION OBJECTIVES

- To understand the role of Ministries in the Government
- To learn about the current structure and responsibilities of the some of the existing Ministries

Ministries are Government organizations with specialized functions. Each ministry is responsible for a sector of public administration. Countries around the world divide their ministries differently. In Timor-Leste, each Prime Minister has the power to establish ministries when they organize their Government. Again, we will use the example of the Fourth Constitutional Government to consider ministries in Timor-Leste.

Currently, Timor-Leste has twelve ministries: Defense and Security; Foreign Affairs; Finance; Justice; Health; Education; State Administration and Planning of Territory; Economy and Development; Social Solidarity; Infrastructure; Tourism, Commerce and Industry; Agriculture and Fisheries. We will consider a subset of these in more detail.

1. Ministry of Foreign Affairs

Structure of the Fourth Constitutional Government

Article 20: Ministry of Foreign Affairs

(1) The Ministry of Foreign Affairs is the central Government body responsible for the design, execution, coordination and assessment of the policy defined and approved by the Council of Ministers for the areas of international diplomacy and cooperation, consular functions, and promotion and defence of the interests of the Timorese living abroad.

(2) It is up to the Ministry of Foreign Affairs to coordinate, in collaboration with the Ministry of Finance, the relations between Timor-Leste and the donors.

Article 4: Composition of the Government[8]

[8] As amended by Decree Law 15/2010 (October 15, 2010) - 6th Amendment to the Organic Law of the Fourth Constitutional Government

(2) The Ministers are assisted in their functions by the following Deputy Ministers and Secretaries of State:

(b) The Minister of Foreign Affairs, by the Vice Minister of Foreign Affairs.

The Ministry of Foreign Affairs functions as the representative body of Timor-Leste in the international community. It conducts Timor-Leste's foreign relations and diplomatic policy to support the country's security and development needs. The Ministry's general function is to track international politics with regard to Timorese interests in order to respond with appropriate and coherent foreign policy. In addition to managing Timor-Leste's embassies in Australia, Portugal, the European Union, Indonesia, Malaysia, the United Nations, and the United States, the Ministry provides the Prime Minister with the tools and information to negotiate treaties and agreements with other nations.

The Ministry of Foreign Affairs is run by the Minister of Foreign Affairs. The Minister of Foreign Affairs is a senior ministerial position. He or she is assisted by the Vice Minister of Foreign Affairs, the Secretary of State for International Cooperation and by the Secretary of State for Migrations and Communities Abroad.

The Minister of Foreign Affairs' powers depend upon how strongly the Prime Minister has established himself or herself in setting foreign policy. If given more leeway by the Prime Minister, a foreign minister can potentially exert significant influence in crafting foreign policy. On the other hand, a Prime Minister who prefers a more hands-on role in foreign relations would result in a less influential Minister of Foreign Affairs.

2. Ministry of Justice

Structure of the Fourth Constitutional Government

Article 22: Ministry of Justice

(1) The Ministry of Justice is the central Government body responsible for the design, execution, coordination and assessment of the policy defined and approved by the Council of Ministers for the areas of justice and human rights, namely:

(a) Propose the policy and draft the regulation projects required for the areas under its responsibility;

(b) Regulate and manage the prison system, the execution of the penalties and the social reinsertion services;

(c) Ensure mechanisms of representation and legal aid for the most underprivileged citizens, through the Public Defence;

(d) Create and ensure the proper mechanisms for ensuring citizenship rights and promoting the divulgation of applicable laws;

(e) Organize the cadastre of rural and urban property and the registry of immovable assets;

(f) Manage and oversee the registry and notary service system;

(g) Administrate and manage /real estate assets of the State;

(h) Promote and guide the judicial training for the judicial careers and other civil servants;

(i) Pronounce, under request from other ministries, on the compliance of any draft legislative diploma with the guiding principles of the democratic rule of law, the values of Justice and Law, and with the rights, liberties and guarantees;

(j) Set up collaboration and coordination mechanisms with other Government bodies responsible for connected areas.

(2) The Office of the Advisor on Human Rights is placed within the Ministry of Justice.

Article 4: Composition of the Government[9]

(2) The Ministers are assisted in their functions by the following Deputy Ministers and Secretaries of State:

(d) The Minister of Justice by the Vice Minister of Justice.

[9] As amended by Decree Law 11/2010 (August, 11, 2010) - 5th Amendment to the Organic Law of the Fourth Constitutional Government

The Ministry of Justice is responsible for designing and coordinating policies set by the National Parliament and the Council of Ministers in the areas of law, justice, and human rights. The Ministry of Justice manages the Government's relationship with the courts, the Public Prosecution Service, the Superior Council for the Judiciary and the Superior Council for the Public Prosecution, as well as other participants in the legal system. For example, it would administer the Government relationship with the bar association of Timor-Leste when it becomes established.

The Ministry of Justice runs the prison system in Timor-Leste, as well as the services for ensuring that perpetrators of crime will be able to reenter society as productive citizens. For example, social reinsertion programs might include simple job training or skills development.

The Ministry of Justice also is in charge of providing legal services through the Office of the Public Defender. Specifically, the Public Defender ensures that disadvantaged citizens will receive legal aid and assistance. The Ministry manages the notary system in Timor-Leste and provides legal education services through the Judicial Training Center. The National Directorate on Citizenship and Human Rights is also a part of the Ministry of Justice.

3. Ministry of Finance

Organic of the Ministry of the Finance
Decree Law No. 13/2009 (February 25, 2009)

Section 8:

The Ministry of Finance, hereinafter referred to as MoF, is the central Government body responsible for the design, execution, coordination and assessment of the policy defined and approved by the Council of Ministers, for the areas of annual planning and monitoring, budget and finances.

The Ministry of Finance handles the planning and monitoring of the country's finances and budget. Among its many duties, the Ministry is in charge of working with the Central Bank to set the exchange and monetary policies to further economic goals established by the Council

of Ministers. It proposes policies and drafts regulations on tax revenue, public accounting, finances, auditing, control of the treasury, and the management of debt. It keeps careful watch over the Timor-Leste oil fund and often works in collaboration with the Ministry of Foreign Affairs. The Ministry manages state property and publishes official statistics (Organic Structure of the Ministry of Finance, Chapter 1, Article 2, Decree Law No.13/2009 (25 Feb. 2009)).

The Ministry is broken up into five general departments that have their own national departments:

1) General Department for Revenues and Customs
    - National Department for Customs
    - National Department for Oil Revenue
    - National Department for Inland revenue

The General Department for Revenues and Customs (GDRC) is responsible for coordinating the collection and administration of state revenues through taxation and customs. It also controls the borders to protect the environment, security, and public health of Timor-Leste.

2) General Department for State Finance
    - National Department for the Budget
    - National Department for the Treasury
    - National Department for Procurement
    - National Department for the Management of State Property
    - National Department for Autonomous Public Authorities

The General Department for State Finance (GDSF) oversees the drafting and implementation of the State Budget. It oversees financial administration of the country to ensure legality and regularity. The GDSF also controls the process involved in acquiring the goods and services needed for public administration.

3) General Department for Analysis and Research
    - National Department for Statistics
    - National Department for the Macroeconomy

- National Department for the Oil Fund

The General Department for Analysis and Research (GDAR) provides a way to integrate the technical and specialized services provided by the Ministry involving statistics, macroeconomic policy, and the Oil Fund.

4) General Department for Corporative Services

The General Department for Corporative Services (GDCS) provides general administrative services to the Ministry. It coordinates the Ministry's training programs and human resources, maintains equipment and vehicle repairs necessary to the functioning of the Ministry, and publishes information of interest to the Ministry.

5) Department for the Effectiveness of Foreign Aid

The Department for the Effectiveness of Foreign Aid (DEFA) guarantees the effective use of foreign aid provided by development partners. It manages the funds offered to Timor-Leste, gathers financial information on foreign aid sources to better inform the various Ministries involved, and analyzes development projects to introduce improvements to quality and impact.

4. Ministry of Agriculture and Fisheries

Law on the Structure of the Ministry of Agriculture and Fisheries
Decree Law No. 18/2008 (June 19, 2008)

Article 1:

The Ministry of Agriculture and Fisheries, hereinafter referred to as MAF, is the central Government body responsible for the design, execution, coordination and assessment of the policy defined and approved by the Council of Ministers, for the agriculture sector, namely in the fields of farming research and technical assistance to farmers, irrigation systems, forest management as well as for livestock and fisheries.

The Ministry of Agriculture and Fisheries (MAF) is in charge of policy for the agricultural sector, which includes the areas of technical assistance to farmers and management of forestry and fishery resources. The MAF also oversees the National Parks of Timor-Leste,

implements programs for rural development, monitors animal health, inspects food production, and establishes mechanisms for oversight of the areas within its authority.

CHAPTER THREE: THE JUDICIARY

CHAPTER OBJECTIVES

- To understand the role of the judiciary
- To explore where judges fit in the balance of powers between branches of government
- To explain the different types of courts available in Timor-Leste
- To learn how judges are managed by the Superior Council for the Judiciary

CHAPTER OVERVIEW

- There are three types of required courts in Timor-Leste:
  - Courts of law, which have the Supreme Court of Justice at its head;
  - Administrative courts, which are governed by the High Administrative, Tax, and Audit Court, which has not yet been formed; and
  - Military courts that judge crimes of military nature. Military courts have also not yet been formed.
- There are two other types of courts that may be created: maritime courts and arbitration courts.
- The Supreme Court of Justice is the highest court of law, but since it has not yet been created, the Court of Appeals has taken on the temporary duties as the highest court in Timor-Leste.
- The Superior Council for the Magistracy manages and disciplines judges in Timor-Leste. It appoints, assigns, and promotes judges depending on its discretion.

I. THE ROLE OF THE JUDICIARY

SECTION OBJECTIVES

- To learn about the jurisdiction and independent nature of the judiciary
- To introduce the history of the judiciary in Timor-Leste

Constitution of Timor-Leste

Section 67: Organs of Sovereignty

The organs of sovereignty shall comprise the President of the Republic, the National Parliament, the Government and the Courts.

Section 118: Judicial function

(1) Courts are organs of sovereignty with competencies to administer justice in the name of the people.

(2) In performing their functions, the courts shall be entitled to the assistance of other authorities.

(3) Court decisions shall be binding and shall prevail over the decisions of any other authority.

Section 119: Independence

Courts are independent and subject only to the Constitution and the law.

Section 120: Review of Unconstitutionality

The courts shall not apply rules that contravene the Constitution or the principles contained therein.

1. Role of the Courts

In Title V (Courts), Chapter I (Courts and the Judiciary) of the Constitution of Timor-Leste, the courts are explicitly introduced as "organs of sovereignty." As defined in Section 67 of the Constitution of Timor-Leste, courts should be considered as independent holders of government power in their own right. They are as crucial a part of the smooth governance of Timor-Leste as the President, the Government, or the National Parliament.

Statutes of Judicial Magistrates (Law no 8/2002, Nov. 5, 2002)[10]

Article 3: Functions of the judiciary

(1) The functions of the judiciary shall be applying the law, administering justice and enforcing its decisions.

(2) Judicial magistrates shall not refrain from judging on the grounds of absence, vagueness or ambiguity of law, or on the basis of insurmountable doubt.

(3) The duty of allegiance to law shall not be put aside on the pretext that a rule is unfair or immoral.

Courts make sure that statutes passed by the National Parliament and the Government are not violated. To that end, the basic function of the courts is to maintain the rule of law. It is the job of the judicial branch to apply and interpret the laws in order to resolve disputes that arise under them. Although judges may have personal feelings about the fairness of a particular regulation or law, they must try to set these aside in an attempt to objectively deliver justice in each case before them.

Court decisions must be thought of as binding and sufficient on their own. The National Parliament, the President, and the Government do not have any constitutional power to reject judicial decisions or to violate them. As with other state bodies, courts are limited by the Constitution. No judge may issue a decision that violates the Constitution or its principles.

[10] Law no 8/2002 was amended by Law no. 11/2004 (Dec. 29, 2004)

2. History

In the wake of Indonesian rule, the courts of Timor-Leste went through a transitional period in the early 2000s under the control of the United Nations Security Council through the United Nations Transitional Administration for East Timor (UNTAET). UNTAET created four District Courts and appointed Timorese judges to staff them. These courts are located in Dili, Baucau, Suai, and Oecussi. In June 2000, special panels of the Dili District Court and the Court of Appeals were convened to handle genocide, crimes against humanity, war crimes, and torture cases that had arisen during the Indonesian occupation. The courts thus played a pivotal role in the process of reconciliation and rebuilding.

Transfer of the Judicial System Statute[11]

Preamble
At a time when the transfer of the powers of sovereignty is taking place, following the international recognition of our country's independence proclaimed on 28 November 1975, there is an urgent need to ensure that the judicial system in its various facets be transferred without any kind of precipitation or vacuum.

Article 1
The judicial organization existing in East Timor shall remain in operation until such a time as the new judicial system is installed and becomes operational . . .

While the judicial branch expands, it is an exciting time to be a lawyer or a judge helping to build the system of justice in Timor-Leste. For example, on April 27, 2011, the National Parliament appointed Judge Maria Natércia Gusmão to the Court of Appeals. She is the first female judge of the highest court of law in Timor-Leste. Before this appointment, she served on the Dili District Court.

II. JUDGES

[11] Decree Law 1/2002 (July 7, 2002)

SECTION OBJECTIVES

- To understand the qualifications in becoming a judge
- To learn how the independence of judges is protected and maintained

1. Judicial Qualifications

Recruitment and Training for the Professional Careers of the Judiciary and the Office of the Public Defender Statute[12]

Article 3: Eligibility requirements

(1) Candidates for the in-service training course for the career of judicial magistrate, of public prosecutor and of public defender must meet the following requirements:

(a) Be a Timorese national;

(b) Hold a degree in law;

(c) Possess written and spoken knowledge of the country's official languages, namely Portuguese and Tetum;

(d) Meet all other requirements for admission into the civil service.

To qualify as a judge in Timor-Leste, a candidate has to be a Timorese national who holds a degree in law. This initial qualification ensures that the candidate has had adequate training in legal concepts and is familiar with procedures of court. The candidate must also be able to write and speak Portuguese and Tetum before becoming a judge. The language provision is important because Timor-Leste has two official languages, Tetum and Portuguese; two working languages, English and Indonesian; and dozens of regional languages. The main language used in the courts, however, is Portuguese. In a nation with a diverse number of working languages, access to justice inevitably requires that judges be able to read all court documents filed, as well as communicate with attorneys and litigants. Finally, a judicial

[12] Decree Law 15/2004 (Sep. 1, 2004)

candidate must qualify to be a member of the civil service in Timor-Leste. Additional requirements for candidates may be added through subsequent legislation.

Candidates that fulfill the initial qualifications then go through a selection process. This involves both a written and oral selection test before a panel of three people appointed by the Minister of Justice. The written portion of the selection test covers criminal and civil laws, as well as the accompanying procedural regulations. In the oral portion, candidates are asked questions about professional ethics, civil and criminal law, constitutional law and judicial organizations, and their motivations for pursing a professional career in the judiciary. The oral exam by the panel also serves as a test of language ability since questions are asked in either Portuguese or Tetum. The candidates must answer in the language in which the question was asked. Selected candidates go through a 15 month theoretical training and a 9 probationary practical training period to qualify. This careful process was designed so that only qualified and trained personnel become judges. For more information on the selection process, please consult Section 2, Articles 7-11 of Decree Law No. 15/2004.

Statutes of Judicial Magistrates

Article 26: Career

(1) Judicial career shall comprise the following categories:

(a) Third-class State Judge;

(b) Second-class State Judge;

(c) First-class State Judge;

(d) Counselor-Judge.

(2) Career shall start at the level of third-class state judge.

Once a judge has passed all the requisite exams and completed the probationary period through satisfactory service, he or she starts a career as a third-class state judge. After at least three years on the bench and good reviews, he or she becomes a second-class judge. Second-

class judges who sit for additional exams can be promoted to a first-class state judge. Of course, promotion to the next class is always conditional upon there being vacant spaces in the higher classes of judges. Since in the future there will often be more qualified judges than vacancies, consideration is given among candidates for ratings achieved at exams, performance records, and seniority.

Counselor Judges are designated by the Superior Council of the Magistracy and appointed by the President of the Supreme Court of Justice from among the first-class state judges who have at least eight years of experience and exceptional reviews and from among jurists of recognizes merit who have at least fifteen years of a professional activity in the area of law. In addition, the National Parliament may elect one Counselor Judge from among judges and jurists that comply with these requirements (Article 29 of the Statute of Judicial Magistrates).

2. Independence of Judges

Constitution of Timor-Leste

Article 121: Judges

(1) Judicial function lies exclusively with the judges installed in accordance with the law.

(2) In performing their functions, judges are independent and owe obedience only to the Constitution, the law and to their own conscience.

(3) Judges have security of tenure and, unless otherwise provided for by law, may not be transferred, suspended, retired or removed from office.

(4) To guarantee their independence, judges may not be held liable for their judgments and decisions, except in the circumstances provided for by law.

(5) The law shall regulate the judicial organisation and the status of the judicial magistrates/judges of the courts of law.

Judges play a major role in maintaining order in Timor-Leste. When laws are violated, the people of Timor-Leste need to be able to trust that the courts will hear their grievances and respond accordingly in a just and fair way. To this end, the independence of judges is an

important constitutional principle. The Constitution of Timor-Leste provides a variety of ways to ensure that the judiciary stays as free of bias as possible.

First of all, jurisdiction is exclusive when granted by the laws to a court or to a judge. For example, this means that a judge will not have to take into consideration the desires of the President or the Prime Minister in considering a case in his or her docket. Article 121, Clause 2 points out that a judge need only rely on a reading of the Constitution of Timor-Leste, the relevant laws, and his or her own conscience to decide a case. While a judge will surely take into account the political or social context of a potential decision, he or she is free to decide without needing to consult with any other branches of government.

Secondly, judges are given the protection of tenure. After being appointed to office, a judge may not be demoted, suspended, or removed from office unless a particular law is passed to permit this process. For the most part, this provision shields judges from the political ramifications of their decisions. Acting through the Superior Council for the Magistracy, political forces can still pressure judges by refusing to reappoint them to office, but this would be an unwarranted politicization of the Council. For the judicial branch to act as a vigorous guardian of constitutional rights and civil liberties, the Superior Council for the Magistracy must remain as removed from politically motivated actions as possible.

The third provision protecting judges is immunity from liability resulting from their decisions. Again, the constitutional language indicates that a law could be passed opening judges to select types of liability, but since no such laws have been passed by the National Parliament yet, it is unclear what form this removal of liability would take. The people of Timor-Leste have a strong interest in an independent judiciary that will make correct but unpopular decisions, without fear of retribution or personal liability.

3. Exclusivity of Judges

Constitution of Timor-Leste

Article 122: Exclusivity

Judges in office may not perform any other functions, whether public or private, other than teaching or legal research, in accordance with the law.

Another way of maintaining an independent judiciary is to prohibit judges who are currently in office from acting in other capacities. This prevents them from being beholden to private interests or to the influence of interested parties before them in court. For example, a judge may not act as a consultant for litigants even on his or her personal time. The constitutional prohibition provides exceptions for teaching and legal research, subject to prior authorization by the Superior Council of the Magistracy. Judges who are active on the bench may still continue to serve as professors or legal researchers. Since judges are typically selected from among the top legal scholars of Timor-Leste, preventing them from teaching the future generation of lawyers/judges or from continuing to research legal issues would be doing the country a disservice. In addition, in these two capacities of teaching or research, there is less of a risk of bias or of undue influence. Judges are also prohibited from taking political positions or from engaging in active politics within the political parties. No public statements regarding politics may be made by judges either. Once judges are no longer on the bench, they are free to take on professional responsibilities and careers.

4. Impartiality of Judges

Statutes of Judicial Magistrates

Article 7: Guarantees of impartiality

Judicial magistrates shall not intervene in cases involving, as a judicial officer, a person to whom they are related by marriage, common life, family or kinship of any degree in the direct line or up to the second degree in the collateral line.

Article 36: Legal Practice

Judicial magistrates may not practice as a lawyer/ other than in a case of their own cause or that of their spouse, descendant or ancestor.

To avoid the appearance of favoritism, judges are forbidden from presiding over cases involving people with whom they share close family ties. For example, a case involving a judge's husband or cousin cannot be heard by that judge, even if the judge has a particular expertise in the relevant area of law (Article 87 of the Civil Procedure Code). Some of these conflicts might not be apparent at the initial stages of a lawsuit. If a conflict of interest arises later in a case, a judge still must recuse himself or herself and arrange for a different judge to be a replacement. There are no particular prohibitions against cases involving close friends of judicial figures, but judges should still consider whether the friendship will impair his or her ability to adjudicate the case in a fair and balanced manner. Judges are also not allowed to provide legal advice in general. There is an exception for lawsuits that involve themselves, a spouse, a descendant or ancestor. For example, a judge would be allowed to advise his wife or child on a pending case. The concern here is that judges are meant to be impartial, so allowing judges to give legal advice risks creating bias.

Questions

Judge Santos has been assigned a real property case involving a dispute between his cousin and a neighbor. This case will be Judge Santos last case since he will retire in about a month. The cousin has never been particularly kind to Judge Santos, so he feels confident that there is no danger of showing favoritism because of family ties.

1) Should Judge Santos recuse himself from the case?

2) After Judge Santos retires, is he allowed under the Constitution to become a law school professor?

Answers and Explanations

1) Yes, Judge Santos should definitely recuse himself from the lawsuit. Under Article 87 of the Civil Procedure Code, Judge Santos is prohibited from intervening as a judge in proceedings that involve a family member. A cousin's land dispute would be an inappropriate matter for Judge Santos to adjudicate. Although Judge Santos knows that he will not favor the cousin in any way, the law guarantees that every litigant that comes before the courts will receive impartial judgment. A family tie runs the risk of hurting or favoring a litigant's case in a way that is unrelated to the merits of the lawsuit. It is also irrelevant that it will be Judge Santos' last case before retirement.

2) Yes, Judge Santos will be able to become a law professor. Article 122 of the Constitution of Timor-Leste bars active judges from taking on most private or public functions, but it actually makes a special exception for judges who wish to serve in teaching or legal research capacities. In other words, Judge Santos can be a professor at a law school even while he is an active judge (provided that his teaching duties do not impair his ability to serve as a judge). After retirement from the bench, he would be even more welcomed as an experienced teacher of law.

III. TYPES OF COURTS

SECTION OBJECTIVES

- To learn the different types of courts
- To explore the role of the Supreme Court of Justice

Constitution of Timor-Leste

Article 123: Categories of Courts

(1) There shall be the following categories of courts in the Democratic Republic of East Timor:

(a) The Supreme Court of Justice and other courts of law;

(b) The High Administrative, Tax and Audit Court and other administrative courts of first instance;

(c) Military Courts.

(2) Courts of exception shall be prohibited and there shall be no special courts to judge certain categories of criminal offence.

(3) There may be Maritime Courts and Arbitration Courts.

(4) The law shall determine the establishment, organisation and functioning of the courts provided for in the preceding items.

(5) The law may institutionalise means and ways for the non-jurisdictional resolution of disputes.

Within the judicial branch, there are numerous types of courts to handle the different issues that arise. First of all, there are the courts of law, which handle all the legal disputes that arise within the laws of Timor-Leste that are not assigned to another type of courts. Second, there are the administrative courts that handle the tax and administrative disputes. Third, military

courts are used to judge crimes of military nature. These three courts handle the fundamental judicial needs of Timor-Leste.

Article 123, Clause 3 indicates that there *may* be Maritime Courts and Arbitration Courts. The courts are not mandatory under the Constitution of Timor-Leste. This is probably because these two types of courts address issues that could be handled by courts of law or administrative courts, but if there is a great need for specialization, these courts would certainly be helpful. For example, if Timor-Leste faced a great deal of litigation over maritime issues, maritime courts could be created with judges that are experts on the Law of the Sea. If there are many cases that would be better handled through arbitration, arbitration courts could similarly be established.

Article 123, Clause 2 prohibits the creation of courts of exception, as well as courts that would only judge certain types of criminal offenses. Thus, the parliament could not pass a law to create a court of exemption to handle all cases involving accusations of terrorism or of treason.

We will now address each type of court in more detail.

1. High Administrative, Tax, and Audit Court

Constitution of Timor-Leste

Article 129: High Administrative, Tax and Audit Court

(1) The High Administrative, Tax and Audit Court is the highest body in the hierarchy of the administrative, tax and audit courts, without prejudice to the competence of the Supreme Court of Justice.

(2) The President of the High Administrative, Tax and Audit Court is elected from among and by respective judges for a term of office of four years.

(3) It is incumbent upon the High Administrative, Tax and Audit Court as a single instance to monitor the lawfulness of public expenditure and to audit State accounts.

(4) It is incumbent upon the High Administrative, Tax and Audit Court and the administrative and tax courts of first instance:

(a) To judge actions aiming at resolving disputes arising from fiscal and administrative juridical relations;

(b) To judge contentious appeals against decisions made by State organs and their agents;

(c) To perform all the other functions as established by law.

