



JUDICIAL SYSTEM MONITORING PROGRAMME

PROGRAMA DE MONITORIZAÇÃO DO SISTEMA JUDICIAL

JSMP celebrates 9 years of working together to build and uphold the judicial system in Timor-Leste

I. Introduction

JSMP was established in 2001 to help ensure that the justice sector and the judicial system in Timor-Leste adhere to international human rights standards, specifically in relation to justice that is fair, affordable, credible and accessible for all, in order to support good governance. JSMP was established with the goal of disseminating information that has been compiled and assessed to the general public and also for the benefit of international observers. The main function of JSMP is to contribute towards the establishment of a transparent judicial system through recommendations based on credible analysis.

In order to ensure that JSMP uses credible, transparent and accountable management practices it also conducts regular annual audits to ensure that money is spent effectively based on sound financial policies. Even though during the last 9 years JSMP has encountered a range of problems, both in relation to its programs and other aspects of institutional management, these problems have been overcome by the excellent cooperation and commitment of all JSMP staff, international advisors, the Board and especially the donors who have continued to support JSMP programs and ensure that the continuation of these programs in accordance with JSMP strategic plans.

The National Parliament is entrusted with a mandate that is crucial to the national development process, as the centre for political exchange and the determination of the nation's future, as well as representing the people and exercising constitutional powers to draft legislation. For this reason JSMP believes that it is really important to monitor the processes taking place in the National Parliament with the aim of bringing members of the parliament closer to their

constituents and also ensuring that the voices of the people are heard by the National Parliament which is the forum for the people to ensure that their views are including in the political decision making process.

II. JSMP Programs

In order to achieve its established institutional goals, JSMP has been and is currently carrying out a range of core activities, mostly focused on special issues such as the provision of training to court actors, police and community leaders (village councils, women's groups and youth groups), organizing conferences and workshops, providing legal assistance and advice to victims of gender based violence to provide access to the formal justice system. In addition, JSMP has also provided commentary and legal analysis on draft laws prepared by the National Parliament and the Council of Ministers.

The aforementioned programs are implemented by the Legal Research Unit (LRU), Women's Justice Unit (WJU), Victim Support Service (VSS) and the Outreach Unit (Outreach) with support and cooperation with JSMP management. The following paragraphs provide a short summary of the types of activities and core duties performed by each of these units to date:

- **Legal Research Unit (LRU)**

LRU was the first unit established after JSMP was inaugurated and started its work by monitoring the ad hoc trials in Jakarta before expanding its coverage to trials conducted by the Serious Crimes Panels. LRU has actively fought for the rights of victims who have suffered human rights violations during the Indonesian occupation of Timor-Leste. From the beginning JSMP has closely monitored the work of the Commission for Acceptance, Truth and Reconciliation and distributed information in the form of the final recommendations contained in the CAVR Report (Chega..!) and has monitored the drafting of legislation in the Parliament. After providing analysis of legislation, JSMP was inspired to establish a Parliament Watch Program (PWP) which began in March this year. This new program is aimed at making an active contribution to the legislation drafting process in relation to the law and human rights, as well as helping parliament to disseminate information to the community. Also this program aims to help parliament to engage in public consultation and facilitate the exchange of ideas and comments amongst members of the public about certain laws to be considered by the relevant committee in Parliament.

- **Women's Justice Unit (WJU)**

In 2004 the WJU was established after providing situational analysis about women's access to formal justice. This unit was set up with the main goal of specifically monitoring cases of gender based violence processed through the formal justice system. Like the LRU, the WJU also provides commentary and legal analysis on cases of gender based violence to ensure that they are

processed in accordance with national and international law. In addition the WJU also has contributed to a number of legal products in relation to the protection of women's rights in all aspects of their life, and specifically about their access to formal justice to resolve their cases. Also the WJU has engaged in a range of efforts to promote women's rights such as organizing a series of trainings to local leaders, women's groups, police and youth at the District level and providing advocacy through the radio, television and the distribution of pamphlets.

