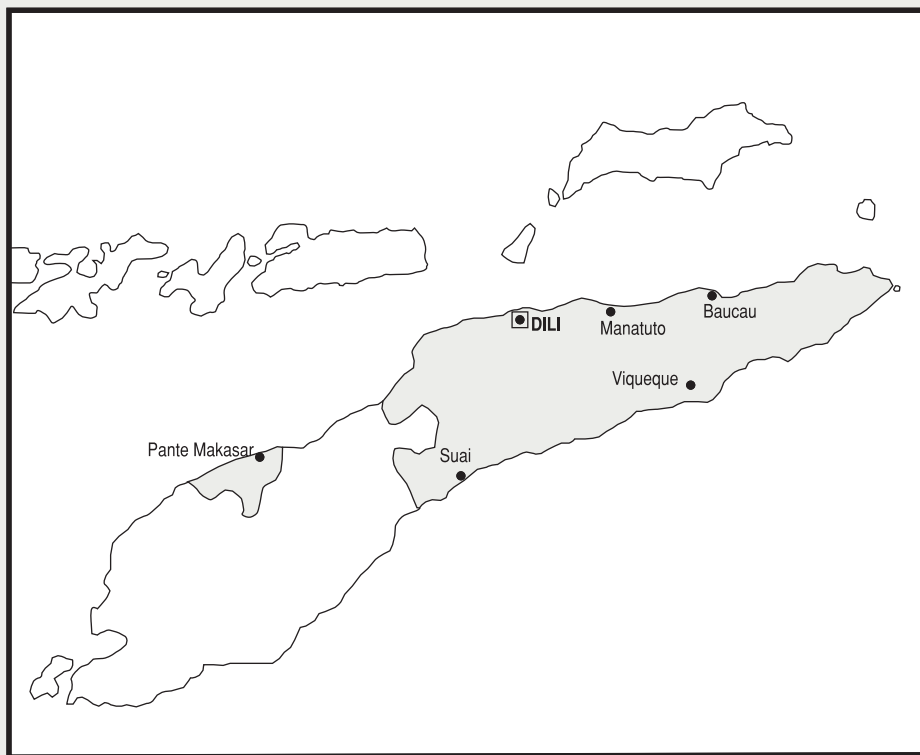


Timor-Leste





TIMOR-LESTE

The Two Sides of Success

Rui Graca Feijo

In just a year from 2013 to 2014 Dili has undergone major changes. Just outside the airport, which is to undergo a significant expansion, stands a gigantic statue of Nicolau Lobato, the guerrilla leader and sometime President of the self-proclaimed Democratic Republic of Timor-Leste, who was gunned down by the Indonesian occupiers in 1978. The statue evokes the outstanding role played by the Resistance in the struggle for national liberation, and symbolizes the contribution of deep-rooted national values (as opposed to foreign-born ideas) that have come to dominate the political discourse in the country. These ideas contributed to the victory of Taur Matan Ruak in the presidential elections two years ago and subsequent defeat of the more cosmopolitan former President, Jose Ramos-Horta. Towards the city centre there is a brand new double bridge over the Comoro River. A few yards away there are signs of new investment as exemplified by Timor Plaza, a bustling shopping mall with fancy establishments like cafés, restaurants, fashion stores, bookshops, a cinema and even an Apple Macintosh outpost. Groups of youth, using the Internet Wi-Fi facilities provided by some mobile phone operators, cram its corridors. In addition there are upmarket office facilities occupied by many international enterprises that have established themselves in the country.

On the newly paved seafront, a new building reveals a little of the motivation behind this recent surge in public works: the headquarters of the Commonwealth of Portuguese Speaking Countries (CPLP) which had its regular summit in Dili in late July, bringing several heads of state and government from Africa, Europe

