



JUDICIAL SYSTEM MONITORING PROGRAMME
PROGRAMA MONITORIZASAUN SISTEMA JUDISIAL

Press Release

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**The long road ahead for the Justice Sector in
Timor Leste**

***“Development of the Timor-Leste Justice System and
challenges faced during 2011”***

Introduction

The justice sector is a key component in Timor-Leste, as this is a democratic nation based on the rule of law. JSMP believes that the concept of democracy and the rule of law can only be made a reality if all parties are determined to continue working in the spirit of cooperation. JSMP acknowledges that the relevant institutions have pursued a range of efforts and policies, both on the government side as well as civil society, in order to strengthen the justice sector.

Throughout 2011 JSMP noted that significant progress has been achieved as well as positive changes in several aspects. Nevertheless, JSMP does not deny that in other areas our justice system is still facing a range of challenges and obstacles in relation to guaranteeing and upholding justice that reflects the rule of law, especially for perpetrators of serious crimes or past crimes against humanity that occurred during the Indonesian occupation. In this case, JSMP believes that the issue is not one of limited human resources, nor is it due to other technical obstacles, but rather institutional negligence and professional incompetence by the judges handling these cases. JSMP laments these practices because they harm public sentiment regarding the functioning of the formal justice system in relation to guaranteeing and providing justice for all as set out in the Constitution.

The following achievements/progress and challenges were noted by JSMP during 2011, and we have also outlined alternative suggestions for each issue that we believe warrants attention in the future.

Progress in relation to legislative matters and policy

- Throughout 2011 JSMP noted that 14 laws were passed by the National Parliament;¹ however only one of these laws relates to the justice sector, namely the Civil Code. Nevertheless, JSMP laments the process used to pass and promulgate this important law, because there was not enough time allocated for public involvement.² In addition, the National Parliament also failed to hold plenary sessions or pass two other important laws namely the Law on Reparations and the Law on the Establishment of a Memorial Institution. Therefore, JSMP urges the members of the National Parliament to demonstrate firm leadership and pass these two laws before their mandate expires.
- The implementation of training programs at the Judicial Training Centre organized by the Ministry of Justice was an important step and vital breakthroughs were made to improve the professionalism of legal actors in terms of both quality and quantity.
- Moreover, JSMP has noted that the recruitment and training of candidate judges, prosecutors and public defenders has continued, while separate training has been conducted for private lawyers. Those participating in the first round of training for private lawyers are gaining work experience in the field of legal representation in Portugal³ as part of their judicial training.
- In May 2011 the Court of Appeal held a swearing-in ceremony for 14 new legal actors comprising 4 judges, 5 prosecutors and 5 public defenders. Therefore currently there are 18 judges, 17 public prosecutors and 16 public defenders comprising a total of 51 court actors.

Progress within the courts

- JSMP notes that the Dili, Suai and Baucau district courts have continued to conduct a mobile court service in the districts. JSMP believes that this is a very productive and responsive step in responding to the real issues being faced by other parties, namely limited transport options, costs, problems of distance, time and accommodation. JSMP believes that the mobile court initiative has had a multidimensional impact on challenges that have always prevented the community from accessing justice and the protection and defence of their rights.
- JSMP also noted that the Court of Appeal conducted a hearing that was open to the public regarding the examination of evidence. This is a change of attitude by the Court of Appeal. JSMP believes that public hearings are an important part of ensuring the transparency and

¹ Source – JSMP Parliamentary Watch Program

² Please refer to a JSMP press release and justice update published on the JSMP website: www.jsmp.minihub.org; President of Timor-Leste performs miracle by promulgating the Civil Code that contains more than 2000 articles in just one day, as well as the Civil Code and Legislative Dynamics in the National Parliament.

³ Currently, seven private lawyers are attending on the job training in Portugal, including the President of the Timor-Leste Bar Association.

accountability of each decision issued by the court. This will provide an opportunity to the community to participate as well as control the productivity of our judicial system and at the same time this can prevent negative perceptions of the process and conclusions reached by the court in a particular case. Therefore, JSMP continues to urge the Court of Appeal to conduct public hearings to encourage the involvement of the general community, unless there are grounds or impediments that demand for the hearings to be closed to the public.

