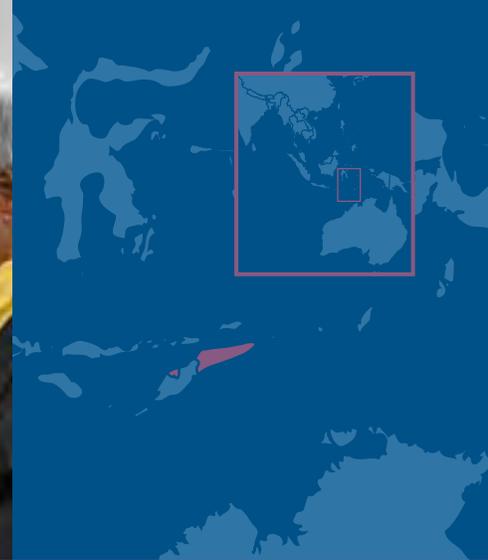


SECURITY SECTOR REFORM MONITOR



TIMOR-LESTE
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INTRODUCTION

The previous two editions of the *Security Sector Reform (SSR) Monitor: Timor-Leste* have largely focused on policing issues and SSR policy respectively. The justice system should not be overlooked as a fundamental component of the security sector, however, in assessing SSR in Timor-Leste. In particular, the ongoing backlog of prosecution cases has an impact on policing authority on the ground and overall public trust in the rule of law system. With its focus on the justice system in Timor-Leste, this edition of the *SSR Monitor* will provide a brief background on the institutional development of the justice system to introduce the current context and discuss salient issues and future plans for the national justice system.

Timor-Leste's national justice system was effectively set up in 1999 and, understandably, remains in a developing state with immense obstacles to still be overcome. Improving access to the formal justice system, in particular, will be an important challenge, especially in remote communities that, due to the lack of police and judicial reach, often rely on various informal justice mechanisms.

Although many long-term challenges remain in establishing a credible, independent and effective justice system, signs of progress are recognizable. After several years of acute centralization and dysfunction, the recent approval of a comprehensive strategic planning framework for justice sector development represents a significant step forward for the justice sector. Indeed, a number of important issues are being addressed, with the potential to lead to positive changes for the long-term development of the justice sector.

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Cover photo: The president of the Court of Appeal, Dr. Claudio Ximenes (on right), swears in one of two judges who graduated from the second course offered by the Legal Training Centre. UN photo by Thaiza Castilho.

ABOUT THE SSR MONITOR

The *Security Sector Reform Monitor* is a quarterly publication that tracks developments and trends in the ongoing security sector reform (SSR) processes of five countries: Afghanistan, Burundi, Haiti, South Sudan and Timor-Leste. Every quarter, there will be separate editions for each case study country. Adopting a holistic definition of the security sector, the *SSR Monitor* covers a wide range of actors, topics and themes, from reforms in the rule of law institutions and armed forces to demilitarization activities and the role of non-statutory security and justice actors.

Research for the *SSR Monitor* is field based: a resident researcher in each case study country leads data collection and analysis, with support from desk-based analysts at The Centre for International Governance Innovation (CIGI). The same research guidelines are employed for each country. All editions of the *SSR Monitor* are subjected to an external peer review process in addition to our internal editorial review.

Other positive signs include an increase in the number of national judicial actors conducting court proceedings, which should help address language issues, and efforts to improve the functioning of the district courts, which will provide better access to justice to those previously excluded from the formal justice system.

DEVELOPING THE JUSTICE SECTOR

The national justice system has arisen from the ashes of the violence and destruction of Timor-Leste's separation from Indonesia in 1999. The absence of court infrastructure, institutional systems and qualified national judicial actors¹ hampered early justice sector development — challenges which continue to this day. From the outset, the courts relied almost exclusively on international, usually UN-funded, Portuguese-speaking judicial actors. Excessive delays in investigations and prosecutions quickly undermined the credibility of the justice system,² which functioned sporadically, if at all, in the three district courts outside Dili. These early failings further compounded public mistrust in the formal judicial process, which is still widely seen as exclusive by the majority of the population due to its legal complexity and the use of Portuguese (sometimes translated, mistranslated or paraphrased) in trial proceedings and prosecutorial investigations.³

The establishment of the Legal Training Centre (LTC) in 2005 enabled the formal training of 48 Timorese law graduates from Indonesian universities, who had been serving as national judicial actors.⁴ Initial problems

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¹ Judicial actors refers to judges, prosecutors, defence lawyers, court clerks, prosecution clerks and defence clerks.

² These delays also served to undermine the credibility of police investigations.

³ While both Portuguese and Tetum are official languages of Timor-Leste, Portuguese — the language of the former colonial power — is used primarily by educated elites, while Tetum — the national language of everyday use — is considered by those elites to be too underdeveloped in legal terminology for adequate use in the justice system. The result is that the justice system largely functions in a language that the majority of the population does not understand.

⁴ See United Nations Development Programme (UNDP) (2010a) for a detailed chronology of the establishment and operationalization of the LTC.

with LTC training included inconsistent and irregular training as well as the controversial use of Portuguese to train students who were largely lacking Portuguese language skills.⁵ In 2005, all national judicial actors controversially failed their competency exams, in which language competency was a significant factor, leading to the resignation of several well-known judicial actors.⁶ Indeed, ongoing criticism continues to focus on the quality of judicial training, but also on trainees' understanding of the complexity of legal processes in Timor-Leste.⁷

The deep political division of the 2006 crisis has led to political attacks on the justice system. The country's senior judicial leadership was accused by opposition groups of having a bias towards the FRETILIN government and interested Portuguese-speaking countries. Counter-accusations claimed that the then prosecutor-general⁸ was subservient to the then president (now prime minister). This political antagonism towards the justice sector further threatens its already fragile legitimacy.

