



JUDICIAL SYSTEM MONITORING PROGRAMME
PROGRAMA DE MONITORIZAÇÃO DO SISTEMA JUDICIAL

JUSTICE UPDATE

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NEW PLAYERS IN TIMOR-LESTE'S JUSTICE SYSTEM

Recently, the first group of probationary Timorese court actors, (judges, prosecutors and public defenders) graduated from the *Centro de Formação Jurídica de Timor-Leste* (the Timor-Leste Legal Training Centre, hereafter the "CFJ"), and took office. This group, together with international court actors, will be responsible for running the country's judicial system.

Given the importance of this development, JSMP decided to speak with some of the graduates. This Justice Update aims to reveal some of the opinions of this group. JSMP asked them about the CFJ legal training program, issues affecting the Timorese legal system, and their expectations for the future.

Due to time constraints¹, JSMP was not able to speak with all probationary court actors. JSMP spoke with the Chairman of the Superior Council of Judicial Magistrates, Dr. Claudio Ximenes and with the following probationary actors: Ivo Jorge Valente, Dra. Angelina J. Saldanha, Dr. Domingos Barreto, Dra. Zélia Trindade, Dr. Reinato Bere Nahac and Dr. José da Costa Ximenes (prosecutors); Dra. Olga Barreto Nunes, Dr. Fernando de Carvalho and Dr. Manuel Sarmento (public defenders); and Dr. Antonio Helder do Carmo, Dra. Edite Palmira dos Reis and Dr. Deolindo dos Santos (judges).²

1. THE JUDICIAL TRAINING PROGRAM

1.1. Background

The CFJ training program was established by Decree-Law No. 15/2004 on the Recruitment and Training for the Professional Careers of the Judiciary and the Office of the Public Defender (hereafter the "Recruitment and Training Law"). This law establishes a procedure for the selection of candidates and requirements for their training and probationary employment. It applies to

¹ Interviews held between July 25 and 31 2006.

² The other trainee graduates who have taken office are: Jacinta Correia da Costa, Maria Natércia P. Gusmão, Constâncio Basmerly, Antonino Gonçalves, Duarte Tilman Soares, Guilhermino da Silva, Ana Paula Fonseca and José Maria de Araújo (judicial magistrates); Vicente F. e Brito, Aderito Tilman, José da Costa Ximenes and Ivonia Maria Guterrez (prosecutors); Marcia Sarmento, Cancio Xavier, Sebastião A. de Almeida, and Sérgio J. Hornai (public defenders).

candidates for employment in the Judicial Magistracy, Public Prosecution and the Office of the Public Defence.

Application to the CFJ is open to Timorese nationals who hold a degree in law and are able to write and speak in Tetum and Portuguese.³ Candidates for the training program are selected through oral and written tests.⁴ Those approved attend the training program, which aims to develop the skills required for the trainees' respective future duties.

In accordance with the law, the training program is divided into three stages.⁵ The first two stages are referred to as in-service training and are comprised of a theoretical stage lasting one year followed by a practical stage of six months. The third and final stage is probationary employment within Timor-Leste's judicial system for a period of one year.

After completing the three stages of the training program, the trainees are considered fit or unfit for service, with those considered unfit being excluded from practice.⁶

In May and July,⁷ the first group of the CFJ's students concluded their in-service training and were appointed by their respective bodies as probationary actors. During this probationary stage, they will receive the titles of probationary judicial magistrate, probationary public prosecutor and probationary public defender.⁸ The first group of probationary actors includes 11 judges, 9 prosecutors and 7 public defenders.

During the probationary stage the trainees will have the specific rights and duties inherent to their respective work functions.⁹ They are paid a salary¹⁰ and work together with other court staff, including international court actors.¹¹

Dr. Claudio Ximenes¹² informed JSMP that during the first three months of the probationary stage, the group will attend additional training once a week in civil law and civil procedure, as insufficient time was devoted to these topics during the second stage of the in-service training course.¹³ After the completion of this additional training, each institution will distribute the trainees by district, through

³ Article 3 Decree Law No. 15/2004 on Recruitment and Training for the Professional Careers of the Judiciary and the Office of the Public Defender (hereafter "Recruitment and Training Law").

⁴ Articles 8 to 11 Recruitment and Training Law.

