



JUDICIAL SYSTEM MONITORING PROGRAMME
PROGRAM PEMANTAUAN SISTEM YUDISIAL

Mid-Term Report 2002

Dili, East Timor
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JSMP Staff, July 2002

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The Judicial System Monitoring Programme (JSMP) was set up in early 2001 in Dili, East Timor. Through court monitoring, the provision of legal analysis and thematic reports on the development of the judicial system, JSMP aims to contribute to the ongoing evaluation and building of the justice system in East Timor. For further information see www.jsmp.minihub.org

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1. INTRODUCTION

The last two years have been rich in events and developments for the East Timorese people. In eager anticipation of independence, they have made great efforts to rebuild their country after the rampage led by the Indonesian military in September 1999. A key factor both for ensuring state security and for the process of national healing has been the construction of a formal justice system in which to prosecute those accused of committing serious crimes during the Indonesian occupation. When the multinational force, INTERFET, arrived in 1999 it encountered an entirely destroyed infrastructure and a legal vacuum, with most legal professionals having fled the territory. A crucial part of the mandate given to the United Nations Transitional Administration (UNTAET) by the Security Council was the administration of justice. Since then, some of the small number of East Timorese lawyers have been appointed as judges, prosecutors and public defenders and a transitional legal system has been established. Even though there have certainly been major achievements, the justice system is still in a nascent state and will need continued support in the future.

It was in this context that the concept of Judicial System Monitoring Programme (JSMP) emerged in early 2001. After consultation with local non-governmental organisations and early observations of the very first Serious Crimes trials, it was clear that the justice system was experiencing significant problems and that an independent body was needed that could provide:

- a) a physical presence through legal observers at the trials;
- b) analysis of the progress of the new legal and judicial system; and
- c) public information.

After being entirely dependent upon volunteer contributions for several months, JSMP was established and fully funded by August 2001. The organization has since then contributed to the development of the fledging judicial system by identifying areas of concern and by making recommendation for reform. In addition, JSMP's public information initiatives – particularly in relation to the serious crimes trials – have meant that JSMP is now widely recognized as the sole source of information on the East Timorese judicial system for those outside of East Timor, as well as providing a valuable and independent contribution to the ongoing public debate inside East Timor.

2. SECTOR PLANS AND ACHIEVEMENTS 2002

2.1. PROJECT ADMINISTRATION AND STAFFING

Thanks to grants from USAID, AusAid and the Government of Finland, JSMP has been able to expand its staffing levels quite drastically. Going from three staff members at the time of our first Annual Report in February 2002, we will have grown to eleven staff by the end of August 2002:

- 1 Director
- 1 Administrative assistant
- 6 Legal researchers
- 2 Outreach officers
- 1 Security guard

In addition, one consultant has been present in Jakarta to observe the Ad Hoc Human Rights court.

We are not planning to expand the staffing level further but instead intend to focus on consolidating our activities within the two units of JSMP, namely the legal research unit and the outreach unit.

2.2. TRIAL OBSERVATION

a) Trial observation in East Timor

Trial observation continues to enable JSMP to gain an invaluable and unique first hand impression of developments taking place within the judicial system in East Timor. This long term data gathering project represents the main source of information used by JSMP for comparative analysis. In all court monitoring, detailed notes are taken by the legal observers and are later entered into the JSMP case database which contains information about all Serious Crimes trials.

Since January 2002, JSMP legal observers have been present at more than 40 preliminary hearings and trial sessions. JSMP's focus during this reporting period has continued to be on Serious Crimes cases, however, limited observation has taken place on ordinary cases before the Dili District Court. This will increase in the forthcoming period due to the recruitment of additional staff, including one international lawyer who speaks Bahasa Indonesia, still the primary language used in the ordinary jurisdiction.

A significant development in recent months has been the training of the first of JSMP's legal research/trial monitoring staff in the principles and practice of monitoring trials from a human rights perspective.