The High Administrative, Tax and Audit Court have not yet been established, but when it is created, it will sit at the top of the administrative, tax, and audit courts. Any administrative or tax issue that these lower courts are unable to settle satisfactorily will be appealed to this court to be resolved. The High Administrative, Tax, and Audit Court will be led by a President and he or she will be elected for a term of four years by and from among its respective judges.

The High Administrative, Tax, and Audit Court's main function is to monitor the expenditures made by the Government to make sure that no laws are being violated. State accounts are audited to ensure that no embezzlement is occurring. In addition, this court resolves disputes that involve fiscal matters or issues of administrative law. If the High Administrative, Tax or Audit Courts are unable to resolve a dispute, the Supreme Court of Justice should have the jurisdiction to address it.

2. Military Courts

Constitution of Timor-Leste

Article 130: Military Courts

(1) It is incumbent upon military courts to judge in first instance crimes of military nature.

(2) The competence, organisation, composition and functioning of military courts shall be established by law.

No military courts have been established in Timor-Leste yet, but when they are set up, these courts will have authority to hear cases regarding "crimes of a military nature." This means that they will adjudicate cases using laws and procedures that uniquely apply to the members of the military in Timor-Leste.

Members of the military are subject to the laws of Timor-Leste like all other citizens, unless otherwise specified. For example, a law limiting what type of weapon someone can possess might contain an exception for members of the military or police. When they break these general laws they are subject to the civilian court system like all other citizens. For example, a soldier on leave in Dili who steals a motorcycle would be tried in the civilian courts because stealing a motorcycle is not a crime of a military nature.

However, members of the military are also subject to a unique set of rules, called "military law" in some countries, and applicable only to members of the military. Violations or crimes against this military law are considered crimes of a military nature. Just like this does not include a member of the military who commits a "regular" crime, it also does not include crimes by non-military personnel against a member of the military or military property. If a man, who is not a member of the military, attacks and injures a soldier, the man would be tried by the civilian courts. Likewise, if a woman who is not a member of the military breaks into a military building and steals a gun, she would be tried in the civilian courts. Examples of crimes of a military nature might include defection, disobeying orders, assaulting a fellow member of the military, or being drunk while on duty.

Decisions of the military courts may be appealed to the Supreme Court of Justice.

3. Supreme Court of Justice

Constitutionally, the highest court of law in Timor-Leste should be the **Supreme Court of Justice**. Currently, however, this court does not yet exist. Until it is created and staffed, the Court of Appeals has taken on the duties of serving as the highest court. In this section, we will discuss the constitutional provisions that establish and govern the Supreme Court of Justice, but bear in mind that for now, these provisions refer to the Court of Appeals.

Constitution of Timor-Leste

Article 124: Supreme Court of Justice

(1) The Supreme Court of Justice is the highest court of law and the guarantor of a uniform enforcement of the law, and has jurisdiction throughout the national territory.

(2) It is also incumbent on the Supreme Court of Justice to administer justice on matters of legal-constitutional and electoral nature.

Article 125: Functioning and Composition

(1) The Supreme Court of Justice shall operate:

(a) In sections, like a court of first instance, in the cases provided for in the law;

(b) In plenary, like a court of second and single instance, in the cases expressly provided for in the law;

As the court with the final decision making authority on questions presented in lower courts, the Supreme Court of Justice ensures that the law is interpreted and enforced in a consistent manner across the country. To achieve this uniformity, the Supreme Court of Justice is given jurisdiction that extends throughout the territory of Timor-Leste. In other words, all cases that are handled and filed in the country could be rightfully appealed to the Supreme Court of Justice, provided that procedural requirements are met. It acts as the administrator of justice on not only issues arising from laws of Timor-Leste, but also from constitutional issues. Of course, when the case before the Supreme Court addresses the violation of the Constitution of Timor-Leste by a newly enacted law, the Supreme Court will rule on whether the law meets constitutional requirements. When questions of electoral regulations or proceedings arise, the Court may also consider them and rule on whether the proceedings are legal and valid.

Constitution of Timor-Leste

Article 124: Supreme Court of Justice

(3) The President of the Supreme Court of Justice shall be appointed by the President of the Republic from among judges of the Supreme Court of Justice for a term of office of four years.

Article 125: Functioning and Composition

(2) The Supreme Court of Justice shall consist of career judges, magistrates of the Public Prosecution or jurists of recognised merit in number to be established by law, as follows:

(a) One elected by the National Parliament;

(b) And all the others designated by the Superior Council for the Magistracy.

Article 127: Eligibility

(1) Only career judges or magistrates of the Public Prosecution or jurists of recognized merit of East Timorese nationality may become members of the Supreme Court of Justice.

(2) In addition to the requirements referred to in the preceding item, the law may define other requirements.

As the highest court, the Supreme Court of Justice will be made up of the most respected jurists of Timor-Leste: career judges, Public Prosecution magistrates, and jurists of "recognized merit." In addition, at least five of the judges on the Court must be Counselor Judges, the highest rank of judge in Timor-Leste. Section 127, Clause 1 of the Constitution of Timor-Leste also specifies that members of the Court must be nationals of Timor-Leste. As with the nationality requirement for the Presidency of the Republic, this makes it more likely that the judges will understand the local context in performing his or her duties. Since the transitional UNTAET period, Timor-Leste has had a significant number of non-Timorese judges assist in the administration of justice. When the Supreme Court of Justice is in full operation, this constitutional mandate ensures that it will be citizens of Timor-Leste that have the final say on the law of the land. All but one of the judges on the Court will be selected by the Superior Council of the Magistracy. Only one of the judges on this high court will be elected by the National Parliament.

This provision permitting the National Parliament to pick a justice acts as a minor check on judicial power by the legislative branch. Although only one justice is designated by the National Parliament, this choice will be by the parliamentary majority. Judges are expected of course by ethical considerations to be independent of political ties, but the judge chosen by the National Parliament will likely have a history of decisions that have favored policies of the ruling party. Once appointed, the judge will of course be free to vote his or her conscience on the Supreme Court of Justice. However, it would likely be the hope of the parliamentary majority

that their chosen judge will share its political or social views and be able to sway other members of the Court.

The Supreme Court of Justice is led by a President who is chosen from among the justices on the Court by the President of the Republic. The President of the Supreme Court of Justice plays a major role in leading and shaping the character of the judicial branch. For example, he or she leads the Superior Council of the Judiciary, which appoints the judges of Timor-Leste. In the subsequent section, there will be further information on the Superior Council of the Judiciary.

Constitution of Timor-Leste

Article 126: Electoral and Constitutional Competence

(1) It is incumbent upon the Supreme Court of Justice, on legal-- constitutional matters:

(a) To review and declare the unconstitutionality and illegality of normative and legislative acts of the organs of the State;

(b) To provide an anticipatory verification of the legality and constitutionality of the statutes and referenda;

(c) To verify cases of unconstitutionality by omission;

(d) To rule, as a venue of appeal, on the suppression of norms considered unconstitutional by the courts of instance;

(e) To verify the legality regarding the establishment of political parties and their coalitions and order their registration or dissolution, in accordance with the Constitution and the law;

(f) To exercise all other competencies provided for by the Constitution or the law.

(2) It is incumbent upon the Supreme Court of Justice, in the specific field of elections:

(a) To verify the legal requirements for candidates for the office of President of the Republic;

(b) To judge at last instance the regularity and validity of the acts of the electoral process, in accordance with the respective law;

(c) To validate and proclaim the results of the electoral process.

Although the Supreme Court of Justice is the highest legal authority that appeals can be directed toward, it has more than just a reactive role. With regards to constitutional or electoral matters, the Court must be active in reviewing laws and regulations for whether there are violations of the Constitution of Timor-Leste. At the request of the President, the Court may also provide anticipatory review of statutes to point out any omissions or issues that might create constitutional issues. As discussed in the chapter on the presidency, the Court should only be selectively consulted for significant legal issues encountered by the President. Relying too heavily on anticipatory review would seem to give the judicial branch too much influence over the legislative branch and the President or would take up too much of the Court's limited time and resources.

In elections, the Supreme Court of Justice plays a regulatory role. Not only does it validate and issue the results of the elections, but it also ensures that all electoral procedural rules are being followed and that the candidates for the presidency meet minimal legal requirements.

Question

The National Parliament is considering a law that will allow the President of the Republic to select one justice for the Supreme Court of Justice. In other words, both the President and the Parliament will each be able to have one justice on the Court. Proponents of the law point out that it seems fair for the President to have some say in the judicial selection process. The law has not yet been passed and the President has asked the Supreme Court of Justice for advice on the constitutionality of the law.

1) Is the Supreme Court of Justice allowed to give the President an assessment of constitutionality before the law is even passed?

2) Does the law violate the Constitution of Timor-Leste?

Answer and Explanation

1) Yes, under Article 126, Clause 1(b) of the Constitution of Timor-Leste, the Supreme Court of Justice is allowed to provide **anticipatory verifications** of constitutionality. The Court does not have to wait for the law to be passed to provide the President with an analysis of whether the proposed law is constitutional.

2) Yes, the proposed law is not constitutionally sound. It violates Article 125, Clause 2 of the Constitution of Timor-Leste. The Superior Council for the Judiciary selects all of the justices on the Supreme Court of Justice, except for one justice who is chosen by the National Parliament. The President of the Republic actually does have substantial input in the judicial selection process since he or she is the one who chooses the President of the Supreme Court of Justice from among the justices on the Court.

IV. SUPERIOR COUNCIL FOR THE MAGISTRACY

SECTION OBJECTIVES

- To understand the role of the Superior Council for the Judiciary in managing judges and running inspections of the judiciary
- To learn about how the Superior Council for the Judiciary is chosen

Constitution of Timor-Leste

Article 128: Superior Council for the Judiciary

(1) The Superior Council for the Judiciary is the organ of management and discipline of the judges of the courts and it is incumbent upon it to appoint, assign, transfer and promote the judges.

(2) The Superior Council for the Judiciary shall be presided over by the President of the Supreme Court of Justice and shall have the following members:

(a) One designated by the President of the Republic;

(b) One elected by the National Parliament;

(c) One designated by the Government;

(d) One elected by the judicial magistrates from among their peers;

(3) The law shall regulate the competence, organisation and functioning of the Superior Council for the Judiciary.

The **Superior Council of the Judiciary** is the managerial and disciplinary body for judges in Timor-Leste. It is in charge of the important tasks of appointing, assigning, reassigning, and promoting judges, so the Council plays a major role in shaping the judicial branch. It is a five-person council with one member selected by the President of the Republic, one by the National Parliament, one by the Government, and one by the judicial magistrates, plus the President of the Supreme Court of Justice who presides. This selection is intended to promote a

good balance of power between the branches of government since each one chooses a member on the powerful Council. Each member serves a four-year term.

Statutes of Judicial Magistrates

Article 9: Composition

(2) The Superior Council for the Judiciary shall be presided over by the President of the Supreme Court of Justice and shall have the following members:

(a) One designated by the President of the Republic;

(b) One elected by the National Parliament;

(c) One designated by the Government;

(d) One elected by the judicial magistrates from among their peers;

(3) The Council shall, at its first meeting, elect its Vice-President by secret ballot and simple majority.

Article 12: Requirements for designation and election

Career judges or magistrates of the Public Prosecution or other jurists as well as figures of recognized merit can be designated and elected for the Superior Council for the Judiciary.

The members of the Superior Council of the Judiciary chosen by the President of the Republic, the National Parliament and the Government must be career judges or magistrates of the Public Prosecution, other jurists or figures of recognized merit. This is to ensure that the Council will have knowledgeable and experienced members who are qualified to make the important decisions needed to create a robust judicial branch.

The member of the Council chosen by the judges is a judge selected by his or her peers to be their representative and will certainly be well-qualified to assess other judges and judicial candidates. The election of this member of the Council is by secret ballot of active judges. Once the ballots are counted, the judge with the highest number of valid votes is elected to the Council. According to Article 13 of the Statutes of Judicial Magistrates, the elected judge may not refuse the appointment to the Council.

Statutes of Judicial Magistrates

Article 16: Functioning and frequency of meetings

(1) The Superior Council of the Judiciary shall function in plenary sessions and through a disciplinary panel.

(2) The Council shall be convened by its President or at the request of two thirds of its members.

(3) The Superior Council of the Judiciary shall convene in ordinary sessions every three months and in special sessions whenever there is a notice to this effect.

(4) The Council shall function when two thirds of its members are attending and shall decide by the majority of present voters.

(5) Membership to the Superior Council of the Judiciary shall be forfeited if a member fails to attend unjustifiably on two consecutive or intercalated occasions.

The Superior Council of the Judiciary holds meetings every three months, but it can be convened for special sessions. Special sessions of the Council might be called to address pressing issues affecting the judiciary. For example, the Council may need to meet in order to fill a sudden series of vacancies in the courts. The President of the Council or four out of the five members can convene a meeting. When at least two-thirds of the members are attending, the Council has the power to make decisions as a whole. Since there are five members on the Council, this means that at least four of the five members must be present. All decisions are made by majority vote of those members present. On the five-member Council, a majority vote would be three out of five. If a member fails to attend two consecutive meetings without adequate justification, he or she forfeits his or her spot on the Council.

1. Functions of the Superior Council of the Judiciary

Statutes of Judicial Magistrates

Article 15: Competencies of the Superior Council of the Judiciary

(1) It shall be incumbent upon the Superior Council of the Judiciary:

(a) To appoint, assign, re-assign, promote, dismiss and appreciate professional merits of, exercise disciplinary action over, and generally conduct all acts of a similar nature, regarding judicial magistrates;

(b) To appreciate professional merits of, and exercise disciplinary action over, judicial officers, without prejudice to disciplinary competencies given to judges;

(c) To appoint the Council Secretary, judicial inspectors, accounting inspectors and inspection secretaries;

(d) To order the conduction of special inspections, investigations and inquiries into courts;

(e) To prepare and approve the rules of procedure of the Council;

(f) To advise on retirement requests submitted by judicial magistrates;

(g) To perform other functions given by law.

(2) It is also incumbent upon the Superior Council of the Judiciary to appoint on an exceptional basis assistant judges for courts, where there is a prolonged absence of an incumbent causing serious disruption of services or an excessive accumulation of workload.

The primary duty of the Superior Council of the Judiciary is to manage the judges and judicial officers of Timor-Leste. The Council has the power to initiate investigations into suspected wrongdoing by any judges through Judicial Inspection. Judicial Inspection is a department within the Council that employs judicial and accounting inspectors. All of the inspectors are chosen by the Council, subject to approval by the Minister of Justice. Inspectors must be judges that have demonstrated excellent ratings in the past. Judicial Inspection investigates and then reports to the Council. Any deficiencies and missteps in judicial services are then fixed by the Council. The Council also helps manage the workload of judges in Timor-

Leste. If there is an excessively heavy amount of cases created by the absence of a judge, the Council can appoint assistant judges that can help relieve the workload. The Council sets its own rules of procedure.

CHAPTER FOUR: THE NATIONAL PARLIAMENT

CHAPTER OBJECTIVES

- Understand the composition of the National Parliament
- Understand the powers of the National Parliament
- Understand the limits on the powers of the National Parliament

CHAPTER OVERVIEW

- The National Parliament is the supreme legislative organ of the Timorese state.
- The electoral law governs parliamentary elections and defines electoral capacity, which establishes who can vote and who can be elected to Parliament.
- On Election Day, voters vote for party lists and seats in Parliament are awarded to the individuals on the party list, in the order they are listed, according to the D'Hondt System.
- Members of Parliament elect a President of the National Parliament to act as the presiding officer, chief administrator, and primary ambassador of Parliament.
- Members elected in party-lists of political parties that receive seats in Parliament can form parliamentary benches.
- Members of Parliament are also divided into a variety of specialized standing committees responsible for evaluating and reporting on matters, especially draft legislation.
- Parliament can exercise its law-making power in two ways: 1) by directly enacting legislation; or 2) by delegating its law-making authority to the Government.
- The Constitution places substantial limits on Parliament's power. In particular, Parliament cannot restrict or suspend fundamental rights, freedoms, and guarantees of the Timorese people except in very limited circumstances.
- The Supreme Court of Justice is the ultimate arbiter of the constitutionality of Parliament's acts.

- The President can limit Parliament's power by exercising the power to veto legislation passed by Parliament.
- The President also has the power, in limited circumstances, to dissolve the National Parliament and call for a new round of national parliamentary elections.

I. INTRODUCTION

SECTION OBJECTIVES

- To introduce the role of Parliament
- To consider the relationship between Parliament and the people of Timor

The National Parliament is the law-making branch of the state of Timor-Leste. Under Article 95 of the Constitution, it drafts and passes legislation that advances the domestic and foreign policy interests of the Timorese people. Currently, it must be made up of a minimum of fifty-two and a maximum of sixty-five democratically elected Members of Parliament ("Members") though the first National Parliament had 88 members as noted in Article 167 of the Constitution. The entire assembly of Members is referred to as the **plenary**. According to Article 93 of the Constitution, Members of Parliament are chosen through national elections and serve a five-year term with this five-year period being called the **parliamentary term** and divided into five, year-long **legislative sessions**.

Under Article 45 of the Rules of Procedure of the National Parliament, as amended in 2009 ("Rules of Procedure"), the normal working period for Parliament during one legislative session begins on 15 September and lasts until 15 July, with a break from 23 December to 2 January. During a legislative session, plenary sessions (which are meetings of the entire assembly of elected Members of Parliament) take place every Monday and Tuesday. The various parliamentary committees, which are described below, meet every Wednesday and Thursday. Under Article 50 of the Rule of Procedure, Parliament may choose to suspend its plenary sessions "for the purpose of the work of the committees," though such a suspension may not exceed ten days. Every Friday during a legislative session is reserved for contact between Members of Parliament and voters under Rule of Procedure Article 46.

When necessary, Parliament can convene outside of its normal working period. Articles 99(4) and 86(d) of the Constitution and Article 48 of the Rules of Procedure allow the Plenary, the Standing Committee, one-third of the Members of Parliament, or the President to summon the plenary to convene outside the normal working period. Extraordinary sessions of Parliament

may be necessary in times of crisis, when the interests of the Timorese people require immediate action by the National Parliament.

But how, in practice, does this assembly of elected officials pursue the interests of the Timorese people? This chapter attempts to answer this question by exploring the composition, powers, and limitations of Parliament. Before starting this analysis, however, we return briefly to one broad, conceptual issue that is relevant to most of the topics covered in this chapter: the Timorese people's control over Parliament's law-making authority.

While law-making authority is principally given to Parliament acting as a whole, it can be inefficient and impracticable to have this entire body meet, debate, and vote on absolutely every decision necessary for the state to function on a daily basis. Consequently, Parliament can and does delegate its power in a variety of ways. This chapter explores the mechanisms by which Parliament's broad, legislative mandate is broken down and performed by smaller, more specialized bodies as well as other branches of the state.

But as we will see, when Parliament decides to delegate a portion of its authority, it does not give up all control over the delegated power. It maintains a supervisory role in a variety of ways. For instance, when Parliament grants the Government authority to issue decree-laws, it retains some control through parliamentary appraisal and its ability to dismiss the Government. Supervisory powers such as these are an important check on the ability of the Government exercise authority that is otherwise reserved for the National Parliament. We will examine Parliament's various supervisory functions in more detail throughout this chapter.

It is helpful to mention here, however, that the way Parliament maintains a degree of control when it delegates its law-making ability is conceptually analogous to another fundamental democratic principle. Remember that while Parliament is the primary organ for making laws, under the Constitution, sovereignty still belongs exclusively to the Timorese people. By electing a parliament for the purpose of passing generally applicable laws, the people delegate a portion of their sovereignty to this body of legislators. But the Timorese people do not cede all control over the legislative process. Through periodic elections and referendum, the people retain and exercise their right to collectively direct the country. In addition, the National Parliament, like all organs of the Timorese state, must comply with the Constitution. Thus, even

though Parliament is the branch with primary responsibility for making laws, this authority comes from, and remains subject to, the will of the people.

When examining the composition, powers, and limitations of the National Parliament, try to observe how Parliament's officials and organs are kept accountable to the people. With the addition of each new position and committee, the Timorese people can seem further and further removed from the law-making process. As authority is delegated and dispersed through a wide array of state actors, ask yourself how the actor delegating a particular power maintains control over the actor that is assigned to exercise the power. Then try to follow the chain of delegation and supervision all the way back to the population at large. Are any legislative actors wholly insulated from public opinion? Are there any that should be?

II. COMPOSITION

SECTION OBJECTIVES

- To understand how Members of Parliament are elected
- To understand how Members are organized into different positions, groups, and committees to fulfill the National Parliament's mandate
- To examine the powers, duties, and immunities accorded to the Members of Parliament
- To understand the role and purpose of the various officers, groups, and committees within the National Parliament, including:
  - The President of the National Parliament and Bureau of the National Parliament
  - Parliamentary Benches
  - The Specialized Standing Committees and Ad Hoc Committees
  - The Standing Committee of the National Parliament

The Constitution sets out the basic composition of the National Parliament. Article 93 requires that Parliament consist of a minimum of fifty-two and a maximum of sixty-five Members chosen through national elections for five-year terms. Article 95 requires Parliament to elect a President of the National Parliament and set up the Standing Committee and other parliamentary committees. Beyond these general requirements, however, the Constitution does not provide detailed instructions regarding the election, organization, and practical operation of Parliament. Instead, it provides only basic principles to guide the specific rules that must be developed over time. In this chapter we explore the more detailed rules enacted by Parliament that govern this sovereign organ of the Timorese state. In this section, we address the composition of Parliament. This analysis is guided by two distinct questions:

1) How are the Members of Parliament chosen?
2) Once elected, how are the Members of Parliament organized to fulfill the National Parliament's mandate?

We begin with the broadest possible conception of Parliament's composition by examining how individual Members of Parliament are elected. This tells us who is a Member of Parliament, but it does not tell us how Parliament is organized. Once elected, Members of Parliament are organized into a variety of positions, parties and committees to facilitate the orderly pursuit of the legislature's mandate. We will address each of these divisions in turn to better understand how this body of elected officials is structured to perform its function: enacting laws that promote the interests of the Timorese people.

1. Nationally Elected Members of Parliament

The Members of the National Parliament are chosen through national elections. Article 93 of the Constitution requires that these elections be "universal, free, direct, equal, secret and personal," but it does not provide the precise procedures for fulfilling this requirement. Instead, it requires Parliament to establish by law "the rules relating to constituencies, eligibility conditions, nominations, and electoral procedures" that govern the election of Members of Parliament. A whole and precise account of the rules enacted by Parliament to this end is not attempted here. Rather, we will consider only those provisions most relevant to understanding the composition of Parliament.

Electoral Capacity

The right to vote in national elections is called **active electoral capacity**. By statute and in accordance with Article 47 of the Constitution, every Timorese citizen over seventeen years of age residing in the national territory presumptively has active electoral capacity.

Law on the Election of the National Parliament (Law no. 6/2006)[13]

Article 4: Active electoral capacity

(1) Every Timorese citizen over seventeen years of age has active electoral capacity.

[13] Law 6/2006 was amended by Law 6/2007 (May 31, 2007), Law 7/2011 (June 22, 2011), Law 1/2012 (January 13, 2012)

(2) To exercise the right to vote is a mandatory condition to register in the voter registration.

(3) Voters admitted to hospital or penal institutions that have an updated electoral card are entitled to vote by means of a mobile voting process.

All Timorese citizens that are over the age of 17 and reside in Timor-Leste have active electoral capacity and, therefore, the right to vote in national parliamentary elections. There is one other limitation on electoral capacity: the voter registration requirement. In order for eligible voters to exercise their right to vote, they must register in the voter registration. Article 65(2) of the Constitution makes voter registration compulsory and universal. It also places the burden for registering voters on the state by requiring voter registration to be "officially initiated." According to Law No. 6/2007, Article 40, in order to vote on Election Day, a voter must be able to present one of the following three documents for identification purposes: 1) an updated voter's card; 2) a Timorese identity card; or 3) a Timorese passport. This requirement is necessary to protect against voter fraud and is meant to ensure compliance with the democratic principle of "one person, one vote." The identification requirement prevents individuals from voting multiple times under fake names or by pretending to be another person and stealing that person's vote. The voter can only vote with a Timorese identity card or a Timorese passport if his personal data are in the list of voters of the census geographic unit where he should vote in.

But this tells us only who may participate in electing Members of Parliament. This does not tell us who may actually seek election to Parliament.

The law governing parliamentary elections permits any Timorese citizen with active electoral capacity to run for election to the National Parliament. However, it also recognizes that some positions in the Timorese state are incompatible with seeking election to the National Parliament for important policy reasons. Consequently, persons holding certain positions in the Timorese state are prohibited from running for National Parliament, even though they otherwise would be eligible to run.

