



JUDICIAL SYSTEM MONITORING PROGRAMME

PROGRAM PEMANTAUAN SISTEM YUDISIAL

ACCESS TO JUSTICE FOR WOMEN VICTIMS

DILI, EAST TIMOR
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The Judicial System Monitoring Programme (JSMP) was set up in early 2001 in Dili, East Timor. Through court monitoring, the provision of legal analysis and thematic reports on the development of the judicial system, JSMP aims to contribute to the ongoing evaluation and building of the justice system in East Timor. For further information see www.jsmp.minihub.org

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INTRODUCTION

JSMP's "Women in the Formal Justice Sector" (released in March 2004) was based on two months of court monitoring of women-related cases in Dili District Court. The study arose from recognition that women in Timor encounter particular difficulties in accessing and receiving justice. The report found that more attention should be given to the issue of female victims' (of domestic violence, sexual assault and rape) access to the formal justice system.

JSMP's Women's Justice Unit (WJU) was set up in April 2004 to help implement some of the recommendations in the report and to perpetuate its focus on issues facing women. The central goals of the WJU are to use JSMP's expertise in the justice sector in Timor to assess and report on the status of women in the formal justice sector, to provide policy advice regarding legal issues affecting women in the formal justice sector, and to develop and provide resource support for issues impacting women's access to formal justice.

Under the Technical Cooperation programme of the UNHCHR, the UNMISET's Human Rights Unit contracted JSMP's WJU to do an Access to Justice for Victims Project with an emphasis on gender in May 2004. The Human Rights Unit is very interested in the issue of access to justice. Until now, most of the work of donors and the UN in relation to justice in East Timor has been devoted to build the capacity of the justice system. Such institutional building is of course very important, but as JSMP's report "Women in the Formal Justice Sector" showed, there is clearly a need for further attention to be given to increasing access to justice, the role of the law and lawyers in facilitating this access, and the human rights implications of access to justice.¹

As part of this Access to Justice for Victim's Project, JSMP's WJU conducted a Workshop entitled "Legal Assistance for Women" on 8 July 2004. At the workshop JSMP put forward a suggested solution to the problem of women's access to justice: the establishment of a legal assistance for women office to liaise between victims and the police, prosecutor's office and the court. Such a legal assistance for women office would facilitate greater participation of victims in the progress of their cases and create a dialogue between the police, prosecutor's office, court and the victim. This office could advise female victims of their rights and explain the justice process when victims first arrive at the police station to report a crime. This legal office could then be in regular contact with the police and the prosecutor's office and help facilitate faster progress of the victim's case from the police to the prosecutor's office. It could also write to the prosecutor's office on the victim's behalf to provide further information to the prosecutor and to help suggest options for prosecuting the victim's case. Such an office could also be in regular contact with the court administrators to ensure the case was progressed efficiently through the court. And at all times, such an office could continue to advise victims on the progress of their cases, to help ensure they did not lose faith in the process.

At the Workshop on 8 July JSMP presented four options to implement this solution:

¹ JSMP is currently conducting three assessments which consider issues associated with access to justice.

1. The Access to Justice for Victims, or Women's Legal Aid Assessment (the subject of this report)
2. A general Legal Aid Assessment
3. A Human Rights Assessment.

It is anticipated that all three assessments will recommend further action be taken. However, JSMP will not take action on any of the assessments until all the results are complete, the value of each is considered, and JSMP's capacity to take action on any of the results is considered.

1. Increase the capacity of the existing LBH (Lembaga Bantuan Hukum or Legal Aid Institutions), or create a group within the LBH to give legal assistance to women.
2. Increase the capacity of existing NGOs which give social support to women (such as Fokupers, Pradet, ETWAVE) to enable them to provide legal support.
3. Create a new unit within JSMP to provide legal assistance to women.
4. Create a new organization to provide legal assistance to women.

The positive and negative points of each of these solutions were discussed at the workshop, as were the possibilities of implementing each one. There was clearly a great deal of interest in advancing the proposed solution amongst the members of the judiciary, prosecutors, defence lawyers, and NGOs in attendance. For many of those present this was the first time they had had the opportunity to consider how this solution could be implemented. After considerable discussion about each of the options it appeared there may be more support for creating a new unit within JSMP or creating a new organization to provide legal assistance to women. (Please see the results of the Workshop at Appendix I). However, most of those present would clearly like to consider the options further, and many expressed the wish for a later Workshop once they have read the results of this Assessment. Whatever option is decided upon will clearly need the support of the legal fraternity and NGOs who work in this area.

JSMP would therefore recommend conducting a further workshop in order to: 1) discuss the results of the Access to Justice for Women Victims report, and 2) achieve broad consensus on a solution to the issue of access to justice for women and a suggested method of implementing the solution.

2 ABOUT THIS REPORT

2.1 AIM OF THIS REPORT

The ultimate objective of this study is to make recommendations as to how to improve women's access to justice. This report follows the following steps in pursuit of this aim:

1. Examine the current state of access to justice for victims (with a gender emphasis) in East Timor
2. Consider measures needed to improve access to justice for women victims
3. Propose a solution to help improve access to justice for women victims
4. Suggest options for implementing this solution to improve access to justice for women victims.

2.2 DURATION AND SCOPE OF THE STUDY

This Access to Justice for Victims Report focuses on access to the formal justice sector of East Timor. In East Timor, victims of crime seeking justice can ideally access two different systems. A victim or person with knowledge of a crime may choose to utilize either traditional law, also known as *adat*,² or the formal legal system. The victim may also utilize a combination of the two systems in resolving their problem.

More specifically, this report describes a solution to the problems of access to justice for victims in Dili (this is because most of the formal justice system is based in Dili). Of the four district courts in Timor, Dili District Court is the most stable functioning court. Dili is the most populous district as well. However, many of the problems with access to justice described in this study are more severe in other districts where the formal justice system is often barely visible. At this stage, it is not clear that the solution described in this report – the establishment of a legal office to provide assistance to women victims – could be applied outside of Dili as such an office would mainly be dealing with formal justice institutions. Although this solution would therefore only probably be available in Dili, it must be noted that most of those interviewed for the report emphasized the need to improve access to justice for women in the districts, as their needs are currently almost completely neglected.³

The assessment is mostly based on interviews conducted from 24 May to 6 July 2004 with judicial actors in Dili District Court (judges, prosecutors, defence lawyers (public and private) and LBH lawyers), VPU officers (National, Dili, Manatuto, and Liquica), NGOs supporting women (Fokupers, ETWAVE, Rede Feto, Oxfam), and the Department of Labour, Solidarity, and Social Services. It also incorporates the results of the Workshop of 8 July 2004. It also used information gained during JSMP's monitoring period September 29, 2003 to November 28, 2003, when JSMP monitored Dili District Court on a daily basis for criminal cases involving women (the information from which formed the basis for JSMP's "Women in the Formal Justice Sector" report). It also incorporates information gained from JSMP's report on "An Analysis of a Sexual Assault Decision from Dili District Court" (awaiting publication).

² For further information regarding the role of traditional law in women-related cases in East Timor, *see* Swaine, Aisling, International Rescue Committee, "Traditional Justice and Gender Based Violence", August 2003.

³ Interviews with judges, prosecutors, and defence lawyers June 2004.

As JSMP was asked to do an Assessment of Access to Justice for Victims, this study is also mostly concerned with the rights of victims, rather than the rights of suspects. Women in East Timor appear as suspects less often than men. Women have often appeared as suspects in cases involving prostitution however. Prostitution is not a crime under the Indonesian Penal Code (the Criminal Law currently applicable in East Timor), but the sex workers are often charged with pimping themselves (those responsible for operating the establishments where the prostitutes work are not detained or charged with anything). As suspects these women have faced numerous problems: they have never been interviewed individually by the police or their defence lawyers; and they are often harassed by the police who arrest them; and difficulties similar to those faced by women victims when dealing with the formal justice system in other cases.⁴ The proposed solution in this report (the establishment of a paralegal legal aid office) and options for implementation would therefore also be useful to women as suspects.

During the course of the research for this report, it emerged that one of the major difficulties women face in relation to their access to the formal justice system in East Timor relates to civil and family law: it is currently very difficult to obtain a divorce. It appears that a number of women are seeking to have their separation from their husband formalised (often for financial child support reasons) when their husband has left them for another woman. According to an interview with one of the NGOs supporting women, none of the divorce cases they have been providing social and legal support for has ever come to conclusion.⁵ Since JSMP conducted the Workshop for this assessment, a number of women have also come to the WJU seeking assistance with processing their divorce cases. Although the proposed solution from this report (the establishment of a paralegal legal aid office) would mainly be concerned with providing legal assistance to women victims of crime, it could possibly also provide legal assistance to women in family law cases. The work areas of the office would have to be considered if, and when it was established.

