



**JUDICIAL SYSTEM MONITORING
PROGRAMME**
PROGRAM PEMANTAUN SISTEM YUDISIAL

Case Flow and Management:

A Statistical Analysis, 2003-mid 2004

A JSMP Report

Dili, East Timor
August 2004

ACKNOWLEDGMENTS

JSMP would like to emphasise that this report would not have been possible without the assistance and co-operation of the registry staff and judges of each of the Courts of East Timor. JSMP would like to express its gratitude to these individuals and appreciates the hard work that they are doing and their achievements to date amid difficult circumstances. JSMP offers this report in the spirit of contributing to the development of a sustainable and fair justice system for the people of 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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1. INTRODUCTION

The Courts of East Timor have now been functioning, if at times intermittently, since 2000. There has as yet, however, been no comprehensive analysis of their operation since inception and consequently there is a very limited understanding of the progress of East Timor's judicial system to date. To that end JSMP embarked on the Judicial System Statistics Project ("Project") in May 2004 with a view to collecting information on all cases commenced in all Courts in East Timor from 2003 to 2004. In JSMP's view this report therefore provides a crucial insight into the state of the judicial system at a critical juncture in East Timor's development as a nation.

The specific objectives of the Project were two-fold:

- To collect statistics with the object of improving understanding of the current operation of the courts; and
- To assess the ability of the court to collect and manage information as part of the case management and record keeping process.

JSMP is not, nor does it purport to be, an organisation expert in the field of data collection and management. The analysis of the statistics presented in this report has therefore been limited to those which JSMP is competent to comment on. Instead, a number of general concluding comments will be made, in section 5, on issues of record keeping and information management in respect of which there is room for improvement. In short, this report is simply an attempt to promote discussion and consideration of issues relating to the functioning of the courts and the management of information retained by the courts and not to be the final word on the subject.

It is difficult to overstate the importance of maintaining adequate public access to records of public information. This is particularly so in developing countries, such as East Timor, seeking to establish and strengthen its public institutions and to encourage civic interest in those institutions. In general terms, there appears to be a clear lack of co-ordination and management of judicial information amongst the courts in East Timor. On one level, this can be viewed as a trivial matter of court administration. However, in a broader context, a lack of consistency in and information on the operation of the courts has potentially far-reaching implications for East Timor's judicial system and the esteem in which it is held by the public. This report must therefore be considered in light not only of the need to assess the present functioning of the courts in East Timor but also the need to ensure that there is genuine public access to information which will shed light on that functioning.

In general terms, the most striking of the conclusions which can be drawn from the statistics collected by JSMP are as follows:

- There was very limited information available in relation to civil cases as a result of generally limited file access and an inadequate range of information on the registers in the civil jurisdiction of most courts.

- In many courts long delays were experienced in relation to the processing of civil cases.
- An excessive amount of time was taken to distribute files to judges following the issue of the indictment in criminal cases.
- Cases in some of the courts were disposed of relatively expeditiously representing, in JSMP's experience, a significant improvement from recent years.
- There was in a number of courts a low incidence of acquittals.
- There was a disproportionately high number of charges relating to sexual violence in criminal cases before East Timor's courts¹.
- There was a high incidence of detention orders issued at detention review hearings held within 72 hours of a suspect's arrest.

2. RECOMMENDATIONS

For the purposes of this project JSMP examined all available court files in respect of legal proceedings which were commenced between 1 January 2003 and 1 June 2004. We believe that we gained a valuable insight into the administration of the courts which is difficult to fully capture in a single report. JSMP will continue to analyse the information gathered in future general reports. JSMP extends an invitation to court actors particularly the court registry staff of the respective courts, the administrative judges and the President of the Court of Appeal to meet with us regarding our choice of statistical fields, our findings and our recommendations.

2.1. *Recommendations relating to Systems and Procedures*

JSMP recognises that at present, all courts are required to report regularly to the President of the Court of Appeal. However, there appears to be a lack of uniformity in the way this is conducted. Consequently, it is necessary to establish clear guidelines in relation to the reporting provided by the courts to the President of the Court of Appeal. These guidelines must be adhered to uniformly by all courts.

Accordingly JSMP recommends that:

2.1.1

The President of the Court of Appeal, in consultation with the Judge Administrators and court registry staff, use this report as a guide in formulating the types of information which would, by way of a regular court report, ensure adequate monitoring of the progress of the courts. On that basis it will be possible to determine the appropriate data-fields to be incorporated in a computer database which can then be used to generate the required reports.

2.1.2

The President of the Court of Appeal be given support to analyse the reports which he receives from the courts in order to detect possible problems with the progress of cases

¹ See also JSMP Thematic Report – 'Women in the Formal Justice Sector', April 2004, available at www.jsmp.minihub.org.

or court procedures. These problems can then be addressed on a systematic or individual basis as required. Examples of such analyses are provided in this report and JSMP would welcome the opportunity to further discuss our methods and findings with the President of the Court of Appeal.

2.1.3

The courts should publish a regular update of basic statistics relevant to the functioning of the judicial system in East Timor. This could be by way of a bulletin specially created for this purpose or, if appropriate, through the Government Gazette.

2.1.4

The range of procedural events currently recorded in court files be expanded and recorded in a standardised format, including the following:

- *The day on which a suspect is arrested and detained. Procedures ought to be implemented requiring the investigating judge to obtain and record this information upon delivery of their decision at the 72 hour review hearing;*
- *The length of sentence and expected date of release, including consideration of early release provisions;*
- *The hearing record, including actors present, the time of the hearing and a summary of what occurred.*

If this data is recorded in the file in standard forms it can then be efficiently recorded in both the computer and paper record which form the basis of statistical reporting.

2.1.5

The location and storage of files be managed in a systematic manner, through use of lockable filing cabinets to ensure both an orderly system and that files and documents are secure, especially non- public documents.

2.1.6

A system of recording the exact location of files be implemented and in the event that a file is removed from the registry its destination be recorded in a file kept at the registry for that purpose and noted on return.

2.2. Personnel Resources

JSMP recommends that:

2.1.2

An additional staff member be recruited to work within the Suai registry.

2.3. Material Resources

JSMP recommends that:

2.3.1.

Additional equipment be provided to the court administration, specifically computer and printer facilities, a photocopier for the Suai District Court, a generator for the Dili District Court and filing cabinets for all courts. Reliable internet access in each court registry is also recommended to improve communication and standardisation between the courts.

2.3.2.

A computer database system be implemented uniformly throughout the courts. This should provide the necessary tools to ensure that reporting and collation of statistics can be performed in a time efficient and standardised manner. Such a database should be developed in close consultation with the court administrators and the President of the Court of Appeal. This database would operate concurrently with the paper record.

2.3.3.

Extensive training be provided to court registry staff regarding the implementation and use of the computer database. Maintenance costs and expertise should be considered in the implementation of the system. Expertise could also be gained from donors who may have supported implementation of such systems in other countries whose judicial systems are at similar stages of development.

2.4. Training

JSMP recommends that:

2.4.1.

Training for court registry staff be continued. Consideration be given to continued training by court administrators from other countries. JSMP is aware that there are a number of international advisers within the Court of Appeal registry and it may be possible for registry staff from the district courts to, on a rotational basis, work for a short period within this court as a means of training.

2.5. Policies and Laws

JSMP recommends that:

2.5.1.

A procedure for closing files should be established which includes the use of a standard form and a prescribed checklist which must be completed before a file can be closed. A policy on the disposal of records should also be considered for the future. The policies should be developed in consultation with the court administrators and training provided on their implementation.

2.5.2.

Consideration be given in the future to the development of a law on archives, which would address, among other things, the security, storage and disposal of court documents.

3. QUANTIFYING THE DATA

3.1. Scope of the Research

The aim of the Project was to collect information relating to all cases commenced in all courts of East Timor between 1 January 2003 and 1 June 2004. Information was therefore gathered from the Dili District Court (“DDC”), Baucau District Court (“BDC”), Suai District Court (“SDC”) and Oecussi District Court (“ODC”), the Special Panels for Serious Crimes (“SPSC”) which, although a part of the DDC, was treated separately for purposes of analysis, and the Court of Appeal. The scope of the Project extended to both the civil and criminal jurisdictions of those courts, with the exception of the SPSC whose jurisdiction is confined to serious criminal cases.

The legal research staff at JSMP discussed at length the categories of information which would best serve the Project objectives identified in the Introduction. Prior to deciding upon these categories JSMP staff consulted random court files to ascertain the types of information which could feasibly be collected. It was then necessary to review the registers which are maintained by the courts. These are, with minor variations between the courts, comprised of the following:

- A book containing relevant case information in handwriting;
- A diary noting the scheduled hearing times for cases; and
- An electronically maintained database based on the book (although not containing the exact same information) which is used by the court registries to produce regular reports to the President of the Court of Appeal.

The purpose of reviewing the court registers was to identify types of information which were not being recorded but which, in JSMP’s view, were important to be included amongst the courts’ records. Based on the assessment of the information contained on both the court files and registers it was then agreed to create a comprehensive spreadsheet for data collection, with 26 separate categories of information in relation to criminal cases and 19 for civil.

