



JUDICIAL SYSTEM MONITORING PROGRAMME
PROGRAMA DE MONITORIZAÇÃO DO SISTEMA JUDICIAL

OVERVIEW JUSTICE SECTOR IN TIMOR-LESTE 2009



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ATTACHMENT

SECTION 1 – THE LEGISLATURE

(i) JSMP commentary on law making processes

The Fourth Constitutional Government of Timor-Leste, led by the Parliament Majority Alliance ('AMP') has had a strong focus on the development of laws that regulate many aspects of people's lives during 2009. As such, the procedures which derive from the Parliament and Government, including the mechanisms used to analyse and develop draft laws must be freely available to all people, while still ensuring that laws can be made efficiently.

In order for the laws made by the government to provide maximal benefit to the people, the law must not only be translated and disseminated, but also summarised at a level that ordinary people can understand.

On a theoretical level, it is clear that the development of laws by the Government and Parliament should be first and foremost based on the rights guaranteed in the framework of a democratic state. In the field of law-making, the following concerns are also relevant¹:

1. *Cultural Considerations*: the law must take account of local customs and the values that underpin society;
2. *Sociological Considerations*: that law and society will always have a reciprocal effect upon each other. Although values cannot be changed by the law, over time, society will be influenced by its legal structures;
3. *Philosophical Considerations*: that in order for the democratic process to operate effectively, and for laws to have legitimacy, law makers must have a system through which they can advocate for the opinions of their constituents; and
4. *Political Considerations*: that law making process will also be governed by what lawmakers consider to be politically and socially desirable outcomes.

It is clear that as a result of these considerations, the law and legal structures must find mechanisms to directly respond to the opinions and desires of the people, so that the government's program can be shaped by the public's vision for what constitutes a just

¹ See Kelik Endro Suryono in "Politik Hukum" page 8, 2002

nation. However, the current reality in Timor-Leste is that even when laws are properly disseminated, the majority of people are not able to understand the content or application of the law – including those with institutional responsibility for its enforcement, such as the National Police Force of Timor-Leste ('PNTL').

As JSMP has noted many times in the past, processes of public consultation prior to laws being made are also not yet sufficient, not only because of time restrictions being placed upon official consultation periods, but also because too often laws are only developed and published in Portuguese, which the majority of people cannot understand. Similarly, many of the consultation processes require people to speak and write Portuguese well, a goal that remains out of reach for most Timorese citizens.

In JSMP's view, all of these issues raise considerable questions about the legitimacy of law-making processes in Timor-Leste, as well as undermine the viability of a state based on democratic rights. The issues discussed above also highlight the considerable obstacles faced in ensuring access to justice. Most particularly, it is deeply concerning that laws are being developed and applied to people who cannot understand their content.

In Timor-Leste, there are two separate but related law making processes which are conducted by the Government and the Parliament respectively. Laws drafted by the Government are called 'Proposed Laws' or '*Proposta de Lei*', while those prepared by Parliament are called 'Projected Laws' or '*Projektu de Lei*'.

The mechanism for making *Projektu de Lei* begins when the law is first drafted. Members of Parliament and Parliamentary Committees can each submit draft legislation to Parliament. Sometimes there is a process of public consultation prior to legislation being drafted. Once a law has been drafted it will be debated publically in a plenary session of the National Parliament. Changes may be made before it is passed. Once passed by Parliament, the President of the Republic is required to approve the law before it will enter into force.

The process for making laws followed by the Government is similar to that described above in relation to the Parliament. *Proposta de Lei* are first drafted by members of the Government, usually within the relevant Ministry. Then the law is debated in the

Council of Ministers. The proposed law may be sent to the public for input and suggestions. Once final approval is given by the Council of Ministers, the draft law is sent to the President of the Republic to approve before entering force. Once in force it is called a *Decree Law*.

JSMP has observed that many laws come directly from the Council of Ministers and do not undergo a period of public consultation. As noted above, this inhibits public understanding of legislative processes and affects the quality of the laws. Dissemination of information before and after a law comes in to force is not sufficient for the public to be able to access, understand and contribute to the law making process. The public must be have the opportunity for involvement during the process of legislative development.

JSMP submits that the new consultative processes that the AMP Government has adopted in response to civil society pressure are a considerable improvement in comparison to consultations that have taken place in the past. A particularly good example of this is the public consultations accompanying the proposed Land Law. This process has been effective because the government directly asked the public about what they thought should be included in the new law. The public then had a chance to tell their representatives about their concerns. While noting this positive step, JSMP believes that the AMP Government should not only hold consultations about the land law but should also commit to holding appropriate consultations with affected parties for all laws. This would ensure that all people have the ability to understand the content of the laws that are going to affect their lives.

Through its participation in the *Rede ba Rai* network of community organisations contributing to the development of the land law, JSMP has been able to observe how consultation meetings facilitated by community organisations about proposed laws can achieve positive results. The *Rede ba Rai*, which includes representatives of local advocacy organisations such as Haburas, Lao Hamutuk and JSMP meets regularly to share information and plan advocacy work around legal and policy developments relating to land title. JSMP has observed that through the work done by land network, advocacy issues have been able to be referred from the people to their civil society representative, and then directly to the Justice Minister. While the processes of consultation surrounding the new Land Law have by no means been perfect, JSMP

encourages the AMP Government to continue building upon this consultative model in the future, in order to facilitate public understanding of and involvement in lawmaking processes.

(ii) The Penal Code

According to articles 1.1 and 2.2 of the Constitution, Timor-Leste is a state based on the principle of democratic rights. In order that the state can function in accordance with these principles, state actors must comply with the norms set out by its existing legal framework, and must ensure that legal issues and decisions are conducted within the terms set out by article 118.1 of the Constitution. Examining the role and duties for which the judicial system must be responsible in accordance with this article, politicians have, over the past years, made the development and approval of the Timor-Leste's Penal Code an important priority.

The Penal Code has been developed over a number of years through the work of a Commission involving both Timorese and international drafters, and based on submissions made by the broader community through a plenary process. The result of this work has been to adopt a Penal Code which by and large respects the social and cultural realities of the Timorese community, as well as taking into account lessons learned through international examples and expertise.

Notwithstanding the time taken to develop the Code, JSMP believes that in the coming years, all actors in the judicial sector must closely monitor its implementation. Although its approval is a fundamental step in building a national legislative framework in Timor-Leste, further amendments will need to be made to take account of social-cultural changes in our nation, and changes to laws at the international and national level.

While JSMP also appreciates the extent to which the approved Penal Code has incorporated amendments arising from a dialogue between the Parliament and civil society, not all of the changes proposed during that process have been taken into account. While JSMP welcomes the promulgation of the Penal Code, it is clear that in times to come the following articles of the code will remain ripe for further consideration and

reform. Based on JSMP's court monitoring work and legal analysis, the following articles of the Code have come to our attention during 2009:

- article 141, which specifies that women who consent to an abortion or interruption of pregnancy may face a penalty of up to 3 years in prison. JSMP recommends that in order for the Penal Code to comply with international human rights law and the principle of non-discrimination, abortion should be completely decriminalised until the tenth week of pregnancy. At a minimum, the law should clarify that that interruption of pregnancy shall not be considered a crime, *inter alia*, when:
 - (i) the pregnancy resulted from a non-consensual sexual relationship; or
 - (ii) the pregnancy resulted from an incestuous relationship; or
 - (iii) it is open to a judge to find that the procedure taken for the interruption of pregnancy was undertaken to protect the physical or psychological health of the mother; or
 - (iv) the procedure was undergone by a female aged under the age of 18 years.²
- article 146 and article 147, which cover the crimes of Serious Offences against the Person and Aggression respectively. In JSMP's view, the drafting of the two sections is confusing, since separate and differing penalties are provided for what in some circumstance may be the same crime. JSMP recommends that the Parliament provide an amendment to clarify this situation, to avoid confusion in judicial application of the two articles.
- article 149, which covers medical malpractice. Although JSMP recognises that it is necessary to protect the medical profession from blame in cases where medical treatment is insufficient to save the lives of patients, JSMP believes that the application of this article may also allow doctors to escape criminal consequences where the treatment they provided was negligent or criminal. JSMP believes that

² For further information, see Judicial System Monitoring Programme, 'Abortion reform still needed: section 141 of the Penal Code must comply with the Constitution and human rights' (2009).

this situation may be clarified either through further law reform, or through building a strong code of self-regulated training and ethics in the medical profession.

- article 177, which covers the sexual abuse of a minor. JSMP is concerned that the article makes no provision for what should happen in the event that sexual abuse is shown to occur where the perpetrator themselves is, also, a minor. JSMP suggests that this situation be clarified through further amendment to this section.

In any process of law reform, the Government must demonstrate that it takes the concern of its constituents and their civil society representatives seriously. It remains troubling to JSMP that many of civil society's law reform suggestions and submissions are not taken into account. Perhaps the most telling example of this during 2009 concerned the issue of abortion, where, fearing controversy from the Catholic Church, the government refused to respond to or acknowledge advocacy done by JSMP and other civil society organisations in support of decriminalisation.

However, the National Parliament is also to be congratulated for the inclusion of certain criminal behaviours in the Penal Code that have caused controversy in the past. In particular, JSMP welcomes the recognition of gender based violence as a crime, and the codification under article 182(d) that it shall be considered an aggravating factor when this crime occurs in a domestic setting or between family members. Further, JSMP welcomes the inclusion of serious crimes (such as war crimes and genocide) in articles 123-30 of the Penal Code and is pleased to see that the punishments outlined for these crimes concord with Timor-Leste's obligations to prosecute and punish such acts. Furthermore, the clarification that no prison sentence should be longer than 30 years (article 66) and that under no circumstances shall the death penalty be considered a legal punishment or legitimate security measure (article 59) are welcome, as they signal an intention to comply with Timor-Leste's obligations in accordance with the First Optional Protocol to the International Covenant on Civil and Political Rights.

