

JUDICIAL **SYSTEM** MONITORING PROGRAMME
PROGRAMA DE MONITORIZAÇÃO DO **SISTEMA** JUDICIAL



**OVERVIEW JUSTICE SECTOR
JANUARY 2008**

DILI, TIMOR-LESTE

Contents

Introduction.....	i
Contents.....	iii
1. Legislation Process	3
1.1. Draft Witness Protection Laws	3
1.2. Draft Penal Code.....	5
1.3. Law for the Regulation of the Legal Profession.....	7
2. Developments at the District Courts and Court of Appeal.....	8
2.1. District Courts.....	8
2.1.1. Dili District Court.....	8
2.1.1.a. Facilities and Equipment.....	8
2.1.1.b. Administrative System	9
2.1.1.c. Human Resources	10
2.1.2. Baucau District Court	11
2.1.2.a. Facilities and Equipment	11
2.1.2.b. Administrative System	12
2.1.2.c. Cases Processed and Problems Encountered	13
2.1.2.d. Human Resources	14
2.1.3. Suai District Court	15
2.1.3.a. Facilities and Equipment	15
2.1.3.b. Administrative System	16
2.1.3.c. Human Resources	16
2.1.4. Oe-Cusse District Court	17
2.1.4.a. Facilities and Equipment	17
2.1.4.b. Administrative System	18
2.1.4.c. Human Resources	19
2.2. Court of Appeal	21
2.2.a. Facilities and Equipment	21
2.2.b. Administrative System	21
2.2.c. Cases Processed and Problems Encountered	21
2.2.d. Human Resources	24
3. Gender Issue	25
3.1. Background	25
3.2. Comments on the handling of cases relating to gender based violence in the formal justice system in 2008	25
3.3. Statistics On Cases Of Gender Based Violence Observed By The WJU In 2008.....	27
3.4. Statistics On Cases Of Gender Based Violence Observed By The WJU In 2008.....	28
4. Victim Support Service.....	31
4.1. Introduction.....	31
4.2. VSS cases between January-November 2008.....	33

4.3. Table of Referred Cases Received by the VSS During 2008.....	34
5. Developments relating to the implementation of Recommendations made by the CAVR AND CTF	35
5.1. CAVR Recommendations	36
5.2. CTF Recommendations	37
5.3. Obstacles	38
6. Developments in the Processing of Cases from 2006.....	39
6.1. Basis.....	39
6.2. Types of cases and forms of responsibility	39
6.3. Developments in the Processing of Cases.....	40
6.4. Obstacles	41

Executive Summary

Overview Justice Sector 2008

Introduction

JSMP, an independent, locally-led NGO, was established in 2001 to promote greater compliance with international human rights standards (particularly those relating to a fair trial), primarily through oversight of the courts.

Our information and analysis is disseminated to the public, and to interested international observers, through a regular series of press releases, updates and thematic reports, as well as through seminars, trainings and workshops.

The broad objective of these activities is to contribute to the development of a strong and transparent justice system through targeted advocacy, based on credible research and objective, firsthand observation.

Over more than seven years of operation, JSMP has witnessed the emergence of new institutions and concerted efforts to re-establish the rule of law. Whilst still reliant on outside assistance, Timor-Leste has, during this period, taken its first steps toward becoming a mature democracy.

This process is, of course, far from complete, and has encountered substantial obstacles to date. JSMP has, through its statements and publications, highlighted both examples of best practice and instances of malfeasance, confusion and non-compliance.

Over the course of this year, the legal sector has seen much turmoil. Attempts on the life of the President and Prime Minister precipitated a firm response. With a state of emergency declared, restrictions on movement were introduced and additional powers handed to a unified police and defence command.

As the joint operations command conducted its operations, complaints began to emerge about their lack of accountability. At the time of writing, a number

of cases relating to alleged human rights violation by armed forces personnel are being investigated, though no prosecutions have yet commenced.

This sense of impunity was deepened in May, when the recently returned President issued pardons for over eighty convicted criminals, including former minister Rogerio Lobato, and several former militia leaders. Despite considerable outcry from civil society and the public alike, many have already been freed.

The 'culture of forgiveness' encouraged by the President and others was furthered by the much-anticipated release of the final report of the Commission on Truth and Friendship. With the aim of improving relations between Indonesia and Timor-Leste, the Commission's findings on militia activity will not lead to prosecution.

As this overview goes to print, debate on several key legislative proposals continues. It may be that the next year will be commenced with additions to the Timorese statute book, each of which will shape the course of the country's legal development.

Casmiro dos Santos

Interim Director, JSMP

1. Legislation Process

1.1. Draft Witness Protection Law

During 2008, JSMP was closely engaged with the drafting of a Bill intended to establish an official witness protection scheme. At the request of Committee A of Parliament, the Legal Research Unit produced a discussion paper examining the necessary reforms and critiquing early versions of the Bill. Later, JSMP delivered an additional submission on the final draft, participating also in public consultations.

With cases of gender-based violence increasingly being heard by the courts, and our Victim Support Service receiving more and more referrals each day, there is no doubt as to the need for a government-run system that protects those upon whose evidence such proceedings may rely. JSMP researchers have repeatedly seen instances where trials cannot proceed due to the unwillingness of witnesses who feel under threat.

Measures do exist for protection of those who have borne the brunt of criminal acts. These are, however, focused on women and child victims, and are coordinated largely through civil society. A broader focus is clearly needed to encompass the entirety of sensitive matters likely to reach the courts. Arguably, such a scheme would operate most effectively if fully aligned with the processes of justice sector institutions.

The scheme envisioned by the draft law requires a near revolution in the conduct of the courts in Timor-Leste. In order to maintain the anonymity, and hence the safety, of witnesses, a telecommunications system would be established to allow testimony to be given at a remote location, with voices technologically disguised. Witnesses would not have to confront the accused, but would still be available for cross-examination.

In terms of security outside of proceedings, a program of police support, overseen by the court, is planned. Reflecting the wide array of possible cases, there is an extensive scale of protection responses. This ranges from local

police patrols through relocation, material assistance and long-term financial support. Whilst these are only meant to be extraordinary measures, any such recourse would come with a substantial public cost.

These practical concerns ought largely, however, to be considered secondary to the principle that witnesses should not suffer any unreasonable personal disadvantage by testifying. The interests of justice are best served by a system that encourages people to come forward with information relevant to legal proceedings. Conversely, this must not be interpreted as infringing upon the rights of the accused, already undervalued.

Furthermore, the law ought to focus on those who are most commonly at risk. Whilst this draft statute allows for quite radical security measures such as might arise from high-profile corruption matters, the fact remains that it is still women and children suffering abuse who are most in need of the protections to be offered. With legal awareness still minimal, many such individuals are unlikely to know how to access protection. JSMP has accordingly recommended a mandatory notification by police.

