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## Current Electoral Processes in Southeast Asia. Regional Learnings

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# Elections in Timor-Leste, 2022-2023

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# **Elections in Timor-Leste, 2022-2023**

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Elections are powerful tools to legitimize political power. If they are regular, frequent, free and fair, then they constitute a solid rock upon which to root a democratic polity and perform a decisive role in settling political disputes in a peaceful manner. As from the restoration of its independence, the Democratic Republic of Timor-Leste has established a solid tradition of democratic elections based on constitutional prescriptions, a reliable electoral administration, and a massive adherence of the citizenry to this form of ascertaining popular preferences and translate the oscillations of their main options.

However, the nature of individual elections depends on the way they are framed by an overarching government system. Legislative or presidential polls have different meanings in presidential, parliamentary or semi-presidential regimes. Single constituency polls differ from those which take place in countries where the territory is divided in a number of smaller units. Proportional Representation is associated with different outcomes from those prevailing in First-past-the-post voting systems. Limiting candidates to partisan members or allowing for the entry into the fray of individuals without partisan affiliation also generates specific dynamics.

For all these reasons, the present essay begins with a survey of the political and electoral system of Timor-Leste, underlying the differences between presidential and parliamentary polls in the context of a semi-presidential regime, and offering a general survey of their respective rules. Then, two sections

discuss the stakes and the outcomes of the presidential elections of 2022 and the legislative polls of 2023. The final section discusses the avenues opened by this electoral cycle, and offers some insight into the likely developments in the coming years.

## **The Political and Electoral System of Timor-Leste**

Timor-Leste is the only semi-presidential Republic in Southeast Asia. Robert Elgie’s definition—“Semi-presidentialism is where there is a directly elected president and a prime minister and cabinet that are collectively responsible to the legislature” (Elgie 2011: 19-20)—aptly describes the country’s government system. As per the Constitution of the Democratic Republic of Timor-Leste (CDRTL), both the President of the Republic (section 76) and the National Parliament (section 93) are elected “by universal, free, direct, equal, secret and personal suffrage” for 5-year mandates thus creating a diarchy of powers with independent (and eventually competing) legitimacies that Sartori considers the distinguishing feature of this government system: “The one characteristic that any semi-presidential system must have [...] is a dual authority structure, a dual-headed configuration.” (1997: 122). No doubt that Timor-Leste fits this broad model. In CDRTL’s terms, the government is responsible both before the president and the assembly (section 107), but in fact holds exclusive executive power. Presidential functions are directed at supervising the “regular functioning of democratic institutions” and may be regarded as a “moderating power” in the wake of Benjamin Constant<sup>1</sup>.

Presidential and parliamentary elections, though, are rather different. Although both the president and the assembly are vested with similar, direct legitimacy, the role of presidents and governments are separate, and the terms under which polls are fought are considerably diverse. To start with, presidential elections are open to any “East Timorese original citizen” over 35 in possession of his full capacities, proposed by a minimum of 5 000 voters (CDRTL

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<sup>1</sup> An expanded analysis of the distribution of powers among president and prime minister in Timor-Leste is provided in Feijó 2020.

section 75), thus allowing for “independent candidates” to stand, paying respect to the fact that the recent history of the country, including its fight for national independence, was not, strictly speaking, organized by formal political parties but had the concourse of civil society in many forms.

In the wake of the first elections that returned the charismatic Resistance leader Xanana Gusmão to the job on a landslide (82.7% of the popular vote), in the so-called “friendly election” in which he defeated another national hero—Francisco Xavier do Amaral, the president of the ephemeral independent nation in 1975 who volunteered to fight “for the sake of a democratic poll” (Smith 2004)—a political convention has been established that regards the lack of partisan ties as an attribute of presidents who are supposed to behave above the party fray. In that election, Xanana refused to be associated with any particular party, accepting the endorsement of many organizations and personalities, and stressed he would not act as partisan agent. As John M. Carey (2000) has argued, decisions that are the object of fierce bargaining at the time of creation of a new regime—as well as the terms under which “founding elections” are fought—have long lasting and pervasive implications and tend to frame subsequent forms of political behaviour. These need not be enshrined in any legal document, but may be powerful tools in the political culture arsenal, and configure political conventions deemed highly legitimate.