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and South America to the country, and promoting Timor-Leste to the chair of the organization for the next two years — a most significant achievement for its young diplomatic corps. A few blocks inland, and dominating the cityscape, another imposing building, the ten-storey iron and glass air-conditioned Ministry of Finance which cost over an estimated US\$50 million, was inaugurated by the Indonesian President Susilo Bambang Yudhoyono on the occasion of his farewell visit. Indonesian building companies had taken the largest share in the construction, an example of the thriving commercial relations that bind the two countries. Several other ministries have completed building their new headquarters (Ministry of Solidarity) or are in the process of building them (Ministry of Justice). The same holds true for important official institutions, such as the National Electoral Commission, which has moved into a grandiose new building. Towards the ocean, one cannot fail to notice the presence of more than half a dozen ships waiting their turn to unload their cargo in a harbour filled with containers suggesting a growth in external trade as official figures confirm. Continuing to the east, in the pleasant seafront garden of Lecidere, which was recently expanded, youths gather by night, creating a lively atmosphere. Nearby, the Hotel Turismo completely refurbished to international standards and much changed from its original structure that was cherished by locals and generations of visitors, is another example of the sort of investment being made in order to bring Dili in line with the requirements of modern business. Major investments are not limited to the capital city, as exemplified by the inauguration of the second power station in the south coast, reinforcing the national network of electricity supply to all districts.

The scenario had changed much since 2004. Back then, the smell of smoke was still detectable, an effect of the devastation caused by the scorched earth campaign of 2001. In 2005, the Palace of the Ashes was a building in ruins, without a proper roof and makeshift windows but was the seat of the presidency of the Republic — a symbolic gesture by Prime Minister Xanana Gusmao to call the attention of well-wishers to the dire needs of the country. Today, the very same building has been completely renovated and houses the Ministry of Health, the one governmental department that has witnessed a 100 per cent increase in its budget between 2010 and 2014. Although figures for improved health show little improvement, Timor-Leste has been declared by the World Health Organization (WHO) as polio free and the incidence of malaria is expected to fall by 75 per cent between 2000 and 2014 (intermediate figures show the country to be on the right track). Timor-Leste has also witnessed a significant rise in life expectancy,

from 50 to 66 years, in the last quarter century, and ranks fifth in the world in terms of progress on this front, mainly due to much improved rates of child mortality and maternal mortality.

The health sector is not the only one to deserve such praise from international organizations. The Food and Agriculture Organization (FAO) reports an increase in the domestic agrarian production, especially grains (rice and maize). These figures have been widely publicized by the Timorese Government and constitute a rosy picture of the country and have more than a grain of truth, though do not tell the full story. Timor-Leste is marching on its own feet now, since the U.N. mission and ancillary security forces have left the country by the end of 2012. However, this march is proving to be tough.

Xanana Gusmao's 'Departure'

Early in 2014, when the National Parliament discussed the proposal for the annual budget, Prime Minister Xanana Gusmao came before the House and announced that this would be the last budget proposal under his term as leader of the government. He said that after the CPLP Summit scheduled for July, he would step down in order to pave the way for a new generation to take over. This announcement seemed to have its roots in the perceptible change of mood in the Timorese population that had elected a member of a younger generation to the presidency in 2012 — a move that was fully supported by the charismatic Gusmao.

For the best part of six months, expectations grew as fast as rumours on the true intentions of the leader, the result being a generalized idea that “big events” were lying in wait. This idea in turn fuelled a tendency in the state apparatus to withhold significant decisions. A mirror of this mood in the country can be grasped from the working agenda of the National Parliament which, with one major exception to which we shall later return, refrained from tackling contentious issues like the long overdue legislation on land rights.

Immediately after the CPLP Summit, Gusmao convened his own party, knowing that in the civil society of the country there had been no significant movement either in support of his departure or his continuation. Some political parties like Fretilin expressed the view that democratic mandates should be taken seriously and that PM Gusmao should accept the responsibility to carry out his tenure till 2017. In governmental circles, there was no clear heir apparent. Hence there was a concern that a replacement of the Prime Minister would affect the

balance of power. In fact, Gusmao has structured his government in such a way that no “natural” heir would emerge easily: his Deputy Prime Minister, Fernando Lasama de Araujo, is the leader of a junior coalition party, Partido Democratico (PD), and two other figures received the rank of “State Ministers” — one from his own Conselho Nacional de Reconstrução de Timor (CNRT) Party (Agio Pereira, a devoted right hand man who does not have charisma) and the other from the third and smaller coalition partner, Frenti-Mudança (Jose Luis Guterres, also Minister for Foreign Affairs). To further complicate matters on the institutional front, the young Secretary General of Gusmao’s CNRT (Dionisio Babo) has little governmental experience and is still in the process of asserting himself as a major player in local politics — although he is a powerful contender in the future.