The first major trial observation report was published by JSMP in March 2002. It constitutes a detailed examination of the first crimes against humanity case to be concluded by the Special Panels for Serious Crimes, the *Los Palos Case*. The 38-page report contained a basic overview of the facts of the case, summaries of the submissions made by counsel for the defence and prosecution, as well as an in-depth analysis of the conduct of the proceedings and

the judgment. The report concluded that:

"..international minimum standards have not been met in a number of specific areas. There is an urgent need to improve the performance of court actors as well as the court administration. One of the most pressing needs is to provide the defendants in serious crimes cases with defence lawyers of experience and competence which correspond with the alleged offences."

The report and its findings have been widely disseminated, including to UNTAET/ UNMISSET, members of Parliament, the Serious Crimes Unit, judges, Ministry of Justice staff and NGOs.

The most significant case currently being monitored is the Lolotoe case, one of the priority cases of the Serious Crimes Unit. It includes 27 counts of crimes against humanity against three accused. As with all the Serious Crimes cases in recent months, the Lolotoe case has been repeatedly delayed due to ongoing administrative problems in the court. In addition to unfilled vacancies for international judges in both the Special Panels and the Court of Appeal, with one exception since 20 May 2002 no Serious Crimes trials have been heard. This has been due to a dispute between the East Timorese judges and the Ministry of Justice over the status of their appointments. The provisional appointments of the majority of the judges expired at independence, however, trials recommenced on 15 July 2002 as the appointments were extended by Presidential decree.

b) Trial observation in Jakarta, Indonesia

In a project where JSMP has received support from the International Platform of Jurists for East Timor (IPJET), observers have been sent to observe the Ad Hoc Human Rights trials in Jakarta. We discovered during our 3 months of observation that we, surprisingly, were the only independent international observers present consistently throughout the hearings.

A final report based on our observations is currently being drafted which will cover the first three trials, namely against Abilio Soares, Timbul Silaen and the Suai Church Massacre. It will undoubtedly be the most accurate and credible report covering the Jakarta trials to be published by any international organization. This is partly due to JSMP's ability to conduct comparative analysis between the trials in Jakarta and in East Timor.

More information about the Jakarta project can be found on the JSMP web site where we have developed a special section fully dedicated to the trials in Indonesia. It is currently the only place which publishes accurate updates of the trials, background legislation and a collection of news articles covering the trials.

2.3. LEGAL RESEARCH AND REPORTS

This reporting period has seen important changes taking place within East Timorese judicial institutions as the new government proceeds to implement long-term policy as well as to establish the structures provided for in the Constitution. This circumstance, combined with the problems in the operation of the courts, has meant that JSMP's role in providing independent analysis of developments in the justice system has shifted focus from predominantly trial monitoring to include examination of new legislation and institutional changes. In that respect, JSMP staff has been monitoring the operation of the National Parliament and the several new draft laws: the law relating to the Provador, the draft law on

Amnesties and Pardons, and the Statue on Judicial Magistrates. JSMP attended a 2 day workshop on the Provador, and will continue to be involved in a working group to analyse and develop the role of this office. In relation to the draft law on amnesties and pardons, JSMP issued an analytical briefing paper that was distributed to members of Parliament to explain some of the implications of the draft law. This preliminary analysis is now being expanded further into a detailed report. Another report is also being drafted that considers the progress in implementing the judicial institutions mentioned in the Constitution.

With the change from UNTAET to UNMISSET, JSMP has continued to provide advice and input to the offices of the SRSG and DSRSG, including in relation to their continued role in providing support to the justice sector.

In March 2002 JSMP's coordinator of legal research gave a presentation at the conference *Justice in the Balance – Military Commissions and International Tribunals in a Violent Age* hosted by the Berkeley War Crimes Study Center, Human Rights Center and Department of Rhetoric at the University of California at Berkeley. In May 2002 JSMP published in the Lao Hamutuk Bulletin an overall assessment report about the state of the justice system at the time of independence.

