

WEAVING NEW INSTITUTIONS, TRANSLATING POLITICAL GRAMMARS: A CRITICAL VIEW ON TIMORESE POLITICAL INSTITUTIONS AND THE “PORTUGUESE LEGACY”

RUI GRAÇA FEIJÓ

CEPESE, PORTO, PORTUGAL

*For Sónia
who holds a Portuguese passport
and a Timorese heart*

1. RECOGNIZING THE NATION, BUILDING THE STATE

The result of the Referendum of August 30th, 1999, in which the Timorese voted overwhelmingly to part ways with the Indonesian Republic and claim independence showed the world that, as far as a Nation is defined by a territory inhabited by people who possess a sense of communality and shared values, which are perpetually being renovated a re-designed in accordance to a matrix, and in response to the challenges that life continuously brings, Timor was a Nation. To speak of “nation building” when four in each five inhabitants had expressed in a form that carries the fame of being the very best way for individuals to express their true sentiments regarding public life – universal suffrage and secret balloting – was certainly a misnomer for what might more aptly be called, at best, ‘state building’. In fact, the sudden withdrawal of the Indonesian public authorities and their civil service left an apparent void – not to be equated with the idea that all forms of legitimate power evaporated overnight, because not only the legitimacy of the occupier was very limited, but also on account of deep-rooted forms of legitimacy and authority that existed in the country, ranging from local, village level, to the emerging forms of post-Resistance structures of own government. The task was set to create a new, modern public administration, and the inspiration for much of this model are to be found in the so called ‘best practices’ acknowledged by the ‘international community’.

A new state organization was conceived from scratch. Its design, in the first instance (mostly prior to the recognition of Independence on May 22, 2002) and later its deployment and implementation under Timorese own rule supplemented by international aid, became a major goal of public policies.

For the Timorese the sudden ‘import’ of a new state model and its underlying paradigms required translation, in the sense that a tool is only useful if it can be operated by those who are to work with it in a proper manner which must combine the tool’s own features and the characteristics of the user.

The new institutions, ideas, instruments need to be weaved into the political and cultural fabric the Timorese themselves understand and are capable of manipulating to express their voice, much like they weave their *tais* – choosing colours, patterns, materials from those available regardless of their geographical origin - thus requiring an active participation in the process of internalizing those elements and absorbing them into their cultural

patterns. This cannot be industrially produced abroad and shipped to the local markets like another commodity: just imagine how an election would represent the will of the voters if everything had been prepared abroad and the instructions were given in a foreign language, like so many gadgets to be found nowadays in Timorese markets.

Portugal ranks among those countries who have volunteered plentiful forms of aid, including among these several models of political, judicial and administrative organization. They seem to have found some echo, at least in the political elites of the country. This essay attempts to find a way out of the paradox that a feeble colonial power is now, after more than twenty years of post-colonial failed solution, and in a globalized world polarized by the USA which leads an anglo-saxon legion of followers with strong presence in that region, a clear and privileged partner of the Timorese in their endeavour to create a new democracy.

2. FROM A FEEBLE COLONIAL RULE TO INDEPENDENCE.

On May 20, 2002, the proclamation of Independence of the Democratic Republic of Timor-Leste marked the final step of a protracted process of self-determination for this half-island of Southeast Asia. Less than three years before, a referendum held under the auspices of the United Nations had signalled the wishes of the vast majority of its people to put an end to a 24-year long experience of Indonesian rule without falling back into any form of formal association with the 'administrative power' of what remained in the light of international law a 'non autonomous territory' – Portugal.

Portuguese sailors had reached Timor from Malacca around 1515, and kept interests in the island ever since (Figueiredo, 2004). But Portuguese colonialism in Timor can be classified as *feeble*. Not to go further back in time, since the beginning of the 'Third Portuguese Empire' (Clarence Smith) in the 19th century, colonial appetites had been focused on Africa, hailed as the 'New Brazil'. The Asian remnants of past glory kept under Portuguese administration slipped into a mostly symbolic status. Eça de Queirós, a novelist and acute observer of Portuguese mores of late 19th century, claimed that those territories 'give us no revenue, and we give them not one single improvement. We entertain with them a sublime struggle of abstention' (1980, p. 1028).