In general terms the focus of the spreadsheet was the time periods in which important procedural milestones were reached, for example, in respect of criminal cases, the dates on which the crime allegedly occurred, the arrest warrant was issued, of the initial 72-hour detention review hearing, any extensions of detention issued, of the indictment, of distribution of the file to the judge, of commencement of trial and of the delivery of the final decision, if any. The type of crime and the area in which it was alleged to have occurred were also included as relevant categories for data collection. The focus was similar in relation to civil cases. Due to the extent of the categories covered and their limited utility in some cases² and for ease of analysis, the legal staff decided to compress and summarise the collected statistics into those considered to be most important. The summarised statistics are re-produced at Annexure 1 and it is largely from this information that the reports conclusions are drawn³.

² See generally sections 5.1 and 5.2.

³ For reference, the fields of information used in the statistics spreadsheets are attached as Annexure 3.

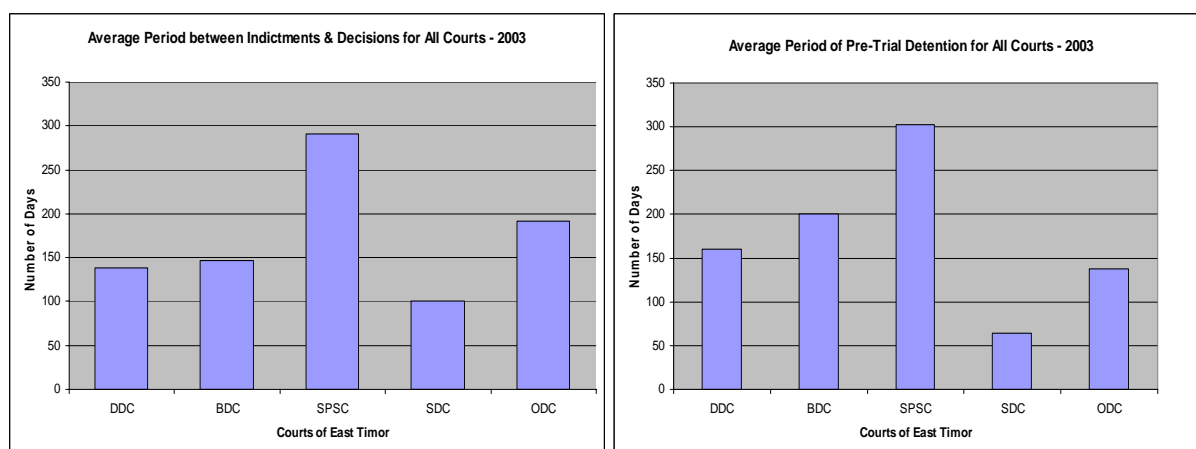
Prior to commencing research JSMP liaised directly with Judge Claudio Ximenes, in his capacity as President of the Court of Appeal, in order to discuss the Project with him and obtain his permission to have access to court files for the purpose of collecting information. Judge Ximenes was supportive of the Project and gave his permission to review the court files, however, this was given on the strict understanding that JSMP would not divulge confidential information obtained from those files. JSMP has neither collected nor published confidential information derived from the files, and has never at any stage intended to, and the statistics on which this project is based are in any event a matter of public record. Nevertheless, by limiting JSMP's access to court files, the courts' have recognised the importance of prohibiting publication of and restricting access to confidential legal information and the Judges are to be commended for this. However, it remains essential in JSMP's view to clarify the precise circumstances in which access to judicial information is available.

3.2. Collecting the Data

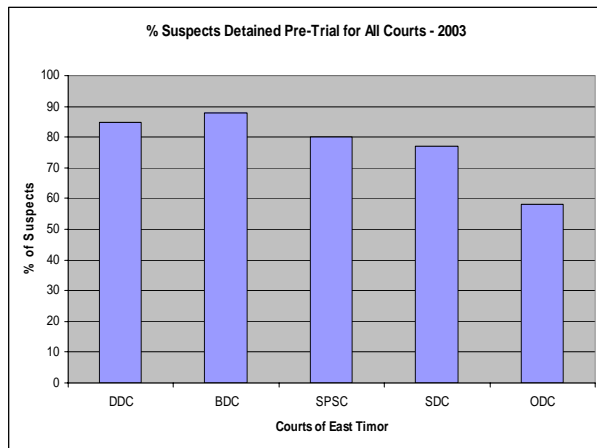
Having obtained the necessary permission, the JSMP legal research staff were then divided into teams of 2 with each allocated a court from which to gather information. This of course necessitated travel to the districts in the case of the ODC and BDC. The Court of Appeal, DDC (of which the SPSC is a part) and SDC (which, due to a lack of facilities in Suai, is operating in Dili) are all located in Dili. The aim was at all times, as much as possible, to collect the information from documents readily available at the registries of each of the Courts and not to conduct an exhaustive search to fill all of the categories of information from all possible sources.

This was necessitated firstly by practical considerations – given the limited information which was available from some of the files it would have taken an inordinate amount of time to search through all available court resources for any missing data. Secondly, and more importantly, the sole objective of the Project was not to collect as much data as possible on the Courts of East Timor – there was also a recognised need to evaluate court file management and record-keeping. The best means of doing so was to limit data-collection to court files thus revealing the extent and accuracy of information maintained on the court files. In addition, JSMP was not always able to access court files⁴ which therefore required the legal researchers to refer to court registers.

4. RESEARCH FINDINGS

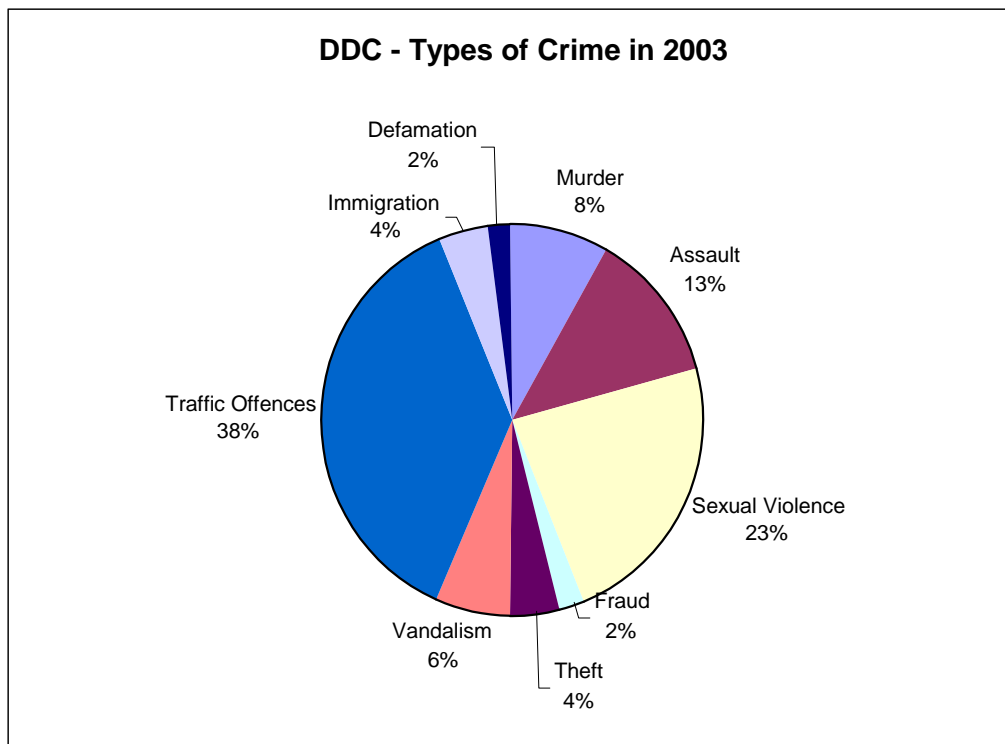


⁴ See section 5.1.



For ease of reading, the summarised statistics on which the following research findings are based are appended in Annexure 1. The most important of these have been reduced to graphic form and are re-produced, both in the tables above and as pie charts in the subsections to follow, however, due to the limited amount of information available in respect of 2004 cases, the graphs are only based on 2003 cases. Any general issues of research methodology are discussed in section 5.

4.1. Dili District Court



4.1.1. Data Collection Issues

There are a number of significant restrictions to the amount of information which JSMP was able to collect from the Dili District Court (“DDC”):

- JSMP was unable to access the court files on civil cases in the DDC for both 2003 and 2004. JSMP staff were informed by court clerks in the civil registry at the DDC that all files, even those that were active, were at the Court of Appeal. The reasons for this were not clear, however, it appeared that the files were being informally reviewed for unknown reasons by Court of Appeal judges. JSMP was given access to the court register, nevertheless, this was extremely limited in scope with very little information on the dates of important procedural steps taken in each case. Another reason given for refusal of access to was that civil cases were essentially private matters. The information which was collected from the register was as a result largely limited to the number and types of civil cases. This information is provided at Annexure 1. The statistical analysis is therefore confined to criminal cases
- JSMP was informed towards the end of the data-collection period that JSMP staff were not permitted to physically inspect any DDC criminal cases which were active. As all cases commenced in 2004 were active JSMP was consequently unable to access these files. It was subsequently arranged to obtain the information by working with a court clerk who would search the file for information requested by the staff member, however, there were insufficient clerks available for this purpose and so, due to time limitations, information on criminal cases for 2004 was not collected.

