

Strengthening the Institutions of Governance in Timor-Leste



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ABBREVIATIONS AND ACRONYMS

CEP	Community Empowerment Project
CNE	National Election Commission
CoA	Court of Appeals
CoM	Council of Ministers
FOI	Freedom of Information
EITI	Extractive Industries Transparency Initiative
GBV	Gender-Based Violence
JSMP	Judicial System Monitoring Programme
JTC	Judicial Training Center
INAP	National Public Administration School
MoJ	Ministry of Justice
MoI	Ministry of Interior
MoPF	Ministry of Planning and Finance
NDP	National Development Plan
NDJAL	National Directorate for Judicial Assessment and Legislation
NGO	Non-Governmental Organization
OIG	Office of Inspector General
OPG	Office of Prosecutor General
PNTL	National Police of Timor-Leste
PEDU	Professional Ethics and Deontology Unit
RoP	Rules of Procedure
SCJM	Superior Council of Judicial Magistrates
SCPP	Superior Council of the Public Prosecution
SSCoM	Secretary of State to the Council of Ministers
STAE	Technical Secretariat for the Administration of Elections
TSP/CSP	Transition Support Program/Consolidation Support Program
UNDP	United Nations Development Program
UNOTIL	United Nations Office in Timor-Leste
UNMISSET	United Nations Mission in Support of East Timor
UNTAET	United Nations Transitional Administration in East Timor
UNICEF	United Nations Children's Fund

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“Promote good governance through popular participation; a responsible and responsive government including a lean, efficient, effective, accountable and transparent civil service and effective, professional, non-political defence and police forces; a decentralized administration with simple and transparent norms, so that governance and public administration is closer to the people; a socially responsible private sector, transparent and accountable civil society organizations; and a responsible, independent and effective media.” – National Development Plan of Timor-Leste

Introduction and Executive Summary

1. Timor-Leste’s National Development Plan (NDP) lays out a vision of a democratic country where state resources are managed efficiently, transparently, and free from corruption, and where the rule of law is respected and office holders are accountable to those by whom they are elected or appointed.

2. **Timor-Leste's achievements are remarkable.** The executive branch of the state, the Government, has been successful in establishing core planning and resource management functions that are effective, transparent, and anchored in the NDP, and compare very favorably with those of other low income countries. The Government has developed solid and transparent arrangements for collecting petroleum revenue, safeguarding the country’s most important resource, and ensuring that sustainable income will be spent only through the budget approved by Parliament. Albeit with varying reach and quality, the Government has also succeeded in providing services in health; education; infrastructure and communications; and agriculture, fisheries, and forestry. These results have been achieved against considerable odds, including a pervasive lack of technical and management skills and lack of familiarity with the institutions needed to run the State.

3. **Four years into the country’s existence, the institutions of the state outside the executive are beginning to play a role, although the executive remains stronger than the Parliament, the Judiciary, the oversight institutions, and the Presidency. Media and civil society organizations also remain comparatively weak.** Despite some progress, much remains to be done to translate the governance architecture set out in the Constitution into well-functioning and fully autonomous institutions. Given the relative strength of the executive, and in order to achieve the checks and balances envisioned in both the Constitution and the National Development Plan, the Government may wish to consider what measures it may take to strengthen other institutions. Such measures may include ensuring that independent institutions have statutory budgets approved by Parliament; maintaining proper channels of communication; respecting the separation of powers; and creating an enabling environment for media, civil society and business. This would build trust and give people confidence that the Government is conducting its business in a fair and honest way. In strengthening governance, the Government may wish to consider using and demonstrating four guiding principles:

- Sending the right signals through leadership and integrity at high levels;
- Relaxing control in order to consolidate it – reassuring citizens by allowing the institutions of scrutiny and accountability to operate independently;
- Strengthening the rule of law and due process, including restrained and appropriate use of the State’s monopoly on coercive power; and
- Reaching out and listening to the population in order to be more responsive to priorities at local level.

4. **In any executive, leadership is critical to the credibility of good governance and anti-corruption efforts.** It sends a signal to the system as a whole that people should follow the standard set by the top, which is particularly important in a context where not all independent constitutional powers are fully effective yet. Timor-Leste's leadership has declared a strong commitment to stamp out mismanagement and corruption. It is important that this resolve be demonstrated by members of Government who make decisions that are free from conflict of interest and are subject to the same standards of performance, behavior and disciplinary procedures applied to the rest of the administration. The Office of the Inspector General has demonstrated increasing capacity to handle internal investigations, inspections, and audit, and posts summaries of its reports on a public website. Timor-Leste's Procurement Decree Law contains specific definitions of situations of conflict of interest. Government has shown further leadership in this area in planning an options study on appropriate integrity instruments that could include declarations of income and assets for key state actors. The Petroleum Fund Act already requires all members of the Investment Advisory Board to supply such declarations on taking and on leaving office.

5. **To complete the full constitutional set of checks and balances, it is important to strengthen the independence and capacity of the Parliament, the Judiciary, the oversight institutions, and the Presidency.** While the constitution clearly provides for the separation of powers, in practice power resides mainly in the Executive. The Office of the Provedor de Direitos Humanos e Justica will provide citizens with a constitutional channel for reporting and seeking investigation into alleged abuses. The High Administrative, Tax and Audit Court is the institution that is constitutionally endowed with the function of external auditor. Given that the creation of this court is not feasible in the medium term, the Court of Appeals plans to assume responsibility for the management of the external audit function as a constitutionally legitimate interim measure. All independent institutions will need to be adequately funded, and – reflecting their independence – their budgets would preferably be presented directly to Parliament or otherwise protected from sequestration.

6. **It will be equally important to foster the development of a free and independent press and a strong civil society.** In establishing a new Penal Code for Timor-Leste, Government may wish to avoid criminalization of defamation, and to create a civil defamation law with appropriate penalties. International good practice suggests that regulation of non-governmental organizations and other civil society groups should encourage transparency and accountability, including requirements for information disclosure, appropriate financial management, and prevention of conflict of interest. At the same time, it is important to protect fundamental freedoms, such as the ability to mobilize funding, and independence from government interference, while avoiding unreasonable barriers to registration.

7. **Ensuring the rule of law and the appropriate and consistent use of coercive power are cornerstones of good governance. Impartial treatment of all citizens, regardless of party affiliation, is critical.** The employment of international legal professionals has significantly improved the functioning of Timor-Leste's weak justice system, but this can only be an interim measure. All district courts are operational although heavily reliant on the United Nations Office in Timor-Leste (UNOTIL) for logistical assistance.¹ Continuing attention to institutional strengthening and training is urgently needed if these improvements are to be sustained. The independence and capacity of the Office of the Prosecutor General will also need to be strengthened, and the rule of law will be further enhanced through strengthening

¹ UNOTIL replaced the United Nations Mission in Support of East Timor (UNMISSET) in May 2005 and is due to withdraw in May 2006.

administrative support functions for the police and army, and by creating effective civilian oversight mechanisms.

8. **Timor-Leste's Civil Service Statute, passed in mid 2004, provides an essential framework for the development of the civil service, but it is awaiting the passage of implementing regulations, including those needed to give full effect to the code of conduct and disciplinary code.** Supplementary legislation and regulations will be needed to specify fair and correct recruitment and administrative procedures, define the limits on political activity for public employers and employees, clarify institutional arrangements, and lay down guidelines for referral in the case of criminal acts. Once the Organic Law of the Office of the Inspector General (OIG) has been passed, the OIG and the corresponding inspectors in each ministry will be able to take the initiative in investigating administrative malpractice cases, reinforced where possible by management information supplied by internal audit. Prima facie corruption cases could be referred to the Provedor once sufficient capacity is established in that office, and apparent criminal cases would be referred directly to the Prosecutor General. Criminal malpractice and corruption would best come under the Penal Code, which needs to include clear definitions of bribery, trafficking in influence, and other types of corruption, together with the provision of penalties. Ahead of the full implementation of the Civil Service Statute, it would be advisable to establish clear ground rules for administrative sanctions and judicial referral and to apply them consistently to all members of the public administration.

9. **Reaching out to various actors, within and beyond Government, is crucial to fostering public support.** Information and consultation are the keys to development of confidence in wise government, as demonstrated by the positive response of the media and civil society to the publication of reports and recommendations from the Office of the Inspector General on its website, launched in August 2005 (www.inspeccaogeral.gov.tl). More accessible information on the budget and operations of Government will reassure the electorate and assist in the development of constructive debate. Government could publish draft legislation when it is forwarded to Parliament, in order to inform the public and encourage wide discussion. Importantly, the Office of the Provedor has identified the need for surveys on corruption. In the face of rumors of corruption and mismanagement, surveys to establish a baseline for the type and incidence of corruption will be useful in pinpointing areas of high risk as well as identifying which agencies are trusted and are functioning well and therefore may serve as models from which others may learn. Information from the surveys would be a significant step in quelling rumors and providing a factual basis for changes in policy and practice necessary to tackle corruption. In addition, Government may wish to explore mechanisms for enlisting communities and beneficiaries in monitoring service delivery and, with appropriate safeguards, assuming responsibilities in managing some public resources.

10. **Given the continuing reduction in the numbers of international advisers, it is all the more critical to build credible institutions that Timorese can manage and run.** While capacity remains an obvious and understandable deficit, this paper suggests that good governance does not need to wait for the creation of greater capacity. Good governance relates to strong and credible leadership, adherence to clear rules, and openness in responding to external scrutiny. If core functions of budget and civil service are working well, services will work, and if the State's monopoly on coercive power is used in a restrained and legal manner, citizens will feel they can trust the State. International experience shows that honest and open regimes can deliver even if they are not technologically sophisticated or filled with highly-skilled people. This finding is encouraging for the future of Timor-Leste.

11. The remainder of this paper discusses the Timor-Leste Framework of Governance, the Decision-Making Process, the Need for a Responsive and Accountable Public Administration, Free of Corruption, the Strengthening of Internal Control, Improving Access to Justice, the Creation of Independent Oversight Mechanisms, and Ensuring Public Access to Information. The four guiding principles set out in paragraph 3 should shape actions in each of these domains of good governance. In each section, the paper provides suggestions for further action.

Framework of Governance

12. **Timor-Leste's Constitution provides for essential checks and balances, safeguards for citizens rights, and separation of powers. The system of checks and balances is beginning to be effective.** For example in 2005, the President vetoed a controversial law on association and referred the law to the Court of Appeals for a review of its constitutionality. The court found that certain provisions were unconstitutional, and the law was referred back to Parliament which subsequently passed an amended version. Also in 2005, for the first time, a case of corruption in the public service was the subject of criminal prosecution. However, some elements of the governance framework remain to be created, including the Superior Council for the Public Prosecution, the Supreme Court, and the High Court for Tax, Administration and Audit.

Box 1: State Institutions as Foreseen in the RDTL Constitution

Office of the President – established.

Council of State – established

Superior Council for Defense and Security – established

Government – established.

Parliament – established. The Parliament currently has 88 members, based on the Constituent Assembly elections, but membership will eventually be reduced in line with the constitutional stipulation that Parliament have between 52 and 65 members.

Courts and Judiciary – established.

Superior Council for the Judiciary – established.

Supreme Court - not yet established.

Court of Appeals - established

Dili, Baucau, Suai, and Oecussi district courts - established

High Administrative, Tax and Audit Court – not yet established.

Military Courts – not yet established.

Maritime Courts and Arbitration Courts – provided as a possibility under the Constitution; not yet established.

Office of the Prosecutor General

Superior Council for the Public Prosecution – in process.

Office of the Provedor – Provedor and deputies appointed, Office opened March 2006.