Presidential elections are fought on a single nation-wide constituency (including voting rights for the East Timorese diaspora), and require an absolute majority of votes to proclaim a winner; should the first round (usually open to a vast array of candidates who successfully overcome the legal and bureaucratic hurdles) fail to return 50% +1 vote to one candidate, a runoff is organised 30 days later between the two best positioned ones. Before the current electoral cycle, this has happened in 2007 and 2012.

In sharp contrast, legislative elections for a single 65-seat chamber (Parlamento Nacional) are the reserved ground for legally registered political parties. The legislation regulating the formation and also—quite important—the survival of political parties is strictly upheld, meaning that any group wishing to compete in national elections must not only observe founding rules, but must also remain significantly active. The whole country—just like in the case of

presidential polls—makes up a constituency (therefore downplaying regional representation). Parties submit closed slates of candidates (65 permanent and several alternate ones), in which one in every three candidates must be of a different gender (up from one in four; law amended in 2011). Seats are allocated through the D’Hondt method (proportional representation with an inbuilt bias in favour of larger parties) to all those who score more than the 4% threshold (up from 3%; law amended 2011).

A brief word on the electoral administration<sup>2</sup>. From the very first national polls, there are two agencies: the National Electoral Commission (Comissão Nacional de Eleições, CNE), notionally an independent body tasked with general supervision, disposing of a grandiose headquarters in Dili, and permanently staffed; and a government department—Technical Secretariat for Electoral Affairs (Secretariado Técnico para os Assuntos Eleitorais, STAE)—that runs the electoral organization on the ground. This dual structure, even though prone to some form of government dependence and/or interference, has discharged its functions rather successfully in most elections (if one judges by the reports of international observation missions).

In the first electoral cycles after independence, presidential elections were held at such a time that it allowed for the inauguration of the new president on Independence Day (20 May), and were soon followed by legislative ones (about three months later). This situation is often referred to as “honeymoon” or “coattails” elections, linking the fate of presidents with that of the parliamentary majority. Even though they may be perceived as rather independent, the likelihood that the political mood in the country expresses itself in converging fashion on both polls is high, giving presidents a theoretical advantage to influence the configuration of parliaments. Recently, though, a disturbance was introduced in the model: after the 2017 cycle was complete, and faced with unexpected difficulties to form a stable government in the extant parliamentary context, president Lu Olo dissolved a recently elected assembly, called early elections for June 2018, and introduced a wider gap between the two polls if terms run their normal time. “Coattails” effect has been blurred if not altogether

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<sup>2</sup> For an extended revision of electoral administration, albeit referring to the last decade, see Feijó (2016a).

abolished. This situation can be reversed if and when a president dissolves the sitting parliament after his election and restores the original formula. In the meantime, both the president and the parliament's terms ran their normal periods, and thus elections were held in 2022 for the presidency and in 2023 for the legislative chamber.

## **The Presidential Election of 19 March and 19 April, 2022**

In 2022, Timor-Leste held its fifth presidential election. The first three presidents (Xanana Gusmão, 2002-2005; José Ramos-Horta, 2007-2012; Taur Matan Ruak, 2012-2017) were all “independent” (i.e. non-partisan) figures who created and sustained a political convention regarding the ways in which the head of state discharges his functions. In 2017, Francisco Guterres “Lu Olo,” the chairman of FRETILIN (Frente Revolucionária de Timor-Leste Independente, Revolutionary Front for an Independent Timor-Leste) (but not the party's actual leader, a role performed by its secretary-general, Mari Alkatiri) ran for the third time, and insisted on being his party's flag bearer. This time he managed to put together a pre-electoral, informal coalition and was supported by other parties—critically, by the parties sustaining the sitting “government of national inclusion,”<sup>3</sup> including Xanana's CNRT (Congresso Nacional para a Reconstrução de Timor-Leste, National Congress for the Reconstruction of Timor-Leste) and the old leader individual endorsement. Lu Olo was returned on the first ballot with a comfortable 57% of the popular vote (three months later, his party would score just under 30%).