Law on the Election of the National Parliament (Law no. 6/2006)

Article 7: Ineligibility

The following are ineligible to run for the National Parliament:

a) The President of the Republic;

b) Judicial Magistrates or public prosecutors in service;

c) Serving career diplomats;

d) Civil servants in service;

e) Members of the Timor-Leste defense force (FALINTIL-FDTL) in service;

f) Members of the police in service;

g) Ministers of any religion or cult;

h) Members of the national electoral commission.

Many of these exemptions arise from the need to respect the separation of powers. The President of the Republic may not run for the National Parliament because no single person can fill both positions simultaneously. This would be a clear violation of the separation of powers because full presidential and legislative powers would be vested in a single person. The members of the legislature need to check and balance other branches of the state. A person filling both roles simultaneously would not be able to perform this important function.

This same logic applies to many of the other positions listed above. A person who is employed under another branch of the state, for example a civil servant or diplomat, cannot also be an active member of the legislature. This is a conflict of interest, because this individual may have personal biases toward the branch of the state for which she works, and this may prejudice her work in the legislature. For instance, a person employed as a civil servant may be reluctant to decrease the funding for the department in which she is employed, even if this budget reduction is good for the Timorese state and the Timorese people.

The ineligibility article exists to prevent these conflicts of interest and abuses of power. Active prosecutors, civil servants, police, and members of the defense force may be unduly biased toward the section of the Timorese state in which they serve, preventing them from effectively representing the Timorese people as a whole. An active member of the defense force, for instance, may be unwilling to support a reduction in the size of the force because he doesn't want to lose this job, or doesn't want his friends and coworkers to lose their jobs, even if such a measure would be best for Timor-Leste.

Moreover, without this prohibition, individuals may be tempted to abuse their positions to help them obtain election to Parliament. This is the reason why members of the national electoral commission may not run for Parliament. To avoid even the appearance of corruption, no individual should be trusted to organize and monitor an election in which he or she is also a candidate. In a system of government like Timor-Leste's that employs a system of checks and balances, no one organ of state is ever completely trusted to check or regulate itself. The same reasoning applies to elections. Thus, a person seeking election to Parliament is not allowed to also supervise and regulate the election.

Another basis for the above exemptions is the sheer impossibility of having one person simultaneously fulfilling their duties as an official in the Timorese state while campaigning for Parliament. Note that an individual holding one of the positions in Article 7 may run for Parliament after suspending or resigning from the conflicting position. For instance, only "civil servants *in service*" or "*serving* career diplomats" are prohibited from running for election to Parliament. A person that holds one of these positions is only prohibited from running for Parliament while actively holding one of the Article 7 positions. Upon suspension, resignation or termination, a person that once held an Article 7 position is free to run for Parliament. In fact, it is common for people who hold such positions to later run for Parliament. They are only prohibited from seeking election while actively serving in one of the positions listed above.

Converting Votes to Seats: "Party-list Proportional" Representation

Elections for Members of Parliament are governed by the Law on the Election of National Parliament, Law No. 6/2006. According to this law, the Timorese people go to their

local polling stations and vote for their preferred party-lists by secret ballot on Election Day. A **party-list** is a list of candidates for Parliament that all belong to the same political party or parties joined together as one entity for the purpose of competing in a particular election. The list may also include citizens that are not affiliated in the political party. Each party chooses which individuals it will put on its list and the order of the candidates it provides. One in three candidates on the party-list must be a woman. Rather than voting for individual candidates, voters indicate the political party they support by voting for its party-list. The total number of votes for each party-list is tabulated and the results are used to apportion seats in Parliament. For each seat in Parliament a political party is awarded, one of the candidates from its party list is elected to Parliament in the order that the candidates are listed on the party-list. In other words, if a political party receives one seat in Parliament, the first candidate listed on its party-list is elected to Parliament. If a party receives five seats in Parliament, the first five candidates listed on its party-list are elected to Parliament.

Article 65(4) of the Constitution requires the conversion of votes into mandates to observe the principle of proportional representation. This means that the absolute proportion of votes each party-list receives in the national election is used to determine the proportion of seats in Parliament awarded to each political party. The Law on the Election of National Parliament, Law 6/2006, requires Timor-Leste use the *D'Hondt* system of **party-list proportional representation**. This is not a strictly proportional system, but slightly favors large parties. Additionally, this law provides for a hard cut-off of 3%, wherein if a party receives less than 3% of the vote, they will not even be considered for representation in Parliament. The following examples explore these issues, and their potential impact, in more detail.

Example 1

Imagine a hypothetical parliament that is made up of only ten members. Suppose a national election to apportion these seats is held in a manner identical to Timor-Leste's, with the following results:

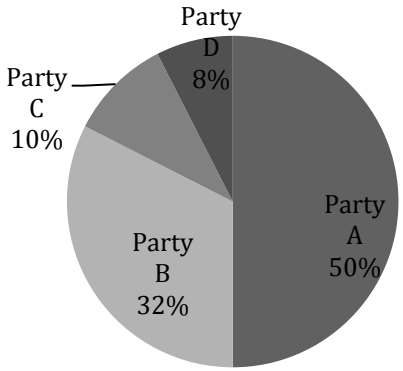
Party A: 1,000 votes

Party B: 650 votes

Party C: 200 votes

Party D: 150 votes

The *proportion* of votes received by each political party is the number of votes received by each political party divided by the total number of votes (in this case 2,000), which provides the following results:



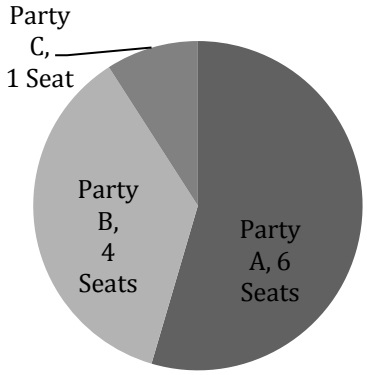
Proportion of votes for Party A: 50%

Proportion of votes for Party B: 32.5%

Proportion of votes for Party C: 10%

Proportion of votes for Party D: 7.5%

If we use the system currently employed by Timor-Leste (the *D'Hondt* system), the ten seats in our hypothetical Parliament are apportioned in the following manner:



Party A: 6 Seats

Party B: 3 Seats

Party C: 1 Seat

Party D: 0 Seats

Notice the following:

1) Party A is advantaged in this system, receiving more seats than its proportion of the vote would allow (using a strict proportional allocation, Party A would receive 5 seats instead of 6);

2) Party B and Party C receive a proportion of seats in Parliament that corresponds to the proportion of votes they received in the election (Party B's 32.5% of the vote would round down to 3 seats, and Party C's 10% of the vote corresponds exactly to one seat); and

3) Party D is disadvantaged (although it received 7.5% of the votes, it is not given a seat).

We achieved these results by applying the *D'Hondt* system. In the *D'Hondt* system, the total number of votes each party receives is divided by the numbers 1 through the total number of seats available. These numbers are put into a grid, where the rows represent the party, and the columns represent the numbers 1 through the total number of seats available. For our example, this grid would look as follows:

Party	**1**	**2**	**3**	**4**	**5**	**6**	**7**	**8**	**9**	**10**
A	1000	500	333	250	200	167	143	125	111	100
B	650	325	217	163	130	108	93	81	72	65
C	200	100	67	50	40	33	29	25	22	20
D	150	75	50	38	30	25	21	19	17	15

Seats are then distributed to the party with the highest number square on the grid that has not already received a seat. In our case, the first seat would go to Party A, because the largest number in the grid is 1000, and is located in square A1, which corresponds to Party A. Going step by step, the seats would be distributed in the following order:

Party	**1**	**2**	**3**	**4**	**5**	**6**	**7**	**8**	**9**	**10**
A	1000 1st seat	500 3rd seat	333 4th seat	250 6th seat	200 9th seat	167 10th seat	143	125	111	100
B	650 2nd seat	325 5th seat	217 7th seat	163	130	108	93	81	72	65
C	200 8th seat	100	67	50	40	33	29	25	22	20
D	150	75	50	38	30	25	21	19	17	15

This means that Party A would appoint the first six people on its party list to Parliament, Party B would appoint the first three on its list, and Party C would appoint the first person on its list.

Example 2

Again, let us say that we have a parliament comprised of 10 seats, and 2000 votes. But now the votes are counted and the results are as follows:

Party A: 1000 votes

Party B: 370 votes

Party C: 260 votes

Party D: 150 votes

Party E: 55 votes

Party F: 55 votes

Party G: 55 votes

Party H: 55 votes

The *proportion* of votes received by each political party is as follows:

Proportion of votes for Party A: 50%

Proportion of votes for Party B: 18.5%

Proportion of votes for Party C: 13%

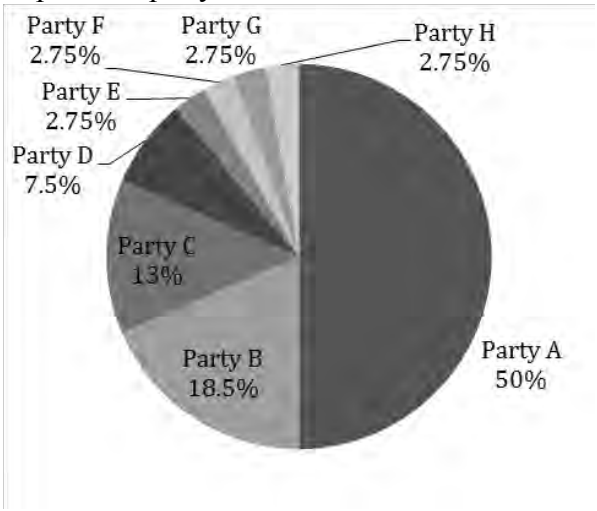
Proportion of votes for Party D: 7.5%

Proportion of votes for Party E: 2.75%

Proportion of votes for Party F: 2.75%

Proportion of votes for Party G: 2.75%

Proportion of votes for Party H: 2.75%



Because Timor-Leste's law employs a cut-off at 3%, Party E, Party F, Party G, and Party H will receive no seats and will not factor into the rest of our calculation.

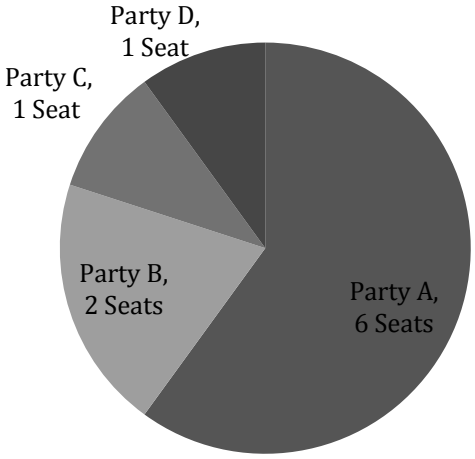
Next, we will create our grid and apportion seats accordingly:

Party	1	2	3	4	5	6	7	8	9	10
A	1000 1st seat	500 2nd seat	333 4th seat	250 6th seat	200 7th seat	167 9th seat	143	125	111	100

B	370 3rd seat	185 8th seat	123	93	74	62	53	46	41	37
C	260 5th seat	130	87	65	52	43	37	33	29	26
D	150 10th seat	75	50	38	30	25	21	19	17	15

Therefore, the parties would get the following number of total seats:

Party A: 6 Seats
Party B: 2 Seats
Party C: 1 Seat
Party D: 1 Seat
Party E: 0 Seats
Party F: 0 Seats
Party G: 0 Seats
Party H: 0 Seats



Notice the difference between the results in Examples 1 and 2. Party A and Party D each had the same number of votes in both examples (Party A had 1000 votes and Party D had 150 votes). In both examples, Party A received 6 seats while Party D received no seats in Example 1, but one seat in Example 2. Part of the reason for these different results is that the total number of votes in Example 2 for Party B, Party C and Party D are all much closer to each other, whereas in Example 1, Party B has significantly more votes than Party C or Party D. Because the *D'Hondt* system gives an advantage to larger parties, Party B had more of an advantage over Party C and Party D in Example 1 than in Example 2.

Electoral Regulation, Supervision, and Legitimacy

Elections are regulated by the Law on the Election of the National Parliament (Law No. 6/2006) and the amendments to this law, Law No. 6/2007 and Law no. 7/2011. In addition to this,

national and international observers monitor elections. It is a serious, criminal offence to violate the electoral law. The Criminal Code provides a list of electoral offenses. Some examples of these offenses are: obstruction to freedom of choice (using violence to force a person to vote or no to vote in a certain way); committing election fraud (for example, by stealing ballot boxes), and disrupt the polling station (by intentionally cutting electrical power).

Any voter, candidate, or candidate's agent who has reason to question the legitimacy of the voting process is entitled to "raise doubts and present complaints or challenges relating to electoral operations." In other words, anyone who has a well-founded belief that an election did not satisfy the requirements set out in the Constitution and the electoral law can challenge the results of the election. Complaints should be addressed to an electoral officer at the voter or agent's polling station. Complaints must be reviewed and decided upon by a minimum of six electoral officers, and the resulting decision must be communicated to the complainant. The electoral officers responding to a complaint may ask for guidance from the Technical Secretariat for Electoral Administration ("STAE"). Complainants may appeal the decision of the electoral officers or the STAE to the National Electoral Commission ("CNE"). If the complaint is presented at a district tabulation center while the votes are being counted, the complaint is submitted directly to the CNE. The provisional results published by the CNE are subject to appeal for 48 hours following their publication. Appeals against the CNE's provisional results must be submitted to the Supreme Court of Justice for immediate resolution.

2. Powers, Duties, and Immunities of Members of Parliament

Now that we know how Members of Parliament are selected, we can turn to the powers, duties, and privileges given to the Members of Parliament. Election to Parliament is a significant endorsement by a Member's constituency. Elected individuals are given important rights and responsibilities to help guide the legislative policies of Timor-Leste. To assist the accomplishment of their mandate, Members of Parliament are also given special privileges with respect to the performance of their official functions. The powers and privileges afforded to Members of Parliament reflect the special place legislative representatives hold in a democratic society. Nonetheless, persons elected to office are required to respect the rule of law, the importance of their task, and the confidence placed in them by the Timorese people. As such,

election to Parliament also comes with certain duties Members of Parliament may not disregard. Moreover, the powers and privileges provided to Members of Parliament are not without checks and limitations.

Powers

The powers given to Members of Parliament are provided in the Rules of Procedure of the National Parliament. First and foremost, election to Parliament necessarily comes with the right to participate in parliamentary deliberations. The basic powers and responsibilities entrusted to each Member of Parliament are listed in the Rules of Procedure.

Rules of Procedure

Article 9: Powers

(3) In order to ensure the mandate runs smoothly, Members of Parliament [] have also the following powers:

(a) to sit during Plenary sessions and on committees and to take the floor in accordance with the provisions set out in the rules of procedure;

(b) to vote;

(c) to submit requests;

(d) to put forward alterations to the Rules of Procedure.

The first two powers listed in this section explicitly guarantee each Member the right to be present, speak, and vote during plenary and committee sessions. These powers ensure that each Member has the chance to participate in the legislative process. This is particularly important for Members of minority parties. This power ensures that they have the opportunity to publicly oppose the initiatives of the majority and try to persuade their peers to consider alternatives. No Member of Parliament can be wholly excluded from the debates surrounding an

act of Parliament. Every Member is guaranteed the chance to speak for or against a proposed act, and to vote accordingly.

Later in this section, we will examine in more detail the power to submit requests and what types of requests Members of Parliament might make. For now, simply note that the power to submit requests necessarily includes the right to have requests heard and acted upon in a reasonable time. This does not mean that every request made by a Member of Parliament must be granted. If a Member's requests go repeatedly ignored, however, he or she has cause to complain.

Among the most common and important requests are requests for information. In order to speak or vote on a proposed act, a Member must have access to the information necessary to develop an informed opinion about the proposal. Members may need information from other state actors, access to classified information, clarification about the details of draft legislation from its drafters, and sufficient support services—such as staff and supplies—to adequately perform their own research on a topic. Requests pertaining to information are only one type in a broad spectrum of requests that Members might make and we won't attempt to exhaustively list every type of request here. It is enough for now to recognize that whenever the Rules of Procedure mention a request that a Member of Parliament might make, every individual Member of Parliament has the ability to make such a request and the request must be respected.

So far we have only addressed powers that are fairly obvious and, as such, might be called the "inherent" powers of Members of Parliament. These powers are fundamental to serving as an elected representative in Parliament. For instance, every Timorese citizen expects his or her elected representative to have the power to vote in Parliament. But Members of Parliament have powers beyond this very basic set. These powers are also listed in the Rules of Procedure.

Rules of Procedure

Article 9: Powers

(1) In accordance with the Rules of Procedure Members of Parliament shall, either individually or jointly, hold the following powers:

(a) to submit drafts of constitutional revisions;

(b) to submit draft laws, referenda, resolutions and deliberations;

(c) to submit proposals for alterations;

(d) to request parliamentary appraisal of legislative acts under the terms set out in article 98 of the Constitution for their alteration or termination;

(e) to request that any bill or draft law or resolution or draft deliberation, as well as parliamentary appraisal be processed with the greatest urgency, as set out in paragraph d);

(f) to submit censorship motions to the Government;

(g) to propose that possible committees be set up and that public audiences be held;

(h) to submit written requests to the Government or other public authorities to receive written information which is considered necessary and useful for the undertaking of their mandate, within a period of 30 days;

(i) to request to the High Court of Justice that they declare rules unconstitutional under the terms and provisions set out in sub-paragraph c) of article 150 of the Constitution.

Note the opening language of this article: Members of Parliament "individually or jointly" hold the powers listed in this article. Of course, in the practical operation of Parliament, these powers are typically of very little importance when exercised individually. This highlights an important concept: Parliament is a deliberative body that depends on compromise and consensus-building to actually get things done. Individual Members can accomplish very little without the support and participation of their peers.

Note, for instance, that all of the above powers confer only the ability to "submit," to "request," or to "propose." Generally, a proposal by one Member of Parliament that is not supported in any meaningful way by other Members will be of little significance. For instance, while every individual Member of Parliament has the power to request parliamentary appraisal of decree-laws issued by the Government, Article 124 (1) of the Rules of Procedure require that the request have the support of one-fifth of the Members of Parliament before the decree-law in

question is actually subject to parliamentary review. Without this requirement, a single Member of Parliament could disrupt the function of the entire Timorese state by repeatedly demanding parliamentary appraisal of every Government decree-law. This would be inefficient and impracticable. As will become more evident throughout this chapter, initiating draft legislation, resolutions, amendments, and the like without support among the other Members of Parliament is generally a wasted effort. The proposal may not satisfy threshold requirements for consideration by the plenary and will likely go ignored or quickly be voted down, probably in a committee, without ever reaching the floor of parliament.

Nonetheless, Members might find it politically useful to make such submissions individually even when they do not have enough support from the rest of Parliament for the draft proposal to have any chance of passing or even becoming the topic of serious deliberation. Introducing a draft law is one way to fulfill promises made while campaigning for election. If the draft proposal is voted down or ignored by the rest of Parliament, during the next election the candidate that initiated the legislation can blame other political parties for Parliament's failure to pass or otherwise act on the draft legislation. On the other hand, voters may blame the failure of the draft legislation on its submitter. After all, the failure might reflect the drafter's lack of effort or skill with regard to convincing other Members to take notice of and support the draft legislation.

Example 3

Consider Decree-Law No. 21/2003, titled "Quarantine and Sanitary Control on Goods Imported and Exported." This law regulates the import of goods that might carry infectious diseases and provides sanctions for violations of these regulations. Suppose a Member of Parliament receives a complaint from a collection of Timorese businesses alleging that, in practice, this decree-law is too strict and the fines imposed for a violation of the law are too high—to the point that the decree-law is negatively impacting their livelihoods and the economy of Timor-Leste. A Government Ministry oversees a number of executive branch officials who are responsible for implementing this decree-law. The Member of Parliament wants to respond to

the complaints of her constituents, but knows very little about this decree-law. While reading the law in question, Decree-Law No. 21/2003, she finds the following relevant language:

Section III: Sanctions

Article 59: Fines

(1) All contraventions shall be punished by fines, the amount of which shall be fixed by Ministerial order.

(2) When determining the cost of fines referred to in paragraph 1 above, any sanitary and environmental risk of the contravention, the sanitary damages, as well as the potential or actual damages, public health, the volume of import and the residence must be taken into account.

(3) All fines imposed by virtue of paragraph 1 above shall be applied without prejudice to judicial fines which may be possibly contaminated or to penal sanctions which may be applied under criminal law.

(4) All fines and accessory sanctions shall be applied by the Director of the Directorate of Quarantine Services.

The Member of Parliament decides to exercise her power under Article 9(1)(h) of the Rules of Procedure (the power to submit requests to the Government to receive information that is necessary for the undertaking of her mandate) in order to respond to her constituents. She sends a letter to the Director of the Directorate of Quarantine Services requesting all written records of fines the Director issued from 2004 to 2009. She also requests any records that explain the nature of the violations for which the fines were applied. She also writes to the Ministry that oversees this office and requests the written records of the fixed fines established by the Ministry, as well as access to any and all relevant studies or reports that the Ministry used to determine the amount of the fines. Finally, she sends a letter to the Director of the Directorate of

Quarantine Services and requests, pursuant to her authority under Article 9(3)(c) of the Rules of Procedure (the general power to submit requests), that the Director refrain from issuing any additional fines until she has had sufficient time to evaluate all of the relevant information.

The Ministry and Director must provide all of the requested information within a period of 30 days. It is necessary and useful for the undertaking of the Member's mandate because it will help her make an informed evaluation of this decree-law. Since parliamentary appraisal of Government decree-laws is an important power of the National Parliament, Members of Parliament must be able to request information from Government actors related to the implementation of decree-laws.

The Member may find that the fines are appropriate and worth the negative economic impact they might cause. In this case, she can convey this finding to her constituents. No one wants to pay a fine, but that does not necessarily mean the fines are unreasonable. In this case, she should explain the importance of the regulations and why the fines are necessary to protect the greater public health of Timor-Leste. She can explain that the amount of each fine is based on careful consideration of the available scientific evidence and therefore that the fines are justified.

In the alternative, she may discover that the Ministry is not taking into account the appropriate factors in setting the fixed fines, or that the Director is inappropriately applying the fines. In the extreme, she might find that the Ministry is not basing the fines on any actual evidence, but rather that it is arbitrarily choosing random amounts. In this case, she should take the matter to other Members of Parliament. Together, they may ultimately decide to present a draft law to amend or terminate the decree-law to correct the situation. Alternatively, just the threat of this action might cause the Ministry to correct the situation on its own. Note, however, that even if this Member finds the decree-law intolerable as it is currently applied, she can do little on her own to change the law. Rather, she must try to convince other Members to see the flaws in the existing law and build support for changing it.

However, the Member's final "request," that the Director temporarily stop applying fines, exceeds her powers as a Member of Parliament. A Member may not dictate the actions and authority of another state actor simply by calling an order a request. Allowing a single Member of Parliament to control an executive official is an unacceptable violation of separation of powers. If a Member is dissatisfied with a decree-law, she can try to change it through the

appropriate legislative processes. But in the interim, she may not "request" that another branch simply stop enforcing the law.

Duties

Members of Parliament are expected to respect the confidence placed in them by the Timorese people. They must also respect the rule of law and their responsibility to discharge their responsibilities faithfully. All of these duties are attendant to their election to office. Members are thus expected and required to conduct themselves in a manner that reflects the importance of the position they hold. To this end, the Rules of Procedure provide a list of the duties incumbent upon each Member of Parliament.

Rules of Procedure

Article 10: Duties of Members of Parliament

(1) Members of Parliament have the following duties:

(a) to arrive punctually and take part in the Plenary sessions and meetings of the Committees to which they belong;

(b) to carry out the duties and functions for which they were appointed in Parliament and proposed by their respective Parliamentary party;

(c) to take part in the voting;

(d) to sign the records of attendance at the Plenary session or at the committees in which they participate;

(e) to justify any absence at any of the plenary sessions or committee meeting within a period of 5 days after such absence.

(2) Members of Parliament also have the following duties to perform:

(a) to respect the dignity of the Parliament and the Members of Parliament;

(b) to observe order and discipline as set out in the Rules of Procedure and comply with the authority of the President of the Parliament;

(c) to contribute, through their behaviour, to the efficiency and prestige of parliamentary work;

(d) to comply with the terms and conditions as set out in the Constitution and Law.

Essentially, Members of Parliament are obligated to fulfill the role for which they are elected to serve. They must attend plenary sessions and the meetings of any committees to which they belong. If a Member must miss a meeting, she must justify her absence within five days of the session she failed to attend. Members must also participate in plenary and committee meetings by signing the record of attendance and voting in deliberations. They are expected to respect their peers and the institution of Parliament. They are also required to adhere to the rules that govern Parliament (the Rules of Procedure) as well as the rules that govern the Timorese state: its laws and its Constitution. Failure to respect and fulfill these obligations subjects the offending Member to internal measures or, in extreme cases, forfeiture of his or her mandate.

Immunities

As a starting point for our discussion of the immunities afforded to individual Members of Parliament, consider Article 94 of the Constitution.