4.1.2. Research Findings

The findings tabulated at Annexure 1 are self-explanatory, however, there are a number of important points which merit further consideration:

- 84.8 % of all arrested suspects had their detention confirmed at the initial detention review hearing (72 hour hearing), with only 15.2 % of suspects being released conditionally⁵. This calls into question whether or not the criteria for pre-trial detention of suspects⁶ were genuinely considered and applied.
- Of those suspects that were detained, the average period of detention was 22 weeks. For each person detained there was an average of 3.8 extensions of detention. Consequently a review of detention took place on average once every 5.78 weeks, that is, approximately every 40 days. Nevertheless, although by regulations the detention of a suspect ought to be reviewed every 30 days⁷, the DDC would appear to be making some attempt to comply with this time period and ought to be commended for doing so. This is an aspect of court procedure which ought to be monitored closely in the future to ensure that improvements continue to be made in relation to the interval between detention reviews and that there is no further abuse of the provisions relating to detention.

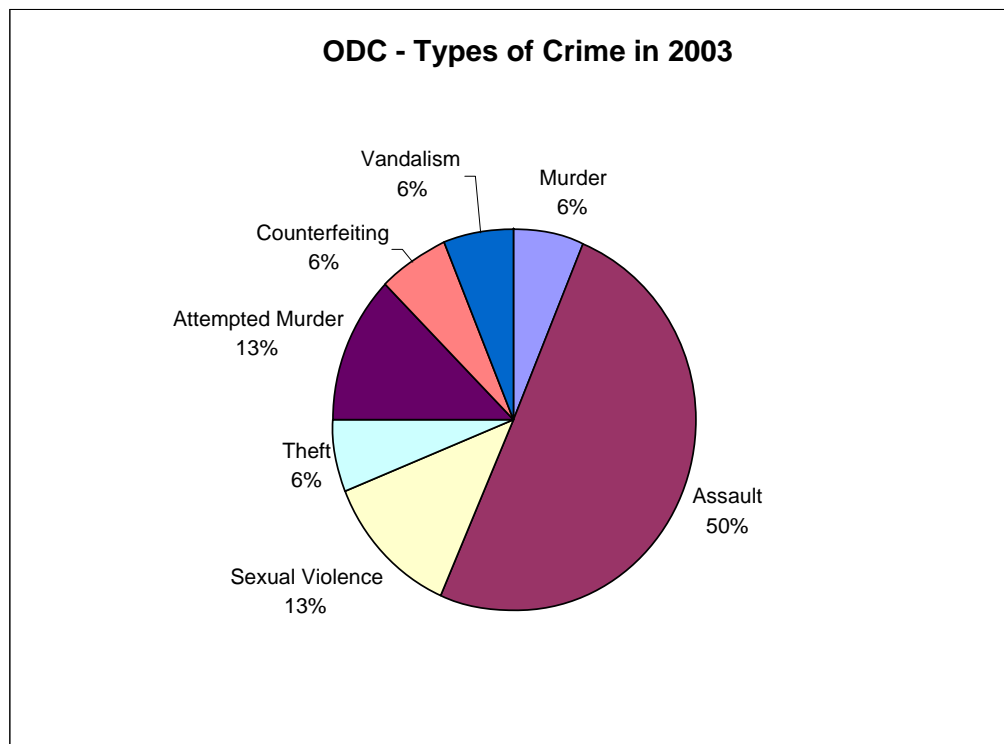
⁵ 'Conditional release' in this report refers to the release of a suspect from pre-trial detention, however, this should not be confused with the terminology of UNTAET Regulation 2000/30 on Transitional Rules of Criminal Procedure, as amended by UNTAET Regulation 2001/25 (hereafter "UNTAET Regulation 2000/30"), in which the phrase is used to refer to the release of a convicted defendant after serving two thirds of their sentence. The terminology used in those Regulations for pre-trial conditional release is release subject to "substitute restrictive measures". Conditional release is used in this report for the sake of convenience and brevity.

⁶ Sections 20.7, 20.8 UNTAET Regulation 2000/30, the relevant provisions of which are appended at Annexure 2.

⁷ Section 20.9 of UNTAET Regulation 2000/30.

- The average period of time between the filing of the indictment and the distribution of the case file to the judge was 6 weeks and 3 days. This would indicate that the file was lying dormant for that period without any attempt made to begin processing the case, which is clearly unacceptable.
- The disposal of cases was relatively expeditious, with an average time period of 23 weeks between the filing of the indictment and the delivery of the decision. Lengthy delays have been a problematic feature of the courts in East Timor in recent years and so this may represent a marked improvement, however statistical information on the courts prior to 2003 is not readily available.
- Of the total number of cases which were both commenced and decided in the assessed period, namely 21 out of 82, there were no acquittals. That is, all of the defendants were convicted. Of all the statistics collected from the DDC, this is arguably the most striking. That there were no acquittals raises questions in relation to the nature and qualitative aspects of the criminal trials held within the court. However, these convictions may have included a number of guilty pleas. JSMP did not collect statistics on the nature of pleas made before the courts.

4.2. Oecussi District Court



4.2.1. Data Collection Issues

Of the numerous limitations encountered by JSMP staff when collecting data from the Oecussi District Court ("ODC"), the most notable are as follows:

- Due to a severe lack of human and other resources at the ODC (for example, the only judge from the ODC is currently undergoing training in Portugal), serious cases had to be sent to the SDC. Lesser offences, on the other hand, remained un-processed until judges from the SDC were able to visit the ODC for the purpose of hearing the cases.

- In respect of all files there was a complete lack of file notes to indicate what had taken place at court hearings. Apart from showing a serious lack of proper file management, this at times made it difficult to collect much of the information which was being sought.
- JSMP staff carrying out research in Oecussi were informed that there were as yet no files opened in respect of civil cases at the ODC, although there was a civil registry established for that purpose. The public defender attached to the ODC is at present responsible for managing an informal process whereby civil disputes are mediated between the parties without formally commencing proceedings in the court.
- There was no record of any trial hearings having taken place in 2004, based solely on a review of the court files.

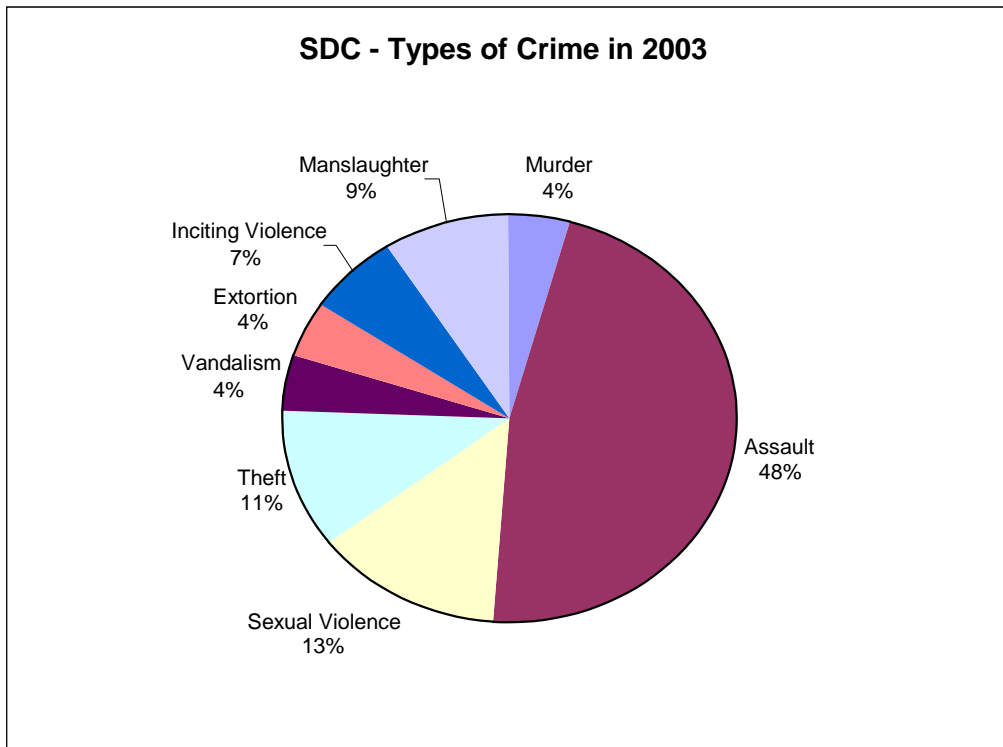
4.2.2. Research Findings

The lack of resources at the ODC is reflected in a number of striking statistics:

- One of the most notable features of statistics collected from the ODC is in relation to pre-trial detention, the average period of which for 2003 was 4 months and 18 days. This is an excessive period of time given that a majority of the cases were simple assaults. This problem is also exacerbated by the fact that there was an average of only 2.75 detention reviews in respect of each detained suspect i.e. after a period of time well in excess of the 30 day period. For example, it was revealed from the inspection of one file that a suspect had to wait 15 months for an initial detention review hearing that must take place within 72 hours of arrest pursuant to section 20.1 of UNTAET Regulation 2000/30⁸.
- In 2003 the average period of time between the issue of the indictment and distribution of the file to the judge was 4 months. In other words, on average, 4 months would lapse until any administrative or judicial steps had been taken in relation to a case. This is a glaring problem which, it would seem, could only be remedied by the grant of additional resources to the ODC. Nevertheless, it should be borne in mind that (as identified in the summarised tables at Annexure 1) this information was based on only 5 out of a possible 19 cases due to lack of information in respect of the remaining cases. Further, it should be taken into account that the Judge was in Portugal for 6 months of 2003.
- Cases for 2004 revealed that there is an increasing trend to avoid detention, with 50% of suspects being granted conditional release. This is likely to be a response to the increasingly lengthy delays experienced at the ODC.