As far as Timor is concerned, a colonial administrator writing in the 1940's, stated that it was 'a colony without colonizers' (Correia, 1944a, p. 15). Some of the few hundred Europeans who lived in the colony (408 in 1930, 332 in 1935, 359 in 1940 - all according to the official bulletin of the colony) were political opponents of Salazar regime, democrats and especially anarcho-syndicalist – at least 80 members of the *Legião Vermelha* (Red Legion) had been deported to the island in 1927, another 50 implied in a rebellion in August 1931-; who had been assigned residence as far from home as the Empire allowed, and were not to be trusted to play significant roles (Figueiredo, 2004, pp. 703-708). Half of the Europeans and most of those who came from other colonies lived in Dili as public servants. In the early 1970's, the number of European settlers in Timor was not superior to 300 in a population in excess of 600,000 – excluding the short-term presence of military contingents (Durand, 2002, p. 86; Thomaz, 1994, pp. 672-673). The Salazar regime claimed the superior

capacity of the Portuguese to mix with locals, and therefore the *assimilados*, or mixed-race, were counted separately – but their number was always far below the 1,000 threshold: 600 (1930), 677 (1935), 689 (1940) (Figueiredo, 2004, pp. 703-704)

The administration of the territory, even after the campaigns of Governor Celestino da Silva (1894-1908) and the war of Manufahi (1912) which are supposed to have marked a turn towards a greater involvement of colonizers in the internal affairs of the country and end an 'intermittent colonization' (Defert, 1992, p.283) was respectful of local, ancient political structures (Hohe, 2002) and remained, to a large, extent based on fostering and managing rivalries between them, thus keeping 'archaic features' (Thomaz, 2001). The Governor of the colony in the 1960's acknowledged that his intentions to invest in structural projects was thwarted by the lack of human resources – there was not a single engineer in the territory (Barata, 1995, p. 55). Education was limited to the secondary level, itself characterized by Durand as 'totally indigent but for the *Liceu* of Dili and the Seminar of Dare' (2002, p. 60) and very few Timorese – either of European origin or native ones – had access to Portuguese higher education, in contrast to the situation in other colonies. Luis Cardoso's novel *The Crossing* (2000) portrays the local elite at the end of the Portuguese rule, and it clearly shows the feebleness of formal education beyond what was available on the territory. The basic commodity of colonial rule – the use of Portuguese language – was restricted to a small minority.

When the Revolution of 25 April 1974 brought about the desire to put an end to the colonial adventure of Portugal, and entailed the recognition of the right to self determination, Timor was regarded by many in Lisbon as a case which might follow the example of Goa – to be integrated into a neighbouring giant, this time not by force but through negotiation, much in the same way as the future of another Asian territory, Macau, was being conceived. Almeida Santos, the minister in charge of this process, admits that three possibilities were actually envisaged – full independence (not believed to be possible on the short term), integration within Indonesia (not believed to be desired by this country – but actually a scenario that was long being prepared and soon made inroads into the scene), and continuation of a link with Portugal (Santos, 2006, II, pp. 297-298). These three positions were mirrored in the political stances of the parties that emerged in Dili in the aftermath of the Revolution. The negotiation process undertaken by the Portuguese authorities with representatives of Timorese opinion, however, soon came to a stalemate and a brief and 'low intensity' civil war broke out in August, 1975 between the pro-independence movement (Fretilin) and those who opposed it, led by UDT (not a straightforward supporter of integration). Fretilin was soon in control of Dili, the Portuguese military withdrew to Atauro leaving the control of the country in their hands, and in an act of despair Independence was unilaterally pronounced on November 28, 1975. Indonesia, however, had made it clear that it was ready to accept a prolonged presence of the Portuguese but not the independence of the territory (Santos, 2006, II, p. 299) and took over by force, certain as it was of important international support (US President Gerald Ford was in Jakarta the day before the invasion officially started).

The military occupation of this territory – officially started when the armed forces of Indonesia attacked and took control of Dili on December 7, 1975, but actually already under way for some weeks, as the process of the 'Balibo Five' (a group of western journalists mur-

dered in the western part of the territory a few weeks before to prevent news of this move to reach the outer world) clearly evidences – and its transformation into Indonesia's 27th province (*Timor Timur*) must be classified as a *failed post-colonial solution*.

The Republic of Indonesia had gained independence from Holland in the aftermath of World War II, and the initial territory had been expanded over the next decades through the incorporation of other former colonial remnants. The absorption of half an island with no more than 15,000 km² and a population under one million seemed a minor episode in a country with thousands of islands and over 200 million souls. In the first decades after Independence, the Republic of Indonesia had crafted a leading place in the new, 'non-aligned' movement and was a beacon for colonized peoples. But after the coup that replaced Sukarno by Suharto and left a trail of blood, the regime was a blatant dictatorship mostly aligned with the US interest in the area. Unlike India, whose democratic regime facilitated the integration of former Portuguese territories of Goa, Damão and Diu into the Union in the 1960's, and granted them voice, Indonesia opted for a brutal rule and genocide (see Durand 2002, p. 89 for estimates of deaths under the occupant). The creation of 'the 27th province' was mostly cosmetic, in spite of the investments actually realized, dwarfed by the pillage of resources and the policies that favoured transmigrants over autochthonous populations. In the words of Thomaz,

'In other circumstances, under another regime and with an army less inclined to oppression and violence, maybe the cultural ties that, in spite of all other elements, link the Timorese to their neighbours, could have worked in a different way and served as a factor for integration; but the misconduct of the soldiers and their attempt to impose a Javanese conception of power – holistic, hierarquical, providencialist – led the Timorese to privilege what were their differences instead of what could unite' (Thomaz, 2001).