It is beyond the scope of this report to suggest methods by which to prevent violence against women in East Timor. This report only considers methods of improving women's access to justice to remedy their situation once that violence has occurred.

2.3 DEFINITION OF THE "FORMAL JUSTICE SECTOR"

Since this report focuses exclusively on the formal justice sector, it is necessary to define the parameters of that sector. East Timor's formal legal system derives from a variety of different written sources and institutions. The written sources of criminal law in East Timor include but are not limited to: United Nations Regulations and Directives dating from UNTAET's administration between 1999 and 2002; the Constitution of Timor-Leste; legislation enacted by the Parliament of Timor-Leste since independence; and the Indonesian Penal Code (and Indonesian law generally) modified by internationally recognized human rights standards. Criminal procedure in the Dili District Court is governed by the UNTAET Transitional Rules of Criminal Procedure (the "Regulation").⁶

For purposes of this report, the institutions that comprise the "formal justice sector" are those that were created by the abovementioned laws as well as organizations working to support, interpret

⁴ Interview with Alola Foundation researcher 6 July 2004. The Alola Foundation will be releasing a report about the issues faced by sex workers and victims of trafficking later in 2004.

⁵ Interview with Fokupers 27 May 2004

⁶ UNTAET Regulation 2000/30, as amended by UNTAET Regulation 2001/25. To be referred hereafter as to as the Regulation.

and apply the same laws. These organizations include the PNTL, the Deputy General Prosecutor for Ordinary Crimes office, the Public Defender's office, Dili District Court, other district courts of Timor, and the Court of Appeal. "Justice actors" for the purposes of this report include the personnel and staff of these institutions and organizations.

The Dili District Vulnerable Persons Unit ("VPU") was created in March 2001 by UNPOL and the PNTL in order to have an investigations department that specialized in solving cases relating to women and children. The VPU is the gateway to the formal justice sector for female victims of crime in Timor. The VPU has jurisdiction over the following types of crime: rape, attempted rape, domestic violence (emotional, verbal and physical), child abuse, child neglect, missing persons, paternity, and sexual harassment.⁷

The Dili District Prosecutor's Office operates with a staff of eleven prosecutors and a Deputy General Prosecutor for Ordinary Crime. In addition, the Suai and Baucau district prosecutors work out of Dili District Court from time to time. The Prosecutor's Office has jurisdiction over "ordinary crimes" which includes all crimes against women except those falling under the jurisdiction of the Special Panel for Serious Crimes. The role of the Public Prosecutor is primarily governed by section 7 of UNTAET Regulation 2000/ 16 as amended by Regulation UNTAET 2001/ 16.⁸

"In most cases the Prosecutor has the duty to request an arrest warrant if appropriate and after the investigation, has the responsibility to decide whether indictments should be made in individual circumstances and prepare the indictment. If the matter is a minor offence with a possible punishment of less than one year the police investigator can proceed directly to the judge in such matters without having to go via the Prosecutor. The Prosecutor also has a role in requesting detention orders from investigating judges while investigations are ongoing."⁹

The Public Defender's Office opened in February 2000 and operates with a staff of seven public defenders at Dili District Court supported by one permanent administrative officer, three international mentors, and four other support staff, one defender in Baucau, and one in Oecussi. The role of the public defender is critical in an environment where many accused have a limited understanding of the rule of law. The duties and responsibilities of public defenders are set out in UNTAET Regulation 2001/24. A Code of Conduct for public defenders is set out in the Schedule to this Regulation. Their role is to provide legal assistance and representation to persons who are involved in criminal investigations and criminal and civil proceedings and who do not have adequate financial resources to pay for such representation.

Dili District Court was the first Timorese court to begin functioning in March 2000. Dili District Court handles the largest case volume of all four Timorese district courts. The Constitution of East Timor establishes two levels of appeal, the Court of Appeal and the Supreme Court of Justice. Due to the lack of human resources to constitute the Supreme Court of Justice, the Court of Appeal has been given the competence to exercise the tasks of the Supreme Court of Justice in terms of the East Timorese Constitution¹⁰ and UNTAET Regulation 2000/11.¹¹

⁷ JSMP's "Women in the Formal Justice Sector" report page 11.

⁸ JSMP's "Women in the Formal Justice Sector" report page 12.

⁹ Section 7 of the Regulation.

¹⁰ Section 164(2) provides that: "Until such a time as the Supreme Court of Justice is established and starts its functions all powers conferred to it by the Constitution shall be exercised by the highest judicial instance of the judicial organization existing in East Timor.

¹¹ See Articles 4 and 14 UNTAET Regulation 2000/11.

3 THE PROBLEM OF ACCESS TO JUSTICE FOR WOMEN VICTIMS

3.1 THE MEANING OF ACCESS TO JUSTICE

Many countries have established a right to legal representation or legal assistance through their constitution or statutory law. The capability to access the legal system is considered a fundamental right. All of “rights” law assumes the existence of government, of justice, and of access to it.¹² In East Timor this right is established by Section 26 of the Constitution: “Access to the courts is guaranteed to all for the defence of their legally protected rights and interests. Justice shall not be denied for insufficient economic means.”

This right is also established in the *Universal Declaration of Human Rights*:

Article 6

Everyone has the right to recognition everywhere as a person before the law.

Article 8

Everyone has the right to an effective remedy by the competent national tribunal for acts violating the fundamental rights granted him by the constitution or by law.

Article 10

Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations, and of any criminal charge against him.

Since the 1960s, reformers around the world have been calling for changes in national legal systems to enhance “access to justice” for disadvantaged groups and citizens at large. Three waves of reform have been identified, aimed at making the right to justice effective. The first wave consisted of efforts to make legal advice more available to the poor; the second phase promoted representative actions and other procedures that would allow a single lawsuit to resolve a number of claims (class law suits and public interest litigation); and the third wave addressed broad reform to the legal system, including alternative dispute resolution and small claims courts. Access to justice remains identified with legal aid, representative actions, alternative dispute resolution, and other strategies of court reform.¹³

This report will only consider access to justice for women victims in terms of the first wave: making legal advice more available to women as a disadvantaged group in Timorese society.

In many countries the courts are often overtly or subtly biased against certain groups. Many people chose to avoid their legal systems altogether rather than face intimidation, cost and time lost in proceedings they know they cannot win. Those who need justice quickly often find the courts inaccessible. This is the current situation for many woman victims in East Timor. Recognizing this situation in other countries, many reformers are interested in programs that will improve “access to justice”.¹⁴

¹² Schroeter, Leonard W., “The Jurisprudence of Access to Justice: From *Magna Carta* to *Romer v Evans* via *Marbury v Madison*”, <http://www.seanet.com/~rod/marbury.html>

¹³ “Access to Justice Movement”, <http://www1.worldbank.org/publicsector/legal/accesstojustice.htm>

¹⁴ <http://www1.worldbank.org/publicsector/legal/access.htm>

In recent years, critics have argued that access to justice reform has largely conflated access to justice with access to the courts. Traditional access to justice ideas have been critiqued as being narrowly directed at procedural access rather than substantive justice. Critics have sought to shift the emphasis from guaranteeing the availability of lawyers or court procedures to producing outcomes that are more fair and equitable. They argue that greater access to the courts will not help the poor in a country where the laws entrench their social and economic exclusion. In addition, sometimes remedies outside the legal system can sometimes provide the same ends, but with greater efficiency.¹⁵

This report may suffer from the same critique, that is, it is mostly concerned with improving women victims access to the courts. However, this report does emphasise that there is no point in improving such access if provision is not also made for social and financial support of victims.

3.2 CRIMES AGAINST WOMEN IN TIMOR AND THE LACK OF ACTION AGAINST THIS CRIME

3.2.1 GENDER BASED VIOLENCE IN EAST TIMOR

Gender based violence is reportedly a significant problem in East Timor. According to 2002 UNFPA statistics, 40% of incidents reported to police concern domestic violence. 25% of cases in Dili District Court relate to domestic violence.¹⁶ However, the problem is probably worse than statistics show as many cases go unreported.

