

# Monitoring the Justice System in Timor Leste

## Judicial System Monitoring Programme

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**T**HE JUDICIAL SYSTEM MONITORING PROGRAMME (JSMP), a non-governmental organization based in Dili, Timor Leste, was established in April 2001 to monitor the processes of the Ad Hoc Human Rights Tribunal in Indonesia and the Special Panels for Serious Crimes in Timor Leste. JSMP was established in response to a need identified by local and international observers in early 2000s for a consistent and credible monitoring presence for the developing justice system that was independent of the then United Nations Transitional Administration for East Timor (UNTAET).

JSMP envisions itself to become the foremost independent organization in Timor Leste that contributes to the development and improvement of the justice and legislative systems through objective monitoring, analysis, advocacy and training in order to:

- Support and advance the rule of law and human rights
- Advance the independence of the judiciary and the legal profession and the administration of justice in full compliance with international law standards
- Promote the adoption and implementation of international human rights standards and other legal rules and principles that advance human rights and the rule of law
- Promote the establishment and enforcement of a legal system that protects individuals and groups against violations of their human rights
- Promote understanding of and compliance with the rule of law and human rights, and provide assistance to those to whom the rule of law and human rights are denied
- Promote equality and the right of everyone to receive equal and fair access to justice and treatment under the law.

JSMP works closely with East Timorese legal and human rights non-governmental organizations (NGOs) to contribute to the developing legal culture both within Timor Leste and the international justice community

by providing information and analysis of issues arising from the ongoing process of creating a new justice system.

### **Establishing a Functional Judicial System<sup>1</sup>**

On 25 October 1999, the United Nations Security Council mandated UNTAET to “exercise all legislative and executive authority, including the administration of justice.”<sup>2</sup> The task at hand was undisputedly overwhelming as documented in many reports;<sup>3</sup> court buildings were destroyed, all judges and most other practicing lawyers had left the territory and a legal regime no longer existed. UNTAET proceeded to create four District Courts, appointed Timorese judges, prosecutors and public defenders and put in place a transitional legal system that retained the application of Indonesian law to the extent that it was consistent with international human rights standards and was not replaced by UNTAET regulation.<sup>4</sup> The establishment of a functioning legal system for the transition period and laying the foundations for the future courts of an independent Timor Leste was not the only pressing issue. There was also the overriding need for justice for crimes committed throughout the period of the Indonesian occupation, including the campaign of violence that engulfed Timor Leste when the Indonesian military and its militia groups terrorized the civilian population in the lead up to and aftermath of the popular consultation in 1999. Reconciliation and trust in a justice system for the future depended in part on justice for the past.

As a result, in June 2000 UNTAET created special panels of the Dili District Court and the Court of Appeals to deal with genocide, crimes against humanity, war crimes and torture—whenever and wherever they occurred—as well as murder and sexual offences under the Indonesian Penal Code where the offense was committed between 1 January 1999 and 25 October 1999.<sup>5</sup> The first Special Panel commenced operation in January 2001 and the second Panel in November 2001. Each Panel consisted of one Timorese judge and two international judges. Furthermore, a specialized branch of the Public Prosecution Service was created to investigate and prosecute serious crimes. A small public defender service was also established. The General Prosecutor had issued over thirty indictments against more than fifty individuals. Thirteen serious crimes trials took place, a significant achievement by any standard. By November 2001, eleven convictions, no acquittals and

two cases were dismissed on procedural or jurisdictional grounds without proceeding to trial. The Court of Appeals heard two final appeals in serious crimes cases. Of the cases that have been heard, all except one have involved charges under the Indonesian Penal Code.