13. **Although the system of checks and balances is growing more effective, the Government remains the country's strongest institution.** It has established core planning and resource management functions that are effective and transparent, and compare favorably with those of other low income countries. Prominently, Timor-Leste has adopted a strong regulatory framework to ensure the transparent and sustainable use of petroleum revenues through the national budget approved by Parliament (Box 2). Yet weaknesses in national capacity make the system vulnerable in the face of the departures of international advisers, as indicated by a recent assessment of the Ministry of Planning and Finance (MoPF). Recognizing this vulnerability, Government has collaborated with development partners including the World Bank to create a multi-donor, five year Planning and Financial Management Capacity Building Program. Centered on the Ministry of Planning and Finance, the program will support planning and financial management in other ministries as well. The program aims to sustainably strengthen

capacity by enhancing skills and knowledge, systems and processes, and attitudes and behavior, while deploying careful recruitment and succession planning to ensure that critical staffing gaps do not continue to undermine performance.

Box 2: Ensuring Prudent Governance of Timor Sea Revenues

Over the next two decades, Timor-Leste stands to gain tens of billions of dollars in oil and gas revenues from the Timor Sea. While this windfall will provide much needed resources from which Government can fund critical development investments and services, it also poses an important set of governance challenges.

International experience suggests that countries rich in natural resources are particularly susceptible to wasteful spending and corruption, as evidenced by consistently lower performance in growth and poverty reduction than in resource-poor nations. The concentration of resources in one sector creates opportunities for rent-seeking and irregular payments, and thus diverts public funds from service delivery and investment spending. Large natural resource rents tend to weaken accountability to taxpayers, especially when the tax base is small, as in Timor-Leste, and when non-petroleum taxes are a small part of revenues. The relative abundance of financial resources can encourage governments to overspend, and to spend in areas that would otherwise be deemed inefficient. In response to these potential governance pitfalls, Timor-Leste has taken several important steps to promote prudent management of its natural resource revenues.

Despite the political difficulty of setting aside savings in the face of Timor-Leste's many development needs, Timor-Leste's leaders have demonstrated commitment to ensuring the sustainability of revenue use for future generations. This is particularly important in Timor-Leste, as revenues from current petroleum fields are expected to last for only a few decades.

Timor-Leste initially followed a provisional savings policy until mid-2005, when Parliament passed the Petroleum Act, the Petroleum Taxation Act, and, unanimously, the Petroleum Fund Act. These laws provide the essential framework for petroleum production and the management of revenues consistent with international good practice:

a) In keeping with the principle of intergenerational equity, all petroleum revenues and returns on investment will be deposited in the Petroleum Fund and *saved for future generations*. Government plans to use only sustainable income, in order to preserve the real value of petroleum wealth by spreading expenditures over an infinite time horizon, safeguarding a sustainable budget in perpetuity. The Petroleum Fund was established in September 2005, with USD 204.6 million of savings accumulated since 2000.

b) Expenditures from the Fund will be *integrated into the budget process*. Transfers from the Fund can only be made to a designated Government account, and total transfers in a fiscal year cannot exceed a ceiling set by Parliament as part of the approval of the regular budget. Expenditures are executed through the Treasury and recorded as part of the Government's consolidated reporting. Revenue and expenditure figures are publicly available, and the Budget Law and regular external audits guard against the misappropriation of funds.

c) Assets are *managed prudently in safe, offshore investments* sheltered from domestic economic risks. While the MoPF has overall responsibility, operational management falls under the Banking and Payments Authority (BPA). Professional investment managers will oversee investments made by the Fund. An Investment Advisory Board was set up in late 2005 to advise the Government on Fund investments.

d) Governance mechanisms have been put in place to *ensure transparency and accountability*, including the timely publication of quarterly reports and annual financial statements. An independent Consultative Council is to be nominated by the Parliament to advise it on matters related to the Fund. Independent external audits will be carried out by an internationally recognized accounting firm, and audit reports will be adapted into a format accessible to the public. Government has also launched a website to publicize the legal regime, transparency arrangements, and financial reports (www.transparency.gov.tl).

e) Recognizing the importance of citizen understanding of the savings regime and governance measures, Government undertook a series of public consultations throughout the country on the Petroleum Fund. Parliament has held a number of seminars for its members on the legal regime and the transparent and sustainable management of the country's petroleum resources.

f) Government and development partners are working to ensure necessary international advisory support combined with capacity building for Timorese counterparts.

g) Timor-Leste has agreed to participate in the Extractive Industries Transparency Initiative (EITI). The country was already managing its petroleum resources according to some of the principles subsequently adopted by EITI well before EITI's launch in 2002.

Timor-Leste's Government has set in place measures for the sustainable and transparent management of Timor-Leste's petroleum revenues. Their ultimate success will depend on a well-functioning public expenditure management system and on the effectiveness of all the checks and balances set out in the Constitution.

14. **Strengthening the separation of powers is a high priority.** In contrast to the achievements of the Executive, the other constitutional powers are relatively weak or remain to be created. Hence, the Government would gain broad-based trust by assisting in the strengthening of the remaining institutions, including Parliament, the Judiciary, and the Presidency, and respecting their autonomy. Together with consultation and information-sharing, the institution of these constitutional mechanisms for external scrutiny will foster the demand for good governance. The establishment of the Superior Council for the Public Prosecution and, in due time, the Supreme Court and the High Administrative, Tax and Audit Court, is important to complete the architecture of checks and balances that is provided for in the Constitution. The courts have established an appropriate interim arrangement whereby the Court of Appeals has assumed the responsibilities of the Supreme Court. All independent institutions including the newly established Office of the Provedor will need to be adequately funded, and – reflecting their independence – their budgets would preferably be approved directly by Parliament. It will be a high priority to create imprest accounts for these institutions as they are currently hampered by lack of funds for daily operations.

15. **In October 2005, Timor-Leste successfully concluded its first elections since the restoration of independence, for local authorities.** Final results have yet to be certified by the Court of Appeals for most localities. Despite numerous minor irregularities, largely due to the inexperience of electoral staff, the elections were regarded as free and fair. Elections are overseen by an electoral supervisory body, as stipulated in the Constitution. In the case of the recent local elections the supervisory body was the National Electoral Commission (CNE), a 13-member body to be constituted each time there is an election. Members of the CNE are appointed by the President, Parliament, Government, and the Judiciary. A permanent technical support body, the Technical Secretariat for the Administration of Elections (STAE), undertakes the organization and administration of elections. Importantly, the recent elections provided critical experience.

16. **Ahead of the 2007 Parliamentary and Presidential elections, the electoral system will need to be strengthened.** In order to assure the credibility and legitimacy of the election process, a range of important policy matters needs to be decided before the drafting of the electoral law for the upcoming elections, which should ideally follow broad discussions involving all political parties. In particular, there are numerous questions surrounding the electoral system: should the Presidential and Parliamentary elections be held on the same day; will the 2001 mix of proportional representation and first-past-the-post be maintained; and how many constituencies will there be? The policy consultation and legislative drafting process will need to start soon, as new voter registration cards conforming to the law must be issued ahead of the elections, and this will take many months. Additionally, in order for the CNE to be effective, more resources, election staff and training will be required. The CNE could usefully be enlarged for the national elections, and commission members could be given a paid sabbatical from their normal jobs. Given the slowness of the judicial system, consideration could be given to strengthening the CNE's decision-making power. Prior to elections consideration could be given to reviewing the provisions in Timor-Leste's new draft Penal Code related to election crimes. For example, as currently drafted the code criminalizes illegal election advertising but fails to criminalize the prevention of legal assembly. It also fails to criminalize violation of impartiality in polling staff. Finally there will be a need for continuing legal advice, ideally provided through assistance from the Electoral Assistance Division of the UN Department of Political Affairs.²

² Needs Assessment Mission: Timor-Leste, Electoral Assistance Division, Department of Political Affairs, UN, December 2005.

Box 3: Suggested Actions

- Ensure Office of the Provedor is fully functioning
- Create the Superior Council for the Public Prosecution
- Create a credible external audit function under the Court of Appeals
- Ask Parliament to create the Consultative Council for the Petroleum Fund
- Ensure adequate funding of the independent constitutional institutions with budgets approved directly by Parliament or otherwise protected, and the provision, as a minimum, of imprest accounts.
- Commence broad policy discussions ahead of drafting of law for 2007 Presidential and Parliamentary elections

Enhancing the Decision-Making Process

17. **Broad consultation at the policy stage ensures both transparency and the development of policies appropriate and implementable in the context of Timor-Leste.** The NDP has among its goals “Enhancing the participation of citizens in public and national life.” Consultation during the policy development process offers an important opportunity for both citizen participation and sound policy development. In some cases it also will be important to consult relevant professionals, such as nurses or teachers. Consultation on policies or legislation that will affect the whole country, as well as future generations, may most usefully encompass a broad cross-section of the population. Given the length of time required for and technical complexities of drafting legislation, ministries may wish to consider using alternative policy instruments so that implementation is not delayed while waiting for legislation to be written and passed (Box 4). It can also be important to build on good practice, developing administrative procedures first and then legislating on the basis of experience. Finally, as well as originating from Government, legislation may be introduced by Parliament or civil society. To date, a number of laws have originated with or are under development in Parliament, including the draft Statute of Combatants of National Liberation and a draft Statute for Private Lawyers. Full and equal consideration of laws proposed by all sources can enhance citizen ownership and participation in the legal process.

Box 4: Alternative Instruments to Parliamentary Legislation

Procedural rules governing the steps officials are expected to follow in carrying out specified administrative processes

Practice rules stating the practices that are to be followed by officials in order to make a statutory scheme operative or effective

Instructions (from a more senior level of the official hierarchy) indicating by whom and how particular administrative powers are to be exercised

Interpretative guides indicating how persons affected by statutory powers can expect those powers to be exercised

Prescriptive directions indicating the actions that persons affected are expected to take in order to comply with statutory rules

Recommendations providing advisory guidance as to appropriate action in order to implement specified policy objectives.

Codes of Conduct prescribing guidelines or standards for action or behavior in specified contexts

Voluntary codes (adopted by private sector bodies) providing for self-regulation on specified matters

Source: Patchett, Keith. Preparation, Drafting and Management of Legislative Projects. UNDP, 2003.

18. **International experience shows that the development of policies and modalities for implementation, accompanied by consultation, best precedes legislation, with a view to achieving the characteristics of “good” legislation as presented in Box 5.** So far, many of Timor-Leste’s laws have been adopted without reference to prevailing circumstances and constraints, and the definition of policies to address them. Unfortunately this has often led to the adoption, more or less “off the shelf,” of laws that prevail in countries with very different challenges from those present in Timor-Leste. There is a further risk that such legislation may assume the existence of implementation agencies which would be prohibitively expensive for Government to create and maintain, or require a level of capacity that is not yet available in Timor-Leste.

Box 5: Characteristics of “Good” Legislation

1. Achieves its objectives
2. Financially viable; cost-effective; benefits justify costs
3. Operationally practicable; efficient to manage and enforce
4. Likely to secure public acceptance and reasonable compliance
5. Predictable and stable in application; no likelihood of unforeseen or undesired consequences
6. Restrictions on community proportionate to intended benefits; fair in application and between different groups
7. Legally sound; consistent with the Constitution, Treaties, and existing law
8. Clearly drafted and reasonably comprehensible, especially to those affected or interested
9. Published promptly and readily accessible

Source: Patchett, Keith. Preparation, Drafting and Management of Legislative Projects. UNDP, 2003.

19. **The development of the Law creating the Office of the Provedor and of policy and legislation in the area of land and property provide excellent examples of both sequencing and consultation on content.** In the case of the former, a broad consultation process with the Timorese community and international experts was conducted while legislation was still in its development stage, allowing for alterations to the draft and education of the community about the future role of the Provedor. In the latter case the Land and Property Directorate within the Ministry of Justice developed basic policies, conducted research at the community level on the appropriateness of the policies, and used the research to inform the content of both policy and legislation. Other examples include the widespread and thorough consultations on the Petroleum Fund and the National Education Congress, which preceded the drafting of a National Education Policy (Box 6). Additionally, in 2004, the month-long consultations involving over 8,000 people undertaken by the veterans’ commissions provided the basis for the draft Statute on Combatants of National Liberation. Enhancement of consultation efforts at the policy development stage will add little to the costs to Government of developing policy and legislation but will be well worth it in terms of generating good law and popular understanding.

