



## *JUSTICE UPDATE*

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### **Recent Developments in the Courts**

The operation of the district courts has recently experienced a number of particularly interesting changes and developments. An increase in new international court actors saw a corresponding increase in the number of trials being conducted, at a time when the national court actors are still undergoing training to enable them to become qualified in the future. This Justice Update will focus on issues of general court administration and observations made by JSMP in that regard.

#### **Court Structure and Court Actors**

The current structure of the courts in Timor Leste has not changed, namely there are four District Courts and a Court of Appeal which is the highest functioning court and the court of last instance<sup>1</sup>.

The Court of Appeal has four judges, namely the Chief Judge and three other judges, of whom two are internationals.<sup>2</sup> Five international judges have now been appointed to the District Courts.<sup>3</sup> Currently the Dili District Court and the Baucau District Court each have two international judges, with the fifth judge being given joint responsibility for the Suai and Oecusse District Courts.

This year has also seen an increase in the number of judicial actors in the ordinary prosecutions unit of the Prosecutor-General's Office and Public Defenders Unit. Five international prosecutors have been employed alongside national prosecutors in the Prosecution Unit, and 7 international public defenders are currently active in the courts.

JSMP believes that the presence of international actors will improve the functioning of the courts which in the past have been sluggish and hampered by a lack of judicial actors. Generally speaking the courts have functioned better with the increase in new court actors, although in many areas the system continues to be in need of a general overhaul.

A higher number of hearings took place in the Dili District Court in comparison with other courts. This was partly due to the fact that this court also held hearings concerning a number of

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<sup>1</sup> The Supreme Court has not yet been established and its jurisdiction is being exercised by the Court of Appeal.

<sup>2</sup> These are: Judge Ximenes (Chief Judge); Judge Antunes; Judge da Goia; Judge da Costa.

<sup>3</sup> These are: Judge Tome; Judge Nosolini; Judge De Morais; Judge Silvestre; Judge Emilia-Castro.

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cases from other jurisdictions<sup>4</sup>. Also, this court held more hearings than the other courts because hearings were conducted nearly every day, usually in the afternoon<sup>5</sup>.

Hearings at the Baucau District Court are held once a week (on Wednesdays) although on occasion they are held on alternative days. Although the judges reside in Dili, JSMP observed that one judge occasionally stays in Baucau after the scheduled day for hearings. JSMP also noticed an improvement of administrative matters, which has been facilitated by international court clerks.

The Oecusse and Suai District Courts are far more remote than the Baucau District court. Each of these courts has its own schedule for hearings. Normally hearings are held on a monthly basis and hearings can continue for a week or more. However, hearings in several cases have been adjourned because of transport issues or because judges are away on leave. JSMP believes that the fact that the two courts are located so far away means that an additional/replacement judge is needed to help conduct hearings in the event that the main judge is unable to do so.

Currently all former national court actors (judges, prosecutors and public defenders) – who passed last years training at the Judicial Training Centre – are still in training. JSMP received information that they are not authorised to handle cases in the courts while training is in progress, Therefore they are not currently working in the courts. Nevertheless, there are a number of exceptions. For example, there is currently a national judge in the Court of Appeal who is actively involved in hearings. Furthermore, there are several local prosecutors who did not pass or attend training but who are still functioning as prosecutors in the court. However, when these prosecutors eventually do enter the formal training programme at the Judicial Training Centre there is a concern that there will not be any other prosecutors to replace them in this vital role.

The prosecution unit has been strengthened by the presence of international prosecutors (predominantly from Portuguese speaking countries). The international prosecutors have been sworn in by the Prosecutor General which means that they are legitimately working in the courts.

JSMP was told that since international prosecutors commenced their employment, national prosecutors have been granted the status of assistants to the international prosecutors and act as their counterparts in hearings. It seems that national prosecutors will be assigned to each district court. For instance, a national prosecutor has been assigned to the Baucau District Court whilst appointments to the Suai and Oecusse District Courts are currently being considered. National prosecutors accompany international prosecutors in hearings. A national prosecutor told JSMP that they continue to carry out investigative duties, draft charges and handle minor cases, but the major cases are handled by international prosecutors.

JSMP believes that the assignment of prosecutors to each of the district courts will help the courts to function more effectively and efficiently, and the presence of international judges will

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<sup>4</sup>Apart from hearings relating to cases occurring within the jurisdiction of the Dili and surrounding Districts, hearings in cases from the jurisdiction of Suai and Oecusse were also conducted in the Dili District Court.

<sup>5</sup> JSMP received information that the number of hearings held in the morning has declined as the judges were providing training to the trainee judicial actors at the judicial training center.

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help to cover the current lack of judges which will result in an increase in the number of cases handled by the courts.

