



JUDICIAL SYSTEM MONITORING PROGRAMME

PROGRAM PEMANTAUAN SISTEM YUDISIAL

FINDINGS AND RECOMMENDATIONS:

**WORKSHOP ON FORMAL AND LOCAL JUSTICE
SYSTEMS IN EAST TIMOR**

Dili, East Timor
July 2002

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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I. BACKGROUND

Traditional Law, sometimes called “Local Justice”, in East Timor, raises many complex issues. This system of “Local Justice” has been used by generations of East Timorese, and is still used to determine both criminal and civil cases. In the traditional system, village chiefs decide every case, and the parties are bound by the result. This places a heavy responsibility both on the village chief and on the parties, as the outcome creates an obligation which participants must respect.

Traditional justice is usually dispensed by a local court without any written law. The chief of the village, after consultation with the people, is responsible for resolving every problem in the village community in East Timor. Customs of traditional justice are passed from generation to generation, and every decision of the chief of the village becomes part of the body of custom and is relied on by people to maintain their rights. Sometimes decisions of the village chiefs have greater legitimacy than those made by the courts as part of the formal justice system.

There are many different traditional cultures within East Timor, and the traditions on which cases are decided vary between different groups. These cultures have been researched by an anthropologist, who reported his research at a workshop held on 10 June 2002 and titled East Timor Community Systems of Justice Consultative Workshop. The research was based on 5 weeks of field research in all 13 districts of East Timor. The workshop was attended by judges, public defenders, chiefs of villages, National and international NGOs, participants from 12 out of 13 districts in East Timor, and participants from every university in Dili.

The report stated that in the districts of East Timor, people still use traditional justice to resolve every case, civil and criminal. The traditional justice system will probably always remain as a dispute resolution system within East Timor.

On the other hand, international experts have raised several questions in relation to the use of traditional justice in domestic disputes in East Timor. Resolution of cases involving women and sexual abuse via traditional justice still does not meet international human rights standards. The use of Traditional Justice in relation to sexual abuse should be examined and reconsidered. Despite this, participants at the workshop thought that serious cases of sexual abuse should be decided by the chief of the village with the other people in their community, rather than by the court. Participants felt that it was appropriate that in East Timor many serious cases were resolved by Traditional Justice.

This report is the result of discussion at the Workshop on 10 June 2002. Participants enthusiastically contributed their opinions about using the local and formal justice systems as a basis for dispute resolution in East Timor. Contributions highlighted both the positive and negative aspects of the subsistence of traditional justice and the existence of the formal justice system. This report also contains recommendations which have been submitted to the Government of East Timor and to organizations working in this area.

2. WORKSHOP PROGRAM

SESSION 1: A NEW NATION WITH AN OLD CULTURE: WHAT DO WE CHOOSE?

- 9.00 am** Introduction: the Objectives of the workshop?
- 9.15 am** The summaries of the community justice systems
- 9.45 am** Problem identificaton:
Community Justice: what are the benefits? What are the problems?
The formal justice: what are the benefits ? What are the problems?
Group discussiond
- 10.15 am** Presentation of the group discussions about the problems identified in relation to community based justice systems
- 11.00 am** Break
- 11.30 am** Discussion on models for the two systems to function together
- 12.30pm** Findings of the groups
- 1.00pm** Lunch

SESSION 2: Look to the future: Who make decisions? About what?

- 2.00** Group discussions about the specific problems and solutions on how the systems can work together
- 3.00pm** Break
- 3.15** Presentasion of the group discusisons
- 4.00pm** Discussion on how to submit recommendations to East Timorese decision makers in the future
- 4.30pm** Closing

3. THE OBJECTIVES OF THE WORKSHOP

- To consider the best way local and formal justice systems can work together to provide legal services in East Timor;
- To analyse the participation of women and children in the local justice system in East Timor;
- To identify the problems and difficulties which impede the processes of formal and local justice; and

To develop the local justice system as a system which can be accessed by everyone and which respects the universality of human rights.