- **Victim Support Service (VSS)**

VSS was established in April 2005 to complement other units within JSMP. This unit was established pursuant to a study carried out by the Women's Justice Unit (WJU) in 2004 which found that the majority of cases registered at the courts involved women and children who were victims of gender based violence. However they face major difficulties in obtaining justice because of limited resources and other factors. Therefore with financial support from UNFPA, JSMP decided to establish this unit with the main goal of providing legal assistance to victims and technical assistance to police and the prosecution and improving communication between the police, prosecution and victims. Due to limited material resources and other types of resources, in the beginning VSS was located in Dili and made regular visits to all jurisdictions. However in mid-2006 when the crisis was taking place the VSS expanded its coverage to the Baucau jurisdiction with financial support from TAF. Then in September 2009 and at the start of 2010 joint funding was provided by TAF, Justice Facility and UNFPA which enabled the VSS to conduct activities in the jurisdictions of Suai and Oecusse. To date the VSS has provided support to clients in 557 cases of gender based violence. This was made possible through good cooperation between VSS, the Vulnerable Persons Unit (VPU), prosecution, Legal Aid Organizations and other service providers such as PRADET, FOKUPERS, CASA VIDA and MSS.

- **Outreach Unit**

The Outreach Unit is a central unit which is responsible for the dissemination of information to the public at the national and international levels. Information is distributed through e-mail lists, the website, justice updates, press releases, monthly newsletters, seminars, workshops, group discussions, radio and television programs as well as education material which contains information about access to the courts and issues that relate to respect for human rights and the law in Timor Leste. At this moment the Outreach Unit has four staff who are employed respectively as Coordinator, Trainer officer, Media Officer and Junior Officer.

III. Human Resources

JSMP initially only had two staff, but now there are 34 national and 2 international staff who are employed as advisors. From this total, 14 lawyers are spread across each of the units within JSMP. In terms of the professionalism of its human resources and the current composition of JSMP, it is fair to say that JSMP is capable of contributing to the establishment of the judicial system.

IV. Finance

Since its establishment JSMP programs have been heavily reliant on donor funding. JSMP currently receives financial support from NZAID, AUSAID, JUSTICE FACILITY, TAF, NORWEGIAN EMBASSY and UNFPA. The table below provides a break down of funding from each donor:

Unit	Donor	Total Funding utilized in 2010	Funding Period
LEGAL RESEARCH UNIT (LRU)	TAF	33,668.00	
	TAF	51,748.00	One Year
	Justice Facility	79,412.00	One Year
	Miserior	74,200.00	One Year
WOMEN JUSTICE UNIT (WJU)	AUSAID	101,701.28	14 Months
	Norwegian Embassy Jakarta	188,422.00	Three Years
VICTIM SUPPORT SERVICE (VSS)	TAF	61,798.00	One Year
	Justice Facility	98,747.00	One Year
	UNFPA	50,000.00	One Year
Outreach Unit	NZAID	8,741.00 ¹	Two Years (ending in May)

¹Total funding received by NZAID is US\$186,323 for a period of 2 ½ years starting in 2007. Therefore the funding figure indicated in the table above reflects the remaining funds that have to be used in the next few months.

TOTAL		748,437.28	
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This table only indicates total funds intended to be used in 2010. However there are several donors who have pledged in writing to assist JSMP for the next three years.

V. JSMP Monitoring of the Judicial System in Timor Leste

As set out in Article 1.1 of the Democratic Republic of Timor-Leste Constitution, Timor-Leste is a democratic, sovereign, independent and unitary State based on the rule of law, the will of the people and the respect for the dignity of the human person. Also Article 2.1 states that Sovereignty rests with the people, who shall exercise it in accordance with the law. Also Article 2.2 of the Constitution provides that the State shall be subject to the Constitution and to the law. The Constitution also establishes principles that govern and promote access to justice for all (Articles 16, 26, 30-44), guarantees the function and independence of the courts (Articles 118 and 119), the separation of powers is set out in Article 69, as well as human rights principles and other principles of democracy. Nevertheless Timor-Leste faces serious problems in relation to the role and responsibility of its state institutions to uphold and provide justice, as well as problems of limited human resources, and the most fundamental problem is political commitment and will on behalf of state leaders. There are a number of cases that highlight these issues that have been summarized below in relation to critical issues taking place in the judicial system.

