

The Timor-Leste Correctional Service: Setting the Course

CONTEXT

In crisis and post conflict situations, the reform and restructuring of the justice and security sector has become a widely recognized condition for reconciliation, peace, and sustainable development. Insecurity, crime, and violence have disastrous effects not only on the ability of affected countries to implement their national development programmes, but also on the lives and property of their citizens.

Without reform of the justice and security sector, vital infrastructure needed for development projects may either be damaged or cannot be rebuilt; foreign funded development projects and investments may be cancelled or postponed to prevent the assets from being diverted to illegal activities; and individuals cannot pursue their interests and improve the future prospects of their families and communities.

Effective reform of the security sector, and in particular the criminal justice triad of police, judiciary and corrections, requires enhanced effectiveness of their operations; increased accountability of their activities; greater transparency of their systems; verified integrity of their personnel; and active civilian oversight of their conduct. Absent these elements, programmes for national reconciliation, rehabilitation and peace cannot be sustained.

The Development Problem

Timor-Leste comprises the eastern portion of the island of Timor, as well as a section of the western part of the island and certain adjacent islands. The western border is shared with the Indonesian province of Nusa Tenggara Timur. With an estimated population of 847,000, Timor-Leste is divided into 13 administrative districts. The cities of Dili (the capital) and Baucau are the two most populated centres.

On August 30, 1999, nearly 80 percent of votes in East Timor chose independence in a referendum conducted by the United Nations. Unrest ensued, resulting in the destruction of approximately 70 percent of utilities, public and private buildings. All three prisons were rendered inoperable. On October 25, 1999, the UN Security Council established UNTAET as an integrated, multi-dimensional peacekeeping operation responsible for the transition of East Timor during its transition to independence.

The UN mandated the United Nations Mission of Support in East Timor (UNMISET) on May 17, 2002 to help consolidate and strengthen a stable environment, and on May 20, 2002 Timor-Leste became an independent and sovereign nation.

The transition from UNTAET administration of the Correctional Service has been accomplished relatively smoothly given the lack of an experienced management cadre. Several challenges are apparent, however, including the failure to appoint a Director of Corrections at the date of writing, the lack of a unitary expression of direction and purpose for the Service, and an uncoordinated and fragmentary donor sector.

Consequently, the Timor-Leste Ministry of Justice and UNMISSET requested that the UNDP Bureau of Crisis Prevention and Recovery conduct a mission to assess the Timor-Leste Prison Service (SPTL) and assist in developing a strategic planning process for its future. The departure of 198 prisoners from the largest prison, Becora, in August 2002, followed by a demonstration in Dili and the failure of some of the prisoners to return to custody has exacerbated the situation.

The team identified two issues that have caused and will continue to cause serious complications for the SPTL if left unresolved for an extended length of time, namely the near paralysis of the Timor-Leste judicial system and the apparent lack of coordination between the Ministry of Justice and the international donor community. Neither of these matters lies within the purview of the Joint Mission, but it should be pointed out that, at the time of writing, 27% of the total inmate population of approximately 292 are held without valid committal warrant. In addition, while the Joint Mission respects the sovereignty of the Timor-Leste government to enter into bilateral relations, it is of the view of the Joint Mission that the lack of coordination between the Ministry and the donor community may impair the future development of the SPTL.

There are also a number of fundamental questions facing the SPTL that primarily stem from the absence of a coherent and publicly accepted correctional philosophy and a weak management in structure, oversight capabilities, and execution. Without a societal consensus, involving all the relevant actors, as to the purpose and objective of the SPTL, and good management by which that consensus is actualized international assistance to the correctional system can be remedial at best, addressing narrowly defined matters of daily operational concern.

Situation Analysis

Strategic Vision

From the inception of UNTAET, the UN managed prisons in East Timor, comprised of facilities at Dili (known as Becora Prison), Baucau, and Gleno. International support in doing so was provided bilaterally, primarily by New Zealand, which was the source for the Director of Prisons, Prison Managers (Wardens), and the supporting management team.