In his party meeting, Prime Minister Gusmao accepted the need to remain at the helm, and delay his anticipated departure. He avoided committing himself to any clear schedule, although he hinted he would prefer to go in advance of the next elections in order to groom his successor and allow him to fight the polls in a position of power.

Two fundamental reasons may explain why Gusmao decided he would step down early. First, the worst kept secret in town is that there is some sort of agreement between the members of the old guard — locally called *katuas*, or elders — that a role for them ought to be devised in the institutional mechanisms of the country, embodied in the creation of a council where Gusmao would sit alongside Jose Ramos-Horta, Mari Alkatiri and maybe some other prominent figures like Lu Olo (twice presidential candidate by Fretilin), General Lere Anan Timur (the Commander of the Armed Forces) or Mario Carrascalão (a man who sided with Indonesia and served as Governor of the 27th Province before joining the ranks of the Resistance and led his own party). Upon the creation of such council, the way could more easily be paved for the emergence of a new generation of leadership. The big question, however, is the extent of powers to be entrusted to such a council: a mere consultative role, or executive functions that are difficult to envisage for a non-elected body? This has been the subject of much talk in Dili, but to this day no clear solution that respects the constitutional foundations (even if the Constitution is to be amended) has been found that satisfies all parties.

The second reason pertains to the realm of actual policies to be implemented. One of the hallmarks of Gusmao’s tenure is the generous creation of pension schemes for “veterans” — a move that has brought with it the reduction of

grievances and a basis for the establishment of peaceful relations overall. However, this policy, which has reached as many as 40,000 families and has a waiting list of almost 160,000 requests, is causing a very serious financial burden for the government. The top positions in a hierarchical scheme are stabilized — and they touch the highest pensions, but the lower echelons may still see a sharp increase in their numbers, and the rules are quite generous, offering pensions and other benefits (mainly in the health and education sectors) to “veterans” and their families, extending the perception of **financial** for a long time to come. As it stands, the veterans schemes take up a larger share of the state budget than either health or security — a clear indication of its enormous importance. Most local observers admit that the scheme must be reconsidered, and a cap imposed on spending under it, a task that probably no politician can undertake other than Xanana Gusmao himself, given his immense support among all those engaged in the Resistance. In a way, the time allocated to Gusmao to continue as Prime Minister has the implicit message that he is in the best position to devise a way to modify one of the most important policies associated with his past tenure.



Meanwhile, both supporters of the current government and senior members of the opposition have the idea that Gusmao is due to reshuffle his government — a decision he has not taken during his first term in office, and which he seemed reluctant to do. This expectation is not conducive to the efficient running of state business, as many fear they will be replaced and prefer not to risk engaging in activities that may jeopardize their chance of remaining in office. The year ended with Gusmao making an emotional Christmas address to the people in which he promised a thorough reshuffle of his government. The way in which this address was framed actually leaves the door open for Gusmao to step down from the role of Prime Minister, although he pledged to remain active in the political arena.

The Mauk Moruk Affair

The last part of 2013 was marked by the reappearance on the Timorese scene of Mauk Moruk, a former senior member of the guerrillas who attempted to overthrow Xanana Gusmao in 1984–85. He was captured by the Indonesians, paraded around the country as a significant defeat of the Resistance, and lived in exile in Holland for more than two decades. He returned, intent to challenge Gusmao once again, proposing fresh elections to replace the Constitution of 2002 by the one approved in 1975, create a new presidential regime, and return

to the radical policies of that period. He managed to enlist the support of some political sectors, like the one led by his own brother who had lost his seat in Parliament in 2012, as well as the religiously inspired *Sagrada Familia* (Holy Family) group of activists. More important than this was his ability to garner support from disenchanted Timorese, and to set up a power base in the east of the country, where he is said to command a few hundred men in arms. In a way, this was made possible by the fact that the position of Fretilin in national politics evolved from open opposition to a considered collaboration with the government, expressed symbolically in the party's decision to back (after tough negotiations) the state budgets for 2013, 2014 and 2015, thus diminishing the idea that they were an opposition party in public perception.

Mauk Moruk's challenge was taken seriously by Gusmao, who suggested a public debate on television which included other relevant members of the Resistance. However, Mauk Moruk did not show up, frustrating some expectations. In March, the National Parliament passed a resolution accusing him of using military uniforms and weapons and criminal associations with a view to overthrowing the constitutional order. He was soon arrested and held in custody without having had the opportunity to appear before a court of law until a decision to release him was taken in late December.

