



JSMP: “We have to make a collective effort to make the judicial system accessible to people”



The SCIT works under the direction and supervision of the Office of the General Prosecutor of Timor-Leste

Created in 2001, the Judicial System Monitoring Programme, a national Non-Governmental Organization, has been a privileged observer of the development of the justice sector in Timor-Leste and of the Serious crimes process. Director, Luis Oliveira Sampaio shared with SCIT Info what are JSMP's activities and the outcomes of their monitoring activity. He leads of team of 30 people, mostly Timorese lawyers.

When and how was JSMP created? What was the main objective?

JSMP was established in 2001, with the main objective to monitor Serious Crimes Process set up by the UN in Timor-Leste, and Ad-Hoc Human Rights Tribunal in Jakarta that were dealing with the Crimes against Humanity and other serious crimes committed in Timor-Leste in 1999. At that time our colleague, Nelson Belo, together with two international legal experts thought it would be important to monitor those processes, to make sure they followed international standards and also to inform the population about the judicial process; its progress and the challenges it faced.

What is your assessment of the serious crimes process?

Our opinion is that this process has not produced good results, nor in Timor-Leste neither in Indonesia. There are difficulties in Timor-Leste because the top responsible for the crimes, with power to design the whole campaign of violence, both military and civilian (although the civilians accused are only Timorese) although accused, are still at large in Indonesia. Until now there is no extradition agreement between Timor-Leste and Indonesia so it is very difficult to bring them to court. Furthermore, this process has had limited resources. In regard to the process in Indonesia, we consider that the judicial system there is very much conditioned by the political situation over there. The democratization process in Indonesia is going on but there are still a great number

of issues that need to be solved before past violations of human rights will find their end in courts. Ten people were brought before the Ad Hoc Court in Jakarta, but they were all acquitted either by Trial Chamber or by the Appeal Chamber.

JSMP continues to follow the process with concern because serious human rights violations, crimes against humanity are international cases. It is the responsibility of the whole international community to address such cases and all countries should help each other in dealing with such cases. People from all countries must reject these crimes and make sure that they will never

happen again. Since the serious crimes process both here and in Indonesia has not brought justice to the victims, JSMP continues advocating for an International Tribunal to

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gether with many other civil society organizations, including Timorese and international. We all form part of A.N.T.I (Timor-Leste Alliance for an International Tribunal) and, together with the victims' association, we continue to fight for this. It might not happen tomorrow or next year but we have to continue calling the attention of the international community so that all together we find a solution for this problem.

But now JSMP has other areas of activity...

When JSMP was set up, there were two units, the Legal Research Unit and the Outreach Unit, for the dissemination of information. Later JSMP also started monitoring the district courts and realized that there were a lot

Editorial:

On the sixth edition of SCIT we are pleased to give you news about the trial of a former Mahidi Militia member. A special panel at the Dili District Court convicted him for 3 crimes of murder and sentenced him to 16 years in prison. This was the first Panel to be formed since the closure of the Special Panels for Serious Crimes in 2005. The formation of such panel follows Decree law 13/2005, that enacts the Code of Criminal procedure of Timor-Leste. This case shows independence of the Timorese Courts and that justice for Crimes against humanity committed in 1999 is still being made.

In addition we continue with the “Questions and answers”, providing explanation for the issues that the community has been raising frequently during our Outreach meetings.

Marek Michon
Head of SCIT

of problems regarding gender based violence. That is why in 2004 JSMP created another unit – Women Justice Unit (WJU) – with the purpose of monitoring cases of gender based violence that were being brought before the courts, (in particular cases involving children and women, the main victims of this kind of violence. Currently JSMP has 4 functional areas: the three I just mentioned and also Victim Support Service. This last one is to provide free legal support to the victims of gender based violence. It also helps the victims to report and communicate with the police. Members of VSS assist in interpreting the law from the perspective of the victim, advocate before the police, prosecutors and judges so that they understand the traumatic situation these victims are, and how to secure evidence in these cases. In summary they assist all the actors at all stages of the process to make sure the cases go to court.

