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Access to Security Information and Language Policy in Timor-Leste

Abstract:

Many East-Timorese thought that the departure of the Indonesian forces in 1999 would mark the end of foreign occupation. However, in reality, the local Timorese elite that took over the reigns of the country imposed many of their foreign learnt ideals and concepts in addition to their own culture of resistance. A good example is the imposition of Portuguese as an official language, foreign to a vast majority of Timorese. This evidences the enduring cultural and historical legacy of the former colonial master. Timor-Leste has not broken free of its oppressive past and this is showcased in the current limitations of citizen's right to information in the national security sector. The consequences are alarming. Most Timorese do not understand nor have access to their own legislation including those relating to national security. They are therefore unable to form an opinion on these issues, and as a result are not in a position to contribute to the decision making process. Laws are consequently drafted without reflecting the realities of life in Timor-Leste and this has placed most Timorese as guests in their own country.

Introduction

Timor-Leste has come a long way since the violence of 1999 and should be commended for its progress in numerous areas. One has to take into account the young nature of the country, and remember that everything is still under construction. Timor-Leste is at a very early stage of nation building. While many former colonial states have had around 40-50 years to experiment with nation building, Timor-Leste has had to endure a late and rushed decolonization process followed by the occupation of a foreign force, topped with the total annihilation of over 90% of its infrastructure during the Indonesian withdrawal. However of significant concern is that, there remains significant limitations in national security legislation in Timor-Leste. It is quite difficult for ordinary Timorese to gain access to legislation, policy and general information relating to the basics of how their country is governed. A high level of illiteracy resulting from low levels of education plays a significant role. However, the situation is far more critical than that. Journalists, activists, students and high-level public workers themselves are often unable to gain access to security related information. This naturally poses significant problems and these will be scrutinised after the undertaking of a policy background check of Timor-Leste. This paper also examines some of the main causes behind these limitations, its consequences and concludes with recommendations to address these issues.

1) *The Passing of the National Security Laws*

In the sovereign Democratic Republic of Timor-Leste, the State has the right and the duty to defend its essential elements; its territory, sovereignty and political power. Article 6 of the

Constitution of the Democratic Republic of Timor-Leste (DRTL) states that one of the fundamental objectives of the State is to “defend and guarantee the sovereignty of the country”. The existing situation and the transnational threats that can be identified in the current strategic environment – which are asymmetrical, scattered, multidirectional and difficult to assess – require an integrated approach to the defence of the essential elements of the State. This integrated National Security concept, seeks a coordinated approach between National Defence, Internal Security and Civil Protection activities so to more effectively address threats with different origins and the aforementioned characteristics,

In this light, Timor-Leste has developed a National Security Policy (NSP). The NSP is used “to regulate the coordination mechanisms between state institutions and civilian oversight over security agencies” in the country.¹ The NSP is “frank in its recognition of sectoral weaknesses, including the need to strengthen coordination and cooperation between the F-FDTL and PNTL and the need to strengthen civilian oversight over the security services”.²

The government set off with the passage of numerous bills and today the National Security legislation is dominated but is not limited to three laws that were admitted to the Timor-Leste Parliament on 29 June 2009. They are Government Bills n. 25/II “Lei de Segurança Interna” (Law on Internal Security), 26/II “Lei de Segurança Nacional” (Law on National Security) and 27/II “Lei de Defesa Nacional” (Law on National Defense). These laws create a confusing tapestry. They are collectively contradictory and have unnecessary overlaps. They refer to outdated governmental structures, create an extraordinary number of new bodies for a small nation- that will be difficult to implement, and are unclear in many other respects.

These laws seek to define the roles and separate the two main security apparatuses: the PNTL and the F-FDTL. They seek to link the PNTL to matters of internal security and the F-FDTL to matters of external security. However, in extraordinary circumstances, these laws allow for the PNTL and the F-FDTL to conduct joint operations. These formalise the move of F-FDTL into the realm of internal security but does so in a way that remains opaque.

