

# **JUDICIAL SYSTEM MONITORING PROGRAMME** **CONSTITUTION**

## **Section 1: Guiding Principles**

The Judicial System Monitoring Programme, herein referred to as (“JSMP”), is guided by the following principles:

1. That the realisation of human rights is essential to achieve the goals of a democratic, peaceful, fair, just and equitable society.
2. That the foundation of human rights is the self-determination of peoples and the principles articulated in Common Articles 1 of the International Covenant of Economic, Social and Cultural Rights and International Covenant of Civil and Political Rights.
3. That human rights are universal, interdependent and indivisible.
4. That the Rule of Law is indispensable to safeguard and advance all human rights and that an independent judiciary and legal profession, maintaining the highest ethical standards, assume a primary role in achieving this goal.
5. That JSMP is founded for the public good and operates to protect, advance and promote human rights.
6. JSMP activities are free of charge to beneficiaries.

## **Section 2: Defining JSMP, its Vision and Objectives**

Article 1 – JSMP status and legality

1. JSMP is an independent, impartial, not for profit association.
2. JSMP will act professionally, and with integrity to meet its mission.
3. JSMP will not discriminate unlawfully against a person or group but may encourage and favour certain disadvantaged groups to advance equality and justice.
4. JSMP is an East Timorese organisation, based in East Timor and registered under the relevant laws of East Timor.
5. It is managed by East Timorese and led by the needs of the people of Timor Leste of respect for their human rights, to participate in democracy and to achieve justice and equality for all.
6. JSMP must operate within the laws of Timor Leste and this constitution.
7. JSMP’s registered office is situated at Rua Setubal, Colmera, Dili, East Timor.

## Article 2 - Vision

The vision of JSMP is to be the foremost, independent organisation in Timor Leste that contributes to the development and improvement of the justice and legislative system through objective monitoring, analysis, advocacy and training.

## Article 3 - Objectives

JSMP carries out activities at a local, national, regional and global level within the following objectives:

1. Support and advance the rule of law and human rights on the basis of the guiding principles;
2. Advance the independence of the judiciary and the legal profession and the administration of justice in full compliance with standards of international law;
3. Promote the adoption and implementation of international human rights standards and other principles that advance human rights and the rule of law;
4. Promote the establishment and enforcement of a legal system which protects individuals and groups against violations of their human rights;
5. 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;
6. Promotes equality and the right of everyone to receive equal and fair access to justice and equal treatment under the law.

## **Section 3: Membership of JSMP**

JSMP's membership consists of individuals who are either full members or associate members.

### Article 4 – Individual Membership of JSMP

1. East Timorese nationals and former JSMP staff members are entitled to apply for full membership of the organisation.
2. All persons are entitled to apply for Associate Membership of JSMP.
3. Applications for Associate Membership must be supported by two members or at the invitation of the Secretariat.
4. Associate Members will from time to time be called upon to advise the Secretariat or Executive Committee in relation to expertise within their field.
5. All Applications are accepted at the discretion of the Secretariat.

6. Members must be individuals who accept this Constitution, the objectives and mission of JSMP.
7. The Secretariat will ensure diversity amongst the membership of the organisation, particularly the participation of women. The Secretariat may establish programs to encourage women's involvement.
8. All members must act in the best interest of JSMP when fulfilling their duties as members, and not in furtherance of personal interests or the interests of third parties.
9. Where there exists a conflict of interest:
  - a. Member's must declare this interest and refrain from voting in the decision affected by the conflict.
  - b. Where the interest has not been declared and the decision has been influenced by the conflict then membership will be terminated.
  - c. The Executive Committee may annul the decision influenced by the conflict.
10. If Members engage in behaviour in the course of their duties that is damaging to the work and reputation of JSMP, a decision will be made by the Commission about whether or not to terminate membership.

#### Article 5 – Affiliated Organisations

1. JSMP will seek the involvement of other organisations to assist in the implementation of its guiding principles and objectives as outlined in Section 1 & Article 3.
2. The Executive Committee, with consultation with the Secretariat, may grant affiliate status to a non-partisan organisation with aims and objectives similar to and consistent with JSMP.
3. In its communications, an Affiliated Organisation may state that it is affiliated with JSMP but may not use the logo or the institutional identity of JSMP without prior permission.
4. An Affiliated Organisation shall cease to hold that status upon;
  - a. Written notice of resignation to the Director; or
  - b. By a decision of the Executive Committee when the affiliate:
    - i. is no longer functioning; or
    - ii. no longer fulfils the conditions of affiliate membership; or
    - iii. has acted prejudicially to JSMP upon a decision by the Commission and affirmed by the Executive Committee.
5. In the event of termination of status, the Affiliated Organisation may no longer indicate that it is affiliated to JSMP.