Therefore, ongoing monitoring and research have continued to occupy a significant amount of time in this reporting period. In addition, the recruitment of the first two national legal research staff has involved considerable training in both legal analysis and report writing, a process that will continue to develop over the coming months. Although this has meant that JSMP has not published any major reports yet, several reports are currently at the drafting stage as mentioned above, including a general review report of the justice system, that examines the progress of each of the District Courts as well as the more recent developments in the overall system.

2.4. PUBLIC INFORMATION AND COOPERATION WITH OTHER NGOS

JSMP has in 2002 strengthened its outreach activities, and is in the process of developing a set of manuals for training both NGOs and members of the community in the Serious Crimes process. The manuals are divided into four parts covering:

- Module 1: What are Serious Crimes?
- Module 2: Holding individuals accountable
- Module 3: Defences for Serious Crimes
- Module 4: Women and Serious Crimes

An international outreach trainer has been assisting the outreach coordinator in this work, which in the near future will be used for district workshops.

The main public information activities in 2002 have been as follows:

a) Web page

JSMP has continued to maintain and develop the web page, which features news, trial schedules, reports, resource material, judgments and indictments. The website, which is updated daily from our Dili office, has increased its number of visitors to approximately 2500 visitors per month. JSMP also administers an e-mail list which has 255 subscribers. The list

members receive news and updates on developments of the judicial sector. Among the subscribers are diplomatic missions to East Timor, researchers, donor organizations, some of the world's leading human rights NGOs, UNMISSET staff and other individuals from around the world.

b) Press releases

JSMP press releases with information from cases we monitor, as well as regarding other updates concerning the judicial sector are issued in both English and Bahasa Indonesia. During the first half of 2002, they have been quoted in all major news papers and radio stations in East Timor, including *Suara Timor Lorosae* and *Timor Post*.

c) News paper interviews

JSMP has continued to brief international journalists in 2002, and JSMP has been quoted in places such as the Guardian, Newsweek, AAP and the Australian Financial Review.

d) Radio

JSMP has increased its outreach activities targeting both national and community radio stations. For the last couple of months, JSMP has had a ½ hour every Thursday afternoon on radio Timor Leste. Frequent radio interviews have also been given, including to community radios such as Radio RaKaMbian and Radio Tokodede. JSMP staff have on several occasions given interviews to ABC radio in Australia and to AFP France.

e) Educational video

JSMP has cooperated with Coalition for International Justice's documentary film maker, who during the reporting period finalised two educational films about the serious crimes process. The second film contained a separate section about JSMP and the role of court monitors in assessing and evaluating the proceedings against fair trial principles. JSMP has also been present at district meetings where the films have been shown to local communities.

f) Cooperation with other NGO's

JSMP have continued its active cooperation with other NGO's during 2002, including cooperation with NGO Forum regarding their activities in relation to the Ad Hoc Human Rights Court in Jakarta. JSMP staff have also been speaking at seminars about the trials in Liquisa and Manatuto district.