Finally, the prerequisites for obtaining protection set a very high standard for the credibility of the witness. It must be recognised that there is utility to any hearing in testimony given, as much as possible, without fear of repercussions. The witness must not be effectively put on trial in order to merit such security. Bearing in mind this and other stated reservations, JSMP looks forward to further action on this critical issue.

1.2. Draft Penal Code

Since 2003, successive versions of a domestic Penal Code have been circulated, each falling victim to the contentious subject matter. This cycle may soon be ended. A new draft is slated soon to be examined by the National Parliament, and appears now to address most of the criticisms levelled at earlier attempts by civil society advocates.

Such a law would list all offences at criminal law in Timor-Leste. In accordance with UNTAET regulation, the country presently defers to pre-existing Indonesian statutes. The Indonesian penal code has been decried as departing from international human rights on a number of fronts, not least in its poor treatment of gender-based violence.

A new, Timorese law is needed not only to correct these shortcomings, but also to ensure that Timor-Leste's social and political structures are appropriately reflected. It is welcome progress to find that in the most recent draft obtained by JSMP, many provisions in respect of domestic abuse and sexual violence are vastly improved.

Unlike its predecessor, the draft would allow prosecution of rape within marriage, and considers cohabitation to be an aggravating, rather than mitigating, factor in assaults. JSMP also applauds revisions that effectively decriminalise abortion in certain cases, such as where the physical or mental health of the mother would otherwise be at risk.

Abortion remains a vexed issue in Catholic Timor-Leste, and church comments on the draft have focused on the retention of criminal sanctions. Given the range of allowed exemptions from punishment included in the draft, such prosecution seems unlikely. The law is still far from reflecting world standards on this issue, but debate continues.

These advances aside, earlier drafts were tarnished by the persistent inclusion of criminal defamation provisions despite vocal opposition from international observers and NGOs. Creation of such an offence would penalize public comments critical of the state, its policies or representatives. This would inevitably limit press freedoms.

Similar provisions, enacted in other Asian nations such as Cambodia and Singapore, have proved a powerful tool for quashing dissent and engendering a compliant media. In an emerging democracy such as Timor-Leste, with its legacy of injustices and its nascent institutions, criminal defamation would have an especially damaging effect.

JSMP understands that both the Minister of Justice and the UN have now confirmed that criminal defamation will be removed from the draft to be debated in Parliament. It is hoped that sustained pressure will avoid the adoption of such an authoritarian and undemocratic device in what would otherwise be a great advance for law in Timor.

The Code would incorporate many treaty obligations at domestic law. Whilst human rights norms are enshrined in the Constitution, this codification would extend guiding legal principles into the realm of war crimes and crimes against humanity. Replicating international prohibitions, the Code also notes that no amnesty or pardon is available.

Though the draft is still far from representing the optimum in legal modernisation, public input is still being received. JSMP remains hopeful that the law, when finally passed by Parliament, will contain many benefits for the Timorese community.

1.3. Law for the Regulation of the Legal Profession

The so-called 'private lawyers statute' recently passed by Timor-Leste's National Parliament creates a new regulatory framework for the local governance of the legal profession. Under the new law, a process of formal accreditation is established, reliant on a regime of practical training. An enforceable code of conduct is also outlined.

Most interestingly, lawyers are required to collaborate toward the betterment of the legal system, and to protest human rights violations and other miscarriages of justice. JSMP contends that this legislative obligation is a very powerful gesture, and that an independent legal community is imperative in safeguarding democratic institutions. Unfortunately, the law seems also to entrench a number of obstacles to effective legal practice, through its positions on education, courtroom protocol and language policy.

When the law comes into full effect, prospective lawyers will be required to pass a fifteen month training program at the government Judicial Training Centre (JTC). Of the four universities currently teaching a law degree in Timor-Leste, only one has currently been accredited such that its graduates will be eligible for the JTC course. This will increasingly become an issue as cohorts of graduates – some comprising over 200 students – exit tertiary education and seek to put their knowledge to use.

In the mean time, those completing their studies in law are largely disallowed from any path into the justice system. Many graduates are effectively stranded, joining the ranks of the ‘advogadu odamatan bot’, the (usually Indonesian trained) ‘front-gate lawyers’ who crowd on courtroom steps and at police stations hoping to broker legal settlements for a fee. This situation is unlikely to render optimal outcomes to parties.

With many students soon to graduate, the limited number of places available for the JTC program is also of concern. The current intake numbers only sixteen. JSMP believes that if Timor’s already short-staffed courts are to benefit from an influx of new local lawyers, training and legal curricula must be urgently brought into line. International lawyers from other civil law systems, such as Portugal, will find it easier to register. Care will need to be taken to ensure local lawyers are not disadvantaged, and to avoid a long-term dependency on international personnel for judicial oversight.

Lawyers, under the statute, must be fluent in one only of Timor’s official languages. The JTC’s exclusive use of Portuguese, however, suggests an institutional preference. JSMP researchers have learned that applicants for a place in the JTC training courses are being told that although responses to the entrance examination and interview can technically be given in Tetum, answers in Portuguese will receive a higher grade. Whilst this may reflect the reality of teaching at the JTC, it does match demographics.

Courts in Timor-Leste can be confusing places - the use of professional attire such as robes, made compulsory by this law, could make legal process all the more alienating. The onus will, in part, be on lawyers to resist those trappings

that elevate the prestige of the profession at the expense of justice, and of their newly created social mandate. JSMP maintains that much support will be needed from government, donors and civil society to assist lawyers in playing well their crucial role in Timor's development.

2. Developments at the District Courts and Court of Appeal

2.1. District Courts

2.1.1 Dili District Court

a. Facilities and Equipment

Facilities and equipment at the Dili District Court are not currently posing a serious problem in comparison with previous years. Significant physical developments were made to the court in 2008 which are quite visible to anyone engaged in monitoring at the Dili District Court.

Currently the Dili District Court has several rooms allocated for court actors, namely for judges assigned to the Dili District Court. There are seven rooms complete with office stationery. Also the judges' quarters are equipped with air conditioners, refrigerators and water dispensers.

The judges assigned to the Dili District Court are also provided with 3 luxury late model INOVA cars, 4 Land rovers, with 2 Tata Sumos for the two trainee judges working at the Dili District Court. The international judges are provided with a luxury Pajero vehicle. The international judges were specifically provided with this luxury car by UNDP; however it has been suggested that UNDP provided this car to the government of Timor Leste. Fuel is also provided by the government.