#### Section 4: Governance

## Article 6 – The governing bodies

1. JSMP is governed by an Executive Committee, an Auditing Board and its membership through the Commission of Members (“the Commission”).
2. The governing bodies will ensure compliance with the guiding principles, the mission and objectives of the organization and actively monitor JSMP’s management, financial and programmatic performance in accordance with this constitution.
3. The day to day functioning of JSMP is the responsibility of the Secretariat.

## Section 5: The Commission of Members

### Article 7 – Definition of the Commission of Members

1. The Commission of Members is comprised of all full and associate members.
2. The Commission shall hold an annual general meeting (AGM) once a year.
3. The Commission has the power and authority to:
  - a. Elect members for the Executive Committee and Auditing Board, as necessary;
  - b. Receive and approve the annual narrative and financial report;
  - c. Provide commentary on the reports;
  - d. If there are any complaints about whether the reports abide by the constitution, members may refer them to the Executive Committee for adjudication as per article 26.
  - e. Receive and adjudicate complaints about members of the Commission, members of the Executive Committee and Auditing Board.

### Article 8 - Meetings of the Commission – the AGM

1. The Commission shall meet every year, or whenever it is called into session by a two-thirds vote of the Executive Committee, or at the request of the majority of the Commission.
2. Between meetings the Commission shall be regularly informed by the Secretariat about the activities of the Executive Committee, Auditing Board and the Secretariat.
3. The Secretariat is responsible for scheduling meetings of the Commission.
4. The agenda for the meetings of the Commission is set by the Executive Committee and additions to the agenda may be made by all members in attendance..
5. Except as otherwise provided in this constitution, the Commission shall make its decisions by a majority of the Commissioners present and voting.

6. The quorum for the Commission meetings shall be one half of the Commission's membership.
7. In the absence of a quorum, Commissioners present at a meeting may, by majority vote, take a provisional decision which shall be submitted to a ballot of all members of the Commission and shall take effect if approved by a majority of Commissioners voting in the ballot.
8. Commissioners unable to attend a meeting at its designated place may participate and vote by electronic means or by conference call with the permission of the Chairperson.

## **Section 6 – The Executive Committee**

### Article 9 – Membership

1. The Executive Committee is comprised of an odd number of members, at least 5 and at most 9, including one staff member from the Secretariat and the Chairperson.
2. The term of a member of the Executive Committee shall be two years.
3. Members may be elected for successive terms.
4. An Executive Committee member may resign at any time by giving notice to the Chairperson of the Executive Committee who must then inform the Secretariat and Commission.
5. When the first Executive Committee is established, the initial terms of the members will be either three or two years, with the majority being two years and then all consecutive terms of members will be two years.

### Article 10 - Election of the Executive Committee

1. The Secretariat shall be responsible for creating and implementing a fair election process for the Executive Committee.
2. All East Timorese full members are eligible to nominate to become a member of the Executive Committee.
3. All full members are able to vote in the election of the Executive Committee.
4. The Executive Committee must include an East Timorese member of the Secretariat elected fairly by the Secretariat, and must not be the Director or Deputy Director.

### Article 11 – Dismissal of members of Executive Committee

1. The Commission may terminate the term of a member of the Executive Committee when:

- a. the member no longer fulfils the requirements of their position; or
  - b. the member accepts an official position which is in conflict with the mission and programmes of JSMP; or
  - c. The member has acted in a way contrary to their obligations on the Executive Committee or in a way as to damage the reputation of JSMP.
2. The Commission must elect three to five members to adjudicate allegations of misconduct or to consider a decision under Article 12(1), and decide whether or not the member shall continue with their term on the Executive Committee.
  3. The Commission must investigate, assess and adjudicate in a manner consistent with principles of natural justice and due process.

#### Article 12 – The Chairperson of the Executive Committee

1. The Executive Committee shall select a Chairperson from among its members for a period of two years and they may be re-selected twice.
2. In the absence of the Chairperson at any meeting, the members present shall elect a Chairperson for that meeting.

