



**ACCESS TO JUSTICE BRIEF**  
**Functional Assessment of the Oecusse & Baucau District Courts**

**Summary of Assessment Findings and Recommendations**  
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**Counterpart International, Inc. (Counterpart)** was awarded funding in 2013 from USAID/Timor-Leste to implement the four-year **Ba Distrito Project (the Project)** with the goal of increasing institutional and human capacity at local levels to deliver basic services as part of wider vision of improved decentralized governance and inclusive access to justice in Timor-Leste. In relation to the last of these, the Project aims to support government to develop and implement a legal aid framework; increase capacity and outreach of legal aid organizations and services; support the creation and dissemination of legal information; and strengthen the functionality of districts court and justice sector institutions.

This brief is based on a report written by Barry Walsh who was contracted by the Project to undertake a functional assessment of the district courts in Oecusse and Baucau with support from the Project's Access to Justice team: Fausto Belo Ximenes, Maria Veronika N. M. Da Costa and Carlos Miguel. Mr. Walsh conducted a desk review of published materials, followed by a program of interviews with court personnel and other stakeholders in Oecusse, Baucau and Dili. The assessment focused on judicial and staff needs, workloads, facilities, budget management, automation, public information and transparency, and access to justice. This brief summarizes the essential findings and recommendations developed by Barry Walsh in consultation with the team and Chief of Party Carolyn Tanner. In framing the recommendations, we have attempted to address the question of what needs to be done to advance the general functional effectiveness of courts, rather than what the Ba Distrito Project is able to do. The precise nature of Ba Distrito activities is yet a matter for discussion and negotiation between Project representatives, the Court of Appeal and USAID.

The U.S. government, through **USAID**, works in partnership with the government of Timor-Leste to support broad-based and effective development. Since 2001, USAID has provided over \$253 million in development assistance to Timor-Leste, and USAID provided over \$12 million to improve the lives of people in Timor-Leste in 2013. USAID supports Timor-Leste in its efforts to build a more prosperous, healthy, and democratic country through programs that foster inclusive and sustainable economic growth, especially in the agriculture sector; improve the health of the Timorese people, particularly women and children; and strengthen the foundations of good governance—all areas which are highlighted in Timor-Leste's Strategic Development Plan 2013-2030.

**Counterpart International** is a global development organization that empowers people and communities to implement innovative and enduring solutions to social, economic, and environmental challenges. For nearly 50 years, Counterpart has been forging partnerships with communities in need to address complex problems related to economic development, food security and nutrition, and building effective governance and institutions. For more information visit [www.Counterpart.org](http://www.Counterpart.org)

**Tetra Tech DPK (Tt DPK)** is a leader and innovator in providing consulting services to further the rule of law and good governance. Tt DPK works around the world to help establish and strengthen productive relationships between state and society and develop sustainable government and justice systems that are responsive, transparent, accountable, fair, and efficient. Enhancing access to justice, especially for disadvantaged groups, is one of its core rule of law service areas.

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## **CONTENTS**

JUSTICE SYSTEM OVERVIEW .....	1
JUDICIAL AND STAFF RESOURCES IN OECUSSE AND BAUCAU .....	3
JUDICIAL WORKLOAD AND DELAY REDUCTION IN OECUSSE AND BAUCAU .....	3
STATISTICAL REPORTING AND COURT FUNCTIONALITY .....	6
LAW AND PROCEDURAL ISSUES.....	9
THE IMPACT OF COURTS ON DETERRENCE AND RESOLUTION OF CRIME .....	10
DOMESTIC VIOLENCE CASE OUTCOMES .....	11
TRAINING OF COURT PROFESSIONALS AND STAFF .....	13
AUTOMATION.....	15
OUTREACH AND FACILITIES MANAGEMENT .....	18

## JUSTICE SYSTEM OVERVIEW

The current court system is based on that instituted by the United Nations Transitional Administration in East Timor (UNTAET) in 2000<sup>1</sup> and consists of the Court of Appeal and four district courts in Dili, Baucau, Suai, and Oecusse. The Dili District Court covers the districts of Dili, Aileu, Ermera and Liquica; Baucau District Court has jurisdiction over the districts of Baucau, Lautem, Viqueque and Manatuto; and Suai District Court covers Covalima, Manufahi, Ainaro and Bobonaro districts. Oecusse District Court covers the Oecusse enclave. The UNTAET regulations also provided for the establishment of district courts in Lospalos, Viqueque, Same, Maliana and Ermera, although none of these have yet been established. Although the Constitution of Timor-Leste provides for the establishment of a Supreme Court, along with various administrative courts and military courts, these too have yet been established.