Constitution of Timor-Leste

Article 94: Immunities

(1) The Members of National Parliament shall not be held liable for civil, criminal or disciplinary proceedings in regard to votes and opinions expressed by them while performing their functions.

(2) Parliamentary immunities may be withdrawn in accordance with the rules of Procedures of the National Parliament.

This section provides limited **immunity** for Members of Parliament. This type of limited immunity is sometimes called "parliamentary immunity" or "legislative immunity." Immunity is a general term applied whenever someone is exempt from prosecution. This provision provides a limited immunity, because of the clause, "in regard to votes and opinions expressed by them while performing their functions."

As will be discussed further below, Members of Parliament are afforded broad immunity for statements related to their votes or debates. However, this is the only form of immunity they possess. With regard to potential criminal or civil wrongs, they are still liable just like any other Timorese citizen. Likewise, a Member of Parliament is not allowed to violate the law simply by claiming it was an official act. The immunity provided above is limited to parliamentary debates, committee hearings, and other activities clearly related to official business.

The purpose of this limited immunity is to ensure open, vigorous, and honest discussion within the deliberations of the National Parliament. After all, Parliament is responsible for leading the nation, and its Members will necessarily have to deal with difficult, uncertain, and highly controversial issues. Imagine if Members had no immunity for the opinions they express during debates. Accusations of defamation, such as libel and slander, could be used to deter vigorous debate in Parliament. This is particularly dangerous because the facts relevant to a given piece of legislation will often be intensely contested. Civil suits based on what is said by Members of Parliament acting in their official role raise substantial separation of powers concerns. If such a suit was allowed, a judge could penalize a Member of Parliament because she disagreed with the political position of the Member. This could seriously endanger the legislative process by allowing the judiciary to exercise improper control over the legislature.

Thus, the immunity provided in the Constitution makes a straightforward policy determination: there is a need to protect unrestrained and vigorous debate within Parliament as well as shield lawmakers from distracting and time-consuming litigation. The immunities article declares these interests categorically more important than whatever interest might be served by permitting individuals to sue Members of Parliament over their political positions.

In other words, the unique and important role Members of Parliament fulfill requires that they have special immunity from being sued, imprisoned, or sanctioned for their votes, speeches, and opinions. Lawsuits based on a Member's political statements are a deterrent to open debate

and can interfere substantially with the Members' performance of official functions. The need for effective legislators and the risk of frivolous, politically motivated lawsuits is so great that it justifies this broad immunity. It is better to provide broad protection for all statements made by a Member of Parliament in her official capacity than risk deterring free and honest speech during Parliament's deliberations. The following examples will help demonstrate this.

Example 4

Suppose Parliament is considering a piece of legislation that will cost the state a substantial amount of money, but the exact amount is in dispute. During the deliberations on this piece of legislation, one Member of Parliament who opposes the legislation makes the following statement:

> The supporters of this bill are lying. They are lying to this body, to the press, and ultimately to the Timorese people. This legislation will cost three times more than its supporters will admit, and they know it. They are lying.

What if the supporters of the bill want to sue for defamation? Article 94 clearly prohibits such a lawsuit. Why? First of all, regardless of whether this claim has any legal merit, and so regardless of the actual details of defamation law in Timor-Leste, just the threat of a lawsuit could be enough to discourage this Member from making this statement or similar statements in the future. Even if the legislation turns out to cost exactly what its supporters claimed, it would still be bad if the threat of a lawsuit prevented the opposing Member from stating his opinion or belief.

Why? First, it may be unclear what is true and what isn't in a case like this. In situations like this example, it can be very difficult to predict how much something will cost in the future. And we do not want to suppress debate in Parliament just because Members are not completely certain of their predictions.

Second, if we wanted to decide the lawsuit in this situation before the legislation actually goes into effect, we might have each side bring in experts on the issue to decide who's telling the truth. But this is exactly the sort of debate that is supposed to take place on the floor of Parliament—not in a court. If this debate was brought before a judge, there is no way to

guarantee that the judge's own political views will not affect the outcome of the proceedings, which is an impermissible intrusion into the legislative process by a member of the judiciary. Consequently, allowing such a lawsuit would raise serious separation of powers concerns.

If a member frequently makes unfounded and exaggerated accusations, this is an issue best resolved through the democratic process. For instance, a party is likely to remove from its party-list a candidate who frequently makes baseless and exaggerated statements. If it doesn't, voters may choose not to support a party that continues to offer such disreputable and offensive candidates. Furthermore, the offending Member may alienate himself from the rest of Parliament by his insulting rhetoric, impeding his ability to represent his constituents.

In any event, this is not a matter that can or should be adjudicated in a court. Otherwise, the Members of Parliament will constantly have to limit their honest opinions and beliefs because of the fear that they might be taken to court for voicing them. Since the political affiliation of the judges that oversee these suits could affect these lawsuits, this would lead to a violation of separation of powers, as the judiciary would become entangled with the work of the legislature.

Moreover, without this immunity, individuals who disagree with a Member of Parliament might abuse the system by filing lawsuits with little or no merit for purely political reasons. They may hope that continuous lawsuits will distract the Member they oppose or discourage her from taking controversial positions in the future. They might also seek out judges that agree with them politically, thus corrupting both the judicial and legislative process in Timor-Leste. This poses a serious risk to democratic legitimacy. Permitting a judge to legally sanction Members of Parliament based on their political positions is an unacceptable act of judicial interference in the legislative process.

Example 5

Suppose the President of Timor-Leste requests Parliament's authorization to declare a state of emergency under Article 85(g) of the Constitution. One thing the President hopes to do under the proposed emergency state is suspend the Constitutional rights of certain criminal defendants, which he argues is necessary for national security. The majority of Parliament

supports the authorization. In an impassioned speech opposing the authorization, a Member of Parliament calls the proposed suspension of Constitutional rights "tyrannical." She goes on to call the President a human rights violator and a dictator.

The President may be deeply insulted, and wish to sue for defamation. Alternatively, the President may ask the General Prosecutor to instigate criminal proceedings for treasonous conduct against this Member. However, this is prohibited by Article 94. This example illustrates a crucial point: the goal of encouraging open and vigorous debate extends to the use of rhetoric. Without this protection, a Member of a minority party might be afraid to take a strong stance against the majority, lest she find herself in front of a judge who happens to share the majority's political ideology. If a Member of Parliament is at all fearful that she might be prosecuted or sued for her statements, she will feel compelled to stay far away from anything that is even remotely inflammatory. Because powerful rhetoric can serve an important role in the democratic process, the immunities clause ensures broad protection for all statements made by a Member of Parliament in her official capacity.

Nonetheless, a Member can still be held accountable for abusing this privilege. Members of Parliament are expected to respect the sanctity of their office, maintain appropriate levels of decorum, and show appropriate respect for their colleagues. Failure to do so may lead to internal measures within the Parliament in accordance with its Rules of Procedure (Articles 63 and 65).

Note that the immunity provided to Members of Parliament is very limited. It is restricted in two important ways. First, as discussed before, there is the limiting clause, "in regard to votes and opinions expressed by them while performing their functions." Thus, the protection only applies to what we might call a Member's "official" functions. This encompasses all the ordinary acts we might expect a Member to undertake in the performance of her mandate. Public speeches, like those given on the floor of Parliament, are clearly protected. This immunity does not, however, extend to a Member's private affairs. How, precisely, to draw the line between official and personal acts is not an easy task and must be left to the interpretation of the courts. What's

important is that the breadth of the immunity is restricted by its purpose: ensuring that Members are not prosecuted or sued for their political opinions.

The Constitution also allows the National Parliament to withdraw parliamentary immunity. This must be done in accordance with their Rules of Procedure. Currently, the Rules of Procedure for the National Parliament support and slightly expand the parliamentary immunity granted by the Constitution.

Rules of Procedure[14]

Article 8: Immunities

(1) Members of Parliament are not held civilly, criminal or disciplinary liable for their voting or for their opinions expressed during the course of their duty or resulting therefrom.

(2) No Member of Parliament can be detained or preventively arrested, except in the case of an intentional crime punishable with a prison sentence of over five years, by way of authorization given by the National Parliament.

(3) In the event there are criminal proceedings initiated against a Member of Parliament and such Member is definitively accused, the National Parliament shall decide whether this Member of Parliament shall or not be suspended in order to pursue the proceedings.

(4) The suspension referred to in paragraph 3 above shall be requested by a competent judge in a document addressed to the National Parliament, the decision being taken by secret ballot and absolute majority of the Members of Parliament present, preceding the opinion issued by the competent committee.

With respect to actions for which Members of Parliament may be held liable, the immunity contained in the Rules of Procedure goes no further than the immunity provided in the Constitution. This means that Members of Parliament have civil and criminal immunity for votes and opinions expressed while performing their official functions (designated as *irresponsibility*). The Statute of the Members of the Parliament (Law 05/2004, May 5, 2004) and the Rules of

[14] Article 8 of the Rules of Procedure is a copy of Articles 10 (irresponsibility) and 11 (inviolability) of the Law 5/2004, May 5, 2004 – Statute of Members of the Parliament.

Procedure, however, provide additional protection in the form of a restriction on **preventive arrest** or detainment and criminal prosecution (designated as *inviolability*). But these restrictions do not make Members of Parliament immune from criminal prosecution. Criminal proceedings against a Member of Parliament may still be pursued according to the rules provided in the law. The primary purpose of the expanded immunity in the Law 05/2004 and in the Rules of Procedure is to maintain the separation of powers. A corrupt or badly intentioned public prosecutor might be tempted to instigate criminal proceedings against political opponents in an effort to prevent them from participating in deliberations on certain pieces of draft legislation. Frivolous accusations could be used to at least detain an opponent long enough to prevent him or her from taking part in the legislative process at a critical time. This would clearly be an impermissible abuse of the criminal justice system to serve political ends. The restriction on preventative arrests and criminal prosecution is a part of the separation of powers. It is a check on the potential for abuse of power by the judiciary.

Preventive arrest occurs when a person is imprisoned purely on suspicion of criminal activity. When a Member of Parliament is preventively arrested, he or she is temporarily suspended from Parliament. Consequently, the Member is temporarily disabled from fulfilling his or her mandate. Thus, to prevent any type of corruption, the Rules of Procedure restricts the preventative arrest of Members of Parliament. For criminal allegations to be serious enough to warrant the Member of Parliament being detained or preventatively arrested, the crime in question must be serious enough to be punishable by a prison sentence of over five (5) years. Thus, Member of Parliament may only be preventive arrested in the situation of a crime punishable by a prison sentence of over five years with Parliament`s authorization. This requirement is necessary to prevent relatively insignificant infractions from being used to arrest a Member of Parliament and in arresting him to functionally deprive him of his ability to fulfill his duties in a way similar to suspension. Article 8 of the Rules of Procedure also prohibits the provisional removal from office of a Member of Parliament during criminal proceedings, without previous authorization from the Parliament. This is a good example of checks and balances at work. For a pending criminal prosecution be able to proceed, and a Member of Parliament suspended, the participation and consent of both the judiciary and the legislature are required. First, a judge must submit a letter to the National Parliament providing a reasoned request for the

suspension of the accused Member of Parliament based on the evidence with which the judge was presented. Second, Parliament must vote on the merits of the judge's request, and the suspension can only be enforced if it is supported by a majority of Parliament. This provides strong protection for Members of Parliament from false criminal allegations directed at them by politically motivated foes. Of course, if the accused Member is likely guilty of a serious crime, her status as an elected Member of Parliament cannot shield her from prosecution. Thus, this immunity is not absolute, and so no Member of Parliament is above the law.

In the end, the specificity of and the limitations on the immunities enjoyed by Members of Parliament highlight an important concept: Members of Parliament cannot act with impunity. The nature of their office might require that they receive certain special immunities, but this immunity is far from absolute. The scope of each immunity is limited to the specific goals it serves and harms it seeks to prevent. In all other respects, the Members of Parliament remain bound by the same laws as all of the Timorese people.

Questions

Suppose that a current Member of Parliament is running for reelection. The election looks like it will be close, and as the date of the election gets closer the Member starts to get nervous. As a final effort to ensure reelection, this Member offers to pay anyone who campaigns for her political party. After some observation and investigation, it becomes clear that she is paying anyone who promises to vote for her and who will tell others that if they vote for her, they too can get paid.

Members of an opposing party learn about these payments. Some of these individuals complain to the electoral officers at the polling stations where the exchanges took place. Eventually, the Prosecutor-General learns about the payments and initiates an investigation. According to Chapter 4 ("Electoral Offences"), Article 234 ("Obstruction to freedom of choice") of the Penal Code, any person who attempts to purchase votes "shall be punished with coercive detention of up to 3 years or fine." After interviewing several witnesses, the Prosecutor-General is convinced that the Member of Parliament who paid people to campaign for him violated the law.

The accused Member of Parliament learns about the Prosecutor-General's investigation and sends a letter to the Prosecutor-General asking her to refrain from pursuing the matter. In this letter, the accused Member cites the immunities afforded to her as a sitting Member of Parliament by the Constitution and the Rules of Procedure. She asserts that campaigning is an official duty for every Member of Parliament and that she therefore cannot be prosecuted for any official statements she made in pursuit of reelection, including offers of money for people to campaign in this way.

You are an assistant to the Prosecutor-General, and she requests your opinion on the following two issues:

1) Can the Prosecutor-General initiate criminal proceedings against the accused Member of Parliament?

2) Can the Prosecutor-General seek an arrest warrant for the preventive arrest of the accused Member of Parliament for the duration of the criminal investigation?

Based on your knowledge of the immunities granted to Members of Parliament, how do you respond to the Prosecutor-General's questions?

Answers and Explanations

1) The Prosecutor-General should absolutely pursue criminal proceedings against this Member of Parliament. The practice of electoral offences is a serious offence and Members of Parliament are not immune from criminal liability because of the office they hold. In this case, the Member's impugned activity was not a vote or the expression of an opinion. Rather, she promised to provide cash rewards to voters who supported her political party in the election. The Penal Code makes it clear that purchasing votes is an electoral offence. Further investigation is warranted and criminal proceedings can and

should be initiated. The immunities provided to Members of Parliament do not bar prosecution in this case.

2) While this is a serious offence, it does not meet the requirements to overcome the restriction on preventative arrest because this crime is not punishable with a prison sentence of over five years. Consequently, the Prosecutor-General cannot seek the immediate arrest of the accused Member of Parliament. However, once the Member of Parliament is definitively accused, the Prosecutor-General can ask a judge to send a letter to the National Parliament requesting the suspension of the accused Member. Upon receipt of the letter, the National Parliament will vote, by secret ballot, whether to suspend the accused Member for the duration of the criminal proceedings.

Loss of Mandate and Replacement

An individual Member of Parliament can forfeit his or her seat in Parliament (i.e., lose his or her mandate) in a variety of circumstances. These are listed in the Statute of Members of the Parliament (Article 8) and in the Rules of Procedure.

Rules of Procedure

Article 7: Loss of mandate

(1) Members of Parliament may lose their mandate in the event:

(a) they do not take their seat in National Parliament up to the fifth plenary session with no justification or fail to appear at five consecutive sessions of the Plenary or committees or has taken 15 intermittent absences with no justification;

(b) they join a different political party from the one they were enrolled in when they were elected;

(c) they have been convicted of an intentional crime, having received a prison sentence of over two years;

This Article demonstrates that the powers and privileges that come with serving as a Member of Parliament also come with significant responsibilities. Each Member is expected to faithfully and reliably fulfill his or her mandate. A Member that chooses to disregard his or her responsibilities may forfeit his or her mandate. Frequent or extensive unjustified absences show a lack of respect for the office and Parliament as a whole. Consequently, a Member may lose his or her mandate through recurring and unjustified absences.

If absences evince a lack of respect for Parliament, changing political parties after getting elected demonstrates a lack of respect for the electorate. Members are elected from a party-list on the assumption by the voters that every candidate on that list shares the ideology of and will remain loyal to their political party. As a result, if a Member chooses to change political parties after getting elected, that Member loses his or her mandate.

Finally, a Member that is convicted of a crime with a prison sentence of over two years has shown a clear lack of respect for the law. If a Member cannot be trusted to obey the law or to respect the rule of law, he or she does not deserve to participate in making new laws. As a result, a Member convicted of a serious crime risks losing his or her mandate.

According to the Rules of Procedure, Article 7, the Parliamentary Bureau, discussed below, is responsible for declaring the loss of mandate of a Member of Parliament. If a Member of Parliament feels that the Bureau revoked her mandate without a valid reason, she may appeal the decision. Within ten days of such a decision by the Bureau, the affected Member of Parliament is entitled to a hearing at a plenary session before all of Parliament. At this session, the entire National Parliament votes by secret ballot to confirm or invalidate the Bureau's decision. If Parliament confirms the loss of mandate, the affected Member may, as a last resort, appeal this decision to the Supreme Court of Justice.

If for any reason a Member of Parliament must leave office before the completion of the parliamentary term that Member must be replaced. If the Member is a man, he is replaced by the next unelected candidate on the party-list of the political party to which the departing member belonged. If the outgoing Member is a woman, the replacement must be a woman.

Absences and Quorum

We saw previously that the Rules of Procedure require each Member of Parliament to attend all plenary sessions and the meetings of any committee to which she belongs. Of course, Members of Parliament can and will miss some plenary and committee meetings. A Member might be ill, unavailable due to a family emergency, preoccupied with another important function of her office such as meeting with citizens at public forums on an important issue, or for any number of other reasons be incapable of attending a plenary or committee meeting. Occasional absences are permitted so long as the Member justifies her absence within five days after the absence occurred. Consequently, not every Member must be present for the plenary or a committee to meet and deliberate.

Plenary sessions and committee meetings do, however, require a **quorum**. A quorum is the minimum number of Members that must be present for a plenary or committee session to take place. The plenary sessions of Parliament require the presence of at least one third of the sitting Members of Parliament. Deliberations of Parliament require the presence of over half of the sitting Members. Thus, a plenary session can take place with only one third of the Members of Parliament present but it cannot deliberate on an issue without the presence of over half of the Members. The President of the National Parliament, assisted by the Secretaries of the Bureau, is responsible for determining which Members are present and verifying the existence of the quorum required for Parliament to operate. At any time, Members of Parliament may request that the President of the National Parliament verify the quorum.

3. Parliamentary Benches

Parliamentary benches are distinct from political parties and this distinction is critical to the function of Timor-Leste's multi-party, democratic system. Political parties play a central role in the operation of Timor-Leste's parliamentary system of democratic government. As we saw previously, voters in Timor-Leste vote for political parties during parliamentary elections. The results of the election are then used to award seats in Parliament to the various political parties according to the proportion of votes each political party received in the election. Members elected in party-lists may form parliamentary benches. Parliamentary benches are not only a

form that Members can use to organize themselves. On the contrary, parliamentary benches are bodies that have powers and rights established in the Rules of Procedures. The formation of parliamentary benches is critical to understanding the operation of the National Parliament.

Composition

Parliamentary benches are composed of Members elected in party-lists presented to election by political parties. It is therefore necessary to begin our discussion of parliamentary benches by considering political parties. Article 70 of the Constitution explicitly recognizes the existence and role of *political parties*.

Constitution of Timor-Leste

Article 70: Political parties and the right of opposition

(1) Political parties shall participate in organs of political power in accordance with their democratic representation based on direct and universal suffrage.

Article 70(1) is given effect in the National Parliament through national elections that apportion seats in Parliament according to a closed party-list system of proportional representation. As we saw previously, political parties earn seats in the National Parliament based on the proportion of votes their party-lists receive in national elections. But Timor has a large number of political parties and, as we'll see below, both major and minor parties have proven able to secure seats in Parliament. It is thus possible, and even likely, that no single political party will receive an absolute majority of the seats in Parliament. But all of Parliament's essential tasks, such as passing legislation and designating a Prime Minister, require at least a majority vote from the entire assembly. Thus, Members from different political parties have to work together to fulfill Parliament's mandate. Once the seats in Parliament are assigned to the various political parties based on the results of the national election, the Members of Parliament are free to form coalitions. Article 106 of the Constitution provides that the "Prime Minister shall be designated by the political party or alliance of political parties with parliamentary majority."

In other words, the political party or coalition of political parties that holds a majority of seats in Parliament selects the Government. For this reason, the parliamentary bench or benches of political party or parties with a majority in Parliament is often referred to as the ruling party or ruling coalition. Members of the other parliamentary benches, those that are not a part of the parliamentary coalition with a majority in Parliament, are sometimes referred to as opposition parties.

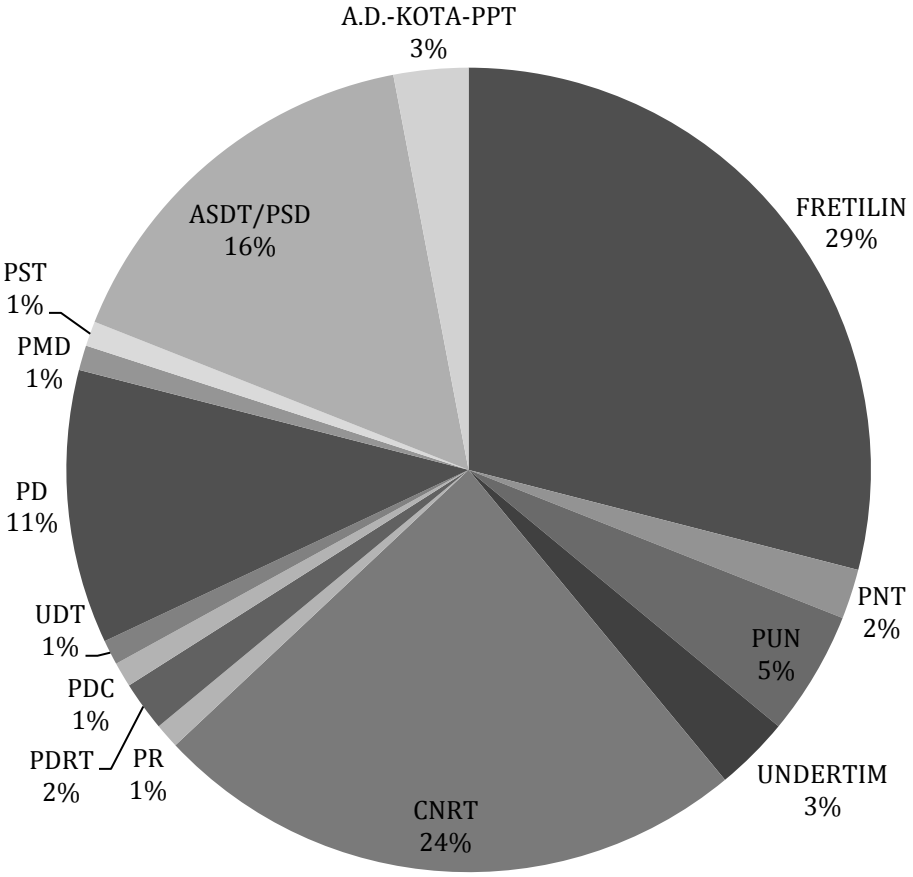
Parliamentary benches are formed after the election and consist of elected Members. This gives each political party with a seat in Parliament two options. Each political party may either: 1) choose to remain independent and form its own parliamentary bench composed exclusively of Members from its political party; or 2) ally with one or more other political parties to form a parliamentary bench comprised of Members from multiple political parties. Individual Members of Parliament may also choose to remain independent by not joining any parliamentary bench. Note, however, that according to Article 12 of the Rules of Procedure, "Independent Members of Parliament may not constitute parliamentary benches." Thus, Independent Members do not enjoy any of the powers and rights of parliamentary benches, which are discussed below.

The Rules of Procedure require each parliamentary bench to notify the President of the National Parliament of its constitution and its membership. Parliamentary benches also select a president and vice-president and must notify the President of the National Parliament of these selections. A parliamentary bench must also notify the President of the National Parliament of any changes to its constitution, leadership or membership.

Note that the formation of parliamentary benches is not restricted by pre-electoral arrangements. The Rules of Procedure, in Article 11(1), specifically provide that "The Members of Parliament elected in party lists or coalition of parties may establish parliamentary benches, regardless of the existence of pre-electoral party coalitions." This means that the Members of Parliament, upon election to Parliament, are free to form and join parliamentary benches in whatever manner they think will best allow them to serve the interests of the Timorese People.