More than the actual threat posed by what was probably an isolated case, this episode reveals the extent to which frustrations with the current state of affairs can easily extend beyond the realm of institutionalized politics, and mobilize significant numbers of people who have, for one reason or another, fallen out of grace and are disenchanted with the way the country is moving. As Anna Powles noted, this case reveals "the struggle between resistance legacies and modern government".² Like the martial arts groups whose activities were suspended in 2013, these forms of expression of social resentment defy the established politicians and require particular attention.

The New Media Law

Among the issues that the National Parliament tackled in the early part of the year, the new media law deserves particular attention. Presentation of the proposed measures by the government was accompanied by a campaign to garner support for them. The reception in Parliament was favourable, and the bill was approved with a considerable majority of votes since Fretilin MPs joined forces with those who normally support the government (only one MP abstained

and none voted against). However, the bill was vehemently opposed by influential journalists as well as by several non-governmental organizations (NGOs) — including the International Federation of Journalists — who denounced it for trying to impose severe limitations on the freedom of the press. This would be done through measures like references to the need of media instruments being national property (which could impair foreign correspondents) or the necessary “registration” of accredited journalists. In brief, they argued that what is portrayed as “regulation” may easily turn out to be some form of constriction of fundamental rights.

President Taur Matan Ruak referred the bill to the Constitutional Court for an evaluation of its content, signalling that in his view four sections were at odds with the fundamental law. The Constitutional Court ruled that three sections were indeed in breach of the Constitution, and the bill was returned to the National Parliament, which on a second reading made several alterations. However, one of the sections deemed unconstitutional was not altered. President Taur Matan Ruak this time decided to promulgate the law, but insisted on sending it once again to the Constitutional Court in view of the persistence of the contentious section, making use of an instrument called the “subsequential revision of constitutionality”.

It is important to note that, while keeping a very close relationship with the government and Prime Minister Gusmao who was a critical factor in the support of his candidacy in 2012, the President of the Republic is an independent figure without party affiliation. Some of his close aides work in the media business and were vociferous opponents of the government proposal. Also, the President needs open access to the media in order to make his messages heard by the people. The risk of alienation of the support of the media community which has proved so far to be a critical ally explains the reason why the President decided to intervene in a case that had almost unanimous support in the National Parliament.

Petroleum

Petroleum is the key resource around which much of the political life of Timor-Leste revolves, given its weight in the revenue of the country. In 2014, some new facts emerged that deserve mention.

For the first time, the report of the Petroleum Fund on the third quarter of 2014 showed that the Fund had not increased from the previous quarter, keeping

its level at about US\$16.6 billion, which is still more than ten times the annual state budget at its current level. There are three reasons behind this negative performance: a major transfer of funds to the state budget, in accordance with existing provisions, currency exchange losses and, above all, a significant decline on oil prices in world markets. This showed that in the future, the increase in petroleum revenues would probably be slower, which may lead to a renewal of the transfers from the Fund to the state budget, which have been consistently above the Fund's "sustainable revenue" level, a technical index that is supposed to cap spending. However, signs emerging from the government suggest that this is being treated as an odd episode rather than a serious warning. In fact, the government approved a budget proposal for 2015 which increases spending by almost 5 per cent to US\$1.57 billion, mostly supported by transfers from the Petroleum Fund. To ascertain the real importance of this fact one must consider the level of public spending, which in recent years has fallen way below what the generous state budget would allow, ranging between US\$1.2 billion and \$1.3 billion. This is due to two factors. The first is a technicality, as expenses have to be inscribed in the budget to be authorized, and delays in starting them leads to difficulties in spending the whole budgeted amount. The second is derived from the incapacity of the state administration to discharge adequately its functions due to poor manpower.

Secondly, the Timorese state has initiated legal action against the major oil companies operating in the country, claiming they evaded tax payments. The taxes in question amount to about US\$380 million — or a quarter of the annual state budget. However, in spite of the high expectations of the Timorese Government, the local courts have not been disposed to favour its position. From a total of 51 cases, 16 were lost (pending appeal) and 28 are now before an international arbitration court in Singapore.