This was the state of affairs that the east-timorese rejected in the referendum of August 30, 1999. Self-determination came thus after a long period of feeble Portuguese colonialism and a short and brutal period of failed post-colonial experience under Indonesian rule – a most unusual combination that singles out Timor.

3. A CONTEXT FOR INDEPENDENCE

The staging of the referendum and the respect for its result owed its success to a number of combined factors, namely:

- a. the struggle of the Timorese people and its capacity to oppose a fierce Resistance to the invaders and create and sustain articulate organizations of different nature to represent their interests;
- b. the stubborn persistence of the Portuguese authorities who kept the issue alive in international *fora*, namely in the UN, an organization that never changed the classification of Timor as 'non-autonomous territory under Portuguese administration';

- c. the economic crisis that affected East Asia in the late 1990's and which shocked the foundations of the Indonesian dictatorial regime;
- d. the end of the Cold War and the spread of the 'third wave of democratization' (Huntington).

The context of a post-Cold War world is a key element to understand the creation of the first new nation of the 21st century just as much as the Cold War is essential to explain the solution that was adopted in 1975. Indeed, geo-political considerations and fears of a country with friendly relations with the soviet bloc (or with the Chinese) were behind the support offered by western powers to Indonesia, a position that had matured for over a decade (Moisés Fernandes, personal communication). The same reasons apply when it came to turn a blind eye on the Indonesian's genocide practices whose impact does not come second to the *khmer rouge* in Cambodia, which have caught the eye of the world and justified strong intervention. As Almeida Santos aptly put it, 'in the correlation of powers between East and West, the logic of interest prevailed over the logic of principles' (Santos, 2006, II, p. 326). In the post-Cold War world, however, respect for human rights and creation of democratic institutions assumed a new dimension. This is the context in which Timor emerges as a new nation. The rhetoric of anti-colonialism so present in 1975 was no longer enough to mobilize the indispensable international support.

International support came to Timor in the form of an off multilateral intervention (military, humanitarian, economic, political, ...) under the aegis of the United Nations. Bi-lateral support, when it existed, as in the case of Portugal, accepted, at least in the first phase, the broad umbrella of the UN. The scope of this intervention, and the vast array of powers conferred upon the personnel assigned to Dili, has no parallel in previous missions, and has received the epithet of 'UN Kingdom of East Timor' (Chopra).

The United Nations were eager to stage an exemplary mission and to foster the emergence of a new, independent country with fully democratic credentials in a brief period of time (given the fact that its heavy presence swallowed considerable amounts of funds). True, Sergio Vieira de Mello, the Brazilian diplomat in charge of this mission, managed to obtain from the Security Council enough room of manoeuvre in order to associate Timorese political leaders to his government in a more comprehensive way than had been achieved in other missions, such as Cambodia (Powell, 2008, pp. 286-344). But the overall picture is still one of a frame of reference drawn for the Timorese by the 'international community' with narrow options.

Two critical decisions were taken in this period that were to have lasting consequences. First, the option for a formal election of a Constituent Assembly, to take place on August 30, 2001. The envisaged life-span of this assembly was short (six months), thus curtailing the possibilities of a widely participated debate, including at the grass-roots level, as suggested among others by Pedro Bacelar de Vasconcelos, then working for the UN. (Vasconcelos, 2006).

The second critical decision, closely associated with this view of a 'procedural democracy' being developed in the country according to international standards, was to cut short the life of the umbrella organization that had played a leading role in all aspects of the process ever since its formation in 1998 – the CNRT – and to dispense a 'transition period' to 'full

democracy' based on political inclusion of a wide spectrum of opinion and the rules of consensus rather than on majority versus minority, which dated back at least to the Peace Plan approved in 1992 and that was the backbone of the proposals Ramos Horta put forward at his Nobel Prize Laureate Lecture in 1996. The dissolution of CNRT after Fretilin announced it would leave the organization signalled that the rules of a new political game had to be crafted in yet another short period.

The question that arises from the above considerations is this: what could be the contribution of Portugal to the challenges facing the new nation? This has got to be answered bearing in mind not only what has been referred above as a feeble colonial rule – as opposed to other colonial models supposed to have left deep imprints in the social fabric of the colonized territories, the British in India being often the paradigm – but also the fact that Portugal, unlike other major European colonial powers (France, Holland, Belgium), was not a democracy for most of the twentieth century, namely in the period prior to de-colonization, and thus the "legacy" that might have survived would probably not be favourable to the new situation.