⁵ Article 12 Recruitment and Training Law.

⁶ Article 24 Recruitment and Training Law.

⁷ The public defenders were sworn-in in May. Prosecutors and Judges were sworn-in in early July.

⁸ Article 20(2) Recruitment and Training Law.

⁹ Article 20(3) Recruitment and Training Law.

¹⁰ Article 20(3) Recruitment and Training Law.

¹¹ Article 22 Recruitment and Training Law.

¹² Dr. Cláudio Ximenes is President of the Court of Appeal and Chairperson of the Superior Council of Judicial Magistrates.

¹³ Article 23 of the Recruitment and Training Law permits the provision of training by CFJ to trainees during their probationary phase.

their Superior Councils. This distribution will be based on the service needs of each district.

During the probationary stage, the trainees will retain a connection with CFJ. However, they will act independently in their duties with support from international court actors.

JSMP considers it important to note that there is currently a second class of 15 students in training at the CFJ, which is scheduled to conclude the training program in 2008. Further, Dr. Ximenes informed JSMP that the training of judges to sit in the Court of Appeal is expected to begin in 2007.

1.2. Participants' views on the training program

JSMP spoke with the probationary court actors to ascertain their opinions regarding the training program. Their answers are summarised as follows:

- a) The training program was important to the professional development of all participants, and in general was of a good quality.
- b) Language was the greatest problem of the training program, in particular the need to have high level Portuguese and be familiar with Portuguese legal terms. Many probationary actors reported arriving at CFJ without sufficient Portuguese, and that this made the training extremely difficult for them as instruction is entirely, or nearly entirely, given in Portuguese. Many still believe that they require further language study, both with the CFJ and privately.
- c) Regarding legal training, some thought that the studies in criminal law and criminal procedure were adequate, but that this was not the case as far as civil law and civil procedure were concerned. This was due to the limited amount of time devoted to the latter subjects during the in-service training course.
- d) Most believed that the probationary period is important to allow further improvement in judicial knowledge and skills together with the opportunity to put into practice what they have learned in the in-service training program. They also expect to gain more confidence and experience through working closely with international court actors.
- e) They believe that probationary actors could initially focus on simpler cases and in particular simpler cases from Timor-Leste's large case backlog. This would facilitate professional development and learning while gaining valuable practical experience. At the same time probationary actors would be doing a valuable service in resolving cases that would not receive attention otherwise.
- f) The majority of probationary actors do not yet have a duty schedule and for the most part are yet to receive cases. The probationary prosecutors have been visiting the Prosecutor's Office daily, but so far no work has been given to them. The international judges contact the probationary judges when a trial

requires a panel of three judges. However, to date only some probationary judges have been asked to participate in these trials. The exception is the Defender's Office where some probationary defenders have been assisting with cases and have participated in trials together with international defenders.

According to information received by JSMP, the justifications given for the failure to properly distribute tasks to the probationary court actors is the need for further classes to be provided to them, and the lack of sufficient security at the present time, particularly given that many of the probationary actors are living in camps for internally displaced persons (IDPs).

1.3. JSMP'S Recommendations

a) Portuguese language

JSMP notes that the use of the Portuguese language was identified by probationary actors as the greatest problem in the training program, particularly Portuguese legal terminology. Despite this, great improvements in language skills were achieved, with most of the probationary actors now able to communicate well in Portuguese.

JSMP recognises that while the legal framework of Timor-Leste continues to be based in the Portuguese language, it is necessary for future court actors to develop their Portuguese skills to a high level. For this reason JSMP recommends that a greater number of Portuguese language classes be given throughout the training program, including during the probationary period.

However JSMP also notes that students in the training program need not only to develop their Portuguese language skills, but also to acquire substantive legal knowledge and practical skills. JSMP considers that conducting legal training classes in Portuguese while trainees are still in the process of learning that language impedes the ability of trainees to fully understand and absorb the content being taught. JSMP believes that at the same time as providing additional language tuition, CFJ should increase the proportion of training that is provided in Tetum, or which is at least translated into Tetum or supported by explanatory materials in Tetum. JSMP considers that taking such an approach is also in line with the Constitution of Timor-Leste, which states that the official languages of Timor-Leste are *both* Portuguese and Tetum, and that Tetum and other national languages are to be valued and developed.¹⁴

Concerning the more general issue of language and the judicial system in Timor-Leste, JSMP has previously put forward a number of recommendations which can be found in the report titled, *The Impact of the Language Directive on the Courts in East Timor*,¹⁵ published in August 2004.