In JSMP's view, judicial actors may face a number of obstacles in their role in applying the Penal Code. In particular, court actors must undergo thorough training in all aspects of the new code, so that they understand the various aspects of all criminal behaviours, as well as the applicable punishment. Although there are some areas in which the

Indonesian Penal Code and the Penal Code of Timor-Leste are similar, particular attention should be given to areas in which national difference or international law has played a role in changing particular crimes or their punishment in the new Code.

Based on the monitoring work done by JSMP in the Dili and District Courts during 2009, the Penal Code is typically being applied only in cases of crime which occurred from April 2009 onwards. In JSMP's view, the approach of the courts in this respect is correct, and is necessary in order to comply with the principle of non-retroactivity of laws, since the Penal Code was promulgated by the President of the Republic on 30 March 2009. For crimes that remain to be processed that occurred before this date, courts should continue to apply the Indonesian Penal Code as in force prior to 2009, except in the case that the Penal Code of Timor-Leste would favor the case of the defendant.³

(iii) The Law for the Protection of Witnesses

On 6 May 2009 the Law for the Protection of Witnesses (No.2/2009) was promulgated. The passage of the law marked the culmination of extensive work done by a number of organisations, including JSMP, to promote reform measures in the area of witness protection in Timor-Leste.

In the past, JSMP has monitored a number of trials that have been discontinued because of the reluctance of witnesses to give evidence in light of personal safety concerns. It is therefore pleasing that the law envisages a suite of changes to trial processes, which, read together, have the capacity to provide comprehensive protection to witnesses in a variety of situations.

Chapter 1 of the law clarifies that that the protective measures enumerated apply to witnesses in both civil and criminal cases, who face significant threats to either their assets or their physical and/or psychological wellbeing. The measures referred to may also apply to the spouse, family member, or close associate of the witness, if there is reason to believe that the witness' testimony would also put them in danger.

³ For a more detailed explanation of how this principle works in practice, see the discussion of the Railos case in Section 5 of this report.

Chapter 2 of the law provides for a range of measures designed to conceal the identity of witnesses, including the use of teleconference; the distortion or concealment of a witness' image and/or voice; and the recording of testimony in a secure location. When these measures are employed, it is incumbent upon a judge to supervise the witness' testimony, and to guarantee its authenticity.

Chapter 3 of the law provides the legal basis on which a witness' identity may be concealed. The following conditions must each be fulfilled:

- the witness, or others related to them, must face a serious threat of the kind outlined above; and
- the witness must be of good credibility; and
- the contents of their testimony must be reasonably probative.

In addition to the above, the concealment of a witness' identity can only occur in cases in which:

- the maximum penalty for the crime alleged is at least five years imprisonment; or
- the matter related to child protection; or
- assets to the value of more than \$50 000 are put at risk.

Chapter 3 also provides that no condemning decision can be made if the decision would be based solely or substantially upon evidence given by a witness whose identity was concealed.

Chapter 4 of the law provides for a range of measures designed to provide security to individuals under threat during the course of a trial, including the suppression of their personal details and police protection. It also provides for a regime of special security measures when long-term victim support is required, such as identity re-assignment; relocation abroad; a support pension; and where necessary, surgical or medical changes to disguise the identity of individuals.

Although a number of civil society based measures already exist that protect some women and children victims of crime, JSMP has long maintained that a more wide-reaching, government-led system of protection is needed for those individuals who are

put at risk because of their role giving evidence in court proceedings. This law is therefore a welcome step forward, in that it provides a mechanism for the protection of those individuals who might otherwise refuse to give evidence. In doing so, it protects the integrity of trial processes, and increases the likelihood of justice being done, especially in cases involving serious crimes.

In its submission on the draft version of this law, JSMP noted that while the law envisages protective measures for a wide range of witnesses, this law may be especially critical for the protection of women and children suffering from abuse. In light of the generally low level of community awareness about the law, JSMP encourages all court actors to support victims, especially those with particular vulnerabilities, to realise their rights in accordance with the protective measures outlined by this law.

JSMP also encourages the Government to ensure that sufficient resources are allocated to ensure that the law can achieve maximal effectiveness in assisting those most in need of its measures. JSMP believes that it is extremely important that this law, in practice, is used regularly to protect the most vulnerable members of Timorese society rather than simply being used in those cases involving high profile witnesses. In order for this aim to be realistic, JSMP believes that additional government funding must be devoted to the establishment of new women and children's shelters, and protective measures for other vulnerable groups. If these additional measures are not implemented, JSMP fears that many of the positive aspects of this law will be rendered ineffective.

SECTION 2 – THE COURTS

(i) Court of Appeal

Although the Constitution of Timor-Leste prescribes that the Supreme Court shall be the highest appellate court, until the present time, the Court of Appeal has maintained that function in the absence of its establishment.

Based on monitoring done by JSMP during 2009, it is the best equipped of all the courts in terms of the resources and facilities that it requires to manage its caseload. It has sufficient staff, office space, equipment and functionaries. Nevertheless, a number of

significant obstacles remain to the smooth functioning of the court on a day-to-day basis. The first is the steady introduction of new legislative instruments, such as the Penal Code, to which every court actor, from judges to functionaries, must become accustomed in order to apply correctly. The second is the issue of Portuguese as a formal legal language, which creates a number of bureaucratic obstacles for most Timorese people wishing to gain access to justice.

The system of administration employed by the Court of Appeal also presents significant barriers for any individual interested in gaining access to District Court and Court of Appeal Documents. In spite of its recognised public role in court monitoring, JSMP staff are frequently informed that they may not gain access to what are, in fact, public documents, unless they are parties to or lawyers in a particular case. In such cases, JSMP is compelled to write an official letter of request to the President of the Court of Appeal, Claudio Ximenes.

In seeking statistical information about the Courts to include in this report, JSMP submitted such an official request letter to President Ximenes on 17 December 2009. However, when JSMP followed up this letter with two consecutive requests of the court for access to information (including a follow-up letter of 5 January 2010) JSMP was informed only that President Ximenes had not yet given permission for court officials to allow JSMP access to the documents.⁴

The following information was collected by JSMP court monitors, and to the best of our knowledge was correct as at January 10 2010.

Court Actors

Judges: Dr. Claudio de Jesus Ximenes (President); Dr. José Luís da Goia (international); Dra. Margarida Veloso (international); Dra. Maria Natercia Gusmão (national); Dr. Deolindo dos Santos (national) no Dra. Jaçinta Correia (national).

(ii) District Court of Dili

Court Actors

⁴ The official letter sent by JSMP to the Court of Appeal appears in Annex 1 to this report.

Judges: Dra Maria Natercia Gusmão, Dr Antonino Gonçalves, Dra Jaçinta da Costa Correia, Dr Guilhermino da Silva, Dr Deolindo dos Santos, Dr Costanção Basmery, Dr Duarte Tilman, Dr João Ribeiro (national judges); Dra. Maria Leonor Botelho and Dr. João Felgar (international judges).

Facilities

Court transportation: 3 motorbikes; 3 cars.

Judges' transportation: 10 cars.

Court generators: 1 new.

Telephones: functioning.

Internet: functioning, with 16 computers.

(iii) District Court of Baucau

The following information was collected by JSMP court monitors at the Baucau District Court and to the best of our knowledge was correct as at 1 December 2009.

Court Actors

Judges: Dra. Edit Palmira; Dra. Ana Paula Fonseca; Dr. Afonso Carmona; and Dr. Diogo Ravara (International).

Prosecutors: Dr. Jose Ximenes; Dra. Benvinda da Costa Rosario.

Public Defender: Dr. Rui Manuel Guterres; Dr. Gergio Paul Dias Quintas.

Administrative Staff: Sr. Augusto Soares (head of administration); Vigilio Freitas.

Justice Officers (Crime): Antonio Fernandes; Helder Veinhas.

Justice Officer (Civil): Leo Amaral.

Interpreters: Miquel dos Santos; Mariana Martins.

Infrastructure

Court Building including: the main room with two public docks and hearing space for three judges, legal representatives, witnesses, and criminal and civil administration; a separate criminal administration section, a separate room for Dr Carmona, an interpreter's room and a number of other empty rooms.

Judge's Residence, which is complete, and currently being shared by Dra. Edit Palmira and Dra. Ana Paula Fonseca.

Prosecutors' Building, which is being fully utilised.

Prosecutors' Residence, which is currently under construction.

Public Defender's Building, which has been completed but which is not currently in use.

Facilities

Court transportation: 5 motorbikes; 1 car.

Judges' transportation: 2 cars.

Prosecutors' transportation: 1 car.

Public Defender's transportation: 1 car.

Court generators: 1 old and 1 new.

Telephones: functioning.

Internet: functioning.

Table 1: Criminal Cases in the Baucau District Court, 2009.

Month	Jan	Feb	Mar	April	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
Pending from previous	101	99	89	87	96	116	119	135	157	150	160	168

month												
Hearings	11	7	23	26	27	27	40	39	19	15	12	
Decisions	13	17	25	17	7	24	24	17	26	5	4	
Cases remaining pending	99	89	87	96	116	119	135	157	150	160	168	

It is possible to make a number of basic observations about these statistics.

The first is that little progress was made in reducing the number of pending cases in the Baucau District Court, the number of which grew significantly between April and December. In part, this was due to the departure of two judges in the latter half of the year for training and capacity building in Portugal. Notwithstanding their departure, it seems clear from this trend that the capacity of the Court is not yet sufficient to reduce the considerable backlog in cases.

Information on the breakdown of types of criminal cases heard throughout the year was requested, but was not made available to JSMP. Similarly, no information was made available to JSMP concerning civil matters.

(iv) District Court of Oecusse

The following information was collected by JSMP court monitors at the Oecusse District Court and to the best of our knowledge was correct as at 14 December 2009.

Court Actors

Judges: Dr. Antonio Helder do Carmo; Dr. Fernando Ferreira (International).

Prosecutor: Dr. Hipolito Exposto, 6 additional support staff.

Public Defender: Dr. Jose Bastio de Almeida, 1 additional support staff member.

Administrative Staff: Dr. Vasco (national head of administration); Sra. Deolinda Baptista (international head of staff administration).