Despite serious obstacles to the early development of the justice system, a number of significant initiatives with the potential to improve the functioning of the justice system have emerged in recent years, including:

- The adoption of key legislation including the criminal code, criminal and civil procedure codes, and the law on domestic violence;⁹
- Efforts to address coordination problems between

⁵ Interview with a senior national judge, Dili, September 2010. For more detailed information see UNDP (2007).

⁶ Interview with Luis de Oliveira Sampaio, director of the Judicial System Monitoring Programme (JSMP), Dili, September 2010. For a more detailed analysis, see Cohen (2006: 93-106).

⁷ Interview with a long-term international official working on the justice system, Dili, September 2010.

⁸ The former prosecutor-general, Longhinos Monteiro, was subsequently appointed as the Polícia Nacional de Timor-Leste (PNTL) police commander-general. See CIGI (2010) for more details.

⁹ The importance of the new legislation for the functioning of the court was strongly emphasized. The need for further legislation, including the civil code and a juvenile code, was further stressed. Interview with a senior national judge, Dili, September 2010.

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justice sector institutions through the formalization of the Council of Coordination for Justice as a justice system management mechanism and advisory body to the Ministry of Justice;

- Policy to increase the quality of national judicial actors and judicial trainees entering the justice sector, such as improved salary and promotions schemes in recent legislation;¹⁰ and

¹⁰ Interview with a senior national judge, Dili, September 2010.

- Efforts to expand the quantity and quality of human resources in the courts and provide infrastructure aimed at enabling the regular functioning of the three district courts outside Dili.¹¹

BOX 1: THE JUSTICE SYSTEM IN TIMOR-LESTE

Timor-Leste's formal justice system is mainly comprised of the courts, the office of the prosecutor-general, public and private defence lawyers and government services provided by the Ministry of Justice. Unregulated informal traditional justice mechanisms also separately operate at the village level across the country.

The courts: The Court of Appeal functions as the supreme court as provided for in the transitional provisions of Timor-Leste's 2002 Constitution. The president of the Court of Appeal thereby functions as the president of the supreme court, but also as the president of the superior council of the judiciary. The supreme court of justice, a high administrative tax and audit court, and military courts — as provided for in the Constitution of 2002 — have not yet been established. The Court of Appeal hears appeal cases from the four district level courts of first instance.

The office of the prosecutor-general: The prosecutor-general is appointed by the president for a four-year term which can be renewed once. The prosecutor-general functions independently of the president and the government as the head of the Public Prosecution Service, an autonomous body comprised of public prosecutors entirely separate to the Ministry of Justice. In Timor-Leste, as in many civil law systems, public prosecutors supervise and direct police investigations, but may also conduct criminal investigations in major cases. In Timor-Leste, public prosecutors and the *Polícia Nacional de Timor Leste* (PNTL) are the two primary branches of the law enforcement authority of the state.

The Ministry of Justice: The Ministry of Justice is the government body responsible for designing, implementing and coordinating policy as defined and approved by the national Parliament and the government for the areas of justice and law. The Ministry of Justice ensures coordination between the government with the courts, the Public Prosecution Service and other justice system institutions. The Ministry of Justice's direct responsibilities include prison services, land and property services, registry and notary services, in addition to the autonomous institutions of the office of the public defender and the LTC.

The Council of Coordination for the Justice System: The Council of Coordination was established under the organic law of the Ministry of Justice as a consultative body of the ministry in relation to justice issues. Formal membership is limited to the minister of justice (chair), the president of the Court of Appeal and the prosecutor-general. Efforts are underway to expand participation to include representatives of the office of public defence lawyers and PNTL.

¹¹ See United Nations Office of the High Commissioner for Human Rights (OHCHR) (2010) for the latest developments.

JUSTICE SYSTEM DEVELOPMENT: REVIEW AND STRATEGY

Following the general neglect in policy, planning and coordination in justice system development, the recent finalization of two policy initiatives from 2009 shows the potential to improve future justice system development. First, after significant delays in engagement by the national political leadership, the Independent Comprehensive Needs Assessment (ICNA) was finally conducted in mid-2009, facilitated by the UN peacekeeping mission.¹² The most important recommendations of the ICNA include the need to:

- Expand the formal justice sector by strengthening the capacity of district courts, possibly establishing further district courts, and through the use of mobile courts;
- Recruit and train more national judicial actors;
- Expand specialized training of judicial actors in the LTC;
- Improve coordination between the prosecution and the police;
- Establish a functioning case management system;
- Safeguard judicial independence;¹³ and
- Strengthen Portuguese language study and develop “legal Tetum.”

Second, the Ministry of Justice’s *Justice Sector Strategic Plan for 2011–2030* (JSSP) represents the first substantive strategic planning and policy framework for the justice

TIMORESE COURT CLERKS WITH
PRESIDENT OF THE COURT OF APPEAL,
CLAUDIO XIMENES (CENTRE, BLUE SHIRT)



Photo credit: UNDP Justice System Programme

sector.¹⁴ The JSSP presents a comprehensive catalogue of sectoral goals, including:

- Improving coordination within the sector by 2012;
- Expanding the Council of Coordination to defence lawyers and police investigators;
- Regulating of traditional informal justice mechanisms within three to five years;
- Developing the ability to complete court cases in a reasonable time-frame within five to 10 years; and
- De-concentrating justice services to improve access to justice in the next 10 to 20 years.

The JSSP incorporated many of the ICNA’s recommendations, although as a government initiative it overlooked the more politically sensitive recommendations relating to language issues and judicial independence. While JSSP objectives range from achievable to impractical, it is the *process* of formulating future policy for the justice

¹² In fact, the mission mandate of the United Nations Integrated Mission in Timor-Leste (UNMIT) from 2006 included an “independent, comprehensive review and analysis of the justice sector” (UNSC, 2006: 88).

¹³ For more information, see ICNA (2009: 16).

¹⁴ For full details, including the consultative process for developing the JSSP, see JSSP (2010).

eBook: *The Future of Security Sector Reform*

In November 2010, The Centre for International Governance Innovation (CIGI) released its first eBook, *The Future of Security Sector Reform*.

