

FORUM ONG TIMOR LESTE

THE TIMOR LESTE NGO FORUM



Caicoli Street, Dili -Timor Leste / Phone 77422821 / 77265169 [Arsen_ctl@yahoo.com.au](mailto:Arсен_ctl@yahoo.com.au) / nizio_pascal@yahoo.com

2013 Timor-Leste Development Partners Meeting
'Operationalising Strategic Development Plan for Effective Results'

SESSION II: Presentation of Governance and Institutional Building Sector Civil Society – represented by Centre of Studies for Peace and Development (CEPAD)

Key recommendations for Government:

- If key achievements and progress resulting from the Strategic Development Plan (SDP) and the Fifth Government's Programme are to be assessed effectively and objectively, civil society organisations must be strengthened and enlisted in order to monitor and evaluate development activities.
- The Government must bring about cooperation between key state institutions and civil society organizations to carry out plans in a coordinated and efficient manner. Such a joined-up approach can ensure that development plans reflect community realities and are implemented with the input of all key stakeholders thereby increasing the likelihood of real progress and national ownership.

Key recommendations for development partners:

- In moving forward on the New Deal for 'fragile states' such as Timor-Leste, we encourage development partners to prioritise activities that strengthen governance, justice and security, because these are the foundations from which a peaceful and resilient society can be built. Combating corruption, improving access to justice, encouraging realistic plans for decentralization of power and improving professionalism in the security sector are all in need of your close attention.
- Please remember when making your funding decisions that 'national ownership' of plans and activities does not entail government ownership only. For ownership of development processes to be truly national, the broad-based participation of the people of Timor-Leste is essential. Civil society must be utilised at every step as the link between citizens and government and citizens and you, our partners for development.

Background:

In order to understand the current agenda in Timor-Leste regarding the governance and institutional building sector, with a focus on justice, security and decentralisation, four key documents have been put forward as necessary background.

Firstly, the Timor-Leste Strategic Development Plan 2011-2030 (SDP) was passed through National Parliament in July 2011 and is the Government's blue print for development over the next two decades. Part five of the Plan deals with the institutional framework, including security, defence, foreign affairs, justice, public sector management and national development agency and economic policy and investment agency. It is the operationalisation of this Plan that is the main focus of the 2013 Timor-Leste and Development Partners Meeting.

Secondly, the contents of the SDP are heavily reflected in the Programme of the Fifth Constitutional Government 2012-2017 Legislature which outlines the Government's plan for its current five year term. Chapter five; 'Consolidating the Institutional Framework', outlines economic policy, good governance in the public sector, and peace, stability and international relations.

Thirdly, the eight Millennium Development Goals (MDG) include such targets as halving extreme poverty rates, halting the spread of HIV/AIDS and providing universal primary education, by the deadline of 2015. These eight goals form a blueprint agreed to by all nations of the world as well as all the world's leading development institutions. As the deadline approaches, the post-MDG framework is being developed and has given rise to diverse perspectives on how best to bring about poverty reduction and protection of human rights for all.

Finally, the New Deal for Engagement in Fragile States arose out of the International Dialogue on Peacebuilding and Statebuilding (IDPS), established in 2008 and comprised of the G7+ group of 19 fragile and conflict-affected countries, development partners, and international organisations. The New Deal was endorsed at a meeting of the IDPS in 2011, alongside the 4th High Level Forum on Aid Effectiveness in Busan, Korea. The rationale behind the New Deal is that the pursuit of the eight Millennium Development Goals has not been an effective mechanism to bring about poverty reduction and sustainable development in fragile states, therefore a different approach is needed. In regard to governance and institutional building, the New Deal and the Peacebuilding and Statebuilding goals contained within, particularly the goals of legitimate politics, security and justice, are said to have much greater potential than the MDG framework for providing direction for fragile states to achieve peaceful and sustainable development. However, as we are yet to see a set of indicators assigned to each peacebuilding and statebuilding goal¹, it is unclear as to how the New Deal will actually be put into practice in Timor-Leste.

¹ As outlined in the New Deal, the G7+ aimed to develop a set of indicators by September 2012. The indicators are meant to respond to the five pillar areas thought to lie at the heart of effective statebuilding and peacebuilding: legitimate politics, security, justice, economic foundations, and revenues and services. This process is still ongoing, and the production of tools, methodology and analysis to guide the process are still being developed.

