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The role of electoral systems within United Nations peacebuilding: the case of Timor-Leste

Tese de doutoramento em Relações Internacionais - Política Internacional e Resolução de Conflitos, orientada pela Prof. Doutora Paula Duarte Lopes, e apresentada à Faculdade de Economia da Universidade de Coimbra

Setembro de 2016



UNIVERSIDADE DE COIMBRA



FEUC FACULDADE DE ECONOMIA
UNIVERSIDADE DE COIMBRA

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The role of electoral systems within United Nations peacebuilding: The case of Timor-Leste

Doctoral Thesis in International Politics and Conflict Resolution, submitted
before the Faculty of Economics, University of Coimbra, to achieve the
Doctoral Degree

Supervisor: Prof. Doutora Paula Duarte Lopes

Coimbra, 2016

Acknowledgements

Pursuing a PhD is a long and enduring process, that one cannot possibly achieve alone. During my PhD I have been fortunate to cross my way with wonderful people and this thesis is also an outcome of this.

I would like to thank my mother, for her constant patience and unconditional support, my sister, and Preta, for the constant joy. I would like to thank Miguel, for the presence, and Diana, my constant friend.

In Coimbra, in my PhD programme, I met great people, whose energy – and hard work - was contagious. I would like to thank first and foremost to Paula Duarte Lopes, my supervisor, for the constant optimism and encouragement. I would also like to thank Maria Raquel Freire, Daniela Nascimento, Licínia Simão, André Barrinha and José Manuel Pureza. I met great colleagues that soon became friends, namely Vanda Dias, Sarah da Mota, Tiago Fazenda, Pedro Reis and João Pinto, who I also thank for our challenging and interesting conversations. The research project on Timor-Leste also allowed sharing great experiences, and the constant good mood of António Leitão and Ramon Blanco were a great part of it.

The periods I have spent in Timor-Leste constituted a fantastic experience, of great learning at many different levels. Dr. Jorge Miguéis was the great encourager, to whom I should thank, also for the constant and caring support.

I would like to thank all my interviewees for their availability in sharing their fascinating experiences and their always-kind availability. Many names come to my mind, and I am indeed grateful to having met and talked to all of them. The list is vast, but this was undoubtedly the most fascinating and richest parts of my research.

I would like to thank Fundação Oriente, both in Lisbon, as well as in Díli, including all the Díli staff, for the kind and always-helpful support. The National Archives of the Timorese Parliament, and their staff, including from the Portuguese Parliament, were always of great help. I would also like to thank the Timorese National Electoral Commission and the Commissioners, particularly Dulce Vítor, Faustino Cardoso and Agostinho Belo. The TLSA Conferences, their committed

organisers and participants, also provided for a rich exchange of perspectives. I would also like to thank in particular to Michael Maley and Sue Ingram.

My visiting period at The Electoral Integrity Project, at the University of Sydney, was one of the great periods of pursuing my PhD. This was a fantastic experience, shared with a great, committed, but foremost kind and generous team. I would like to thank Prof. Pippa Norris, Ferran Martinez i Coma, Richard Frank, Jeffrey Karp, Max Grömpig, Lisa Fennis, Alessandro Nai, and my visiting colleagues.

A great thank you to Marisa Ramos Gonçalves and Manuel Ribeiro, my “Australian family”. Tracing backwards, this needs to add Rita Correia Alves, Sara Almeida and Nuno Costa, the great friends and best “travelling crew” in Timor-Leste.

I would like to thank my CUBA friends, Antje Disterheft, Maria João Fonseca, Rui Alves, Carlos Bártolo, Ulrike Kőrber, Israel Guarda, Luísa Cardoso, and many more, for the constant joyful presence and happy lunches. Gustavo Toshiaki, Nuno Serra and Gustavo Behr should also be mentioned.

There is so much involved in doing a PhD that one has the feeling that it can never acknowledge all the people and organisations that might have contributed to it. Among these I surely have to mention the Portuguese National Electoral Commission, Fundação Calouste Gulbenkian and ISEG. I also have to thank Prof. Ana Prata for our quiet working sessions.

I have been a beneficiary of several grants, without which this research would not have been possible. FCT was the main supporter, but I also acknowledge the travel grants received from the International Studies Association (ISA) and Escola de Estudos Avançados (EEA) - Fundo de Apoio aos Estudantes de Doutoramento, and the support from Fundação Oriente.

Finally, one wonders what the scope of these acknowledgements should be. From the year I have started my PhD, in 2010, so much has happened and so many different people, friends, colleagues and institutions have crossed my way, that maybe I should be indeed grateful to all of them. To enumerate would be unfair. The list is vast and rich, and so was this great adventure.

Financial support

This research was funded by the Foundation for Science and Technology (FCT), with the Doctoral Grant SFRH/BD/79096/2011.

I would also like to acknowledge the FCT Research Grant PTDC/CPJ-CPO/115169/2009 - FCOMP-01-0124-FEDER-014433 for the project “Peacebuilding and sustainable peace: UN missions in Timor-Leste and Portugal's contribution”, in which I took part.



Summary

This thesis uses an institutional approach to demonstrate how the institutionalisation process is not neutral, and can have strong subsequent impacts, in particular within a peacebuilding process. As institutions can be both constraining and constructive, the initial institutionalisation process also had powerful impacts on the subsequent process. In this regard, we further analyse the development of United Nations (UN) electoral assistance, highlighting its evolution and the substantial elements it encompasses, substantiating important political options. As UN electoral assistance is often labelled as technical, this hinders the political scope that these choices and their institutionalisation necessarily entail. Especially in the context of UN peace missions, electoral assistance started to play a more central role. The growing complexity of UN involvement was not followed by substantial guidelines, leaving aside the theoretical debate on the deep implications of electoral options. In order to highlight this aspect, we also provide an account of the substantial factors at stake within electoral systems' design, the main components this can entail and the likely consequences this can have.

In order to illustrate this debate in practice, we analyse the case of Timor-Leste. The most important element of this analysis were the semi-structured interviews carried out with key Timorese political actors. The UN presence in Timor-Leste started in 1999, with the organisation of a Popular Consultation. The Timorese opted for independence and a UN peace mission followed, in order to make the transition for the new independent state. The UN mission, UNTAET, had a broad mandate. Building the new Timorese state and its institutions was the following step and substantial options were at stake. This was a complex process, where UN options and domestic preferences and dynamics intertwined. The previous Timorese consensus developed during the resistance started to vanish and the UN seemed not to take internal political tensions into account. The UN approach was often performed in a top-down approach. At the same time the internal tensions also led to a UN-antagonism, and there was a move for a rapid UN exit. The Constituent process

developed, with strong participation from all political parties, and the UN was left aside since very early. Nevertheless, the UN previous institutional design had a strong impact, especially on the framework it created for competing political actors. State institutions were crafted and these soon channelled political competition in the new independent state.

Timor-Leste became formally independent in 2002 and the UN presence remained, aiming at consolidating the state and its institutions. An area of strong UN support was electoral assistance, especially in preparation for the 2007 general elections. The Timorese electoral system and its crucial options had to be developed, with important institutional impacts. The Timorese electoral system was the result of autonomous Timorese decisions and well informed options, led by the executive and further approved in the Timorese parliament. In general, it was consistent with the international standards, being the product of very precise choices and specifically designed to have an impact in the Timorese reality. Several types of UN electoral assistance were provided, especially regarding the organisation of elections. In the 2012 general elections, UN electoral assistance was also provided, through different forms. Despite this assistance, several problems persisted, even perhaps growing stronger and the UN electoral assistance was not seen as mitigating any of these. Labelling electoral assistance as essentially “technical” renders invisible the political character and impact of the options made. If UN electoral assistance is implemented without taking the broader goals (and context) into account, it risks being counter-productive regarding the promotion of peace and democracy. Particularly, in the case of Timor-Leste, a well informed and aware elite seemed to have taken the lead since very early, and the UN electoral assistance risked being an instrument to shape and strengthen institutions, especially regarding elections, to better suit the aims of leading political actors.

Overall, in the case of Timor-Leste, political competition was channelled through the liberal state institutions, shaping and deepening political grievances. There seems to exist a consensus nowadays among the Timorese regarding the adequacy of these institutions to Timor-Leste and its social and political reality. The

institutional design is seen as adequate, channelling political action. State institutions have been used within their scope and, many times, to the most of their institutional flexibility, very likely due to the checks and balances these allow for.

Keywords: Institutions, United Nations, elections, peacebuilding, Timor-Leste

Resumo

A presente tese utiliza uma abordagem institucional de forma a demonstrar que o processo de institucionalização não é neutro, e podendo ter um forte impacto subsequente, especialmente no processo de consolidação da paz. Uma vez que as instituições podem ser constrangedoras ou constitutivas, o processo inicial de institucionalização pode ter um forte impacto nas fases subsequentes. Deste modo, analisamos seguidamente o desenvolvimento da assistência eleitoral da Organização das Nações Unidas (ONU), salientando a sua evolução e os elementos substanciais que envolve, dando forma a importantes opções políticas. Sendo a assistência eleitoral da ONU muitas vezes denominada “técnica”, esta denominação torna difusa o carácter político que as opções em causa, e a sua institucionalização, necessariamente envolvem. Especialmente no contexto de missões de paz da ONU, a assistência eleitoral começou a desempenhar um papel mais central. A crescente complexidade do envolvimento da ONU não foi seguida por orientações substanciais, deixando de lado o debate teórico quanto às profundas implicações das opções eleitorais. De modo a sublinhar este aspecto, damos também conta deste debate, nomeadamente quanto aos factores substanciais em causa na criação de um sistema eleitoral, principais componentes e prováveis efeitos dessas opções.

Para ilustrar este debate, analisamos o caso de Timor-Leste. A presença da ONU começou em 1999, com a organização da Consulta Popular. Os timorenses optaram pela independência e seguiu-se uma missão de paz, de modo a fazer a transição para o novo Estado independente. Construir o Estado timorense e as respectivas instituições foi o passo seguinte, estando em causa opções substanciais. Tratou-se de um processo complexo, onde as opções da ONU e as preferências domésticas se entrecruzavam. O consenso previamente existente entre os timorenses começou a desvanecer-se, e a ONU pareceu não ter tomado devidamente em conta as tensões políticas internas. A abordagem da ONU foi maioritariamente levada a cabo de uma forma “top-down”. Ao mesmo tempo, as tensões internas levaram também a algum antagonismo quanto à presença da ONU, manifestando o

desejo de uma rápida saída da ONU. O processo constituinte desenvolveu-se, com uma participação forte de todos os partidos políticos, tendo a ONU sido de certa forma deixada à margem deste processo. No entanto, a prévia configuração institucional da ONU teve um forte impacto, especialmente quanto ao quadro que criou para a competição entre os diferentes atores políticos. As instituições do Estado foram desenhadas e em breve canalizariam a competição política no novo Estado independente.

Timor-Leste tornou-se formalmente independente em 2002. Manteve-se a presença da ONU, com o objectivo de consolidação do Estado e das suas instituições. Uma área de forte apoio da ONU foi a assistência eleitoral, especialmente na preparação para as eleições gerais de 2007. O sistema eleitoral timorense teve importantes impactos institucionais. Foi o resultado de decisões autónomas dos timorenses e de opções informadas, lideradas pelo executivo e posteriormente aprovadas no parlamento nacional. Em geral é consistente com os standards internacionais, sendo o produto de escolhas bastante precisas e tendo sido especificamente desenhado para ter impacto na realidade timorense. A ONU prestou vários tipos de assistência eleitoral, especialmente no que se refere à organização das eleições. Nas eleições gerais de 2012 foi também prestada assistência eleitoral, de um modo diverso. Apesar disto, muitos problemas persistiram, até talvez crescendo em intensidade, não tendo ficado demonstrado que a assistência eleitoral da ONU os tenha mitigado. Denominar a assistência eleitoral como “técnica” torna invisível o carácter político e o impacto das opções efectuadas. Se a assistência eleitoral da ONU for implementada sem ter em conta objectivos mais vastos (e o contexto), arrisca-se a ser contraprodutiva quanto à promoção da paz e da democracia. Especialmente no caso de Timor-Leste, uma elite bastante informada pareceu ter liderado o processo desde muito cedo, e a assistência eleitoral da ONU corre o risco de ter sido um instrumento para moldar e reforçar as instituições, especialmente quanto às eleições, de modo a permitir que alguns atores políticos pudessem mais facilmente atingir os seus objectivos.

Em geral, no caso de Timor-Leste, a competição política foi canalizada através das instituições do Estado liberal, dando forma e aprofundando as rivalidades políticas. Parece existir atualmente um consenso entre os timorenses acerca da adequação destas instituições a Timor-Leste e à sua realidade social e política. O desenho institucional é visto como adequado, canalizando a ação política. As instituições do Estado têm vindo a ser usadas dentro do seu âmbito e, muitas vezes, até ao máximo da sua flexibilidade institucional, muito provavelmente devido ao sistema de equilíbrio de poderes que proporcionam.

Palavras-chave: instituições, Nações Unidas, eleições, consolidação da paz, Timor-Leste

List of acronyms and abbreviations

APODETI – *Associação Popular Democrática Timorese* (Timorese Popular Democratic Association)

ASDT - *Associação Social Democrata Timorese* (Timorese Social Democratic Association)

CNE – *Comissão Nacional de Eleições* (National Electoral Commission)

CNRT – *Congresso Nacional de Reconstrução de Timor-Leste* (National Congress for the Reconstruction of Timor-Leste)

CNRT – *Conselho Nacional da Resistência Timorese* (National Council of Timorese Resistance)

DPA – Department of Political Affairs

DPKO – Department of Peacekeeping Operations

EAD – Electoral Assistance Division

EAU – Electoral Assistance Unit

EMB – Electoral Management Body

ETTA - East Timor Transitional Administration

EU – European Union

EU EOM – European Union Electoral Observation Mission

F-FDTL – *Falintil-Forças de Defesa de Timor-Leste* (FALINTIL – Defence Forces of Timor-Leste)

FALINTIL – *Forças Armadas de Libertação e Independência de Timor-Leste* (Armed Forces for the Liberation and Independence of Timor-Leste)

FRETILIN - *Frente Revolucionária do Timor-Leste Independente* (Revolutionary Front of Independent Timor-Leste)

GA – General Assembly

IDEA - International Institute for Democracy and Electoral Assistance

IDP – Internally Displaced People

IEC - International Electoral Commission

IFES - International Foundation for Electoral Systems

KOTA - *Klibur Oan Timor Aswain* (Association of Timorese Heroes)
MP – Member of Parliament
NAM – Needs assessment Mission
OHCHR - Office of the United Nations High Commissioner for Human Rights
OSCE – Organisation for Security and Cooperation in Europe
PD – *Partido Democrático* (Democratic Party)
PPE - Pact for a Peaceful Election (*Paktu ba Eleisaun Pasifika*)
PR – proportional representative
PT - *Partido Trabalhista* (Labour Party)
SC – Security Council
SG – Secretary General
SR SG – Special Representative of the Secretary-General
STAE – *Secretariado Técnico da Administração Eleitoral* (Technical Secretariat for Electoral Administration)
STAPE - *Secretariado Técnico dos Assuntos para o Processo Eleitoral* (Technical Secretariat for the Electoral Process Matters)
UDT - *União Democrática Timorese* (Timorese Democratic Union)
UN – United Nations
UN GA – United Nations General Assembly
UN NAM – United Nations Needs Assessment Mission
UN SC – United Nations Security Council
UN SG – United Nations Secretary-General
UNAMET - United Nations Mission in East Timor
UNAMISIL - United Nations Mission in Sierra Leone
UNAVEM - United Nations Angola Verification Mission
UNDP – United Nations Development Programme
UNHCR - United Nations High Commissioner for Refugees
UNMISSET – United Nations Mission of Support to East Timor
UNMIT - United Nations Integrated Mission in Timor-Leste
UNOTIL - United Nations Office in Timor-Leste

UNTAC - United Nations Transitional Authority in Cambodia

UNTAET - United Nations Transitional Administration in East Timor

UNTAG - United Nations Transition Assistance Group

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Introduction

This thesis focuses on the design of electoral systems in post-violent conflict societies, in particular on the institutional setting and electoral system design within United Nations (UN) peace interventions. The main aim is to highlight the impact different institutional choices, in particular regarding electoral systems, have on the consolidation of peacebuilding efforts. Institutions, including electoral systems, are not neutral. The choice of electoral systems has an impact on the political stability of the societies where these are being implemented. For the UN, elections became a crucial instrument of democratisation and peace interventions. Nevertheless, the institutional choice of electoral systems has necessary impacts, which should be addressed carefully. Institutional design needs to be informed by local characteristics, as otherwise these might not be adequate and sustainable, failing the aim to build a sustainable and democratic peace.

This research has Timor-Leste as a case study, as it is presented as a successful case regarding the sustainability of the institutional and democratic model implemented. It analyses the way in which the UN intervention was carried out regarding the definition of the democratic institutions, the electoral system, how local realities that existed previously were taken into account in this process, and how the whole process addressed the articulation between the global and the local. We also address the effects electoral systems, a very important element of statebuilding, might have on peacebuilding and, therefore, point out the importance of careful electoral design within the peacebuilding policies.

The research question is what impact does UN electoral assistance, especially electoral systems design, have in the political stability of a post-violent conflict country. The main argument is that the institutional design within UN peace interventions, particularly regarding electoral systems, is done on a top down approach, not necessarily reflecting or taking into account the local reality. Hence, these risk contributing to a fragile political and social fabric, instead of contributing to consolidate peacebuilding. The case of Timor-Leste provides evidence that an institutional design, which includes the

participation of local population and reflects local realities, contributes to the embedment of peace processes through institutional building.

The dependent variable is the contribution of electoral systems to peacebuilding, political governance and stability, on the framework of peacebuilding interventions. In situations of peace missions' interventions, electoral systems are often supported and promoted by external actors through peace missions and external electoral assistance. The independent variables, which explain the positive or negative contribution to peacebuilding of the electoral system, are electoral design, namely the outcomes of different designs regarding the relation of powers and the stability of that relation, and the level of involvement of local actors and specificities in that design. The latter, the level of involvement of local actors, is measured by the compatibility of the electoral design with the local existing power distribution reality, namely if locals were involved in the discussions and how this reality was taken into account, and by the further use of the designed institutions. These questions are addressed regarding UN peace interventions and the design of electoral assistance, being also informed by the scientific literature on the impact of electoral systems and their specific factors, especially on post violent conflict societies.

1. State of the art

Electoral systems are a powerful tool of social engineering, with strong consequences at the level of party systems, parliamentary compositions and the democratic durability and stability (Norris, 2002a: 1), among others. Many authors consider electoral systems as one of the most powerful tools of constitutional engineering, able to be used to mitigate conflicts in divided societies (Horowitz, 1985, 1991; Lijphart, 1977, 1994; Reilly and Reynolds, 1999: 6; Sartori, 1968). These are important characteristics to take into account on democracy promotion, especially by international agencies on peacebuilding (Norris, 2002a: 292). The choice of the electoral system is often considered one of the most important factors in society, being one of the most important institutional mechanisms for shaping political competition, as the type of electoral system that is used, as well as its design, can have a deep social impact and can also shape the expected political outcomes (Reilly and Reynolds, 1999: 6).

Electoral systems have been analysed exhaustively by Duverger (1954, 1964) and Rae (1971) and a typology of electoral systems and its impact on the political system has been developed. Rae (1971) classified electoral systems according to two dimensions, namely district magnitude and electoral formula. Duverger argued that the simple-majority ballot system favours the two-party system (1959: 217) and that on the other hand, proportional representation systems favour multipartyism (Duverger, 1959: 239). Authors like Hermens (1941) and Finer (1949) argued that small parties were helped by proportional representation systems, which allowed for a broader representation of society. Duverger focused primarily, and for the first time, not just on electoral systems but rather on the outcomes these produce (Duverger, 1959), paving the way for the subsequent field of electoral studies (Benoit, 2006: 72; Sartori, 1968).

Following Duverger work, many authors have studied the consequences of electoral systems in areas such as minorities, including ethnic and religious (Reynolds, 2006), the representation of women (CDL - AD, 2006; Norris, 1999, 2002a), policy formulation, coalition formation and its durability, and corruption (Benoit, 2006: 80). In the 1990s this area of study has expanded, with the new democratisation waves (Huntington, 1991), allowing for a wider field of studies (Lijphart, 1999; Norris, 2002a: 294). It undoubtedly showed the need for careful electoral system design, as a key factor for new democracies (Reilly and Reynolds, 1999: 25).

However, it seems consensual that there is no perfect system in democracy, since each system has necessarily positive and negative effects, but rather different systems that work better or worse according to the characteristics of the societies where these are being implemented (Norris, 2002a: 294; Reynolds and Reilly, 1997). The choice of the electoral system often implies a trade-off between its potential effects (Reynolds and Reilly, 1997). Everything depends on the characteristics of the given society, and the electoral system choice should be informed by a deep knowledge and main role of the local, as electoral design is highly sensitive to context (Reilly and Reynolds, 1999; Reynolds et al., 2005). The main and fundamental role should be given to the local actors and their knowledge of domestic conditions and priorities (Reilly and Reynolds, 1999: 2). This is deeply connected with legitimacy, as many authors argue that the liberal

peacebuilding model excludes citizens from the emancipation process and that these should be involved in the everyday dynamics, broadening the scope of any intervention (Richmond, 2009: 578). Participation should therefore be a constant commitment, ensuring an effective control of the people over decision processes (IDEA, 2012a: 1).

Despite the choice of the electoral system being one of the most important institutional decisions in a democracy, as it has a deep effect on the country's future political life (Reynolds et al., 2005), it is rarely the case that electoral systems are consciously and deliberately chosen (Reilly and Reynolds, 1999: 23). It is also rarely the case that electoral systems are carefully designed, taking into account the historical and social characteristics of a country (Kadima, 2001). Many electoral related conflicts derive from the electoral system design, many times more concerned with the technical principles and rules rather than with their adequacy to the local context (Iff, 2011: 9). Especially on new democracies, this might prove to be disastrous for the country's future democratic stability (Reilly and Reynolds, 1999: 23).

The United Nations has maintained great interest on democratisation and in particular on the electoral area (UNDP, 2002). This was done in three different areas, namely by continuously developing the principles of elections, by supporting new or restored democracies and by respecting national sovereignty (Goodwin-Gill, 2006: 12). In 1992 the UN Secretary-General (UN SG) nominated a focal point for electoral assistance and the Electoral Assistance Unit (EAU) was created the same year. In the seminal document "An Agenda for Peace", of 1992, the UN SG Boutros-Ghali, when addressing post-conflict peacebuilding, mentioned election monitoring, the strengthening of institutions and political participation promotion as requiring respect for human rights and fundamental freedoms (A/47/277-S/24111, 1992) and the UN General Assembly (UN GA) adopted several resolutions stressing the need of having periodic and genuine elections, thus promoting democratisation. In 1995, in the document "An Agenda for Development", popular participation, democracy and development were seen as interconnected and should be ensured, in order to minimise the risk of violent conflict (A/48/935, 1994). Great popular participation would also, through democracy, assure broader societal goals and objectives (A/48/935, 1994). In the final position paper "An

Agenda for Democratisation”, Boutros-Ghali highlighted the consensus about democratisation, stating that “democracy contributes to preserving peace and security, social justice and human rights, and promoting economic and social development” (Boutros-Ghali, 1996). This approach undoubtedly broadened the scope of electoral assistance. The debate followed and several UN documents stressed the need to continuously readjust the types and objectives of the electoral assistance being provided by the UN.

The UN has continuously provided electoral assistance to its member states, in accordance to the principles of the Charter and the Universal Declaration of Human Rights (Goodwin-Gill, 2006: 12). Electoral assistance has as main objectives

(a) To assist Member States in their efforts to hold credible and legitimate elections in accordance with internationally recognized criteria; (b) To contribute to building, in the recipient country, a sustainable institutional capacity to organize democratic elections that are genuine and periodic and have the full confidence of the contending parties and the electorate (A/56/344, 2001: 344).

Nowadays the UN interest on democratisation goes beyond free and fair elections and looks also at their broader results for societies, namely representative and accountable governments (Goodwin-Gill, 2006: 12; UNDP, 2002: 49) and there is a common consensus about the need of a broad participation by all sectors of civil society, thus assuring a balanced representation of society and strengthening democracy (Goodwin-Gill, 2006: 12).

Electoral assistance can be provided in many different ways (Kumar, 1998; UNDP, 2002). It can be included, when mandated by the UN Security Council (UN SC), in peacekeeping missions and special political missions, most of the times in association with the United Nations Development Programme (UNDP) projects (UNDP, 2002; United Nations, 2012: 15). However, the UN can also provide electoral assistance to countries where no peace mission is present (United Nations, 2012: 15). Currently it is the United Nations Electoral Assistance Division (EAD), comprised in the Department of Political Affairs (DPA), that is the main responsible for electoral assistance across the world (United Nations, 2012: 15). However, electoral assistance provided by the UN is multidimensional and involves multiple agencies and departments. Among these we can find EAD, the Department of Peacekeeping Operations (DPKO), UNDP, the Department of

Field Support, UN Women and the United Nations Office for Project Services (United Nations, 2012: 15).

In several General Assembly Resolutions it has been decided that the UN electoral assistance can only be provided upon request of the member state and that it is up to governments the main responsibilities of organising free and fair elections (Goodwin-Gill, 2006: 18). It has also been recognised that a greater number of states is “using elections as peaceful means of discerning the will of the people and of confidence building, thereby contributing to greater national peace and stability” (A/RES/54/173, 2000) and the UN GA requested UN electoral assistance to be provided “on a case-by-case basis in accordance with the evolving needs of requesting countries to develop, improve and refine their electoral institutions and processes” (A/RES/56/159, 2002).

UN electoral assistance is often provided through technical support (Risley and Sisk, 2005: 28; United Nations, 2012: 16). This can include advice to national electoral management bodies (EMBs), civic and voters’ education, promotion of the representation of women and minorities, logistical and operational support, materials support, international electoral assistance, coordination and support to the media and political parties (UNDP, 2002: 2002; United Nations, 2012: 16). There are also several cases where the electoral system has been designed by the UN. One of these was Timor-Leste, where a robust UN peace mission was in place, and another is Cambodia (UNDP, 2002), where the Electoral Law and the Code of Conduct for Political Parties were provided by the United Nations (Goodwin-Gill, 2006: 105). These latter were both products of the UN and individual experts’ contribution, being only subsequently accepted by Cambodians (Goodwin-Gill, 2006: 106). The UN GA recognised the importance of electoral systems design and of its main components. In particular, it mentioned the importance of

(d) Developing, nurturing and maintaining an electoral system that provides for the free and fair expression of the people’s will through genuine and periodic elections, in particular by: (i) Guaranteeing that everyone can exercise his or her right to take part in the government of his or her country, directly or through freely chosen representatives; (...) (iii) Taking measures, as appropriate, to address the representation of under-represented segments of society; (iv) Ensuring, through legislation, institutions and mechanisms, the freedom to form democratic political parties that can participate in elections, as well as the transparency and fairness of the electoral process, including through appropriate access under the law to funds and free, independent and pluralistic media (A/RES/55/96, 2001: 96).

According to the UN, the common objective is, in all cases of electoral assistance, “to build sustainable peace and development through supporting Member States in holding periodic, credible and genuine elections and establishing nationally sustainable electoral processes” (United Nations, 2012: 16). The UN also highlights that each electoral assistance mission is designed on a case-to-case basis and that no ready-made model of intervention exists (United Nations, 2012: 16). However, an important aspect is the need for coherence, predictability and accountability in UN’s electoral assistance (United Nations, 2012: 16) and there is a continuous lack of harmonisation regarding the way the UN establishes which assistance to provide and how its electoral policy is developed (United Nations, 2008: 16). There needs to be a wider assessment of the electoral implications on peace and stability of countries (UNDP, 2009b) and there is little account in UN documents for the potential effects of its electoral approach and the effects of that electoral design.

As Benoit points out, to study electoral systems creation often requires a detailed contextual knowledge, as the creation of an electoral system often implies recreating the role of its actors and preferences (Benoit, 2006: 78). Moreover, when the electoral systems design occurs in the context of an external post violent conflict intervention, greater attention is needed in order to take these factors into account. It is, therefore, crucial to enquire whether the consensual reported impacts of the electoral institutional design are considered, and how, in the electoral system design in the context of UN peace interventions.

Paradoxically, as there is an increasing recognition of electoral systems as crucial part of institutions of governance (Norris, 2004b; Shugart, 2005: 52), there is a lack of research on “the study of origins—and of reciprocal effects between the correlates of electoral-system selection and subsequent effects of the chosen system” (Shugart, 2005: 51). Despite all the studies regarding the elements and the effects of electoral systems, electoral consequences have been studied more intensively than electoral system origins (Benoit, 2006: 78; Reilly and Reynolds, 1999: 8) and there is still not much work on why an electoral system is chosen over the other (Benoit, 2006: 78; Shugart, 2005: 51). This may in part be due to the fact that the creation of electoral systems does not happen that

often, adding to the fact that once designed, electoral systems are seldom reformed (Shugart, 2005: 51).

Shugart highlights the importance of studies “that look at the effects of electoral reform in one country, as these are comparing two electoral systems even if they are not comparing two or more countries”, and “allow much to be held constant, and thus help us understand both the power of electoral rules and their limits to changing political behavior” (Shugart, 2005: 29), considering them comparative studies. In this regard, a crucial aspect in electoral reform is to see “in one country how electoral politics responds to changes in the electoral system” (Shugart, 2005: 34), as they provide “researchers with unusual opportunities to vary the electoral system while holding much else constant” (Shugart, 2005: 35). This would be “the origins, or ‘engineering’ side, of the study of electoral systems”, highlighting the important “political process attendant in selecting and reforming electoral systems” (Shugart, 2005: 27).

This is precisely the aim of this research: to take advantage of the recent electoral system creation, under the aegis of a post violent conflict intervention, and study how this was created and how the local realities were duly encompassed. It seizes the fact that not much work has been carried out in this area and intends to deepen this approach, especially on the context of democracy creation, strongly rooted on empirical data, from the Timorese case study.

2. Case study: Timor-Leste

In order to illustrate this in practice, the research includes a case study: Timor-Leste. This has been the first state to be built from the beginning through a UN intervention (Gorjão, 2004: 1044), with a UN mandate that even included the control of the territory. It has been pointed out as a true test to statebuilding policies, in its different aspects (Richmond and Franks, 2008). Furthermore, the 2012 electoral cycle served as a test to the maturity of the national institutions and, therefore, to determine if the UN presence, through the electoral system implemented, has contributed to the political and social stability of the country (S/RES/1704, 2006: 3). The formal institutions of the liberal state were given a major importance and there was little consideration to

reflect the social organisation of the country on these. There was, therefore, a divide between the liberal state institutions and the population.

We argue that in Timor-Leste the electoral model was initially adopted without taking into account the local realities, being therefore distanced from the majority of the population, with an exception to the local elite based in Díli. This approach aims at contributing for this debate, focusing on the possibility of disconnection between the defined policies and the results achieved. For this purpose, it is necessary to understand how these policies have been implemented and with which direct effects. This defines another research question, regarding how these interventions are conceived. The objective is, through the case study, to identify ways of centring UN statebuilding policies on the electoral field on the local dynamics in a structural, sustainable and autonomous way.

After the Indonesian occupation of Timor-Leste, in 1975, the UN condemned it for the first time on 12 December 1975, through a UN GA Resolution, and later on 22 December 1975, in the Security Council. Despite this fact, the occupation of Timor-Leste remained a recurrent issue in the UN agenda and it was not until the end of the 1990s, with the changing leadership of the Indonesian Republic, that the question of Timor-Leste gathered its momentum internationally. The New York Agreements were negotiated between Portugal and the Indonesian Republic, under the UN aegis, and this question was dealt with by holding a referendum, ascertaining the will of the people. The Timorese Popular Consultation took place under a strong UN presence. A UN mission followed and Timor-Leste was the scenario for one of the most extensive UN interventions ever, at unforeseen levels. This is our research setting and we extract conclusions from the unprecedented UN intervention at its multiple levels. We focus mostly on institutional design, particularly on the electoral field, within the UN extensive intervention. The institutional design is therefore divided in two different parts: the institution building of the Timorese liberal state, taking place in 2000-2002, and the 2006-2007 choice of the electoral system. We then assess how this worked in practice, focusing on the 2007 and 2012 electoral cycles and impact, in the post independence institutional setting.

One of the main focuses of the UN presence in Timor-Leste, after the referendum, was building the Timorese state and its institutions. In Timor-Leste, at the time of independence, there were barely any democratic institutions at the local level (Risley and Sisk, 2005: 26). Many traditional structures that had survived the previous regime remained, and the setting of democratic institutions proved to be a challenge for the UN (the United Nations Transitional Administration in East Timor - UNTAET), as there was little information and it was also not clear whether the Timorese and international community preferences were the same (Risley and Sisk, 2005: 27). It was recognised, even by UNTAET officials, that in the beginning the UN achievements in building democratic local structures below the national level were quite limited (Blanco, 2010: 187; Risley and Sisk, 2005: 27).

UNTAET was created in 1999 (S/RES/1272, 1999) and lasted until May 2002. It had all the authority over the territory, including the administration and all legislative and executive powers, including justice administration (Goldstone, 2004; Gorjão, 2004: 1044) and the maintenance of order (Richmond and Franks, 2008: 5). UNTAET exercised these powers in the period of transition to a *de facto* independence (Gorjão, 2004: 1044). It was building a state from the beginning (Pureza et al., 2007: 20), in a model of post conflict reconstruction *tout court* (Pureza et al., 2007: 21), with controversial outcomes. UNTAET had to decide when and how to hold elections and which positions should be elected (Galbraith, 2003: 211) and the adoption of a Constitution was a prerequisite for the independence process (Ingram, 2012: 10). UNTAET was considered as having a great success, although this is still disputed (Alldén and Amer, 2007: 7; Gorjão, 2004: 1055; Ingram, 2012; Lothe and Peake, 2010).

After UNTAET's contribution to the independence of Timor-Leste, on 20 May 2002, the United Nations Mission of Support to East Timor (UNMISSET) was established for an initial period of 12 months, further extended, and lasted until May 2005 (S/RES/1410, 2002). UNMISSET addressed mostly institution building (Pureza et al., 2007: 20) and intended to articulate the UN presence with the statute of independent country already achieved (Alldén and Amer, 2007: 6; Richmond and Franks, 2008: 5), keeping nevertheless

a strong UN presence, as the maintenance of the Special Representative of the Secretary-General (SR SG) shows (Pureza et al., 2007: 21).

The UN presence was supposed to end with this mission and in 2005 the United Nations Office in Timor-Leste (UNOTIL) was created, in order to follow up the remaining action, so as to smooth the end of the UN mandate in 2006 (Richmond and Franks, 2008). However, a new situation of turbulence, arising from within the Timorese army and that quickly widespread to the whole country (Scambary, 2009), led to the creation of a new mission (Richmond and Franks, 2008: 2). A new UN mission resulted directly from these incidents, which left profound marks in the Timorese society and strongly affected the statebuilding process that ensued (Richmond and Franks, 2008: 2).

The United Nations Integrated Mission in Timor-Leste (UNMIT) was the last UN mission in the country. It was established on 25 August 2006 (S/RES/1704, 2006), for an initial period of six months and was subsequently extended, ending on 31 December 2012 (S/RES/2037, 2012). UNMIT had, for the first time, the objective of being an “integrated mission” and was expected to articulate the activity of all UN agencies in Timor-Leste (Pureza et al., 2007: 22). It was multidimensional and also addressed the causes of conflict, such as economic and institutional reconstruction, including the reform of the police, army, justice and electoral system (Hegre et al., 2010: 3). It was expected to

support the government on consolidating stability, on implementing a culture of democratic government and to facilitate the political dialogue between several Timorese sectors, in order to ensure a national reconciliation process and to promote social cohesion (S/RES/1969, 2011).

It had as main targets the judicial system, the justice institutions, ensuring a true rule of law (Grenfell, 2009) and a true peace process with an effective transitional justice.

In 2001, the UN mission designed the electoral system for the Timorese Constituent Assembly, and directly administered the elections. This was also true for the 2002 Presidential elections, shortly before the formal independence, in 2002. UN electoral support was continuously provided, with varying levels and forms, especially in preparation for the 2007 electoral cycle. In the eve of the 2012 electoral cycle, Timorese authorities were expected to take the leading role on organising the elections, in what was seen as a proof of the functioning of the Timorese democratic institutions (S/RES/2037, 2012). Unlike the 2007 elections, in 2012 the United Nations would only

have a supporting role (S/RES/2037, 2012), in what was seen a test to a successful UN exit strategy. Despite many reported issues, addressed further in this research, the 2012 elections were overall deemed successful and the UN mission left Timor-Leste by the end of 2012, as planned.

Given this outset, an important question is to understand how the institutional setting, namely the electoral system, was designed and implemented, which was the UN intervention in this regard and how this intertwined with key local actors. For this effect, we analyse how the different actors at the local level intervened, how they perceived the electoral system and in which way these articulated themselves with the UN presence and intervention. An important factor of contrast is the perception of several participants of the electoral process have, namely key political actors, candidates, and members of the designed institutions. As a final objective, our aim is intended to understand how, and in which way, the institutional and electoral system design contributed for the peacebuilding process in Timor-Leste.

3. Methodology

We start by providing an overview of the institutional debate, highlighting the importance that institutions can have, especially regarding how they can shape further political outcomes. We then carry a review of the relevant literature on how the UN conceives the general framework for its electoral support policies within its peacebuilding model. In particular, we identify how the electoral assistance is performed and how local elements are taken into account. Subsequently, a literature review is conducted on the importance that electoral systems have for democracy. In particular, it addresses the debate on the impact that electoral systems can have on the societies where these are being implemented and the social results that different typologies of electoral systems are more likely to produce. The literature review also aims at identifying which social elements, at the local level, can be relevant to include and address on electoral systems design and how they should be included in this context. This constitutes the theoretical framework, which frames the analysis of the case study.

In order to carry this analysis, we rely predominantly on primary sources. Regarding the UN, we analyse relevant documents, such as the SC or GA Resolutions, but

also official documents produced by the UN missions in Timor-Leste. In the specific field of electoral assistance we also look at documents relevant for this, particularly those exchanged by several participants in the UN concrete actions, especially in the electoral area. We reinforce this analysis, on the one hand, with interviews with UN officials, and, on the other hand, with relevant scientific literature. We also analyse Timorese official documents, such as the Constitution Drafts submitted before the Timorese Constituent Assembly, as well as the available minutes of the Constituent Assembly debates, both consulted in the Archives of the Timorese Parliament, in Díli. Official documents from the Timorese authorities, when relating with the UN, are also an important source of analysis.

However, some of the most important sources are the qualitative semi-structured interviews carried out with relevant Timorese political actors. Along this research, we identified several Timorese key players in the above-described processes¹. This was done either through the scientific literature, UN documents, Timorese official documents, exploratory interviews or references from direct sources. It was also relevant the direct observation carried by the author, particularly in 2012 when working within the Timorese 2012 electoral cycle, but also in the several periods of permanence in Timor-Leste in 2013 and 2015. The research project the author took part in, “Peacebuilding and sustainable peace: UN missions in Timor-Leste and Portugal's contribution”² allowed a discussion of multiple perspectives of the peacebuilding process in Timor-Leste. Consultation to the Archives of the National Parliament also proved to be an important source. Presentations in strategic conferences, context specific of Timor-Leste and in the country, also helped to identify key players and dynamics at stake. As the interviews evolved, other sources were identified, allowing for a crossed-checked analysis of key elements. This work relies heavily on this empirical analysis, which was framed within the relevant scientific literature. In this regard, the visiting period at The Electoral Integrity

¹ Annex I provides a summarised description of each interviewee, namely regarding their main roles and other relevant information, in order to better provide context and critical interpretation to the interviews.

² FCT Research Grant - PTDC/CPJ-CPO/115169/2009 - FCOMP-01-0124-FEDER-014433. More details available at http://www.ces.uc.pt/projectos/?prj=4252&id_lingua=2

Project, coordinated by Prof. Pippa Norris³, in the University of Sydney, was of utmost importance.

In our view, the empirical data gathered, through documental analysis, but mostly through qualitative semi-structured interviews to key actors, to be framed afterwards with the theoretical analysis, is what constitutes a great part of its innovative character. In our perspective, it is precisely this methodology that leads to the originality of our conclusions (which differ from the main literature analysed, especially regarding the Constituent Assembly), as well as of the analysis made (of the shaping and impact of the Timorese electoral system). As the institutional design, both regarding the government system and state institutions, as well as the electoral system, needs to be context-specific and suitable for each concrete case, we find that drawing mostly upon empirical data is one of the best tools to assess this.

4. Roadmap

The first chapter analyses institutionalism and adopts the perspective that institutions being regularities, are constructive and constraining of political life. Institutionalisation has a political impact, which should not be neglected. When addressing the democratic state institutions that channel power, with a greater focus on electoral systems, through the institutional perspective, this means acknowledging the different impacts that each institutional configuration can have, highlighting this path. It is therefore important to understand how these institutions can be approached and analysed, in order to take advantage of the rich questions that institutionalism can pose, as well as its grid of analysis.

The second chapter addresses the evolution of UN electoral assistance. It analyses how UN electoral assistance was institutionalised, both materially in terms of practices, as well as formally, through the creation of an organisational framework for its provision. Despite being commonly addressed procedurally, as a technical approach, we highlight the material content it necessarily has and, as a consequence, the substantial

³ More details can be found here: www.electoralintegrityproject.com

choices it applies to. We seek to demonstrate the unavoidable political nature of UN electoral assistance, whose impacts are rarely addressed as such.

The provision of UN electoral assistance within UN peace missions is addressed in Chapter 3. We provide an account of its specificities, in particular regarding the context of a UN peace mission. In this chapter we also provide a brief account of the general theoretical debate on electoral systems and their impact. We provide an overview of the different electoral systems, as well as related elements, and analyse the effects these can have. Our aim is to illustrate the concrete electoral options at stake within the provision of UN electoral assistance, demonstrating that this necessarily implies choices with a political impact, with necessary trade-offs. Therefore, UN electoral assistance cannot claim to be merely technical, as its concrete provision has necessarily a political impact.

In Chapters 4, 5 and 6, we analyse how this theoretical debate was made concrete, in the case of Timor-Leste. Chapter 4 deals with the foundations of the UN presence in the territory and the subsequent peace process, while building the new state. We briefly analyse the Popular Consultation of 1999, and the UN presence, in order to provide context. The next section analyses UNTAET, the UN mission established after the Popular Consultation, as it had as a main task to lay the institutional foundations of the Timorese state, namely by creating its liberal state institutions and make the transition to the Timorese people. We analyse the institutionalisation process, highlighting the scope of the choices at stake, examining in detail how the political institutions were shaped, namely the structure of the state, the government system and the legislature. These issues are usually enshrined in the Constitution, which can be developed and adopted through very different mechanisms. In particular, we analyse the modalities adopted in Timor-Leste regarding the Constituent process, namely elections and its electoral system, and the dynamics that further developed. Within this context, we also look at the constituent process and analyse its dynamics, paying especial attention to the role, and the relationship between the Timorese people and the UN administration. As in the Timorese case a foundational option was to hold elections for a Constituent Assembly, we will also look at the electoral system chosen for this. We analyse the main actors involved, how it was shaped and taking into account which factors, and how it impacted

on the Timorese social and political reality. Our analysis was again developed along two main lines, namely the UN actors and the different Timorese perspectives on these issues, analysing how this intertwined. Our aim is to analyse this process, highlighting the scope and power relations and implications of the options made, underlining these dynamics. We conclude by briefly analysing the 2002 Presidential elections, set up by the UN mission, and the last formal step before the official Timorese independence.

Subsequently, in Chapter 5, our analysis starts from the institutional design put in practice in Timor-Leste, framed by the independent state institutions and we assess how further institutional options were made, within the building process of the Timorese state institutions. In this regard, we analyse how the Timorese electoral system was designed, in 2006-2007. This analysis is again developed in the interplay of two main forces, namely the UN presence and the Timorese. Our aim is to analyse how the previous decision-making process of 2000-2002 influenced this subsequent institutional choice. Again, we look at the UN and the Timorese dynamics, highlighting the main options at stake and the possible implications of these. Within this framework, we analyse in particular the several types of UN electoral assistance being provided and the role these have played. After analysing its creation in 2006-2007, we address the legal reforms carried to frame the 2012 electoral cycle and how these could relate with the previous electoral process. In this chapter we focus our analysis mainly on the setting up of the UN electoral assistance to Timor-Leste, and highlight the institutional design in this regard.

Finally, in Chapter 6, we look at how the designed institutions and political choices have performed. For this aim, we analyse both the 2007 and 2012 electoral cycles, and see the impact of the previous options made had in practice in Timor-Leste. In this regard, we highlight the relevant elements of the electoral system and of the electoral cycle and analyse how these have developed and with which effects. We also look at the UN intervention within the electoral issues, namely through different forms of electoral assistance. In order to provide perspective, we also contrast this with the European Union Electoral Observation Missions (EU EOM) assessment of both Timorese electoral cycles. Regarding 2007 we focus on the performance of the electoral cycle,

closely linked with its recent development and approval by the Timorese institutions. We take into account the UN electoral assistance influencing this, focusing in particular on the UN Certification Mission, but also on the electoral assistance provided by the UN mission and UNDP. In particular, we look at the appraisal made by the UN Certification mission put in practice for the 2007 elections and the impacts this had. We then contrast the appraisal of each electoral cycle with the conclusions of the EU Electoral Observation Mission, in order to provide another set of analysis. We subsequently analyse the 2012 electoral cycle, in order to address how the electoral system and its performance have consolidated. We seek to identify the most important issues in the 2012 electoral cycle, in order to assess if these were a product of the electoral design, of institutional performance or a combination of both. We also seek to identify if these issues persisted from the previous elections and again contrast this with the conclusions of the EU Electoral Observation Mission. Interviews with relevant political stakeholders are also an important source of assessment.

Chapter 1: Institutionalism: an overview

Introduction

In this chapter we carry out a brief and concise analysis of institutionalism. We start by analysing the “old institutionalism”. Subsequently, we analyse the “new institutionalism”, the current institutionalist paradigm, more in depth. Within this, we stress its fundamentals and arguments, as well as the main different approaches it can have. We also exemplify how these can be relevant and useful for international relations and political science, with an insight on the electoral field and on the needs for further research. As there are many contact points within these different approaches, we exemplify the advantages that can arise from these hybrid combinations. After classifying the different approaches in different categories, we analyse what has been the institutionalist contribution for the development of political science analysis, by describing the change that this analysis has produced, in a very substantial perspective. Taking these into account, we propose our own approach, based on previously developed ones, in order to be better suited to highlight and develop the questions enunciated in our research. We conclude that institutionalism is a grid of analysis capable of enriching this research precisely due to the level of consideration it focus on and the questions it can pose, always in an open approach. We also demonstrate the relevance, in particular, that a hybrid combination can have in this specific case, as it allows bringing into the analysis a rich multiplicity of factors that otherwise would be neglected.

1. Institutions shaping political life

For institutionalists, institutions are seen as “stable, recurring pattern of behaviour” (Goodin, 1996: 22). Institutions are “regularities” that form themselves without need of collective mobilisation or authoritarian intervention (Jepperson, 1991), emerging and being situated above the individual level. Institutions can also be defined as “social practices consisting of easily recognized roles coupled with clusters of rules or conventions governing relations among the occupants of these roles” (Young, 1998),

while other authors define them as “sets of rules, codes or tacit understandings which shape behaviour” (Bell et al., 2002).

One of the key points for the new institutionalism is that “the organisation of political life makes a difference” (March and Olsen, 1984: 747). Great attention has thus been put on “the role of institutional factors in structuring individuals’ choices” (Weingast, 1996; Lowndes, 2010: 61), as institutionalists tend to start from the perspective of “institutions that structure action” (Clemens and Cook, 1999: 442). Institutionalists thus become concerned with “the informal conventions of political life as well as with formal constitutions and organizational structures”, and a greater attention is paid to the way how institutions incorporate values and power relationships, as well as to the obstacles and opportunities of institutional design (Lowndes, 2010). In synthesis, new institutionalists address not just the impact of institutions in individuals, but particularly the interaction between institutions and individuals (Lowndes, 2010). As March and Olsen put it, institutionalism is “a set of theoretical ideas and hypotheses concerning the relations between institutional characteristics and political agency, performance and change” (2006: 4).

For institutionalists, “something identified at a higher level is used to explain processes and outcomes at a lower level of analysis” (Amenta, 2005; Amenta and Ramsey, 2010; Pierson and Skocpol, 2002) and explanations at the individual level or at the same level of analysis are avoided (Amenta and Ramsey, 2010: 15).

Institutions differ and do not necessarily involve organisations (Jönsson and Tallberg, 2008) and can be seen outside or beyond these. Organisations are understood as “material entities possessing physical locations (or seats), offices, personnel, equipment, and budgets” (Young, 1989), which is a narrower and more rigid concept than the ones regarding institutions, as mentioned above. This understanding is commonly shared by the contemporary institutionalists, the new institutionalists, and highlights the fact that the institutional analysis is indeed much broader than just formal organisations (Jönsson and Tallberg, 2008). It is precisely this perspective that enriches the institutionalist perspective, as we demonstrate below.

The study of institutions began with Selznick's (Selznick, 1948, 1949, 1957) analysis of organisations and their institutional environment (Thornton and Ocasio, 2008: 100) and Parson's (1956) analysis of how institutions can integrate organisations with other organisations in society through "universalist rules, contracts, and authority" (Thornton and Ocasio, 2008: 100). Institutionalism in political science was used to describe constitutions, legal systems and government structures, comparing them over time and across countries (Lowndes, 2010). In the 1970s, authors like Meyer and Rowan (1977) and Zucker (1977) started to underline the importance of culture and cognition in the analysis of institutions. Meyer and Rowan (1977) also highlighted the importance of external legitimacy, which led organisations to sometimes adopt a less technical core and be looser in their compositions. For Meyer, rationality and the western culture were of extreme importance and the formal organisational structures that were developing were seen as "part of the world society and its cultural system" (Meyer et al., 1987; Meyer, Frank, et al., 1997). Zucker (1977) also pointed out the importance of cultural persistence on institutionalisation. This was the so-called "old-institutionalism". However, old institutionalism was too much focused on the formal structures and adopted an excessive legalist approach (Peters, 1999), and there was more in politics than just "the formal arrangements for representation, decision-making and policy implementation" (Lowndes, 2010). The old institutionalism was limited both in scope and method, with the greater focus on formal rules and organisations and not in informal conventions, and more on formal structures of government than "broader institutional constraints on *governance*" (Lowndes, 2010). It was therefore characterised as normative, historicist, legalist and holistic (Peters, 1999). There was a break with the old institutionalism, and in many fields, including international relations, this was not even a source of continuity for the new institutionalism (Jönsson and Tallberg, 2008), which adopted a broader view of institutions.

The term "new institutionalism" was created by March and Olsen, arguing that political institutions had "receded in importance from the position they held in the earlier theories of political scientists" (March and Olsen, 1984: 734). It emerged also as a critique of the mainstream political science, which was seen as "reductionist". In fact, at that

time, for behaviourists institutions were the result of the aggregation of individual roles, and for rational choice theorists institutions were the accumulation of individual choice in a way that would maximise the utility of preferences (Lowndes, 2010: 63; Shepsle, 1989: 134). New institutionalism also aimed at challenging “the hegemony of behavioralism and methodological individualism in political science and sociology” (Clemens and Cook, 1999). While criticising the “old institutionalism”, as for the new institutionalism political institutions are not analysed just as political organisations (Lowndes, 2010), the new institutionalism went back to the roots in analysing institutions in some branches of political science (Jönsson and Tallberg, 2008).

The analysis of the state and state institutions is of utmost importance. Instead of focusing on institutions as something immutable and with a formal focus, new institutionalists have increasingly “disaggregated the state,” recognising both that societies are often structured by multiple institutions and that institutions themselves are complex embeddings of schemas into resources and networks” (Clemens and Cook, 1999). Institutional change started to increasingly address “the multiple processes of institutional reproduction, disruption, and responses to disruption” (instead of the durability of the state as sole criterion), giving a greater importance to institutional change and to patterns of conflict or scenarios for agency and innovation (Clemens and Cook, 1999).