#### Article 13 - Powers of the Executive Committee

1. The Executive Committee has the following powers:
  - a. To appoint the Director with logistical assistance from the Secretariat;
  - b. To take such action from time to time, and at least annually, to ensure the activities of JSMP are in line with its stated guiding principles and objectives as set out in the Constitution;
  - c. To receive and adjudicate complaints regarding the work of the Director;
  - d. To receive and adjudicate complaints about the constitutionality of the Secretariat,;
  - e. Any other powers provided for under this constitution.

#### Article 14 – Meetings of the Executive Committee

1. The Executive Committee shall meet at least twice a year on a regular cycle.
2. A meeting shall be convened by its Chairperson.
3. The Secretariat is responsible for scheduling and notifying members of meetings of the Executive Committee.
4. Two thirds of the Executive Committee members shall constitute a quorum.

5. The decisions of the Committee shall be by majority vote of all the members of the Committee present and voting.
6. The Executive Committee may invite suitably qualified persons to attend and contribute to its discussions, having regard for their special expertise and concerns.
7. The agenda of and decisions taken by the Executive Committee shall be communicated to the Commission, the Secretariat and to Affiliated Organisations.

## **Section 7 – The Auditing Board**

### Article 15 – Membership

1. The Auditing Board is comprised of an odd number of members, at least 5 and at most 9, including the Chairperson.
2. The term of a member shall be two years.
3. Members may be elected for successive terms.
4. An Auditing Board member may resign at any time by giving notice to the Chairperson who must then inform the other organs of JSMP.
5. When the first Auditing Board is established, the initial terms of members will be either three or two years, with the majority being two years and then any consecutive terms of members will be two years.

### Article 16 - Election of the Auditing Board

1. The Secretariat shall be responsible for creating and implementing a fair election process for the Auditing Board.
2. All East Timorese full members are eligible to nominate to become a member of the Auditing Board.
3. All full members are able to vote in the election of the Auditing Board.

### Article 17 – Dismissal of members of Auditing Board

1. The Commission may terminate the term of a member of the Auditing Board when:
  - a. the member no longer fulfils the requirements of their position; or
  - b. the member accepts an official position which is in conflict with the mission and programmes of JSMP; or
  - c. The member has acted in a way contrary to their obligations on the Auditing Board or in a way as to damage the reputation of JSMP.

2. The Commission must elect three to five members to adjudicate allegations of misconduct or to consider a decision under Article 12(1), and decide whether or not the member shall continue with their term on the Auditing Board.
3. The Commission must investigate, assess and adjudicate in a manner consistent with principles of natural justice and due process.

#### Article 18 – The Chairperson of the Auditing Board

1. The Auditing Board shall select a Chairperson from among its members for a period of two years and they may be re-selected twice.
2. In the absence of the Chairperson at any meeting, the members present shall elect a Chairperson for that meeting.

#### Article 19 - Powers of the Auditing Board

The Auditing Board has the power to:

1. Oversee JSMP's finances, by ensuring the Secretariat conduct an external annual audit of the financial accounts and reviewing the auditor's report.
2. After reviewing the auditor's report, recommend changes to the financial policy of the Secretariat, in accordance with the recommendations in the auditor's report.
3. Audit the administration of property and ensuring property is administered in furtherance to JSMP's objectives and guiding principles as outlined in Sections 1 and 2.

#### Article 20 – Meetings of the Auditing Board

1. The Auditing Board shall meet at least once a year on a regular cycle.
2. A meeting shall be convened by its Chairperson.
3. The Secretariat is responsible for scheduling and notifying members of meetings of the Auditing Board.
4. Two thirds of the Auditing Board members shall constitute a quorum.
5. The decisions of the Auditing Board shall be by majority vote of all the members present and voting.
6. The Auditing Board may invite suitably qualified persons to attend and contribute to its discussions, having regard for their special expertise and concerns.
7. The agenda of and decisions taken by, the Auditing Board shall be communicated to the Commission, the Executive Board, the Secretariat and to Affiliated Organisations.

## **Section 8 – The Secretariat**

### Article 21 – Definition of the Secretariat

1. The Secretariat shall consist of the offices and staff of JSMP.
2. JSMP's day to day functions are the responsibility of the Secretariat.
3. The Secretariat is responsible for the implementation of the objectives within the guiding principles.

