



JUDICIAL SYSTEM MONITORING PROGRAMME
PROGRAMA MONITORIZASAUN SISTEMA JUDISIÁRIU

Press Release

Regional Seminar, Dili

20 June 2017

JSMP discloses findings of its annual report on the justice sector and the legislature for 2016 during a regional seminar for community leaders on the roles of the National Parliament and the formal Justice System which was held in Correios, Dili

On 16 June 2017, JSMP held a regional seminar on 'the Roles of the National Parliament and Judicial Actors in the Formal Justice System of Timor-Leste' which was held at the Salaun Correios, in the Dili Municipality.

The participants in the seminar included village chiefs, women delegates, members of local councils and *lia-na'in* from 18 villages representing the Ermera Administrative Post, Ermera Municipality; Remexio Administrative Post, Aileu Municipality; and Maubara Administrative Post, Likisa Municipality.

A total of 20 people attended the seminar, of which 8 were women and 12 men and the seminar was covered by the national media based in Dili. The invited speakers came from the National Parliament, the Courts, the Public Prosecution Service and the Office of the Public Defender.

The National Parliament was represented by the Vice-Chair of Committee A, Mr. Arão N. de J. da C. Amaral, MP. The Courts were represented by Judge Edite Palmira, who discussed the roles of the courts in administering the formal justice system of Timor-Leste. The Public Prosecution Service was represented by Ms. Angelina Saldanha who discussed the role of the prosecution and challenges in the pursuit of justice.. The Office of the Public Defender was represented by its Public Defender General and Coordinator, Mr. Sergio Hornai, who spoke about the role of public defenders and the challenges, faced providing representation to the accused.

“The event was organised to facilitate direct contacts between local leaders who had already attended a JSMP training course on the sovereign bodies of the State, including

the relevant institutions in the justice sector. The aim was to deepen their understanding of such institutions as well as to convey directly to the representatives of relevant State institutions their ideas, criticisms, doubts and concerns”, said Luis de Oliveira Sampaio, JSMP's Executive Director.

Before inviting speakers to express their views on the topic under discussion, JSMP presented the findings of its monitoring of the National Parliament, the district courts and the Court of Appeal. JSMP's report stressed again the recurrent lack of quorum in the plenary and Committee A meetings. MPs fail to be punctual, utilize time effectively, unjustified absences are prevalent, and MPs often move around and hold separate conversations during the debates in the plenary, thus negatively effecting the productivity of the National Parliament. The JSMP report further referred the issue of how immunity was interpreted which is at odds with the State's commitment to ensure good governance and fight corruption. Notwithstanding this, JSMP welcomed the developments that had taken place in the National Parliament in 2016 when changes were made to the Chair of the Parliament.

The JSMP's report once again brought to light the justice sector's limited budget, the issues of deficient human resources and infrastructures, the fact that hearings in the Court of Appeal are often not open to the public which has only access to the final rulings, and inadequate implementation of the Law on the Protection of Witnesses. Moreover, JSMP's report raised the specific issue of domestic violence. Sixty-six percent of cases monitored in 2016 resulted in defendants receiving suspended sentences. There are no effective mechanisms to standardize these sentences nor applicable rules regarding the behaviour of those convicted. Furthermore, several courts do not enforce additional orders and rules regarding the behaviour of those convicted. Many courts also begin trials very late, negatively impacting the quality of the judicial proceedings.

An issue that was raised by participants in the seminar concerned criminal and civil proceedings before the courts and the legality of the use of customary law by villages councils to address issues at village level. Participants also demanded that an outreach programme be established to explain to communities how the Land Law will be implemented. Specifically, they felt the acknowledgment of prior rights in the special regime for determination of ownership of immovable property was not clear enough. Furthermore, participants expressed their concern with violations of the Parliament's Rules of Procedure, namely with respect to lack of punctuality, unjustified absences and asked that an adequate procedure be implemented to address those issues.

In his answer, the representative from the National Parliament explained that outreach activities regarding legislation were a Government responsibility and that the Parliament had a monitoring role, adding that this monitoring role didn't concern only the physical implementation of projects, but included also the implementation of laws and policies. He said that existing issues concerning land and properties should be addressed by the special regime for determination of ownership of immovable property (the Land Law). He added that in the case of proceedings already under way, the authorities should be asked to wait for the cadastral commissions to complete their work to determine the rightful ownership of the land.

As regards MP's procedural transgressions, namely their lack of punctuality and unjustified absences, Member of Parliament Araújo Noe explained that, as politicians, MPs carry out their functions independently and are therefore difficult to control. But he added that the issue would be discussed with the leaders of the parliamentary benches with a view to establishing a sanctioning procedure for those who did not abide by their Statute in accordance with the Rules of Procedure of the National Parliament.

On the other hand, Judge Edite Palmira and the Public Defender General and Coordinator, Mr. Sergio Hornai, explained to participants that in civil proceedings, the courts have to assess the evidence that is submitted by both parties which play an active role in the presentation of the their case.

As regards peoples' right to own land, Judge Palmira explained that the Special Regime for Determination of Ownership of Immovable Property takes into account the rights of those who have owned the land for a long time and defines clearly their primary right to be title holders. Judge Palmira also stated that, according to the Civil Code, extant leases (*aforamentu*) from the past were not converted into freeholds (*direitu perfeitu*) but that rights over such properties were limited to a 20-year period after which a contract had to be signed with the State.

With regard to the use of customary law to address criminal cases, she explained that it was possible when the crimes were semi-public and the two parties were in agreement. But that if the victim chose to file a complaint with a court, the police did not have the authority to delegate responsibility to community authorities to address the case. Furthermore, in cases that were dealt with by the villages authorities themselves, formal rules had to be observed and the authorities had to ensure that a balanced solution was found and accounted for the damage caused. This point was also emphasized by the Chief Prosecutor for the Dili District, Ms. Angelina Saldanha.

The participants recommended that their training programme be replicated in other areas, particularly in communities that did not have access to information.

The seminar closed with the formal submission of JSMP's 2016 annual monitoring reports for the Justice Sector and the National Parliament to the Vice-Chairman of Committee A of the National Parliament, the Chief Prosecutor for the Dili District and the Public Defender General and Coordinator.

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