Interpreters: None, with a recruitment process taking place at present.

Infrastructure

Court Building including: the main room with two public docks and hearing space for three judges, legal representatives, witnesses, and criminal and civil administration.

Judge's Residence, which has been completed.

Prosecutor's Building, which has been completed.

Public Defender's Building, which has been completed.

Facilities

Court transportation: 2 motorbikes; 1 car not currently working.

Judges' transportation: 1 car

Prosecutor's transportation: 1 car

Public Defender's transportation: 1 car.

Court generators: 1 new.

Telephones: functioning.

Internet: currently being installed.

Table 2: Criminal Cases in the Oecusse District Court, 2009.

Month	January - November 2009
Pending from previous month	Information requested but not available.
Hearings	48 separate cases
Decisions	Information requested but not available.
Cases remaining pending	18 cases

A number of basic observations can be made from the above statistics, and other information that JSMP court monitors obtained when they visited the Oecusse District Court.

The first is that the record-keeping of the Oecusse District Court leaves much to be desired. Information on the breakdown of types of criminal cases heard throughout the year was requested, but was not made available to JSMP. Similarly, no information was made available to JSMP concerning civil matters. Furthermore, the fact that the above information is incomplete and not broken down month by month signifies either that statistics are not being maintained, or that the Court was unwilling to share more complete information with JSMP. In either case, JSMP's lack of access to complete statistics remains a cause for concern.

When discussing the progress of cases with staff administration, it was noted that compared with the other District Courts far fewer cases have come before the Oecusse Court, and that Oecusse also has a significantly lower number of pending cases. According to the Public Prosecutor, this is because far fewer cases are being referred to them by police than might otherwise be expected. In spite of this relatively lower caseload, it was commented by all parties that were interviewed that increasing the staff number and capacity of the Court, particularly in the area of functionaries and administration, would greatly assist their work.

Court staff observed that trial processes generally worked well when all parties were present. In particular, the arrival of an international judge was noted to be of considerable assistance in the learning process of all staff.

However, staff noted that compelling defendants to appear in court remained an ongoing challenge, with many unable to be found at the time of their scheduled trial appearances. A number of difficulties were also cited in relation to the Penal Code, with staff commenting that much greater training was needed for court actors to properly understand its implications. At the time of writing, the failure of the Court's administration to hire permanent translators had also proved an obstacle to the timely resolution of many cases.

(v) District Court of Suai

The following information was collected by JSMP court monitors at the Suai District Court and to the best of our knowledge was correct as at 4 December 2009.

Court Actors

Judges: Dr. Jose Maria (currently undertaking training in Portugal); Dr. Joao Raposo (International).

Prosecutors: 2 Prosecutors.

Public Defender: Marcal Mascarenhas

Administrative Staff: 5 staff, 1 international.

Interpreters: 1 interpreter.

Infrastructure

Court Building including: the main room with two public docks and hearing space for three judges, legal representatives, witnesses, and criminal and civil administration.

Judge's Residence, complete and operational.

Public Prosecutors' Building, complete and operational.

Public Defenders' Building currently under construction, with Public Defenders currently working in the edifice of the main court building.

Facilities

Court transportation: 1 car, 3 motorbikes.

Judges' transportation: 1 car.

Public Prosecutors' transportation: 2 cars.

Public Defenders' transportation: 2 cars.

Court generators: One functional.

Telephones: Fully functional.

Internet: Functional.

JSMP attempted to access statistics for the year 2009 in both the first week of December and the first week of January, but at the time of writing, no statistics had yet been made publicly available.

The following basic observations can be made for JSMP's monitoring work conducted at the Suai District Court in December 2009.

According to court staff, the Suai Court has made considerable progress with its workload during 2009. However, many pending cases remain, with the broad jurisdiction of the Court (taking cases arising from 4 districts) an ongoing obstacle to the speedy resolution of cases. However, court officials noted that one of the strengths of the Court in this respect is that they receive good co-operation from both the PNTL and UNPOL, which assist in sending letters of notification to court parties and by bringing individuals to appear before the Court.

The arrival of an international judge in July 2009 was noted to be of considerable assistance to the learning process of all staff. However according to information relayed to JSMP by court officials, prior to the arrival of Justice Raposo Justice Jose Maria was open to conducting hearings outside of the Court itself (such as in rooms available in the

Maliana District) to overcome transport difficulties for participants. Justice Raposo has so far declined to continue this work, hearing cases only in the courtroom itself.

While JSMP respects the importance of having cases heard in the court for formal and procedural reasons, JSMP also cautiously welcomes the possibility that in the future judges may once again travel outside the court building to hear cases. If properly monitored, this process may assist in improving access to justice more far-flung districts, and play a part in reducing a number of pending cases.

SECTION 3 - GENDER ISSUES

(i) Background

The Women's Justice Unit ('WJU') of JSMP was established in April 2004 after research conducted by JSMP indicated that women in Timor-Leste had little or no access to the formal justice system, and that when they gained access to this system their cases often did not lead to full trials or decisions. This was due to the fact that women have very limited knowledge of the legal procedures that can be used to resolve their cases.

The WJU currently has three permanent national staff and one national volunteer staff member. The primary role of the WJU is to monitor all of the courts in Timor-Leste and to produce thematic reports about issues affecting women in the formal justice system. The WJU also provides commentary on legislation affecting women and issues press releases and justice updates.

This year the WJU carried out training in three sub-districts: Baucau; Maliana; and Vera Cruz in Dili. The aim of this training was to raise the awareness of community members, and women in particular, regarding the law that provides guarantees for women's rights in Timor-Leste, and the legal procedures that apply to criminal cases affecting them. The WJU chose 15 participants from each sub-district. These 15 participants were chosen from local leaders who were willing to represent their communities at the training. The participants were encouraged to pass on information and knowledge obtained from the trainings to other women in their local communities, and to provide guidance on how to have a case resolved through the formal justice system. The WJU anticipates that through the trainings, women who suffer gender based violence will have greater knowledge and support to access to the formal justice system in Timor-Leste.

The training sessions were carried out in four parts:

- **Part One** provided information about human rights, gender, and the causes and consequences of domestic violence;

- **Part Two** provided information about national and international laws that provide guarantees for gender equality;
- **Part Three** provided information about how to gain access to the formal justice system.
- **Part Four** involved an assessment of how much knowledge the participants had obtained from the materials given to them.

This year the WJU also provided training to National Police Force ('PNTL') members (including staff from Vulnerable Persons Units, the Investigations Unit and other units) in four districts: Ermera; Aileu; Liquica; and Manatuto. Materials were provided on gender issues in Timor-Leste's Criminal Procedure Code and Penal Code with the aim of enabling PNTL officers to gain a good understanding of the Codes and apply them in their daily work in accordance with the applicable law.

(ii) Comments on how the formal justice system handled cases of gender based violence during 2009

A significant development amongst the various efforts carried out during this period was the large number of cases involving gender based violence that were heard and received a final decision from the court in comparison with previous years. However, some cases have experienced lengthy delays which can be attributed to the very small number of judicial actors available, in particular the number of judges, lawyers and lawyers available in each district court.

Based on monitoring conducted by the WJU, before formally opening a session a judge typically asks the participants if the case needs to proceed to trial or if it could be settled between the parties. An immediate settlement can occur if the victim agrees to have the case closed. Although this kind of settlement can only apply in cases of 'light maltreatment', JSMP considers it unacceptable that cases of physical crime against women can be closed merely at the request of the victim. Based on monitoring conducted by JSMP in all of the district courts in Timor-Leste, only a small percentage of cases involving domestic violence and sexual violence are resolved through a full legal process. This occurs primarily because victims have a limited understanding of legal

procedures. Many victims also choose to remain silent during the trial process or ask the judge to discontinue their case because they are economically dependant on the perpetrator, or have had the matter settled by the local authorities or customary elders.

In JSMP's view, one of the principal obstacles to justice for victims is the Courts' application of article 125 of the Criminal Procedure Code which contains a provision that is generally referred to as the right to remain silent. According to article 125, a witness to a crime who is related to or lives with the defendant is a competent, but not a compellable witness. JSMP has noted that in a number of cases, judges and prosecutors have applied Article 125 without providing a detailed explanation of the consequences to victims: namely, that if the victim does not provide testimony then the defendant will most likely be released due to a lack of incriminating evidence. This is because family members, including victims, are often the only relevant witnesses to public crimes that occur in the domestic sphere, such as domestic violence.

For this reason, cases like this are generally dismissed early in the proceedings, and no further recourse is available to victims through the formal justice system. The confusion surrounding what can or should be stated in the courtroom increases the reluctance of victims to explain the maltreatment they have experienced. This is understandable, as personal safety is a major concern for many victims. JSMP believes that failure of judges and prosecutors to apply the law properly can lead to confusion and can undermine and destroy the confidence of victims towards the courts.

In the interests of the application of the law based on the principles of human rights and justice, in November 2009 JSMP and FOKUPERS drafted a report proposing that legislators should amend article 125.⁵ Both JSMP and FOKUPERS consider article 125 as extremely disadvantageous to victims of violence who are related to the perpetrator.

JSMP and FOKUPERS proposed the following amendments to article 125:

⁵ Judicial System Monitoring Programme and FOKUPERS, 'Article 125 of the Criminal Procedure Code: Creating a dilemma for victims of domestic violence' (2009).

Article 125

Lawful refusal to give a deposition

1. The persons below may refuse to give a deposition as witnesses:
 - (a) progenitors, siblings, descendants, relatives up to the second degree, adopters, adoptees, and the spouse of the defendant;
 - (b) a person who has been married to the defendant or who cohabits, or has cohabited, with the latter in a relationship similar to that of spouses, in relation to facts that have occurred during marriage or cohabitation
2. The authority competent to take the deposition shall, under penalty of nullity, advise the persons referred to in subarticle 125.1 that they are allowed to refuse to give a deposition. *The competent authority must also clearly advise such persons of the likely legal consequences for their case should they refuse to give a deposition.*
3. *The exemption referred to in subarticle 125.1 shall not apply in cases in which the crime alleged relates to:*
 - (a) *an allegation of violence against the witness themselves; or*
 - (b) *an allegation of family violence against a person under 18 years of age.*

Pursuant to the report and suggestions made by JSMP and FOKUPERS, it is hoped that the legislators will carefully consider this proposal and amend the law in the interests of justice.

