



**JSMP Presentation at the Timor-Leste Development Partners Meeting:
Strengthening the Legislative and Judicial Framework**

Introduction

The judicial and legislative framework is an integral component that underpins the other democratic pillars of the Timor-Leste State and Constitution. A strong and independent judicial system will guarantee and protect people's rights and ensure national stability, and will contribute to a sustainable development process.

We are happy that the 6th Constitutional Government has demonstrated a desire to give priority to improving our judicial and legislative system through legal reform and the harmonizing and standardizing of the legislative framework in the next two years.

We welcome the commitment of the 6th Constitutional Government to strengthen judicial independence and the autonomy of the judicial institutions. We also praise the initiative to use simple language in the legislative process and the facilitation of open dialogue and public involvement in the legislative process.

At this juncture, we would like to point out several matters for consideration in this forum. These matters include:

1. Judicial independence
2. Human resources and investment in the Judicial Training Centre
3. Amendments to the Penal Code
4. Mobile Courts
5. National Legislative Plan
6. Presidential Pardons
7. Draft laws that are still pending

Judicial independence

The independence of the courts, judges and other judicial authorities is an important principle that is enshrined in the Constitution of Timor-Leste. In a democratic State like Timor-Leste this principle is really important to ensure that all people are confident that they will receive fair treatment before the courts, and that the State is administered in accordance with the Law.

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The Constitution of Timor-Leste rigorously protects the principle of judicial independence and also the separation of powers and recognition of their interdependence, however each of them is also understood to be an independent institution.

The Constitution also clearly states that the courts (Article 119) and judges (Article 121.2) are independent and only subject to the Constitution and the law. It is important that courts and judges can make decisions in accordance with the law, and these decisions also need to be impartial.

Therefore, the resolutions issued by the National Parliament and the government to terminate the contracts of the judicial actors and international advisors working in the courts of Timor-Leste, were very risky and threaten the principle of judicial independence, separation of powers and other principles in relation to the concept of a democratic State based on the rule of law.

Recommendation: we hope that the legislative reform initiated by the government will be carried out in accordance with the rules and norms of the Constitution to avoid the public perception that the government is still intervening in the justice sector

Human resources and investment in the Judicial Training Centre

In 2013 JSMP carried out a study to review the resources and capacity of each of the judicial institutions and how they can improve their ability to provide justice and ensure justice for the people of Timor-Leste.

This research was conducted to identify the limits and challenges faced by the aforementioned legal institutions. This research was carried out via interviews with judges, prosecutors and public defenders.

This initiative came about as the result of JSMP court monitoring and informal discussions between JSMP and the judicial actors, and JSMP became aware of their concerns about limited human resources, facilities, communications equipment and other working conditions.

We have shared and discussed these concerns, namely that these limited resources will have a negative impact on the quality of legal services that are provided and therefore will limit access to justice. We are also concerned with the observation that the workload and limited human resources that exist in the justice sector are not proportional with the responsibility to provide justice that has been placed on the shoulders of the judicial actors.

Table: Number of court actors in 2014¹

Court actors	Permanent Actors \		New court actors	2014 Total	
	2012	2013	2014		
Judges	31	36	28	12	40
Prosecutors	24	29	29	11	40
Public Defenders	22	26	26	10	36
Court clerks	78	115	113	-	113
Interpreters	10	11	9	-	9
Administrative officers	-	-	54	-	54
Total	165	217	259	33	292

Recommendations: Therefore, we believe that that the government must continue to invest in the Judicial Training Centre until the number of judicial actors is proportional to the public demand for justice.

Amendments to the Penal Code

Between 2012-2014, through JSMP monitoring and legal aid services provided by ALFeLa in cases of gender based violence, we identified several provisions in the Penal Code that fail to adequately and protect women and children and are not consistent with the obligations set out in international law and the Constitution.

Therefore, JSMP and ALFeLa analyzed these provisions and submitted a proposal to the National Parliament in relation to these provisions that included recommendations on amendments to the Penal Code to remedy these shortcomings.

JSMP suggested for a specific article on incest to be included in the Penal Code. In 2012 a thematic report entitled *Incest in Timor-Leste: An unrecognized crime* found that incest is a widespread crime in Timor-Leste and the Penal Code only provides limited protection to victims. This report reveals that in order for a defendant to be

¹ Overview of the Justice Sector Report 2014 www.jsmp.tl under *publications: annual reports* . These numbers include international court actors before their contracts were terminated by resolutions of the National Parliament and the Government in October 2014. The actual amount of national court actors is 33 judges, 32 prosecutors and 30 public defenders.

convicted, victims aged 14 years and over must prove in court that the defendant has used force, threats and the victim must resist.

In 2014 the National Parliament requested JSMP and ALFeLa to provide commentary on the proposed amendment to Article 172 of the Penal Code on rape to include a subsection on the crime of incest.

JSMP and ALFeLa praised parliament for ensuring that the crime of incest as recommended should not question the victim's consent, age and if force or threats were used.