- Another important issue is that judges and prosecutors have shown good will to listen and cooperate with civil society groups, especially the Office of the Prosecutor General, and they have demonstrated their good will and commitment to be involved with or engage in partnerships with civil society by attending judicial forums or other relevant forums in the justice sector organized by civil society organizations.
- JSMP also notes that currently our courts are displaying openness to the public and are willing to provide information about cases without the bureaucracy that was encountered in previous years. JSMP understands that this practice reflects the spirit of Article 77 of the Criminal Procedure Code regarding “*public access*”. However, JSMP still regrets the fact that all documents are only available in Portuguese and not in Tetum, which is the other official language that is used as the language of communication by the majority of Timorese citizens.
- In addition, JSMP also notes that the prosecution service and the courts have demonstrated an ability to prioritize and hear cases involving corruption, State authorities or a number of other private figures.
- Moreover, the courts have also demonstrated their commitment to deal with cases involving gender based violence.⁴ This can be seen by the volume of cases heard by the courts, despite the fact that the decisions handed down in these cases are far from ideal.
- Amongst these achievements JSMP notes that the most progressive and significant achievement in 2011 was the “**Decision of the Court of Appeal No. 80/CO/2011/TR**” issued in response to an appeal submitted by the prosecution regarding how Article 125 of the Criminal Procedure Code should be interpreted in practice. JSMP believes that this decision has provided a legal resolution to the judicial practice of silencing victims of domestic violence that had been occurring to date. This decision is the most spectacular legal solution that has been provided in the history of the judicial system in Timor-Leste, because through the issuance of this decision the Court of Appeal has dealt with the lack of justice for victims by obliging victims in domestic violence cases to provide testimony against defendants in the court room. Previously in each case involving domestic violence (between spouses) the victim was given an option not to testify.

Despite the aforementioned achievements, JSMP has also noted a number of substantial challenges and obstacles that have tended to undermine the formal justice systems (the courts)

⁴ Amongst the 68 cases observed by the WJU between January and October 2011, 31 cases were tried and decided by the courts.

as well as the interests of justice for those involved in particular cases. These challenges and obstacles include:

- *The Dili District Court has lost its capacity and institutionally has failed to administer, guarantee and uphold justice in a case involving past serious crimes involving a BMP militia member* who was sentenced to 9 years imprisonment by the Dili District Court on 8 July 2011. JSMP laments this situation because JSMP believes that this failure is principally attributable to institutional negligence of the judge handling this case, namely an international judge employed to work in the Timor-Leste courts. The biggest concern to date is that JSMP has not seen any concrete effort by the court or the prosecution service as the body charged with executing the court's decision to locate the convicted person who has evaded justice and ignored the court's decision to imprison him.
- The failure to execute the court's decision in this case clearly shows that the culture of impunity for past crimes continues to flourish in Timor-Leste. JSMP suspects that there were covert efforts to impede the State's obligation to punish perpetrators of past crimes. JSMP notes that in cases involving past crimes two convicted persons absconded when the Court of Appeal was still processing the appeals. The two convicted persons were Lavio and Domingos Maubiti in 2010.
- Another main obstacle noted by JSMP is the fact that until now no effort or good will has been shown by the courts to properly apply Law No. 2/2009 on Witness Protection. JSMP notes that the Office of the Prosecutor General has published a translation in Tetum but JSMP has not seen the courts using this law in court hearings. JSMP does not really understand the clear motive behind this situation; however JSMP urges the courts to apply the aforementioned law in cases involving State authorities, corruption, crimes against humanity, domestic violence and other large scale transnational crimes.
- JSMP also notes a fundamental problem with the interpretation of Article 300 of the Criminal Procedure Code in relation to appeals and the implications on the execution of sentences handed down by the courts. In other words, when is a decision of the court considered to have the full force of the law? JSMP has observed a distinct difference of opinion amongst court actors regarding the interpretation of Article 300 of the Criminal Procedure Code which in turn has serious implications on the execution of convicting decisions (decisions that impose a sentence) by the court.
- Although judicial training continued, the courts and the prosecution service continued to encounter significant obstacles in relation to human resources in these two institutions. JSMP noted that often the courts failed to conduct hearings in cases requiring a panel of judges. For example, in the Dili District Prosecution Unit a public prosecutor is responsible for handling more than 500 cases in a six month period.⁵ This is a very onerous work load on the prosecutors which is not proportional to their individual capacity. This work load exceeds their professional capability and this impacts on the quality of the indictments that they bring before the courts.

⁵ Informal conversation between JSMP and the Dili District Prosecution Service.

- Problems with translation and language continue to raise substantial obstacles in our courts. JMSP notes that the quality of interpretation in the courts has always been a problem and currently there are a very small number of interpreters available.
- Also, our courts still face serious obstacles regarding court clerks who are an important element in providing assistance during the hearing of cases and the preparation of documents and other trial procedures for the judges.
- In addition, JSMP specifically notes that the Dili District Court does not have a set schedule of hearings like the other district courts.

