



JUDICIAL SYSTEM MONITORING PROGRAMME

PROGRAM PEMANTAUAN SISTEM YUDISIAL

WOMEN IN THE FORMAL JUSTICE SECTOR
REPORT ON THE DILI DISTRICT COURT

DILI, EAST TIMOR
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The Judicial System Monitoring Programme (JSMP) was set up in early 2001 in Dili, East Timor. Through court monitoring, the provision of legal analysis and thematic reports on the development of the judicial system, JSMP aims to contribute to the ongoing evaluation and building of the justice system in East Timor. For further information see www.jsmp.minihub.org

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1 EXECUTIVE SUMMARY

For two months in 2003, Judicial System Monitoring Programme (JSMP) monitored the progress of all women-related cases before Dili District Court.

The objective of the study was to collect and analyze information relating to women and the formal justice sector to recommend policy and administrative action to address problems for women in accessing justice. The study arose from recognition that women encountered difficulties in accessing and receiving justice. Our findings are that the situation warrants urgent and clear remedial action.

JSMP found in the cases before the District Court during the period of review that:

- Women-related cases represented the majority (55 percent) of all criminal hearings scheduled during the monitoring period.
- Seventy-eight percent of the women-related cases were sexual violence cases.¹
- The sexual violence cases may be described as "very serious" cases. That is, they included: incest, multiple rapes, aggravating factors such as use of a gun and/or a victim whose average age was just 15, while the accused's average age was 32.²
- Despite the heavy incidence of domestic violence complaints received by the Vulnerable Persons Unit in 2003, not one domestic violence case was scheduled for a hearing before the Court.
- Women were never perpetrators and always the victims in cases scheduled for hearings during the study.
- Very little progress was made in all of the women-related cases before the Court. In only 16% of cases did hearings proceed at all, and in almost all of those few hearings that did proceed, there was practically no progress towards resolution of the case.³
- The Court delivered no decisions in any women-related cases.
- In interviews with JSMP, justice actors displayed gender-biased views that could prejudice effective and sensitive handling of these cases.

JSMP also found that certain low cost policy initiatives could presently assist the access and treatment of female (and potentially other) victims of violence. JSMP recommends that these steps be instituted urgently:

1. JSMP found that women could have greater access to justice and secure appropriate treatment from the justice sector actors with legal counsel. The entitlement to legal counsel could be made available immediately, and administrative arrangements need to be in place to accept the victim's rights to benefit from legal assist. Such assistance needs to be available from the moment the woman wishes to lodge a complaint. In addition, assistance could be

¹ See "Summary Table: Charges Advanced in Women-Related Cases in Dili District Court", attached as Appendix C.

² See "Ages of Victims and Defendants in Sexual Violence Crimes", attached as Appendix E.

³ See "Progress of Women-Related Cases Before Dili District Court", attached as Appendix G.

utilized to communicate with the Prosecutor's Office on the progress of the case, to follow the progress of the case in the courts and to ensure the victim and dependants are safe and secure throughout the investigation, trial and after.

2. JSMP found that there is an immediate need for training of police, prosecutors and judges on legal issues that uniquely affect women and on identifying and handling sexual and domestic violence cases.

3. JSMP found that court clerks were not as vigilant as they could be at maintaining court records and calendars; administrative procedure should be improved to generate schedules and data more quickly and reliably.

4. JSMP observed that the progress of women-related cases was extremely slow, even non-existent in many cases, and should be expedited and improved.

The study, its detailed findings and recommendations are contained within this report.

2 FOREWORD

CHALLENGES FOR WOMEN SEEKING JUSTICE IN DILI DISTRICT: MARIANA'S⁴ CASE

"Violence against women is the most pervasive yet least recognized human rights violation in the world."

— Silence for the Sake of Harmony⁵

Mariana, a rape victim who traveled to Dili District Court to observe the progress of her rape trial recently, was disappointed.⁶ Her trial did not occur because *none* of the court actors were present: neither the judge, prosecutor, defense lawyer, nor the accused had bothered to come to court. Indeed, the only three parties waiting at Court for the scheduled proceeding to continue were Mariana, a JSMP researcher and the court clerk. They waited for over one and a half hours for information from the judge regarding the status of the trial or its rescheduling. Delays and postponements such as those Mariana faced are commonly experienced by women who are victims of crime in East Timor.

It was not to be the only time Mariana would come to Dili District Court expecting action on her case only to find that her hearing had been delayed due to the absences of vital parties. This unpleasant experience would occur to Mariana repeatedly. Eight months after Mariana was raped and had filed her complaint, the accused was free on conditional release and no further date had been set for the trial.⁷

Mariana told JSMP that she does not understand why her case has not proceeded, why there are so many delays and how her case will finally, if ever, be resolved. Mariana also told JSMP that she has heard rumors that someone involved in the case has bribed court actors to stop progress of the case. She cannot verify this information in any way, and she feels pessimistic that there will be any resolution to her case.⁸ Were she to ask the police officer who took her complaint, the two doctors who examined her, one of the three different prosecutors who have handled her case, the court reporters who have scheduled and rescheduled the hearings, or the judge assigned to her case, it is unclear to JSMP whether any of them would be able to give her a satisfactory explanation for the delays that have plagued her case.

During two months of monitoring the Dili District Court, JSMP learned that Mariana's case in the formal justice sector of East Timor is unique only in her demonstrated bravery, dedication and commitment to proceeding against the man who she alleges raped her.⁹ In an attempt to find answers to some of Mariana's questions, JSMP has compiled this report based

⁴ JSMP has used pseudonyms to protect parties' confidentiality. In all cases *infra* where JSMP has changed the name of a party, the name is initially marked with an asterisk, i.e. Mariana*. Although the names of the defendants in the women-related cases that were scheduled before Dili District Court during the monitoring period are public information, JSMP has assigned its own numbering system to these cases in order to prevent the disclosure of any confidential information.

⁵ Domestic Violence and Women's Health in Central Java, Indonesia. "Silence for the Sake of Harmony." April 2001, p.1.

⁶ Interview with Mariana, November 13, 2003.

⁷ JSMP staff inquired on five separate occasions at the Court and Prosecutor's Office as to the status of rescheduling Mariana's case. A further hearing date was finally rescheduled. However, that hearing, too, was postponed because of the absence of a party: the court reporter. As of the time of writing this report, no further scheduling had been made in Mariana's case.

⁸ Interview with Mariana, November 13, 2003.

⁹ Based on JSMP's monitoring of Dili District Court from September 29 to November 28, 2003. See *App. G* for more statistics on postponed women-related cases at Dili District Court.

on a study of criminal cases involving women as victims of crime in Dili District Court. JSMP plans to continue this study and monitoring over six months in 2004.

3 INTRODUCTION

3.1 ABOUT JSMP

The Judicial System Monitoring Programme (JSMP) was set up in early 2001 in Dili, East Timor. Through court monitoring, the provision of legal analysis and thematic reports on the development of the judicial system, JSMP aims to contribute to the ongoing evaluation and growth of the justice system in East Timor. JSMP's over-all objectives include, *inter alia*, promoting the development of a fair justice system in East Timor; prompting action to bring practices in line with international human rights standards; providing a physical monitoring presence at district court trials and hearings of the Court of Appeal; promptly reporting on selected trials, and their fairness; and promoting the role of a fair justice system in the related process of national reconciliation. JSMP is involved in a strategic review of the justice sector with a view to securing basic rights and particularly rights regarding access to justice.

JSMP undertakes a number of initiatives to achieve its objectives, including: building East Timorese capacity and networks in relation to the justice system; training East Timorese lawyers, activists and students in fair trial guarantees and trial observation; ensuring East Timorese participation and consultation in the justice system's development; facilitating cooperation between relevant East Timorese and international organizations through the exchange of legal observers, research, analysis and policy development on the rights to justice and basic rights that can be secured through the legal process or by justice actors, sharing and disseminating information; increasing public awareness of the internationally recognized elements of a fair justice system and the rule of law, both within East Timor and the region generally; informing the East Timorese Government, UNMISSET, the East Timorese public and the international community of possible irregularities in the justice system; identifying causes and suggesting possible reforms; and providing independent information on recent developments in the justice system in East Timor, including to local and international media and NGOs.

3.2 EAST TIMOR AND THE JUSTICE SECTOR

On 20 May 2002 East Timor became a sovereign nation, after a struggle for self-determination marked by decades of human rights abuses by the occupation force. Shortly after the 1999 referendum, in which the East Timorese implicitly voted for independence from Indonesia, the United Nations Transitional Administration in East Timor (UNTAET) took over administration of East Timor. The mandate of the mission was not merely to govern the territory in the time before independence, but more importantly to create structures and enhance capacity building in a way that would enable East Timorese self-governance. UNTAET administrators immediately prioritized establishing a functioning justice system.

However, after several years of a United Nations administered justice system and now under the Government of East Timor, the justice sector in East Timor is widely regarded as the weakest sector. The weakness of the justice sector in a post-conflict country such as East Timor translates into the present inability of women to access formal justice. Additionally it means that gender development efforts are hampered and the encouragement of economic development is extremely difficult.

The manifold difficulties experienced by actors in the justice sector include: the existence of only a small number of legally qualified East Timorese nationals, very few of whom are women; little to no judicial supervision throughout the Court system; lack of clarity as to which laws apply in East Timor; a poor relationship between the judiciary and the Government; delays in the appointment of the Superior Council of the Judiciary and in the appointments of judges; long absences of judges while attending training in Portugal; more difficulty in making skills transfers from international advisers than had been expected; contracts of short duration for international judges; incomplete legislation; legislation that frequently does not correspond to the realities existing in East Timor, including the realities faced by women in East Timor; and a lack of administration skills and poor planning in the judicial sector.

3.3 ABOUT THIS STUDY

3.3.1 BACKGROUND

This study and resulting report focuses on the formal justice sector of East Timor. In East Timor, victims of crime seeking justice can ideally access two different systems. A victim or person with knowledge of a crime may choose to utilize either traditional law, also known as *adat*,¹⁰ or the formal legal system. The victim may also utilize a combination of the two systems in resolving their problem. This study focuses on what transpires after a woman or her friends or family approach the police, (either the Policia Nacional de Timor-Leste (PNTL) or the United Nations Police (UNPOL)), to file a complaint about an allegedly criminal occurrence against a woman. Most specifically, this study focuses on the frequency, content, quality and duration of criminal proceedings relating to women in Dili District Court for a two-month period.

During JSMP's regular monitoring of the Dili District Court from May to August of 2003, JSMP monitors were unable to attend and monitor rape proceedings, which are closed pursuant to Regulation.¹¹ In addition, during the monitoring, JSMP staff became aware that very few, if any, domestic violence cases were proceeding to trial. Based on JSMP's preliminary observations of the challenges facing the district courts and all justice actors in proceeding with women's cases, JSMP determined there was a need to focus on and more extensively research these cases. In order to achieve its objective of fully monitoring Timor's justice sector, and to observe and document the progress of rape and domestic violence as well as other cases involving women Timor's formal justice sector, JSMP initiated this study in Dili District Court.

3.3.2 AIM OF THE STUDY

The objectives of this study originally were to generate data on the conduct of rape and attempted rape cases at Dili District Court, and to collect and analyze information relating to women and the formal justice sector. The study's ultimate goal is to make recommendations for addressing issues in women's access to formal justice and to provide directions for future research in this area. Throughout the course of the study, additional objectives were added, including: identifying the reported crimes that most frequently involve women in Timor; compiling and analyzing data on the crimes involving women that are actively prosecuted in Dili District Court; generating preliminary data on what occurs at the

¹⁰ For further information regarding the role of traditional law in women-related cases in East Timor, see Swaine, Aisling, International Rescue Committee, "Traditional Justice and Gender Based Violence", August 2003.

¹¹ Section 28.2 (b) of U.N. Regulation 2000/30 as amended by 2001/25 ("Regulation").

prosecutor's office in women-related cases; and analyzing the legal issues pertaining to women-related crimes in Timor.

Ultimately, this study will form the foundation and guide for subsequent initiatives into the treatment of women and their pursuit for rights in the formal justice sector in East Timor.