These facilities and equipment were provided by the court to facilitate the day-to-day work of judges. Administration staff are currently provided with adequate facilities to enable them to carry out their duties properly. These facilities include 16 computers linked to the internet and accompanied by supporting equipment. Translators are also provided with a special room and each unit is provided with a computer. The administration section has three cars and three motorcycles, and like the judges, fuel is provided by the government. In an interview with a staff member of the Dili District Court some time ago JSMP was informed that the Dili District Court has more than adequate facilities and some staff feel that some items are excessive.

b. Administrative System

Based on monitoring conducted by JSMP the administrative system used at the Dili District Court is complex and overly bureaucratic in comparison with other district courts. This was evident when JSMP wanted to obtain statistics on cases that had been dealt with between January and November. The court refused to provide this information with the excuse that the Internal Regulations state that such information is not available to everybody. In the end all of the district courts said the same thing to JSMP, namely that they could not provide case statistics requested by JSMP because they were not permitted by the Court of Appeal pursuant to the Internal Regulations, because one of the articles stated that information relating to court administration could not be provided to any person who was not a court actor. When JSMP tried to obtain a copy of the Internal Regulations as a point of reference the court refused for reasons that remain unclear.

This practice clearly violates the provisions of Article 77 of our Criminal Procedure Code because this article states that any person that has an interest in any matter relating to the judicial system or in relation to a decision issued by the court in a particular case can obtain information without being

obstructed, although one of the provisions is that the person must obtain prior authorization from the court actor handling that particular case.

For the aforementioned reason JSMP can not provide an overview of the number of cases dealt with by the Dili District Court between January and November. Nevertheless, based on court monitoring conducted by JSMP during the aforementioned period, JSMP was able to ascertain that the Dili District Court tried a total of approximately 223 cases, including both civil and criminal cases.

JSMP believes that this is a very positive development worthy of praise, especially considering the small number of staff working at the Dili District Court who were able to conduct so many trials.

c. Human Resources

Currently the Dili District Court has 7 national judges, 1 international judge and 2 trainee judges. The total number of judges is very small in comparison with the volume of cases occurring in Dili and surrounding areas like Ermera, Aileu and Liquica.

Based on information obtained by JSMP when conducting court monitoring at the Dili District Court, the international judge currently assigned to the court may complete his assignment in early or mid December and another international judge might replace him and continue his work, however it is unclear when the new international judge will start work.

In the performance of their duties the judges used all of the equipment and facilities provided by the government to support their work.

There are currently 5 prosecutors and 7 public defenders assigned to the Dili District Court. JSMP believes that these numbers are very low considering their case load and that Dili is the heart of the nation and without doubt the level of criminality in this area is much higher than in other jurisdictions.

Recalling that current levels of court actors are inadequate the government is still providing training at the Judicial Training Centre in Caicoli, Dili. However, unfortunately only 16 candidates have been accepted into the training and based on information provided to JSMP two of them have already withdrawn from the training, meaning that only 14 participants are currently attending the legal training.

2.1.2. Baucau District Court

a. Facilities and Equipment

Based on monitoring conducted by JSMP at the Baucau District Court it appears that infrastructure for the judges and prosecutors is still being developed and in November 2008 the court house was still being rehabilitated. This indicates that adequate attention has been given to improving the infrastructure in this jurisdiction.

Although the court is still lacking other necessities, in general the court has been provided with enough office facilities to support day-to-day administrative processes.

The renovation of the courthouse is a priority because it is poor condition as it has not been well looked after since Indonesian times. So that the court will be able to provide services to the public its physical condition warrants attention.

The rehabilitation of the courthouse does not impede the administrative activities being conducted in this jurisdiction. Based on JSMP monitoring, trials were held on a daily basis in accordance with dates predetermined in the court schedule.

Judges, public prosecutors and public defenders were provided with transport, clearly demonstrating the measures taken by the government in

cooperation with international NGOs to enable the court actors to perform more effectively and efficiently.

It cannot be denied that the Baucau District Court has recently been more productive, and throughout 2008 it was able to settle a number of outstanding cases. This hard work sets an excellent example that is worthy of praise and demonstrates the fine performance of the court actors. Thus, it is fair to say that the actors at the Baucau District Court are truly determined to settle the criminal and civil cases registered at the aforementioned court.

b. Administrative System

The Baucau District Court follows the same administrative system as other district courts, whereby as the court of first instance it receives case files from the office of public prosecution that are registered at the administrative section of the court and then the president of the court distributes the case files to judges using a system based on sequential numbers to identify each case. The same process is used for appointing a presiding judge for each trial, in accordance with the established rules of procedures, which also apply to the establishment of panels to try cases carrying a penalty in excess of five years imprisonment. When panels are required normally a judge will be summoned from Dili, which is different to the procedure used in the Suai and Oecusse District Courts, because the Baucau District Court has two national judges.

The administrative system is flexible, meaning that the court can provide an opportunity to the defendant to submit an appeal, for example if the defendant feels that the decision issued by the court lacks genuine proof or is too heavy then the defendant or his legal representative can lodge an appeal within 15 days from the date the decision was issued.

The Baucau District Court has one advantage over the other district courts as it provides better access to information about hearings because a schedule that includes the details of each cases must be displayed on the notice board

that is mounted in front of the court house, including the case number, names of defendants victims, witnesses, judges, prosecutors and public defenders/lawyers involved in each case. This is aimed at providing information to any interested party.

This is also the case with the procedure for opening hearings in the court room. The judicial officer is required to inform those in attendance about court room procedures before the judge declares a hearing open or closed to the public. The judicial officer must first read out the case number and then the name of the defendant/suspect and the type of case. The administrative structure of the court is based on lines of coordination between each unit in accordance with their respective functions.

The criminal section is led by a person with a background in criminal law as well as civil law. This structure has been established to ensure that work is carried out professionally within a structured and appropriate administrative system.

c. Cases Processed and Problems Encountered

This section will provide statistics on the total number of cases processed in 2008 by the Baucau District Court, including both criminal and civil cases¹.

Criminal Cases

Year	Cases registered	Cases Pending	Decided
2008	142	79	63

Civil Cases

Year	Cases registered	Cases Pending	Decided
2008	18	8	10

¹ This statistic was obtained from criminal and civil section after JSMP's requested was acceded by the head Baucau District Court

The most fundamental problem encountered by the Baucau District Court was the high number of cases pending and the slow progress of criminal and civil cases, as indicated in the two tables above. This can be attributed to problems associated with the replacement of an international judge, language issues and legislation. Language was a determining factor in how quickly or slowly cases were processed by the court. For example some cases were still pending in 2008 because between 2000-2005 decisions were still being issued in the Indonesian language. Thereafter all decisions were translated into Portuguese at the level of appeal due to a provision in the Constitution, and also because many of the court actors were from Portuguese speaking nations. This is one reason why there is such a backlog of cases.

d. Human Resources at the Baucau District Court

In terms of quantity, human resources are still far below acceptable standards because the Baucau District Court currently only has two judges, two prosecutors and one public defender. In the performance of daily duties the judges are assisted by two judicial officers; one international and one national. An interpreter who understands dialects is available to facilitate the trial process, considering that many participants use a wide range of dialects that are difficult to understand. However there are still many problems with this process because the interpreter often is not fluent in these regional languages and misinterpretations are frequently conveyed to the judges.