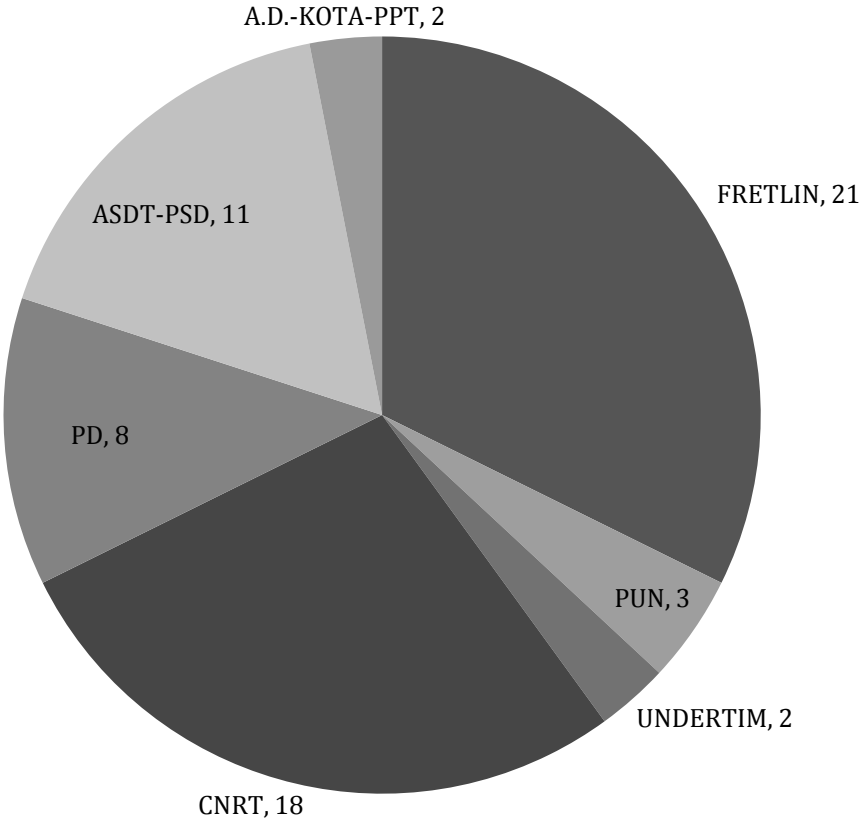
Timor has a large number of political parties, and both major and minor political parties are represented in Parliament. The following chart shows the proportion of votes received by each political party in the 2007 National Parliament election.

2007 National Parliament Election Results by Political Party



Consequently, numerous political parties received seats in the 2007-2012 National Parliament. Based on the results of the 2007 parliamentary election, the 2007-2012 National Parliament had the following composition.

Seats in the 2007-2012 National Parliament by Political Party



As these results demonstrate, many political parties, some large and some small, received seats in the National Parliament for the 2007-2012 legislative term. All the political parties elected for legislative this term formed a parliamentary bench composed exclusively of Members from its party-list, including the parties that ran for election in a coalition of parties list and the political parties that formed a coalition after the elections to obtain majority in the Parliament and select the Prime Minister (CNRT, PD, PSD and ASDT). For more information see *Selection of Prime Minister*.

Powers

The powers given to parliamentary benches are derived from the Constitution. Return again to Article 70 of the Constitution. Recall that Article 70(1) recognizes the existence and role of political parties. Article 70(2) contains the right to democratic opposition.

Constitution of Timor-Leste

Article 70: Political parties and the right of opposition

(2) The right of political parties to democratic opposition, as well as the right to be informed regularly and directly on the progress of the main issues of public interest, shall be recognised.

The right to democratic opposition is preserved through the role and powers of parliamentary benches in the legislative process. This principle is given effect by making sure that opposition parties are able to play a meaningful role in the legislative process despite their minority status. The powers given to every parliamentary bench are listed in the Rules of Procedure.

Rules of Procedure

Article 13: Powers and rights of parliamentary benches

Each parliamentary bench shall have the following powers and rights:

(a) to participate in the committees in accordance with the number of its members and for this purpose shall indicate the names of its representatives;

(b) to be heard when establishing the agenda and to determine the agenda of a certain number of plenary meetings;

(c) to request that the Standing Committee summons Parliament;

(d) to initiate laws;

(e) to submit motions for rejection to the Government's program;

(f) to submit censorship motions to the Government;

(g) to be regularly and directly informed by the Government about the state of the art of the principal affairs of public interest, when previously agreed between the Government and parliamentary benches;

(h) to question the Government;

(i) to request that debates be immediately held.

The powers given to parliamentary benches in many ways parallel those given to individual Members of Parliament and, similarly, exist primarily to protect the participation of opposition and minority parties in the legislative process. Remember from Article 3 of the Rules of Procedure, "Members of Parliament are representatives of all the people of the nation, regardless of the constituency for which they were elected." It is therefore crucial that the views of all Timorese people are represented in Parliament, not just those of the people who supported the political parties with a majority of seats in Parliament.

The powers afforded to parliamentary benches are part of the practical embodiment of the "right of opposition" contained in Article 70(2) of the Constitution. These powers ensure that political parties that are elected to Parliament by the Timorese people have the ability to represent the views of their constituents. These delineated powers ensure that even small parliamentary benches are able to participate in the legislative process. In addition, note that the Rules of Procedure, Article 11(5), entitle every parliamentary bench, to the extent possible, to all necessary support services, such as working offices.

The powers given to each parliamentary bench in Article 13 of the Rules of Procedure prevent the political party or alliance of political parties with a majority of seats in Parliament from overpowering and marginalizing minority (or opposition) parties. For example, no parliamentary majority may enact rules prohibiting a minority party from speaking during deliberations or requesting access to necessary information. Similarly, minority parties are guaranteed at least some representation in parliamentary committees, where they are likewise guaranteed the opportunity to participate in the deliberations of these committees. Finally, every

parliamentary bench of the political parties not represented in the Government is entitled to set the agenda of one plenary session in each legislative session. We will discuss the importance of the agenda in the section on "Setting the Agenda" under "The President of the National Parliament and Bureau of the National Parliament," below.

Note also that many of the powers given to parliamentary benches provide opposition parties checks on the work of the Government. As we will see below, once a majority party or coalition of parties establishes a Government, Parliament maintains numerous checks on that Government. But exercising many of these checks requires a majority vote in Parliament. Thus, if the political party that selected the Government is able to maintain unity, opposition parties are at risk of being trivialized and wholly segregated from the work of the Government. The powers in Article 13, however, ensure that opposition parties have the ability to stay informed about the work being done by the Government, to question Government officials, and to initiate legislation to censor or dismiss the Government. In this way, opposition parties can continue to play a vital role as a check on the majority controlled Government.

College of Representatives of Parliamentary Benches

According to the Rules of Procedure, Article 25(1), the presidents of the various parliamentary benches (or their designated representatives), the President of the National Parliament, and one member of the Government comprise the College of Representatives of Parliamentary Benches ("College"). Essentially, the College is a small group that effectively represents the collective positions and desires of the various parliamentary benches and the Government. Consequently, it is a crucial point of reference for the President of the National Parliament. The Rules of Procedure frequently require the President of the National Parliament to consult with the College on matters vital to the operation of Parliament. Consulting with this group provides the President of the National Parliament a ready means to get a general sense of the will of the various parliamentary benches sitting in the National Parliament. Most importantly, the President of the National Parliament must consult the College when setting the agenda for Parliament. The role of the College will become more clear during our discussion of the President of the National Parliament below.

4. The President of the National Parliament and Bureau of the National Parliament

The Rules of Procedure, Article 15(1) require that at the start of each legislative term, Parliament must select one of its Members to hold the position of President of the National Parliament for the entirety of the term and act, amongst other roles, as the presiding officer of the National Parliament. The position of President of the National Parliament is briefly summarized in the Rules of Procedure.

Rules of Procedure

Article 14: Status

(1) The President represents the National Parliament, defends its rights and dignity, carries out and coordinates parliamentary works impartially, and exercises authority over all employees, agents and security forces placed at the service of the National Parliament.

Thus, in addition to being Parliament's presiding officer, the President of the National Parliament is also the chief administrator of Parliament. Consequently, the President of the National Parliament has "authority over all employees, agents and security forces placed at the service of the National Parliament." The President of the National Parliament also performs administrative functions with respect to the individual Members of Parliament. In this capacity, the President of the National Parliament accepts requests for substitutions, receives resignations, and judges notifications of absence. For example, Members of Parliament must inform the President of the National Parliament, directly or through the Bureau, of their absence from any plenary session and their reason for not being able to attend. The President of the National Parliament must keep track of absences in order to ensure that each Member of Parliament is fulfilling his or her duties, as discussed previously.

Note that the President of the National Parliament is expected to carry out his or her duties "impartially." As we will see, the President of the National Parliament exercises a broad

array of powers and responsibilities in order to ensure the orderly function of Parliament. However, these powers are largely procedural and administrative, and the President of the National Parliament is expected not to abuse his or her position in order to benefit a particular political party or collection of political parties. Essentially, the President of the National Parliament is responsible for ensuring the neutral application of Parliament's Rules of Procedure. Any act of Parliament that does not comply with the Rules of Procedure is unlawful and invalid.

In addition to being Parliament's presiding officer and chief administrator, the President of the National Parliament is the main point of contact for Parliament. As such, the President of the National Parliament is Parliament's primary ambassador to other, sovereign bodies.

Rules of Procedure

Article 198: Institutional relations

The institutional relations of Parliament with national sovereign bodies, parliamentary institutions of other countries or other national or foreign institutions shall take place by way of the President or delegations of Members of Parliament or Member of Parliament delegated by such President.

Selection of the President of the National Parliament

Articles 41 and 16 of the Rules of Procedure help to govern the selection of the President of the National Parliament. According to these sections, at the start of each legislative term, the outgoing President of the National Parliament, if still an elected Member of Parliament, continues to function as the interim President of the National Parliament until a new one is elected. If the outgoing President of the National Parliament was not reelected to Parliament, the oldest Member of Parliament functions as the interim President of the National Parliament. Any sitting Member of Parliament can run for the position of President of the National Parliament. A Member that wants to run for this position must submit a petition, called a candidature, signed by a minimum of ten and a maximum of twenty Members of Parliament at least twenty-four hours before the election of the President of the National Parliament. The resulting list of candidates is

submitted to the Members of Parliament in plenary session and Members vote by secret ballot for the candidate of their choice.

The candidate that receives an absolute majority of votes is elected to the position of President of the National Parliament. If no candidate receives an absolute majority of votes in the first election, another election must immediately follow during the same meeting. In the second round, only the two candidates with the highest number of votes from the first round are allowed to run. This process ensures that a single candidate will ultimately receive an absolute majority of votes from the Members of Parliament. Ideally, this method of election will ensure that the President of the National Parliament commands the respect of the entire plenary.

Role of the President of the National Parliament

As the presiding officer of Parliament, the President of the National Parliament is primarily responsible for ensuring the orderly function of this legislative body. The President of the National Parliament must ensure that the Parliament functions in accordance with the Rules of Procedure. The responsibilities of the President of the National Parliament are set out in more detail in the Rules of Procedure.

Rules of Procedure

Article 17: Powers of the President of the National Parliament

(1) The President's responsibilities at Parliament during his term of office shall be:

(a) to chair the Bureau;

(b) to set the plenary sessions and the agenda in accordance with the provisions of the Rules of Procedure, once the Representatives of the Parliamentary Benches have been heard;

(c) to organize the plenary sessions;

(d) to admit or reject the bills or draft laws or resolutions, draft deliberations and requests, once the fact that they comply with the Rules of Procedure has been ascertained, without prejudice to the right to appeal to the Plenary.;

(e) to receive and to refer to the competent committees the texts of the bills or draft laws and treaties, as well as those of petitions addressed to Parliament;

(f) to maintain the order, discipline and security of the Parliament;

(g) to sign the minutes of the sessions and the documents dispatched on behalf of Parliament;

(h) to inform Parliament of the messages, information and explanations addressed to it;

(i) to promote the publication of debates and all the works and acts carried out by Parliament;

(j) to summon and chair the Conference of Representatives of the Parliamentary Benches;

(k) to exercise the other powers that the Constitution, the Rules of Procedure and the Organic Law assign to the President.

The President of the National Parliament is central to the daily operation of Parliament, and we will repeatedly encounter the powers of the President of the National Parliament in this chapter. Note, however, that much of the President of the National Parliament's work is administrative: organizing plenary sessions, signing official documents such as meeting minutes, conveying information to the plenary from outside actors, and publishing the debates and acts of Parliament. Some of the President`s tasks are effectively clerical tasks. Again, the President of the National Parliament's primary role is to ensure the orderly function of Parliament. The President of the National Parliament manages Parliament, and so can be viewed as an administrator without prejudice to its political functions. The President plays also an important role in the legislative process by admitting or rejecting bills and draft laws presented before the Parliament. We will address some of the President of the National Parliament's more important powers in more detail, below.

Setting the Agenda

One of the President of the National Parliament's most important enumerated powers is setting the agenda for the plenary sessions of Parliament. Each plenary session of Parliament follows a prearranged agenda distributed to the Members of Parliament in advance of the session. This is a logical and necessary way to organize the work of the plenary. Members must know in advance what issues they will be deliberating on so that they can prepare. Moreover, not every issue in need of Parliament's attention can be considered at every plenary session. Consequently, before an issue can be considered by Parliament, it must be placed on the agenda. Members of Parliament, the parliamentary benches, the specialized standing committees, and the Government may all request that the President of the National Parliament place an item on the agenda. These items usually consist of draft bills, laws, and resolutions, but they may also include declarations (such as an authorization of a state of emergency), changes to the Rules of Procedure, and exercises of Parliament's supervisory or political steering authority (such as parliamentary appraisal of a Government decree-law).

There are two components to each plenary session of Parliament: the period before the agenda and the period during the agenda. The President of the National Parliament is responsible for determining what issues will be covered during each of these periods. We will first examine the period before the agenda.

Rules of Procedure

Article 51: Period before the agenda

(1) There will be a period of time before entering into the agenda in order to:

(a) Read any announcements or information which the President considers pertinent, once the College of Representatives of the Parliamentary Benches has been heard;

(b) Read and appraise the summaries of the plenary sessions;

(c) Read and appraise the reports of the representations and deputations;

(d) Discuss and approve wishes of congratulations, greetings and solidarity, protest or condolences proposed by the Bureau, by the parliamentary benches or the Members of Parliament;

(e) Hold emergency debates;

(f) Make political statements.

The President of the National Parliament may use the period before the agenda to update the Members of Parliament on any topics pertinent to their work. For example, the President of the National Parliament may wish to inform the Parliament that the Government responded to a prior request from Parliament and provide the plenary with the Government's response. Reports, or summaries thereof, by Parliament's officials may also be read to the plenary at this time. For example, the Rules of Procedure, Article 82, requires that each specialized standing committee regularly update Parliament on the state of its work. These reports, when particularly pertinent to Parliament's work in a particular plenary session, might be read or summarized during the period before the agenda. Similarly, the Bureau may wish to use this period to update the plenary on its decision or ongoing deliberations with regard to a Member's loss of mandate. According to Article 51 of the Rules of Procedure, the parliamentary benches may also ask the President of the National Parliament to include items in the period before the agenda. They can do so through the College, which the President of the National Parliament must consult before organizing the period before the agenda. The period before the agenda normally lasts for one hour. It may be extend to two hours for emergency debates. The full time allotted is established by the College.

The most important part of Article 51, however, is the provision for emergency debates. In a time of crisis, an issue might be of such importance that it necessitates bypassing the typical formalities associated with being placed on the agenda for parliamentary consideration. The President of the National Parliament may allow emergency debates in his discretion with the approval of the College.

The President of the National Parliament, after consulting with the College, also determines the items that will be discussed in the period during the agenda. This allows the parliamentary benches to tell the President of the National Parliament what topics each of the various parties would like to consider during an upcoming plenary session. While the President of the National Parliament must hear from the College, setting the agenda is largely left to her

discretion. However, there are some significant limitations on the President of the National Parliament's discretion. First of all, the President of the National Parliament must follow the precedence for agenda items provided in the Rules of Procedure.

Rules of Procedure

Article 52: Sequence of items to be addressed on the agenda

When setting the agenda, the President shall give precedence to the items on the agenda as follows:

(1) Suspension of constitutional guarantees and the declaration of stage of siege and state of emergency, under the terms set out in article 25 of the Constitution and also authorization to declare war and make peace.

(2) Affairs concerning rules of procedure of the National Parliament.

(3) Discussion of bills and draft laws in the following order:

(a) Appraisal of the bills concerning State Planning and the Budget;

(b) Discussion of laws and treaties on matters which are of the exclusive scope of the legislative powers of the National Parliament.

(c) Appraisal of decree-laws approved by legislative authorization;

(d) Discussion of laws and treaties.

(4) Supervisory affairs and other political contents, under the following terms:

(a) Elections and ratifications of nominations;

(b) Authorization for the displacement of the President of the Republic on State visits;

(c) Appraisal of the Government's Program;

(d) Voting on motions for rejection, votes of confidence or censorship motions of the Government;

(e) Deliberation on the Government's activity report;

(f) Deliberation on the Planning and State Budget implementation report.

Take a moment and consider the order of the above items. Situations of crisis, such as a declaration of a state of emergency or war, logically come first. Matters concerning the Rules of Procedure come second but before all others because changes to the Rules of Procedure affect how Parliament deliberates on other matters. Direct law-making (bills and draft laws) is given precedence to Parliament's supervisory powers. This list provides a helpful synopsis of Parliament's work and an items position on this list indicates how central the item is to the function of Parliament. The higher the item's position, the more the item is associated with Parliament's role in the functioning of the state.

The President of the National Parliament must follow this order when organizing the agenda. The President of the National Parliament does not have complete discretion when setting the agenda. She must adhere to the detailed requirements provided in the Rules of Procedure when performing this task. If the correct order is not followed, or if a Member has any other complaint with regard to the agenda set by the President of the National Parliament, an appeal can be made to the plenary. In addition, the Government may ask the President of the National Parliament to include items on the agenda. If the Government needs Parliament to deliberate on "affairs of national interest requiring urgent resolution", it may even request priority on the agenda. The President of the National Parliament, after hearing from the College, has discretion to decide on such a request.

Remember that each parliamentary bench of political parties not represented in the Government is entitled to set the agenda of one plenary session during each legislative session. In this way, minority parties may force discussion and deliberation on topics the majority does not want to consider. The major parties, which dominate the College and the Government, will generally have the most influence over the agenda. At least once per legislative session, however, a minority party may force the plenary to consider the item or items it deems important. This is one way of giving effect to the right to democratic opposition.

Chairing Plenary Meetings

The President of the National Parliament also chairs each plenary session of Parliament. To this end, the Rules of Procedure provide the President of the National Parliament with a series of procedural powers to maintain order during plenary sessions.

Rules of Procedure

Article 17: Powers of the President of the National Parliament

(2) In terms of the plenary meetings:

(a) to chair the plenary meetings, declare them open, suspend and close them and to manage the respective business;

(b) to give the floor to the Members of Parliament and members of Government and to keep order during the debates;

(c) to grant permission to the Members of Parliament not to attend the sessions;

(d) to secure fulfillment of the Rules of Procedure and the deliberations taken by Parliament.

The President of the National Parliament oversees and moderates the deliberations of Parliament. The President of the National Parliament opens and closes each plenary session. The President of the National Parliament must recognize Members of Parliament and members of the Government before they may take the floor and address the plenary, and all orators must respect the President of the National Parliament's command when he or she asks them to yield. Again, the President of the National Parliament is responsible for ensuring adherence to the Rules of Procedure during Parliament's deliberations.

Always keep in mind that the President of the National Parliament is expected to discharge her duties "impartially" (Rules of Procedure, Article 14(1)). This is necessary because the President of the National Parliament is the primary arbiter of whether or not Parliament is functioning in accord with the Rules of Procedure. Any action by Parliament that does not conform to the Rules of Procedure is unlawful and invalid. It is thus crucial that the President of

the National Parliament fulfill her role impartially and with absolute respect for the neutral application of the Rules of Procedure.

If a Member of Parliament believes the Rules of Procedure are not being followed, she can raise a **point of order** with the President of the National Parliament. A point of order is a formal assertion that an action violates the Rules of Procedure. The President of the National Parliament must decide if the challenge is valid and, if it is, how to correct the transgression. If the President of the National Parliament determines that the point of order raised by the Member of Parliament is invalid, the Member may appeal the President of the National Parliament's decision to the plenary.

For example, the President of the National Parliament may not selectively recognize Members of Parliament during deliberations based on her personal political allegiances. Likewise, the President of the National Parliament may only admit or reject bills or draft laws based on whether they conform to the Rules of Procedure. The President of the National Parliament may not reject such a bill or draft law because of her own attitudes regarding the draft legislation. If the President of the National Parliament abuses any of her powers, a Member of Parliament may appeal the President of the National Parliament's decision to the plenary.

Admitting Draft Legislation

Another one of the President of the National Parliament's basic powers involves admitting draft legislation. We saw previously that Members of Parliament and parliamentary benches have the power to initiate legislation. This means that they have the power to introduce draft laws for deliberation and a vote by the National Parliament. In fact, the Constitution gives three state actors the power to initiate new legislation.

Constitution of Timor-Leste

Article 97: Legislative initiative

(1) The power to initiate laws lies with:

(2) The Members of Parliament;

(3) The parliamentary groups/benches;

(4) The Government;

Initiation is the first step toward making a piece of draft legislation into law. This is the point at which the new item is first introduced to Parliament for consideration. Draft legislation that is initiated by Members of Parliament or parliamentary benches is called a **draft law**, whereas draft legislation that is initiated by the Government is called a **bill**. Note that a bill is different from a decree-law. A **decree-law** is legislation enacted by the Government, either pursuant to legislative authorization granted by Parliament, or the Government's inherent legislative power. A bill is a piece of draft legislation initiated by the Government for Parliament to deliberate upon. The Government enacts decree-laws unilaterally. When the Government initiates a bill, it is proposing legislation that it would like Parliament to pass.

Of course, before a law can be initiated it must first be written. Any individual or group of individuals may write a piece of draft legislation, but it will not be considered by Parliament unless one of the actors listed in Article 97 of the Constitution initiates it. The author or authors of a piece of draft legislation must consider the purpose of the law they hope to pass and how they will give effect to this purpose through appropriate legislation. When drafting a law, the authors should also be mindful of the formal requirements the Rules of Procedure place on draft legislation.

Rules of Procedure

Article 98: Formal requirements concerning draft laws and bills

(1) Draft laws and bills shall:

(a) Be drawn up in any official language, the text in the Portuguese language being the basic text which shall prevail over the versions in other languages, the Members of Parliament being allowed to speak in any working language;

(b) Be drawn up under the form of articles, possibly divided into paragraphs and subparagraphs;

(c) Have a title which shall convey its principal object;

(d) Be preceded by a brief justification or explanation of the motives.

(2) The requirement referred to in sub-paragraph d) of paragraph 1 above involves, as far as bills are concerned and whenever possible, the presentation of an introduction which contains the following requirements:

(a) A descriptive document concerning the applicable social, economic and financial situations;

(b) Informative summary of the advantages and consequences of its application;

(c) A summary of the legislation in force regarding the matter.

(3) Draft laws and bills which do not meet the requirements set out in sub-paragraphs a) and d) of paragraph 1 above shall not be admitted.

The formal requirements for draft legislation are minimal and largely self-explanatory. The draft must be in a language that the Members of Parliament can read, organized at least into articles, and have a title. Finally, it must include a brief introduction that explains the purpose of the legislation.

In addition to these formal requirements, no draft law or bill that violates the Constitution may be admitted. Finally, Article 93 of the Rules of Procedure requires that "Members of Parliament and parliamentary benches may not submit draft laws or draft amendments which involve, during the ongoing economic year, an increase in state expenditure or decrease state revenue set out in the Budget." In other words, once a Budget has been set and implemented, there cannot be laws or amendments changing spending or revenue for that economic year.

The President of the National Parliament is responsible for appraising all newly initiated draft laws and bills. If an initiative conforms to the above requirements, the President of the National Parliament admits the draft, numbers it, and refers it to the competent specialized standing committee, where applicable. The President of the National Parliament must promptly inform the plenary of her decision to admit or reject a draft law or bill. The Members have until the end of the next plenary session to appeal this decision. Once an appeal is filed, the President of the National Parliament submits the matter to the plenary for deliberation and a conclusive

vote on the matter. If a draft law or bill is rejected, the draft may not be put forward again during the same legislative session.

If a piece of draft legislation is admitted, the process for setting the agenda, as discussed previously, determines when it will actually go before the plenary. If a draft law or bill is admitted but not voted on during the legislative session during which it was initiated, it does not need to be renewed during the next legislative session. It remains open for consideration by Parliament until the end of the parliamentary term. Similarly, admitted bills only expire/ upon the resignation of the Government or the end of the parliamentary term. If a piece of draft legislation lapses because of the conclusion of the parliamentary term or resignation of the Government, it will have to be re-initiated at the start of the next parliamentary term.

The Bureau of the National Parliament

Recall that the President of the National Parliament's first enumerated responsibility is to chair the Bureau of the National Parliament. Consequently, the President of the National Parliament is the President of the Bureau. In addition to the President of the National Parliament, the Bureau consists of two Vice-Presidents, a Secretary, and two Deputy-Secretaries. As we'll see below, the Bureau exists primarily to assist the President of the National Parliament in the fulfillment of his or her duties. This largely consists of helping the President of the National Parliament with the day-to-day administration of Parliament. The Vice-President, Secretary, and Deputy-Secretaries of the Bureau are elected at the start of each parliamentary term from among the Members of Parliament and serve for the entirety of the parliamentary term.