At a time when the United States, Canada and their coalition partners are re-evaluating their roles and exit strategies in Afghanistan and other broken states, *The Future of Security Sector Reform* provides a crucial understanding of the complexities of reforming the security and justice architecture of the state. Written by leading international practitioners in the field, it offers valuable insight into what has worked, what has not and lessons that can be drawn in development, security and state building for the future.

This book is available for free as a PDF and can be purchased in eBook format for eReader devices, tablets, smartphones or computers.

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system, which is of fundamental importance after protracted mismanagement and general dysfunction. However, the political will to implement the JSSP will be critical. In this respect, the continued lack of appointing Ministry of Justice staff to continue the momentum of the JSSP process through the JSSP secretariat is of concern.¹⁵ The ICNA and the JSSP mark the most significant strategic policy contributions to justice system development to date, but the serious challenge of effective implementation remains

¹⁵ Interview with a long-term international official working on the justice system, Dili, September 2010.

CURRENT TRENDS, FUTURE PROSPECTS

“DECENTRALIZING” THE COURT SYSTEM

Despite serious ongoing challenges, including the lack of qualified national judicial actors and unequal access to justice, the justice system is showing some provisional signs of progress. The government is promoting its success of “decentralizing” the justice system (Democratic Republic of Timor-Leste, 2009b). According to government statistics, the courts addressed more cases in 2007–2008 (1,457) than in the previous six years (1,137), including a trebling of cases addressed in the courts outside Dili: 2007–2008 (336) compared to 2000–2006 (125). The office of the prosecutor-general also processed 5,778 cases in 2008–2009 compared to 401 cases in 2006.¹⁶ From the perspective of police work, one PNTL district commander is of the opinion that the general judicial system has greatly improved in the last two years compared to the general dysfunction prior to that time, including the performance of the public prosecution service.¹⁷

The improved functioning of the three district courts outside Dili is encouraging compared to the sporadic nature or outright absence of court proceedings in some districts until recent years; however, operational challenges continue.¹⁸ One leading opposition politician acknowledged that the judiciary is functioning, but argued that the main problem remains the significant lack of resources in the justice sector.¹⁹ Indeed, the district courts are often incapacitated by the continued absences of judicial actors or administrative staff clerks or non-operational infrastructure. However, recent examples of mobile court cases in Baucau and Suai

¹⁶ These are encouraging signs of progress, but one international official working in the justice system advises caution in depending on court statistics — reliable statistical information is unavailable, particularly in the prosecutor-general’s office. Interview with an international official working on the justice system, Dili, September 2010.

¹⁷ Interview with a district PNTL commander, Dili, September 2010.

¹⁸ For more information, see OHCHR (2010: 18).

¹⁹ Interview with Jose Texeira, Member of Parliament and FRETILIN (opposition) spokesperson, Dili, September 2010.

indicate the potential for the operationalization of mobile judicial teams to conduct trials in remote areas. Further plans will be developed in the coming months.²⁰ The proper implementation of mobile courts would visibly promote access to the formal justice system and represents a good opportunity to increase confidence in the formal system, thereby reducing reliance on informal justice mechanisms.

THE FUTURE OF JUDICIAL TRAINING

It is widely recognized that international judicial advisers and trainers will be required for the long term.²¹ Indeed, qualified judicial actors will also require further training, including specialized training for some years to come.²² Without quality international judicial training and advisory support for up to 15 years, there would likely be serious challenges to the functioning of the justice system.²³ Goal seven of the JSSP states that “all justice sector personnel will be provided with necessary competencies, skills and knowledge,” and the “Timorization” plan envisages that timelines will be defined to replace international judicial actors in the “long term” — that is beyond the “medium term,” which is specified as beginning in 2015 (JSSP, 2010: 70).

The training of Timorese judicial personnel by international judicial actors at the LTC looks set to continue for the foreseeable future, with support from the UNDP Justice Sector Programme.²⁴ Expanded LTC training courses will include private defence lawyers, legal translators and judicial clerks. However, several observers raise questions about the quality of the training provided by the LTC.²⁵ Some practising

national judges, prosecutors and public defenders lack the basic legal concepts and continue to misinterpret basic laws such as the Criminal Code and the Criminal Procedure Code.²⁶ The problem is also partly due to the complexity and applicability of laws, many of which are closely based on laws from other Portuguese-speaking countries.

Despite signs of improvement in the quality of international judicial trainers in recent years, there is room for further improvement.²⁷ In the several years of international support under the UNDP Justice System Programme, the focus has been on quantitative results rather than the qualitative assessment of international judicial advisory support.²⁸ In 2009, the ICNA recommended the “rigorous recruitment” of international judicial advisers be based on advisory capacity and that “periodic evaluations” include input from national judicial actors (ICNA, 2009: 59). With international judicial trainers and advisers expected to remain engaged in justice system capacity development for the long term, it will be critical that high-quality personnel are selected and their work is properly evaluated in order to ensure the quality of national judicial actors and to prepare national judicial actors to themselves eventually takeover as judicial trainers.

“TIMORIZING” THE NATIONAL JUSTICE SYSTEM

After the serious challenges and dysfunction of early justice sector development, national judicial actors have become increasingly responsible for the functioning of the justice

²⁰ In fact, the JSSP includes the establishment of a mobile court circuit system for the long term in its core activities to improve access to justice (JSSP, 2010).

²¹ Interviews with a senior national judge; Luis de Oliveira Sampaio, director of the Judicial System Monitoring Programme (JSMP); Jose Teixeira, Member of Parliament and FRETILIN (opposition) spokesperson; international officials and observers working on the justice sector, Dili, September 2010. See also ICNA (2009: 30–34).

²² Interview with a senior national judge, Dili, September 2010.

²³ Interview with Luis de Oliveira Sampaio, director of the JSMP, Dili, September 2010.