3.3.3 DURATION AND SCOPE OF THE STUDY

From September 29, 2003 to November 28, 2003, JSMP monitored Dili District Court on a daily basis for criminal cases involving women either as the victim or the accused. As no Dili District Court criminal cases observed by JSMP during this time period involved a woman as a perpetrator of crime, the report analyzes only crimes in which women were the victims, or the incidental victims--as in the case of an abandonment of a child charge brought against a father.¹² In addition to the monitoring, during the same time period, JSMP interviewed relevant justice actors and frequently observed the VPU and the Prosecutor's Office in Dili. JSMP also interviewed Los Palos and Oecussi VPU officers and noted anecdotal information regarding progress of women-related cases in Oecussi.

Dili District Court was the subject of this study because of the geographic and logistical limitations imposed by the short duration of the study. Of the four district courts in Timor, Dili District Court is the oldest and most stable functioning court. Dili is the most populous district as well, however, many of the biases against women encountered over the course of this study may be more extreme in more rural, agrarian, and traditional regions.

3.3.4 DEFINITION OF THE "FORMAL JUSTICE SECTOR"

Since this report focuses exclusively on the formal justice sector, it is necessary to define the parameters of that sector. East Timor's formal legal system derives from a variety of different written sources and dynamic institutions. The written sources of criminal law in East Timor include but are not limited to: United Nations Regulations and Directives dating from UNTAET's administration between 1999 and 2002; the Constitution of Timor-Leste, dated May 5, 2002; legislation enacted by the Parliament of Timor-Leste since independence the Indonesian Penal Code (and Indonesian law generally) modified by internationally recognized human rights standards. Criminal procedure in the Dili District Court is governed by the UNTAET Transitional Rules of Criminal Procedure (the "Regulation").¹³ These temporary rules were developed by UNTAET and were intended to replace the Indonesian Code of Criminal Procedure¹⁴ until an East Timorese law was developed.

For purposes of this report, the institutions that comprise the "formal justice sector" are those that were created by the abovementioned laws as well as organizations working to support, interpret and apply the same laws. These organizations include the PNTL and UNPOL, the Deputy General Prosecutor for Ordinary Crimes office, the Public Defender's office, Dili District Court, the Court of Appeal, other district courts of Timor; also included are non-governmental legal and women's organizations, such as Fokupers and Perkumpulan

¹² The focus of the report was initially on women in the formal justice sector in any role: either as victim or as perpetrator. However, the focus necessarily shifted to women as victims of crimes only. (*See infra* at 3.3.6 "Women as Victims: Defining "Women-Related Cases".)

¹³ UNTAET Regulation 2000/30, as amended by UNTAET Regulation 2001/25. To be referred hereafter as to as the Regulation.

¹⁴ Section 54.2 of the Regulation states that: the present regulation takes precedence over Indonesian laws on criminal procedure; provided, however, that at any point of criminal procedure which is not specified in the present regulation shall be governed by applicable law as provided in Section 3 of UNTAET Regulation 1999/1.

HAK. "Justice actors" for the purposes of this report include the personnel and staff of these institutions and organizations as well as the victims, witnesses, family members and perpetrators of crimes.

The Dili District Vulnerable Persons Unit ("VPU") was created in March 2001.¹⁵ The VPU is the gateway to the formal justice sector for female victims of crime in Timor. UNPOL Headquarters and the PNTL worked together to establish the unit. The VPU has jurisdiction over the following types of crime: rape, attempted rape, domestic violence¹⁶ (emotional, verbal and physical), child abuse, child neglect, missing persons, paternity, and sexual harassment. The PNTL and UNPOL created the VPU in order to have an investigations department that specialized in solving cases relating to women and children.¹⁷ According to UNPOL, eventually operational VPUs will be established in every police station in Timor. At the time of writing, no UNPOL or PNTL officer could confirm to JSMP that that goal was being achieved.

For the study, JSMP researchers observed and interviewed officers at the Dili District VPU on a number of occasions, and interviewed police officers at the Oecussi and Los Palos VPUs. On December 10, 2003, the Dili District VPU transitioned to having primary command responsibility rest with the PNTL, not UNPOL. UNPOL remains as technical advisers for some time.

The Dili District Prosecutor's Office operates with a staff of four prosecutors and a Deputy General Prosecutor for Ordinary Crime. In addition, the Suai and Baucau district prosecutors work out of Dili District Court from time to time. The Prosecutor's Office has jurisdiction over "ordinary crimes" which includes all crimes against women except those falling under the jurisdiction of the Special Panel for Serious Crimes.¹⁸ The role of the Public Prosecutor is primarily governed by section 7 of UNTAET Regulation 2000/ 16 as amended by Regulation UNTAET 2001/ 16.

"In most cases the Prosecutor has the duty to request an arrest warrant if appropriate and after the investigation, has the responsibility to decide whether indictments should be made in individual circumstances and prepare the indictment. If the matter is a minor offence of with a possible punishment of less than one year the police investigator can proceed directly to the judge in such matters without having to go via the Prosecutor. The Prosecutor also has a role in requesting detention orders from investigating judges while investigations are ongoing."¹⁹

JSMP observed that the prosecutorial staff at the Dili District Court was minimal given the number of cases to be handled by the staff. It is important that there are a sufficient number

¹⁵ Interview with UNPOL Kimberly Campbell, 27/9/03.

¹⁶ For ease of reference, JSMP adopts the terminology used by the police in this report, as opposed to using the broader and more current term "gender-based violence".

¹⁷ Interview with UNPOL Kimberly Campbell, September 27, 2003, and Interview with UNPOL Kiran Bajracharya, Team Leader Dili VPU, October 2, 2003.

¹⁸ There is also a separate Prosecutor's Office for Serious Crimes, which is staffed by the United Nations. Although the Prosecutor for Serious Crimes has issued indictments for sexual violence during this time period and the Special Panel has made a number of rape convictions, this study did not encompass the work of the Serious Crimes Unit. Throughout the course of this research, however, JSMP researchers learned that the Serious Crimes Unit's intent to issue a large sexual violence indictment was terminated. Further research on this issue as well as the jurisprudence of the Special Panel for Serious Crimes in terms of women-related cases is warranted.

¹⁹ Section 7 of the Regulation.

of suitably trained prosecutors with adequate resources, skills and facilities available in order to ensure the quality of services delivered by the Prosecutor's Office.

The Public Defender's Office opened in February 2000 and operates with a staff of seven public defenders at Dili District Court²⁰ supported by one permanent administrative officer, three international mentors, and four other support staff, one defender in Baucau, and one in Oecussi. The role of the public defender is critical in an environment where many accused have a limited understanding of the rule of law. The duties and responsibilities of public defenders are set out in UNTAET Regulation 2001/24. A Code of Conduct for public defenders is set out in the Schedule to this Regulation. Their role is to provide legal assistance and representation to persons who are involved in criminal investigations and criminal and civil proceedings and who do not have adequate financial resources to pay for such representation.²¹

Dili District Court was the first Timorese court to begin functioning in March 2000. Dili District Court is one of four district courts in Timor, and handles the largest case volume of all Timorese courts. The Constitution of East Timor establishes two levels of appeal, the Court of Appeal and the Supreme Court of Justice. Due to the lack of human resources to constitute the Supreme Court of Justice, the Court of Appeal has been given the competence to exercise the tasks of the Supreme Court of Justice in terms of the East Timorese Constitution²² and UNTAET Regulation 2000/11.²³ The Court of Appeal was not functioning for a period of almost 18 months from October 2001 until July 2003.²⁴

²⁰ Defenders also represent accused before the Suai District Court which currently sits in the Dili District Court building.

²¹ See also section 135.2 of Constitution of East Timor.

²² Section 164(2) provides that: "Until such a time as the Supreme Court of Justice is established and starts its functions all powers conferred to it by the Constitution shall be exercised by the highest judicial instance of the judicial organization existing in East Timor.

²³ See Articles 4 and 14 UNTAET Regulation 2000/11.

²⁴ See JSMP Dili District Court Final Report 2003.

3.3.5 STRUCTURE/METHODOLOGY OF THE STUDY

JSMP researchers for this report consisted of one international and one national staff member. The international researcher was a lawyer with women's and human rights experience. The national staff member has worked extensively with women who were victims of crime as a Human Rights Officer with the United Nations. Interpreters were used on occasions when the national staff member could not be present at interviews. In addition, JSMP researchers drew from other JSMP staff members' knowledge of Timor's justice sector.

To initiate the study, the JSMP researchers asked The Honorable Claudio Ximenes, the Chief Judge of the Court of Appeal, for his support of the researchers in observing otherwise closed proceedings in District Court. His Honor agreed to support JSMP's research and signed a letter to that effect. JSMP informed each of the potentially affected district judges about this research and ask each of the judges for permission to attend otherwise closed proceedings. JSMP explained the gender-related research to the judges at Dili District Court on a case-by-case basis as relevant cases were before them. In general, the Dili District Court judges were supportive of JSMP's research and allowed JSMP access to the proceedings.

From the inception of this study, JSMP was concerned about the confidentiality, dignity and privacy interests of the victim. In order to protect the confidentiality interests of the parties concerned, JSMP made a written commitment to the judges and parties that it would not disclose any identifying details regarding the proceedings observed or cases studied. To address JSMP's concerns about offending the dignity of or being insensitive to the victim, JSMP asked the judges who allowed JSMP access to the otherwise closed proceedings to either ask permission of the parties or at the very least, to explain to the parties that JSMP was present in the courtroom as part of a research project on women in the formal justice system. In addition, JSMP attempted to, and with one exception succeeded in, having only female researchers attend the gender-based criminal proceedings.²⁵ Further, the JSMP female researchers decided as a matter of policy not to press victims for information outside of what occurred at the court proceedings. (*See infra* at 6.4. and *App. E* for more information regarding the victims in the cases.)

As JSMP researchers commenced their monitoring of the Dili District Court, they introduced themselves to the court staff and explained that JSMP was interested in monitoring any case relating to women. Court clerks maintain the schedule of proceedings in Dili District Court, and were integral to the success of this monitoring project. In addition, the court reporters maintain the case files. As a general matter, JSMP was given access to the otherwise closed case files for purposes of this project. For a particular day, the court schedule displays the following information: 1) the name and number of the scheduled case; 2) the court reporter assigned to the case and 3) the judge assigned to the case. Only sporadically will the court schedule also reflect the time of the proceeding. (*See infra* at 6.3. for court scheduling issues.)

Monitors explained to the court clerks that they were interested in any and all criminal cases that involved women, whatever they were: murder, rape, attempted rape, assault, domestic violence and maltreatment. Since the type of case was not reflected on the schedule,

²⁵ On one occasion, no interpreter was otherwise available, so a male JSMP Timorese lawyer knowledgeable about this study who has spent significant periods of time monitoring the district courts accompanied the international JSMP lawyer to a rape hearing to translate. That hearing was late and then postponed.

JSMP initially had to rely on the court reporters' account of what the nature of the scheduled cases and try to cajole the reporter into verifying that information by looking it up in the case file. As the research progressed, and if case files were available, court reporters allowed JSMP researchers to access the scheduled cases' files directly to ascertain if the case involved a female victim or perpetrator and as such was relevant to this study.

If any scheduled case involved a woman as a party (either as a victim or perpetrator), JSMP researchers created a record of the date the initial incident allegedly occurred; the date the District Court was assigned the case; the dates on which proceedings had taken place before the monitoring period; what had happened at those proceedings; the respective ages of the victim and suspects; and the key facts of the cases. (*See* attached Appendices E, F and G.)²⁶ If a scheduled hearing actually proceeded, JSMP researchers monitored and recorded the events of the session. If the session did not take place, JSMP researchers inquired after the relevant parties and tried to ascertain the reasons for cancellation.

In light of the JSMP researchers' review of Timorese domestic violence studies conducted by Oxfam and International Rescue Committee²⁷, JSMP researchers were immediately concerned by the absence of domestic violence cases proceeding at Dili District Court. In an attempt to gain more information regarding domestic violence cases in the formal justice sector, JSMP researchers approached UNPOL Commissioner Sandra Peisley to receive permission to conduct interviews and research at the VPU at Dili District Court. JSMP researchers hoped to gain some indication of the incidence of domestic violence and related case reports to the PNTL and UNPOL, the gateway to the formal justice sector.