Despite social and procedural obstacles, the increase in gender based crimes being dealt with at the district courts in Timor-Leste shows that there are now more Timorese women who are seeking justice through formal legal channels. There are a range of complex issues associated with domestic violence and sexual violence, and to effectively combat this problem it is necessary to consider the experiences of women during formal judicial processes. Women should be encouraged to say that they no longer accept domestic violence and sexual violence. JSMP encourages Timorese court actors to more carefully consider the approach they use towards victims who have experienced domestic violence and sexual violence.

(iii) Statistics

Table 3: Cases of gender based violence observed by WJU in 2009

Court	Cases of Sexual Violence	Cases of Domestic Violence (maltreatment)	Trial ongoing	Final Decision has been issued	Total
Dili District Court	4	22	12	14	
Baucau District Court	6	10	13	3	
Suai District Court	5	-	3	2	
Oecusse District Court	1	4	-	4	
Total	16	36			52

These statistics do not reflect all of the cases that have come before the courts of Timor-Leste, but rather those cases that the WJU observed between January and December 2009. The WJU is not able to provide detailed statistics from each of the courts in Timor-Leste because the WJU was not granted access to statistics from these courts. However, the statistics prepared by the WJU show that there has been a rise in the number of final decisions in cases of gender based violence (sexual violence and domestic violence) in 2009.

(iv) The applicable law in Timor-Leste in cases of gender based violence

Applicable law

The Penal Code of Timor-Leste was enacted pursuant to decree law no.19/2009 and came into force in April 2009. While the Penal Code is now the primary instrument that regulates cases of gender based violence in Timor-Leste, the WJU also monitors aspects of the Criminal Procedure Code, the general and customary principles established in international law, and certain treaties that have been directly adopted into the law of Timor-Leste pursuant to the Constitution.⁶

⁶ Constitution of Timor-Leste, Article 9.

General observations about the draft Law on Domestic Violence

The draft Law on Domestic Violence has been approved by the Council of Ministers and is now before parliament for debate. From the outset, the development of a draft law on domestic violence has been a challenging process, as there is much debate on how the issue should be regulated. Many NGOs have advocated to have the law enacted as quickly as possible, and JSMP has contributed to many of these processes.

Domestic Violence

Charges that are laid in relation to domestic violence in Timor-Leste are normally classified as ‘maltreatment’ under article 145 of the Penal Code, which can be light or serious depending on the consequences suffered by the victim. The ‘domestic’ aspect of this crime is only considered as an aggravating factor in sentencing. However, the new Timor-Leste Penal Code does also include a separate crime with reference to domestic violence, as set out in article 154:

Article 154 - Mistreatment of a spouse

This article can be applied to domestic violence for the mistreatment of a spouse, and carries penalties between 2 to 6 years imprisonment.

Under this article, there is scope for judges to try cases of domestic violence, whether physical or psychological, under the new Penal Code. This is a positive development in the criminal law of Timor-Leste, and has the potential to provide protection for women in the domestic sphere. Domestic violence now constitutes a public crime, which means that if domestic violence occurs, any person can report the crime to the authorities and it is not necessary to wait for the victim to make a complaint. JSMP hopes that this change in the law will increase the number cases involving gender based violence which are dealt with through the formal justice system.

Sexual Violence

The Penal Code contains a number of provisions on sexual violence:

Article 171: SEXUAL COERCION

Any person who, by means of violence, serious threat, or after having made, for the purpose of compelling another person to endure or to practice with the same or a third person any act of sexual relief, such a person unconscious or placed the same in a condition where resistance is impossible, is punishable with 2 to 8 years imprisonment.

Article 172: RAPE

Any person who, by the means referred to in the previous article, practices vaginal, anal, or oral coitus with another person or forces the same to endure introduction of objects into the anus or vagina is punishable with 5 to 15 years imprisonment.

Aggravating factors are applied if the sexual offenses referred to in articles 171 and 172 are committed against a family member, through the misuse of authority, against an incapable person who is suffering from a physical or mental deficiency, or against a minor. JSMP welcomes the wider definition of rape in article 172, which includes marital rape and also states that having a familiar relationship will be seen as an aggravating factor pursuant to the applicable law.

Article 174: SEXUAL EXPLOITATION

Any person who, with intent to derive profit or any person who makes a livelihood from, promotes, facilitates, or by any other means, contributes toward engaging another person in prostitution or other sexual acts, is punishable with 3 to 10 years imprisonment.

Aggravating factors are applied to article 174 if the following circumstances arise:

- Exploitation of the situation of abandonment or economic necessity of the victim;
- Use of violence or serious threat;
- Displacing the victim to a country different from where the victim was born or was resident; or
- Withholding any identification document belonging to the victim.

Article 175: CHILD PROSTITUTION

Any person who practices sexual exploitation towards a minor, even with the consent of the victim, is punishable with 4 to 12 years imprisonment.

Article 176: CHILD PORNOGRAPHY

Prohibition of child pornography. Also includes a prohibition on the distribution, exhibition and duplication of child pornography.

Article 177: SEXUAL ABUSE

Any person who practices vaginal, anal or oral coitus with a minor aged less than 14 years is punishable with 5 to 20 years imprisonment.

Article 178: SEXUAL ACTS WITH AN ADOLESCENT

Any person who practices any relevant sexual act with a minor aged between 14 and 16 years, taking advantage of the inexperience of the same, is punishable with up to 5 years imprisonment.

Article 179: SEXUAL ABUSE OF A PERSON INCAPABLE OF RESISTANCE

Any person who practices any relevant sexual act with an unconscious or incapable person particularly vulnerable by virtue of illness, physical or mental deficiency, taking advantage of said situation of incapacity, is punishable with 4 to 12 years imprisonment.

Article 180: SEXUAL FRAUD

Any person who fraudulently takes advantage of mistaken identity, and practices vaginal, anal or oral coitus with another person, is punishable with up to 3 years imprisonment.

SECTION 4 – VICTIMS SUPPORT SERVICE

(i) Introduction

Since its establishment in April 2005 the Victim Support Service (VSS) has been part of the overall administration of JSMP. Between January and December 2009 the VSS provided legal assistance to victims of gender based violence in a total of 176 cases. These cases have included domestic violence, sexual violence, sexual abuse and attempted rape. However, it should be borne in mind that these statistics do not provide an accurate reflection of the total number of crimes committed, rather they provide some indication of how many cases were dealt with through the formal justice system.

The provision of legal assistance to victims is one of the main programs of VSS and is aimed at supporting victims so that they can understand legal proceedings. The VSS was established with the aim of assisting clients to understand their rights in accordance with the applicable law in the formal justice system and also of increasing the number of prosecutions of cases involving gender based violence. In order to achieve these aims, VSS engages in a range of activities including the distribution of information through posters, brochures, pamphlets and radio and television programs; participating in regular discussions, trainings, workshops; and working with other stakeholders on advocacy activities. Other types of assistance are available to victims from the State, but the current mechanisms are not sufficient to provide material assistance, and therefore the VSS also provides material assistance in the form of food, transport and accommodation.

VSS works in close collaboration with the Police Vulnerable Persons Units (VPU) that are located in each of the four court jurisdictions and provides coverage to Dili, Liquica, Ermera, Aileu, Suai, Ainaro, Same, Maliana, Baucau, Manatuto, Lospalos, Viqueque and Oecusse. VSS has also forged a good working relationship with the Police Investigations Unit in each district to introduce criminal investigation methods that uphold victims' rights in accordance with the Penal Code and the Criminal Procedure Code.

VSS carries out an important educational role and has provided training in districts such as Maliana, Liquica, Same, Oecusse, Dili, Manatuto, Ermera and Lospalos. This training

is an important step in raising public awareness about the formal justice system in Timor-Leste from the perspective of the victim. VSS also collaborates with other stakeholders such as Pradet, Fokupers, Rede Feto, AMKV (Association of Men Against Violence), Forum Tau Matan, the Timor-Leste Bar Association, religious institutions, the Oecusse Women's Forum, Casa Vida, ECM Baucau, FFSO, and international agencies such as UNICEF, UNFPA, UNIFEM, IOM, Caritas Australia and government agencies such as SEPI (Secretary of State for the Promotion of Equality), DNSS (National Division of Social Services), and the Department of Immigration and the Ministry of Foreign Affairs.

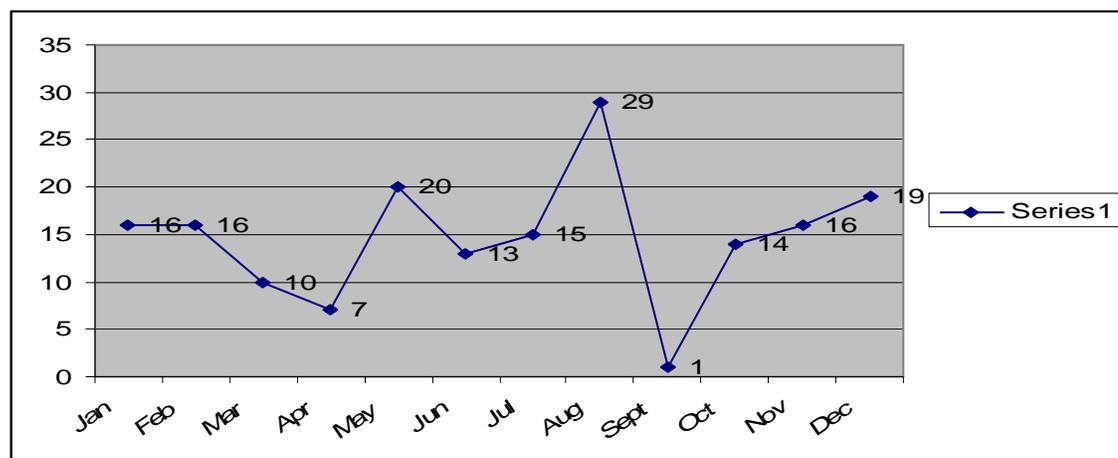
Activities to raise public awareness need to continue in the area of gender based violence. For this reason, VSS along with numerous other organisations has organised training about the law from the perspective of the victim, has produced informative materials such as posters, brochures, stickers, radio and television programs and has organised trainings and workshops.