The correctional system in Timor-Leste is an incarceration based system, including pre and post-conviction detention for juveniles, men, and women. Since independence, the responsibility for prison management is vested in the Ministry of Justice. In addition to the judiciary, the Ministry is also responsible for civil registry functions, citizenship, and prosecution and defence legal systems. Police services are provided by UNMISSET and the Timor-Leste Police Service, which although accountable to the UNMISSET Police Commissioner, is in the process of assuming executive authority.

In the introductory meeting with the team, the Minister clearly expressed a progressive correctional agenda, which included the introduction of offender programming, specialized prisons to deal with a variety of security levels for men, women and juveniles, an orientation to the social and family reintegration of prisoners, and the introduction of a system of conditional release. As central to this agenda, the Minister outlined the importance of inmates maintaining continuous family and community relationships.

During the course of site visits, the Vice Minister proposed that agriculture be the main source of inmate employment at Gleno Prison. This would require the installation of a security fence. At all three prisons, the Vice Minister promised to ensure the provision of clean water in each cellblock, and, in the Becora Prison, to provide funding for the purchase of sewing machines in order to establish a textiles workshop. The Vice Minister also agreed to seek funding for another vehicle at Baucau Prison.

Virtually all of the parties contacted by the team expressed surprise at the Ministry's correctional agenda. In contrast, the team was repeatedly told, and observed during its site visits, that the operation of the SPTL has tended to favour very limited programming and activities for prisoners; that there is little or no emphasis on social reintegration following incarceration; that most rehabilitative programming is conducted at the initiative and under the direction of NGOs active in the field; and, most importantly, that there appears to be little support for the principles espoused in international correctional standards, including the need to adequately feed prisoners and provide for their hygiene. In addition, the team was told on several occasions that alternate sentencing (e.g. community service) could be a suitable means of proceeding in many cases.

At the initial meeting, the Minister also spoke at length and in some operational detail about the need to construct and refurbish several new prisons in various locations in Timor-Leste (Metinaro, Weberek, Suai, Gleno, and Oecussi), as well as for the closure of Becora prison in Dili (see Ministry of Justice, Matrix of Priorities and the Potential Role of Donors, 10/10/02). These plans or variations of them were repeated by the Vice Minister. Given the state of development of the social service network in Timor-Leste, the challenges of transportation in the country, and the limited resources available to the families of most prisoners, the team was consistently told by its other interlocutors that these construction plans would further serve to distance prisoners from family, undermine the ability of social service agencies to provide programming, and would inhibit efforts at social reintegration.

An analysis of the Timor-Leste budget indicates that the annual proportion of government resources dedicated to corrections will decrease by 20% by 2005-06. In 2002-03 budget, 0.97% of total government expenditures are allocated to prisons. In the 2005-06 budget, that percentage drops to 0.77%. It is difficult to envision the institutionalization of a progressive correctional system given the magnitude of the budgetary decrease.

The persistent discrepancies between the Ministry's strategic vision and the understanding of the team's other interlocutors coupled with the percentage decrease in public monies devoted to corrections suggest that there is no societal consensus as to what the Timor-Leste correctional system should look like in the future. It also intimates that there is little agreement among the parties involved in corrections as to what objective or purpose the Timor-Leste correctional system serves.

Operational Pressures on Timor-Leste Prisons

Due to the fragility of the judicial system and the limited experience of the SPTL staff, the prison system operates and functions under tremendous pressure and scrutiny. At the time of writing, adult males comprised the majority of the total population of 292 at the three prisons, a population that includes both sentenced and pre-trial prisoners. A small number of juvenile males (6 prisoners) are housed at Becora Prison, while 1 female prisoner is incarcerated at

Baucau. Of note is the presence in this population of a number of prisoners awaiting trial for multiple violent offences and alleged war crimes.

At the time of writing, 77% of the prison population (207 prisoners) was awaiting trial. Of this number, 79 prisoners (38% of the pre-trial population and 27% of the total prison population) are held without warrant.