When applying the institutional analysis to politics, institutions can be seen as influencing policy and political action in two different ways: they can be constraining or be constitutive. Institutions are constraining when they superimpose conditions of possibility for mobilisation, access and influence, when they limit some forms of action and encourage others and the conditions under which organised interests circulate and put pressure on obtaining collective goods from the state (Amenta and Ramsey, 2010), by being “concrete, massive, autonomous” (Clemens and Cook, 1999: 445) and a source of political mediation (Amenta, 2005) or political opportunity (Meyer and Minkoff, 2004). Institutions are constitutive when they establish viable models for political action (Amenta and Ramsey, 2010), and institutions have constitutive properties that allow for mobilisation or identity formation (Skocpol, 1985, 1992; Wuthnow, 1985).

2. Different approaches within institutionalism

Being the “new institutionalism” the contemporary institutional framework, there are different approaches to institutionalism, a distinction that varies according to different authors, with a proficient literature on the subject (Hall and Taylor, 1996; Lichbach and Zuckerman, 1997; Immergut, 1998; Rothstein, 1996; Ikenberry, 1994; Kato, 1996; Remmer, 1997). Classifications are far from being unanimous, but some approaches are recognised by a broader range of authors. In order to provide a map of understanding, we expose here the broad list of institutionalisms, as adopted by Lowndes (2010), although summarised, in order to provide a larger framework of the current institutional theory. After this, we analyse in further depth some of the approaches more commonly recognised by the majority of authors within institutionalism, namely historical institutionalism, political institutionalism, sociological institutionalism, normative institutionalism and rational choice theory.

Lowndes (2010) identifies normative institutionalism, rational choice institutionalism, historical institutionalism, empirical institutionalism, international institutionalism, sociological institutionalism, network institutionalism, constructivist institutionalism and feminist institutionalism. We summarise each one of these, as it can prove to be a useful tool to further understand institutionalism.

Normative institutionalism studies the norms and values embedded in political institutions and how these shape individuals’ behaviour and was much developed by March and Olsen (1984, 1989). For rational choice institutionalists, institutions are systems of rules with which individuals try to maximise their utility and a review of these approaches can be found in Weingast (1996). Historical institutionalism analyses how the choices regarding institutional design, namely in government systems, further influence the subsequent decision-making of individuals. A review of this branch can be found in Hall and Taylor (Hall and Taylor, 1996). Empirical institutionalism is the one closer to the old institutionalism and analyses how different institutional types can have a practical impact on government performance. A review on this issue is carried out by Peters (1996). International institutionalism analyses how state behaviour is driven by the formal and informal structural constraints of international political life, as can be found in

Rittberger's analysis (Rittberger, 1993). Sociological institutionalism analyses how institutions create meaning for individuals, therefore providing an important basis for normative institutionalism in political science. Meyer and Rowan can be consulted for the relevant analysis (Meyer and Rowan, 1991). Network institutionalism demonstrates how regular, though many times informal, patterns of interaction between individuals and groups form political behaviour. This is further developed in (Marsh and Rhodes, 1992). For constructivist institutionalism, institutions shape behaviour through meaning, namely the ideas and narratives used to "explain, deliberate or legitimise political action" (Lowndes, 2010). Schmidt (2006) and Hay (2006a, 2006b) further developed this issue. Feminist institutionalism analyses how gender norms act within institutions and how gendered power dynamics are constructed and maintained by institutional processes. Kenney (1996) and Chappell (2006) further develop this question.

The majority of the authors recognises three main approaches, namely (i) historical institutionalism, (ii) political institutionalism and (iii) sociological institutionalism, with many differences among them and varying according to the focus on higher-order determinants and on how much they do matter causally (Amenta and Ramsey, 2010). Commonly recognised approaches are also (iv) normative institutionalism and (v) rational choice theory (Jönsson and Tallberg, 2008).

Historical institutionalism

Historical institutionalism starts from institutions and analyses how they affect the individuals' behaviour (Thelen, 1999), emphasising the concrete temporal processes where institutions are embedded and where they emerge from (Thelen, 1999: 371). Historical institutionalists focus on "asking the big questions, highlight the importance of institutions in explanations, and reject functionalists explanations for why institutions emerge" and tend to focus on determinants at the macropolitical or macroeconomic level (Amenta and Ramsey, 2010). Therefore, they claim for further research on institutions, in order to establish the process that led to their creation and persistence (Amenta and Ramsey, 2010). For historical institutionalists, causation is expected to be multiple and conjunctural, involving time-order and "path dependence" (Pierson and Skocpol, 2002). They allow space for "the contingencies of history" and tend to focus on the persistence

of institutions (Jönsson and Tallberg, 2008). Historical institutionalists also argue that institutions that can solve collective action problems are important to understand political outcomes (Rothstein, 1996). Fioretos defends that historical institutions should be brought directly into international relations theory (Fioretos, 2011) and emphasises the role of microfoundations of historical institutions. Historical institutionalism provides “important mid-range causal mechanisms”, including sequencing and feedback, addressing endogenous change and “the interaction between the domestic and the international”; it highlights the role of temporality and context, questions left behind in classic world politics analysis (Nexon, 2012).

Political institutionalism

For (i) historical and (ii) political institutionalists, institutions are “formal or informal procedures, routines, norms, and conventions in the organizational structure of the polity or the political economy” (Amenta and Ramsey, 2010: 16). Political institutionalists usually situate their level of analysis at the state or macro political level, arguing that the “process of formation of states, political systems, and political party systems strongly influence political processes and outcomes” (Amenta, 2005; Amenta and Ramsey, 2010: 16). They address power directly and analyse the impact of political institutions on political processes and outcomes (Amenta and Ramsey, 2010). Political institutionalism focuses on “systemic and structural aspects of states and political party systems” and their organisation, analysing how these “shape the political identities, interests, and strategies of politically mobilized groups” (Amenta and Ramsey, 2010). Political institutionalism focuses on “longstanding institutional differences across countries” and argue that “nation-level political institutions mediate the influence of domestic organized political actors and global processes” (Amenta and Ramsey, 2010). For Amenta and Ramsey political institutionalists have a “weaker self-identity” as this “has a similar approach to study as historical institutionalism, but predates it and constitutes the main theoretical strain within it” (Amenta and Ramsey, 2010: 16).

Sociological Institutionalism

To this, (iii) sociological institutionalists add “cognitive scripts, moral templates and symbol systems” at the suprastate or supraorganisational levels (Amenta and Ramsey, 2010: 17; Hall and Taylor, 1996). For these authors, institutions group material resources and networks and its influence and durability is just something that is embedded in their political actors at the individual or organisational level (Amenta and Ramsey, 2010: 17; Clemens and Cook, 1999: 445). Cultural and ideational causes are the main focus for sociological institutionalists in the sociology of organisations (Powell and DiMaggio, 1991), as well as for the ones analysing the influence of the “world society” (Meyer, Frank, et al., 1997). States and other political actors are treated like other organisations, achieving a broader theoretical perspective on organisations and politics (Amenta and Ramsey, 2010). It also focuses on organisations’ seek for legitimacy through the diffusion of ideas and other cultural forms and often analyses the formation of public policies, as a means of diffusion of norms and policies, being international scope organisations the frequent mediators in this (Amenta and Ramsey, 2010). Norms, models and conventions (Amenta and Ramsey, 2010: 18; Meyer, 2000; Meyer, Thomas, et al., 1997; Meyer and Rowan, 1977) determine what are the appropriate mechanisms to ensure political stability, through organisational structures of influence. States often maintain characteristics similar to the ones of their peers, forming a global polity (Meyer, Frank, et al., 1997), seeking for legitimacy, often adopting characteristics of the ones perceived as more legitimate (DiMaggio and Powell, 1983: 151–152; Dobbin et al., 2007: 450–454; Ramirez et al., 1997; Weyland, 2005: 274–278), often following the ones perceived as more successful (DiMaggio and Powell, 1983: 151–152; Miller and Holl, 2005: 199–200).

Normative institutionalism

Normative institutionalism (iv) focuses on the role of norms and values, how institutions shape individual choices and structure subsequent action (Hall and Taylor, 1996). It originated in the subfield of organisational theory and focuses on the role of norms and values, rather than on rationality and means-ends efficiency; it replaces “the logic of consequences” by the “logic of appropriateness” (Jönsson and Tallberg, 2008). It

also addresses how institutions shape and constrain individual choice; institutional change is conceived in terms of learning (Peters, 1999) and existing institutions tend to structure the further aims of change (Hall and Taylor, 1996). Normative institutionalist analysis are not common in international relations, as it is understood that “a logic of consequences is likely to be more compelling than a logic of appropriateness because rules can be in conflict, hierarchical structures of authority are absent, power asymmetries are high, and the benefits derived from pursuing instrumental policies can be great” (Krasner, 1999).

Rational choice institutionalism

The (v) rational choice theory emphasises the coordination of functions of institutions, namely on generating or maintaining equilibrium (Thelen, 1999) and starts the analysis from the individuals’ point of view and question where do institutions come from; institutions are seen as a mechanism that states can use to reduce their transaction costs and achieve gains in the global anarchy, thus maximising their gains (Thelen, 1999). It sees utility-maximising individuals or states (at the international level) as central actors in the political process. Institutions emerge, therefore, “as a result of their interdependence, strategic interaction and collective action or contracting dilemmas” (Jönsson and Tallberg, 2008), in search for the maximisation of their utility and reduction of agency costs. Institutions have important functions for the individual actors affected and this is why institutions emerge and survive. Rational choice theorists start with the individual and ask where did institutions come from (Thelen, 1999: 379). They have been influenced by the new institutional economics, namely by importing the notions of transaction costs and agency (Jönsson and Tallberg, 2008), being Keohane one of its main theorists, developing the functional theory of international regimes or institutions (Keohane, 1984). From here, international relations can view states as principals which delegate functions on international institutions, which act as agents (Jönsson and Tallberg, 2008). There is the high risk that the agent will follow its own interest, rather than the principal’s one. The main factors for this are the asymmetry of information and conflicting interests, and the main tools for combating this are monitoring and incentive mechanisms (Jönsson and Tallberg, 2008).

A great part of the rational choice theory tends to adopt a functional view of institutions (Hall and Taylor, 1996; Pierson, 1996; Thelen, 1999). The question of why institutions emerge and are maintained can, therefore, be answered regarding the functions they perform (Thelen, 1999). Rational choice institutionalism can also adopt a non-functionalist and more historical view of institutions (Pierson, 1996). For instance, North (1990) analyses how, historically, different types of institutional arrangements emerge, which can promote or distort development. Knight (1992) also creates a model of institutional formation and change, putting “distributional conflict” at the centre of his analysis (Thelen, 1999).

Hybrid combinations of different approaches

Starting from three main existing varieties of institutionalism, such as rational choice institutionalism, historical institutionalism and sociological institutionalism, all of them with very diversified literature (Thelen, 1999; Hall and Taylor, 1996), some authors develop and combine some of its elements to generate new approaches and analysis.

For example, some authors working within the rational choice theory have attempted to contextualise its analysis with elements of the historical institutionalism, in a strategy they call “analytical narratives” (Thelen, 1999: 370). With this, they try to build explanations of empirical events with analysis that “respect the specifics of time and place but within a framework that both disciplines the detail and appropriates it for purposes that transcend the particular story” (Levi, 1999). This combines, therefore, the analysis of simple concrete cases with the deductive characteristics of rational choice institutionalism based on individual incentives (Thelen, 1999: 370).

The combination between historical and sociological institutionalism embraces a wider view of institutions “not just as strategic context but as a set of shared understandings that affect the way problems are perceived and solutions are sought” (Thelen, 1999). Some of these authors also underline the role of culture to define points of possible equilibrium and how this is achieved (Bates, Figueiredo, et al., 1998; Ferejohn, 1991; Greif, 1994). This analysis is used, for instance, to assess how collectively shaped norms define appropriated conducts, shape individual identities and influence interests (Katzenstein, 1996) and, by doing so, “inform how political actors define what they want

to accomplish” (Katzenstein, 1996). Katzenstein (1996) carries a political analysis on why some norms become institutionalised rather than others. This analysis comes closer to the versions of institutional sociology that take into account the concepts of power and legitimacy when explaining how institutions emerge and are reproduced (Fligstein, 1991; DiMaggio, 1988; Stinchcombe, 1997). Elements of historical and normative institutionalism can also be combined in studies regarding the historical roots of existing international organisations (Cox, 1996; Haas, 1990; Murphy, 1994).

Rational choice theorists aim at producing broader theoretical assumptions. Examples are not just used by their intrinsic importance, but also to demonstrate a much wider application of its theoretical claims (Knight, 1992; Levi, 1988; Tsebelis, 1990), even when they attempt to explain exceptions to what would be the expected outcomes of their theory (Bates, Figueiredo, et al., 1998; Golden, 1997; Levi, 1997; Wallerstein, 1989). There are, however, some exceptions, which are stronger among the comparativists and some draw their conclusions at the same mid-range level as most of the historical institutionalists (Thelen, 1999: 373). However, one of the main difficulties is to define the preferences of citizens in general, “ex ante to a particular application” (Levi, 1997b: 24).

Comparative historical methods usually go beyond the classical historical details and “aim for theoretical generalization” (Rueschemeyer and Stephens, 1992). Sometimes they focus on a limited range of cases, unified by common elements, such as space or time, working somehow in “mid-range-theory” (Thelen, 1999: 373). However, this approach can lose many details in order to “identify general causal patterns” which can be common to a number of countries (Thelen: 1999, 373). Nevertheless, even these authors clearly state that their analysis are “problem driven, not theory driven; they are motivated by a desire to account for particular events or outcomes. They are devoted to the exploration of cases, not to the elaboration of theory” (Bates, Greif, et al., 1998). In single case analysis, historical institutionalists use close analysis of critical cases to illuminate important general issues (Thelen, 1999: 373).

3. New Institutionalism and new analytical perspectives

Lowndes argues that the new institutionalisms are varied and building upon the best institutionalist theory (Lowndes, 2010). Therefore, in order to assess the steps

further it has brought to political science, the best approach would be to analyse them through six different analytical perspectives, which shift from the classical focus. These are organisations and rules, formal and informal conception of institutions, static and dynamic conception of institutions, submerged values and critical stance, holistic and disaggregated conception of institutions, and independence and embeddedness (Lowndes, 2010), as briefly described and exemplified below.

Regarding organisation and rules, instead of being seen as political organisations, political institutions can be seen as a set of rules that “guide and constrain the behaviour of individual actors” (Lowndes, 2010). Institutions are a set of rules that exist within and between organisations, “as well as under, over and around them” (Fox and Miller, 1995). Organisations are not the same as institutions, despite being an important focus for institutional analysis, due to their role of collective actors developing rules and subject to institutional constraints (Lowndes, 2010). Formal and informal conceptions of institutions are also to taken into account, as new institutionalists focus on informal conventions and formal rules. Informal conventions and formal rules may reinforce each other, but can also conflict, one overriding the other, as dominant informal conventions can also replace formal rules or prevent them from inducing change (Lowndes, 2010). Informal mechanisms for policy-making can constitute a parallel institutional framework to formal arrangements (Lowndes, 1996). Political institutions should, therefore, be analysed regarding formal and informal rules, as this enriches the scope of the work. Static and dynamic conceptions of institutions can also be used, as opposed to the previous stable vision of institutions (Huntington, 1968). March and Olsen (1989) argue that institutions are created and sustained “islands of imperfect and temporary organisation in potentially inchoate political worlds”. New institutionalists are more concerned with how institutional stability is achieved through human action, seeing institutions as “processes” and not anymore as “things”; institutional rules have thus to be sustained over time, through a process of institutionalisation (Lowndes, 2010). Submerged values and critical stance are also very important aspects. Pierre (1999: 390) summarises this position referring that “the structure of governance – the inclusion or exclusion of different actors and the selection of instruments – is not value neutral but embedded and sustains

political values". Starting from this assumption, Goodin (1996) and Rothstein (1996) develop the question of knowing how political institutions can be designed so as to widespread desired values in a society. This differs from the old institutionalism, more concerned with "good government", with an implicit compromise with a set of values. Instead, the new institutionalism tries to identify how institutions "embody – and shape – societal values, which may themselves be contested and in a flux" (Lowndes, 2010). Holistic and disaggregated conceptions of institutions are also adopted. New institutionalists focus on the institutions that compose political life, such as electoral systems, cabinet decision-making, arrangements for policy-making or inter-governmental relationships (Peters, 1999), as institutions are understood as expressing not only through formal structures and official procedures, but also tacit understandings and conventions, beyond the "organizational boundaries" (Lowndes, 2010). This differs from the old institutionalism, which tended to analyse whole systems of government. New institutionalists, unlikely old institutionalists, affirm that political institutions "are not independent entities, existing out of space and time" (Lowndes, 2010) and explore how political institutions are embedded in specific contexts (Granovetter, 1985). Institutionalists focused also on the "bottom-up" influence of "locally specific institutional constraints" (Lowndes, 2010). The concept of social capital is also used (Putnam, 1993), in order to analyse the relationship between institutions of civil society and the performance of local institutions. Clegg (1990) analyses locally specific institutional environments and show how they can challenge society-wide frameworks. Political institutions achieve a great diversity with their interaction with non-political institutions at the local level, which leads "to do not only different things but also the same things differently" (Clegg, 1990).

Relevance for international relations and political science

The initial approach of international studies, that happened during the inter-war years, focused mainly on the study of international institutions (Jönsson and Tallberg, 2008). It was a rather "legalist" approach, focused in formal structures, that could be compared to the "old institutionalism" (Peters, 1999). This did not contribute much for the development of institutional theory (Rochester, 1986), nor did it become a source for

the new institutionalism in international relations theory (Jönsson and Tallberg, 2008). It was perhaps the absence of rigid institutions in the international scene that led to such a richer development of the new institutionalist literature and theorisation within the international relations studies (Jönsson and Tallberg, 2008).

Contemporary institutionalist analysis is not limited to formal international organisations. In international relations, new institutionalists have a broad view of institutions, which is not limited to organisations, and can have a broader meaning than these, following Young's initial definition (Young, 1989). According to this definition, for instance, sovereignty would be an institution and the state would be an organisation (Jönsson and Tallberg, 2008). In international relations state sovereignty is indeed a fundamental institution, "guiding international relations" (Jönsson and Tallberg, 2008); sovereignty is however seen as a "social construct" (Bierstecker and Weber, 1996) and can be defined as "the institutionalization of public authority within mutually exclusive jurisdictional domains" (Ruggie, 1998) or as "a set of institutionalized authority claims" (Thomson, 1994). Issues like diplomacy, international law, warfare, trade regimes and other smaller institutions are a smaller part of the institution of sovereignty (Jönsson and Tallberg, 2008).

Jönsson and Tallberg affirm that rational choice institutionalism, historical institutionalism and normative institutionalism have all been important sources for international relations theory (Jönsson and Tallberg, 2008), with a stronger emphasis on rational institutionalists (Jönsson and Tallberg, 2008). Theories studying domestic institutions have influenced institutional analysis in several fields of international relations (Jönsson and Tallberg, 2008). These include questions regarding the formation of institutions, institutional persistence and change, as well as institutional effects on individual behaviour. Institutional design has also been one of the main questions, although just for a minority of authors (Aggarwal, 1998; Haas, 1990).

International relations is also growingly concerned with the question of whether institutional design is driven or not by functional concerns or "social processes of emulation" (Jönsson and Tallberg, 2008), especially in the context of delegation of powers to international organisations. In this context, some authors have analysed the evolution

of the European Union (EU), as well as other regional integration initiatives in North and Latin America; the question arises of whether regional institutions are role models or the most effective responses to functional demands of the integrated international economy (Mansfield and Milner, 1997). Institutional interplay is also an area of analysis, addressing how formal and informal institutions interact at the international level, namely regarding institutional nesting, interplay and interconnectedness (Aggarwal, 1998; Young, 2000; Stokke, 2001). Young refers that “most institutions interact with other institutions both vertically or across levels of social organization and horizontally or at the same level of social organization” (Young, 2000).

Hall and Taylor (1996) address the three new institutionalisms brought to political science, namely historical institutionalism, rational choice institutionalism and sociological institutionalism. They also provide a thorough description of their main virtues, caveats and applications in concrete areas of political science. The conclusion is that much more than an autonomous use of each of these, a combined approach with “greater interchange among them” should be the way forward (Hall and Taylor, 1996: 955). Indeed, each individual approach “seems to be providing a partial account of the forces at work in a given situation or capturing different dimensions of the human action and institutional impact present there” and “the insights of one approach might be used to supplement or strengthen those of another” (Hall and Taylor, 1996: 955). In this regard, historical institutionalism is seen as standing “in an especially pivotal position” (Hall and Taylor, 1996: 957), as many of its arguments can be translated and complemented by other institutional approaches.

Historical institutionalists use as a starting point “a world replete with institutions” and focus on “the way in which the power relations present in existing institutions give some actors or interests more power than others over the creation of new institutions” (Hall and Taylor, 1996: 954). They “conceptualize the relationship between institutions and individual behaviour in relatively broad terms”, emphasising “the asymmetries of power associated with the operation and development of institutions” (Hall and Taylor, 1996: 938). However, this analysis must not be apolitical, as it should not “mask the degree to which those institutions, like so much else in politics,

emerge out of a struggle for power and resources” (Hall and Taylor, 1996: 954; Knight, 1992; Moe, 1990). According to historical institutionalists institutions are defined as “the formal or informal procedures, routines, norms and conventions embedded in the organizational structure of the polity” (Hall and Taylor, 1996: 938) and their view on institutional development emphasises “path dependence and unintended consequences”, integrating the “institutional analysis with the contribution that other kinds of factors, such as ideas, can make to political outcomes” (Hall and Taylor, 1996: 938).

Institutional analysis within the electoral field

Institutionalism provides a very rich approach and analytical framework in the electoral field, allowing for a broad analysis of elections and electoral systems, decomposing its elements and analysing how these impact and are shaped at a wider level, looking also at how these contribute to structuring political action.

In a similar approach, Pippa Norris (Norris, 2004a) analyses the impact that political institutions and the legal rules shaping the electoral system can have regarding turnout. For Norris (2004a) political institutions refer to “variables such as party competition, type of electoral system and level of the contest”, whereas legal rules “determine who is eligible to cast a ballot”, and voting facilities include “the ease with which those eligible can in fact register and vote” (Norris, 2004a), the latter with lesser importance for turnout, when considering established democracies. Institutional factors include “the type of electoral system, size of electoral districts, frequency of national elections, whether the contest was presidential or parliamentary, and the type of party system” (Norris, 2004a). The conclusions are that “political institutions and legal rules were strongly and significantly associated with voter participation” and that participation can be maximised by specific institutional arrangements, among which we can find proportional representation and competitive party systems (Norris, 2004a). Norris (2004a) concludes that political institutions and legal rules indeed influence turnout. The author further exemplifies the impact of specific institutional reforms in the electoral field can have on turnout, highlighting the further importance of case studies “within

particular countries [that] can provide important insights into the impact of these developments” (Norris, 2004a).

Shepsle and Weingast (1981) have also analysed the relation between stability and electoral systems that adopt a pure majority rule. They concluded that “real-world legislative practices constrain the instability of PMR [Pure Majority Rule] by restricting the domain and the content of legislative exchange” (Shepsle and Weingast, 1981). Therefore, stability is precisely a result of the concrete institutionalisation of the majority rule: “decision making stability of real-world legislatures lies in the way these legislatures institutionalize majority rule” (Shepsle and Weingast, 1981). It is caused, in Shepsle and Weingast’s view, by the “restrictions on such legislative exchange”, which promotes “structure-induced equilibrium” (Shepsle and Weingast, 1981). They also analyse the role of “complex legislative agreements” on stability; however, and although these are important, they are classified as “contingent contracts [...] without resorting to the institutionalisation of a rule” (Shepsle and Weingast, 1981). Shepsle and Weingast also identify, however, what they consider to be the main gap in the study of institutions and their effect on policy choice, which is “understanding the factors governing the choice of one institutional arrangement over another” (Shepsle and Weingast, 1981).

As we can see, the institutional analysis can prove to be a very rich framework in order to analyse electoral systems and the legal rules that might complement it, as well as the previously defined bodies embodying state power. In this regard, many frameworks of analysis are possible, as demonstrated above. However, due to the complex nature of these realities, mixed approaches can probably be of greater value, as we demonstrate below.

A field for further research concerns processes of institutionalisation (Jönsson and Tallberg, 2008), namely “how do initial agreements jell into institutions prescribing appropriate behavior”. The relation between international institutions and domestic politics, namely the “interrelations of domestic politics and state behavior” (Jönsson and Tallberg, 2008) still has much room for further development. In fact, international institutions, when relating with the national states, can have convergence effects but can

also magnify the pre-existing differences within the states they relate to (Martin and Simmons, 1998), in the so called “two-level game” (Putnam, 1988).

Conclusions and proposed approach

Institutionalism poses “questions that might not otherwise occur” and produces “new and fresh insights that other frameworks or perspectives might not have yielded” (Judge et al., 1995). It might not be possible to define “new institutionalism” as a theory (Lowndes, 2010), being rather an “organising perspective” (Gamble, 1990), or a methodology (Diermeier and Krehbiel, 2003), which provides “a map of the subject and signposts to its central questions” (Rhodes, 1995). It is a varied approach to politics, based on the affirmation that “institutions are the variable that explain most of political life, and they are also the factors that require explanation” (Peters, 1999).

Indeed, the new institutionalism does not require one particular theory, as its strength derives from its multi-theoretic character, allowing to assess competing propositions coming from different political theories (Lowndes, 2010). Its epistemic gain can be the “movement from a problematic position to a more adequate one within a field of available alternatives”, as apposed to “epistemology’s mythical movement from falsity to truth” (Calhoun, 2000). Its creators agree that the spirit “is to implement rather than to reject alternative approaches... Much remains, however, before the different conceptions of political institutions, action and change can be reconciled meaningfully” (March and Olsen, 2006: 16).

Given the above exposed, institutional analysis can prove to have many different approaches, which can be carried among the main approaches developed, but also by using a combination of several of them, as demonstrated by the hybrid combinations and the realities that these were applied to. Further than this, institutionalism can also entail specific tailor-made approaches, as the one proposed by Lowndes (2010), which focus on the aspects seen as more relevant regarding each institution, regardless of rigid theoretical boundaries.

As above-mentioned, the institutional approach should be problem-driven, as it is precisely this targeted approach, combining multiple methods, that constitutes one of its biggest advantages. It starts by asking the questions and is then able to adapt the most

relevant institutional perspective, or a combination of many, according to the relevance of each concrete case. The reality at stake is then enriched by the multiplicity of perspectives from which it is seen, along multiple methodological and theoretical guidelines.

In this research, we adopt this approach. We follow the historical institutionalism, as it is the approach that better suits the research question, namely how the Timorese electoral system, and concomitant state institutions were crafted, and the impact this had on the Timorese society. It is also of great value to demonstrate the political impact of each institutional choice, which cannot be considered as being “value-neutral”. This approach is complemented by a hybrid combination, especially with political and rational choice institutionalisms, allowing to trace the importance of the interests of each actors when shaping political state institutions.

In this research, we analyse the process of building the Timorese liberal state institutions. By tracing their formation, we can also contrast its outcome with the classic liberal state framework, and render visible the underlying motives for each precise institutional shaping. We can, therefore, shed light on the motivations and preferences of the main political actors involved, and analyse whether these were within the scope of the liberal conceptions of each institution. This contributes to a better understanding of the appropriation (or not) of the liberal state institutions by the Timorese, and how the liberal state and its institutions were adopted by these.

Having in mind the institutional framework, and the several dynamics it can comprise, as described above, we can trace this for two different actors, namely the UN and the Timorese. We highlight the institutional conceptions each of these aimed for Timor-Leste and how these developed in practice. In this regard, institutionalism that traces actors and their preferences on shaping institutions is also of great value, as it highlights informal decision process and power dynamics, which have also contributed to shaping institutions and have embedded on these the power dynamics that followed its creation. This also allows tracing the path of institutional creation, including the motivations of the main actors, and contrast this with the classic scope of these

institutions within the liberal state. This illustrates if and how the modern liberal state was envisaged by these actors and if or how they have pursued their ultimate framework.

In this regard, our contribution is to analyse the formation of national institutions, within the broader UN intervention. Our aim is to understand the process of institution building within UN interventions and analyse its impact on the associated peacebuilding process. We focus especially on the main institutions that shape political power, namely the state institutions as the Parliament and the President of the Republic, often embodied in the Constitution (and the constituent process itself). The electoral system is also of utmost importance in this regard, as it is the institution (here understood broadly, and not the same as an organisation) and channels the popular will into vested political actors performing their roles in the formal state institutions.

Chapter 2: United Nations electoral assistance: historical evolution and importance on peacebuilding

Introduction

The concept of democratic peace draws upon the writings of Immanuel Kant, according to whom democratic states do not go to war against democratic states – although they might go to war against non-democratic ones. This theory of the perpetual peace has further been backed by empirical analysis, addressing international wars since 1817 (Doyle, 1983) and democracy is thus seen as likely to produce a “peace dividend” (Russett, 1993).

There is nowadays a general agreement in the international community of the strong link between peace, human rights and development, all fostered through democracy (Rich and Newman 2004, 10), with democracy being closely linked by some authors to development (Sen, 1999). In the 1990s, democracy assistance was one of the core elements of many countries’ development assistance (NORAD et al., 2010: xi). It started by supporting electoral processes, to focus on institutional reform on the early 1990s, civil society and the media on the mid 1990s, to parliaments and political parties and, recently, to address accountability and state-society relations (NORAD et al., 2010: xi). Free and fair elections are seen as an element to sustain the political legitimacy of democratic governments, being both pre-requisites for good governance and strong governing institutions. These are also seen as necessary conditions for poverty alleviation and sustainable human development (Ponzio, 2004: 212–213). In this context UN institutions strongly emphasised the support to state institutions in charge of the electoral processes, both at the overseeing and management levels (Ponzio, 2004). Nowadays democracy promotion is part of a broader agenda aiming to support good governance (NORAD et al., 2010: xi). Although there is no single definition of good governance, it is linked with how states should perform, comprising the rules and practices that shape government choice, including also the exercise of power and authority (Kjaer, 2004; NORAD et al., 2010: 7). Democratic transitions are built on the

assumption that coherent and functioning states (Rakner et al., 2007), as well as statebuilding and democracy, are to be seen and built as a whole (NORAD et al., 2010: xi). This proved not to be realistic and many countries started to question the effectiveness and impact of their interventions (NORAD et al., 2010: xi). The imposition of democracy without internal support proved not to be likely to succeed, and goals and timeframes should also be adequate to the states context and their real capacities (NORAD et al., 2010: xi). The electoral cycle approach was first conceptualised in 2005 (Tuccinardi et al., 2008: 15) and expanded the scope of electoral assistance, comprising all stages of the electoral process and shifting away from an election-day only approach.

Formally, the UN electoral assistance began during the 1960s and 1970s through the Trusteeship Council, with the Organisation observing or supervising plebiscites, elections and referenda around the world (UNDP, 2002: 7). The UNDP also financed small electoral assistance projects between 1976 and 1990 (UNDP, 2002: 7). This was carried out in the framework of decolonisation, as Article I of the Charter mentioned the “friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples”. The “will of the peoples” (Ludwig, 2004b) was ascertained through referenda and, between 1960s and 1970s, the UN membership had an increase of 40 newly independent states. Until the end of the 1980s the UN had no mandate to assist elections in sovereign states (Ludwig, 2004b: 169), and its electoral experience and electoral assistance was only carried out in non-sovereign countries, in the context of decolonisation regarding independence (Ludwig, 2004b: 169), as in the case of Namibia (Schroeder, 2013: 213). With the growing requests to help with elections, especially in the context of peace agreements, as a series of violent conflicts reached the opportunity of a peace agreement, the UN was called to assist with the holding of elections (Ludwig, 2004b) and this rationale soon changed. With the end of the Cold War, many peace agreements were concluded in many conflict-ridden countries, including holding elections under international support (Ludwig, 2001: 5), with the UN providing electoral support in many of these cases. Many Eastern European countries also carried out elections, often requesting international support, thus creating a market for electoral assistance. African countries felt this influence as well. With the collapse of the Soviet Union, the only viable

form of governance seemed to be the Western liberal democracy model. As a result, many African countries carried out reforms, under international or UN assistance. The UN was called to assume a more active position on conflict resolution (Ludwig, 2004b), as it was the institution perceived as more neutral and with universal standards (Ludwig, 2004b: 170; Schroeder, 2013: 213). Regarding electoral assistance, UN universal membership made it seem more likely to “provide assessment based on established international standards” and less likely to have political motivations (Ludwig, 2001: 2). Plus, several UN instruments contained a legal basis where electoral assistance could fit. The Universal Declaration of Human Rights states that “the will of the people shall be the basis of the authority of government ... [and] shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage” (United Nations General Assembly, 1948). The International Covenant on Civil and Political Rights, namely its article 25, states that individuals have the right to participate in “genuine periodical elections”. The evolution of the UN electoral assistance took place based on these very fundamental principles.

In this chapter we provide a brief historical analysis of the UN electoral assistance, focusing on the rationale and its institutional form, which grounded concrete decisions. Afterwards, and as a synthesis, we present a brief description of the resulting types of electoral assistance and its specific differentiating content. Finally, we carry out a critical analysis of these processes and programmes, whose choices are commonly portrayed as technical by the UN, highlighting the political scope of the decisions at stake.

1. The beginnings of UN electoral assistance

The first UN GA Resolution on electoral assistance was adopted on 8 December 1988 and emphasised the “significance of the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, which established that the authority to govern shall be based on the will of the people, as expressed in periodic and genuine elections” (A/RES/43/157, 1988). In this document, the UN GA called “upon the Commission on Human Rights, at its forty-fifth session, to consider appropriate ways and means of enhancing the effectiveness of the principle of periodic and genuine elections”, with the due respect for “the sovereignty of Member States” (A/RES/43/157, 1988: 5). In

1989 the government of Nicaragua requested UN electoral observers, in order to “verify that the electoral process [was] genuine” (A/44/210, 1989). This was included in the broader context of the peace process in Central America (A/RES/43/24, 1988) and elections and electoral reforms were a condition for a peace agreement (A/44/210, 1989; Schroeder, 2013: 214). The UN mission, as requested by the Nicaraguan President, had a broad scope and verified if the electoral measures announced by the Government had been implemented, and if the electoral process had been genuine during its whole development (A/44/210, 1989). In a letter to the UN GA, the UN SG highlighted that it had not been a UN practice to support elections in independent states (A/44/210, 1989). However, in the case of Nicaragua there were special factors: it was not a request by just a single member state, but it had broad regional support, namely from Costa Rica, El Salvador, Guatemala, Honduras and Nicaragua (Joint Declaration of the Central American Presidents, 1989); it was included “in the context of Central American Peace efforts” and, in that regard, the UN GA Resolution (A/RES/43/24, 1988), of 15 November, had already requested the SG to

afford the fullest possible support to the Central American Governments in their efforts to achieve peace, especially by taking the measures necessary for the development and effective functioning of the essential verification machinery” (A/RES/43/24, 1988: 6).

The UN was invited to verify the electoral process in Nicaragua, covering all 10 districts and “throughout the 10-month duration of that process” (A/44/210, 1989). However, for the UN SG Perez de Cuellar, agreeing with the Nicaraguan request would have “no effect on established practice, nor would a precedent be set for possible further requests” (A/44/210, 1989). Later, on 6 June 1989, the UN SG addressed another letter to the President of the General Assembly, with further developments on the Nicaragua question (A/44/304, 1989). The SG had already sent “several missions to Nicaragua”, mainly to make contact with Government and electoral authorities, but also with opposition parties and other entities based outside Nicaragua, and “to observe the debate in the Legislative Assembly on the reform of the electoral laws and the laws regulating the mass media” (A/44/304, 1989). UN experts had also studied the legal documents resulting from the reform and “submitted a detailed report to the Nicaraguan Government containing, inter alia, a number of suggestions on specific areas which they

believed required further clarification” (A/44/304, 1989). The SG considered he had already been granted enough legal basis to carry out the observation of the Nicaraguan electoral process, through the previous GA Resolution A/RES/43/24, 1988, where the GA requested the SG to provide “the fullest possible support” to the peace process, as cited above.

Following these initiatives, on 16 August 1989, the Secretary-General transmitted to the General Assembly a “Framework for future efforts” on electoral assistance, which summarised the basic principles regarding elections, at four different levels: “the will of the people expressed through periodic and genuine elections” as being the basis of governments; the right of candidacy and equal opportunities for all candidates; national electoral institutions ensuring equal opportunities; and cooperation from the international community (A/44/454, 1989).

On October 1989, the General Assembly supported the SG decision to establish a “United Nations Observer Mission to verify the electoral process in Nicaragua”, following the Nicaraguan “sovereign decision”, and the deployment of “a group of observers to verify each and every stage of the electoral process in Nicaragua, a process that [was] to culminate in national elections scheduled for 25 February 1990”, within its Resolution “The situation in Central America: threats to international peace and security and peace initiatives” (A/RES/44/10, 1989: 7). The GA further noted that this was “an extraordinary measure related to the maintenance of international peace and security” (A/RES/44/10, 1989: 8). Later on December 1989 the UN GA approved a Resolution addressing sovereignty issues related to electoral processes, namely regarding the scope of the UN electoral assistance to be provided (A/RES/44/147, 1989). In this regard, the GA recognised that

there [was] no single political system or single model for electoral processes equally suited to all nations and their peoples, and that political systems and electoral processes are subject to historical, political, cultural and religious factors” (A/RES/44/147, 1989).

As such, it would be

the concern solely of peoples to determine methods and to establish institutions regarding the electoral process, as well as to determine the ways for its implementation according to their constitution and national legislation” (A/RES/44/147, 1989: 2).

It also called all states not to interfere in the internal questions of “national electoral processes”, according to the “Charter and in the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States”, therefore respecting “the sovereign right of peoples to determine their political, economic and social system” (A/RES/44/147, 1989: 3–4). The UN SG was also requested to report to the GA on this sovereignty issue, under the item entitled "Enhancing the effectiveness of the principle of periodic and genuine elections" (A/RES/44/10, 1989: 10), which it did regularly (A/RES/45/151, 1990; A/RES/46/130, 1991; A/RES/47/130, 1992; A/RES/48/124, 1993; A/RES/52/119, 1998; A/RES/60/164, 2006).

On the same date, the UN GA adopted a second Resolution, titled “Enhancing the effectiveness of the principle of periodic and genuine elections”, where it re-called the Commission of Human Rights to report to the General Assembly on the “appropriate ways and means of enhancing the effectiveness of the principle of periodic and genuine elections in the context of full respect for the sovereignty of Member States” (A/RES/44/146, 1989: 8). However, an agreement in this regard was not possible, and later on 1990 the GA requested the SG “to seek the views of Member States, specialized agencies, other competent bodies of the United Nations system and those with specific expertise” (A/RES/45/150, 1990: 10), and further asked the Secretary General to propose guidelines for UN electoral assistance, namely “suitable approaches that will permit the Organization to respond to the requests of Member States for electoral assistance” (A/RES/45/150, 1990: 10). The SG should “report his findings” to the following session of the GA, “together with an account of United Nations experience in election monitoring, within existing resources” (A/RES/45/150, 1990: 11).

By 10 October 1990, the UN GA had already approved electoral assistance to Haiti, after its President had requested “assistance from the United Nations in order to achieve the peaceful and efficient development of the coming electoral process” (A/RES/45/2, 1990). Some authors argue this broadened the criteria for electoral assistance, as in the Haiti case there was no “international dimension” at stake (Schroeder, 2013: 215). By the same time, another Resolution addressing sovereignty concerns (A/RES/45/151, 1990) was approved by the GA.

In November 1991, after consulting member states (A/46/609/Add.1, 1991), the SG presented two reports to the General Assembly with the title “Enhancing the effectiveness of the principle of periodic and genuine elections” (A/46/609, 1991; A/46/616, 1991), pursuant to the previous GA Resolutions A/RES/45/150, 1990 and A/RES/45/151, 1990, respectively. The SG described, as requested, the UN experience in electoral verification, both in non-self-governing territories, as well as in member-states, with the novelty brought by the cases of Nicaragua and Haiti (A/46/609, 1991). The UN bodies involved in electoral assistance were the Center for Human Rights, the Department of Technical Cooperation for Development and the UNDP (A/46/609, 1991). In his concluding observations, the SG made one of the most important remarks, stressing that it was “important for the United Nations to continue to use its discretion in deciding how to respond to requests for electoral verification and to decide on a case-by-case basis” (A/46/609, 1991: 79). Technical assistance was expressly distinguished from electoral observation, and these last requests for electoral assistance ought to meet certain criteria, namely:

situations with a clear international dimension; (...) cover the entire electoral process in order to secure conditions of fairness and impartiality; (...) broad public support in the State for the United Nations assuming such a role; and, finally, there should be approval by the competent organ of the United Nations” (A/46/609, 1991: §79).

In 1991 the UN GA formally embraced these criteria for UN electoral assistance. This was made at the same time as reaffirming national sovereignty, a double approach that marked the debate on electoral assistance within the UN since its early stage. In the debate taking place in the General Assembly, some countries were seeking to ensure that electoral choices would remain an issue of national sovereignty and “no one system for elections would be advocated” (Ludwig, 2001: 2). This concern was raised by a group of countries, including Cuba, China, Democratic People’s Republic of Korea, Lao People’s Democratic Republic, Namibia, United Republic of Tanzania, Viet Nam and Zimbabwe, fearing that the UN “might promote a particular form of elections and governance”, arguing these choices should rather be left to member states (Ludwig, 2001: 3). Another important set of questions had to do with “the basis upon which the Organization would choose the electoral system or procedures to be recommended” (Ludwig, 2001: 3).

Resolution A/RES/46/130 was adopted by the UN GA in 17 December 1991, reaffirming again that it was

the concern solely of peoples to determine methods and to establish institutions regarding the electoral process, as well as to determine the ways for its implementation according to their constitution and national legislation (A/RES/46/130, 1991: 2).

The GA recognised that there was “no universal need for the United Nations to provide electoral assistance to Member States”, except in special circumstances,

such as cases of decolonization, in the context of regional or international peace processes or at the request of specific sovereign States, by virtue of resolutions adopted by the Security Council or the General Assembly in each individual case, in strict conformity with the principles of sovereignty and non-interference in the internal affairs of States (A/RES/46/130, 1991: 4).

A first and modest organisational structure for the provision of electoral assistance was approved (A/RES/46/137, 1991). The UN SG appointed a focal point for electoral assistance, with supporting staff, in order to “ensure consistency in the handling of requests of Member States organizing elections”, among other electoral related tasks (A/RES/46/137, 1991: 9). The Focal Point would namely

assist the Secretary-General to coordinate and consider requests for electoral verification and to channel requests for electoral assistance to the appropriate office or programme, to ensure careful consideration of requests for electoral verification, to build on experience gained to develop an institutional memory, to develop and maintain a roster of international experts who could provide technical assistance as well as assist in the verification of electoral processes” (A/RES/46/137, 1991: 9).

The Secretary-General should also report regularly on this area to the General Assembly.

In January 1992 the UN SG Boutros-Ghali began its term, which lasted until December 1996. The UN SG presented three ‘agendas’ addressing peace (A/47/277–S/24111, 1992), development (A/48/935, 1994) and democratisation (A/51/761, 1996). These identified several links between violence and election-related dynamics: the need for election monitoring, strengthening of institutions and political participation when addressing post-violent conflict peacebuilding (A/47/277–S/24111, 1992; Goodwin-Gill, 2006: 10); the need to ensure popular participation, democracy and development in order to minimise the risk of violent conflict (A/48/935, 1994); and the need to promote and strengthen democracy since it “contributes to preserving peace and security, social

justice and human rights, and promoting economic and social development” (A/51/761, 1996: 51). These documents had significant impacts and practical consequences. Democratisation should be seen as an implicit Charter value and “inextricably linked” to peace and development (Schroeder, 2013: 216); democratisation should expand “within and among states” and the UN should expand democracy and electoral assistance (Boutros-Ghali, 1996).

The Electoral Assistance Unit, a permanent electoral agency, was established by the SG under the Department of Political Affairs (A/47/668, 1992), in order to assist the Focal Point, in accordance to the GA Resolution (A/RES/46/137, 1991). The Focal Point was responsible to “coordinate and ensure consistency in the handling of electoral assistance” (A/47/668, 1992: 13), establishing working groups with other UN departments of relevance, as the Department of Economic and Social Development of the Secretariat, the Center for Human Rights and the UNDP (1992: 14). More requests for electoral services were accommodated. Elections held on the basis of peace agreements were considered a priority for electoral assistance at the time, as these were seen as a conflict resolution tool and an element to help on peacekeeping operations (Ludwig, 2001: 4). In 1992, when the EAU was established, it “relied extensively on the UNDP’s financial and personnel resources” (Ponzio, 2004: 213). The number of requests for electoral assistance and observation increased sharply, and between 1 October 1991 and 16 October 1992 a total of 31 requests were made by member states (A/47/668, 1992: 3), mostly African countries seeking for electoral credibility (Schroeder, 2013: 216). From these, 12 referred to technical assistance, eight to electoral observers and 11 aimed a combination of both (A/47/668, 1992: 26).

The UN SG provided an account of the different types of electoral assistance to be provided by the UN (A/47/668, 1992: 63). These were made following the previous UN GA request for “guidelines and terms of reference” for UN electoral involvement (A/RES/46/137, 1991: 18) and drew upon the UN previous experience on the field of electoral assistance, but also on the SG views for this (A/47/668, 1992: 63). In this regard, the SG called for greater flexibility, especially regarding the chronological coverage of elections, as the UN presence would add confidence-building as a primary consequence

(A/47/668, 1992: 58) and, as such, a more flexible approach should in some cases be adopted (1992: 56–62), especially with the increase of requests.

As a consequence, six forms of UN electoral involvement were enunciated, namely verification, coordination and support of the activities of international observers affiliated with other organisations, technical assistance, organisation and conduct, and supervision (though the latter not defined here) (A/47/668, 1992: 63). Electoral verification would start to be seen as “an exceptional activity” of the UN (A/47/668, 1992: 53) and further requisites were specified, namely:

- (a) (...) situations with a clear international dimension and which may relate to the maintenance of international peace and security;
- (b) Monitoring provided by potential United Nations activity should cover - geographically and chronologically - the entire electoral process, from the initial stages of registration through the elections themselves;
- (c) (...) specific request from the Government concerned as well as broad public and political support for a United Nations role;
- (d) Approval should be provided by the competent United Nations organ.

In cases where these four criteria had not been met, the SG had given the alternative of providing more flexible approaches, as follow and report, where a small mission of experts assessed the election and provided the UN SG with an internal report. This assessment was often made in cooperation with other UN agencies (A/47/668, 1992: 60). In other cases, coordination and support was provided, regarding international observers from other organisations (A/47/668, 1992: 61). These were more flexible, not requiring a Security Council or General Assembly mandate, or a UN public statement, but allowed the UN to be supportive in more requests, though offering mostly a “symbolic presence” (Schroeder, 2013: 218) and were authorised 32 times between 1993 and 1995. Technical assistance comprised a “wide variety of demands, circumstances” and the agencies involved highlighted “the need for a more systematic approach to electoral assistance” (A/47/668, 1992: 46).

Organisation and conduct of elections had been provided for the first time to Cambodia in 1992, upon a Security Council resolution (S/RES/745, 1992). Electoral assistance to Cambodia was one of the main UN peace missions with an electoral scope (A/47/668, 1992: 28). The holding of elections was a central aspect and the “the responsibility for the organization and conduct of the elections” was entrusted to the

United Nations Transitional Authority in Cambodia (UNTAC) (A/47/668, 1992: 28). It was the first time that the UN was “entrusted with the organization and conduct of elections” (A/47/668, 1992: 30) and the Secretary-General's implementation plan (S/23613, 1992: 23–51) was the basis regarding

details on the legal framework, civic education and training, registration of voters, political parties and candidates, polling, the structure of the UNTAC Electoral Component, the need for computerization and the calendar of the electoral process”. As in the initial discussion regarding UN electoral assistance, the electoral component in Cambodia was included in the broader context of the Paris Agreements, aiming at peace and reconciliation in the country (A/47/668, 1992: 28).

This extensive UN electoral involvement was justified with the fact that the SG highlighted the role of UN electoral assistance as “an important instrument for peacemaking and post-conflict peace-building”, as “free and periodic elections can provide a positive solution to potential or existing conflict”, and the UN electoral assistance could “help to build confidence among parties currently in dispute and facilitate peaceful solutions” (A/47/668, 1992: 76). The SG also equated further possibilities regarding the UN role after electoral assistance, namely “If the United Nations certifies that an election was free and fair and therefore the result must be considered valid, does it have a responsibility to follow implementation of the election results?” (A/47/668, 1992: 68). However, this perspective did not have any follow-up.

In 18 December 1992 the UN GA approved the usual two resolutions on the electoral field, one regarding the abovementioned sovereignty issues, which became “biennialized” (A/RES/47/138, 1992: §11), and the other recognising that “Requests for electoral assistance should be made by governments and be provided on a case by case basis” (A/RES/47/130, 1992: 4). The GA also recommended the SG to consider the proposed guidelines as “provisional”, to be evaluated with the UN electoral experience of the following two years (A/RES/47/138, 1992: 9).

Until 1993 the number of electoral assistance requests kept growing (A/48/590, 1993) and the UN GA recommended that this continued to be provided as “case-by-case basis”, in accordance with the proposed guidelines (A/RES/48/131, 1993). The scope and objectives of electoral assistance broadened and the UN GA recognised the role of electoral assistance in the broader context of “continuation and consolidation of the

democratization process”, being this assistance ideally “provided before and after elections have taken place” and that “needs assessment missions” should aim at “recommending programmes which might contribute to the consolidation of the democratization process” (A/RES/48/131, 1993: 4). The SG addressed, for the first time, the specificities electoral assistance provided in the context of “major peace-keeping missions”, where the timing and synchronisation of the “various components of the peace process” were crucial, in order not to result in further conflict (A/48/590, 1993: 64). The lack of appropriated UN coverage, due to short timeframes, was also presented as a shortcoming in the effectiveness of electoral assistance, throughout the Report. Careful planning should be developed in “consultation with government officials” (§65), and though “the timetable may vary somewhat from one country to another, the activities to be undertaken prior to an election are fairly standard, and the time they will take can be generally predicted” (§66). Timing was therefore crucial from three main perspectives, namely the success of the “broader peacekeeping effort”, to allow an appropriate UN response and “to ensure that elections are not an end in themselves, but a final phase in a particular series of activities towards increased democratization” (A/48/590, 1993: 67).

Between 1993 and 1995 the UN accepted more than 50 requests for electoral services, declining less than 12%, as the UN SG argued that even a small UN presence had a symbolic meaning, fostering voter participation and discouraging electoral fraud (Schroeder, 2013: 218). The increase in the number of small electoral missions and, in most cases, its limited scope, made UN electoral officials worry that the UN could be borrowing its prestige and giving a “stamp of approval” to pseudo-democrats, observing elections that were far from being democratic in its essence (Schroeder 2013: 218). Cases like Djibouti (1992), Togo (1993), Senegal (1993), Algeria (1995), Gambia (1996), Zambia (1996), linked the UN to dubious elections (Schroeder 2013: 218). In the following years UN peacekeeping missions in places such as Somalia and Bosnia complicated the UN public image, with effects also on the electoral area. The Security Council excluded the UN from observing elections in Bosnia and Guatemala (Schroeder 2013: 216). A request regarding Macedonia was also declined, as the Council of Europe and the Organisation for

Security and Cooperation in Europe (OSCE) were already observing the elections (Schroeder 2013: 216). Nevertheless, the UN head of mission designated observers and issued a public statement, without the GA consent, with the UN rebuking these senior officials (Schroeder 2013: 217). The EAD also had difficulties in securing funds, with the expansion of the electoral interventions, the increase of requests and donor states not that willing to allocate funds for this type of intervention (Schroeder 2013: 217).