It is critical to ensure that progress is made in relation to the prevalence of violence against women and children. The Police VPU conducts investigations and works closely with civil society and victims of gender based violence to gather evidence. The Office of the Prosecutor General is the highest authority in the prosecution of criminal cases and is a key stakeholder in the work carried out by the VSS. Effective cooperation between these institutions and the VSS, as well as other civil society stakeholders, influences the institutional culture surrounding the prosecution of cases involving domestic violence, and upholds the rights and needs of the victims.

(ii) Number of VSS clients

The graph below shows the number and type of cases attended to by the VSS between January and December 2009.

Table 4: Number of VSS Clients by Month (January 2009 - December 2009)



(iii) Organisations providing referrals to the VSS during 2009

Referrals are a critical part of providing assistance and ensuring that cases involving violence against women and children are taken to court. Therefore, the table below provides details about referrals given to victims so they can access the services provided by the VSS.

Table 5: Referrals to VSS

	Losp	Baucau	Viqq	Mntt	Dili	Liqsa	Aile u	Erm era	Suai	Aina ro	Same	Oec usse	Grand total
Fokupers					5								5
Other							2		3				5
Police	15	12	9	6	34	5	3	14	20	8	6	12	144
Pradet					10								10
Rede Feto													
Walk in	1				5	1						5	12
Prosecutor													
Grand Total	16	12	9	6	54	6	5	14	23	8	6	17	176

Table 6: VSS clients - level of education

Client Education	Total	Percentage
Did not go to school	24	15%
Don't know	85	52%

Elementary school	23	14%
Junior high school	25	15%
Senior high school	7	4%
University	-	-
Grand Total	176	100%

Table 7: VSS clients – Age distribution

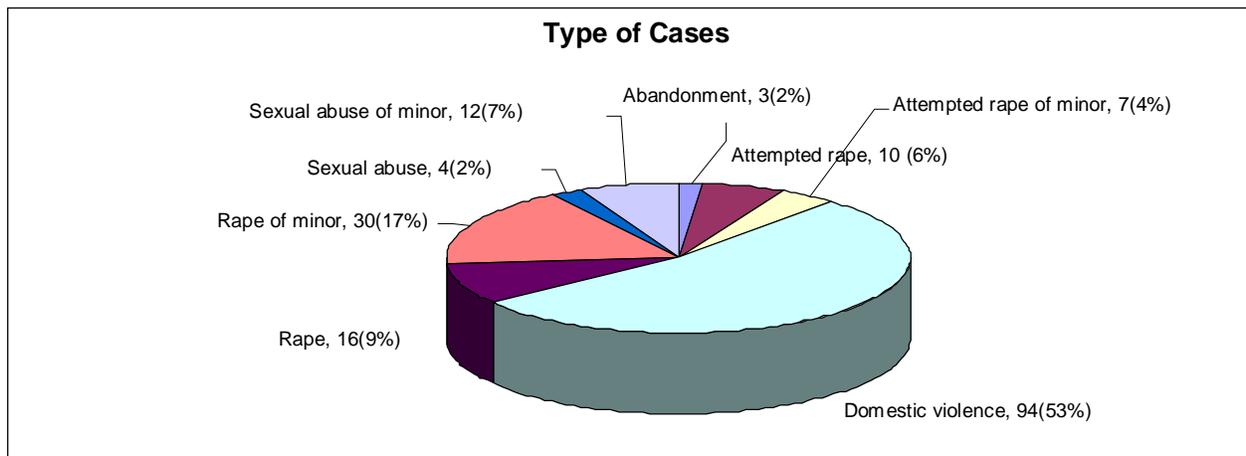
Client Age Group	Total	Percentage
<5	4	2%
>35	16	9%
05-12	19	11%
13-17	35	20%
18-25	45	26%
26-35	44	25%
Don't know	13	7%
Grand Total	176	100%

Table 8: VSS clients – Marital Status

Client Marital Status	Total	Percentage
Married	96	55%
Single	80	45%
Grand Total	176	100%

(iv) Breakdown of cases for which clients sought the services of VSS

Table 9: Breakdown of cases for which clients sought the services of VSS



Abandonment Attempted rape Attempted rape of minor Domestic violence Rape Rape of minor Sexual abuse Sexual abuse of minor

(v) Progress of cases that were assisted by the VSS

Table 10: Case progress through the formal justice system

Status	Total	Percentage
Withdrawn / Resolved via Mediation	8	5%
Registered with Prosecutor Referred to Public Defender	41	23%
Registered with Police	118	67%
Processed in Court	7	4%
Finished by Court Decision	2	1%
Grand Total	176	100%

During 2009 the VSS made initial contact and provided legal assistance to clients in a total of 176 cases. In two of these cases the court completed the trial process and issued a final decision. However there were an extremely limited number of court actors available because they were studying in Portugal, and this has impeded the judicial process and therefore the majority of cases are still pending before the Public Prosecution Service. 110 cases are still being investigated by the police. 41 cases are still being processed by the Prosecution Unit and seven cases are still being processed by the courts. Eight cases have been closed due to a lack of evidence or have been resolved through mediation, especially in cases of domestic violence where the victim has not suffered a serious injury. Eight cases have been resolved through traditional justice mechanisms or between the families.

The issue of violence against women continues to be complex issue for members of the community and leaders. Many leaders believe that in order to avoid violence, women should not go to discos or bars. These types of commonly held attitudes in the community can impact on women's ability to enjoy their freedom as human beings, and must be addressed through ongoing training to shift stereotypical attitudes. In addition to these efforts, civil society is providing advocacy to bring attention to the parliamentary debate on the Domestic Violence Law this year.

Although this report shows that few cases involving gender based violence are prosecuted before the courts, the number of cases dealt with is not an accurate reflection

of what is occurring in the community. Therefore, it is hoped that raising public awareness will have a positive impact on the formal justice system, to encourage victims to have confidence in the processes available. There are positive indications - however, progress continues to be impeded by limited resources in key institutions.

SECTION 5 – ISSUES IN THE JUSTICE SECTOR

(i) The capture and illegal release of Martenus Bere

Table 11: Chronology in the case of Martenus Bere

1999	Martenus Bere was the leader of the LAKSAUR (Laksanakan Sapu Rata) militia group which operated in the area of Suai-Covalima throughout 1999. Although Bere was involved in a number of events involving the commission of serious crimes, Bere is most infamously connected with the Suai church massacre, which took place on 6 September 1999.
February 2003	<p>In February 2003, the UN Serious Crimes Unit (established 2001) indicted Martenus Bere, Egidio Manek and others for their role in the commission of serious crimes during 1999. According to the UN Serious Crimes Unit, estimates of the number of people killed in the Suai Church massacre range between 30 and 200 people and include three priests. Many others were also seriously injured as a result of the attacks. (Case 09-2003, paragraph 228-237.)</p> <p>The UN Serious Crimes Unit’s Indictment No. 09/2003 charges Bere, and others, with 51 counts of ‘<i>crimes against humanity: murder, extermination, forced disappearances, torture, inhumane acts, rape deportation and persecution</i>’.</p> <p>An INTERPOL warrant for Bere’s arrest is issued and a request for his arrest and extradition is sent by the Special Panel for Serious Crimes to Indonesian police.</p>
5 August 2009	Martenus Bere crosses the land border between West Timor and East Timor using a valid Indonesian passport and visa in order to visit family in Suai.
8 August 2009	Suai police capture Bere after he is recognised and attacked by local people. Bere is captured and detained by the Suai Police for 72 hours, before being brought before the Suai District Court
11 August 2009	The Suai District Court orders that Bere be transferred to preventative detention in Becora prison for up to three years, or until his case can be heard.
26-28 August 2009	Discussions are had between heads of state as to how Timor-Leste might secure Bere’s release from prison, following a request from Indonesia’s Minister for Foreign Affairs, Hassan Wirajuda. Wirajuda also informs Timor-Leste’s President that he will not attend Timor-Leste’s independence celebrations unless Bere is released into his

	custody.
30 August 2009	<p>On 30 August, as Timor-Leste celebrated 10 years of independence, Prime Minister Xanana Gusmao gave orders to be carried out through the Minister of Justice, Lucia Lobato, for prison authorities to release Martenus Bere and transfer him to the Indonesian embassy.</p> <p>President Jose Ramos-Horta addresses the nation. Although he does not mention Bere by name, he declares that there ‘will be no international tribunal in Timor-Leste’ and asks the United Nations to confine their investigative processes to those under the mandate of the UN Serious Crimes Unit.</p>
31 August 2009	The United States’ Presidential delegation meets with Timor-Leste’s President and Prime Minister to discuss their grave concerns with regard to the pursuit of justice for serious crimes. In particular, they highlight their concern with the release of Martenus Bere.
1 September 2009	The UN Secretary-General’s Special Representative, Maria Okabe, releases a statement recording the UN’s grave concern regarding the release of Martenus Bere, and stating that that the position of the United Nations is that there can be no amnesty or impunity for serious crimes such as war crimes, genocide or crimes against humanity.
2 September 2009	The UN Special Representative on Human Rights writes to President Ramos-Horta asking him to justify the release of Martenus Bere, and reminding him that the government cannot deviate from their international obligations in the name of friendship with Indonesia.
6 September 2009	On the morning of 6 September, the 10 year anniversary of the Suai church assacre, a number of people wearing black gathered to stage a demonstration outside the Indonesian embassy, and to light candles to remember the victims of the massacre.
7 September 2009	Prime Minister Gusmao visits Suai. He later explains to Parliament that the purpose of his visit was to speak with the families of victims, and explain to them that justice must be a secondary concern in light of the need for development, particularly in the area of water and road improvements.
8 September 2009	<p>Prime Minister Gusmao attends a commemoration ceremony for the victims of the Suai Church Massacre. Although the priests do not mention the issue of justice during the ceremony, some families of victims stage demonstrations.</p> <p>The National Parliament refuses to approve President Ramos-Horta’s planned trip to the United Nations because of his role in the release of Martenus Bere.</p>