²⁴ The UNDP Justice Sector Programme is a five-year capacity-building and sector support program currently scheduled to operate from 2008 to 2013. For further information see UNDP (2010b) and UNDP (2010c).

²⁵ Interviews with international officials and observers working on the justice system, Dili, September 2010.

²⁶ Interview with a long-term international official working in the justice system, Dili, September 2010.

²⁷ Interviews with a senior national judge, Dili, September 2010. In 2006, Professor David Cohen, a leading academic on the Timor-Leste justice system, concluded: “If the UN is to engage in judicial capacity building it should ensure the recruitment of experienced and professional qualified trainers and teachers. That every judge is not necessarily a competent professional trainer is amply manifested by the problems of the program implemented at the Judicial [Legal] Training Centre” (Cohen, 2006: 111).

²⁸ Interview with an international official working on the justice system, Dili, September 2010. An independent evaluation team in 2007 had “serious concerns about the effectiveness of the training delivered” and cited national judicial actors’ criticisms that “the mentoring process did not have consistent and uniform standards, as it depended very much on the individual personalities and skills of international justice actors” (UNDP, 2007: 43).

TABLE 1: LTC TRAINING OF JUDGES, PUBLIC PROSECUTORS AND PUBLIC DEFENDERS

Course	Admitted	Completed	Judges		Public Prosecutors		Public Defenders		
			Male	Female	Male	Female	Male	Female	
2005–2007	40	27	7	4	6	3	5	2	
2006–2009	15	10	2	0	2	2	3	1	
2008–2011	18	14 continuing to second phase of training (4 expected to become judges, 5 public prosecutors and 5 public defenders)							

Source: Statistics received from UNDP Timor-Leste by CIGI, September 2010.

system. International advisory support will continue to be required, despite the mostly positive reaction to the ownership of the justice system. It was not until 2007 that 27 judges, prosecutors and defence lawyers, having completed LTC training courses, were appointed as qualified national judicial actors. A further 10 LTC graduating lawyers were appointed in May 2009. Those 37 national judicial actors consisted of 13 judges, 13 prosecutors and 11 public defenders. Another 13 judicial actors are currently serving as probationary judges, prosecutors and defence lawyers. Their probable appointment will increase the number of national judicial actors to around 50 in the coming year.

Currently, international judicial actors provide not only training and mentoring, but also line functions within the judicial system, including support to the four district courts.²⁹ A comparatively high proportion of international judges perform specialized functions in the Court of Appeal. International prosecutors and defence lawyers visit district courts on an ad hoc basis, in case, for example, of more complex trials.³⁰ Despite improvements and some valuable individual contributions by international judicial actors, criticism of the quality of legal decisions by not only national judges and also some international judicial actors continues.³¹

²⁹ International judicial actors are Portuguese-speakers from Portugal, Brazil and Portuguese-speaking African countries who are generally paid through various bilateral agreements with the government or tripartite arrangements including the UNDP Justice Support Programme (JSP).

³⁰ Some complaints suggested that international judges and other judicial actors appointed to district courts did not regularly visit those district courts.

³¹ Interviews with several long-term international officials and observers working on the justice sector, Dili, September 2010. As an example, JSMP trial monitoring found that “due to the limited number of prosecutors, at certain times and in certain jurisdictions, international judges have appointed private lawyers to replace and take over the role of prosecutors and act as prosecutors during trials” (JSMP, 2010c).

Although international judicial actors continue to often serve in line functions as judges, prosecutors and defence lawyers in trials, a noticeable recent shift towards “nationalized” trial hearings in routine cases has occurred. It is significant that in the most complex and high-profile trial in the short history of the courts, namely the trial of the February 11 attacks on the president and prime minister, the three-judge panel consisted of national judges, while the prosecutor and defence lawyer were internationals. In previous years, international judicial actors often entirely conducted court proceedings with Portuguese-Tetum translation or paraphrasing usually provided. In recent years, national judicial actors have increasingly conducted trials in the three district courts outside Dili. Such “nationalized” trial proceedings often take place entirely in Tetum, which is significant given the history of controversial language issues in the courts with the dominant role of Portuguese in proceedings attended by Tetum-speaking witnesses, suspects and victims.³²

The JSSP highlighted the challenge of “ensuring that international judges, within a reasonable time frame, no longer perform judicial functions and increasingly perform advisory, training and mentoring functions” (JSSP, 2010: 15). Indeed, this would allow practical national capacity to develop with mentoring support, but also enable the use of Tetum language in trials, thereby improving the accessibility and transparency of the judicial process. In early 2011, it is expected that all prosecutorial functions will be “nationalized,” with international judicial advisers

³² Interview with a senior national judge, Dili, September 2010.

TABLE 2: NATIONAL AND INTERNATIONAL JUSTICE SECTOR STAFF

	Judges		Prosecutors		Defence lawyers		Court clerks		Prosecution clerks		Defence clerks
	National	Int'l	National	Int'l	National	Int'l	National	Int'l	National	Int'l	National
Court of Appeal	1	2	-	-	-	-	6	1	-	-	-
Dili District Court	8	2	9	6	7	4	18	3	20	4	15
Baucau District Court	3	1	2	0	2	0	6	1	6	-	3
Suai District Court	1	1	1	0	1	0	1	-	3	-	3
Oecussi District Court	1	1	1	0	1	0	2	1	3	-	2
LTC	-	5	-	-	-	-	-	-	-	-	-

Source: Statistics received from UNDP Timor-Leste by CIGI, September 2010.

providing only mentoring support rather than line functions. The Court of Appeal, however, is expected to require international judges to continue to serve in specialized legal areas in line functions for some considerable time to come.

COMPLEX TRIALS

Despite shortcomings in some judicial decisions, the courts have shown the capacity to conduct complex trials, albeit with the support of international judicial actors, which marks an encouraging sign of development in the justice system in comparison to previous years.³³ In particular, several cases from the 2006 crisis were prosecuted in Dili district court, including high-profile trials of the former interior minister. The completion of several cases from 2006 in the national courts indeed contributed to affirming some credibility in the judicial process for a population largely disillusioned in its justice system (see UN Commission of Inquiry [UNCOI], 2006: 176–203).