Lu Olo discharged a controversial mandate, deviating from the previous convention inasmuch as he was a leading figure of a major party (FRETILIN) and interfered directly with the parliamentary process of choosing and sustaining government (Feijó 2023a; 2023b). He tested the constitutional limits of presidential powers on several occasions—refusing to dismiss the (minority)

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<sup>3</sup> On the meaning of the “government of national inclusion” (the VI Constitutional Government headed by Rui Maria de Araújo), see Feijó (2016b).

VII Constitutional Government (led by Alkatiri) after it failed parliamentary investiture and keeping it as a caretaker cabinet for more than six months; refusing to offer the parliamentary majority coalition the chance to form a government; after dissolving the parliament for the first time in the country's history and calling fresh legislative elections (which were won by a coalition opposed to FRETILIN), the president was forced to accept a solution excluding his own party, but rejected a dozen ministers from the major coalition partner (Xanana's CNRT) forcing Prime Minister Taur Matan Ruak (TMR) to govern with a cabinet devoid of critical ministers and severely distorting the representation of its parliamentary basis. After a tug-of-war with Xanana, the VIII Constitutional Government was profoundly reshuffled: the president pressed TMR to ditch his pre-electoral alliance, offering him FRETILIN support (and entry into government) in lieu of CNRT. The revamped cabinet lasted until the end of the parliaments term.

Lu Olo's political behaviour was challenged at the Constitutional Court. However, the court's interpretation of the issue resulted in enhancing presidential powers. In fact, the court ruled that presidential decisions and actions can only be legally challenged in case an impeachment procedure—requiring a qualified, two-thirds majority in parliament (CRDTL section 79.3.)—is initiated. Otherwise, presidential actions are not susceptible to legal challenge (see Leach 2021).

In brief: for most of Lu Olo's term in office there was an unprecedented and clear identification between the president and the government, which the president had actively manoeuvred to impose, acting openly as a party agent. Disputes over the legality aside, the legitimacy of his mandate, and the transparency of his chosen methods have been questioned. They entailed a high degree of instability, and political animosity in Dili ran high. For some observers, the perils of “democratic backsliding” were emerging<sup>4</sup>.

Lu Olo ran for a second consecutive mandate (his fourth campaign). As usual in two-round elections, when electors tend to express an ideological or sentimental vote in the first instance and face a tougher, pragmatic choice in the

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<sup>4</sup> I dealt with these issues at length in Feijó (2023b).

second ballot, and therefore pre-electoral coalitions or agreements are not hard pressing, Lu Olo faced the competition from 15 other candidates, several of them from the government support base that saw no need for a unified march and preferred to test their popularity in view of subsequent bargains. Eleven of those ran as “independent”—including a leading figure also associated with FRETILIN (Lieutenant-General Lere Anan Timur who polled 7.8%). Four were women (amongst whom the prime-minister’s wife, who did very poorly: 0.65%). José Ramos-Horta, who had failed his re-election bid in 2012, stood as “independent” with Xanana’s CNRT support. Observers noted that the show had two major actors, the majority of candidates being relegated to subsidiary roles. The crux of the matter was then: how does the electorate judge the course of action initiated by Lu Olo in 2017, which he purported to maintain, and Ramos-Horta frontally challenged?

The first round was staged on 19 March, and as it was widely expected, returned Lu Olo (22.13%, well below his own score in the 2007 and 2012 first rounds) and Ramos-Horta (46.56%) for the runoff on 19 April. In the second round, Lu Olo attracted votes from his allies who failed to qualify, and polled 37.90%; Ramos-Horta cruised to a landslide (62.10%) based on the vote of electors dissatisfied with his opponent’s term in office. Ramos-Horta platform promised the return to the abandoned convention of “president of all the Timorese,” distancing himself from partisan agency. In tune with this stance, he resisted his main supporters’ pressure for the immediate dissolution of parliament and early elections (that would be justifiable in view of the poor results obtained by the government apologists) and kept the prime minister in office. Ultimately, president Ramos-Horta called parliamentary elections to be held roughly five years after the last ones on May 21, 2023. At the moment of announcing his decision, he made a powerful speech reflecting critically on what he regarded as excessive political polarization and urging his citizens to meditate seriously on the sectarian course that was taking hold of the country (Ramos-Horta 2023).