The Bureau primarily assists the President of the National Parliament in the performance of administrative functions necessary for Parliament to function on a daily basis.

Rules of Procedure

Article 21: General Powers of the Bureau

The Parliamentary Bureau shall be responsible for:

(a) Declaring the loss of mandate incurred by a Member of Parliament;

(b) Guaranteeing the performance of Plenary and Committees' support services;

(c) Ensuring that Members of Parliaments' requests for information and official publications is met;

(d) Drawing up a six-monthly report concerning the progress of the application of laws and fulfillment of the deadlines of the respective regulations;

(e) Any other functions which prove to be pertinent for the regular operations of the parliamentary work.

Article 21 conveys the administrative function of the Bureau. In particular, the final power provided to the Bureau in Article 21 illustrates the Bureau's primary purpose. According to this clause, the Bureau is responsible for "any other functions" pertinent to the "regular operations" of Parliament. This provision suggests that the Bureau is a managerial body. Such a function is, or ought to be, primarily apolitical. The Bureau is responsible for ensuring the provision of adequate support services and appropriate responses to requests for information regardless of the political positions of the individual or group in need of assistance. Declaring that a Member has lost his or her mandate, as discussed previously in the section on the same, should entail the rigid application of Parliament's Rules of Procedure. It should not be politically motivated.

The apolitical role of the Bureau parallels the status of the President of the National Parliament, who is expected to carry out and coordinate parliamentary works "impartially" (Rules of Procedure, Article 14(1)). The Bureau exists primarily to help the President of the National Parliament manage the wide array of administrative duties for which the President of the National Parliament is responsible. Members of Parliament should submit the majority of their requests and complaints to the Bureau.

The Bureau also assists with the procedural duties of the President of the National Parliament. For example, the Secretary of the Bureau is responsible for providing the following assistance to the President of the National Parliament.

Rules of Procedure

Article 23: Powers of the Secretary

The Secretary shall be responsible for:

(a) verifying the presences in the plenary sessions, as well as, at any time, verifying the quorum and recording the votes;

(b) putting in order the materials to be put to the vote;

(c) organizing the requests of the Members of Parliament and the members of Government who wish to take the floor;

(d) drawing up the minutes of the plenary meetings.

Again, note the politically neutral nature of these powers. A key role of the President of the National Parliament and the Bureau is to maintain the orderly function of Parliament on a daily basis. This function should be performed with professional detachment from any particular political agenda.

5. Specialized Standing Committees

Parliament maintains a wide array of standing committees that specialize in particular areas of governance. Specialized standing committees are devoted to subjects of such substantial and recurring relevance that they require specialized attention, for instance foreign affairs and fiscal policy. Topics that warrant a specialized standing committee require constant attention. The current specialized standing committees are as follows.

Specialized Standing Committees of the National Parliament
Current as of 29 May 2011

Committee A:	Constitutional Issues, Justice, Public Administration, Local Power and Government Legislation (12 Members)
Committee B:	Foreign Affairs, Defence and National Security

	(10 Members)
Committee C:	Economy, Finance and Anti-Corruption (11 Members)
Committee D:	Agriculture, Fisheries, Forest, National Resources and Environment (11 Members)
Committee E:	Poverty Elimination, Rural and Regional Development and Gender Equality (9 Members)
Committee F:	Health, Education and Culture (8 Members)
Committee G:	Infrastructures and Social Equipments (7 Members)
Committee H:	Youth, Sports, Employment and Professional Training (5 Members)
Committee: I:	Internal Regulation, Ethics and Mandate of the Members of Parliament (5 Members)

The specialization provided by the specialized committees is crucial to Parliament's function. Parliament's mandate requires this group of officials to handle an exceptionally diverse and complex range of issues. Refer back to the nine specialized standing committee listed previously and look at the competence of each committee. Parliament is responsible for passing laws with respect to all of these areas: from national security and foreign affairs to education and development. Each of these areas requires a different category of expertise. Even a Member of Parliament well versed in social sciences, such as economics and political science, is sure to encounter issues that fall well beyond his or her particular competence. A complicated infrastructure investment decision, for instance, might require a detailed knowledge of both engineering and finance that is well beyond the abilities of a single elected official. The division of Members of Parliament into specialized committees is one of the most important means Parliament has to deal with this problem.

This division allows the Members of Parliament to divide themselves into groups that specialize in particular issues. The Members that make up each specialized committee can devote the bulk of their time and attention to the issues that fall within their committee's competency. Committees have the power to summon and question experts on relevant issues from the Public Administration and civil society. They can commission reports or studies necessary to properly consider an issue. It would be cumbersome and impracticable to require the entire Parliament to take these actions with respect to every issue within Parliament's broad competence. Specialization corrects for this deficiency and leads to better governance.

Composition

According to Article 27 of the Rules of Procedure at the beginning of each parliamentary term, Parliament must decide on the number of Members to commit to each standing committee and how to distribute the seats on each committee among the various parliamentary benches. This is done at the proposal of the President of the National Parliament, after he or she has consulted with the College. This distribution should, as closely as possible, parallel the proportional representation of each parliamentary bench in Parliament. The composition of parliamentary committees is thus based on, and should reflect, the overall composition of Parliament. For instance, a party with fifty percent of the seats in Parliament should be given roughly fifty percent of the seats on the various specialized standing committees. The precise numbers must be agreed on through the deliberation of Parliament.

Seats on the standing committees thus belong to parliamentary benches, rather than individuals. Each party is responsible for choosing which of its Members will fill the seats it is given and for filling seats on committees vacated by one of its members. Appointment to a committee lasts the duration of the parliamentary term. Generally, a Member of Parliament may not sit on more than one specialized standing committee, though there is an exception for very small parliamentary benches. A Member of Parliament may lose his or her seat on a parliamentary committee in a number of ways, as provided in the Rules of Procedure.

Rules of Procedure

Article 29: Functions

(2) The Members of Parliament shall lose their capacity as members of parliamentary committees when:

(a) they cease to belong to the parliamentary group for which they were appointed;

(b) they request it;

(c) they are, at any time, substituted by their parliamentary group on the parliamentary committee;

(d) they fail to attend three parliamentary committee meetings per legislative session, except when duly justified.

This article highlights how seats on a committee belong to a parliamentary bench, rather than to any individual Member. The party may at any time substitute one of its members with another with respect to any parliamentary seat the party controls. Furthermore, if a Member cease to belong to his or her parliamentary party, cedes her seat on any parliamentary committee on which he or she sits.

The final reason for which a Member might lose a seat on a committee—repeated absences—emphasizes the importance of work in committees to Parliament's function. The strict rules with regard to attendance even receive their own, separate article in the Rules of Procedure. Three unjustified absences "shall" result in the Member losing the committee seat for the remainder of the term. This strict mandate of attendance reflects the crucial role these committees serve.

Powers

The function and purpose of each standing committee is decided by deliberation of the Plenary at the start of the parliamentary term.

Rules of Procedure

Article 30: Constitution and functioning

(1) The Plenary, at the proposal of the Bureau, and once the College has been heard, deliberates on the constitution of the specialised standing committees, within a time limit of five days after the parliamentary benches have been formed.

(2) The appointment, the number and the assignment of powers of the specialised standing committees are defined in the deliberation set out in paragraph 1 above.

The deliberation on the constitution of each specialized standing committee occurs simultaneously with the deliberation on the assignment of seats to each committee. The deliberation on the constitution of each specialized standing committee defines the purpose of and powers granted to each committee. Thus, the competency and composition of each specialized standing committee is decided by the entire plenary at the start of each parliamentary term.

Once assembled, each committee functions as miniature parliament. Each committee elects its own officers (president, vice-president, and secretary), establishes its own rules of procedure, and is responsible for setting its own agenda. The officers of a committee are sometimes referred to as the bureau of that committee.

The general powers of the specialized standing committees are set out in the Rules of Procedure.

Rules of Procedure

Article 35: Competencies of the specialized standing committees

The specialized standing committees shall be responsible for:

(a) discussing and issuing opinions on the bills and the draft laws, proposals for alteration and treaties submitted to Parliament;

(b) appraising the petitions submitted to Parliament;

(c) keeping informed about political and administrative problems which are of their scope and provide Parliament, when it considers it convenient, with the necessary data for the appraisal of the acts of Government;

(d) holding public audiences with authorities from civil society;

(e) summoning any members of Public Administration bodies to provide information on matters related to their areas of competence.

The primary purpose of the specialized standing committees is to deliberate and report on draft legislation (bills and draft laws). When a draft law or bill is properly initiated, the President of the National Parliament typically refers the draft to the standing committee that is competent in the subject matter that the legislation concerns. The vast majority of draft laws and legislation will clearly fall within the competency of a specialized standing committee. For example, Law No. 3/2007, the Military Service Law, clearly falls within the competence of Committee B: Foreign Affairs, Defence and National Security.

The competent committee must then appraise the draft legislation and produce an official report on the item. To this end, the committee may summon and question any member of the Public Administration who can provide information on the matter. The committee may also call on civil authorities, including consultants, professionals and members of civil society organizations who are experts in the legislative matter under discussion. Other Members of Parliament, the Government, and the advisors of the parliamentary benches may also attend and, to a limited extent, take part in committee meetings.

Rules of Procedure

Article 77: Collaboration or presence of other Members of Parliament, members of Government and advisors

(1) Any Member of Parliament may attend the committee meetings of which they are not a part and, should the committee so authorize, may take part in the work but with no right to vote.

(2) Members of Government may request to be heard in the committee meetings.

(3) The advisors of the parliamentary benches may attend the committee meetings.

Note that although non-committee members can attend and contribute to committee meetings, only Members of Parliament who sit on the committee are allowed to vote in the committee's deliberations.

In order to ensure that the committees can properly execute their responsibilities, they are provided the following, additional capabilities.

Rules of Procedure

Article 79: Powers of the committees

The committees may take the necessary steps to ensure the smooth running of their functions, namely:

(a) carrying out studies;

(b) requesting information or official opinions;

(c) requesting statements from any citizens;

(d) undertaking public audiences;

(e) requesting and hiring experts to assist them in their work, when authorized by the President and by decision of the Parliament Plenary;

(f) undertaking information or study missions.

This is a non-exhaustive list of the type of tools a committee might use to reach a reasoned opinion regarding a draft law or bill that was referred to it. Note that only the hiring of experts requires approval from outside the committee, mainly due to the cost. Of course, committees are also provided the financial resources to pay for appropriate administrative personnel and support services as necessary to complete their work.

A committee may also choose to hold public audiences on a matter before the committee's consideration. A public audience is a committee meeting open to any public and

civil society authority who wishes to address the committee on any legislative matter under appraisal as well as any matter of relevant public interest that relates to the committee's specific area of work. The committee has the exclusive authority to determine whether to hold a public audience.

Once the committee has thoroughly considered a piece of draft legislation, it must issue a report and official opinion on the matter. This report is referred to as the committee's "initial appraisal." The President of the National Parliament sets the deadline for this report when she refers the draft legislation to the committee, although a committee may request an extension. The content of this report is governed by the Rules of Procedure.

Rules of Procedure

Article 34: Report and rapporteurs

(1) The reports should, as much as possible, contain the following information:

(a) A succinct analysis of the facts, situations and realities in question;

(b) Background summary of the problems raised;

(c) Legal or doctrinal framework of the topic under debate;

(d) Foreseeable consequences of the approval of the legislative instrument in question and the possible costs with its respective application;

(e) Reference to the contributions received from entities who are interested in the matter;

(f) Conclusions and official opinion;

(g) Brief summary of the positions of the parliamentary benches with regard to the matter under discussion.

(2) The reports shall indicate the initiative or matter and shall be signed by the committee President and rapporteur or rapporteurs.

(3) The President [of the committee], with regard to each matter to be submitted to the Plenary, shall appoint one rapporteur or more and may appoint one different rapporteur for each one of the parts of the report which requires this division.

(4) The contents of the report is of the responsibility of the Member of Parliament acting as rapporteur.

(5) Only the conclusions, recommendations and official opinions set out in the report may be altered and voted on by the committee.

The report issued by the committee is very important. The rapporteur for each piece of draft legislation under consideration by the committee must thoroughly evaluate and summarize all of the factors relevant to the legislation, as listed in Article 34(1). Other Members of Parliament who do not have the time or capacity to research the matter in question may largely depend on this report to reach their own conclusion on a piece of draft legislation. The committee report offers a succinct conclusion on a piece of draft legislation based on the evidence available to the committee. This conclusion will typically include a recommendation regarding whether Parliament should or should not pass the legislation in question. The committee's recommendation will often be a deciding factor for whether a draft law or bill becomes law.

Still, the issuance of a report by a committee is not a requirement for a draft law or bill to go before the plenary for deliberation. It is typically expected, but the lack of such a report within the deadline established by the President of the National Parliament does not preclude the item from going before the plenary for general consideration. After the committee issues its report on the legislation, the draft law goes before the entire plenary for a deliberation and vote on the general characteristics of the legislation.

But the committee's role is still not complete. The general discussion and vote is limited to the principles and system of the draft legislation.

Rules of Procedure

Article 105: Start of the discussion

(1) The discussion on general points relates to the principles and systems of each draft law or bill.

(2) The discussion includes the presentation of the initiative by its author, for a period of 15 minutes, the presentation of the conclusions of the report and official opinion by the rapporteur, for a period of 10 minutes and a period of questions and answers.

(3) The President may decide to shorten or extend the time allotted to the discussion, once the College of Representatives of the Parliamentary Benches has been heard.

Article 107: Vote

(1) The vote on general points shall relate to each draft law or bill.

(2) Once it has been approved in general, the draft law or bill may be referred to the committee competent in that matter for appraisal and vote on specific points.

Discussion on the general points is thus limited to the abstract, overall aim of the draft law or bill and the mechanisms envisioned to accomplish this end. Essentially, Parliament must consider the draft law or bill in its entirety, and decide whether it supports the overall purpose of the draft legislation and the means chosen to give effect to this purpose. At this point, the plenary does not consider the fine points of the draft law or bill, such as the particular wording of any individual article. Following this discussion, Parliament as a whole votes to approve or reject the draft legislation in general, without altering any of the specific language contained in the draft law. If the draft is rejected, it may not be put forward again until the next legislative session (Constitution, Article 97 (3)).

If the draft legislation is approved, the general principles and mechanisms of the draft legislation are approved, but the specific wording must still be decided. At this point, the draft law may be referred back to the competent committee for appraisal of specific points. If the draft law concerns a matter listed in Articles 95(2) or 95(3) of the Constitution, the deliberation and vote on specific points should take place in a full plenary session, rather than a committee session. But Parliament can vote to allow the committee to conduct the specific appraisal of the legislation. The vote on specific points focuses on the precise wording of the draft law. At this time, Members may propose altering different aspects of the legislation by introducing amendments. The plenary or the committee may then have a separate vote on each individual article, paragraph, or even subparagraph of the legislation. If the draft law or bill is amending an

existing law, only those articles of the existing bill that are amended by the draft legislation are open for discussion.

Once the deliberation and vote on specific points is complete, the plenary conducts a final overall vote on the draft law. At this point, no more changes in the text are allowed, and the plenary must vote to approve or reject the bill in its entirety. If the draft legislation is approved, it is referred back to committee for "final wording" (Rules of Procedure, Article 112(1)). The committee has five days to decide the final wording and it may not alter the legislative meaning of the draft legislation. At this stage, the committee "shall confine itself to improving and systematizing the text and its style" (Article 112(2)).

Once the committee determines the final language of the draft law, the draft is sent to the President of the National Parliament. If any Members of Parliament disagree with the final language chosen by the committee, they may file a complaint with the President of the National Parliament. The President of the National Parliament's decision on the complaint can be appealed to the plenary. If there are no complaints or all complaints have been settled, the legislation is signed by the President of the National Parliament and sent to the President of the Republic for promulgation and publication.

The discussion above highlights the important role committees serve in the legislative process. This process is cyclical, meaning that most legislation will pass back and forth between the plenary and the competent committee several times. This process is meant to encourage consensus, because minority parliamentary benches will often have more power in committees than the plenary. When there are only five members on a committee, for instance, a single individual who is a member of a minority parliamentary party will have an easier time being heard in the committee than before the entire assembly (which has up to 65 members). Nonetheless, some special legislative acts do not go before committees. But, in general, most ordinary legislation will depend heavily on the work of the standing committees.

Ad Hoc Committees and Inquiries

The National Parliament also has the power to establish ad hoc committees. These committees function just like standing committees and are similarly organized to address a

particular issue. But ad hoc committees are temporary. They are created to address a problem that is not recurring or permanent. Consequently, ad hoc committees typically dissolve once they complete their work.

For instance, Parliament established an ad hoc committee to appraise and approve the bill of Timor-Leste's civil code. Since a new code does not need to be drafted every year, this committee was only needed for as long as it took to write the code. Consequently, the ad hoc committee established to draft a civil code dissolved when the code was completed and enacted. While it existed, it functioned just like a standing committee. Ad hoc committees can be created to conduct parliamentary inquiries. Parliamentary inquiries are initiated to "supervise the fulfillment of the Constitution and laws and to appraise acts of Government and administration" (Rules of Procedure, Article 161(1)). Thus, if Members of Parliament have reason to believe the Government is acting unlawfully, they can assemble an ad hoc committee to investigate the potential wrongdoing. An inquiry committee is formed to examine a specific case of misconduct, and can summon and question members of Government to determine the existence of any wrongful conduct. Once the inquiry is concluded, the ad hoc committee charged with conducting the inquiry is no longer needed and so it dissolves.

6. The Standing Committee of the National Parliament

The Standing Committee is unique in that it is the only committee specifically named in the Constitution, in Article 95, Clause 4(c). The Standing Committee essentially meets any time the National Parliament is not in session.

Constitution of Timor-Leste

Article 102: Standing Committee

(1) The Standing Committee shall sit when the National Parliament is dissolved or in recession and in the other cases provided for in the Constitution.

In this sense, the Standing Committee can be thought of as a miniature Parliament that only meets when the full Parliament (the plenary) does not. When Parliament is not in session, the Standing Committee sits as Parliament's representative. It exists so that a group of legislatures can act on behalf of the full plenary if an exigency arises that requires legislative action and there is not enough time for the entire plenary to assemble. Its powers are strictly limited, however, as we will see below. But first, we will discuss the composition of the Standing Committee.

Composition

The composition of the Standing Committee is mandated by the Constitution.

Constitution of Timor-Leste

Article 102: Standing Committee

(2) The Standing Committee shall be presided over by the President of the National Parliament and shall be comprised of Deputy Presidents and Parliament Members designated by the parties sitting in the Parliament in accordance with their respective representation.

The Rules of Procedure further describe the composition of the Standing Committee. The President of the National Parliament is Chair of the Standing Committee and he is assisted by the two Vice-Presidents of the Bureau (the Deputy Presidents named in the Constitution). The other seats on the Standing Committee are divided among the parliamentary benches in accordance with the proportional representation of each political party in Parliament. Thus, the remaining seats on the Standing Committee, like seats on the specialized standing committees, belong to parliamentary benches and not individual Members. The President of the National Parliament and the two Vice-Presidents are the only exception, in that they are elected by their peers and sit on the Standing Committee by virtue of their position. The precise number of Members that comprise the Standing Committee is not provided in the Constitution or the Rules of Procedure.

It will vary depending on the number and proportional representation of the political parties in Parliament.

Powers

First and foremost, note that the Standing Committee cannot pass legislation. This is the mandate of Parliament in its entirety and is therefore reserved for the entire assembly. In fact, many of the Standing Committee's duties are bureaucratic or ceremonial, as we'll see below. Nonetheless, the Standing Committee exercises important, but limited, powers. The Constitution lists the powers of the Standing Committee in Article 102, Clause 3. The Rules of Procedure provide a slightly expanded list that includes all of the powers mentioned in the Constitution as well as a few additional powers.

Rules of Procedure

Article 40: Powers

The Standing Committee shall be responsible for the following:

(a) to monitor the activities of both the Government and the Administration;

(b) to coordinate the activities of the parliamentary committees;

(c) to take the necessary steps to summons Parliament whenever it is considered necessary;

(d) to prepare and organize the plenary sessions of Parliament;

(e) to approve the displacement of the President of the Republic under the terms of article 80 of the Constitution;

(f) to manage the relationship between National Parliament and counterpart parliaments and institutions in other countries;

(g) to authorize a state of siege and state of emergency;

(h) to authorize the declaration of war and the making of peace;

(i) to exercise the powers of Parliament in relation to the mandate of the Members of Parliament, notwithstanding the powers of the President and the competent committee in this area;

(j) to prepare the opening of the plenary session;

(k) to coordinate the functioning of the committees during the time when the legislative assembly is suspended, should this be required for the work to be able to run smoothly;

(l) to decide on the complaints regarding inaccuracies in the wording of the final text of the parliamentary decrees and resolutions.

Note that the Standing Committee is expressly authorized to exercise authority typically reserved for the entire plenary in only three, specific situations. It may consent to a trip by the President of the Republic, authorize the declaration of a state of siege or emergency, and authorize a declaration of war and the making of peace.

The first situation, authorizing travel by the President of the Republic, comes directly from Article 80 of the Constitution. Article 80 requires the President of the Republic to obtain the consent of the National Parliament *or of its Standing Committee* for any absence from the national territory. In this situation, efficient governance requires the Standing Committee to be able to exercise this power of the National Parliament. This authorization will not ordinarily be controversial, and so the inconvenience of requiring the entire National Parliament to assemble for the sole purpose of authorizing the President of the Republic to leave the country outweighs the need to adhere to ordinary legislative formalities. Consequently, the Standing Committee may provide this authorization in Parliament's stead.

The remaining situations, authorizing the declaration of a state of siege, emergency, war, or peace, are all necessitated by the need for the state to respond quickly in times of crisis. It takes time for the entire National Parliament to assemble and deliberate on an issue. If the country is under attack or is beset with a serious disaster, it is dangerous to prevent the state from responding until the Parliament can meet and deliberate on the issue. Thus, the need for quick action in emergencies permits the Standing Committee to authorize executive action that would otherwise require authorization by the entire Parliament.

However, note that the Standing Committee's authorization is only a temporary substitute for authorization by Parliament. If the Standing Committee authorizes any of the above declarations, the authorization must be confirmed by Parliament during its first plenary session following authorization by the Standing Committee. This plenary session should take place soon after the Standing Committee issues its authorization because the Standing Committee is one of the state actors that can call for extraordinary sessions of Parliament. Recall that extraordinary sessions are meetings of the plenary that take place outside the normal working period. In the event that the Standing Committee must authorize a state of siege, emergency, war, or peace, it should also be expected to call for an extraordinary session of Parliament to deliberate on the authorization as quickly as possible.

III. POWERS

SECTION OBJECTIVES

- To understand and distinguish between the two ways Parliament can exercise its legislative power through direct law making and delegation of law-making authority to the Government
- To understand the restrictions on Parliament's ability to delegate law-making power to the Government
- To understand the safeguards that protect Parliament's legislative supremacy when it delegates law-making power to the Government
- To examine some of Parliament's most important supervisory powers and the relevance of these powers to the separation of powers in the Timorese state
- To understand when and how Parliament may dismiss the Government

The National Parliament is the supreme legislative organ of the Timorese state. It is primarily responsible for enacting legislation that promotes the interests of the Timorese people. In order for Parliament to accomplish this broad legislative mandate, it exercises broad legislative powers. But Parliament also exercises many important powers that allow it to check and balance the other sovereign organs of the Timorese state. In this section, we will examine some of the most important powers, direct and supervisory, that are exercised by the National Parliament.

We will begin with the direct legislative power of the National Parliament. The law-making power of Parliament can be divided into two categories. First, Parliament may directly enact laws that fall within its constitutional competence in order to promote the domestic and foreign policy interests of the Timorese people. Second, Parliament may authorize the Government to issue decrees that carry the force of law ("decree-laws"). The first of these two categories is the most direct and commonly understood exercise of Parliament's legislative mandate. In practice, however, the second category is the more frequent method employed by Parliament to accomplish its mandate. The delegation of law-making authority /is related to a

separate category of power exercised by Parliament: supervising the Government's exercise of legislative power ("parliamentary appraisal").

Before going further, it is important to note that the distinction between laws enacted by Parliament and those issued as Government decree-laws is one of form, not substance. These are simply different means for accomplishing the same end. Different procedural processes adhere to each, and these procedures are key to preserving the separation of powers. Nevertheless, once duly enacted, each form carries the full force of law.

1. Parliament's Direct Law-Making Power

The most straightforward exercise of Parliament's legislative mandate occurs when Parliament directly enacts legislation. Article 95 of the Constitution lists the matters with respect to which the National Parliament is competent to pass laws.

Constitution of Timor-Leste

Article 95: Competence of the National Parliament

(1) It is incumbent upon the National Parliament to make laws on basic issues of the country's domestic and foreign policy.