Portuguese experts drafted these laws and although MPs had some input, these being written in Portuguese, input was limited as the language was unclear to most. MPs attitudes vis-à-vis these security laws is highlighted by the example of the passing of the Internal Security Act on March 17th 2010. Timor-Leste’s internal security act was approved by the National Parliament with 36 votes in favor though almost half of the deputies were late to get back to the plenary after their lunch-break. This doesn’t show great ownership of the laws, which incensed the Speaker of the National Parliament, Fernando Lasama de Araujo.

The laws were not widely disseminated among the public and many Timorese do not understand them well. The implementation has created a lot of problems. Many police officers for example

¹ Guterres, Francisco (2009) *Secretary of State for Security, Security Sector Development: “Stability and Reform.”* Ministry of Defence and Security. Paper for Donor’s Meeting 3 -4 April. Available at <http://fundasaunmahein.files.wordpress.com/2009/07/speech-secretaryofstateforsecurity.pdf>

² The Centre for International Governance Innovation (CIGI). *Security Sector Reform Monitor: Timor-Leste*, No. 2.

do not understand the legislation because they were drafted in Portuguese and there was no consultation to the community. The community was not involved because there is no accessible open space to hold relevant discussions of legislation.

2) Description of Difficulties pertaining to the National Security Legislation process

a) Causes of poor legislation

1) Legislative oversight and management state bodies

Two main state bodies are responsible for the oversight and management of national security legislation in Timor-Leste: the National Parliament Committee B & the Superior Council for Defence and Security.

The National Parliament Committee B (for National Defence, Security and Foreign Affairs) is the body responsible for providing legislative oversight of the security sector, as well as for developing legislation relating to defence and security issues and institutions. This Committee contains a number of powerful political figures, and given its role in forming legislation as well as making recommendations on budgetary issues, it has a potentially important role to play in police reform and broader security sector reform. Currently, however, the legislative branch of government has shown limited capacity to provide effective oversight or constructively shape security discussions, as the executive dominates. While the introduction of legislation might be possible that does not specifically rely on the Prime Minister's leadership or vision, parliamentarians have limited technical capacity and political influence to implement a more significant legislative agenda on security policy. A good example is the national security law, which was drafted by Portuguese experts. The law was put forward to the Parliament for scrutiny and debate, however it was quickly approved without any real scrutiny as most parliamentarians lack the legal and technical expertise required.

Superior Council for Defence and Security – This body is chaired by the President, and includes the Prime Minister, three parliamentarians, the relevant ministers (defence, justice, interior, foreign affairs), the National State Security Officer, the heads of the F-FDTL and PNTL, and two civilians appointed by the President. This body was created in 2005, but its specific role remains somewhat ambiguous. It does have the power to review relevant legislation, declare a state of emergency, and select or dismiss the Joint Chief of Staff of the Defence Force and the Deputy Joint Chief of Staff of the Defence Force but these, and several other formal powers in practice are secondary to its role as a forum for decision-makers to discuss important issues around, and share information on defence and security. However, it appears to be a body more for coordination and consultation than decision-making.

2) Language of Drafting

During the period of Timorese resistance against Indonesia, Portuguese language was used as a tactic to communicate in secret. Most of the resistance leaders were educated under a Portuguese curriculum and therefore adopted Portuguese as their professional language to communicate. Use of Portuguese also meant that those Timorese who were pro-Indonesian

were left in the dark as to what the resistance did. Moreover, most Timorese leaders in exile also used Portuguese to lobby the Lusophone Countries to gain support for the resistance movement. However, most young people who were educated during the Indonesian time used Tetun and Bahasa Indonesian to communicate. Therefore during the resistance the generational gap grew wider and more visible.

During the independence struggle young Timorese were not preoccupied with the language issue. They were reassured because Xanana Gusmao said during an interview that “the freedoms would have no meaning if we adopt a language that people in Timor-Leste do not understand”³. This statement guaranteed that young people would be taken into account in the resistance policy and would continue to be factored in later when Timor-Leste would become a sovereign state.