In an IRC study on the “Prevalence of GBV in East Timor”, 51% of women consulted stated that in the last 12 months they had felt unsafe in their relationship with their husband; and in the “IRC Pilot Study on GBV in East Timor”, it was found that in the past year, 24.8% of women had experienced violence from an intimate partner. The forms of violence identified as most common were physical abuse such as being hit, kicked, punched, slapped, twisting of arm or hair pulled (21%) and psychological abuse. 4% had been threatened to be killed by their husband.¹⁷

The effects of these high rates of gender based violence are sometimes exacerbated by the reluctance of the formal justice system to respond aggressively to cases of alleged violence.

3.2.2 JSMP’S “WOMEN IN THE FORMAL JUSTICE SECTOR” REPORT

JSMP’s “Women in the Formal Justice Sector” report was based on two months of court monitoring of women-related cases in the Dili District Court from 29 September to 28 November. The objective of the report was to collect and analyze information relating to women and the formal justice sector to recommend policy and administrative action to address problems for women in accessing justice.

JSMP found in the cases before the District Court during the period of review that:

- Women-related cases represented the majority (55 percent) of all criminal hearings scheduled during the monitoring period.
- Seventy-eight percent of the women-related cases were sexual violence cases.

¹⁵ “Access to Justice Movement”, <http://www1worldbank.org/publicsector/legal/accesstojustice.htm>

¹⁶ 76% of domestic violence victims are women. UNFPA Domestic Violence brochure 2002.

¹⁷ Swaine, Aisling, opcit, page 13

- The sexual violence cases may be described as "very serious" cases. That is, they included: incest, multiple rapes, aggravating factors such as use of a gun and/or a victim whose average age was just 15, while the accused's average age was 32.
- Despite the heavy incidence of domestic violence complaints received by the Vulnerable Persons Unit in 2003, not one domestic violence case was scheduled for a hearing before the Court.
- Women were never perpetrators and always the victims in cases scheduled for hearings during the study.
- Very little progress was made in all of the women-related cases before the Court. In only 16% of cases did hearings proceed at all, and in almost all of those few hearings that did proceed, there was practically no progress towards resolution of the case.
- The Court delivered no decisions in any women-related cases.
- In interviews with JSMP, justice actors displayed gender-biased views that could prejudice effective and sensitive handling of these cases.

JSMP also found that certain low cost policy initiatives could presently assist the access and treatment of female (and potentially other) victims of violence.¹⁸

3.3 CURRENT SOLUTIONS FOR ASSISTING WOMEN VICTIMS

3.3.1 SOCIAL SUPPORT

There are some NGOs providing social, counseling and housing support to women victims of gender-based violence. In Dili, when the VPU is notified of a case of sexual assault or domestic violence involving injury, they usually take the victim to the safe room at the hospital (although the speed with which the VPU takes the victim is limited by the VPU's lack of transport).¹⁹ Pradet Timor Lorosa'e coordinates with the VPU to provide support to victims and their families who have experienced violence and trauma. In conjunction with the staff at Dili National Hospital, Pradet has set up the safe room in the hospital for victims of gender based violence. The safe room is staffed by midwives and doctors with counselors on call. In the safe room victims are offered counseling, medical and forensic examinations and follow up care. Pradet also provides a 24 hour crisis service to victims of gender based violence and child abuse.²⁰

The VPU also usually notify Fokupers of the victim's situation.²¹ Fokupers will also often send a staff member to the hospital to coordinate with Pradet to provide counseling support and discuss options for the victim once they have left the safe room.²²

¹⁸ JSMP's "Women in the Formal Justice System" report pg. 4

¹⁹ Interview with the Dili District VPU 14 June 2004. VPU Dili have no cars, but do have two motorbikes donated by UNFPA. Sometimes the VPU can use a patrol car, but often these are broken too. When they pick up a victim they usually have to put her in a taxi and follow her by motorbike to the hospital.

²⁰ Interview with Pradet 29 June 2004

²¹ Interview with Dili District VPU date 14 June 2004

²² Interview with Fokupers date 27 May 2004

For victims of domestic violence Fokupers has a safe house (*uma mahon*) with facilities for eight women and their children. This safe house is in a secret location for the protection of the victims.²³ ETWAVE is also able to provide limited safe house facilities, again in a secret location, for victims of sexual assault and domestic violence.²⁴

These facilities are only really available for victims of violence in Dili. In other districts, when the VPU is notified of a case of gender-based violence they will endeavour to take the victim to the nearest hospital facility (their ability to quickly take the victim to a hospital is limited by the fact that VPU in most of the districts do not have their own transport, and also have no means of communications).²⁵ Hospitals outside of Dili do not have a safe room for victims of such violence however. Fokupers is a nation wide NGO (with connections to other women's groups in the districts), but JSMP understands that its members in the districts have not received the same level of counseling training as the counselors in Dili.

3.3.2 LEGAL SUPPORT

Fokupers has one lawyer who provides some legal support to victims of domestic violence and sexual assault. However, victims must know to ask for Fokupers, or must be referred to Fokupers by the VPU. Also, as there is only one lawyer, the amount of legal support he can give, and number of cases he can take on, is of course limited.

At present in East Timor, this is the only legal assistance specifically available to women victims. There is no special legal assistance available to women suspects (although they have the same access to public defenders, LBH, and private lawyers as male suspects). The Fokuper's lawyer also provides some limited support to women in family law cases, although none of these have yet come to conclusion.²⁶

²³ Interview with Fokupers date 27 May 2004

²⁴ Interview with ETWAVE date 27 May 2004

²⁵ Interview with VPU Manatuto and VPU Liquica 2 July 2004. VPU Manatuto said they had no transport. VPU Liquica had been given two motorbikes by UNFPA, but both were currently broken.

²⁶ Interview with Fokupers date 27 May 2004

4 WHAT KIND OF LEGAL ASSISTANCE IS NEEDED TO IMPROVE ACCESS TO JUSTICE FOR WOMEN VICTIMS

As described in JSMP's "Women in the Formal Justice Sector" report, there is clearly a need for legal support for women. However, as described in 3.3.2, there is currently a lack of such support available. This chapter will consider the areas where assistance is needed and what kinds of assistance are needed.

4.1 ASSISTANCE TO REPORT THE CRIME TO THE POLICE

Many women do not report the gender based violence that has occurred to them to the police.²⁷ The "IRC Prevalence of GBV Study" found that most women who did seek help for domestic violence went to their family (32%), 5% went to traditional justice, 3% went to police, 9% tried to forget about it.²⁸ There are many reasons for this, including:

- Many women do not think that the violence that has occurred to them is a crime. 51% of those surveyed in the "IRC Prevalence of GBV Study" strongly agreed that "a man has a good reason to hit his wife if she disobeys him".²⁹
- In cases of domestic violence and sexual assault (especially if it happens in the family eg. by an uncle, brother, or father) many women do not think they should discuss these issues with people outside the family. In the "IRC Prevalence of GBV Study" 84% of respondents strongly agreed with the statement that 'family problems should only be discussed with people in the family', and 51% of women felt that the best way to cope was with support from their family.³⁰
- In East Timor, and especially in the districts, there are no means of communications – there is often no telephone and no transport. Often people live far from the nearest police station. The police also do not have a telephone and in the sub-districts often have no transport. So, physically, it is very difficult for women to tell the police when violence is committed against them.
- Often, when women experience domestic violence it is difficult for them to escape from the place where it is occurring, that is, often the person committing violence against them will not permit them to leave to inform anyone about it.
- Women are often embarrassed to tell the police when violence has occurred, especially if it involves sexual assault. They do not want to tell others what has happened to them, and they especially do not want to admit they have been sexually assaulted. Women also sometimes believe that people will think they are the person who is at fault in a case of sexual assault (this is unfortunately quite commonly believed in other countries too), and if they report it they will be seen as a "bad girl". In Timor, many people also believe that to talk openly about sex is against Timorese culture, so of course this limits a woman's ability to inform the police she has been sexually assaulted.³¹
- Women are worried that if they tell the police about the violence it will become public knowledge. Sometimes the press reports on these cases and often they publish the name; or enough of the story that the victim thinks that other people will know about it.³²

²⁷ Under reporting of violence against women is a world wide problem.

²⁸ Swaine, Aisling, *opcit*, pg. 13

²⁹ *ibid* pg. 13

³⁰ *ibid* pg. 13

³¹ Interview with a Prosecutor 11 June 2004

³² Interview with Chief Prosecutor, see "Women in the Formal Justice Sector" report pg. 16.