4. THE 'PORTUGUESE LEGACY'

Among the critical elements that shape the Timorese political system and can be viewed as being influenced by Portugal the following can be singled out:

- a. the Constitution and the choice of a 'semi-presidential' regime
- b. the electoral system and the organization of the electoral process
- c. the philosophical foundations of the juridical system

4.1. THE CONSTITUTION AND THE CHOICE OF A SEMI-PRESIDENTIAL REGIME.

At midnight on the 20th day of May 2002, Xanana Gusmão proclaimed the Independence of the first nation to be officially born in the 21st century. As of that moment, Xanana would be the first President of the Republic, as he had been elected according to the Constitution of the Democratic Republic of Timor Leste, crafted by a specially designed Assembly, which then became the fundamental law of the land.

The transitional period that ran from the Referendum of August 31, 1999, and more specifically, from the time when the UN Security Council established a provisional authority in the territory, has been regarded as a 'benevolent authoritarian regime'¹²⁴ (Chesterman, 2004) given the extent of powers entrusted to the Special Representative of the Secretary General and his team of international co-operants and advisors, the UNTAET – United Nations Transitional Administration of East Timor, without any precedent in the history of similar

.....
¹²⁴ *Freedom House* rated Timor as a 'non-free' polity with 6 points out of maximum of 7

operations. 'The Benevolent Dictator' is the title of one chapter referring to Timor in Samantha Powell's biography of Sergio Vieira de Mello (Powell, 2008)

A key element resided in the transfer of power to the Timorese. In this context, the creation of a broad legal framework under the form of a Constitution, and the ways to achieve such a goal, were amply debated before the option to legalize political parties on the short time, and organize elections for a Constituent Assembly, granting this institution with six months to complete the whole process. Pedro Bacrelar de Vasconcelos reports from his experience

"The decision to charge one specifically elected body with the sole task of elaborating the fundamental law – a 'Constituent Assembly' - was not the only possibility that the UN considered. On the contrary, the virtues of an ample form of consultation that would involve the entire population, capable of engaging local communities in a decentralized debate with the Timorese political leaders, and make them participate in the political process, were emphatically stressed in the words of the transition administrator, Sergio Vieira de Mello, before the delegates to the Congress of CNRT in August 2000. However, the decision that was taken later in the year to call elections for a Constituent Assembly in the following August would bring political action into the conflictual ground of formal representation and dispute for votes. Among many other good intentions, an opportunity was lost to build an open and plural consensus based upon the diverse currents of opinion, political forces, and the multiple interests and sectors of the Timorese society" (Vasconcelos & Cunha, 2009, pp. 232-233).

In a way, this decision brought about the dissolution of CNRT by Xanana and represented a severe blow to the perspective of a protracted process of transition based on consensual co-operation that was the cement of unity before the Referendum of 1999. After this, it would be "politics as usual" like in any established, stable democracy - a sort of *trompe l'oeil* that many were eager to take for the real thing

Fretilin won a comfortable majority of seats, enough to impose the model of its choice. Ruled out was the re-appropriation of the 1975, Marxist inspired, short-lived Constitution – both the international and the national contexts would not tolerate that. The leadership of Fretilin seems not to have had great difficulties in proposing a draft inspired by the Portuguese Constitution of 1976 – which they had grown used to see in operation in the process of consolidation of the Portuguese Democracy after the Carnation's Revolution. Also, the Portuguese Constitution of 1976, with its amendments and some forms of "translation" to be adapted to different circumstances, had made an impact in Lusophone Africa, including the country that had offered the Timorese leadership more substantial support – Mozambique. (Gouveia, 2006) So, with no real surprise – in spite of the absence of a direct presence of advisors, as had happened in other lusophone contexts –

'the main written source of the Timorese Constitution, crafted and approved by the Constituent Assembly on the 22nd March 2002, was the current Portuguese Constitution' (Vasconcelos, 2006, p. 70).

Among the elements that signal a convergence between the two texts, a special mention should be made to the choice of a 'semi-presidential' form of government – an aspect that has recently been the subject of a thorough study in the Lusophone world (Lobo & Neto, 2009) – and which reveals not only the extent to which the Timorese fundamental law owes to the Portuguese, as we have been assuming in the lines above, but also the latitude for adaptations and the way the Timorese used it.

To put in short what would take a full paper to fully justify¹²⁵, in most comparative studies of 'semi-presidential' regimes or forms of government, the key variable is assumed to be the powers pertaining to the President of the Republic, the Prime Minister, or Government, assuming by default what is not specifically attributed to the President. In the Lusophone world, where the Portuguese experience is regarded as the common matrix, the variation in the presidential powers is quite substantial. Leaving aside the case of Angola (which in the meantime has made steps towards a presidential regime), the extreme points of variation in a numeric scale (taken to represent synthetically the existence/inexistence or strength of several qualitative indicators) are 18 for the case of Mozambique, and 8.5 in Timor-Leste, Portugal scoring 11.5 (Lobo & Neto, 2009, p. 267).