Recommendations

We believe that there are several ways to deal with this crime, as explained in the proposal submitted by JSMP and ALFeLa. These considerations include:

- 1. Separating the crime of incest from the crime of rape to avoid confusion; because these two crimes have different characteristics and also different standards of proof;*
- 2. The criminalization of relevant sexual acts that have characteristics of incest so that incest is not only limited to sexual intercourse, but it includes other sexual acts that harm victims;*
- 3. Ensure that the crime of incest includes relationships between uncles and nieces.²*

National Legislative Plan vs Legislative Productivity

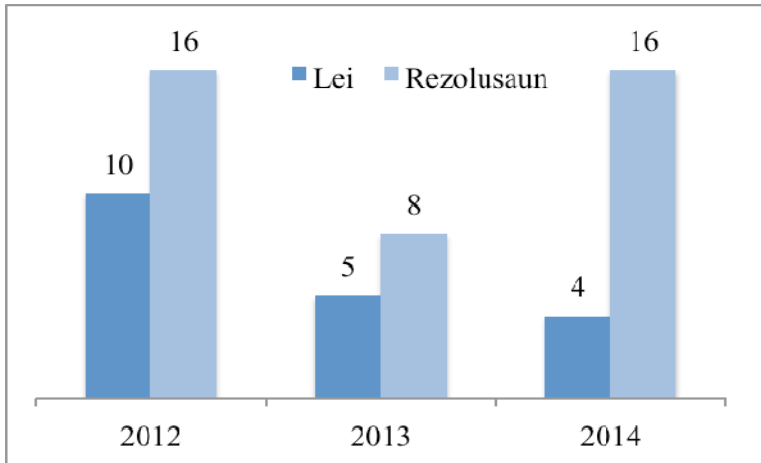
We believe that it is important for the National Parliament and the Ministry of Justice to develop a national legislative program, to help the government and the National Parliament to identify legislative priorities for each financial year.

We have observed that legislative productivity decreased because there was no national legislative plan, like those that exist in other countries. A national legislative plan is important to identify priorities and measure the ability of the National Parliament to produce a certain number of laws in a year.

Table comparing the productivity of the National Parliament in 2012, 2013 and 2014

² Complete information is available in the JSMP and ALFeLa report at www.jsmp.tl, or can be directly accessed via the following links: Tetum: <http://jsmp.tl/wp-content/uploads/2013/03/280115-JSMP-ALFeLA-Penal-Code-Submission-FINAL-Tetum.pdf>

English : <http://jsmp.tl/wp-content/uploads/2013/03/280115-JSMP-ALFeLa-Penal-Code-submission-FINAL-English.pdf>



Year	Type of Laws	
	Laws	Resolutions
2012	10	16
2013	5	9
2014	4	16
Total	18	41

Mobile Courts

The mobile court program brings justice to those communities in isolated areas who are mostly farmers. Poor road conditions, limited transport and limited finances make it difficult for them to participate in proceedings being conducted at the district/State courts.

Timor-Leste only has four district courts to handle cases occurring in 13 districts. This means many people have to travel considerable distances to access justice, and this justice is often difficult and expensive.

We have observed that the mobile court program is a very positive step because this initiative is a clear response to the challenges faced by the interested parties.

However, we recommend that the mobile court must ensure that proceedings are conducted in accordance with the correct procedures that take place in the State/district courts.

Presidential pardons

On 30 August 2014 the President of Timor-Leste exercised the competence provided in the Constitution to grant pardons to five convicted persons, including cases of corruption and incest.

This process led to a controversial debate at all levels of society and has the potential to continue if there is no legislative mechanism to regulate and control this process in the future.

The President has the competence to grant pardons in accordance with Article 85(i) of the Constitution, and we do not have any objection to providing this competence to the President.

However, we are concerned that the pardons are being administered without careful consideration or are not in accordance with the criminal law and criminal procedure law which have the potential to damage efforts to strengthen the justice sector and give the impression that the State has discriminated against convicted persons.

Recommendations:

1. We believe that it is important to have a rule for providing instructions to the President when exercising the competence provided for in the Constitution to grant pardons, and if possible to limit this competence.
2. The competence must be exercised properly, especially to avoid the granting of pardons in cases of corruption and other cases that relate to the public interest, such as sexual violence and incest.
3. The process of granting pardons must include an option to gradually reduce sentences, rather than completely freeing a convicted person, which has been the practice to date. This will strengthen public trust in the legal institutions and limit the public perception that the law/justice only applies to ordinary citizens.

Draft laws that are still pending

In 2014 the National Parliament did not reschedule a number of draft laws that were proposed in 2013 and in previous years. There are several laws from the National Parliament as well as the government that were not given consideration or rescheduled for discussion and approval.

The draft decree-laws and laws from the parliament and the government include the following:

The draft laws that are still pending or have passed the time limit for debate during 2012 - 2014

Law	Date of Proposal
Draft Law No. 29/II, amending Law No. 1/2007 on a monthly pension for members of parliament and Law No. 7/2007 on the rights of those holding positions in sovereign organs.	13/02/2012
Draft Law No.21/II on Anti-Corruption	08/11/2011
Draft Law No. 18/II, on Local Government	18/02/2009
Draft Law No.20/II on a Public Memory Institution	16/06/2010
Draft Law No.19/II on a National Reparations Program	16/06/2010
Draft Law No. 9/II on Firearms	02/04/2008
Draft Law No.19/II on Municipal Elections	18/02/2008
Draft Law No. 6/II on Real Estate Financial Fund	06/09/2013
Draft Law No. 7/III Special Law for Establishing Real Estate Rights.	06/09/2013
Draft Law No. 8/III Law on Expropriation	06/09/2013
Draft Law No. 13/III Law on Forest Protection	08/05/2014
Draft Law No. 14/III Population and Residence Census	14/05/2014

We believe that the National Parliament should have organized and optimized its time in 2014 to reschedule important draft laws and prioritize those laws that are still pending such as the Draft Law Against Corruption, Draft Law on a National Reparations Program, Draft Law on a Public Memory Institution.

The problem of corruption is an urgent and important one that requires consideration and solutions are needed immediately to prevent and eradicate the practice of corruption.

In addition, issues regarding justice for past crimes are also important for consideration.

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