

The structural marginalisation of the districts under UNTAET¹

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Introduction

Ever since his election in 2012, Timor-Leste's President TMR has been a crusader for the districts, decrying their poverty and disadvantage and calling for greater policy focus and expenditure on rural infrastructure and services. In his speech on the inauguration of the Vth Constitutional Government in August 2012 he observed:

State institutions contribute to the unbalanced development of the territory. Our centralized public administration has large, heavy structures in the capital, often providing poor quality services, and is almost absent from the districts where most of the population lives and social and economic deprivation is greatest. The state is not serving the vast majority of the Timorese people as yet (TMR 2012).

He returned to the same theme at the inauguration of the VIth Constitutional Government in February 2016, stating:

I'm concerned about our country's high level of poverty. When I travel to the *sucos* and *aldeias*, I see how many people still live in great deprivation. The previous governments have taken the first steps towards addressing this issue. But we need to do more and better in order to support our most deprived brothers and sisters. These situations of great poverty and deprivation hinder our national development (TMR 2015).

This paper suggests that the neglect of the districts by successive governments is, in part, a consequence of the structural marginalisation of the districts under the United Nations Transitional Administration in East Timor (UNTAET). While UNTAET's failure to recognise and engage with local systems of governance and local actors has been widely documented (see, for example, Chopra 2002, Chopra and Hohe 2004, Cummins 2010, Hohe 2002, Lemay-Hebert 2011), the combined effect of UNTAET decision-making in several domains on the districts has received less attention.

Two domains of UNTAET activity in particular have, in combination, left a lasting structural legacy for the districts. The first is the organisation of public administration in a way that arguably retarded the reach, quality and coherence of service delivery in the districts and the engagement of local people in service development and implementation. The second is UNTAET's preference for competitive party political processes as part of the normative blueprint it followed to build the machinery of state, which resulted in a parliament and executive largely unrepresentative of and unaccountable to local communities.

The organisation of public administration

The orchestrated campaign of destruction and displacement following the announcement of the results of the popular consultation and the subsequent withdrawal of Indonesia as the governing power of the territory of East Timor left a structural vacuum behind: there was no applicable constitution or body of law; there was no judicial system to interpret and apply the law; there was no executive to take high level decisions and no administration to implement those decisions; there was no fiscal system for the collection and disbursement of public revenues; there was no structure in place to extend the reach of government and the delivery of government services across the territory; and there was almost no intact public infrastructure or public records and no personnel in place to deliver public services. UNTAET stepped into the breach and it set about rebuilding the machinery of government from scratch. How to proceed was far from clear. What laws should apply? What sort of structure

¹ The analysis contained in this paper builds on the author's direct experience of the dynamics of state-building under UNTAET over the course of its mandate. From early 2000 she held various positions in UNTAET including district administrator and director of transition planning, and she subsequently served as chief of staff in UNMISSET until the end of 2002.

should be put in place for executive-level decision making? – the mandate vested all power in the Transitional Administrator, but with whom should he consult, and how and when should he devolve power. What functions should government perform, and how should government functions be grouped and organised? And importantly for this paper, how should the delivery of government services across the territory be organised? – should there be some element of decentralisation, and if so what form should it take: administrative deconcentration, or devolution of funding and decision-making to local representative bodies? These questions were frequently decided on the run with little analysis of the longer-term ramifications. Yet they locked in arrangements that would become the template for practice well into the future.

A decision to have an administrative presence in the districts was taken during the planning phase of UNTAET, with the UN Secretary-General advising the Security Council that a district administrator would be appointed to each district to oversee public administration and coordinate all UNTAET activities at the district level (UNSG 1999, paragraph 69). While these positions were filled early in the life of the mission, the administrations under them were poorly structured, resourced and staffed for their public administration role. The functional and organisational arrangements for district offices blurred the lines between core UN functions such as political affairs, human rights monitoring, fleet maintenance and personnel security on the one hand and the restoration of government services on the other, with the latter coming in a poor second. The job descriptions and skill sets of international professional and administrative staff other than the district administrator and his/her deputy concentrated on core UN functions, leaving UN volunteers to provide a small pool of generic personnel who could be deployed to support local service development.

As planning got underway on the establishment structure and recruitment of a national civil service in the first half of 2000, no explicit policy framework was articulated for the role of the district office as part of a system of national public administration, or for the gradual separation of the hybrid functions of the district offices into core UN and public administration streams with discrete roles and staffing arrangements. Timorese leaders pushed hard for the early recruitment of national personnel to district administrator positions but as this changeover was implemented progressively from late 2000, international administrators simply stepped aside for the first tranche of national recruits and again no consideration was given to disaggregating UN and national functions or to formulating a functional statement for a district office within a national structure of government.