In 1994 the SG provided an account of the electoral assistance situation in the previous period (A/49/675, 1994). By 1994 the UN GA had already authorised election observers for Nicaragua, Haiti, Eritrea and South Africa and the SC had agreed to send observers to Angola, El Salvador and Mozambique. However, electoral observation in a small scale (previously referred to as follow and report) was considered “of negligible benefit” and would be authorised only in special cases (A/49/675, 1994: §29). Requests for electoral assistance continued to increase and technical assistance was the most requested, being rendered 43 times between 16 October 1993 and 15 October 1994 (A/49/675, 1994: §37). Nevertheless, the SG highlighted problems in the field of “institutional memory”, as electoral experts many times designed electoral assistance projects having in account their previous experiences, “rather than referring to the Electoral Assistance Division for conceptual advice and operational design” (A/49/675, 1994: 11–12). El Salvador and Mozambique were the two major electoral operations within peacekeeping missions (A/49/675, 1994: §22). The GA recommended the EAD to provide “post-election assistance to States (...) and to electoral institutions, in order to contribute to the stability and continuity of their electoral processes” and to reassess and define “more clearly the activities related to democratic consolidation which the United Nations might usefully undertake in assisting the efforts of interested States in this regard” (A/RES/49/190, 1994: §5). Electoral assistance should also channel and “support democratization activities as related to human rights” to the United Nations High Commissioner for Human Rights, thus broadening its scope, with “increased responsibilities and enlarged mandate in the field of electoral assistance and democratization” (A/RES/49/190, 1994: 6,14).

2. Broadening the scope of electoral assistance: a longer-term focus

In 1995 this trend continued, with the SG further emphasising the shifting of electoral assistance “from short-term preoccupation with the events of a particular election day to more longer-term considerations related to the development and strengthening of electoral institutions and processes” (A/50/736, 1995: §3). The SG noted the “the beginning of a new, "second-generation" phase in the provision of electoral assistance” with “specific types of expert assistance, aimed at supporting and strengthening the existing capability of a requesting Government” (A/50/736, 1995: §26). Therefore, more "client-oriented" forms of assistance” should be considered (§27). These would rely more on experts, whether “highly qualified” or “senior”, in order to either “review and provide an objective assessment of existing electoral systems and procedures”, “focus on the electoral law” or “provide Governments and electoral commissions with advice on the streamlining, improvement and strengthening of their existing electoral institutions and procedures” (A/50/736, 1995: §27). This was due, among others, to the fact that by 1995 many states had already had multi-party elections, with changes “in political processes, structures and participants” (A/50/736, 1995: §26). The UN GA further noted

the evolution in the nature of requests for assistance and the growing need for specific types of expert assistance aimed at supporting and strengthening the existing capability of the requesting Government, in particular through enhancing the capacity of electoral institutions (A/RES/50/185, 1995: §12).

Technical assistance continued to be the most requested, and the areas covered included “advice on electoral systems and methods of power-sharing” and “review and amendment of electoral laws” (A/50/736, 1995: §25). Missions with just a UN “primarily symbolic” presence were often refused by the EAD (A/50/736, 1995: §4). There was a decrease of electoral components in larger peacekeeping missions, being Haiti the only case (A/50/736, 1995: §5). Regarding the institutional memory, the preparation of “guidelines and handbooks”, as mentioned in the previous report, did not proceed and the SG considered them “secondary priorities” (A/50/736, 1995: §8), being unlikely that “technical papers” would be used as “authoritative information” by national election officials (A/50/736, 1995: §18).

Kofi Annan was appointed as UN SG in January 1997 and the focus of electoral assistance shifted. Particular attention was called upon “fig leaf democracy”, and those who, claiming to be democrats “would overturn democracy in more subtle, yet equally destructive ways” (Annan, 2000). As a consequence, electoral assistance would only be provided to governments who demonstrated to be willing to hold free and fair elections (Schroeder, 2013: 219). On these grounds electoral assistance to Haiti was terminated. The EAD had now motives to decline electoral assistance to governments that could link the UN to electoral fraud (Ludwig, 2004a: 182) and 60% of the requests were denied in Annan’s first term (Schroeder, 2013: 219). The EAD made electoral services conditional on a Needs Assessment Mission (NAM), assessing the timing and political will of free and fair elections, making also recommendations to governments on improving the electoral process – which resulted, many times, on governments declining the electoral assistance request (Ludwig, 2004a: 173).

Following this trend, UN electoral assistance was refocused on technical assistance, which the UN SG later considered “less visible but no less important” (A/60/431, 2005) when compared to electoral observation. Kofi Annan argued that follow and report should decrease and the EAD authorised it only three times during Annan’s first term (Schroeder, 2013: 219). Technical assistance has since then been the most common form of electoral assistance (Schroeder, 2013: 209–210, 211). In 1997 UN electoral agencies expanded “technical electoral assistance” in order to make it an “entry point” for other UN programmes, aimed at strengthening “good governance” as a whole (Schroeder 2013: 212), focusing also on “participatory, effective and accountable institutions” (Schroeder 2013: 220). The good governance agenda had as an object to bypass the problems caused by the allegedly neutrality of technical assistance, trying to convert particular objectives into more concrete technical questions (Zannotti, 2005: 480). This also meant moving away from the election day and focusing on a broader scope, including long-term institution building (A/52/474, 1997) and independent electoral commissions were perceived by UNDP as a very important element (Schroeder, 2013: 221). By supporting elections in Indonesia, Mozambique, Bangladesh, Sierra Leone and Nigeria, “the UNDP cultivated the relationships required to support governance

reform efforts in sensitive areas such as human rights, decentralization, and judicial and media independence” (Ponzio, 2004: 218). According to some authors, a core mistake of the initial electoral assistance projects was not necessarily the *ad hoc* support, but rather “the belief that such support would suffice to ensure the sustainability of the following electoral processes, the independence and transparency of the EMB” and the democratic development of the country (Tuccinardi et al., 2008: 15). The international community paradigm shifted the focus from strict democratisation to the broader concept of good governance, with a significant acceptance that democratisation was a necessary step to achieve good governance (Newman and Rich, 2004: 10).

Revised guidelines for electoral assistance were drafted in 1997 (A/52/474, 1997: -11). Cooperation with other organisations, such as the International Foundation for Electoral Systems (IFES), OSCE, the European Union, The Carter Center, the International Institute for Democracy and Electoral Assistance (IDEA), among others, was highlighted (A/52/474, 1997). The EAD and the DPKO equated a “lessons learned” project, to be useful for “future peacekeeping missions” (A/52/474, 1997: 23). The SG called for new forms of UN electoral assistance, with an emphasis on “the sustainability of the electoral process, and on assisting electoral administrators to plan and conduct elections efficiently and with cost-effectiveness”, with “field projects over longer periods of time and with greater attention to specific results and resulting additional needs” (A/52/474, 1997: IV,§32–33). The broader and diffuse scope of electoral assistance, as proposed by the UN SG, was endorsed by the UN GA in its subsequent resolutions (A/RES/52/119, 1998; A/RES/52/129, 1998).

In 1999 there was a general decrease of large-scale electoral assistance missions, with the exception of the organisation and conduct of the popular consultation in Timor-Leste (A/54/491, 1999: 3). It was the second mission of this kind in the UN history, being the first UNTAC, in Cambodia, in 1993 (A/54/491, 1999: 29). In the context of a peacekeeping operation, the UN also provided electoral assistance to the Central African Republic (A/54/491, 1999: 28). Electoral assistance projects became broader, more complex and specialised, with stronger coordination challenges. As such, needs assessment missions were deployed, in order to identify the needs for each concrete

request (A/RES/54/173, 2000). Technical assistance truly started to become the dominant model of electoral assistance and a growing differentiation within this concept started to be developed, with the SG Report mentioning three different types, namely process assistance, capacity-building, and institution-building (A/56/344, 2001: §7). Process assistance consisted on “expert advice for the introduction of new systems” or the transformation of the existing ones, with “expert advice that identifies options, analyses comparative advantage and makes recommendations regarding suitability and implications for other electoral processes” (A/56/344, 2001: §40). Capacity-building focused on the development of the national ability to conduct elections, and institution building on “the development of key institutional components of electoral management, which may include preparation and/or review of electoral laws (...) and electoral commissions (...) supportive of effective electoral processes” (A/56/344, 2001: §45) .

In 2001 the EAD “developed a series of seven new programme activities (...) closely linked”, that from that point on could no longer be “specifically defined as one particular category of assistance” (A/56/344, 2001: 29). These were divided in pre-electoral assistance activities and electoral assistance. Pre-electoral assistance comprised expert advisory services and needs assessment missions, both provided at early stages. Electoral assistance activities included the observation and monitoring of elections, further subdivided in coordination and support for international observers, provision of UN observers, expert monitoring and support for domestic observation and monitoring; process assistance, which could include direct support with planning, logistics, civic education and quality control of software systems; capacity-building; institution-building; and systems architecture. Systems architecture was the most complex and comprehensive, including

analysis and design of electoral systems and processes to ensure their consistency with the political and legal framework, appropriate representation of political parties, and the integration of those systems and processes within the broader political environment (A/56/344, 2001: §47).

This aimed at ensuring that “the new electoral elements are consistent and compatible with existing political and social structures, cultural norms and traditions”, and

expertise provided draws upon past international electoral practice and experience, review of the existing socio-economic and political conditions in the country, comparative analyses of system and institutional options and careful sequencing of assistance (A/56/344, 2001: §47).

This was used in the case of Timor-Leste regarding the preparation of the 2001 elections, as it was “the first comprehensive example of system architecture to date because of the broad mandate of the United Nations in building independent institutions that will play a leading role in the future country’s independence” (A/56/344, 2001: §48). The UN was “responsible not only for the conduct of elections in East Timor but for drafting the electoral laws and establishing appropriate mechanisms for the conduct of elections” (A/56/344, 2001: §48). In fact, by 2001 Timor-Leste (UNTAET), along with Sierra Leone (United Nations Mission in Sierra Leone - UNAMISIL), were the only two large-scale UN electoral missions (A/56/344, 2001: §4). In Timor-Leste, electoral assistance included “discussions with East Timorese leaders and civil society” to embrace the Timorese desires and not to compromise the integrity of the electoral process (A/56/344, 2001: §16). Two teams were sent, namely an electoral systems education team and an advance planning and design team, with the tasks of

design the structure of the electoral management body (...), develop a comprehensive operational plan for the conduct of the 2001 elections, design a capacity-building programme and establish the basis for a voter education and information programme (A/56/344, 2001: §16).

The SG also highlighted that in “countries undergoing political transition, however, old systems may have to be modified and adapted to address new political realities” and electoral assistance must be “flexible and focused not only on immediate electoral priorities but on the longer-term implications and the broader political and electoral environment” (A/56/344, 2001: §59). Therefore, in the context of democratisation, electoral assistance needed to be “flexible and focused not only on immediate electoral priorities but on the longer-term implications and the broader political and electoral environment” (A/56/344, 2001: 59). In the broader good governance objectives, UNDP had a greater role on “long-term technical assistance projects to strengthen electoral authorities” (A/56/344, 2001: §12). A “binding note of guidance on United Nations electoral assistance in January 2001” was issued (A/56/344, 2001: §14), mostly with instructions of institutional nature (A/56/344, 2001: §23). The

subsequent UN GA Resolution highlighted the “comprehensive coordination” between the EAD and UNDP and requested UNDP, in this field, “to continue its governance assistance programmes in cooperation with other relevant organizations, in particular those that strengthen democratic institutions and linkages between civil society and Governments” (A/RES/56/159, 2002: §7).

UN electoral assistance within peace missions

In the beginning of the 2000s electoral missions increased (A/58/212, 2003: 42–43). If during the mid 1990s the number of electoral missions had decreased, as abovementioned, intra-state conflict in the late 1990s led to several peace missions and elections became increasingly seen as “an essential aspect of peace-building” (A/58/212, 2003: 42–43). By 2003 the EAD was still working closely with the DPKO in the three peace missions with an electoral component, namely Timor-Leste, Sierra Leone and Afghanistan (A/58/212, 2003: 42–43). A “best practices” chapter on electoral assistance was developed with the Department’s Peacekeeping Best Practices Unit (A/58/212, 2003: 18). Electoral assistance became “increasingly incorporated into major United Nations peacekeeping and peace-building missions”, and the SG highlighted “the value of including electoral experts at political negotiations aimed at ending or preventing conflicts” (A/58/212, 2003). The SG listed the four types of UN electoral assistance being provided in 2003, namely technical assistance, the organisation and conduct of elections, observation or monitoring of elections, and “participation where elections are expected to play a significant role in the peace-building phase of political negotiations”, the later recently developed (A/58/212, 2003: 5).

Regarding the context, technical assistance was more likely to be provided in politically stable contexts; organisation and conduct of elections regarded post-conflict conditions (as in the case of Timor-Leste). Participation in the context of peace negotiations had been recently developed and used in the case of the Occupied Palestinian Territory (A/58/212, 2003: 5). Technical assistance was also requested in countries “considering a major review and reform of existing systems” and could cover areas such as “institution-building, capacity-building, civic education, political party development and the civil registration process” (A/58/212, 2003: 35). The EAD biggest

problem was “a product of success” (A/58/212, 2003: 56). Technical assistance requests were growing in complexity, with an emphasis on capacity-building, and UN staff was crucial in this process, being required “a solid understanding of electoral issues, the political dynamics of the areas to which they are deployed and the United Nations system itself” (A/58/212, 2003: 57). For instance, in the case of Timor-Leste “the United Nations and the East Timorese agreed that it was the role of the independent Timorese Government, and not the United Nations Transitional Administration, to determine the post-independence electoral system”, an option not exempted from problems (A/58/212, 2003: 45). The UN GA acknowledged the evolving and complex nature of electoral assistance, namely technical cooperation, often focused on strengthening national institutions and, among others, encouraged UN agencies to share knowledge on this field, as “institutional memory” was still a recurrent need to be addressed (A/RES/58/180, 2004). The UNDP should also “to continue its governance assistance programmes” (A/RES/58/180, 2004: §11).

By 2005 the EAD continued to be a victim of its success, with increasing requests and complexity, mainly regarding “technical assistance and post-conflict elections”, highlighting the importance of a “better link between electoral events and parallel processes in areas such as human rights, the rule of law, and institution-building” (A/60/431, 2005: §1). Post-conflict electoral assistance was being provided to Afghanistan, Iraq, Burundi, the Democratic Republic of Congo, Haiti and Liberia (A/60/431, 2005: §2) and there was a growing awareness of the pervasive nature of the electoral-related areas, such as timetables, electoral systems, inclusion, political parties, media, among others (A/60/431, 2005). The SG expressly recognised the impact electoral design can have on peace, stating that “design of electoral systems that promote inclusiveness and political stability can be an important tool for conflict prevention” (A/60/431, 2005: §70).

In 2007 the organic of electoral assistance within peacekeeping missions was clearly defined and it would be “provided through the electoral components of the missions of the Department of Peacekeeping Operations or through the special political missions managed by the Department of Political Affairs” (A/62/293, 2007). The EAD

assisted the missions “in designing and staffing the electoral component and provides technical guidance”, while UNDP “increasingly helps countries develop national capacity for professional electoral management and frameworks for inclusive electoral participation over a sustained period” (A/62/293, 2007: §1). UNDP was the organisation in charge of most “long-term electoral support outside the peacekeeping or post-conflict environment”, shifting from supporting specific elections to support the whole electoral cycle (A/62/293, 2007: §9). By 2007 electoral assistance was provided in the context of a peacekeeping operation in Afghanistan, Democratic Republic of the Congo, Haiti, Liberia, Sierra Leone, Sudan and Timor-Leste (A/62/293, 2007: §13). In this last case, UNMIT “through its Electoral Assistance Office, provided key legal advice and support for the drafting of electoral regulations, procedures and codes of conduct” and assisted “the National Electoral Commission in accomplishing its mandate of supervising the electoral process” (A/62/293, 2007: §13). Gender mainstreaming became important and a priority on electoral assistance (A/62/293, 2007: §19), as well as support to political inclusiveness (A/62/293, 2007: §21). The Report concluded that “more attention must be paid to system-wide coherence and consistency” (A/62/293, 2007: §38), referring again to the lack of institutional memory.

The electoral cycle approach to electoral assistance was adopted by the UN GA in 2007, recommending that

throughout the time span of the entire electoral cycle, including before and after elections, as appropriate, based on a needs assessment, the United Nations continue to provide technical advice and other assistance to requesting States and electoral institutions in order to help to strengthen their democratic processes (A/RES/62/150, 2008: 5).

The electoral cycle approach had been first conceptualised in 2005 (Tuccinardi et al., 2008: 15) and broadened the scope of electoral assistance. This included all steps of the electoral cycle, including inter-election periods, as these were considered crucial in its multiple components and might also require international support. This support should be provided before, during and after the election period, as all factors were able to shape the electoral processes in its multiple components (Tuccinardi et al., 2008: 16). This approach was put in practice in several projects, such as in the Democratic Republic of

Congo, Timor-Leste, Togo or Sierra Leone, becoming a model on the electoral assistance field (Tuccinardi et al., 2008: 16).

By 2009 there were increasing demands for electoral assistance, which was becoming even more complex, and the SG highlighted the need to

make sustainability and cost-effectiveness more central in the design and provision of electoral assistance; consider additional measures to ensure that elections contribute to peace and good governance, rather than violence or instability; and increase the use of special or more flexible administrative procedures, with the necessary safeguards and controls, for electoral projects in a crisis situation or under a Security Council mandate” (A/64/304, 2009: §2).

The SG also recognised, for the first time in these reports, the political scope of electoral assistance, namely that

while elections are technical processes, they are fundamentally political events. However, the true measure of an election is whether it engenders broad public confidence in the process and trust in the outcome. An election run honestly and transparently, respecting basic rights, with effective and neutral support of State institutions, and responsible conduct of participants (leaders, candidates, and voters) is most likely to achieve an accepted and peaceful outcome (A/64/304, 2009: §2).

The SG also identified the need to work on conflict prevention within the electoral context. Concerns regarding sustainability highlighted the need to extend electoral assistance throughout the whole electoral cycle, in order to “secure needed resources and expertise to support effective planning and institution-building between electoral events” (A/64/304, 2009: §41). The UN GA kept the focus on institution building and strengthening, as well on capacity building, throughout the whole electoral cycle, “in order to consolidate and regularize the achievements of previous elections and support subsequent elections” (A/RES/64/155, 2010). The question of institutional memory finally became central in 2011, and the SG sought “in the next biennium the improvement of coherence, predictability and accountability in delivery of electoral assistance” (A/66/314, 2011). There was a continuous emphasis on governance, as

[i]nvestments in elections will not yield sustainable peace and development without independent and professional judiciaries, open, pluralistic media, a robust civil society, a credible government and effective governance at all levels” (A/66/314, 2011: 2).

The SG made a synthesis of the types of electoral assistance being provided at the time, with the most common being technical assistance, expert panels and

coordination of international observers. Organisation and conduct of elections, as well as verification/certification could also be provided, being at this time very rare and requiring a GA or SC mandate (A/66/314, 2011: 6).

Increasingly, the focus continued to be on good governance and elections alone were devaluated, as a good election alone was “rarely sufficient to produce good governance; good governance on the other hand tends to produce good elections” (A/68/301, 2013: §1). The SG stressed again the institutional coordination of UN components relevant for electoral assistance. The EAD, on behalf of the focal point, provided “ongoing political and technical guidance to all United Nations entities involved in electoral assistance, including on electoral policies and good practices” (A/68/301, 2013: §7). The UNDP supported the developing of electoral institutions, legal framework and elections “outside the peacekeeping or post-conflict context” (A/68/301, 2013: §8). Finally, in peacekeeping or post-conflict environments, electoral assistance was provided “through components of field missions under the aegis of the Department of Peacekeeping Operations or the Department of Political Affairs”, with the “political and technical guidance” of the EAD to the “electoral assistance providers on the ground” (A/68/301, 2013: §9). The SG also reiterated his concern with electoral related violence, addressing some effects that electoral components might have on mitigating this risk (A/68/301, 2013: 28–40). Finally, the SG broadened the requirements for “conducting genuine elections”, which should be “fundamentally political, rather than technical” and “not an end in themselves” (A/68/301, 2013: 45). Measures to be taken to reinforce “trust and confidence” in the electoral process should include

broad political consultation on the rules of the game, including the electoral system and electoral laws; the appointment of electoral authorities that are and are seen to be honest, impartial and capable; transparency in electoral administration; state neutrality; inclusiveness, especially of politically marginalized groups, including minorities; and efforts to enhance the political participation of women. (A/68/301, 2013: 47).

In December 2013 the UN GA followed the trend of the SG Report and endorsed a broad approach to electoral assistance, recognising the importance of “the links that exist between development, peace, human rights, the rule of law and democratic governance, including the holding of free and fair elections”, which should be considered “in the elaboration of the post-2015 development agenda” (A/RES/68/164, 2014). It went

a step further and highlighted the role of “civil society and the importance of its active engagement in the promotion of democratization”, inviting “Member States to facilitate the full participation of civil society in electoral processes” (A/RES/68/164, 2014: 17), broadening even more the scope of electoral assistance.

3. Synthesis: types of UN electoral assistance

By the mid-1990s, the UN SG would already refer to an extensive enumeration of modalities of electoral assistance to be provided. Its denomination and content would change along time and some were more frequent than others, with a few being discontinued in the evolution of UN electoral assistance. In order to provide a clearer overview of these, we will seek to briefly describe all types of UN electoral assistance, to provide a broader picture of the scope it would reach. Electoral assistance was many times described focusing upon the activities it comprised and the denomination of the several types changed along the time, with its classification varying in different documents. As such, when describing the several types, we focus on the activities they comprise, rather than on its sometimes-changing nomenclature. To provide a more substantial analysis we group them in four main categories, according to our perspective on their similitude and the degree of UN involvement entailed. These are election observation and other assessments; supervision, organisation and conduct of elections; coordination and support; and technical assistance. Within these, we will highlight the concrete types of electoral assistance comprised.

Election observation and other assessments

These aimed at responding to requests of member states for the UN “to assess or even validate the integrity of an electoral process” (UN DPA, 2014) and were used as “an additional tool for national actors to overcome a confidence crisis in an electoral process, and provide interested UN organs with an assessment of the process for their future deliberations” (UN DPA, 2014). These mandates were “inherently political” and required a decision from the Security Council or the General Assembly (UN DPA, 2014). Mandates for observation or verification were frequent in the beginning of the UN electoral assistance (UN DPA, 2014). The UN was requested to certify electoral processes

in some countries, but from 1994 on, these types were rarely provided (A/49/675, 1994: 29).

Follow and report was developed in 1992 (Schroeder, 2013: 212), allowing a more flexible approach, providing a UN symbolic presence, with the UN sending a small team that followed the elections and issued an internal report to the UN SG (UN DPA, 2014). In some cases a single observer was sent (A/49/675, 1994: 29). This happened when no extensive UN support could be present, for instance, due to a late request. In 1994 the UN SG considered that this symbolic presence only made a limited contribution to “further democratic development”, the ultimate UN objective, and it was only provided in special circumstances (A/49/675, 1994: 30).

Verification missions were the most common in the 1990s, often in the context of peace agreements or within peacekeeping missions (Ludwig, 2001: 9), frequently with specific electoral provisions (Ludwig, 2004b). Electoral assistance developed in this context, through electoral observation. These missions required a SC or GA mandate and the appointment of a Special Representative, to certify each step of the electoral process (Ludwig, 2004b). It started with the adoption of legal framework, and included further steps as voter registration, election campaign, election day and results announcement (Ludwig, 2004b). These missions were carried in sovereign states, with the national government responsible for organising the elections, and the UN to verify its legitimacy (Ludwig, 2001: 9). These were carried in Nicaragua (1990), Angola (1992), El Salvador (1993-4) and Mozambique (1994). A UN verification mission took place in Timor-Leste for the 2007 elections (SG/SM/10682, 2006), where a small team verified each phase of the elections carried by independent Timor-Leste, with extensive UN electoral assistance (Luís, 2015). The verification mission was independent from the UN, but this was not exempt from problems, including adopting a different approach from the initial, contradictory assessments and potential conflict of interests (UNMIT, 2007a).

Supervision, and organisation and conduct of elections

These forms of electoral assistance require an extensive and formal UN involvement, as the UN puts elections in practice. They are less common, being exceptions. In supervision and organisation and conduct the UN is in charge of organising

the elections in a member state (UN DPA, 2014). This was provided in rare cases, in transitional settings, as the UN would usually only perform a supporting role on assisting the national electoral administration (UN DPA, 2014). Within this framework, electoral assistance could comprise supervision and organisation and conduct, as described below. In rare cases, UN experts take part of the national electoral administration itself, being the responsibility shared between the UN and the member state (UN DPA, 2014). These are exceptions in contexts of transition, where the UN takes a supporting role in assisting the national electoral administration (UN DPA, 2014), as in Afghanistan (2004-2005) and Iraq (2005).

Electoral supervision was only carried in non-sovereign territories, within decolonisation (Ludwig, 2004b). It was mandated by the SC or GA and a Special Representative of the UN SG should oversee the mission. The UN was responsible for certifying “the legitimacy of each step in the election or referendum process” (Ludwig, 2001: 8). It implied heavy costs of time and human resources, being unlikely replicated. It was carried within the United Nations Transition Assistance Group (UNTAG) in Namibia, in 1989-90, with the goal of holding free and fair elections in its transition to independence (Ludwig, 2004b). A Special Representative was appointed and worked closely with UNTAG, as “there was no sovereign state responsible for the process” (Ludwig, 2004b). The whole electoral process, including voter registration, electoral campaign, vote counting and publication of the results, was subject to approval and certification by the Special Representative, regarding the “fairness and appropriateness of all measures taken by the authorities at each stage” (Ludwig, 2001: 8).

In organisation and conduct the UN was directly responsible for organising and conduct elections of a member state (Ludwig, 2004b). The UN assumed the role of a sovereign state on planning and conducting the election. It required the approval of the SC or GA and a Special Representative should be appointed. In these cases the UN would not further observe the election, as this could generate a conflict of interests (Ludwig, 2004b). This implied heavy financial and human resources and it did not occur very often. Cambodia (1992-1993) and Timor-Leste (2001-2002) were the two emblematic examples and worth a more detailed analysis.

Cambodia elections of 1993 were carried within a large peacekeeping mission (Ludwig, 2001: 11). The Paris Agreements, signed by Cambodia and 18 countries, invited the UN to create UNTAC. Holding “free and fair elections” was key, and a Constituent Assembly would be elected, to draft and approve a new Constitution. The new legislative assembly and government would be the following step. A UN needs assessment mission was carried in 1991 and an implementation plan was submitted to the SC in February 1992. The SC Resolution creating UNTAC (S/RES/745, 1992) approved the implementation plan and set the date for the elections, the latest in May 1993. For the first time a UN mission was granted a mandate to conduct an election in a member state, carrying the functions of a national authority (Ludwig, 2001: 11). The electoral mandate was one component of the wider peacekeeping operation, and consisted of five main areas: enacting a legal framework, civic education and training, voter registration, political parties and candidates and polling, all these combined in the electoral calendar and system (Ludwig, 2001: 11), in articulation with the remainder mission components. The Referendum in Timor-Leste, of 30 August 1999, was another example. This was much smaller and shorter than in Cambodia, as the Referendum was planned and implemented in months (rather than years) and the population was smaller (Ludwig, 2001: 12). However, the following Constituent Assembly in 2001 and Presidential elections in 2002 also followed this pattern (Luís, 2013b). Unlikely Cambodia, in Timor-Leste there was no peacekeeping mission during the Referendum, and the security was a responsibility of the Indonesian government (Ludwig, 2001: 13), which became a major obstacle to operations in the field. The peacekeeping mission was only mandated in the post-referendum. The Referendum was organised between May and 30 August 1999, and a needs assessment mission was carried in May, following the New York Agreements.

Coordination and support

Coordination and support of international electoral observers was provided when the UN established a coordination secretariat in the host country (Ludwig, 2004b), to coordinate non-UN observers. It was first provided in Ethiopia and recognised as a form of UN electoral assistance in 1992 (A/47/668, 1992: 61). International observers were sent by organisations or states at their own cost and the UN helped to coordinate

their work, seeking to maximise the available resources, although the UN did not issue any statement regarding the election (Ludwig, 2004b). This did not require GA or SC approval, and no SR SG was needed, allowing flexibility and cost reduction, and there was also no official UN certification (Ludwig, 2004b). This was seen as having a narrow scope, as was limited to a very specific time-frame, not embracing all stages of the electoral process and leaving potential space for fraud (Ludwig, 2001: 15). It was initially provided in 1993, after a request from Malawi in 1992 regarding “assistance in organizing and conducting a referendum on the question of single or multiparty government” (Ludwig, 2001: 14). The UN carried two needs-assessment missions and the Electoral Assistance Unit recommended an Electoral Assistant Secretariat to be created in Malawi, in order to coordinate international observers activities, regarding registration, campaign, polling and vote counting (Ludwig, 2001: 14), and advice on international standards and practices (Ludwig 2001, 14). Coordination and support became frequent on observation assistance models, and was used again in Malawi in 1994, in its first multiparty elections, as well as in Armenia (1995), Cambodia (1997), Lesotho (1998), Nepal (1999), Niger (1999), Nigeria (1998-99), Mali (1997), South Africa (1999), Tanzania (1995, 2000), among others.

Support for national observers was added in 1994 (A/49/675, 1994: 26), and developed to allow nationals to observe their own electoral process. It provided a platform, with resources usually not available, in coordination with the civil society. Local actors needed to be perceived as credible and the observation methodology played a great role (Ludwig, 2001: 16). This was used, among others, in Mexico (1994), Indonesia, Kenya (Ludwig 2001: 16) and Tanzania (Ludwig, 2004b).

Technical assistance

Technical assistance became the dominant model and most electoral assistance now takes the form of small-scale technical assistance (UN DPA, 2014). It expanded considerably, with “advice and support” being provided “in all sectors of electoral administration” to national authorities in charge of carrying elections in a member state (UN DPA, 2014). It can cover different electoral subjects, as

electoral administration and planning, review of electoral laws and regulations, electoral dispute resolution, boundary delimitation, voter registration, election

budgeting, logistics, procurement of election materials, use of technologies, training of election officials, voter and civic education, voting and counting operations, election security and coordination of international donor assistance (UN DPA, 2014).

It can be provided during several days or several months, being the most flexible and “least intrusive and generally aimed at national capacity-building” (Ludwig, 2001: 16). It can be combined with other forms of electoral assistance, either in sequence or simultaneously (Ludwig, 2001: 17). In Malawi (1992-1993), technical missions were carried prior to the referendum, advising the government on the timetable and procedures for registration and voting (Ludwig, 2004b). In Mexico (1994) the UN carried a review of the electoral system, requested by the national government, while also preparing domestic observers (Ludwig, 2004b).

3.1. Political scope of the “technical options” and the need for context specific approaches

As we can see, by the end of the 1990s, UN electoral assistance was seen mostly as technical, and the effects of elections were seen as one of the few determinants for democratisation. However, many UN electoral officials were concerned with the political neutrality of this technical assistance, especially in polarised elections in post conflict states (Santiso, 2002: 555). As one UN official agreed, “no part of the electoral process is apolitical. (...) [The UN] (...) should not play around with electoral assistance without being aware of its implications.” (Bjornlund, 2004: 383). Indeed, in this context many difficult options prove to be needed, a choice of which can only be of a political nature. An expert consensus “can conflict with donor and domestic group demands” (Reynolds, 2005; Schroeder, 2013: 211). The expert community also often offers “competing recommendations”, including namely “whether to select a proportional representation or majoritarian system” (Schroeder 2013: 211). In some circumstances, the “technical advice” might be closer to “preferences and interests of the external democracy promoters”, which might constrain the local input, affecting the stability and legitimacy of the resulting institutional system (Whitehead, 2004: 162). In many post conflict scenarios, UN officials have been subject to conflicting pressures from different sources, such as donors, local factions and had no clear UN guidelines regarding decisions such as the

timing, sequencing and choice of the electoral system (Santiso, 2002: 573). UN officials also recognised that they had “limited experience in strengthening electoral systems to promote inclusive processes and effective electoral institutions” (López-Pintor, 2000). Uneven “political commitment to democratic reforms” and “the application of sometimes inappropriate democratic models in client countries” also proved to be big constraints (Ponzio, 2004: 226).

Elections are a political process in its essence, and so should electoral assistance be faced. As the UN SG Ban Ki-moon recognised, elections are “inherently political” and susceptible of being manipulated to non-democratic ends (Ki-moon, 2010). As a result, great attention should be put in the options at stake, as these bear the risk of empowering extremist groups or “inherently autocratic” regimes (Ki-moon, 2010). A single model to be implemented in all contexts might prove not to be adequate, as every country’s “underlying economic, social, and institutional conditions and legacies” can have great influence (Carothers, 2002). It is necessary to have a context-specific approach, considering both formal and informal institutions (Rocha Menocal and Sharma, 2009) and these choices have necessary implications that cannot be simply considered technical.

In the last years more holistic approaches tend to see elections as one element of a much broader cycle of electoral processes (NORAD et al., 2010: 1). An integrated approach to democracy assistance is needed, as electoral processes can have broad impacts, such as, for instance, shape the character of parliament and vice versa (Ponzio, 2004: 227). However, despite the continuous change of the UN electoral focus and assistance, many problems persisted regarding the consequences of the choices made. Examples of these questions are the time and sequence of elections, namely if local elections should precede national ones, which was at stake in Timor-Leste (2001) and Afghanistan (2004) (Reilly, 2008: 171). In Iraq, the adoption of a quicker single national constituency led to polarisation and violence, with the UN subsequently changing its advice to an opposite option (Lemieux, 2011). Available options may also lead to a “second best” situation, such as deciding if it is better to hold elections on a “semi-democratic” regime and prepare a good international exit or aim at “impeccable

democratic standards” that cannot be met before an international mandate is exhausted (Whitehead, 2004: 155). On post-conflict elections decision-makers often need to make “political trade-offs such as whether to expand international control or strengthen local ownership” (Jarstad and Sisk, 2008; Schroeder, 2013: 211). These choices have crucial consequences in the future of the countries at stake. UN democratisation options have a political impact that should not be neglected (Whitehead 2004: 156). Great care and attention should be put on these, raising the question of accountability of the options made.

Therefore, “a purely technical approach to democracy assistance will fail unless political obstacles are confronted” and external democratisation actors “can only succeed when favourable domestic circumstances exist for democratic change” within a country, namely national leadership “with strong political support base”(Ponzio, 2004: 226).

Conclusions

UN electoral assistance has its roots in its broader contribution for peace. Its genesis was connected to peace processes and that was the expectable contribution of credible elections, growingly present in peace agreements. UN electoral assistance had a long, and not always steady evolution. It has been the object of ordinary UN SG Reports, further analysed by the UN GA. Forms of electoral assistance diversified, often broadening its scope. The initial requisite of insertion on a peace process with an international scope blurred, and new and more flexible modalities developed. This was not exempt from problems and the UN soon narrowed its interventions, refocusing on broader goals. Good governance, through an electoral cycle approach, was one of these. However, electoral assistance grew in complexity. New forms developed and technical assistance became the dominant model. At the same time, the electoral component and electoral assistance became increasingly present on the mandates of UN peace missions. However, the impact of UN electoral assistance being provided in these contexts is very rarely traceable to a concrete goal. The options made are imminently political and, even though the UN might recognise this in broader terms, it fails on recognising it within each approach to the concrete cases, rather labelling it as technical. Crucial options are made, discarding their eminent political character and thus leaving untraceable a broader UN

focus and approach. Being UN electoral assistance growingly provided in the context of peace missions, it remains to be ascertained if there is a broader UN approach to this objective, ensuring coherence of the politically technical options made, in order to achieve this broader goal. We analyse this question in the next chapter, connecting it with possible impacts that several electoral options can entail.

Chapter 3 – UN peace missions, institutional design and electoral systems

Introduction

In this chapter we focus on UN electoral assistance within peace interventions and see how electoral assistance implications are taken into account. In particular, we analyse which factors does the UN take into account when providing electoral assistance, its social impact and, therefore, possible effects on each specific society. After summarising electoral assistance within UN peace missions, we provide an overview of the debate on the effects of electoral systems and the contribution and impact of different institutional arrangements, especially regarding electoral systems design. This is especially important regarding their potential contribution to peace and democracy, particularly in sensitive post-violent conflict societies. This chapter intends to contrast and bring together two fields of studies, international relations and political science, not always convergent, and we expect to highlight the impact of different options within UN peace interventions.

1. Electoral assistance and UN peace missions

As we described, UN electoral assistance was shaped closely linked with the aim of achieving peace, being electoral support often considered within this broader dimension. However, in its genesis, UN electoral assistance was not necessarily provided in the context of a peace mission, nor is it the norm today. However, electoral assistance has become a frequent pattern within UN peace missions and this needs to be addressed carefully, as it can prove to have far more reaching consequences, namely regarding its impact on peace. We now address specifically UN electoral assistance provided in the context of peace missions, to provide an overview of this specific UN electoral assistance.

Peacekeeping missions have gradually incorporated electoral assistance as one of its core tasks (Lindenmayer et al., 2012: 54). Peace agreements often include general elections for the executive and legislative bodies, with local elections following within one or two years (United Nations, 2003: 151). In a peacekeeping mission the electoral component has often become one of the most important aspects, as

the holding of an election tends, in such cases, to be a fundamental element of the overall political agreement giving rise to the operation (as has been the case in numerous missions, including those mounted in Namibia, Cambodia, Mozambique and Timor-Leste (Maley, 1999).

This evolution took place in the broader context of the acceptance of the concept of self-determination, especially in decolonisation, as set out in the UN Charter (Articles 1, 73b and 76b), the recognition that a country's internal problems can threaten international peace, and the growing emphasis on good governance, especially important to the international donor community, which led many countries to adopt democratic mechanisms (United Nations, 2003: 149).

Holding elections within peace missions often raises the question if all required conditions for a legitimate electoral process are met before holding the election, requiring a lot of coordination among several mission components (Ludwig, 2001: 10). This poses a double problem, namely that either the electoral mission might have to be delayed, should the necessary conditions fail, or that holding elections without meeting the necessary requirements might also risk electoral credibility (Ludwig, 2001: 10). The United Nations Angola Verification Mission (UNAVEM II) and the elections held in Mozambique in 29 and 30 September 1992 might be an example of this. Elections held as a part of a wider peacekeeping operation are also usually the most costly (López-Pintor, 2000; Ponzio, 2004: 219).

Due to the growing multidimensional scope of the missions, the electoral operation in the context of a peace mission needs careful planning, comprising several interrelated phases and stages (United Nations 2003: 149). An important and sometimes crucial issue is to determine when to hold an election, with vast and controversial literature on this issue (for an overview on the debate, see Flores and Nooruddin 2012; Brancati and Snyder 2011; Norris 2002; Reilly 2004; Reilly 2008). As electoral processes are very sensitive to context, it is rarely the case that an election can be fully planned from the beginning. Factors of political, military or economic nature play a key role and the electoral process is often developed in stages or when crucial benchmarks are met (United Nations 2003: 149). Previous to the electoral activities, a NAM is usually carried out. Planning also comprises different stages, namely prior to the peacekeeping agreement, during the agreement phase and in the post-agreement; within each of these,

several aspects are also to be followed. Especially within the context of peace missions, elections need careful preparation and a very systematic approach is needed (Lindenmayer et al., 2012: 54).

The DPKO has been asked to provide support to elections since 1991 (Lindenmayer et al., 2012: 9). The UN has provided electoral assistance in missions such as MINUSTAH (Haiti), MONUC (DRC), MONUSCO (DRC), UNOCI (Côte d'Ivoire), UNAMA (Afghanistan), UNMIL (Liberia) and UNMIT (Timor-Leste) (Lindenmayer et al., 2012: 9). In the 2011 Secretary-General Report, five types of UN electoral assistance are mentioned, namely organisation and conduct of elections, verification-certification, technical assistance, expert panels and coordination of international observers (A/66/314, 2011). In 2012 the Security Council authorised 25 peacekeeping missions to provide electoral assistance to national elections, with multiple electoral cycles (Lindenmayer et al., 2012: 10). The UN involvement in the outcome of elections, especially in politically tense contexts, has been subject to criticism. Subsequently, in 2012 the UN Focal Point for Electoral Assistance produced the document "Principles and Types of UN Electoral Assistance", limiting verification to situations when "it is deemed absolutely necessary to contribute to political stability or preserve a peace process". In 2012, from the 17 UN missions deployed in the field, nine comprised an electoral assistance dimension in their mandate, namely UNOCI, MINUSTAH, MONUSCO, UNMIT, UNMIL, UNMISS, UNAMA, MINURSO and UNMIK (Lindenmayer et al., 2012: 12).

Within peacekeeping, the main electoral areas where the mission intervenes are "technical issues" and assistance on the logistical aspects of the election (Lindenmayer et al., 2012: 12). Usually the Security Council also requests the missions to coordinate the involvement of many other actors from the international community, in areas such as financial coordination or coordination of observers (Lindenmayer et al., 2012: 12). Human Rights is one area that is being increasingly a matter of concern for the Secretary-General, especially regarding human rights violation in the context of upcoming elections (Lindenmayer et al., 2012: 12). Other areas also present in the mandates are women participation, gender issues, hate speech in the media and fostering peaceful electoral activities (Lindenmayer et al., 2012: 13). Peacekeeping mandates are always more vague

than its concrete implementation in the field. As a result, it is up to the missions' SR SG to implement these guidelines and to "design a shared, coordinated, and integrated strategy for the conduct of elections" (Lindenmayer et al., 2012: 13). As the electoral mandate can be widespread between different agencies and units, the SR SG is the ultimate responsible to ensure that all components of the mission have an integrated strategy and converge to the same goal, comprising also its implementation (Lindenmayer et al., 2012: 14). In fact, the SR SG plays a very important role, especially "in times of an election as the country and the mission are under a great deal of stress" (Lindenmayer et al., 2012: 14). In post-conflict electoral cycles the SR SG is especially important on seeking for consensus and facilitating dialogue between important actors (Lindenmayer et al., 2012: 14). The SR SG and the mission coordination can prove to be crucial for the electoral support needed in different host countries, being strategic leadership and coordination mechanisms a key factor regarding the mission's structure, mobilisation and management (Lindenmayer et al., 2012: 20). Although a case specific approach might be needed, some examples can prove to be potentially replicable (Lindenmayer et al., 2012: 20).

United Nations electoral assistance is nowadays provided by a multiplicity of agencies and actors, with a strong interdependence with other mission components and UN agencies, and inter-component liaison should be constant (United Nations, 2003: 151). Among these components we can find the Office of the Special Representative of the Secretary-General (political negotiation), political affairs (monitoring), military (territorial integrity), civilian police (law and order), public information (civic and voter education campaigns), the legal unit, the office of administration and support (short- and long-term local staff recruitment, procurement and transport), the United Nations High Commissioner for Refugees (UNHCR), the Office of the United Nations High Commissioner for Human Rights (OHCHR), the UNDP and the UN Volunteer Programme (United Nations 2003: 151).

However, the EAD is the main actor, with other UN agencies acting in close cooperation. The EAD appoints a Chief Technical Adviser or Chief Electoral Officer to monitor closely the planning implementation, and the EAD is responsible for compliance with the UN standards (United Nations, 2003: 151). UNDP is one of the main providers of

electoral assistance, especially in a post-conflict context not requiring a peace mission. On the one hand, the mission configuration and activities need to be shaped by the mission's concrete context, with an extremely important role by the SR SG (Lindenmayer et al., 2012: 54). However, on the other hand, common experiences and goals are not always shared in the context of peacekeeping missions, and important information comprising best practices can sometimes be wasted, leading to *ad hoc* approaches to the preparation of elections (Lindenmayer et al., 2012: 54).

Phases of electoral assistance within peacekeeping missions

Within a peacekeeping mission, an election can be divided in five main phases, which may also overlap. These are expanding the legal framework, establishing the electoral administration, voter registration, candidates nomination and campaigning, and polling and counting (United Nations, 2003: 152). The legal framework shapes the context in which elections are going to take place and, therefore, influences the UN involvement in the process and its scope. The electoral legal framework can be foreseen in the Constitution, electoral laws or any other agreement between the parties in conflict (United Nations, 2003: 152). This can also be the result of negotiations between the parties and the UN may be called to intervene, normally through the SR SG. Electoral rules should receive contributions and take into account areas such as "political, civil, military, police, logistics and public information" (United Nations, 2003: 152). The UN may assist on drafting these sets of principles and rules, which are often the result of an agreement between the parties in a conflict. The SR SG has often electoral experts and this negotiation requires "continuous and intense UN technical and political involvement" in order to reach "a feasible and acceptable set of electoral rules" (United Nations, 2003: 152). Two important questions in this phase are the electoral system to be adopted and the criteria for the right to vote (United Nations, 2003: 150). Human Rights Units should work throughout the electoral process, making recommendations to the mission and to legislature regarding key human rights areas to be taken into account or amended in electoral laws (Lindenmayer et al., 2012: 33). These include areas as "determining the fair and clear division of electoral boundaries, ensuring access to polling stations, and developing rules on candidacy and party participation" (Lindenmayer et al., 2012: 33). For

instance, in Timor-Leste, in the beginning of 2010 sections of the UNMIT and the UN country team cooperated in this regard, in preparation for the 2012 elections. The electoral management body is the institution responsible for the organisation and conduct of an election. It is often the case that, in a post-conflict situation, state institutions are weak or non-existent. In this case, it can even be the UN to play the role and tasks of the EMB – though in these cases there needs to be a distinction between the UN mission and the electoral component, as it was the case of Timor-Leste and the Independent Electoral Commission. However, in most cases, the UN may provide technical assistance to the EMB, in order to strengthen its role and public perception as a fair, credible and effective institution (United Nations, 2003: 153). Credibility is a very important aspect, as suspicious of political bias can ruin the peace negotiations and process and escalate the tension between the parties formerly at conflict (United Nations, 2003: 153). Voter registration is also an important phase, as it determines who will be able to vote. There are crucial aspects, both regarding the definition of the right to vote (often through electoral legislation), but also regarding the more practical aspect of voters registration and accuracy, and efficiency on the practical side (United Nations, 2003: 154). Post conflict situations also pose greater challenges, as voter registration may be difficult due to logistic or security issues, voters documentation may be scarce and Internally Displaced People (IDPs) may have greater difficulties on exercising their rights. In some cases, the UN may carry this phase by itself. Voter criteria based on “race, colour, sex, language, religion, political or other opinion, national or social origin or ownership of property” are not endorsed by the UN, as opposed to the Universal Declaration of Human Rights and other human rights instruments (United Nations, 2003: 154). Voter eligibility is usually dependent on “citizenship, residency and age” (United Nations, 2003: 154). The requirements for political parties to run for election should be regarded very carefully, not to abusively prevent certain forces from running for an election. The transformation of violent groups in non-violent political parties is one of the areas of electoral assistance, as it was the case of Timor-Leste (2001-2002) and Sierra Leone (2001-2002) (United Nations, 2003: 155). As issues of neutrality and impartiality may arise, spreading to the whole peacekeeping mission, this area is often carried out by “a third party”, as UNDP

(United Nations, 2003: 154). As in many peacekeeping operations the UN has the monopoly of the broadcast system, there can be an agreement with the EMB to allow for airtime to competing parties on the election. The UN mandate may also foresee the monitoring of political rallies, in order to verify its compliance with the codes of conduct and other legislation. Finally, polling and counting is one of the most intense periods of a peacekeeping mission (United Nations, 2003: 156). If the UN is directly involved in the election, it should allocate massive resources to polling and counting, ensuring the security of ballot papers and other material, in order to prevent fraud or a breach of voters' confidence (United Nations, 2003: 156).

Modalities of electoral assistance within peacekeeping missions

Among all the modalities of UN electoral assistance, as identified above, five have particular relevance within peacekeeping missions and mandates. These are the organisation and conduct of elections, supervision, verification, coordination and support for international observers and technical assistance. Although they follow the main description previously provided, they face specificities in the context of peace missions, which we now briefly describe and highlight.

In the organisation and conduct of elections, the UN is called to run the election, being directly responsible for areas such as staffing, logistics and security. The UN acts fulfilling the role of a national electoral administration, exercising all the necessary powers. This was the case of Cambodia in 1992 and Timor-Leste in 1999 and 2001-2002. On supervision the UN is responsible for certifying the electoral results, as well as all steps of the process (United Nations, 2003: 157). As the certification may collide with national sovereignty, this type of electoral assistance is indeed very rare and more likely to be used as a part of a peacekeeping operation when national sovereignty has not yet been established (United Nations, 2003: 158). On verification the UN is called to verify the "freedom and fairness" of some components of an electoral process conducted by a sovereign country (United Nations, 2003: 158) and this is usually fulfilled through UN electoral observation, carried out over an agreed period of time. In coordination and support for international observers the UN is coordinating observers sent by different countries or organisations. This was the case, for instance, in South Africa, where the UN

was coordinating the observers sent by the Commonwealth, the EU and the Organisation of African Unity (OAU) (United Nations, 2003: 158). Technical assistance is the most common modality of UN electoral assistance. It should have as a basis the specific requirements of the host country and can be provided in any area of electoral administration. It can include analysis, advice, equipment or training of national institutions (United Nations, 2003: 158). This modality is often used in a peacekeeping context, as it was the case in Haiti. From all these, verification and certification are becoming increasingly uncommon within peacekeeping electoral assistance (Lindenmayer et al., 2012: 12). It has only been used recently in Côte d'Ivoire and a small certification team was mandated in Timor-Leste in 2006 (Lindenmayer et al., 2012: 12). Indeed, it was this small electoral mission deployed in Timor-Leste in 2006 that stressed the need to have adequate legislation for the 2007 presidential and parliamentary elections, though not all its recommendations have been accepted and adopted by the national authorities (Lindenmayer et al., 2012: 12).

According to the UN, the common objective is, in all cases of electoral assistance, “to build sustainable peace and development through supporting Member States in holding periodic, credible and genuine elections and establishing nationally sustainable electoral processes” (United Nations, 2012: 16). However, there can be “potential trade-offs and inherent tension between near-term peace-building and democracy-building activities”, that often “external agencies, such as the UNDP fail to examine carefully” (Ponzio, 2004: 226). In this regard, it is very important that these factors be carefully addressed, as they might prove to have important subsequent effects on countries stability and democracy developments. Support to non-genuine democratic intentions might prove to have very strong negative consequences (Reilly, 2004a), as it has been illustrated by the UN early electoral assistance praxis, above in this chapter. UN electoral assistance can also have a very broad and complex scope. It remains to be ascertained, in each case, which factors are taken into account and how peacebuilding as a final objective is pursued in each step of these processes.

Although the UN highlights that each electoral assistance mission is designed on a case-by-case basis and that no ready-made model of intervention exists (United

Nations, 2012: 16), critical choices are at stake. There needs to be a wider assessment of the electoral systems choices implications on peace and stability of the countries intervened (UNDP, 2009a) in order to prevent electoral related violence but also to contribute to a sustainable peacebuilding. The UN intervention model assumes that electoral processes that are free and transparent are crucial to support peace at the local level (Ndulo and Lulo, 2010), through the stability of local government institutions (Risley and Sisk, 2005: 17). However, if the chosen electoral system does not take into account local power relations, electoral processes may well result in more violence, instead of leading to a sustainable and consolidated peace (IDEA, 2012b; Sisk, 2008a).

Current UN mandates usually start with a peace force, then progressing to develop some civil society, state institutions and hold elections, in order to generate a legitimate domestic power (Sisk, 2008b: 257). Despite criticism that the main electoral areas where a peacekeeping mission intervenes are “technical issues”, and assistance on the logistical aspects of the election (Lindenmayer et al., 2012: 12), a much broader approach is carried in practice, with strong political implications. Indeed, if the UN electoral assistance within a peacekeeping mission can include expanding the legal framework, establishing the electoral administration, voter registration, candidates nomination and campaigning and polling and counting (United Nations, 2003: 152), as mentioned above, this can already be a very substantial intervention. In the path from war to democratisation, there are several main challenges that international interventions need to address, namely the balance of power between the parties at stake in the conflict (including the nature of the elites), the institutional framing of the transition, including choices regarding political institutions such as elections (and how this can affect the main parties in the conflict), the social divisions and the extent of the international involvement, especially in the case of the UN (Sisk, 2008b: 242). Despite the apparently detailed procedures for UN electoral assistance, there seems to be a “need for more effective, theory-informed strategic directions” in this field of action, for adequate policy formulation and programming (Sisk, 2008b: 241).