- Some people appear to believe that domestic violence is an unavoidable part of Timorese culture, and as a result many women do not think they should report it to the police.
- Women do not know that domestic violence and sexual assault are crimes, and they do not know that they should report these problems to the police.
- Women think adat law will be a better system to resolve issues of domestic violence and sexual assault. Women also know that police are also sending women back to local justice or solving violence cases at police station level.³³
- Women think the police will not believe them when they report crimes of gender based violence.
- Even if the police believe the woman's account of what has happened, they may not consider it serious, and will often send them back to the family or to live the person who has assaulted them.³⁴
- Many people in East Timor do not have a good impression of the police. Sometimes they do not trust them because they still associate the PNTL with POLRI (the police force during the Indonesian occupation) who reportedly committed human rights abuses against numerous Timorese. Some people do not trust the PNTL because they have heard stories of them committing abuses against Timorese, in particular against women (for example, the recent highly publicised case of the alleged rape of an 18 year old girl by nine PNTL officers).³⁵ Some people also do not believe the PNTL are very competent, so do not think there is much point in reporting a crime to them, because the PNTL will not do a very thorough investigation and may make the situation worse for them.³⁶
- Women may be aware of the numerous problems in the formal justice system, particularly the lengthy delays in the court process. They may decide that it is not worth the trouble of reporting the violence they have experienced to the police because they do not want to have to go through the problems others have experienced with the formal justice system.³⁷
- Women may be aware that gender based violence is a crime, and that they should report it to the police, but may decide that for financial or other reasons, they cannot afford to report the perpetrator to the police, because they fear what his absence from them may mean. For instance, often because of their lack of economic power, some women prefer to solve problems through local justice due to a fear of losing economic support should their husbands be jailed.³⁸
- Even if a woman reports the violence to the police, due to the lack of social support mechanisms (especially safe houses) in Timor, she may continue to be exposed to real threats.

A range of broad ranging long term education, and improvements to East Timorese institutions, are clearly needed to overcome the difficulties described above to assist women to inform the police when violence has occurred, including:

³³ Swaine, Aisling, opcit, pg. 4

³⁴ Interview with UNHCR 10 June 2004. UNHCR informed JSMP of the case of a woman in Suai who was repeatedly sent back to her home by the police despite the fact it was her neighbour who was trying to rape her.

³⁵ See JSMP press release 3 June 2004

³⁶ Anecdotal interviews.

³⁷ Interviews with women's NGOs 27 May 2004

³⁸ Swaine, Aisling, opcit pg. 3

- Improve East Timor’s infrastructure so that women have means of transport and methods of communication by which to notify police of the violence they are facing.
- Conduct nation wide education campaigns about women’s rights, and teaching people to respect women.
- Educate people that gender based violence is not the fault of the victim, and teach women that they should not be embarrassed to report it.
- Educate people that domestic violence and sexual assault are not part of Timorese culture.
- Educate people that domestic violence and sexual assault are crimes, and should be reported to the police.
- Educate the police about domestic violence and sexual assault, and especially about what to do when women come to the police having suffered from these crimes. All of the PNTL need education about these issues. The VPU need particular training about how to deal with victims of these crimes.
- Educate people about the role of police in East Timor, in particular, that it is the role of the police to investigate incidents of crime.
- Educate people that the police also consider the crimes of domestic violence and sexual assaults to be serious.
- Improve relations between the people and the police, so that women can trust the police when they report crimes to them.
- In order to restore faith in the police, independent investigations should be carried out into allegations of PNTL wrongdoing.
- Improve the formal justice system so that women related cases progress more quickly (see *infra* at 4.4 and 4.5 for recommendations in regard to methods of improvement).

4.2 ASSISTANCE TO EXPLAIN THE CRIME TO THE POLICE AND TO ENSURE THE POLICE CONSIDER THEIR PROBLEM SERIOUSLY

Women report violence to the police because of fear for their own safety, in the hope of protection from violent husbands, and in the expectation that the formal justice system will stop the violence that they are experiencing in their own homes.³⁹ According to the IRC study, police were seen to have more force and capacity to scare violent husbands into stopping their actions.⁴⁰ However, victims sometimes have difficulty getting the police to understand the violence they have suffered, and also getting the police to take the problem seriously. Such difficulties include:

- According to interviews with the VPU and prosecutors, victims often do not explain clearly or logically the sequence of events involved in the violence they have suffered.⁴¹ This may be because they have suffered a great deal of distress and trauma so it is difficult for them to explain the events to the police. As a result however, the statement they make to the police is often very confused. This in turn hampers the police investigation of the crime, and the prosecutor’s indictment against the accused.
- Police also sometimes do not ask victims clear questions. Some police questions appear to create further confusion for the victim and in turn in the police report of the crime.

³⁹ Swaine, Aisling, *opcit*, pg. 2

⁴⁰ Swaine, Aisling, *opcit*, pg. 3

⁴¹ Interviews with VPU National 14 June and Prosecutors 15 June

Confusing and contradictory police statements can result which also create confusion in the court documents.⁴²

- Victims also often do not understand the importance of evidence. For example, the VPU in Dili told JSMP that when women have suffered from sexual assault the police need their underwear as evidence. However, the women often wash it before they give it to the police because they are ashamed to hand over dirty underwear. Women also often wash themselves before reporting a sexual assault to the police. This possible destruction of medical evidence of the rape in turn creates difficulties for the prosecutors when prosecuting the case.⁴³
- Police officers sometimes do not consider crimes of domestic violence or sexual assault as ‘serious’ violence warranting attention. During interviews for the “Women in the Formal Justice Sector” report, JSMP was told by some VPU officers that they had discouraged women from reporting “minor” domestic violence incidents or rapes that were not “serious”.⁴⁴ Women are returning home from police stations with the belief that the violence they have experienced is not valid or ‘serious’ enough to be dealt with by police.⁴⁵

Measures which could be taken to overcome these problems of miscommunication, and to ensure police consider seriously crimes of violence against women, and carry out effective investigations of such violence include:

- Improve police training in questioning techniques of victims of gender based violence. At present, the PNTL have a policy of only allowing female VPU officers to question victims of such violence, which is commendable as long as it is followed (JSMP has observed that sometimes it is not). However, those officers must also be trained in methods of creating a calm environment in which the victim can describe the events of the crime (in some cases the victim may have to be taken to a different location from a police station filled with armed male police officers).
- Educate all PNTL officers that domestic violence and sexual assault are serious crimes, which must be investigated thoroughly.
- Improve training in investigation for all PNTL officers, especially in investigation of gender based crimes.

⁴² See JSMP’s “An Analysis of Sexual Assault Decision from Dili District Court” report (awaiting publication).

⁴³ It must be noted however, that in ordinary cases in East Timor forensic evidence is rarely, if ever used. In none of the women related cases JSMP has observed has forensic evidence ever been relied on by the prosecutor or defence.

In an interview with the Sub-district Administrator of Manatuto (2 July), she complained that sexual assault victims in Manatuto were particularly upset that they had never received the results of the forensic tests which had been taken in the hospital after the assault. JSMP has also observed in examinations of case files that although in medical reports forensic tests are reported as having been carried out, the results of these tests are never included in the case file.

In an interview with VPU National on 14 June 2004, JSMP was told that until May 20 2004, UNPOL paid for forensic tests, and in particular DNA tests, to be sent to Darwin (apparently each DNA test cost \$1000). VPU National was unsure who would pay for such test results now. It is unclear to JSMP if the results of such tests ever actually come back from Darwin.

⁴⁴ Interview with Dili District VPU 2 October 2003.

⁴⁵ Interview with UNHCR officer 10 June 2004 and Swaine, Aisling, opcit, pg. 3

- Increase the resources of the VPU. Ensure that each district VPU has a means of transportation, and means of communication.⁴⁶ Set up a roster so that the VPU can be contacted 24 hours. Also improve other resources of the VPU to enable them to better carry out their role.⁴⁷ Also ensure that each member of the VPU has received training as a VPU officer,⁴⁸ and that there are a core group of VPU officers who continue to work as VPU officers for a number of years.
- Victims should be informed of the purpose of medical examinations (doctors will look for cuts and bruises as evidence of sexual assault). They should also be told not to wash before a medical examination.
- Funding should be provided for forensic testing and DNA testing (this will probably still need to be carried out in Darwin). Prosecutors and judges should be given training in how to use forensic tests in prosecuting and deciding cases.
- A women's legal assistance office could perhaps assist with liaison between the police and the victim at the police station. Such an office could help to explain the police's questions to the victim, and could make suggestions to the police as to points for further investigation.