4.3. Suai District Court

⁸ The suspect was subsequently conditionally released, but is still awaiting trial as at 1 June 2004.



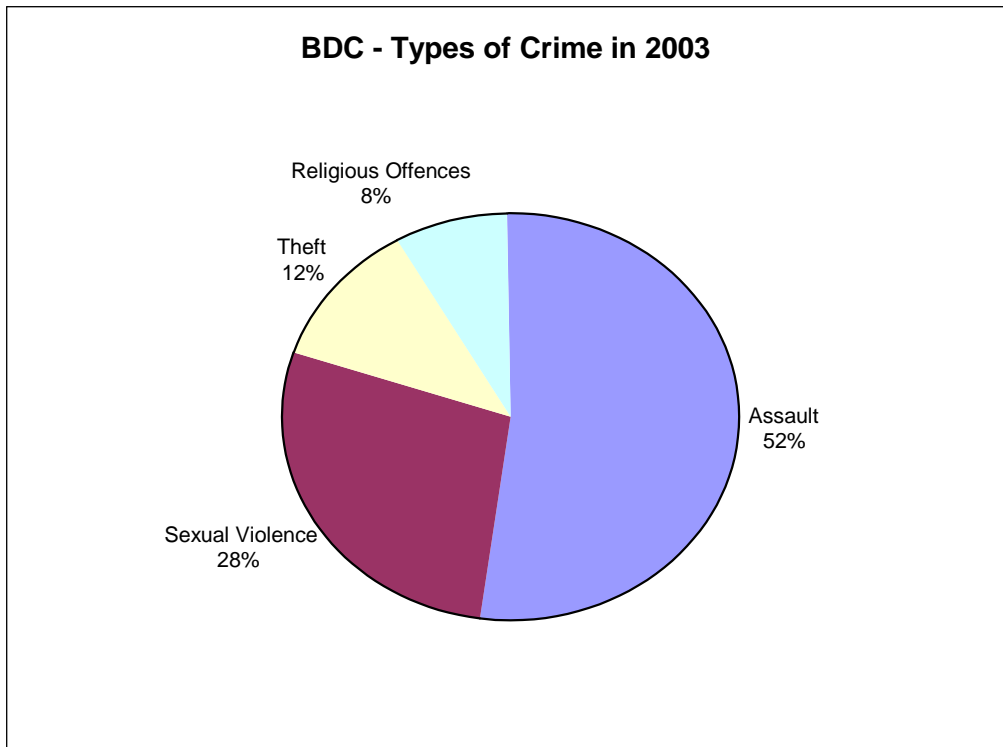
4.3.1. Data Collection Issues

- Judges in the Suai District Court (“SDC”) were assigned on occasions to assist ODC and DDC cases. However, it must be stressed that the SDC statistics are only based on cases within the jurisdiction of the SDC.

4.3.2. Research Findings

- The statistics collected from the SDC demonstrated a rapid progression of cases. Amongst decided cases, the average time between the issue of the indictment and delivery of the decision was only 13 weeks and 2 days. Again, it is possible that the analysed cases included a number of guilty pleas.
- There was a particularly high proportion of assaults amongst the types of crimes perpetrated within the jurisdiction of the SDC. There was also a relatively large number of charges relating to sexual violence which were brought before the SDC.
- It is noted that no trials for civil cases for 2004 had commenced.

4.4. Baucau District Court



4.4.1. Data Collection Issues

JSMP encountered very few problems when gathering statistics from the BDC:

- There were no judges present at the Baucau District Court (“BDC”) at the time of carrying out data collection⁹. JSMP staff were consequently unable to access files of one of the judges as they were locked in a filing cabinet and the key was not in the physical possession of the court clerks. In general, however, JSMP staff were able to collect data from the BDC with the assistance of the court staff.
- In general the BDC files were the most complete of all court files and included documentation of almost every procedural step taken¹⁰.

4.4.2. Research Findings

In relation to the BDC, the following statistics are particularly noteworthy:

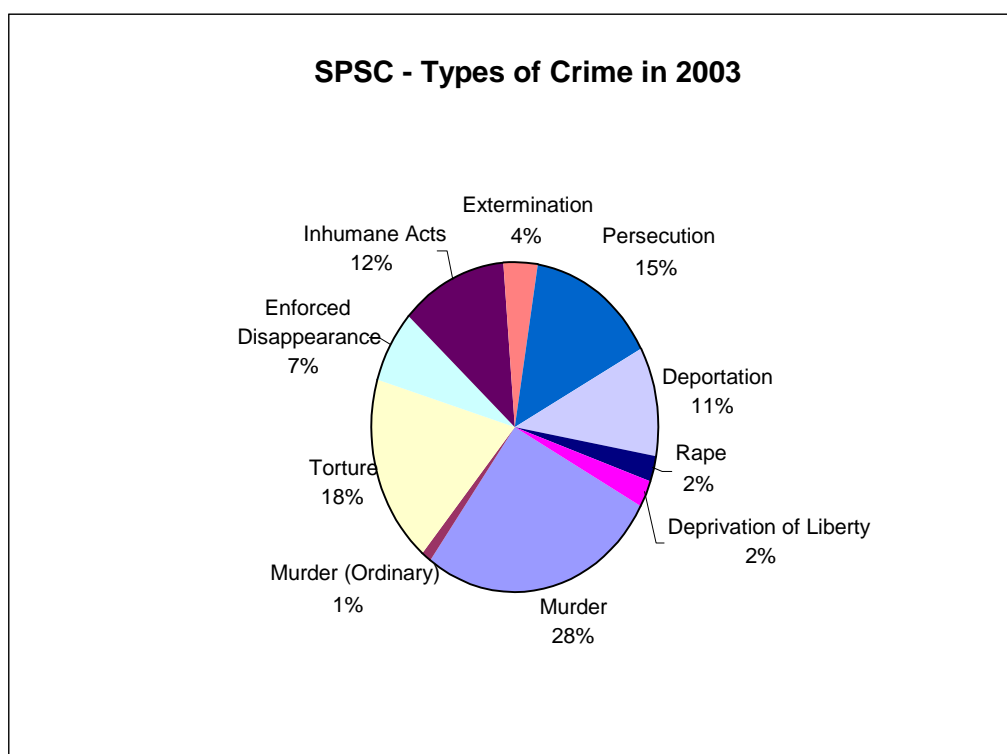
- Suspects were detained for an extremely long period of 28 weeks and 6 days on average for 2003 cases.
- A high proportion of suspects were detained at the initial review hearing – 87.8% in 2003.
- There was an unnecessarily long period of 6 weeks and 4 days between the date of the indictment and the distribution of the court file to the judge

⁹ See JSMP Press Release, ‘Court Cannot Function Due to Budget Bungle’, 7 May 2004, available at www.jsmp.minhub.org.

¹⁰ For example, almost always when a hearing was postponed a document would be included stating the reason for postponement and explaining the next stage of proceedings.

- A large number (23 out of 41) of 2003 cases were decided in that year. The average time from indictment to decision in respect of 2003 cases was a particularly rapid 21 weeks. However, it is possible that this statistic includes guilty pleas. This is an especially positive achievement for the court, however, it should be borne in mind that undecided cases (as at 1 Jun 2004) have on average taken 9 months and 4 days to reach a stage at which proceedings are still pending.
- There was very little information available in relation to civil cases, primarily because there has to date been very little action taken by the litigants in these cases.

4.5. Special Panels for Serious Crimes¹¹



4.5.1. Data Collection Issues

There were numerous problems encountered in the course of data-collection at the Special Panels for Serious Crimes (“SPSC”), and a number of resulting analytical limitations, which deserve mention:

- It was sometimes difficult to ascertain information on the suspects’ detention history from the case files¹². Consequently, the averages pertaining to detention were derived from a limited base.