4. SUMMARY OF RECOMMENDATIONS

4.1 Session 1: Benefits and problems of local and formal justice

4.1.1 Positive and negative aspects of traditional justice

A. Advantages of traditional justice:

Economics advantages

- The traditional justice system does not cost much to operate
- The system doesn't cost the parties anything to participate

Effective and efficient in making decisions

- All groups believed that the traditional justice system quickly resolves cases
- One group mentioned the system has no bureaucracy

Acceptance of decisions by traditional authorities

- Four groups said in the traditional system, the whole community will accept decisions and act on them immediately

Promotes reconciliation

- Two groups said that the whole community accepts decisions made in this system and the parties to the dispute forgive each other
- This builds strong family relationships for the future

Mutual respect

- Four groups believed that because the whole community accepts decisions, parties would respect each other and continue take part in the life of the community

- One group stated that the traditional system is still very strong because the community still believes in it
- Another group also said that the traditional system is built on traditions of the people themselves

Decision makers

- Two groups noted that the traditional decision makers have a difficult job to do making decisions on the cases
- Another groups also advised that the whole community respects the traditional chief

:

Benefits

- For people staying in village, it is easy to have a decision made on a case
- Flexibility
- Decisions are tailored to the circumstances of each case

B. Disadvantages of traditional justice :

Decisions makers

- Three groups raised the possibility that decisions-makers will manipulate their decisions to their own advantage

Traditional law

- Two groups stated that the traditional law is not written and so is less certain than written statutes

Women's rights

- Three groups noted that women's dignity can be treated as commodity in this system, for example in a rape case where the victim's family is given financial or other compensation for her loss of dignity

No appeal rights

- One group stated that once a decision has been made, it cannot be appealed

International law

- Four groups said that in many cases the process and decisions of the traditional system is violating international human rights standards

The decision of traditional justice

- Two groups mentioned that sometimes people did not accept the decision made in the traditional system

Effectiveness

- Two groups said that, the traditional system does not investigate matters so cannot effectively solve criminal cases

Victims and suspects in traditional prosecutions

- Five groups said that sometimes victims and accused persons were not happy with decisions made by traditional authorities. Sometimes the authorities do not involve the victims in the process, so the victim does not understand the outcome. Sometimes suspects are also not sufficiently involved.

Economic

- One group said that the traditional system uses money from both victims and suspects to resolve the dispute, so it costs a lot of money

Children and women's rights

- One group said the system does not give protection to domestic sexual violence cases against women and children

4.1.2 Positive and negative aspects of the formal justice system

A. Advantages of the formal justice system

The law

- Six groups said that the law used in the formal system is written, is widely accepted by all communities and countries and can be used to resolve disputes

Decisions

- Five groups proposed that in the formal system, all decisions were taken following regulations and international standards so decisions were more readily accepted

Economic

- One group noted that the parties need money to take cases to court

Time

- One group said that the formal system takes a long time to resolve cases

Victims and suspects

- Three groups mentioned that the formal system protects victims' and suspects' rights which makes them more likely to accept the court's decision

Rehabilitation

- One group said that in the formal system anyone can be rehabilitated if found not guilty

More specialised

- One group said that the formal system has good specialist practitioners for many cases

B. Disadvantages of the formal justice system:

Process

- Eight groups said that the process of the formal system takes a long time and might lead to more problems between the victims and suspects before the case is resolved.