Commissioner Peisley permitted JSMP to interview VPU officers but not to be present at the initial intake proceedings with victims, in part in order to avoid the JSMP researchers' becoming witnesses to the crimes reported. At the Dili VPU, JSMP researchers observed the influx of victims on five different occasions and interviewed five VPU officers. In addition, the UNPOL Commanders of Dili District, first Antonio di Silva, then Matthew Gunda, provided JSMP with crime statistics from Dili District for relevant time periods. (*See* App. B.) JSMP also interviewed VPU officers in Los Palos and one officer at the Oecussi VPU.

At the Dili District VPU, JSMP was told that many domestic violence cases that are settled out of court are settled at the Prosecutor's Office. As a result, and in order to follow up on cases that had been scheduled in Court, JSMP interviewed prosecutors at the prosecutor's office. Prosecutor General Dr. Longuinhos Monteiro provided JSMP permission to interview prosecutors for this report. In addition, JSMP interviewed the head of the Public Defenders Office, Dr. Sergio de Jesus Hornai, to follow up on specific cases. JSMP also interviewed non-governmental organizations regarding women in Timor relating to this study.

²⁶ *See* "Elapsed Time Since Incident in Women-Related Cases Before District Court (until 28/11/03)" attached as App. F.

²⁷ *See generally* Swaine, Aisling, International Rescue Committee, "Traditional Justice and Gender Based Violence," August 2003; Joshi, Vijaya and Maggie Haertsch, International Rescue Committee, "Prevalence of Gender Based Violence in Timor Leste," July 2003.

3.3.6 WOMEN AS VICTIMS: DEFINING "WOMEN-RELATED CASES"

As stated above, all of the criminal cases involving women as parties at Dili District Court involved women as victims, not perpetrators, of crime. "Women-related cases" for purposes of this study indicates any case in which a woman or her child was a direct party in the case. When referring to "women-related cases" herein, JSMP intends to refer only to those cases that actually arose at Dili District Court during the two-month monitoring period, not the entire spectrum of cases that exists in Timor. There were eighteen women-related cases at Dili District Court during the two month period which encompassed: nine rape charges, three attempted rape charges, six sexual violence charges, two murder charges, one attempted murder, one maltreatment and one abandonment charge. (This sample is analyzed more fully *infra* at 4.2, 6.1.)

Three specific types of crime involving women that arose frequently in JSMP's interviews and review of relevant literature concerning Timor were domestic violence, trafficking in women and prostitution. However, not one trial hearing relating to these legal issues was scheduled before the Dili District Court during the monitoring period. Since actual domestic violence, prostitution and trafficking in women cases did not occur in this sample, they are not included in the term "women-related cases" used throughout this report.²⁸

A note about crime statistics: Throughout this study, the statistics kept by the VPU in Dili District Court provide a valuable reference point since the subject of this study is women in the formal justice sector. However, crimes such as domestic violence and rape have a tendency to be under-reported, and conclusions drawn from this study are limited to the incidence of *reported* crimes.²⁹ During interviews, JSMP was told by some VPU officers that they had discouraged women from reporting "minor" domestic violence incidents or rapes that were not "serious".³⁰

4 OVERVIEW OF WOMEN-RELATED CASES AT DILI DISTRICT COURT

4.1 RELATIVE ACTIVITY OF WOMEN-RELATED CASES COMPARED TO OTHER CASES

During the two-month monitoring period from September 29 - November 28, 2003, 55 percent, or over half, of the criminal hearings scheduled at Dili District Court involved female victims. (See "Relative Activity of Women-Related Cases to Other Cases in Dili District Court During Monitoring Period" attached at App. A.) Almost 50 hearings relating to a mere eighteen women-related cases were scheduled over the two-month period.³¹ While

²⁸ The absence of domestic violence, trafficking in women and prostitution cases from the sample of cases before the Dili District Court is further discussed *infra* at Section 4.2.

²⁹ According to the Chief Prosecutor in JSMP's interview: "[There are] many factors why the victim doesn't want to report [the sexual violence crime] to the police; [sometimes: 1) the] rape happens in the family: by an uncle, brother, [or] father; 2) [when the] victim tells the police--the police make her feel that it is not confidential and she is embarrassed; [and/or] 3) lack of information, she doesn't know that it is a criminal offense. With the newspaper and press, sometimes they publish the name; they publish enough of the story so that the victim knows that other people will know about it. She feels ashamed, because under East Timorese culture, she will be seen as a bad girl. All these factors can be changed, once the system is improved. [We must learn h]ow to support the victim and protect the victim." October 14, 2003.

³⁰ Interview with Dili District VPU PNTL Officer, October 2, 2003.

³¹ During the same period, 38 hearings for criminal cases that did not involve women were scheduled. The actual number of hearings involving women that were scheduled was 47. There were two additional hearings that were not reflected on the schedule, but which JSMP was able to observe, which brought to JSMP

this preponderance of women's cases clearly demonstrates that there are many cases involving women in Timor, it cannot be inferred that women represent the majority of victims of crime. In fact, according to available Dili District Police Crime Statistics, over the four-month period from August through November of 2003, 67% of the victims of reported crime were male, and just 33% were female.³² JSMP has found no information pertaining to the discrepancy between the statistical trend in Timor (for males to represent the majority of victims of reported³³ crime), and the fact that the majority of cases before the District Court during the two months monitored involved women as victims. There are likely a number of potential explanations which only further research and analysis could ascertain.

JSMP researchers were able to obtain thoroughly maintained statistics regarding the volume and incidence of reported crimes in Dili over 2003 from the Dili District Police and VPU office because the Dili District Police maintains and provides statistics for reported crimes. However, the lack of available statistics at the Prosecutor's Office and Dili District Court made it difficult, if not impossible, to generate a verifiable ratio of rate of prosecution of women-related cases. Statistics tracking the nature and duration of cases at Dili District Court were not available to JSMP's researchers; indeed, it appears they are not maintained. JSMP also asked the Dili District Prosecutor's Office to provide statistics for its incoming cases.³⁴ It was unable or unwilling to do so. The inability of the Prosecutor's Office to track the types of cases awaiting prosecution and those currently being prosecuted or the unwillingness of the Prosecutor's Office to provide this data to researchers is problematic as it is impossible to draw verifiable conclusions about the disposition of the reported crimes that the Dili District Police records.³⁵ Without this verifiable data, it is difficult to state with certainty why the majority of cases before Dili District Court involved female victims during the monitoring period, but Dili District Police Statistics showed that two-thirds of crime victims were male. Although the Police statistics do not include specific case numbers, and as such the progress of specific cases could not be tracked, the statistics provide an essential baseline in determining the prevalence of reported crimes against women in Dili District. Instead, researchers are left to hypothesize.

As a result, JSMP notes that there was a significant increase in the proportion of women's cases over the course of the monitoring period. During the first month of monitoring, women's cases comprised less than half of the total sessions scheduled at Dili District Court. However, during the second month of monitoring, cases involving women composed over two-thirds of the total sessions scheduled. One possible explanation is that JSMP's monitoring of women-related cases induced the relevant justice actors to prioritize such cases during this time period. Supporting this hypothesis is the fact that almost a third of the women-related cases scheduled for hearings during the monitoring period had had no

researchers' attention the fact that the Court schedule was often incomplete. (For more information on the Court schedule, see *infra* at Section 6.2.)

³² See Percentages of Women as Victims of Reported Crime Compared To Men as Victims of Reported Crime in Dili District (September-November, 2003) attached as Appendix B; "Crime Statistics from Dili District Police Station" attached as Appendix H. In the future study, it will be useful if JSMP can gather longitudinal data stretching over a longer period.

³³ Again, JSMP emphasizes that the only available statistics relate to *reported* crime. *Actual* incidence of crimes against women is likely much higher than the reported crime rate, but further studies must be done to generate the numbers.

³⁴ Conversation with Deputy General Prosecutor, November 2003; Interview with Chief Prosecutor October 14, 2003. During the interview with the Chief Prosecutor, he volunteered that, "[O]ne thing [that] is very important, is that the Prosecutor and the Police must have a database about domestic violence."

³⁵ Indeed, Dili District VPU Officers and PNTL Officers expressed frustration at their lack of access to information about how cases they forward to the Prosecutor's Office are disposed. JSMP recommends that the Prosecutor's Office and Court maintain statistics of all cases before them in order to evaluate their progress.

hearings scheduled for the six months prior to the monitoring.³⁶ In nine of the eighteen women-related cases, no hearing had been held for the previous six months.³⁷

JSMP recommends that on a regular basis, the Prosecutor's Office and Court maintain statistics regarding the types of cases brought before them.

4.2 CHARACTERISTICS OF THE SAMPLE OF WOMEN-RELATED CASES

The majority of women-related cases scheduled at Dili District Court involved women as victims of sexual violence.³⁸ A small percentage, 22%, of the women-related cases was composed of murder, maltreatment/attempted murder and abandonment cases.³⁹ No domestic violence, prostitution, trafficking in women or "illegal staying" cases were scheduled during the two months of monitoring.⁴⁰ Only one assault hearing was scheduled for the maltreatment/attempted murder case in which a woman had been stabbed by her brother-in-law. The lack of domestic violence prosecutions can be partially, but not satisfactorily, explained by the fact that from January to August of 2003, out of 148 domestic violence cases reported to the Dili District VPU, 104 of the complaints were withdrawn by victims after receiving the public prosecutor's approval to withdraw.⁴¹ Since the Prosecutor's Office does not have statistics, it is unnecessarily burdensome to ascertain the specific qualities of the domestic violence cases. JSMP recommends that the Prosecutor's Office and Court maintain statistics of all cases in order to evaluate their progress.

³⁶ See App. G. Five of the eighteen cases had not had one single hearing scheduled during the previous six months.

³⁷ See App. G.

³⁸ See App. C. Fourteen of eighteen cases involved alleged sexual violations.

³⁹ See "The Sample: Charges Advanced and Penal Code Provisions Implicated in Women-Related Cases Scheduled for Hearings During Monitoring Period" attached as Appendix D. Of the four cases that did not involve sexual violence, two were murder cases, one was maltreatment/attempted murder and one was an abandonment case. Note that two of the sexual violence cases also included charges relating to breaking and entering and false imprisonment.

⁴⁰ It is beyond the scope of this report to fully investigate the issue of prostitution and trafficking in women in Timor, but the following comment from JSMP's interview with the Chief Prosecutor will provide some understanding of the context. "Prostitution is illegal in East Timor. In Java, [prostitutes] have a big house and compound, have to pay a fee to [the] government, then they have a doctor to prevent AIDS. In East Timor, very few prostitutes are from East Timor. Many prostitutes [come] from Thailand and Indonesia. They say they want to come for tourism or for a restaurant on their VISA [application]. In the night they practice prostitution...[In one such case in Timor, one girl is in prison and Police] can't find the boss right now. One boss makes coordination from Thailand." October 14, 2003.

When interviewed by JSMP, a different Prosecutor said that both Timorese and international women are prostitutes but that, "[i]t is not a crime for the women who commit prostitution. It is a crime for the pimps under Indonesian Penal Code [sections] 296-297." However, that same Prosecutor further stated that there are women who have been found guilty of "illegal staying" or of "pimping themselves" in Timor and been deported or incarcerated as a result of this conduct. October 17, 2003.

JSMP's Dili District Court Final Report 2003 states, "[During the monitoring period,] [t]he Prosecution also instigated investigations and requested arrest warrants for cases in which there was not an applicable crime or the penal code provisions required significant manipulating of the wording and intent to charge the suspect. A number of people were arrested during the monitoring period and brought before the investigating judge for prostitution. There is no crime of prostitution according to the Indonesian Penal Code. It appears that attempts are made to try prostitutes pursuant to Articles 296 and 506 of the Indonesian Penal Code which relate to a person who makes an occupation of intentionally facilitating obscene acts by others with third parties and; any person who as a pimp takes advantage of the prostitution of a woman." In summary, prostitution and trafficking of women in Timor are subjects which merit further inquiry. Both prostitution and trafficking certainly exist in East Timor but are not being treated in a consistent manner by the formal justice sector.