¹¹ The Special Panels for Serious Crimes comprise panels of judges specially formed within the DDC for the purpose of trying crimes committed in 1999, or crimes committed prior to that date if deemed to be genocide, war crimes or crimes against humanity. See section 10 of UNTAET Regulation 2000/11 on the Organization of Courts in East Timor.

¹² It should, however, be pointed out that in many cases indictments were only issued by the Serious Crimes Unit *after* the arrest of the suspect. Prior to the issue of these indictments ordinary panels of the DDC therefore had

- Given that serious crimes committed in 1999, and before, took place throughout the districts of East Timor it was deemed worthwhile including information on the location of these crimes (see Annexure 1). Nevertheless, these should not be viewed as an accurate reflection of the areas in which most violence occurred. Firstly, the analysis is confined only to 2003-04 cases. Secondly, there were of course a range of considerations informing the decision to prosecute alleged crimes (obviously the amount of evidence available was critical). As a result there are many crimes which have not been fully investigated and prosecuted.
- 18 of the 35 cases registered with the SPSC in 2003 relate to suspects who are thought to be in Indonesia and so beyond the jurisdiction of the SPSC. The statistics at Annexure 1 only take these cases into account if to do so would not produce a misleading result.
- There was only 1 case for 2004, however, as with the other courts, this information has been included in a separate table at Annexure 1.

4.5.2. Research Findings

Given its role, and the amount of funding and resources devoted to it, the functioning of the SPSC is clearly subject to somewhat different considerations in comparison to the other courts of East Timor and this is borne out in the data collected from the SPSC court files. The most striking features of the operation of the SPSC during the assessment period are as follows:

- The average period of time between commission of crime and filing of indictment was 3 years, 3 months and 2 days. This clearly represents an excessive delay in the investigation of crimes. Nevertheless, this is largely explicable by a lack of resources required for the Serious Crimes Unit to investigate often complex crimes promptly.
- The average period of time from the issue of the indictment to the delivery of the decision was 9 months and 21 days. From the date of the indictment to the commencement of trial took on average 5 months and 24 days. In JSMP's view, whilst not ideal, this represents a relatively expeditious disposal of proceedings for which the SPSC ought to be commended, although this may in part be a consequence of the number of guilty pleas submitted by defendants in 2003. In any event it represents in JSMP's experience an improvement in the flow of cases through the SPSC since inception in 2001, although there is no readily-available data to show this.
- The average period of pre-trial detention was 10 months and 2 days. In many cases this was pursuant to court orders detaining the suspect until a final decision was delivered. This needs to be considered in light of UNTAET Regulation 2000/30, section 20.10 of which limits pre-trial detention to 6 months. This is, however, subject to the remainder of the regulations. Section 20.12 authorises the continued pre-trial detention of the suspect provided that the case is a complex one involving a crime carrying imprisonment of more than ten years, there are exceptional grounds and continued pre-trial detention is reasonable in the circumstances. Given that serious crimes are involved it may have been appropriate for the court to order continued detention in as many instances as it

responsibility for the administration of suspects' cases, including issue of arrest warrants, conduct of 72 hour detention review hearings and extensions of these detentions, if any. Consequently, defects in the record keeping process in relation to detention may in many cases be the responsibility of the DDC criminal registry.

did, however, this would only be valid if all of the limbs of section 20.12 were genuinely considered and satisfied.

- All offences were charged as crimes against humanity unless stated otherwise.
- As at 1 June 2004, there has only been one indictment filed by the Serious Crimes Unit with the SPSC in 2004.

4.6. Court of Appeal

4.6.1. Data Collection Issues

JSMP staff faced many challenges in attempting to access the Court of Appeal files:

- JSMP received authorisation from the President of the Court of Appeal and had in theory access to all cases files, whether the appeal had been decided or not. Access proved to be much more difficult in practice. Access to the files for interlocutory appeals was more difficult than for final appeal case files¹³. It proved to be easier to consult files on interlocutory appeals from decisions of the SPSC, as most of these cases had already been registered within the court system. However, in relation to interlocutory appeals from the district courts – an overwhelming number of which were from the DDC – the main difficulty related to the actual identification of the case once the case had been returned to the district level after the decision from the Court of Appeal. A case will generally only be given a case number within the district courts once the indictment has been filed with the court. Consequently, in relation to interlocutory appeals on pre-trial measures (detention, release or conditional release), the case is frequently unregistered and is only assigned a temporary case number with the prosecution. In cases where an indictment had been filed after the decision of the Court of Appeal, JSMP was able to review the files and collect data on the relevant fields of information.
- Access to other types of decided cases was possible provided the files had been delivered to the court. Access to decided appeal files on civil cases of the DDC was not possible for the reasons previously explained at section 4.1.2.
- JSMP was given access to undecided cases provided the files were reviewed in the Court of Appeal registry in the presence of a registry staff member. Case files currently in process were in the possession of the judge rapporteur to whom the case had been allocated and so it was arranged for JSMP staff to be given access whenever the files were in the hands of registry staff (often immediately after a procedural step has been taken in the case¹⁴) before being returned to the appropriate judge. This meant that JSMP had to come to the registry of the Court of Appeal on a daily basis in order to ascertain whether there were any files with the court clerks. For a variety of reasons, there have been numerous delays for civil cases being handled by the Court of Appeal. Consequently there was no temporary placement of the case files with the registry and so JSMP could not collect information relating to most civil cases.

¹³ Interlocutory appeals amounted to some 48% of the appeals in 2003 and 54% in 2004. See Annexure 1.

¹⁴ For example, by requesting translation of documents on the case file or by scheduling a hearing.

- When analysing the statistics of the Court of Appeal regard should be given to the fact that the Court of Appeal was not operating for a period of 18 months and was only able to resume functioning in June 2003¹⁵. During this 18-month period the court registry was open and parties could file an appeal, however, cases could not be processed due to the lack of judges.

4.6.2. Research Findings

The statistics collected in relation to the Court of Appeal reveal that there are still a number of issues with its operation:

- There was a relatively high proportion of decided cases for both 2003 (44 out of 73) and 2004 (11 out of 33). However, of these an overwhelming majority were interlocutory appeals which are required by law to be heard expeditiously. The overwhelming source of these appeals was the DDC with the SPSC being the only other jurisdiction from which there was a substantial number of appeals.
- There has been a significant improvement in the general flow of cases through the Court of Appeal in 2004 as compared with 2003. For example, the period between registration and decision was 4 months and 5 days in 2003 but only 4 weeks and 5 days for 2004. However, taking into account the average period for which undecided cases have remained in process (11 months 3 weeks and 3 days), there remain concerns with case flow in the Court of Appeal, especially given the high proportion of interlocutory appeals and the speed with which they ought to be disposed of.
- There is no common language which is spoken by all judges in the Court of Appeal. Consequently it is necessary to translate many of the documents which are on the Court of Appeal case file as most of the documents from district levels were written in Bahasa Indonesia.

5. RESEARCH METHODOLOGY

5.1. Problems Encountered

There were numerous problems encountered during the course of research which impacted upon the scope and accuracy of the data on which this report is based. However, JSMP does not, unless expressed otherwise, suggest that the courts were the primary cause of these problems. These problems are enumerated and summarised as follows:

5.1.1. Inconsistent Policy

The issue of access to judicial information has received very little attention from the legislature. Section 30 of UNTAET Regulation 2000/11 on the Organization of Courts in East Timor¹⁶ prohibits disclosure of judicial information unless authorised by the President of the Court of Appeal “for public information or research purposes”. In

¹⁵ See also JSMP Thematic Report 2 – ‘The Right to Appeal in East Timor’, October 2002, available at www.jsmp.minhub.org.

¹⁶ Which states that: “Judges shall not disclose any information or personal data related to or obtained in the discharge of their functions, except where authorized by the Court President for public information or research purposes”.

addition there is also section 25.2, which states that “[t]he hearings of the court, including the pronouncement of the decision, shall be public...”, and section 28.1 of UNTAET Regulation 2000/30, which states that “hearings shall be open to the public”. Arguably, there is an implied right under sections 25.2 and 28.1 for the public to be given access to documents related to open court hearings. There is not, however, beyond this very general and limited legislative provision, any comprehensive policy or system regulating access to judicial information held by the courts of East Timor, whether it be public access or access granted under specific circumstances for non-governmental organisations such as JSMP.

Although there was general authorisation granted this was clearly interpreted differently between the courts. In some courts the legal researchers encountered no problems whatsoever in obtaining access to court files. In others, however, the researchers experienced more restrictive policies in trying to review the files and the position of the courts was only clarified after further meetings with judges. Even now, after all data has been collected, the policy of all courts in East Timor in relation to public access to court documents remains somewhat unclear.

For example, there were few if any problems encountered in collecting information for all cases from the ODC, BDC and SDC, be it from those courts’ civil or criminal jurisdictions. On the other hand, access was limited in respect of criminal cases from the DDC in which the decision had not yet been delivered i.e. open files still in process. In these situations JSMP staff were only able to obtain the relevant information from one of the court clerks. Furthermore, there was at times a perceived reluctance on the part of some judges in several of the courts to grant access to files, whether or not those files were closed. Irrespective of the possible merits of the courts’ stance in these cases, it was certainly a factor which contributed to the difficulty of gathering the data. More significantly, the lack of a clearly formulated and disseminated policy on document access inhibits public access to important judicial information.