2.1.3. Suai District Court

a. Facilities and Equipment

The Suai District Court currently has a very limited amount of facilities and equipment to support its functioning. This often has an influence on the processing of cases in this jurisdiction. Between the end of 2007 and mid-2008 some houses were rehabilitated to accommodate judges assigned to this court. The Suai District Prosecution building and houses to accommodate prosecutors assigned to this region are ready for use but have not been officially inaugurated and the building for public defenders is still being completed.

JSMP is quite concerned with this situation because the competent minister has used every available opportunity to continuously state that in terms of providing the necessary facilities and equipment to facilitate the judicial process everything is fine because the government has allocated sufficient funds to this area.

However the reality faced by judicial actors is quite different from other courts. This was clear when JSMP conducted monitoring at the Suai District Court. To support the work of the court actors the government has allocated 2 motorcycles (Mega Pro, GL Max) and 2 cars for judges (Hilux and Land rover).

However it is a major concern that all rooms in the court appear empty (there are no cupboards to store information/files, no computers for the court actors (the four available computers are no longer in working condition) and the court has a very limited amount of tables and chairs which are in very poor condition in comparison with the Dili District Court which seems to have more than enough of everything.

b. Administrative System

The administrative system used by the Suai District Court seems to be more open than the one used by Dili District Court, even though only one administrative officer is employed. This was quite apparent when JSMP conducted monitoring at the Suai District Court and held some informal interviews with some court actors who were keen to assist JSMP.

In relation to case statistics for 2008 the administrative officer was only able to provide information about the total number of cases and could not provide further detail for the same reason mentioned by other courts that the internal regulations did not allow information to be provided on case statistics unless permission was granted from the Court of Appeal. Nevertheless JSMP was able to ascertain the total number of cases registered in its overview of 2008, as indicated in the table below² :

Total cases for 2008	Criminal	Civil
142	125 cases	17 cases

c. Human Resources

In terms of supporting the judicial process at the Suai District Court, the current number of court actors or human resources is inadequate or the bare minimum required in comparison with the huge jurisdiction that this court is responsible for.

The following staff are currently assigned to this court: one judge (Jose Maria de Araujo), one prosecutor (Reinato Bere Nahak) and one public defender (Sebastião Amado de Almeida) as well as one administrative officer (Marcelino Sarmiento).

² This statistic was obtained by JSMP through administration section in Suai District Court

When the court is required to hear a serious criminal case then two additional judges need to be summoned from Dili to form a panel.

No international judges are currently assigned to the Suai District Court and when an international judge is required to form a panel then one will be summoned from Dili, in the same way national judges are provided. It is important to note that when this court requires the assistance of additional judges to form a panel the Presiding Judge who is assigned permanently to the Suai District Court has to write a letter to the President of the Dili District Court and must seek permission from the Court of Appeal to appoint judges to sit on the panel.

Staff at the Suai District Court do not only conduct hearings at the court house in the district capital, but they also try to conduct hearings in each region as a mobile court. The jurisdiction of the Suai District Court covers regions that are quite remote such as the districts of Same, Bobonaro and Maubisse as well as Cassa (Ainaro). JSMP believes that their hard work should be noted and praised by the government and they should be provided with the necessary assistance to facilitate their work.

2.1.4. Oecusse District Court

a. Facilities and Equipment

The development of facilities and equipment at the Oecussi District Court achieved some progress during 2007-2008 because a significant amount of infrastructure was established to facilitate the provision of services to the public.

This is evident in relation to the construction of houses to accommodate judges, prosecutors and public defenders. The government paid attention to the establishment of such infrastructure by allocating state funds for the renovation of buildings to accommodate the court actors. These activities

were part of a plan to provide the necessary infrastructure for the court operating in this autonomous region.

A JSMP source observed that there are still a number of problems associated with the construction of adequate facilities and equipment in the aforementioned jurisdiction. These problems are not the result of an unequal distribution of funds, but rather the lack of human resources in the management of this process. The lack of human resources has stalled the construction of infrastructure and has contributed to the slow pace of judicial administration.

As mentioned above, it appears that efforts have been made at the Oecusse District Court to renovate buildings left over from Indonesian times to accommodate judges, prosecutors and public defenders to provide them with permanent accommodation and a place to perform their work. The renovation of these buildings is nearing completion, except for the building currently occupied by the judge.

In comparison with previous years the Oecusse District Court now has a reasonable amount of office equipment such as several computers that are complementing by supporting facilities. One Kijang Hilux car is provided for the judge and 2 motorcycles have also been handed over to the court. One generator has been provided to facilitate the performance of daily activities. All of these facilities enable the court to function more effectively.

Without proper supporting facilities the administrative staff and judge face fundamental difficulties in trying to perform effectively and efficiently. Current facilities at the very least will help facilitate the functioning of the court and support the administrative process, including the trial process.

b. Administrative System

The Oecusse District Court like all other district courts across the nation has a well structured administrative system. Judges at this district court conduct preliminary hearings for criminal and civil cases. For criminal cases, the

national police are responsible for the first 72 hours. After 72 hours the prosecution must submit these cases to be registered at the court. Before conducting hearings into either criminal or civil cases the court issues notifications to the parties, including witnesses, accompanied by a schedule of hearings.

As part of judicial administration cases are assigned to individual judges or panels depending on the category of case. Cases carrying a penalty in excess of five years imprisonment are assigned to a panel and cases carrying a penalty less than five years imprisonment are assigned to individual judges. This same procedure is adhered to by judges in the district courts as well as the Court of Appeal. The uniformity of this administrative system is strongly linked to the management of the Court of Appeal, because all district courts are administered by the Court of Appeal which functions as a Supreme Court of Justice (even though such a court has not been established yet).

The aim of this uniform system of administration is merely to facilitate administrative management in all courts. For example, it is important to coordinate the work of the prosecution, the police and other competent bodies in accordance with their respective functions.

c. Human Resources at the Court

The Oecusse District Court during 2007-2008 had one national judge, one public prosecutor (who traveled between Dili-Oecusse) and one public defender. Private lawyers from **FFSO** often provided representation in the absence of a public defender. This shows that human resources are still extremely limited in this jurisdiction, and reflects delays in the governments program to recruit public servants.

Two judicial officers, one interpreter fluent in the local dialect (Baekenu) and one international advisor have been assigned to the Oecusse District Court to assist with administrative functions. These numbers are still inadequate to

enable the court to effectively conduct its activities over such a large jurisdiction.

Based on monitoring conducted by JSMP, the judge at the Oecusse District Court has only presided over cases as a single judge. In order to establish a panel two judges have to be summoned from Dili. This also applies for the public prosecutor who does not yet reside in Oecusse because accommodation is still being completed.

The aforementioned issues are still impeding the work of the court. The implementation of government policy has been delayed which has stalled the recruitment of human resources. With such a limited number of court actors clearly the court needs to bolster its human resources in order to provide a maximum level of legal and administrative services.