<p>9 September 2009</p>	<p>On the 10 year anniversary of the Maliana police station massacre, President Ramos-Horta declares that he will resign unless the National Parliament changes its decision and approves his trip before 5pm that day. Under strong pressure, the Parliament approves the President's request, with 31 MPs voting in favour, 10 MPs voting against, 5 MPs abstaining, 1 MP not voting, and 18 MPs absent.</p> <p>On the same day, the President of the Court of Appeal, Claudio Ximenes, calls a press conference to explain that the Court has been briefed on the case by the Judicial Inspector, and that any person who effects the release of a person from prison without a judicial order has committed a crime punishable by a prison sentence of between 2 and 6 years.</p>
<p>14 September 2009</p>	<p>MPs from the FRETILIN and Kota parties initiate Motion of Censure proceedings in the National Parliament on the basis that the release of Martenus Bere was an illegal act. Media and legal commentators note that if the Motion is successful, the AMP Government must fall.</p>
<p>12 October 2009</p>	<p>The Motion of Censure fails, with 25 MPs voting in favour (from the parties of FRETILIN, Kota/PPT and PUN) and 39 voting against (from the parties of CNRT, PD, ASDT/PSD and Undertim).</p> <p>In the parliamentary debate on the Motion of Censure, the Suai Massacre is mentioned frequently by all parties.</p> <p>AMP Deputies declare that the people of Suai do not desire justice, but that they only want development, including clean water, good roads, and reliable electricity. They also argue that if the Government had not released Martenus Bere, Timorese students studying in Indonesia may have been at risk of attack, and that those wishing to cross the border between East and West Timor may have faced harassment from the Indonesian military. One Deputy from Suai, Alvaro Sesurai, agreed that the priority of the people of Suai was development, and not 'justice for themselves alone'.</p> <p>FRETILIN Deputies argue that the people of Suai demand justice. They also refer to Bishop Dom Basilio do Nascimento's belief that if Martenus Bere was sent to prison, it would not affect Timor-Leste's relationship with Indonesia.</p>
<p>21 October</p>	<p>JSMP initiates a petition in the Court of Appeal to seek a declaration on the legality or illegality of the government's release of Martenus Bere. In its petition, JSMP restricts its legal submission to arguments concerning the failure of state organs to act within their Constitutional powers, and does not make submissions on the issue of the transferral of Martenus Bere from the Suai Court to Becora Prison. JSMP submits that the authority to make its petition derives from article 48 of the Constitution. The petition is also sent to the President of the</p>

	Republic, the Prime Minister, and the National Parliament.
1 November	Martenus Bere is reported in the media to have been granted safe passage to Indonesia, allegedly suffering from high blood pressure and diabetes.
3 November	The Government of Timor-Leste publicly declares that Martenus Bere has been granted passage to Indonesia for reasons of critical ill health. Indonesian governmental authorities also publicly declare that Martenus Bere has recently returned to the country.
12 November	Marking the anniversary of the Santa Cruz massacre, hundreds march from the Motael Church to the Santa Cruz cemetery. Public demands for justice are read out at the commemoration ceremony, demanding accountability for the authors of the violence occurring in 1999, including for the crimes of Martenus Bere. Victims groups in Suai and Liquica each write directly to the Government appealing for them to prosecute Martenus Bere and others accountable for serious crimes during 1999.
17 November	JSMP receives a letter of response from the Court of Appeal declaring that JSMP's petition has been found to be invalid by a panel of judges composing President Claudio Ximenes, Dr José Luís da Goia, and Dr Antonino Gonçalves. As such, the substance of its legal arguments are not addressed.

Martenus Bere and the judicial system

It is JSMP's view that the government's decision to release Martenus Bere has caused grave damage to Timor-Leste's judicial system. This is because the decision is clearly in violation of Timor-Leste's Constitution, Timorese national laws and international conventions ratified by Timor-Leste. Further, by ignoring the system of criminal procedures set out by such laws, Timor-Leste's leaders have raised serious questions about their commitment to the principle of the separation of powers, which is fundamental to the operation of a democratic state.

As an organisation devoted to strengthening the judiciary and the rule of law in Timor-Leste, JSMP argued in its petition to the Court of Appeal that it had standing in accordance with article 48 of the Constitution to present seek recourse for the lamentations of the victims and the general public. Article 48 of the Constitution provides that '(e)very citizen has the right to submit, individually or jointly with others,

petitions, complaints and claims to organs of sovereignty or any authority for the purpose of defending his or her rights, *the Constitution, the law or general interests*' (emphasis added). Similar sections are found in many constitutions around the world, through which constitutional review proceedings may be initiated pursuant to *actio popularis* – the citizen's right to litigate regardless of his/her specific legal interest in the case in question.

Article 69 of the Constitution provides that the State of Timor-Leste is governed by a 'Separation of Powers'. The article explains that although the organs of the State are independent, in order to function effectively they must not operate outside the scope of their powers, as set out by the Constitution. In the case of Martenus Bere, it is clear that according to the Constitution, the power to release individuals from prison can only be undertaken by a judicial authority. As such, the decision undertaken by the Prime Minister and President to secure Bere's release should not only be regarded as an abuse of power, but also as a violation of the Constitution and of the powers of the other organs of State.

Regrettably, the response of the Court of Appeal to JSMP's petition, sent to JSMP on 17 November 2009, was that JSMP's petition was not made in compliance with due legal process. According to the Court of Appeal, article 48 was not an appropriate mechanism to initiate a judicial process. Furthermore, the Court held that the only legal question that could have been resolved through a judicial process was whether or not the Dili District Court would have had jurisdiction to hear Bere's case, considering that he originally fell under the jurisdiction of the District Court of Suai. According to the Court, if JSMP wished to initiate that process, such a petition should have been filed in the Dili District Court, rather than in the Court of Appeal.

However, JSMP is of the view that the legal arguments submitted to the Court were of a Constitutional, rather than a jurisdictional nature and that the Court of Appeal does have unique original jurisdiction to review the question of whether other organs of the State have acted outside the powers afforded to them by the Constitution. In JSMP's view, it is therefore disappointing that the Court of Appeal refused to consider the legal submissions presented to it, and to read down the potential scope of article 48 of the Constitution.

Martenus Bere, justice and reconciliation

The decision to release Martenus Bere was greeted with grief and disbelief on the part of many people, especially by victims of serious crimes and their families. In JSMP's view, and that of many others, the decision can only be taken as a sign that Timor-Leste's leaders refuse to listen to the demands of the people regarding the need for justice in this nation.

It is greatly concerning to JSMP that throughout the public dialogue surrounding the Martenus Bere case, politicians and parliamentarians alike have declared that ordinary people in Timor-Leste no longer demand justice, but instead are only interested in the development of the nation.

These misrepresentations are deeply problematic for two reasons. The first is that the allegation that ordinary people do not care about justice for past crimes is demonstrably false. Consider, for example, the lamentations of those presiding over the 10 year commemoration ceremony of the 1999 Liquica Massacre, who declared 'We have been broken and destroyed until this very day ... the point at which we mark 10 years since the massacre. There is not one person with us today that did not lose their husband or wife, their son or daughter, mother or father, sister or brother, or indeed their whole family in the massacre ... we can pray for their souls, but in order for them rest in peace, first there must be justice'. Furthermore, when JSMP visited victims groups in Suai to offer them legal advice and assistance in relation to the Martenus Bere case on 16 October 2009, their reactions to the information that was conveyed to them about the Martenus Bere case left them visibly furious and despondent, with every person present asking how their government could have made such a decision.⁷

The second reason that the representations of the government are problematic is that in reality, there is no dichotomy between pursuing development and justice for past crimes. While JSMP has long acknowledged that maintaining a healthy relationship with Indonesia is essential for the process of development and stabilisation to take place in Timor-Leste, such a partnership must be made on equal terms, and with human rights as

⁷ See also, Amnesty International, *We Cry for Justice: Impunity Persists 10 Years on in Timor-Leste* (2009), to which JSMP contributed information.

its core basis. Without securing a stable foundation upon which all people can seek justice, the State can expect that instability will inevitably result from people's frustrations. JSMP considers the release of Martenus Bere from prison an insult to the spirits of those that died in the Suai Church Massacre in 1999, and on behalf of all Timorese citizens, JSMP therefore demands that the Government respect both the Constitution and the national laws of Timor-Leste, and in doing so, strengthens the State in accordance with democratic rights and principles.

(ii) Processes to implement the CAVR and CVA

The Commission for Reception, Truth and Reconciliation in East Timor ('CAVR') was established pursuant to article 162 of the Constitution and UNTAET regulation number 2001/10. The mandate of the CAVR was to research and make recommendations about violations of human rights that happened in Timor-Leste between 25 April 1974 and 25 October 1999; to make recommendations about the prevention of human rights violations in the future; and to make recommendations about reparations for those who had experienced rights violations.

The CAVR report was completed on 31 October 2005, and along with its recommendations was presented to the President of the Republic. On 28 November 2005 the President presented the National Parliament with a copy of the report, as well as transmitting a copy to the UN Secretary General.

The Timor-Leste and Indonesia Truth and Friendship Commission ('CVA') was established by a bilateral agreement between Indonesia and Timor-Leste. It was an *ad hoc* arrangement between the two nations and does not have a legislative basis in the domestic laws of either country or international law. The mandate of the CVA was to establish the truth about violence in Timor-Leste during 1999 and to promote reconciliation and friendship between the two states. The CVA report was completed on 13 March 2008, and was delivered to the Presidents of both countries at a joint meeting in Denpasar. The report was also presented to the National Parliament on 9 October 2008.