### Article 22 – Responsibilities and Powers of the Secretariat

1. The Secretariat has the following powers and responsibilities:
  - a. Design and the implementation of policies, plans, programmes and activities that embody the guiding principles and objectives as stated in this constitution;
  - b. Creation and implementation of efficient internal management policies and procedures;
  - c. Human resource management and recruitment of staff and volunteers;
  - d. Advising and supporting the Commission and Executive Committee;
  - e. Advertising and short-listing candidates for the position of Director;
  - f. Interviewing candidates for the position of Director and ensuring the interviewing panel includes a member of the Executive Committee, chosen by the Executive Committee;
  - g. Organising and providing logistical support for the Executive Committee, Commission and any other committee of JSMP.
  - h. Implementing and giving effect to the policies and decisions of the Executive Committee.
  - i. Any other power included in this constitution or be considered part of the day to day operation and management of JSMP.

## **Section 9 - The Director**

### Article 23 – Selection of the Director

After the Secretariat has interviewed candidates, the first and second choices for the position of Director shall be presented to the Executive Committee who will appoint a Director for a term of up to two years and may reappoint the Director for additional

terms. It may also appoint an acting Director only for the duration of the vacancy in the office.

#### Article 24 – Director’s responsibilities

1. The Director is in charge of and responsible for the work of the Secretariat, including:
  - a. Administration policies and procedures;
  - b. Financial management;
  - c. Human resource management;
  - d. The development, planning and co-ordination of strategies, projects, programmes and policies to implement the guiding principles and objectives of JSMP as stated in this constitution.
2. The Director shall prepare such reports as the Executive Committee may require, but particularly financial and narrative reports of the Secretariat.
3. The Director may establish such branches or liaison offices as may be required to carry out the work of JSMP.
4. The Director may appoint a Deputy Director. The role of the Deputy Director is to assist the Director and to act as Director during his or her absence.
5. The Director approves the appointment of Staff for the Secretariat and any branch or liaison office of JSMP.
6. The Director and the Deputy Director must attend, without vote, all meetings of the Executive Committee. Legal and other staff may be invited to attend meetings as appropriate.

#### Article 25 – Dismissal of the Director

1. Any complaints about the Director not abiding by their duties and the constitution shall be made to the Executive Committee, by the following process:
  - a. Only a majority of all the Coordinators of the Secretariat can take a complaint to the Executive Committee.
  - b. The Executive Committee must notify the Director in writing of the details of the complaint and allow the Director a reasonable opportunity to respond.
  - c. The Executive Committee may then decide whether or not the conduct constitutes a breach of the Director’s duties by taking into consideration:
    - i. The weight of evidence of the breach;
    - ii. The explanation provided by the Director; and
    - iii. Any other relevant factors.

- d. If the Executive Committee by consensus or by two-thirds majority, decide that a breach has occurred then they may impose a sanction taking into account:
  - iv. The type of duty breached by the Director;
  - v. The nature of the breach; and
  - vi. Any previous breaches of duty
- e. The Executive Committee may impose one of the following sanctions:
  - vii. A verbal warning, which can only be imposed up to two times and only in minor cases;
  - viii. A written warning, which can only be imposed up to three times or, if there has been previous verbal warnings, a maximum of two times; or
  - ix. Dismiss the Director; this may be imposed only in serious cases or after a minimum of three warnings, verbal or written.
- f. After the decision has been made the Executive Committee must inform the Director and the Secretariat in writing of the decision and what sanction was imposed, if one in fact was imposed.
- g. This process does not preclude any legal action that may be pursued by any party.

## **Section 10 – Financial Management**

### Article 26 – Financial Policies

1. The Secretariat will create and implement financial policies to ensure that accurate financial records are kept and that the organization's financial resources are used in furtherance of the constitution and principles herein.
2. JSMP will not accept conditional donations or donations from a political party.

### Article 27 - Assets and Liabilities

1. All of JSMP's assets will be only be used for the furtherance of its mission, guiding principles and objectives.
2. In case of dissolution, members and staff shall have no personal claim to the assets of JSMP.
3. After payment of financial commitments, any remaining assets shall be directed by the Executive Committee to other associations pursuing similar aims.