On a similar count, the Timorese Government brought a case against Australia in the International Court of Justice in The Hague in 2013, regarding the seizure of confidential documents from an attorney acting on behalf of the Timorese authorities. The background to this action is the desire of Timor-Leste to challenge the terms of the agreement regarding the maritime boundaries between the two countries and their share of the Timor Sea oil. In March, before a formal trial, the judges in The Hague supported the position of Timor-Leste and ordered the Australian authorities not to use the documents they had seized. Later on, Australia and Timor-Leste agreed to a suspension of the hearings in order to resolve the case amicably, a decision that was extended to the issues pending in

the Permanent Court of Arbitration regarding the settlement of their boundary disputes.

All these facts suggest that the oil issue is becoming more problematic and multi-faceted, requiring a substantial dose of realism and perhaps of some change in the current approach which seems too dependent on overly optimistic scenarios.

The Question of Portuguese Judges

Frustration over the handling of the court cases brought by the Timorese state against oil companies grew intense in the second half of the year, as the outcomes of these cases went against the expectations of the local authorities. Timorese authorities based their expectations on legal advice provided by Portuguese law experts. This sentiment merged with a deep-seated uneasiness regarding the continuing high profile role played by Portuguese and other foreign judges in the local judicial system.

During the transitional period (1999–2002), all major state functions were placed in the hands of foreign individuals. With the proclamation of independence on the 20 May 2002, the executive and legislative functions were taken over by the Timorese themselves. However, the judicial system retained foreign judges in charge of the majority of courts. This odd situation in which sovereign bodies are commanded by foreigners was devised as a transitional measure allowing for the training of local judges to replace the foreign ones. More than ten years later, there has been little change, and the sentiment that expatriate judges were there to stay without any limit to their terms began to be regarded as an affront to national sovereignty. Ever since the new Minister for Justice Dionisio Babo joined the government in 2012, this issue has been on the top of the local agenda — if only to meet passive resistance from the personnel in question to face the issue as it should be faced. Dionisio Babo is supposed to have asked for a formal meeting with his Portuguese counterpart in order to discuss this matter, and one year elapsed before they could arrange such a meeting. To make things worse, the control which would normally be exercised over local judges by the Magistrates Council was widely regarded as extremely weak.

In this broad context of dissatisfaction with the underlying situation and the actual performance of several individual judges, the Timorese authorities decided to take action. First, there was a closed-door meeting of Parliament

(a rare event) which took the unprecedented decision to recommend to the government that a substantial alteration of the status quo to be implemented in the very short term. Although there were some dissenting voices, namely from Fretilin, the vote in the House managed to secure wide support that extended to many members of the opposition party, thus showing that there was a widespread dissatisfaction with the judicial system. Acting upon this recommendation, the government decided to suspend the contracts of several international judges, who took offence and mostly refused to abide by the executive orders. The governmental decision met the opposition of the Magistrates Council, a critical institution in the judicial arena which supported the independence of judges, who took a stance in favour of the continuation of the status quo. Faced with outright disobedience on the part of several magistrates, the government issued expulsion orders, forcing them to abandon the country within forty-eight hours.

The position of the Timorese Government has to be considered in the context of the underlying situation of the need to have foreign magistrates participate in the organs of national sovereignty combined with the frustration over the professional weaknesses in the cases that were brought against the oil companies. Due to these reasons, tough measures were implemented to deal with the issue. Portugal, the country most affected by these decisions, decided to suspend its cooperation with Timor-Leste in the judicial field, and threatened to extend such suspension to other fields.

One further aspect of this issue deserves special notice. Both in Timor-Leste and elsewhere, a strange coincidence was observed: several judges expelled from the territory were supposedly in charge of court cases referring to corruption charges against government ministers and other public officials.

Corruption is a critical feature of the Timorese political and cultural landscape and the period under Indonesian occupation has left an enduring mark. The *Transparency International Index of Corruption Perception* for 2014 signals for the third consecutive year that the country is increasing in corruption levels. Timor-Leste ranks 133 in a list of 175 countries — a symptom of severe problems on this count.

In the course of the year, the leader of the Anti-Corruption Commission, Adérito de Jesus, decided not to stand for another term in office. He said he was doing so for personal reasons, but it was widely believed that he was frustrated by the slow movement of processes in the judicial system. It took

a long time for the government to agree to submit to the National Parliament a list of possible new leaders of the Commission before Adérito Tilman was finally chosen. For this reason, the Commission was for almost half a year without a proper leadership.