The limited number of court staff has caused major concerns about the administration of the court. Therefore the recruitment of court staff is a human resource priority, both in terms of quantity and quality, requiring an accountable selection process to ensure that the candidates selected will truly serve the people and the nation with full sincerity and honesty, with full accountability, morality and dignity in accordance with the functions entrusted to them.

2.2. Court of Appeal

a. Facilities and Equipment

In 2008 the Court of Appeal had adequate facilities and equipment available to support its functioning and performance. Three international judges were assigned to the Court of Appeal, while transport, wages and other facilities were provided by the government and UNDP. Three national judges were provided with facilities by the state. Basically, adequate facilities and

equipment have been provided to support the work of judges assigned to the Court of Appeal.

Staff within the administrative section and registry were lacking of support in one area only, namely the provision of transport.

b. Administrative System

In respect to the positive law, judges at the Court of Appeal examining cases at the appellate level have three main ways to decide both criminal and civil cases, namely to send a case back to the court of first instance and order a new trial, decide the case based on its merits, or re-examine the case in its entirety before the Court of Appeal.

If a case is to be re-examined before the Court of Appeal then a schedule of the trial will be displayed on the notice board and the administrative section of the court will contact (via telephone or written notification) the parties or any person directly involved in the case (witnesses), informing them that the case is to be examined at the level of appeal.

When the court issues a decision in a case that carries the full force of the law the administration section of the Court of Appeal will provide a copy of the decision accompanied by the relevant case file to the district court responsible for executing the decision and to inform the parties.

c. Cases Processed and Problems Encountered

This section will provide statistics about criminal and civil cases processed at the level of appeal between 2001-2008³.

³ This statistic was obtained by JSMP through administration section in Court of Appeal

Criminal Cases

Year	Cases registered	Total	Decided	Pending	Remaining Cases (year)
2001	14	14	4	10	-
2002	6	16	2	14	2001 : 10
2003	10	24	16	8	2002 : 14
2004	16	24	11	13	2003 : 8
2005	13	26	22	4	2004 : 13
2006	30	34	31	3	2005 : 4
2007	67	70	66	4	2006 : 3
2008- Oct. 08	90	94	71	19	2007 : 4
Total	246		223		

Civil Cases

Year	Cases registered	Total	Decided	Pending	Remaining Cases (year)
2001	4	4	1	3	-
2002	9	12	0	12	2001 : 3
2003	24	36	2	34	2002 : 12
2004	9	43	1	42	2003 : 34
2005	12	54	1	53	2004 : 42
2006	5	58	1	57	2005 : 53
2007	2	59	22	37	2006 : 57
2008-per 30 September 08	8	45	21	24	2007 : 37
Total	73		49		

In reference to the two tables above the most fundamental issues causing delays in the processing of both criminal and civil cases from year to year are problems with languages and legislation.

The language issue was a hindrance between 2000-2005 because nearly all of the criminal and civil cases appealed were prepared in Indonesian, including decisions from the district courts. Therefore at the level of appeal all case files had to be translated into Portuguese before they could be processed. The translation process is time consuming, and from year to year the number of cases pending continues to increase, especially civil cases.

In addition, problems with legislation impeded the processing of cases, especially civil cases. For example, previously Timor Leste would process criminal cases in accordance with UNTAET Regulation No. 30/2000, as amended by Reg. 25/2001 on the transitional rules of criminal procedure, and then in 2006 Timor Leste was provided with its own criminal procedure code through the issuance of Decree-Law No. 13/2005. However another factor impeding this process is the fact that Timor Leste is still using the Indonesian Penal Code as its material law and both national and international actors need time to gain familiarity with the Indonesian Penal Code.

Problems with legislation had a major impact on the processing of civil cases (refer to table above) because between 2000-2006 courts in Timor Leste were still using the Indonesian Civil Procedure Code to handle civil cases. In 2007 Timor Leste was provided with its own civil procedure code, although Indonesian law was still being used. The use of Indonesian law has had a major impact on the legal process at the level of appeal because judges at the Court of Appeal do not have a sound understanding of Indonesian language and Indonesian laws. The table above shows that before Timor Leste got its own civil procedure code many cases remained pending before the Court of Appeal, and after the Timor Leste Civil Procedure Code was issued, nearly all of these civil cases were processed. The aforementioned issues have been the main impediments to the processing of cases at the appellate level.

The entry into force of the Timor Leste civil procedure code with retroactive effect has had a major impact on the processing of civil cases because many of these cases were appealed in accordance with the Indonesian civil procedure code, and were deemed to be in conflict with law after the Timor Leste civil procedure code was issued in 2007.

d. Human Resources at the Court

In 2008 (January–November) the Court of Appeal had three international judges and 3 national judges who worked together to process appeals. These appeals comprised both civil and criminal cases, or requests for reviews on legal matters submitted by members of parliament or from other state bodies. The international judges working at the Court of Appeal carried out their duties and functions based on an agreement between UNDP, the government of TL and CPLP countries. Three national judges have been seconded to the Court of Appeal, after being appointed permanently to the district courts, because JSMP believes that there is no legal basis to permanently appoint national judges to the Court of Appeal.

In addition to the aforementioned judges, there are three judicial staff working at the Court of Appeal who administer both civil and criminal cases. Another four staff are employed in the area of general administration, logistics etc. In practice interpreters are brought over from the Dili District Court when a case needs to be re-examined.

3. GENDER ISSUES

3.1. Background

The Women's Justice Unit was established within JSMP in April 2004 after research conducted by JSMP indicated that women in Timor Leste lack access to the formal justice system, and when they do actually seek access their cases do not progress to trial and settlement.⁴ Currently the WJU has four staff; three national staff and one international advisor.

The main work of the WJU is to conduct court monitoring and to write thematic reports about issues confronting women in the formal justice system. In addition to court monitoring the WJU also provides commentary about legislation relating to women, writes press releases and justice updates, provides training to women's groups about women's rights and access to formal justice, strengthens working arrangements with other legal professionals, NGOs and deal with issues that relate to gender based violence. The aim of the WJU is to improve women's access to the formal justice system in Timor Leste.

3.2. Comments on the handling of cases relating to gender based violence in the formal justice system in 2008

A significant development was the large number of cases of gender based violence that were tried and decided in comparison with the judicial processes in place when the WJU was first established in 2004.⁵

Even so, many cases of domestic violence in 2008 resulted in full acquittals. This is because many of the victims chose to remain silent during the trial process.

⁴ Refer to JSMP Report "Women in the Formal Justice Sector: Report on Dili District Court, April 2004.

⁵ Refer to WJU statistics contained in this report.

The Court applies Article 125 of the Timor Leste Criminal Procedure Code which contains a provision generally referred to as the right to remain silent.⁶ According to this article, a witness to a crime who is related, married or lives together with the defendant is authorized by law to refuse to testify.

However, JSMP understands that some judges and prosecutors apply Article 125 to victims and inform victims that they have the right to remain silent.⁷ This confusion about what should be said in the court room has resulted in victims becoming even more reluctant to explain attacks against them, which is understandable in the circumstances.