Although court decisions significantly improved — from a single paragraph as was usual in previous years — problems

with the quality of evidence, witness protection and the technical complexities of the legal process persist, thereby raising questions about the quality of judges' decisions in some trials. In September, judges in Dili district court acquitted all 28 defendants in the high-profile “Fatu Ahi” case from 2006, due to insufficient prosecutorial evidence and reluctant witnesses. This resolution of this case, recommended for prosecution by the UNCOI,³⁴ whether right or wrong, has led to speculation regarding the judges' integrity and motivation, particularly as several of the defendants had received presidential pardons less than one month before that final decision.³⁵ Indeed, one diplomat in Dili questioned, with some irony, whether acquittals in such high-profile cases meant that the independent UNCOI was mistaken in its investigations and prosecution recommendations, based on the available evidence.³⁶

The most high-profile and complex trial in the short history of Timor-Leste's court ended in March 2010, with the conviction of 24 defendants (and the acquittal of four others) accused of the attempted murders of the president and the prime minister in separate armed attacks on

³³ Interviews with a senior national judge and an international official working on the justice system, Dili, September 2010.

³⁴ See UNCOI (2006) and JSMP (2010c)

³⁵ Interview with Luis de Oliveira Sampaio, director of the JSMP, Dili, September 2010.

³⁶ Interview with a Dili-based diplomat, Dili, September 2010.

TABLE 3: STAFFING AND BUDGET FOR THE JUSTICE SYSTEM

	Permanent staff	Temporary staff	Approved state budget in 2009 (US\$ millions)	Approved state budget in 2010 (US\$ millions)
Courts	66	39	-	-
Court of Appeal	-	-	1.2	0.86
District courts (4)	-	-	9.5	1.68
Office of the prosecutor-general	32	107	3.47	2.5
Ministry of Justice	489	162	8.97	10.9

Source: UNMIT (2010).

February 11, 2008. The analysis of the trial by the JSMP raised concerns of insufficient evidence to establish who shot the president and contradictory witness testimony and ballistic evidence about the killing of Major Reinado and one associate (JSMP, 2010a). The “truth” of the identities of the actual perpetrators who shot the president and Major Reinado is still not yet known.³⁷ Nevertheless, the UN Human Rights Unit in Timor-Leste concluded that:

The trial generally conformed to human rights standards and upheld the rights of the defendants, though it exposed some weaknesses in the judiciary that are not unique to this case, such as inadequate translation. [...] However, overall the ability of the judiciary to conduct such a politically sensitive and complex trial is a positive indication of the increasing maturity of the system. (OHCHR, 2010: 19)

Similarly, the JSMP, as an independent NGO, “congratulated” the judicial actors and investigators working on the politically sensitive case, but also went further to say that in future complex court cases, “everyone can have faith in the courts to find the truth and uphold justice” (JSMP, 2010a).

³⁷ Interview with Luis de Oliveira Sampaio, director of the JSMP, Dili, September 2010.

It is encouraging that the justice system continues to act independently, as seen in the February 11 trial and a number of other major court decisions in recent years. However, political interference in the justice system is emerging as a major concern for the justice system. Recent examples of political interference in the justice system and excessive presidential pardons have demonstrated that political challenges to the independence of the judiciary are increasingly apparent.³⁸ In fact, the 24 defendants convicted in the aforementioned high-profile trial in March, received presidential pardons in August. Although several leading politicians and civil society leaders remain highly critical of these political interventions, arguing that they undermine the credibility of the justice system, a senior national judge remains optimistically confident that citizens are aware that the politicians are the problem rather than court actors.³⁹ Based on its short history, the independence of the courts and judicial actors will continue to face challenges for some years, not only from the political elite, but also, perhaps, business elites.

³⁸ Political interventions in the justice sector will be explored in detail in the next edition of *SSR Monitor: Timor-Leste*.

³⁹ Interviews with a senior politician in the PD party (part of the governing coalition); Jose Texeira, Member of Parliament and FRETILIN (main opposition) spokesperson; Fernanda Borges, Member of Parliament, President of Parliamentary Committee A on Constitutional Issues, Justice, Public Administration, Local Government and Government Legislation, President of PUN party (opposition); Luis de Oliveira Sampaio, director of the JSMP; Nelson Belo, director of Fundasaun Mahein, a non-governmental organization (NGO); the director of a leading national NGO; and a senior national judge, Dili, September 2010.

PROSECUTION POLITICS

In recent years, the former prosecutor-general, Longuinhos Monteiro, had been increasingly criticized for both his lack of independence from the political authorities and his alleged corruption.⁴⁰ An opposition politician characterizes the prosecutor-general's legacy as being one of political corruption, including allegedly discarding certain politically sensitive cases.⁴¹ In March 2009, the former Minister of State Administration under the previous FRETILIN government, Ana Pessoa, was appointed prosecutor-general.⁴² Prosecutor-General Pessoa was tasked to "cleanup" the prosecution service; implement management systems, deal with the extensive backlog of pending cases and address allegations of corruption within the prosecution service. After an external audit, the prosecutor-general restructured the office administration and hired new staff (ICNA, 2009: 36). The deputy prosecutor-general, Ivo Valente, resigned soon after the prosecutor-general's appointment, allegedly due to political differences.⁴³ The director of administration and finance in the office of the prosecutor-general was transferred from his position due to alleged corruption and conflicts of interest. However, ongoing allegations and speculation of corruption and the unprofessional behaviour of prosecutors remain a concern.