Decisions

- Five groups said that length of the process in the formal system will influence both victims and suspects to spend more money in that process

Relationship between the formal system and traditional systems

- Two groups said that the formal justice system does not recognise the validity or the advantages of the traditional system

Language

- Two groups noted that the formal system in East Timor uses many languages

Future family relations

- One group said that the relationship between families is still healthy when the case is resolved by the formal justice system

Human resources

- Three groups noted that human resources in the formal system are still limited

Access

- Two groups said that people have no access to the formal system, so they do not know about the role of that system or how the courts operate

Experience

- Two groups said that the inexperience of East Timor's judges, prosecutors and public defenders means that the decisions made by the formal justice system will not always be legally correct

The influence of government in the formal system

- Two groups said that the formal system is only important to the government, and that the system does not pay any attention to the people

4.2 Session 2: The systems: problems and recommendations

4.2.1 Problems of the traditional justice system

Domestic Violence

In many cases, the local justice system has taken a position on domestic violence matters which does not give equal respect to the rights of men and women. The system often does not uphold the dignity of women and children who are affected by domestic violence and it may not even give them the opportunity to participate in the process. This means that women and children are frequently sidelined when decisions affecting their lives are taken. This practice continues to occur in villages where the formal justice system is difficult to access and local resolution has been the only way for disputes to be resolved.

The local justice system tries to reconcile both the victim and the alleged perpetrator in order to promote reconciliation within the community. As a result of the process, the victim is entitled to compensation such as animals or Tais (or other forms of compensation, which vary from district to district), and the perpetrator must promise that they will not commit such crimes again in future. In the local justice system, the victim must accept the compensation and no prosecution will take place afterwards. There are serious concerns that this method of resolving disputes undermines human rights principles, particularly the rights of women and children, as many cases involve domestic violence and/or sexual abuse.

Lack of legal acknowledgement of the traditional justice system

During the seminar, participants emphasized that the existence of the traditional justice system should be formally acknowledged by the government of East Timor. They also stressed that the traditional justice system should be structured nationally and recognized as part of the formal justice system. The challenge for the people of East Timor is now to contribute ideas in order to find the most appropriate mechanism for the local justice system, so that it respects human dignity and the equal rights of all members of the community.

A number of questions were posed at the seminar about who is eligible to practice in the local justice system, what mechanisms will be used to identify those practitioners, and the kind of knowledge and ability practitioners should have in order to be able to competently practice in the local justice system. Presently, individuals practicing within the system include the chiefs of villages and sub villages, chiefs of Sub districts, and members of Falintil. Participants believed it was very important to review the current local justice system in East Timor and to review local

justice mechanisms, as many of these appear to contravene human rights principles. The local justice system also needs to be reliable and easily accessed by those who seek remedies from the system.

Recommendations;

Participants recommended that:

- the formal education system educate the public about preventing domestic violence and protecting families from its effects;
- the government establish a formal mechanism for resolving domestic violence cases;
- religious groups provide moral support for these initiatives;
- a mutual and sustainable relationship be created between the formal and local justice systems to handle cases efficiently, and respect the universality and equality of rights
- the Government and NGOs work together in socializing the issues on the universality and equality of the rights between men and women;
- violent behaviour in the family be eradicated;
- the local justice mechanism, which does not currently respect the dignity of women and children, be reformed;
- the local justice system be legally recognized by the state, and be accessible to the public without any discrimination on the basis of sex, religion, ethnic origin, political opinion, or nationality.

4.2.2 Problems of the formal justice system

Language

Language has become a considerable problem in the Formal Justice System, where intensive language training for the court staff is urgently needed. Many court staff are not able to speak the national languages of East Timor, which has a negative impact on the ongoing process of trials in the court. This situation is exacerbated by the lack of legal experience of the court translators. Court translators should have legal experience and/or a legal background prior to their employment. In addition, the fact that many international judges are not able to speak Tetum or Portuguese has encouraged some justice seekers to choose the local justice system as a more efficient and reliable system, rather than bringing cases to the formal justice system.

Language is one of the problems which are seriously impeding the progress of the formal justice system, and difficulties with language have weakened public confidence in the system, as the public cannot follow the legal process. The local justice system has been the most practicable, understandable and easily accessed system, especially for villagers who are not able to travel to Dili or to regional centers.