⁴¹ Dili District VPU Statistics, Presentation by Kiran Bajracharya, Team Leader VPU, September 2003.

5 A CASE STUDY : MARIANA

JSMP researchers met Mariana, a physically frail 24 year-old woman, on the first day of monitoring women's cases at Dili District Court. Three months prior to the monitoring period, there had been two pre-trial detention hearings for the suspect and one trial hearing in Mariana's case. During the two-month course of the monitoring period, Mariana's case was scheduled for trial hearings five times, but only one hearing would actually open and proceed. At that hearing, the prosecutor read the indictment for a second time and then the defense asked for a delay, which the court granted. While JSMP researchers waited with Mariana for her case to proceed on more than three separate occasions at Dili District Court, she told JSMP some facts from her case, but since these conversations occurred in the court waiting area, which is open and not private, she was not at liberty to speak freely. Mariana averred each time JSMP researchers suggested leaving the court to talk more extensively, saying that she felt ill and could not talk. In fact, she told JSMP researchers that she had been ill and unable to sleep for the past six months.

However, after a series of delayed hearings in her case, and during a time when no follow-up hearing had been re-scheduled, Mariana came to Dili District Court to look for the JSMP researchers. She was distraught and frustrated by the constant delays and said that she was willing to talk to the researchers and wanted to contribute to the report, so that perhaps "something would change". What follows is her story as she told it to JSMP researchers.⁴²

5.1 THE RAPE

In late March 2003, Mariana was leaving the bar where she worked in Dili early in the morning. A friend of hers, ("male friend"), offered Mariana a ride home. The male friend's acquaintance, the accused also accepted a ride with the male friend. The male friend first stopped at his hotel, Dili 2001, to pick up a key. While away from the car picking up the key, Mariana and the accused waited in the car. At that time, the accused, who is a member of the Timorese military, Falintil-FDTL, brandished a weapon and threatened Mariana.⁴³ When the male friend returned, the accused held the gun to Mariana's head and demanded that the male friend drive the accused to Komoro, where he lived. Mariana said that the male friend was "too afraid to say anything" and drove them to Komoro. Upon arriving there, however, the accused demanded that the male friend drive them outside town, to a shooting range used by the army. When they arrived at the shooting range, the accused demanded money from the male friend and Mariana. Mariana gave everything she had to the accused: her ring, necklace and phone. The male friend gave the accused the money he had, but the accused was not satisfied and demanded another \$500 from him. The suspect told the male friend to drive back to Dili and get \$500 and said that he would wait with Mariana at the shooting range. The male friend pleaded with the accused not to do anything to Mariana and the accused said he would, "Take care of her like she is my sister."

⁴² Where information was gained from a source other than Mariana, such as the case file or an interview with the judge or one of the prosecutors handling her case, the source is indicated in the footnotes of this report.

⁴³ JSMP researchers read the male friend's statement in the case file. He stated that he and Mariana went into Dili 2001 together and had sex. He also stated that when they emerged from Dili 2001, the accused was agitated and said that since they were not married, they should not have gone inside the hotel room together. Mariana's report, however, states that she waited in the car with the accused. The Prosecutor assigned to the case repeatedly refused to discuss it or any other cases with JSMP, so JSMP was unable to learn how the prosecution planned to deal with this contradiction.

When the male friend left, Mariana tried to run away, but the accused followed her, beat her severely and raped her. After he raped her he told her she could go so she ran as fast as she could to the nearest occupied building, which was the Japanese compound, where she fainted upon arrival, her wounds were treated and a medical report relating to the rape was generated. The male friend returned to where he had left Mariana and the accused. The accused told him Mariana had run to the Japanese compound, so the male friend attempted to visit her there. However, Mariana was distraught and refused to see him. She spent the night at the compound and when she returned to her home the next morning, she told her mother she had been raped. Together, they called Mariana's uncle, who is a soldier in the FDTL and told him that she had been raped by one of the soldiers. She also called her boss from the bar and told him that she had been raped and resigned from her job.

5.2 THE REPORT

Mariana's interaction with the formal justice sector began the afternoon after the rape when she went to the police station in Becora to file a report. The Becora police called the Dili District Police VPU and a VPU officer, Juliana*, traveled to Becora to pick Mariana up. Mariana says that Juliana was "nice, looked after [her], helped [her], took her statement, brought her to the hospital and explained to [her] why [she] needed to go to the hospital to give evidence." Mariana was brought to the doctor for a medical examination, photographs, and a DNA test on the sperm. Mariana recalls the VPU officers telling her that the results of her DNA test would be returned within eight days. She went home after the VPU officers explained to her that they would arrest the accused. They did, and then picked up Mariana to provide identification. Mariana and the accused were not transported to the police station in the same vehicle.⁴⁴ However, while the VPU waited to start the identification process, they left Mariana and the accused sitting in the same small room. This made Mariana very uncomfortable, she said, but she also said the police were always present in the room at the same time. Mariana made a positive identification of the accused. The accused, however, denied ever having seen Mariana or having been in the bar that night. Mariana protested, telling the accused that other people had seen him at the bar and in the car with the Male Friend and her and that he knew that he had raped her.

The police collected witness statements. Three witnesses made statements indicating that they saw the accused in the car with Mariana and the male friend that night, including the male friend (Witness A); Witness B, Mariana's friend who had been with her earlier on the night of the rape and would accompany her to the trial sessions; and Witness C, a friend of Mariana's who worked for the police and who had been at the bar on the night of the rape. With the exception of the discrepancy as to whether the male friend went into the hotel alone or with Mariana earlier in the evening,⁴⁵ the male friend's statement confirmed Mariana's sequence of events, including the accused's brandishing a gun, the accused's demanding money, everything up to the point at which the male friend left the accused and Mariana alone together on the outskirts of the town. The male friend stated that when he had returned to the site, he sought out the accused, who told him that Mariana had run to the Japanese compound. The male friend's statement confirms that he attempted to contact Mariana at the compound, but that she refused him admission.

5.3 THE PROSECUTOR'S OFFICE

⁴⁴ The practice of transporting the victim and suspect in the same vehicle is officially forbidden, but a number of police officers, especially those in remoter areas like Los Palos, reported that it sometimes happens that victim and suspect are transported in the same vehicle.

⁴⁵ See note 43, *supra*.

Mariana met with a Prosecutor before the accused's detention review. He explained to her that she should testify truthfully at the hearing. She attended the hearing and testified, and she understands that the result was that the accused was incarcerated for three months. According to the Court files and a conversation with Mariana, Mariana and the accused were the only two persons present aside from the lawyers and Investigating Judge at the detention review hearing. Since that meeting with the Prosecutor, Mariana has had no contact with the Prosecutor's Office. The police have informed her about the scheduling of her case. She notes that three different Prosecutors have handled her case, however, as she has seen three different prosecutors in court for her case.⁴⁶ JSMP attempted on at least five different occasions to meet with the Prosecutor presently responsible for Mariana's case to ask follow-up questions of that Prosecutor. However, the Prosecutor consistently told JSMP that he was too busy to discuss the case with JSMP researchers.

5.4 THE COURT: HEARINGS

Mariana's first trial hearing was held before the commencement of JSMP's monitoring period, three months after the incident had occurred. During that hearing, Mariana, the accused, the Male Friend, and Witnesses B and C testified.⁴⁷ The next hearing took place fully three and a half months later, on the first day of JSMP's monitoring period and the judge allowed JSMP to attend. The hearing started 20 minutes late, lasted 40 minutes and thirteen people attended: the Judge, Prosecutor and Defender; the Court Clerk; the accused; Mariana and her friend (Witness B); two JSMP researchers; two female PNTL police officers; and two armed and uniformed FDTL members, friends of the accused. In addition, despite the fact that the proceeding was supposed to be, by law, a closed proceeding, at least three police and court staff unrelated to the case loitered in the side doorway listening to the proceeding. The judge spoke a mix of Tetum and Portuguese, the prosecutor and defender each spoke a mix of Tetum and Bahasa Indonesia.

At the commencement of the hearing, the judge asked the two friends of the accused, who were armed, to surrender their weapons. It was unclear why the friends were present or had been admitted to this closed proceeding, as they were never called to testify as witnesses and never appeared to attend any subsequent hearings. Because the judge asked them to surrender their weapons, the two uniformed military men approached the bench and laid their guns on the Prosecutor's table. The Prosecutor then read the indictment, although since he had previously read the indictment, JSMP is of the opinion that it was unnecessary for him to read it again. The judge then asked the accused about his condition and asked if what was said in the indictment was true. The accused replied that it was not and that he had not in fact ever seen Mariana before. The judge replied that the accused should tell the truth and allowed the defense lawyer to make comments. The defense lawyer said that he had not been provided access to the results of the accused's DNA test and that he thought it was necessary to verify whether the Male Friend had also had a DNA test. At this point, the judge adjourned the court session so that the defense could access and review the test results. The case was rescheduled for a date two weeks in the future.

5.5 THE COURT: DELAYS AND POSTPONEMENTS

Two weeks later, Mariana and her friend and JSMP researchers arrived at court. After waiting for one hour and 30 minutes, the judge did not appear (*see infra* at Section 6.3 on postponements and delays). At the next scheduled hearing only after Mariana and her friend, Witness B, arrived and had been waiting, the judge told Mariana that the defense lawyer was

⁴⁶ Interview with Mariana, November 13, 2003.

⁴⁷ Interview with Judge, November 18, 2003, and Mariana, November 13, 2003.

ill in the hospital and so the hearing would be rescheduled. For the next two weeks, JSMP researchers continually requested the follow-up rescheduled time for the hearing no further hearings were scheduled. It was during this time that Mariana met JSMP researchers and provided them an interview. Also, during this time, JSMP discussed the case with the presiding judge, who told JSMP that he foresaw the need for at least two more sessions, and to hear Mariana testify yet again before he could reach the decision stage. He also emphasized that the medical report and evidence that he already had at his disposal were highly probative. After JSMP researchers had asked the court staff and judge a number of times, the case was given a re-schedule date. On the morning of the hearing, Mariana called one of the JSMP researchers and told her that she felt sick and did not think she would attend. The JSMP researcher encouraged her to attend, and she did. Unfortunately, however, yet again, the defense counsel did not appear, as a result of the same illness that had caused his previous absence. A subsequent date was set. On that hearing date, Mariana and JSMP researchers waited at the Court for two hours to no avail, as the hearing did not open, first, because court reporters were in training and second, because of poor resource management and scheduling by the Court. On this hearing date, the defense counsel had recovered from his illness and was present at the Court. JSMP took the opportunity to ask him whether he had received the DNA tests the Court had previously ordered him to receive and examine in advance of the next hearing. He said he had not.⁴⁸

5.6 MARIANA'S CASE AT TIME OF WRITING

At the time of writing this report, Mariana's case had still not been re-scheduled and the accused remained on conditional release.

6 THE PROGRESS OF WOMEN-RELATED CASES BEFORE DILI DISTRICT COURT: ADMINISTRATION AND MANAGEMENT

6.1 GENERAL OVERVIEW OF THE PROGRESS OF WOMEN-RELATED CASES

During the Indonesian occupation of East Timor, Timorese justifiably had little confidence in the formal justice sector. In order for the public to invest and trust in its new formal justice sector, progress must be made towards providing access to justice and efficient delivery of verdicts for victims and the accused.

However, in direct conflict with these goals, progress in women-related cases during the monitoring period was almost always postponed or delayed. Few hearings actually proceeded, and of those that did proceed, most involved only the mechanical reading of the indictment. Delays before proceedings were the norm; indeed, the average delay before hearings was about 45 minutes. Ironically, delays before hearings that were ultimately merely postponed were the longest. In some cases, victims and court actors waited for up to two and a half hours only to learn that their cases would not be proceeding at all. Not only did few women-related cases make any progress at all, the court issued no final decisions in any of the women-related cases.