The political affiliation of the prosecutor-general, as a senior FRETILIN party figure, has also led to some speculation of political bias. These politics of speculation and perceptions of partiality may potentially damage the independent position of the prosecutor-general. A high-profile case alleged to be based on political bias is the recent official closure of the prosecution case against the former

40 In 2006, the UN COI continued to agree with the findings of the earlier UN Commission of Experts report that the office of the prosecutor-general did "not at present function independently from the State of Timor-Leste" (UNCOI, 2006:188). In relation to alleged corruption, the national human rights NGO, HAK, recently published a chronology of a lengthy case in which the prosecutor-general was allegedly involved in the extortion of funds in 2004 (see HAK, 2009).

41 Interview with Jose Teixeira, Member of Parliament and FRETILIN (opposition) spokesperson, Dili, September 2010.

42 The outgoing prosecutor-general was himself appointed PNTL Police Commander-General (see CIGI, 2010: 13).

43 Ivo Valente was appointed Vice Minister of Justice on September 1, 2010.

Defence Minister and the senior command of the national army, the *Forças de Defesa de Timor-Leste* (F-FDTL), including the F-FDTL commander, for the alleged illegal distribution of illegal weapons to civilians at the height of the 2006 crisis.⁴⁴ That the UNCOI had recommended prosecutions of those individuals (UNCOI, 2006: 134) leads some to question whether this demonstrates the political bias of the prosecutor-general.⁴⁵ Such speculation is ostensibly supported by her political and personal links with the former defence minister and the shared opinions of the FRETILIN leadership and the F-FDTL commanders in relation to the circumstances of the 2006 crisis. However, the prosecutorial opinion to close the case is officially that of an individual international prosecutor rather than the prosecutor-general; therefore the speculation cannot be substantiated. For the prosecutor-general, however, political speculation and allegations of political bias will continue to increase, especially in the political campaigns leading to national elections in 2012.

The prospect of political accusations, whether speculative or substantiated, has the potential to undermine the credibility of not only the prosecution, but also broader judicial institutions. In this respect, future investigations and prosecutions of high-level corruption cases will probably result in political accusation and counter-accusation, particularly due to the open political affiliation of the current prosecutor-general. Indeed, this has been witnessed in the recent indictment of the serving deputy prime minister and the serving foreign affairs minister on corruption charges. Allied politicians have claimed political vengeance on the part of the prosecutor-general against the deputy prime minister, who was her political adversary during the 2006 crisis (see *Diario Nacional*, 2010).

44 The written decision of the international prosecutor indicates insufficient evidence of unlawfulness and culpability with the conclusion that the actions of distributing weapons to ex-guerrilla fighters were "necessary ones" albeit allegedly "outside the juridico-legal framework" (Dili District Prosecution Service, 2009).

45 Interviews with the director of a leading national NGO, Dili, September 2010.

It is encouraging, however, that the government is taking steps leading to their prosecution.⁴⁶ After several years of lethargy in such cases, the high profile of the corruption case may optimistically indicate that the prosecutor-general will be willing to confront politicians and bureaucrats. In this respect, the possibility of future high-profile prosecutions will represent an important opportunity to strengthen public confidence in the justice system and the legitimacy of justice sector institutions, but is likely to lead to intense accusations of political bias. The independence of the justice system and its strength to combat political interference may be significantly tested.

THE PROSECUTION AND POLICE INVESTIGATIONS

A major ongoing problem, not only for the justice sector, but for the whole security sector and particularly for the credibility of the police, is the large backlog of pending prosecution cases in recent years, as shown in Table 4. The protracted backlog in investigations and prosecutions has led to a general public distrust in the formal justice system, and arguably an increasing reliance on traditional, informal justice mechanisms. As shown in the table, in June 2010, 4,965 cases were pending in the prosecution office. According to UNMIT, from February to June 2010, 1,628 new prosecution cases were registered and 1,762 cases were handled, demonstrating “progress... in the increased use of the formal justice system” (UNSC, 2010b: 11). Many cases, however, have remained stuck for protracted periods of time. Many of those pending cases are domestic violence, which remains prevalent in Timor-Leste. In October, the UN reported to the Security Council that “effectively managing the caseload remains a challenge, and the will to prosecute is, sometimes, weak” (UNSC, 2010b: 11).

The backlog of prosecution cases, the lack of prosecutors and the limited capacity of prosecutors and police investigators — which is exacerbated by the general dysfunction in the relationship of

the prosecution with police investigations — largely explains the large number of pending cases (see ICNA, 2009). Ongoing efforts to establish a coordinated case management system between police, prosecution, courts, defence and the prison system is an important initiative for the coordination of cases in the justice system, being supported by the Australian government “Justice Sector Support Facility” and the UNDP JSP.⁴⁷ Sources indicate that currently more than 13,000 cases from 2001 to 2010 have been entered into the information management system in the office of the prosecutor-general, which is expected to become operational in October (UNSC, 2010b: 12). To establish this kind of system-wide case management system will greatly benefit public access to case information through district government outreach offices, which has been seriously lacking in past years. To achieve this will indeed be a positive step forward for access to justice in communities.

JUDICIAL POLICE: PROBLEM OR SOLUTION?

The lack of progress in many cases has also seriously challenged the credibility of the police in its investigative capacity and also broader perceptions of police authority and the rule of law.⁴⁸ According to one district PNTL commander, public prosecutors have noticeably improved in their attention to address new cases in the last two years. This had led to improved coordination between prosecutors and district police investigators such as through regular case meetings.⁴⁹ Such positive opinions are not necessarily shared by all PNTL commanders, however. In October, the PNTL marine commander reportedly complained that the weakness of the justice system caused frustration, rather than motivation for police work (*Tempo Semanal*, 2010c).

⁴⁷ The Australian government’s bilateral aid, in the form of the “Justice Sector Support Facility,” is supporting formal justice sector institutions, in particular the office of the prosecutor-general. The “Justice Facility” program will last from 2008 to 2013, with an overall budget of US\$28.5 million. See ICNA (2009) for more detailed recommendations in relation to a coordinated case management system.

⁴⁸ Interview with the director of a leading NGO, Dili September 2010. For several years, national and international police officers have privately complained about the dysfunction of the justice system and the serious problems of coordination of investigations with the prosecution service.