Lack of effectiveness

Many participants at the seminar expressed their frustration that the formal justice system does not follow proper procedures, because of the scarce human and financial resources available to the courts in East Timor. There were concerns that excessive bureaucracy in the formal justice system has caused delays and weakened public confidence in the system. The best way to build an efficient, impartial and independent justice system is a significant question for the people of East Timor.

Land and property cases

In the past, East Timorese owned land left to them by their ancestors. However, during the Portuguese and Indonesian occupations, many houses and blocks of land were forcibly taken from their owners and occupied by the colonising powers. During the Indonesian occupation, many people were forced to sell their land to soldiers and their families. This has caused serious confusion within the community and participants believed the government should establish a proper mechanism to deal with land and property issues.

Recommendation:

Participants recommended that:

- It is important to identify which mechanisms of the local justice system could be incorporated into the formal justice system, and will be legally and nationally recognized;
- It is essential to provide a legal translator to translate documents into the language that is most commonly used by the community in order to encourage them to participate in the formal justice system;
- It is important to recruit court translators who have a legal background or who have experience in the legal field;
- It is particularly important to recommend to East Timor's government that it supports the local justice system based on international human rights principles;

In order that a tribunal can be truly independent, impartial and just, it is vitally important that any political interventions into the formal legal process are strictly prohibited

ANNEX I : LIST OF PARTICIPANTS

DISTRICT OF AILEU

No	Name	Organization
1	Humberto Tilman	Hak Asasi Manusia (HAM)

DISTRICT OF AINARO

No	Name	Organization
1	Rosa Rodrigues	
2	Orlando Xavier	

DISTRICT OF BAUCAU

No	Name	Organization
1	Aleixo Ximenes	CAVR
2	Gregorio D.O.X	Commissao Justisa
3	Andre Dos S.F	Commissao Justisa
4	Carolina Do Rosario	CAVR
5	Domingos B.	Kejaksaan

DISTRICT OF ERMERA

No	Name	Organization
1	Bernardo S. Babo	Chefe de Suko
2	Manuel S.	Chefe de Aldeia
3	Martinho N. Ximenes	Chefe de Suko
4	Agosto Ataidi	Conselheiro

DISTRICT OF LIQUICA

No	Name	Organization
1	Maria Fernanda M.	CAVR
2	Ana Maria	CAVR
3	Elisa Dos Santos	Grupo Rate Laek
4	Amelia Dos Santos	Grupo Rate Laek
5	Aurelia De Jesus	Grupo Rate Laek
6	Angelina	Grupo Rate Laek
7	Clara Dos Santos	Grupo Rate Laek

DISTRICT OF LOSPALOS

No	Name	Organization
1	Luis Monteiro	
2	Valentin D.S Trindade	
3	Faustino Dias Sarmento	
4	Justino Valentin	CAVR
5	Albino Da Silva	CAVR

DISTRICT OF MANATUTO

No	Name	Organization
1	Ildefonso Pereira	CAVR
2	Geraldo Gomes	CAVR

DISTRICT OF MALIANA

No	Name	Organization
1	Bento Oliveira	Forum Hak Asasi Manusia (HAM)

DISTRICT OF OE-CUSSE

No	Name	Organization
1	Arnold Sunny	CAVR
2	Antonio H. Da Costa	CAVR

DISTRICT OF SUAI

No	Name	Organization
1	Armando Dos Reis	
2	Atanasio Tavares	

DISTRICT OF VIQUEQUE

No	Name	Organization
1	Daniel Sarmento	CAVR
2	Helena H.X. Gomes	CAVR
3	Teodoro O. Pinto	Yayasan Direitus Hanesan