6.2 TRANSPARENCY AND COMMUNICATION: TRACKING THE PROGRESS OF WOMEN-RELATED CASES BEFORE DILI DISTRICT COURT

⁴⁸ JSMP notes that all the relevant justice actors should be presented the results of the DNA tests as a matter of course.

Regardless of whether a proceeding is to be closed or open to the public, in order to assemble the interested and necessary parties, the proceeding must be properly scheduled. As JSMP reported in its Dili District Court Final Report 2003, "The full realization of th[e] right [to a public hearing] requires that the public have access to hearings and importantly can readily obtain information about when and where public hearings are to be held,⁴⁹ or otherwise are informed of why the hearings are not open to the public." That the necessary parties be assembled and the schedule be transparent is a fundamental prerequisite to providing women with access to justice at Dili District Court. It is also fundamental to achieving efficiency in the processing of cases at Dili District Court and eliminating the waste of the valuable judicial resource of time. The Court schedule should be immediately transparent to every visitor to Dili District Court in order to support these goals. However, JSMP researchers found that there was little transparency in communicating scheduling of women-related cases at Dili District Court.⁵⁰

Some of the obstacles to tracking the progress of cases before the Dili District Court include the following:

1) As noted in JSMP's Dili District Court Final Report 2003, the notice board at the Court is not being used, or at best, is being used only rarely, by Court staff to communicate to the public when proceedings are scheduled. At the time of writing this report, interested parties must personally inquire of the case reporters in order to ascertain the scheduling of a case and in order to be granted access to the stapled-together bundle of handwritten papers that function as the central court schedule. Clearly, a system which requires victims of sexual violence or families of murder victims to inquire personally of official court staff is not optimal, since affected persons and victims may be intimidated, made emotionally anxious or embarrassed by the proceedings.⁵¹ JSMP recommends that court staff update the notice board on a daily basis in order to provide the public with immediate access to the scheduled court proceedings for the week. In fact, JSMP observed that the Court schedule was light enough to allow for a bi-weekly schedule to be posted at any given time. In addition, JSMP recommends that Court dates be published in the local paper in advance of the hearing.

2) To further complicate matters, JSMP researchers observed that there was often no Court staff present in the office, for stretches of up to two hours, during regular work hours from 9:00-12:00, and 14:00-17:00. In almost every case in which no Court clerk was present in the Court office, the court clerks' absence could not be attributed to their presence in a hearing, as there were no hearings taking place. Court clerks were absent during times when women-related cases were scheduled to proceed, at times when interested parties had an acute need to inquire about the schedule. For example, one day during the monitoring period, three women-related cases were scheduled to proceed, but because of Portuguese language training for court clerks, none of the court clerks were present.⁵² On many other occasions, clerks were absent--but not for any official reason. JSMP recommends that: (a) a court clerk always be present in the office during business hours to answer questions about and to manage the case schedule; (b) if it is not possible to have Court staff in the office, a sign should be posted indicating when Court staff will return; (c) training sessions be staggered so that some of the reporters attend in the morning and the others attend in the

⁴⁹ *Van Meurs v. the Netherlands* (215/1986) 13 July 1990, Report of the UN Human Rights Committee at 60.

⁵⁰ For more information regarding the staffing of the Court clerk's office and the resource limitations that office experiences, see JSMP's Dili District Court Final Report 2003.

⁵¹ See note 27, *supra*.

⁵² For more about this incident, see *infra* at 6.3. Due to poor management, even after the court reporters arrived at court, none of the three cases went forward, despite all the relevant parties being assembled for one of the three cases.

afternoon; and (d) if staggered training scheduling is not possible, that training sessions be scheduled consistently on a specified day of the week, such as Friday, and be announced at least a week in advance of the scheduled sessions, in time to inform all interested parties of the postponements well in advance of the proceedings.

3) Even if an interested party overcomes their possible intimidation and the Court clerk is present in the office, the interested party still may not receive the information they are seeking. The Court schedule presently reflects just the name and number of the cases scheduled for the day, since there is no designated space for the time of the proceeding on the schedule. Usually, the time for the hearing is not recorded next to the case name and number. JSMP recommends that the form for the schedule be amended to include a space for the time of the hearing and that that information be entered for every case.

4) In addition, the current method for assigning cases to Court clerks at Dili District Court is an obstacle to communicating schedule developments to interested parties. Under the present system, one Court clerk is assigned to each case. Thus, if an interested party seeks to inquire about the progress of a particular hearing on a particular day, they may be disappointed to learn that the clerk who is in the office is not the clerk assigned to the case which has a hearing scheduled. In JSMP's experience, with few exceptions, Court clerks disavowed any knowledge of or responsibility for any case they were not assigned to. Although JSMP concedes that serves some efficiency goals to have one individual as the one most knowledgeable about the facts of a given case in order to streamline the burden of recording proceedings, JSMP recommends that one court clerk be assigned with primary responsibility for a given case, but in the event of the absence of that Court clerk, all Court clerks should share responsibility for answering questions regarding all the cases. Given that it is part of the Court clerk's responsibility to record the next scheduled hearing in the case file as well as what transpired at the last hearing, *any* court clerk should be able to refer to any case file and inform an inquiring party when the next hearing is scheduled or what transpired at the last hearing.

5) The schedule presently used at Dili District Court is a handwritten document. Although there are two computers in the court office and JSMP researchers have observed the Managing Clerk of the Criminal Section entering scheduling data into a spreadsheet on one of the two functioning computers in the Criminal Court Office, the data is only entered into the computer retroactively.⁵³ A few of the otherwise avoidable problems that arise from using only a handwritten schedule include: difficulty searching the schedule for specific case numbers; mis-entry of case names and numbers; and Court clerks neglecting to inform necessary parties concerning an upcoming hearing. A computerized schedule would allow for multiple format searching; an automatic check to ensure that case names and numbers correspond; and automated advance warnings of scheduled hearings. JSMP recommends that all Court clerks be prepared to enter all relevant scheduling data into a computerized document in order to centralize and track the data. Doing so would also provide a check against human errors in entering re-scheduling of cases after the frequent postponements. The document could require a follow-up entry for every scheduled hearing to be made before the day's file is closed. Also, the cases could be categorized at time of entry by the type of crime, which would facilitate statistical tracking.

6) Another obstacle to observing the progress of cases at Dili District Court, and a particularly troubling one for JSMP researchers in conducting the monitoring for this report, is that not all cases are duly recorded on the centralized Court schedule. In some instances, as

⁵³ Although the Managing Clerk of the Criminal Section helpfully referenced the spreadsheet to answer JSMP's questions, it remains unclear to JSMP exactly what information is presently recorded on the spreadsheet and for what purpose.

JSMP monitors were checking the daily court schedule, a judge would enter the court office and inform JSMP that he or she had three or four more cases than were reflected on the day's schedule written in their personal diary.⁵⁴ JSMP recommends computerizing the schedule in order to help alleviate this problem.

7) Interested parties can experience difficulties obtaining accurate information about the scheduling of a case because of erroneous entries made by court clerks in the case files. For example, JSMP noted that the court clerks are in the habit of making anticipatory entries into case files. This means that when a judge adjourns or postpones a case and states that at the next hearing, for example, the prosecutor will read the indictment, the court clerk might make an entry headed with the next date and stating, "Court opened and the prosecutor read the indictment." This practice is misleading and error-prone. JSMP observed cases in which the clerk failed to make an entry stating that after all, and despite their previous notation, the hearing did not actually occur because, for example, the prosecutor failed to appear. All that the case file reflected was that the, "Court opened and the prosecutor read the indictment." The practice of making entries in advance causes unnecessary confusion, the generation of inaccurate records, and ultimately and most importantly, when important phases of the trial are skipped, deprivation of the fair trial rights of the accused. In addition, JSMP noted that case file notes are frequently incomplete and inadequately or inaccurately reflect what occurred at the hearing. JSMP recommends that extensive training on court reporting be offered to court staff and that court clerks be reminded of the ultimate goals and objectives of court reporting, and the importance of maintaining accurate and clear records.

Implementing the above recommendations would greatly assist women in East Timor's formal justice sector to have their cases decided efficiently and expediently.

6.3 POSTPONEMENTS AND DELAYS

As JSMP reported in its Dili District Court Final Report for 2003, lack of compliance with court schedules was problematic in all Dili District Court cases, as there were more hearings that were postponed than hearings that proceeded according to schedule. Further, "JSMP observed that the reason for postponement was generally the absence of one or more key players."⁵⁵

Article 14 (3) (c) of the ICCPR guarantees the right to a trial "without undue delay". The UN Human Rights Committee has noted that, "To make this right effective, a procedure must be available in order to ensure that the trial will proceed "without undue delay", both in first instance and on appeal."⁵⁶ The right to a speedy trial is crucial not just to the accused, but to the victim also.

Unfortunately, JSMP's observations regarding delays and postponements in its Dili District Court Final Report for 2003 apply just as squarely to women-related cases before Dili District Court. Although the women-related cases before the District Court during the monitoring period were undisputedly serious cases requiring heightened sensitivity to the

⁵⁴ It is for this reason that JSMP distinguishes between "scheduled hearings" from the calendar and "scheduled and observed hearings". In addition, although the case file notes indicated that three substantive hearings had proceeded during the monitoring period, JSMP was unable to verify that they occurred or to attend them because they were not reflected in the centralized schedule and the relevant judges were not reachable in advance of the hearings.

⁵⁵ See Dili District Court Final Report, 2003, at p. 60.

⁵⁶ UN Human Rights Committee General Comment 13, 13 April 1984, at paragraph 10.

victim or the victim's family members, postponements and delays marred the vast majority of these serious proceedings.⁵⁷

Indeed, a critical distinction existed between those cases "scheduled" for hearings and hearings that actually occurred. By way of example, during the two-month monitoring period, of the 49 women-related case hearings *scheduled*⁵⁸ or observed by JSMP, fully 41 were postponed. In fact, just eight hearings observed by JSMP actually *proceeded*.⁵⁹ However, in the majority⁶⁰ of those eight hearings that *proceeded*, all that transpired during the court session was the reading of the indictment and a question from the presiding judge about whether the defendant pleaded guilty or not. After these mechanical proceedings and usually after less than 30 minutes, the judge adjourned the proceeding for the day. Ultimately, the court considered evidence in just 6% of the women-related hearings scheduled.⁶¹

It is not surprising then, to learn that 274 days was the average length that the women-related cases before the Court had been being processed through the formal justice sector.⁶² In all postponed cases, the primary cause of the postponements and delays was the failure of some or all of the justice actors to appear at Court. This includes both the failure: (1) to appear at Court at all on the day designated for the hearing, and (2) to appear at Court on time, since tardiness sometimes caused other actors to depart before the arrival of necessary parties who were late and the hearing would have been adjourned.⁶³

JSMP observed totally unnecessary postponements in many women-related hearings. The following are some of the causes of parties' absences, delays and postponements experienced at Dili District Court:

- 1) It is imperative that Court actors evaluate the case before each hearing in order to ensure that as much progress as can possibly be made on a scheduled case is made.⁶⁴ For example, one day during the monitoring period, three women-related hearings, hearings A, B and C, were on the Court's docket for the day. Judges, lawyers, Mariana and JSMP researchers waited for two hours for all the court clerks to return to Court from a training session. When the Court clerks finally returned after a two hour delay, the relevant parties for Mariana's case,

⁵⁷ Indeed, so many postponements and delays in the women-related cases during the monitoring period occurred, it was unreasonable to devote the majority of this report to the analysis of what occurred legally during the proceedings, instead, a large portion of this report needed to be dedicated to documenting the basic fundamentals of what is required in order to actually proceed with the cases. Sixteen of the eighteen women-related cases, the very serious cases, were composed of fourteen sexual violence and two murder cases.

⁵⁸ See Activity of Women-Related Cases Relative to Other Cases *Scheduled* at Dili District Court (29/9-28/11/03), attached as Appendix A.