⁴⁹ Interview with a district PNTL commander, Dili, September 2010.

⁴⁶ See *Tempo Semanal* (2010a) and *Australia News Network* (ANN) (2010).

TABLE 4: PROSECUTION BACKLOG

Year	Backlog of Prosecution Cases
2004	3,000
2005	2,707
2006	2,500
2007	4,000
2008	5,400
2009	4,981
June 2010	4,965

Source: US Department of State (2005–2009); UNSC (2009); UNMIT (2010).

The recent proposal of establishing “judicial police” suggests an official recognition of the serious problem of relations between police investigations and prosecution, leading to the backlog of pending cases and procedural delays. At present, the PNTL national police criminal investigation service investigates cases under the direction of the prosecution service, under the prosecutor-general, as is common in civil law systems. The generally weak quality of investigations leads prosecutors to frequently return cases to investigators, which requires translation of documents and often leads to delays and case backlogs.⁵⁰

The Minister of Justice recently presented draft legislation to the Council of Ministers to establish the “judicial police” under the Ministry (*Radio Timor-Leste*, 2010). Several significant problems with the proposed law include:

- The proposal that the “judicial police” would report to a politically appointed minister would open the institution to political interference;
- The proposal to arm an investigation unit with long firearms would potentially exacerbate tensions between security services and further increase the perception of the “militarization” of the police; and

⁵⁰ For specific information on the lack of PNTL investigative capacity and legal understanding of the investigation process, see ICG (2009:12). As an indication of the lack of investigative capacity in the police, the JSSP actually refers to a recent report by a Portuguese technical mission on investigative capacity which concluded that “criminal investigation is practically non-existent” (JSSP, 2010: 88).

- The “judicial police” would remain distanced from the prosecution service without necessarily addressing the disconnect between the prosecution and the police.⁵¹

There are strong indications that the Council of Ministers will not agree to the “judicial police” under the Ministry of Justice. The FRETILIN opposition party considers the proposal that judicial police report to the Minister of Justice to be unconstitutional.⁵²

Although the potential for a politicized “judicial police” under the Ministry of Justice would be detrimental to SSR in Timor-Leste, there are advantages in the proposal to shift the responsibility for investigations away from the prosecutor-general, given the protracted problems between police investigations and the prosecution.⁵³ This is an accepted arrangement in many civil law jurisdictions. Whether the PNTL commander-general (who was himself the former prosecutor-general) will accept a proposal to “break up” the police institution, and whether other security sector actors will accept the proposal of, in effect, arming the justice system, remains to be seen. After more than a decade of UN and bilateral police training, comprehensive and coordinated investigations training should urgently address the continued lack of police investigative capacity, whether or not the “judicial police” is established.

ACCESS TO JUSTICE

The lack of access to the formal justice system remains, perhaps, the most major long-term problem facing the justice sector. It will not be simply resolved through nationwide district courts and mobile court circuits. There also remains a real and perceived concern for the financial costs of engaging with the often expensive, distant and time-consuming intricacies of the formal justice system.

⁵¹ Interview with an international official working on the justice system, Dili, September 2010

⁵² Interview with Jose Texeira, Member of Parliament and FRETILIN (main opposition party) spokesperson, Dili, September 2010

⁵³ The ICNA recommended that a specialist investigation team with forensic capacity be created under the supervision of the prosecution service (ICNA, 2009: 38).

The use of Portuguese in the courts represents a major ongoing obstacle to broader access to justice for communities and judicial actors. Recently, the F-FDTL commander, Major General Ruak, significantly criticized the use of Portuguese in the courts as excluding most citizens in the court process.⁵⁴ The issue is recognized by the Minister of Justice, who has publicly stated that “access to justice is hampered by the fact that the two official languages — Tetum and Portuguese — are not spoken by the majority of the population” (Democratic Republic of Timor-Leste, 2009a). Ongoing efforts to develop a Tetum legal dictionary for use in the formal justice sector will support future efforts to support judicial actors and potentially promote further use of Tetum in court proceedings. Concerted efforts towards further increasing the use of Tetum in the justice system will enable inclusion and access to justice, but also improve the credibility and legitimacy of the justice system for the majority of the population.

The lack of access to justice, compounded by the lack of adequate police response and investigative capacity, is a main contributing factor to the widespread reliance of communities on traditional or informal justice mechanisms. Despite criminal legislation, crimes of sexual and domestic violence are often “resolved” within the local system, but not necessarily with the agreement of victims.⁵⁵ Improving access to formal justice, however, would not simply end preferences for informal justice mechanisms, particularly in remote areas where customary practices remain paramount.⁵⁶ Instead, the formal justice system must demonstrate positive examples, including financial assistance in judicial processes, and the government must begin to regulate the informal justice system. These actions will facilitate a long-term change in reliance on informal justice in local communities. Beginning in 2008, the Ministry of Justice

initiated consultations regarding the development of draft legislation to regulate traditional dispute mechanisms by introducing human rights and gender standards.⁵⁷ Although the process of “standardizing” traditional justice systems will be highly problematic, harmonizing the formal and informal systems will enable minor cases unresolved by local mechanisms to be brought to the formal system and also attempt to ensure that criminal cases, such as domestic violence, will be addressed only through the formal system.⁵⁸ The opportunity to address some of the injustices of the informal justice system should not be missed, particularly as domestic violence remains one of the main national security threats.

CONCLUSION

Justice system development has a very short history in Timor-Leste. Beginning without courts, institutions or qualified judicial actors, the widely criticized national justice system has recently showed some signs of progress in its internal coordination and strategic planning. For long-term development support, the JSSP provides a framework for the justice system, particularly in improving public trust and access to the justice system, controversial language issues, investigation–prosecution relations and the role of international judicial advisers. Effective system-wide and long-term implementation of that plan by politicians, justice system actors, international partners and civil society will be critical to future justice system development.