On October 1999 many Timorese from Timor-Leste and the diaspora gathered in Darwin for a conference. Carlos Ximenes Belo and Xanana Gusmao, Mari Alkatiri, Mario Viagas Carrascalao proposed Portuguese as an official language when drafting RDTL's constitution. The younger generations were not able to express their voice and were mostly ignored at the time. So at the time the older generation dominated affairs. They decided to choose Portuguese as the official language because in reality they thought that most young people involved in the resistance did not have much formal education. In fact many young Timorese had completed university education. These educated young Timorese had the potential to challenge the elders for power. So in order to deter any challenges posed by the younger generation, the older generation made a political choice in choosing Portuguese as the official language which also reaped two additional benefits: ie 1. The Portuguese language can reconcile the elders that were involved in the civil war in 1975, 2. The Portuguese language can easily lead them into the top positions in the government because the young do not understand Portuguese.⁴

Most official documents are now drafted in Portuguese and few people can read and understand these. This further strengthens the power of the Portuguese speaking elite. The favouritism to the veteran/resistance leaders has dominated, and is inscribed in the law, through the imposition of Portuguese as an official language. The RDTL constitution recognized 4 languages, Tetun and Portuguese are official languages and Bahasa Indonesia and English are working language. However, in reality in Timor, the government applies exclusively Portuguese, which many young people do not understand.

3) Secretive Nature of Timor Politics

Thus, after 1999, by using the Portuguese language as the official language the older generation benefited by placing themselves within middle and upper ranking positions within government's institutions such as, Parliamentary Committee B, Army and Police. These institutions are dominated by elders who work very secretly, influenced by the way they

³ Interview with Xanana Gusmao (Talitakun 1998. Pg 2.) Xanana Gusmao was made this statement while the Timorese studying in Indonesian raises the issue of Portuguese language domination in Timor-Leste independency.

⁴ Interview with David Dias Ximenes in Dili, on 29 July 2011

worked during the resistance. This culture of resistance among the political elite means that most possess a secretive mentality whereby public information is circulated among the elite only. Security is a sensitive sector and most politicians don't possess that natural ease of sharing information with the public and this causes immense difficulties for journalists and ordinary citizens to obtain information on security sector matters.

4) Lack of Media Scrutiny

The media in Timor-Leste has very limited access to information about these issues. This happens because many journalists cannot speak Portuguese and are therefore limited in gaining access to the source of information. They quote without deep analysis and fail to look at the legal background.⁵ Sources are not always verified and this often leads to the spread of rumours, often triggered by politicians themselves for political gain.⁶ The media in the most part is also rather poorly trained and lack investigative skills. The media is also afraid to ask tough questions to security sector actors for fear of reprisal.

The failure of the media to confirm information with credible sources stems from their lack of access to channels that disseminate factual information. The Government has no system to circulate public information, which handicaps media outlets in obtaining information. This results in media reporting based on rumours, enabling situations of public panic through the publication of false information. A good recent example is the publication in October 2011 in all mainstream newspapers of a government minister being detained at Darwin Airport with \$400,000, causing much furore, only for the story to be discredited the following day with a statement made by the Australian Ministry of Foreign Affairs explaining that no Timorese citizen was ever detained. Another example occurred on April 26 2010, when *Suara Timor-Leste*, a Timorese daily newspaper, created a clash between political leaders, specifically, between Mari Alkatiri and Xanana Gusmao. The paper reported that Xanana accused Alkatiri of being the main actor behind the burning of the Customs Office in 2006. This case certainly made Mari Alkatiri and the followers of FRETILIN party angry.⁷

Some reliable sources do exist on the internet, but because of a telecommunications monopoly, the internet is expensive for journalists to access.

5) Limited Disclosure of Human Rights Violations

Numerous human rights violations have taken place in Timor-Leste since independence in 2002. Serious human rights problems include police use of excessive force during arrest and abuse of authority; arbitrary arrest and detention; and an inefficient and understaffed judiciary that deprives citizens of due process and an expeditious and fair trial. Domestic violence, rape, and sexual abuse are also problems. This has led to a perception of impunity.⁸ Although rape is a crime, failures to investigate or prosecute cases of alleged rape and sexual abuse are common, as are long delays. Domestic violence against women is a significant problem often

⁵ Mahein Nia Lian No.10, 6th of September 2010, p.8

⁶ Antonio Cardoso (Member of Parliament in Dili, 25 Oct.2011

⁷ Mahein Nia Lian No. 10, Media & Security in Timor-Leste, 6th September 2010, p.6