¹⁴ Article 13, Constitution of RDTL.

¹⁵

b) Training in civil procedure

It is clear that a problem exists in relation to training in civil law and civil procedure. Probationary court actors will only have three months to conclude their studies in these subjects, a length of time insufficient for their learning requirements in these difficult subjects.

JSMP believes that the lack of effective civil litigation in Timor-Leste at the present time represents a significant flaw in the nation's justice system and a major impediment to the establishment of the rule of law. The failure to adequately educate the next generation of Timorese court actors about civil law and procedure only serves to reinforce this deficiency. JSMP therefore recommends that the CFJ increase its focus on civil litigation and devote a more substantial period of training to this topic.

c) Probationary work

With respect to the probationary court actors' ability to carry out their duties, JSMP believes that despite the situation of insecurity in the country and additional classes, the trainees should start working on cases immediately. Most are already at the disposal of their respective institutions. Regarding the probationary judges, while some of them have already taken part in panels, date there is no system for ensuring that this opportunity is extended to all.

JSMP considers that the immediate commencement of full probationary duties would be in the interests not only of the probationary actors but also of other justice sector actors and the Timorese people more generally, particularly given the existing backlog of cases and the shortage of skilled persons working in the Prosecution Service, the Public Defender's Office, and the District Courts.

Furthermore, JSMP notes that under law the probationary period is limited to one year in duration. At the end of this period trainees are assessed as to whether they are fit to take up full duties. The sooner probationary actors are permitted to undertake their responsibilities, the more experience they will receive and the better equipped they will be at the expiry of the probationary period to be assessed as fit service.

Finally, JSMP wishes to express some concerns regarding the procedure by which probationary judges will be assessed for fitness to undertake full duties. The Recruitment and Training Law requires that trainees that are unfit for service at the completion of their probation period are "excluded".¹⁶ However it does not explain what this entails (whether for example such persons are able to undertake additional training or a further probationary period). Nor does it state what criteria will be used or who will make this decision.

¹⁶ Article 24 Recruitment and Training Law.

It seems likely that the relevant body is the Superior Council or Service to which a probationary actor is accountable,¹⁷ however JSMP believes that this should be made clear, and that uniform and transparent criteria should be established for use in this assessment.

2. THE JUDICIAL SYSTEM

JSMP also spoke with the new probationary actors about issues affecting the wider Timorese judicial system. They made the following comments.

- a) The judicial system in Timor-Leste is not yet strong nor consolidated and it continues to suffer from a number problems. The national judicial authorities are still being trained and the judicial system is dependent on the support of international actors. The probationary actors acknowledge that they need to be well prepared in order to build a strong judicial system. They also stated that judicial functions need to be respected by the non-judicial authorities and by the population, and that the judiciary must not be subjected to interference from other organs or government representatives.
- b) The courts should have adequate facilities, support and working conditions. Logistical problems, such as lack of water, electricity and equipment, and difficulties in the transport of the defendants, victims and witnesses, must not be allowed to continue since they compromise the functioning of the courts. These problems, together with the backlog of pending cases, impede the strengthening of the justice system and undermine the population's faith in formal justice mechanisms. Efforts are needed from all stakeholders in the justice system to solve these problems.
- c) The judicial system in Timor-Leste will only be strong when all people, especially private lawyers, public agents and members of civil society, know the law well and are prepared to work with it. The probationary actors believe there is a need for public information and education campaigns about Timorese laws.
- d) The support of international court actors is important for the country, particularly during this time of political crisis, but international actors must respect the Timorese people and their culture;
- e) Regarding the creation of new laws, civil society should be consulted in this process, since this would allow laws to be better adapted to the reality of life in Timor-Leste.
- f) Most trainees probationary actors view Timorese legislation as preferable to Indonesian laws, since they say the Timorese codes are more complete and

¹⁷ These bodies are given the power to appraise a trainee's performance during the probationary period and may determine that the latter is unfit for the job, which may in turn lead to exclusion if the situation cannot be rectified: see article 22 Recruitment and Training Law.

easier to work with. They also believe that the existence of Timor-Leste's own legislation is very important for the consolidation of the justice system. For this reason, the Criminal and Civil Codes need to be finalised and approved to complete the basic legislative framework of the country.