Sub-sector 1 – Justice:

Key achievements/ progress

As stated in the SDP; “The justice sector plays a crucial role in the consolidation of peace and stability, guaranteeing the rule of law and promoting accountability and transparency in our institutions.”² From the perspective of civil society organisations in Timor-Leste, it is positive to see that the SDP and the Fifth Constitutional Government’s Programme recognise some barriers which need to be overcome to build a fair and functional justice system in Timor-Leste, particularly with regard to improving access to justice and strengthening human resources to deliver justice services.

Key challenges

Access to formal justice is poor, especially for women and the marginalized majority living in rural areas. The majority of cases processed by the formal justice system concerning women relate to gender-based violence and violence against women, however when compared the number of incidents of such violence experienced by women in Timor-Leste, it is clear that only a small minority are being addressed through the court system.³

Access to justice is also hampered by the fact that laws are not informed by and understood by many who are affected by them. This is partly due to language barriers as reported by Judicial System Monitoring Programme (JSMP), from the commencement of the first legislative period until now, the National Parliament has not had official translations from Portuguese to Tetum for most of the laws that it has drafted and approved.⁴

Human and other resources have increased, but are still not sufficient to allow the system to function adequately. For example, according to JSMP, the District Courts, which are designed to allow greater access to justice for people in the districts of Timor-Leste, have limited numbers of court actors, lack adequate security measures, lack accommodation options for court officials and experience ongoing problems with electricity and water. Similarly, the Public Defenders Office lacks adequate transport and equipment to function effectively.⁵

Corruption, collusion and nepotism (KKN) continues to jeopardise good governance in Timor-Leste. According to CEPAD’s research into this issue, citizens claim that KKN is exacerbated by a culture of impunity which sees many criminal and civil cases pending at the investigative stage due to political pressure.⁶ A strong legal framework to address KKN issues is still incomplete. Despite the establishment and ongoing activity of the Anti-Corruption Commission (KAK), a clear anti-corruption law, whistle blower protection law and asset declaration law are still outstanding.

² Programme of the Fifth Constitutional Government 2012-2017 Legislature, p.178.

³ JSMP Annual Report; Overview of the Justice Sector 2012, p.20

⁴ JSMP Annual Report; Overview of the Justice Sector 2012, p.18

⁵ JSMP Annual Report; Overview of the Justice Sector 2012, p.16

⁶ CEPAD ‘Timor-Leste: Voices and paths to Peace’ Dili 2010 no ‘The people’s voice against corruption in Timor Leste’, Dili November 2012.

The way forward

If the statebuilding and peacebuilding goal outlined in the New Deal is to effectively address injustices and increase people's access to justice in Timor-Leste, civil society organisations suggest the following recommendations:

- Timor-Leste has two systems of justice; traditional and formal. The Government must acknowledge the role and potential of traditional justice and use evidenced based policies and laws to better coordinate the two systems in a way that promotes greater access to justice by the marginalized majority countrywide. Further investigation into and development of traditional justice has recently gained considerable support from the President of the Republic, Taur Matan Ruak.
- Corruption, collusion and nepotism (KKN) is an all pervasive issue that is symptomatic of mal-administration and bad governance in Timor-Leste. The legislative framework around KKN must be completed as a priority. Laws to be developed and implemented include; an anti corruption law (which needs to coordinate the roles of the key entities responsible for addressing KKN and also strengthen the legal powers of KAK), asset declaration law and whistleblower protection law.
- The Timor-Leste government needs to partner directly with civil society organisations to ensure that citizens are involved as much as possible in making laws, understanding laws and assessing laws. This will lead to greater relevance of laws to citizens and also awareness of citizens of their rights and obligations under existing laws.

Sub-sector 2 – Security reform

Key achievements/progress

Civil society organisations welcome the government's commitment, as outlined in the SDP and Fifth Constitutional Government Programme, to pursue security sector reform, particularly in the areas of defining roles and responsibilities of National Police of Timor-Leste (PNTL) and Falintil – Defence Force of Timor-Leste (F-FDTL) and development of a comprehensive long term strategic plan for the security sector.