5.1.2. Insufficient Records

The courts in East Timor record and manage judicial information in 2 basic forms: by way of court register; by way of case files. It is a given that a lack of proper management and compilation of case files, and basic records of case information derived from these files by way of court registers, makes it more difficult for the court to properly discharge its functions. Properly maintained files reduce the likelihood of an abuse of process and substantive errors of law whilst accurate registers provide a snapshot view of the status of a case. The courts in East Timor therefore strive to maintain a basic register of pending and closed proceedings¹⁷, however, it is clear that the information being recorded was often inadequate, although this of course varied from court to court.

It has, however, become clear to JSMP that some of the courts in East Timor, particularly the DDC, have made significant progress in recent years in relation to their maintenance of registers. Nevertheless, the data-collection revealed that there is much room for improvement in terms of the scope of information available on the court registers.

¹⁷ See section 3.1

At present most court registers typically cover information such as the name and number of a case, the name of the responsible judge, the nature of the case (i.e. type of crime or claim, depending on whether a criminal or civil action or not) date on which it was registered, the decision (if any), the detention status of the accused (if criminal) and whether or not there has been an appeal. This range of information provides only a limited insight into cases. Consequently, in those cases in which JSMP had to refer to court registers, either as a supplement or substitute for case file information, it was not possible to obtain important information in relation to periods of detention (in criminal cases), for example, on interlocutory decisions or to gain a general appreciation of the status and progress of a case. This proved to be even more difficult in relation to registers maintained in civil jurisdictions.

There were also problems encountered in collecting data from the information retained on case files. For example, it was frequently difficult to ascertain from even a thorough reading of a court files what took place at a scheduled hearing or even whether the hearing took place and, in criminal cases, when a suspect was arrested and when and for what period a suspect's detention was extended. Insufficiently maintained court registers and case files therefore restricted in many of the cases the amount of information which JSMP was able to collect.

5.1.3. Location of Files and Documents

Although this was not a particularly serious obstacle to data-collection, there were several occasions on which case files could not be located. It is, of course, inevitable that judges at any given time would have case files in their possession and in these instances it was simply a matter of meeting with the individual judge in question to arrange a time to review the file or wait for the case file to be returned to the court registry. In the situation of the civil jurisdiction of the DDC, however, none of the cases for 2003 were available for review because they were all being kept at the Court of Appeal for reasons which were not clear to JSMP.

Further, important information was not always readily available or accessible from court files due to a lack of documentation recording the procedural aspects of a case. For example, dates of detention and extensions of that detention sometimes had to be derived from reading the Prosecutions applications for the detention of the defendant, which summarised the defendant's detention history, in the absence of official court documents recording the dates of detention.

5.2. Methodological Limitations

In addition to the problems discussed above, there are some inevitable practical limitations inherent in the nature of the information collected. Consequently it is necessary to make a number of qualifications before introducing the statistics for analysis. These can be summarised as follows:

5.2.1. Multiple Defendants

In numerous cases there were multiple defendants. For example, in SPSC case no. 18/2003 there was initially 55 defendants. In cases such as this it was obviously not feasible to obtain information for each defendant. Therefore, in cases where there were

multiple defendants information was collected only in respect of the first-named defendant. Inevitably this meant that, at least for cases where there were multiple defendants, a moderate amount of information was potentially omitted

5.2.2. Multiple Charges

In some criminal cases there were multiple, different charges. Separate charges were only noted in the statistics spreadsheets where they related to different crimes. Hence, for example, if there were 3 charges of murder, 2 of sexual assault and 1 of theft, the relevant column would simply state that the defendant had been charged with murder, sexual assault and theft without noting the number of charges.

5.2.3. Ambiguous Definition of Charges

The tables of summarised statistics appended at Annexure 2 contain information on the number and types of charges brought in relation to criminal cases. The charges specified in those tables are based on the list of charges used by the DDC and are available at their criminal registry. It is important to note, however, that the precise nature and scope of these charges is not always clear. For example, although there are categories of crimes for sexual violence and domestic violence, there is also a category for assault. The limits of each of these categories are not clear – there may be some overlap – and this need to be taken into account when analysing statistics as to types and numbers of crimes in each jurisdiction.

5.2.4. Lack of Information

Due to the lack of information on many of the court registers and court files in relation to certain issues (for example, arrest dates, detention extension dates and decisions at 72-hour detention hearings) the collected statistics in some categories were often based on some and not all cases within the year-group. The statistics in some categories might therefore reflect only a limited number of cases, depending on the number of cases for which there was no information. The summarised tables denote the number of cases out of the whole year group for which the relevant information was not available

6. ASSESSMENT OF RECORD MANAGEMENT BY REGISTRIES

As mentioned in the Introduction, this report has deliberately avoided being prescriptive in terms of providing comprehensive solutions in relation to issues of record keeping and information management which have already been alluded to. Instead there are a number of critical issues which will be highlighted in this section in the hope that they will be further discussed and acted upon by the relevant judicial actors.

6.1. Improved File Management

The extent of information available on court files varied markedly from court to court. As a result, it was sometimes difficult to verify basic information which ought to be easily apparent from a court file, for example, the period of time for which a suspect has been detained and the date of their next detention review. In some cases in the SPSC and the BDC, for example, the files were well-maintained with an index of documents at the start of the file and sections clearly distinguished according to the types of documents (witness statements, indictment etc). This was commendable, however, improved file management is something which needs to be addressed uniformly across

all the courts to ensure that important documents are easily accessible to judges. If not feasible whilst a case is in progress, due to the large number of hearings or documents being filed for example, the courts should at least adopt a file-closing procedure for decided cases whereby a court clerk ensures that the file is in proper order and all documents are enclosed. This could potentially reduce the time spent by judges reviewing and familiarising themselves with court files, a critical consideration given the heavy case load experienced by judges in the courts in East Timor. This is an issue which could easily be resolved by way of appropriate training and guidelines.

6.2. More Detailed Registers

In JSMP's view there is a need to maintain more detailed information on the registers¹⁸. This will enable both members of the public and judicial officers to immediately ascertain the status and procedural history of a case. Information such as the date of arrest, the date and result of the 72-hour detention review hearing, the number, date, nature and result of hearings and the number and date of detention extensions (if applicable) would be useful and would provide an immediate insight into the status and progress of a particular case. Details relating to sentence and applicability of reductions in sentences should also be included. It must be stressed, however, that there have been significant improvements in the recording and management of judicial information in the DDC, the busiest court in East Timor. For example, in the criminal registry of the DDC the court clerks now maintain a whiteboard which details each suspect's detention history and their current status. This is a development which JSMP encourages and which should be expedited in other courts, and in other respects within the DDC itself. In relation to civil cases the information available on the registers was particularly lacking. For example, in the DDC JSMP was only able to identify from the civil register case numbers, names of parties, responsible judges, dates of commencement and dates of distribution. This narrow range of information gives a limited insight into the progress and status of cases. Even taking into account the nature of a civil case as an essentially private matter there are numerous additional types of information which could be placed on the civil register without impeaching either parties' privacy. In any event, it is in JSMP's view a matter of public interest to ascertain the general progress and functioning of the courts, whether for civil or criminal cases.

6.3. Consistency in Access to Judicial Information

Inconsistent policies towards record keeping and document access (discussed in section 5.1.1), in JSMP's view, demand greater co-ordination amongst the courts¹⁹. In JSMP's experience the lack of a clear, unified position on the types of information which could be accessed made it more difficult and time-consuming to obtain important information relating to the justice system. There are of course numerous types of judicial information which should remain confidential. However, as has been recognised in many other countries, of both common and civil law backgrounds²⁰, public access to

¹⁸ See section 5.1.2.

¹⁹ This is a need which has been recognized, in an Australian context, by the Australian Law Reform Commission: see [ALRC 98 - Keeping Secrets: The Protection of Classified and Security Sensitive Information, 2004](#), at paragraph 7.40.

²⁰ For example, according to the *Guidelines for Public Access to Court Records* issued by the state courts of New Hampshire, USA, "[a] presumption exists that all court records are subject to public inspection". The *Guidelines* are accessible at www.courts.state.nh.us. Similarly, the courts of the Canadian province of British Columbia have issued Practice Directions and Court Circulars granting public access to criminal files in specified

judicial information serves an important communal function, namely, the promotion of an informed public and encouragement of openness and accountability in the judicial system²¹. As stated by Anne Cohen in an article on the subject of public access to judicial information:

“Access to pre-trial documents furthers the same societal needs served by open trials and pre-trial civil and criminal proceedings. Court officials can be better evaluated when their actions are seen by informed, rather than merely curious, spectators²².”