Developments and Progress in the Judicial System

A. Legislative Policy

JSMP has observed that since the 2006 crisis the judicial system in Timor-Leste has improved. JSMP believes that the judicial system has performed better during this period because of significant progress in a number of areas, especially in terms of legislative policy, human resources, infrastructure, means of communication, capacity building, intensive training etc. Two pieces of legislation that are crucial to the administration of justice are the Penal Code and the Law on Witness Protection which were promulgated in mid-2009. In addition, there are several other laws that are being developed, including a Draft Law Against Domestic Violence which is being debated by the National Parliament.

B. Human Resources

In this area JSMP has observed that in 2009 significant progress was achieved because the courts now have 37 judicial actors comprising 13 judges, 13 prosecutors and 11 public defenders. Until now the government continues to address the importance of human resources both in terms of

quantity and quality. For this reason the government continues to recruit legal graduates to attend training at the Judicial Training Centre.

The national judicial actors are being supported by internationals from Portuguese speaking nations which include the following five judges: João Felgar, Maria Leonor, Diogo Ravara, Fernando Ferreira and João Paulo Raposo. Also there are four international prosecutors, namely: Felismino Cardoso, Baltazar Ramos, Jose Luis Landim,) and three public defenders, namely: Andre Peixoto Fernandes, Afonso Prado and Pedro de Andrade.

C. Infrastructure

Permanent housing has been provided for court actors. JSMP has observed that all of the courts in Timor-Leste have been rehabilitated; however JSMP recognizes that further improvements are required such as housing for judges in Baucau, Suai and Oecusse.

Attention has also focused on providing housing for prosecutors and public defenders. JSMP believes that offices have been provided to prosecutors and public defenders to carry out their functions in all of the courts although they have not been provided with permanent houses.

Several Critical Issues for the Judicial System

Challenges and Difficulties faced by the Judicial System

In addition to progress that has been achieved by the judicial system to date, there are a number of critical issues and major impediments to ensuring that rights to justice are being upheld. As stated above JSMP believes that an important issue is the commitment and political will of leaders to ensure that justice is made available to all, as well as institutional responsibility provided for in the Constitution. JSMP has observed that the following central issues continue to obstruct the provision of justice, namely:

- Independence and Sovereignty of Judicial Institutions
- Separation of Powers
- Culture of Forgiveness
- Debate on Language and Judicial Administration

Independence and Sovereignty of Judicial Institutions

The independence of the judicial system is one of the most critical aspects in the process of developing the judicial system to date. The Maternus Bere case, the burning of a school in Becora that was carried out by students who did not pass examinations, and retrial of the case involving an attack on the residence of Brigadier General Taur Matan Ruak (now Major General of F-FDTL) are all examples of serious incidents relating to the independence and sovereignty of

the judicial organs. These cases place a lot of pressure on the courts to stand strong and uphold their sovereign mandates as set out in Articles 118 and 119 of the Constitution.

Separation of Powers

Article 69 of the Constitution establishes the principle of “Separation of Powers”. This article states that “Organs of sovereignty, in their reciprocal relationship and exercise of their functions, shall observe the principle of separation and interdependence of powers established in the Constitution”.

The provisions of this article delineate a clear line between each sovereign body. This means that a sovereign organ may not encroach upon the jurisdiction of another sovereign body. This article does not give any room for a sovereign organ to intervene in the functions or responsibilities of another body that is not included in its mandate. An excellent example is the case of the defendant Maternus Bere. JSMP believes that the decision to release Maternus Bere should be seen as a serious threat and takeover of the sovereignty of our judicial institutions which are one of the sovereign organs of the State. Behavior like this should not only be seen as a “misuse of authority” but moreover should be understood as political intervention against the authority of another sovereign organ. JSMP observes that if the principle of separation of powers is not respected in a consistent manner then this will create misunderstandings between each of the sovereign organs. This has the potential to produce other impacts such as the vulnerability and fragility of the State because of a lack of mutual respect for these sovereign organs.

Culture of Forgiveness

Although JSMP understands that the President of the Republic has constitutional authority and the prerogative to grant pardons to convicted persons in accordance with Article 85 (i) of the Constitution, JSMP continues to be concerned with and is opposed to this practice when it has no basis and reflects a general culture of forgiveness. JSMP considers that this culture of forgiveness will destroy the collective efforts to develop a credible legal system and uphold justice for all. Moreover, JSMP believes that this culture of forgiveness in addition to destroying our legal framework, also demonstrates a disregard and lack of appreciation for the hard work carried out by our legal institutions to ensure that citizens of Timor-Leste accept the rule of law, democracy and human rights values. To this end JSMP reiterates that pardons should only be given after a court has issued a final decision carrying the full force of the law, and where the parties to a case have accepted the decision and agreed not to pursue any further legal recourse.