Any court system stands in need of continuous evaluation and periodic review. UNTAET rapidly introduced in Timor Leste a new justice system. The timeframes and manner in which the system was established appeared to have married design and implementation into a single phase.<sup>6</sup> UNTAET's decision to begin the immediate transfer of formal roles to the Timorese meant that the key court actors were introduced into an emergency court system with minimal training and the effective absence of an operational court administration. In saying this, as stated above, it must be acknowledged that UNTAET was faced in October 1999 with an almost complete absence of existing material resources and local experienced professionals available to it in seeking to establish and develop judicial capacity. The transitional administration did not just have to deal with a damaged social infrastructure, but an entirely destroyed one. It is undeniable that an enormous amount of progress has been made given the circumstances that confronted the mission in late 1999. However, the devastation inherited by UNTAET did not diminish the need for an evaluation to ascertain whether the arrangements constituted a suitable basis upon which to take the justice system in Timor Leste forward.

A JSMP assessment of the then existing judicial system in 2001<sup>7</sup> pointed out several concerns such as limited judicial resources in the form of

- Lack of research facilities
- Absence of court library (though an ad hoc collection of legal publications existed)
- Lack of support staff for the judges
- Inadequate liaison between the courts and the prisons and other relevant institutions.

As a result of these findings, JSMP extended court monitoring and judicial system analysis to the operations of Timor Leste's District Courts. JSMP also adopted a program on analyzing legislative measures.

## Outreach Program

JSMP undertakes extensive outreach work in Dili and throughout Timor Leste. Initially the aim was to inform Timorese people of the decisions of the Ad Hoc Tribunal and Special Panels for Serious Crimes. JSMP's outreach work has expanded to include human rights training, training of judicial officials and district workshops explaining judicial processes and civil and political rights. It formed an Outreach Team for this purpose.

The Outreach Team is JSMP's link with Timorese and international stakeholders. Its central task is to make JSMP's work accessible to different audiences and assist the process of education and debate regarding important issues in law, justice and human rights. The Team currently comprises four national staff members. Another staff member works specifically on outreach projects within the Women's Justice Unit.

The Outreach Team has responsibility for four broad categories of activities. These are:

- Publications and materials. This includes producing educational materials, brochures and posters; editorial functions relating to JSMP's thematic reports, justice updates and media releases; and maintaining a library of materials and publications.
- Information dissemination. This includes the dissemination of JSMP publications to key stakeholders in Timor-Leste and overseas; provision and explanation of information/materials to remote district communities; maintenance of JSMP's internationally regarded website in the four languages of Timor; distribution of news and information through JSMP's email lists; coordination of regular radio and television discussions on important issues; the production of programs (including dramas) for broadcast on Timor's community radio stations; and the utilization of local and international media to highlight issues of urgent public interest.
- Community Training. Since beginning its district training early in 2005, the Outreach Unit has co-ordinated training provided to the Timorese National Police, district/sub-district administrators, village leaders, traditional leaders, the church, and representatives from local women and youth groups. The Outreach Unit is now focusing on Village Councils by providing training on how to access the formal justice system. The issues covered in the training have

included: general human rights issues, the formal legal system, legal processes, children's rights, women's rights, and practical information for victims in accessing justice through the courts.

- **Networking.** This includes maintaining mutually beneficial and constructive relationships between JSMP and government, civil society groups, community leaders, the Portuguese speaking community abroad and the media.

The Outreach Team was also crucial in disseminating information to remote communities regarding the Special Panels for Serious Crimes. This role continues with regard to ongoing developments within the justice sector.

## **Training for Women**

In 2004, as a result of its research on the situation of women in the formal justice sector, JSMP created the Women's Justice Unit (WJU) to focus on cases involving women victims of domestic violence. In 2005, JSMP established a Victim's Support Service, a legal referral and legal aid service for women.

In 2004, members of WJU interviewed members of the Timor Leste National Police or Policia Nacional de Timor-Leste (PNTL), particularly of the Vulnerable Person's Unit (VPU), local government officials (district and sub-district levels) and women's groups in all districts of Timor Leste as part of a research project on police behavior towards women in the country.

Through these interviews the WJU learned that most cases of domestic violence and sexual violence were being resolved within the family or through traditional law or by customary means. People did not know how to pursue a case through the formal justice system or what avenues were available to them if they were confronted with a legal problem.