On a first approach, this seems to contradict my previous argument that Mozambique may have been an intermediate in the dissemination of the Portuguese model among the Timorese leadership in exile in that country. It need not be so. Rather, it reveals the flexibility of the model as well as the political wisdom of Alkatiri and his followers, who took their decisions based not only on an abstract model, but on a careful analysis of the situation in Timor-Leste.

Fretilin knew, after having comfortably won the elections for the Constituent Assembly, that the electoral bill regulating those elections had a provision anticipating the possibility of the mandate being extended for a full legislative term without having to call fresh elections after the approval of the fundamental law – and thus, that they had received a mandate they could preserve for five or even six years¹²⁶. No incentive existed for those who commanded the majority of the Assembly not to envisage giving the Government, and the Prime Minister, a substantial share of political power, or to foster a substantial partition of power.

Outside the Assembly, however, Xanana Gusmão – who had broken his ties with Fretilin in the mid 1980's, and recently dissolved the CNRT after disputes emerged in the wake of the Referendum – commanded a fairly wide basis of support, even if not organized in a political party. He could chose either to capitalize on his popularity by running for President (as he did, polling over 80% of the vote) – but would only do so, in spite of all international pressures in that direction, if the job was more than one of formal representation – or decide to "go treat my orchard", as he often said he was inclined to, and be a major force outside the political system, with foreseeable negative consequences for the stability of the regime and consolidation of democracy. Before these conceivable alternatives, and without

.....
125 This section is further developed in Feijó 2009 (forthcoming)

126 There was an ambiguity in the words of the Constitution that allowed Fretilin to keep its majority from August 2001 to the general elections of June 2007 – almost six years.

a candidate that might challenge Xanana at the polls, Fretilin opted to grant the President moderate powers in an effort to create a (minimally) inclusive system and keep the major actors in active roles. The result of this weighing of the scale turned out to be, as stated, the lusophone semi-presidential regime in which the President commands fewer power.¹²⁷

The matrix was respected, its flexibility tested, and its adaptation to the short term political dilemmas of the dominant party in the Assembly also assured.

4.2. THE ELECTORAL SYSTEM AND THE ORGANIZATION OF THE ELECTORAL PROCESS.

One interesting aspect of the influence of Portugal consists of the electoral system, comprehending both the electoral supervision organizations and the choice of a method of converting votes into parliamentary seats.

As for the first aspect, and contrary to the widespread practice of having a single body supervising the electoral process under the scrutiny of Parliament, Timor-Leste made a choice for a double-bodied structure, placing one – STAE: *Secretariado Técnico de Administração Eleitoral* (created by Diploma Ministerial 3/2004 on the 5th May 2004) – under direct administration by the Minister for Home Affairs - off State Administration, assuming this to be a purely technical body without any power to make politically sensitive decisions; and entrusting the overall organization and politically sensitive decisions to an independent, multi-party body called CNE – *Comissão Nacional de Eleições* (actually created by the Law 5/2006, on the 19th December, but existing since the UNTAET period - a pre-Independence body which was used in the 2004 local elections). This actually mirrors the early choice made in Portugal, which has been modified in recent years, after it was adapted in Timor-Leste. Contrary to the Portuguese example, where there were no significant public signs of disagreement between STAPE (*Secretariado Técnico de Apoio ao Processo Eleitoral*, lodged in the Ministry of the Interior) and CNE (*Comissão Nacional de Eleições*, an independent body), let alone of public confrontation, the fact that one organization is closely controlled by the Government whereas the other reflects a plurality of opinions has led, in the case of Timor-Leste, to significant levels of public showing of mistrust and open divergence between the two organs (up to the 2007 elections at least).

More than that: the off STAE played a major role in the preparation of the electoral laws of 2006, namely the Law 6/2006, passed by the National Parliament, which rules the procedures in the case of parliamentary elections. Among other items, this bill took the unusual step of replacing the formula used in the first ('foundational') national elections held in Timor – the Constituent elections of August 2001 – without any Constitutional justification, since the fundamental law of the land specifies that the 'conversion of votes into mandates will be done by a method of proportional representation' (article 65.4). But the 'Sainte-Lague method' used in 2001, which respects the constitutional mandate, was replaced

.....
127 See Feijó 2006 and Forthcoming 2010 for further elaboration

by the one the Portuguese experts aiding STAE were more familiar with – the ‘d’Hondt method’ (Feijó, 2010).