In order to implement the recommendations of the two reports, the National Parliament, through its Commission A, was required to pass a resolution to regulate the process of implementation. As will be discussed below, this finally occurred on 14 December 2009.

Interaction between the two reports

Some of the recommendations of the two reports are the same, such as the recommendation to pursue justice for past crimes. Looking at past experiences of human rights violations, the two reports also recommend institutional reform and the capacity building of institutions which could prevent human rights violations occurring again in the future. Recognising the importance of Timorese people knowing about their own history, the two reports also recommend the dissemination of the two reports to the public, particularly through the teaching of history in all schools.

However, the CAVR report has a focus on personal responsibility, whereas the CVA recommends an analysis capturing institutional responsibility. The CAVR recommends that a program of reparations and rehabilitation be initiated by the state for victims of human rights violations, whereas the CVA recommends public documentation of the conflict be made, that a commission for the disappeared should be established, that scholarships should be set up for children that were the victims of violence, and that the leaders of both Timor-Leste and Indonesia publicly apologise to the victims of human rights abuses.

Efforts of civil society to implement the recommendations of the CAVR and CVA

The National Consensus Dialogue Process for Truth, Justice and Reconciliation ('Consensus Dialogue') was established in early 2009, with the support of the Norwegian Embassy in Dili. Its objective has been to advocate for the implementation of the CAVR and CVA reports. The Consensus Dialogue has over the past year organised a number of meetings involving both civil society and political parties, with the objective of securing commitments from political parties about how to implement the recommendations of the CAVR and CVA.

The first National Consensus Dialogue Meeting was held on 17-19 June 2009 in the office of the Ministry of Foreign Affairs, and the second on 10 September 2009 in Hotel Timor. The objective of these two meetings was to compile the ideas raised by all parties, and to submit a proposal to the National Parliament to establish a follow-up institution to implement the recommendations of the CAVR and CVA.

Accordingly, on 14 October 2009 the Consensus Dialogue's Steering Committee submitted a proposal directly to the President of the National Parliament, Fernando Lasama Aruajo. In a meeting between the President of the National Parliament and the Steering Committee, the President made a declaration that:

In recognition of the fact that these issues have not yet been debated in a plenary session of the National Parliament because of the many other important issues to be resolved in the national interest, and because the issue is often forgotten in the plenary agenda of the National Parliament, I promise to give close attention to this issue and to put it in the agenda to be debated in the State Budget discussions on 15 November 2009 in order to discuss the devotion of funds to this matter, contingent on the opinions of other members of Parliament.

On 11 November 2009, the Consensus Dialogue organised a further meeting to discuss the special topic of reparations for victims. The meeting, which was attended by the President of the National Parliament, civil society representatives, and victims groups involved a presentation from a Chilean scholar on different ways in which nations around the world have tackled the issue of reparations for victims. Each of the participants, including representatives of political parties and the President of the National Parliament, concluded that a mechanism must be agreed upon to make reparations for the victims identified in the two reports, and that sufficient funds must be devoted in the 2010 National Budget to implement such a mechanism.

Having received this commitment from the President of the National Parliament, the Post-CAVR Technical Secretariat, with support from both the European Commission and United Nations Development Program, designed a public information consultation process to run between November 2009 and June 2010 to seek public support and input on how such a follow-up commission could be designed. Since the passing of the

Resolution on 14 December and the referral of these issues to Parliamentary Commission A, the Post-CAVR Technical Secretariat will now organise its public information program to begin in early 2010. It will involve explaining and consulting with stakeholders, and its final report will be presented to Commission A.

In early December 2009, a number of local Timorese NGOs presented hundreds of signed petitions to the Parliament urging it to urgently act on the implementation of the CAVR report. The majority of the petitions were signed by Timorese, from all parts of Timor-Leste. However, citizens from 23 other countries, including Indonesia, also endorsed the petition.

Plenary Debates

In a letter of clarification sent to JSMP in 2008, Commission A confirmed that although the two reports had different subject matter and competencies, in principle the Commission planned to debate them together, since the two each dealt with the issues of promoting truth, and building relations that would improve justice, human rights and the stability of the nation in the future.

Following the transmission of the two reports to the National Parliament in 2005 and 2007, in 2008 the National Parliament planned to raise a resolution in order to implement the resolutions of the CAVR and CVA. Commission A of the Parliament was asked to commence proceedings in this respect, however because each of the major political parties had different ideas and policies regarding how best to implement the recommendations of the two reports, the process reached an impasse.

Progress was not made until the end of 2009. Then, as foreshadowed by the President of the National Parliament, Fernando Lasama Aruajo, in October 2009, the Parliament in its budget deliberations for 2010, voted a contingency sum of US\$250,000 for the establishment of a new institution to implement the recommendations of the CAVR and CVA.

On 14 December 2009, the Parliament debated a Resolution (34/11) on the implementation of the CAVR and CTF reports. The resolution acknowledged the work and reports of the CAVR and CTF. It recognised the need to acknowledge the suffering of victims through the provision of reparations and to implement the recommendations of the reports. The Resolution asked Parliament's Committee A to review the reports, to determine what concrete measures should be taken to implement the recommendations and to draft legislation that provides for implementation and the establishment of a body to oversee the process. Committee A has been given until mid March 2010 to complete these activities and report to the National Parliament.

Commentary

In JSMP's experience, 2009 has been a particularly difficult year for the families of victims of serious crimes, who until mid December were still waiting for the National Parliament to discuss the two reports. In their advocacy for these individuals, many civil society organisations and international non-government organisations have recommended that a central component of the government's plan to ensure justice must be to take action in this area, and to devote sufficient funds to ensure the success of any follow-up institution. Through non-action on this issue, JSMP considers that over time, the victims will be re-traumatised by lack of official acknowledgement at the governmental level. Further, through the preparation of both the CAVR and CVA reports, many Timorese that worked together with the two commissions rightfully began to expect that their efforts would produce real results for the future of their nation. For this reason, the government has a responsibility to pay close attention to the findings of the two reports, and to implement their recommendations in a timely manner.

Although significant obstacles remain to the implementation of the reports, JSMP is pleased that there has been significant progress in relation to the CAVR and CTF reports in the final months of 2009. JSMP believes that the efforts of the Consensus Dialogue during 2009 have been instrumental in achieving this progress and in ensuring that the Resolution was debated in the National Parliament on 14 December.

JSMP strongly supports the creation of a follow-up institution to implement the recommendations of the two reports. Along with other NGOs, JSMP submits that in

order for this institution to gain the confidence of the public, it is necessary that the institution to be fully independent from Parliamentary and Government institutions. Without independence, JSMP believes that the institution's ability to achieve its goals will be limited.

JSMP also urges Commission A, when examining the CAVR and CTF reports and considering what steps must be taken to implement their recommendations, to consult widely with civil society and the public. This will help ensure that the law governing the implementation of the CAVR and CTF recommendations is the most effective that it can be, producing maximum benefits for victims and their families and more generally for the Timorese public.

JSMP also considers that any future processes concerning the two reports should seek to further their dissemination among the Timorese community at large. At the present time, many people have not yet been made aware of the procedures undertaken by the two commissions of enquiry, and have not been made aware of their findings. As well as making people aware of their own history, such dissemination and awareness may also give some level of recognition and comfort to the victims discussed in the two reports.

(iii) The 2008 Shootings Case⁸

Facts

In the early hours of 11 February 2008, President Jose Ramos Horta was shot and seriously injured while returning to his Dili residence. As a result of the shooting the President suffered bullet wounds to his stomach. Major Alfredo Reinaldo and his bodyguard were both killed.

⁸ For more information about individual shootings in the 2008 Shootings Case, please see: JSMP, *Trial begins in the case of the 11 February 2008 attacks: a positive step in the face of challenges to the Timorese Justice Sector* (2009); JSMP, *District Court of Dili continues to hear witnesses in the 11 February case* (2009); JSMP, *Military advisor to the President gives deposition as the case of 11 February 2008 continues* (2009); JSMP, *District Court of Dili hears 52 witnesses so far in the Shootings Case* (2009); JSMP, *Controversy surrounds the substitution of legal team in the case of the 11 February Shootings* (2009); and JSMP, *The case of the 11 February 2008 and the principle of a fair trial* (2009).

On the same day, as he was leaving his residence in Balibar, Prime Minister Xanana Gusmao also came under attack. This attack did not result in either the Prime Minister or his bodyguards being injured.

Defendants

There are 28 defendants in the 2008 Shootings Case. These include one woman, Angelita Pires, who was the partner of Major Reinaldo at the time of his death. While awaiting trial, four of the defendants applied for and were granted bail, subject to home detention. The other defendants remain in custody at Becora prison, pending the outcome of the trial.

The majority of the 28 defendants in this case were part of Major Reinaldo's and Gastao Salsinha's militia group, which was organised after their defection from the F-FDTL and PNTL at the time of the 2006 crisis.

The defendants are all being tried jointly under the following articles of the Criminal Code:

- article 23, regulating the elements of an attempted crime;
- article 146, 'Serious offences against physical integrity'; and
- article 203, 'Attempt against the highest representative of an organ of national sovereignty'.

JSMP's monitoring has shown that all 28 defendants have exercised their right to silence during the trial, refusing to give testimony about their knowledge of the events giving rise to this case.

Case progress

The 2008 Shootings Case first came before the Dili District Court on 16 June 2008 and is still continuing at the time of writing. Up until now, the Court has heard from over 100 witnesses. Very few have given an indication that they have knowledge of what happened on 11 February 2008. Most witnesses have declared that they do not know anything at all about the events in question.

Some witnesses have given evidence that the defendant Angelita Pires encouraged Major Reinaldo to refrain from negotiating with other parties in the period before the events of 11 February 2008. While this information may not have any probative value in relation to the charges before the Court, it may be of more general public interest considering the lack of clear information on political developments following the 2006 crisis.

Since the case commenced, strong security has been provided by both the prison guard authority and international police. Prison guards always give strong security and take prisoners from Becora to the court and back again.