## The Parliamentary Election of May 21, 2023

Parliamentary elections took place on May 21, 2023. Unlike the previous poll (2018) in which many parties formed pre-electoral coalitions both to beat the 4% threshold, in the case of smaller parties, or to anticipate post-electoral government formation bargaining given the experience of the previous poll's aftermath (only FRETILIN and PD [Partido Democrático, Democratic Party] went solo), in 2023 there was no single coalition, the Court of Appeals having rejected all three proposals being submitted. A total of 17 parties were finally accepted by the court, most without any previous experience. In the run up to the polls, the three major parties supporting the VIII Constitutional Government<sup>5</sup>, rooted in young sectors of the population with significant ties to “martial arts groups” (MAGs), announced they would endeavour to pursue the political line of the outgoing cabinet and share government responsibilities. Xanana's CNRT campaigned aggressively for an absolute majority and admitted it might look for external support in case its score was not sufficient, but ruled out any agreement with the outgoing cabinet's political bases.

Timor-Leste has a small political elite dominated by the presence of *katuas*, or elders—a rather common feature in many countries. However, a distinctive feature of this group of extremely influential individuals is that they were prominent political actors back in 1974-1975—almost half a century ago—when Portugal initiated the failed decolonisation of the territory which ended up at the time of the Indonesian invasion (December 7, 1975), then followed by 24 dramatic years of neo-colonial and rather brutal rule. These fifty-odd years saw those figures play different roles, converge as often as diverge, support and fight each other, generate a ballast of personal animosity. It is not surprising that, as they remain powerful actors, political platforms are somehow overshadowed by their personal competition and individual ambitions. Generally, observers find it difficult to ascertain the main ideological orientation or pragmatic issues in dispute, and prefer to stress conjunctural proposals and

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<sup>5</sup> These parties comprise FRETILIN, PLP (Partido da Libertação do Povo, People's Liberation Party), led by Taur Matan Ruak, and KHUNTO (Kmanek Haburas União Nacional Timor Oan, Enrich the National Unity of the Sons of Timor).

personality clashes. The major stakes of this election were the survival of the incumbent government and its patronage network, seriously weakened in last presidential poll.

This election mobilized a vast number of East Timorese. Even though the electoral register is poorly updated and tends to include more individuals than actual citizens with voting capacity (due the slow elimination of deceased electors and difficulties in tracking migrants who are sometimes doubly registered), a feature that artificially enhances abstention, official figures suggest a participation rate around 80%. In any case, the actual number of citizens casting a vote was the highest ever—a clear indication that the polls were regarded as highly relevant to the population ways of life.

Xanana's CNRT was the clear winner. Falling just short of an absolute majority (41.5% of the popular vote and 31 seats, close to its goal of 33), CNRT won in 10 of the country's 13 districts, including the heavily populated capital district (Dili), where it polled 52%—a clear indication of its traction among the most dynamic sectors of Timor-Leste. A party with parliamentary representation (PD), rooted in the youth and student's movements of the Indonesian times, strong among the *Gerasaun Foun* (New Generation), standing outside the government base even though it had been supportive of the mid-term reshuffle, and later endorsed Ramos-Horta in the 2022 runoff, marginally increased its performance to finish in third place (6 seats/9.3% from 5 seats /8.1%).