JSMP believes that statements made by the President of the Republic about pardons before the judicial process has been finalized can create confusion for the public, and can directly or indirectly influence the trial process and the court’s decision making process, and strengthen the idea that defendants’ fates can be swayed by political opinion or the influence of the President.

This will influence the ongoing legal process because the defendants will place their faith in receiving a presidential pardon rather than cooperating with the courts to reveal the truth and strengthen the administration of justice. For this reason JSMP objects to this practice and emphasizes that the pardoning of convicted persons should be carried out in accordance with criteria established by law.

- ***Language Issue and Judicial Administration***

JSMP acknowledges that from a constitutional perspective the language issue is not open for debate. However in practice the language issue is an impediment that frustrates ordinary citizens who wish to access the formal justice system. Various groups have expressed their concern that they become victims of injustice in relation to the language used to process their case. The latest comment on this issue was made by Major General Taur Matan Ruak, in relation to the case of Kiak which occurred during the 2006 crisis. JSMP continues to be concerned and worried about this issue, because although Article 13 of the Constitution states that the official languages of Timor-Leste are Portuguese and Tetum, in practice the Tetum language is pushed aside when it comes to the administration of justice, including correspondence and court decisions and documents that are issued by the State. Although there is an argument on technical grounds to justify this situation, claiming that Tetum has not developed enough to possess appropriate technical and legal terminology, JSMP believes that such an argument does not reflect the spirit of the Constitution nor the professional creativity of the intellectuals and experts who work in this field.

JSMP has also observed that a number of court actors have used their own initiative to use Tetum during the trial process, however summons and court decisions are always issued in Portuguese. For this reason many people don't understand what has been decided by the court in their case. It is extremely difficult for lawyers or legal representatives who don't speak Portuguese which can create all sorts of problems in relation to court decisions.

Recommendations

With reference to the progress, challenges and difficulties described above, JSMP recommends the government to remain committed to promoting and strengthening the judicial system of Timor-Leste.

JSMP recommends for all sovereign organs to address the challenges and difficulties discussed above and calls for all parties to respect the law and the principle of "separation of powers" as set out in the Constitution.

JSMP also urges the National Parliament and the government to quickly promulgate a law on pardons. This step is necessary to ensure that the policy on the granting of pardons does not disregard legal norms and adheres to customary legal practices applied by nations across the world. In this way the policy on pardons will not merely reflect the personal conviction of the president without regard to other social factors.

JSMP also recommends for court actors to pay attention to the important issue regarding the use of Tetum in all areas, including correspondence, court administration and trials. As JSMP has observed, the administration of justice almost always uses Portuguese in summons and other court documents. JSMP emphasizes that the administration of justice should not only be considered in terms of the requirements of court actors, but also must take into consideration those who receive the various decisions that are issued by the courts.

JSMP recommends for the state authorities to refrain from demonstrating a political stance or issuing statements that tend to influence court decisions. JSMP believes that such statements can have a negative psychological and social consequences and influence on decisions relating to cases that are still in progress.

VI. Conclusion

Although JSMP acknowledges the constitutional powers of the president to grant pardons, JSMP also notes the need to establish appropriate criteria on the use of these constitutional powers. JSMP does not wish to debate the issue of competence, but rather wishes to maintain its position that all sovereign organs must consistently respect their roles as set out in Article 69 of the Constitution in order to prevent the community from claiming that the legal system in Timor-Leste is fragile.

If the president continues to influence processes that are still in progress then there is a need to ensure that his efforts do not threaten or undermine attempts to ensure that the law is applied and upheld in a consistent and fair manner for all people. If the policy on pardons has a tendency to substitute court decisions JSMP is certain that such actions will indirectly undermine efforts to uphold the law in Timor-Leste.

In this context JSMP believes that the pardons given by the President can disturb social order and can undermine the public's trust in the sovereign organs of the state.

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