Alongside the research work, WJU distributed posters, brochures and radio program sheets to district communities. These public education materials discussed sexual violence and domestic violence and the formal process for settling these types of cases. The public education materials were distributed to PNTL stations, local government offices, Timorese Women's Organization (OMT) and the Popular Organization of Timorese Women (OPMT) members, and community radio stations in all districts of Timor Leste.

Many who received the materials asked the WJU to give training on them, believing that they would not properly understand the subject-matter merely by reading or listening.

Based on this information, the WJU decided to conduct a training program in the districts. In March 2005 the WJU began the program in Bobonaro District and then continued in each district outside Dili, concluding in October 2005. Following this first training, the Outreach Unit and Legal Research Unit of JSMP joined the WJU to carry out other trainings.

The training materials were intended to explain the public information materials, with sufficient background. They therefore covered general human rights, women's rights and children's rights with a focus on violence against women and children, the law and legal processes and the formal process for victims of domestic violence and sexual violence. The first training produced very positive results and was taken seriously by the participants. The materials provided by the WJU were very effective and easily understood.

This training program had the following objectives:

- To increase the knowledge of participants about legal issues, criminal offences and human rights;
- To enable participants to better understand that sexual violence and domestic violence are criminal offences; and
- To inform the participants on how to assist victims of violence.

Between April and October 2005 JSMP conducted trainings in twelve districts of Timor Leste on human rights, the law and the legal process, with a focus on cases of gender-based violence. The participants included members of the PNTL, particularly the Vulnerable Persons Unit (VPU), village heads, women's groups such as OPMT and OMT and, youth groups and students. Across the twelve districts, four hundred twenty-three people participated.

Each training ran for two days and was carried out by JSMP staff. Both informative and interactive methods were used. The participants were generally attentive and enthusiastic in discussion and asking questions, which provided an insight into participant's knowledge and attitudes on the topics of training.

The training provides a good example of the process and content of training activities involving people who are being initiated into human

rights work. Following is an account of the program, methodology and content of the 2005 training on women's rights.

### **Women's Rights Training<sup>8</sup>**

The training targeted representatives of women's groups, members of the police and village heads. They were considered to benefit the most from the training because they were involved in resolving cases of violence occurring in their respective areas, and they were trusted by their own communities.

Training workshops were held in several places and covered:

1. General human rights, including human rights definition, civil and political rights and social and economic rights.
2. The formal legal system in Timor-Leste
  - Sources of law
  - Types of criminal and civil cases
  - The role and function of police, prosecutors and judges
  - The courts and fair trials
3. The rights of women and children
  - Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) in general
  - Understandings of sexual violence and domestic violence
4. Information on the formal legal process for victims of sexual violence and domestic violence.

The training started with the study of the general and basic human rights, including those of criminal suspects and victims, as basis for learning the formal legal processes.

The participants received detailed training manual in mixed Bahasa Indonesia and Tetum languages. To most participants the information in the training manual, in particular the material on the formal legal process, was new. They also received a brochure on the formal legal process and posters on domestic violence to take back to their communities.

### **Evaluation**

JSMP carried out an evaluation to measure the success of the training and to generate ideas for improving the program. The evaluation was three-fold:

an evaluation form on participants' experiences, a questionnaire to identify whether or not the information was being understood, and an internal evaluation workshop.

Overall, the training was rated highly by participants and trainers, and participant knowledge increased across all areas that were the aims of this report. JSMP recommends that:

1. This training should be continued, not only at the district level but also at the sub-district and village levels.
2. To maximize the training's effectiveness, use more interactive methods like games or simulations.
3. Simplify materials as much as possible in the use of language and format, such as use of comics or pictures, and removal of legal jargons.
4. Reduce the amount of material or increase the time.
5. Target the materials to particular groups and give opportunities for those from similar backgrounds to work together. In particular separate women from men so that they feel more confident to discuss their ideas.

Since 2005 the Women's Justice Unit has provided training on a number of women's rights topics, most recently, in 2010, on the newly enacted Domestic Violence Law. This training has been provided to doctors, nurses, lawyers, paralegals and police to assist them in understanding their obligations as professionals and the rights of victims of domestic violence. The training was designed in conjunction with law and public health academics from Charles Darwin University in Darwin, Australia. These academics will be evaluating the training and researching its effectiveness in changing the attitudes of professionals in relation to domestic violence.