Box 6: Examples of Successful Consultation – The National Education Congress and National and International Consultation on the Petroleum Regime

In October 2003, the Ministry of Education, Culture, Youth and Sports organized the National Education Congress as a precursor to drafting the National Education Policy. The preparation of the Congress was guided by a Steering Committee comprising the Ministry, other important national stakeholders including the Church and the National Institute for Linguistics, and development partners. The congress was meticulously prepared by 9 working groups focusing on basic education; secondary and vocational & technical education; tertiary education; non-formal education and literacy; curriculum; teacher training; language of instruction; community participation and private sector involvement; and education finance. The working groups included representatives of Government, the Church, and national and international NGOs and other civil society stakeholders. About 600 teachers, headmasters, parents and other stakeholders, representing schools throughout the territory, attended the 3-day conference in October. They discussed the 9 themes in small groups, formulated recommendations for the Ministry, and discussed them in plenary sessions. The Congress' recommendations form the basis of the Education Policy, which is currently being considered by the Council of Ministers.

In another instance of successful consultation, the Government of Timor-Leste's Timor Sea Office conducted consultations, both nationally and internationally, on its proposed new petroleum regime in 2004-2005. The process began in August 2004 with an intensive 3-day public consultation meeting in Dili to explain and to receive comments on the draft petroleum laws. The briefing began by explaining how the industry worked, before moving on to the Government's proposal for regulating it. The briefing covered the draft Petroleum Act, the draft Production Sharing Contract and the draft Petroleum Taxation Act. A separate meeting was held in Dili in October on the draft Petroleum Fund Law. The Dili meetings were attended mainly by NGOs and the media. They were followed by similar briefings in all 13 district centers, attended by 50-60 community leaders each. The Office also began a program of holding briefings in all sub-district centers which focused on the Timor Sea negotiations and the Petroleum Fund. Many of the local leaders who attended these meetings walked 4 hours or more to attend. The consultations also drew in companies and international stakeholders. All draft laws were posted on the Timor Sea Office website (www.timorseaoffice.gov.tl/). International stakeholders were notified of the availability of the drafts, and invited to provide comments. Finally, the Government met with companies to discuss their concerns and comments. These consultations generated written comments from international institutions, NGOs and companies, all of which were made public, based on a suggestion from NGOs during one of the initial meetings. Some of the comments were taken into account when finalizing the laws.

20. **Institutionalizing the legislative program will support the priorities of the Council of Ministers and promote consultation.** According to the recently modified Rules of Procedure (RoP) for the CoM, the Office of the Secretary of State for the Council of Ministers (SSCoM) sets forth the annual legislative program for each fiscal year. In FY2006, for the first time, SSCoM has set forth a list of policies and legislation expected to be presented to the CoM in the course of the year. The list was drawn up in consultation with the line ministries, with SSCoM playing a role in prioritization. This is an important step, given that in previous years there was no such coordination and prioritization, and by default line ministries decided what policies and legislation to put forward. Building on this step SSCoM may wish to develop guidelines for information, consultation, and drafting procedures, as called for in the new RoP.

21. **Institutionalizing mechanisms for legislative drafting and review will ensure harmonization in the development of the body of law.** The National Directorate for Judicial Assessment and Legislation (NDJAL)³, within the Ministry of Justice (MoJ) is legally mandated to draft legislation, as well conduct studies, issue opinions, or otherwise provide technical input into draft legislation. In practice, legislative drafting itself generally takes place within ministries, often with the assistance of international advisers. Laws are then generally submitted to the NDJAL for review. Recognizing the need for a further mechanism to ensure legal consistency, Government has also created a Commission on Harmonization under the SSCoM to review all organic laws to ensure that they do not contradict each other or the Constitution. A

³ Decree No. 3/2003, Organic Law of the Ministry of Justice, Part IV, Sec. 8.

challenge for this commission is to ensure that critical legislation, such as the Organic Law for the OIG, is reviewed early on and not held up for extended periods by the review process.

22. **Given its size and scarce legal resources, Timor-Leste may wish to consider how to consolidate legislative drafting further.** Currently both the NDJAL and the SSCom play a role in the legal drafting process. Consideration might be given to strengthening either the NDJAL or SSCom as a central legislative drafting agency, rather than delegating the preparation of legislation largely to line ministries as is the current practice. Under such a system, policy development could take place in ministries which would then, when a legislative project was due, present the policy to a central body for drafting. Once draft legislation was prepared, it could then be sent back to the relevant ministry for technical review. As international technical assistance on legislative drafting will be required for the foreseeable future, such assistance could be lodged in the central agency with technical assistance for policy development assigned to individual ministries. Clear differentiation of policy development and legislative drafting responsibilities, and the creation of an established mechanism for legislative drafting and review, would contribute to harmonization across legislative projects.

23. **Strengthening the legislative review and drafting capacity of Parliament will enhance the quality of legislation while broadening citizen participation.** Once a law is passed by the CoM, it is forwarded to Parliament where the President of the Parliament assigns it to one of seven technical committees for consideration. Under the new draft organic law for the Parliament, a technical services office to provide legislative drafting services, among others, is envisioned. There have been some important procedural improvements in Parliament's consideration of laws. In keeping with the Rules of Procedure for the CoM, Government has been consistently submitting explanatory notes with bills, leading to improved debate within committees and the rejection of draft bills in some cases. A procedural change whereby committee reports to the plenary are written only after consultations with Government and civil society has led to more debate, including offering of amendments, in both committee and plenary.

Box 7: Centralization of Legislative Drafting– The Parliamentary Counsel Office in New Zealand

In a number of countries the drafting of legislation is the responsibility of a specialist legal unit, rather than being handled directly by Ministries or Departments. This approach brings together in one place staff with the specialist skills and expertise to draft laws that are simple, clearly expressed, consistent with other legislation which may already be in effect, and which respect legal fundamentals such as constitutional or human rights obligations.

In New Zealand for example, the Parliamentary Counsel Office (PCO) is a statutory office of the Parliament responsible for drafting legislation. It is also responsible for making the law accessible to the public. The PCO drafts Government legislation for introduction into Parliament. It advises on legal issues and drafts amendments when laws are being debated and considered by Parliament. It also drafts some Members' Bills at the direction of the Attorney General in cases where there is a high probability that the Bill will receive sufficient support in Parliament to become law. The PCO also provides legislative drafting advice to the promoters of Private Bills and Local Bills.

In addition the PCO drafts subsidiary law such as Statutory Regulations. In New Zealand Regulations generally deal with the detailed implementation of Acts of Parliament, and are important because often it is through them that the laws are directly applied to individuals and organizations in society. Drafting high quality regulations can be just as challenging as drafting bills.

24. **Opportunities and mechanisms for consultation can be built into the policy process, allowing the sector ministries to continue to take the lead on policy development while establishing means of consultation.** The health and education ministries have performed well in leading policy development in their sectors and sector working groups have been established in several areas. These could be expanded to include civil society and/or become fora to launch

and oversee the policy process, undertake broad consultations as appropriate, and monitor and evaluate policy implementation. In addition to civil society, the working groups could consult sector specialists, those particularly affected by a given policy, and civil servants. The insights gained through monitoring and evaluation by such working groups can usefully feed into the policy development process, while also providing a basis for improving service delivery.

Box 8: Suggested Actions

- Issue a directive from the Council of Ministers regarding the recommended sequencing of policy preparation, including consultation, and regular updates of priorities for legal drafting
- Create a central legislative drafting unit and other appropriate legal drafting mechanisms
- Disseminate to the public draft legislation submitted to Parliament
- Include or consult civil society in sector working groups

Building Responsiveness and Accountability in Public Service

25. **Building a public service that is accountable, responsive, service-oriented and free of corruption is a foundation for good governance.** Passed in June 2004, the Civil Service Statute and its accompanying codes of ethics and disciplinary procedures set the framework for an honest, responsible public service. Supporting legislation and regulations are awaited that will clarify public servants' rights and duties and create a strong integrity framework, prohibiting the receipt of gifts and defining the limits of acceptable political activity. Equally important will be the development of a professional body of staff, imbued with an *esprit de corps*, who are determined to serve the public interest diligently. At present, reports of absenteeism and failure to comply with standards of attendance, punctuality and working hours are fairly widespread. Moreover, the administration is highly centralized, with many decisions sent up to Ministerial or even the Prime Minister's level. While centralization is understandable in the face of limited capacity and fear of making mistakes, it can also inhibit the development of capacity and responsibility, create long delays, prevent Ministers from playing their proper roles, and give rise to the appearance of political influence in administrative decisions. Less centralization in decision-making, accompanied by effective monitoring and safeguards, would lead to stronger performance. The Ministry of Health has made commendable progress in creating benchmarks and indicators of results against which staff at all levels can be held accountable. It may be useful for the Government to consider whether the results-oriented model of the Ministry of Health could be adopted in other areas of public administration (Box 9).

Box 9: Accountability in the Ministry of Health

The Ministry of Health has succeeded in empowering and instilling accountability in its staff throughout the territory through a set of key management instruments. First, the ministry has a clear policy which focuses on improving maternal and child health care. Second, planning and budgeting to achieve these objectives start at the sub-district level and proceed to the national level. Third, a small set of indicators (see below), consistent with the Ministry's objectives, is measured at every level of the system. Fourth, the Ministry holds monthly management meetings with district health representatives, and they in turn meet with sub-district personnel to monitor progress and discuss issues. These tools allow the Ministry to focus on the important results, and to identify and act on problems. The Ministry intends to associate communities more closely with this process.

District	Outpatients visits per capita (OPD) %	Maternity services coverage (attended by midwife) %	Measles Coverage < 1 %	Access to health facility %
Aileu	1.46	15	32	91
Ainaro	.72	19	21	94
Baucau	1.17	18	37	68
Bobonaro	.99	15	25	94
Covalima	1.47	33	29	85
Dili	1.97	42	18	100
Ermera	.81	13	31	96
Lautem	1.44	20	36	12
Liquica	.97	20	39	87
Manatutu	1.52	29	56	97
Manufahe	1.19	19	25	93
Oecussi	0.35	3	8	78
Viqueque	1.95	20	23	25
NATIONAL	1.29	22	27	80

Source: Ministry of Health, Quarterly Report for January to March 2005

26. **In addition to traditional top-down accountability mechanisms, such as oversight institutions and internal controls, the quality of governance and service delivery can be significantly enhanced through a complementary focus on bottom-up structures of participation, information and, in some cases, responsibility for services.** When public funds are misspent, it is ordinary citizens who have the most to lose through the deterioration of public services and detrimental effects on economic growth. When consulted and informed about how much money is available for local services, users and interested groups can assist the Government in optimizing the allocation and checking the use of public funds. In this context, it is commendable that Timor-Leste's budget for FY2006 gives much more detail than in the past in the area of capital expenditure. This will facilitate more accurate monitoring and, indirectly, greater accountability. Citizen groups are likely to remain vigilant in monitoring staff attendance and the use of funds, be it through the quality of schools, availability of medical care or safety of the water supply, because their own quality of life is at stake. International experience shows that welcoming community feedback and placing information, decision-making authority, and even financial resources in the hands of local citizens can considerably improve the efficiency and effectiveness of public expenditures as long as safeguards are maintained. For example, in Bangalore, India, as well as in Malawi and the Philippines, community report cards have raised public awareness about the quality of government services and provided the respective Governments with specific feedback on areas of needed improvement. Local governance in Bolivia has been enhanced by community oversight committees, through which citizens monitor public expenditure performance and participate in local government decision-making. In Porto

Alegre, Brazil, public service delivery has improved in large part due to meaningful citizen participation in the budget process. NGOs can also serve as effective intermediaries in enhancing government service delivery.