The Ministry of Justice in co-operation with relevant judicial actors should therefore adopt uniform guidelines in relation to the dissemination and management of judicial information²³. The form and scope of these guidelines would of course be a matter of considerable debate. In JSMP’s view such guidelines would at least need to address the circumstances in which access to judicial information would be available, the types of information available, prescribe standards of record keeping and clarify the right to copies of important judicial documents (e.g. court decisions). Guidelines would enhance legal certainty amongst court actors, ensure greater scrutiny, and therefore accuracy, of court records and improve the accessibility of judicial information.

7. CONCLUSION

This report has attempted to provide an insight into both the flow of cases through the courts in East Timor and the way in which information relating to those cases is managed and disseminated. Statistics have revealed amongst other things that, with respect to the progress of cases through the courts, there has in several courts been an improvement in the time and efficiency with which cases are disposed of. Nevertheless, taking into account time periods relating to undecided cases, it is clear that court delays continue to be a problem for the operation of East Timor’s judicial system. Furthermore, the low rate of acquittals and patterns of pre-trial detention with regard to criminal cases (for example, rate and periods of detention) give cause for concern.

There are also a number of issues which arise in relation to the management of case information, specifically by way of court registers and case files, by registry staff. During the course of this Project it became clear to JSMP firstly that there is no apparent consistency amongst the courts in relation to the collection, management and accessibility of judicial information. In JSMP’s view this reflects the absence of a coherent policy or guidelines. The implementation of such a policy is critical to ensure

circumstances: see www.adidem.org/articles/singer1.html. In Brazil, according to Article 37 of National Decree No. 4.553 of 27 December 2002, access is even granted to what are deemed to be confidential legal documents if the court is satisfied that there is a ‘collective interest’ in this access. The website of the courts of the Brazilian State of Rio Grande do Sul, at www.tj.rs.gov.br/site_php/consulta/index.php, illustrates the wide variety of judicial information which is publicly available in Brazil. See also, ALRC 98 *ibid* at paragraphs 7.22 – 7.41.

²¹ For example, it has been recognised that article 19 of the *International Covenant On Civil And Political Rights* encompasses a human right to freedom of information and that this right includes access to information held by public authorities, although the exact scope of this right in relation to judicial information is unclear – see Report of the Special Rapporteur, *Promotion and Protection of the Right to Freedom of Opinion and Expression*, UN Doc. E/CN.4/2000/63, 18 January 2000, para. 44.

²² Cohen, A.E., ‘Access to Pre Trial Documents Under the First Amendment’, (1984) 84 *Columbia Law Review*, 1813, at 1827.

²³ To JSMP’s knowledge there has to date been no formal judicial directives or regulations which address these issues. It is hoped that the official nomination of court clerks (who were formerly probationary) on June 14 2004 will encourage a move in this direction

the accuracy of judicial information and transparency in the judicial system and to facilitate greater access to and civic interest in the judicial system. Secondly, with some variation between the courts, the range of case-related information being collected at the court registries is inadequate. This is particularly so for civil cases. Again, improved record-keeping is crucial to encouraging transparency in the judicial system.

Furthermore, to effectively plan and recognise deficiencies in the court system, policy makers must have access to detailed and reliable court statistics. At present this does not occur, with policy makers in the justice sector having to rely on anecdotal evidence or inadequate and at times incomplete information. By tracking the progress of each case from inception to closure, and the important procedural steps along the way, problem areas in the justice sector can be confidently identified.

This report demonstrates that more in depth statistics which effectively track the progress of cases give a useful and accurate representation of what occurs through all stages of the court system. Through such statistical reports, senior judges and policy makers can clearly determine problem areas, and respond accordingly. Obtaining more detailed case information is not a significant increase in work for court clerks. Each court currently generates case load reports and increasing the number of fields to be entered is not an unacceptable burden. This work, however, would be extremely valuable for the development of the justice sector. The introduction of more detailed statistical reports would undoubtedly improve long-term planning and would have the flow-on effect of improved efficiency throughout the court process. Nevertheless, JSMP has deliberately avoided attempting to prescribe an exhaustive list of remedies to the problems which have been identified. Instead, the intention in this report has been to raise the issues and make some tentative suggestions in the hope that this will promote wide-ranging discussion of problems whose redress JSMP sees as being critical to the continued development of East Timor's judicial system.

ANNEXURE 1

The figures in the brackets denote the number of cases out of the total number in which the information on that subject was either absent or incomplete (e.g. there are 35 SPSC cases for 2003 so if there was incomplete information as to pre-trial detention in 10 of these cases the relevant cell would have a (10/35) as well as the average period of pre-trial detention, based on the remaining cases). This information is not available for all fields however. Furthermore, there are some minor variations in the available fields of information between the courts.

2003**Statistics for All Criminal Cases 2003**

Court	Total No. Cases	No. of Cases Decided	% of Suspects Detained Pretrial	% Suspects Conditionally Released Pretrial	Avg. Period of Pre-Trial Detention	Avg. No. of Detention Reviews	Avg. Time b/w Crime & Indictment	Avg. Time b/w Indict & Distribution to Judge	Avg. Time b/w Indictment & Collection Date²⁴
DDC	82	21	84.8 (8/82)	15.1 (8/82)	22 weeks 6 days (16/82)	3.8 (36/82)	24 weeks 2 days (17/82)	6 weeks 3 days (18/82)	12 months 1 week
ODC	19	9	58	42	4 months 18 days (8/19)	2.75 (8/19)	6 months 11 days	4 months (14/19)	9 months 3 weeks
SDC	56	34	77.1 (4/56)	22.8 (4/56)	9 weeks 1 day (3/56)	2.1 (6/56)	30 weeks 1 day (3/56)	2 weeks 1 day	10 months 4 weeks 1 day
BDC	41	23	87.8 (8/41)	12.10 (8/41)	28 weeks 6 days (12/12)	5.5 (12/41)	20 weeks 5 days (11/41)	6 weeks 4 days (16/41)	9 months 4 days
SPSC	35	7	80 (6/35)	20 (6/35)	10 months 2 days (6/35)	2 (6/35)	3 years 3 months 2 days (2/35)	5 days (2/35)	11 months 4 days ²⁵

Statistics for All Decided Criminal Cases 2003

Court	Total No. Cases Decided	Avg. Time b/w Indictment and Start of Trial	Avg. No of Postponements	Avg. No. of Trial Hearings	Avg. Time b/w Indictment & Decision	% of Acquittals
DDC	21	16 weeks 2 days (9/21)	0.5 (4/21)	3.5 (3/21)	23 weeks 6 days (9/21)	0 (0/21)
ODC	9	5 months 17	n/a (9/9)	2.67	6 months 12	0

²⁴ 'Collection Date' means 1 June 2004, the deemed closing date for the collection of statistics as described in Section 3.1.

²⁵ The 18 cases in which the defendants are thought to be in Indonesia have not been taken into account for the purposes of calculating this average period. The only statistics in the tables which do encompass these cases are the types of charges, the locations of crimes and the periods between the crime and indictment and the indictment and distribution to the judge. Their inclusion in these fields will not have a distorting influence. See also Section 4.5.1.

		days (1/9)			days (1/9)	
SDC	34	33 weeks 5 days (2/34)	n/a (34/34)	2.5 (1/34)	14 weeks 2 days (2/34)	12 (3/34)
BDC	23	15 weeks 6 days (4/23)	3.7 (0/23)	4.8 (0/23)	21 weeks (5/23)	8.7
SPSC	7	5 months 24 days (1/10)	n/a (7/7)	5.5 (1/10)	9 months 21 days (1/7)	14.28

Types of Charges Criminal Cases 2003

Crime	DDC	ODC	SDC	BDC	Total
Murder	4	1	2		7
Attempted Murder		2			2
Assault	6	8	21	13	48
Sexual Violence	11	2	6	7	26
Fraud	1				1
Theft	2	1	5	3	11
Vandalism	3	1	2		6
Extortion			2		2
Forgery		1			1
Defamation	1				1
Inciting Violence			3		3
Religious Crimes				2	2
Traffic Offences	18				18
Immigration	1				1
Manslaughter			4		4
other	2				2
Total	49	16	45	25	135

Types of SPSC Charges 2003 Cases

Murder (not as a Crime Against Humani ty)	Murder	Torture	Enforce d Disappe arance	Inhuma ne Acts	Extermi nation	Persecu tion	Deporta tion	Rape	Depriva tion of Liberty
1	22	12	6	10	3	15	9	2	2

Locations of SPSC Crimes 2003 Cases

Aileu	Baucau	Bobonaro	Covalima	Dili	Liquica	Oecussi
2	1	2	7	11	1	8

Statistics for all Civil Cases 2003

Court	Total No. of Cases	Total No. Cases Decided	Avg. Time b/w Commencement and Trial	Avg. No of Postponements	Avg. Duration of Trial	Avg. Time b/w Commencement and Decision	Avg. Time b/w Commencement and Collection Date
DDC ²⁶	88	n/a	n/a	n/a	n/a	n/a	n/a
ODC	n/a	n/a	n/a	n/a	n/a	n/a	n/a
SDC	6	0	n/a (0 trials commenced)	n/a (0 trials commenced)	n/a (0 trials commenced)	n/a (0 trials commenced)	3 months 21 days
BDC	7	0	37 weeks 1 day (6/7)	n/a (7/7)	n/a (7/7)	n/a (7/7)	12 months 2 weeks