Despite serious ongoing functional challenges and capacity limitations, the national courts have recently demonstrated relatively encouraging signs of national judicial actors independently conducting high-profile trials, including those related to the 2006 crisis. The increasing indications of national ownership in the process of “nationalizing” the courts, including increasing Tetum language use in court

⁵⁴ Major General Ruak also reportedly called on all international judicial actors to either “learn Tetum or leave!” (See *Tempo Semanal*, 2010b).

⁵⁵ For more detailed explanation and analysis see UN OHCHR (2010: 21–22). The JSSP also recognizes the problem, for instance, in JSSP (2010:10).

⁵⁶ Indeed, local leaders order “fines” in some communities if disputes are taken outside the community to a formal process.

⁵⁷ See ICG (2009: 14), which notes that regulation efforts should also be used to clarify the role of PNTL in such local level policing.

⁵⁸ Interview with a senior national judge, Dili, September 2010.

proceedings, recognition of the need to include those excluded by unequal access to justice and policy development to regulate informal justice mechanisms, further mark significant initial steps in justice system development. Nevertheless, significant challenges remain for the justice system and the broader security sector, including impunity and political intervention in the independence of the justice system (as will be explored in the next *SSR Monitor: Timor-Leste*).

It is positive that the long-term sustainable development of the formal justice sector is considered from within the national justice system to be achievable with political will, sufficient resources and conscientious hard work.⁵⁹ However, deeper issues remain: whether the developing justice system with its complex systems and legal processes is too complicated for such a small nation such as Timor-Leste;⁶⁰ whether the current justice system model is sustainable due to the capacity limitations of judicial actors, the complexity of the legal framework of the justice system and the predominant use of Portuguese language in a justice system whose participants have minimal proficiency; and whether judicial reform to establish a simplified justice system model is more applicable to context, culture and capacity in Timor-Leste. Indeed, some of the emerging initiatives and recent developments may be initial indications of the prospect of future judicial reform in Timor-Leste.

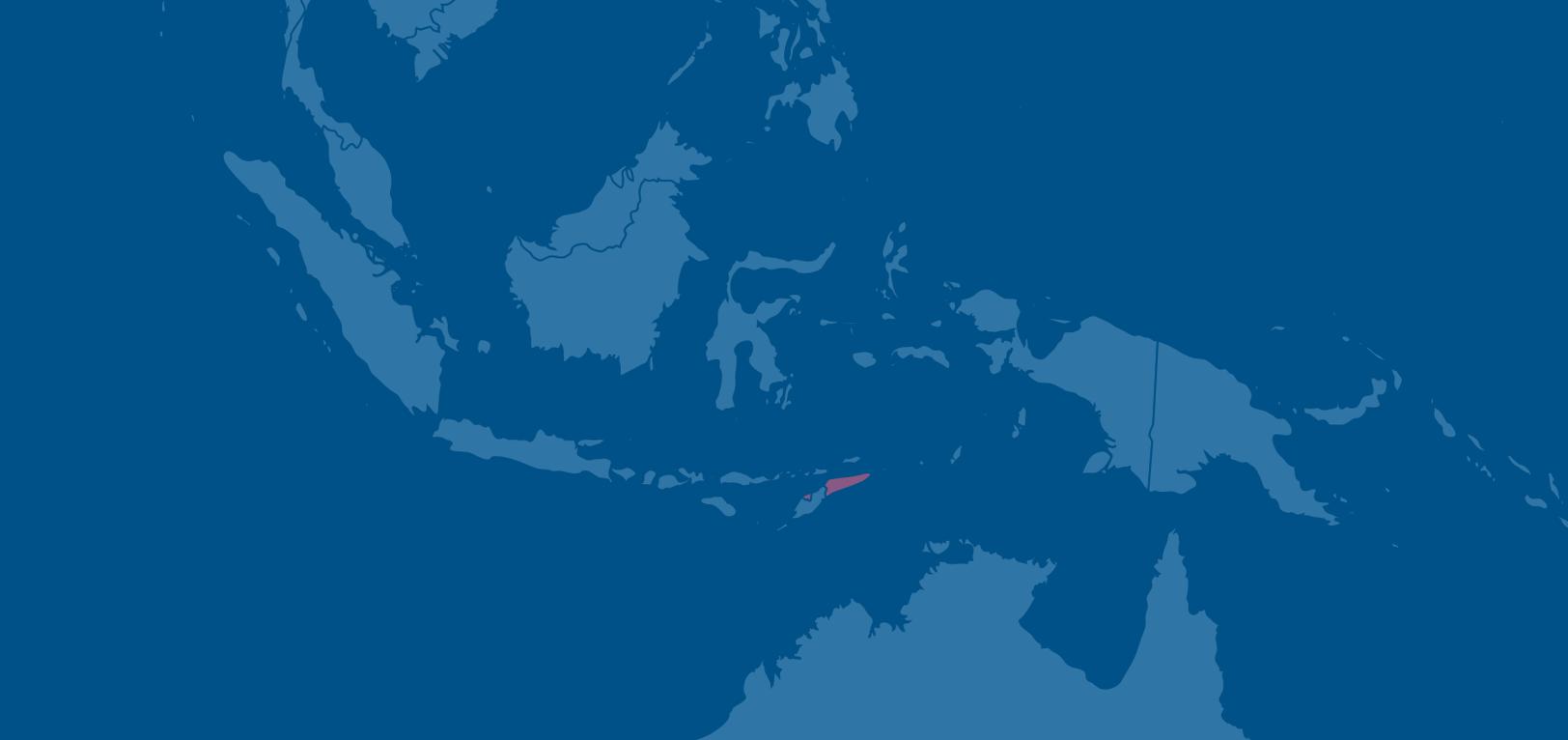
⁵⁹ Interview with a senior national judge, Dili, September 2010.

⁶⁰ Interview with Luis de Oliveira Sampaio, director of the JSMP, Dili, September 2010.

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