DISTRICT OF DILI

No	Name	Organization
1	Salvador sarmento	ICR
2	Januario Freitas	ICR
3	Mariano C. da Cruz	Universidade Timor Leste
4	Joana Cunha	ETWAVE
5	Thomas Freitas	Lao Hamutuk
6	Manuela Pereira	FOKUPERS
7	Julino Ximenes	Y. HAK
8	Benevides C.B	LIBERTA/Advocacy
9	Teresa Barros	APSC
10	Beba Siquera	APSC
11	Maria Natercia	Judge at the Court of Appeal
12	Antonio Da Costa	Timor Post
13	Silveirio Pinto	Y. HAK
14	Cancio Xavier	Defensor publiku
15	Eusebio Aparicio	Juiz iha Tribunal Distritu

ANNEX II: LIST OF RECOMMENDATIONS

Recommendations to the traditional systems:

- the formal education system educate the public about preventing domestic violence and protecting families from its effects;
- the government establish a formal mechanism for resolving domestic violence cases;
- religious groups provide moral support for these initiatives;
- a mutual and sustainable relationship be created between the formal and local justice systems to handle cases efficiently, and respect the universality and equality of rights
- the Government and NGOs work together in socializing the issues on the universality and equality of the rights between men and women;
- violent behavior in the family be eradicated;
- the local justice mechanism, which does not currently respect the dignity of women and children, be reformed;
- the local justice system be legally recognized by the state, and be accessible to the public without any discrimination on the basis of sex, religion, ethnic origin, political opinion, or nationality.

Recommendations to the local system:

Participants recommended that:

- It is important to identify which mechanisms of the local justice system could be incorporated into the formal justice system, and will be legally and nationally recognized;
- It is essential to provide a legal translator to translate documents into the language that is most commonly used by the community in order to encourage them to participate in the formal justice system;
- It is important to recruit court translators who have a legal background or who have experience in the legal field;
- It is particularly important to recommend to East Timor's government that it supports the local justice system based on international human rights principles;
In order that a tribunal can be truly independent, impartial and just, it is vitally important that any political interventions into the formal legal process are strictly prohibited

ANNEX III: GROUP DISCUSSIONS

GROUP I

	<i>Positive</i>	<i>Negative</i>
Local Justice	<ul style="list-style-type: none"> - Economically, it will save money - Relation between families of victim and accused will be harmonious in the future 	<ul style="list-style-type: none"> - The decision-maker (usually the village chief) can use their power to manipulate cases, and make decisions according to their wishes rather than the law
Formal Justice	<ul style="list-style-type: none"> - Fair trial - It has Regulations that can protect suspects' and victims' rights 	<ul style="list-style-type: none"> - Procedurally, it takes a long time - System is very expensive

GROUP II

	<i>Positive</i>	<i>Negative</i>
Local Justice	<ul style="list-style-type: none"> - People understand their rights - Decisions are effective immediately and at a local level - Flexible - People have some control over the sanction imposed - People don't need money to access this system - Effective and efficient - Local Sanction - Appropriate to local customs 	<ul style="list-style-type: none"> - Unwritten law because made by custom or village chief - Law differs between villages, districts and regions - Cases usually involve gender issues - No appeal from decision of chief - Sometimes decisions contradict International Human Rights standards - System discriminates against people from outside village, region or nation
Formal Justice	<ul style="list-style-type: none"> - Written law is more certain - Law has more formal authority 	<ul style="list-style-type: none"> - Formality - Special law needed for each offence - Inefficient

	<p>because made by government</p> <ul style="list-style-type: none"> - Controlled by Government - Judges and prosecutors are state employees - People don't need money or livestock to pay for remedies - Effective and efficient - Formal sanction 	<ul style="list-style-type: none"> - Centralized - Government interest may influence - Top-down systems - Contradiction between formal and local systems
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GROUP III