⁸ Country Reports on Human Rights Practices – Timor-Leste, US Department of State, August 2011, p. 1

exacerbated by the reluctance of authorities to respond appropriately. There is yet no law prohibiting sexual harassment, and sexual harassment is reportedly widespread, particularly within some government ministries and the police.⁹

Many violations are committed by State institutions towards its citizens, in particular by the PNTL & the F-FDTL and these are not investigated or followed up. One good example is the fatal shooting of a young man by a Dili PNTL officer during a police response to a fight at a Christmas party in 2009. The officer was suspended and the case quickly referred to the public prosecution service for criminal investigation but it remains unclear if and when the case will be prosecuted.¹⁰ Disregard for the law is often the case when investigations are conducted. For instance, in the cases of violations committed by the army, by law, subsequent investigations should be investigated by the PNTL. However, the reality is that the army generally conducts its own investigations and these are most often closed to the public.

PNTL disciplinary cases, which are administered internally, resulting from PNTL excesses, are most often closed without any explanation. In 2007, out of 254 disciplinary cases, 239 were closed. In 2008, 256 from 306 cases were closed. In 2009, 145 cases were closed out of 207 in total. A culture of impunity seems to be growing within the security forces.¹¹

b) Consequences of poor legislation

The previous section highlighted a number of causes to the limitations in national security legislation in Timor-Leste. The main problem that results from this is the loss of legitimacy in the legislative process due to a lack of broad consultation. Limitations to information reduces peoples' ability to contribute to political and civil life. A lack of community involvement in the process of taking decisions results in a situation where citizens are unable to fulfill their civic rights. Furthermore, the limitations to information is further exacerbated by the problem of drafting all information and legislation in the Portuguese language. If people don't understand what is written, they are unable to have any input, and will therefore not respect it. This may create a sense of disenfranchisement among a large section of the general population, resulting in growing frustrations that may lead to violence. Young people are overrepresented in Timorese jails, probably in part as a result of limitations to access to information.¹² The high rate of imprisonment of young people is symptomatic of their disenfranchisement, partly caused by exclusion on the basis of language. There are not many people involved in the process of scrutiny because many Timorese do not understand the language and the procedures based on the law. There are not many opinions in regards to any type of information because it's not accessible¹³.

There are also no accessible systems that makes it easy for people to get involved in the legislative development process. If people participate less in the process of development, it does not mean that people are not willing to but is due to their lack of access to information. The state must create a system of information and ensure that all people have access to information

⁹ Country Reports on Human Rights Practices – Timor-Leste, US Department of State, August 2011, p. 14

¹⁰ Security Sector Reform Monitor – Timor Leste, No. 2, CIGI, May 2010, p. 10

¹¹ Mahein Nia Lian No. 21, 'Dezenvolmentu Polisia', 21st July 2011, p.22

¹² Roberto Pacheco, JSMP, Interview conducted on the 29th of Oct 2011.

¹³ Jose Freitas (the head of village in Dili, 22 Oct. 2011

easily, allowing them to participate in the process of drafting legislation.¹⁴At present much legislation is drafted by foreign advisers. The government needs to put into place campaigns in communities to facilitate the “socialising of the laws”. By this, one means a robust dissemination of the draft laws among the population so as to educate them about the laws that will govern them, followed up by education on the laws that have been passed. The lack of genuine national ownership and consultation on the process undermines past and future implementation efforts.¹⁵

Furthermore, access to information is limited within institutions themselves. For example, most within the police and army are unaware of the organic laws that govern their institution, which poses significant implications and facilitates the chances of abuses being committed. This is illustrated by a recent visit to FM's offices on the 17th of November by two F-FDTL officers seeking to obtain the security-related laws recently translated into Tetun by FM in partnership with Irish Aid. They sought to obtain the various laws pertaining to the Army, as previously they only had access to the official laws in Portuguese. This portrays the rather laughable situation in Timor-Leste, whereby state institutions obtain unofficial translations from LNGOs to gain understanding on the laws that govern them.

Limited access to information also leads to less accurate comments made by the media, therefore increasing the number of misinformed articles and facilitating the spreading of rumours. This will be discussed further in a later section.