In this regard, in the next section we provide a brief overview of the electoral debate, namely regarding the several elements and expected effects of the different

electoral systems, in order to highlight how these material aspects seem absent from the UN approach to electoral assistance.

2. Electoral systems as central institutions of democracies

Democracies are constituted and sustained by its institutions (Reilly and Reynolds, 2000: 421). Political institutions and its “constellation” are becoming “highly complex”, and “superseded the sovereign assembly that was central to the ancient conception of democracy” (Dahl, 1991: 30). Being regularities, political institutions can constrain or construct the choices available to political actors. In the sense that

constitutions, laws, contracts, and customary rules of politics make many potential actions or considerations illegitimate or unnoticed; some alternatives are excluded from the agenda before politics begins, but these constraints are not imposed full-blown by an external social system; they develop within the context of political institutions (March and Olsen, 1984: 740).

State institutions “shape the choices available to political actors” (Reilly and Reynolds, 2000: 421). This is particularly important in post-violent conflict societies, as the institutional design and expected outcomes can be able to channel the conflict into the democratic process; as such, a player that failed its goal on elections should find it easier to wait for another turn than to destroy the democratic rules (Przeworski, 1992: 34; Reynolds et al., 2005). Special attention should be paid to institutional design. The broader constitutional arrangement, many times the result of a peace agreement and its negotiations, can also shape or have implications on the electoral system and its components, with important elements being comprised in the new electoral laws. In particular, institutions and electoral laws reflect a certain agreement regarding society, state institutions, the electoral system and its configuration (Jeong, 2005: 104), as well as the relation of forces they are likely to produce.

An electoral system can be defined as “the set of rules that structure how votes are cast at elections for a representative assembly and how these votes are then converted into seats” (Gallagher and Mitchell, 2005b: 3). Due to their likely outcomes, some authors consider electoral systems as “the central political institution in representative democracy” (Gallagher and Mitchell, 2005b).

The institutional design of electoral systems has important impacts in many different areas, and the effects of these have been analysed exhaustively, also according to their many different aspects and components. For instance, electoral institutions can affect the behaviour of political elites, patterns of representation (André et al., 2016: 43), and, eventually the public policies these produce (André et al., 2016), among many others, as we describe below.

Duverger was the first author to focus on the outcomes of electoral systems, rather than just on their components, (Duverger, 1959), opening what would become a broad field of studies (Benoit, 2006: 72; Sartori, 1968). Duverger talks about mechanical and psychological factors deriving from different electoral models, which not only shape electoral outcomes, but also deal with the reactions of society, especially voters and parties, in anticipation of the elections themselves (Duverger, 1959: 24). The author argued that simple-majority single-ballot system favours the two-party system (Duverger, 1959: 217), in what became known as the Duverger law. It is argued that if there were only one seat at stake, only the two biggest parties had an effective chance of being elected, further leading to bipartism. On the other hand, the author argued that proportional representation systems favour multi-partism, as well as majority systems with a second round (Duverger, 1959: 239). The first proposition refers to the so-called mechanical effect, while the second to the psychological effect. Indeed, voters refrain from voting in parties that might not have a chance of achieving representation, as it is the case for most parties in majoritarian systems, as there can only be one winner. On the other hand, as in proportional representative (PR) electoral systems more parties stand a chance of being represented, voters perceive this as a broader range of meaningful options. Other authors had also previously argued that smaller parties would fare better on proportional representative systems, which also allowed for a broader representation of society (Finer, 1949; Hermens, 1941).

As proportional representative electoral systems tend to favour the representation of all parties, including the smaller ones, this tends to favour their creation as well, as voters know they will have an effective chance of being represented (Duverger, 1959: 246–249). Simple-majority systems or single-member district systems

tend to lead to polarisation, a phenomenon that rewards larger parties, on a disproportional representation that can disregard small parties (Duverger, 1959). The opposite process, depolarisation, occurs under the proportional representation electoral model. The mechanical effect is connected to “effects that flow directly from the electoral rules and the structural conditions” (Norris, 2004b: 23), such as, for instance, electoral thresholds excluding smaller parties from achieving seats. Psychological effects regard “how the public, politicians, and parties respond to electoral rules and, hence, the underlying reasons for some of these relationships” (Norris, 2004b: 23), and despite some strong correlations among factors, causation is harder to find. Although more is known regarding the mechanical effect than the psychological effect of these propositions (Norris, 2004b: 23), much can already be extracted from here as concrete conclusions for electoral design, namely regarding the constitutional structure, electoral system and electoral procedures (Norris, 2004b: 39).

The most accepted generalisation in electoral studies is the “Duverger law”, answering the question of what was the relation between electoral systems and the number of parties, stating that the single-ballot and single-member district would lead to a two-party system (Duverger, 1954; Shugart, 2005: 27). There have also been numerous studies on several aspects of electoral systems, such as “proportionality, number of parties”, as well as broader aspects as “regime stability, democratic quality, and management of ethnic conflict” (Shugart, 2005: 28). Most of the studies focused on how electoral systems affect the transformation of votes into seats, the results of political parties and how this affects the number of parties and party system (Shugart, 2005: 30). It is therefore crucial to understand the possible options available and their likely outcomes, when it comes to this institutional design. Constitutional provisions can already shape much of the institutional results and rules, and these tend not to be amended that often – despite, nevertheless, adjustments on national laws, which can also prove to have an important impact (Norris, 2008: 219).

2.1. Elements and classification of electoral systems

There are many ways of classifying electoral systems, depending either on their most significant components, as well on the effects these produce, with vast literature on

the issue (for an overview, see André et al., 2016; Blais, 1988a). One of the most important authors is Rae, who analysed the consequences of electoral systems (1967, 1971), identifying some of their most important properties. Following the consolidated work on the consequences of electoral systems (Duverger, 1954; Rae, 1967), key elements in this analysis seem to be “the electoral formula, assembly size, and ballot structure”, whose impact can be analysed through the outcomes of “vote-seat disproportionality, electoral turnout”, women in parliament or party competition patterns (Norris, 2004b: 22). In this regard, Rae emphasises the role of the ballot, district and formula (Rae, 1967). Lijphart (1999) also identified seven main aspects that electoral systems should take into account and that shape them, namely the electoral formula, district magnitude, electoral threshold, size of the body to be elected, influence of presidential elections on legislative elections, malapportionment (i.e. mismatch between a district's population and vote share) and interparty electoral links (Wolff, 2006: 10). Other authors consider three key dimensions, as the ballot structure, constituency and electoral formula, which can be subdivided in six components, namely

- (1) the nature of the constituency (whole constituency/districts);
- (2) constituency magnitude;
- (3) the object of the vote (lists/individuals);
- (4) the number of votes allowed;
- (5) the type of vote (nominal/ordinal/numerical);
- and (6) the formula (majority/ plurality/proportionality) (Blais, 1988a: 108).

Due to the aim of the present research, that is to illuminate the debate on the impact of electoral systems within the UN electoral assistance framework, we adopt the most common (and probably simpler) approach (Blais, 1988b: 102), that classifies electoral systems according to the proportionality of the outcomes these produce. In this regard, elements as the electoral formula, district magnitude, electoral threshold and ballot structure, are paramount, as briefly described below. We also analyse other key components, such as the electoral management bodies, voter registration, and political parties and their regulation, including financing. Our aim is to provide an account of the effects these might have, especially in sensitive post-conflict contexts.

Electoral formulae

A key element of an electoral system is the electoral formula. The electoral formula can be defined as the mechanism of translating votes into seats. This is often the

element used to classify electoral systems, even though it might not have an impact on proportionality as significant as district magnitude, as described below. The effects of the electoral formula can also be impacted on by the electoral threshold, and these need to be carefully analysed when combined. According to the most common classification, electoral systems can be divided into three main categories. These are plural-majority systems, proportional representative systems and mixed systems (Blais, 1988a; Council of Europe, 2000; Lijphart, 1994; Norris, 1997; Reilly and Reynolds, 1999; Reynolds et al., 2005). Majoritarian systems privilege the governability criteria, seeking to ensure stable executives. On the other hand, proportional representative systems privilege a broad social representation, in a consensual democracy model. Mixed systems combine elements of each of these, with the impact varying according to each concrete option.

In plural-majority systems the candidates that get the most votes win all the seats. In proportional representative systems the candidates are elected according to their share of votes, translated by an electoral formula. Mixed systems can combine some of these characteristics and, for instance, on semi-proportional systems there is a proportional representation system combined with a plurality-majority system (Council of Europe, 2000). In plural-majoritarian electoral systems the candidates or lists that have most votes win the election. Majoritarian systems require an absolute majority of votes, while in plural the election is won by the most voted contestant, regardless of the number of votes it achieves. These are usually simple systems, ensuring clear majorities and governments; however, this is usually at stake of a broader popular representation, leaving second choices aside, as well as minorities and women, in a “winner takes all” outcome. It also increases the number of wasted votes, and per consequence, potential disenfranchised groups, as only majoritarian preferences will reach a translation into seats. There are several varieties of these, namely first past the post, block vote, party block vote, alternative vote and the two-round system. The most common is the first past the post, used in the United Kingdom and the countries influenced by it (Reynolds et al., 2005: 52).

In proportional representative electoral systems, seats are allocated in proportion to the votes achieved, according to a pre-set formula. There are two main

types of electoral formulae in PR systems, namely highest average and largest remainders. However, all formulae are capable of being integrated according to the effects they produce, namely their bias by being most favourable either to smaller or larger parties (Gallagher and Mitchell, 2005a: 589). The Hare Quota and Saint Laguë are seen as unbiased (or, at worst, biased towards smaller parties), while the Danish method is seen as favouring smaller parties (Gallagher and Mitchell, 2005a: 589). The Droop Quota, D'Hondt method, Imperiali and Imperiali highest averages are all seen as favouring larger parties. Proportional representative systems are seen as making power sharing more evident, as they ensure a fair representation of society in the elected bodies, thus reducing wasted votes and disenfranchised groups; on the other hand, they are seen as allowing political fragmentation, thus making stable executives and governments potentially more difficult (Reynolds et al., 2005: 57). However, there are many variants in PR systems (Marsh, 1985; Shugart, 2005: 40) and their effects depend also on the choice of other elements, such as the district magnitude, ballot structure or electoral threshold, among others.

Mixed electoral systems combine characteristics of different types of electoral systems, as above defined. Therefore, as Blais highlights “a mixture is a mixture, and the only way to identify a mix is to refer to its basic components” (1988b: 106) and mixed electoral systems should be looked at according to their main components and effects. A common feature in mixed electoral systems is to have a broad proportional representative constituency, complemented with single member majoritarian districts ensuring local representation⁴.

District magnitude and electoral districts

District magnitude is the number of seats to be elected in a constituency. District magnitude is considered one of the most determinant elements of an electoral system, and for some the most important one (Rae, 1967). The size of the constituencies can have a greater impact on proportionality of the electoral outcomes, regardless of the electoral formula. The smaller the district magnitude (as in most majoritarian systems, where

⁴ For an overview of how several elements of mixed systems can interrelate, see Rich, 2015.

district magnitude is one), the greater is the disproportionality between votes and seats. Furthermore, it is also argued that in majoritarian systems a great district magnitude tends to lessen the proportionality of the results (Eggers and Fourinaies, 2014: 269). On the contrary, and particularly under proportional representative systems, as district magnitude is superior to one, this increases proportionality between votes and seats (Reynolds et al., 2005: 77).

However, proportionality originated in large district magnitudes can also create a trade-off regarding the proximity between voters and their representatives, as great district magnitudes increase the distance between voters and their elected representatives (Norris, 2004b: 163). District magnitude also has a strong effect on the viability of candidates and parties, as the “larger the number of seats is in a given district, the larger the number of candidates and parties with real electoral chances of winning at least one seat” (Lachat et al., 2015: 284), and therefore “the larger the district magnitude, the larger number of viable competitors” (Lachat et al., 2015: 297), potentially increasing the diversity of representation. Incentives for “strategic behaviour are stronger in smaller districts, as only large parties are likely to be viable” (Lachat et al., 2015). However, the reverse of “electoral systems that create opportunities for small parties to win seats” is a potentially fragmented party system (Singer, 2015: 118), though there is still a strong debate on this issue.

Regarding electoral districts, their delimitation is also important, especially when taking into account the social composition of the electorate and their likely political preferences, with criteria to define electoral districts being highly sensitive. Two common ways of distorting representation are district malapportionment or the disproportional assignment of seats to a constituency, and gerrymandering, namely making district boundaries artificially match previously anticipated political preferences.

Threshold

In the mechanics of an electoral system the threshold is the minimum of votes required for a party to achieve representation (Reynolds et al., 2005: 83). This is an element that has a great impact on proportionality. Thresholds can be natural, being a mathematical result of the application of the electoral formula, or be created by law.

Legal thresholds are given percentages of votes, set by law, below which the parties do not enter the share of seats. Therefore, all votes falling below the legal threshold are excluded, and the share of seats is made among the votes of parties above it. Although thresholds increase the amount of wasted votes, they are seen as avoiding fragmentation in representative bodies, ensuring more stability and more stable and broader political parties. Nevertheless, thresholds bear the risk of being misused, especially by established political parties, leaving behind potential new entrants and leading to a cartelisation of the political scene (Gauja, 2014).

Ballot structure

The ballot structure refers to how electoral choices are presented on the ballot paper (Reynolds et al., 2005: 174), including the number of parties and candidates and how these are presented for voters' choice (Norris, 2004a: 2). This further determines "which individual candidates are to occupy those seats" (Gallagher and Mitchell, 2005a: 589). One of the underlying questions regards who should have more power determining the individual to be elected, namely if the party or the voter. In closed lists, the party has previously determined the sequence of candidates; in preferential variants, voters can either rank candidates previously set by the party, or name their preferred ones (open lists) (Gallagher and Mitchell, 2005a: 589); voters can be entitled to have one or more votes. Independent candidates can also be an important issue, as these would not need to rely on a party to be elected. The values at stake are the stability and traceability of the political choices and party accountability, versus the possibility of allowing representatives not dependent on the interests and machinery of the big political parties. Blais summarises three key components of the ballot structure, namely the object of the vote, and the number and types of vote (1988b).

Other electoral components

There are other aspects, beyond the strict definition of the electoral system, capable of affecting the electoral outcome. All these are sensitive to context and should take into account the realities of where these are to be implemented. We provide a brief description of these, highlighting the main issues.

The electoral management body is the institution responsible for the organisation and conduct of an election. A very important factor is the role of state institutions that exercise their competencies within the electoral process. These may include electoral management bodies, executive authorities, especially regarding voters' registration, but also dispute resolution authorities, as the courts. The design of an electoral management body is a very important decision. There are three main world models, namely the independent model, the governmental, and the mixed model (Catt et al., 2014: 6). The governmental model is more frequent in northern-european countries, as it requires high levels of trust in governmental services, with the independent model being more frequent in emerging democracies (Catt et al., 2014: 7). Mixed models include two electoral bodies: one of these implements the electoral process, and is usually inserted on a governmental department, while the other should supervise the whole process and be formally independent from the executive, usually following the requirements of EMBs in independent models. In any case, and regardless of the model, there seems to be consensus regarding the legal obligations of these bodies, namely independence – especially from the incumbent, the existence of effective regulatory powers, transparency, accountability and the existence of clear procedures (IDEA, 2014: 102). EMBs that are independent from the executive, the independent model, seem to be the trend in the world (Reilly, 2002: 125). In some of these, EMBs can be composed by representatives of political parties and other social organisations, and conflicting interests are seen as supervising each other and ensuring stable rules in the electoral process. Some authors argue that the partisan members variant of this model may lead to its paralysation, as in the case of Haiti (Reilly, 2002: 125), but it remains nevertheless a very used one. A very important factor, regardless of the model, is electoral supervision, to ensure equal opportunities for all contestants. This is especially important to prevent a bias towards the party in the government (the incumbent), ensuring the opposition enjoys equal opportunities. Especially in post-violent conflict scenarios, the lack of trust may lead to disruptive behaviour from competing parties, disengaging from a democratic process they envisage as unfair.

Voter registration is a very important aspect, as it will determine who will be able to vote (Norris, 2004b: 170), potentially avoiding the disenfranchisement of certain category of people, such as women. A very important aspect is to avoid the institutionalisation of certain political categories that can generate ethnic exclusion (Lieberman and Singh, 2012), also given the particular context in which the electoral system is designed (Bogaards, 2013: 82). As such, voter criteria based on sex, race, religion or social origin should be avoided, as conflicting with UN instruments (United Nations, 2003: 54) and potentially leading to social cleavages. Criteria for voter eligibility are usually based on citizenship, residency and age, which are usually endorsed by the UN (United Nations, 2003: 154). Voter registration might also impact on turnout, as clear voter registration procedures or mandatory vote can be seen as incentives for people to vote (Norris, 2004b: 153). Voter registration is also dependent upon an effective electoral administration (Norris, 2004b: 171), especially regarding the registration procedures, the accuracy and maintenance of the voters' roll.

Political parties are seen as having an important role in democracies. They aggregate interests and political preferences, thus simplifying voters' choices, and can channel and frame the debate, also through organised campaigns, allowing for candidate selection, structuring parliamentary divisions, acting as think tanks and organising governments (Dalton and Wattenberg, 2002; Norris, 2004b: 254). Very important aspects regard party regulation, namely concerning their formation, registration and also campaigning (Reilly, 2002: 133), as well as financing. There is a great debate on what are the factors determining the number of parties in a polity, an account of which is provided for in (Neto and Cox, 1997).

Another strong debate regards the desirable scenario concerning political parties. Some authors find that transitional democracies usually need greater inclusion, especially as they need to engage all political parties in the democratic dynamics, withdrawing from possible "zero sum" strategies (Reilly, 2002: 133). As such, majoritarian systems, as first past the post, are seen as providing a "winner takes it all outcome" that may be contra productive regarding democracy, as they tend to "lock out minorities from parliamentary representation" and "lead to the total dominance of one group over all

others” (Reilly, 2002: 133). On the opposite, some authors find that fractionalised or ethnical or regionally exclusive parties are even seen as negative regarding democracy prospects, being found in many failed democracies (Huntington, 1991). As majoritarian systems tend to produce a one-party government and a strong parliamentary basis, which can lead to more stability, this can be seen as not reflecting all political parties in that society, leading to a more disproportional parliamentary composition (Norris, 2004b: 94). This raises the question of which system is desirable, with necessary trade-offs between both options.

Some authors argue that party rules, namely regarding its formation, registration and campaign, should encourage these to be “broad-based, cross-regional and multi-ethnic political parties in fragile multi-ethnic states” (Reilly, 2002: 133), and multi-ethnic lists of candidates, or multi-ethnicity within parties should also be encouraged through a specific set of rules in this regard (Reilly, 2002: 135). Political parties tend to have a facilitating role in avoiding ethnic conflict (Horowitz, 1985, 1991), as “the ethnic card” may sometimes be played and highlight the former social divisions. Parties and candidates should also be encouraged to achieve specific support levels from specific groups and regions, with specific distribution requirements (Reilly, 2002: 135).

Authors like Norris suggest that in majoritarian systems, as parties need to be broader, the linkage between voters and the parties’ programmatic identity tends to be weaker (2004b: 255) and smaller political parties might not have the chance to actually influence the composition of the cabinet. On the contrary, in PR systems parties can aim at representing specific groups, even if small, and these have the possibility of being represented in the parliament, reducing “wasted votes” and being an incentive for its supporters to actually go to the polls (Norris, 2004b: 36). The proportional representative system, when combined with a low threshold, may still allow for their parliamentary representation (Norris, 2004b: 255) and regional links can also help to promote a stronger bond between voters and their representatives (Norris, 2004b: 263).

Rules governing political parties can be highly sensitive to the context and great care is needed when designing them. Unstable political parties and a fragmented political scene can be a problem (Norris, 2004b: 255), but the crystallisation of the political

parties' constellation (Gauja, 2014), thus limiting the entrance of new political actors, can also be seen as a problem within electoral reforms (Biezen and Rashkova, 2014; Bowler and Donovan, 2013; Colomer and Llavador, 2011; Katz and Mair, 1995; Mainwaring and Zoco, 2007). In many emerging democracies, parties can be shaped along strong personal charismatic leaders, instead of solid programmatic basis. In these cases, the adoption of more proportional electoral systems, instead of majoritarian ones, can help to mitigate this effect, broadening voters' choices (Norris, 2004b: 263). Requisites regarding political parties, especially those necessary to run for an election, should be regarded very carefully, not to abusively prevent certain forces or specific groups from competing. However, the UN tends to avoid these questions, due to neutrality concerns, and these are rarely dealt with, and usually by UNDP (United Nations, 2003: 154).

2.2. The need for broader participation: turnout

It seems consensual that democracy and a balanced representation require a broad participation by all sectors of society (Goodwin-Gill, 2006). As such, in post-conflict societies, turnout can play a huge role on the consolidation of the new state on the path to democracy, as it is a form of engaging people in the democratic process. Institutions need to be sound and to be perceived as legitimate by the population, in order to avoid the risk of creating "phantom states" with resources but whose governing institutions might not have social or political legitimacy (Chandler 2006, 9). Voter turnout is usually higher in proportional representative systems (Norris, 2004b: 23) than in majoritarian and all other electoral systems (Norris, 2004b: 162). Proportional representative systems will also tend to increase the turnout, as there are more chances that disperse votes across the country could still be grouped for a substantial representation, when aggregated at the national level (especially if within a broad constituency and lower or no thresholds) (Norris, 2004b: 36). Therefore, while in majoritarian systems smaller political parties might not have the chance to actually influence the composition of the cabinet, in proportional representative systems they can still have the possibility of being represented in the parliament, reducing "wasted votes" and being this possibility an incentive for its supporters to actually go to the polls (Norris, 2004b: 36). Turnout also tends to be higher in elections for the executive in parliamentary elections than in

presidential elections (Norris, 2004b: 163). Voter turnout can also be influenced by other aspects, such as the party system, which in some way frames the choices available to voters, the degree of effective party competition and the extent to which each vote is likely to significantly influence the outcome of the election (Norris, 2004b: 175). Compulsory voting, criteria for the right to vote (such as age, origin, nationality or residency, among others), electoral administration and voter registration procedures (including here voting from abroad) are also factors to take into account, although with smaller impact on electoral turnout (Norris, 2004b: 176).

3. What is the best electoral system?

As we have briefly described above, the approach to electoral systems varies greatly. This is true regarding the importance of its main elements, which also impacts on their classification. The debate on which might be the best electoral system is strong and each author seems to favour a specific electoral system, or a combination of several elements, with a great variation of preferences, as illustrated in the following citation

André Blais and Louis Massicotte [favour] single-member constituency systems, while Donald Horowitz and Ben Reilly have expressed sympathy for AV and Giovanni Sartori is a supporter of 2RS. He himself, along with Andrew Reynolds and Rein Taagepera, can see particular merit in PR-STV, while Matthew Sjøberg Shugart and Martin Wattenberg regard mixed systems as at least holding out the promise of providing the best of both worlds (Shugart and Wattenberg, 2003: 595). Arend Lijphart, the doyen of the field of electoral systems research, regards the Danish system (open-list PR) as the closest to his ideal, even though he would prefer its lists to be a little less open than they are (Gallagher, 2005a: 568).

Norris considers that the combination of proportional electoral systems in parliamentary republics allows for “horizontal checks and balances in the core institutions of the state” (Norris, 2008: 212). These allow some flexibility, as the prime minister can be “replaced without a major constitutional crisis” in case of loss of support (Norris, 2008: 212). Lijphart raises the question of whether electoral systems “of the established democracies” can serve as “the ‘optimal’ model for new democracies” (Lijphart, 2005: viii). In this regard, for the latter two criteria seem to be fundamental, namely simplicity and proportionality (Lijphart, 2005: ix). In these cases, the author would prioritise a PR system simple to understand and operate, which would ensure a high degree of proportionality (Lijphart, 2005: ix). “Simplicity” is then further decomposed in concrete

aspects, namely “multimember election districts that are not too large (...), list PR instead of the single transferrable vote, and closed or almost closed lists” (Lijphart, 2005: ix). The size of election districts would avoid losing the proximity between voters and representatives, and the closed lists would “encourage the formation of strong and cohesive political parties” (Lijphart, 2005: ix). A nationwide compensatory system could also be envisaged, but at stake of simplicity – and despite that it is rarely the case that nationwide political parties have already developed in consolidating democracies (Lijphart, 2005: ix).

On the contrary, “since most countries that are not yet fully democratic have significant ethnic or religious divisions, the plurality model is clearly *not* advisable” (Lijphart, 2005: viii). According to the author, this is consensual among scholars, namely,

If any generalization about institutional design is sustainable ... it is that majoritarian systems are ill-advised for countries with deep ethnic, regional, religious, or other emotional and polarizing divisions. Where cleavage groups are sharply defined and group identities (and intergroup insecurities and suspicions) deeply felt, the overriding imperative is to avoid broad and indefinite exclusion from power of any significant group. (Diamond, 1999: 104).

Lijphart would also not recommend semi-proportional and mixed systems (except if these would have pure PR compensatory components), as they would never ensure the representation of minorities “as accurately and consistently as PR” (Lijphart, 2005: ix).

Regardless of these preferences, the effects of electoral systems are to a great extent conditioned by their elements – although their exact predictability can never be guaranteed, due to the social dynamics they perform upon, and “a system that has a certain effect in one society at a given time may not have the same effect in another context” (Gallagher, 2005a: 575). Given this background, there can be no definition of the perfect electoral system. At best, criteria to be prioritised can be chosen, and then the best institutional option in order to achieve it can be analysed (Gallagher, 2005a: 568). In many cases this institutional design might also not be optimal, as there can be trade-offs regarding many of these effects, letting alone the mutable social and political reality.

Going one step further, there seems to be a plethora of criteria prioritised when assessing electoral systems, both by scholars and practitioners (Gallagher, 2005a: 568), and that also roughly corresponds to perspectives on the desirable effects that an electoral system is expected to feature. A vast account of these criteria can be found in

Gallagher (2005a: 569–571), as well as a summary of the eight most valued “key criteria for evaluating electoral systems” (Gallagher, 2005a: 571), the latter being:

accuracy of representation of voters’ preferences; socio-demographic representation in parliament; personal accountability of MPs to constituents; maximization of participation opportunities for voters; cohesive and disciplined parties; stable and effective government; identifiability of government options; opportunity for voters to eject governments from office (Gallagher, 2005a: 571).

Despite the great variety of criteria, proportionality or the accuracy of representation seem to be almost consensually identified (Gallagher, 2005b: 570). However, even despite being identified as some of the most common preferences, all these items are highly debatable and with necessary trade-offs. Furthermore, they also do not point towards a specific electoral system, but rather to combinations of elements of these that could fare better or worse in some of these items (Gallagher, 2005a: 573), implying again a non-optimal choice.

Electoral systems as conflict management tools

There are four major theories that can be used to analyse the possible contribution of electoral systems to conflict management: consociationalism, centripetalism, integrative consensualism and explicitism. Consociationalists argue that proportional representation systems are best suitable for ethnical divided societies, since they grant a political guarantee of representation of all groups, making the use of violence less justifiable (Reilly and Reynolds, 1999: 28). Centripetalists tend to prefer alternative vote systems, as these encourage political leaders to conquer votes outside of their typical electorate circle, thus making political candidates compete for and extend their program to a different electorate than just their typical support basis (Dreef and Wagner, 2011; Reilly and Reynolds, 1999: 27; Reynolds et al., 2005: 18). Integrative consensualism encourages crosscutting ethnic cleavages in plural lists, rejecting the fact that elections are merely an ethnic choice; it starts from the assumption that society is plural and rests on the principle of proportionality and coalition governments (Reilly and Reynolds, 1999: 38). The fourth, explicitism, expressly recognises the importance of communal groups for democracy and gives them institutional fixed representation in the

electoral law; these reserved seats can be assigned to ethnic, linguistic or other minorities deemed important to be represented (Reilly and Reynolds, 1999: 40).

In the context of electoral design as a conflict management tool (Wolff, 2006), questions such as proportionality, small parties representation and ethnic minorities inclusion (Reynolds, 2006), among others, are of great importance (Norris, 2002a). There are also sensitive areas such as the rules applicable to political parties, namely at the local level or regarding ethnic composition, the financing, electoral dispute resolution mechanisms and the observation and vote polling (Risley and Sisk, 2005: 17).

Despite the consociational or centripetal approach, or combined elements of both, there seems to be a consensus among scholars that a power-sharing agreement embracing all significant groups is needed for democracy in divided-societies (Reilly, 2004b: 15). In this regard, some authors argue that electoral systems should be designed to ensure power sharing between the different groups, rather than “winner-takes-all outcomes” (Reilly, 2004b: 6). International interventions should carefully design and build sustainable institutions, to facilitate the short-term transition to democracy (Reilly, 2004b: 24) and the promotion of peace (Norris, 2008: 220). Permanent power-sharing mechanisms create permanent incentives to a sustainable peace and can be composed of, for instance, incentives for inclusion, proportionality, decentralisation and a generally fair distribution of forces (Sisk, 2013: 11). Centripetalists also agree on the creation of incentives to cooperate in ethnic divided societies, in “win-win” exchanges (Reilly, 2001: 7), even though they advocate for moderate, aggregative centrist forms of political cooperation, rather than the multiple political parties proportional representative systems are likely to produce (Reilly, 2001: 11; Sisk, 1995: 19). Many times elites agree to enter into these agreements due to the costs of the failure to negotiate and the new escalation of violence; they might not be able to foresee its future competing through the newly created democratic institutions, but agree to participate in it, especially if permanent formulas of distribution and representation of the different powers and groups in society are established (Sisk, 2013: 12). Power-sharing institutions are seen as likely to result in “moderate and cooperative behaviour among contending groups in divided societies” (Lijphart, 1999; Norris, 2008: 210) and regarded as one of the most

important outcomes in conflict settlements after many years of war (Reilly, 2002: 130; Sisk, 2013: 12). With inclusive representative bodies, consociational democracies are seen to “manage and contain ethnic tensions, armed uprisings, and intercommunal violence, helping to build peace and stabilize fragile democracies in plural societies” (Norris, 2008: 210).

Despite all the arguments put forward advocating for power-sharing constitutional arrangements, there is a field of literature that refutes this option. This argues that there are many other types of initiatives that can strengthen democratic governance, that such constitutional arrangements tend to be rigid, that there are intrinsic difficulties on resolving the underlying conflict and, finally, that economic conditions and the state functions should be created before power-sharing arrangements can be implemented (Norris, 2008: 215).

In fact, although power-sharing agreements cannot be a guarantee of peace, and despite the challenges emerging from the context where these are to be implemented, namely regarding poverty and state fragility, power-sharing constitutional agreements are defended as one of the most important factors “toward lasting peace-settlements and sustainable democracy” (Norris, 2008: 223). Context also plays, obviously a very important role. In the first place, deep poverty can be a serious challenge, which, along with a fragile state and a struggling economy, may lead into a resurgence of conflict; furthermore, power sharing reforms can have a limited scope and should be followed by a broader set of reforms (Norris, 2008: 209). There is not a single remedy, though, but through the institutional design, power sharing arrangements are seen as increasing the chance of success of democratic governance, especially after peacebuilding interventions (Norris, 2008: 214). Pervasive to this debate can also be the dual analysis of the factors peace and democracy, as mentioned below. Although some authors argue that this can be a mutual exclusive relationship, others argue that these can in fact converge, and that, despite contextual factors, a certain institutional arrangement can indeed improve the probabilities of peace (Norris, 2004b).

Designing for peace or for democracy: is there a divide?

For some authors there is a challenging relationship between peace and democracy, an aspect particularly scrutinised in the case of PR systems. Some authors argue that it is difficult to prove, even for its supporters, that this has indeed positive impacts on both peace and democracy, especially on post-violent conflict societies (Bogaards, 2013: 82) and that proportional representation systems may lead to less effective government coalitions (Sisk, 2013: 14), despite having “a good record in securing peace, though less so of democracy” (Bogaards, 2013). In most cases PR would result in “peace rather than democracy” (Bogaards, 2013: 82), or in particular party-list, PR would not lead to further democratisation, with more accountability being desirable (Sisk, 2009). However, even the opponents of PR seem to acknowledge “a strong correlation between PR and peace” (Bogaards, 2013: 82). Furthermore, PR seems to be positively related to a set of important aspects (Bogaards, 2013: 82), namely better government responsiveness (Cho, 2010), social tolerance (Kirchner et al., 2011) and women engagement in politics (Kittilson and Schwindt-Bayer, 2010). In line with these conclusions, Norris (2008: 209) argues that power-sharing agreements should result in “proportional electoral systems with low vote thresholds” and large district magnitudes (Norris, 2004b: 35), plus reserved seats, in order to allow minority representation, which could also allow for “multiparty coalitional cabinet government”. This conclusion was reinforced recently, (Norris, 2016), relying upon a new worldwide dataset, The Electoral Integrity Project.

Some authors find that an important problem of elections and electoral mechanisms as part of a peace process is that many times they are perceived as something that should end the conflict rather than something that should instead foster pluralism (Iff, 2011: 7), and that long-term stability and short-term advantage might therefore not always be compatible (Reynolds et al., 2005: 18). There is a big debate on whether to design for peace or for democracy, framing a possible dichotomy of peace versus democracy as the desirable outcome of the electoral system (Bogaards, 2014). Notwithstanding, some authors argue that it is possible to pursue both from an early stage (Sisk, 2008b: 240). This implies designing so that the initial constraints to democracy

that may have aroused from a peace agreement can be overcome in the short-medium term, allowing for trust, legitimacy and democracy to be built in the longer-term (Sisk, 2008b: 240). These situations are “conceptual grey zones”, as many post-conflict societies are in a dynamic situation, “somewhere in between war and peace and war and democracy” (Sisk, 2008b: 243). Negotiations to end the violent conflict may often need “compromises that constrain democratization” if these are to be maintained unchanged in the longer term (Sisk, 2008b: 249). After first elections, for instance, adjustments might be made in areas such as electoral regulations, thresholds, electoral formula and the size of the legislative body (Norris, 2004b: 262; Shvetsova, 1999). There might be the need of “post-settlement settlements”, where institutional adjustments can be made, after the immediate impact of the violent conflict has already vanished (Toit, 2003). Therefore, some authors argue that post-violent conflict institutional design should be flexible, in order to allow for subsequent adjustments, particularly regarding specific power-sharing and non-democratic representation that may arise from a peace agreement (Sisk, 2008b: 254). Initial “inclusion at all costs” agreements may need to be gradually reformed, in order to allow, for instance, that factors such as ethnicity no longer necessarily have to be the basis for representation or power-sharing in society, and that the political system can broaden along democratic, programmatic and accountable parties, rather than leadership personalities (Sisk, 2013: 13). Beyond an initial peace agreement, there is the need to ensure institutions that would allow for permanent social conflict management (Rothchild, 1973; Sisk, 2008b: 253).

Proportional representative is the type of electoral system that is usually agreed upon if the electoral system for parliament is to be foreseen in a peace agreement (Bogaards, 2013: 82). Proportional representative systems have apparently become the *de facto* norm when it comes to UN interventions and the majority of the electoral processes carried “under UN auspices” in transitional contexts have used a proportional representation system (Reilly, 2004b: 15). This was the case of Chile and Namibia in 1989, Nicaragua in 1990, Cambodia in 1993, South Africa and Mozambique in 1994, Liberia in 1997, Indonesia in 1999, Bosnia in 1996, 1998 and 2000 and Kosovo, among others (Reilly, 2004b: 15). Proportional representation, in its simplest form became “the *de facto*

norm of UN parliamentary elections” (Reilly, 2004b: 15). The consociational model has already shown to be durable and has indeed become a default approach to conflicts, originating grand coalitions, proportionality and mutual or minority veto rights (Sisk, 2013: 10). Cases like Burundi, Macedonia, Nepal, and South Sudan are used to illustrate how power-sharing agreements could bring relative peace after many years of war (Sisk, 2013: 12). Especially in divided societies, proportional representative electoral systems have more democratic outcomes than majoritarian electoral systems, especially if they include low thresholds or positive action, (Norris, 2008: 211), allowing for a broader representation, including minority groups.

Conclusions

The literature on electoral systems is vast and their elements and effects are complex, with almost infinite combinations and possibilities (Gallagher and Mitchell, 2005a: 596). However, there is often a trade-off between each of its elements and the effects these are likely to produce. There surely seems to be a divide between political science and international relations, both regarding theory and practice, on the impact that the design and implementation of electoral systems can have on post-conflict societies, and the effects these can have for peace (Norris, 2008: 220). Although there might not be a single necessary electoral design for peacebuilding (Paris, 2010), there surely needs to be a debate on these questions, including theoretical and practitioners’ perspectives and insights, both from the literature and from the field. Although one might argue that there is not a single solution, to be remedial for all aspects, it would already be a milestone if this debate could be made, taking both theoretical and concrete, social realities into account. In fact, when we analyse the UN documents regarding electoral assistance, these can prove to be very prolific and detailed, but rather than the procedural description, the element that seems to be missing is the above-mentioned analysis of the effects and impacts of electoral systems and electoral systems design and how these options are made.

Even though one can argue that the UN should respect the principle of the sovereignty of the states, and that it is up to these to choose the electoral system, the UN is actually deeply involved in these concrete options. In the first place, the UN

involvement often begins in the peace agreements and the outcomes these produce. As it is also mentioned throughout the extensive UN documents on electoral assistance, from a very early stage the UN always carries a needs assessment mission in order to assess and agree upon the type of electoral assistance requested by the referred state. In this context, since a very early stage “technical assistance” became the dominant form of electoral assistance, with a broad field of action that can be contained in this category. Already in 2001 the UN SG recognised technical electoral assistance as the dominant model of electoral assistance, but with a growing conceptualisation, including “(a) process assistance; (b) capacity-building; and (c) institution-building” (A/56/344, 2001: 7). In particular, “process assistance” consisted of “expert advice for the introduction of new systems” or the transformation of the existing ones, comprising “expert advice that identifies options, analyses comparative advantage and makes recommendations regarding suitability and implications for other electoral processes” (A/56/344, 2001: 40). If such broad scope of assistance is to be provided, it is not understandable if the UN does not address this theoretical and practical debate. In fact, from a very early stage of SG Reports and GA Resolutions, a mention has always been made to something that could be similar to this, the “institutional memory”. However, and after so many years, it is still to be implemented.

Though each mission is unique and its approach requires flexibility, general guidance could be developed, in order to save resources and improve performance, when looking at past experiences, especially when considering that elections have become a central aspect of peacekeeping missions (Lindenmayer et al., 2012: 54). Even if the mission configuration and activities need to be shaped by the mission’s concrete context, with an extremely important role by the SR SG, on the other hand, common experiences and goals are not always shared in the context of peacekeeping missions, and important information comprising best practices can sometimes be wasted, leading to *ad hoc* approaches to the preparation of elections (Lindenmayer et al., 2012: 54). Inputs from the field and reviewing guidelines mechanisms should be taken into account, sharing recommendations and developing a best practices exchange. Again, and referring to the debate on the different implications of electoral systems, this impact analysis seems to be

absent from all the UN documents regarding electoral assistance and these seem to be conceptualised more of a procedural nature, even though the UN intervention is in fact substantial. Substantial guidelines for implementation and assessment on the field seem to be inexistent, raising the question on how and why each decision is taken.

In fact, these choices have necessary implications and trade-offs, thus requiring concrete background and guidelines, and should not be seen just as technical, but rather political. Ironically, this also seems to be how the UN perceives itself, especially when it comes to UN electoral assistance within multidimensional peace interventions (United Nations, 2003). The UN recognises its “substantive investment of political credibility and resources”, the involvement on the process of expanding the legal framework, often through brokering an agreement between the conflicting parties, “transforming violent groups into non-violent political parties”, the UN facilitation of “communication and negotiation between parties and the EMB”, supported by a “[c]omparative analysis of the electoral systems of different countries” as an important tool (United Nations, 2003: 147–158), and as being crucial and substantial aspects of the UN electoral assistance in the context of multidimensional peacekeeping operations.

The question, therefore, remains and deepens: how to explain this divide? What are the UN criteria, if any, for the concrete provision of electoral assistance, especially regarding electoral systems design within UN peace interventions? If these answers cannot be provided in the relevant UN documents, and following the methods suggested in abundant literature, we answer this question through a case study, namely analysing the UN peace intervention and the electoral assistance provided in Timor-Leste. We seek to highlight, in particular, how the different options were weighted regarding the configuration of the institutional design and its impact, how these were put in practice and how the contribution of the local actors was taken into account in this process. After more than a decade of the initial UN mission in Timor-Leste, this case study can provide a useful insight regarding the medium-term effects of the adoption of the institutions at stake, thus aiming at contributing to an impact evaluation and assessment of the UN electoral assistance effectively provided.

Chapter 4 – The founding days: Popular Consultation and the constituent options

Introduction

Timor-Leste was a Portuguese colony since the sixteenth century. The Portuguese dictatorial regime of the XX century advocated for its sovereignty over the former colonies, re-labelling them as “ultramarine provinces” and defending this before the UN, when West colonies were left aside. In 1974 the Portuguese Revolution took place and Portugal granted independence to its former colonies. However, in a time of great internal political turbulence, political orientations regarding Timor-Leste did not follow immediately. In this context, the three historical Timorese political parties started refining their orientation, especially regarding the independence. The Social Democratic Association (ASDT – *Associação Social Democrática Timorese*), later renamed Revolutionary Front of Independent Timor-Leste (FRETILIN - *Frente Revolucionária de Timor-Leste Independente*) favoured the complete independence of the country. The Timorese Popular Democratic Association (APODETI - *Associação Popular Democrática Timorese*) favoured the integration in the Republic of Indonesia, while the Timorese Democratic Union (UDT – *União Democrática Timorese*) favoured the continuation of the relationship with Portugal.

In January 1975, FRETILIN and UDT formed a coalition, seeking an autonomy process to ensure independence within a 5-10 year term (AMRT, 2016). However, on May 1975 UDT broke the coalition and strong rivalries emerged. On 10-11 August 1975 UDT launched an armed coup to take the power and on 20 August 1975 FRETILIN launched a counter-coup and took control over Timor-Leste (AMRT, 2016). There was a period of great tension, internally among different supporters, but also internationally, between Portugal and Indonesia. On 28 November 1975 FRETILIN declared the independence of Timor-Leste (AMRT, 2016). However, this was not widely recognised internally or externally. On 30 November a group of Timorese political parties, namely UDT, APODETI, Association of Timorese Heroes (KOTA - *Klibur Oan Timor Aswain*) and the Labour Party

(PT - *Partido Trabalhista*) signed a declaration, under Indonesian control, defending the Timorese integration within Indonesia (AMRT, 2016).

On 6 December 1975, the USA President Gerald Ford and State Secretary Kissinger met with the Indonesian President, Suharto, giving their tacit approval to an Indonesian action towards Timor-Leste, which would also have Australian support. On the following day, 07 December 1975, Indonesia launched the “Operation Komodo” and invaded Timor-Leste (AMRT, 2016). The UN condemned the invasion, first on 12 December 1975, through a UN GA Resolution, and later on 22 December 1975, in the Security Council. However, the Indonesian violent occupation continued, remaining unresolved until the end of the 1990s. Despite the fact that the UN condemned the Indonesian invasion of Timor-Leste since a very early stage, this became a recurrent issue in the UN agenda. In the end of the 1990s Timor-Leste became an “international urgent need” (Blanco, 2013), and under the UN aegis, a referendum was agreed to between Portugal and the Indonesian Republic. The New York Agreements foresaw that the UN organised the Popular Consultation and, should the independence be chosen, a UN mission should be deployed, in order to make the transition for the new independent state.

This is the object of this chapter. We analyse the Popular Consultation, providing context for the next step, the transition to independence. In the transition process, we analyse the institutionalisation process in Timor-Leste, comprising the constituent options, Constituent Assembly, electoral system, and further options made, namely regarding the government system. We highlight the role of the Timorese and the UN mission, the choices made and their implications. The initial institutional setting is also the scenario where further institutional options were made, a subject for the next chapters.

The 1999 Popular Consultation

On 11 June 1999 the United Nations Mission in East Timor (UNAMET) was established. It had as the main objective to “organize and conduct a popular consultation” (S/RES/1246, 1999), aiming to ascertain whether the Timorese would choose a “constitutional framework providing for a special autonomy” within Indonesia

or reject it, leading to independence (S/RES/1246, 1999). This took place following the New York Agreements (A/53/951 – S/1999/513, 1999) and UNAMET comprised political, information and electoral components, the latter being also responsible for voter registration (S/RES/1246, 1999). An International Electoral Commission (IEC) was created, composed of three international experts, to supervise and monitor the electoral process and address the electoral complaints, certifying the results (A/54/654, 1999).

The Popular Consultation was held on 30 August 1999. The ballot boxes were carried to Dili, where a single national counting was held, in order to reduce the risk of geographic targeted violence (A/54/654, 1999). Despite many challenges, the Popular Consultation was carried out with great success (Luís, 2015). After the certification by IEC, the UN Secretary General announced the results. Voter turnout was 98.6%, namely 446.953 voters (A/54/654, 1999). From these, 21,5% (94.388) voted in favour of the special autonomy, while 78,6% (344.580) rejected it, voting in favour of independence (A/54/654, 1999). After the results announcement there was an outbreak of violence from the pro-Indonesian militias and security forces. The UN Security Council authorised “a multinational force under a unified command”, “under Chapter VII of the Charter of the United Nations”, “to restore peace and security in East Timor, to protect and support UNAMET” (S/RES/1264, 1999: 3). According to the New York Agreements (S/RES/1246, 1999), if independence was chosen, the UN would be granted the full authority over the territory, in order to make the transition to independence. In this regard, a broad UN peacekeeping mission was deployed.

1. UNTAET and the institutional framework design

Following the referendum’s violent outbreak, the Security Council established a UN peacekeeping mission on 25 October 1999, UNTAET. Created under the Chapter VII of the Charter of the United Nations, UNTAET was “endowed with overall responsibility for the administration of East Timor, (...) empowered to exercise all legislative and executive authority, including the administration of justice” (S/RES/1272, 1999). The mission had a broad mandate, comprising “support capacity-building for self government”, including a “governance and public administration component” (S/RES/1272, 1999: 8). A Special Representative of the Secretary-General was appointed, Sérgio Vieira de Mello, being

“responsible for all aspects of the United Nations work in East Timor”, having “the power to enact new laws and regulations and to amend, suspend or repeal existing ones” (S/RES/1272, 1999). Despite the comprehensive powers in which the Special Representative and the mission were vested, they should

consult and cooperate closely with the East Timorese people in order to carry out its mandate effectively, with a view to the development of local democratic institutions, including an independent East Timorese human rights institution, and the transfer to these institutions of its administrative and public service functions (S/RES/1272, 1999).

Timor-Leste became a mini-state, ran by the UN. On 7 August 2000 the East Timor Transitional Administration (ETTA) was created by the SR SG, with the Transitional Administration Cabinet being the executive and the National Council being the proto-parliament (S/2001/42, 2001: 11), “to integrate East Timorese into all major decision-making areas within the Administration” (S/2001/42, 2001: 16). The UN SG recognised this was “an innovative approach (...) designed to meet the Security Council’s objective of preparing the Timorese for self-government”, responding “directly to the desire of the Timorese to take charge of their own fate” (S/2001/42, 2001: 47).

Despite this will of inclusion from the UN, many Timorese felt they lacked adequate preparation and, especially in the National Council, they did not have previous experience and did not feel much support from the UN (Interview with former National Council Member, 2015), in order to duly perform their roles as they wished to. In both bodies the Timorese did not feel that their participation was of great relevance other than to promote a formal idea of inclusion of the nationals in UN-driven bodies (Interview with Ana Pessoa Pinto, 2015; Interview with former National Council Member, 2015). This happened despite the widespread appreciation for the Transitional Administrator, Sérgio Vieira de Mello (Interview with José Teixeira, 2015), labelled “a good friend of Timor-Leste” (Interview with Ana Pessoa Pinto, 2015), which was due, among other factors, also to the Lusophone links (Interview with Dionísio Babo Soares, 2015), as he was Brazilian, and cultural affinity (Interview with Ramos Horta, 2015). This perception of the lack of national participation, seeing it as formal and merely “decorative” (Gorjão, 2004: 1052) was in line with further criticism to the UN mission in Timor-Leste, arguing that from the

very beginning the UN adopted a top-down approach, leading to the lack of national ownership, with the Timorese being “largely absent from the mandate” (Ingram, 2012: 6).

During UNTAET’s mandate critical choices were at stake. These included the transition from the UN administration to the independent state, namely to Timorese institutions, still to be created. This process and its timeframe reflected and had deep implications on shaping the Timorese institutions (Luís, 2016). The institutional options also led to elections for the new bodies and the electoral framework had to be shaped. Although diverse in its nature, all these choices were be equally important and highly sensitive.

Although the UN had created the East Timor Transitional Administration, as above mentioned, composed of the Transitional Administration and the National Council, all members of both bodies were appointed by the Transitional Administrator (Ingram, 2012: 8) and many Timorese did not feel represented. Shortly before the Popular Consultation in 1999, the Timorese elites had organised themselves under the National Council of Timorese Resistance (CNRT – *Conselho Nacional da Resistência Timorense*), embracing major historical political parties, the Catholic Church and other organisations (Ingram, 2012: 7). This reflected the existing sense of unity previous to the Popular Consultation (Interview with Mário Carrascalão, 2015), after the long struggle for independence. However, internal tensions started to emerge, although not evident or duly taken into account by UNTAET (Ingram, 2012).

CNRT emerged as an important national actor for the UN (S/2001/42, 2001: 2) and, within this, Xanana Gusmão, but also to some extent Ramos Horta, as the UN main interlocutors (Goldstone, 2004: 89). These favoured a “national unity” approach to the future of the country (Goldstone, 2004: 89), where no political parties or political competition would emerge, but which was not consensual within the CNRT. FRETILIN, one of the historical parties and the strongest in 1999, felt it was being neglected by the UN in the transition process, which, along with the “national unity” approach, would also not take into account FRETILIN’s prominent role in the Resistance and as the historical party with most popular support (Interview with Francisco Guterres Lu-Olo, 2015). On August 2000 FRETILIN abandoned the CNRT, severely weakening the Council’s position, especially

its legitimacy as a UN counterpart (Ingram, 2012: 9). This also led to an explicit move towards political competition, leaving definitely aside the national unity approach.

Transition calendar and political options at stake

Within the UN intervention, building the new liberal state (Luís, 2015: 243), allowing the creation of legitimate national institutions (Reilly, 2004b: 2), would be crucial towards *de facto* independence. Although the UN might have wanted to remain neutral, its actions and decisions had deep institutional implications (Ingram, 2012: 20–21). UNTAE eventually had to meet its statebuilding benchmarks in a short timeframe (Gorjão, 2004: 104) and it had been set by the Department of Peace-Keeping Operations, with no previous experience on governance (Gorjão, 2004: 1044; Interview with Senior UNTAET Officer, 2015).

The first crucial option was the calendar regarding the political transition for independence. On January 2001 the UN SG gave an account of “the emergence of a growing consensus among the Timorese people to seek independence by the end of 2001”, after “intensive discussion in the Cabinet, the National Council and with other Timorese leaders” and broad public consultations (S/2001/42, 2001: 2). Regarding the constitution, a “nationwide consultation and decisions regarding the electoral modalities and the composition of the Constituent Assembly” was envisaged (S/2001/42, 2001: 3). After this, the Constituent Assembly should draft the constitution, with the modalities approved for its adoption, whether through a referendum or by the Constituent Assembly being still under discussion (S/2001/42, 2001: 3).