⁵⁹ JSMP attended some hearings that were not noted on the schedule. Court clerk case notes indicate that three substantive sessions took place in two different cases. JSMP did not attend these three sessions because they were not formally documented on the court calendar. (For more, *see infra* at 4.2, "Transparency and Communication".) These three sessions are not included in the final results of the monitoring because JSMP has noted numerous errors in the court clerk's notes such that JSMP cannot rely on the entries in case files to substantiate that what is recorded did in fact occur. Therefore, JSMP was not able to verify that the sessions occurred. (For more on case file notes, *see infra* at Id.)

⁶⁰ Five out of the eight hearings, *see* App. G.

⁶¹ Three out of the 49 hearings, *see* App. G.

⁶² *See* App. F. Further, four of the women-related cases scheduled during the monitoring period had been in the court system for over a year. *See* cases ## 3, 10, 12, 13.

⁶³ Or, in cases in which the judge was the absent party, JSMP observed the judge arriving two hours late and then convene court to make a note that the prosecutor and defense counsel were not at court, and as such the case could not proceed.

⁶⁴ The third case, C, was also postponed. The court clerks said it was postponed because it was lunchtime, but did not explain why proceedings could not be scheduled to commence after lunch, since the court's afternoon docket was open and no case.

Hearing A, were present. However, the same prosecutor and judge were slated to appear in both hearings A and B, so there was a conflict in allowing the cases to proceed concurrently immediately upon the return of the Court clerks. The defender for Hearing B was not present at court. In a move that could only evince a lack of understanding of the need for the cases to proceed if at all possible, the judge decided to postpone Mariana's case, Hearing A, to a later date, and opened Hearing B. Since all the necessary parties for Hearing B were not present, Hearing B lasted less than five minutes, just long enough for the judge to declare that the absence of the Public Defender precluded the case from proceeding. As a result, two hearings were ultimately postponed where only one hearing should have been postponed. JSMP recommends that all court actors cooperate and coordinate schedules to efficiently manage hearings and facilitate their progress and to ensure that where at all possible, progress is made in scheduled hearings.⁶⁵

- 2) JSMP believes that if all parties necessary to a hearing are present except the Court clerk, the hearing should proceed with a substitute Court clerk. There are three Court clerks in the criminal section of the Dili District Court. While it is helpful for a Court clerk to have a basic understanding of what has already occurred in a particular case, it is not absolutely necessary. In addition, information about the case is supposed to be accessible in the case file or from the judge with whom the Court clerk is working. JSMP recommends instituting a system whereby Court clerks are able to substitute for each other in order to maximize the progress of all hearings.
- 3) Court clerks should arrive promptly at Court every morning and immediately place necessary calls to verify that suspects will be transported to court for the day's hearings. In the event a Court clerk does not report to work on time, one of the other clerks should call and alert the police to transport the suspect for the absent clerk's assigned hearing. In order to prevent postponements due to the absence of the suspect, JSMP recommends establishing a system whereby responsibility for arranging that suspects be transported is shared among the Court clerks.
- 4) Court clerks told JSMP that parties are informed of upcoming hearing dates via letter correspondence. JSMP notes that victims have the legal right to be informed of hearing times in their cases by the police or Prosecutor's office.⁶⁶ Mariana, the rape victim that spoke with JSMP, informed JSMP that the police contacted her to alert her to upcoming hearing dates. However, on at least two occasions, JSMP observed that relevant justice actors had not received the letter informing them of their schedule time or contact from the police. JSMP recommends that Court clerks and police or the Prosecutor's office make follow-up calls to the relevant parties if possible.
- 5) JSMP observed that the serious illness of one public defender prevented a number of rape proceedings, including Mariana's case, from going forward for over three weeks. JSMP recommends that the defender's office devise a system to share workloads between lawyers in cases of any lawyer's prolonged absence.⁶⁷

⁶⁵ See *supra* at 5. "A Case Study: Mariana".

⁶⁶ Section 12.3, UNTAET Reg./2000/30; 25 Sept. 2000 as amended by 2001/25; 14 Sept. 2001.

⁶⁷ See also *supra* at 5. "A Case Study: Mariana".

- 6) There is presently no formal mechanism by which the parties may inform the Court in advance if they will not be able to appear on their Court date. For a relevant example, recall Mariana's arriving at court for a scheduled hearing only to learn that it was postponed because the Public Defender was still out of work sick and would be unable to attend the hearing. Had the Public Defender's Office given the Court advance notice, the Court clerk could have called the relevant parties to reschedule the hearing, rather than assembling all the parties at Court to postpone the hearing. JSMP recommends that all court actors notify the Court clerk of their planned absences to prevent this inefficiency. JSMP also recommends that the clerk contact the relevant parties to reschedule the hearing. JSMP further suggests that in the future, Timor's new professional association of lawyers might take responsibility for enforcing requirements to give notification of absences by levying sanctions on members of the bar for failure to appear at Court if the reason is insufficient, or was not given well in advance.
- 7) Delays in opening proceedings occur far too frequently. These delays occur both when all parties are assembled, so for no apparent reason, as well as while awaiting necessary parties. JSMP never heard the Court provide an explanation for the tardy commencement of any of the women-related case proceedings. In addition, during the delays, JSMP has observed that affected parties who are at Court punctually may leave after having waited for prolonged periods of time.⁶⁸ Ultimately, then the delay becomes yet another postponed hearing. Therefore, JSMP recommends that judges consistently insist that Court proceedings start punctually, and set the standard that hearings at Dili District Court must start on time. As it stands, the victims and the accused are penalized with more delays by the failure of professional justice actors: lawyers and judges, to appear at court on time. In the future, the court or a professional legal association could impose sanctions for failure to appear at court at the specified time.
- 8) JSMP observed that the judge, the most unquestionably vital and necessary party to a hearing, sometimes did not appear at Court for the proceeding. Court clerks were often unaware of the reason for the judge's failure to appear at the appointed time. In at least three instances, JSMP researchers telephoned the absent judge in an attempt to ascertain their whereabouts and estimated time of arrival. The judges never answered or returned calls. On at least two separate days during the monitoring, without explanations, two different judges simply did not come to Court. One day was a day on which Mariana's case was scheduled.⁶⁹ On the other day in question, two women-related cases would be postponed due to this unexplained absence. JSMP recommends that judges be

⁶⁸ In case #12, all the necessary parties and the families of the two accused and the victim assembled for the sexual violence case. For no ascertainable reason, the judge opened proceedings fully one hour after the scheduled time. During the intervening one hour, however, the police thought the hearing was not to take place and had returned the accused to prison. For this reason, upon opening the hearing an hour late, the court hearing adjourned the hearing to a later date.

In another case, a spousal murder hearing was scheduled before the court, three women and one man from the victim's family, the judge and a JSMP researcher were present at the court. The hearing was scheduled to begin at 10:00 a.m., but in fact began an hour late, at 11:00 a.m. At the time the hearing was opened, the judge called for the accused to be brought in. The accused had been in the custody of police at the Court earlier that morning. However, when the judge asked for the accused, the police told the judge they could not find him. The judge ordered the police to find the accused, but they were unable to do so. The accused had eluded police custody while awaiting trial. The judge wrote a letter and gave it to the police ordering the police to find the accused. At this hearing, the prosecutor and defense did not appear. The victim's family members told the JSMP researcher that they were very upset with the accused. Case # 16.

⁶⁹ See *supra* at sec. 5, "A Case Study: Mariana".

required to be at Court during office hours and that a system for monitoring their presence at Court be established.

It is elementary that unless the Court convenes with all the relevant actors and at the agreed upon time, it will be impossible to provide women access to justice. JSMP's recommendations are intended to lay the foundation for the basic functioning of the Court in order for the justice sector to serve the people of Timor and increase public access to justice.

6.4 VICTIM INVOLVEMENT

"Justice comes from the voices of victims. In a new country we can only develop as a community if we include the victims as a part of the foundations of this new society."

—Ms. Ita Nadya⁷⁰

The Transitional Rules of Criminal Procedure sets forth rights for the victims of crime. These include rights to: attend review hearings, be notified of hearing times, attend trials, and request to be heard at stages of criminal proceedings.⁷¹

However, in two months of monitoring at Dili District Court, JSMP researchers observed only three victims at three of the eight sessions that actually opened and despite 47 women-related proceedings having been scheduled for hearings. The first of the hearings attended by a victim was in an attempted rape case. The juvenile victim was accompanied to Court by her parents.⁷² The second case attended by a victim was Mariana's case. During the monitoring period Mariana came to Court six times and the first two times, she was accompanied by her friend who also was a witness in the case. On her subsequent trips, a JSMP researcher accompanied her. (*See supra* at sec. 5. "A Case Study: Mariana".) In only one case of the three attended by a victim, the maltreatment case, did JSMP observe a victim giving testimony.⁷³

The very low rate of attendance of victims observed by JSMP at Dili District Court may be attributed in part to: 1) the fact that unless the proceeding had actually commenced in a courtroom, it was impossible for JSMP to identify whether people waiting outside the courtroom were victims or not and during two months of monitoring, only eight women-

⁷⁰ Commission for Reception, Truth and Reconciliation in Timor Leste (CAVR). *Women and Conflict, National Public Hearing*, CAVR National Headquarters, former Comarca Balide, Dili, 28-29 April 2003, p.9.

⁷¹ "Any victim has the right to be heard at a review hearing before the Investigating Judge, and at any hearing on an application for conditional release pursuant to Section 43 of the present regulation. In the exercise of this right, a legal representative may represent the victim in court. An individual victim has the right to be notified by the prosecutor, or by the police in proceedings pursuant to Section 44 of the present regulation, in advance of the time and place of review hearings..." Section 12.3, UNTAET Reg./2000/30; 25 Sept. 2000 as amended by 2001/25; 14 Sept. 2001. "A victim may request to the court to be heard at stages of the criminal proceedings other than review hearings." Section 12.5, UNTAET Reg./2000/30; 25 Sept. 2000 as amended by 2001/25; 14 Sept. 2001. "The victim has the right to request the Public Prosecutor to conduct specific investigations or to take specific measures in order to prove the guilt of the suspect. The Public Prosecutor may accept or reject the request." Section 12.6, UNTAET Reg./2000/30; 25 Sept. 2000 as amended by 2001/25; 14 Sept. 2001. "The Public Prosecutor shall take reasonable steps to keep the victims informed of the progress of the case." Section 12.8. UNTAET Reg./2000/30; 25 Sept. 2000 as amended by 2001/25; 14 Sept. 2001. "The Court shall take appropriate measures to protect the safety, physical and psychological well-being, dignity and privacy of victims and witnesses. In doing so, the Court shall have regard to all relevant factors, including age, gender, health, religion and the nature of the crime, in particular, but not limited to, whether the crime involves sexual or gender violence or violence against children." Section 36.8 UNTAET Reg./2000/30; 25 Sept. 2000 as amended by 2001/25; 14 Sept. 2001.

⁷² However, one of the two defendants in that case did not appear at the hearing and so the hearing was postponed.

⁷³ Because JSMP had decided in advance not to interfere with the victims' attendance or to disturb the victims at the proceedings, female researchers approached only one of the three victims, Mariana, after the proceedings to briefly explain the purpose of the study research and to establish that the identifying details of the case would not be disclosed. In Mariana's case, the judge had failed to explain to those present in the court the reason for JSMP's presence there, therefore JSMP researchers wanted to introduce themselves, explain the purpose of the research and to assure the victim that her identity would be protected. Also, Mariana and JSMP's national researcher were already acquainted, thus there was a more imminent need to explain to the victim why JSMP had been present for the proceeding. JSMP did not ask further questions of the victim at the first hearing, but instead waited until after Mariana said that she did not mind JSMP's presence in the courtroom.

related criminal proceedings actually commenced at Dili District Court despite 47 having been scheduled so there were few opportunities for JSMP to observe victims in Court. (*See* Apps. A, G.) 2) It is widely established and recognized that the social stigma associated with sexual violence proceedings acts as a disincentive to rape victims considering attendance at a trial.⁷⁴ JSMP was also told by a judge who had postponed a rape case in which the victim had not appeared that the victim was "too shy" to come to court.⁷⁵ In that particular case, the judge postponed the proceedings in order for the victim to attend after encouraging the prosecutor to tell the victim not to be too shy.