Types of Claims Civil Cases 2003²⁷

Crime	DDC
Action for Debt	1
Breach of Contract	29
Defamation	6
Employment/Unfair Dismissal	3
Inheritance	1
Divorce	4
Compensation	4
Property	10
Lease	1
Building and Construction	8
Others	2
Total	69

Statistics for all Court of Appeal Cases 2003

Number of Cases	Number of Decided Cases	Number of Appeals per Court	Number of Civil Appeals versus Criminal Appeals	Avg. Period b/w Making of Appeal and Registration	Avg. Period b/w Registration and Distribution to Judges	Avg. Period b/w Registration and Decision	Number of Cases Requiring Translation in Respect of Documents on File²⁸
73	44	DDC - 42 BDC - 1 SDC - 3 ODC - 0	26 – civil 43 – criminal	3 weeks	7 weeks 2 days	4 months 5 days	15

²⁶ For the reasons explained in Section 4.1.1 there was very limited information available in respect of DDC civil cases. JSMP was, however, able to obtain statistics on the number and types of civil cases.

²⁷ The DDC was the only court for which adequate data was available on the types of civil claims, nevertheless, this information was not available in respect of all civil cases.

²⁸ Due to the differing language capacities of the judges in the Court of Appeal documents on the court files often have to be translated into an appropriate language. See section 4.6.2.

		SPSC - 20				
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Avg. Period b/w Registration and Collection Date
11 months 3 weeks 3 days

2004

Statistics for All Criminal Cases 2004

Court	Total No. Cases	No. of Cases Decided	% of Suspects Detained Pretrial	% Suspects Conditionally Released Pretrial	Avg. Period of Pre-Trial Detention	Avg. No. of Detention Reviews	Avg. Time b/w Crime & Indictment	Avg. Time b/w Indict & Distribution to Judge	Avg. Time b/w Indict & Collection Date
DDC	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a
ODC	10	0	30 (2/10)	50 (2/10)	n/a	2.6 (5/10)	4 months 22 days	1 month 11 days (8/10)	3 months 2 weeks 2 days
SDC	17	5	66.6 (2/17)	33.3 (2/17)	5 weeks 5days (5/17)	1.1 (5/17)	6 weeks 4 days (3/17)	2 weeks (0/17)	3 months 2 weeks 5 days
BDC	13	1	100 (10/13)	0 (10/13)	1 week 4 days (12/13)	3.5 (11/13)	55 weeks 5 days (10/13)	n/a	11 weeks
SPSC	1	0	0 (1/1)	100 (1/1)	n/a	n/a	4 years 5 months 2 weeks 1 day (1/1)	n/a (0/1)	2 months 3 weeks (1/1)

Statistics for All Decided Criminal Cases 2004

Court	Total No. Cases Decided	Avg. Time b/w Indictment and Start of Trial	Avg. No of Postponements	Avg. No. of Trial Hearings	Avg. Time b/w Indictment & Decision	% of Acquittals
DDC	n/a	n/a	n/a	n/a	n/a	n/a
ODC	0	n/a	n/a	n/a	n/a	n/a
SDC	5	4 weeks 4 days (0/5)	0.8 (0/5)	3.2 (0/5)	2 weeks 6 days (0/5)	0 (0/5)
BDC	1	n/a (1/1)	n/a (1/1)	n/a (1/1)	n/a (1/1)	0 (0/1)
SPSC	0	n/a	n/a	n/a	n/a	n/a

Types of Charges Criminal Cases 2004

Crime	DDC	ODC	SDC	BDC	Total
Murder	n/a	1		1	2
Assault	n/a	6	5	1	12
Sexual Violence	n/a	2	4	1	7

Theft	n/a		1		1
Traffic Offences	n/a	1			1
manslaughter	n/a		5		5
other	n/a		1		1
Total	n/a	10	16	3	

Types of SPSC Charges 2004 Cases

Murder	Persecution
1	1

Locations of SPSC Crimes 2004 Cases

Covalima
1

Statistics for all Civil Cases 2004

Court	Total No. of Cases	Total No. Cases Decided	Avg. Time b/w Commencement and Trial	Avg. No of Postponements	Avg. Duration of Trial	Avg. Time b/w Commencement and Decision	Avg. Time b/w Commencement and Collection Date
DDC	33	n/a	n/a	n/a	n/a	n/a	n/a
ODC	n/a	n/a	n/a	n/a	n/a	n/a	n/a
SDC	4	0	6 weeks (3/4)	n/a (4/4)	n/a	n/a	3 months 3 weeks 5 days
BDC	4	0	2 months 1 week 4 days (3/4)	0 (0/4)	0 (0/4)	0 (0/4)	12 months 2 weeks

Statistics for all Court of Appeal Cases 2004

Number of Cases	Number of Decided Cases	Number of Appeals per Court	Number of Civil Appeals versus Criminal Appeals	Avg. Period b/w Making of Appeal and Registration	Avg. Period b/w Registration and Distribution to Judges	Avg. Period b/w Registration and Decision	Number of Cases Requiring Translation in Respect of Documents on File
33	11	DDC – 11 BDC – 3 SDC – 4 ODC – 0 SPSC – 10	5 – civil 23 – criminal	2 weeks 4 days	4 days	4 weeks 5 days	8

ANNEXURE 2

When considering JSMP's analysis of court statistics in the criminal jurisdictions it is important to bear in mind the procedural requirements and time restrictions to which the Courts of East Timor are subject pursuant to UNTAET Regulation 2000/30. The most pertinent of these provisions, at least in relation to the specific types of information collected under this project, are as follows:

- Section 20.1 requires the Investigating Judge to hold a hearing to review the lawfulness of the arrest and detention of the suspect **within 72 hours** of their arrest.
- According to section 20.9 The Investigating Judge must review the detention of a suspect **every thirty days**.
- Section 20.10 limits the period for which a suspect may be kept in pre-trial detention to **no more than six months** from the date of arrest, "unless otherwise provided in UNTAET regulations" (in which regard see s 20.11).
- Section 20.11 authorises the extension of pre-trial detention by an additional three months provided that the case involves a crime carrying imprisonment for more than five years and there are compelling grounds for the extension.
- Section 20.12 authorises the continued pre-trial detention of the suspect provided that the case is a complex one involving a crime carrying imprisonment of more than ten years, there are exceptional grounds and continued pre-trial detention is reasonable in the circumstances. On exceptional grounds, and taking into account the prevailing circumstances in East
- Section 23 addresses the issue of interlocutory appeals. According to section 23.2 the appellant must file the appeal with the Court of Appeal **within ten days** of the relevant decision. The Court must then summon the parties to a hearing within ten days of the receipt of the petition.
- According to section 29.1, a preliminary hearing must be held **within twenty days** of receipt of the response of the defence provided in section 26.3 or upon the expiration of the term defined in section 26.2.
- Section 39.4 requires the court to release its written decisions **within a maximum of 20 days** of the deliberations in respect of which the decision is made.
- According to section 40.2 an appeal must be filed **no more than ten (10) days** after the appealed decision is released.

This report should also be considered in light of Article 14(3) of the *International Covenant on Civil and Political Rights* which, among other things, entitles suspects to be informed promptly of the offence with which they are charged and to be tried without undue delay.

ANNEXURE 3

The fields of information collected for all cases are as follows:

Fields of Information for Criminal Cases	Fields of Information for Civil Cases	Fields of Information for Appeal Cases
<ul style="list-style-type: none"> • Case No. • Name of Accused • Crime • Date Registered • Presiding Judge • other judges • Date of Occurrence • Place of Crime • Date Warrant of Arrest Issued • Date Arrest • Date 72-hour Hearing • Decision 72-hour Hearing • Date Detention Decision Reversed • Dates of Extension of Detention • Date of Indictment • Date of Distribution of File to Judge • Date Indictment Read • Date Trial Started • Number and Dates of Trial Hearings • Whether Postponed or not • Date of Final Decision • Decision • Sentence • Comments 	<ul style="list-style-type: none"> • Case No. • Name of Plaintiff • Name of Defendant • Date Action Commenced • Date Distributed Judge • Type of Case • Date 1st Hearing Scheduled • Date Last Hearing Scheduled • Date of Final Decision • No. of Scheduled Hearings • Presiding Judge • Other judges 	<ul style="list-style-type: none"> • Case No. • District Level Case No. • Identifying Name • Appeal Case No. • Judge Rapporteur • Court of First Instance • Date Requested Appeal • Date of Making Appeal • Date Registered • Date Distributed to Judges • Date of Response of the Respondent • Nature of Appeal • Party Making Appeal • Whether File Documents Translated • Date of Scheduled hearing • Whether Hearing Took Place • Date of decision • Date Statistics Collected