The Constitution provides that the president of the Supreme Court presides over the Superior Council for the Judiciary, the body responsible for appointment, transfer, discipline and promotion of judges established in the law on the Statute of Judicial Magistracy<sup>2</sup>. In practice this role is discharged by the president of the Court of Appeal pending the establishment of a Supreme Court. Effectively, the president of the Court of Appeal heads the judiciary. The staff of the Court of Appeal assist the president in the administration of all courts.

Compared with the courts, there is a similar governance structure for both the Office of Prosecutions Service and the Office of Public Defenders. The Constitution provides for the establishment of a prosecution service and a Superior Council for Prosecution Services, which is responsible for the appointment, transfer, promotion and discipline of prosecutors. The Public Prosecution Service was established in 2005<sup>3</sup>.



The Office of the Public Defender (OPD), under the Ministry of Justice (MoJ), is the entity responsible for providing full and free of charge legal, judicial and extra-judicial assistance to citizens with insufficient economic means.<sup>4</sup> The OPD was originally established during the period of UNTAET to represent defendants before the Special Panels for Serious Crimes in the Dili District Court.<sup>5</sup> From 2005 onwards, however, the OPD's mandate was extended to provide nation-wide legal aid. The Superior Council of Public Defender governs the appointment, transfer, promotion and discipline of public defenders.

<sup>1</sup> UNTAET Regulation No. 2001/25 amending UNTAET Regulation No. 2000/11 on the Organization of Court in East Timor

<sup>2</sup> Law No. 11/2004 amending Law No. 8/2002 on Statute of Judicial Magistracy

<sup>3</sup> Law No. 14/2005 on the Statute of the Public Prosecution Service

<sup>4</sup> Article 16 of Decree-Law 12/2008, of 30/4 (Organic Statute of the MoJ)

<sup>5</sup> Office of Public Defender "Bringing Justice Close to the People, UNMIT/Serious Crime Investigation Team (SCIT)

Judges, prosecutors and public defenders are appointed at the entry level, all senior positions being filled only by promotion from the lower ranks. Each is thus a career service and new recruits can only be appointed at the entry level after undergoing a period of full time training provided by the Legal Training Center (LTC), which is a division of the MoJ. There are not other institutions or processes concerned with judicial training.

The judiciary itself remains small – 25 judges in total to serve a population of up to 1.2 million people<sup>6</sup>, which is a ratio of 1 judge for approximately every 40,000 people in Timor-Leste. We understand that currently there are 12 judge candidates undergoing training at LTC and they are expected to be eligible for appointment as probationary judges third-class by early 2015. Judge numbers are complemented by 25 prosecutors and 20 Timorese public defenders. Judges in Timor-Leste have a total of 131 support staff, including 60 judicial officers –professional staff who are trained via the LTC<sup>7</sup> who serve in the positions of superior secretary, secretary, court clerk, assistant clerk and diligence officers. Total numbers of civil servants and judicial officers together amount to a ratio of five staff on average for each judge<sup>8</sup>. In courts of developed countries, it would be common for the ratio to be in the order of 1 judge to 10 or more support staff. According to the Courts Staffing Profile and Annual Work Plan for 2014, a total of 144 additional court personnel are expected to be recruited by 2018, more than doubling the current number.

A noteworthy feature of the judicial career path is that although judges and prosecutors undergo joint training at the LTC and are appointed in similar ways, their careers do not overlap. Unlike some European systems, serving judges are not appointed to prosecutorial positions, nor are serving prosecutors appointed to judicial positions. The same applies to public defenders. These differences are also reflected in approved pay scales for magistrates, which ensures that judges are paid more than prosecutors, and prosecutors more than defenders. The allocation of places to LTC graduates is determined by the final examination score of each candidate, with the strongest candidates being admitted for judicial appointment, the next strongest for prosecutor appointment and the remainder for appointment as public defenders.

Administrative decisions affecting the administration of courts are made with the authority of the president of the Court of Appeal. A Council of Coordination for Justice was established under the Organic Law of the Ministry of Justice in 2008<sup>9</sup>. The Council is the advisory body on matters of justice and law. It is composed of the Minister of Justice, who presides, the President of the Court of Appeal, the Attorney General's Office, the Public Defender General, a representative of private lawyers. In 2009 the Council assisted the Ministry of Justice in developing a Justice Sector Strategic Plan (JSSP) for Timor-Leste 2011-2030.<sup>10</sup> Progress in achieving JSSP goals has been slow due to limitations on funding support available from the Government of Timor-Leste and donors. Neither the Council of Coordination for Justice nor the Court of Appeal publishes annual reports on their activities as far as they may concern the administration of justice. It would seem that judicial policy to date, in the short time since Timorese have taken over judicial positions previously filled by international judges, has been focused principally and necessarily on developing core services and basic capacities, such as providing working courts within the districts.