At this stage the Constitutional process had not been set yet. The Timorese elites favoured an elected Constituent Assembly, to draft the Constitution. Other sectors of society favoured a broad-based process, where the Constitution could be drafted according to wide popular participation, thus widening its inclusion and scope. The later could give room to a constitutional text being drafted by an independent commission, and further subject to a referendum, taking place in the same date as elections for the Constituent Assembly, which should finalise the Constitution (Devereux, 2015: 18). However, this option was seen by many Timorese as the UN imposing their own constitution (Interview with Francisco Guterres Lu-Olo, 2015; Interview with José Teixeira,

2015; Interview with Ramos Horta, 2015; Interview with Vicente Guterres, 2013). Both processes were still open as of the SG's Report to the Security Council (S/2001/42, 2001: 2) and consideration for other models was also possible (Devereux, 2015: 18). Another option was drafting an interim Constitution, to be re-discussed a few years after its initial adoption, allowing time for a more consolidated and wider debate (Interview with Adérito Soares, 2015).

After an initial impasse regarding the future of independent Timor-Leste, the Timorese internal tensions started to develop, and both the Timorese elites and the population seemed to pressure for a rapid UN exit strategy (Gorjão, 2004: 1045). The transition calendar was thus shaped in this context, with both the UN and the Timorese elites favouring a quick transition to independence (Devereux, 2015: 3; Goldstone, 2004: 88; Ingram, 2012: 6). Setting a date for UNTAET to leave Timor-Leste was an important request from the Timorese, including Xanana Gusmão and Ramos Horta (Gorjão, 2004: 105), as well as FRETILIN and other parties. Most of the Timorese leaders supported this, as the Timorese were eager for national ownership after a long struggle for independence (Interview with Adérito Soares, 2015). On 22 February 2001 the National Council approved the recommendations for the political transition to independence (Gorjão, 2004: 1045). These included an elected Constituent Assembly, composed of 88 members, to draft the Constitution (Gorjão, 2004: 1045). The Constituent Assembly was crucial and expected to “become the first legislature of the independent State” (S/2001/42, 2001: 3), if so provided for in the Constitution. Elections were set to take place on 30 August 2001 and the Constitution was to be drafted in a 90-day period. A government should then be established and, as a presidential form of government seemed “to be the current consensus” (S/2001/42, 2001: 3), as recognised by the UN SG to the UN SC, presidential elections should be held. Despite the “technical difficulties in organizing the elections and the complex political decision-making process” (S/2001/42, 2001: 4), this seemed to meet both the UN and the Timorese leadership preferences, leaving aside other options of broader civil-society processes (Devereux, 2015: 18–19; Goldstone, 2013: 89; Ingram, 2012).

The Constitutional Consultations

Prior to the definition of the calendar for transition, the National Council had initiated consultations regarding popular participation in the constituent process (Ingram, 2012: 15) and a group of Timorese civil society organisations, the NGO Forum, asked for a more participatory process on constitution-making (Devereux, 2015: 20). This included desirably experts and representatives of civil society, as well as the Catholic Church, among others, and implied developing an extensive national consultation process (Devereux, 2015: 20). This vision contrasted with the option towards classic representative democracy, embraced both by the UN and the Timorese elites (Luís, 2016), where a Constituent Assembly elected through general elections was expected to represent the preferences of voters, through the different candidates and candidacies, on debating and voting their perspectives for the country.

Despite the clear institutional option for a Constituent Assembly, UNTAET still provided for a popular constitutional consultation mechanism, the Constitutional Consultations (UNTAET/Dir/2001/03, 2001). On 31 March 2001 UNTAET approved its framework, though much limited when comparing with the initial aim. A Constitutional Commission was established in each of the 13 districts and should hold “at least one Public Hearing” in each sub-district (UNTAET/Dir/2001/03, 2001: 11). Commissions were composed of five to seven members each, all of them Timorese, appointed by the Transitional Administrator (UNTAET/Dir/2001/03, 2001: 6), among people “respected in their community” and unable to run as candidates to the Constitutional Assembly without previously resigning (UNTAET/Dir/2001/03, 2001: 6). For each Commission there was a Rapporteur, appointed by the Transitional Administrator (UNTAET/Dir/2001/03, 2001: 11). Reports would then be prepared for each district, and be presented by the Transitional Administrator, on behalf of the Constitutional Commissions, to the Constituent Assembly on its first day of sitting (UNTAET/Dir/2001/03, 2001: 4). In line with previous tensions regarding popular participation and the role of the Constituent Assembly, UNTAET noted that “Nothing in the present directive may be interpreted as limiting or otherwise affecting the mandate of the Constituent Assembly” (UNTAET/Dir/2001/03, 2001: 5). The Constituent Assembly “should give due

consideration to the results of the consultations” (UNTAET/REG/2001/2, 2001a: 2), although no further concretisation for this provision was made.

The Consultations took place from 14 June to 18 July 2001 and aimed at assessing popular preferences regarding the main institutional options for the country, by “soliciting the views of the people of East Timor on the future Constitution of an independent and democratic East Timor, in coordination with civil society initiatives” (UNTAET/Dir/2001/03, 2001). These included issues such as the nation, name of the country, government system and head of state, government structure and administration, political system, economy, taxation and investment, language, citizenship, currency, national flag, national anthem, national symbols, traditional law and values, defence and security, human rights issues and amendment of the constitution (UNTAET, 2001).

The Consultations lasted about one month and consisted of a total 212 public hearings, with an estimated reach of about 38.000 people (S/2001/983, 2001: 1; UNTAET, 2001), out of the 778.989 as of the 2001 UN civil registration (UN, 2001). People heard at these consultations were “almost 10% of the electorate” and “10 - 15% of the attendees participated through presentation of their own views or on behalf of a village” (UNTAET, 2001). Initially the Constitutional Consultations aimed at having a broad scope, whether regarding its duration, matters covered and the number of people consulted. Nevertheless, these ended up being very limited, whether in scope or length (Luís, 2015: 253).

Despite the strong traditional organisation in the country, there seemed to be a consensus regarding the need to establish the new liberal state institutions and “community leaders in East Timor were supportive of the need to establish a democratic constitutional basis to the new nation” (EUEOM, 2001: 7). A unitary republic was the preferred option regarding the nation, while the semi-presidential system was the preferred government system in most of the districts (Adão, 2009: 360). As for the flag, the flag of the 1975 National Republic of Timor-Leste (more connected with FRETILIN, as opposed to the CNRT flag, used in the 1999 Popular Consultation ballot paper) was the preferred in 11 of the 13 districts (Adão, 2009: 360). District reports were sent by each

rapporteur to the Transitional Administrator on 16 August 2001, to be presented to the Constitutional Assembly in its first session, on 18 September 2001 (UNTAET, 2001).

In short, the Consultations aimed at being an expression of popular social representation (Ingram, 2012: 14–15) outside the liberal state institutions, despite some technical aspects of the debate (Interview with Ramos Horta, 2015). However, they were somehow perceived as a UN held process (Adão, 2009; Luís, 2015; Mendes, 2005), where the Transitional Administrator would appoint the members and set most of the rules. This had not been carefully designed and the Consultations ended up being again a product of UN design (Interview with Adérito Soares, 2015). As a result, even the NGO Forum rejected to take part in the Constitutional Commissions (Interview with Adérito Soares, 2015) and this seriously affected the consideration the Constituent Assembly would give to its outcomes. The Consultations had, therefore, a narrow impact in the institutional debate taking place (Luís, 2016). However, this can still be seen as fostering popular discussion (Luís, 2015: 254; Mendes, 2005) and contributing to “strengthen the community's sense of ownership of the resulting Constitution and also of its commitment to abide by the Constitution” (EUEOM, 2001: 9).

2. Elections for the Constituent Assembly

Regarding the elections for the Constituent Assembly, UNTAET was responsible to “ensure free and fair elections in collaboration with the East Timorese people” (S/RES/1338, 2001). The UN mission was in charge of the whole upcoming electoral processes, comprising elections for the Constituent Assembly and probably for the President of the Republic. In order to “achieve the goal of independence for East Timor by the end of 2001” (S/RES/1338, 2001), UNTAET should establish the electoral calendar, “to strengthen the involvement and direct participation of the East Timorese people” (S/RES/1338, 2001). The Electoral Assistance Division of the UN Department of Political Affairs had already carried out a needs assessment mission and an “electoral pre-planning session (...) in cooperation with the Australian Electoral Commission” (S/2001/42, 2001: 5). On the following months UNTAET, embodying the legislative power, approved a set of

legislation in order to frame the upcoming elections⁵. Civil registration was carried out by UNTAET and the voters' roll was based upon this data (S/2001/42, 2001: 34). On 23 June 2001 there were 778.989 registered Timorese with an official document (UN, 2001) and the voters roll was extracted from this. There were however some problems regarding voter registration (Maley, 2003: 496) and the electoral roll, whose process needed improvement on the following elections (EUEOM, 2001: 11). Although independence was the aim, the UN SC still emphasised "the need for a substantial international presence in East Timor after independence" (S/RES/1338, 2001).

Electoral design

UNTAET designed the electoral system for the Constituent Assembly (UNTAET/REG/2001/2, 2001b). When tracing back from the history of UN missions, the UN had deployed a large electoral mission to Namibia in 1999, in a multidimensional peace operation (Interview with Senior UN Electoral Officer, 2015). A proportional representative electoral system was then adopted, with mandates determined according to the largest remainder formula, and no threshold, with closed party lists (Interview with Senior UN Electoral Officer, 2015). The UN SC recognised later that this had indeed led to a legitimate outcome, meeting internationally accepted standards of election administration, and this was further reproduced in Cambodia in 1992 (Maley, 2003: 480). Proportional representative systems are very simple and easy to apply and became very common on post-conflict or first time elections (Lijphart, 2005). This became the "natural model" for first time elections held after independence and it was natural that the UN personnel would refer to it, as it happened in Timor-Leste (Interview with Senior UN Electoral Officer, 2015). The electoral system was subject to debate in the National Council, though at the time not much attention had been given to this. There was a general will for a quick transition and the political debate at the time was more centred on the Constitution (Interview with Senior UN Electoral Officer, 2015). FRETILIN was seen as the biggest and most influential party at the time (Interview with Adérito Soares, 2015;

⁵ These were UNTAET Regulations no. 2001/2, "On the Election of a Constituent Assembly to Prepare a Constitution for an Independent and Democratic East Timor" (UNTAET/REG/2001/2, 2001b), no 2001/3 "On The Establishment Of The Central Civil Registry For East Timor" (UNTAET/REG/2001/3, 2001) and no. 2001/11 "On Electoral Offences for the Election of a Constituent Assembly" (UNTAET/REG/2001/11, 2001).

Interview with Senior UN Electoral Officer, 2015), very likely to win the election, regardless of the system or formula adopted (Interview with Adérito Soares, 2015; Interview with Senior UN Electoral Officer, 2015).

A proportional representative system was then adopted by UNTAET, with 75 members of the Constituent Assembly to be elected in a single national constituency, with no threshold, according to the largest remainder formula. There were 13 district representatives, one for each district, in a uninominal election according to a simple majoritarian system (UNTAET/REG/2001/2, 2001b).

The implications of electoral design can be very technical and there was not much technical awareness on this issue at the National Council, other than general knowledge of the overall option for a proportional representative system (Interview with Senior UN Electoral Officer, 2015). The knowledge on local specificities of the Timorese context lacked on the debate and, to some extent, so did adequate UN electoral advice (Interview with Senior UN Electoral Officer, 2015). In this light, and as district governance seemed to have been a UNTAET priority, with the creation of district administrations (Ingram, 2012), there was an elected representative for each of the 13 districts, by simple majority. This led to a mixed electoral system, as it was not purely proportional representative anymore, but rather combined a proportional representative single national constituency with 13 single-member majoritarian constituencies at the district level. The national constituency of 75 members, especially with no threshold, allowed for a great proportionality between votes and seats. The Hare formula, or largest remainder, is one of the most direct proportional formulas, thus increasing the close relationship between vote shares and seats. However, single-member majoritarian constituencies favoured the most influential party across the country (especially as there were no sharp regional asymmetries), which in this case was undoubtedly FRETILIN. Although in the end district representatives did not perform differently from other national candidates (Interview with Senior UN Electoral Officer, 2015), their creation undoubtedly increased the share of seats FRETILIN achieved.

Political parties had an important role in this election, but they were not granted the exclusive of political action. Political parties could present closed or block lists for the

election (meaning that political parties could choose the order of candidates on the list), of up to the maximum of 75 candidates (though less was permitted, an important flexibility for smaller parties). However, individual candidates could also run independently, either at the national or district level, with a minimum of popular support (500 or 100 supporters, respectively) (UNTAET/REG/2001/2, 2001b). This provision could also allow Xanana Gusmão to compete (Interview with Senior UN Electoral Officer, 2015), as at the time he was not affiliated with any political party. This not only recognised the role of political parties, but also provided openness regarding candidacies from people not affiliated to these. Candidates were eligible if they met the same criteria to vote, namely being aged 17 or above, having been born in Timor-Leste or having at least one parent or spouse being born in the country, a provision to mitigate pro-Indonesian influences.

In order to run for the election, parties had to register before the IEC and a registration period began. To register as a party, popular endorsement was required (500 supporters) and names, symbols or other elements “likely to incite hatred or violence” or similar to national symbols or a previously registered party, were not allowed (UNTAET/REG/2001/2, 2001b: 24). Parties’ registration allowed the formal institutionalisation of blocks of political preferences, leaving definitely behind the option for national unity. Besides historical parties, this allowed the post-independence reality to group itself and become institutionalised as political actors, if they chose to, and 16 political parties were registered (Luís, 2015: 252). Nevertheless, important political actors did not affiliate with any political party, namely Xanana Gusmão or Ramos Horta.

An Independent Electoral Commission was again created (UNTAET/REG/2001/2, 2001b), vested with the whole electoral authority, operating “as an independent body” (UNTAET/REG/2001/2, 2001b: 11). It was simultaneously responsible for the whole organisation and conduct of the electoral process, including registration of political parties, electoral dispute resolution and prevention and control of irregularities (UNTAET/REG/2001/2, 2001b: 14). The IEC also supervised the electoral process and certified the results, advising “the Secretary-General of the United Nations Organization as to whether the criteria for a fair and free election have been met”

(UNTAET/REG/2001/2, 2001a: 14). This was an overwhelming authority, even if possibly conflicting within itself, especially when congregating both the organisation and the supervision of the elections. The UNTAET Chief Electoral Officer was also a member of the IEC, without the right to vote, this last provision aimed at mitigating the influence of the incumbent authority over the independent body. The UN SG appointed the five Commissioners, with the right to vote (UNTAET/REG/2001/2, 2001b: 13), from which three were international experts and two Timorese nationals. Although its members had the same powers, the Timorese felt they lacked technical preparation, not being able to provide a substantial contribution as they wished to (Interview with National Member of the IEC, 2015), despite their strong will and commitment (Interview with Senior UN Electoral Officer, 2015). The IEC was in general perceived as an independent body, although the distribution of tasks between the IEC and UNTAET was not in all fields clear (EUEOM, 2001: 12).

Election results and outcomes

Elections for the Constituent Assembly were held on 30 August 2001. The electoral campaign was in general calm, with a low level of electoral intimidation (EUEOM, 2001: 24). Elections were held peacefully and on 10 September the IEC certified the results to the SR SG and considered that the elections had been free and fair (IEC, 2001). There was a remarkable participation and a turnout of about 91% (S/PV.4367, 2001: 3). In total 16 political parties were registered and for the single 75-member national constituency there were 968 candidates running on party lists and five independent candidates. For the 13-district single-member constituencies there were 84 candidates from political parties and 11 independent candidates (Luís, 2015). The “large number of parties” contesting the election comprehended a great diversity, both in terms of ideology and age (EUEOM, 2001: 24–25). This could “represent the beginnings upon which a more solid system of representative democracy might be based” (EUEOM, 2001: 24). There was “a greater degree of political heterogeneity than one might have expected” and this “apparent pluralism was in turn reflected in the vote, so that the process was certainly not a 'one horse' race” (EUEOM, 2001: 27). Participation in the campaign was not confined to parties and candidates, with civil society playing an

important role (EUEOM, 2001: 25). This also allowed the discussion of important issues regarding the future of the country (EUEOM, 2001: 25).

From the 16 parties contesting the election, 12 won seats, being FRETILIN the most voted by large (S/PV.4367, 2001). It achieved 57.4% of the votes and a total of 55 seats, namely 12 of the 13 district seats and 43 seats in the national constituency (S/PV.4367, 2001: 2). Results can be better illustrated in the table below.

Table 1 – Electoral results - 2001 Elections for the Constituent Assembly

2001	Constituent Assembly			
	75 members national		13 Districts	Total
Parties	% votes	Seats	Seats	Seats
FRETILIN	57,40%	43	12	55
PD	8,70%	7	0	7
PSD	8,20%	6	0	6
ASDT	7,80%	6	0	6
UDT	2,30%	2	0	2
PNT	2,20%	2	0	2
KOTA	2,10%	2	0	2
PPT	2,00%	2	0	2
PDC	1,90%	2	0	2
PST	1,70%	1	0	1
PL	1,10%	1	0	1
UDC/PDC	0,60%	1	0	1
Independent		0	1	1
Others	4%	0	0	0
Total	100%	75	13	88

Although district representatives were meant to ensure nationwide representation, majoritarian circles favoured the most influential party throughout the country, with FRETILIN securing 12 out of these 13 seats⁶. This eventually gave a boost to its position at the Constituent Assembly, despite seeming consensual that it would in any case be the most voted (Interview with Adérito Soares, 2015; Interview with Senior UN Electoral Officer, 2015). The Constitution approval required the vote of 60 out of its 88 members (UNTAET/REG/2001/2, 2001b), and FRETILIN needed to negotiate with smaller

⁶With an exception for Oecusse, due to the 10 minutes late arrival of FRETILIN's candidate to the registration, which generated much debate in the Electoral Commission (Interview with National Member of the IEC, 2015).

parties (Interview with Vicente Guterres, 2013), a fact seen as positive towards social consensus.

On 15 September 2001 the Special Representative swore in the 88 members of the Constituent Assembly (S/2001/983, 2001: 1) and on 20 September the Special Representative appointed the “Second Transitional Government”, composed of 20 ministers, vice-ministers and secretaries of state, reflecting “the outcome of the elections of 30 August, as well as sectorial expertise, with an emphasis on youth and geographical representation” (S/2001/983, 2001: 7). A “Council of Ministers, led by a Chief Minister, Mari Alkatiri” presided the Transitional Government, supervising the East Timor Public Administration (S/2001/983, 2001: 7).

3. The Constituent Assembly and the constituent process

The constituent process was initiated. There was a broad agreement regarding the main institutional options for the country and a strong will to take part in it (Luís, 2013b) and five constitutional drafts were submitted before the Constituent Assembly. During the constituent debates all parties were welcome to submit their proposals and views, which would further be debated and voted (Interview with Manuel Tilman, 2015), being FRETILIN’s main orientation seen as one of great inclusion (Interview with Adérito Soares, 2015).

The constitutional discussion was not only centred around institutional aspects, as elements of a more symbolic nature raised important debates, namely the flag, the restoration (or not) of independence or the FALINTIL/(F)FDTL denomination⁷ (Interview with Francisco Guterres Lu-Olo, 2015), among others. There was much discussion around the government system, with four proposals advocating for a semi-presidential system (Feijó, 2014a: 112), but also regarding the scope of presidential powers.

⁷ FALINTIL – *Forças Armadas de Libertação e Independência de Timor-Leste* (Armed Forces for the Liberation and Independence of Timor-Leste) refers to the former Timorese liberation forces, struggling for independence. F-FDTL – *Falintil-Forças de Defesa de Timor-Leste* (FALINTIL – Defence Forces of Timor-Leste) refers to the Timorese armed forces, after independence. There was a very controversial disarmament, demobilisation and reintegration process, including recognition issues, thus reinforcing the importance of the denomination. For more details see (Lopes, 2015).

The long struggle for independence had allowed the Timorese to develop an idea of the institutions they wanted for the country (Interview with José Reis, 2015). This determination eventually contrasted with the broad UN presence, with a mandate comprising statebuilding. Especially within FRETILIN, previous constitutional projects continued to adjust and develop (Interview with José Reis, 2015) since its initial 1975 Constitution, when independence was declared. FRETILIN held several conferences, still during the Resistance, where constitutional drafts were approved. Initially, it opted for a presidential system for Timor-Leste, on the assumption that Xanana Gusmão could be the president, affiliated with it. In 2001 the presidential system was referred by the UN SG as “the current consensus” (S/2001/42, 2001: 42). However, internal tensions started to emerge, mainly between FRETILIN and Xanana Gusmão (Goldstone, 2013: 213), with the UN playing a role, and FRETILIN started to re-evaluate whether the presidential option was the most adequate, thus shifting to a semi-presidential system.

The Consultations within the constituent debate

In the constituent debate the Constitutional Consultations were not welcomed, though, (Adão, 2009: 154) and the presence of the members of the Constitutional Commissions was not allowed in the Assembly. The Reports were not formally addressed as constitutional proposals (Adão, 2009: 148), although some of their views were further submitted before the Assembly, but by the elected political parties, especially the ones with larger representation (Adão, 2009: 154).

The UN had failed to engage FRETILIN in the Consultations (Interview with Adérito Soares, 2015) and FRETILIN perceived them as UN-owned, aimed at antagonising the strongest party (Interview with Adérito Soares, 2015) and to neglect the powers of the popular elected body (Interview with Francisco Guterres Lu-Olo, 2015). The UN action would possibly overlap the elected national institution (Interview with Adérito Soares, 2015; Interview with Ana Pessoa Pinto, 2015; Interview with Francisco Guterres Lu-Olo, 2015; Interview with Manuel Tilman, 2015; Interview with Mário Carrascalão, 2015) and its popular legitimacy, meeting some resistance regarding the UN presence in the Constituent Assembly, with the Timorese seeking to set the UN aside since very early (Interview with Manuel Tilman, 2015). This could either be the product of the much-

criticised UN top-down approach (Blanco, 2010: 185; Brown, 2009; Richmond and Franks, 2008: 4) and lack of social engagement, or the UN actually confused the lack of political entities with a lack of politics and correspondent institutional options (Ingram, 2012: 6), in a period when the Timorese were eager for national-ownership (Interview with Adérito Soares, 2015). The UN itself had set a short 90-day period to adopt a constitution (UNTAET/REG/2001/2, 2001b), with both the UN and the Timorese ruling elite favouring a rapid transition (Devereux, 2015: 3; Goldstone, 2004: 88), without much room for broadly inclusive processes as this.

The Constituent Assembly developed its own popular participation process (Interview with Francisco Guterres Lu-Olo, 2015), in its own timeframe, which was seen as short. There was participation of citizens in the thematic commissions, including members of the civil society, experts and national and international NGOs (Adão, 2009: 154; Luís, 2015: 254), with the NGO Asia Foundation even carrying a national survey on constitutional matters (Mendes, 2005), all taking place in the short timeframe of constitutional drafting. Once the Constitution was approved, its members embraced another Constitutional Consultation process, in order to socialise the Constitution and explain its outcome to the people in all districts (Interview with José Reis, 2015).

Presidential powers

One of the strong constitutional debates regarded the scope of presidential powers and the semi-presidential system was then the prevailing option. The lack of presidential powers would thus increase the role of a Parliament expected to be led by FRETILIN. However, the President was granted the power to “dissolve the national parliament” and “dismiss the government and exonerate the prime minister” (CRDTL, 2002: 86). It would also be the President to appoint the Prime Minister, opting either for the leader of the most voted party or coalition of parties. According to the Constitution, the Prime-Minister should be appointed by the President of the Republic, after hearing the political parties represented at the National Parliament, within “the most voted party or alliance of parties with parliamentary majority” (CRDTL, 2002: 106). This is an alternative clause, which the President of the Republic can use at its sole discretion, thus becoming the custodian of the governability (Vasconcelos, 2011: 349).

Even though FRETILIN had the majority at the Constituent Assembly, therefore being able to substantially influence and take part in the Constitutional debate, the origins of this clause were not easy to trace, still as of 2015⁸. None of the constitutional projects initially submitted by the political parties contained it, nor could it be found in the Timorese National Parliament archives of the Constituent Assembly. It was also not easy to trace it in the interviews carried with members of the Constituent Assembly, still as of 2015, with only a few referring to it and its origins, namely Manuel Tilman, Ana Pessoa and Lu-Olo (Interview with Ana Pessoa Pinto, 2015; Interview with Francisco Guterres Lu-Olo, 2015; Interview with Manuel Tilman, 2015). It was introduced allegedly to allow for more flexibility on government formation (Interview with Manuel Tilman, 2015) and the inclusion of smaller parties in the government (Interview with Ana Pessoa Pinto, 2015).

Although the Portuguese Constitution might have been an important source for the Timorese constituent process, significant differences exist, demonstrating that the Timorese constituent process was effectively tailor made. Regarding government formation, the Portuguese Constitution states that “the President of the Republic should appoint the Prime Minister taking the electoral results into account” (art. 187). In the Timorese case, the government formation clause is more specific, though still containing two options in alternative, whose choice belongs to the President of the Republic. This might show that, despite being a source, the autonomy of the Timorese options prevailed, in specifically canvassed institutional design. It is however questionable if such a degree of uncertainty in such an important matter is desirable, especially if taking into account the need for building certainty and trust in state institutions, in a post-conflict consolidating context (Luís, 2015: 258). This undoubtedly extended the influence of the presidential powers towards the government, as the elected president can prove to be central for the formation of the former. The sequence of the electoral calendar has thus become an important issue, as, if held first, presidential elections can already be a

⁸ Its concrete application in 2007 caused some surprise (Interview with Mário Carrascalão, 2015), generating huge controversy among FRETILIN cadres and its supporters in general, with claims that the Presidential decision had been unconstitutional. Many FRETILIN supporters argue this clause would only be applicable to pre-electoral coalitions, with a strong debate around the constitutionality of the government formation. Nevertheless, its use has never been formally disputed before the Court.

milestone towards one of the outcomes of the parliamentary elections, namely regarding the Prime Minister's appointment.

Constitutional outcome

The final constitutional draft was voted favourably for 72 of the 88 members of the Constituent Assembly, namely from FRETILIN, ASDT, KOTA, PDC, UDC, PL, PNT, PPT and PST; 14 voted against, namely from PD, PSD and UDT; João Carrascalão abstained and Aliança Araújo, from PNT was absent (Mendes, 2005: 378–9). The Constitution was finally adopted on 22nd March 2002, although it only entered into force on the 20 May, the day of independence.

The Constitution adopted a semi-presidential system, with universal elections for the Parliament and the President of the Republic, both mandates with the same duration, and a proportional representative electoral system for the Parliament (CRDTL, 2002). The Parliament was composed of a minimum of 52 seats and a maximum of 65, to be defined by law (CRDTL, 2002: 93). District representatives previously set by UNTAET (that seemed to favour FRETILIN) seemed to have been left aside. The Government should be formed according to an alternative clause, with the President of the Republic being decisive (Vasconcelos, 2011: 349) in choosing either the most voted party or the majoritarian coalition of parties.

The future electoral system started to be shaped, as the Constitution already enshrined the basic principles of democratic elections. The vote should be “universal, free, direct, secret, personal and periodic”, both for the sovereign and local institutions. Voter registration was mandatory. There should be an independent electoral body, in order to supervise voter registration and the elections. The basic principles of electoral campaign were also foreseen (Luís, 2015: 254), embodying universal civic and political rights and freedoms.

The constituent process in Timor-Leste is often labelled by the literature as non-democratic, arguing it was “elite driven and dominated by one winning faction” (Garrison, 2005: 19) or specifically driven group (Wallis, 2014: 92), “with a like-minded minor party” (Ingram, 2012: 15), among others (Saati, 2015). This is becoming, however, a narrow

perspective, disregarding “the reflections on key issues of power and governance” both at the civil society and within the Constituent Assembly.

In fact, all members of the Constituent Assembly interviewed considered it an open, democratic and public process, described as fair and inclusive, with FRETILIN showing a great openness (Interview with Vicente Guterres, 2013); this was constant for members coming both from smaller parties (Interview with Manuel Tilman, 2015; Interview with Mário Carrascalão, 2015), from FRETILIN (Interview with Francisco Guterres Lu-Olo, 2015; Interview with José Reis, 2015), even if no longer close to it (Interview with Adérito Soares, 2015), being also the perception of non Constituent Members not affiliated to FRETILIN (Interview with Ramos Horta, 2015). The Constitutional Consultations, a UN held popular consultation process (Adão, 2009; Luís, 2015; Mendes, 2005), could have led to a broader social representation and were the expression of a process of another kind (Ingram, 2012: 14). However, both were legitimate choices and the option for a more institutional constituent process prevailed.

The Timorese constitutional outcome was also subject to strong criticism from several academics (Ingram, 2012; Mendes, 2005: 379), arguing presidential powers were limited. Regardless of these arguments, the Timorese institutional division of powers is seen as positive by many, as it allows a balanced division of political intervention and preserves the image of the President of the Republic (Interview with Ramos Horta, 2015). In particular, Ramos Horta, who has been both Prime Minister and President of the Republic, deems the presidential powers as adjusted to the country, as it refrains the president from interfering too much in internal policy, who thus can become a referee in a more neutral position (Interview with Ramos Horta, 2015). From the interviews carried it was consensual that the Timorese institutional design was adequate for the country, including specifically the Presidential powers and its articulation with the Government and the National Parliament (Interview with Ramos Horta, 2015; Interview with Vicente Guterres, 2013).

More presidential powers or a presidential system were seen as potentially dangerous, due to the “strong personalities” emerging in Timor-Leste early independence (Interview with Vicente Guterres, 2013), which presidentialism could foster (Interview

with José Teixeira, 2015), narrowing choices. The country's regional insertion, and the frequent presidential dictatorships (Interview with Vicente Guterres, 2013), could make a strong president potentially hazardous for the country's internal institutional dynamics. When carrying out fieldwork, both the government system and the scope of the presidential powers seemed to be highly accepted and consensual (Interview with Dionísio Babo Soares, 2015; Interview with Francisco Guterres Lu-Olo, 2015; Interview with Ramos Horta, 2015; Interview with Vicente Guterres, 2013). This perspective of the adequacy of the presidential powers, casted mainly through interviews carried in 2013 and 2015, contrasts sharply with most of the literature produced on this issue (Feijó, 2014b; Ingram, 2012) the cause of which being still an enigma after all the research carried on the issue. It seems however of great importance that all the Timorese interviewed, despite its heterogeneous political preferences, seem very comfortable with it, especially after more than a decade of its multiple practical implementation. The institutional outcome is broadly seen as adequate for the country (Interview with Ramos Horta, 2015; Interview with Vicente Guterres, 2013) and it has not been changed until the present, nor is it under debate (Interview with Dionísio Babo Soares, 2015).

If institutions need to be both strong, but flexible to react to changing circumstances (Reynolds et al., 2005: 2) and allow multiple decision processes, even if generating tensions (Reilly, 2014: 139), this seems to have been the Timorese case. The initial institutional design and intent seemed to have adapted to subsequent power relations with consequential decisions widely accepted popularly, in a proof of social legitimacy (Chandler, 2006: 9). There is a generalised sense of adequacy of the present institutional design, very likely due to the checks and balances and the flexibility it allows for (Luís, 2016).

4. Presidential elections

The Transitional Administrator set the date of Presidential elections to 14 April 2002 (UNTAET Directive 2002/1, 2002) and these were legally framed by UNTAET⁹. The

⁹ Regulations No. 2002/01 On the Election of the First President of an Independent and Democratic East Timor (UNTAET/REG/2002/01, 2002) and No. 2002/02 On Electoral Offences in Relation to the Election of The First President (UNTAET/REG/2002/2, 2002).

IEC had again the exclusive authority over electoral matters. It was redesigned and composed of the Chief Electoral Officer, five voting Commissioners appointed by the UN SG, from which three were Timorese and two international electoral experts (UNTAET/REG/2002/01, 2002: 6). The powers of the IEC increased and a new period for political parties' registration began (UNTAET/REG/2002/01, 2002). The election should "be free and fair, with universal adult suffrage and a secret ballot" (UNTAET/REG/2002/01, 2002: 1), and on the basis of a single national constituency. It would have just one round and the candidate with the highest number of votes was elected president (UNTAET/REG/2002/01, 2002: 27).

The election took place on the date set, 14 April 2002 (UNTAET, 2002; UNTAET Directive 2002/1, 2002) and the results were certified by the IEC and sent to the UN SG on 21 April (UNTAET, 2002). The participation was very high. From the estimated 439.000 registered voters (UNTAET, 2002), there were 378.548 votes cast, with a turnout of about 86% (S/2002/432/Add.1, 2002: 432). Candidates could be nominated by one or more registered political parties or be independent (upon presentation of the signatures of 5.000 supporters among registered voters) (UNTAET/REG/2002/01, 2002: 25). There were two candidates, Xavier do Amaral and Kay Rala Xanana Gusmão, the later constituting itself for the first time as an institutional political actor. Xanana Gusmão won the election, with 82.69% of the votes and became the first elected president of Timor-Leste (S/2002/432/Add.1, 2002: 432). However, the alleged lack of FRETILIN support to Xanana Gusmão (Interview with Ramos Horta, 2015), despite FRETILIN not presenting its own candidate, deepened political resentments.

Independence was formally declared on 20 May 2002. The Constitution entered into force, the Constituent Assembly transformed itself in the first National Parliament and the first elected President of the Republic took office. The Constituent Assembly becoming the National Parliament, without a specific election for the later, generated great controversy. This was obviously a political option, previously foreseen by the UN and UNTAET and later in the Timorese Constitution. Both the SG Report to the SC (S/2001/42, 2001: 42) and the UNTAET Regulation included this, the later stating that "The Constituent Assembly shall become the legislature of an independent East Timor, if

so provided in the Constitution” (UNTAET/REG/2001/2, 2001b: 6), which the Constituent Assembly further did. From the Timorese side, this was justified with the lack of resources to carry new parliamentary elections (Mendes, 2005: 380) and by the fact that there was no need to be constantly having elections for democratically elected organs, which would also delay the *de facto* independence aim (Vasconcelos, 2011: 523).

The Timorese state had its *de jure* elected institutions in this very precise timeframe (Goldstone, 2004: 88). The UN presence still continued, with the focus on institution building. This constitutional design was further put to a strong test in 2007, within a climate of widespread instability and internal crisis, with presidential powers and the government formation clause at the centre of a highly sensitive decision making process, with great impact at the internal level. Crafting the electoral system and its possible outcomes were also very important issues to follow, as we describe in the following chapter.

Conclusions

The UN presence in Timor-Leste started with the Popular Consultation, in 1999, when the Timorese were called to the polls to decide whether they were to be independent or have a special autonomy within Indonesia. Independence was the chosen option and a broad UN mission was deployed, in order to create and prepare the state institutions for a *de facto* independence, which was seen as building the state from the beginning. Elections were a crucial step and the UN mission itself drafted the 2001 electoral system, for the Constituent Assembly and the President of the Republic. A proportional representative system was chosen, with a 75 member national constituency, with the Hare formula. 13 district seats were also foreseen, which have given a numerical advantage to the most voted party, FRETILIN.

After a long struggle for independence, culminating with the 1999 Popular Consultation, internal consensus started to vanish. In the post-conflict scenario a power struggle developed between two very powerful actors, Xanana Gusmão and FRETILIN (Goldstone, 2013: 213), in which the UN is seen as having played a role. Despite potential disagreement with FRETILIN options, Xanana Gusmão did not constitute himself as an

institutional political actor until the 2002 presidential elections, when he became the President of the Republic.

Independence meant canvassing state institutions, embracing sensitive political options in a specific timeframe (Goldstone, 2004: 89). A semi-presidential government system was the option chosen, with the President of the Republic co-existing with a parliament and a government, the latter being responsible to the legislature, in a system of mutual checks and balances. The future national parliament was to be elected according to a proportional representative system. During the constituent process there was a very organised political actor, FRETILIN, with cadres also coming from the diaspora, with a clear institutional perspective. The UN presence, through a wide mission, intertwined, and at times collided, with the national dynamics on institution building. Having drafted the electoral system for the Constituent Assembly, and started a popular constitutional consultation process, the UN was since very early put aside in this debate. In the constituent process FRETILIN was the most represented, with smaller parties also presenting their institutional views. Negotiation was inevitable and the process was consensually deemed as open, participatory, transparent and democratic. Independence would be a true test to institutional sustainability, with the further institutional design and performance being an issue to follow closely.

Chapter 5 – Inside the institutions: framing the Timorese electoral system

Introduction

In this chapter we start from the institutional configuration put in practice in Timor-Leste in its transition to an independent state, and analyse how the further institutionalisation proceeded, namely regarding the creation of the Timorese electoral system. Our aim is to analyse how state institutions have performed, taken into account its previous design, in shaping further institutional options. We analyse the role of two main groups of political actors, namely the Timorese and the UN, and see how the dynamics developed between these. Within the UN, the role of the UN mission and of the electoral assistance provided, namely through a Certification Team, are crucial. In this regard we analyse the electoral system, its main elements, potential implications and trade-offs, revisiting the dynamics within its creation. We also analyse further amendments after the initial 2007 electoral cycle, to see how political preferences were accommodated after the first electoral cycle. Providing this analysis will set the context for the next chapter, where we analyse the Timorese electoral cycles.

1. How to design an electoral system? The Timorese take the lead

On May 2002 the SC expressly welcomed “the successful and peaceful” elections held, noting however that the newly created institutions were still fragile and that further UN support was needed (S/RES/1410, 2002). The UN presence would still continue, with the focus on institution building. UNMISSET was created in this regard (S/RES/1410, 2002), for an initial period of one year and lasted until April 2005. Although the SC recognised “the primary responsibility of the people of East Timor for nation building”, UNMISSET’s mandate included the provision of “assistance to core administrative structures critical to the viability and political stability of East Timor” (S/RES/1410, 2002). The mission was expected to remain in place during a period of two years, within which it would “fully devolve all operational responsibilities to the East Timorese authorities as soon as is feasible, without jeopardizing stability” (S/RES/1410, 2002). In May 2003, as of

UNMISET's first extension (S/RES/1480, 2003), the SC acknowledged "the efforts of the people and Government of Timor-Leste and the progress achieved in developing the institutions of an independent state", while recognising "the importance of continued efforts to transfer skills and authority from UNMISET to the government of Timor-Leste" (S/RES/1480, 2003). In 2004 UNMISET was further prolonged, "to allow key tasks to be performed and to sustain, strengthen and build upon the gains made to date, thereby permitting Timor-Leste to attain self-sufficiency" (S/RES/1543, 2004). Despite "the progress achieved by the people and Government of Timor-Leste, with the assistance of the international community" and the "notable advances achieved in the last months" (S/RES/1573, 2004), the country had not yet "reached the critical threshold of self-sufficiency, mainly in key areas such as public administration, law enforcement and security" (S/RES/1573, 2004).

On April 2005 a small mission was deployed, aiming at making the transition from the UN withdrawal from the country (S/RES/1599, 2005). UNOTIL was established, with a one year mandate (S/RES/1599, 2005). Regarding statebuilding, the mandate of UNOTIL consisted of supporting "the development of critical State institutions" (S/RES/1599, 2005). On transferring the authority to the new state institutions, UNOTIL should "emphasize proper transfer of skills and knowledge in order to build the capacity of the public institutions of Timor-Leste" (S/RES/1599, 2005). All parties concerned, namely "the Government of Timor-Leste, UNOTIL, the United Nations Secretariat, United Nations development and humanitarian agencies, and multilateral financial institutions" should immediately start "planning for a smooth and rapid transition, in Timor-Leste, from a special political mission to a sustainable development assistance framework" (S/RES/1599, 2005). The transition would be closely monitored and adapted and, if necessary, comprise "any modifications such progress might allow to size, composition, mandate and duration of the UNOTIL presence" (S/RES/1599, 2005).

Holding elections would be key in this regard and the whole electoral process had to be carried out. On 29 August 2005 the Minister of State Administration, Ana Pessoa Pinto, addressed a letter to the UN EAD, requesting electoral support at three main levels: legal advice to electoral law drafting, information technologies and logistics

(Minister of State Administration, 2005). The UN EAD addressed this request by deploying a small needs assessment mission to the country, pursuant to the UN GA approved framework (A/RES/46/137, 1991: 137). The NAM aimed at evaluating “the prevailing conditions for the conduct of free and fair elections, including legal, political, human rights, material and institutional arrangements through meetings with persons and organizations the mission finds relevant to its work” (UN EAD, 2005). It would identify “the pre-election assistance needs” and “the provisions that need to be included in the electoral laws for the 2007 presidential and parliamentary elections, taking into account the political concerns on the ground” (UN EAD, 2005: 2). The NAM visited the country for two weeks, meeting with a group of stakeholders deemed relevant (Kriegler and Santos, 2005).

The UN NAM provided a broader assessment of the situation in Timor-Leste regarding the upcoming elections. The team visited Timor-Leste during two weeks, “exploring many different – and informed – points of view”, from “an unusually large and varied number of interlocutors”, with the support of UNOTIL and UNDP (Kriegler and Santos, 2005: 2). Its report was published on the 1st December 2005, including a framework for future electoral support, especially regarding electoral law drafting and institutional options, as well as a suggestion of an electoral law and a possible electoral calendar (Kriegler and Santos, 2005). This contained several annexes, including “*Alguns Princípios de Lei Eleitoral*” (“Some Principles of Electoral Law”) and a tentative calendar regarding the forthcoming electoral processes (Kriegler and Santos, 2005). Its findings included the main areas of concern, namely political parties, electoral management bodies, the Electoral Commission and electoral supervision, the capacity of STAE (*Secretariado Técnico da Administração Eleitoral* - Technical Secretariat for Electoral Administration) for 2007, voters’ roll, electoral laws including the electoral calendar, proportional system and the independence of the EMBs and finally, the role of UN in the forthcoming elections (Kriegler and Santos, 2005).

The NAM found that “formally the political scene is dominated by one party”, FRETILIN, whose cabinet being composed of “competent, disciplined and motivated political thinkers (...) whereas hardly any comparable thinking or planning can be found in

opposition circles” (Kriegler and Santos, 2005: 3). There was “little if any evidence of feet-on-the-ground, pragmatic political planning (...) of concerted research of legal and constitutional issues outside the ruling party” (Kriegler and Santos, 2005: 3), even within political parties represented in the parliament, especially due to “lack of research and general back-up facilities of professional staff” (Kriegler and Santos, 2005: 3).

Regarding the electoral system, the Constitution already foresaw a proportional representative system, but this lacked specification, with many institutional options being possible (Kriegler and Santos, 2005: 11). The government seemed favourable to a 5% threshold which, had this been applicable in the Constituent Assembly Elections, would increase FRETILIN’s share of seats (Kriegler and Santos, 2005: 12), as well as of the fourth most voted parties, at the expenses of smaller parties¹⁰. The threshold was justified with the need “to exclude parties with little support”, and for the NAM “a common conceit for electoral administrators” was “to wish to control the number of political parties”, although this should be “a power exclusive to the people and that the power to make such a distinction is theirs alone” (Kriegler and Santos, 2005: 12)¹¹.

Regarding the EMBs, the National Electoral Commission (*Comissão Nacional de Eleições* - CNE) should be a *de facto* independent electoral body, with “means, staff and material” “to really supervise and oversee the whole electoral process as the Constitution requires” (Kriegler and Santos, 2005: 12), with the possibility of being composed of representatives of competing political parties. It should also be the institution carrying civic education, which had previously been done by a ministerial agency, seen as “biased or party-oriented” (Kriegler and Santos, 2005: 12). This agency was STAE, “a specialist electoral administration within the Department of State Administration”, defined by the Timorese Decree no 2/2003 as a “subsidiary institution” in the structure of the Ministry of

¹⁰ The 5% threshold would have far more consequences than the ones here briefly described by the NAM Team. Although the numbers regarding the Constituent Assembly results are not clear, a 5% threshold would have deterred eight parties from entering the Constituent Assembly, with the correspondent 13 seats being divided among the four most voted parties. However, despite being important, this factor has to be taken into account addressing the remaining components of the electoral system as a whole, or this analysis would risk being too simplistic. A more detailed analysis of these factors is provided below.

¹¹ Despite the NAM’s consideration in this regard, thresholds are commonly used around the world. Even though its effects can be controversial, but with some degree of predictability, in the sense they limit the entrance of smaller parties, if used proportionally they are not generally considered unacceptable. A more detailed analysis of these factors is provided below.

State Administration (Kriegler and Santos, 2005: 5). This led to a “perception of political control by the government of the day of the electoral process”, “notwithstanding the presence of a number of UN advisors assisting STAE” (Kriegler and Santos, 2005: 5). The NAM suggested a “protocol outlining the relationship between the ministry and STAE”, accompanied by a “practice of strict non-interference by the ministry” (Kriegler and Santos, 2005: 6). The lack of separation between STAE and the ministry contrasted with the few powers given to CNE (Kriegler and Santos, 2005: 6). Even though both bodies were foreseen in the law, CNE members were “part-time and unpaid” and “given practically no human or material resources”, to the extent of having “no money for electricity generation” (Kriegler and Santos, 2005: 6). A reinforcement of CNE was highly needed, though “only at a considerable price, politically and financially”, to ensure it being a real supervisory and independent body, over voters’ registration and voting, as the Constitution foresaw (Kriegler and Santos, 2005: 6). The voters’ roll also needed to be updated, (Kriegler and Santos, 2005: 8), correcting previous inaccuracies, as well as replacing low quality voter cards (Kriegler and Santos, 2005: 9).

The Team also considered that electoral laws should thus comprise institutional and material choices and these would be much more substantial than law drafting itself, “a technical language to express precedent options” (Kriegler and Santos, 2005: 9), regarding “policy decisions”. These also required planning, logistics and the like” (Kriegler and Santos, 2005: 10), to be “reduced to clear and simple language in manuals”, addressing the several stakeholders in the electoral process, such as “electoral staff, political parties, observers and voters” (Kriegler and Santos, 2005: 10).

Another question regarded the electoral calendar, much connected to the terms of office, in order to determine which elections to be held first, namely the presidential or the parliamentary, or even if both were to be held at the same time (Kriegler and Santos, 2005: 11). This discussion was much connected with the office-bearer, although with contrasting positions regarding the beginning and term of the mandates of both institutions (Kriegler and Santos, 2005: 10). According to the Constitution, the Prime Minister was appointed by the President of the Republic, from “the most voted party or by the alliance of parties with parliamentary majority” (CRDTL, 2002: 106), with the

President of the Republic having discretionary powers regarding this decision. Being Xanana Gusmão the President of the Republic, and with FRETILIN expected to achieve a majority at the Parliament, the chronology of the elections could prove to have substantial political impact (United Nations Assessment Mission to Timor-Leste, 2006).

The capacity of STAE to carry the elections was seen as successful from the government's perspective, despite extensive UN support, and less successful seen from other sources, with no evidence regarding both (Kriegler and Santos, 2005: 7). There were also contradictory appraisals regarding local *suco* elections, namely alleging excessive interference from the Government, much associated with FRETILIN (Kriegler and Santos, 2005: 7). The 2007 electoral cycle would be crucial for the government and there were different perspectives on whether these should be managed by the UN or by the Timorese (Kriegler and Santos, 2005: 7), being "a very formidable challenge" regarding logistics, resources and organisation capacity (Kriegler and Santos, 2005: 8). The NAM also stressed out the desirable outstanding role of the UN in the 2007 elections, especially due to the "significant degree of unease about the blurring of the line between the majority party and government during local elections", thus creating "considerable concern at the prospect of UNOTIL's mandate ending in May 2006" (Kriegler and Santos, 2005: 14). The NAM concluded having as "the most important recommendation (...) that the UN's leadership role continue undiminished at least until the inauguration of the new government in 2007" (Kriegler and Santos, 2005: 14). Election planning would be a crucial component, which was "essentially a technical exercise and the UN is pre-eminently in a position to take the lead in getting it under way" (Kriegler and Santos, 2005: 14). The NAM also recommended that "the request by the Minister of State Administration for assistance in drafting new electoral laws should be acceded to", although not just regarding its drafting, but "by providing advice at a more senior level to facilitate debate (...) on the fundamental questions of policy that must be resolved before the drafting process" (Kriegler and Santos, 2005: 14). This should be made with "widespread participation in its construction", especially due to "the high levels of mistrust among opposition politicians and other leaders outside the government" (Kriegler and Santos, 2005: 15). It was desirable that all stakeholders would understand "the rules of the

game”, an essential requisite for “the transparency of the electoral process – and hence its credibility and legitimacy” (Kriegler and Santos, 2005: 15).

Following the electoral support request to the UN on August 2005 (Minister of State Administration, 2005), the UN mission provided the Timorese with three advisers, including “a short-term legal drafter to the Government” (S/2006/628, 2006: 50). Although no other substantial developments followed on the short term (Feijó, 2010: 106), the NAM’s Report was the basis of the SG assessment of future electoral assistance to Timor-Leste, later on August 2006, shortly before UNMIT was created (S/2006/628, 2006: 50).

From the Timorese side, the NAM’s Report (Kriegler and Santos, 2005) was seen as an attempt from the UN to draft the electoral law itself and generated a tense reaction within the Ministry (Interview with Ana Pessoa Pinto, 2015). Although the initial Timorese support request stressed the need for the legal experts to work under the coordination of Timorese institutions (Minister of State Administration, 2005), the NAM Report attached a sample of what a Timorese electoral law could look like (Kriegler and Santos, 2005), which might not have helped regarding the lead of the decision process. The initial Timorese request made it very clear that the experts would work under the direction of the Timorese government (Minister of State Administration, 2005) and not under UN instructions. Budget concerns were brought into this decision, as UN electoral support projects would be “very expensive and there were no compatible funds within the Timorese State Budget” (Interview with Ana Pessoa Pinto, 2015). In this context, a request for electoral assistance was addressed to Portugal, aimed at drafting of the first Timorese electoral laws (Interview with Ana Pessoa Pinto, 2015; Interview with Jorge Miguéis, 2015). The main and overall objective was that the electoral laws be drafted according to Timorese decisions, namely STAE and the Ministry (Interview with Ana Pessoa Pinto, 2015) and not by the UN.

Request for Portuguese support

When considering possible electoral support options, a Timorese request for electoral cooperation from Portugal was not likely to involve heavy costs, if any costs at all (Interview with Ana Pessoa Pinto, 2015). On January 2006 the request was addressed

to the Portuguese government, which responded very positively (Interview with Jorge Miguéis, 2015). There had already been a very good experience with Portuguese cooperation regarding the Timorese local elections, namely through STAPE (*Secretariado Técnico dos Assuntos para o Processo Eleitoral* - Technical Secretariat for the Electoral Process Matters), the Portuguese government agency responsible for organising the elections. The good institutional relations with Portugal and STAPE developed, the Timorese were invited to observe Portuguese elections and Portuguese technical cooperation seemed an adequate choice, at multiple levels (Interview with Ana Pessoa Pinto, 2015).

The STAE Director, Tomás Cabral, went to Lisbon to request support for the electoral drafting, on January 2006. The Portuguese General-Director for Internal Affairs responded positively to the request and a team was created to perform this task, in close coordination with the Portuguese cooperation agency and the Ministry of Foreign Affairs (Interview with Jorge Miguéis, 2015). The Portuguese government was eager to cooperate with Timor-Leste, and it was irrelevant that Timor-Leste was led by a left wing government (FRETILIN) and the Portuguese one was centre-right at the time (social-democrat - PSD) (Interview with Jorge Miguéis, 2015).

The team was composed of three people, all with a legal background and experience in the electoral field. The Team leader, Mr. Jorge Miguéis, was a senior electoral officer in Portugal, with extensive expertise and working on elections since 1975; another team member was Timorese, although living in Portugal (Ana Vargas), with previous experience in electoral support to the local elections in Timor-Leste, and the third one was a lawyer working on elections at the Portuguese Electoral Commission (Paulo Madeira) (Interview with Ana Pessoa Pinto, 2015; Interview with Jorge Miguéis, 2015). The Mission was in Timor-Leste between February and March 2006, working according to the terms of reference then set by the Minister of State Administration, Ana Pessoa, and with frequent meetings (Interview with Jorge Miguéis, 2015).