In conclusion, Timor-Leste finds itself in a situation where the foreigners drafting the law have a better understanding of the law than Timorese themselves. Furthermore, this demonstrates that the National Parliament of Timor-Leste is not doing its job of scrutinizing the laws properly. Most parliamentarians do not speak Portuguese and lack the technical expertise required to gain an appropriate understanding to debate and approve legislation.

Overall, this undermines the rule of law in Timor-Leste and leads to a situation where the elite who understand the law can get away with most violations without public knowledge. For instance in 2007, Rogerio Lobato, former Interior Minister was jailed on five charges for arming civilians during the 2006 crisis and sentenced to seven and a half years in jail. He was later that year allowed to leave the country for supposed health reasons and in 2008, his sentence was cut in half by President Jose Ramos Horta. In Timor-Leste, those convicted of crimes with close connections to the political elite seem to enjoy more amnesties and leniency than those who do not. Furthermore, in court those who do not speak Portuguese are often misrepresented and cannot follow all court hearings and procedures as result of poor interpretation.

The limitation to information can also have deadly repercussions. In 2005 two traffic police officers were hit by an ambulance on an emergency run in Kovalima. During the trial, the court favoured with the ambulance crew as they had the law on their side which stated that on an emergency run, ambulances have priority and everyone including traffic police must move aside. Sadly, those traffic officers were unaware of this law.

¹⁴ Taur Matan Ruak, 22nd Jan 2011

¹⁵ Security Sector Reform Monitor – Timor Leste, No. 2, CIGI, May 2010, p.6

3) Recommendations

Every country has their own means of defining their own security legislation. And Timor-Leste is no exception. When developing legislation one must take into account the sensitive nature of the security sector in Timor-Leste. The security sector in most countries is one of the most sensitive sectors but because of Timor-Leste's history it is even more so. Those legal experts drafting the country's laws need deeper research into the realities in Timor. Legislation must be adapted and form an accurate representation of the specificities that make Timor-Leste and its people what it is. .

However, one concrete first step the government could implement is the automatic publishing of official translations of all state documents into Tetun, so that people can get more involved in civic life and broader socialization of the community can take place. A department of translation with legal authority should be set up whereby all legislation, including drafted legislation put forward to the parliament is translated into Tetun thus allowing greater scrutiny by parliamentarians.

Secondly, as previously mentioned in this paper, the government should push forward significant information campaigns whereby they educate the population about the main laws that govern them. In other words, a program of "socialization of the law" is required so as to create greater awareness and understanding of the legal framework in place in Timor-Leste, thus creating more debate and scrutiny enabling a more democratic Timor-Leste. This 'socialization' campaign should also focus on facilitating public access to security related information by setting up public libraries in all district capitals. This would allow the creation of easily accessible information hubs for all citizens.

Thirdly, although Tetun is a language understood by most Timorese it has limitations for legal drafting Tetun as it is today, demands another more complex language for legal purposes and therefore one recommends that the Government sets up an official linguistic institute and campaign with the purpose of linguistically developing and standardizing Tetun up to a stage where it can be used for legal purposes. Ultimately, this newly developed Tetun could become the sole official language of Timor-Leste, included into a newly constructed curriculum and the country could do away with the current set of linguistic confusion so prevalent today.

Conclusion

Timor-Leste, ten years after independence, is still a fledgling democracy. It is a country that requires maturity and a sound legislative process in the security sector is vital for the development of a healthy democratic society. FM understands that history has shaped this land and its people profusely and that these account for many of the reasons why the legislative process has its limitations. However, one must look forward and seek to build a more prosperous Timor-Leste. Limitations in the legislative process are abundant and in this paper FM have examined some of their main causes. FM have also looked into the numerous problems associated with the limited nature of the Timorese national security legislative process. There is no bigger threat than the potential breakdown of the rule of law if people continue to struggle in gaining access and ownership to the legislative process. If people don't have access to information and legislation, they can't understand it and cannot contribute to any public discussion on the topics. If they can't form their own opinions, they will become victims, leading to a situation where there is no local ownership of the legislation that governs this country and its institutions.

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