Hasn't JSMP recently started a new area of activity: monitoring the Parliament?

Yes. We have been already making regular visits to the Parliament and now we have decided to intensify activities in this area. It is important because the Parliament is the State institution that enacts the laws that will regulate the life of the nation. The Asia Foundation (TAF) already had plans to support civil society organizations that could look into the work of the Parliament so we submitted our proposal when they opened the public tender. They considered that JSMP could conduct the Parliament Watch Project. This is a new project but it has a lot to do with justice. There are a lot of new laws that are being developed that we need to look into, so we will be working together with Committee A to see how we can develop laws together. In addition we will be organizing workshops to have a focus group discussion with the community to see how we can involve the community in the legislative process that is taking place in the National Parliament. We launched this project last on March 10.

What kind of activities do you organize to keep the population informed?

We conduct many activities developed by our Outreach Unit which tries to reach people according to the media they have access to. We have the website where we publish all information about the areas we monitor. For the local community we use the community radio programs, we also have a

regular show on television and national radio. Furthermore, we produce a lot of information that we disseminate regularly. We also have a training program in several areas targeting different audiences. Through these workshops we expect to help solving some of the problems the judiciary is facing, from the base to the top. In these training events we also have the opportunity to take note of the people's main concerns, about their difficulties in accessing the judicial system, in filling complaints, accessing the court, how to file a civil case, etc. Then, our colleagues look for the appropriate person or institution that can provide the answers to their questions, such as a judge, a prosecutor, defense lawyer or parliament representative and ask them to clarify the issues. We then bring the answers back to the community.

From your experience, do you think that people already understand how the formal justice system works?

Timor-Leste is a small country therefore it is not difficult to put the system in place and to inform the population. However in the beginning of the process there are many difficulties. People already understand the judicial process but from their particular perspective, and sometimes they confuse civil cases and criminal cases. When they channel the cases to the wrong department and they don't receive the response they were expecting, they accused the police, the prosecutors and the court of not working properly. But this is a problem of lack of knowledge. People also complain that the judicial system only works for common people, important people can go away with crimes. They don't understand the bureaucracy, why in some cases the procedure takes a long time and in others it is easier to make justice.

JSMP's position is that we have to make a collective effort in Timor-Leste to explain the judicial sector to the community, so that they become more familiar with it. It takes time and investment until people understand and learn how to correctly access the judicial system in order to solve their problems.

JSMP monitors the judicial system since it was created. How do you see its evolution?

Every year JSMP publishes a report – An Overview of the Justice Sector – where we identify both the progress and the challenges that the courts still face. We are very worried with some situations that the judiciary is facing. In 2009 we observed some progress, posi-

tive developments in some areas but also situations for great concern.

In regard to positive developments we noticed that, like JSMP had been calling since 2006, the State has started to place more staff in the district courts and giving them the equipment and the conditions they need for their work, including transport and accommodation. However, public defenders in the districts still don't have proper conditions. Also in 2009 Timor-Leste implemented its own Criminal Code, which has been recently translated into Tetum by the President of the Court of Appeal. We have noticed however that the juridical terms are all in Portuguese. We recognize that Tetum is not developed enough in this field but we recommend the development of a juridical Tetum dictionary. This could facilitate the work of the legal actors but also help the citizens.

Another positive development was the approval of the Witness Protection Law. This was a very important achievement, however the law has not yet produced any practical effects because the law is only in Portuguese, a lot of people do not understand it and witnesses do not know how to get protection. The courts also, when they interrogate witnesses, they do not refer to the law, they don't apply it. So, the law is in force but it has not been implemented properly.

Although with some limitations there has been progress in the judiciary. However, also in 2009 we report a great concern for the intervention of the state in the judiciary namely releasing Maternus Bere, who has been accused of committing serious crimes, serious human rights violations in 1999.

At the Dili District Court, which has jurisdiction over serious crimes, a new Special Panel was formed to try a former militia. Is JSMP monitoring this case?

Yes. And the fact that this case went to court and Maternus Bere didn't is a reason of great concern for us. Because we consider that all cases must have equal treatment in the courts.

