



REPÚBLICA DEMOCRÁTICA DE TIMOR-LESTE
PROVEDORIA DOS DIREITOS HUMANOS E JUSTIÇA



Estrada de Caicoli Dili, Timor-Leste No.Tlf: +670 333-1070/3331030

Contribution to Democratic Governance Timor-Leste-EU Dialogue

His Excellency, Dr. Jose Luis Guterres; Minister of Foreign Affairs and Cooperation

His Excellency, Dr. Dionisio Babo Soares, Minister of Justice

Her Excellency, Mrs Sylvie Tabesse, Ambassador of the European Union to Timor-Leste

Members of Government and National Parliament

Our colleagues from civil society institutions

Ladies and Gentlemen

It is a great honour to participate in this dialogue here today. On behalf of the Provedor, we would like to take this opportunity to share information about our mandate and work, and about recent actions taken to meet some of the challenges we face in the area of democratic governance.

As provided in the Constitution, the Provedoria's mandate has two main areas: Human Rights and Good Governance. The PDHJ places particular emphasis on the important role it performs as an oversight mechanism of the work of public institutions. It is through this function that the Provedoria looks at the conformity of public authorities' actions and omissions with national and international law, and supports the prevention of reoccurrences of violations through the implementation of investigatory and monitoring processes and educational activities.

But what constitutes good governance? What is the form which bad governance takes? Can an economic crisis be blamed on bad governance practices? Here in Timor-Leste, we consider that good governance is closely linked with democratic practices, which incorporates principles such



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as: rule of law, accountability, transparency, human rights, effectiveness, fair administration amongst others.

In order to successfully implement our mandate, the PDHJ needs to identify whether good governance violations have occurred and suggest measures to prevent future violations. An analysis of the current state of the public service by the PDHJ has led to the identification of categories of violations which we now use in our work. These were inspired by administrative law principles, incorporating relevant aspects of criminal law. Through this process, we try to shape practical good governance concepts in order to assist public institutions with their tasks of delivering quality services to the population.

Our main categories of good governance violations are: **incompetence, mal-administration, abuse of power and illegality**. This is the first time we have attempted to translate these terms into English from their original Tetum and Portuguese versions. Due to language limitations, I would like to provide some examples and a short explanation of these categories.

As it relates to **incompetence**, the basis for this category is the fact that in any State governed by the rule of law, actions and decisions can be taken only by those public authorities who have the necessary legal mandate. For example, when a community leader decides to ‘donate’ community land to an individual or group, he or she has acted beyond their mandate as empowered by law. In a similar manner, when a police officer decides not to register a criminal complaint and persuades the suspect to give compensation to the victim, that police officer is taking the role of the courts into his own hands. I am sure we all agree that the distinction between the roles in these examples needs to be respected. These are the types of actions which we analyse through the category of incompetence.



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We at the PDHJ felt that it was fundamental to clarify what **mal-administration** should mean in order to ensure that it did become a concept to describe everything that does not ‘go well’ in public administration. As such we classify mal-administration violations into three main categories: (1) difficulties or challenges in accessing public services, (2) lack of information, limited transparency or lack of participation by the public in the administration system; and (3) lack or ineffectiveness of control mechanisms.

Mal-administration can be related to systems or procedures in which the public are faced with an excessively heavy burden or are forced to pay high charges in order to access public services. Excessive bureaucracy is a typical example in this category. Another example is where an individual faces challenges in accessing public services, such as the need to travel a long distance to access services.

When public institutions hold socialisation sessions, take part in TV or radio programmes or develop informative materials, they are implementing good administration practices. In addition, authorities have the onus of guaranteeing that the public are informed of their decision. An important mechanism used in Timor-Leste to assure of this is the practice of “*taka lista ka taka naran*”. All of these activities are fundamental to ensuring that the public is able to challenge a decision made by a public authority which impacts on them, therefore ensuring a necessary degree of transparency.

Public authorities are authorised to use the people’s resources to establish institutions which can deliver all of the services which every Timorese has the right to: building schools and hospitals, delivering quality health care and education, training teachers, providing social security to the people and establishing adequate infra-structure. As such, systems must be in place to control the use of funds and ensure adequate implementation of services. For example, if at the sub-district administration level, the systems for public asset management are not applied properly, then this



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is an indication of mal-administration. If materials or tools are distributed to the population for a specific purpose, for instance increased agricultural production, and the relevant authority fails to monitor whether these tools are used for the designated purpose in a designated way, this lack of a control system can represent mal-administration.

The PDHJ has another category called *Sees husi Podér* in Tetum or *Desvio de Poder* in Portuguese, these can be taken to mean “deviating from the power with which an individual is entrusted by law”. Through this category we look at two main violations: (1) use of a public position to obtain benefits or to cause damage to a third person; and (2) use of a public asset for private interests.

When faced with allegations of this type, the PDHJ might do an investigation of an administrative nature, including identifying system failures which allowed the violation to take place. If these investigations reveal criminal actions, then the PDHJ will forward the case to the Anti Corruption Commission.

Our last category is **illegality**, where we look closely at whether a specific action or decision contravenes the law. This also serves as a “catch all” category, allowing us to consider those cases which do not fit into one of the other categories, but which are nonetheless against the law. Many cases related to procurement and recruitment procedures are dealt with in this category. In suspected incidences of illegality the PDHJ’s will ask questions as to whether the procedures established by the law were respected and whether the criteria provided by the law were the criteria used by the public authorities to make their decisions .

Before I conclude I must tell you that all of the examples mentioned above are situations that the PDHJ has dealt with as part of our investigation and monitoring role in the area of good governance. Last year alone we concluded a total of 25 final investigation reports in the area of



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good governance. We have also undertaken various monitoring activities, including monitoring related to the implementation of the PDD and have sent a number of recommendations to the relevant ministries. It makes all the PDHJ staff extremely proud when we see that the various government institutions have followed up on the Provedor's recommendations.

What I have spoken about today consists of both the vision and the framework through which we interpret public authorities' acts and omissions. I will be the first to admit that there are gaps in our efforts but we need to always remember that the PDHJ is neither a court nor an executive body. We are an independent institution who looks at these issues through impartial eyes. We try to identify the root cause of the problem within the different areas and relations that make up the systems before making suggestions in the form of recommendations on how to improve that system.

I think that we can all agree that the Public Authorities are today better enabled to serve the community than they were 6 or 7 years ago, when the PDHJ started its work. Despite this, we have gradually been receiving more complaints which fall under the good governance mandate. Now complaints in the area of good governance represent about 65% of the total number of complaints made to the PDHJ. This derives from an increase in demand for better services from the public authorities, and a readiness to complain when the public does not receive the services that they are entitled to. This increased demand from the public is further evidence that we are on the right path towards democratic governance . As such, the PDHJ will continue working for and with the community and public authorities to increase knowledge about *governasaun di'ak* - good governance – while continuing to support the authorities' efforts to deliver *governasaun di'ak liu* – a better governance.