While questions around the role and function of district offices within a national administration were never formally considered or addressed, by default a highly centralised form of public administration emerged under UNTAET that laid the foundations for the future. District administrators essentially supported, rather than coordinated or managed, most government services in their districts. The district staff responsible for basic services such as health, education and agriculture reported to head offices in Dili and had little to do with the district administration. The head offices determined priorities and budgets for their line staff in the districts and they generally had little organisational capacity and, in some cases, little inclination to engage with the district administrator or the local population. The result was that planning occurred in a vacuum and services at the district level were poorly coordinated across the sectors. The district administration was left to deliver residual functions and administrative support, without a budget allocation and, for the first couple of years, without any clear planning role.

During the hiatus after the popular consultation, CNRT cadres in the districts had supported the delivery of humanitarian assistance (de Mello 2000). But in keeping with UNTAET's determined impartiality, they were not formally involved in district administration or in liaison between UNTAET and local populations. Under pressure from national leaders, UNTAET introduced district advisory councils in July 2000. In the words of the official notification, they were a consultative mechanism to ensure "the participation of the East Timorese people in the decision-making process of the Transitional Government at District level" (UNTAET 2000). In practice the effectiveness of the councils was uneven, depending on the commitment of the district administrators who convened and chaired them, the local legitimacy of their members and the substance of the business they discussed. At best the councils were advisory and they did not become a feature of district administration over time.

In establishing district administrations, UNTAET missed a critical opportunity to deconcentrate public administration, to engage local populations meaningfully in decision-making on government

services and to achieve coherence in district planning and service delivery. Instead, it left a very weak government footprint in the districts and a legacy of operational and structural challenges that are still working their way through today.

The embedding of competitive party processes

UNTAET's mandate was to transition the territory of East Timor to independence, and both the Security Council and the Timorese leadership had their foot on the accelerator. For the UN member states, UNTAET was a large and expensive mission² funded by mandatory contributions to UN operations and delays in mission completion represented a direct cost to their national budgets. For many in the Timorese leadership, frustrated by UNTAET's domination of the transition process and positioning themselves for the new order, independence could not come soon enough.

A precondition for independence was the creation of legitimate political institutions, which could receive and hold sovereign power. These institutions would be enshrined in a constitution for the future state. In guiding the steps towards the development of the constitution, UNTAET reshaped the political landscape in both measured and unintended ways. Illustrative of this influence was the decline in authority of the National Council of Timorese Resistance (CNRT from its Portuguese acronym), the umbrella body formed in the lead-up to the popular consultation as the inclusive voice of the independence struggle, and the ascendancy of individual political parties.

In the months leading up to the popular consultation on East Timor's political future on 30 August 1999, a mission under the direction of the UN Department of Political Affairs was mandated to organise the ballot on the ground, and it adopted the CNRT emblem for the ballot paper to signify the independence option to voters. After Indonesia's withdrawal from the territory, CNRT confidently expected to partner with the UN in the transition process and saw the vote under its emblem as its badge of legitimacy. As Ramos Horta, CNRT's international negotiator, explained to the assembled media on 28 September 1999 after meetings at UN headquarters, in the 1960s and 1970s national liberation movements from countries such as Namibia and South Africa had been recognised by the UN General Assembly as the sole legitimate representatives of the people without their having been elected. "On the basis of the legitimacy that came from the 30 August referendum, the CNRT expected to be consulted at every level and to participate actively in the transition period" (UN media 1999). He was to be sorely disappointed.

UNTAET came under the direction of the UN Department of Peacekeeping Operations, whose dominant institutional culture was one of strict neutrality in dealings with parties on the ground, and so it operated in East Timor (Rodrigues 2003, 28; Suhrke 2001, 8). UNTAET treated CNRT as only one local party, albeit the principal one, and the relationship was to be one of consultation rather than partnership. This was evident in the language of the Transitional Administrator following his first meeting in East Timor with Xanana Gusmao, CNRT's president, where he adumbrated some form of consultative mechanism involving not only CNRT but other "protagonists" (UNTAET 1999). A few weeks later the first advisory body to UNTAET, the National Consultative Council, was established. CNRT was assigned seven places on the Council, while three places went to political groups outside CNRT. This representation was characterised in the enabling regulation as broadly reflective of the spread of votes in the popular consultation.

This same political spread carried over into the formation of the successor body, the National Council, which was appointed in October 2000. Strikingly, despite the language of the enabling regulation specifying seven (later amended to up to ten) representatives of CNRT, when the membership was announced the name CNRT was airbrushed out altogether. Instead each appointee was described as a political party representative, including the fiercely non-partisan Xanana Gusmao who had a visceral distrust of party politics and set himself above the partisan fray.