JSMP is a NGO. It receives financial support from whom?

Our regular donors are The Asia Foundation, for the monitoring activities, the US Embassy, and the Women Lawyers Association from Norway for gender issues. We also received some funding from the Australian project Justice Facility, and from the catholic organization MIZERIO. As for UN agencies we received support from UNFPA.

Dili District court found Domingos Noronha a.k.a guilty of 3 murders

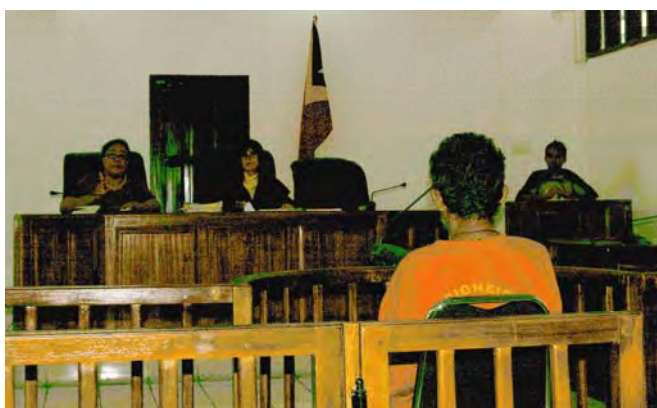
Former Mahidi Militia sentenced to 16 years in prison

On the 26 March 2010 a Special Panel for Serious Crimes sitting in the Dili District Court rendered the verdict in the case of the Prosecutor Vs. Domingos Noronha a.k.a. Domingos Mau Buti, former Mahidi Militia member, Court case nr. 8/2004. The court found the defendant guilty of 3 murder counts, and sentenced him to 16 years in prison for the murder of Luis da Silva, Fatima Mesquita and Sabina Mesquita committed on 27th March of 1999 in Lepo village, Zumalai Sub-District.

Delivering the judgment, the Presiding Judge, Maria Leonor Botelho, highlighted the brutality of the murders and disrespect for human life, evident in the desecration of the bodies of the victims. Domingos Noronha was charged in 2004 by the former Deputy-General Prosecutor for Serious Crimes Unit, for Crimes Against Humanity: 4 counts of murder and 1 count of rape. He was captured by the police in December 2008 after illegally crossing the border.

The trial of Domingos Noronha commenced on 18 January 2010. Following provisions of Article 3 of Government Decree Law 13/2005, implementing the Code of Criminal Procedure, the Dili District Court formed a Special Panel to hear this case. The Panel was composed of two international judges, Justice José Rapozo and Justice Maria Leonor Botelho, who was presiding, and one Timorese judge, Justice Guilhermino dos Santos. The Public Prosecutor was represented by the international prosecutor Dr Franklin A. Furtado. The defendant was represented by three lawyers appointed by the Public Defenders Office, including Dr. Cândio Xavier.

The Panel has held 6 sessions and heard 9 witnesses.



One of the sessions took place in Suai, in order to hear witnesses that could not travel to Dili. After a hearing the witnesses expressed satisfaction for playing their role in the judicial process for the 1999 serious human rights violations. The group of witnesses included neighbors of three of the murder victims in this case but also former militia members. “[T]he law should apply to everybody equally, nobody is above the law, and it is important to find out who actually committed crimes, because whoever commits crimes must pay”, said Mr. Mateus Gomes. “I am happy I did my part”, he added.

The judgment is not final the prosecution has filed an appeal with the Court of Appeal.

Domingos Noronha is one of the 391 accused for Crimes Against Humanity committed in Timor-leste in 1999. 304 accused remain at large. Investigations are still ongoing, conducted by UNMIT/Serious Crimes Investigation Team (SCIT). SCIT was established by UN Security Council Resolution 1704 with a mandate to complete the investigations into the serious human rights violations of 1999, left pending when SCU was closed in 2005.

UNTL Law students attended lecture on the role of forensics in criminal investigation

On the 3 March 2010 the Timor-Leste National University (UNTL Law Faculty fourth-year students attended a presentation on forensics organized by UNMIT Administration of Justice Support Unit and the Serious Crimes Investigation Team.