27. **Publishing and disseminating information are key to encouraging public involvement in fostering accountability in the public service.** In Uganda, surveys undertaken in the early 1990s to track education expenditures from the central government to the school level determined that fewer than 20 percent of per-student capitation grants were reaching the schools for which they were intended. This information, spread through public radio broadcasts, spurred schools and parents to demand better service and accountability from public officials. It also motivated Government to tackle theft and strengthen disbursement procedures, with the result that over 90 percent of the funds allocated now reach their target. Recognizing the value of transparency, the Government of Timor-Leste has improved its dissemination of information over the web. To date Government and most line ministries have websites as does the Office of the Inspector General, encouraging a better informed public that is more confident about what is being done in their name and with their resources. Particularly important are the websites for the Oil, Gas, and Energy Directorate as well as the Petroleum Transparency site which provides updates on petroleum revenues.

28. **Timor-Leste may wish to continue its efforts to find effective ways of disseminating public information.** The use of community radio has already proven to be a bottom-up accountability mechanism in Timor-Leste. When the residents of one village discovered that a development committee treasurer had misappropriated funds intended for public use, they were able to broadcast his response and apology to the community members he had deceived. However, the effectiveness of this system is challenged by limited funding for the maintenance of community radio facilities. Additional mechanisms for transparency and citizen monitoring may include expanded signposting of what public services are available and when they are available free of charge, disseminating the press release of the weekly Council of Ministers meeting and the National Gazette in both national languages, making the National Gazette, Budget Books and Quarterly Budget Execution reports available in the districts, encouraging citizen feedback on Government decisions through community fora, and working to build the capacity of local citizens to participate in expenditure monitoring.

29. **The quality of governance and efficiency of service delivery through citizen involvement can be enhanced further by the devolution of decision-making and resource management authority to local communities.** Involving local citizens in decisions about how to spend public resources can focus spending more sharply on citizen needs and preferences. Delegating spending decisions to the service delivery level can reduce the risk of administrative capture. In Timor-Leste, the Community Empowerment Project (CEP) set a precedent for the use of community block grants to move spending authority to the local level. However, difficulties in the program's implementation have offered lessons in the importance of close links between community participation mechanisms and Government systems. Based on this experience, a strong case can be made – from the perspective of both spending efficiency and accountability – for following up the CEP with a more streamlined system of block grants that is integrated into the Government budget, the Treasury system and the local government administration. To this end, in 2005 Government launched a pilot project in Bobonaro district, providing local development grants directly to communities. USD 192,000 has been budgeted for this activity across Bobonaro's six sub-districts for FY2006, and the initiative is expected to be extended to Lautem District in FY2007. Similarly, a UN Habitat and World Bank supported initiative in the Ministry of Public Works is piloting the management of small grants directly by poor urban communities. In the education sector, UNICEF and the Ministry of Education and

Culture piloted a block grant program in seven schools. Due to lack of decentralized disbursement systems, the pilot was not continued; however some school principals are undergoing training in basic book-keeping. The development of a block grant scheme is a policy priority for primary education, with the expectation that Parent Teacher Associations and School Councils will play a role in resource management. Limited capacity does not imply that devolved authority will lead to a decrease in accountability. International experience indicates that accountability can be strengthened, not weakened, by greater involvement of representative oversight bodies close to the field level, such as Parent Teachers Associations and health management committees. At the same time, accountability to the center must be maintained.

Box 10: Suggested Actions

- Expand district and results-based approaches to all sectors
- Conduct Public Expenditure Tracking Surveys
- Publish National Gazette in Tetum
- Make Budget Books, Quarterly Budget Execution Reports and National Gazette available in the districts in both national languages
- Disseminate the press release of the weekly Council of Ministers meeting in both national languages
- Expand piloting of local development grants
- Strengthen mechanisms to disseminate information and promote citizen involvement, such as parent-teacher associations

Strengthening Internal Control

30. **The Office of the Inspector General is making a significant contribution to integrity, transparency and accountability.** Created in 2000 under the transitional administration, the OIG now falls under the Office of the Prime Minister. The OIG conducts investigations and special reviews in order to detect wrongdoing and promote best practices in Governmental operations. With the Prime Minister’s consent, the OIG may undertake investigations in response to requests from Parliament, the President, the Prime Minister, Ministries, and citizens. The staff of 13 includes inspectors and auditors, the Inspector General, and the Sub-Inspector General, a post that is currently vacant. The OIG investigates allegations and submits reports with recommendations for administrative action or prosecution to the Prime Minister, who may forward them to the relevant agency or the Prosecutor General. OIG investigations into personal use of Government vehicles resulted in changes in rules, leading to stricter control over vehicle use and a sharp and visible reduction in use for personal purposes. An investigation into the use of fuel vouchers and misappropriation of fuel has led to a new voucher system with stronger controls. In a number of cases, the OIG has found evidence warranting criminal investigation, and the Prime Minister has forwarded these cases to the Office of the Prosecutor General. One is now moving to trial. As yet the OIG does not monitor the implementation of its recommendations, but the recent addition of staff members for the Division of Corrective Measures may help to remedy this omission.

31. **The Office of the Inspector General has been active in promoting transparency and anti-corruption measures through public education.** The OIG has carried out public information campaigns in all districts about corruption and how it can be combated. The campaign includes the distribution of fliers with information on corruption, nepotism, collusion, and bribery with instructions on how to make a request to the OIG. Such campaigns are commendable as a well-informed citizenry is critical to combating corruption. The Inspector General also gives lectures on anti-corruption and conflict of interest to civil servants at the National Public Administration School (INAP), and held two conferences on “Transparency and Accountability” in November 2003 and May 2004. The recent launch of the website of the OIG,

including the publication of summary investigation reports, is an important step in furthering transparency and has increased the credibility of the OIG and of Government more generally (www.inspeccaogeral.gov.tl).

32. **Building on these achievements, the credibility and effectiveness of the OIG could be further strengthened.** Passage of the OIG's Organic Law would increase the independence of its operations, enable it to conduct ministry inspections, and follow up on the implementation of its recommendations. The implementing regulations that will underpin the Organic Law would allow the OIG to create links with inspectors in all the ministries, ensuring consistent inspection and investigation standards throughout the administration. In line with best practice, the Office may wish to define its work program independently, although from time to time the Office may be asked to conduct a special investigation on issues of particular concern to the Prime Minister or other ministers. While it is normal for the recommendations of the OIG to be acted upon by the Executive, clear rules enabling referral of potentially criminal cases directly to the Prosecutor General would increase the effectiveness of the Office. To date the Prime Minister has given permission for referral on a case by case basis, but a system of direct referral to the Prosecutor General could usefully be formalized. This would allow the public to verify the consistency of procedures and actions, precluding perceptions of selective application of rules or double standards, and confirming that everyone is subject to the law, irrespective of rank. Full public reports on activities undertaken and recommendations made will send a strong message to the public that administrative waste, malpractice and corruption will not be tolerated, while demonstrating accountability, transparency, and responsiveness in the investigation process.

33. **The Ministry of Planning and Finance has an internal audit unit which reports to the Head of Treasury.** This is an internal management function which tests the effectiveness of, and compliance with, systems and procedures, and reports to management accordingly. The internal audit unit has an annual work plan and conducts spot audits at the request of the Ministry, as a result of which some cases have been referred for prosecution. The unit has also launched an audit of all the Government's district financial offices. A recent assessment of the Ministry of Planning and Finance indicates that it will be important to conduct internal audit on a regular basis throughout the Ministry and administration, starting with the procurement function. In particular, it would be advisable for the Ministry to ensure that all its operations are subject to internal audit and that reports are made to a high management level. Depending on the extent to which internal audit has been established in other ministries, the Ministry internal audit function could assist them, focusing in particular on high-risk areas.

34. **Agency level inspectors to ensure compliance with administrative regulations will strengthen management and performance.** While the OIG covers all Government operations, responsibility for specific internal management and control systems is devolved to each ministry. Monitoring the application of administrative regulations and internal management systems can be strengthened through internal inspection functions. Usually all Government agencies have internal control offices, but given its small size, Timor-Leste may wish to create specialized internal control functions only in the large ministries. In 2004, in keeping with its Organic Law, the Ministry of Interior (MoI) established an Office of Inspection with a mandate to conduct audits and inspections, create a system for public complaints and propose improvements in services. The police force, which falls under the MoI, already has its own complaints mechanism, but the Office of Inspection acts as the disciplinary review body for the police. The Ministry of Health has an inspector to provide for internal control in financial and human resource matters, who collaborated with the OIG to investigate a corruption case involving a district health officer which is now going forward to trial. School inspectors have been appointed and are part of the staff in the district education offices. These sector

inspectorates can contribute to instilling a service-oriented and accountable civil service, and to reducing absenteeism. They could also provide a vehicle for citizen monitoring through, for instance, a monthly meeting in each district capital to report to communities on sector performance.

Box 11: Suggested Actions

- Submit the Organic Law of the Office of the Inspector General to Parliament
- Extend the function of internal audit in the Ministry of Planning and Finance beyond Treasury, with coverage of Procurement as the initial priority

Putting in Place Independent Oversight and Audit

35. **Timor-Leste's critical independent oversight mechanism, the Office of the *Provedor de Direitos Humanos e Justica*, opened its doors in March 2006.** Following the promulgation of the organic law for the Office of the Provedor in April 2004, the Provedor was elected by Parliament in early 2005. The Provedor quickly appointed his two deputies, for human rights and anti-corruption respectively. Recruitment of the staff for the office is nearly complete, and the Provedor has already conducted an education campaign in the districts and in Dili. Per Article 27 of Timor-Leste's Constitution, the Office of the Provedor will function as Ombudsman and Human Rights Commission. The mandate of the Provedor encompasses fighting corruption,⁴ promoting good governance and rule of law, protecting human rights, and redressing violations and injustice. The Provedor is appointed by and answers to Parliament and will undertake investigations in response to complaints from the public or requests from Government. The Provedor may make recommendations in a report to the entity affected. The recommendations of the Provedor are not backed by legal sanction but may include referral of a given matter to the Prosecutor General. The Provedor also has a mandate to mediate and conciliate between the complainant and the agency affected. The legislation stipulates that the Provedor shall keep the public informed so a major component of the Provedor's activities will be public outreach and the promotion of human rights and good governance.

36. **The establishment of the Office of the Provedor constitutes a clear and significant commitment to integrity and transparency in governance, but its effectiveness will depend on several factors.** Many countries now have ombudsman's offices, human rights commissions, or a combination of both. Experience has shown that the success of such entities depends on political support, adequate resources, public perceptions, functional competence, and how well they fit into the overall system of administrative regulation.⁵ The fact that the Provedor is constitutionally mandated strengthens the office; however, the independence of the office would be further strengthened if its budget were derived directly from Parliament, or were otherwise protected, and the office had access to funds for day-to-day operations, at least through an imprest account. Staffing levels are a further constraint. The Provedor will require sufficient well-qualified staff to be able to deliver timely and thorough investigations, while also disseminating information. This will be particularly so if the Provedor assumes a large role in, for example, oversight of the armed services. Focusing on police oversight efforts under the auspices of the Provedor may be more efficient than the addition of a separate police oversight

⁴ The Provedor is planning to agree Memoranda of Understanding with, the Prosecutor General, OIG, Police and other relevant agencies with the aim of establishing close communication and coordination among them and avoid duplication of work. It will also be helpful to define corruption cases as distinct from cases of administrative malpractice and purely criminal cases not involving corruption. The OIG and Prosecutor General will need to notify the Provedor of all cases in their purview which appear to involve corruption so that the Provedor can determine whether to take them over.

⁵ World Bank, *Using an Ombudsman to Oversee Public Officials*, PREM Note No. 19, April 1999.

body but will require additional financial and human resources for the Provedor. Budgeting and staffing levels may need to be increased once the level of demand for the services of the office becomes apparent.

37. The creation of independent oversight bodies to ensure professionalism and accountability on the part of the security forces remains a key governance challenge.