(2) It is exclusively incumbent upon the National Parliament to make laws on:

- (a) The borders of the Democratic Republic of East Timor, in accordance with Article 4;
- (b) The limits of the territorial waters, of the exclusive economic area and of the rights of East Timor to the adjacent area and the continental shelf;
- (c) National symbols, in accordance with item 2 of Article 14;
- (d) Citizenship;
- (e) Rights, freedoms and guarantees;
- (f) The status and capacity of the person, family law and inheritance law;
- (g) Territorial division;

(h) The electoral law and the referendum system;

(i) Political parties and associations;

(j) The status of Members of the National Parliament;

(k) The status of office holders in the organs of State;

(l) The bases for the education system;

(m) The bases for the health and social security system;

(n) The suspension of constitutional guarantees and the declaration of the state of siege and the state of emergency;

(o) The Defence and Security policy;

(p) The tax policy;

(q) The budget system.

Article 95(1) grants a broad set of legislative powers to the National Parliament. Any legislation that affects a "basic issue" of Timor-Leste's "domestic and foreign policy" is within Parliament's legislative competence. This means that Parliament may pass any and all legislation it deems necessary for good governance.

Note that the Constitution grants Parliament *exclusive* power over the issues in Article 95(2). This means that laws respecting these areas can only and must be exercised by Parliament and cannot be delegated. Thus, Article 95(2) limits the ability of Parliament to delegate its legislative authority to the Government. In other words, the Government cannot issue decree-laws on the issues listed in Article 95(2), with or without legislative authorization. Laws affecting the matters in Article 95(2) must be passed directly by Parliament.

For example, when Parliament passed legislation defining Timor-Leste's maritime boundaries (Law No. 07/2002), it did so in accordance with Article 95(2)(b). However, this legislation was already constitutionally authorized under Article 95(1), since defining maritime boundaries is a basic issue of domestic and foreign policy. But because defining these limits is a

matter reserved exclusively for Parliament under Article 95(2), Parliament could not have authorized the Government to enact a similar piece of legislation in the form of a decree-law. This is what is meant when it is said that matters in Article 95(2) are reserved exclusively for Parliament.

In any case, Parliament may exercise its direct law making power over any matter that concerns a basic issue of governance. Note, however, that Parliament's lawmaking power is not without limit. This broad grant of legislative authority is subject to several important constraints, which are discussed in the section on "Limits," below.

But the more interesting and frequent situation arises when Parliament chooses instead to let the Government pass laws that are presumptively within the purview of Parliament. This is referred to as a delegation of law-making authority. We have already seen how Article 95(2) of the Constitution limits Parliament's ability to delegate its authority to the Government. But Article 95(2) of the Constitution is not the only limit on the acceptable subject matter of Government decree-laws. As we will see in the following section, the specific topics with respect to which Parliament may authorize the Government to issue decree-laws are exhaustively listed in Article 96 of the Constitution.

2. Parliamentary Delegation of Law-Making Authority (Legislative Authorization)

The Constitution grants Parliament express permission to delegate some law making functions to the Government. This enables the Government to enact decrees that carry the force of law in areas over which Parliament has primary authority. This delegation serves the interest of efficient governance. When Parliament grants the Government legislative authorization, Parliament cedes some of its own power to the executive branch. Because of the importance of maintaining the correct balance of powers between the branches, there are numerous safeguards that protect Parliament's basic supremacy when it comes to making legislation.

Subject matter restrictions

The first of these restrictions concerns the subject matter of a proposed grant of legislative authorization. Article 96 of the Constitution lists the specific areas with respect to which Parliament may grant the Government the authority to make decree-laws.

Constitution of Timor-Leste

Article 96: Legislative Authorization

(1) The National Parliament may authorize the Government to make laws on the following matters:

(a) Definition of crimes, sentences, security measures and their respective prerequisites;

(b) Definition of civil and criminal procedure;

(c) Organization of the Judiciary and status of magistrates;

(d) General rules and regulations for the public service, the status of the civil servants and the responsibility of the State;

(e) General bases for the organization of public administration;

(f) Monetary system;

(g) Banking and financial system;

(h) Definition of the bases for a policy on environment protection and sustainable development;

(i) General rules and regulations for radio and television broadcasting and other mass media;

(j) Civic or military service;

(k) General rules and regulations for requisition and expropriation for public purposes;

(l) Means and ways of intervention, expropriation, nationalization and privatization of means of production and land on grounds of public interest, as well as criteria for the establishment of compensations in such cases.

Article 95(2) (discussed previously), Article 96(1) (above), and Article 115(3) (below), create three categories of subject matter with respect to which the Government might seek to pass decree-laws. The first category, the topics listed in Article 95(2), are matters with respect to which the Government may never issue a decree-law. The second category, the topics listed in 96(1), are matters with respect to which the Government may issue decree-laws, but only after receiving legislative authorization from Parliament. Decree-laws that fall within this category are additionally subject to parliamentary appraisal.

Constitution of Timor-Leste

Article 115: Competence of the Government

(3) The Government has exclusive legislative powers on matters concerning its own organisation and functioning, as well as on the direct and indirect management of the State.

The third category consists of any topics that fall within Article 115(3) of the Constitution. These are matters with respect to which the Government has exclusive authority to issue decree-laws. According to Constitution, Article 98(1), Decree-laws issued under Article 115(3) do not require legislative authorization and are not subject to formal parliamentary appraisal. For easy reference, the three categories are listed and described in the following table.

Table 1

Category	Article of Constitution	Type of Subject Matter	When Can the Government Issue Decree-Laws on these Matters?
First	95(2)	Matters reserved exclusively for Parliament	Never. Parliament may not authorize the Government to pass decree-laws on these topics.

Second	96(1)	Matters over which Parliament may grant legislative authority to the Government	Only upon receiving legislative authorization from Parliament. These decree-laws are subject to parliamentary appraisal.
Third	115(3)	Matters reserved exclusively for the Government	Always. The Government does not need to seek authorization to pass decree-laws on these topics.

Distinguishing between these three categories is critical to understanding the legislative power Parliament shares with the Government. If the Government requests authorization to pass a decree-law in an area that falls within the first category, Parliament is constitutionally forbidden from providing this authorization. This is true even if the majority of Parliament is in favor of granting the request. The party or coalition of parties that has a majority in Parliament effectively controls the Government. Without this restriction on delegating legislative power to the Government, the majority could neutralize the right to democratic opposition by simply giving the entire competence of the National Parliament to the Government through legislative authorizations. Instead, some matters that are central to Parliament's mandate may not be delegated to the Government. These matters remain subject to ordinary legislative procedures, which safeguard the right to democratic opposition.

Alternatively, when the Government issues decree-laws on topics within its exclusive competence—the third category—Parliament maintains no direct check on these decrees. This category contains topics over which the Government has inherent competence. Consequently, this category is not a permanent cession of parliamentary authority to the Government. Rather, it protects a collection of powers inherent to the function of the Government from intrusion by Parliament.

To this point, it is important to highlight a fourth category of decree laws that can be issued by the Government: decree laws issued on matters beyond the matters reserved to the Parliament (Articles 95 and 96 of the Constitution). The Constitution does not have a general provision that gives the Government the power to enact legislation in all the topics and matters that are not reserved to the Parliament. Nevertheless, the interpretation of the Constitution in regard to the division of legislative powers between the Parliament and the Government is that in regard to matters beyond the ones that are reserved to the Parliament, both the Parliament and the

Government can enact legislation. The constitutional practice over the last ten years reflects this interpretation with the Government issuing decree laws in several matters without any contrary pronouncement from the Parliament. The Government`s legislative powers were also recognized by the Court of Appeals in a decision issued in June 19, 2009 (Constitutional Process 01/ 2009). The decree laws approved by the Government that fall in this fourth category are subject to parliamentary appraisal like the decree laws issued under an authorization from the Parliament.

Regarding the second category of Government decree-laws, those issued according to parliamentary authorization, additional safeguards are needed to preserve Parliament's legislative supremacy. Before addressing these, however, take a moment and consider the following example, which tests your ability to distinguish between the four categories of legislation.

Questions

The law on Criminal Procedure in Timor-Leste provides a good example of legislative authorization at work. Pursuant to Article 96(1)(b) of the Constitution, Parliament passed Law No. 15/2005 ("Legislative Authorization on Criminal Procedure Matters"). This law gave the Government permission to approve a Criminal Procedure Code and repeal legislation already in force that might conflict with the new code. Pursuant to this authorization, the Government enacted Decree-Law No. 13/2005 ("Approving the Criminal Procedure Code"). This decree-law approved, published, and entered into force the Criminal Procedure Code for Timor-Leste. This law clearly falls within the second category of decree-laws. This decree-law was authorized by Article 96(b) of the Constitution, but only pursuant to a grant of legislative authorization from Parliament.

Below you will find a selection of laws identified by title and a short description of the object and scope of the legislation. Based only on this information and your understanding of Articles 95, 96, and 115(3) of the Constitution, try to determine:

a) Whether the Parliament, the Government, or both could have enacted the legislation;

b) If the Government could have enacted the legislation through a decree-law, whether the Government was required to get legislative authorization from Parliament before passing the decree-law.

We will start with an example:

Sample Law: Approving the Criminal Procedure Code: this law publishes and enters into force the Criminal Procedure Code for Timor-Leste.

Sample Answer:

a) Either Parliament or the Government could enact this legislation. Article 96(1)(b) permits Parliament to authorize the Government to make laws on the definition of criminal procedure. Remember that items contained in Article 96 are presumptively within the purview of Parliament. With respect to the topics in this Article, Parliament may authorize the Government to pass laws on the subject matter listed, but Parliament could also pass its own legislation on these topics. In this case, Parliament could enact a criminal procedure code pursuant to Article 95(1), as this is a basic issue of domestic policy. However, because this topic is also listed in Article 96, Parliament could permit the Government to pass a criminal procedure code, which we know is what the ~~actual~~ Parliament chose to do in 2005. This topic falls within the second category of subject matter as set out in Table 1.

b) For the Government to enact a criminal procedure code, it would first need to receive legislative authorization from Parliament. Consequently, the criminal procedure code enacted by the Government remains subject to parliamentary appraisal.

1) Law on Citizenship: establishes conditions for granting, losing and reacquiring East Timorese citizenship.

2) Law of Ministerial Cabinets: establishes the composition, structure and functions of the cabinets of Government members.

3) Freedom of Assembly and Demonstration: defines the legal regime for exercising the right to hold assemblies and demonstrations in public places or places open to the public.

4) Licensing of Commercial Activities – establishes rules for the exercise of commercial activities.

Answers and Explanations

1) a) Only Parliament could enact this legislation. Laws affecting citizenship are included in Article 95(2), laws that are exclusively within the competence of Parliament.

b) Since this law is within the exclusive competence of Parliament, the Government cannot seek and Parliament cannot grant authorization for the Government to enact this law as a decree-law.

2) a) This law falls within the exclusive competence of the Government under Article 115(3). It pertains solely to the Government's ability to establish its internal structure and organization.

b) Because this law is within the exclusive competence of the Government, the Government did not need to seek legislative authorization before enacting this decree-law.

3)a) Only Parliament could enact this legislation. Laws respecting rights, freedoms, and guarantees are included in Article 95(2), laws that are exclusively within the competence of Parliament.

b) Since this law is within the exclusive competence of Parliament, the Government cannot seek and Parliament cannot grant authorization for the Government to enact this law as a decree-law.

4) a) Both the Parliament and the Government could enact this legislation. The rules concerning commercial activities are not exclusively within the competence of Parliament (Articles 95 and 96 of the Constitution).

b) Since this law in not within the exclusive competence of the Parliament, the Government could enact this decree-law.

Procedural restrictions

In addition to the subject matter restrictions on legislative authorization discussed in the preceding section, the Constitution and the Rules of Procedure also place procedural restrictions on Parliament's ability to grant the Government legislative authorization.

Constitution of Timor-Leste

Article 96: Legislative Authorization

(2) Laws authorizing legislation shall define the subject, sense, scope and duration of the authorization, which may be renewed.

The ability of the Government to enact decree-laws is restricted from the beginning because any legislative authorization must "define the subject, sense, scope and duration of the authorization" (Constitution, Article 96(2)). Consequently, the Government's power to legislate is preemptively limited by the mandate the Parliament provides the Government. Since Parliament is ceding some of its power to the Government, Parliament has the right to set the parameters that define the amount of authority it intends to yield. The Government is then required to keep its decree-laws within the boundaries set by Parliament. If the Government exceeds these limits, it is usurping Parliament's power without Parliament's consent, thereby violating the separation of powers.

Temporal restrictions

A legislative authorization may also expire because of the passage of time. Any legislative authorization granted to the Government becomes void upon the dismissal of the Government, the dissolution of the National Parliament, or the end of the parliamentary term.

The automatic termination of a grant of legislative authorization arises from the current Parliament's overriding right to supremacy in pursuing its constitutional mandate. Because legislative authorization involves the delegation of Parliament's authority to the Government, a legislative authorization automatically expires when:

1) The Parliament that granted the authorization terminates and a new Parliament is elected (either because the parliamentary term concludes or because Parliament is dissolved); or

2) The Government that received the authorization is dismissed.

Termination of legislative authorization in these two situations is necessary to protect Parliament's legislative supremacy. A new parliament is not presumptively expected to cede the same amount of its authority to the Government as its predecessor. Thus, a new parliament is not bound by a legislative authorization that it did not pass. Similarly, just because Parliament saw fit to grant one Government the authority to enact decree-laws, it is not presumed that Parliament will place identical confidence in a new Government comprised of a new group of officials. Consequently, a grant of legislative authorization lapses with the resignation or dismissal of the Government that was originally given the authorization.

Parliamentary appraisal

Decree-laws passed pursuant to a grant of legislative authorization are also limited *ex post* because they remain subject to parliamentary appraisal. When Parliament grants the Government authority to issue decree-laws that fall within the second category of legislative acts, Parliament is permitting the Government to pass laws that are otherwise within the competence of Parliament. Because Parliament is delegating a portion of its law-making authority, it maintains a check on the Government in the form of parliamentary appraisal. If the Government exceeds the bounds of its authorization or enacts a decree-law the majority of Parliament disagrees with, Parliament has the power to terminate or change the decree-law.

This is called **parliamentary appraisal**. According to Article 98(1) of the Constitution, to subject a decree-law to parliamentary appraisal, at least one-fifth of the Members of Parliament must sign a petition in favor of appraisal within thirty-days of the decree-law's publication. While a decree-law is awaiting appraisal, Parliament may temporarily suspend, in part or in full, the execution and application of the decree-law. This suspension will lapse if Parliament holds ten (10) plenary sessions without making a final decision on the decree-law.

There are three possible outcomes when a Government decree-law undergoes parliamentary appraisal:

- First, the National Parliament may decide to terminate the decree-law. Parliament does this by passing a resolution that expressly terminates the decree-law. This type of resolution completely repeals the decree-law enacted by the Government.
- Second, Parliament may choose to amend the decree-law while it is under appraisal and then publish a law that amends it In essence, Parliament tries to improve the decree-law by adding or deleting portions of the law. If Parliament ultimately approves the amendments the decree-law enters into force in its amended form.
- Third and finally, the decree-law may go into force in its original form. This can happen either when Parliament rejects to terminate the decree-law or rejects the proposed amendments or when Parliament fails to reach a conclusion on the decree-law during the time limits provided by Constitution and Rules of Procedure.

Thus, parliamentary appraisal gives Parliament an important supervisory power over the Government. When Parliament grants the Government legislative authorization, Parliament maintains the ability to terminate or revise a Government decree-law enacted pursuant to the grant. This is true even if the decree-law in question was within the limits of the authorization Parliament gave the Government in the original legislation.

Please note that through parliamentary appraisal the Parliament can terminate or revise not only decree laws enacted pursuant a legislative authorization but also other decree laws which the Government approves. Parliament, however, cannot appraise Government decree laws which are enacted under the Government`s exclusive legislative competence.

3. Supervisory Powers

Parliament maintains a wide array of supervisory powers over the Government and the President. Supervisory powers are those powers that allow the Parliament to exercise some influence or control over the actions of the Government and President. The careful exercise of Parliament's supervisory authority is crucial to the separation of powers and the system of checks and balances that keep the Timorese state functioning democratically and lawfully. We considered one of Parliament's important supervisory powers in the Article on "Parliamentary Appraisal," above, that arises from Parliament's supreme legislative powers. But Parliament maintains a wide array of other, constitutionally mandated checks on the Government and President.

Many of Parliament's supervisory powers are provided in Article 95(3) of the Constitution. This Article gives Parliament a series of responsibilities that do not involve the direct creation of new laws, but rather involve Parliament's relationship with the other branches of the Timorese state.

Constitution of Timor-Leste

Article 95: Competence of the National Parliament

(3) It is also incumbent upon the National Parliament:

(a) To ratify the appointment of the President of the Supreme Court of Justice and of the High Administrative, Tax and Audit Court;

(b) To deliberate on progress reports submitted by the Government;

(c) To elect one member for the Superior Council for the Judiciary and the Superior Council for the Public Prosecution;

(d) To deliberate on the State Plan and Budget and the execution report thereof;

(e) To monitor the execution of the State budget;

(f) To approve and denounce agreements and ratify international treaties and conventions;

(g) To grant amnesty;

(h) To give consent to trips by the President of the Republic on State visits;

(i) To approve revisions of the Constitution by a majority of two-thirds of the Members of Parliament;

(j) To authorize and confirm the declaration of the state of siege or the state of emergency;

(k) To propose to the President of the Republic the submission to referendum of issues of national interest.

The powers listed in Article 95(3) mainly involve Parliament's interaction with and role in the operation of other organs of sovereignty in the Timorese state. They allow Parliament to oversee the work of executive officials, providing a crucial legislative check on the powers of the other branches of the state. Article 95(3) includes many of Parliament's important supervisory powers and is therefore crucial to the functional separation of powers. For instance, the power of Parliament to authorize a declaration of a state of siege or emergency is a crucial legislative check on the President's power. Such declarations expand the powers of the President and may permit the President to suspend or postpone elections. Therefore, Parliament must exercise its supervisory power with care, only authorizing such declarations when they are truly necessary and in the interest of the Timorese people. By checking the executive's authority, Parliament remains faithful to the Constitution and the Timorese people. Often, Parliament will exercise the powers contained in Article 95(3) by passing resolutions. For example, when Parliament chooses to ratify an international agreement, it will do so by passing a resolution to that effect, as it did in Resolution No. 2/2003, ratifying the Timor Sea Treaty between the Government of Timor-Leste and the Government of Australia.

Steering and Political Monitoring: the Government's Program; State Plan and Budget

One of Parliament's most important supervisory functions is to monitor and deliberate on the policy decisions made by the Government. This supervisory role may be referred to as political steering and/or monitoring. This occurs most directly when Parliament deliberates on

the Government's program, State Plan, and State Budget. These deliberations are mandatory and occur periodically.

We will begin with the Government program, which is described in Article 108 of the Constitution. When a new Government is appointed, it has thirty days to submit its program to the National Parliament. The Government's program "should include the objectives and tasks proposed, the actions to be taken and the main political guidelines to be followed in the fields of government activity" (Article 108(2)). Parliament then has a maximum of five days to debate on the proposed program. At the close of this deliberation, either a motion to reject the program or a motion to pass a vote of confidence in the Government may be presented.). Either motion requires the support of an absolute majority of sitting Members to pass. If any motion to reject the program is presented or approved, the Government`s program is considered accepted and "approved".

During these deliberations, Parliament has the opportunity to consider and debate the Government's broad policy goals. This is one way that the Government remains accountable to Parliament. If the program is not rejected, the Government will begin to implement its program, namely by issuing decree-laws. But if an absolute majority of Members of Parliament rejects the Government's program two consecutive times, the Government will be dismissed.

Similarly, the Government remains accountable to Parliament through mandatory parliamentary deliberations on the State Plan and Budget. The State Plan and Budget outline the particular means the Government believes will accomplish the state's policy goals and, perhaps more importantly, how state money should be spent to achieve these goals. The Government is required to submit bills outlining the general Plan and State Budget annually.

Once these bills are submitted, the President of the National Parliament will distribute them to all of the specialized standing committees. The bills are also distributed to the parliamentary benches as well as any Members of Parliament who request them. Each specialized standing committee creates a report on the Plan and Budget as it relates to their sector and submits this report to the Economic and Finance Committee. Ultimately, the Economic and Finance Committee must prepare an official report and opinion on the overall suitability of the Plan and Budget proposed by the bills submitted by the Government. Then the bills go before the plenary for discussion and voting on general and specific points. Thus, Parliament maintains the

ultimate power to amend or even reject the Government's proposals regarding the State Plan and Budget (Rules of Procedure, Articles 162-169).

Dismissing the Government

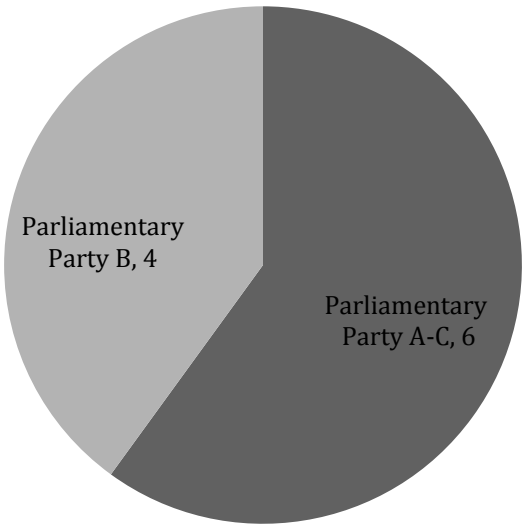
Note that many of the powers in Article 95(3) reflect Parliament's role in supervising the work of the Government. For instance, Parliament is expected to "deliberate on progress reports submitted by the Government" and "the State Plan," and "monitor the execution of the State budget." Article 107 of the Constitution makes the Government "accountable to the President of the Republic and to the National Parliament for conducting and executing the domestic and foreign policy in accordance with the Constitution and the law." For this reason, an important function of Parliament is overseeing and evaluating the work of the Government. Parliament must make sure the Government is properly giving effect to the laws and policies that Parliament, which represents the collective will of the Timorese people, hopes to advance.

According to Article 112 of the Constitution, if Parliament is dissatisfied with the Government, it may dismiss the Government. Parliament may dismiss the Government in three ways. First, Parliament can reject the Government's program. Second, Parliament may fail to pass a vote of confidence requested by the Government. Third, Parliament may pass a vote of no confidence in the Government. Any of these acts of Parliament are followed by the dismissal of the Government and the formation of a new Government. Thus, Parliament does not only have the ability to monitor the Government. Parliament may dismiss the Government if the Government fails to give effect to Parliament's laws and policy goals.

Example 7

Return to our hypothetical parliament in **Example 6**. Recall that the three political parties had formed into parliamentary benches, with the result represented in the following chart:

Seats in Parliament by Parliamentary Party



So long as the Party A and Party C can maintain unity, the Government chaired by the Prime Minister they appointed will stay in power. With 60% of the votes, this coalition can approve the Government's State Plan and Budget, pass a vote of confidence, and block a vote of no confidence. Parliamentary Party A-C can also enact legislation authorizing the Government to enact decree-laws.

But this requires every member of Parliamentary Party A-C to vote together. What if some members of political party C or political party A become dissatisfied with the work of the Government? Alternatively, suppose political party C does not feel like political party A is treating it fairly within the confines of their coalition. Party B may be able to convince some members of the coalition to defect and, if successful, could dismiss the Government selected place by Parliamentary Party A-C.

Note, however, that the Timorese state cannot function without a Government. Upon the dismissal of one Government, a new one must be formed. If Parliament cannot reach an agreement and select a Prime Minister, this creates an institutional crisis and the President might have to dissolve Parliament. In this case, a national election must be held to select a new Parliament. Consequently, even if some members of the A-C coalition are not satisfied with the

current Government, defection and dismissal only furthers their interest if they believe they can establish a better Government by partnering with Party B or undergoing a new national election.

IV. LIMITS

SECTION OBJECTIVES

- To recognize the fundamental supremacy of the Constitution in all affairs of the Timorese state
- To examine the Constitutional limits on Parliament's power to pass laws restricting or suppressing fundamental rights, freedoms or guarantees
- To understand judicial review and abstract review
- To understand the presidential veto and when and how Parliament can override a presidential veto
- To recognize the circumstances in which the President may dissolve the National Parliament and call for a new round of national parliamentary elections

In the Timorese state, the Constitution is supreme and all organs of sovereignty must operate within the confines of the Constitution. Thus, the Constitution is the ultimate check on Parliament's power. Parliament is lawfully required to ensure that all of its actions comply with the Constitution. Any parliamentary act that violates the Constitution is unlawful.

Constitution of Timor-Leste

Article 2: Sovereignty and constitutionality

(1) Sovereignty rests with the people, who shall exercise it in the manner and form laid down in the Constitution.

(2) The State shall be subject to the Constitution and to the law.

(3) The validity of the laws and other actions of the State and local Government depends upon their compliance with the Constitution.