	<i>Positive</i>	<i>Negative</i>
Local Justice	<ul style="list-style-type: none"> - Provides a basis for people to respect each other and respect the law - it doesn't take long time - it is easy for people in village to resolve every case - economically, it will not be difficult for people to participate 	<ul style="list-style-type: none"> - it can create nepotism - Unwritten Law and there is no written statute - Sometimes victim and accused are left unsatisfied - Sometimes people don't respect local justice
Formal Justice	<ul style="list-style-type: none"> - Written law, legal and passed by government - due process of the law is followed - people will agree with the decision because it is based in law 	<ul style="list-style-type: none"> - the process is very long - it can create a new problem - different in reality than it is in theory

GROUP IV

	<i>Positive</i>	<i>Negative</i>
Local Justice	<ul style="list-style-type: none"> - still used by people 	<ul style="list-style-type: none"> - people make decision by

	<p>to judge every case until now and people consider it a good system to judge their case</p> <ul style="list-style-type: none"> - the process is easy - people can respect each other - easy to understand because they use local language - parties can give redemption money between them 	<p>themselves</p> <ul style="list-style-type: none"> - give priority to material gain rather than resolving the dispute - sometimes they just give compensation in criminal act - sometimes the victims do not attend the case in local justice - people don't give their respect to women's issues - there is no attention to children's issues, for example about sexual abuse
Formal Justice	<ul style="list-style-type: none"> - procedurally, it is possible to judge every case according to international standards - protect human rights - it is possible to get rehabilitation 	<ul style="list-style-type: none"> - the process is too long - the human resources are very limited - no more experience - no reconciliation - many languages were used in formal justice - people still not understand about trial procedure - the process is too long so it is possible to create a new problem

GROUP V

	<i>Positive</i>	<i>Negative</i>
Local Justice	<ul style="list-style-type: none"> - people still respect traditional justice - have a respect to chief of villages - effective and efficient - easy to resolve every case 	<ul style="list-style-type: none"> - contradiction with human rights standard - nepotism - it is possible to judge criminal case - make a decision by themselves - it is impossible to judge every case about criminal act at the court
Formal Justice	<ul style="list-style-type: none"> - respect human rights - judicial decisions are fair 	<ul style="list-style-type: none"> - need much money - there is many intervention from outside - the human resources are very

	<ul style="list-style-type: none"> - written law - people have access to know about the case and the procedure - fair trial 	limited
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GROUP VI

	<i>Positive</i>	<i>Negative</i>
Local Justice	<ul style="list-style-type: none"> - the process is quick - all people will submit the decision - the decision is absolute - applicable law 	<ul style="list-style-type: none"> - sometimes impartial - the traditional justice needs much money to resolve every case - contradiction with international standard of human right
Formal Justice	<ul style="list-style-type: none"> - systematically it is a general law - the decision is absolute - the decision is according to the regulation - 	<ul style="list-style-type: none"> - it takes time to judge the case - it can create a new problem in the community - sometimes the decision contradicts traditional justice

GROUP VII

	<i>Positive</i>	<i>Negative</i>
Local Justice	<ul style="list-style-type: none"> - it can resolve the case quickly - people will still respect each other - chief of village makes many sacrifice to resolve every case - 	<ul style="list-style-type: none"> - it can resolve the case quickly but still not absolute - obligation - no investigation - it will not effective to resolve every case
Formal Justice	<ul style="list-style-type: none"> - fair trial - it has guarantee when the trial finished that judgement will be 	<ul style="list-style-type: none"> - different court - formal process takes time to resolve case - it needs money - the legal staff are very limited.

	handed down.	- different investigations
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GROUP VIII

	Positive	Negative
Local Justice	<ul style="list-style-type: none"> - it can resolve cases quickly - the administration is very simple - it doesn't need much money 	<ul style="list-style-type: none"> - it is only recognized by people who live in the village - some people don't admit the decision
Formal Justice	<ul style="list-style-type: none"> - it takes time to judge every case - people need much money to resolve their case at the court - legal subsistence - the decision is absolute 	<ul style="list-style-type: none"> - it takes time to resolve via formal system - the administration isn't easy - some cpeople need much money to resolve every case at the court