- g) Although the Timorese legislation already approved needs revision in some areas, since some of it does not take into account the specific needs of Timor-Leste, some probationary actors believe that the most important consideration is for Timor-Leste to have its own legislation. As people make use of the laws and observe their practical application, the amendments required will become evident.
- h) Although the Timorese legislative framework is not yet complete, some probationary actors said that there are already enough instruments to allow implementation of the law. The judiciary cannot remain idle, since this would hinder the stability and development of the country. Therefore, until the Timorese legislative scheme is complete, Indonesian legislation should be used to fill any gaps, assuring the existence of applicable law in all areas. All efforts should be made to ensure the observance of the rule of law, including by enabling judicial determination of civil cases, something which has yet to occur. The probationary actors believe they have an important role in this task.

2.1. The population and the justice system

- a) The Timorese population has difficulties in understanding the formal justice system due to the lack of public information. A process should be undertaken in order to disseminate information about legislation in force. Timorese people need to be made aware that they already have their own laws. As such, the Government, together with the courts, Prosecutor's Office and Defender's Office, should take steps toward establishing processes for public education about Timorese law. In order for the population to trust the legal system it is important that they know about and understand it.
- b) The Timorese population also need to understand that Timor-Leste is a democracy based on rule of law, and that for this reason the law must prevail. To achieve this goal public legal education is important. NGOs are also able to play a role in this process.

2.2. The role of traditional justice

- a) Almost all the probationary actors considered that the traditional justice system is important in civil cases as well as in some simple criminal cases. Traditional justice mechanisms are a fast way to resolve conflicts and enable the reconciliation of the parties. In respect of more complex cases, the probationary actors explained that traditional justice methods cannot be used and that the formal legal system should be applied.

- b) International court actors need to understand the Timorese culture and traditional methods of dispute resolution. Adaptation and flexibility are important and it is important to recall that the Constitution itself foresees the use of traditional justice.¹⁸
- c) One probationary actor pointed out the need to create a law specifically dealing with the role of traditional justice, in order to clarify and facilitate mediation and the role of traditional processes.

2.3. Police

- a) The justice system depends on the police to enforce it. Therefore, members of the police force need to be well educated and trained in order to carry out this role properly. Members of the police force should know their rights and obligations.
- b) All probationary actors were of the view that the PNTL must start operating again and that the Government needs to address this issue urgently. The trainees believe that the involvement of international forces in supporting the national police is important, but that the operation of the PTNL is fundamental for Timor-Leste.

2.4. Private lawyers

- a) There is a need for a law governing the activities of private lawyers. The Government should urgently approve such a law.
- b) Private lawyers should undergo a training program, enabling them to become better acquainted with the new Timorese laws and to learn the Portuguese language. They stated that as long as this does not occur, there will be no balance in the justice system, since only those working in the public sector have been provided with training.
- c) A law on legal practice must govern the activities of foreign private lawyers in Timor-Leste. Some trainees believe that while there is no Timorese law governing this matter, the activities of foreign lawyers should not be hindered. One probationary actor pointed out that although there is no national legislation on the matter, there is the Indonesian law, which provides that foreign lawyers can only work as consultants together with an Indonesian lawyer and that this requires Government authorization and the approval of the Bar Association.¹⁹ In the view of the person expressing the latter opinion, this Indonesian law can be used to protect the rights of the Timorese lawyers.

¹⁸ Article 2(4) Constitution of RDTL states "The State shall recognise and value the norms and customs of East Timor that are not contrary to the Constitution and to any legislation dealing specifically with customary law."

¹⁹ Article 23 (1 and 2) of the Indonesian Law no. 18/2003 (Lawyers' Law)

2.5. JSMP'S Recommendations

JSMP emphasises that, notwithstanding the recent crisis in Timor-Leste, the Timorese court system must not be paralysed. The Courts must work with the laws in force in Timor-Leste. Pending cases must be handled and resolved, particularly civil cases, which to date have not been dealt with effectively. To facilitate this process, public authorities must assure the minimum conditions required for the effective operation of the judiciary, including the provision of adequate infrastructure, logistics and security.