The fundamental aspects of the Timorese electoral system were carved in this process. The Timorese had a very clear idea of the broad electoral framework intended for the country, namely a proportional representative electoral system with a single

national constituency (Interview with Jorge Miguéis, 2015). Although the proportional representative system was already foreseen in the Constitution, the electoral formula and constituencies remained to be defined by law (CRDTL, 2002: 65). The D'Hondt method was the formula suggested by the Portuguese experts, as it would ensure a fairly good proportionality between votes and seats, also according to the Portuguese experience (Interview with Jorge Miguéis, 2015). A myriad of political parties was not seen as desirable by the Timorese and to achieve this aim a threshold was the option chosen (Interview with Jorge Miguéis, 2015). The vote counting at the district level was also a Timorese requested option (Interview with Jorge Miguéis, 2015), justified with the fact that there were no logistical conditions to count the votes at the local level (Interview with Ana Pessoa Pinto, 2015). Although the counting at the district level was subject to much criticism, even at the Parliament, giving rise to later allegations of electoral fraud, this Timorese option mirrored the previous UNTAET option of counting the votes at the district level, despite the fact that the conditions in 2007 were very different from the ones during UNTAET elections.

The Timorese seemed to be sure about these fundamental options, but there were other relevant aspects missing and the team aimed at drafting what could be “a reliable electoral architecture, ensuring the equality of opportunities between the candidacies in a smooth electoral process”, within a broader democratic framework (Interview with Jorge Miguéis, 2015). This was based on the Portuguese electoral system, which had already proven to be reliable and ensure a great degree of integrity, with local specificities inserted according to the Timorese context. Within the drafting process there were frequent meetings with the Minister, where proposals were discussed and adjusted according to what was aimed by the Timorese counterpart, the only decision-maker. The experts provided technical expression to the Timorese electoral options, within a broad democratic framework (Interview with Jorge Miguéis, 2015). The Minister Ana Pessoa, who was leading the process, seemed to be very enlightened on electoral issues and very determined to carry free and fair elections, according to the UN standards (Interview with Jorge Miguéis, 2015).

The team only drafted the electoral laws for the President of the Republic and the National Parliament. The drafting process was all carried out in Timor-Leste and according to the instructions from the Minister and the frequent meetings held (Interview with Jorge Miguéis, 2015). Although the Team had been in Timor-Leste for a short period of very intensive work, this seemed to be much appreciated by the Minister and it was the basis of the subsequent discussion regarding the Timorese electoral system. There was a very good relationship between the experts and the UN in general, with particular emphasis on UNDP, which had constant information about the drafting process, but that in no way tried to interfere (Interview with Jorge Miguéis, 2015). In the end of the mission and shortly before the departure, the SR SG requested a meeting with the team leader, in order to be informed on the law drafting outcomes. After being duly and thoroughly informed, he made a symptomatic comment: “Tell New York there is no problem” (Interview with Jorge Miguéis, 2015). The outcome of this process, as of March 2006, was the first draft of the Electoral Laws for the President of the Republic and for the National Parliament, used as a basis for further discussion.

2. Electoral mandate and UN assistance options

On May 2006 the Government submitted the draft of the electoral laws before the Parliament (A/RES/60/164, 2006: 52). However, this submission and the expected subsequent debate coincided with one of the peaks of social unrest in Timor-Leste at the time, with the turbulence affecting this process¹².

The internal social unrest started from within the military and spread through the whole country. On the 30 of May President Xanana Gusmão declared the state of emergency for thirty days and took control over the security forces. After a strong social and political pressure, Prime Minister Alkatiri resigned on 26 June, and a new Government took office on 10 July 2006, led by Ramos Horta, as Prime Minister, forming the II Constitutional Government of Timor-Leste (Governo de Timor-Leste, 2015). With the new government taking office, the electoral drafts previously submitted were deemed as void, as the government had changed (Governo de Timor-Leste, 2015). On 11

¹² Much can and has been written about this, and this short description only aims at providing some context regarding the electoral debate.

July 2006 a new version of these was submitted before the Parliament, this time through the FRETILIN Parliamentary Group, with some minor changes regarding the initial proposal (IFES, 2006: 3). However, no law for the electoral bodies was presented (A/RES/60/164, 2006: 52). Shortly after, on 18 July, there was also an electoral draft presented by all opposition parties in the Parliament, namely ASDT, KOTA, PSD, UDT, UDC/PDC, PD, PL and PPT (A/RES/60/164, 2006: 52; IFES, 2006: 3). UNOTIL had also promoted a “consultative meeting” on the new electoral laws on 17 August 2006 (UNOTIL, 2006). The electoral laws were not approved until December 2006, as many developments followed, as further described below.

The level of instability led the SG to propose a new, multidimensional and integrated mission for Timor-Leste, consisting of military, police and civilian components, among others. It would have an initial mandate of 12 months, until after the Timor-Leste Presidential and Parliamentary elections of 2007 (S/2006/628, 2006). Thus, UNMIT was created on 25 August 2006 (S/RES/1704, 2006), for an initial period of six months, and eventually lasted until 31 December 2012 (S/RES/2037, 2012). UNMIT was established in a context of “concern over the still fragile security, political and humanitarian situation in Timor-Leste” (S/RES/1704, 2006). A very important aspect, highlighted by the Security Council, was the presidential and parliamentary elections, scheduled for 2007. These were the first ones to be held since independence, and “a significant step forward in the process of strengthening the fragile democracy” (S/RES/1704, 2006). UNMIT’s mandate was shaped around these factors, focusing on statebuilding, with a strong emphasis on state institutions and would place elections and the electoral process and actors as central to the stability of the new state. According to the UN SG, the priority should be the “transparency of the electoral process and the conduct of the 2007 elections in a credible manner, with maximum participation of the Timorese electorate”, which would “directly affect the legitimacy of the outcome of the elections” (S/2006/628, 2006: 50).

The SG gave an account of general concerns regarding the delay of the electoral process, which resulted in a lack of certainty and predictability, potentially raising more difficulties for smaller parties (S/2006/628, 2006: 52). A crucial issue, according to the UN SG, was the “impartiality and capacity” of the electoral bodies, namely STAE and the CNE.

During the previous 2005 local elections STAE was much perceived as being close to the government and the ruling party, FRETILIN, whereas CNE was non permanent and had scarce means to carry its mandate as a true supervisory body (S/2006/628, 2006: 51). A more independent framework for STAE was needed, as well as the establishment of a new National Elections Commission, as a true supervisory body (S/2006/628, 2006: 52).

In response to the initial request for UN electoral assistance made by the Minister of State Administration on August 2005 (Minister of State Administration, 2005), the UN had provided “an electoral management adviser, an information technology adviser and a short-term legal drafter to the Government” (S/2006/628, 2006: 50). The first drafts of the electoral laws had been developed in STAE, under the Minister of State Administration (as mentioned above). Although it had been stressed by the NAM that these should be the product of wide consultations before being drafted, the Minister would rather present them first before the Parliament, where such broad consultations would then take place (A/RES/60/164, 2006: 52).

At this stage, the Secretary-General equated four options for possible UN electoral assistance in Timor-Leste: technical assistance, observation of the electoral process, certification of the electoral process or the UN administration of elections (S/2006/628, 2006: 54). The SG considered that UN administered elections would only make “a limited contribution” towards building local capacity of the Timorese for the future (S/2006/628, 2006: 54). Certification was the best option, as it would “afford guarantees of the integrity of the electoral process” (S/2006/628, 2006: 54). This had to be requested, and therefore, agreed upon by the Timorese state. The Certification Mission would carry visits to Timor-Leste to assess the different phases of the electoral process and its “positive certification by the team, on the basis of benchmarks to be determined prior to the beginning of the electoral process, would be a precondition for commencement of the successive phase” (S/2006/628 2006, 54). The Team would certify “(a) legal framework; (b) electoral authorities; (c) voter registration; (d) political party and candidate registrations; (e) campaign period; (f) polling day activities; (g) ballot tabulation procedures; and (h) adjudication of challenges” (S/2006/628, 2006: 54).

UNDP electoral assistance would also be present and focus on

training of national and international observers and party agents; procurement; provision of assistance for civic and voter education activities in collaboration with the new National Elections Commission and the Electoral Assistance Division; training and material assistance to political parties through the establishment of political parties resource centres as appropriate; and long-term capacity-building extending beyond the 2007 electoral process" (S/2006/628, 2006: 55).

Technical assistance should also be provided, "through the new mission's electoral component, in cooperation with UNDP" (S/2006/628, 2006: 56). This technical assistance should cover the fields of

general election administration and policy advice; legal framework (including regulations and procedures); voter registration and information technology; gender issues, including promoting the equal participation of women; operational planning and logistics; training; and field operations" (S/2006/628, 2006: 55).

In this regard, the SG also made recommendations on the electoral component of the future UN mission's mandate, namely to "support Timor-Leste in all aspects of the 2007 presidential and parliamentary electoral process", including areas such as technical and logistic support, "electoral policy advice and certification or other means", providing "impartial international presence throughout the electoral period" (S/2006/628, 2006: 110). The electoral component was to be headed by a chief electoral officer, with the role of providing "policy guidance on all United Nations electoral assistance activities" (S/2006/628, 2006: 122) and should report to the Deputy Special Representative for Governance Support, Development and Humanitarian Coordination (S/2006/628, 2006: 122). There should be "electoral officers providing assistance and advice" both to STAE and the CNE (S/2006/628, 2006: 122). There was a mention to STAE requesting "250 United Nations Volunteers to be deployed nationwide three months prior to the elections" (S/2006/628, 2006: 122), regardless of other personal, but no reference to the possible needs of CNE. The SG highlighted that "credible elections" were "a keystone" in the nation-building process, for an "open, pluralistic democracy" (S/2006/628, 2006: 144). This was also comprised in the UNMIT mandate, to be later approved by the Security Council on 25 August 2006 (S/RES/1704, 2006: 174).

2.1. UNMIT and the UN Certification Team

UNMIT, the UN multidimensional mission, was approved by the Security Council on 25 August 2006 (S/RES/1704, 2006). Its mandate thoroughly comprised electoral support, stressing the need for electoral law drafting and to put in place solid and electoral institutions for a sustainable electoral processes (S/RES/1704, 2006). UNMIT was created in the eve of the 2007 electoral cycle and when the electoral laws had already been submitted, but were yet to be discussed, before the Parliament. As these were the first general elections to be carried out after independence, at the time UNMIT was established the whole electoral aspects were still to be addressed, from the enactment of legislation to the logistics of its implementation. To add to this, a period of great instability also weakened state institutions and brought the conflict into these, making it even harder to reach agreements. Being a multidimensional mission, the electoral component was one of its essential aspects. In this context, UNMIT's initial mandate included areas such as

support the Government and relevant institutions, with a view to consolidating stability, enhancing a culture of democratic governance, and facilitating political dialogue among Timorese stakeholders, in their efforts to bring about a process of national reconciliation and to foster social cohesion,

support Timor-Leste in all aspects of the 2007 presidential and parliamentary electoral process, including through technical and logistical support, electoral policy advice and verification or other means,

ensure, through the presence of United Nations police, the restoration and maintenance of public security (...) and also assist in the planning and preparing of electoral-related security arrangements to adequately prepare the national police for performing their roles and responsibilities during the conduct of the 2007 elections (S/RES/1704, 2006).

The SC also “encouraged Timor-Leste to enact a set of electoral legislation” to provide for

the 2007 elections to be supervised, organized, administered and conducted in a free, fair and transparent manner, with due respect to the need to establish an independent mechanism, and reflects general consensus within Timor-Leste regarding the appropriate modalities for the 2007 electoral process (S/RES/1704, 2006: 9).

On 11 August 2006 the Timorese Prime-Minister, Ramos Horta, formally requested the UN electoral support suggested by the UN SG, namely for “the United Nations to observe and verify” the forthcoming electoral process, including “the

legislative and presidential elections scheduled for April and May 2007” (S/2006/668, 2006). The aim was for the UN to assist the country on holding “credible and legitimate democratic elections” and to contribute to its “institutional capacity” in this field (S/2006/668, 2006). The verification mission would ascertain areas such as “impartiality of the national electoral commission, freedom of movement and assembly”, access to the media, voter education, voting and counting procedures, but also “the best way to provide support to enable the political parties to conduct political campaigns” (S/2006/668, 2006). Despite being foreseen on this date, the appointment of the Certification Team was only announced on behalf of the UN SG later on 13 October 2006 (SG/SM/10682, 2006).

The Certification Team had, as its main mission, to “verify the satisfactory conduct of each phase of the electoral process” (SG/SM/10682, 2006). It was composed of three members, one of which had already been a Commissioner at the Independent Electoral Commission, within the 2001 election for the Constituent Assembly. Being appointed on 13 October 2006, the Certification Team would expectedly cover the whole electoral cycle, from electoral law drafting to the elections themselves and subsequent stages, namely results announcements and address of complaints.

The UN Electoral Assistance Division, in the Department of Political Affairs, developed a “Concept Paper” in order to clarify the role of the Certification Team (CJ/DPA/EAD/09/27/06, 2006). This differed both from the model envisaged by the SG and by the Prime Minister Ramos Horta in its letter to the SG dated 11 August 2006, but it was the document followed by the Certification Team, arguing it reflected “the latest thinking of the relevant players” (UN Certification Team, 2006: 2).

The First Report of the Certification Mission was only presented on 2 November 2006 (UN Certification Team, 2006) and mainly developed its benchmarks. The Team noted that “the manner in which the mandate will be executed is to a large extent left to the Team to determine” (UN Certification Team, 2006: 2). It also noted that although its role was “not one of providing advice”, as this function was “performed, within UNMIT, by the Electoral Unit”, its “Reports may, from time to time, identify, or give rise to an

inference of, steps which need to be taken to ensure that the electoral process meets the standards which the Team will be seeking to apply” (UN Certification Team, 2006: 3).

The Team also decided not to adopt an evaluation through phases, as suggested by the SG, as many of these would take place simultaneously. Instead, it would rather assess “distinct categories of functional activity” (UN Certification Team, 2006: 4). The benchmarks were to be “developed by the certification team in consultation with the UN Secretariat and the Timorese electoral authorities” (UN Certification Team, 2006: 5) and also covered the legal framework.

3. Timorese electoral options: FRETILIN and opposition parties

In the Timorese Parliament there were two options regarding the electoral laws, one coming from the FRETILIN government and the other from all the other parliamentary groups (A/RES/60/164, 2006: 52; IFES, 2006: 3). There was a broad agreement regarding the main options (Boneo, 2006a). Both proposals were “similar and consistent with the international standards”, with the exception of some minor details, which could easily be corrected (Boneo, 2006a: 2), according to the comparison the UNDP parliamentary legal adviser provided the Parliament with, aiming at enlightening the discussion (Boneo, 2006a). The UN mission had also promoted a “consultative meeting” on the new electoral laws (UNOTIL, 2006).

There was much international discussion on these issues, with several UN documents analysing the several options at stake (Boneo, 2006a; UNDP Parliament Project, n.d.; UNDP Timor-Leste, 2007; United Nations Assessment Mission to Timor-Leste, 2006), and commented versions and suggestions on the electoral drafts (IFES, 2006), as well as several mentions from the UN Electoral Certification Team (UN Certification Team, 2007a, 2007b), among others. However, despite this broader involvement, the decisions seemed to have remained national, within the members of the Timorese Parliament (Interview with Vicente Guterres, 2013).

A single national constituency with 65 members of parliament (MPs), the maximum allowed by the Constitution, was consensual. There were differences regarding significant aspects, namely regarding the electoral formula, with FRETILIN proposing d’Hondt Method, with a 5% threshold, and the opposition proposing the Hare Quota.

Women in party lists, the role of the electoral commission and the place where vote counting should take place, namely whether at the polling centres or at the district level, were some of the most prominent issues. We shall now briefly analyse and compare the main aspects of the Timorese electoral system, also taking into account its possible concrete implications in the specific context of Timor-Leste.

District magnitude and electoral formula

Regarding the constituency, and despite no provision in the Constitution (CRDTL, 2002: 93), there was an agreement regarding a single national constituency, composed of 65 members of Parliament, with both proposals converging on this. District magnitude, namely the number of seats per constituency, is one of the most important aspects of an electoral system regarding its effects on proportionality (Gallagher and Mitchell, 2005b: 6). The higher the district magnitude, namely the number of members of parliament to be elected in a certain district, the more chances smaller parties have in achieving representation (Gallagher and Mitchell, 2005b: 7).

Both projects have thus abandoned the 13-uninominal candidates created by UNTAET, one for each district in a majoritarian election, which might seem to have given an advantage to FRETILIN in the Constituent Assembly. After the 2006 internal crisis, people seemed to prefer national cohesion (Interview with Senior UN Electoral Officer, 2015). This was expressly recognised by the President of the National Parliament at the time, arguing that if FRETILIN still maintained this UNTAET option they would have secured all the 13 seats, as FRETILIN was the party with broader support at the district level, unlike many other parties (Interview with Francisco Guterres Lu-Olo, 2015). Despite this, FRETILIN has chosen not to, as party lists already ensured a broader representation (Interview with Francisco Guterres Lu-Olo, 2015).

Table 2 – 2001 Constituent Assembly Elections in Timor-Leste (UNTAET), 75 seats national constituency and 13 district single-member constituencies (official data)

2001	75 members national constituency							
	Hare quota, no threshold				13 Districts	Total		
Parties	% votes	Seats	% seats	% difference	District	Seats	% seats	% difference
FRETILIN	57,40%	43	57,33%	-0,07%	12	55	62,50%	5,10%
PD	8,70%	7	9,33%	0,63%	0	7	7,95%	-0,75%
PSD	8,20%	6	8,00%	-0,20%	0	6	6,82%	-1,38%
ASDT	7,80%	6	8,00%	0,20%	0	6	6,82%	-0,98%
UDT	2,30%	2	2,67%	0,37%	0	2	2,27%	-0,03%
PNT	2,20%	2	2,67%	0,47%	0	2	2,27%	0,07%
KOTA	2,10%	2	2,67%	0,57%	0	2	2,27%	0,17%
PPT	2,00%	2	2,67%	0,67%	0	2	2,27%	0,27%
PDC	1,90%	2	2,67%	0,77%	0	2	2,27%	0,37%
PST	1,70%	1	1,33%	-0,37%	0	1	1,14%	-0,56%
PL	1,10%	1	1,33%	0,23%	0	1	1,14%	0,04%
UDC/PDC	0,60%	1	1,33%	0,73%	0	1	1,14%	0,54%
Independent		0	0%	0%	1	1	1,14%	n/a
Others	4%	0	0%	0%	0	0	0%	0%
Total	100%	75	100%		13	88	100%	

Although district constituencies would favour FRETILIN (Interview with Francisco Guterres Lu-Olo, 2015; Interview with José Teixeira, 2015), it would be prejudicial for the unification of the country (Interview with José Teixeira, 2015; Interview with Vicente Guterres, 2013). With the 2006 social unrest, the country was much divided and “there was the danger that it could split in two” (Interview with Vicente Guterres, 2013). A single national constituency was believed to avoid district divisions and foster cohesion (Interview with Vicente Guterres, 2013), avoiding also district boundaries delimitation (Interview with Senior UN Electoral Officer, 2015). It was also be simpler, contributing to a better public understanding. Maybe after the initial consolidation district constituencies could be envisaged, or another sort of local bodies, such as municipalities, but only at a later stage (Interview with Vicente Guterres, 2013). By 2006 some political parties could also have difficulties in having candidates at the district level, and there were district asymmetries regarding the presence of some political parties or the lack thereof (Interview with Vicente Guterres, 2013).

In fact, these 13 single-member districts were in 2001 justified with the aim of achieving representation from each district, in a closer relationship between voters and the elected members of parliament. Nevertheless, there is a trade-off between proximity

and representativeness (Gallagher and Mitchell, 2005b: 12). Single member districts increase the number of wasted votes, namely the ones that go to “losing candidates” (Gallagher and Mitchell, 2005c: 571), though faring better on local representation (Gallagher and Mitchell, 2005b: 12). At the same time, proportional representative systems “with just one constituency covering the whole country (...) gives excellent proportionality but no direct representation for localities” (Gallagher and Mitchell, 2005b: 12). However, in the UNTAET electoral system, the 13 district representatives did not seem to act differently from the other FRETILIN MPs elected at the national level (Interview with Senior UN Electoral Officer, 2015).

There seems to be also a broad consensus among scholars that proportional representative systems are better suited for new democracies (Lijphart, 2005), especially with internal divisions, as they contribute to “avoid broad and indefinite exclusion from power of any significant group” (Diamond, 1999: 104). They are seen as more desirable, as they allow the election of bodies with a broad representativeness (Lijphart, 2005). In the case of Timor-Leste, a proportional representative system was an inclusive argument in a post-conflict situation, where everybody could feel represented (Interview with Senior UN Electoral Officer, 2015) and it would provide a rational conversion of votes into seats (Interview with Senior UN Electoral Officer, 2015). It would also be the easiest way for people to vote (Interview with Senior UN Electoral Officer, 2015). Simplicity was a key element, allowing a broad public understanding, as well a high degree of proportionality, according to the above-mentioned non-exclusionary aim (Lijphart, 2005).

In proportional representative systems all votes are taken into account as a whole in each constituency, to determine the number of seats according to the chosen formula. In both proposals, either from FRETILIN or from the opposition, a single national constituency of 65 seats would mean that all votes would be taken into account as a whole at the national level, to determine the seats according to the chosen formula. However, choosing the formula would be another crucial issue, not entirely consensual. The electoral formula, namely the allocation of seats according to votes, was left open in the Constitution. This provided a broad range of choices, as electoral formulas can differ

considerably from each other (despite the fact that, as abovementioned, district magnitude seems to be the key element).

Regarding the electoral formula, FRETILIN proposed an allocation of seats according to the D’Hondt method. Among the proportional representative electoral systems, the D’Hondt Method is known by moderately favouring larger parties, or as “the most ungenerous towards smaller parties” (Gallagher and Mitchell, 2005c: 585). The opposition parties proposed an allocation of seats according to the Hare Quota, as in previous UNTAET organised elections for the Constituent Assembly. The Hare Quota is often seen as “unbiased between larger and smaller parties” (Gallagher and Mitchell, 2005c: 588) and, although it does not ensure a perfect proportionality, it does not favour smaller or larger parties in the allocation of seats. Below we present our own simulations and concrete impact regarding the different options at stake, based on our own data (Luís, 2015), extracted from the available UN official sources¹³.

Table 3 – Comparison of the two electoral drafts, for a 65-member constituency, based on the Timorese 2001 Constituent Assembly election results

2001 elections Official results (75 national constituency)		Formula (no threshold)				Threshold: 3% or 5%			
		Opposition						FRETILIN	
		Hare		Hondt		Hare		Hondt	
Parties	% votes	Seats	%	Seats	%	Seats	%	Seats	%
FRETILIN	57,40%	38	58,46%	42	64,62%	45	69,23%	46	70,77%
PD	8,70%	6	9,23%	6	9,23%	7	10,77%	7	10,77%
PSD	8,20%	6	9,23%	6	9,23%	7	10,77%	6	9,23%
ASDT	7,80%	5	7,69%	5	7,69%	6	9,23%	6	9,23%
UDT	2,30%	2	3,08%	1	1,54%	0	0,00%	0	0,00%
PNT	2,20%	2	3,08%	1	1,54%	0	0,00%	0	0,00%
KOTA	2,10%	2	3,08%	1	1,54%	0	0,00%	0	0,00%
PPT	2,00%	2	3,08%	1	1,54%	0	0,00%	0	0,00%
PDC	1,90%	1	1,54%	1	1,54%	0	0,00%	0	0,00%
PST	1,70%	1	1,54%	1	1,54%	0	0,00%	0	0,00%
PL	1,10%	0	0,00%	0	0,00%	0	0,00%	0	0,00%
UDC/PDC	0,60%	0	0,00%	0	0,00%	0	0,00%	0	0,00%
Others	4,00%	0	0,00%	0	0,00%	0	0,00%	0	0,00%
Total	100,00%	65	100,00%	65	100,00%	65	100,00%	65	100,00%

¹³ The figures for this election were hard to trace and not always consistent within different sources. Therefore, we opted to use only figures from UN official sources or from the IEC official certification of results (despite small consistency issues). This can raise questions regarding their exact accuracy. It was also not possible to track the exact number of voters for each party/candidacy and we opted to limit the analysis to the type of official data available, namely the percentage of votes. When relevant, we calculated the number of votes according to other available types of data.

The legal threshold

In the mechanics of electoral systems, and regardless of the formula used, perfect proportionality is often impossible to achieve, as there is a natural threshold – which, as mentioned above, seems to lower as the district magnitude increases. Beyond this natural threshold, there can also be a legal threshold. The legal threshold is the percentage of votes, set by law, which a party needs to achieve in order to be considered for the allocation of seats. Thresholds can also prove to be very important elements, and impact directly on the allocation of seats and, therefore, on proportionality. If the legal threshold is superior to the natural threshold, this may lead to a waste of votes and a barrier preventing less voted parties to achieve representation. Legal thresholds are often justified with the need to avoid fragmentation and to promote stability in the elected bodies. However, there is often a temptation, coming from established parties, to artificially hindering the representation of smaller parties, thus curtailing the expression of popular will (Gallagher and Mitchell, 2005c).

A legal threshold impacts on the proportionality of election results, as it does not consider (or “wastes”) the votes below its limit, reducing the representativeness of the electoral outcomes and of the allocation of seats. At the same time it impacts on the composition of the parliament, and also very likely on party systems, as smaller parties have less incentives and chances of achieving parliamentary representation. In young democracies, with scarce resources, this could hinder the formation or existence of new parties. At the same time, thresholds are often justified with the need of reducing the number of parties, and thus avoiding parliamentary fragmentation, ensuring the formation of stable governments. Again, there is a trade off between these objectives, which has to be dealt with very carefully and according to the goals intended to achieve. Although legal thresholds such as 1% or 2% can be considered to be low and very similar to the natural thresholds, thresholds of 5% or more can already impact on parliamentary representation and party systems. Depending on the vote share among parties in a given country, it can also lead to a variable percentage of wasted votes and disenfranchised groups of voters, which should be balanced against the aims of stability and non-fragmentation. For instance, a simulation for 2001:

Table 4 – 2001 Constituent Assembly Elections in Timor-Leste (official data), 75 seats national constituency and 3% and 5% threshold simulation

2001	75 members national constituency								
	Hare quota, no threshold				Votes (estimated)	3% or 5% threshold			
	% votes	Seats	% mandates	% var.		Seats	% seats	Var. Seats	% var. votes
FRETILIN	57,40%	43	57,33%	-0,07%	219 824	53	70,67%	+10	13,27%
PD	8,70%	7	9,33%	0,63%	33 318	8	10,67%	+1	1,97%
PSD	8,20%	6	8,00%	-0,20%	31 403	7	9,33%	+1	1,13%
ASDT	7,80%	6	8,00%	0,20%	29 872	7	9,33%	+1	1,53%
UDT	2,30%	2	2,67%	0,37%		0	0,00%		-2,30%
PNT	2,20%	2	2,67%	0,47%		0	0,00%		-2,20%
KOTA	2,10%	2	2,67%	0,57%		0	0,00%		-2,10%
PPT	2,00%	2	2,67%	0,67%		0	0,00%		-2,00%
PDC	1,90%	2	2,67%	0,77%		0	0,00%		-1,90%
PST	1,70%	1	1,33%	-0,37%		0	0,00%		-1,70%
PL	1,10%	1	1,33%	0,23%		0	0,00%		-1,10%
UDC/PDC	0,60%	1	1,33%	0,73%		0	0,00%		-0,60%
Independent									
Total	96,00%	75	100,00%		314 417	75		13	

In Timor-Leste, FRETILIN proposed a legal threshold of 5%. This would impact upon the proportional representative electoral system (enshrined in the Constitution) and the single national constituency of 65 members, which already ensured a very broad proportionality and were the most determinant regarding this issue. The divergence in the electoral formula (D’Hondt vs. Hare) and the 5% legal threshold (FRETILIN) would impact upon this, but only to a limited extent, regarding the broad architecture of the electoral system. However, and although this seems to abide by broad international standards, these proposals should be analysed taking into account the specific situation in the country, where these were meant to be implemented. In fact, they seem to have been tailor-made for the specific situation of Timor-Leste, taking the very specific local political context into account (which is desirable) and precisely crafted. As the UNDP electoral legal adviser mentioned,

the inclusion in the electoral law of rather high thresholds for representation in Parliament – 5% is the level suggested in the Government draft – is consistent with international standards, although it might hinder political development in the specific context of Timor Leste (UNDP Parliament Project, n.d.: 5).

It is precisely in the specific context of Timor-Leste that these effects should be taken into account.

A more detailed and context-specific analysis can be provided when looking at the results of the 2001 Constituent Assembly Elections and applying these 2006 options, a

simulation which many contributors for this discussion did (Boneo, 2006a, 2006b; IFES, 2006). Electoral proportionality is foremost increased by the size of the constituency. When converging to a single national constituency, composed of 65 members (the maximum previously foreseen in the Constitution), both options would lead to lessen the waste of valid votes, thus increasing the proportionality between valid votes and seats. Among the possible formulae for proportional representative systems, the Hare Quota, as proposed by the opposition parties, is one of the most proportional, especially if with no threshold, as it was the case.

Table 5 – Timorese 2001 Constituent Assembly election results: 65 seats and Hare quota (opposition proposal), with impact of a 3% or 5% threshold

2001 simulation	65 members national constituency							
	Hare quota, no threshold				Votes (estimated)	3% or 5% threshold		
Parties	% votes	Seats	% mandates	% var.		Seats	% seats	% var. seats
FRETILIN	57,40%	38	58,46%	1,06%	219 824	45	69,23%	11,83%
PD	8,70%	6	9,23%	0,53%	33 318	7	10,77%	2,07%
PSD	8,20%	6	9,23%	1,03%	31 403	7	10,77%	2,57%
ASDT	7,80%	5	7,69%	-0,11%	29 872	6	9,23%	1,43%
UDT	2,30%	2	3,08%	0,78%	8 808	0	0,00%	-2,30%
PNT	2,20%	2	3,08%	0,88%	8 425	0	0,00%	-2,20%
KOTA	2,10%	2	3,08%	0,98%	8 042	0	0,00%	-2,10%
PPT	2,00%	2	3,08%	1,08%	7 659	0	0,00%	-2,00%
PDC	1,90%	1	1,54%	-0,36%	7 276	0	0,00%	-1,90%
PST	1,70%	1	1,54%	-0,16%	6 510	0	0,00%	-1,70%
PL	1,10%	0	0,00%	-1,10%	4 213	0	0,00%	
UDC/PDC	0,60%	0	0,00%	-0,60%	2 298	0	0,00%	
Others	4,00%				15 319			
Total	100,00%	65	100,00%		382 968	65		

The D’Hondt Method, presented by FRETILIN, similar to the Portuguese one, is still very proportional, but tends to favour bigger parties. In this case, when combined with a 5% threshold, it would create a barrier to the entrance of small parties into parliament, while also favouring the most voted ones.

Table 6 – Timorese 2001 Constituent Assembly election results: 65 seats and D’Hondt method, with 3% or 5% threshold (FRETILIN proposal)

2001 Simulation	65 members national constituency							
	2001 elections, d'Hondt method, no threshold				Votes (estimated)	3% or 5% threshold		
Parties	% votes	Seats	% mandates	% var.		Seats	% seats	% var. seats
FRETILIN	57,40%	42	64,62%	7,22%	219 824	46	70,77%	6,15%
PD	8,70%	6	9,23%	0,53%	33 318	7	10,77%	2,07%
PSD	8,20%	6	9,23%	1,03%	31 403	6	9,23%	1,03%
ASDT	7,80%	5	7,69%	-0,11%	29 872	6	9,23%	1,43%
UDT	2,30%	1	1,54%	-0,76%	8 808	0	0,00%	-1,54%
PNT	2,20%	1	1,54%	-0,66%	8 425	0	0,00%	-1,54%
KOTA	2,10%	1	1,54%	-0,56%	8 042	0	0,00%	-1,54%
PPT	2,00%	1	1,54%	-0,46%	7 659	0	0,00%	-1,54%
PDC	1,90%	1	1,54%	-0,36%	7 276	0	0,00%	-1,54%
PST	1,70%	1	1,54%	-0,16%	6 510	0	0,00%	-1,54%
PL	1,10%	0	0,00%	-1,10%	4 213	0	0,00%	0,00%
UDC/PDC	0,60%	0	0,00%	-0,60%	2 298	0	0,00%	0,00%
Others	4,00%	0	0,00%	-4,00%	15 319	0	0,00%	0,00%
Total	100,00%	65	100,00%		382 968	65		

The D’Hondt method was allegedly chosen by FRETILIN as it would favour smaller parties (Interview with Francisco Guterres Lu-Olo, 2015), despite the literature suggesting the opposite (Reynolds and Reilly, 1997). The opposition parties strongly opposed the 5% threshold, which FRETILIN accepted to lower to 3%. The legal threshold was justified with the need to ensure more democracy, as a party achieving below 3% of the votes would not represent much in terms of voters (Interview with Francisco Guterres Lu-Olo, 2015). It was also questionable if parties with low representation should be empowered (Interview with Senior UN Electoral Officer, 2015). It was estimated that members of parliament were elected with 5.000 to 7.000 voters, which was not be very high (Interview with Francisco Guterres Lu-Olo, 2015). It would also avoid too many political parties, “a waste of human resources in a small country” (Interview with José Reis, 2015).

As we can see in the tables above, in the 2001 Constituent Assembly elections only four parties achieved more than 3% or 5%, namely FRETILIN (57,40% and 43 seats), PD (8,70% and seven seats), PSD (8,20% and six seats) and ASDT (7,80% and six seats). However, as there was no threshold, eight other parties elected MPs, in a total of 13 seats. If a threshold had been applicable, whether of 3% or 5%, these 13 remaining seats would have been shared among the four most voted parties, with the following results:

FRETILIN (57,40% of the votes and 53 seats), PD (8,70% and eight seats), PSD (8,20% and seven seats) and ASDT (7,80% and seven seats).

FRETILIN eventually accepted to lower the threshold from 5% to 3%, a figure that could be considered irrelevant when taking the 2001 election results into account. However, electoral and political realities are dynamic and its outcomes are never entirely predictable. A new strong political party, CNRT (*Congresso Nacional de Reconstrução de Timor-Leste* - National Congress for the Reconstruction of Timor-Leste), was indeed created by former President Xanana Gusmão on the eve of the 2007 parliamentary elections. With great confidence in its electoral numerical advantage, strong political competition that would threaten its majority was a possibility that FRETILIN did not seem to anticipate (Interview with Ramos Horta, 2015).

The tables above illustrate well the different impacts in practice, applying both the proposed formulae and threshold to the 2001 election results. Although the available figures for the 2001 elections are scarce and sometimes inconsistent, this can provide an estimate of these impacts. The UNTAET created 13 single member constituencies in 2001, which gave a substantial advantage to FRETILIN, that achieved 57,4% of the votes in the national constituency and 62,5% of the seats in total (**Table 2**). However, the system now proposed by FRETILIN would increase this disparity, as with the same 57,4% of the votes, FRETILIN would ensure 70,77% of the seats. A comparison of the three different options can be summarised below.

Table 7 – Comparison of the two electoral drafts, for a 65-member constituency, based on the Timorese 2001 Constituent Assembly election results, versus the UNTAET 2001 electoral system for the 75-member national constituency

2001 elections Official results (75 national constituency)		Formula (no threshold)				Threshold: 3% or 5%				2001 election results	
		Opposition						FRETILIN		UNTAET	
		Hare		Hondt		Hare		Hondt		Hare, 75 + 13	
Parties	% votes	Seats	%	Seats	%	Seats	%	Seats	%	Seats	% seats
FRETILIN	57,40%	38	58,46%	42	64,62%	45	69,23%	46	70,77%	55	62,50%
PD	8,70%	6	9,23%	6	9,23%	7	10,77%	7	10,77%	7	7,95%
PSD	8,20%	6	9,23%	6	9,23%	7	10,77%	6	9,23%	6	6,82%
ASDT	7,80%	5	7,69%	5	7,69%	6	9,23%	6	9,23%	6	6,82%
UDT	2,30%	2	3,08%	1	1,54%	0	0,00%	0	0,00%	2	2,27%
PNT	2,20%	2	3,08%	1	1,54%	0	0,00%	0	0,00%	2	2,27%
KOTA	2,10%	2	3,08%	1	1,54%	0	0,00%	0	0,00%	2	2,27%
PPT	2,00%	2	3,08%	1	1,54%	0	0,00%	0	0,00%	2	2,27%
PDC	1,90%	1	1,54%	1	1,54%	0	0,00%	0	0,00%	2	2,27%
PST	1,70%	1	1,54%	1	1,54%	0	0,00%	0	0,00%	1	1,14%
PL	1,10%	0	0,00%	0	0,00%	0	0,00%	0	0,00%	1	1,14%
UDC/PDC	0,60%	0	0,00%	0	0,00%	0	0,00%	0	0,00%	1	1,14%
Others	4,00%	0	0,00%	0	0,00%	0	0,00%	0	0,00%	1	1,14%
Total	100,00%	65	100,00%	65	100,00%	65	100,00%	65	100,00%	88	100,00%

Even though FRETILIN has expressly abandoned the 13 single member districts, and despite the fact that the system proposed by FRETILIN would still ensure a high degree of proportionality (though curtailed with the legal threshold), it would be less proportional than the UNTAET design with a 75-member national constituency and 13 single member districts, when taking the 2001 electoral results into account. However, electoral and political realities are very dynamic. This discussion is complex and its impacts can never be fully predictable. Even though the system proposed in 2006 tended to favour larger parties, which at the time was FRETILIN, a new strong political party emerged, to which these rules would also be applicable. Nevertheless, the system proposed seemed to be consistent with the international electoral standards, with its likely effects and adoption seemingly a politically enlightened choice.

The UN Certification Team, when assessing the legal framework regarding the electoral system, has considered that the

use of a proportional representation system with a single nationwide constituency has ensured that constituency malapportionment, and distortions of the seats-votes relationship arising from malapportionment, and/or differential concentration of majorities, and/or the splitting of votes between a multiplicity of parties, will not arise” (UN Certification Team, 2007a: 15, 2007b).

Therefore, should the electoral system be properly implemented, every voter would “have his or her vote accorded equivalent weight to that of others” (UN

Certification Team, 2007a: 15, 2007b). In accordance, the benchmark referring to “a formula for converting votes into legislative seats which complies with the relevant constitutional requirement” has been satisfied (UN Certification Team, 2007a: 89).

Lists, candidates and women

Members of Parliament were elected through universal and direct suffrage, in closed party lists. Both drafts proposed that lists be presented by registered political parties and composed of party affiliates or independent citizens. FRETILIN would allow single candidates to run for the elections in uninominal lists, similar to those in place for the Constituent Assembly. However, FRETILIN draft suggested that lists had to be composed of a minimum of 65 candidates, while the opposition allowed more flexibility, potentially important for smaller parties, incapable of gathering such a number of candidates. FRETILIN’s proposal was approved into the final text and lists had to be composed of a minimum of 65 candidates (Lei n.º 6, 2006: 12). The opposition also proposed that lists be composed of candidates from every district, preferentially proportional to its population. However, due to the abovementioned difficulties that parties could have at the district level (Interview with Vicente Guterres, 2013), this proposal was further abandoned.

Voters had to be Timorese or have Timorese origin, acquiring the right to vote at the age of 17, broad criteria also applicable to those wishing to run as candidates. There was an insight of a gender quota, with FRETILIN proposing that women should be present in the effective candidates and at least one among the first five, while the opposition rather proposed at least one woman within each five candidates. This generated debate and the final version agreed on having at least one woman in each group of four candidates, otherwise the list would be rejected (Lei n.º 6, 2006: 12).

Ballot structure and loss of mandate

An important question that raised much controversy was FRETILIN’s proposal that, in case an elected member of parliament abandoned or was expelled from its political party, he or she would lose its mandate. This question is connected to the nature of representation and to the relationship between principal and agent (Gallagher

and Mitchell, 2005b: 11), namely who shall be considered to represent the electorate, the party or the member of parliament. In closed lists, the party chooses the candidates and places them on the list according to a given order; in open or preferential lists it is the voter that either chooses or ranks the candidates (Gallagher and Mitchell, 2005b: 11). This corresponds to different visions of representation, namely if it should take place through political parties (closed or block lists) or through a closer relationship between candidates and voters (open or preferential lists) (Gallagher and Mitchell, 2005b: 11).

Closed party lists also reinforce party structures and discourage patronage (Interview with Senior UN Electoral Officer, 2015). This was especially relevant when considering the geographical insertion of Timor-Leste, due to the great problems of vote buying in the region (Interview with Senior UN Electoral Officer, 2015). Preferential vote also did not make much sense in a country with high illiteracy (Interview with Senior UN Electoral Officer, 2015) and the list block vote would be the simplest and easiest way for people to vote (Interview with Senior UN Electoral Officer, 2015). According to this perspective, representation takes place through political parties and these present closed lists to the electorate, which then chooses a party list. According to the other, elections should allow the representation of the people and voters should have a word regarding the candidates they want to elect, either by choosing them (open lists) or by ranking them among all candidates presented by the party (preferential lists). In this last case, members of parliament seem to be accountable both to parties and voters.

This is also connected to the nature of the mandate and the question was raised regarding when should a member of parliament loose the mandate. FRETILIN proposed that if an MP that abandoned the political party, either voluntarily or by being expelled, it should loose the mandate. This option was criticised, as it would give the party a strong control over elected members of parliament, thus transforming it in a satellite to the parties and not a democratic body (Interview with Vicente Guterres, 2013). The solution adopted was the loss of mandate only in cases of “floor crossing”, namely when an MP elected in a list of a political party becomes affiliated to another party (Lei n.º 6, 2006: 16). Should the MP remain as independent, the mandate is still kept, in recognition of the relationship with the respective voters.

Electoral Management Bodies

The Timorese Constitution foresaw that the “supervision of voter registration is carried by an independent body, whose composition, organisation and function should be regulated by the law” (CRDTL, 2002: 65.6). A serious issue under great discussion was the configuration and the institutional design of the electoral management bodies. In an early stage, in previous elections the electoral administration was composed of STAE, the government branch in charge of implementing the electoral process, and CNE, the independent supervisory body. However, serious concerns were raised regarding these, from the UN NAM (Kriegler and Santos, 2005), to other institutions (IFES, 2006; UNDP Timor-Leste, 2007), namely regarding an asymmetry of powers towards STAE, under strong governmental influence.

FRETILIN proposed the maintenance of this architecture, with CNE being an *ad-hoc*, temporarily appointed body, which would only be in place for the electoral period. The opposition parties, in return, proposed a separate and autonomous law to regulate the electoral administration bodies. For these, CNE would be a permanent body, with a broad composition and strong supervision powers, while STAE would be placed under the authority of CNE, in order to limit unduly ministerial interferences in the electoral process. The Court of Appeal (*Tribunal de Recurso*) completed this institutional configuration, as foreseen in the Constitution (CRDTL, 2002: 124.2, 126.2). The Court of Appeal validated and published the electoral results, and verified the requisites of those wishing to run for President of the Republic (CRDTL, 2002: 126). The Court of Appeal also acted as a court of appeal by addressing and adjudicating electoral complaints and dispute resolution over electoral issues, following a first decision from CNE, and it would be the ultimate institution to assess “the validity of the acts of the electoral process”, according to their respective law (CRDTL, 2002: 126).

The existing model, namely with STAE under the Minister of State Administration, and an *ad-hoc* CNE, as also proposed by FRETILIN, was seen by many as not desirable, as it maintained and fostered the asymmetries between STAE and CNE. This institutional configuration was also widespread interpreted as allowing an unduly interference from the executive in the electoral process, thus undermining its credibility

(IFES, 2006: 14). STAE would always have an institutional advantage towards CNE (IFES, 2006: 13), as it would be a permanent body with permanent staff, benefiting from long-term assistance and institutional capacity-building. A temporary CNE would lead to a weak institutionalisation, preventing institutional experience, leading to the lack of institutional memory (IFES, 2006: 13). Both the Commissioners and staff had to be appointed anew for each election, and to the above-mentioned institutional problems, logistical concerns would add. CNE would have a permanent weakness and disadvantage towards STAE, a body which it was supposed to strongly supervise (IFES, 2006: 13).

At the time of this discussion, the electoral administration was already facing an uneven situation: STAE was proficiently resourced, with previous experience (as it had been a continuous body) and under the strong control and direction of the Minister of State Administration, both strongly publicly associated with FRETILIN (United Nations Assessment Mission to Timor-Leste, 2006: 3). At the same time, CNE had not yet been created as a permanent electoral body, its members had not been appointed, nor was it duly staffed or resourced, being its powers still unclear in the electoral laws (United Nations Assessment Mission to Timor-Leste, 2006: 3) as of late 2006. The UN Assessment Report recommended that CNE should have STAE under its direction, to avoid the public perception that STAE operated “under the Executive branch which is indistinguishable from the ruling party, already seen as over-powering other branches of Government” (United Nations Assessment Mission to Timor-Leste, 2006: 3). CNE should also be duly funded and be a permanent body (United Nations Assessment Mission to Timor-Leste, 2006: 5). Should the Parliament maintain STAE inside the Minister of State Administration, more legal guarantees preventing ministerial influence in the electoral body should be created. At the same time, STAE should abide by CNE regulations, injunctions and be accountable to it regarding the electoral process (IFES, 2006: 15). CNE should also be duly funded, by the National Parliament, and the government should not be allowed to appoint any Commissioners (IFES, 2006: 15).

The composition of CNE also generated strong disagreement, which however is only noticeable in small details. Both drafts propose a CNE composed of many members, 11 in the Opposition’s proposal, and 15 in FRETILIN’s. FRETILIN proposed that the

President of the Republic, the Parliament and the Government would appoint four members each, in a total of 12; the judiciary and the public prosecution and the public defence council would appoint a member each. The Opposition proposed a member appointed by the President of the Republic, five members appointed by the Parliament according to its proportional representation and including two women, two members of the judiciary and two public prosecutors and a member of the public defence council. This can be better illustrated in the following table.

Table 8 – Comparison of proposals on CNE’s composition

CNE – Composition options			
	FRETILIN	Opposition	Final text
President of the Republic	4	1	3
		Casting vote.	Min. one woman.
Parliament	4	5	3
	Appointed.	Nominal list, respecting proportionality; two women.	Elected by the Parliament. Min. one woman.
Government	4	0	3
			Min. one woman.
Judiciary	1	2	1
	Peer elected.	Peer elected; one woman.	Peer elected.
Public Prosecution	1	2	1
	Peer elected.	Peer elected; one woman.	Peer elected.
Public Defence Council	1	2	1
	Peer elected.	Peer elected; one woman.	Peer elected.
Civil Society	0	0	3
			1- Catholic Church 1 - Other Religions 1 - Women NGOs
Total	15	11	15

In FRETILIN's proposal, the three sovereign bodies would appoint 12 out of 15 Commissioners. The President, Xanana Gusmão, would appoint 4, but FRETILIN could appoint 8 (Government and Parliament), which could give it a strong dominance over the supposed independent body (Boneo, 2006a; Interview with Vicente Guterres, 2013). This model would allow a party with a parliamentary majority to dominate the independent body (Boneo, 2006a: 33), while the objective should rather be the opposite. In the parliamentary discussion another model was created, to curtail FRETILIN's aimed influence. Representatives of NGOs, the Catholic Church, and non-Catholic religions were suggested and FRETILIN's power over CNE as the incumbent became diluted (Interview with Vicente Guterres, 2013).

Vote counting: polling stations or district centres

Vote counting can be seen as technical detail, but it raised important issues during the debate. While the opposition parties proposed that a first counting be held at the polling station, right after closing the polls, FRETILIN proposed votes to be counted only at the district levels. FRETILIN's proposal was justified with the insufficient logistics of polling stations (Interview with Ana Pessoa Pinto, 2015), and the need to maintain vote secrecy, as district counting would invalidate establishing voting patterns at the local level. This was questioned by the opposition, arguing the stable security situation did not require this procedure anymore. The opposition also did not trust ballot boxes being carried to the district centres by electoral officials hired by STAE. Even though party delegates could in theory supervise this process, it would take a considerable number of party officials to do it (Boneo, 2006a: 30) and not all political parties were duly resourced. Counting at the local level would allow more transparency, while at the district centres more resources a better-trained electoral staff could be present. However, in a climate of mistrust regarding FRETILIN, this was interpreted as allowing electoral fraud and the proposal was highly contested.

4. The Timorese electoral system

The parliamentary debate on the electoral laws took place on a very late stage (Interview with Senior UN Electoral Officer, 2015) and in a climate of political unrest and

mistrust, especially towards the FRETILIN Government (United Nations Assessment Mission to Timor-Leste, 2006: 1).

There were concerns regarding the public debate on these issues (IFES, 2006: 3). While a broad public discussion on the electoral laws and related options was recommended at several levels, the FRETILIN Government opted by carrying it at a later stage, as of the parliamentary debate, and not prior to drafting the electoral laws. A broad consultation and dissemination of the electoral options could also lead to a better understanding of the options at stake (United Nations Assessment Mission to Timor-Leste, 2006: 4), engaging the population and fostering the legitimacy of the electoral processes and their outcomes (IFES, 2006: 4). Holding the discussion at a late stage was also an obstacle to this. Public parliamentary consultations on the electoral laws were carried in late 2006, and lasted for a short period of some days (IFES, 2006: 3).

There were also concerns regarding the low level of understanding of the options at stake, due to its high degree of technical complexity (IFES, 2006: 4). The discussion around the electoral laws is often very technical (Gallagher and Mitchell 2005b) and in this case it was limited to a few people with awareness on the matter (Gallagher and Mitchell, 2005c; Interview with José Teixeira, 2015; Interview with Ramos Horta, 2015; Interview with Senior UN Electoral Officer, 2015). In the case of Timor-Leste, this knowledge seemed to be limited to a few members of the political parties, mainly based in Díli, with the public discussion being much restricted around these (IFES, 2006: 4). However, the options at stake, especially regarding the FRETILIN proposal, were clearly crafted taking into account the Timorese context and resulted on enlightened and targeted choices (Interview with Jorge Miguéis, 2015), seemingly with a sharp political knowledge and awareness. The parliamentary discussion developed and became tense, with many members of the parliament abandoning it, arguing that FRETILIN wanted to dominate the debate and to control the electoral process. However, Vicente Guterres and the party KOTA remained in the room and took part on shaping the current electoral system (Interview with Vicente Guterres, 2013).

The main options of the Timorese electoral system were not adopted until 28 December 2006, when the Law regarding the Electoral Management Bodies and the

Electoral Laws for the National Parliament and for the President of the Republic were approved (Lei n.º 5, 2006; Lei n.º 6, 2006; Lei n.º 7, 2006). The Timorese electoral system was hence shaped, although with subsequent small amendments in 2007, shortly before the elections took place.

Members of the National Parliament would be elected in a single national constituency, composed of 65 members, in a proportional representative system, with D'Hondt method and there would be a threshold, but lowered to 3%. With the 3% threshold, either small political parties fall short on reaching it, or when they do they elect at least two members (Interview with Vicente Guterres, 2013). This was substantially different from the initial Constituent Assembly elections and political parties would face greater hardship on electing members of parliament (Interview with Vicente Guterres, 2013). Candidates would run in closed block lists, presented by registered political parties (or coalitions), which could comprise independent candidates (Lei n.º 6, 2006: 19). Lists should have at least one woman in each four candidates, otherwise they would be rejected (Lei n.º 6, 2006: 12). However, political parties had to register anew for this election, including the ones already represented at the Parliament, in what was seen as a FRETILIN's attempt to limit the number of competitors in the upcoming election, and that that generated great discontentment, aggravating the tensions (Interview with Vicente Guterres, 2013). The President of the Republic is elected by absolute majority and, in case no candidate could achieve it, a second round takes place between the two most voted candidates (Lei n.º 7, 2006). Candidates should be Timorese registered voters with 35 years old or more, and be supported by at least 5.000 voters, comprising at least 100 supporters per district (Lei n.º 7, 2006). Regarding the EMBs, it was not possible to have STAE detached from the government (Interview with Vicente Guterres, 2013). Elections would be put in place by STAE under the government structure (Lei n.º 5, 2006). However, CNE remained as a permanent and independent body and its competences were broadened regarding the initial proposal (Interview with Vicente Guterres, 2013). The National Electoral Commission, an independent, autonomous and permanent body with a broad composition, would supervise all the electoral processes.