The background to this alteration can be summarized thus: in 2005, Ana Pessoa, then Minister for State Administration, asked the UN for technical aid in the field of election; the UN dispatched to Timor a *Needs Assessment Mission* who conducted his job and issued a report in which notice was duly taken of the delicate and intricate balance of powers in the country, the authorities to tackle electoral issues reaching further than the ‘government’ alone – but the expected follow up was slow, and in the meantime another letter had been sent to ask for Portuguese bilateral assistance, which was approved in a short time. The Portuguese team arrived in Dili by March 2006 to work with STAE, bypassing some of the recommendations of the UN team led by Judge Johann Kriegler, who insisted on the Parliament (not the Government) central role in passing the legislation and therefore in receiving the required assistance. As this process was under way, the President of the Republic, Xanana Gusmão, took an initiative to call all political actors to publicly discuss the electoral issues that required a parliamentary initiative¹²⁸ – and not a single participant thought the change of the ‘Sainte-Lague’ method to be among the issues to be raised.

This episode reveals the extent to which bilateral political relations between the governments of Timor-Leste and Portugal manage to make some goods available faster and in a more efficient way than the heavy, bureaucratic machinery of the UN – even if in this case the UN had a strong point of principle, that is, not to be seen as partisan (which the Portuguese government actually disregarded by engaging directly with one of the parts, the Fretilin-supported Government).

4.3. THE PHILOSOPHICAL FOUNDATIONS OF THE JUDICIAL SYSTEM

The third case is one of high controversy: the adoption by the Timorese authorities of juridical and judicial formulae in line with Portuguese, and thus Continental-European models, as opposed to the anglo-saxon tradition in this matter, with significant ‘clashes of paradigm’ (to recover the excellent formula of Tanja Hohe) involving part of the international community. One example will illustrate this point. The 2007 report by Freedom House on *Freedom in the World* reads:

‘A national debate erupted in early 2006 over a revised penal code that criminalises defamation and allows for fines and jail terms up to three years for anyone who publishes comments seen as harmful to an official’s reputation. Another revision doubles the term of imprisonment when defamation is committed through the media. The new code follows increased government efforts to crack down on journalists over the last three years, as reporting has

.....
128 I refer to a series of Conferences, the first of which was held with the participation of the then visiting President of the Portuguese Republic, Jorge Sampaio, in February 2006. I was then a member of the team charged with the organization of this conference and therefore I base my remarks on first hand knowledge of the way events unfolded.

grown more critical. The Prime Minister signed an executive order approving the new code in December 2005¹²⁹, alarming several international and press-freedom watchdog groups, which subsequently lobbied President Gusmão to veto the legislation right up to the date it was scheduled to come into effect in mid-February. Gusmão sent the law back to the Ministry of Justice for consideration on February 17, where it has remained since¹³⁰. The criminal defamation provisions of the Indonesian penal code apply until a new East Timorese penal code is promulgated”.

The following year, the annual report notes that the proposed Penal Code ‘has remained with the Minister of Justice for consideration since February 2006’ - after taking good note that elections had been held and a new government formed by the previous Opposition to Fretilin was now in power. In 2009, the new report states:

‘Press freedom is limited by criminal defamation provisions of the Indonesian penal code that continue to apply until the new East Timorese penal code is promulgated. An East Timorese penal code was finalised in October 2008, however, and was awaiting ratification by year’s end. The original draft of the bill maintained the defamation provisions of the Indonesian code, although the Ministry of Justice removed the criminal defamation provisions in September after public consultation, a move hailed by rights activists as a significant step towards expanding press freedom.’

The last report from Freedom House (2010) acknowledges the fact that the President signed the new government proposal for a Penal Code (30 March 2009) which, among other novelties, removed the contentious clauses on defamation. It does also take into consideration that all charges brought under the interim legislation were dropped after the new Code was enforced. Yet, surprisingly, Freedom House did not see it fit to reflect those positive changes in the rating for Civil Liberties in Timor Leste, maintaining it in line with those years when the issue was regarded as a threat to the freedom of the press...

Two comments are necessary at this stage: first, Freedom House is not alone in their claim that attempts promoted by Mari Alkatiri’s government to pass legislation that actually was not sanctioned by the President of the Republic, constitute a serious event that contributes to the penalty they imposed by lowering the mark from 3 to 4. Among others, Siapno (2006) and Simonsen (2006) have argued – even if using a question mark or referring to a temptation rather than an outcome – that Timor was drifting down a ‘path to authoritarianism’. As argued elsewhere (Feijó, forthcoming), the main thrust of the argument collides with the fact that the Constitution of the Republic, and the political and legal action of a sometimes underrated President of the Republic, seem to have provided enough guaran-

.....
129 Actually, the Penal Code was approved in a formal session of the Council of Ministers, thus involving the entire government

130 Technically, this was a compromise solution reached by agreement between the President of the Republic and the Prime Minister. This solution was made in order to avoid a former use of the vetoing powers of the President, and is not explicitly consecrated in the Constitution.

tees to fail those attempts and secure substantial revisions of the bills in question in line with the requirements of Human Rights standards.