Consequently, the team undertook a cursory assessment of the judicial system with the knowledge that a separate and independent mission had been constituted to review and assess the judicial system. The team found widespread agreement that the judicial system in Timor-Leste is in a state of near paralysis. Criminal courts have not functioned for several months; judges and Ministry of Justice are entwined in a protracted labour dispute, public defenders do not visit their clients in prison, and; the process set out in UNTAET Regulation 2001/25 s.44, which provides for expedited trials and shortened remand periods in certain cases, is not being used. Consequently, cases are not being heard and remanded prisoners continue in custody with no realistic expectation as to when their case will come to trial.

These facts combine to place great pressure on the SPTL. Previous investigations have concluded and the team was told that the judicial situation has and continues to cause significant unrest in the prisoner population and was one of the primary factors in the disturbances and escapes of 2002. It is understood that the upcoming UNDP-Donors Judicial Mission will address these matters in more depth.

Management Issues

Site visits and interviews conducted indicate not only that the management of the Timor-Leste Correctional Service is weak, but that its organizational structure appears to be seriously underdeveloped. At some levels, management is non-existent, in person and on paper, given the apparent absence of a valid organigramme for the SPTL. This lack of a sound managerial structure is exemplified, as the team was informed, by some day-to-day functions ordinarily performed by first-line supervisors (such as the ordering of cleaning supplies) being undertaken at the Ministerial and Vice-Ministerial level.

These difficulties are magnified by the failure to make timely managerial appointments, which has meant that the transition to East Timorese management has been less than optimal. For example, there has not been a Prison Director since June 2002. Additionally, the Ministry has not had a corrections advisor since independence. The absence of these key management positions means that the SPTL does not possess the requisite planning, control and policy capabilities normally associated with national correctional systems.

A possible anomaly in the 2002-03 budget of the Ministry of Justice, District Prisons, raises additional questions concerning managerial control, all of which are beyond the team's capability to answer. Thirty-four percent of the total 2002-03 prison expenditures is allocated to salaries and wages; 44.1% is dedicated to operational materials and supplies; and 8.2% went to utilities and power. A rough standard distribution of these costs for a prison system would be approximately 70% salaries and wages; 20% for operational materials and supplies; and 10% for utilities and power. The team was not able to ascertain the reason(s) underlying the apparent discrepancy in the percentage costs dedicated to operational materials and

supplies, but, as these costs do not include any capital expenses, the issue may be one that deserves further investigation.

The team learned of many operational weaknesses in the daily routine and operations of the prisons, even subsequent to the events of August 2002 at Becora. This includes poor practices in perimeter security, withdrawal of staff from certain areas of the prison, and a lack of interpersonal relationships necessary for dynamic security. Problems of this nature are indicative of managerial inexperience, lack of supervisory oversight, and the absence of operational audit and review processes.

Notwithstanding these weaknesses in operational and strategic management, the team notes the reported absence of prisoner-on-prisoner violence. The team has been informed that there have been no recent allegations of systemic human rights violations by prison staff. While this speaks well of the performance and training of the SPTL operational staff, it is difficult to imagine that this record can be sustained without strengthening the overall management of the correctional service.

Donor Support

The team's interviews reveal that the donor environment is confused and fragmented. There is deep concern among donors that assistance already provided by international aid is being replicated. Some donors express concern about a lack of transparency between the donor community and the Ministry and that this lack of coordination may jeopardize future international assistance. The team was told that donors had been advised by the Ministry that all future donor relations would be conducted on a bilateral basis.

The team believes that Timor-Leste can ill afford this situation given the embryonic nature of the SPTL, the extreme pressures the SPTL is experiencing due to judicial paralysis, and the apparent lack of a societal consensus as to what type of corrections system Timor-Leste should have.

Selected Issues

Construction of New Prison Facilities

As mentioned previously, considerable interest has been expressed by the Ministry in the construction of new prisons at a variety of locations, and the refurbishment of other existing sites. These plans are explicitly stated as being dependent on donor support. One of the most often mentioned of these intentions is the closure of Becora prison, to be replaced by a new prison at Metinaro.