In addition to the achievements and challenges noted with concern above, JSMP has prepared a number of alternative suggestions in the form of recommendations in the interest of reforming these relevant institutions in the future. These suggestions urge the relevant institutions to give proportional and professional attention to these matters in the future. The recommendations and demands are as follows:

1. We encourage the legislative bodies, namely the National Parliament and the Council of Ministers, to foster a culture of open consultation and to provide sufficient time to the public before a law is taken to a plenary session, passed and then forwarded to the President for promulgation in the State Gazette.
2. We encourage and urge the President to use his authority effectively in accordance with the Constitution, and to exercise the rights bestowed upon him by the Constitution in an effective manner before issuing a decree to promulgate a law. At the very least, JSMP urges the President to take advantage of his legal experts or legal advisors to ensure that every type of legislation forwarded by the National Parliament is understood and analyzed legally and politically in great detail before it is enacted. Or in other words, we urge the President to use his right to veto in an optimal fashion.
3. We urge the President to uphold the constitutional authority granted to him by the people in accordance with the provisions set out in the Constitution.
4. We urge the judges at the courts to ensure that every convicting decision (decisions that impose a sentence) must be executed in an effective manner without undue delay to ensure justice for victims. Specifically, JSMP urges the Dili District Court and the Public Prosecution Service to take appropriate and effective steps in the case of the convicted person Valenti Lavio involving crimes against humanity, who absconded to avoid serving his sentence. JSMP particularly urges institutional responsibility for the negligence and incompetence of the international judge who displayed arrogance and a lack of professionalism in this case. JSMP regrets the failure to execute this sentence that was caused by the judge's delay in issuing a written decision that took three months. This delay then provided an opportunity to the convicted person to abscond from Timor-Leste. This professional negligence was avoidable if the aforementioned judge understood his professional role and his institutional role in upholding justice for the victims and for holding accountable any person who tries to take the life of another without reason.

5. We request for the Court of Appeal to ensure a common interpretation of Article 300 of the Criminal Procedure Code to avoid misinterpretations between court actors. JSMP recommends that every convicting decision must be executed until such time the Court of Appeal issues an alternative decision. Such a step should prevent the reoccurrence of incidents like the case of Lavio and Domingos Maubuti (two persons convicted in a serious crimes case in which there was a failure to execute their sentence).
6. We encourage all of the courts to apply the Law on Witness Protection at all instances, especially in cases involving State authorities or cases that have an impact on the safety of witnesses due to the special character of each case.
7. We encourage all of the courts to develop and increase the mobile court service to all the districts until such time the government establishes courts in the predetermined jurisdictions.
8. We continue to encourage the courts and the prosecution service or the court actors to continue increasing the spirit of cooperation and to strengthen partnerships with civil society and to consider civil society groups as a potential resource to help promote and strengthen the justice system in Timor-Leste.
9. We encourage the Ministry of Justice to give serious attention to the issue of interpretation and translation in all of the courts. In addition, we encourage the courts to provide and develop a dictionary of Legal Tetum which can be used to conduct the entire trial process in Tetum, when there isn't a need to conduct the trial in Portuguese.

Despite the long list of challenges and obstacles that continue to undermine our legal system, JSMP is certain that through the collective spirit and endeavor that we have fostered to date we will be able to overcome and resolve all of the aforementioned challenges and obstacles and the court institutions will take their proper place as set out in the Constitution. JSMP would like to specifically urge all parties to be aware of and value the sovereignty of the courts as independent institutions in the performance of their role pursuant to the spirit of the law and the Constitution.

JSMP continues to invite and encourage everyone to continue working together to strengthen our legal system and in particular to encourage public participation in developing and sustaining the justice sector in Timor-Leste.

JSMP would like to use this opportunity to express its sincere gratitude and appreciation to all parties, including the judges, prosecutors, lawyers and other members of the professional legal community who have worked hard and devoted themselves to build and develop the legal system of Timor-Leste. We also dedicate our gratitude and appreciation to those donors who have been supporting JSMP and our programs. Our donors include USAID-The Asia Foundation, the Government of Australia through AUSAID and the Justice Facility, NOREM, Misereor, UNFPA and UN Women through the MDG fund program. JSMP believes that your support has planted the seed of hope for the people of Timor-Leste for a better future.

“Once again, supporting JSMP programs means supporting justice programs for all”.

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