Second, it is curious to notice that the criminal defamation provisions of the proposed Penal Code closely mimic similar dispositions of the Portuguese Penal Code (chapter VI, articles 180 and 183) – and Portugal, with those very same solutions for an important issue pertaining to the exercise of public liberties and the existence of a free press, has been consistently rated at top rate 1 by Freedom House...¹³¹

The elaboration of the Timorese Penal Code was made in the framework of an overarching agreement between the governments of Timor and Portugal, and a senior legal advisor was dispatched to work in close association with the Ministry of Justice in Dili. Other Portuguese specialists have also been working on other themes of the Legal and Judicial system of the new nation. The incident regarding criminal defamation was the noisiest of the problems raised by a multitude of local NGOs and local branches of international organizations (from UNICEF to International Labour Organization). More than detailed technicalities – which also occurred - most criticism to the original proposed bill derived from different philosophical approaches to Law and the Judicial system. In choosing the Portuguese in a part of the world where anglo-saxon models are dominant, Timor took a bold decision that requires consistency. Removing the broad framework from the discussion of single issues tends to obscure rather than illuminate what is at stake, as could be illustrated by the fact that failure to reach agreement over the new penal code meant that the Indonesian Penal Code – not known for its democratic and human rights virtues since it is the same one that existed at the time of Suharto dictatorship – has remained the law under which Timorese had to settle their disputes in this sensitive matter.

5. CONCLUDING REMARKS

The key to unravel the paradox of a feeble colonialism exercised by a country with limited democratic traditions such as Portugal, being transformed into a strong influence in the shaping of the basic elements of the newly independent Democratic Timor-Leste, defeating alternative models with large influence in neighbouring countries should be sought in the combination of two elements

- a. the rising influence of Democratic Portugal, directly or indirectly, on the leaders of the Timorese Resistance in the period between 1975 and 1999; and
- b. the evolution of the Timorese leadership in response to the emerging complexity of their own society in terms of plural forms of representation.

The first aspect encompasses at least three relevant components.

.....
¹³¹ However, the provisions of the Portuguese legislation have consistently been regarded by the European Court of Justice as contrary to human rights and thus the Portuguese authorities accumulate defeats at the hands of those judges, who stubbornly insist on a view that gives greater protection to freedom of expression.

First, the official stance of Portuguese authorities in international *fora*, namely in the United Nations, denying Indonesia the right to be recognized as a legitimate ruler of Timor-Leste, and maintaining the flame of the need for a proper act of self-determination under the auspices of the international community as a key to any solution of the Timorese question. This attitude was particularly significant in the 1980's when the forces of *realpolitik* took over many governments of western democracies, and Indonesia closed the gap in successive votes in the UN General Assembly, only to be prevented from actually reversing the trend by the combined impact of the fall of the Berlin Wall and the shockwaves of the dissemination of impressive images registered and circulated by Max Stahl of the Santa Cruz Cemetery bloodshed (November 1991) perpetrated by Indonesian military on defenceless, barehanded Timorese. The moral dimension of a small country struggling against the odds and the Great Powers to keep the Timorese question as an issue that required the involvement of the international community to challenge the use of force and redress the rule of international law was accrued in this critical period.

Secondly, after an initial phase in which former colonies had turned to radical, single party 'Popular democracies', those new African nations slowly turned to processes of democratization – of which Cape Verde is perhaps the leader and the most successful case – and were inspired by the Portuguese Constitution of 1976 (often helped by Portuguese advisors who had a significant impact in drafting the new constitution of a number of lusophone countries).

Mozambique is a special case, not only because of its ability to put an end to a protracted civil war and initiate a transition towards a new democratic and inclusive regime, but because this very process was witnessed first hand by an important part of the Timorese leadership, mostly of Fretilin, who had sought shelter in this western shore of the Indian Ocean. In this sense, one might argue that the transition to democracy in lusophone Africa in the 1990s indirectly touched the Timorese leadership and above all those who had the privilege of actually witnessing its impact in the healing of deep wounds from a civil war – not altogether unlike the memory of the events of the months leading up to the occupation of Timor Leste by the Indonesian forces.

Third, the reaction of the Portuguese public opinion made it easy –or even compulsory – for political decision-makers in the crucial months surrounding the Referendum of 1999, to engage in a substantial way in the aid efforts to the martyred brethren of Timor Leste. The flux of Portuguese co-operants to Timor-Leste, which reached several thousands, can be viewed as a reflex of the deep-rooted sentiments of the general public opinion¹³².