### **Other Human Rights Education Activities**

In 2010 the Legal Research Unit of JSMP has been conducting training on women's and children's rights and on the Timor Leste Penal Code. The training on women's and children's rights has been provided to secondary school students in a range of districts in Timor Leste. The aim of this training was to make secondary students become more aware of their rights as protected by the Convention on the Rights of the Child. The training on the new Timorese Penal Code has been provided to police and to village leaders (*Xefi Suku*). For the police, the objective of the training was to familiarize them

with the provisions of the new law, particularly with the provisions that relate to their work and which protect the rights of victims and those accused of crimes. For the village leaders, the objective of the training was to provide them with an understanding of the relevant provisions of the formal legal system so that these could be considered when local leaders were resolving problems at the local level.

In the same year, the Legal Research Unit disseminated information about the Timor Leste Demonstration Law which regulates how to legally hold public protests or demonstrations. The objective of this training was to enable people, particularly young people to understand their political rights in relation to holding or attending public protests and the processes for obtaining permit to hold such activities.

In 2010, JSMP also established its Parliament Watch Project, which seeks to improve parliamentary and legislative processes by monitoring and reporting on the National Parliament, contributing to the legislative process through advocacy activities and submissions, and assisting the public to understand and participate in the democratic process. As part of this project, JSMP held in the same year training on the role of parliament and democratic participation. The training was held with local communities in five districts. The objective was to assist members of the public to understand their new political system and the ways in which they can contribute to the protection of their rights through it.

## **Future**

As a young nation with a history of human rights abuses, JSMP believes that it is very important that Timor Leste has its people provided with information about human rights and the mechanisms open to them to obtain protection of their rights, including the formal justice sector and the democratic process. Since the capacity of the government and schooling system to provide such education is currently limited, JSMP believes that it is important for civil society to step in and provide human rights education. JSMP intends to expand and continue its human rights training in the future. It will seek to further improve the public's understanding of women's rights and the formal justice system and will provide training on other important human rights issues as they arise. JSMP hopes that such training will con-

tribute to the development of a strong and sustainable justice system and democracy in Timor Leste.

## Endnotes

1. The discussion in this section is largely drawn from the JSMP, *Justice In Practice: Human Rights In Court Administration* - JSMP Thematic Report 1 (Dili: JSMP, 2001), page 2.

2. Security Council Resolution 1272/99, 25 October 1999.

3. See for example the progress reports of the Secretary-General to the Security Council on the Transitional Administration in East Timor, especially that of 24 July 2001; See also Report of the Security Council Mission to East Timor and Indonesia, 20 November 2000; Hansjoerg Strohmeyer "Building a New Judiciary for East Timor: Challenges of a Fledgling Nation" *Criminal Law Forum*, (2000) 11/259-285; Suzannah Linton "Rising from the Ashes: the Creation of a Viable Criminal Justice System in East Timor," *Melbourne University Law Review*, (2001) 25/122-180.

4. UNTAET Regulation 1999/1 section 3.

5. UNTAET Regulation 2000/15 sub-sections 2.1, 2.3 and 2.4. It should be noted that in the original jurisdiction of the Special Panel granted by Regulation 2000/11, torture was subject to temporal restriction. Although Regulation 2000/15 clarified the position, recent amendments to Regulation 2000/11 have not resolved the inconsistency.

6. Fredrick Egonda-Ntende, "Building a new judiciary in East Timor: The first steps and missteps..." *Commonwealth Judicial Journal*, forthcoming. Judge Egonda-Ntende was a judge of the Court of Appeal of East Timor from its inception until November 2001.

7. *Justice In Practice: Human Rights In Court Administration*, op. cit., pages 9-12.

8. The discussion in this section is based on *Judicial System Monitoring Programme, JSMP Training in the Districts of Timor Leste 2005 - Report, Reflection and Recommendations* (Dili: Judicial System Monitoring Programme, 2006).