Victim participation in the prosecution of crimes, especially sexual crimes, is helpful to securing convictions.⁷⁶ However, JSMP believes that the Prosecutor's Office is so overburdened as to prevent it from interacting sufficiently with the victims of crimes. One Prosecutor JSMP interviewed stated that they became a Prosecutor in order to give victims a voice.⁷⁷ That desire is not being realized in the present situation in Timor's formal justice sector.

1) JSMP recommends that legal counsel be provided to victims at every stage of the investigation and trial. Whether or not a prosecution is mounted and conviction secured, the victim should be entitled to protection, as should those at risk for whom she may be responsible. Her own and shared assets need to be safeguarded, as does her ability to maintain herself and her dependants through these assets. Legal counsel can provide advice, assistance in dealing with justice actors and should have the authority to initiate action and to advocate for the victim on her informed instructions throughout the criminal process and on respective civil and family matters.

2) JSMP recommends establishing a liaison position to interface between the victims and the prosecutor's office that would facilitate greater participation of victims in the progress of their cases and create a dialog between the Prosecutor's Office and the victims. For example, in one case JSMP observed, there were factual inaccuracies in the indictment. In addition, the victim's and one of her witnesses' statements had unnecessary contradictions.⁷⁸ Had the victim and prosecutor been able to meet to discuss the case, such inaccuracies and contradictions would have been more easily eliminated or at least coherently explained. A liaison would coordinate such meetings and review case files to ascertain important details that need to be verified. The investment of time that it would take for the already busy prosecutors to meet with the victim and the liaison would ultimately assist the prosecutor's ability to secure convictions.

3) In addition, JSMP recommends establishing a support group to which the Prosecutor's Office can refer victims, and with which the Prosecutor's Office has a relationship in order to, among other things, advise victims on the progress of their cases. JSMP also recommends instituting a program to teach anger management for offenders.

⁷⁴ *See supra* at 3.3.5, Footnote 35.

⁷⁵ October 31, 2003, proceeding #1.

⁷⁶ According to the Chief Prosecutor, the role of the victim in assisting the Prosecutor is, "If she has evidence, she makes a statement that says, "I was raped." If the victim doesn't have strong evidence or a witness, it's a problem. Especially if the accused does not confess. But once the hearing is in the court, the role of the judge, even if the witness doesn't want to say anything, the judge must ask the victim what happened and must see the statement from the police. The victim's presence in the court is important, because the police only take parts of the statement in the report. The judge and the prosecutor and the lawyer need to ask the victim new questions. Ask if the suspect good man? Was it the first time you had sex with the man or not? We cannot analyze them ahead of time, the victim must be there." Interview, October 14, 2003.

⁷⁷ Interview with Prosecutor, October 17, 2003

⁷⁸ *See supra*, "Mariana: A Case Study" at sec. 5.

4) JSMP also recommends that judges request the Prosecutor to encourage the victim to attend the proceeding *in advance* of the hearing. In the absence of the victim, the judge should allow the case to progress towards conclusion, by utilizing the witness's statement. The judge should not continue to allow postponements and adjournments, but consider it a priority to reach decision in the case.

5) JSMP recommends that victims be allowed to await hearings in a designated waiting room at Dili District Court in order to create a level of comfort for victims attending the proceedings. Eliminating postponements and delays to speed the case towards resolution and efficiently manage important resources, will assist in facilitating victim involvement in the cases. If cases proceed as scheduled and victims see progress being made in their cases, they are less likely to become dejected and lose interest in the progress of the case.

Implementing changes to encourage involvement of victims may have beneficial long-term results for women in East Timor. Emphasizing the importance of victims' involvement will build an atmosphere of respect for women and self-advocacy.

6.5 CONSIDERING EVIDENCE AND RENDERING DECISIONS

JSMP observed that little substantive progress was made in the women-related cases before the Court during the monitoring period. Few hearings included the consideration of any evidence; most involved only the reading of the indictment.⁷⁹ The longest substantive hearing lasted 70 minutes; the shortest substantive hearing was twenty minutes long. With so little progress made in the majority of the cases, it is no wonder that during the two-month monitoring period, and through the time of writing this report, *not one final decision* in any of the women-related cases was rendered. No victim or suspect in any of the eighteen cases had the security of knowing the final disposition of their case.⁸⁰ This was so even after a total of 49 observed and scheduled hearings, and although the average length of the cases was fully 274 days.⁸¹

In one case, the Court said it was prepared to render a decision. Unfortunately for the woman awaiting a verdict in that case, one year, seven months and ten days had elapsed since the incident occurred. At the time of writing, no decision had been handed down in that case.⁸²

It is axiomatic that the victim brings her case to the formal justice sector in order to have the case heard and a verdict rendered. Until a verdict has been rendered and the accused has been convicted or acquitted, justice has not truly been delivered to either the victim or the accused. Indeed, a central goal of criminal procedure is to guide an organized, efficient, structured and speedy resolution of a criminal case. Until that resolution transpires, the system has not functioned to the benefit of the parties it is intended to be serving.

As noted in JSMP's Dili District Final Report 2003, JSMP understands that Dili District Court is understaffed as a number of judges are presently in Portugal receiving training. However, one purpose of this report is to indicate areas that, with the resources presently at the disposal of the Dili District Court, can be improved. The aforementioned lack of transparency in scheduling, delays and postponements, all prevent progress towards the ultimate decision stage. However, JSMP notes that once the decision stage is finally reached, it is imperative that the deciding judge renders his or her decision in a timely fashion. If the

⁷⁹ See App. G.

⁸⁰ See App. E.

⁸¹ See Apps. G and F respectively.

⁸² Time calculated from inception of cause of action to close of monitoring period. Case #3, App. F.

judge has difficulty writing a decision due to lack of experience, it is essential that he or she be able to communicate this difficulty to his or her supervising judge well in advance of the time that he or she must make a decision.⁸³ JSMP recommends that the judges currently laboring to hear and decide the cases at Dili District Court receive training in how to write a decision. JSMP further recommends that previously written sexual and domestic violence decisions be compiled in a central location in the court office for ease of the judges' reference.

7 DIRECTIONS FOR FUTURE RESEARCH

"Don't just drive around in your big new cars, or fly around the world. In villages in all thirteen districts there are so many widows and orphans. I ask you to do something to help them in their daily lives."

—Timorese woman subjected to violence
during 1975-1999⁸⁴

JSMP's monitoring establishes that women-related cases compose a significant portion of the cases before Dili District Court.⁸⁵ Given the serious nature of the cases⁸⁶ and the negligible amount of progress made in them during the monitoring period⁸⁷, it is clear that there is significant room for improving women's access to justice in the formal justice sector in Timor. There are a number of areas in which further research and development would contribute greatly to both understanding and improving the status of women in the formal justice sector. JSMP identifies the following as contributions that would be helpful:

1. Educate and train women and families in Timor's communities regarding domestic and sexual violence.
2. Obtain and analyze all written decisions to date from women-related cases from Dili District Court and other courts.
3. Observe and critique domestic violence mediation hearings at the prosecutor's office and VPU.
4. Analyze prosecutors' indictments relative to the facts of the women-related cases.
5. Interview more rape and domestic violence victims; access them through non-governmental organizations.
6. Monitor sentencing review hearings and investigating judge proceedings in women-related cases at all courts.
7. Catalog, organize and analyze relevant statistics of the women-related cases at the Prosecutor's Office.

⁸³ In JSMP's Dili District Court Final Report, JSMP noted, "Between May and August 2003, approximately 19 appeals were filed from decisions of the Dili District Court. Out of these, eleven were related to civil matters and the remaining eight to criminal matters." Perhaps the low level of criminal appeals can be partially attributed to the dearth of final decisions being issued from Dili District Court.

⁸⁴ Commission for Reception, Truth and Reconciliation in Timor Leste (CAVR). Women and Conflict, National Public Hearing, CAVR National Headquarters, former Comarca Balide, Dili, 28-29 April 2003, p.5.

⁸⁵ See App. A.

⁸⁶ See Apps. C, D, E.

⁸⁷ See Apps. F and G.

8. Catalog and analyze withdrawn women-related case complaints. Interview the women who withdraw the cases about the reasons for withdrawal and their past histories.
9. Analyze the draft domestic violence legislation and track its progress towards approval.
10. Analyze the present status of sexual violence laws in Timor and compile a training manual that synthesizes the present state of these laws for justice actors.

While these contributions would advance the progress of women-related cases in Dili District Court substantially, immediately implementing at least some of the recommendations contained within this report would also create important and positive impacts for women seeking justice in the courts.

8 CONCLUSION

Clearly, Timorese women should be able to access justice through Timor's courts when they have been the victims of crime. Instead, significant barriers to justice exist. Justice actors working to provide Timorese women with equal access to the courts are well-advised to educate themselves regarding the most crucial elements of crimes against women and to prosecute all women's cases aggressively. Only once women-related cases are aggressively and efficiently prosecuted will the formal justice sector effectively begin to deter crime against women in Timor. The law can be a valuable tool in re-shaping cultural expectations of what behavior is acceptable towards women; statistics regarding the incidence of domestic and sexual violence against women in Timor indicate that behavior towards women needs to be re-shaped.

For women turning to the courts for justice, that justice is currently deferred. Indeed, not one final decision was rendered in the eighteen cases before the court during the monitoring period. Training and educating justice actors to understand and respond to domestic and sexual violence issues is essential to any progress being made in women-related cases in Dili District Court.

In summary, JSMP suggests implementing the following recommendations.

Transparency and Communication: Tracking the Progress of Women-Related Cases Before Dili District Court

- JSMP recommends that on a regular basis, the Prosecutor's Office and Court maintain statistics regarding the types of cases brought before them in order to evaluate progress made in the cases.
- JSMP recommends that Court staff update the Court notice board on a daily basis in order to provide the public with immediate access to the scheduled Court proceedings for the week. In fact, JSMP observed that the Court schedule was light enough to allow for a bi-weekly schedule to be posted at any given time. In addition, JSMP recommends that Court dates be published in the local paper in advance of the hearing.
- JSMP recommends that: (a) a court clerk always be present in the Court office during business hours to answer questions about cases and to manage the case schedule; (b) if it is not possible to have court staff in the office, a sign should be posted indicating when court staff will return; (c) necessary training sessions be staggered so that some of the clerks attend in the morning and the others attend in the afternoon; and (d) if staggered training scheduling is not possible, that training sessions be scheduled consistently on a specified day of the week, such as Friday, and be announced at least a week in advance of the scheduled sessions, in time to inform all interested parties of the postponements well in advance of the proceedings.
- JSMP recommends that the form for the Court schedule be amended to include a space for the time of the hearing and that that information be entered for every case.
- JSMP recommends that one Court clerk be assigned with primary responsibility for a given case, but in the event of the absence of that Court clerk, all Court clerks should share responsibility for answering questions regarding all the cases. Given that it is part of the Court clerk's responsibility to record the next scheduled hearing in the case file as well as what transpired at the last hearing, *any* court clerk should be able to refer to any case file and inform an inquiring party when the next hearing is scheduled or what transpired at the last hearing.
- JSMP recommends that all Court clerks be prepared to enter all relevant scheduling data into a computerized document in order to centralize and track the data. Doing so would also provide a check against human errors in entering re-scheduling of cases after the frequent postponements. The document could require a follow-up entry for every scheduled hearing to be made before the day's file is closed. Also, the cases could be categorized at time of entry by the type of crime, which would facilitate statistical tracking.
- JSMP recommends computerizing the Court schedule in order to ensure that all hearings are accurately reflected in the daily Court schedule.
- JSMP recommends that extensive training on court reporting be offered to court staff and that Court clerks be reminded of the ultimate goals and objectives of court reporting, and the importance of maintaining accurate and clear records.