“Developing effective, professional, non-partisan defense and police forces...” is a stated goal of the NDP. Internal and external security understandably remains a continuing concern at the community level. Discipline and professionalism on the part of the armed services are critical to providing security, upholding the rule of law, maintaining good relations between army and police, and generating public confidence in the armed forces. Any gains which may be made in establishing better relationships between the armed forces and communities will quickly be lost if there is a perception of impunity for those who commit disciplinary or criminal offences. Emerging evidence of unprofessional conduct highlights the need for independent oversight bodies for the security forces, as well as the development of adequate capacity for civilian management of the defense force.

38. While there has been commendable progress in the institutionalization of disciplinary systems for the police service, these could be further strengthened by clearer articulation of roles.

The National Police of Timor-Leste (PNTL) falls within the Ministry of Interior. In keeping with the Organic Law of the PNTL, the Professional Ethics and Deontology Unit (PEDU) provides a complaints mechanism for the public and undertakes investigations. Minor breaches of discipline are handled within districts, while serious offenses are referred to PEDU. Where disciplinary review and appeal are concerned, there is some ambiguity, with overlap between the Inspectorate, established by the Organic Law for the Ministry of Interior, and the Superior Police Council, mandated by the Organic Law of the PNTL to be the final determining body on police complaints. Disciplinary review and oversight of the PNTL would be strengthened through clarification of the roles of these bodies, ideally when rules of procedure for both organs are developed. Protocols for interaction with the Office of the Provedor will also need to be developed. Clarification of the lines of operational authority between civilian officials in the Ministry and the PNTL command structure will reinforce the independence of the police force. The army, Falintil-Timor-Leste Defense Force, has developed an internal disciplinary code, but this has yet to be approved by the Ministry of Defense. Encouragingly, however, there have been inquiries into and hearings on some breaches of discipline. Meanwhile, the Office of the Provedor provides the only external oversight for the security forces. Consideration could be given to establishing an independent review commission for police complaints, as well as strengthening Parliament’s oversight role with respect to the security forces.

39. Ensuring independence of the audit of government accounts is crucial for enhancing governance.

Timor-Leste’s Constitution allots the function of external audit to the High Administrative, Tax and Audit Court. As an interim measure, the Ministry of Planning and Finance contracts the task to an external private auditing company, after which audit reports and the management letter are submitted to the Executive, and then to Parliament. While contracting is unavoidable in the short and medium term, contracting by the Ministry has serious shortcomings. It creates conflict of interest as the audit is paid for by the entity which is being audited, and there is no independent check on the scope and rigor of the audit. Nor does it contribute to local institution building for external audit. Recognizing that the establishment of the High Administrative, Tax and Audit Court may take some years, arrangements are now being made to transfer the responsibility for the contract of the external auditor from the MoPF to the Court of Appeals (CoA). Until independent audit capacity is developed, the CoA will need

support services to help manage the contract and interpret the audit results. A study to outline the necessary arrangements for the transfer and subsequent capacity building is planned for 2006. The CoA has incorporated the needs of the future High Administrative, Tax and Audit Court into its long-term human resource planning.

Box 12: Suggested Actions

- Ensure adequate funding of the Office of the Provedor with budget approved directly by Parliament
- Publish and submit to Parliament the Annual Reports of the Provedor
- Establish a credible independent audit function under the Court of Appeals, pending the creation of the High Administrative, Tax, and Audit Court
- Establish mechanisms for coordination between Ministry of Interior, PNTL, and Office of the Provedor
- Create independent review commission for police complaints.

Improving Access to Justice

40. **Timor-Leste's Constitution establishes the independence of the courts and judiciary and a framework for safeguarding this independence.** In addition to courts and a prosecution service, the Constitution calls for two independent oversight bodies – the Superior Council for the Judiciary and the Superior Council for the Public Prosecution. The Constitution provides further safeguards to independence in that the President appoints both the Prosecutor General and the President of the Supreme Court. As stipulated by the Constitution, the Prosecutor General has been making annual reports to Parliament. The Ministry of Justice sets overall policy direction for the sector, runs the Judicial Training Center, has responsibilities for legislative research and drafting, and administers the prison and defense services.

41. **The Constitution further establishes a system of courts for the delivery of justice.** The courts envisioned by the Constitution include the Supreme Court of Justice and other judicial courts, the High Administrative, Tax and Audit Court, and Military Courts. The Constitution also provides for the possible establishment of Maritime Courts and Arbitration Courts. To date district courts in Dili, Baucau, Suai, and the Oecusse enclave, as well as the Court of Appeals, have been established. In line with transitional arrangements provided for in the Constitution, the Court of Appeals has assumed the functions of the Supreme Court, until there is sufficient national capacity to staff a supreme court. The Dili District Court previously included the Special Panel for Serious Crimes, but this body was dissolved on May 20, 2005 with the departure of UNMISSET. Many of those indicted for serious crimes have not yet been prosecuted, but the recent detention of a number of indicted individuals who have recently returned to Timor-Leste indicates that the court will continue to hear such cases.

42. **Since the restoration of independence there has been progress in some areas of the justice system.** The Office of the Prosecutor General (OPG) and the Public Defense Service have developed basic personnel and case management systems. The courts and prosecution have begun producing statistics, which the Ministry of Justice (MoJ) plans to publish. Legal education campaigns carried out by the MoJ and civil society organizations have contributed to public understanding of the formal justice system, and the Ministry plans to publish a journal intended for a broad audience with updates on the justice system. Much effort has been devoted to the passage of essential legislation, such as the Organic Laws for the Ministry of Justice, the courts, the Office of the Prosecutor General, and the Statute of Judicial Magistrates which regulates judicial careers. Still remaining to be enacted is the Organic Law for the Public Defense.

43. **Despite these improvements, the justice system remains the weakest branch of Timor-Leste's governance architecture.** The district courts in Baucau, Oecusse, and Suai function only sporadically. They are currently operating, but judges, prosecutors, and defenders are not in residence and depend on UNOTIL to travel to the courts for hearings. The OPG and, to a lesser extent, the courts, have developed formidable backlogs. As of December 2005, the prosecution service had a backlog of almost 3,000 cases, while as of October 2005, there were 474 cases awaiting trial in the district courts. Illegal detention remains a significant problem. The effectiveness of the justice system is further hampered by the fact that laws and proceedings are not translated into languages understood by all court actors, including Timorese legal professionals, the majority of whom were trained in Indonesia. The Timorese judges, prosecutors, and public defenders appointed by the United Nations Transitional Administration in East Timor (UNTAET)⁶ had basic law degrees from Indonesian universities, but none had any substantial professional experience and received scant professional training prior to their appointments. While many carried out their duties with dedication, in some cases lack of experience and oversight led to professional infractions ranging from inconsistent attendance in court to allegations of corruption. All were disqualified in professional examinations in 2004-2005 and have been in full-time training since 2004.

44. **The weaknesses of the justice system particularly affect civil cases.** Between January and October 2005, only 17 civil cases were tried in all of the district courts, in contrast to 337 criminal cases. During the same period, the backlog for criminal cases awaiting trial was reduced by 29 percent, but the backlog for civil cases increased by 39 percent. In October 2005, the Court of Appeals had a backlog of 54 civil cases, compared to 4 criminal cases.⁷ The slow resolution of civil cases affects the confidence of both the community and the private sector in the justice system. The *Doing Business Report for 2006* found that Timor-Leste scored poorly on enforcement of contracts, with an enforcement time averaging 990 days and costing USD 183 for every USD 100 recovered.

45. **Currently the Timorese courts are operated *entirely* by international judges, prosecutors, and public defenders.** Over 20 legal professionals from other lusophone countries, funded by UNOTIL, UNDP, or bilateral arrangements, have been recruited to fill the vacancies left by the disqualification of the Timorese legal professionals. The system is likely to remain dependent on international court actors until at least 2010, if not beyond. While critical posts were left unfilled during the initial transition from Timorese to international court personnel, planning across the sector aimed at eliminating these gaps has now improved. The Council on Coordination, a donor coordination body made up of the President of the Court of Appeals, the Prosecutor General, and the Minister of Justice, has worked with UNDP to create a funding mechanism and mobilize donor funds to cover the costs of international personnel. Funding for these positions will be a key element of international support to the justice sector for the foreseeable future.

46. **The addition of 20 international legal professionals has brought significant improvements in the efficiency of the courts and prosecution.** Among criminal cases in the Dili District Court, 242 were decided between January and October 2005, compared to 11 between January and December 2004. International prosecutors have completed an inventory of the prosecution backlog, revised the case assignment system, and accelerated the resolution of cases. Starting with a backlog in the Office of the Prosecutor General of almost 3,000 cases in

⁶ UNTAET had executive, legislative, and judicial authority in Timor-Leste from October 1999 until the restoration of independence in May 2002.

⁷ Court of Appeals, Statistical Data, November 2005

September 2005, by January the backlog had been reduced to 2,730, with a net reduction each month for the first time since the creation of the justice system. International judges have also driven improvements in notification systems and the publication of case schedules.

47. **There has been significant progress in training Timorese legal professionals, which is a key priority for Government and the Judiciary.** Since mid-2004, 27 trainee judges, prosecutors, and public defenders have been in full-time training at the MoJ's Judicial Training Center (JTC). Following the completion of the training course in mid-2006, the trainees who pass will undergo a year of practical training. Court clerks, court administrators, prosecution office clerks, and public defender assistants have also begun training. Some of the judges will proceed directly to specialized training in order to become judges for the Court of Appeals or the High Administrative, Tax and Audit Court. The MoJ's JTC will continue to provide post-graduate, professional training, and is currently preparing for a new intake of trainees. The National University of Timor-Leste has recently started a faculty of law in cooperation with Portuguese and Brazilian institutions.

48. **Given the significant national and international resources invested in training, periodic external evaluations of the program will help ensure quality.** The training at the JTC is supported by a range of donors through UNDP's Strengthening the Justice Sector Program, as well as bilaterally. The teaching is largely done by the international judges, prosecutors, and defenders serving in the court system. Language has been a challenge, particularly in the early stages of the training, as students who received their legal education in Indonesian must study law in Portuguese, while also learning Portuguese language. An evaluation of the training programs would help highlight effective practices while indicating areas for improvement.

49. **While training for Timorese legal professionals is critical, strengthening institutions and systems will be essential in order to make routine the improvements brought about by the international actors.** Much of the progress since 2002 has involved training and the passage of legislation, with less attention to the creation of well-functioning institutions. In this respect the independent oversight institutions play a key role. The Superior Council of Judicial Magistrates (SCJM) oversees judicial careers, including disciplinary actions, providing a mechanism to prevent judicial management from compromising judicial independence. The passage of the Statute of Judicial Magistrates, published in 2002, regulates judicial careers and lays the legal basis for the creation of the SCJM. The SCJM was established in June 2003, but has yet to function properly. It still lacks key staff, such as a judge inspector, judge evaluator, and secretariat staff headed by a judge secretary, who would be responsible for executing decisions of the SCJM. Meetings have been sporadic.

50. **The institutionalization of sound selection, evaluation, and disciplinary procedures for judges and other legal professionals is critical to ensuring independence and professionalism.** It is also necessary for fostering public confidence in the institutions of the justice sector. Making robust selection, evaluation, and disciplinary processes open to public scrutiny would play a key role. In this regard, the publication of deliberations of the SCJM is particularly important. The Statute of Judicial Magistrates stipulates that deliberations of the SCJM are to be published in the Gazette, but this has been amended to require only certain decisions to be published. Resumption of the practice of publishing all deliberations will help ensure accountability and independence in the judiciary. The international personnel will have a crucial modeling and mentoring role in fostering high standards in the Timorese justice system, and should be subject to the same oversight, evaluation, and disciplinary processes as their

Timorese colleagues. Finally, creating guidelines that facilitate public access to case decisions is fundamental to the transparency and independence of the system.