Former national Public Defenders are still attending training and they too are prohibited from participating in hearings, except for one public defender – who did not pass the training – who is currently handling cases. Since the local judicial actors have been attending training a large number of cases have been handled by private lawyers, who are therefore fulfilling an essential role in Timor-Leste's judicial system at present. JSMP believes that the increase in international lawyers can help improve the process for resolving cases through the courts, and they will also be able to use their experience to improve the quality of legal representation.

JSMP has observed that until now the presence of international judicial actors has not had a significant influence on the role of local actors (especially lawyers) relating to case management in the courts, nevertheless it can impact on the handling of cases, especially in terms of communication. It is apparent that international actors who come from Portuguese-speaking countries, which generally have similar legal systems, find it easier to communicate during hearings and to have a good understanding of the trial process both during and outside of hearings. For example, international prosecutors and judges find it easier to communicate with each other, whereas national actors find it hard to communicate effectively with international actors both during hearings and outside of court due to their limited fluency in Portuguese. Currently interpreters are provided in all hearings which helps to facilitate communication during hearings, however communication difficulties still exist outside of court.

### **Training of Court Clerks**

The Judicial Training Centre is also currently conducting regular training for national court clerks in the District Courts, in Dili and Baucau. JSMP has observed that international court clerks and a judge from the Court of Appeal facilitate this training. In Dili, training is attended by court clerks from Dili, Suai and Oecusse District Courts. In Baucau training is provided for court clerks in the local court.

JSMP believes that training such as this is positive and can improve the quality of the work performed by court clerks. It is nevertheless important for the court clerks and other judicial actors who are currently attending training at the Judicial Training Center to be given adequate time to adjust to the new system that will be implemented in the future.

### **Difficulties in Presenting Witnesses and Accused**

JSMP carried out routine observations of hearings at all district courts. JSMP observed that in several cases witnesses and accused (especially those who were on conditional release or home detention) did not appear at hearings, although they had been summoned by the court. This problem occurred in all district courts, especially those courts located outside of Dili and has been acknowledged by at least one judge.

JSMP observed that factors such as limited transport and fuel (as experienced by the police) were often the main cause, but other factors included the fact that the witnesses/accused lived in remote areas and poor road conditions have made it difficult for police to bring them to court.

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JSMP is aware that this problem has no easy solution, as witnesses and suspects are obliged to attend court, and the court is also responsible for ensuring a case is completed through the trial process, however, the task of presenting witnesses and suspects is normally carried out by the court with assistance from the police.

JSMP believes that the provision of adequate fuel and transport to the police force would make it easier to bring witnesses and suspects to court, but there is also a need for vehicles and roads to be in good condition. Another alternative is for the court to provide transport facilities, however in the absence of good quality roads, they may still experience the same difficulties as the police.

### **Arrest and Detention Review Hearings**

Arrest and detention review hearings previously have been open to the public when presided over by former national judges. Since international judges have taken over, several of them have closed these review hearings to the public. This is due to a number of reasons, for instance, a judge told JSMP that this was in accordance with the law.<sup>6</sup> Nevertheless, JSMP observed that other judges have differing interpretations of this law, whereby certain hearings are made open to the public, unless the defendant objects. Lately other judges have started to grant permission to JSMP to witness these hearings provided a number of conditions are met<sup>7</sup>.

JSMP can understand the different interpretations of the judges, however JSMP believes that Regulation No. 25/2001 does not stipulate that these hearings should be automatically closed to the public. The suspect must be asked about his or her preference regardless of whether or not a judge goes on to grant this request. JSMP believes that the wishes of the suspect must be fully considered by court actors before deciding to close the hearing to the public.

### **Hearing Timetables and Access to Court Documents**

Currently the public can access information about the scheduling of cases for hearings and trials in each court. A regular timetable of hearings is currently available in each court. JSMP believes that this progress is beneficial, however, the amount of information available to the public is still limited. For example, it is difficult for members of the public not directly involved in a case to obtain court decisions and other court documents<sup>8</sup>. As yet there is no clear mechanism in place to allow the public access to court documents. The publication of two volumes of Court of Appeal decisions earlier this year is a positive step which should be encouraged. Regular publication of court decisions by way of official court reports is an important first step for developing a broad policy on public access to judicial information in general.

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<sup>6</sup> An international judge told JSMP staff that hearings are closed to the public in accordance with section 20 of Regulation No. 30/2000 as amended by Regulation No. 25/2001. According to section 20.2 “[t]he review hearing shall be closed to the public, unless requested otherwise by the suspect and ordered by the Investigating Judge.

For a more complete discussion of this issue see *JSMP Justice Update*, ‘Closure of Detention Review Hearings’, 15/2005.

<sup>7</sup> JSMP Staff were permitted by Judge Elias Tome to witness review hearings provided they did not divulge information discussed in the hearing to the public. Judge Emiliano from the Baucau District Court also permitted JSMP staff to witness review hearings.

<sup>8</sup> JSMP’s ability to obtain court decisions depends largely on whether or not we are able to get them from prosecutors or defence lawyers.

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