The team notes that generally accepted planning standards hold that approximately 10-15% of the cost of a prison is incurred at the initial construction and commissioning phases, with the large majority of costs incurred in operating the prison over its life span of approximately 35 years. This is a matter of concern, given the decreasing proportion of public funds allotted to SPTL over the next few years. Based upon budget projections, therefore, new prison construction would appear to be precluded.

The team also was told on several occasions of the difficulties that the “relocation” of Becora to Metinaro would pose significant difficulties in access to other criminal justice related services (e.g. public defenders and social workers), the provision of institutional support and maintenance services, access by family members, and eventual reintegration to the community.

Further, approximately 25% of the population of Timor-Leste lives in Dili and environs. According to UNPOL statistics, approximately 45% of reported crime in Timor-Leste in September 2002 occurred in Dili. In the sub-district of Metinaro, no crime was reported during the period.

The correctional experts on the team consider SPTL to be fortunate to have a useable facility in good repair (such as Becora) in the major population centre. Given the notes above, it is strongly recommended that SPTL reconsider its plan to close Becora, taking into account downstream cost factors and the impact of location on reintegration, rehabilitation, and institutional services. Furthermore, until the managerial and financial foundations of the SPTL are more firmly grounded – and the paralysis of the judiciary is resolved – the building of new prison facilities cannot be endorsed by this team.

Legality of Detention

As noted in the section on Operational Pressures, there is some question as to the legal status of a significant proportion of those incarcerated while awaiting trial and for whom there is no current legal documentation upon which to base their incarceration. Prison officials believe that it is proper and required that they continue to detain these prisoners on the basis that they will eventually be tried.

UNTAET Regulation 2001/23 is drafted in accordance with international law, and its provisions are not uncommon in the body of international correctional legislation. The loss of jurisdiction over an offender due to the lapse of a warrant removes the matter from the purview of the courts and places it squarely in the domain of correctional management, who then have no legal authority to continue to detain the offender.

One of the cornerstones of democratic societies is the rule of law. Subsumed in this concept are clear and universally accepted notions of transparency, accountability, and the duty to act fairly. The situation with respect to this group of prisoners controverts all of these concepts. The Ministry must act with dispatch to address this matter.

Training Initiatives

Virtually all studies, evaluations, and lessons learned exercises of international assistance during peace missions have demonstrated and repeatedly emphasized that training in the justice and security sector is effective only to the extent that it is integrated into a comprehensive managerial programme that has a publicly accepted strategic direction. The effectiveness and sustainability of training initiatives depends upon its being embedded within an organizational structure that has a clearly enunciated and functioning human resources management system, promotions procedure, code of conduct, and disciplinary process. The effectiveness of training decreases whenever any of these elements is missing. This does not necessarily mean that training initiatives are not feasible as stand alone projects, absent these structures, but that their efficacy may be of only a limited and short-term nature.

The team has learned that the Ministry is engaging in bilateral training arrangements. The details of such arrangements are unknown to the team. Given the varying views as to purpose and direction of the SPTL and its managerial weaknesses as noted above, as well as the previous training that the SPTL has been given, the introduction of a new training method may prove to be more damaging than helpful. The team strongly supports the coordinated delivery of further training initiatives and the introduction of practical measures such as mentoring programs that are responsive to the defined needs of SPTL. Furthermore, there may be certain topics of strategic interest in the justice and security sector upon which common interest training could be delivered to police, judicial, and corrections officials.

National Corrections Commission

Given the absence of a societal consensus on the objective and purpose of Timor-Leste's correctional system, there is a clear need for a broadly based, public dialogue to come to an agreement on a national correctional vision. It is only from this agreed upon vision, arrived at in a partnership with civil society, that the government of Timor-Leste can define, formulate, and establish the strategic direction for the SPTL. To address this issue, the team recommends the establishment of a National Corrections Commission.

Composition

The activities and operations of the Commission must be led by Timor-Leste nationals. The Commission should be broadly based, including all the relevant actors involved in corrections, and have strong representation from civil society organizations. Therefore, the Commission would include one representative of the:

- Church
- Ministry of Justice
- Timor-Leste Prison Service staff
- Bar Association
- Prosecutors
- Timor-Leste Police Service
- NGO Forum; and
- Ministry of State for Labour and Solidarity

The membership of the Commission may well be augmented on a task basis by members of the governmental or non-governmental sectors whose expertise is required temporarily by the Commission to address certain aspects of its work.