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<sup>6</sup> CIA World Fact Book: <https://www.cia.gov/library/publications/the-world-factbook/geos/tt.html>, accessed August 2014.  
“Population: 1,201,542;

country comparison to the world: 160; note: other estimates range as low as 800,000 (July 2014 est.)”

<sup>7</sup> Judicial officers are appointed pursuant to Government Decree No. 27/2009 on Juridical Regime of the Employees of Justice and the Services of the General offices of the Tribunals, the Prosecutor General and Public.

<sup>8</sup> This ratio is calculated by dividing the number of all staff on the payroll of the courts by the number of judges. It does not indicate the number of personal staff available to each judge.

<sup>9</sup> Article 18 of Decree-Law 12/2008.

<sup>10</sup> Justice Sector Strategic Plan for Timor-Leste 2011-2030, Approved by the Council for the Coordination of Justice, Dili, 12<sup>th</sup> February 2011, at pages 14 and 31.

The language used in court records is Portuguese, which is one of the two official languages of Timor-Leste, the other being the more widely used Tetum. This policy has resulted in there being a much smaller pool of candidates for judicial appointment than there would be if Tetum was also used. All candidates for appointment as a judge, prosecutor or defender must pass examinations offered only in Portuguese, producing low numbers of qualified judges. It has also resulted in Timor-Leste courts remaining at least partially dependent on the availability of international judges to boost their numbers even today. Currently 12 percent of judges are not Timorese.

### **JUDICIAL AND STAFF RESOURCES IN OECUSSE AND BAUCAU**

There are 4 judges in Baucau and 1 judge in Oecusse. A strength of the courts in Oecusse and Baucau is that, in addition to judges, the current establishment includes significant numbers of judicial officers who have graduated from the LTC. Oecusse has five judicial officers, two interpreters, an IT officer and a driver. Baucau has 13 judicial officers, two interpreters, an IT officer, two cleaners and a gardener. Expectations among existing personnel of the two district courts is that when further judges are appointed to those courts by early in 2015, there will be similar numbers of additional judicial officers also appointed. In these circumstances it is difficult to see a problem of there being insufficient numbers of support staff in future.

A key question is whether there will be sufficient funding for staffing and other needs of the judiciary in Oecusse and Baucau. Budgetary estimates processes for the 2015-16 fiscal year were under preparation at the time of interviews with court officials. These discussions revealed that the Court of Appeal is seeking government funds on behalf of all courts and to cover all planned operational activities. These include, we were told, information technology services, mobile courts and additional salary costs to cover appointments of new graduate judges and judicial officers. It was suggested that although the final appropriations have not yet been decided by the government, the Court of Appeal was confident of most of its expanding needs being funded.

### **JUDICIAL WORKLOAD AND DELAY REDUCTION IN OECUSSE AND BAUCAU**

#### **Caseload**

Caseload statistics are not routinely reported by the Court of Appeal, but information about officially collected figures were readily provided on request by the relevant judicial secretary at Oecusse and Baucau. The official figures, however, are limited to counts each month of newly opened cases, closed cases and pending cases at the end of the month. Based on those figures and information provided by judicial secretaries, we have compiled a statistical analysis of caseloads at Oecusse and Baucau for 2013, as shown in the following tables.

<b>Oecusse – Civil &amp; Criminal Cases in 2013</b>		
Incoming	133	11 on average per month
Ratio of civil to criminal	11%	
Finalized	190	16 on average per month
Pending	34	
Clearance rate	143%	
Pending to finalized ratio	18%	

Only 11% of cases in Oecusse were civil cases in 2013, which is a surprisingly small proportion by international standards, even in an economically underdeveloped country. Counting all case types together, during that year the court finalised 43% more cases (190) than were newly registered (133). In other countries that use clearance rates in measuring case processing, this represents a clearance rate of 143% over

the year<sup>11</sup>, meaning that cases were being finalised 43% faster than the rate of incoming cases. On average 11 new cases were registered each month, and 16 were disposed. This means that in a typical week the single judge at Oecusse, supplemented by occasional collective hearings of 3 judges, was able to process 16 cases a month. The pending caseload at the end of 2013 was only 18% of the volume of cases finalised in that year (i.e. 34 cases pending as against 190 finalised), which is a small number of cases, given the rate at which cases are finalised.

<b>Baucau – Civil and Criminal Cases</b>	<b>In 2013</b>	<b>On average per month</b>	<b>In 2012</b>	<b>On average per month</b>
Incoming	437	36	241	20
Ratio of civil to criminal	14%		14%	
Finalized	165	14	125	10
Pending	676		404	
Clearance rate	38%		52%	
Pending to finalized ratio	410%		323%	

In contrast to the 11% of Oecusse cases that were civil cases, Baucau recorded that 14% of its cases were civil in 2013, still a relatively small proportion. And while 437 cases were newly registered in the year, only 165 were finalised, amounting to a clearance rate of only 38%. On average 36 new cases were registered each month and 14 were finalised. This means that in a typical week the judges at Baucau were together only able to process an average of less than 4 cases. Furthermore, pending caseloads at the end of 2013 were over four times greater than the number of cases finalised during the year, a high number compared with the rate at which cases are finalised.