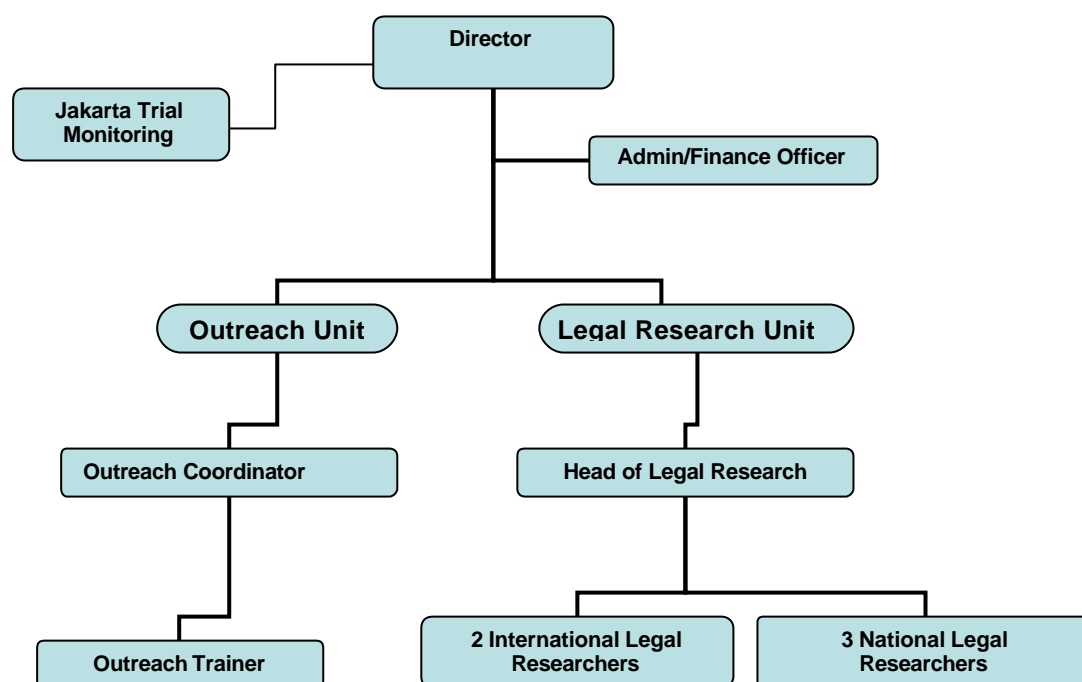
JSMP have cooperated with Yayasan HAK in a number of areas including the analysis of draft legislation and with La'o Hamutuk by writing articles on justice for their bulletins and with Australia Legal Resources International in organising a workshop on community justice systems in Dili.

JSMP has also given briefings as part of the training of US Peace Corps and to prosecutor and investigator trainees at the Serious Crimes Unit. In addition, JSMP has given briefings on the justice system to diplomatic missions, several researchers and to UNMISSET senior staff.

3. EVALUATION OF THE PROGRAMME FEBRUARY TO JULY 2002

JSMP was established in 2001, a process which has been described in more detail in the first JSMP annual report, which can be accessed through our web site. In order to expand JSMP activities and to provide a more thorough project implementation, the organisation has prioritised using the first half of 2002 to secure funding, to recruit new staff members and to

design a structure for managing the rapidly growing organisation. While recruitment of new staff has been a long process, we hope to be fully functional by the end of August 2002. The organisational will then be staffed as described below:



3.1. *IMPACT OF JSMP LEGAL RESEARCH ACTIVITIES*

JSMP has in 2002 continued to observe Serious Crimes trials, which to date has included a physical presence by legal observers at all proceedings open to the public. We have in addition met and interviewed judges, prosecutors, defenders and in general maintained the good relationship we had earlier established with all relevant stakeholders.

Following the publications of JSMP reports, we have met with representatives of the Ministry of Justice, as well as with senior UNTAET/UNMISSET representatives. It is from these meetings, as well as from reading justice sector briefings within the UN, that it has become evident that material produced by JSMP has been used extensively by others as a tool of analysing the current state of the judiciary. Even so, it must be admitted that due to internal policies in the Ministry of Justice, recommendations have not yet fully been implemented, and the system is still in a nascent and fragile state. There are, however, important exceptions – one of the most significant being the creation of a new Court Administrator position for Serious Crimes.

JSMP has after independence been producing comments on draft legislation such as the amnesty law and the judicial magistrates law. None of the draft laws have yet been passed in Parliament, and it remains to be seen whether our recommendations will be taken into account.