The lecture was conducted by SCIT Forensic Pathologist, Dr. Nurul Islam and focussed on the role of forensics in a criminal investigation. In addition they discussed the development of forensic medicine in Timor-

Leste and visited the SCIT forensic lab. The session was preceded by a briefing on the SCIT’s mandate and history. Next year this group of students will become the first Law Faculty graduates by the National University.

This presentation is a part of capacity building activities. The first activity of 2010 was a Workshop for National and International Prosecutors on International Law and the Serious Crimes Process that took place on the 5 February.



The 4th year UNTL Law Class visiting SCIT forensic lab



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Investigating 1999 to assist Justice in Timor-Leste

WWW.UNMIT.ORG/RULE OF LAW/SERIOUS CRIMES

In Short....

- **Parliament is soon to debate law reparations and follow-up institution to CAVR and CTF.** The draft Law is being prepared and will be presented by Committee A. The debate is expected to take place by the end of May. UNMIT's Human Rights and Transitional Justice Unit is supporting this process.
- **II World Conference on Exhumations and Psychosocial Support to Victims** took place in Bogota, Colombia between the 21 and 23 April. Timor-Leste was represented by Gregorio Saldanha, from the 12 November Committed.

The questions here published were frequently posed to SCIT by the community during outreach activities



What is the difference between giving a statement to CAVR and Serious Crimes Investigation Team or PNTL? A statement given to CAVR is not valid?

Such a statement is valid, but only for CAVR process and cannot be used in the court. Written statements can be accepted in court as evidence only if they are collected by a judicial authority (police, certified investigator, judge), as stated in article 266 of the Code of Criminal Procedure. CAVR, although played very important role in justice process was not a judicial authority. Victims and/or witnesses of crimes committed in 1999 who reported the crime to the CAVR should then also contact SCIT and/or PNTL or the Prosecutor's Office.

Why aren't the people accused for 1999 crimes, who are living in Indonesia, brought before the court? Why don't the police bring them? What about Interpol?

For reasons of national sovereignty, the police from one country cannot enter and operate in another country. INTERPOL is not an international police that can arrest people in any country; it is a network of police forces that cooperate with each other. To bring the people accused of committing crimes against humanity in 1999 to the Timorese courts, Timor-Leste and Indonesia would have to sign an Extradition Agreement. They can also be tried in Indonesia or in any other country which is a party of treaties about prosecution of crimes of genocide, war crimes, and crimes against humanity (Universal Jurisdiction).

The pro-independence people also committed crimes. Are these also investigated by SCIT?

SCIT investigates whoever committed Crime against Humanity, murder, sexual offense and torture in 1999, independently of their political affiliation.

The crimes committed during 1999 are being investigated. However, people have been victimized from the time of occupation of East Timor, what will happen to those cases? Can SCIT investigate those cases?

No. The mandate of the SCIT is restricted to crimes committed in 1999. Crimes committed between 1974 and 1998 can be investigated by national police, under supervision of the Prosecutor-General of Timor-Leste.

Can SCIT investigate the cases of the 2006 crisis?

No, because of SCIT's mandate. The 2006 cases are being investigated by the national police under the supervision of the Prosecutor-General of Timor-Leste.

During investigations SCIT has to do exhumations. What do you do after the exhumation?

After the exhumation the SCIT Forensic Team takes the human remains to its lab for medico-legal examination. The Forensic Pathologist and the Forensic Anthropologist will make the examination to find out how the cause and manner of death. In cases where the identity of the victim is not known they will also try to identify him/her. The examination takes usually 3 to 4 days. Once the examination is completed the remains are returned to the family.

When an exhumation takes place, the clothes of victims are taken together with the remains, but sometimes they are not returned to families. Why?

Clothes and objects found together with the remains of the victims are sometimes kept by SCIT because they constitute evidence and they have to be presented in court once the trial begins. The clothes may show traces of blood and/or wholes that indicate a gunshot, etc. This can be evidence that the person was murdered.