4.3 ASSISTANCE TO TAKE THE CRIME FROM THE POLICE TO THE PROSECUTOR

According to JSMP's "Women in the Formal Justice Sector" report, there are sometimes difficulties associated with movement of a case from the police to the prosecutor:

- Sometimes the police are not efficient in taking a case to the prosecutor's office.
- Sometimes the prosecution do not make themselves readily available to the police. (Indeed, JSMP has observed that the VPU and prosecutor's do not necessarily work similar office hours. The VPU is supposed to be in their office from 7am – 5pm Monday – Friday. Prosecutors are sometimes not in their office during those hours however, either because they are at court or at some other appointment.)
- Sometimes the prosecutor does not think the police investigation is complete, so asks the police to investigate further,⁴⁹ but often the police do not understand what further evidence is needed. As a result the case can sometimes go on hold indefinitely, unless the victim or accused make further inquiries about it.⁵⁰

⁴⁶ See supra at 3.3.1 for information on the lack of VPU transport and communications.

⁴⁷ For instance, in regard to the problem of victims washing the underwear which is required as evidence of the sexual assault, the VPU Dili suggested that one way to solve this problem would be for the woman to give the VPU the underwear at the police station. To do so, the woman would of course need to have clean underwear to change into. The VPU would therefore need a supply of clean underwear to give to victims in such circumstances.

The VPU Dili also told JSMP that it was difficult to get child assault victims to tell the VPU about the violence they had experienced, because they were often sobbing uncontrollably and were also extremely hungry and thirsty by the time they arrived at the VPU. They told JSMP that one simple way to solve this problem would be if the VPU were resourced to provide the children water and biscuits. Interview with VPU Dili 14 June 2004

⁴⁸ Two of the district VPU officers told JSMP they had never received training to become VPU officers. All of the VPU officers said they would like to receive more training, particularly in questioning techniques. Interviews with VPU 14 June 2004 and 2 July 2004.

⁴⁹ Interviews with prosecutors 11 and 15 June 2004

⁵⁰ Interview with a Public Defender 15 June 2004

- The Prosecutor’s Office is extremely busy. There are only 17 prosecutors (including the Prosecutor General and the Deputy-Prosecutor General). The prosecutors do not therefore have a lot of time to discuss cases with the police.

In order to ensure rapid movement of a case from the police to the prosecutor, the following measures may be useful:

- Ensure that the process of taking cases from the police to the prosecutor is clear to both the PNTL and the Prosecutors office.
- Educate the PNTL and Prosecutors about the seriousness of crimes of domestic violence and sexual assault.
- As a women’s legal assistance office could be made aware of a case at the VPU stage, such an office could continue to make inquiries to the prosecutor as to the progress (and thus help to facilitate faster progress) of a case from the police to the prosecutor.

4.4 ASSISTANCE TO HELP THE PROSECUTOR VIGOROUSLY PROSECUTE GENDER BASED CRIMES

In JSMP’s “Women in the Formal Justice Sector” report, and the “An Analysis of a Sexual Assault Decision from Dili District Court” JSMP observed that sometimes prosecutors do not appear to prosecute cases of gender based crimes with great vigour. Moreover, despite the heavy incidence of domestic violence complaints received by the VPU, during the JSMP monitoring period of women related cases from 29 September – 28 November not one domestic violence case was scheduled for a hearing before the Court. There are a number of possible reasons for this:

- The prosecutorial staff at the Dili District Court is minimal given the number of cases to be handled by the staff. The Prosecutor's Office is so over-burdened as to prevent it from interacting sufficiently with victims of crimes.
- Indonesian law, especially the Indonesian Criminal Code (KUHP) is outdated.⁵¹ The Criminal Code is gender neutral and the prosecutions ability to prosecute gender based crimes – especially domestic violence and sexual assault – is limited by the narrow definitions of crimes in the code. (For example, prosecution of rape within marriage is not possible under the KUHP article on rape (Article 285).)
- The prosecution sometimes does not ask effective or clear questions of the victim, suspect, or witnesses before or during trial.⁵² JSMP has observed the prosecution asking questions which in fact confused the victim and court proceedings generally.
- JSMP has also observed that, in some cases, the prosecution does not charge the accused with all the articles of KUHP the accused could be charged with, including the strongest offences the accused could be charged with. Sometimes it appears that the prosecution only tries to charge with an offence which is easy to prove.⁵³
- JSMP has observed that in the final indictment the prosecution does not ask for the longest sentence possible under the offence charged.⁵⁴

⁵¹ It is based on 1912 Dutch colonial law, see JSMP’s report “An Analysis of a Sexual Assault Decision in Dili District Court”, for further information. Also, interview with a Prosecutor 11 June 2004

⁵² See JSMP’s report on “An Analysis of a Sexual Assault Decision in Dili District Court”

⁵³ See JSMP’s report on “An Analysis of a Sexual Assault Decision in Dili District District Court”

⁵⁴ See JSMP’s report on “An Analysis of a Sexual Assault Decision in Dili District District Court”

- The Prosecution does not appear to have knowledge of international law. Section Nine of the Constitution provides that if Timorese law contradicts international legal standards, international law should prevail.⁵⁵ But the Prosecutor's office does not have access to international law (apparently it has no internet access and no books on international law) and the prosecutor's have not yet received training on international law or on the international treaties which East Timor has signed.⁵⁶
- Prosecutors sometimes do not believe the victim's account of events surrounding the crime.⁵⁷
- Prosecutors sometimes send cases back to local justice systems, the police, or the family.⁵⁸
- The lack of domestic violence prosecutions can be partially explained by the fact that, for instance, from January to August of 2003, out of 148 domestic violence cases reported to the Dili District VPU, 104 of the complaints were withdrawn by victims after receiving the public prosecutor's approval to withdraw.⁵⁹

In order to improve the quality of prosecution of gender based crimes the following measures are necessary:

- The Ministry of Justice should ensure that there are a sufficient number of suitably trained prosecutors with adequate resources, skills and facilities available in order to ensure the quality of services delivered by the Prosecutor's Office.
- New Timorese laws should be introduced to replace outdated Indonesian laws, especially a new Penal Code and Domestic Violence Legislation. Drafters of these laws should ensure they comply with international standards, and incorporate internationally accepted definitions of sexual assault, rape, domestic violence etc.
- Prosecutors should be given training on how to prosecute domestic violence and sexual assault applying the law currently applicable in East Timor.
- Prosecutors should be trained in requesting sentences appropriate to the seriousness of the crime the accused is charged with.
- Prosecutors should be given training about international law, especially about the treaties East Timor has signed and about customary law. Prosecutors should be taught how to use international law in their cases. They should also be given access to international law – through books, copies of the texts of treaties, and internet access to such laws.
- A women's legal assistance office could perhaps act as a liaison between the victim and the prosecutor's office.⁶⁰ Such an office could write to the prosecutor on the victim's

⁵⁵ **Section 9 (International law)**

1. The legal system of East Timor shall adopt the general or customary principles of international law.
2. Rules provided for in international conventions, treaties and agreements shall apply in the internal legal system of East Timor following their approval, ratification or accession by the respective competent organs and after publication in the official gazette.
3. All rules that are contrary to the provisions of international conventions, treaties and agreements applied in the internal legal system of East Timor shall be invalid.

⁵⁶ Interviews with Prosecutors 11 and 14 June 2004.

⁵⁷ Interview with Prosecutors 11 and 15 June 2004.

⁵⁸ Interview with a Prosecutor 14 June 2004

⁵⁹ "Women in the Formal Justice Sector" report page. 18

⁶⁰ For example, in one case JSMP observed, there were factual inaccuracies in the indictment. In addition, the victim's and one of her witnesses' statements had unnecessary contradictions. Had the victim and prosecutor been able to meet to discuss the case, such inaccuracies and contradictions would have been

behalf and suggest options for prosecuting the victim's case. Such a group could also provide information to victims on the progress of their case in the prosecutor's office and encourage women to continue with a prosecution once they have begun.

