



JUDICIAL SYSTEM MONITORING PROGRAMME
PROGRAMA DE MONITORIZAÇÃO DO SISTEMA JUDICIAL

Press Release

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JSMP meets with the Prosecutor General of Timor Leste

On 28 October 2010 JSMP organized a meeting with the Prosecutor General at the Office of the Prosecutor General, Colmera, Dili, Timor Leste.

This meeting constituted a positive step forward in strengthening the working relationship between these two institutions as well as providing an opportunity to inform Her Excellency the Prosecutor General about the role of JSMP in the justice sector. This meeting was similar to a previous meeting held with the President of the Republic.¹

“The Office of the Prosecutor General is the highest institution that oversees the work of all prosecutors and prosecution units in Timor Leste, and is a key institution in strengthening and upholding the public interest and defending the democratic legality and sovereignty of this constitutional state, and therefore it is very important for JSMP to strengthen its working relationship with the Office of the Prosecutor General and examine the possibility of providing necessary support’, said Luis de Oliveira, Executive Director of JSMP, during this meeting.

Luis de Oliveira added that JSMP is a non-government/civil society organization and more importantly, as the only organization that monitors all of the courts in Timor Leste including the Court of Appeal, JSMP is determined to improve the working relationship with all other judicial institutions to make a collective effort to safeguard and uphold justice for everyone. Therefore, this meeting constitutes a positive step in upholding the law and ensuring that the law is administered in the proper way.

After hearing a short introduction by the team representing JSMP, Her Excellency the Prosecutor General Ana Pessoa Pinto, stated that the Office of the Prosecutor General has keep abreast of JSMP activities and reports. Sometimes she agrees with JSMP on certain issues, however sometimes she takes a different view. The Prosecutor General stated that every one has the right to interpret the law and the legal system that is currently developing. On the issue of presidential

¹ On 22 October 2010 JSMP met with the President to present its stance on the issue of presidential pardons, and also to provide input and request for the President to morally support the role and function of the formal justice system.

authority to grant pardons and commute sentences, the Prosecutor General agrees with JSMP that measures or legislation should be introduced to regulate this matter. However, she did not agree with the attitude that there has been no law until now, because the Prosecutor General said that the Constitution is a law, and it is the highest law in Timor Leste.

The Prosecutor General was seriously concerned about several developments in the formal justice sector relating to how the law was being interpreted and how law was being practiced in the courts. The Prosecutor General was extremely concerned with the interpretation of provisions relating to the application of restrictive measures such as *Termu Indentidade ba Rezidencia* (TIR)², ‘suspended sentences’ for convicted persons and the interpretation of Article 125 of the Criminal Procedure Code³ on ‘*refusal to give a deposition*’ in cases involving family members or spouses. The Prosecutor General believes that if legal actors did not interpret the law precisely and carefully then this could impact on the community in general, and their trust in the formal justice/legal system. In relation to these matters the Prosecutor General said that it would be very difficult to ensure that the courts adhered to due process and consequently the community would lose their faith in the justice system in Timor Leste.

The Prosecutor General emphasized that court actors are continuously focusing on the concept of human rights. Therefore when they were leading a trial of a case, many of their legal considerations have tended to focus more on the rights of the defendants and have overlooked the rights of victims who have suffered as the result of violent acts committed by defendants in violation of their human rights. That is why in nearly all serious cases involving murder and (sexual) assault defendants are only ordered to remain under TIR. Also the courts have got into the habit of applying suspended sentences in all cases that carry a prison sentence of less than three years. This has a major impact on the way that victims feel about the judicial process, which is supposed to restore and repair the rights that have been violated. These practices actually harm the rights of the victim and hurt the feelings of the wider community in relation to their trust and perception of having a justice system that is fair and credible.

In consideration of these developments the Office of the Prosecutor General regularly discusses the correct and logical interpretation of the law as well as encouraging prosecutors to carry out their work with full responsibility and integrity. Other considerations were the inclusion of provisions on compensation in charges filed by prosecutors, and also the establishment of district prosecution units in each jurisdiction. Also there are plans to establish a prosecution unit to provide representation in several districts that require such a service.

² *Termu Indentidade ba Rezidencia* (TIR), this is a measure imposed by the court prior or post conviction, where by the defendant or convicted person may live at home and move freely in their home town but may not travel to other districts without permission from the Court.

³ In 2009 JSMP issued an analytical report on the application of Article 125 of the Criminal Procedure Code entitled “The provisions of Article 125 of the Criminal Procedure Code problematic for victims of domestic violence”. For more information, please refer to JSMP website: <http://www.jsmp.minihub.org>

In response to a request from JSMP to establish an institutional working relationship, the Prosecutor General stated that she is open to all initiatives, including arranging interviews and responding to questions and concerns passed on to JSMP by those living in remote areas. Currently the Office of the Prosecutor General is working with UNDP to develop a community radio program and there is a possibility of including JSMP in several sessions as part of this program.

The meeting ended with an additional request from JSMP to be given support from the Prosecutor General to be involved with the Judicial Training Centre with a view to modifying what is currently being developed and applied by the Training Centre. The Prosecutor General replied that she will seek a solution and make a proposal to the Ministry of Justice.

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