Even though safety is a concern for many victims, without victim testimony cases normally can not progress and the defendant is fully acquitted.

JSMP believes that if judges and prosecutors apply Article 125 to victims, then this article is being used incorrectly to the detriment of the victim.

Despite social and procedural impediments, many more women in Timor Leste are now seeking justice and cases of gender based violence constitute more than half of the cases handled by each of the district courts.

JSMP believes that when judges and prosecutors misapply the law the resulting confusion can undermine and destroy a victim's faith in the courts.

If widespread domestic violence and sexual violence is to be opposed then the formal prosecution of these crimes needs to take into consideration the experiences of women. Women have to be encouraged to proclaim that they do not accept domestic violence or sexual violence. Therefore JSMP encourages judicial actors in Timor Leste to more carefully consider how they approach female victims.⁸

⁶ WJU plans to conduct more in-depth analysis and research next year into Article 125 of the Timor Leste Criminal Procedure Code.

⁷ In almost all cases of domestic violence observed by the WJU the judges informed victims about their right to remain silent or to speak in accordance with Article 125 of the Timor Leste Criminal Procedure Code.

⁸ WJU Press release, December 2008.

3.3. STATISTICS ON CASES OF GENDER BASED VIOLENCE OBSERVED BY THE WJU IN 2008⁹

COURT	SEXUAL VIOLENCE	DOMESTIC VIOLENCE (MALTREATMENT)	PENDING	FINAL DECISION	TOTAL
DILI DISTRICT COURT	9 CASES	14 CASES	11 CASES	13 CASES	23 CASES
BAUCAU DISTRICT COURT	5 CASES	10 CASES	5 CASES	10 CASES	15 CASES
SUAI DISTRICT COURT	-	2 CASES	2 CASES	-	2 CASES
OECUSSE DISTRICT COURT	1 KASUS	2 CASES	2 CASES	1 CASES	3 CASES
TOTAL CASES				24 DECISIONS	43 CASES

These statistics are not reflective of all of the cases processed by courts in Timor Leste but rather indicate the cases observed by the WJU between January – December 2008. The WJU was able to monitor 43 cases of gender based violence (sexual violence and domestic violence) examined by the existing courts in Timor Leste, namely the Dili District Court, the Baucau District Court, the Suai District Court and the Oecusse District Court,.

⁹ These statistics reflect data compiled by the WJU relating to cases observed by the WJU.

The WJU is unable to provide detailed statistics about each of the courts in Timor Leste because the aforementioned courts did not provide the WJU with access to their statistics.

The statistics provided by the WJU are based on court monitoring and indicate an increase in the number of final decisions handed down in cases of gender based violence (sexual violence and domestic violence).

To get a more detailed understanding of how the courts have considered these developments, analysis of decisions issued in cases of gender based violence will be contained in a WJU report entitled "Analysis of Decisions in Cases Involving Female Victims: July 2007- December 2008" which will be launched in January 2009.

3.4. APPLICABLE LAW IN TIMOR LESTE IN RELATION TO CASES OF GENDER BASED VIOLENCE

Applicable law

The applicable law in Timor Leste during 2008 was the Indonesian Penal Code and the Timor Leste Criminal Procedure Code. General or customary principles of international law and certain treaties can be directly applied in the law of Timor Leste pursuant to the Constitution.¹⁰

¹⁰ According to Article 9 of the RDTL Constitution:

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

Domestic Violence

According to the Indonesian Penal Code domestic violence is not categorized as a specific crime. Cases involving domestic violence are normally prosecuted as 'maltreatment' causing serious physical injury or murder, depending on the injuries suffered by the victim.¹¹ The 'domestic' aspect of such crimes is only considered as an aggravating factor in sentencing. Therefore, when a defendant is found guilty for hurting a family member, the sentence will be increased by one third.

Sexual Violence

The Indonesian Penal Code contains a number of provisions about crimes of sexual violence, the most important articles relate to rape and sexual intercourse with a minor:¹²

Article 285: Any person who by using force or threat of force, forces a woman to have sexual intercourse with him out of marriage shall, being guilty of rape, be punished by a maximum imprisonment of twelve years.

Article 287: (1) Any person who out of marriage has carnal knowledge of a woman whom he knows or reasonably should presume that she has not yet reached the age of fifteen years, or if it is not obvious from her age, that she is not yet marriageable, shall be punished by a maximum imprisonment of nine years.

¹¹ Maltreatment is provided for in Articles 351-356 of the Indonesian Penal Code.

¹² The Indonesian Penal Code does not explicitly prohibit marital rape or rape against a male victim.

In October 2008 the Ministry of Justice launched a draft criminal procedure code for Timor Leste and gave members of civil society and NGOs 30 days in which to provide feedback on the draft.

The WJU provided comments on articles relating to gender based violence. The WJU collaborated with several women's organizations under the guidance of *Fokupers*.¹³

The WJU of JSMP congratulated and praised the Ministry of Justice for distributing the final draft of the Timor Leste Criminal Procedure Code to NGOs and for seeking their feedback. This consultation shows that the government has a strong commitment to democracy and ensuring that the process of drafting laws takes into account the opinions of community members in Timor Leste.

The WJU also appreciates the wider definition given to rape, which includes marital rape and also mentions that the existence of a familial relationship will be considered as an aggravating circumstance according to this law. The draft law also mentions abortion, and states that no person will be prosecuted for carrying out an abortion due to physical and mental factors that endanger the life of the pregnant mother.

Domestic violence will be considered a public crime, meaning that when an incident of domestic violence occurs any person can report the crime to the authorities without waiting for a complaint to be lodged by, or on behalf of, the victim.

The WJU requested the government to prioritize the draft law on domestic violence after the draft penal code is approved and has entered into force.

The WJU hopes that the draft Timor Leste penal code will be promptly approved and promulgated at the end of 2008 or the beginning of 2009.

¹³ The organizations involved in this working group were: Fokupers, JSMP-WJU and the VSS, Pradet, Alola Foundation, SEPI, UNIFEM, UNFPA, PDHJ, AMKV.

4. Victim Support Service (VSS)

4.1. Introduction

Since its establishment in April 2005 the Victim Support Service has been under the administrative guidance of JSMP. The VSS has provided legal representation to victims of gender based violence in up to 330 cases predominantly involving sexual violence and domestic violence. Although this figure is far below the real number of incidents that occur, it still provides an overview of the number of cases being processed by the formal justice system.

Timor Leste is still endeavouring to improve a justice system that does not yet provide much assistance to the vulnerable. Therefore the VSS supports the legal process by assisting clients to understand their rights, the roles of court actors and what needs to be done when a final decision is issued. Until now the state has been unable to provide accommodation for victims of violence and through the support of donors the VSS decided to provide material support such as food and transport, as well as cameras to take pictures of victims' injuries as evidence.