51. **The Superior Council for the Public Prosecution (SCPP) has yet to be created.** The publication of the Organic Law for the Public Prosecution in September 2005 laid the legal basis for the creation of the SCPP. The Prosecutor General then initiated the creation of the SCPP by soliciting the required nomination of members from Government, the President, Parliament, and members of the prosecution service. Like the SCJM, the Superior Council for the Public Prosecution will provide essential oversight, regulation, and discipline of careers in the prosecution service, and will clearly establish the professional independence of the prosecution service. Meanwhile, the Council on Coordination, originally established as a planning and donor coordination mechanism, is evolving into a policy-making body. While coordination is important, a careful balance will need to be maintained in order to ensure that it does not preempt the independence of the judiciary, prosecution, and MoJ. The timely establishment of the SCPP is central to strengthening the independence and professionalism of the prosecution service.

52. **The adoption of the Organic Law for the Public Defense will complete the framework for the regulation of public legal professionals.** Timor-Leste's Constitution guarantees the right to defense. Although the defense service is under the MoJ, it will have its own organic law, currently being drafted, to regulate the service. The draft organic law contains provisions for the organization of the service, the nomination of a director, and the creation of a Superior Council for the Public Defense.

53. **The legal framework and accreditation standards for private lawyers remain to be created.** In addition to the lawyers in the public system, there are approximately 30 private lawyers working for law firms or legal aid organizations in Timor-Leste with no legal framework either for private lawyers or a bar association. Legal aid organizations have provided an indispensable service, particularly during the gaps in staffing in the public defense service brought about by training. Additionally legal aid organizations provide mediation services which parties in civil cases often use, given the costs and duration of court cases. However some lawyers and legal aid organizations are alleged to have poor professional standards, charging high rates for poor or non-existent service. A draft Advocate Statute which would create a bar association and a regulatory framework for lawyers was produced by the Lawyers Association of Timor-Leste and submitted to Parliament in 2004, but remains under consideration by a parliamentary committee. The next step would be to appeal for submissions from the public, practicing lawyers, and other professional groups before finalizing the statute. Reliable mechanisms of accreditation are also an issue, as a number of universities, in addition to the newly founded law faculty at the National University, are now offering law degrees.

54. **Timor-Leste has drafted a new Penal Code, which might usefully be subject to review and perhaps amendment.** Passed by the CoM as a decree law in December 2005, the law has yet to be promulgated by the President. The draft law criminalizes "Denial of Justice" by judges, which would allow for criminal charges to be brought against judges with respect to their decision-making, with sentences of up to eight years. This article has the potential to prejudice the independence of judges and is unnecessary, as the Statute of Judicial Magistrates adequately provides for the transparent discipline of misconduct and incompetence by judges. It is also runs counter to trends in most other civil law and lusophone countries. Additionally, several articles seem to violate the principle of proportionality between the seriousness of the offence and the severity of the sentence, with sentences of two to four years for relatively minor offenses, such as driving without a license, the disruption of a religious procession, the use of

false weights and measures, breaking seals and marks, and disobedience of orders to disperse. The criminalization of such offences will also increase the burden on the already weak court system. Punishment may be more appropriately provided through civil penalties. Finally, the definition of torture in the draft code does not adequately conform to the Convention Against Torture, which Timor-Leste has ratified, and therefore may usefully be amended.

55. **Despite some improvements, illegal detention is a continuing problem, making the creation of an improved case management system a matter of priority.** As of September 2005, there were 67 suspects, out of a prison population of approximately 270, who had been detained longer than six months without warrant or trial. Even among those not in illegal detention, pre-trial detention can last for months. An UNOTIL task force on illegal detention has resolved 80 percent of these identified cases, but systematic changes in case management are required to prevent the problem recurring. The institutionalization of standard case management is essential to routinize communications between police, prosecution, courts, and prisons, and reduce the incidence of illegal detention.

56. **Police understanding of the use of the 72-hour preventative detention has strengthened: the prosecution and the courts now need to follow suit.** The first stage in illegal detention has been keeping suspects in preventative detention beyond the legal 72-hour limit within which a suspect must appear before a judge. Police adherence to this regulation has improved, but this progress has been undermined by the slowness of the prosecution and courts in bringing detainees to court. Conversely, the release of criminal suspects from preventative detention undermines the confidence of the community in the justice system and in police competence.

57. **The challenges surrounding the justice system significantly constrain the ability of women to seek and receive justice.** “Facilitate access to justice for women and develop the legal means to fight violence and other crimes perpetrated against women ...” is a policy goal of the NDP (9.23). Cases of violence against women make up a large portion of court cases in Timor-Leste. For example a court monitoring report for October 2005 showed that of 26 cases heard, 14 (53 percent) involved violence against women.⁸ Yet when cases are resolved, the sentences are often light.⁹ Timor-Leste’s new Penal Code reinforces this approach, with very light penalties for rape, with a basic penalty of two to ten years.¹⁰ These cases cannot be satisfactorily resolved in the traditional justice system, and the fact that cases of gender-based violence (GBV) are being brought to court at all constitutes an improvement over the Indonesian era. However, given that crimes such as rape and domestic violence tend to be under-reported to start with, light sentences and the slow resolution of cases involving GBV act as a further deterrent to female victims seeking justice.

58. **Improving access to justice for women calls for specific practical changes.** The new office building for the OPG will include a private interview room for cases of GBV. Consideration could also be given to recruiting a social worker and psychologist to assist victims and witnesses in such cases. More generally, the police, prosecution, and courts may wish to undertake a joint analysis of serious cases of GBV, which could then serve as the basis for measures to prioritize serious cases. Incorporating training on gender into JTC training would be useful, including training on handling GBV and other crimes affecting vulnerable groups.

⁸ JSMP Court Monitoring for the Month of October 2005

⁹ JSMP Court Monitoring for the Month of October 2005

By comparison driving without a license or disturbing a funeral procession are punishable by up to two years in prison, while certain forms of defamation can be punished with up to three years in prison.

¹⁰

59. **Better planning, budget execution, and administration will promote improved judicial services.** In FY2005, the courts assumed control of their own budgets from the MoJ, but budget execution was poor, at only 55 percent. Lack of articulation between planning and budget preparation, combined with lack of flexibility and a high degree of centralization in financial administration, hampers service delivery. The district courts face shortages of essential supplies and equipment, such as fuel for generators and vehicles, telephones, fax, and office supplies. Broken photocopy machines lead to case documents being taken out of court buildings to be photocopied in shops or at the offices of NGOs. Improving planning and budget preparation, the finance and administrative systems of the MOJ, courts, and prosecution service, as well as improving coordination with the MoPF, could lead to increased responsiveness. A continuing problem for both defense and prosecution remains the lack of funds to pay for transport, food, and accommodation for witnesses and victims from the districts for court appearances. Providing an imprest account for this purpose is a badly needed first step in improving access to justice and public perceptions of the justice system. In the future it would be desirable for these independent institutions to have statutory budgets that are approved directly by Parliament, or otherwise protected from sequestration.

60. **Customary justice mechanisms are widely used in many parts of the country, and access to the formal justice system is limited.** However there is no law or policy establishing a legal framework for linking customary practice to the formal justice system. Given the pressure on the court system, the MoJ may wish to develop a definition of jurisdiction with respect to customary and/or civil arbitration mechanisms. The creation of a hierarchy of dispute resolution mechanisms able to produce legally binding decisions could lead to many civil and minor criminal cases being resolved before reaching the formal court system. Among the conclusions of a National Dialogue on justice held in March 2004 was the recommendation that the Government establish an independent commission to create conditions for the integration of customary law into the formal justice system, particularly for civil cases and minor crimes. Significant analytical work has already been undertaken in this area.¹¹ The Land Law Program under the MoJ may provide some useful models for approaching these policy questions.

61. **Building on production of statistics by courts and prosecution, the MoJ may wish to consider developing basic performance indicators for the justice system.** Such indicators could include backlogs in prosecution and courts, time needed to process civil and criminal cases, resolution of cases involving women, total hours that court is in session, and number of cases remanded. Consideration could be given to developing simple means of measuring public perceptions of service delivery in the justice system. The production of gender-disaggregated statistics would be an important step in improving women's access to justice, allowing women's cases to be tracked through the system and ensuring their timely processing. Such indicators could be published in the Gazette or the planned quarterly bulletin from the MoJ.

¹¹ *Traditional Justice Legal Analysis*, Australian Legal Resources International, 2004; Aisling Swaine *Traditional Justice and Gender Based Violence*, International Rescue Committee, Research report August 2003; Judicial System Monitoring Programme, *Findings and Recommendations: Workshop on Formal and Local Justice Systems in East Timor*, Dili, July 2002; The Asia Foundation, *Restorative Justice in East Timor: An Evaluation of the Community Reconciliation Process of the CAVR*, 2004.

Box 13: Suggested Actions

- Complete standardized case management system
- Regularly collect and publish statistics from the justice system
- Make needed small capital investments in courts, including installation of phone and fax systems, and create imprest accounts to finance daily operations
- Complete the staffing of the SCJM, including, if necessary, the appointment of international personnel to key positions; publish the deliberations of the SCJM in the Gazette
- Nominate the Superior Council for the Public Prosecution; develop a performance evaluation system for prosecutors
- Submit the Organic Law for Public Defenders, including a code of conduct and disciplinary procedures, to the Council of Ministers and Parliament; appoint a Director; develop a performance evaluation system for public defenders
- Create summaries of laws in Tetum for broad distribution
- Open private interview room for victims of gender-based violence in the Office of the Prosecutor General; recruit a social worker and psychologist to assist victims and witnesses in such cases
- Carry out an assessment of women's access to justice and develop a strategy for improvements
- Carry out an analysis of cases of serious gender-based violence, leading to prioritization of such cases
- Develop plan for the sustainable function of all four district courts on location, particularly Suai and Oecusse
- Review draft Penal Code
- Develop definition of jurisdiction with respect to formal and customary justice mechanisms

Ensuring Public Access to Information and Strengthening the Role of Civil Society

62. **Information is critical to building a broad-based national consensus around good governance.** The Government's own initiatives to provide information, coupled with an independent and free press, play crucial and complementary roles. To facilitate access to information and define the exceptional cases in which information may be withheld, Government adoption of policies and guidelines on information dissemination and arrangements for access to information would be of great benefit. Such guidelines would establish and disseminate good practice, helping to form the basis for an eventual freedom of information law.

63. **Communication and access to information play a key role in educating citizens, fostering citizen participation in the policy process, promoting good governance, and bolstering Government anti-corruption efforts.** The NDP calls for the "Development of information programs for the general population and for civil servants regarding the....services that citizens have a right to expect from public institutions and the course of redress available in cases of non-compliance." Government progress toward this goal has been solid. For a time, the Council of Ministers produced press releases in both Portuguese and Tetum after every meeting, and it is understood that the Tetum version will soon be restored. The Official Gazette, Journal of the Republic, is a key means of disseminating information, particularly on new legislation. Currently the Gazette is published only when there are new laws to be published, and distribution is erratic. The effectiveness of the Gazette as an information tool could be strengthened through translation into Tetum, more systematic distribution, including free distribution to Government offices, and easy availability to embassies, the media, and civil society. The resumption of the practice of posting the Gazette on the web will further broaden dissemination. The Government's sustained efforts at consulting with and informing the public about the installment of pre-paid electricity meters is a good example of effective consensus building with the public around a tough policy decision (Box 14).

64. **Government has taken several important steps in strengthening outreach and information dissemination.** The establishment of the Government Information Office in 2004 to provide training to public officials in outreach and media liaison is a highly positive step. To

date, the office has conducted training for officials in five ministries, including health, transport and communications, public works, and agriculture. The office has also run specialized one-on-one training for ministers and vice-ministers. The creation of Government websites, particularly that of the OIG, constitutes an important step in information dissemination. There has been significant progress in the development of other Government websites, including line ministries and autonomous agencies (www.timor-leste.gov.tl/). Of particular note are the Oil, Gas, and Energy Directorate site (www.timor-leste.gov.tl/EMRD/index.asp) and the Petroleum Transparency site (www.transparency.gov.tl) which contain comprehensive information about Timor-Leste's petroleum resources and the framework for their management. Finally Government conducted a series of "Open Government" meetings in every district of the country, which allowed communities to raise issues of local concern directly with the responsible ministers.