Postponements and Delays

- JSMP recommends that all Court actors cooperate and coordinate schedules to efficiently manage hearings and facilitate their progress and to ensure that when at all possible, progress is made in scheduled hearings.
- JSMP recommends instituting a system whereby Court clerks are able to substitute for each other in order to maximize the progress of all hearings.
- In order to prevent postponements due to the absence of the accused, JSMP recommends establishing a system whereby responsibility for arranging that transportation of suspects be shared among the Court clerks.
- JSMP recommends that Court clerks and police or the Prosecutor's Office make follow-up calls to the relevant parties if possible.
- JSMP recommends that the Defender's office devise a system to share workloads between lawyers in cases of any lawyer's prolonged absence.
- JSMP recommends that all Court actors notify the Court clerk of their planned absences to prevent this inefficiency. JSMP also recommends that the clerk contact the relevant parties to reschedule the hearing. JSMP further suggests that in the future, Timor's new professional association of lawyers might take responsibility for enforcing requirements to give notification of absences by levying sanctions on members of the bar for failure to appear at Court if the reason is insufficient, or was not given well in advance.
- JSMP recommends that judges consistently insist that Court proceedings start punctually, and set a standard that hearings at Dili District Court must start on time. As it stands, the victims and the accused are penalized with more delays by the failure of professional justice actors: lawyers and judges, to appear at court on time. In the future, the Court or a professional legal association could impose sanctions for failure to appear at Court at the specified time.
- JSMP recommends that judges be required to be at Court during office hours and that a system for monitoring their presence at Court be established.

Victim Involvement

- JSMP recommends that legal counsel be provided to victims at every stage of the investigation and trial. Whether or not a prosecution is mounted and conviction secured, the victim should be entitled to protection as should those at risk for which she may be responsible. Her own and shared assets need to be safeguarded, as does her ability to maintain herself and her dependants through these assets. Legal counsel can provide advice, assistance in dealing with justice actors and should have the authority to initiate action and to advocate for the victim on her informed instructions throughout the criminal process and on respective civil and family matters.
- JSMP recommends establishing a liaison position to interface between the victims and the Prosecutor's office that would facilitate greater participation of victims in the progress of their cases and create a dialog between the prosecutor's office and the victims.

- JSMP recommends establishing a support group to which the Prosecutor's office can refer victims, and with which the prosecutor's office has a relationship in order to, among other things, advise victims on the progress of their cases. JSMP also recommends instituting a program to teach anger management for offenders.
- JSMP recommends that judges request the prosecutor to encourage the victim to attend the proceeding *in advance* of the hearing. In the absence of the victim, the judge should allow the case to progress towards conclusion, by utilizing the witness's statement. The judge should not continue to allow postponements and adjournments, but consider it a priority to reach decision in the case.
- JSMP recommends that victims be allowed to await hearings in a designated waiting room at Dili District Court in order to create a level of comfort for victims attending the proceedings. Eliminating postponements and delays to speed the case towards resolution and efficiently manage important resources, will assist in facilitating victim involvement in the cases. If cases proceed as scheduled and victims see progress being made in their cases, they are less likely to become dejected and lose interest in the progress of the case.

Considering Evidence and Rendering Decisions

- JSMP recommends that the judges currently laboring to hear and decide the cases at Dili District Court receive training in how to write decisions. JSMP further recommends that previously written sexual and domestic violence decisions be compiled in a central location in the Court office for ease of the judges' and interested parties' reference.

9 ACKNOWLEDGEMENTS

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10 APPENDICES

APPENDIX A

ACTIVITY OF WOMEN-RELATED CASES RELATIVE TO OTHER CASES SCHEDULED AT DILI DISTRICT COURT					
(29/9-28/11/03)					
	Total Scheduled** Court Sessions, Women-Related Cases*	Percentage of total cases	Total Scheduled Sessions, Non-Women Related Cases	Percentage of total cases	Total Hearings Scheduled
October	18	42%	25	58%	43
November	29	69%	13	31%	42
Total	47	55%	38	45%	85

* Three additional hearings were recorded in case files as having been conducted, however JSMP was not able to monitor them as they were not reflected on the Court schedule for the day they occurred. Thus, they cannot be verified.

** JSMP also learned of two hearings that were not reflected on the schedule in advance of the hearings, thus the total number of hearings in Exhibit G is 49.

***Note that "scheduled hearing" does not signify that the hearing actually occurred, but rather merely that it was scheduled.

APPENDIX B

Percentages of Female Victims of Reported Crime Compared To Percentages of Male Victims of Reported Crime in Dili District (Aug.-Nov. 2003)										
	Total August	%age total victims August	Total September	%age total victims September	Total October	%age total victims October	Total November	%age total victims November	Total	Total %ages
Female	26	25%	27	28%	48	39%	38	41%	139	33%
Male	79	75%	71	72%	75	61%	57	59%	282	67%
Total	105	100%	98	100%	123	100%	95	100%	421	100%

APPENDIX C

SUMMARY TABLE: CATEGORIES OF CHARGES ADVANCED IN WOMEN-RELATED CASES IN DILI DISTRICT COURT during monitoring period	
Total Sexual Offense Cases: 14	
Total Percentage of Sexual Offense Cases:	78%
Other Cases: 4	
Total Percentage of Other Charges:	22%
<i>Breakdown of Sexual Violence Charges</i>	
Rape	9
Attempted Rape	3
Miscellaneous Sexual Violence	6
<i>Breakdown of Other Charges</i>	
Murder	2
Maltreatment	1
Attempted Murder	1
Abandonment	1

APPENDIX D

THE SAMPLE: PENAL CODE PROVISIONS UTILIZED BY THE PROSECUTOR IN WOMEN-RELATED CASES SCHEDULED FOR HEARINGS DURING MONITORING PERIOD		
Case Number	Type of Offense	Penal Code of Indonesia Provision
1	Rape	285
2	Rape	285
3	Rape; Statutory Rape; Obscenity	285, 287, 294
4	Att. Rape; Breaking and Entering	285, 53.1, 287.1, 53.1
5	Att. Rape; Statutory Rape	285, 53.1, 287.1, 53.1
6	Obscenity	290.2
7	Obscenity	290.2
8	Obscenity, False Imprisonment	333, 290
9	Rape, Indecency	285, 289
10	Att. Rape, Indecency	285, 53, 289
11	Statutory Rape	287
12	Statutory Rape	287
13	Rape	285
14	Rape; attempt	285, 55.1
15	Premeditated Murder	340
16	Murder	338
17	Maltreatment, Att. Murder	338, 53, 354.1, 351.1-2
18	Abandonment	304

APPENDIX E

AGES OF VICTIMS AND DEFENDANTS IN SEXUAL VIOLENCE CASES				
(DILI DISTRICT COURT 29/9-28/11/03)				
Case Number	Type of Offense	Age of Victim	Age of Suspect	Age Differential (In Suspect's Favor)
1	Rape	24	28	4
2**	Rape	15	22	7
			27	12
3	Rape, Statutory Rape, Obscenity	14	14	0
4	Att. Rape [Breaking and Entering]	15	30	15
5	Att. Rape, Statutory Rape	12	60	48
6	Obscenity Seduction	4	19	15
7	Obscenity Seduction	11	90	79
8*	Obscenity [False Imprisonment]	12	28	16
		12		16
9	Rape, Indecency	12	48	36
10	Att. Rape, Indecency	15	22	7
11	Statutory Rape	15	30	15
12**	Statutory Rape	17	18	1
			17	0
13	Statutory Rape	17	38	21
14**	Rape	35	27	-8
			25	-10
AVERAGE AGE OF VICTIMS OF SEXUAL VIOLENCE IN CASES BEFORE THE COURT		15.33333		
AVERAGE AGE OF SUSPECTS IN SEXUAL VIOLENCE IN CASES BEFORE THE COURT			31.94118	
AVERAGE AGE DIFFERENTIAL BETWEEN SUSPECTS AND VICTIMS				14.421053

* = more than one victim in case

** = more than one perpetrator

APPENDIX F

ELAPSED TIME SINCE INCIDENT IN WOMEN-RELATED CASES BEFORE DILI DISTRICT COURT (until 28/11/03)				
Case Number	Type of Offense	Time elapsed from incident to close of monitoring period		
		Years	Months	Days
1	Rape		8	8
2	Rape		10	13
3	Rape; Stat. Rape; Obscenity	1	7	10
4	Att. Rape; Breaking and Entering		5	26
5	Att.rape; Stat.Rape		10	
6	Obscenity Seduction		4	8
7	Obscenity Seduction		3	26
8	Obscenity, False Imprisonment		3	11
9	Rape, Indecency		8	5
10	Att. Rape, Indecency	1	1	26
11	Juvenile Rape		4	18
12	Juvenile Rape	1	5	12
13	Juvenile Rape	1	2	5
14	Rape		6	19
15	Premeditated Murder		11	25
16	Murder		7	22
17	Maltreatment, Att. Murder		5	5
18	Abandonment		8	23
	ttl:	4	107	262
	ttl days:	1460	3210	262
	grand total days:			4932
Average duration of cases (in days):				274

APPENDIX G

PROGRESS OF WOMEN-RELATED CASES BEFORE DILI DISTRICT COURT				
Case no.	Type of offence	Number of Postponements	Only Reading of Indictment	Substantive Progress Made [^]
1	Rape	3	1	0
2	Rape	4	n/a	1
3	Rape; Stat. Rape; Obscenity	3	n/a	1*
4	Att. Rape; Breaking & Entering	3	1	0
5	Att. Rape; Stat Rape	4	1	0**
6	Obscenity Seduction	2	n/a	0
7	Obscenity Seduction	2	n/a	0
8	False Imprsmnt, Obscenity	2	n/a	0
9	Rape, Indecency	2	n/a	0
10	Att. Rape, Indecency	4	n/a	0
11	Stat. Rape	3	n/a	0
12	Stat. Rape	2	n/a	0*
13	Stat. Rape	1	1	0
14	Rape	1	n/a	0
15	Murder	0	n/a	1
16	Murder	2	n/a	0
17	Maltreatment, Att. Murder	1	1	1
18	Abandonment	2	n/a	0
Total # Postponements:		41		
% Postponed (41/49):		84%		
Total # Hearings in Which Indictment Read Only:			5	
% Indictment Only (5/49):			10%	
Total # Hearings w/Evidence Considered				3
% Hearings in Which Evidence Considered (3/49):				6%
% Hearings That Proceeded At All (8/49):				16%
% Cases in Which Decision Reached				0%

[^] No decisions were rendered in any of these cases during the monitoring period

* Case file indicates hearing occurred, but JSMP did not attend so there was no way to verify

** Case file indicates two hearings occurred, but JSMP did not attend so there was no way to verify

APPENDIX H

REPORTED CRIME STATISTICS for DILI DISTRICT (Jan.-Nov. 2003)													
All information provided by Dili District Police*													
	Jan.	Feb.	Mar.	Apr.	May	June	July***	Sub- total	Aug.	Sept.	Oct.	Nov.	Total
Rape	5	1	3	2	1	-	7	19					
Attempted Rape/ Sexual Violence	2	1	2	5	-	1	0	11	2	2	2	2	30
Domestic Violence**	21	25	19	16	22	12	15	130	18	9	13	9	179
Sexual Harassment	-	-	2	1	1	-	2	6	n/a	n/a	n/a	n/a	6
Child Abuse	1	2	3	-	1	1	0	8	n/a	n/a	n/a	n/a	8
Child Neglect	-	1	3	-	-	4	0	8	n/a	n/a	n/a	n/a	8
Missing Persons	-	-	3	3	1	4	1	12	n/a	n/a	n/a	n/a	12
Illegal Staying/ Entry^	n/a	n/a	n/a	n/a	n/a	n/a	n/a				1	1	2
Other	n/a	n/a	n/a	n/a	n/a	n/a	n/a		12	10	7	6	35
Abduction	n/a	n/a	n/a	n/a	n/a	n/a	n/a		1				1
* No comparable statistics were available from prosecutor's office or from Dili District Court													
** From Jan 2003 -August 2003, out of 148 cases of Domestic Violence, a total of 104 cases were withdrawn by the victim after receiving the public prosecutor's approval to withdraw													
***All Jan.-July statistics provided by VPU, Aug.-Nov. statistics provided by Dili District General Police, except Aug. domestic violence statistics provided by VPU													
^ Illegal entry/staying crimes are used against suspected prostitutes. Since these charges are not under the VPU's jurisdiction, JSMP does not have the data for Jan.-July crimes.													