### Article 28 - Financial Control

1. Except as otherwise provided by the Executive Committee, contracts or other legal instruments can only be executed on behalf of JSMP if signed by the Director or the Deputy Director in the absence of the Director.
2. All cheques must be signed by the Director or the Deputy Director in the absence of the Director, and one or two other named member of staff as approved by the Executive Committee.

## **Section 11 – Ethics and Monitoring Procedures**

### Article 29 – Mission and Program Evaluation

1. The Executive Committee will periodically revisit JSMP’s guiding principles, objectives and mission at least every five years or at most every three years, to determine if the need for its programs continues to exist.
2. This constitutional review may be conducted either internally or externally.
3. The Executive Committee will periodically evaluate the effectiveness and impact of JSMP’s programs and projects
4. This evaluation will be conducted externally.
5. The Executive Committee, with assistance from the Secretariat, shall determine the terms of reference for the evaluation.
6. The terms of reference will include:
  - a. The effectiveness and impact of current programs;
  - b. Whether the current programs are within the guiding principles, mission and objectives as outlined in this constitution;
  - c. Recommendations to changes of policy, strategies and plans and ways of working.
7. Evaluations will include input from programme participants and affiliated organisations.
8. The Secretariat must consider the recommendations in the report and use the evaluation to strengthen the effectiveness of the organization and, when necessary, be used to make programmatic changes.

### Article 30 – Financial Evaluation

1. The Secretariat will prepare internal quarterly financial statements, which will be provided to the Auditing Board, and identify and explain any material variation between actual and budgeted revenues and expenses.
2. The Secretariat will conduct an annual independent audit of its accounts by an accredited accountant.

### Article 31 – Complaints

1. Any member of the public, Commission, Auditing Board, Executive Committee or staff of JSMP has a right to make a complaint to the Executive Committee on any suspected breach of the constitution by the Secretariat.
2. The Executive Committee members will investigate, assess, and adjudicate whether the breach occurred in a manner that is consistent with principles of natural justice, due process and with the constitution of JSMP.
3. If a breach of the constitution has occurred the Executive Committee:
  - a. May request the Director take action to deal with the constitutional breach;
  - b. May make appropriate policy or procedural changes if within a reasonable time the Director takes no action;
  - c. Must refer the matter to the Director to be dealt with in line with the Secretariat's human resources policy and procedure if the breach involves a particular member of staff;
  - d. May proceed with resolution using the same process as stated in Article 20 if within a reasonable time the Director takes no action.

#### Article 32 – Publication of Reports and Public Access

1. JSMP will prepare and make available annually to the public information about the organization's mission, program activities, and basic audited (if applicable) financial data, including the names of the organization's Commission, Executive Committee and Secretariat.
2. This report shall be distributed to all members, staff and affiliated organisations, any other interested parties and provided at the request of a member of the public.

#### **Section 12 – Amendments, Dissolution, Transition and Entry into Force**

##### Article 33 - Dissolution

JSMP may be dissolved only by a vote of at least two-thirds of the total membership of JSMP, with a three-fourths majority. Such dissolution shall be affected by the Executive Committee or by persons appointed by the Executive Committee.

##### Article 34 - Amendment of this Constitution

1. This Constitution may only be amended by a vote of two-thirds of the Commission, with a majority of three-fourths.
2. Amendments may be considered and voted on by circulation, by whatever means, including but not limited to meetings, email and conference calls.

3. The results of the vote shall be declared after allowing a reasonable time for all votes to be cast and all votes to be counted.
4. The declaration of the results must be communicated to all members and the Secretariat.
5. The Secretariat shall provide logistical and administration support for the voting.
6. The amendment shall come into force on the date that it is declared or at a date set by the Executive Committee but no later than three months after its declaration.

#### Article 35 - Entry into Force

This Constitution enters into force on 1 April 2005 when ratified by the Secretariat acting for the Commission and Executive Committee.

#### Article 36 - Transition

The Secretariat shall operate as the Commission for a period of up to one year, and as the Executive Committee for up to two years, or until the Commission and Executive Committee are formed.

#### Article 37 – Application of Decree Law 5/2005

1. This constitution incorporates and is subject to Government Decree Law 5/2005 *On Non-Profit Making Corporate Bodies* (“Law 5/2005”).
2. The constitution applies in the event of a conflict or inconsistency between Law 5/2005 and the constitution, but only to the extent permissible by law.