Advocacy and Networking

The VSS is committed to building working relationships and advocacy to strengthen its networks, as well as developing on-going relationships with the government to advance the rights of women and children who are victims of gender based violence, so that this will be taken up as a national issue. This can be achieved through regular discussions, collaboration in a number of cases and by contributing to trainings, seminars or joint dialogue in key districts.

The VSS carries out an educational role and raises public awareness about the rights of victims and the formal justice system and in many cases provides training to the public. VSS partners who have been working towards these goals include: Pradet, Fokupers, Rede Feto, AMKV (Association of Men against Violence), Forum Tau Matan, Asosiasaun Advogadu Timor Leste (Timor Leste Bar Association), Alola Foundation and several religious institutions, and international bodies including: UNICEF, UNFPA, UNIFEM, ASF (Lawyers without Borders) and government bodies including SEPI (Secretary of State for the Promotion of Equality) and the DNSS (National Division for Social Work).

There is still a great need for activities to promote public awareness in relation to gender based violence. Therefore, together with other organizations the VSS has organized legal training to the VPU unit of the police and criminal investigations section focusing on victims' perspectives and has produced informative materials such as posters, brochures, stickers, calendars, bags, radio and television programs as well as trainings and workshops.

During 2008, in addition to being invited by other organizations to carry out training, the VSS also managed to organize training on Decree-Law No. 13/2005 on the Timor Leste Criminal Procedure Code for members of the VPU investigations unit of the police and the criminal investigations unit in general. This training was carried out in two jurisdictions, namely Dili and Baucau, and was facilitated by prosecutors from each of the two aforementioned jurisdictions. This training was conducted because the VSS identified fundamental issues relating to coordination between police and prosecutors.

The provision of training for government staff was an important contribution to raise public awareness. The VSS helped police to organize legal training for their officers that was carried out in Dili and Baucau to ensure that their methods of criminal investigation respect the rights of victims and to build a good working relationship between the police and the prosecution in terms of

processing cases of gender based violence, and was also aimed at ensuring that police would be sensitive to victims who have experienced gender based violence.

The Vulnerable Persons Unit of the police investigates cases relating to violence against women and children and therefore they need to work closely with the community and victims to gather evidence. The prosecution unit is responsible for criminal cases and thus is a very important partner. The cooperation between these bodies and the VSS, as well as those organizations working with gender issues and women’s and children’s rights, has an impact on institutional culture and ensures that the rights and needs of victim are given greater respect.

The Table below shows the total and type of cases handled by the VSS during 2008. Although this is not an exhaustive list of cases of gender based violence tried by the courts of Timor Leste, it still provides a representative sample of such cases.

4.2. VSS cases between January-November 2008

<i>Type of Case</i>	<i>Total</i>	<i>Percentage</i>
Domestic Violence	53	46 %
Abandonment of child/family	9	8 %
Sexual violence against an adult	16	14 %
Sexual violence against a child	22	19 %
Attempted sexual assault against an adult	6	5 %
Attempted sexual assault against a child	4	3 %
Sexual abuse of a child	5	4 %
Murder	1	1 %
Total	116	100 %

The provision of a supporting mechanism to enable cases to be taken to court is an important factor in responding to violence against women and children. Therefore the Table below shows the source of referrals that enabled victims to take their cases to the VSS.

4.3. Table of Referred Cases Received by the VSS During 2008

Source of Referral	Aileu	Baucau	Dili	Ermera	Liquica	Manatutu	Viqueque	Total Cases
Fokupers			2					2
Other			2					2
Police	4	15	6	25	13	10	7	80
Pradet			15	2	1	1		19
Rede Feto			1					1
Walk in		1	10					11
SEPI	1							1
Grand Total	5	16	36	27	14	11	7	116

Throughout 2008, the VSS provided initial contact and legal assistance to clients in up to 116 cases. This included one case that has been settled by the court with the issuance of final decision. However, the lack of resources and a mechanism for case distribution within the prosecution unit and courts continued to impede the legal process, as many cases remain pending. Five cases are still with the police, 80 cases are still with by the prosecution unit, three cases are still with the courts, seven cases have been referred to the public defenders office and one case needs to be followed up because the victim has moved and it is difficult to contact the victim. The remaining nineteen cases have been dealt with through traditional/customary justice and settled amicably.

Radio and television are important tools to spread information to the community about gender based violence and victims' rights. In 2008 the VSS worked together with the Outreach Unit and the WJU of JSMP to organize several programs to provide information to the public about domestic violence and cases of abandonment being processed by the courts. These programs were announced on national television and via community radio stations in the districts.

Although gender based violence was reported and was processed by the courts, it appears that the number of cases registered only represent a small portion of incidents that actually occur across Timor Leste. Therefore, it is hoped that increased community awareness and positive trends in the formal justice system will encourage victims to have confidence and faith in the existing processes and formal law. There are positive trends even though developments have been impeded by a lack of resources in key institutions, the establishment (and support) of women's committees in several districts and the provision of better lines of communication for members of the community. Moreover, it is hoped that the provision of advocacy to all components of society will promote more serious debate in parliament about the law on domestic violence.

5. Developments relating to the implementation of Recommendations made by the CAVR AND CTF

The CAVR was established pursuant to Article 162 of the RDTL Constitution and UNTAET Regulation No. 10/2001, while the CTF was established pursuant to a bilateral agreement between TL-Indonesia without any legal basis. The mandate of the CAVR expired in 2005 and the mandate of the CTF expired in 2008.

Upon the expiration of their respective mandates, the two commissions submitted their reports to the President of the Republic and then later on reports were submitted to the National Parliament.

In a letter of clarification, Committee A from the National Parliament stated that although the two reports were different, with different levels of authority, nevertheless the two commissions shared several aims, including a desire to reveal the truth and improve friendship to promote justice, human rights and the future stability of the nation.¹⁴

The national parliament, via Committee A, tried to issue a resolution to organize the process of implementing the recommendations contained in the CAVR and CTF reports.

5.1. CAVR Recommendations

The Commission for Acceptance, Truth and Reconciliation (CAVR) was set up to establish the truth about human rights abuses that occurred in Timor Leste between 1974-1999, as well as promoting reconciliation and restoring the dignity of victims. The main objective of establishing the CAVR was to recommend reforms to ensure that human rights violations would not be repeated in Timor Leste.

The final report of the CAVR entitled “Chega” was submitted to the President of the Republic on 31 October 2005, and on 28 November 2005 the *Chega* report was submitted to the National Parliament. CAVR encouraged the state of Timor Leste to develop reparations programs for victims and to reform a number of government institutions, particularly the Ministry of Justice and security agencies, to ensure freedom of the press, and use civil society to conduct educational activities for the community of Timor Leste about history, human rights and justice, as well as bringing perpetrators of human rights abuses before national and international courts.