The issue of de-colonization had left scars in the memories of more than one generation. Although many were convinced that the "exemplary decolonization" was no more than what the circumstances created by stubbornness of the Salazar-Caetano regime would allow and thus accepted it with realism, in contrast to those who were severe critics of the whole process, most seemed to converge on a negative appraisal of the ways followed by

.....
132 Having been deeply touched by this wave of solidarity, and having been myself a co-operant in Timor-Leste, I reflect here upon my own experience, and dedicate this piece of work to one of the finest examples of this group of Portuguese who good-heartedly gave part of their lives in a mission of pure solidarity.

the former colonies (especially in the immediate aftermath of Independence) and, to a certain extent, dreamed of a really “exemplary decolonization” that Timor appeared, in 1999, to embody. The scope of public enthusiasm and mobilization can be gauged by the fact that the public reception to Xanana in Lisbon, in the end of summer 1999, is deemed to be the second biggest civic, public demonstration of the 20th century, being surpassed only by the 1st of May, 1974 – the public endorsement of the military coup of the previous week.¹³³ The impetus of the public support for an active involvement in the reconstruction of Timor Leste was thus a critical element in helping to shape the political decision.

But the other side of the coin must also be stressed: the evolution of the Timorese leadership, whose culminating point may be said to consist of the foundation, in 1998 – that is, one year before the critical agreement of May 1999 that paved the way for the Referendum to be held, and self-determination to be achieved through a democratic mechanism that the international community endorsed – of the *Conselho Nacional da Resistencia Timorese* (CNRT). Over the years, the Council successively dropped the ‘Revolutionary’ mention for the ‘National’ one, and later on the ‘Maubere’ epithet that was a remnant from divisive moments of History in favour of the plain, un-ideological ‘Timorese’.

CNRT brought together all the components of the Resistance to the Indonesian occupation, from those who had proclaimed independence on the 28 November, 1975, to those who had fought on the other camp in the brief civil war of the previous August and were disillusioned with the evidence of Indonesian brutality. 1998 marks the recognition that the Resistance was not the property of a single movement or group of personalities – it had embraced the vast majority of the Timorese. And Timorese society had, in the twenty odd years since the invasion by the giant neighbour, become a more complex one: to quote but a few examples, Dili jumped from 20,000 to 200,000 inhabitants, schooling grew from residual to encompass a sizeable share of the youth, the Catholic Church emerged as an autonomous Timorese voice, roads were built that facilitated contacts. Not surprisingly, new forms of organization and resistance were created – from RENETIL, the student’s network, to the emergence of the moderate sector who had sided with Indonesia in 1975.

Xanana was the first to acknowledge in the mid 1980’s the defeat of the political model inherited from 1975 and to break the ground for the new, polymorphic Resistance to emerge – and this was certainly not an easy move for a man trapped in the mountains (Mattoso, 2005). Falling in the hands of the Indonesians increased his international visibility – and maybe enhanced his instincts to broaden his views.

Ramos Horta, who had kept the flame alive as much as possible outside Timor, kept close relations with Xanana throughout the period. His familiarity with the changing conditions of post Cold War situation deepened the view he expressed in his Nobel Peace Laureate acceptance speech that Timor was ready for a Democratic future, as detailed in the Peace Program drafted by the then CNRM, when he expressed the view that

.....
133 I leave aside all references to religious manifestations, namely those which have taken place in Fatima

'we will endeavour to build a strong democratic state based on the rule of law which must emanate from the will of the people expressed through free and democratic elections' (Horta, 1996)¹³⁴

It was thus the merger of the Portuguese stance as a proactive Democratic state, a fore-runner and player of the 'Third Wave of Democratization', and the solo defender of Timor and Timorese rights in their years of solitude and abandonment, with the leadership that was eating the bitter bread of disillusion (both of 'revolutionary days of plenty' or 'respectful integration of a people with a soul of its own') and open to experience the taste of Democracy that thrived on a soil where few seeds had been sown before. The impact of Portugal on the political structures of the new nation, much more than the rhetoric about 'five centuries of constant presence', of which little was palpable in the realm of democratic institutions, principles and foundations, is the result of the works of one generation: the generation of Portuguese that built a democratic and solidary country, and the generation of Timorese who found in the opposition to the Indonesian violent occupation the reason to gather together, respecting diversity and worshipping peace.

So far, what has been established is the use of a Portuguese political grammar by the Timorese political elites in their endeavour to weave a new democratic administration. The extent to which this grammar has been translated in ways that empower the Timorese citizens at large to use them in order to express their voice remains a topic for further investigations.

Porto, 31 December, 2010.

.....
134 I wish to thank both Kay Rala Xanana Gusmão and José Ramos Horta, now respectively Prime Minister and President of the Republic of Timor-Leste for extensive interviews granted in November 2009, which form part of the accumulated knowledge used in the preparation of this essay.