



JUDICIAL SYSTEM MONITORING PROGRAMME

PROGRAMA MONITORIZASAUN SISTEMA JUDISIÁL

Justice sector briefing to Australian Volunteers International (AVI)

An Overview of the Justice Sector in Timor-Leste

Tuesday, 5 July 2016

Introduction to JSMP

- The Judicial System Monitoring Programme JSMP was established in 2001 in Dili, Timor-Leste to monitor the processes of the Ad Hoc Human Rights Tribunal in Indonesia and the Special Panels for Serious Crimes in Timor-Leste.
- JSMP now exists as a Timorese led not-for-profit organisation working to improve the justice and legislative systems in Timor-Leste through:
 1. Independent monitoring,
 2. Legal education, and
 3. Advocacy.

The History of Timor-Leste

- A former Portuguese colony (450 years)
- Occupied by the Indonesian Military between 1975 and 1999 (24 years)
- United Nations intervention with UNTAET administration and regulations/laws
- Achieved full independence in 2002

Background on the Justice Sector

- Civil Law system based on the Portuguese system/influence
- Different to the Common Law system in Australia
- Signatory to several core human rights instruments, including:
 - International Covenant on Civil and Political Rights
 - International Covenant on Economic, Social and Cultural Rights
 - Convention on the Rights of the Child
 - Convention on the Elimination of All Forms of Discrimination Against Women

Background on the Justice Sector

- The *Criminal Procedure Code* and the *Penal Code* were introduced in 2005 and 2009 respectively
- The *Civil Procedure Code* and the *Civil Code* were introduced in 2006 and 2011 respectively
- *The Law Against Domestic Violence (LADV)* was introduced in 2010
- *The Law on Witness Protection* (introduced in 2009, but it has not been well implemented)

The Court Structure in Timor-Leste

- Four District Courts: Dili, Baucau, Suai and Oecusse
- Court of Appeal but no Supreme Court
- Tax and Audit Court was established in 2013
- Mobile Courts (brings justice to people who otherwise would not be able to attend court because they live in rural areas)
- No Military and Family Courts currently

Other related judicial institutions

- Office of the Prosecutor General – responsible for the prosecution of all crimes in Timor-Leste.
- Public Defenders Office – operates under the Ministry of Justice to provide free legal services to the community.
- Anti-Corruption Commission (KAK) – focuses on investigating corruption cases in Timor-Leste.
- Criminal Investigation Unit – investigates all crimes in Timor-Leste. The Unit is part of the National Police of Timor-Leste (PNTL).
- Police Scientific Criminal Investigation (PCIC) – provides criminal scientific investigation support services nationwide. Sits under the Ministry of Justice and answers to the Prosecutor General.

The Legal Training Centre (LTC)

- Provides professional legal training to law graduates
- 2 years of training at the LTC to become either a judge, prosecutor or public defender. This involves 18 months of study and a 6 month placement.
- The LTC also provides training for private lawyers.
- Training at the LTC mostly focuses on the *Penal Code*, *Civil Code* and Portuguese language classes. It does not include training on international instruments and international best practices.

JSMP Observations

Trends of cases reaching the Courts

- In 2015, JSMP monitored 564 cases involving violence against women (involving cases against girls aged 0-16). Notably,
 - 71% of these cases were charged as simple assault under Article 145 of the Penal Code
 - 102 cases involved sexual violence. 8% involved sexual offences against minors (under 14 years old). The majority of victims were female (88%)
 - 434 cases involved domestic violence. In 92% of these cases the victim was female and in 87% of cases the defendant and victim were husband and wife.
 - In cases of domestic violence the court imposed a suspended sentence in 51.4% of cases and a fine in 16.14% of cases.
- In 2015, JSMP monitored 20 corruption cases.

JSMP – Observations

Recent Successes

- Courts are starting to award compensation to victims of sexual assault
- A few court decisions have used the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)
- The presence of the *Law Against Domestic Violence* (LADV) has brought in more domestic violence crimes into the courts
- In a few cases involving domestic violence the courts have imposed prison sentences

JSMP – Observations

Ongoing challenges

- Use of Portuguese language for decisions/laws
- Access to justice for women and children
 - Many crimes against women are still resolved by the traditional system, lack of understanding of criminal nature of crimes, etc.
 - Most domestic violence cases are concluded with suspended sentences.
 - Lack of gender sensitivity by court actors, especially from male court actors

Key Priorities for JSMP

- Court monitoring and publications (press releases, case summaries, thematic reports on important issues, submissions and annual report)
- Advocacy to amend the *Penal Code*, especially for the inclusion of a specific Article to deal with incest cases
- Advocacy on presidential pardon
- Advocacy on law or a guideline which deals with immunity for National Parliament and Government
- Advocacy on the issue of land law

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