Box 14: An Example of Effective Government Consultation and Communication – The Pre-Paid Electricity Meters

To improve cost recovery for electricity consumption and to reduce the highly regressive subsidies to the power sector, the Government decided in June 2003 to install pre-paid power meters for electricity consumers in Dili.

The first lot of 10,000 pre-paid meters arrived in July 2003 and installation commenced in August. Between August and December 2003, only about 900 meters were installed. Customers resisted the installation and on one occasion violently attacked Power Authority personnel.

In early 2004, the Power Authority drastically changed its installation strategy. First, following consultation it became clear that the Power Authority's strategy to focus only on bigger consumers was ineffective as such selective installation raised a lot of suspicion among consumers about the motivation for selectivity. Second, it became clear that community meetings led by traditional authorities (*chefes de suco* and *chefes de aldeia*) would be a crucial step in familiarizing the public with the need for the meters and the process of their installation. Third, starting in January 2004, the Prime Minister, the Minister of Transport, Communication, and Public Works, and the Secretary of State for Water and Electricity waged a systematic media campaign with a consistent message of enforcement: "Twenty four hour power generation can only return when every consumer pays their bill, with the help of the pre-paid meter." As a consequence, the program accelerated, and between January 2004 and March 2004, 4,700 meters were installed.

This is a major accomplishment for the Government. Implementing cost recovery after nearly four years of free electricity is a challenge under any circumstances. In the context of high electricity prices and difficult economic circumstances, including a high and increasing urban unemployment rate, it could have been destabilizing. The Government's strategic use of consultation and communication were crucial in smoothing the process.

65. **Professional, effective, and independent media are a pillar of good governance, ensuring access to information and freedom of speech.** Articles 40 and 41 of Timor-Leste's Constitution provide safeguards for freedom of expression and freedom of the press. A stated goal of the NDP is the promotion of responsible, effective, and independent media. Timor-Leste's media are further protected and regulated under the Indonesian law¹² by Law No. 40 1999 on the Press. An executive order issued by the Transitional Administrator in 2000 effectively de-criminalized defamation. To date, Timor-Leste has enjoyed freedom of the media, rated by Freedom House's *Freedom of the Press 2005* report as one of 39 percent of countries, out of 194 surveyed, with a free press.¹³ However, the 2000 executive order was overturned by directive of the CoM in 2004. More importantly, Timor-Leste's new Penal Code, due to enter into force in 2006, criminalizes defamation. This provision of the Penal Code has met with

¹² Indonesian law obtains in Timor-Leste, except where it has been replaced by new regulations or contradicts international human rights law.

¹³ *Freedom of the Press 2005*. Freedom House. Press freedom rating based on legal environment, political influence, and economic pressure.

opposition from the media, including the Timor-Leste Journalists Association, and civil society. It is likely to lower Timor's position in future Freedom House ratings.

66. **Timor-Leste's media have an important role to play in efforts to combat corruption.** The importance of independent media as a pillar of anti-corruption is well documented. For example, in 2003 the Philippines Center for Investigative Journalism exposed deep and pervasive corruption in the Philippines Bureau of Internal Revenue by checking actual versus declared assets among officials. Timor-Leste's media have the potential to contribute a great deal in monitoring the private and public sectors, highlighting policy issues, and exposing malpractice and corruption, issues which generate a high level of public interest. There is also an acknowledged need among the media for independent training in investigative journalism and, more specifically, on how to report on corruption responsibly.

67. **Criminalization of defamation could have a chilling effect on Timor-Leste's media and impede its ability to play its part in promoting accountability and serving the public interest.** Since 1999, Timor-Leste has developed four daily newspapers, several weeklies, an independent national television and radio broadcaster, and community radio stations in most districts. However, the quality of reporting is weak and serious investigative journalism does not yet exist. Moreover, the media are financially frail and susceptible to self-censorship due to the legacy of suppression of the media during the Indonesian era. While frustration over mistakes in reporting is understandable, changes in the media environment, and particularly criminalization of defamation, could easily lead to pervasive self-censorship. This would undermine the independence of the media and their potential to become a pillar of the checks and balances of the state.

68. **Timor-Leste's media would be strengthened by the decriminalization of defamation.** While many countries still have laws criminalizing defamation, these laws are often no longer used or are being overturned. The worldwide trend is strongly in favor of civil penalties for defamation and the strengthening of self-governance of the media through press councils. This trend follows a realization that criminalization of defamation has proven a serious threat to freedom of the press and open discussion in many countries. Political bodies, public figures, and governments have used defamation laws effectively to silence critics. Timor-Leste could effectively decriminalize defamation through the amendment of the Penal Code, and institute civil penalties for defamation. Alternatively the creation of a press law, such as Indonesia's press law of 1999, could provide standards and safeguards to the freedom of the press while decriminalizing defamation.

69. **Freedom of Information legislation will help entrench the rights of citizens to information.** A growing number of countries have adopted Freedom of Information (FOI) laws under which citizens and the press have the right of access to government documents with few exceptions. FOI laws have many variants and can effectively be adapted to different country contexts. Whatever their form, FOI laws have been shown to promote effective democratic participation, control corruption, enhance accountability and good governance, and support efficient information exchange between government and the public. Articles 40 and 41 of Timor-Leste's Constitution provide a basis for enacting FOI legislation. To prepare the ground for such an Act, it would be helpful to gain experience through a Government-wide policy on information access. Government may wish to consider initiating discussions with leading journalists, media owners, and leading civil society organizations on the development of a freedom of information policy. Meanwhile, access to information would be strengthened by revoking or amending the secrecy provisions in the Penal Code of the subsidiary law.

Box 15: Freedom of Information in the Promotion of Good Governance

Over 50 countries now have freedom of information laws and another 15-20 are actively considering adopting one. These nations are joined by a growing number of inter-governmental bodies – including the World Bank, European Union and UNDP – that have established FOI policies.

The right to FOI derives primarily from the guarantee of freedom of expression found in Article 19 of the *Universal Declaration of Human Rights*. It provides that all citizens enjoy rights of freedom of opinion and expression, including the right to “seek, receive, and impart information and ideas,” a guarantee now generally considered to include an obligation of openness on the part of government.

The democratic rationale for FOI legislation is that public bodies hold information not for themselves but as custodians of the public good, and such information must be accessible to members of the public absent an overriding public interest in secrecy. In this respect, FOI laws reflect the fundamental premise that government is to serve the people.

Added to this are many practical benefits – promoting effective democratic participation, controlling corruption, enhancing accountability and good governance, and promoting efficient information exchange between government and the public, including the business sector. The result is a powerful argument for adopting FOI legislation.

Source: World Bank, “Legislation on Freedom of Information: Trends and Standards,” PREM Note No. 93, October 2004.

70. **Civil society organizations and communities can play an important role in collecting and disseminating information on Government activities.** Experience around the world has shown that a robust civil society is an important watchdog over policy making and implementation.¹⁴ Civil society organizations in Timor-Leste have yet to assume a strong watchdog role, with the exceptions of the HAK Association, Fokupers, the Judicial System Monitoring Program (JSMP), LABEH, Rede Feto, and Luta Hamutuk. JSMP has performed well in its systematic monitoring of the justice system, providing regular and thorough reports and updates. Experience has also shown that strategic partnerships between Government and civil society can provide the basis for effective anti-corruption efforts.¹⁵ The role of civil society in improving governance in Timor-Leste could be strengthened further through closer links between non-governmental organizations and the media.

71. **It is necessary to regulate and protect civil society. With that aim, the Decree Law on Non-Profit Making Corporate Bodies was published in mid-2005.** The law provides an essential framework for the creation and registration of civil society organizations, particularly foundations and associations. However it could be strengthened, if amended in consultation with civil society, to reflect conditions in Timor-Leste rather better. For example, the requirement that foundations possess no less than USD 50,000 in assets to be recognized may be unrealistic, particularly for district-specific foundations. Requirements for information disclosure, particularly on financial matters and provisions for safeguarding the independence of appeals to de-registration decisions, would also strengthen the law.

72. Timor-Leste has acceded to all seven core international human rights treaties, providing additional legal guarantees of human rights and civil liberties. Commendably, the country is in the process of reporting on these treaties, an obligation that many countries do not fulfill, and has pioneered a streamlined treaty reporting process.

¹⁴ World Bank, *Fostering Institutions to Contain Corruption*, PREM Note No. 24, June 1999.

¹⁵ UNDP, *Lessons from Developing Countries: UNDP Anti-Corruption Initiatives in Democratic Governance*, Presentation, International Conference on Transparency and Accountability in Public Administration, November 13-14, Dili, Timor-Leste.

Box 16: Suggested Actions

- Submit a Civil Defamation Law to Parliament, and avoid the criminalization of defamation
- Continue active information campaigns on Government programs
- Make Budget Books, Quarterly Budget Execution Reports and National Gazette available in the districts in both national languages
- Disseminate the press release of the weekly Council of Ministers meeting in both national languages
- Develop a Freedom of Information policy, leading ultimately to a Freedom of Information Law