Conversely, FRETILIN plummeted to its lowest ever score: 25.75% (previously 34%) and only 19 seats (from 23). It managed to retain the first spot in its traditional eastern districts' stronghold, but in the Special Administrative Region of Oecusse that has been governed by its cadres for a long while, it lost to CNRT. In the capital district, its share of the vote (22.5%) was less than half that of CNRT. Prime minister's PLP's seats were cut in half (4 from 8), and just scored 5.8% of the popular vote, coming last of those that surpassed the threshold. The third party in his government support base, KHUNTO, managed to stick to the same number of seats it had previously (5 from 7.5% of the vote).

From the 17 competing parties, only these five secured seats in parliament. A newcomer, PVT (Partido os Verdes de Timor, Green Party of Timor)—another organization closely linked with the youth and MAGs—, registered in

2022, came close to overtaking the 4% threshold (it scored 3.6%), as did another party in the former government support base, PUDD (Partido Unido para o Desenvolvimento e a Democracia, United Party for Development and Democracy), with 3.2%. All others scored less than 1%. Taken as group, these 12 parties received just below 10%, meaning the elected parliament actually represents more than 90% of electors. In view of these results, President Ramos-Horta has made it clear he will appoint a CNRT designated prime minister as soon as the new parliament convenes for the first time. The outgoing government has tried to push the inauguration of the new assembly to September, arguing the extant parliamentarians ought to be given the right to “terminate the legislative session”—a delaying tactics that did not meet the approval of the judicial authorities that stressed the parliament had been dissolved for the purpose of the May elections, and the new elected members ought to be sworn in according to the law. This attempt delayed by several weeks the normal course of events.

Most likely, the new prime minister would be Xanana Gusmão himself (for what would be his third term as head of government). Two theoretical options were open: to form a minority cabinet, or to entertain a cooperation agreement with PD. Both parties have issued public statements indicating they were ready to share government responsibilities, and a formal coalition government would be formed with majority support in the National Parliament

## **Where to from Here?**

One might expect constitutional rules to prevail in the coming years as democracy in Timor-Leste moves towards consolidation, and regular, free and free elections take place at their opportune moment. That would mean having new presidential elections in 2027 and parliamentary ones in 2028.

The CRDTL enshrines a political principle: that of the necessary renewal of political personnel as it states in section 64: “No one shall hold any political office for life, or for indefinite periods of time.” The pragmatic consequences of the principle, though, are not clear. Contrary to some speculation based on CRDTL’s unclear formulation regarding the renewal of presidential mandates

(CRDTL section 75.3 reads: “The President of the Republic’s term in office may be renewed only once),” by virtue of which some have sustained that Ramos-Horta would not be eligible to stand again, the constitutional expert Pedro Bacelar de Vasconcelos—himself well acquainted with the Timorese fundamental law—sustains that a president exercising his second term in office after someone else’s mandate (that is, in a non-consecutive manner) is eligible for a third one (Vasconcelos 2011: 265). Assuming that the Constitutional Court of Timor-Leste upholds this position, then there is no case to suggest any of the current day politicians will be barred from running again. However, it is most unlikely that *Gerasaun Tuan* (generation of 1974-1975) will seek new mandates.

If for no other reason, the “laws of life” will apply to a key group of individuals now in their mid- to late seventies. Generational turnover is inevitable, regardless of the timing for its manifestation. In terms of official rhetoric, this principle is embraced across the political spectrum; however, actual performance often denies stated goals. Back in 2015, Xanana took a critical step in that direction when he handed over his premiership to an illustrious member of the following generation—Rui Maria de Araújo. The broad approval elicited by the new premier, and the structural solution he embodied, rose hopes it would not be reversed. But hopes proved to be short-lived, as FRETILIN went back on its word and reinstated a premier from the older generation in 2017. As it turned out, Rui de Araujo went on to emerge as an alternative voice within his party to the old guard, trying to challenge it in their congress (but was prevented from standing for a vote on leadership), and has recently called for a reconsideration of his party’s options in face of the “shameful defeat” of last elections, positioning himself as a candidate for a different style of leadership. The fact that the most prominent face of the “renovation” proposed by the current FRETILIN leadership for the last elections was Lieutenant-General Lere Anan Timur (born 1952) suggests there is a long way before accepting a decisive turnover