4.5 ASSISTANCE TO HELP THE COURT DEAL WITH THE CASE EFFICIENTLY

Many women never see justice delivered in crimes they report to the formal justice system. Not one final decision was rendered in the eighteen women related cases before the court during the monitoring period for JSMP's report "Women in the Formal Justice Sector" (29 September to 28 November). The average length that women related cases before the Court had been processed during this monitoring period was 274 days.⁶¹ According to some of the women's NGOs we interviewed, this was one reason many women chose not to pursue the formal justice process, or withdrew their case during the process.⁶² The victim brings her case to the formal justice sector in order to have the case heard and a verdict rendered. Until a verdict has been rendered and the accused has been convicted or acquitted, justice has not truly been delivered to either the victim or the accused. Many of the problems with court administration were described in JSMP's reports "Dili District Court Final Report 2003" and "Women in the Formal Justice Sector", including:

- Lack of transparency in scheduling, delays and postponements, all prevent progress towards the ultimate decision stage. Progress in women-related cases during the monitoring period for the "Women in the Formal Justice Sector" report was almost always postponed or delayed.⁶³
- Scheduling of cases is not communicated, so parties are often not assembled for the trial.
- The notice board at the court is rarely used by Court staff to communicate to the public when proceedings are scheduled. Interested parties must personally inquire of the case reporters in order to ascertain the scheduling of a case. When victims of sexual violence have to inquire personally of official court staff they may be intimidated, made emotionally anxious or embarrassed by the proceedings.
- Sometimes during regular working hours there are no court staff present in the office for up to two hours, often for no official reason. This means that nobody knows when cases will be scheduled.
- Interested parties can experience difficulties obtaining accurate information about the scheduling of a case because of erroneous entries made by court clerks in the case files. In addition, case file notes are frequently incomplete and inadequately or inaccurately reflect what occurred at the hearing.

more easily eliminated or at least coherently explained. A liaison would coordinate such meetings and review case files to ascertain important details that need to be verified. The investment of time that it would take for the already busy prosecutors to meet with the victim and the liaison would ultimately assist the prosecutor's ability to secure convictions. JSMP's "Women in the Formal Justice Sector" report

⁶¹ "Women in the Formal Justice Sector" report pg. 27

⁶² Interviews with Fokupers and ETWAVE 27 May 2004. VPU officers also complained to JSMP about the slowness of the court process 14 June and 2 July.

⁶³ Few hearings actually proceeded, and of those that did proceed, most involved only the mechanical reading of the indictment. Delays before proceedings were the norm; indeed, the average delay before hearings was about 45 minutes. Ironically, delays before hearings that were ultimately merely postponed were the longest. In some cases, victims and court actors waited for up to two and a half hours only to learn that their cases would not be proceeding at all. Not only did few women-related cases make any progress at all, the court issued no final decisions in any of the women-related cases. "Women in the Formal Justice Sector" report pg. 23

- Lack of compliance with court schedules is problematic in all Dili District Court cases (there are more hearings that are postponed than hearings that proceed according to schedule). The reason for postponement was generally the absence of one or more key justice actors.⁶⁴ This includes both the failure: (1) to appear at Court at all on the day designated for the hearing, and (2) to appear at Court on time, since tardiness sometimes caused other actors to depart before the arrival of necessary parties who were late and the hearing has to be adjourned.⁶⁵
- Some justice actors do not receive the letter informing them of their schedule time, nor are they contacted by the police to inform them of their trial date.
- The social stigma associated with sexual violence proceedings acts as a disincentive to rape victims considering attendance at a trial. JSMP was also told by a judge who had postponed a rape case in which the victim had not appeared that the victim was "too shy" to come to court.⁶⁶

The following measures are necessary to improve the efficiency of court proceedings in cases of gender based violence:⁶⁷

- Training and education of justice actors to understand and respond to domestic and sexual violence issues.
- Extensive training on court reporting should be offered to court staff and court clerks be reminded of the ultimate goals and objectives of court reporting, and the importance of maintaining accurate and clear records.
- Court actors should evaluate the case before each hearing in order to ensure that as much progress as can possibly be made on a scheduled case is made.
- Court staff should update the notice board on a daily or bi-weekly basis in order to provide the public with immediate access to the scheduled court proceedings for the week.
- A court clerk should always be present in the office during business hours to answer questions about and to manage the case schedule. If it is not possible to have Court staff in the office, a sign should be posted indicating when Court staff will return.
- One court clerk should be assigned with primary responsibility for a given case, but in the event of the absence of that Court clerk, all Court clerks should share responsibility for answering questions regarding all the cases.
- All court actors should cooperate and coordinate schedules to efficiently manage hearings and facilitate their progress and to ensure that where at all possible, progress is made in scheduled hearings.
- If all parties necessary to a hearing are present except the Court clerk, the hearing should proceed with a substitute Court clerk.
- Court clerks should arrive promptly at Court every morning and immediately place necessary calls to verify that suspects will be transported to court for the day's hearings.

⁶⁴ See Dili District Court Final Report, 2003, at pg. 60.

⁶⁵ Or, in cases in which the judge was the absent party, JSMP observed the judge arriving two hours late and then convene court to make a note that the prosecutor and defense counsel were not at court, and as such the case could not proceed. "Women in the Formal Justice Sector" report pg. 23

⁶⁶ "Women in the Formal Justice Sector" report pg. 15

⁶⁷ See also JSMP's reports on "Dili District Court Final Report 2003" and "Women in the Formal Justice Sector".

- Court clerks and police or the Prosecutor's office should make follow-up calls to the relevant parties to confirm that parties have received their letter to inform them of hearing times.
- All court actors should notify the Court clerk of their planned absences. Court clerks should contact the relevant parties to reschedule the hearing.
- Victims should be allowed to await hearings in a designated waiting room at Dili District Court in order to create a level of comfort for victims attending the proceedings.
- A women's legal assistance office could act as a liaison between the court clerk, the prosecutor and the victim. Such an office could regularly visit the court to inquire as to progress in a victim's case, and ensure the court clerks carry out their administrative duties as described above.

4.6 ASSISTANCE TO ENSURE THE JUDGE TREAT CASES OF GENDER BASED VIOLENCE WITH CARE

In JSMP's "Women and the Formal Justice Sector" and "An Analysis of a Sexual Assault Decision from Dili District Court" JSMP observed that victims sometimes did not receive the treatment they expected from judges in court proceedings. In particular:

- During the monitoring period for JSMP's report on "Women in the Formal Justice Sector", and during monitoring in May, June and July 2004, JSMP observed that the judge sometimes (for no explanation) did not appear at Court for the proceeding.
- Judges did not appear to give much regard to the violations of the rights of victims in cases of gender based violence.⁶⁸
- Judges sometimes write very short decisions, so it is difficult to see what factors they took into consideration when making their decision.⁶⁹
- Judges rarely give the maximum penalty to an accused, despite the seriousness of the crime.⁷⁰

In order to improve the victim's sense of fairness at the proceedings they are going through, JSMP recommends:

- Judges be required to be at Court during office hours and that a system for monitoring their presence at Court be established.
- Judges should consistently insist that Court proceedings start punctually, and set the standard that hearings at Dili District Court must start on time.
- Judges should be given training in the rights of victims of gender based violence.
- Judges should be given more training in writing decisions.

⁶⁸ See JSMP's report "An Analysis of a Sexual Assault Decision from Dili District Court"

⁶⁹ See JSMP's report "An Analysis of a Sexual Assault Decision from Dili District Court"

⁷⁰ Interview with a Prosecutor 11 June 2004 and Fokupers 27 May 2004.

5 OTHER COUNTRIES' SOLUTIONS TO SOLVE THE PROBLEM OF ACCESS TO JUSTICE FOR WOMEN VICTIMS

In some developed countries such as Australia, Canada, US, UK it is understood that women who have suffered domestic violence or sexual assault need practical, emotional, financial and legal support. There are usually a range of social and legal services available for women who have suffered such violence which are often coordinated by a government agency such as a Department of Community Services. These include:

- 24 hour emergency police contacts. (Police often have Domestic Violence or Sexual Assault liaison officers trained to give assistance in these cases.)
- 24 hour Domestic Violence and Sexual Assault Crisis Services. These can provide information, support and access to safe accommodation or refuges for women and their children. Such services can also assist with transport and finances.
- Domestic violence and sexual assault outreach workers or counselors. These can offer support to women escaping such violence.
- Refuges and shelters which provide safe and secure accommodation for women and children escaping violence. At such shelters women are helped to get back on their feet with emotional support, legal assistance and help to find permanent housing and assistance with applying for appropriate benefits. Such emergency housing is sometimes in a secret location to protect women.⁷¹

In some developed countries there are also often Women's Legal Aid or Victim Support Services available within general Legal Aid Offices, or as separate organizations. Such services are often coordinated by a government agency such as the Ministry of Justice. Such Women's Legal Aid provide the following services:

- Legal advice and information to women
- Legal representation of women
- Court assistance for women dealing with domestic violence or sexual assault
- Social work support for women
- Liaison and consultation with community and government agencies
- Promotion and advocacy of women's issues generally
- Community education
- Law reform⁷²

Some developing countries also offer similar services to women victims of domestic violence and sexual assault (although the level of service they can provide is often less than that provided in developed countries for financial and other reasons). In Indonesia, for example, the Government Bureau for Women's Empowerment helps to do advocacy about women's rights through leaflets, TV and by working with NGOs which support women. It has also set up anti-rape communication forums in all the provinces.⁷³

⁷¹ Information from various websites.