A few weeks before the National Council was appointed, the two major historical parties in East Timor, FRETILIN and UDT, had pulled out of CNRT, leaving only a rump of minor parties. Their defection followed closely on the heels of the CNRT congress held in late August 2000 which had sought to tie all the parties to a pact of national unity which set strict groundrules for political action. Arguably, the Transitional Administrator had set the scene for the defection in his speech to the

² The budget allocation for UNTAET operations in the 2000/2001 financial year was \$US563M (UNGA 2000)

congress, in which he observed that the new politics of nation-building were now coming to the fore, and UNTAET's consultative mechanisms in the future were bound to reflect the diversity of opinion. He described the political transition as a shared responsibility where CNRT, UNTAET, the National Council, political parties, civil society and international agencies must all work together, and he signalled the beginning of party political competition:

During the humanitarian crisis and the early period when fundamental institutions had to be created from scratch, I always stressed that East Timor needed unity between political parties. We had to make basic decisions necessary in the face of the devastation. I believe that the time is upon us when political difference and diversity will inevitably, and rightly, enter into the national debate on what is best for the future of East Timor.... Multi-party democracy requires this constructive debate between parties that differ on the issues but share a commitment to democracy itself. To allow for this, we will also have to develop the legal framework for the political and electoral process. We shall soon have to prepare a draft regulation on political parties [...] By setting the legal boundaries of political party activity, the current impatience that many parties are showing can be released into constructive, democratic and non-violent political debate (De Mello 2000).

UNTAET worked to a liberal peacebuilding template, and a competitive party system was part of the toolkit. This approach was bitterly derided by CNRT's president, Xanana Gusmao, in a message to the people on 31 December 2000. He decried "an obsessive acculturation to standards that hundreds of international experts try to convey", and observed that "(s)ome think that mere political party membership is a synonym for democracy". Referring to international staff he continued:

they forget how unaware they are of the whole process of our people's struggle and, therefore, encourage the expression of various forms of difference as if this was the only way of ensuring democracy. This...leads to a strong ill-feeling against the CNRT as if the CNRT was the main enemy of political parties and civil society (Gusmao 2000).

The institutionalisation of competitive politics was now well underway. One of the primary tasks of the National Council was to advise on the mechanisms for developing the constitution. It issued a discussion paper, invited public submissions and held hearings to consider options and formulate its advice. At the end of the process, it recommended that the constitution be developed by a Constituent Assembly of 88 members elected using a mixed electoral system: 75 should be elected under a single national constituency on a proportional basis, and 13 should be elected from each of 13 district constituencies on a first past the post basis. It also recommended that the Constituent Assembly should be transformed into the parliament when the constitution was promulgated. These recommendations closely mirrored the formal advice provided by UNTAET during the Council's hearings. When UNTAET's legal division drafted the regulation governing the process for electing the Constituent Assembly, it specified closed candidate lists for the national constituency: political parties would submit their candidate lists to the electoral office, and voters would mark a single party or an independent candidate on the ballot paper. The regulation set a high procedural bar for independent candidates, and in practice none contested the national constituency.

UNTAET was anxious to achieve a pluralist assembly, and the single national constituency it advocated was intended to deliver this outcome. The 13 district seats were a concession to representation of district interests. It was a matter of self-congratulation for UNTAET that 12 political parties won seats in the Constituent Assembly (de Mello 2003, 19). This was in reality something of a pyrrhic victory as one party – FRETILIN – held a majority of seats and, in combination with ASTD, held the supermajority needed to pass the constitution.

In line with the recommendation of the National Council, the Constituent Assembly did become the national parliament at independence and, in the electoral law drafted prior to the first post-independence election in 2007, the handful of district seats were abolished altogether. The provision allowing for independent candidates was also dropped: the electoral law specifies that 'Members of Parliament shall be elected through plurinomial lists, presented by political parties or party coalitions, and each voting citizen shall be entitled to one single vote in the list' (Law 6/2006, Art. 11).

The electoral system that UNTAET had shaped behind the scenes had serious ramifications for district representation and voice. The adoption of a single national constituency and a closed list of candidates means that members of parliament owe their position to the political party that assigns them a winning slot on the party list and they have no direct personal accountability to voters. From the perspective of voters in the districts, there is no-one who identifiably represents their local interests, who is locally based and to whom they can easily make representations and over whose performance they can exercise any direct leverage.

The entrenchment of competitive party politics as the route to legislative and executive power has left little if any room for a committed local leader operating outside the party system. After independence, political party affiliation became the *only* path to membership of the legislature, and the appointment of prime ministers was made by the president on the advice of the officials from the political party with a plurality of votes or the alliance of parties with a parliamentary majority (Constitution Art. 106, Portuguese text).

Conclusion

The administrative and electoral systems developed under UNTAET arguably contributed to the isolation and under-development of the districts. Weak district administration, coupled with little and later no local political representation, muted the voice of the districts within government and blighted the prospects for a coordinated, concerted approach to people-focussed district development.

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