Reducing the Risk of Corruption

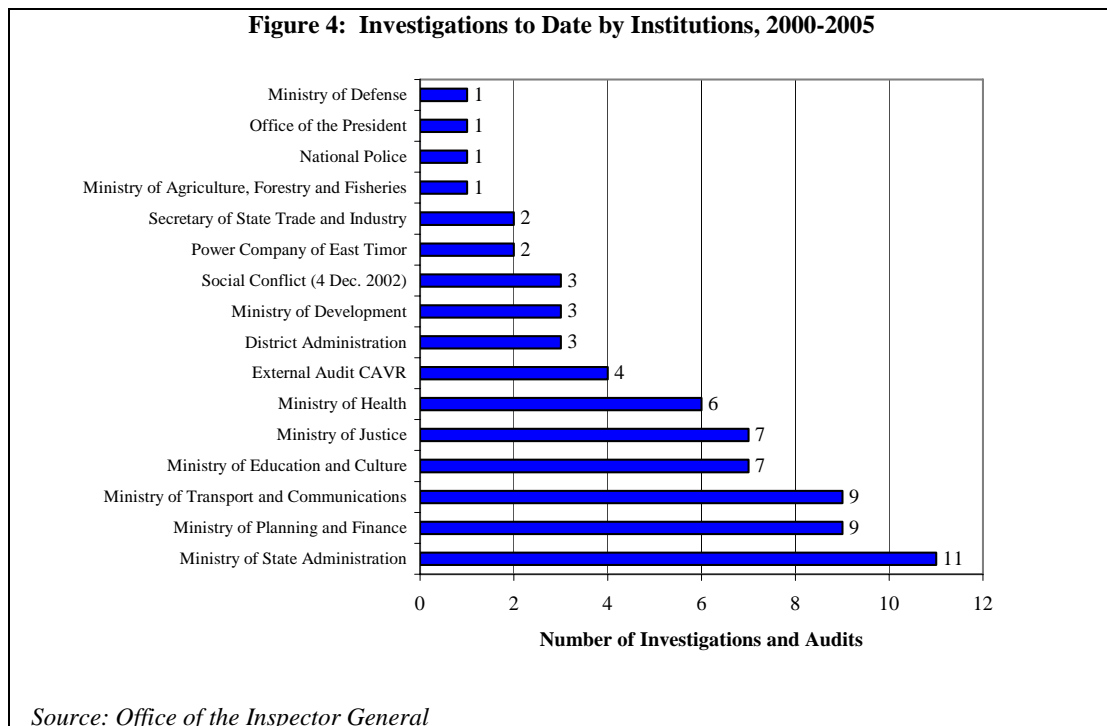
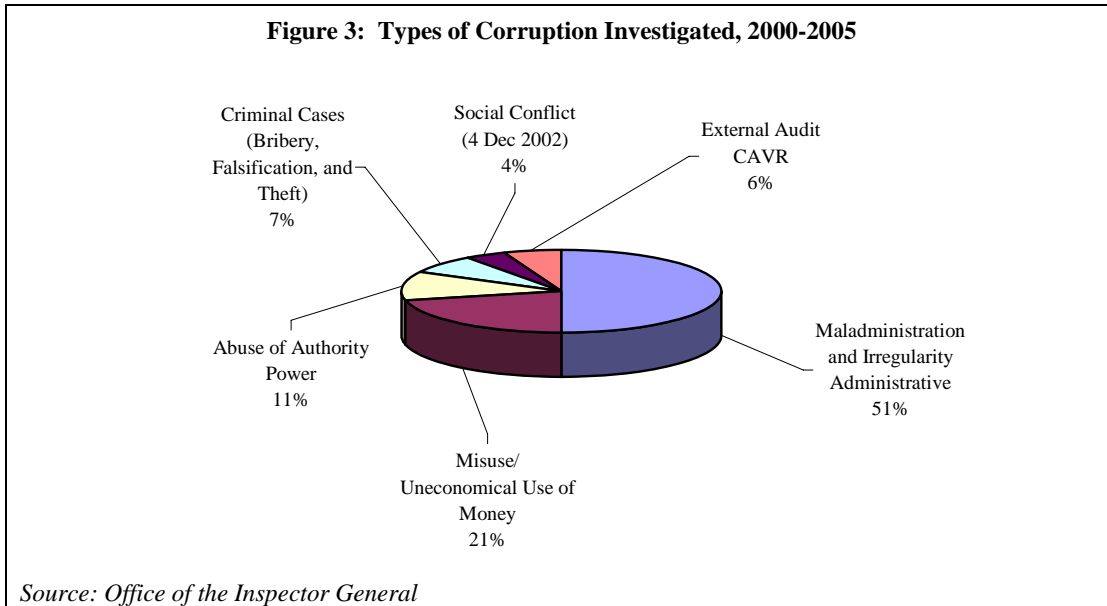
73. **There is much anecdotal but no systematic evidence as yet on the scope and incidence of corruption in Timor-Leste, but risks can be identified.** In every country certain sectors and areas are more vulnerable to corruption than others; typically, the areas listed in Box 17 are prime candidates for corruption. To generate the information needed to support targeted actions against corruption in Timor-Leste, a range of diagnostic tools are available to provide data and pinpoint problem areas. These include surveys of businesses, households, and public officials which allow for the triangulation of results. Alternatively diagnostics may focus on particular agencies, such as Customs. The introduction of Phase I of the ASYCUDA revenue tracking software in Customs has resulted in greater transparency and revenue growth, and will be followed by Phase II, under which Customs plans to introduce an automated cargo manifest and automated risk evaluation. It will also seek to adopt the Arusha declaration and raise ethical standards of conduct, all of which should help to reduce corruption. Customs is a particularly important agency: given the need for investment and the dependence of the economy on imports. Timor-Leste cannot afford the risks of additional costs and impediments to trade facilitation and private sector development. The *Doing Business* report included Timor-Leste for the first time in 2005 and rated the country 142 out of 155 countries surveyed. For the promotion of economic growth, it will be important to foster a client-friendly and corruption-free relationship between Government and business, including in the areas of procurement, registration and licensing, customs, taxes, and dispute settlement. It is understood that the Provedor is planning a survey of perceptions of corruption, which would help to create a baseline from which further developments could be measured.

Box 17: Areas That are Typically at High Risk of Corruption

- Customs
- Tax/Revenue Administration
- Procurement (government contracts)
- Judiciary/Courts
- Police
- Military
- Public Utilities (e.g. power, water, telephone)
- Licensing and Registration Authorities
- Natural Resources (i.e. forestry, petroleum)
- Local Government

74. **Timor-Leste has conducted a number of investigations into allegations of misuse of public funds and corruption.** Until the Provedor is fully operational, the Office of the Inspector General remains the primary agency capable of investigating allegations of corruption. As of December 2005, the OIG had conducted 73 investigations since its establishment in 2000, of which 42 have been completed since the restoration of independence in 2002. The investigations have covered irregularities of recruitment and in procurement processes, as well as mismanagement of public funds and inventories (Figure 3). The Ministry of State Administration, the Ministry of Justice, the Ministry of Education, and the Ministry of Transport

and Communications accounted for 34 of the investigations (Figure 4). Several cases of criminal misconduct investigated by the OIG or by the Internal Audit Unit of the Treasury Department of the Ministry of Planning and Finance have been forwarded to the Office of the Prosecutor General. One case of corruption is going to trial.



75. **In a new country like Timor-Leste, malpractice may stem from lack of knowledge.** Insufficient clarity surrounding procedures, poor training, and administrative irregularities, rather than malfeasance, may often account for mismanagement. Failure to follow proper procedures is a central problem and results from civil servants following former rules (e.g.

shopping rather than batch procurement), not knowing the new rules, seeking to circumvent cumbersome rules, and working with limited capacity to implement rules (e.g. writing inadequate specifications for a tender for bids). A report by the Office of the Inspector General notes that in most cases inefficient internal control mechanisms played a role in failing to catch administrative irregularities, indicating the need to strengthen internal control mechanisms.¹⁶

76. **Poor budget execution may contribute to perceptions of corruption.** For example, with actual expenditures and commitments at 84 percent of budget allocations, FY2004 budget execution in the education sector was significantly below target, while at the same time, parents made voluntary contributions for the functioning of schools.¹⁷ Such instances may be due to inefficient systems, but contribute to public perceptions of mismanagement and corruption. However, it is also the case that an important proportion of Timor-Leste's civil servants worked as public employees under the Indonesian occupation, a regime that was rife with corruption at all levels of the public administration, judiciary, police and military, and that it is not unlikely that these practices persist. Given this starting point, it will be a challenge to demonstrate successfully that other modes of operation are possible and desirable.

77. **Does Timor-Leste need to develop an action plan to combat corruption?** Whatever the current level of corruption, there are two reasons why the Government may wish to take a proactive stance in fighting it. First, as a new country, Timor-Leste has a narrow window of opportunity to "get it right" and build institutions that the population can trust. Once corruption takes hold, it will be very hard to fight against it, and attainment of many of the objectives of the NDP will be frustrated as a result. Second, rightly or wrongly, there is a widespread perception among the Timorese population that corruption is increasing. Such perceptions are important because they can undermine the credibility of the Government in the eyes of the electorate. Timor-Leste may therefore wish to develop and implement a coordinated anti-corruption action plan to support the achievement of the NDP.

78. **Several elements could be included in such an anticorruption action plan.** Increasing understanding of the scope and incidence of the problem will provide a basis for replacing rumor with fact, focusing on risk mitigation, and strengthening existing systems. A range of diagnostic surveys can assist in identifying corruption. Surveys would help to establish a baseline for the type and incidence of current corruption against which future progress could be gauged. They would also serve to pinpoint where problems are greatest and identify the better performing agencies from which others can learn. This kind of information would dispel rumors and enable the Government to take the moral high ground, by being brave enough to seek empirical evidence backed by the commitment to act on it. Surveys can be followed by consultations with Government and civil servants, communities, businesses, and civil society, to establish national consensus over the results, and determine how to best reduce the risks and minimize the opportunities. Development of a professional civil service, together with transparent and accountable public administration, will provide a bulwark against corruption but will not be enough to eliminate all risks or deal with all cases.

79. **Clear comprehensive definitions of different types of corruption and trafficking in influence are needed to underpin the fight against corruption and provide a basis for prosecution.** Unfortunately the definition of corruption in the new Penal Code is not consistent with the UN Convention Against Corruption. For example, the definition of criminal corruption

¹⁶ Mariano Lopes da Cruz, 'Defining the Problem in National Context: Types of Corruption experienced in Public Administration in Timor-Leste'. Presentation, International Conference on Transparency and Accountability in Public Administration, November 13-14, Dili, Timor-Leste.

¹⁷ The system of voluntary school contributions ("caixa escolar") was abolished nationwide in late 2005.

appears to apply only to individuals and not to legal persons such as companies. The code could usefully prohibit unlawful gains on behalf of both individuals and political parties. It will also be important to define and explain the concept of conflict of interest, which means a conflict between private interests and the public interest. Acting in the private interest and against the public interest is an abuse of power. Within the general category of conflicts of interest, Timor-Leste's Procurement Decree Law clearly defines two specific situations of conflict of interest for civil servants, one involving family members to the second degree who have commercial interests with bidders; and civil servants who have had commercial interests with bidders during the previous three years. This definition is cross-referenced to the definition of conflict of interest provided in the Civil Service Statute. Decisions subject to private interest are to be declared void, and the associated civil servants subject to disciplinary action.. Public information campaigns and civil service training will help ensure that people clearly understand the various types of illegal practices. Lessons from other countries show that an informed and engaged citizenry is indispensable to fostering a culture of integrity and accountability.

80. **Government, Parliament, and the President have expressed support for the creation of integrity instruments, such as the declaration of income and assets by public officials, which would fit well with an anti-corruption action plan.** An options study on integrity instruments, planned for FY2006, could include recommendations on the creation of an income and asset registry and institutions to administer and oversee it. The Petroleum Fund legislation already requires that members of the Investment Advisory Board fill out a declaration on taking office and on leaving it. Following the study, an implementation plan will be developed.

81. **Timor-Leste's leadership has declared strong and consistent commitment to stamp out mismanagement and corruption.** It is important that this resolve be backed up by demonstrating that members of Government make decisions that are free from conflict of interest, and that they are subject to the same standards of performance and disciplinary procedures applied to the rest of the administration. Income and asset declarations for the Council of Ministers, other senior politicians, and key public servants would reassure the public that agents of the State are not subject to conflict of interest, and will be deterred from benefiting improperly from office. The forthcoming regulations under the Civil Service Statute will need to clarify public servants' rights and duties and create a strong integrity framework, unconditionally prohibiting the receipt of gifts (in some countries civil servants cannot even accept an invitation to a meal) and defining the limits of appropriate political activity. It will also be important that implementing regulations are laid down for the code of conduct and disciplinary code; that clear and open procedures for recruitment, appointment and promotion are established; and that written records are kept so that decisions can be made available for review. At the same time, prompt investigation and prosecution of administrative malpractice and corruption will have an important demonstration and deterrent effect.

82. **Timor-Leste's signature of the United Nations Convention Against Corruption in December 2003 is a strong public statement of commitment to combating corruption.** Ratification by Parliament is still awaited. The Convention was drafted with civil law countries in mind and therefore presents no technical difficulties. It is important that the Convention be ratified by Parliament in a timely fashion as it can provide a blueprint for the development of many of the anti-corruption measures needed in the country. Government may wish to consider adopting optional provisions in the Convention that can render prosecutions easier to bring without prejudicing the fairness of the criminal proceedings being brought against a suspect.

83. **As an emerging petroleum economy, Timor-Leste's support for the Extractive Industries Transparency Initiative is a highly positive step.** This is particularly true given

that Government was already following what became EITI's transparency principles before the initiative itself was established. Government welcomed the opportunity to participate in the Initiative in its Statement at the London Conference on June 17, 2003. In March 2005 the Prime Minister delivered a speech to the EITI Conference in London, outlining Timor-Leste's record of transparency.

Box 18: Suggested Actions

- Conduct anti-corruption surveys, followed by consultations
- Define types of bribery and in the Penal Code, and make corruption a criminal offense for corporate, as well as individual parties
- Provide Implementing Regulations for the Civil Service Statute for the code of conduct and disciplinary code, and include a prohibition on the receipt of gifts and definition of the limits of appropriate political activity,
- Clarify procedures for investigation of malpractice on the basis of the Civil Service Statute
- Launch options study on integrity instruments, including the development of an income and asset registry and implementing institutions
- Submit legislation requiring income and asset declarations for the Council of Ministers, other senior politicians and key public servants
- Present budget for the Office of the Provedor directly to Parliament
- Publish and submit to Parliament the Annual Reports of the Provedor
- Carry out public information campaigns
- Ask Parliament to ratify the United Nations Convention Against Corruption
- Issue status report on Timor-Leste participation in EITI