Xanana will remain at the forefront of politics for some time. However, he is supposed to feel the weight of his age and to keep truthful to his previous desire to pave the way for the next generation. When he does so, a major issue will surface. The rooting of democracy in Timor-Leste has been made through

an original process that combines the development of liberal-democratic practices (namely, free and fair regular elections) with respect for other forms of political legitimation, mainly with charismatic authority (in the precise Weberian sense). As Weber explained over a century ago (1922), charisma may have a critical impact on politics, and it is an attribute of precise individuals who normally are unable to pass it on to others—a feature that renders charismatic authority difficult to articulate with legal-rational legitimacy. However, Xanana has behaved since independence in a manner that reveals his option to develop democratic institutions. Failure to realise the virtues (or even the mere existence) of this association, and the double nature of current political system’s popular legitimacy—as was arguably the case with Lu Olo’s term in office, blatantly ostracizing the old leader—resulted in a crisis that the recent polls put in evidence. As a brilliant student I had in Dili once put to me: “we may do things without *Maun Boot* (Big or Older Brother); but we can hardly achieve anything against Xanana.” His wisdom ought to be heard.

Moving beyond the critical aspect of the fate of personalities, two aspects of national politics deserve special mention. For one, in the quarter century mediating between the self-determination referendum of August 30, 1999 and the most recent elections, the number of registered electors rose from 451,968 to 890,145—almost doubled. The vast majority of new voters are youngsters, some of whom born after independence. A significant number of East Timorese youths are prone to participate in “martial arts groups” activities, which go well beyond the alleged sporting side of things, as James Scambary (2019) has shown. As recently as early 2023, President Ramos-Horta referred in highly critical terms to their activities and their responsibilities in confronting and undermining established, democratic authority, going as far as to suggest he would not be willing to appoint ministers associated with MAGs. Why did he feel compelled to go this far? Because MAGs have close links to at least two registered political parties—KHUNTO, which has been in parliament since 2017, and was part of the VIII Constitutional Government; and PVT, registered in 2022—which have polled almost 10% of the popular vote. For most observers, the radical rejection of established authorities embodied by MAGs is a consequence of the youth’s incapacity to find adequate ways to engage in a prosperous way of life and their frustration at the precarious economic and

social status they enjoy. Policies are urgently required that address the roots of youth discomfort, lest it degenerate in radical populist movements challenging the rule of law.

The second critical issue is economic diversification in a country highly dependent on oil revenues. Statistically speaking, the petroleum sector accounts for approximately 70% of the Timor-Leste GDP, more than 90% of the total exports, as well as more than 80% of the state's annual revenue (Neves 2022). Oil revenues have been channeled to the Petroleum Fund (PF), from which an Estimated Sustained Income (ESI) may be withdrawn every year, guaranteeing its long-term sustainability. In fact, ESI has systematically been overstepped, and more funds diverted to the annual state budget given the lack of alternative economic and financial sources. Both a prudent management of the PF that dispels fears of a “doomsday” (the drying out of PF deposits within a few years unless new fossil fuel fields come in exploration, as has been exposed by NGOs like Lao Hamutuk), and sound investments in diversifying the economy—another example of rhetoric convergence and similar action abstention - are urgently called for.

In this context, one may expect Xanana's new administration to pursue a more “nationalist” approach—in line with what he did in past occasions. For instance, the decision on whether the processing of new oil and gas output from the Greater Sunrise in Darwin or else in a new venue in Timor-Leste's south coast, where a major ambitious infrastructure and industrial plan—the *Tasi Mane* Project (Male Sea Project)—has been devised and progresses with hiccups, cannot wait much longer. Xanana has been a champion of the project, defending it with an aggressive “national independence” rhetoric. However, it does raise some questions as to its economic profitability, and poses diplomatic considerations in the country's relations with its neighbour Australia (with whom the output is to be shared according to an established proportion which that is contingent on the final solution), extending further to the Asia-Pacific security context in view of a possible partnership with the People's Republic of China. A more energetic stance on this project is expected soon.

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