¹⁴ Letter submitted by Committee A of the National Parliament, dated 9 September 2008

The CAVR submitted its final report in 2005, but only in 2008 did the National Parliament plan to issue a resolution relating to the implementation of recommendations made by the CAVR. The National Parliament planned to lead and supervise the implementation of recommendations with special priority to ensure that the following recommendations were implemented: 1), to establish a follow-on institution to the CAVR with responsibility for disseminating information contained in the report, to provide assistance during the implementation of recommendations as well as the establishment of monuments and training programs, 2) to set up a national reparations program/scheme for victims of the conflict that occurred in TL between 1974-1999, 3), further dissemination of the CAVR report as well as including it in official curriculum at all schools.

5.2. Recommendations of the CTF

In December 2004 Timor Leste and Indonesia through their respective heads of state signed a bilateral agreement to establish a Commission for Truth and Friendship (CTF) aimed at establishing the truth about the violence that occurred in 1999. The aim of setting up this commission was to strengthen reconciliation and friendship between the two nations. The CTF was mandated to prepare recommendations focused on revealing the truth and improving friendship between the two countries.

The President of the Republic submitted the CTF Report to the president of the national parliament on 9 October 2008¹⁵. This report only provided clarification about cases of human rights abuses that occurred in 1999 and recommended measures such as reparations for victims, the reform of institutions and the establishment of an investigative committee to investigate

¹⁵ *Diario Nasional*, 10 Oct. 08 p. 1

the perpetrators of human rights abuses, as well as the return of underage victims who were separated from their families.

At the end of 2008 the national parliament tried to issue a resolution to implement the recommendations of the CTF. The plan was for the national parliament to prioritize 1), the establishment of an institute to continue the mandate of the CTF and CAVR to conduct historical research, education and training programs, assist to implement the CTF Report and to provide regular reports to the national parliament, 2), establish a national reparations program including the provision of psycho-social assistance to victims of trauma and separated families, 3), establish an institute mandated to carry out investigations and to compile information about missing victims, including children who were separated from their families.

5.3. Obstacles

Committee A of the National Parliament proposed that separate resolutions for each of the Committees be evaluated and combined. JSMP observed that the National Parliament planned to hold a plenary session to discuss the recommendations of the CAVR and CTF. However, the Committees of the National Parliament and each of the political factions have their own political viewpoints and perspectives. For this reason the plenary session has been delayed several times, which has disappointed victims from a number of districts who were anticipating this plenary discussion and were upset with the policy of the national parliament to obstruct this process. The victims returned to their districts without hearing a clear explanation from the national parliament. Until now the general community does not have a comprehensive understanding of what the CAVR and CTF have achieved or about the process for implementing their recommendations in the future.

Debate on a resolution to implement the two reports was scheduled for 30 October 2008, however members of parliament have been engaged in such lively debate that the schedule was delayed until 10 November 2008.

However the second date for discussion did not eventuate because differences of opinion emerged amongst the members of parliament, especially the committee responsible for this issue.

The main aim of this plenary session is to discuss resolutions to implement the two reports, especially to identify the main priorities to be addressed in the implementation of the recommendations, as detailed in points a) and b) above.

6. Developments in the Processing of Cases from 2006

6.1. Basis

It is widely known that on 8 June 2006 the Timor Leste Minister for Foreign Affairs officially submitted a request to the UN Secretary General to establish an Independent Commission of Inquiry (ICI) to investigate incidents that occurred during the crisis. As a follow up to this request, on the 20 June 2006 the UN Security Council, via Resolution 1690 (2006), established the ICI at the request of the UN Secretary General.

6.2. Types of cases and forms of responsibility

In line with its mandate the commission identified two forms of responsibility, namely individual and institutional.

Events for which individual responsibility can be ascribed :

- 1) The violence that occurred at the Comoro market on 28 April (one civilian dead, eight civilians injured and one PNTL officer suffered serious injury)
- 2) Violence at Rai Kotu on 28 April (one civilian dead)
- 3) Violence in Gleno on 8 May (one PNTL officer dead while the other was seriously injured)
- 4) Armed confrontation in Fatu Ahi on 23 May (5 dead, 10 injured)
- 5) Armed confrontation in Taci Tolu/Tibar on 24 May (9 dead, 3 injured)

- 6) Attack on the residence of Brigadier General Ruak on 24 May (1 PNTL officer dead, 2 F-FDTL soldiers suffered serious injuries)
- 7) Armed confrontation between PNTL and F-FDTL on 25 May (9 dead, 27 injured)
- 8) Burning of the da Silva family home in Fomentu on 25 May (6 dead)
- 9) Incident at the Mercado Lama on 25 May (1 dead, 1 injured)

Events for which institutional responsibility can be ascribed :

- 1) Violence at the government palace on 28 April (2 dead, 4 injured)
- 2) Violence at Taci Tolu on 28-29 April (2 dead, 3 injured)
- 3) Armed confrontation at Comoro Market (1 injured)
- 4) Armed confrontation at PNTL headquarters on 25 May

In addition institutional responsibility could also be ascribed for the illegal and irregular distribution of weapons.

6.3. Developments in the Processing of Cases

Based on monitoring conducted by JSMP during 2008, the prosecution almost completed its investigation into the aforementioned cases. The courts have only conducted hearings and trials in several of these cases, namely;

1. The illegal and irregular distribution of weapons, involving the defendant Rogerio Tiago Lobato
2. Attack on the residence of Taur Matan Ruak on 24 May
3. Shooting that occurred at the PNTL HQ and in front of the Ministry of Justice on 25 May
4. Incidents at Taci Tolu-Tibar on 24-25 May.
5. Armed Confrontation in Fatu- Ahi on 23 May

The prosecution unit informed JSMP that in relation to ICI recommendations the prosecution unit has registered 16 cases, although progress has been slow. From a total of 16 cases, the courts have issued decisions carrying the full

force of the law in 3 cases, namely the case involving Rogerio Lobato, the case involving the shooting in front of the Ministry of Justice and the case involving an attack on the residence of Taur Matan Ruak. Of the 16 cases registered at the prosecution unit four have been closed and did not progress to trial due to a lack of evidence. The prosecution unit explained that these cases would only be reopened if strong evidence was to emerge. The incident at the Mercado Lama is still under investigation.

In accordance with monitoring conducted by JSMP, the processing of these cases did not fully adhere to the recommendations of the ICI because the prosecution felt that the ICI recommendations were guidelines for investigation into these cases, and also because the investigative process also revealed the involvement of others not mentioned in the ICI report.

In October 2008, the prosecution carried out a follow-up investigation against military leaders (F-FDTL) and several individuals in relation to the Mercado Lama incident on 25 May who were suspected of being involved in the 2006 conflict.

6.4. Obstacles

The processing of cases from the 2006 crisis was very slow due to the following problems or obstacles:

- Lack of human resources within the prosecution unit
- National prosecutors were not authorized to handle these cases due to concerns about their impartiality and their personal safety
- The replacement of international judges and prosecutors in accordance with a contract between the government and UNDP
- Problems with languages used during this process