Last minute amendments and counting at the district level

The 2007 electoral laws had small amendments and one of them took place while the electoral process was already taking place (Interview with Ramos Horta, 2015). One of the most contentious was the provision that votes would only be counted at the district level (UN Certification Team, 2007a: 4). Setting the vote counting at the district centres (instead of at the polling stations) was an initial FRETILIN proposal, not approved in the initial electoral law of 28 December 2006 (Lei n.º 6, 2006). This was later approved by FRETILIN at the Parliament already on 31 May 2006 (Lei n.º 6, 2007), when at 11 April the election date had been set to taking place on the 30 June 2007 (Decreto n.º 12, 2007: 12). It was a very controversial process, with the opposition walking out of the parliamentary debate (Judicial System Monitoring Program, 2007). The amendment was justified by FRETILIN with the need to maintain vote secrecy at the suco level and “reduce the risk of intimidation and violence for voters” (UN Certification Team, 2007a: 6). However, the Certification Team found the wording was insufficient to achieve the secrecy aim (UN Certification Team, 2007a: 6). Last minute electoral amendments were severely criticised, as they should not be allowed (UN Certification Team, 2007a: 85), especially from the day the election date had been set or at least six months before the election day. At the time FRETILIN was seen as dominating the Parliament and amending the electoral law “as if it was a restaurant menu” (Interview with Ramos Horta, 2015).

Delays on approving the electoral laws and electoral assistance

Delays in the enactment of all electoral procedures can hinder transparency and predictability for all agents involved (UN Certification Team, 2007a: 11), and this was true also regarding the late specification of electoral offences (UN Certification Team, 2007a: 13), made by FRETILIN at a very late stage (Lei n.º 6, 2007). The delays impacted on the certainty and predictability of electoral procedures, as CNE’s late appointment and “limited start-up resources” also led to delay on approving the legal regulations for polling and counting (UN Certification Team, 2007a: 19). Supervision of voter registration was also not possible due to the late appointment of the CNE (Interview with Senior UN Electoral Officer, 2015).

Electoral assistance projects had already been put in practice and had to be reformulated, in order to embrace CNE, which however was only appointed at an even later stage. UNDP electoral assistance was already in practice by February 2007 (UNDP Timor-Leste, 2007), as an adjustment of the previous 2006 approved project (UNDP Timor-Leste, 2006). On the 2007 document UNDP would support STAE in areas already identified, such as “technical assistance to STAE for public information, communication and sensitive electoral materials” (UNDP Timor-Leste, 2007: 8) but, as CNE had not yet appointed, UNDP would just reserve budget allocation to provide support to its requests (UNDP Timor-Leste, 2007: 8). This asymmetry would increase the split between CNE and STAE (Interview with Senior UN Electoral Officer, 2015).

The 2012 electoral cycle – legal framework

The Timorese electoral system had been shaped for the 2007 electoral cycle, as described above, with the approval of the most important Timorese electoral laws, concerning namely the electoral management bodies, and the electoral laws for the President of the Republic and for the Parliament. These would also shape the 2012 electoral cycle, which we will further describe in the next chapter.

The initial electoral laws were object of subsequent minor amendments, although not very substantial in its nature. Counting locally at the polling stations was one of these changes, applicable for both the presidential and parliamentary elections (Lei n.º 7, 2011; Lei n.º 8, 2011). The number of women in party lists increased and it would from 2011 on be of 1/3 (Lei n.º 7, 2011: 7). Electoral offences became crimes (Lei n.º 7, 2011; Lei n.º 8, 2011: 8), which could have made its application more difficult.

In 2012, other amendments would aim at accommodate unexpected circumstances, such as the lack of conditions for the vote from abroad, or the death of a presidential candidate on the eve of the election. Regarding the later, and in order to avoid postponing the presidential election, the law was amended, in order to overcome that legal provision (Lei n.º 7, 2012). Below we can find a brief overview of the most substantial provisions of the main Timorese electoral laws.

Table 9 – Main Timorese electoral laws and further amendments

Electoral laws:	EMBs	Parliament	President of the Republic
2006	<p>Law 5/2006, 28 Dec. Independent EMB, CNE + STAE (governmental)</p>	<p>Law/2006, 28 Dec. PR, national constituency of 65 members, Hondt method, 3% threshold. Block lists presented by political parties. At least one woman in each four candidates.</p>	<p>Law 7/2006, 28 Dec. President of the Republic elected by absolute majority; run off in case no candidate achieves more than 50% of the votes.</p>
2007		<p>Law6/2007, 31 May Counting at the district centres. Electoral offences, fines.</p>	<p>Law 5/2007, 28 March Technical improvements, “taking into account the comments of the UN Electoral Certification Commission”.</p>
2011	<p>Law 6/2011, 22 June Compensation for CNE Members upon meeting attendances; Activity report sent to Parliament. Six year term, renewable once. Supervision over voter registration. STAE director taking part on CNE meetings, no vote. STAE under the Government structure.</p>	<p>Law 7/2011, 22 June At least one woman in each three candidates. Polls close at 3pm. Voting in each geographic unit only. Counting at the polling stations. District Centres receive the minutes with the figures of the initial counting. Electoral offences revoked (placed on the Criminal Code instead).</p>	<p>Law 8/2011, 22 June Vote for detainees and patients in hospitals. Polls close at 3pm. Voting at the geographic unit of voter registration. Counting at the polling stations. Voting from abroad.</p>
2012		<p>Law 1/2012, 13 January Voting from abroad not applicable in this election.</p>	<p>Law 2/2012, 13 January Voting from abroad not applicable in this election. Law 7/2012, 1 March The death of a candidate does not lead to postponing the election.</p>

Conclusion

The creation of the Timorese electoral system evolves around three very powerful dynamics: the UN presence, the FRETILIN led government and the opposition parties. This took place in a climate of great tension, due to the late 2006 instability spreading from inside the armed forces. There was much tension and controversy during this process, with political differences at times contaminating a debate that could be more technical, or with technicalities being used with a political aim. Despite the period of great instability, there was already a clear idea of what was intended in this regard by the Timorese, namely by the FRETILIN government. The opposition parties grouped together and presented another proposal for an electoral draft, both being discussed together, with extensive international technical support (Boneo, 2006a; IFES, 2006; United Nations Assessment Mission to Timor-Leste, 2006). During this process, and also as an outcome of the severe unrest, a new multidimensional mission was deployed, UNMIT.

In general, the Timorese electoral system is consistent with the international standards, from the beginning, ensuring a broad proportionality and a good *ratio* between votes and seats. However, this coexists with some important flaws and politically oriented options that might curtail its virtues. The legal 3% threshold can be seen as controversial in the effects it produces, when taking the local context into account. In an emerging democracy, it remains questionable if legally limiting the number of political parties with parliamentary representation is desirable, also taking into account the need of popular inclusion and to avoid disenfranchisement of specific groups. The asymmetry of powers in the electoral administration was also a serious issue, with STAE being perceived as too close to the government and the CNE as severely lacking legal powers and material resources, as well as electoral assistance.

Despite these factors, the creation of the Timorese electoral system, in 2006-2007, shows a strong will of self-determination and independence regarding the UN presence. The Timorese had a clear idea of what was aimed and possible flaws in the electoral design do not seem to be due to a lack of electoral knowledge, but rather a product of a concrete aim. Ironically, some of these flaws exist since the 2001 electoral

system created by the UN mission, with the Timorese mirroring previous UN practices, as the lack of powers of the electoral commission, and a distortion on proportionality between votes and seats.

The creation of the Timorese electoral system became again an institutional mechanism of competition between the main political actors, which have struggled to design it and used it to the most of its flexibility. Along the potential political impacts of the institutional choices made, elections would channel the conflict through democratic instruments, precisely crafted according to the national context.

Chapter 6 - Post-independence electoral cycles: 2007 and 2012

Introduction

Following the detailed analysis of the Timorese electoral system and its creation, provided in the previous chapter, we analyse the post-independence electoral cycles. These were framed by the legislation approved by the Timorese, an outcome of the institutionalisation of their political preferences. Political actors are key in this analysis, through the options made. The institutional performance is the main focus of analysis, again taking into account two main actors, namely the Timorese institutions and the UN, through several mechanisms of electoral assistance. The 2007 electoral cycle was the first one after independence, with strong electoral assistance, from the UN peace mission, UNDP and an UN Electoral Certification Team. In the 2012 electoral cycle UN electoral assistance was much smoother, with a supporting role from the UN mission and UNDP, and the main options being mostly left to the Timorese institutions. It was this institutional autonomy that also led to the end of the UN mission, as we further analyse in detail.

The Timorese 2007 general elections were the first ones to be held after independence and were expectedly crucial for the future of the new state. They constituted a test of whether Timorese could channel their conflicts through the liberal state institutions, therefore voicing the different options at stake through political competition. It was also a true test for the still incipient state institutions, as these had both to organise the electoral process and also to be the vehicles to address any conflicts. This would not only require institutional strength and capacity, but also resilience and flexibility, in order to accommodate different possible choices. As national state institutions were still fragile, particularly following the 2006-2007 crisis, the 2007 electoral cycle was a strong endeavour. UN electoral support was envisaged as needed and heavily deployed at multiple levels, as already described in the previous chapter.

Political competition was far from smooth, its development pervading state institutions. The strong political rivalry continued through these, deepening the political

divisions that started to take shape during the 2000-2001 transition process. FRETILIN remained the strongest and most influential political party, having formed the I Constitutional Government of Timor-Leste on May 2002 (Governo de Timor-Leste, 2016a). However, during the crisis, Prime-Minister Alkatiri was forced to resign and his credibility was seriously affected. The II Constitutional Government took office on July 2006, led by Ramos Horta (Governo de Timor-Leste, 2015), former Minister of Foreign Affairs. However, after being elected President of the Republic and expected to take office on 20 May 2002, Ramos Horta resigned as Prime Minister. On May 2007 the III Constitutional Government took office, shortly before the Parliamentary Elections of 30 June.

Xanana Gusmão had been President of the Republic since 2002, with the mandate expected to finish on 20 May, after the 2007 Presidential elections. A new political party, CNRT, was formed in March 2007, three months before the 2007 Parliamentary Elections, which Xanana Gusmão joined (EUEOM, 2012b: 8; Governo de Timor-Leste, 2014; RTP Notícias, 2007). This generated strong controversy, with FRETILIN alleging that Xanana Gusmão formed CNRT while still being President of the Republic and, therefore, at the time not allowed to engage in political activities, much less concerning political parties. The acronym CNRT also generated huge controversy, as it stood for National Congress for the Reconstruction of Timor-Leste (*Congresso Nacional para a Reconstrução de Timor-Leste*) and this resembled the former CNRT (*Conselho Nacional de Resistência Timorese* - National Council for the Timorese Resistance), formed still during the Indonesian occupation, grouping the three most prominent Timorese political parties at the time, namely ASDT (later FRETILIN), UDT and APODETI. After the 1999 Referendum, CNRT opened to all political parties, including the ones recently formed, a move that was never welcomed by FRETILIN. Eventually FRETILIN abandoned CNRT in 2001, running for the elections independently and frustrating the wishes for a government of national unity, expressed among others by Xanana Gusmão. The symbol adopted by CNRT in 2007 also resembled the former CNRT's flag, as included by UNAMET in the Popular Consultation's ballot paper.

1. The 2007 electoral cycle

The 2007 general elections took place in a context of political crisis, recognised by the UN NAM diagnosis, and this undermined trust in the government (United Nations Assessment Mission to Timor-Leste, 2006: 1). In this tense context, election timing was important for both technical and political dimensions, the later influencing also reconciliation in a period of great internal turbulence, with the elections recommended to be held in April/May 2007 (United Nations Assessment Mission to Timor-Leste, 2006: 2). Election sequencing was also very relevant, as it could be an expression of the influence of either the Presidency of the Republic or the Parliament in the other election, with

“stand-off” in power between the popularity of the President with a weaker constitutional mandate and the authority of the governing party, which controls both the Parliament and Government (United Nations Assessment Mission to Timor-Leste, 2006: 2).

According to the Timorese Constitution, it would be up to the President of the Republic to appoint the Prime-Minister, either from the most voted party or from the most voted coalition of parties (CRDTL, 2002). Therefore, this political option of the President of the Republic could be of great importance, and it was not irrelevant at all who the President in office at that time was. The UN Needs Assessment Mission recommended that both elections be held on the same day (United Nations Assessment Mission to Timor-Leste, 2006), a recommendation that was not followed. Presidential elections were set to take place on 9 March 2007 (Decreto n.º 1, 2007), with the run-off taking place a month later, on 9 April 2007. Parliamentary elections would take place on the 30 June 2007 (Decreto n.º 12, 2007), expectedly after the new elected President took office, usually on the 20 May.

Electoral administration was in an asymmetrical position, as previously referred to. STAE had resources, experience and was under strong control and direction of the Minister, being both undoubtedly associated with FRETILIN (United Nations Assessment Mission to Timor-Leste, 2006: 3). On the other hand, CNE was still to be created and become permanent, its members were to be appointed, and it lacked both staff and resources. The late approval of the electoral laws made its powers unclear (United Nations Assessment Mission to Timor-Leste, 2006: 3). It was recommended that CNE

should have STAE under its direction, to avoid the public perception that STAE operated under the government and ruling party orientations, which were “already seen as overpowering other branches of Government” (United Nations Assessment Mission to Timor-Leste, 2006: 3) and CNE should also be duly funded (United Nations Assessment Mission to Timor-Leste, 2006: 5).

Following the Needs Assessment Mission, UN electoral support options were canvassed by the UN SG, based on the NAM Report. The UN electoral support further accepted consisted mainly of a certification mission (S/2006/668, 2006), plus a UNDP Project and an electoral component at the UN mission’s mandate. UNDP received a request from STAE, regarding support to the national elections in 2007 in the areas of

electoral administration and planning, logistics, information technology, voter registration (database and new photo voter identification cards), public information, communications, voter education, including the production and submission of electoral materials and support to national NGOs (UNDP Timor-Leste, 2007: 7).

UNDP supported STAE in these areas already identified, such as “technical assistance to STAE for public information, communication and sensitive electoral materials” (UNDP Timor-Leste, 2007: 8). As CNE had not yet been appointed, UNDP would reserve budget allocation to provide support to its requests (UNDP Timor-Leste, 2007: 8). The UN Certification Team, implemented as described in the previous chapter, assessed the main areas of the electoral cycle. The Team’s benchmarks referred mainly to the conduct of the elections, in its diverse stages and although it was deployed by the UN, the Team’s findings were independent and could not be attributed to the UN.

When UNMIT mandate was extended, on 22 February 2007, in the eve of the first 2007 elections, the UN SC reiterated the forthcoming electoral processes would be “a significant step in the process of strengthening democracy in Timor-Leste” (S/RES/1745, 2007). The SG also welcomed “the adoption of the laws on the National Commission on Elections, as well as on the Parliamentary and Presidential Elections”, encouraging “additional steps, including amendments deemed necessary, implementation of an appropriate regulatory framework, and logistical preparations to be undertaken with the assistance of UNMIT” (S/RES/1745, 2007). The SC also called “upon all parties in Timor-Leste to adhere to the principles of non-violence and to democratic

and legal processes to ensure that the upcoming elections have a unifying impact and contribute to bringing the people of Timor-Leste together”, encouraging “all Timorese parties to ensure that free, fair and peaceful elections take place and that the timetable for polls developed by the National Commission on Elections is respected” (S/RES/1745, 2007). There was also a reference to the work of the UN Independent Certification Team and to the need of implementing “its key recommendations to ensure credibility of the electoral process”, encouraging “the international community to assist in this process including through electoral observation” (S/RES/1745, 2007). In fact, besides accepting the UN certification mission, there was also a Timorese request to the European Union for an extensive presence of electoral observers (Interview with Ana Pessoa Pinto, 2015), possibly to obtain an external and diversified assessment of the elections, other than the one performed by the UN (Interview with Ana Pessoa Pinto, 2015), which was seen as potentially having a conflict of interests in this.

The electoral cycle of 2007 took place under the instability of the previous generalised conflicts. There was also a high number of IDPs around the capital and a strong presence of foreign security forces (Leach, 2009). However, despite “the enormous challenges facing future governments in Timor-Leste” (Leach, 2009), people had the strong will to participate. Many parties and candidates ran for the elections and the turnout in the three elections was never below 80%.

Presidential elections were the first ones to take place. These were held in two rounds, as no candidate achieved an absolute majority in the first round. There were eight candidates contesting the election on 9 March 2007. The two most voted were Francisco Guterres “Lú-Olo”, supported by FRETILIN, with 27.89% and José Manuel Ramos Horta, with 21.61% (Tribunal de Recurso, 2007b), supported among others by Xanana Gusmão. There were 522.933 registered voters, from which 427.198 have voted, with a turnout of 81.69% (Tribunal de Recurso, 2007b). The second round took place on 9 April 2007, where there were a total of 524.073 registered voters, from these, 424.478 went to the polls, with a voter turnout of about 81%. The candidate Ramos Horta was the most voted, with 69.18% of the votes, and became President of the Republic.

Parliamentary elections were held on 30 June. There were a total of 529.198 registered voters and from these 426.210 went to the polls, with a turnout of 80,54%. There were 14 candidacies, from which only seven passed the 3% threshold (Tribunal de Recurso, 2007a). FRETILIN was the most voted, with 29.02% and 21 seats (Tribunal de Recurso, 2007a), but not securing an absolute majority.

Table 10 – 2007 Parliamentary Elections – official results

2007	65 member national constituency			
	Official data		3% threshold	
Candidacy	Votes	% votes	Seats	% seats
FRETILIN	120 592	29,02%	21	32,31%
CNRT	100 175	24,10%	18	27,69%
ASDT-PSD	65 358	15,73%	11	16,92%
PD	46 946	11,30%	8	12,31%
PUN	18 896	4,55%	3	4,62%
AD-KOTA-PPT	13 294	3,20%	2	3,08%
UNDERTIM	13 247	3,19%	2	3,08%
PNT	10 057	2,42%	0	0%
PDRT	7 718	1,86%	0	0%
PR	4 408	1,06%	0	0%
PDC	4 300	1,03%	0	0%
PST	3 982	0,96%	0	0%
UDT	3 753	0,90%	0	0%
PMD	2 878	0,69%	0	0%
Total	415 604	100%	65	100%

There was a period of great institutional uncertainty, as if FRETILIN was invited by the President to form a government it might not be able to secure a stable majority to support its Government in the Parliament, necessary, for instance, to have the state budget approved by the Parliament. There were talks promoted by José Ramos Horta, the President of the Republic, aiming at a consensus between parties to secure a stable government (Interview with José Reis, 2015; Interview with Ramos Horta, 2015). Although the path is still controversial (Interview with Mário Carrascalão, 2015), with FRETILIN claiming that no further answer was given by Xanana Gusmão to its proposal for “a government of great inclusion” (Interview with José Reis, 2015), the President of the

Republic at the time, Ramos Horta, argues he “tried everything” and no agreement or support for a FRETILIN government was possible (Interview with Ramos Horta, 2015) and this led eventually to a government formed by Xanana Gusmão’s CNRT and the remaining parliamentary groups supporting it.

There were huge protests and social unrest, mainly from FRETILIN supporters, which never accepted this outcome as legitimate (Leach, 2009). They argued this violated the Constitution, as the “coalition” would have to be formed prior to the election, and not after, as it was the case. Although this constitutional clause was drafted in the Constituent Assembly with a FRETILIN majority, it was not easy to trace its origin, as it was not in the initial proposals. Even as of 2015, its path is still controversial and difficult to trace back. It was introduced allegedly to allow for more flexibility on government formation (Interview with Manuel Tilman, 2015) and the inclusion of smaller parties (Interview with Ana Pessoa Pinto, 2015). However, its concrete application in 2007 generated much surprise (Interview with Mário Carrascalão, 2015), even among its supporters. Many FRETILIN supporters argue, nevertheless, that the aim of the clause was to apply it only to pre-election coalitions (Interview with Francisco Guterres Lu-Olo, 2015), with a strong debate around the constitutionality of the government formation.

Despite the social unrest, FRETILIN never took the case to the Court of Appeal, claiming it rather decided to engage in the democratic process, and did not want to be responsible for dangerous social unrest (Interview with Francisco Guterres Lu-Olo, 2015). The IV Constitutional Government was formed, led by Xanana Gusmão (Governo de Timor-Leste, 2016b).

1.1. The EU Observation Mission

As referred above, international observers were encouraged to observe the elections, in particular from the European Union (Interview with Ana Pessoa Pinto, 2015), in order to provide another source of assessment. The EU Observation Mission observed the elections and analysed the most significant aspects of the electoral cycle, also including recommendations for the future.

Elections were deemed peaceful in general (EUEOM, 2007: 24), with some minor violent incidents. There were martial arts groups, though, spread throughout the country

(EUEOM, 2007: 24). Campaign was done through community meetings, at the local level, “where candidates introduced themselves and their programs to small groups of potential voters” (EUEOM, 2007: 24), which also allowed room for intimidation.

There was “undue interference by public officials in the electoral process” in the Presidential and Parliamentary elections (EUEOM, 2007: 25). There was public support of President Xanana Gusmão to the presidential candidate Ramos Horta (EUEOM, 2007: 25) on the one hand, and the “signing of community contracts for local development offered by FRETILIN government officials to all suco councils across the country during the Parliamentary election”, on the other, resulting in a breach of impartiality from public entities (EUEOM, 2007: 25). Presidential candidate Lú-Olo, affiliated with FRETILIN, also “announced in a press conference just before the second round election the delivery of millions of dollars of previously budgeted financial aid to villages” (EUEOM, 2007: 25).

The electoral laws had several amendments until shortly before the elections, including important issues such as vote counting (EUEOM, 2007: 8), as further described below. An amendment was also passed allowing candidates “to include any symbol of their choice on the ballot paper” (EUEOM, 2007: 8), resulting in two appeals before the Court of Appeal. This also had important consequences at the practical level, as, for instance, the Voting and Counting Regulation only came into force four days before the first round of the presidential election (EUEOM, 2007: 9).

FRETILIN’s late amendment of the electoral law regarding vote counting at the district centres meant that all materials, including the ballot papers and the ballot boxes, had to be transported from each polling station and centres to the district facilities of CNE. CNE addressed a letter to the Parliament complaining it had not been heard and these changes had further impacts at multiple levels, including “legal (new regulations had to be approved), operational and logistical, voters’ education, polling and counting staff training at polling station and district level and budget among others” (EUEOM, 2007: 9). Among other issues, this provision could diminish the certainty of the legal provisions applicable to these, among other concerns regarding vote counting transparency (EUEOM, 2007: 8). The provision was similar to the UN ran elections in Timor-Leste, where vote counting at the district level aimed at not allowing a voting

pattern to be identified, thus protecting citizens from potential post electoral violence. However, in 2007 the situation had already changed and the issue generated much public debate among different political parties, alleging this would allow for fraud at vote counting, diminishing the guarantees of electoral integrity. Although this issue might be controversial, also regarding the procedure, as among others, CNE was not consulted (EUEOM, 2007: 9), the EU Observation Mission considered that in the end it comprised “the necessary safeguards for the transparency, promptness and accuracy of the counting process, therefore meeting all relevant international standards” (EUEOM, 2007: 9).

The CNE was also only instituted in 15 January 2007 (EUEOM, 2007: 8), which allowed little time to develop further provisions to be contained in Codes of Conduct and other regulations. There were several delays in the electoral process, including the late approval of the Regulations on Candidate Registration and Voter Registration, which entered into force shortly before the elections, leaving candidates with 12 days to comply with the new substantial requirements, such as the number of signatures needed (EUEOM, 2007: 10).

Lack of law enforcement mechanisms

The Timorese Constitution foresaw an important set of principles on the electoral campaign “to try and introduce a level playing field”, including “equality of opportunity and treatment for all candidates, impartiality towards candidacies on the part of public bodies, transparency and supervision of electoral expenses” (EUEOM, 2007: 10). Nevertheless, campaign finance was under-regulated (EUEOM, 2007: 10) and areas such as the candidates’ code of conduct lacked effective sanctions, which in case of breach would not allow for enforcement (EUEOM, 2007: 11). Even if at an initial stage there should be an agreement from all stakeholders regarding the applicable principles (Luís, 2015: 263), it should also be possible for these to be enforced in case of breach, reinforcing its certainty even at the social level. There were serious issues with the “complaints-resolution mechanism” and applicable sanctions, these being “a key part of an electoral system” (EUEOM, 2007: 11). Many electoral norms lacked an effective sanction, therefore making its compliance solely dependent on the stakeholders’ will. Many sanctions foreseen in the law referred to criminal offences, to be reported by CNE

to the judicial system, and the latter lacked resources and a timely manner to address these (EUEOM, 2007: 11). Another option was to have softer penalties for law infringement, such as administrative sanctions, which could be applicable by the CNE and which could be dealt with in a timely fashion, with immediate effects on the ongoing electoral process, rather than seeking a stronger remedy after the electoral period had passed (EUEOM, 2007: 11). The delays on the electoral process as a whole made the “coming into force of the complaints procedure until after the first round election” (EUEOM, 2007: 12). Generally speaking, CNE lacked enforcement power, sometimes seeking a “soft power” through the media, “in an attempt to exercise moral pressure” on infractors (EUEOM, 2007: 11) and it also lacked resources (EUEOM, 2007: 12). As a recommendation, the EU pointed out that CNE powers should be increased in upcoming elections (EUEOM, 2007: 11), to allow for an effective supervision.

1.2. The UN Certification Team

The UN Certification Team developed its own benchmarks and these referred mainly to the conduct of the elections themselves, as described in the previous chapter. Benchmarks covered the legal framework and its development, and eight main areas, namely electoral authority, voter registration, political party and candidate registration, political campaign, polling activities, vote tabulation, adjudication of challenges and “general” (UN Certification Team, 2006). These were further divided between “criteria which are fundamental to the conduct of credible, legitimate, free, fair and transparent elections” and “good practices” (UN Certification Team, 2006: 7). Regarding its relationship with the UN mission, the Certification Team was “fully independent”, and its findings could “not be attributed to the UN as an organization”, following the UN “established practice where it provides technical support, the UN will not judge the overall conformity of the process with international standards” (CJ/DPA/EAD/09/27/06, 2006).

However, regarding the Timorese counterparts, the Certification mission resulted in a contentious process, with several reports sent to New York against its reports (Interview with Ana Pessoa Pinto, 2015). Regarding the UN, if at the beginning the UN Mission recommended its suggestions to be followed by the Timorese, this seems to

have evolved to a dissent of perspectives regarding the appraisal of the 2007 Timorese elections. We provide an overview of the main findings of the Certification Team, as well as its possible developments regarding both the UN and the Timorese perspectives.

Main issues

When analysing the 2007 electoral cycle, the most outstanding issues, according to the Team, were the counting at the district level, some aspects of the legal framework and the electoral management bodies, as described below. Last minute amendments of the electoral laws was also one of the issues raised by the Team. It considered these should not be allowed (UN Certification Team, 2007a: 85), either from the day the election date was set or at least six months before any given election. It was a last minute amendment that allowed, for instance, the elimination of counting at the polling stations (UN Certification Team, 2007a: 4), a critical aspect for the Team. This was justified by FRETILIN with the need to maintain vote secrecy at the suco level (UN Certification Team, 2007a: 6), although the Team found that the wording was insufficient to achieve this aim (UN Certification Team, 2007a: 6). Counting at the district level was one of the aspects highlighted by the Certification Team (UN Certification Team, 2007a: 4), also much contested by the opposition parties. This procedure would take longer (UN Certification Team, 2007a: 7) as it required the logistics necessary to transport the ballots and other electoral materials, many of these highly sensitive, including uncounted votes and blank ballot papers, from the polling stations to the district centres. This could easily undermine the confidence in the process and results and also increase the tension regarding the waiting time for results announcement. Plus, on aggregating all the ballot papers at the district centres, the counting would take place during a longer period, as all votes pertaining to that district would be counted in the same district centre.

The electoral bodies were another critical issue (UN Certification Team, 2007a: 17), as, among others, the Electoral Commission had been appointed at a late stage of the electoral process. Due to this late appointment of CNE, voter registration was not supervised (UN Certification Team, 2007a). CNE's late appointment and "limited start-up resources" led to delay on approving the legal regulations for polling and counting (UN Certification Team, 2007a: 19), although this was mitigated by their similarity regarding

the previous elections (UN Certification Team, 2007a: 19). CNE consolidated itself, despite the arduous challenge (UN Certification Team, 2007a: 20), being praised along the Reports (UN Certification Team, 2007a: 23, 2007b). Overall, the Team considered that STAE and CNE carried a great endeavour and had shown capacity for their mission (UN Certification Team, 2007a: 87). However, although CNE seemed to be consolidating, with a positive assessment (UN Certification Team, 2007a: 20), STAE was considered only “partially successful” (UN Certification Team, 2007a: 24), as the Minister of State Administration interfered too much in its duties (UN Certification Team, 2007a: 26), hindering the impartiality, neutrality and credibility of the electoral process. STAE should be removed from the jurisdiction of the Minister and Ministry of State Administration and answer directly to CNE (UN Certification Team, 2007a: 85) and STAE director should be appointed by the Parliament, under a proposal by CNE (UN Certification Team, 2007a: 85). The relationship between CNE and STAE was also tense and with conflicts, including issues regarding their respective functions, with the Minister and Vice Minister of State Administration being involved in STAE’s decisions, despite the fact that both were candidates (UN Certification Team, 2007a: 17). CNE also lacked enough powers, especially over STAE, and the Certification Team considered this did not allow it to be a truly independent and supervisory body, as foreseen in art 65. of the Timorese Constitution (UN Certification Team, 2007a: 28).

The Team also found that delays in the enactment of all electoral procedures hindered transparency and predictability for all agents involved (UN Certification Team, 2007a: 11), including the specification of electoral offences (UN Certification Team, 2007a: 13). Civic education should also be reinforced, and legal provisions applicable to political parties should be effectively enforced at all times, including during the campaign (UN Certification Team, 2007a: 86). The abuse of state resources was an area of recommended legal action (UN Certification Team, 2007a: 15, 2007b). Overall, the Team considered that changes in these areas should be incremental, as “no element of the recent electoral processes so defective that it needs to be recreated from scratch” (UN Certification Team, 2007a: 87).

When making a global assessment, the Team concluded that “the parliamentary election process has not proceeded satisfactorily” (UN Certification Team, 2007a: 82), although it believed “it was clearly within the capacity of Timor-Leste to satisfy virtually all of the benchmarks” (UN Certification Team, 2007a: 82). Problematic areas referred to

a lack of transparency in the legal framework, the excessive exercise of ministerial influence on electoral operations, an effective failure to provide a transparent register of voters, a restrictive time frame for appeals, and a failure to comply with all constitutional requirements (UN Certification Team, 2007a: 82).

In an analysis of great technical detail, the Team concluded that 22 benchmarks had been satisfied, 11 had been partially satisfied, 11 had not been satisfied and in four cases it was not possible to provide a conclusion (UN Certification Team, 2007a: 81). Despite the numerical aspect, the Report highlighted that its approach was to consider that as “all of the benchmarks are firmly rooted in well-defined international standards, there is no comparable international standard in accordance with which a “weighted average” could be taken” (UN Certification Team, 2007a: 82). In its regard, the “definition of a process “proceeding satisfactorily” is one which can (...) be expected to be brought to a successful conclusion which meets all the specified benchmarks” (UN Certification Team, 2007a: 82), as “benchmarks do not represent an aspirational statement of unachievable best practice: they simply encapsulate what is to be found in a typical well-run election” (UN Certification Team, 2007a: 82). Consequently, the Team did not certify the elections.

The impact of the UN Certification Team

The relationship between the experts composing the Certification Mission and the Timorese electoral institutions was far from smooth. Although the mandate was very clear that the Certification Team would be independent, regardless of UNMIT, the fact is that the Certification Team made a request to UNMIT regarding the approval of the mission benchmarks, which was agreed to. A similar request to endorse the Terms of Reference and benchmarks was made to STAE, whose answer was not that clear, but still positive. Following previous patterns, there seemed to be a contentious relationship

between the Certification Team and the Timorese electoral administration, with UNMIT itself being involved in this.

Initially, on 1 February 2007, UNMIT had urged the “Timorese to consider recommendations by Independent Electoral Certification Team” (UNMIT, 2007b). This was reinforced by the UN Security Council, which stressed the need of implementing “its key recommendations”, encouraging “the international community to assist in this process including through electoral observation” (S/RES/1745, 2007). Nevertheless, later, this positioning did change. On 30 April 2007, shortly after the first round of the presidential election, UNMIT issued a “Statement in response to the sixth report of the Electoral Certification Team” (UNMIT, 2007a), where it underlined that one of the most important aspects was that the election had been “free and fair, reflecting the will of the voters” (UNMIT, 2007a). UNMIT also made a very strong remark highlighting the role of the elections in the peace process, namely that

all the candidates had the opportunity to address their doubts and grievances through the existing electoral and judicial mechanisms rather than taking them to the streets, which also reflects well on the public confidence in the national capacity to handle disputes peacefully (UNMIT, 2007a).

It finished by making an underneath appraisal of the Certification benchmarks, noting that

electoral benchmarks referred to by the Team reflect international standards and full compliance with these standards is indeed a challenge not only to Timor-Leste but to also to fledging and established democracies (UNMIT, 2007a).

UNMIT had already criticised the Certification Team, as it had “not considered whether non-or partial compliance with a number of benchmarks was material to the overall results of the past election” (UNMIT, 2007a), and “considering that these are the first national elections which the Timorese authorities have ever conducted, they should be seen as a significant achievement” (UNMIT, 2007a).

In the methodology developed by the Team, elections would only be certified in case all benchmarks had been fulfilled. However, when assessing electoral processes, other approaches were possible. These can include qualitative analysis, which was the case of the EU Electoral Observation Mission (EUEOM, 2007), which assessed the overall aspects of the electoral cycle, concluding that “Presidential and Parliamentary elections

met basic international standards for democratic elections” (EUEOM, 2007: 1). The EU EOM referred that the 2007 elections had been an “openly-contested electoral process that represents a significant milestone in the democratic development of Timor-Leste” (EUEOM, 2007: 1) and that the “legal framework is broadly in accordance with international standards for democratic elections” (EUEOM, 2007: 1), despite very harsh critiques and strong recommendations in some problematic areas of the electoral process, as demonstrated above.

These reflect two contrasting approaches regarding electoral assessment, which in no way hinder the possibility of criticism, should any aspect of the electoral process fail to comply with the referred standards. In fact, the EU EOM assessment is very strong regarding some problematic areas of the electoral process. At the same time, even within the Certification Team’s reports, there seems to be elements where another approach could be rooted. For instance, Annex 1, titled “Assessment of impact on election result of failure to satisfy benchmarks”, assesses, for each benchmark, its “impact on election result”, namely whether these were likely to have direct or indirect effects on the election result (UN Certification Team, 2007a: 89). Within the benchmarks that were not satisfied, only a few were likely to have an impact on results and even in those cases either that impact was not likely to be present or was impossible to quantify (UN Certification Team, 2007a: 89). Other issues, formulated in such broad terms as

conditions exist for all electoral stakeholders (including voters, political contestants, agents and observers) to exercise their human rights, including their rights to freedom of expression, freedom of assembly, freedom of movement, and access to information (UN Certification Team, 2007a: 98),

a benchmark considered “not satisfied”, may also be ambiguous and blur the extent to which it was satisfied.

The Certification Team’s approach was one of possible many and, although the Team was independent, the methodology adopted led to a very strong conclusion, namely not certifying the elections. In a period of strong internal unrest it can be questioned what was the positive contribution this approach had. This modality of electoral assistance and its outcome might have had strong social consequences in Timor-Leste, creating more tension in the Timorese authorities (Interview with Ana Pessoa

Pinto, 2015) and between these and the UN presence, which in the end did not act in a unified manner.

2. The 2012 electoral cycle

The following UNMIT's extension took place already after the 2007 elections, on 25 February 2008 and again, despite the Certification process, the SC acknowledged "the successful conclusion of the presidential and parliamentary elections in 2007 and the formation of a democratically elected government and institutions in Timor-Leste" (S/RES/1802, 2008). However, "the political, security, social and humanitarian situation in Timor-Leste" was still "fragile" and the SC recalled "the leadership and other stakeholders (...) to pursue peaceful dialogue and to avoid violent means to resolve differences" (S/RES/1802, 2008). The SC recalled "all parties in Timor-Leste, in particular political leaders" for the need to work together towards political dialogue and "consolidate peace, democracy, rule of law, sustainable social and economic development and national reconciliation in the country" (S/RES/1802, 2008). In this context, UNMIT's mandate was extended for another year (S/RES/1802, 2008).

There were also positive remarks concerning the efforts of both "the Government and people of Timor-Leste" regarding "political challenges", including the Government and the opposition's commitment towards peace and national stability, reaffirming the commitment towards democracy and the rule of law, which were constant in subsequent mandate extensions (S/RES/1867, 2009; S/RES/1912, 2010; S/RES/1969, 2011).

Consolidating state institutions was the core of the following UNMIT's mandates. In 2011, the SC recognised "the contribution that Timor-Leste had made in demonstrating the critical importance of institution building in post conflict peacebuilding", highlighting the importance of a "peaceful, credible and transparent electoral process in 2012" for "Timor-Leste's long-term stability" (S/RES/1969, 2011). A system of "checks and balances" among state institutions, which should be continuously respected, was also seen as very important (S/RES/1969, 2011). The SC recognised a period of "general stability through further improvements in the political and security situation", and

strong commitment of the leadership and other stakeholders in Timor-Leste to fostering national dialogue and peaceful and inclusive participation in democratic processes, and their ongoing efforts to promote continued peace, stability and unity (S/RES/1969, 2011).

The SC welcomed also the “efforts of the political leadership of Timor-Leste” and UNMIT was extended for another year (S/RES/1969, 2011).

The successful completion of the 2012 elections was a target for subsequent goals within the broad UNMIT mandate. If the 2012 elections were successful, UNMIT’s police component would be reconfigured “to take account of the changing nature of its role and function in Timor-Leste and the plan of its drawdown” (S/RES/1969, 2011). UNMIT was requested

to extend the necessary support, within its current mandate, for the preparation of the parliamentary and presidential elections of 2012, as requested by the Government of Timor-Leste, and in accordance with the recommendations of the planned electoral assessment mission (S/RES/1969, 2011: 3)

with the international community being encouraged to “assist in this process” (S/RES/1969, 2011: 3). The SC highlighted the “United Nations support and cooperation with the Government of Timor-Leste” (S/RES/1969, 2011: 19) and stressed “the importance of ownership of the strategy by the leaders and people of Timor-Leste in this process” (S/RES/1969, 2011: 20).

UNMIT’s mandate was extended again until 31 December 2012, shortly before the presidential elections (S/RES/2037, 2012), on 23 February 2012. The SC Resolution underlined “the importance for Timor-Leste’s long-term stability of ensuring a peaceful, credible and transparent electoral process in 2012” (S/RES/2037, 2012). The SC acknowledged

the steady progress made in the preparation of the presidential and parliamentary elections, notably by political leaders’ commitment to peace and stability during the electoral process, and by the ongoing efforts by the electoral management bodies to increase women and youth participation in the electoral process” (S/RES/2037, 2012).

Women participation was taken into account, with the Council welcoming “Government’s commitment to women’s participation in the political sphere in the upcoming elections” (S/RES/2037, 2012). UNMIT should still provide “the necessary support (...) for the preparation and implementation of the presidential and

parliamentary elections, as requested by the Government of Timor-Leste” (S/RES/2037, 2012: 3) and the international community was also invited to take part in this, namely by “sending election observers and volunteers as requested by the Government of Timor-Leste” (S/RES/2037, 2012: 3). UNMIT’s mandate would remain “at the current authorized levels” but there should be a “plan of its phased drawdown, in accordance with the wishes of the Government of Timor-Leste, conditions on the ground and following the successful completion of the 2012 electoral process” (S/RES/2037, 2012).

Nevertheless, “the extent of United Nations support was much less than for the 2007 elections, since the capacities of the electoral management bodies have increased significantly” (S/2012/765, 2012: 12). The Council should be kept informed by the Secretary-General and a report should be submitted

within 60 days after the formation of the new Government and at the latest 15 October 2012 (...) assessing the security and political situation, and providing recommendations on the completion of UNMIT’s Mission and the transfer of responsibilities in order to enable the Government of Timor-Leste and UNMIT to finalize preparations for UNMIT’s withdrawal consistent with the situation on the ground and on the views of the Government of Timor-Leste concerning the post-UNMIT United Nations role in Timor-Leste” (S/RES/2037, 2012: 20).

The SG submitted the Report accordingly (S/2012/765, 2012) and the SC decided to send a small mission to Timor-Leste (S/2012/793, 2012), in order to assess the drawdown of UNMIT and address future cooperation with the country. The SC was “struck by the consensus among Timorese interlocutors across the spectrum that UNMIT should proceed to close at the end of its current mandate in December” (S/2012/889, 2012) and, despite some existing challenges and a smooth drawdown, on 31 December 2012 the UN missions in Timor-Leste ended formally.

2.1. Election results and the government formation clause

The 2012 electoral cycle was a true test for the future of the country (EUEOM, 2012a: 4). The first round of presidential elections took place on 17 March 2012 and the second round on 16 April. The parliamentary elections took place on 7 July. These were very competitive and were held successfully and in a climate of general peace.

For the first round of 2012 Presidential Elections each candidate had to be proposed by a total of 5.000 voters. All the 13 districts needed to have proponents in a

number not smaller than 100 and each proponent could only endorse one candidacy. There were 13 candidates; however, the candidate Francisco Xavier do Amaral died a few days before the election. There were a total of 626.503 registered voters. From these, 489.933 went to the polls, with a turnout of 78,20%. Francisco Guterres “Lú-Olo”, supported by FRETILIN, was the most voted, with a total of 28,76% and the second most voted, with 25,71%, was Taur Matan Ruak (Tribunal de Recurso, 2012b), supported by CNRT and mainly by the coalition of parties at the Government. These two candidates were admitted to the second round, to take place on 16 April. There were 627.295 registered voters and from these 458.703 went to the polls, a voter turnout of 73,12%. The Court of Appeal declared that the election was valid and approved the official results (Tribunal de Recurso, 2012c). The candidate Francisco Guterres “Lú-Olo” achieved a total of 38,77%, and the candidate Taur Matan Ruak 61,23%, being declared the President of the Republic of Timor-Leste (Tribunal de Recurso, 2012c).

Parliamentary Elections were held on 7 July. There were 23 competing political parties running for the election, including two coalitions, in a total of 21 candidacies. The number of registered voters increased to 645.624, from which 482.792 have voted¹⁴, in a turnout of 74.78%, as described below (**Table 11**).

¹⁴ There were 2.931 blank votes and 8.442 null.

Table 11 – Timorese 2012 parliamentary elections: official results and threshold

impact

2012	65 members national constituency							
	Official data		3% threshold		No threshold			
Candidacy	% votes	Votes	Seats	% seats	Seats	% seats	Var. Seats	Var % seats
CNRT	36,68%	172 908	30	46,15%	27	41,54%	-3	-4,62%
FRETILIN	29,89%	140 905	25	38,46%	22	33,85%	-3	-4,62%
PD	10,30%	48 579	8	12,31%	7	10,77%	-1	-1,54%
Frenti Mudança	3,11%	14 648	2	3,08%	2	3,08%	0	0,00%
P. KHUNTO	2,93%	13 822	0	0%	2	3,08%	2	3,08%
PST	2,41%	11 379	0	0%	1	1,54%	1	1,54%
PSD	2,15%	10 158	0	0%	1	1,54%	1	1,54%
PDN	1,99%	9 386	0	0%	1	1,54%	1	1,54%
ASDT	1,80%	8 488	0	0%	1	1,54%	1	1,54%
UNDERTIM	1,49%	7 042	0	0%	1	1,54%	1	1,54%
UDT	1,13%	5 332	0	0%	0	0%	0	0%
PR	0,91%	4 270	0	0%	0	0%	0	0%
PLPA/PDRT	0,85%	4 011	0	0%	0	0%	0	0%
APMT	0,84%	3 978	0	0%	0	0%	0	0%
PUN	0,68%	3 191	0	0%	0	0%	0	0%
PMD/PARENTIL	0,66%	3 125	0	0%	0	0%	0	0%
AD	0,56%	2 622	0	0%	0	0%	0	0%
PTD	0,54%	2 561	0	0%	0	0%	0	0%
PDL	0,47%	2 223	0	0%	0	0%	0	0%
PDP	0,40%	1 904	0	0%	0	0%	0	0%
PDC	0,19%	887	0	0%	0	0%	0	0%
Total	100%	471 419	65	100%	65	100%		

Regarding the results, CNRT was the most voted party, with 36.68% of the votes and 30 seats. FRETILIN was the second most voted, with 29.89% of the votes and 25 seats (Tribunal de Recurso, 2012a). The 3% threshold seemed to have had a stronger impact in the 2012 parliamentary election than in 2007 (Tables 11 and 12) and from the 23 competing parties in the election, only four passed the 3% threshold, namely CNRT, FRETILIN, PD and Frenti Mudança, thus achieving parliamentary representation (Tribunal de Recurso, 2012a). This left unrepresented historical parties such as UDT, PSD or ASDT (Tribunal de Recurso, 2012a), raising questions about the outcomes of the legal threshold (Interview with Vicente Guterres, 2013). Should there be no threshold, another six parties would have achieved parliamentary representation. For the first time FRETILIN was not the most voted party, but rather CNRT.

Table 12 – Timorese 2007 Parliamentary elections: official results and threshold impact

2007	65 member national constituency							
	Official data		3% threshold		No threshold			
Candidacy	Votes	% votes	Seats	% seats	Seats	% seats	Var. Seats	Var % seats
FRETILIN	120 592	29,02%	21	32,31%	20	30,77%	-1	-1,54%
CNRT	100 175	24,10%	18	27,69%	17	26,15%	-1	-1,54%
ASDT-PSD	65 358	15,73%	11	16,92%	11	16,92%	0	0%
PD	46 946	11,30%	8	12,31%	8	12,31%	0	0%
PUN	18 896	4,55%	3	4,62%	3	4,62%	0	0%
AD-KOTA-PPT	13 294	3,20%	2	3,08%	2	3,08%	0	0%
UNDERTIM	13 247	3,19%	2	3,08%	2	3,08%	0	0%
PNT	10 057	2,42%	0	0%	1	1,54%	+1	1,54%
PDRT	7 718	1,86%	0	0%	1	1,54%	+1	1,54%
PR	4 408	1,06%	0	0%	0	0%	0	0%
PDC	4 300	1,03%	0	0%	0	0%	0	0%
PST	3 982	0,96%	0	0%	0	0%	0	0%
UDT	3 753	0,90%	0	0%	0	0%	0	0%
PMD	2 878	0,69%	0	0%	0	0%	0	0%
Total	415 604	100%	65	100%	65	100%		

There was a widespread belief of fraud and manipulation regarding the final results, reinforced by the political proximity of the General-Director of STAE to the Prime Minister and the constant presence of the Prime Minister in the electoral facilities of STAE, even few days before the election (Interview with Manuel Tilman, 2015; Interview with Ramos Horta, 2015). The election was in general not perceived as fair (Interview with José Reis, 2015; Interview with José Teixeira, 2015; Interview with Manuel Tilman, 2015; Interview with Mário Carrascalão, 2015). Nevertheless, and despite some controversy regarding the documents and results of districts such as Baucau, the electoral results were not formally disputed (EUEOM, 2012a).

No party secured an absolute majority in Parliament. The President of the Republic invited the leader of the most voted party, CNRT, to form a government. After a short period of uncertainty and negotiations, a government was announced: it would be formed by all parties represented in Parliament, namely CNRT, PD and Fretilin, but not FRETILIN, the second most voted, which did not take part in it. There was a period of “public disorder”, especially in Díli and Viqueque districts, following this announcement (S/2012/765, 2012: 19). Nevertheless, the unrest was much smoother than previously in 2007 and the social discontentment with the presidential decision was visible to a much

lesser extent (EUEOM, 2012b: 25).

2.2. The EU Observation Mission and general appraisal of the 2012 electoral cycle

Despite UN extensive electoral support, important gaps in the elections remained. Regardless the change in the incumbent in power before and during the election, namely FRETILIN in 2007 and the CNRT led coalition in 2012, the same type of problems of previous elections persisted, even if perhaps growing stronger (EUEOM, 2007, 2012a). There was also great concern regarding the amount of money involved in the election, especially regarding CNRT, with people fearing a transition from the political debate to financial arguments instead (Interview with Mário Carrascalão, 2015; Interview with Ramos Horta, 2015).

The abuse of state resources remained a serious issue, as well as the lack of control regarding campaign financing, favouring the incumbent (EUEOM, 2012a). There was a serious need for more regulation in the field of campaign and political financing (EUEOM, 2012a: 3) and there was a lack of precision in the legal texts regulating these issues. There was “a large discrepancy between the amount of funds available to CNRT and those available to the other parties” (EUEOM, 2012b: 4). The existing law did “not set a ceiling on the amount of money that parties and party coalitions may raise” and there were complaints regarding the “financing of the CNRT campaign, which appears to have broken the law forbidding donations from national and foreign companies” (EUEOM, 2012b: 4). This was reported particularly to a public fundraising event held in Díli on 15 May 2012, conducted by the Prime-Minister and CNRT leader, Xanana Gusmão, in which “150 business people have contributed a total of US \$2.653.650” to the campaign of CNRT for the Parliamentary Elections (Jornal Independente, 2012a). The Global Organisation of Parliamentarians against Corruption in Timor-Leste issued a press release stating that “the donations appear to have come from a range of local and international companies that have also won large government construction contracts” and submitted the allegations “to the country's Anti-Corruption Commission, Prosecutor-General and the National Election Commission” (ABC Radio Australia, 2012). This also led to a strong protest from FRETILIN, whose parliamentary group issued a public statement and

reported the complaint to the National Electoral Commission, the Public Prosecution and to the Anti-Corruption Commission (FRETILIN Media, 2012). The fact was also strongly noted by the EU Electoral Observation Mission, referring that the “party itself confirmed that at a single fund-raising dinner in May, attended by Xanana Gusmão and his family, \$2.35m was publicly pledged, although the actual pledges made that evening may have been much higher”, including “companies making the highest pledges of between \$50,000 and \$250,000 were several Timorese and Indonesian companies and two from China which had received large government contracts” (EUEOM, 2012b: 16). This was in violation of several laws regulating party financing, which “forbid parties from receiving donations from companies, whether national or foreign, or from foreign individuals”, with a possible breach “of the conflict of interest and transparency provisions of the UN Convention against Corruption” (EUEOM, 2012b: 16).

The abuse of state resources by the incumbent remained a problematic area. There was the “use of the advantages of incumbency during the campaign”, mainly from CNRT, but also from other parties in the government (EUEOM, 2012b: 16). Two major cases stood out, namely the “disbursement of \$46.7m in three tranches between 15 June and 15 August” to pay the pensions to “more than 27,000 veterans of the resistance and their families”, an announcement made by the Secretary of State shortly before the election, regarding payments already due since the beginning of 2011 (EUEOM, 2012a: 17). Another Secretary of State, which was “a member of the CNRT National Directive Council (CDN) and was appointed Deputy General Coordinator for the party’s election campaign” announced “the launch of a month-long \$3/day work programme with a budget of \$20m”, with an unusual timing and exceptional large sum involved and “people received the payment without doing any work”, which raised “the question of whether this year’s programme was used to enhance the political prospects of those implementing it” (EUEOM, 2012b: 17). Apart from these, the EU EOM also noted minor cases, such as the use of electricity supply as a campaign instrument, as “towns used to frequent blackouts experienced several days of uninterrupted electricity in the week or so before the election” (EUEOM, 2012b: 17). The Report also found that these could “only be construed as an inappropriate attempt by the government to use the advantages of

incumbency to influence the outcome of the election” and such practices should “be outlawed during the campaign period” (EUEOM, 2012b: 26). There should also be “spending ceilings during campaigns” (EUEOM, 2012b: 27).