Charges have been brought against senior government members, for example, the Finance Minister, Emilia Pires, who was supposed to go to court on corruption charges a few days after the foreign judges were suspended, including the one who was to rule in her case. Most of those cases are now on hold, as the court system has been basically paralysed. In response to the allegations, PM Gusmao made a particularly controversial remark: that politicians should be judged first and foremost by the court of public opinion, that is, by the electoral processes, and ought to be given immunity while serving their terms. This view confuses political responsibility, which is undeniable, with judicial responsibility, which cannot wait until the end of a political term to act if there are grounds for suspicion. It reveals a particularly poor understanding of the evils of corruption, which he has attempted to curb in his first term as Prime Minister with the appointment of a Deputy Prime Minister in charge of the problem, an experiment that went sour with the resignation of Mario Viegas Carrascalão.

Diplomacy

In 2014, Timor-Leste had a major diplomatic success — the organization of the CPLP Summit in Dili in late July. Following the Summit, Timor-Leste will hold the Chair of the organization for two years, allowing extensive visibility in the Portuguese-speaking countries.

A note should be added though: Timor-Leste was among the leading countries supporting the membership of Equatorial Guinea, an oil-producing country with a dismal record on human rights and very feeble ties to the Portuguese language in the CPLP. Other oil-producing countries like Angola and Brazil were also active in supporting Equatorial Guinea. Portugal reluctantly accepted (and was critical of the way Timor-Leste handled the issue at the ceremonies in Dili). These actions may reduce the chances of the doors of the European Union being as widely open to Timor-Leste as some might expect given Portugal's critical role in such field.

Jose Ramos-Horta played a very high profile role in the U.N. mission in Guinea Bissau following the attempts to return the country to constitutional

rule. The government of Timor-Leste decided to offer material support in the form of electoral assistance which has been widely acclaimed. It showed what was invested in the preparation of local elections in Timor Leste could be transferred to a similarly difficult situation elsewhere. This aid provided by Timor-Leste was highly visible and internationally appreciated, boosting the country's reputation as a generous giver after so many years at the receiving end of assistance.

Finally, things have been less enthusiastic on the ASEAN front. Timor-Leste would have expected that the Indonesian Chair of the organization might move the country closer to full membership of ASEAN — but this did not materialize. Reservations exist among critical players in the ASEAN, especially Singapore, who fear that the Timorese state's fragility may open up doors to money laundering — a concern not helped by the high levels of perceived corruption in the country.

An Original Initiative

In 2014, one original initiative took place: the creation of a “Special Zones of Social Market Economies” in the enclave of Oecusse and the island of Atauro. The aim of the project is to create special conditions for sustained development in these two parts of the country through special legislation to entice private investment in a business friendly environment, with matching public funds. So far, however, although the project has only been endowed with generous funds in order to carry on with studies, actual investment has been delayed. The physical infrastructure for this project will also be used for a major event on 2015: the celebrations of the arrival of the first Portuguese Christian sailors on the island 500 years ago, a significant date which the local authorities wish to be graced by a visit of the Pope.

In the short term, however, the most remarkable feature of this initiative is that the leadership of the project was entrusted to Mari Alkatiri, the leader of the opposition party Fretilin, and sometime Prime Minister (2002–06), now said to be the “Viceroy” of Oecusse. This has been regarded as a gesture of goodwill by the government, or as an attempt to secure a very broad basis of political support for the current situation. In due course, it will show whether Fretilin espouses a significantly different model of development from the one being pursued by Gusmao's government — in which case some friction might develop — or whether there is no important divergence and a prospective collaboration at central level may be devised, perhaps before the next general elections due

in 2017. Whatever happens, the significance of the appointment of Alkatiri for this particular job goes beyond the “Special Zone” and indicates something with broader horizons. Perhaps the governmental reshuffle supposed to take place in early 2015, and which is rumoured to include members of Fretilin acting as technical experts rather than party representatives, will be a second step in this direction.

Note

1. Anna Powles, “Xanana Gusmao-Mauk Moruk: Timor Struggles with Its Past and Future”, *The Interpreter*, 5 December 2013.