The team recommends that the Commission be supported in its work by a full-time facilitator, under contract to UNDP, and a staff of two Timor-Leste nationals for a period of one year.

It is suggested that UNDP coordinate the establishment of the Commission with interested donors.

Mandate

The Commission's initial responsibility is to formulate a general statement of vision and intention that could serve to direct not only the Commission's further operations but also the design and development of the Timor-Leste Correctional Service. This foundation building could be completed within two months of inception of the Commission and engagement of its support staff.

Following the development of this statement, the Commission would address certain fundamental correctional issues in the light of the direction it has developed. These topics include:

- Management and Resources: forecasts of the size and profile of the future inmate population; the size and characteristics of the required staff complement; staff training and development; prison operational and security models; organization structure; human resource management policies.
- Rehabilitation and Programming: vocational and academic education; agriculture; provision of social services; exercise; inmate grievances and redress; release procedures and preparation; and health and hygiene
- Community Relations: supervision of offenders in the community and other forms of community based corrections; reconciliation; and the implementation of alternate sentencing.
- Legal Framework: review adequacy and congruence with correctional philosophy.

The team recommends that the Commission be supported in this developmental work by up to six technical advisors, chosen for their expertise on selected correctional issues, who may be engaged for an average of six months. UNDP will coordinate the engagement of the necessary advisors with interested donors.

Reports

The Team recommends that the Commission report to the Minister of Justice, the Minister for Labour and Solidarity, and the Deputy Special Representative of the Secretary General upon completion of its statement of vision and intention, and again upon completion of its work on selected correctional issues. It is envisioned that the latter report would be submitted no later than twelve months from the inception of the Commission.

Estimated Costs: \$405,100 (Commission: meetings @ \$6,000; Consultants @ \$7,500/month for an average of six months; transportation @ \$6,000/consultant. UNDP: Facilitator @ \$40,000; Support Staff @ \$15,000/staff; Transportation @ \$7,500; Computer @ \$2,000/per; Office supplies @ \$6,000; Vehicle maintenance and fuel @ \$3,600)

Immediate Assistance Projects

Many of those contacted by the team identified specific activities or projects that they believed were worthy of immediate action in order to achieve specific, concrete improvements in the SPTL in the short-term. The purpose of these quick impact projects is to release as expeditiously as possible the excessive pressure that has accumulated within the correctional system. At the same time, these quick impact projects are designed to support pivotal elements of the system that require immediate assistance. It is envisioned that each of these projects are of donor interest, can be accomplished within eight months or less, and are achievable at minimal cost. The total combined cost of the Immediate Assistance Projects is \$300,150.

UNDP will coordinate the immediate assistance projects with interested donors and, if the need arises, envisages adding a corrections program coordinator onto its staff. (This program coordinator could also serve as the full-time facilitator for the National Corrections Commission and the costs, therefore, are subsumed in those of the National Corrections Commission.)

Code of Conduct for Prison Staff: All prison systems require a code of conduct for their staff. There is no specific code of conduct for the SPTL. One needs to be devised and implemented immediately. Concomitantly, a disciplinary process needs to be designed and implemented that is transparent, fair, and conducted in a timely manner. To accomplish both these tasks may require technical expertise, which may take four months.

Estimated Cost: \$35,000 (Consultant @ \$7,500/month; transportation @ \$4,000; office supplies and printing @ \$1,000)

Inmate Employment Workshop: The team was informed that all Timor-Leste Police and Prison Service uniforms are manufactured in Australia. These uniforms can be made inside the Becora Prison, thereby providing prisoners with a meaningful skill that will facilitate their rehabilitation and social reintegration into their communities. At the same time, the prisoners will be providing a community service to the government of Timor-Leste and its populace, as well as lowering the costs to the government of Timor-Leste when it needs to purchase additional uniforms. Setting up the workshop can be accomplished within two months.