The problems facing the justice sector continue to remain daunting even in 2002. As a response to this, the need for structural analysis is more important than ever. JSMP has responded to this new situation by strengthening its legal research unit, which will contribute

with an increased number of reports during the second half of 2002. Currently, the major challenges seem not to relate to the development and quality of work produced by JSMP, but to the creation of structures to ensure the implementation of JSMPs recommendations.

3.2. THE JAKARTA OBSERVATION PROJECT

The project of sending legal observers to Jakarta has received significant attention internationally. Being the only international observers present in the court room has given our reports and findings additional credibility, and we have been a source of information for both journalists, diplomats, researchers and NGOs.

It is, however, difficult to assess the actual impact of the project until the final trial observation report has been published.

3.3. PUBLIC INFORMATION

Outreach has been a focus area for JSMP in 2002. We have been involved in an increasing number of activities, and the network of people we cooperate with continues to expand. The JSMP outreach team consisting of one East Timorese coordinator and one international lawyer has shown itself to be extremely effective, and the unit has several important projects planned for the near future, including more district workshops.

Our contact with people, especially in the communities, shows that there is still an urgent need for justice related information to be distributed in order to promote accountability and the rule of law. JSMP has already started developing a plan for district visits, and our new activities, especially our cooperation with radio stations, have so far been a great success.

At an international level, JSMP has also continued to be the primary provider of news related to the East Timorese Justice system and legal developments concerning East Timor generally.. Our briefings of international media have continued in 2002, and the number visitors to our web page has more than doubled during the last six months. The number of subscribers to our e-mail list service has also increased from 175 to 255 during the same period.

3.4. CONCLUSION

JSMP has grown in to a well functioning medium-size NGO in a fairly short time and has confirmed its role as an important contributor to strategic policy formulation regarding judicial reform in East Timor. Furthermore, JSMP has combined this with a commitment to the dissemination of valuable information to both the East Timorese and international community.. JSMP has laid the ground work for future achievements, and established a valuable confidence among court actors. It remains the only organisation developed and based in East Timor that is exclusively dedicated to monitoring the justice system and publicising its findings.

Although the desired number of thematic reports has not yet been finalized at the time of this report, the recruitment process for new staff has almost ended, and it is expected that the strengthened legal research and outreach unit will produce substantial analysis within the near

future. Apart from that, immediate priorities are to secure more long-term funding and to ensure that structures are created to facilitate the implementation of JSMP's analytical recommendations.

4. FINANCIAL STATEMENT

In 2002 JSMP has received income from three main sources: grants from USAID/OTI, AusAid and the Government of Finland.

The new USAID grant continued to be in-kind with strict restrictions on use, something which caused delays in deliveries but made financial management easier. The grant covers all core areas of JSMP's activities, including legal research, outreach and administrative positions. Output required by JSMP included five thematic reports, and the expansion of the outreach programme. Although the recruitment of new staff has delayed the legal research activities somewhat, JSMP aim to be able to fulfil the grant requirements by the end of grant period on 30 September 2002.

The support from AusAid was awarded to JSMP through the Human Rights Small Grant Scheme and supports the legal research activities of JSMP. Due to several factors, including delays in awarding the grant, JSMP was not able to start recruitment of new staff until later than originally stipulated in the project proposal. However, all staff under the agreement have now been recruited and the implementation of the grant activities has now commenced. The grant period is for one year.

The Government of Finland provided JSMP with a financial grant to support legal research activities. The international legal researcher supported under the grant has recently commenced her work with the JSMP office, and it is planned that the activities supported by that grant will completely implemented by January 2002.

JSMP Financial overview, 15 July 2002 (in US\$)	
Contributions 2002	
<i>USAID/OTI</i>	94 400.00
<i>AusAid</i>	37 963.00
<i>Finland</i>	20 105.00
Expenditure 2002	
<i>USAID/OTI</i>	70 296.00
<i>AusAid</i>	1 315.63
<i>Finland</i>	762.00
Balance	80 094.00