⁷² Information from various websites.

⁷³ Aksi Sinurat, "Peranan Perempuan Dalam Perlindungan Korban Perkosaan di Kota Kupang" ("The role of women in the protection of rape victims in Kupang"), <http://www.menegpp.go.id/JURNAL%201-2%202003.htm>

Women's Police Desks have been established in 163 police stations in 19 provinces around Indonesia.⁷⁴ This Indonesian version of the VPU takes testimony from victims, takes victims to the hospital for medical examination, and then takes victims to a safe house. This police unit also helps with the prosecution of rape cases.⁷⁵

There are a number of NGOs in Indonesia which help women victims. These give counseling to women, provide information about health issues associated with assault, accompany victims from the police stage and through the court process, and provide information in the media about investigations so the court process can move more quickly. Some legal aid institutes also have women's legal aid specialists. NGOs have also set up victims support groups which include paralegal training of women survivors of violence.⁷⁶

In Indonesia shelters are available for victims of gender based violence. At these shelters women are provided with counseling, and helped to get legal assistance, medical assistance, and to find future safe housing. Staff from these shelters also accompany victims to court.⁷⁷

⁷⁴ "Failed Justice and Impunity: the Indonesian Judiciary's Track record on Violence Against Women", Report to the UN Special Rapporteur on Independence of the Judiciary Mission to Indonesia, Prepared by National Commission on Violence Against Women with partner organizations, Jakarta, 22 July 2002.

⁷⁵ Aksi Sinurat, "Peranan Perempuan Dalam Perlindungan Korban Perkosaan di Kota Kupang" ("The role of women in the protection of rape victims in Kupang"), <http://www.menegpp.go.id/JURNAL%201-2%202003.htm>

⁷⁶ "Failed Justice and Impunity: the Indonesian Judiciary's Track record on Violence Against Women", Report to the UN Special Rapporteur on Independence of the Judiciary Mission to Indonesia, Prepared by National Commission on Violence Against Women with partner organizations, Jakarta, 22 July 2002.

⁷⁷ Aksi Sinurat, "Peranan Perempuan Dalam Perlindungan Korban Perkosaan di Kota Kupang" ("The role of women in the protection of rape victims in Kupang"), <http://www.menegpp.go.id/JURNAL%201-2%202003.htm>

6 PROPOSED SOLUTIONS TO THE PROBLEM OF ACCESS TO JUSTICE FOR WOMEN VICTIMS

6.1 LEGAL SOLUTIONS

The major impediment to substantive access to justice for women in East Timor is lack of respect for women's rights. This problem exists across the whole spectrum of society; it is the cause of violence against women in the first place, and explains many of the difficulties women encounter in trying to seek justice. There is clearly a need for broad education about women's rights across the population. In particular, men must be taught that violence against women is against the law. Police, prosecutors, defence lawyers, and judges must be given training on how to deal with cases of gender based violence. Such broad ranging educational and training needs should become a government priority.

But such changes in attitudes towards women and towards violence towards women will take years to achieve. In the meantime, strategies to improve women's procedural access to justice could be attempted, such as the establishment of a women's legal assistance office. As described in Chapter 4, such an office could ensure that legal assistance was provided to victims at every stage of the investigation and trial. This office could perform the following tasks:

- It could assist with liaison between the police and the victim at the police station. Such a group could help to explain the police's questions to the victim, and could make suggestions to the police as to points for further investigation.
- As a women's legal assistance office could be made aware of a case at the VPU stage, such an office could continue to make inquiries to the prosecutor as to the progress (and thus help to facilitate faster progress) of a case from the police to the prosecutor.
- It could act as a liaison between the victim and the prosecutor's office. Such an office could write to the prosecutor on the victim's behalf and suggest options for prosecuting the victim's case. Such a group could also provide information to victims on the progress of their case in the prosecutor's office and encourage women to continue with a prosecution once they have begun.
- It could act as a liaison between the court clerk, the prosecutor and the victim. Such a group could regularly visit the court to inquire as to progress in a victim's case, and ensure the court clerks carry out their administrative duties as described above. If cases proceed as scheduled and victims see progress being made in their cases, they are less likely to become dejected and lose interest in the progress of the case.

In short, this office would be similar to the Women's Legal Aid offices, and Victim Support services of developed countries, it would carry out almost similar activities but would not actually represent clients in court. Such a paralegal legal aid office could also perhaps serve a community education purpose; producing a range of information, to inform women of their rights, that domestic violence and sexual assault are crimes and should be reported to the police, and about the court process.

6.2 SOCIAL SUPPORT SOLUTIONS

A far greater level of social support for victims of gender based violence is also needed. There is no point in educating women about their rights and providing legal assistance if they do not have the financial or practical means to implement them. The NGOs and Department of Labour,

Solidarity, and Social Services need larger budgets to implement greater programs of social assistance.

In particular:

- Pradet Timor Lorosa'e and Fokupers need more staff and more training of those staff to provide greater counseling support in the hospital, and once the woman has left the hospital.
- More doctors and medical staff should be trained to deal with victims of violence in the safe room.
- More safe houses should be set up to protect and accommodate more victims of domestic violence and sexual assault and their children
- A means of providing financial support should be established to support women throughout the court process and beyond. (at present many withdraw from the court process because they will no have any economic means of support if their husband is sent to jail. See supra 4.1)
- A means of transportation for Pradet and Fokupers so that victims can be assisted to escape violent situations. The VPU also need more transport so they can actually pick up victims, and a means of communication (preferably a mobile phone) so they can contact the hospital and Fokupers to let them know they are coming. The VPU also need more training and other resources with which to create a more comfortable interview environment for the victim.

Such social support services should be set up throughout the districts of East Timor.

7 OPTIONS FOR IMPLEMENTING A PARALEGAL LEGAL AID OFFICE FOR WOMEN

At the Workshop on 8 July 2004, JSMP's suggestion of the establishment of a women's legal assistance office had broad support. JSMP presented four possible options for implementing such an office. JSMP asked for suggestions as to other possible options, but none were put forward. The options, as discussed, are as follows:

7.1 INCREASE THE CAPACITY OF THE EXISTING LBH, OR CREATE A GROUP WITHIN THE LBH, TO GIVE LEGAL ASSISTANCE TO WOMEN

Positive points about this option:

- LBH already have three years of legal and court experience
- In other countries, there are units within the Legal Aid Institutes which are specially designed to give legal assistance to women (sometimes called Women's Legal Aid or Victim Support). In creating such a unit within the LBH in East Timor, it could learn from the experience of such units in other countries.

Negative points about this solution:

- Usually LBH in East Timor are only concerned with the rights of suspects, not victims. If LBH were to start to focus on giving assistance to victims, this could create confusion within the LBH and also outside.
- Concerns have been raised about the quality of the services offered by some LBH. If the quality of LBH services for defendants is in question, it is not clear that LBH would offer a high quality service for victims.

What needs to be done in order to implement this option?

- A new unit would clearly have to be established within the LBH to focus on women victims (Terms of Reference for this new Unit would need to be written).
- Lawyers with an interest in women's rights would need to be employed to work in the new unit.
- These lawyers would all need training in how to speak to women victims (paying special regard to the trauma these women may be experiencing etc).
- Questions about the quality of service provided by LBH would need to be answered satisfactorily.

7.2 INCREASE THE CAPACITY OF EXISTING NGOS WHICH GIVE SOCIAL SUPPORT TO WOMEN (SUCH AS FOKUPERS, PRADET, ETWAVE) TO ENABLE THEM TO PROVIDE LEGAL ASSISTANCE

Positive points about this option:

- These groups already have extensive experience in giving social support to women victims.
- These groups have good relations with the police and the police trust them. It would therefore be reasonably easy for them to establish a liaison role between the victim and the police and provide more in the way of legal assistance at that stage of the process.