There was again an overall lack of enforcement mechanisms regarding the compliance with the electoral laws (EUEOM, 2012a). The effective enforcement of the legal provisions could only be effective to the “extent to which parties are prepared to cooperate with CNE in meeting the standards of transparency and accountability also required by the law” and fines should be discouraging, although “neither of these conditions is being met at present” (EUEOM, 2012b: 27).

The asymmetric powers and capacity regarding the EMBs, namely the Electoral Commission and STAE, persisted (Interview with Dulce Vítor, 2013; Interview with Faustino Cardoso, 2013). The Electoral Commission, the supervisory body, lacked powers and resources and even felt neglected regarding the level of UN electoral support (Interview with Dulce Vítor, 2013; Interview with Faustino Cardoso, 2013; Interview with Senior UN Electoral Officer, 2015). STAE, the executive body, which benefited from extensive UN support, was seen as not impartial and too close to the government (Interview with Ramos Horta, 2015). The political proximity between the Director of STAE and the Prime Minister (Jornal Independente, 2012b) led to a widespread belief of fraud and manipulation regarding the final results (Interview with Manuel Tilman, 2015), aided by controversy regarding STAE’s refusal to provide the CNE with the official forms with the results and to allow a recounting (EUEOM, 2012a: 11). Despite this, the electoral results were not formally disputed (EUEOM, 2012a), being respected by the main political actors.

The 2012 elections were considered successful and this was a very important part of the Joint Transition Plan, agreed by the Timorese and the UN, comprising also the government formation and opposition rights, “in accordance with democratic principles” (S/2012/765, 2012: 64). Therefore, and despite the still existing challenges, the UNMIT mandate was terminated, as foreseen, on 31 December 2012.

3. Embodying elections as a liberal state institution: popular participation and autonomy of practices

The UN peacebuilding interventions, embracing liberal statebuilding models, have challenging relationships with the local dynamics (Freire and Lopes, 2013: 205), often creating what some authors call “frictions” (Tsing, 2005). However, local appropriation may also take place, with potential innovative outcomes regarding the initial UN aim (Freire and Lopes, 2013: 213; Luís, 2015: 262).

In this section we analyse two very important aspects regarding how the local interacts with the UN model, especially, within elections: the turnout and what we call autonomy of practices. We highlight turnout, as many times the liberal statebuilding is concerned with setting the state institutions, neglecting popular participation. However, on the case of Timor-Leste there was a strong popular participation, as can be seen analysing voter turnout along the several elections. Another example of the embodiment of liberal practices by local actors is the autonomy that local actors might have when recreating these, introducing unforeseen local elements in liberal institutions, in an “encounter with local cultural and power dynamics” (Freire and Lopes, 2013: 204). This demonstrates how universals become concrete in practice (Tsing, 2005), in what can be seen as an original appropriation of the liberal peace model, something that the case of Timor-Leste has been praised for (Interview with Mikiko Tanaka, 2013). In this case, we analyse the Pact for a Peaceful Election (PPE – *Paktu ba Eleisaun Pasifika*) and its original genesis and contributions for peacebuilding.

Participation

Despite the extended UN intervention, the building of liberal state institutions alone could not by itself ensure popular engagement (Luís, 2013a). Despite the “tensions between the liberal peace and the realm of customary forms of politics and social structure” (Richmond, 2011: 115), traditional structures and dynamics provided a support basis that allowed people to be able to participate in the statebuilding process, as it can be shown in the voter turnout. In fact, electoral turnout figures are very consistent and it can be seen that people went massively to the polls from 1999 to 2012, helping to legitimise and to participate in the newly built liberal state. If we analyse the data from

electoral turnout in Timor-Leste, we find that it is always above 70%, as we can see in the following table (**Table 13**).

Table 13 – Electoral turnout in Timor-Leste

Election	Registered Voters	Turnout	Abstention
Popular Consultation 1999	446.666	98%	2%
Constituent Assembly 2001	421.018	91%	9%
Presidential Elections 2002	439.000	86%	14%
Presidential Elections 2007 (1 st round)	522.933	81,69%	18,31%
Presidential Elections 2007 (2 nd round)	524.073	81%	19%
Parliamentary Elections of 2007	529.198	80,54%	19,46%
Presidential Elections 2012 (1 st round)	626.503	78,20%	21,8%
Presidential Elections 2012 (2 nd round)	627.295	73,12%	26,88%
Parliamentary Elections 2012	645.624	74,78%	25,22%

Some authors argue that the electoral figures, namely regarding registered voters, are not accurate (Leach, 2009: 223) and therefore the abstention rate is increased (Feijó, 2012: 39; Leach, 2009). Nevertheless, what the overall figures show is the Timorese will to participate in the democratisation process, responding positively to the participation in the liberal state building process.

Elections became very valued in the international community, in part because they can be one of the few measurable patterns of an international intervention, allowing for an exit strategy (Ellis, 2009: 1). The national counterpart may be aware of this and act accordingly, regardless of its true commitment to democracy. Although popular participation does not mean that the liberal state institutions as a whole are meeting their goals towards the people (Luís, 2013a), it demonstrates the popular will to take part

in this model, also creating pressure for state institutions to deliver (Interview with Mikiko Tanaka, 2013).

Autonomy of practices: the Pact for a Peaceful Election

In Timor-Leste the traditional organisation institutions were always present, sometimes prevailing over the liberal state institutions (Richmond, 2011: 124; McWilliam, 2005: 40). The Pact for a Peaceful Election can be a good example of how a liberal statebuilding institution, namely elections, was backed and routed on social organisation and traditional resources and institutions. The PPE was an initiative of the Timorese Electoral Commission and took place in 2012, shortly before the 2012 electoral cycle. Led by the CNE, it aimed at congregating all leaders of all political parties, as well as the people in the villages with traditional authority (the *lia nain's*, or the “owners of the word”), whose authority derived from the ancestral traditions, as well as people in general. After congregating all these people, a traditional ceremony would take place, according to the rituals of the traditional culture, in every village (*aldeia*), municipality (*suco*) or district (*distrito*). This aimed at congregating all the stakeholders for a compromise regarding peaceful elections and against the use of violence in the electoral process (Interview with Dulce Vítor, 2013; Interview with Faustino Cardoso, 2013). This initiative aimed also at bringing the electoral process closer to the people and their everyday lives and to make them perceive the electoral process as their own (Interview with Faustino Cardoso, 2013). At the same time, the initiative aimed also at calling another set of forces, namely the sacred or *hamulak*, with another set of sanctions in case of non-compliance (Interview with Dulce Vítor, 2013). Being performed according to the traditional and sacred rituals, invoking the power of the ancestors gave this procedure another level of legitimacy, rooted in the traditional institutions, in a unique approach (Interview with Mikiko Tanaka, 2013), and not just on the ones resulting from the liberal state and the international intervention. This initiative took place when UNMIT, the UN mission, was still present in the territory, and was never foreseen in any mandate.

When we analyse this initiative, we can see here an “accommodation” of the liberal state institutions, brought by the use of traditional strategies and “customary practices”, which have always been present, even in times of “acute economic hardship”

(Richmond, 2011: 122). This was done “at a customary and cultural level (...) rather than at a material level” (Richmond, 2011: 122) due to the difficulties in the development process (Lopes, 2013). At the local level this can also be seen as a search for security and continuity (McWilliam, 2005: 40), with “broad cultural resonance and popularity” (Richmond, 2011: 124), as well as familiarity (Interview with Faustino Cardoso, 2013) which could be used to bridge the liberal state institutions into the local sphere. The Pact for a Peaceful Election can be seen as an example of the use of traditional practices, in order to support the building of the modern state (Richmond, 2011: 122). The initiative aimed at “connecting the liberal state project to local practices of politics and conflict resolution” (Richmond, 2011: 124). In this case the Pact for Peaceful Election was seen by the Commissioners of the National Electoral Commission as leading to an effective peace and as connecting the liberal state institution “elections” to the everyday lives of the Timorese people (Interview with Dulce Vítor, 2013; Interview with Faustino Cardoso, 2013). The same end was recognised by other actors at different levels of society (Interview with Primary Education Teacher, 2013), including the UNDP Country Director (Interview with Mikiko Tanaka, 2013). These initiatives can play a role in reconciliation, both at the material and at the sacred level (Richmond, 2011: 121), or in important areas such as “politics and conflict resolution” (Richmond, 2011: 122), as well as institutions of social structure and stability (McWilliam, 2005: 34).

These traditional institutions were crucial for the stability of the newly created state, and some of them more than probably the formal institutions of the new liberal state (Richmond, 2011: 123). This interrelation, between traditional rooted institutions and the ones from the liberal state, such as in the case of elections, takes place outside the international intervention mandate and nevertheless both converge to the same objective, with no “contradiction between custom, culture and democracy” (Richmond, 2011: 124); on the contrary, all work towards the same end: achieving peace and stability through a democratic process, namely through elections (Interview with Dulce Vítor, 2013; Interview with Faustino Cardoso, 2013; Interview with Mikiko Tanaka, 2013). Some of these traditional institutions can prove to be very useful in developing “a sophisticated form of peace” (Richmond, 2011: 124) rather than the ones of the liberal state, or, at

best, can also converge to the same end (Interview with Faustino Cardoso, 2013). Local dynamics of conflict societies have many times been considered “insignificant when compared to the reach of liberal institutions and the market” (Richmond, 2009, 2011: 115) or even antagonistic to the project of the liberal state and its institutions (Chandler, 2013). However, instead of the “general dynamic of opposition” (Chandler, 2013; Richmond, 2011) between the local and liberal in peacebuilding and statebuilding operations, in the case of Timor-Leste the local resilience has, in some way, fulfilled the gap in the areas where the liberal intervention was not able to provide for (Lopes, 2013; McWilliam, 2011).

We can conclude that in Timor-Leste the local was able to support the modern state (Richmond, 2011: 118) and the “resurgence of traditional belief systems and customary forms of governance” had the effect of “redressing the local agency gap” (Richmond, 2011: 118). The local can, therefore, play different roles in peacebuilding and statebuilding, namely regarding its “participation, stakeholders, and ownership, its legitimising effect, resilience, of civil society and needs, and of social mobilization” (Richmond, 2011: 116). This can also show how the democratic universals became concrete in practice (Tsing, 2005) and how this practice also contributed to support and embed them, even though not always in a consistent fashion (Freire and Lopes, 2013: 214).

Conclusions

In general, the Timorese elections held after independence, in 2007 and 2012, have been considered to meet the basic democratic standards, despite some important flaws. The lack of effective law enforcement mechanisms, the lack of financial control, as well as the abuse of state resources, especially by the incumbent, are some of these issues, which seem to have persisted over time. The 3% threshold can also be seen as controversial in the effects it produces, despite not being a concern in the Timorese society. As the mere existence of a political party entitles it with campaign financing, limiting the number of political parties is often seen as desirable and as saving public resources, in a very questionable approach. The lack of power and resources of the CNE is a serious issue, as well as STAE being perceived as too close to the government. All these

issues seem to have continued over time and despite changes in the incumbent government and extensive UN electoral support.

In 2007, also as an outcome of the severe unrest, a new multidimensional UN mission was deployed, namely UNMIT. A new modality of UN electoral assistance was put in practice, namely a Certification Mission, which would follow close the 2007 electoral processes. The UN Certification Team ended up not certifying the elections, as all standards had not been met, although the majority had. This was a controversial approach, which again led to a contentious relation with the Timorese government and the UN mission itself, in a time of great social tension. Despite the Team's view, UNMIT argued that some of the standards might have been crucial for the integrity of the electoral process, while others might have been minor, especially when considering the social and political context of Timor-Leste at the time. The Minister of State Administration also highlighted that there were several complaints sent to New York regarding the Certification Team (Interview with Ana Pessoa Pinto, 2015). Following previous patterns, a contentious relationship between the Certification Team and the Timorese Government seems to have maintained, with UNMIT itself playing a role, in the end challenging the conclusions of the UN Certification Team.

However, many of these flaws existed since the 2001 electoral system created by the UN mission, with the Timorese mirroring previous UN practices. Among these we can find the excessive powers of the executive over the electoral administration structure, the lack of powers of the independent electoral body, as well as some distortions on proportionality between votes and seats. These aspects, as well as innocuous electoral infractions or lack of limits to the incumbent powers, could have been dealt with more carefully. However, in the post independence phase, the lack of enforcement powers and means, as well as a moderate cartelisation of the parliamentary representation, proved it to be hard to achieve.

Despite these factors, elections in Timor-Leste became indeed one of the greatest mechanisms of competition between the main political actors, which have used the institutions to the most of its flexibility (Luís, 2016). Electoral turnout has also been very high, in a demonstration of the strong will of popular participation. Along the

political impacts of the institutional choices made, the conflict has indeed channelled through democratic institutions, in particular elections, in a very positive and autonomous contribution to peacebuilding.

There seems to exist a consensus nowadays among the Timorese regarding the adequacy of these institutions to Timor-Leste and its social and political reality. None of the institutional options made in 2001 have been amended until today nor this seems to be at stake. There is a generalised sense of adequacy of the present institutional design, very likely due to the checks and balances and the flexibility it allows for (Luís, 2016).

General Conclusions

This thesis used an institutional analysis to address the creation of the Timorese power institutions, namely the electoral system, within a UN electoral assistance framework. Our aim was to demonstrate how this institutionalisation process took place and the impacts this had regarding peace. The institutional analysis proved to be a valuable framework, as it allowed to reconstruct the process of institution building, its dynamics, the relevant actors' positions, and the broader processes that led to the crystallisation of norms. As institutions can be both constraining and constitutive, the initial institutionalisation process also had powerful impacts on the subsequent process, namely the creation of the Timorese electoral system. This broader process took place between two main sets of actors, namely the Timorese and the UN.

The UN electoral assistance was institutionalised within a long process, not always linear. It was first provided with the aim of promoting peace. Since an early stage, the debate taking place at the UN GA raised concerns regarding national sovereignty. It was formally recognised that it was always up to the member state to make the structural options needed for an electoral system to be created and implemented. Nevertheless, multiple forms of electoral assistance developed, broadening in scope and reach. The UN involvement grew in complexity, embracing very substantial and important institutional options. Despite having a strong political and social impact, these UN interventions were always labelled as technical, not addressing the potential impacts of the electoral options made.

UN electoral assistance started to have a growing presence in UN peace missions, being often at its core. Post-conflict contexts are very sensitive and the electoral options can have a great impact on peace. The growing complexity of UN involvement was not followed by substantial guidelines, leaving aside the theoretical debate on the deep implications of electoral options. In fact, the literature has produced a vast field of studies on electoral systems, apparently not reflected in UN documents. One of the literature conclusions is that there is no perfect electoral system, as it often implies trade-offs between several possible objectives. Context also plays a great role, as consequences

of institutional design are not necessarily replicable. However, the options made need to take these trade-offs into account and to be aware of their possible implications.

Despite this fact, the literature suggests that proportional representative electoral systems seem to be preferable in post-conflict scenarios, due to the power sharing mechanisms these allow for. A fair translation of votes into seats, as well as broad proportionality, seem to be key aspects, ensuring equal opportunities for all competing actors, as well as broad enfranchisement of society. Even within the UN electoral systems design, proportional representative electoral systems seem to be the norm, also due to their simplicity, allowing a broad popular understanding of the electoral rules. However, the UN seems to lack formal acknowledgement of the political implications of the options made. Notwithstanding, the most common form of UN electoral assistance is labelled as “technical assistance”, thus leaving aside the theoretical debate from its concrete interventions. Although the consequences of different institutional settings in the electoral field might not produce the same outcomes in different contexts, general guidelines could be provided, in order to better shape this powerful UN intervention, with strong social consequences.

With this theoretical background, and following these lines of research, the case study was analysed. The data gathered, through several periods of fieldwork, proved to be of great richness. As such, most of the thesis’ conclusions are based on the empirical data collected, illustrating the theoretical debate previously introduced in the first chapters.

Case study: Timor-Leste

The UN presence in Timor-Leste started with the Popular Consultation, in 1999, allowing the Timorese to opt either for independence, or for special autonomy within the Republic of Indonesia. After political negotiations regarding the UN mandate (and its shortcoming, namely assigning Indonesia with the security), the UN organisation of the ballot was crucial for its success. The Timorese civil society, as well as its leadership, were united and played a prominent role, namely ensuring the Popular Consultation would have undisputable popular legitimacy. From the registered voters, 98% went to the polls, and 78.6% voted in favour of independence. The Timorese were able to express their

preference for independence through the vote, clearly adhering to the ballot as a way of resolving the existing conflict.

Following the Popular Consultation, the UN was endowed with the whole authority over Timor-Leste and UNTAET was established, being in charge of the transition to a Timorese administration. The appointed Transitional Administrator decided when and how to further delegate the authority. State institutions had to be crafted, as well as the process according to which this would be done. The initial unity among the Timorese elites started to vanish and a power struggle developed. After many years of resistance, clear distinct ideas of the institutional design for the country developed. Xanana Gusmão envisaged a national unity approach, where political parties would not be prominent and, despite being an extremely important actor during the resistance, did not constitute himself initially as a political actor. FRETILIN saw itself as one of the most important resistance actors and felt legitimised in order to take part in the decision process as such, assuming its nature of a political party. The UN approach was crucial within these two perspectives. CNRT, a platform aggregating civil society and all political parties, formed before and after 1999, was created, aiming at being the UN national counterpart. If at a first moment, the UN wanted to remain neutral, the transition path led to a UN option being formulated. FRETILIN felt neglected by having the same weight in the CNRT as post-1999 political parties, and Xanana emerged as the UN main interlocutor. FRETILIN abandoned the CNRT and the legitimacy of this body was seriously threatened. If at a first moment, UNTAET had envisaged a broad popular consultation process to draft the constitution, it later called for elections, especially after FRETILIN left CNRT. The unanimity of all Timorese political actors, including Xanana Gusmão and Ramos Horta, towards a rapid UN exit also pushed for this, as an elected Constituent Assembly would be quicker than the broad popular constituent process.

UNTAET scheduled the elections for the Constituent Assembly, at the same time maintaining the Constitutional Consultations (despite these not being welcomed later in the Constituent Assembly, as they were seen as a UN-owned process and curtailing the role of the Assembly). The electoral system chosen by UNTAET for the Constituent elections ensured a broad representation of all competing political parties, even if its

provision for district representatives somehow favoured FRETILIN, the most voted party nationwide. However, FRETILIN did not secure the 60 seats necessary to approve the Constitution and had to negotiate. A broad constituent process was initiated, with political parties presenting their constitutional projects and discussing the relevant institutions.

Despite internal political rivalries, the Timorese sought to leave the UN aside the constituent process since very early. UN technical advice was not provided, nor was UN translation even seen as desirable, with Assembly members translating texts among themselves. The use of Portuguese language had also a strong political significance, as it meant leaving most of the UN staff aside, but also giving a greater role to the Portuguese speaking elite (many coming from the diaspora in Mozambique and affiliated with FRETILIN). Nevertheless, there was no express discomfort with this within the Assembly. While dominating the Constituent Assembly, both in numbers and preparedness, FRETILIN's instruction was of great inclusion, with proposals being negotiated and voted.

The conclusions of this research contrast with much of the literature consulted on the issue, particularly in what concerns the Constituent Assembly. This is often seen by the literature as a non-democratic process, led by FRETILIN. This argument informed our interviews and, to our surprise, all interviewed actors have emphatically underlined the opposite. In order to further test this idea, we broadened the initial scope of the interviewees. As such, we have carried out interviews with several key members of FRETILIN (Interview with Ana Pessoa Pinto, 2015; Interview with Francisco Guterres Lu-Olo, 2015; Interview with José Reis, 2015; Interview with José Teixeira, 2015), but we have also interviewed people belonging to political parties that have had an independent path, such as KOTA and PSD (Interview with Manuel Tilman, 2015; Interview with Mário Carrascalão, 2015) and that in 2007 supported the CNRT Government, led by Xanana Gusmão, while FRETILIN was the opposition party. We also interviewed people having important roles in the Constituent Assembly, at the time affiliated with FRETILIN, but colliding with it at a later stage and being thoroughly perceived as independent (Interview with Adérito Soares, 2015); people strongly affiliated with CNRT (Interview with Dionísio Babo Soares, 2015) and at the time of the interview having important roles in the CNRT

parliamentary majority (Interview with Vicente Guterres, 2013); as well as prominent Timorese political actors that occupied key roles in the Timorese state, directly taking very controversial institutional decisions (Interview with Ramos Horta, 2015).

Regarding the shaping of the Timorese state institutions, the conclusions are consensual and rarely controversial among the interviewees. At the same time, the conclusions extracted from the interviews contrast sharply with the existing literature on the issue, and do not allow us to follow most of the academic conclusions. At a late stage of this research we also confronted some interviewees (Interview with Adérito Soares, 2015; Interview with Dionísio Babo Soares, 2015; Interview with Francisco Guterres Lu-Olo, 2015; Interview with Ramos Horta, 2015) with the conclusions of some literature, namely regarding the lack of democracy within the Constituent process, which were expressly refuted. To our surprise, especially interviewees affiliated with FRETILIN referred they had very rarely been interviewed in this regard, and that FRETILIN's view had never been accounted for in these type of analysis. Nevertheless, their perspective on the Constituent Assembly was broadly the same as other interviewees.

Regarding state institutions, the semi-presidential government system was the option chosen, with a Parliament and President of the Republic directly elected by the people. FRETILIN was the biggest party, but lacked a prominent leader that could be President of the country. Parliamentary and governmental powers grew and the presidential role remained a more symbolic one. However, the President would have a very important influence towards the appointment of the Prime-Minister, a detail often neglected in the literature. The origins of this clause were not easy to trace, as it was not in the initial FRETILIN constitutional draft, and references were scarce in the interviews. It was allegedly introduced during the constituent debate to provide the President with a greater influence over the Government. This influence would be far more than theoretical and it was used in 2007, with far reaching social and political impact in the country. Its use in 2007 was strongly and mostly contested by FRETILIN cadres and supporters, but was however undisputed before the court. In this case, even if it was a surprise that in 2007 Xanana Gusmão could have been appointed to form a government, the fact is that CNRT indeed secured a parliamentary majority that formed and supported a CNRT-led

government. Even in this context, both the legislature and government have performed their five-year mandate.

Again, this might show that the alleged FRETILIN's dominance in the Constituent Assembly did not mean that the institutional architecture effectively favoured it. It also shows how ambiguous provisions risk having undesired effects, which, in transitional democracies, risk jeopardising democratic stability. On the other hand, this can be the result of institutional flexibility, allowing for multiple legitimate solutions than the ones envisaged by a more obvious approach. What seems to remain undisputable is the use that the Timorese have made of state institutions. They have used them to the most of their flexibility, going even further than the obvious outcome. At the same time, and despite being the product of disputed options, institutions seem to have performed according to their expected role.

Institution building and the Timorese electoral system

After independence, a period of institutional consolidation followed, aside a strong UN presence. During this period, the UN mission aimed at fostering institutional consolidation. On 2006-2007 a new crisis emerged, with institutions being at the centre of the conflict. The next electoral cycle took place in 2007. The electoral system had to be designed, with crucial options to be made. Although the Constituent Assembly already opted for a proportional electoral system, this was vague regarding further specifications and multiple options could emerge. UN electoral assistance was requested to draft the electoral laws, though the emphasis was put on the Timorese leadership of the process. A UN NAM was deployed but its broad-reaching report generated an adverse reaction in the Timorese Minister Ana Pessoa, which saw it as too intruding. Instead, a cooperation request was addressed to Portugal, which acceded to it, drafting a proposal later submitted before the Parliament.

In this proposal, the FRETILIN government envisaged a single national constituency of 65 members and district representatives were abandoned. Closed lists should be proposed by political parties, and seats would be allocated according to the D'Hondt Method, slightly favouring most voted parties, with a 5% threshold. Opposition parties also submitted a proposal, similar to UNTAET's electoral system. It consisted of a

65 member national constituency, with seats allocated according to the Hare Quota, slightly favouring smaller parties, and with no threshold. The debate coincided with a period of great social and political unrest in Timor-Leste, with FRETILIN's government facing great contestation and the Prime-Minister Alkatiri being forced to resign. The discussion in the Parliament was tense and most of the opposition parties abandoned it, though some remained and indeed sought to influence the debate. The result was a proportional electoral system, with a single national constituency of 65 members. Members should be elected according to the D'Hondt Method. Although the threshold was lowered to 3%, it did not make a difference regarding the previous 2001 election results. However, political realities are very dynamic and a new political party was soon to emerge, led by Xanana Gusmão.

Electoral administration was a controversial issue, with FRETILIN proposing an electoral commission mostly appointed by the political power, such as the President, Parliament and Government. The opposition saw this as allowing the control by the most voted parties, through the elected bodies. Instead, it proposed a broader composition, with members from NGOs, religious bodies, in order to curtail and balance the political influence. This was the chosen model, with influences from FRETILIN's initial proposal. The Electoral Commission would coexist with STAE, the government body in charge of organising the elections. Due to the late provision and appointment of CNE, STAE had far more experience, resources and capacity in general. To add up to, STAE had also been a long beneficiary of UN electoral support, in its many formats, while the CNE, still to be appointed, could not be a similar UN beneficiary. In the UNDP electoral support project, on the eve of the 2007 elections, detailed electoral support to STAE was provided, while for CNE there was just an allocation of funds for their eventual request. This was also felt by CNE officials, who felt neglected by the UN and received far less support, including advice, than the governmental body did.

The Timorese electoral system was thus the result of autonomous Timorese decisions and well informed options, led by the executive and further approved in the Timorese parliament. In general, it was consistent with the international standards, though specifically designed to have an impact in the Timorese reality. The single national

constituency aimed at avoiding internal divisions, in a period when these were critical. Its most striking elements were probably the electoral threshold, which, along with an asymmetrical electoral administration, as well as vote counting only at the district level, were seen as allowing a greater governmental influence over the electoral process than other electoral systems. FRETILIN was seen as dominating state institutions, including STAE, the body in charge of implementing the electoral process. This generated mistrust among the opposition parties and legal provisions for vote counting only at the district level were seen as unacceptable. However, both the UN Certification Mission and the EU Observation Mission pointed the lack of infractions at this level, despite the Timorese elites being uncomfortable with this option, as it would potentially allow room for electoral fraud, spreading mistrust in a time the country needed to build confidence in its institutions and elected bodies.

UN electoral assistance was not seen as mitigating any of these aspects of electoral design. At a first moment it was seen by the FRETILIN government as being too intrusive and was left aside on law drafting. The Certification mission put in practice for the 2007 elections made a broadly positive appraisal of the electoral design (despite strong critiques to the election itself), though many of its further legislative recommendations were not followed by the Timorese entities. The Timorese electoral system options should therefore be seen as exclusively Timorese and as the product of very precise choices. There was a great knowledge of the function of the electoral mechanisms, which can be said as having grown over time. If the essence of the electoral system remained unchanged, it was subject to very precise amendments, again on the eve of the 2012 elections. This indicates that there was an awareness of the main elements and effects of the electoral architecture, the choice of which seems to have been from the beginning an autonomous Timorese choice, regardless of extensive UN electoral assistance.

Institutional outcomes: the 2007 and 2012 elections

The effects of the electoral system options could be felt in the 2007 and 2012 electoral cycles. In the first place, it should be noted that there was a strong popular participation in both electoral periods, through the electoral cycles they were composed

of (Presidential 1st round and runoff, and Parliamentary elections). This participation can be illustrated by the number of competing parties and coalitions, as well as by the electoral turnout, the lowest of which was above 70% (though on a steady descending trend from the initial 98% of the Popular Consultation). This can be a true sign that the people are really engaging with the liberal state institutions created, agreeing to cast their vote, in order to express their political preferences through electoral competition.

The Timorese electoral system is seen as having ensured a fairly proportional conversion of votes into seats. The threshold is seen as curtailing the chances of smaller parties, as they are only able to secure parliamentary representation when their electoral outcome is so expressive (above 3%) that it often allows them to secure two seats. However, in the Constituent Assembly there was also a very important contribution of smaller parties having just one representative, an aspect highlighted in some interviews. Notwithstanding, the threshold was not seen as negative by most of the interviewees, as it would prevent political fragmentation in a country as small as Timor-Leste. The most problematic issue highlighted was the governmental bias of STAE, which contrasted with the lack of strength of CNE. This was a recurrent issue highlighted by the interviewees, being also one of the most striking issues both in the UN Certification Mission Report, as well as in the EU Observation Report. The lack of electoral enforcement mechanisms added to this, with legal provisions with a declarative nature only, in areas such as legal infractions. The problems identified in 2007 had even stronger effects in 2012, with broad concerns regarding electoral fraud, lack of electoral law enforcement, a biased electoral administration towards the government and lack of control of campaign financing and abuse of state resources, favouring the incumbent. Adding to the excessive governmental proximity of STAE, only four parties achieved parliamentary representation, much due to the effects of the legal threshold, reinforcing the widespread belief of electoral fraud.

The UN electoral assistance in Timor-Leste was provided in multiple formats. For the 2007 elections, UN electoral support was provided through a UNDP project, the UN mission, UNMIT and a Certification Mission. Despite the many formats of electoral assistance provision, it is strongly disputed that there was a sole “UN approach”, let alone a consistent focus. Indeed, the Certification Mission was approved by the Security Council

as verifying the electoral process by subsequent stages, but this was changed by the mission itself, along with the UN DPA, arguing that an overall appraisal was a better methodology. The mission was deemed to be independent, but sought the UNMIT's approval of its benchmarks. At the same time, the Certification mission assessed an electoral cycle to which the UN was also providing other forms of support, namely through the main UN mission, UNMIT, as well as UNDP. Through the performance of its mandate, a tense relationship grew between the Certification Team and the Timorese government, in an initial stage, but also with the UNMIT itself. If at the beginning the UN SG seemed to have encouraged the Timorese to adopt the Team's recommendations, at a later stage it recognised the successful conduction of the elections, despite the Team's negative appraisal. It is also questionable that the Team adopted a different methodology than the one initially envisaged by the UN SG. Plus, the final assessment is debatable, as it argues elections would only be certified should all benchmarks be met. The Team lacked consideration for the impact of the non-certification, especially taking into account that most of the benchmarks had been met and that non-compliance would only rarely refer to aspects that could influence the electoral outcome, as it expressly recognised. The Team's appraisal added up to the existing tension between the Timorese and the UN, with UNMIT itself (despite being an electoral assistance provider as well) picking a side and openly criticising the Team's conclusions.

Regarding the support being provided by UNDP and the UN mission, its scope also raises some questions. In fact, in 2007 this built upon a seemingly intentional asymmetric design and capacity of the electoral bodies. Assistance was being consistently provided to STAE, even in the eve of the 2007 elections, while the independent supervision body, CNE, was still to be appointed, and therefore could not be a beneficiary. The UN support reinforced the governmental capacity, for what it could be used, and lacked being provided to the independent supervision body. This asymmetric assistance was consistently felt along the years, also strongly referred to after the 2007 electoral cycle. The lack of powers of the supervision body, as well as the bias of STAE, was consistently referred to along the interviews carried out. Providing asymmetric electoral support in this context, thus favouring even more the electoral body closer to

the government, constitutes a questionable approach in a country living in a post-conflict context and still in a transitional phase of a democratic system.

At the same time, the question remains if there was an overall aim on the provision of the UN electoral assistance. Tracing back from the general perspective of the evolution of UN electoral assistance, specific objectives seem to have been key for its provision. Among these there was peace, a true commitment to democratisation and the possibility of having an impact on a broader good governance agenda. In Timor-Leste, elections were a key aspect of the new liberal state, which the UN helped to build. However, a substantial focus on the provision of electoral assistance could not be identified. Instead, it seems that from the very beginning the Timorese took the lead on this, with the UN providing assistance for the objectives or goals defined by Timorese institutional actors. If the context was of deep asymmetric institution building, it should be questioned if the UN should provide assistance, thus risking deepening these differences. Even if the UN might have wanted to remain neutral, providing support in a biased context can very hardly be considered as preserving neutrality. Despite recognising an initial crucial role, the UN assistance is seen by the Timorese as having been mostly formal and disregarding many Timorese realities. The resulting institutional outcome is, therefore, broadly seen as a product of the Timorese choice. Elections and state institutions, including their bias and flaws, are indeed a product of Timorese-owned and intentional choice, and have been thoroughly used as a peaceful mechanism to channel the conflicts, with broad popular support.

Looking at the broader picture in Timor-Leste, the liberal state seems to have been built with a great knowledge and understanding of its institutions by the Timorese. The UN had the initial role of facilitating the transition, but was rapidly bypassed by the Timorese, who were eager to put their institution-building enlightened options in practice. State institutions were tailor made and put in practice according to Timorese specific political and social knowledge. The UN was seen as having a merely formal role and was not allowed to interfere in this process. Despite the ambitious UN mission present in the territory since 1999, Timor-Leste always had a very strong traditional and social organisation. These structures have been present side by side with the liberal state

institutions, sometimes conflicting or being present in a parallel way. The Pact for a Peaceful Election, carried out by the CNE, shows how traditional practices can contribute to foster liberal state institutions, maintaining and reinforcing the identity of both. Popular support was also a key element of the viability of the Timorese state. Its formal birth as a sovereign state had its origin on the Popular Consultation, held in 1999, with the popular will being crucial in this regard. The 98% turnout seemed to have left a “democratic imprint” in the Timorese, with great turnout in further elections.

Concluding remarks

In Timor-Leste the elites had a clear sense of what they wanted for the country, and understood the institutional options, its function and effects, since a very early stage. On the contrary, the UN administration lacked taking local actors and dynamics into account and was seen as having missed the existing power dynamics. Also as a product of this, the UN generated antagonism, with the Timorese seeking to leave it aside since a very early stage. Nevertheless, the UN institutional designed had a strong impact, especially on the framework it created for competing political actors.

The UN electoral assistance lacked debate on its institutional impact. Decisions were labelled as technical and left to “experts” to be implemented, while implementers in the field had a very broad margin of decision, with concrete material implications, such as, for instance, the 2007 Certification Mission. It is questionable if there was a “One UN” approach to electoral assistance, with conflicting views among several UN agencies or agents. UN electoral assistance was reshaped against the first UN directives, at the experts own will, whereas probably they should all be contributing to a common goal. Furthermore, the UN electoral assistance did not necessarily focus on the outcomes of the electoral system being proposed, and there was not an explicit consideration for the outcomes of the electoral assistance. Similarly to initial stages of UN electoral assistance, it can be provided regardless of a broad and consistent commitment to democracy. For instance, UNMIT and UNDP electoral assistance were provided over a biased electoral administration design (in 2007, but also in 2012), thus contributing to foster the asymmetry. It somehow detached from broader goals, such as peace and democracy, and although it may have led to it, it did not seemed to be due to a UN intervention focused

on these goals. Labelling electoral assistance as essentially “technical” renders invisible the political character and impact of the options made. As long as this is not expressly recognised, these remain unseen, making it more difficult to be addressed and dealt with. It also raises accountability issues, as the decision chain is not always traceable or existent, and yet (loose) decisions are taken under a supposedly unique UN approach to electoral assistance. This contrasts sharply with the scientific literature, which is proficient on examples of moderately predictable impacts of electoral options. It is therefore questionable if UN electoral assistance can aim at autonomously having any broader objective, such as peace or democracy. By other words, if UN electoral assistance is implemented without taking the broader goals (and context) into account, it risks being counter-productive regarding the promotion of peace and democracy. Particularly, in the case of Timor-Leste, a well informed and aware elite seemed to have taken the lead since very early, and the UN electoral assistance risked being an instrument to shape and strengthen institutions, especially regarding elections, to better suit the aims of those leading political actors.

In the Timorese case, the elites seemed to have taken the command of the institutionalisation process and it was the UN that followed their dynamics. The will of a UN successful intervention led to the UN being driven by the local, without having a focused global intervention. In this context, the UN electoral assistance was also driven by this trend, with the specific Timorese will taking the lead and determining the institutional direction, even if missing the best standards. This created initial tensions, further aggravating as the Timorese formally took the lead.

Overall, political competition was channelled through the liberal state institutions, which have been used to the maximum of their extent, shaping and deepening political grievances. Despite great criticism regarding the constituent options made, especially within the academic community, there seems to exist a consensus nowadays among the Timorese regarding the adequacy of these institutions to Timor-Leste and its social and political reality. None of the institutional options made in 2001 have been amended until today nor does this seem to be at stake. The institutional design is seen as adequate, channelling political action.

However, political realities are dynamic by nature and the institutional design was later subject to surprising outcomes, namely in 2007, even for some of its main creators. Political competition often takes the institutional scope further than what seemed to be originally foreseen, in an exercise of institutional flexibility. Nevertheless, state institutions have been used within their scope and, many times, to the most of their institutional flexibility. The internal power struggle developed and was fought among the institutional lines, almost in an inversion of the Clausewitz clause. This can be seen in the electoral results for the Constituent Assembly, the constituent process or the government formation clause as it was used in 2007, and to a lesser extent in 2012. Whenever there was a breach or a possibility of a breach in the institutional design, in many cases as an outcome of UN decisions, the main competing sides used it and tried to take advantage of it, sometimes with unforeseen consequences in the concrete case. This is true for the elites, that have envisaged them and competed tightly, but also for the people, that seemed to have been supportive of this, namely by voting and thoroughly but critically accepting its main outcomes.

Recent developments and further research

During the course of this research there were important developments regarding the UN approach to electoral assistance. It was finally recognised that more guidance was needed and the UN developed a series of documents addressing this issue. Regarding Timor-Leste, the institutional conflict aggravated, although with a new configuration. Again, the latent conflict was fought along the institutional lines, using the flexibility that state institutions allowed in this regard. At the same time, institutional reforms were carried, in order to accommodate new intents, with very precise aims. In some aspects, the fragilities of the previous institutional design deepened, as in the case of the Electoral Commission and the tighter regulation on the creation of political parties, as we summarise below.

After 2012, the date of this research, there were important documents approved within the field of UN electoral assistance, further specifying UN orientations in the matter. In 2012 the approved the Guidelines for “UN Electoral Needs Assessments” (UN Focal Point for Electoral Assistance, 2012a) and a Policy Directive on the “Principles and

Types of Electoral Assistance” (UN Focal Point for Electoral Assistance, 2012b). In 2013 there was finally a Policy Directive on “Electoral System Design and Reform”, where the potential impacts of each electoral option were highlighted, along with relevant literature and possible effects of each concrete option. This document intended to “provide UN personnel with a general understanding of key aspects of electoral systems and UN policy and guidance on how to support Member States” (UN Focal Point for Electoral Assistance, 2013b). There was also a Policy Directive on “UN Electoral Assistance, Supervision, Observation, Panels and Certification” (UN Focal Point for Electoral Assistance, 2013a) and Guidelines to the “Provision of Security in Electoral Processes” (UN DPKO/DFS, 2013). On 2014 two other documents were approved, namely policy directives on “UN Support to the Design or Reform of Electoral Management Bodies” (UN Focal Point for Electoral Assistance, 2014a) and on “United Nations statements and public comment around elections” (UN Focal Point for Electoral Assistance, 2014b).

In Timor-Leste there were also important developments regarding the main state institutions. In 2015 there was a move towards unity in the government of Timor-Leste. FRETILIN voted the state budget favourably and, after negotiations, Xanana Gusmão resigned as Prime-Minister and Rui Araújo, a FRETILIN cadre, replaced him in a CNRT led government. FRETILIN reiterated the party did not take part in the government, but rather supported the existent coalition government, acceding to one of its cadres being Prime-Minister (Alkatiri, 2015). This approach towards “national unity” led to a lack of parliamentary opposition, and the President of the Republic became somehow a dissonant voice in the country, raising concerns regarding corruption and lack of investment in areas as education and health. Strong tensions emerged between these state institutions (Alvarez, 2016), with allegations that the President was being the opposition and forming a new political party.

In 2016 there was a general move towards a growing governmentalisation of the state and its institutions, including the electoral. A new set of legislation was approved, regarding political parties (Lei n.º 2, 2016), voter registration (Lei n.º 6, 2016) and the EMBs (Lei n.º 7, 2016). The composition of the Electoral Commission was dramatically changed, being reduced from 15 to seven members (Lei n.º 7, 2016). These would be

appointed by the President of the Republic (1), Government (1), judiciary (1), public prosecution (1) and Parliament (3), subverting the intent of its creation (Lei n.º 5, 2006). The Parliament also elects the President of the CNE, which has also a Vice-President and a Secretary, the three being permanent members. This leads to the CNE reflecting the political majority at the time, whereas it should instead supervise and be impartial towards political power. This amendment took place again on the eve of the 2016 local elections, with general elections expected to take place in 2017. While the CNE could, for the first time, rely on its institutional memory and capacity built along the years, all the mandates were immediately terminated, with the argument of “cost reduction” (Lei n.º 7, 2016), generating controversy. The law was approved on June 2016 and the new Commissioners took office on August (Parlamento de Timor-Leste, 2016). This raised important concerns in the Timorese society, with the President of Republic making an attempt to veto the legislation, but finally promulgating it, in the context of the turbulent relationship with the Parliament and the Government. The Rules of Procedure of the Timorese Parliament were also amended, after an institutional conflict that led to the resignation of its president, Vicente Guterres (interviewed), in order to allow the future impeachment of the President of the Parliament (Lusa, 2016), a process to be initiated upon the request of 10 MPs. This was proposed by CNRT, alleging the need of the board of the Parliament to reflect the parties in the Government (Lusa, 2016), while the literature suggests that the Parliament should instead balance and supervise its action. The requisites to create a political party became more demanding, requiring 20.000 signatures of registered voters (instead of the previous 1.500, foreseen by Lei n.º 3, 2004), including at least 1.000 for each municipality (the previous law only required proportionality). Campaign funding became indexed to the number of votes achieved (versus the previous balanced share of 50% of the funds), with each vote meaning from \$1 to \$10, being up to the Government to define this amount (Lei n.º 2, 2016). This was approved shortly after the creation of three new political parties (Lusa, 2015), and justified with the need to reinforce the role of political parties in the Timorese society (Parlamento de Timor-Leste, 2016). The 2017 general elections will be crucial, regarding either how political competitors will institutionalise their preferences and strategies, but

also regarding how public perceptions of these institutional dissents will be expressed in votes.

A new line of studies seems to emerge, commencing precisely from these two dynamics. On the one hand, it would be of great value to follow the UN patterns of electoral assistance, after the guidelines created from 2012 on, and see how these developed on the ground. On the other hand, and starting from the example of Timor-Leste, it would be interesting to assess how post-UN interventions in the institutional setting, especially in the electoral field, develop and consolidate. Intertwining these two areas could have very important outcomes, especially regarding a contribution to the development of focused UN assistance on institution building in the electoral field, on post conflict interventions, within longer-term democratisation processes.

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Interview with Ana Pessoa Pinto (2015) Interview with Ana Pessoa, carried by the author in Dili, on 7 July 2015.

Interview with Dionísio Babo Soares (2015) Interview with Dionísio Babo Soares, carried by the author in Dili, on 10 July 2015.

Interview with Dulce Vítor (2013) Interview with Dulce Vítor, Commissioner of the National Electoral Commission since 2004, carried by the author in Díli, Timor-Leste, on 8 and 12 July 2013.

Interview with Faustino Cardoso (2013) Interview with Faustino Cardoso, Commissioner of the National Electoral Commission since 2004 and President of the National Electoral Commission until 2012. Interview carried by the author in Díli, Timor-Leste, on 10 July 2013.

Interview with former National Council Member (2015) Interview with a former member of the National Council, held by the author in Dili, on 6 July 2015.

Interview with Francisco Guterres Lu-Olo (2015) Interview with Francisco Guterres Lu-Olo, carried by the author in Dili, on 2 July 2015.

Interview with Jorge Miguéis (2015) Interview with Jorge Miguéis, member of the Portuguese Cooperation Team on drafting the 2006 electoral laws; interview carried by the author in Lisbon, on the 1st December 2015.

Interview with José Reis (2015) Interview with José Reis, carried by the author in Dili, on 30 June 2015.

Interview with José Teixeira (2015) Interview with José Teixeira, former Fretilin spokesperson, carried by the author in Dili, on 1 July 2015.

Interview with Manuel Tilman (2015) Interview with Manuel Tilman, carried by the author in Dili, on 26 June 2015.

Interview with Mário Carrascalão (2015) Interview with Mário Carrascalão, carried by the author in Dili, on 29 June 2015.

Interview with Mikiko Tanaka UCD (2013) Interview with Mikiko Tanaka, UNDP Country Director for Timor-Leste, carried by the author in Díli, Timor-Leste, on 9 July 2013.

Interview with National Member of the IEC (2015) Interview with a national member of the Independent Electoral Commission, carried by the author on 14 May 2015.

Interview with Primary Education Teacher (2013) interview with a Primary Education Teacher, carried by the author in Díli, Timor-Leste, on 13 July 2013.

Interview with Ramos Horta (2015) Interview with Ramos Horta, carried by the author in Díli, on 8 July 2015.

Interview with Senior UN Electoral Officer (2015) Interview with Senior UN Electoral Officer, carried by the author on May 2015.

Interview with Senior UNTAET Officer (2015) Interview with Senior UNTAET Officer, by the author in 2015.

Interview with Vicente Guterres (2013) Interview with Vicente Guterres, President of the Timorese Parliament, carried by the author in Díli, Timor-Leste, on 5 July 2013.

Annex I – Interviewees: contextual description

Adérito de Jesus Soares was a member of the Constituent Assembly, elected in FRETILIN's lists. He was the Chair of the Systematisation and Harmonisation Committee of the Constituent Assembly, which was also composed of Vicente Soares Faria (Secretary, FRETILIN) and Manuel Tilman (Rapporteur, KOTA) (also interviewed). By 2002 he was also a Board member of the NGO Forum and the NGO Lao Hamutuk. There are references to a contentious process, where he refused to obey to Alkatiri, FRETILIN's leader. In 2009 he was proposed by Prime-Minister Xanana Gusmão (CNRT) as Chairperson of the Anti-Corruption Commission, a proposal that FRETILIN strongly opposed to in the Parliament, but that he held until 2014. He is a lawyer and has worked with UNMIT and UNDP on human rights. He is doing a PhD in Australia National University, on "Protection of economic and social rights in post-conflict Timor-Leste".

Ana Pessoa Pinto was a member of the Timorese Constituent Assembly, elected in FRETILIN's lists. In the UN Transitional Administration she was appointed the Cabinet Member for Interior and later the Justice Minister. She was the Minister of Internal Administration in FRETILIN's government (2002-2007). In 2007 she was elected member of parliament on FRETILIN's list. She became General Prosecutor of Timor-Leste in 2009, a position she held until the beginning of 2013. After this, she became an adviser for the President of the Republic, a position she held at the time of this interview (2015). She is a lawyer and studied in Mozambique.

Anna Mosley was the Manager of the New Zealand Aid Programme, at the New Zealand Embassy for Timor-Leste, at the time of this interview (2013).

Dionísio Babo Soares has been the Secretary-General of CNRT since 2007. He was Minister of Justice in August 2012 (first interview) and later became Minister of State, Coordinator of State Administration Affairs and Justice and Minister of State Administration, a position he held at the time of the second interview (2015). He was

second on CNRT's list for the Parliamentary Elections of 2012, after Xanana Gusmão. In 2007 he also managed Ramos Horta's campaign for the Presidency. He got his PhD from Australia National University, with the thesis "Branching from the Trunk: East Timorese Perception of Nationalism in Transition".

Dulce Vítor was a Commissioner of the National Electoral Commission of Timor-Leste at the time of this interview (2013). She was a Commissioner since 2004 and one of the few Commissioners taking part in it from the beginning, supervising all Timorese elections, including 2012. With the legal reform of the EMB on 2016 her mandate was terminated.

Faustino Cardoso was the President of the National Electoral Commission during the 2007 and 2012 general elections, and a Commissioner at the time of this interview (2013). He was a Commissioner since 2004 and, along with Dulce Vítor, was one of the few Commissioners taking part in the CNE from the beginning, including the 2012 elections. He is also a lecturer at the National University of Timor-Leste (UNTL).

Francisco Guterres Lu-Olo is the President of FRETILIN. He was the President of the Constituent Assembly, elected by his peers, and was elected member of the Constituent Assembly on FRETILIN's list. He was the President of the National Parliament from 2002 to 2007, being the first candidate as member of parliament in FRETILIN's list. He was again elected member of Parliament in 2012, the first on FRETILIN's list. He has been FRETILIN's presidential candidate on the 2007 and 2012 presidential elections. He was appointed as General Coordinator of the Council of Armed Resistance on FRETILIN's Extraordinary Conference held in Sydney, Australia, in 1998 and in 2001 he was elected President of FRETILIN. He was a Commander during the Resistance to Indonesia.

Jorge Miguéis was the Director of STAPE, the Portuguese governmental department in charge of organising the elections. He has worked in elections since the Portuguese Constituent Assembly, in 1975, and carried several electoral cooperation

projects with the Portuguese speaking countries. In 2006 he led the Portuguese cooperation team that worked on drafting the Timorese electoral laws.

José Reis was a member of the Constituent Assembly, elected in the lists of FRETILIN. He was a member of Commission II – Organisation of Political Power in the Constituent Assembly. At the time of this interview (2015) he was the Deputy Secretary-General of FRETILIN.

José Teixeira was the spokesperson of FRETILIN between 2007 and 2012. He was elected member of parliament in 2007, in FRETILIN's lists, a position he held until 2012. Previously he had been Secretary of State of the first Timorese Government (2002-2005), led by FRETILIN, and later Vice-Minister (2005-2007). He also worked with UNTAET from 2000 to 2002. He is a lawyer and lived, studied, and worked in Australia for many years.

Manuel Tilman is one of the founders of the party KOTA. He was elected member of the Constituent Assembly in KOTA's lists. He was the Rapporteur of the Systematisation and Harmonisation Committee of the Constituent Assembly, which was also composed of Adérito Soares (Chair, FRETILIN - also interviewed) and Vicente Soares Faria (Secretary, FRETILIN). He was a member of parliament until the 2012 elections, when KOTA did not achieve parliamentary representation. KOTA supported the formation of the CNRT-led government in 2007. He ran for President of the Republic in the 2007 and 2012 elections. He was a member of the Portuguese Parliament between 1980 and 1984, elected on ASDI lists. He is a lawyer.

Mário Carrascalão was a member of the Constituent Assembly elected on the lists of PSD, a party of which he was a founder. He was a member of Commission II – Organisation of Political Power in the Constituent Assembly. He was elected member of parliament in 2007, on PSD's list. PSD supported the CNRT Government after the 2007 elections, having several members in the government. Mário Carrascalão became Deputy-Prime-Minister in 2009, a position from which he resigned in 2010, in disagreement with

Xanana Gusmão. In 2012 PSD did not achieve parliamentary representation. He was the Governor of Timor-Leste during the Indonesian occupation, from 1983 to 1992, a position that often becomes controversial, despite his alleged cooperation with the Timorese during that period.

Mikiko Tanaka was the UNDP Country Director for Timor-Leste as of the 2012 elections, a position she still held at the time of this interview, in 2013.

Ramos Horta was a Minister for Foreign Affairs and Defence in the first Timorese government (FRETILIN), from 2002. He renounced in 2006, pressuring Alkatiri to renounce as Prime Minister. After Alkatiri's resignation, Ramos Horta became Prime Minister until the 2007 Presidential elections, when he was elected President of the Republic, a position he held until 2012. He was the President of the Republic in 2007, when the government formation clause was used to invite the most voted coalition of parties to form a government, generating great controversy. In 2012 he ran again for President of the Republic, but was third, not going to the second round. He was a very prominent figure from the Timorese Resistance, in the Diplomatic Front, having been awarded the Nobel Prize for Peace in 1996. He was a member of FRETILIN, from which he resigned in 1988.

Vicente Guterres was the President of the Timorese Parliament at the time of this interview (2013), whose position he resigned in 2016, after strong political pressure, especially from CNRT. He is a member of parliament since the Constituent Assembly. In 2012 he was the 4th MP to be elected on CNRT's list, and on 2007 he was the second, after Xanana Gusmão. He was elected member of the Constituent Assembly on UDC/PDC's list, being the only member to be elected in this. He had been elected President of the CNRT in 2000 and was a member of the Commission II – Organisation of Political Power in the Constituent Assembly, having been closely involved with the electoral issues.