Challenges

Lack of clearly defined roles of PNTL and F-FDTL which leads to overlapping in patrol areas and duties. Some steps have been taken to strengthen chains of command in the security forces, but a far clearer division of authority is still needed between the police, army, military police and intelligence service. Public perception of the roles of security actors is also of concern, only 15 percent of the general public believe that the PNTL are responsible for maintaining security.⁷

Key security laws including the law on the use of force, are not being implemented properly demonstrated by current calls by the National Parliament for a review of excessive use of force by members of the PNTL. Such important laws must be well understood by PNTL officers and citizens alike so that rights are protected.

⁷ The Asia Foundation, '2008 Survey in Timor-Leste on Security and Policing Issues'.

Formulation of a national security policy is not yet complete, despite the Council of Ministers examining a draft review of the security sector entitled ‘Securing the Future’ in May 2012. A possible reason for this is that the joint Ministry of Defence and Security is not adequately resourced or supported to undertake coordinated and strategic policy planning, as evidenced by the fact that its budget for salaries in 2012 was only US\$42,000.⁸ In the absence of a clear policy, important issues cannot be addressed and laws cannot be harmonized. For example, despite the clear separation in the RDTL Constitution of the roles of the PNTL and the F-FDTL, laws passed in 2010 authorised joint operations of the two forces. Without a clear-cut policy, the formulation and implementation of these laws become quite complicated.

Promotion practices within the PNTL have been called into question and have the potential to lead to serious tensions within the force.

The way forward

If the statebuilding and peacebuilding goal outlined in the New Deal; to manage the legitimate use of force in order to protect the population and territorial integrity from international or external threat, is to be achieved in Timor-Leste, civil society organisations suggest the following recommendations:

- To cooperate with civil society organisations working on issues of security to develop a clear and effective policy for security sector reform which is based on evidence with local context.
- To increase the level of civilian oversight of security policy and practice by increasing the capacity of the Ministry of Defence and Security and Parliamentary Committee B (Foreign Affairs, Security and Defence). This will increase transparency and accountability of the security sector.
- To continue to build the capacity of the PNTL, particularly in the areas of harmonising training programmes and reviewing the systems of promotion and recruitment to ensure they are as effective as possible.

Sub-sector 3 – Decentralization

Key achievements/progress

Civil society organisations welcome the efforts of the government to act on the provisions of the RDTL Constitution which call for it to respect the principle of decentralization of public administration and its recognition that governance should be as close to the people as possible to provide self-determination.

Civil society appreciates what the government has done so far. As reported by the Ministry of State Administration, beginning in 2004, the Government started piloting a range of procedures and institutional arrangements providing a “real time” simulation of local government. This was done through the Local Development Programme (LDP) and the objectives were to provide the government with practical lessons and policy input. So far 25 Local Assemblies have been established in four pilot districts; Bobonaro, Lautem, Manatuto and Aileu. The assemblies consist of around 500 members including both government officials and members of the Suco Councils. Capacity building has been

⁸ “The State Budget 2013, Budget Lines, PR-MdJ, Livro 4A”, Government of Timor-Leste, January 2013.

provided to all members these areas to ensure that they are able assume their new functions and responsibilities.

Challenges

- The 'what' i.e. the concept and goal of decentralization is often described in a positive way but the 'how' i.e. the process through which the concept and goal is translated into reality is far more complex. Civil society is concerned over how the transition of powers from the central government to municipal governments will be resourced and how the governing function will be coordinated between the two levels.
- Civil society is also concerned about the current division of powers given that the timeline suggests that the current government is expected to establish 3-5 municipalities over five years. Establishing the responsibilities of municipalities within this timeframe is unrealistic.
- The role of local government and the reporting lines of community leaders is as yet unclear, that is, do local government bodies report to the Central Government or the Municipal Government?

The way forward

- Civil society must be engaged much more closely in the 'socialization' of the policy around decentralization, through more interactive forums which give citizens a space to ask questions, raise concerns and provide ideas. This will give any future policy a clear evidence base.
- The Government needs to give attention to the planned law of local power so that it can be enacted to clearly allocate of the responsibilities and capacities of Local government. Development of this law and other legislation concerning decentralization should be carried out in consultation with citizens through partnerships with civil society.
- Civil society must be included in the planned Municipality Installing Committees which will carry out reviews in all 13 districts to determine which meet the minimum requirements for establishment of municipalities and which will also establish electoral processes.
- A comprehensive civic education campaign regarding decentralization and the role of citizens and elected representatives needs to be carried out in cooperation with civil society. Without thorough understanding of their rights and responsibilities within the new governance system, citizens will not be able to engage fully in the democratic process.