Estimated Cost: \$25,750 (Heavy duty over-locker @ \$3,000/per machine; heavy duty sewing machines @ \$2,500/per machine; electronic scissor @ \$250; tailor benches @ \$500/per bench; refurbishment of workshop @ \$5,000; miscellaneous tools @ \$1,000; shipping of equipment @ \$2,000)

Inmate Discipline: All prison systems require a mechanism by which to discipline inmates who break prison rules. UNTAET Regulation 2001/23 establishes a process for dealing with disciplinary offences, but the team understands that it has not been implemented, which is essential to maintain control of the inmate population, to protect human rights, and maintain the establishment of the rule of law.

UNTAET Regulation 2001/23 should be immediately implemented, a process that may require technical expertise for a period of three months.

Estimated Cost: \$26,000 (Consultant @ \$7,000/month; transportation @ \$4,000; office supplies and printing @ \$1,000)

Inmate Redress: All prison systems require a mechanism by which inmates can make complaints and grievances may be presented. This mechanism must be transparent, fair, and conducted in a timely manner. UNTAET Regulation 2001/23 establishes the mechanism, but the team understands that it has not been implemented.

UNTAET Regulation 2001/23 should be immediately implemented, a process that may require technical expertise for a period of three months.

Estimated Cost: \$26,000 (Consultant @ \$7,000/month; transportation @ \$4,000; office supplies and printing @ \$1,000)

Transportation for Social Workers: The Department of Labour and Solidarity has appointed two social workers responsible for the social rehabilitation of prisoners. The two social workers are currently working with juveniles and vulnerable groups (such as women, mentally ill and the elderly), liaising with the inmates, families, and communities as well as monitoring inmates cases within the judicial system. With the anticipated employment of the new social workers by the end of the year their work can be extended to the offenders who are released from prison. The effectiveness of their work, however, is currently hampered by their not having access to a vehicle, as they possess only two motorbikes. Consequently, they have little ability to conduct work outside the capital and in remote communities. Furthermore the ability to transport family members (e.g. the children of female inmates) is non-existent.

The Department of Labour and Solidarity, therefore, could be provided with two vehicles for the Social Workers, inclusive of fuel and maintenance costs for a period of three years.

Timeline: One Month

Estimated Cost: \$36,800 (Vehicle @ \$7,000/vehicle; maintenance and fuel @ \$300/month; shipping @ \$1,000/vehicle)

Juvenile house: SPTL is currently incarcerating juveniles with adult offenders. While it is recognized that some juveniles may require secure accommodation, it is advisable that they be separated from adults. Therefore, there is a need to examine, in collaboration with the Department of Labour and Solidarity, the possibility of establishing a facility for this population, as well as community alternatives for those juveniles who should not be held in custody, a process that may require technical expertise.

Timeline: Three Months

Estimated Cost: \$25,000 (Consultant @ \$7,000/month; transportation @ \$4,000)

Transportation for SPTL: The SPTL currently does not have sufficient and reliable vehicles with which to convey prisoners to and from court or from prison to prison. Each of the three prisons requires its own vehicle, which is secure and reinforced.

Timeline: Two Months

Estimated Cost: \$67,500 (Vehicle @ \$21,000/vehicle; shipping @ \$1,500/vehicle)

Penal Institution Oversight Team: UNTAET Regulation 2001/23 establishes a Penal Institution Oversight Team to receive complaints, inquire into alleged abuses, and make recommendations to the Prison Director, and provide written reports to the Minister of Justice concerning prison conditions. The Oversight Team has not been implemented.

UNTAET Regulation 2001/23 should be immediately revised and implemented, a process that may require technical expertise for a period of six months.

Estimated Cost: \$57,000 (Consultant @ \$8,000/month; transportation @ \$6,000; office supplies @ \$3,000)

Laminated Human Rights Cards for Prison Officers. UNTAET Human Rights trained virtually all prison officers concerning international human rights standards and their application to prison operations. Pocket cards were developed summarizing basic human rights, but were not printed and distributed.

The production and dissemination of such cards is an important human rights safeguard, which can be accomplished within one month.

Estimated Cost: \$1,100