Negative points about this option:

- These groups do not have much experience with the courts, and do not know a lot about the justice system
- If these groups started to provide legal as well as social assistance, it may create confusion about their role, and deflect from the other important work that they do.

What needs to be done in order to implement this option?

- One of the groups would need to decide to create a new unit and clearly establish its role to provide legal assistance. It would then have to employ lawyers to work in this unit.
- These lawyers would have to establish good relations with court actors, and quickly acquire knowledge of the East Timor justice system.

7.3 CREATE A NEW UNIT WITHIN JSMP TO PROVIDE LEGAL ASSISTANCE TO WOMEN

Positive points about this option:

- JSMP already has a Legal Team which has extensive experience in dealing with court actors. The Legal Team has a great deal of knowledge about the justice system in East Timor and also about the court process.
- JSMP also already has a Women's Justice Unit which is on good terms with the police, prosecutors, judges and others in the court. The Women's Justice Unit is also very familiar with the problems faced by women in the formal justice system.
- If a women's legal assistance office was set up within JSMP, this group could draw on the experience of the Legal Team and Women's Justice Unit. Perhaps one or two of the employees of the Legal Team and the Women's Justice Unit could be transferred to work in the women's legal assistance office. The new office could also use JSMP's experience and good name to start its work on a good footing.

Negative points about this option:

- Until now, JSMP's work has been mostly involved with court monitoring and legislative analysis. If JSMP is to create a women's legal assistance office for women victims, this will perhaps compromise JSMP's independence in court monitoring.⁷⁸
- Although JSMP has a lot of experience with court actors, it does not have a great deal of experience with the police (and much of the work of a women's legal assistance office would be with the police).
- Although JSMP's Women's Justice Unit is knowledgeable about the problems which face women in the formal justice system, it does not have experience in dealing with women victims directly.

What needs to be done in order to implement this option?

- The work of a women's legal assistance office within JSMP would need to be clearly defined, to ensure against conflicts of interest with the work of other sections of JSMP.
- JSMP would have to obtain donor funding to establish such an office as a separate unit within JSMP.

⁷⁸ Interview with a Public Defender 18 June 2004

- The office could need to establish good relations with the police and courts.
- The employees of such an office would need training in how to speak to women victims (paying special regard to the trauma they may be experiencing etc).

7.4 CREATE A NEW ORGANIZATION TO PROVIDE LEGAL ASSISTANCE TO WOMEN

Positive points about this option:

- A new organization could focus all of its attention on providing legal assistance to women victims (it would not have any conflicting interests). A new office could also recruit lawyers who were genuinely interested in this type of work.
- If a new organization has a name such as “Legal Assistance for Women” everyone would understand exactly the nature of their work.

Negative points about this option:

- Because this would be a new organization, people would not yet know if it had the capacity to do the work it was undertaking. As a new organization it may also not be very familiar with the East Timor justice system, court actors, or police, or with the particular problems faced by women in the formal justice system. It would take considerable time to establish a good reputation and to gain the trust of victims and those with whom the office was liaising.
- It may be difficult to find people interested in establishing a new organization such as this, particularly given the shortage of (currently unemployed) trained lawyers with knowledge of women’s rights in East Timor.

What needs to be done in order to implement this option?

- Those establishing this new organization would need to find donor funding to set up the office.
- The new organization would have to establish good relations with the police and court actors.
- The employees of this new organization would all need training in how to speak to women victims (paying special regard to the trauma they may be experiencing etc).

8 CONCLUSION

As discussed in this report, a great deal of work needs to be done in order to improve substantive access to justice for women in East Timor: education is needed at all levels of society about women's rights, the economic situation of women needs to be improved, and various reforms are needed throughout the formal justice system. This report has discussed some means by which women can be empowered to practically implement their rights through the provision of greater social, emotional and financial support. NGOs and Department of Labour, Solidarity, and Social Services need larger budgets to implement greater programs of social assistance. Such social support services should be set up throughout the districts of East Timor. However, it is beyond the scope of this report to discuss in detail all the reforms which are needed to improve women's access to substantive justice.

This report has, however, suggested a solution to improve women's access to procedural justice: the establishment of a women's legal assistance office. Such an office could ensure that legal assistance was provided to victims at every stage of the investigation and trial. It could provide advice and assistance in dealing with justice actors, and help advocate for the victim on her informed instructions throughout the criminal process and on respective civil and family matters. Such an office could provide for greater participation of victims in the progress of their cases. This office would be similar to the Women's Legal Aid offices, and Victim Support services of developed countries, it would carry out similar activities but would not actually represent clients in court.

At the Workshop on 8 July JSMP presented four options to implement this solution:

1. Increase the capacity of the existing LBH, or create a group within the LBH to give legal assistance to women.
2. Increase the capacity of existing NGOs which give social support to women (such as Fokupers, Pradet, ETWAVE) to enable them to provide legal support.
3. Create a new unit within JSMP to provide legal assistance to women.
4. Create a new organization to provide legal assistance to women.

On the basis of the results in this report, JSMP would recommend proceeding with either options 3 or 4. However, we judge it likely that court actors, VPU and NGOs already involved in providing support to women would be interested to discuss further the findings of this report. Although there is broad consensus on the need for the establishment of an office to provide legal assistance to women, the TOR of such an office still needs to be more clearly established, and broad consensus will need to be reached as to where to establish such an office.

JSMP would therefore recommend conducting a further workshop in order to: 1) discuss the results of the Access to Justice for Women Victims report, and 2) achieve broad consensus on a solution to the issue of access to justice for women and a suggested method of implementing the solution.

9 APPENDIX 1 – RESULTS OF 8 JULY WORKSHOP

GROUP DISCUSSION

WHAT WOULD A LEGAL ASSISTANCE FOR WOMEN OFFICE DO?

- Advocacy (in order to do advocacy to the village level, would have to collaborate with other organizations and also with the church)
- Accompany the victim to the police, prosecutor's office, and court
- Give information to the victim about the legal process/ justice system
- Research about the problems (crimes) which women face
- Remind the court clerk to inform the court actors, victim and suspect about trial dates
- Give information (to the prosecutor, and court) which the victim has not yet presented, and other evidence which the group finds.
- Give training, and courage to the victim to explain the events of the crime to the court
- Inform and give references about international law to use in the case
- Gather statistics and reports about women related cases in the court
- Coordinate well in order to have good relations with the police, prosecution, and court so that they can fully understand the work of the office
- Help ensure that evidence gets from the hospital and police to the court
- Facilitate advocacy for women as victims and suspects

SMALL GROUPS DISCUSSION ABOUT THE FOUR OPTIONS:

1. INCREASE THE CAPACITY OF LBH OR CREATE A NEW GROUP WITHIN THE LBH TO GIVE ASSISTANCE TO WOMEN AS VICTIMS

Positive points about this option:

- Victims can get good legal access
- Work can focus with professionalism
- Victims feel secure
- Give responsibility to lawyers to do their work
- Lawyers know the background of cases well.

Negative points about these options:

- There are not sufficient human resources
- Financial capacity is limited
- They do not have much commitment
- They don't have much gender sensitivity
- They still have paternalistic mentality

2. INCREASE THE CAPACITY OF NGOS WHICH GIVE SUPPORT TO WOMEN TO GIVE LEGAL ASSISTANCE

Positive points about this option:

- To give capacity, and good knowledge in legal and non legal areas

Negative points about this option:

- Lack of human resources
- Limited knowledge about the law

3. CREATE A LEGAL ASSISTANCE FOR WOMEN OFFICE WITHIN JSMP

Positive points about this option:

- JSMP already knows about law and the court actors
- JSMP also has a Women's Justice unit which knows about the problems which arise in women's cases

Negative points about this option:

- Until now JSMP's work has been mostly court monitoring. If JSMP starts to work to give assistance to women victims this could create a conflict of interest with its other work.
- JSMP does not have much experience in giving moral/social assistance to women who have experienced trauma in these sorts of cases.

4. CREATE A NEW ORGANIZATION TO GIVE LEGAL ASSISTANCE TO WOMEN

Positive points about this option:

- Can involve all women's organizations and lawyers in this group
- Can do all types of assistance: legal assistance
moral assistance
social assistance

Negative points about this option:

- It needs a lot of planning, and coordination. Because this will be a very different type of organization, involving VPU, women's groups, and court actors.
- It would have to look for money and a donor to support it.
- It would have to find enough people to work there
- It would have to find people who wanted to set up a new organisation, and work there.