Problems Identified

Throughout the trial, JSMP has identified a number of problematic developments. For example, some of the defendants' lawyers have not been proactive in defending their clients' rights. The resignation of the defence lawyer Dr. Benvides without proper notice being given to the Court placed his clients' rights to an adequate legal defence under article 60(d) of the Criminal Procedure Code and article 34(2) of the Constitution in doubt.

Furthermore, the judges have often not been proactive in directing the course of the proceedings as they are required to do under article 245(1) of the Criminal Procedure Code. For example, it falls to sitting judges to ensure that the purpose and limits on depositions are carried out in accordance with article 119 of the Criminal Procedure Code. Their failure to do so in this case has meant that many of the questions asked by the Prosecutor and Defence Counsel have lacked focus, and much time has been wasted on hearing evidence with little or no probative value.

JSMP has observed problems with the scheduling of hearings for this case, which has led to unnecessary delay. At first the Court scheduled hearings for the case for three days each week. The case could not be heard every day because the judges also had other hearings scheduled that they had to attend. However, JSMP has observed that the hearing schedule for the 2008 shootings case regularly changes. Sometimes hearings are held in the morning only and sometimes in the afternoon only. The hearings are often adjourned because of other items on the judges' agenda. In addition to this, during the

month of August, the courts were closed for three weeks annual holidays. This meant that the trial had to be adjourned and was reconvened on 15 September 2009.

JSMP's monitoring shows that the case has also been progressed particularly slowly because of the large number of witnesses (between 174 – 200 according to Office of the Prosecutor General). Because of the large number of witnesses, the Prosecution requires adequate time in which to lead the evidence necessary to prove its case. There are many witnesses who have not yet given evidence. Some witnesses will be unable to give their evidence because at the time of the relevant events they were working for the United Nations and they have now returned to their own countries or have moved to work in other countries. These witnesses left Timor-Leste before the Court notified them of their obligation to testify.

Evidence of Witnesses

On the basis of JSMP's observations, the majority of witnesses who have given evidence so far say that they do not know anything about what happened to the President or the Prime Minister. Many of them have merely heard a small amount of information from other, second-hand sources. Some said that they believe they have relevant information merely because they lived beside the President and accordingly lived beside where the events happened.

JSMP has observed that throughout the hearing so far, no witness has yet been warned about the consequences of giving false testimony, as set out by article 118 of the Criminal Procedure Code. JSMP has also observed that there has not been adequate intervention from the judges to direct proceedings to limit the evidence given to that which is relevant to the facts of the shooting. As such, much of the witness evidence has focused on unrelated information about the time that Major Reinaldo spent in the forest. It is not clear to JSMP or other observers how this information can be thought to assist in the prosecution or defence of the accused parties in this case.

Future progress of the case

JSMP will continue to monitor the progress of the 2008 Shootings Case and report on its findings in the coming year. JSMP encourages all parties to work together to advance the

trial with due speed and efficiency, and to comply more strictly with the doctrines set out in the Criminal Procedure Code.

(iv) The Railos Case⁹

Legal case of the prosecution

The prosecution in this case accused the defendant of committing crimes contrary to the law on 24 May 2006. As noted above, the contents of the charges made against Railos included illegal possession of arms, homicide, threatening behaviour, kidnapping and assault, offences defined in either the UNTAET Regulations or the Indonesian Penal Code.

The charges laid against Railos by the Prosecutor were for very serious criminal offences. At trial, it appeared that the actions of the defendants corresponded with the elements set out in the criminal offences. However, while the actions of the defendants may have met the criteria contained in the charges, throughout the trial JSMP emphasised the requirement that the crimes be proved and that consideration be given to other facts establishing the motive behind the attack on the F-FDTL Head-quarters in Tasi Tolu. In its observations of this trial, JSMP stressed the fact that the charges had to be legitimately and convincingly proven beyond reasonable doubt.

Decision in the case of Railos

The actions of the defendant, Railos, were initially investigated by the United Nations Independent Special Commission, which recommended that he be charged with a number of crimes in relation to his involvement in the 2006 Crisis. Following this, in accordance with the recommendations of the Special Commission, the Office of the Prosecutor General charged the defendant with crimes under the following provisions of the Indonesian Penal Code and the UNTAET Regulations:

⁹ For more information, particularly about the earlier stages of the Railos Case, please see: JSMP, *The Crisis 2006: A Lesson for the Future* (2009); JSMP, *Justice Update: Railos Hetan Sentensa Tinan 2 Fulan 8 Tanba Simu no Rai Armas Ilegalmente* (December, 2009), JSMP, *Justice Update: Trial of Railos and others: Step forward in case of attack on the F-FDTL HQ* (May, 2009); JSMP, *Press Release: Trial of case relating to attack in Tasi Tolu postponed again* (May, 2009); JSMP, *Press Release: Case of attack on F-FDTL is adjourned once more* (April, 2009); JSMP, *Press Release: Case of attack on F-FDTL is adjourned once more* (February 2009).

- The crime of using illegal arms and rifles, in contravention of article 4 and 4.7 of UNTAET regulation 5/2001;
- Four counts of homicide, in contravention of article 338 of the Indonesian Criminal Code;
- Two counts of threatening behaviour, in contravention of article 336 of the Indonesian Criminal Code; and
- Five counts of kidnapping, in contravention of article 333 of the Indonesian Criminal Code.
- Two counts of assault, in contravention of article 352.1 of the Indonesian Criminal Code.

The Railos proceedings were repeatedly delayed and consequently took three years to reach completion. The process was protracted due to a range of obstacles and impediments, some of which have been discussed above and in JSMP's other publications. However, despite these challenges, on 9 October 2009, the Court was finally able to hand down its judgment. Pursuant to the jurisdiction of the Dili District Court, Railos was sentenced to two years and eight months imprisonment.

In handing down the sentence in the Railos Case, the Court noted that despite the lengthy duration of the proceedings, the Court had not managed to satisfy itself of the facts necessary to prove some of the charges laid by the Prosecutor against the defendant. Accordingly, the Court found the defendant 'not guilty' in relation to the crimes of homicide and kidnapping. However, the Court found that Railos guilty of committing the crimes of illegal possession of fire arms and offences against integrity. However, because the duration of the sentence imposed was less than the period that Railos had already served on remand in preventative detention, the practical effect of the sentence was that Railos was released.

Charges proven:

- causing harm to the body or health of another person – simple offence against physical integrity (article 145 Criminal Code of Timor-Leste)
- possession of prohibited arms (article 211 Criminal Code of Timor-Leste)

Charges not proven:

- Homicide (article 138 Criminal Code of Timor-Leste)
- Kidnapping (articles 224 Criminal Code of Timor-Leste)

- Destruction, theft, hiding or profaning of a corpse (article 224 Criminal Code of Timor-Leste).

In handing down its judgment, the Court substituted provisions in the new Criminal Code of Timor-Leste for the equivalent articles in the Penal Code of Indonesia, which had initially been used to charge the defendant. Under the new provisions, the applicable sentence could range from two to three years. This is in contrast to the provisions of the Penal Code of Indonesian, which provided for sentences ranging from 3 months to 15 years.

The Court substituted the provisions on the basis of the Principle of Legality, which is enshrined in the Constitution and the Criminal Code of Timor-Leste. Article 31(5) of the Constitution of the Democratic Republic of Timor-Leste provides that '(c)riminal law shall not be enforced retroactively, except if the new law is in favour of the accused. Similarly, the Criminal Code of Timor-Leste states in article 1 that '(n)o act or omission may be qualified as a crime unless it was defined as such by law before it was committed'. Following similar principles, article 4 of the Criminal Code of Timor-Leste provides that no person may be punished for an act defined as a crime at the time of its commission if a subsequent law no longer considers it as such. According to this provision, the law subsequent to the commission of the crime shall apply to previous conduct whenever it is more lenient to the perpetrator. The effect of these provisions was that the Court was required to apply the Criminal Code of Timor-Leste which provided for a lesser sentence.

In this case, the Prosecutor also charged Railos with the crime of destruction, theft, hiding or profaning of a corpse under article 224 of the Criminal Code. This charge was not made at the time of the initial charges since there was not an equivalent provision in the Indonesian Criminal Code, which applied at that time. The Court found that it had insufficient evidence upon which to find the defendant guilty of this charge. However, JSMP submits that even if there were sufficient evidence, the Principle of Legality means that this charge should not have been laid against Railos and the Court could not have applied article 224 to the defendant since the activities were not illegal at the time they took place.

Testimonial evidence in the Railos case

There were a number of witnesses who gave evidence in the Railos case. The Court needed the evidence of a range of witnesses in order to consider whether the evidence of each party was consistent with that of the others. It is through the collection of evidence from a range of witnesses that the Court is able to discover the truth of the allegations and the process can achieve justice.

In this case there were 19 witnesses, all of which appeared at the request of the prosecution. However the majority of the witnesses gave evidence which did not support the Prosecution's contentions. They stated that they knew nothing about any facts that would support the allegations of homicide and kidnapping. For example, witness JS, when questioned by the defence lawyer said that Railos had never threatened him when he was captured in 2006. He also declared that at the time of his capture, Railos had saved his life.

JSMP's observations about the progress of the Railos case

As a local NGO with the vision of contributing to the development of the judicial system in Timor-Leste and supporting judicial institutions, JSMP respects the Court's competency to hand down judgment in this case.

However, JSMP notes that there were a number of issues in this case which were problematic. For example, the case continued for an unacceptably long time. These problems must be recognised and learnt from in order to ensure the future success of formal justice system. It is important that such problems do not become normal and that this case does not become a negative precedent for the judicial system of the future.

JSMP asks the Office of the Prosecutor General to pay attention to the problems that occurred throughout the duration of this case, including the prosecution's failure to gather sufficient evidence to prove its case prior to the commencement of the trial. While the prosecution will not always be successful in proving its charges before a court, it is important that the Prosecutor have evidence that has a reasonable prospect of proving the crimes that are being alleged.