However, although extremely important, a functioning judiciary is not enough on its own to ensure the operation of the rule of law. Additional steps must be taken to allow the effective operation of the justice system. One such step is the approval of the minimum required legislation (including the Penal Code, the Civil Code, the Statute of the Office of the Public Defender, legislation regulating the legal profession, and legislation regarding the organisation of the judiciary). In line with this, the draft Statute of the Office of the Public Defender is currently before Parliament and awaiting approval.

There are also two bills relating to private lawyers currently before the Parliament, one drafted by the Lawyers Association of Timor-Leste and another from the Ministry of Justice. The former was submitted first and has already been debated in the Parliament. After parliamentary debates and calls for input from civil society and government a second draft bill was proposed by the Ministry of Justice. JSMP is concerned by this lack of coordination which appears to have hampered the passage of this important legislation through Parliament, and believes that the Ministry of Justice must work more closely with civil society organisations in the creation of legislation for the justice sector.

JSMP urges the Parliament to work on completing legislation for the regulation of the legal profession as well as adopting the Statute for the Office of the Public Defender.

JSMP also agrees with the probationary actors interviewed that enhancing public knowledge about and understanding of Timorese laws and the legal system is extremely important for the operation of the justice system. This requires a substantial commitment of time and resources. However some fundamental but simple steps may have a significant impact, including the publication of Timorese laws in Tetum, and the translation into Tetum and dissemination of court decisions and official court documents.

The reestablishment of the national police force is also urgent, in order to assure the enforcement of law and order. However JSMP believes that the need to carry out this process quickly must be balanced with the equally important need to ensure that the reintegration process is fair and thorough.

3. EXPECTATIONS

On the question of their personal expectations about their future careers, the probationary court actors made the following comments to JSMP:

- a) They hope to be able to work towards developing the justice system in their country. They believe that the involvement of Timorese court actors (along with the creation of Timorese legislation) will contribute a great deal towards the development of the judiciary.
- b) They hope to be strong and courageous and to achieve justice through the strict application of the law, without external influence.
- c) They hope in due time to be involved in the revision and amendment of Timorese legislation.
- d) They point out that the justice system needs to be able to work faster, and they hope that they can contribute to achieving this goal by working hard and increasing the number of actors operating in the justice system.
- e) They would like to have access to further training courses in the future, in order to improve their knowledge and gain further experience.

The probationary actors are aware of the problems they will face in building a strong and consolidated justice system. They pointed out the following.

- a) The need to improve local knowledge of the Portuguese language.
- b) The general feeling of insecurity in the country, as well as the insecurity specifically affecting the professional activities of lawyers.
- c) The need for salaries commensurate with duties performed, which is an important means for preventing corruption and the loss of court actors to higher-paid employment.
- d) The need for Government support in respect of logistics, including not only ensuring suitable salaries and conditions, but many other things, including the provision of equipment, security, training for the justice sector staff, and transportation for victims, witnesses and defendants attending court.

3.1. JSMP'S Recommendations

Considering that Timor-Leste is a new nation still consolidating its democracy, and keeping in mind the recent crises which have impacted on legal and government structures, JSMP believes that additional efforts are needed in order to ensure the application of the law. In this context JSMP welcomes the arrival of these new Timorese court actors who, by their very presence, will assist in these efforts.

However despite the importance of this group's work, not just as legal professionals, but also as the first Timorese graduates of the CFJ, JSMP

recognise that many obstacles must still be overcome in Timor-Leste's justice sector. The presence of these Timorese court actors is but one of the steps in this long process.

In addition, some assurances need to be offered to this group to ensure their immediate and effective participation in the justice system. In particular, sufficient security must be provided to address the current climate of fear and the fact that many of the probationary actors are still living away from their homes. JSMP believes that they will need material and intellectual support in order to carry out their work efficiently and effectively.

Nevertheless, JSMP welcomes the appointment of the probationary court actors as an important milestone in the development of the Timorese justice system. JSMP congratulates them all and wishes them well in their work, continued training, and progress toward undertaking full responsibilities.