

HIGH-LEVEL DIALOGUE ON CUSTOMARY AND INFORMAL JUSTICE

AND SDG16+

Dili, 8 December 2021

(Time: 13h00 – 14h30)

Manuel Cárceres da Costa, Minister of Justice

Mr. Chairman...

Excellency,

Ladies and Gentlemen,

It is an honour to be here today at this useful dialogue and share experience of Timor-Leste.

Access to quick justice is an important pillar of lasting peace and stability in countries such as those in G7+. It is included in the Strategic Development Plan (SDP). Customary justice institutions have played a crucial role in Timor-Leste. The government is committed to work with community leaders in how best to attain the goal of access to justice for all.

Timor-Leste is an independent and unitary sovereign democracy based on the Rule of Law, the will of the people, and respect for human dignity. The Constitution of the Democratic Republic of Timor-Leste (RDTL) recognizes fundamental human rights, in particular those foreseen in international legal

documents, establishes the general operating principles of the Rule of Law State and the system of justice, and defines its institutions and their respective powers.

The section 2 (4) of Constitution provides that the State shall recognise and value the norms and customs of Timor-Leste that are not contrary to the Constitution and to any legislation dealing specifically with customary law. However no specific legislation dealing with customary law has been enacted.

Traditional legal practices in Timor-Leste, usually imbued with ancestral religious beliefs, are inherent to a system in which kinship concepts regulate most aspects of everyday life. Conflict resolution and punishment of crimes are part of this.

For most Timorese, customary practices are an integral part of everyday life and play a central role in resolving disputes between individuals and communities, such as land disputes, conflict between communities and natural resources management. These practices focus on maintaining community and environmental harmony, in contrast to the formal justice system, which is perpetrator focused.

Ladies and Gentlemen,

CURRENT LEGAL FRAMEWORK FOR THE INFORMAL JUSTICE SECTOR

To date there is no comprehensive legislation regulating the informal justice sector and the proposal of law to regulate the customary law still in discussion.

However, it is not entirely unregulated by Timorese law. Some existing laws have a bearing on the legality and effect of local justice mechanisms.

As mentioned above, the Constitution recognise and value the norms and customs of Timorese that are not contrary with the it.

In July 2016 a new *Suco* Law (Law No. 9/2016), was enacted. It addresses some of these deficiencies. It provides that “duties” of *Sucos* include to “promote the a solution to litigation occurring within the community or between *aldeias* in the *Suco*. *Xefes de Suco* (*chief of suco*) have the competency to “intervene, whenever requested, in the mediation of conflicts or disputes between community members” as well as “between the *aldeias* in the *Suco*. Nonetheless, *Xefes de Suco* are also required to “inform the [police] about facts which can constitute a crime.

The most detailed legal framework relevant to the informal justice sector is the Criminal Procedure Code (CPC). While the CPC is principally intended to regulate procedures in the formal justice system, it also touches upon the circumstances in which matters can be dealt with extra-judicially. Two features of the CPC are particularly relevant to the informal justice sector are distinguishes between “public crimes” and “semi-public crimes”. Where a public crime is reported, prosecutors are in every instance required to conduct an investigation. An indictment must then be issued unless the evidence is insufficient, the perpetrator remains unknown, or the case would be inadmissible. In contrast, “semi-public crimes” are only prosecuted where a complaint has been made by the victim or another specified person. In a case involving a “semi-public crime”, it is also possible for the complainant to terminate proceedings by withdrawing

the complaint, and/or for the judge to attempt conciliation between the victim and defendant.

Recently, Timor-Leste has approved the arbitration law (Law no. 6/2021, on 31 March 2021). This law provides a way for litigants to resolve their disputes through arbitration or out of court, as an effective and efficient step in resolving their problems.

Despite the lack of a clear constitutional mandate, a number of efforts have been undertaken to formalize local or traditional justice systems. Since 2009, the MoJ has worked together with UNDP's Justice System Program on three separate proposals to link the formal and informal justice systems. And now, we have a new proposal to go to the public consultation.

Ladies and gentlemen,

As a final word, I would like to say that ensuring justice for all is a key objective of Sustainable Development Goal 16.

We have lessons that we can learn from each other and the g7+ Peer learning called Fragile to Fragile cooperation is an excellent forum. Dialogues such as this one are a best opportunity for exchange of first hand lessons and experiences.

I thank you for your attention