Nonetheless, in terms of what legislation Parliament may pass, the Constitution seemingly places few limits on Parliament's lawmaking authority. Recall that Article 95 grants Parliament a broad array of competencies. As long as the procedures Parliament follows to enact legislation satisfy constitutional requirements, like the right to democratic opposition, it may seem like the Constitution places no substantial limits on what laws Parliament may pass. The Constitution does, however, contain several provisions that substantially restrict Parliament's law making power.

Consider, for example, Article 3 of the Constitution, which sets out the fundamental principles of citizenship in Timor-Leste. Article 3(1) provides that there shall be acquired citizenship in Timor-Leste. Recall that Parliament has exclusive competence to pass laws on citizenship. Parliament may not, however, pass a law regulating citizenship that categorically prohibits individuals from acquiring Timorese citizenship because such a law would violate Article 3(1) of the Constitution. As this example demonstrates, in certain areas the Constitution places preemptive restrictions on what legislation Parliament may pass.

But the most direct limit the Constitution places on Parliament's legislative power concerns Parliament's ability to restrict or suppress fundamental rights, freedoms, and guarantees. Parliament can only pass laws that restrict constitutional rights, freedoms and guarantees in very limited circumstances.

Constitution of Timor-Leste

Article 24: Restrictive laws

(1) Restriction of rights, freedoms and guarantees can only be imposed by law in order to safeguard other constitutionally protected rights or interests and in cases clearly provided for by the Constitution.

(2) Laws restricting rights, freedoms and guarantees have necessarily a general and abstract nature and may not reduce the extent and scope of the essential contents of constitutional provisions and shall not have a retroactive effect.

The Constitution contains a broad list of individual rights, freedoms, and guarantees in Articles 16-49. Parliament can only pass a law that limits the exercise or fulfillment of a

fundamental right, freedom, or guarantee when such a law is necessary to protect other constitutional protected rights or interests and Parliament's ability to pass such a law is clearly provided in the Constitution For example, Article 53 of the Constitution (Consumer rights) provides all consumers with the right to receive truthful advertising about consumer goods. But Article 40 (Freedom of speech and information) provides every individual with the right to uncensored speech, determining that "the exercise of the freedom of speech and information is regulated by law based on the imperative of respect for the Constitution and the human dignity". Suppose Parliament passes a law designed to give effect to Article 53. The law necessarily regulates what advertisers can and cannot say about the products that they are selling. An advertiser might argue that the law unconstitutionally restricts his freedom of speech because the state is restricting what he can and cannot say about a product. In such circumstances, however, the restriction on the advertiser's free speech with respect to advertising his product is constitutionally justified by the need to safeguard the consumer rights set out in Article 53. In this case, Parliament may pass a law that censors false or misleading speech about a consumer good because this restriction on free speech is necessary to protect the rights of consumers. In other words, one individual's rights can be limited in order to protect the fundamental rights of others.

In a different situation, for example, Article 42 provides every individual the right to assemble peacefully and to demonstrate "in accordance with the law." While everyone has the right to assemble and demonstrate, Parliament may pass laws that limit the time, place, and manner of demonstrations. For example, the state does not have to allow a noisy demonstration to take place at three in the morning in a quiet, residential area. Thus, Parliament may pass a law that reasonably and neutrally limits a fundamental right when the Constitution makes it clear that the right is only protected so far as it is exercised in accordance with the law and a compelling interest justifies the restriction.

The two examples above focused on the limited situation when Parliament *can* pass a law that restricts constitutional rights, freedoms, and guarantees. But keep in mind that these are exceptions, not the rule. Recall the language from Article 24 of the Constitution: Parliament can *only* pass restrictive laws in the limited scenario described above. When a restrictive law is neither necessary to safeguard other constitutional rights or interests nor otherwise clearly

permitted by the Constitution, the law is invalid because it is unconstitutional. Still, the language in Article 24 is ambiguous and open to the interpretation of the courts of Timor-Leste. Lawyers, politicians, and academics will no doubt argue over the precise meaning of this Article, and whether or not certain laws are unconstitutional due to this provision.

In any given case, however, a party to a lawsuit or criminal proceeding might ask a court not to apply a statute passed by Parliament because the statute is unconstitutional. When a court assesses the constitutionality of a parliamentary act, this is called **judicial review**. This judicial power is expressly provided in the Constitution.

Constitution of Timor-Leste

Article 120: Review of unconstitutionality

The courts shall not apply rules that contravene the Constitution or the principles contained therein.

Ultimately, the Supreme Court of Justice is responsible for determining the constitutionality of a parliamentary act. Thus, the Supreme Court's decisions will shape the meaning and application of Article 24. The ability to challenge Parliament's lawmaking power based on Article 24 is limited only by the creativity of the challenging party and its ability to convince the Supreme Court of the validity of its challenge. For now, however, it is enough to recognize that acts of Parliament can be challenged for impermissibly restricting the rights, freedoms, and guarantees contained in the Constitution.

In addition, the Constitution places even stricter limits on Parliament's ability to wholly *suppress* fundamental rights, freedoms, and guarantees. Article 24 concerns only Parliament's ability to *restrict* rights, freedoms, and guarantees. For example, although Parliament may restrict where and when a demonstration takes place, this is not the same as prohibiting the demonstration from taking place entirely. The suspension of the exercise of fundamental rights, freedoms, and guarantees is constitutionally permissible in only the most limited circumstances.

Constitution of Timor-Leste

Article 25: State of exception

(1) Suspension of the exercise of fundamental rights, freedoms and guarantees shall only take place if a state of siege or a state of emergency has been declared as provided for by the Constitution.

(2) A state of siege or a state of emergency shall only be declared in case of effective or impending aggression by a foreign force, of serious disturbance or threat of serious disturbance to the democratic constitutional order, or of public disaster.

(3) A declaration of a state of siege or a state of emergency shall be substantiated, specifying rights, freedoms and guarantees the exercise of which is to be suspended.

(4) A suspension shall not last for more than thirty days, without prejudice of possible justified renewal, when strictly necessary, for equal periods of time.

(5) In no case shall a declaration of a state of siege affect the right to life, physical integrity, citizenship, non-retroactivity of the criminal law, defense in a criminal case and freedom of conscience and religion, the right not to be subjected to torture, slavery or servitude, the right not to be subjected to cruel, inhuman or degrading treatment or punishment, and the guarantee of non-discrimination.

(6) Authorities shall restore constitutional normality as soon as possible.

There are many requirements that must be met before Parliament can suspend fundamental rights, freedoms, and guarantees. First, a state of siege or emergency must be declared in the manner set forth in the Constitution. The President is responsible for declaring a state of siege or emergency upon receiving legislative authorization from Parliament. If the President and Parliament agree that such a declaration is necessary, their decision must be based on fear of one of the emergencies set out in Article 25(2). Even then, a suspension can only last for thirty days, with an option for periodic renewal for additional thirty-day periods as necessary. In addition, certain fundamental rights cannot be suppressed even during a state of siege, as set out in Article 25(5). Finally, a declaration of a state of siege or emergency must be terminated as soon as possible. Thus, the Constitution permits the suspension of fundamental rights, freedoms, and guarantees in only the direst circumstances and for only the most limited period of time

necessary to preserve the Timorese state. At all other times, Parliament is constitutionally forbidden from passing laws that suspend or suppress constitutional rights, freedoms, and guarantees.

Abstract Review

Under what circumstances might a parliamentary act be subjected to judicial review? A court cannot arbitrarily decide, of its own volition, to assess and rule on the constitutionality of a piece of legislation. That would violate the separation of powers because the judiciary would be exercising an impermissible amount of control over Parliament. Courts are limited to deciding the cases that come before them. For example, in the discussion in the preceding section, we considered how a party to a lawsuit might challenge the constitutionality of a law as a defense to criminal or civil sanctions. For instance, we previously considered a hypothetical advertiser of consumer goods. If this advertiser was sued for false advertising, he might try to escape liability by raising a constitutional challenge to the legislation that prohibits false advertising. In this case, the advertiser might argue that his advertising was constitutionally protected speech and therefore he could not be held liable under a statute prohibiting deceptive advertising. We also discussed why this argument would likely fail. But what is important to the present discussion is that the constitutional challenge arose in a particular, concrete case.

However, this is not the only way a law might come to the Supreme Court for the purpose of determining whether or not it is constitutional. The Supreme Court may also consider the constitutionality of laws under abstract review. The Constitution specifically provides several state actors the ability to seek abstract review of a law.

Constitution of Timor-Leste

Article 150: Abstract review of constitutionality

Declaration of unconstitutionality may be requested by:

(a) The President of the Republic;

(b) The President of the National Parliament;

(c) The Prosecutor-General, based on the refusal by the courts, in three concrete cases, to apply a statute deemed unconstitutional;

(d) The Prime Minister;

(e) One fifth of the Members of the National Parliament;

(f) The Ombudsman.

Abstract review permits the Supreme Court of Justice to review the constitutionality of a piece of legislation based purely on the text of the statute. Returning to the example of our unscrupulous seller of consumer goods, abstract review would permit one of the state actors listed in Article 150 to challenge a statute prohibiting deceptive advertising even though no individual seller of consumer goods has actually been sued for violating the statute. The issue decided by court would essentially be the same, because the question would still be whether the statute impermissibly restricts the free speech rights of sellers. But the sellers at issue would be wholly hypothetical. Thus, abstract review permits the Supreme Court to evaluate the constitutionality of a statute even if no individual has actually been affected by the statute. The actors in Article 150 have "constitutional standing." This means that the constitution expressly gives them the right to ask the Supreme Court to assess the constitutionality of a statute, regardless of whether the statute has actually caused any harm to any individual.

The importance of abstract review depends on both the willingness of the state actors in Article 150 to use it and the willingness of the Supreme Court to declare parliamentary acts unconstitutional. Note that abstract review can be initiated by a minority (one-fifth) of the Members of Parliament. This introduces a unique and significant factor in legislative bargaining. It permits opposition parties and groups to threaten to seek constitutional review of a controversial law proposed by the majority. Ideally, this option can be used to promote more moderate legislation.

Abstract review can be an important check on parliament's power, because it allows unconstitutional statutes to be invalidated before they actually violate the constitutional rights of any individual. But if it is used for purely political reasons, it can give the Supreme Court too

much authority to overturn popular legislation and thereby usurp Parliament's authority and role as the popularly elected representative of the Timorese people. Consequently, abstract review should be employed cautiously and conscientiously so as not to violate the separation of powers. But it remains a powerful and important constitutional check on Parliament.

1. Presidential Veto

The possibility of a presidential veto is a significant check on Parliament's legislative power. A presidential veto occurs when the President receives a piece of legislation, duly enacted by Parliament, but refuses to promulgate it. This means that the President decides not to formally enact a legislative act even though Parliament passed the legislation. The President generally has a limited period of time to decide whether to promulgate or veto a piece of legislation passed by Parliament, and Parliament generally has the ability to override a presidential veto.

There are two basic reasons why a President may veto a piece of legislation:

1) For policy or political reasons. In such instances, the President disagrees with the purpose or effectiveness of a piece of legislation passed by Parliament.

2) Because the Supreme Court of Justice rules the law unconstitutional. In these cases, the President requests that the Supreme Court of Justice undertake anticipatory review of a piece of legislation. If the Court finds that the legislation is not constitutional, the President must veto the law.

We will discuss both of these reasons in more detail below.

Veto for Discretionary Reasons

This type of veto occurs when the President disagrees with the legislation passed by Parliament. The President may feel that the problem addressed by the legislation is not a significant priority, and therefore not worth the resources necessary to implement the legislation. Or, the President might believe that the legislation is pertinent to a worthwhile issue, but that the

legislation, as written, will be ineffectual or even do more harm than good. In this case, the President must send a written explanation to Parliament that provides her reasons and justifications for vetoing the legislation.

Parliament can override a presidential veto made for discretionary reasons by voting to confirm the legislation. Both the presidential veto and Parliament's ability to override a presidential veto are addressed in Article 88 of the Constitution.

Constitution of Timor-Leste

Article 88: Promulgation and veto

(1) Within thirty days after receiving any statute from the National Parliament for the purpose of its promulgation as law, the President of the Republic shall either promulgate the statute or exercise the right of veto, in which case he or she, based on substantive grounds, shall send a message to the National Parliament requesting a new appraisal of the statute.

(2) If, within ninety days, the National Parliament confirms its vote by an absolute majority of its Members in full exercise of their functions, the President of the Republic shall promulgate the statute within eight days after receiving it.

(3) However, a majority of two-thirds of the Members present shall be required to ratify statutes on matters provided for in Article 95 where that majority exceeds an absolute majority of the Members in full exercise of their functions.

Article 88(2) and 88(3) provide Parliament the power to override a presidential veto by voting to confirm the legislation. Note, however, that this Article sets out two different standards for overriding a presidential veto. Article 88(2) requires only an absolute majority vote in Parliament to override a presidential veto. For example, if there are sixty-five (65) Members of Parliament, at least thirty-three (33) Members must vote to confirm a piece of legislation in order to override a presidential veto.

Article 88(3), however, imposes a higher standard. This higher standard only applies to laws that relate to Parliament's powers under Article 95 of the Constitution, which we discussed in Section IV of this chapter. Recall that this is a limited list of issues within the competency of

the National Parliament and consists of such things as laws regarding the borders of Timor-Leste, tax policy, rights of citizenship, and the status of Members of Parliament.

For Parliament to overturn a Presidential veto on a law relating to one of the topics in Article 95, two-thirds of the Members present for the deliberation must vote to confirm the legislation. This does not mean that two-thirds of *all* the Members of Parliament must vote to confirm the legislation, only two-thirds of those present as long as it exceeds an absolute majority of all the Members. This heightened requirement is called a **special majority**.

There are two components to this requirement. Recall our discussion of quorums at the end of the section on Composition, above. According to the Rules of Procedure, over half of the total Members of Parliament must be present for deliberations. For example, if there are sixty-five (65) Members of Parliament, then thirty-three (33) must be present for the assembly to deliberate on whether to confirm a piece of legislation the President vetoed. Of those Members who attend the deliberation, two-thirds must vote in favor of confirming the legislation in order to override the veto *and* that number must exceed an absolute majority of the total Members of Parliament. Therefore, if thirty-three (33) Members attend the deliberation and thirty (30) vote to confirm, this satisfies the two-thirds requirement but *not* the absolute majority requirement and so the presidential veto will stand.

But what is most important about Article 88(3) is that it requires more than a simple majority vote in Parliament to override a presidential veto. For example, suppose that there are sixty-five (65) Members of Parliament and sixty (60) Members are present for a deliberation on whether to override a presidential veto. If Article 88(2) governs the confirmation vote, Parliament can override the veto if thirty-three (33) Members vote in favor of confirming the legislation. If Article 88(3) governs the confirmation, however, at least two-thirds of the sixty (60) Members who are present must vote to confirm in order to override the veto. That means at least forty (40) Members must vote in favor of confirmation or the veto will stand. The confirmation thus requires a **special majority**, meaning the act requires support from more than a simple majority of the sitting Members of Parliament.

Again, Article 88(3) applies to statutes on matters listed in Article 95. Recall from our discussion above that these are matters over which Parliament has exclusive competence. The

special majority requirement for overriding a presidential veto thus applies to Parliament's direct law-making power but not to an act of legislative authorization. Why might this be the case?

First and foremost, the topics listed in Article 95 relate to the most fundamental and important exercises of state power. Laws passed under Article 95 can affect territorial divisions, citizenship, basic rights, freedoms and guarantees, revisions to the Constitution, and numerous other significant matters. Legislation on these issues requires the utmost care and broadest possible consensus. Thus, if the President has good reason to veto a piece of legislation affecting one of these areas, the Constitution requires a heightened amount of support from the Members of Parliament to override this decision. The **special majority** requirement thus increases the importance of a presidential veto in circumstances that relate to Article 95, placing a more meaningful check on Parliament's power.

In addition, consider the final provision in Article 88 of the Constitution.

Constitution of Timor-Leste

Article 88: Promulgation and veto

(4) Within forty days after receiving any statute from the Government for the purpose of its promulgation as law, the President of the Republic shall either promulgate the instrument or exercise the right of veto by way of a written communication to the Government containing the reasons for the veto.

Even once Parliament passes a piece of legislation authorizing the Government to enact decree-laws in a certain area, the President retains veto power over the decree-laws ultimately drafted by the Government. In such circumstances, there is less reason to impose the **special majority** requirement on Parliament. When Parliament passes a law under Article 95, it will immediately go into effect upon promulgation by the President and immediately impact the Timorese people. When Parliament decides to delegate its power, however, its legislation will be more vague and its immediate effects less tangible. In such instances, Parliament may override a presidential veto with only a simple majority. The President's veto power remains an important check, however, because the President can still veto the decree-laws the Government drafts

pursuant to Parliament's grant of legislative authorization. Because the President will have another opportunity to exercise his veto power, the Constitution does not require Parliament to obtain a **special majority** to override an initial veto of a grant of legislative authorization.

Veto after the Supreme Court of Justice Rules the Statute Unconstitutional

If the President is concerned that a piece of legislation is unconstitutional he or she can request that the Supreme Court of Justice review the legislation for constitutionality before promulgating the statute. This is **called anticipatory or preventive review** because it takes place before the statute goes into effect. If the Court determines that the statute is unconstitutional, the President sends the legislation back to Parliament for revision.

Constitution of Timor-Leste

Article 149: Anticipatory review of constitutionality

(1) The President of the Republic may request the Supreme Court of Justice to undertake an anticipatory review of the constitutionality of any statute submitted to him or her for promulgation.

(2) The preventive review of the constitutionality may be requested within twenty days from the date on which the statute is received, and the Supreme Court of Justice shall hand down its ruling within twenty-five days, a time limit that may be reduced by the President of the Republic for reasons of emergency.

(3) If the Supreme Court of Justice rules that the statute is unconstitutional, the President of the Republic shall submit a copy of the ruling to the Government or the National Parliament and request the reformulation of the statute in accordance with the decision of the Supreme Court of Justice.

(4) The veto for unconstitutionality of a statute from the National Parliament that has been submitted for promulgation can be circumvented under Article 88, with the necessary amendments.

After legislation is subject to a constitutional veto, Parliament can still override the veto in accordance with Article 88. This means that Parliament can correct the constitutional

problems in the legislation or override the constitutional veto in compliance with the majority or super majority requirements in Article 88(2) and 88(3).

Questions

Each of the following problems presents a hypothetical law passed by Parliament that is subsequently vetoed by the President. In each case, you will also be given the results of a confirmation vote in Parliament that attempts to override the veto. Based on Articles 88, 95, and 149 of the Constitution, determine in each case whether Parliament has or has not successfully overridden the presidential veto.

1) Parliament passed a law that made numerous changes to the electoral law, including a new definition of "active electoral capacity." The President sought anticipatory constitutional review of the law, and the Supreme Court of Justice found the new definition of active electoral capacity unconstitutional, but the remaining amendments constitutional. Parliament reassessed the legislation and deleted the new definition of active electoral capacity. Of the sixty-five Members of Parliament, sixty-three (63) were present for the vote and thirty-eight (38) voted to delete the constitutional deficiencies of the statute.

2) Parliament passed a law authorizing the Government to establish new sentencing requirements for criminal offenses related to the sale and purchase of illegal drugs. The President vetoed the legislative authorization because she does not agree with the current Government's attitudes toward criminal sentencing. The legislation returned to Parliament for new appraisal. Of the sixty-five Members of Parliament, sixty-three (63) were present for the vote and thirty-eight (38) voted to confirm the legislation.

3) Parliament passed a law redefining the limits of the territorial waters of Timor-Leste. The President vetoed the law because she thought it did not assert the furthest boundaries

permitted under international law. After reviewing the law, Parliament held a vote to confirm the legislation. Of the sixty-three (63) Members of Parliament, fifty-seven (57) were present for the vote and thirty-nine (39) voted to confirm the legislation.

Answers and Explanations

1) Parliament amended the definition of "active electoral capacity" and corrected the constitutional deficiencies identified by the Supreme Court of Justice. The Parliament reformulated the law and therefore did not have to override the veto. The overridden of a veto takes place when the Parliament wants to maintain the law as approved despite of its unconstitutionality as declared by the Supreme Court. For that, the Parliament must vote to confirm the law as previously approved with the majority or super majority requirements in Article 88(2) and 88(3).

2) Parliament successfully overrode this veto made for discretionary reasons. It might be tempting to think that this legislation relates to a matter listed in Article 95 because it affects individual liberty (in the sense that it will impact prison sentences for drug offenders). Criminal sentences, however, are contained in Article 96 (matters with respect to which Parliament may authorize the Government to make laws). Thus, Article 88(2) governs this confirmation vote and Parliament needs only an absolute majority to override the veto. Of the sixty-five (65) total Members of Parliament, a majority—thirty-eight (38)—voted to confirm. Therefore, this attempt to override the discretionary veto succeeds.

3) Parliament successfully overrode this veto made for discretionary reasons. Because defining the limits of territorial waters falls under Article 95, Article 88(3) governs this confirmation vote. Thirty-nine (39) of the fifty-seven (57) Members present for the vote supported confirmation. This is over two-thirds of the Members who were *present*, even though this number is less than two-thirds of the *total* Members of Parliament in this

hypothetical—sixty-three (63). Because thirty-nine (39) is also enough to constitute an absolute majority of the total Members of Parliament in this hypothetical, this attempt to override the discretionary veto succeeds.

2. Dissolution

In exceptional instances, the President may exercise the power to dissolve the National Parliament and initiate a new round of national elections to select a new Parliament. This drastic action can be taken only when "a serious institutional crisis" prevents the formation of a Government or the approval of a State Budget for more than sixty-days.

Essentially, if a sitting Parliament is unable to reach consensus on one of these issues that Parliament is incapable of performing its most basic and necessary functions. The Timorese state cannot function without a Government or a budget. Consequently, if a body of elected Members of Parliament cannot fulfill one of these obligations, then a new election is necessary to select a group of legislators who can ensure the continued operation of the Timorese state. Dissolution is an extreme measure and can occur in only very limited circumstances. The President's power to dissolve the National Parliament is discussed in more detail in the chapter on the President in this text.

In the event that Parliament is dissolved, the subsequently elected National Parliament begins a new legislative term, increased by the time necessary to complete the legislative session in progress at the date of the election. For example, assume Parliament is dissolved halfway through its third legislative session. The next parliamentary term for the newly elected National Parliament will last five and a half years—the normal five year legislative term plus the half year remaining in the last, partially completed legislative session of the dissolved Parliament.

GLOSSARY

Active electoral capacity: an individual's right to vote in national elections.

Amnesty: the power to extend a pardon, usually to a group of people, and most often for political crimes, *before* they are convicted.

Bill: a piece of draft legislation initiated by the Government.

Cohabitation: a political situation in semi-presidential systems when the President is from a different political party than the majority of the National Parliament.

Commutation: a Presidential power in which he or she does not offer any forgiveness, but only reduces the penalty.

Draft law: a piece of draft legislation initiated by Members of Parliament or a parliamentary party.

Decree law: a legislative act enacted directly by the Government.

Extraordinary sessions of Parliament: meetings of the plenary that take place outside the normal working period. Extraordinary sessions of Parliament may be necessary in times of crisis, when the interests of the Timorese people require immediate action by the National Parliament.

Immunity: a general term applied whenever someone is exempt from prosecution. The Constitution provides immunity for certain government officials for acts they undertake in the course of their duty, such as expressing opinions or voting.

Jurisdiction: scope of authority granted to a court, defined area of responsibility within which to administer justice.

Legislative session: the year-long period of a parliamentary term from 15 September to 14 September of the following year. There are five legislative sessions in each parliamentary term. The working period of the National Parliament in each legislative session goes from 15 September to 15 July.

Liability: the state of being legally responsible for damages or other punishment.

Litigant: a party involved in a lawsuit.

Pardon: a Presidential power in which the President (1) forgives the person of the crime, and (2) cancels any punishment associated with that crime.

Parliamentary party: group of elected Members of the Parliament of the same party representation.

Parliamentary term: the five-year period for which Members of Parliament are elected to serve.

Party-list: a list of candidates for election to the National Parliament who are selected by and belong to one political party.

Party-list proportional representation: a system for parliamentary elections whereby parties make lists of candidates to be elected, and seats get allocated to each party in proportion to the number of votes the party receives in the election.

Plenary: the complete assembly of all Members of Parliament.

Plurality: This is when, in the case of parliament, no group has more than 50% of the votes. When using the term in the context of a general election it is when the number of votes cast for the winner is less than 50% of the total votes cast.

Point of order: a formal challenge raised by a Member of Parliament that the Rules of Procedure or the Agenda have been violated.

Preventive arrest: occurs when a person is imprisoned purely on suspicion of criminal activity.

Program of Government: outlines the agenda that the Government would like to pursue. The framework of the Program typically corresponds to the legislative agenda of the majority political party or majority coalition.

Quorum: the minimum number of Members of Parliament that must be present for a plenary or committee session to take place; if a sufficient number of Members are not present, any decision made during the session is void.

Recusal: act of abstaining from participation in a legal proceeding due to a conflict of interest.

Universal Suffrage: the right to vote for all adults who are not disqualified by the laws of the country.