We were also able to gain access to statistics for 2012 in Baucau, indicating that new case registrations were significantly less than in 2013. But when comparable figures in 2012 are examined, average case disposals per month in 2012 were still only 10 cases, i.e. less than 3 cases finalised per week.

These figures give no indication of the types of criminal cases or the types of civil cases being processed in Oecusse and Baucau. We know from our interviews and from reports of the Judicial System Monitoring Programme (JSMP), however, that a large proportion of criminal cases at both centres relate to domestic violence offences. Furthermore, JSMP reports indicate that in most criminal cases, including domestic violence, the defendant confesses to the offence in court, reducing the time required to hear each case. Interviews with court staff at both courts confirmed this trend.

Interviews with court staff also indicate that in cases where a criminal defendant fails to appear at a hearing, the court will adjourn the case until the defendant is found or the court gives up trying to find them. These cases will be counted as part of the court's pending caseload until the defendant is found, which in most cases is seldom because of the absence of procedures and resources for finding absconders. Thus a significant proportion of pending caseload counts includes these cases. Pending criminal caseloads in Baucau have grown gradually from 6 in 2000 to 221 in 2011, then to 314 in 2012 and finally 559 in 2013. It seems likely that a large proportion of these cases cannot be processed by the courts, as the defendants are unlikely ever to appear in court. We learned that after proceedings have been commenced, finding criminal defendants in Timor-Leste is not officially considered to be the responsibility of the prosecutor or the police,

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<sup>11</sup> A clearance rate is used by courts in Anglophone and European court systems to compare the rate of cases finalised with the rate of cases being newly registered over the same period. It is calculated by dividing finalised cases by new cases and then multiplying the answer by 100 to produce a percentage.

but the courts themselves; and there are no special resources under the courts' control for chasing and apprehending defendants who do not answer a court notification.

Another area of uncertainty flows from the fact that no statistical information is collected on the age of cases, i.e. the time taken from the date the case is initially registered to the date it is finalised and closed after a court determination. Interviews with court officials suggest that most cases can ordinarily be processed within the range of only 3 to 6 months when the defendant appears in court.

The available figures suggest some anomalies that can only be resolved by closer study. For example, although Baucau currently has four judges, average disposals per judge are low compared with average disposal for the lone judge in Oecusse. However, even in Oecusse, average rates of case disposals seem low when taking into account that few cases are likely to involve an extended hearing. All persons interviewed indicated that most cases can be scheduled for a hearing of no more than half a day and hearings longer than a day are rare. It was also indicated that cases do not generally get adjourned unless the defendant fails to appear.

Even if one looks only at rates of new case filings, without considering disposal rates, there is still a question about how large future caseloads are likely to be. The figures we have for 2013 indicate that on average there are 36 new cases per month in Baucau, which averages at 12 new cases a month for each of the four judges currently at that centre. The equivalent figure in Oecusse was 11 per month, although we have figures to indicate that that rate has risen significantly in Oecusse during 2014.

The figures we have seen, and the information provided during our interviews, indicate that higher quality statistical information will be needed before it is possible to draw clear conclusions about options for improving case management.

Here are examples of questions that further analysis can help answer:

- Why are civil caseloads so low in comparison with criminal cases?
- Why are most criminal cases domestic violence cases?
- Why are there apparently high rates of confessions in criminal matters?
- What proportion of pending caseloads is made up of criminal cases where the defendant has absconded and is unlikely ever to be found?
- How might the caseloads of judges be calculated in ways that will help determine how many judges are needed at each district court location? What is a reasonable caseload of a judge in a typical month?
- What is an acceptable period of delay in processing the average case? If most cases are processed in 3 to 6 months, is that considered to be acceptable?
- In what circumstances should mobile courts be conducted if the ages of pending cases that might be heard by a mobile court are within an acceptable range?

### **Delay reduction**

Our examination of the trends in case management at Oecusse and Baucau did not disclose a significant delay problem, essentially because information about the age of cases is not collected. But this conclusion is also reinforced by the anecdotal feedback from those we interviewed indicating that most cases are finalized within a period of 3 to 6 months and that most cases processed by both district courts relate to domestic violence, cases in which defendants typically confess to the offence in court. Baucau, of course, is carrying high numbers of pending cases. But it also has low rates of case finalizations, suggesting that any delays are not so much due to the volume of new cases being registered, but to problems in achieving optimal levels of judicial productivity. The causes of this are not explained by routine court statistics.

## **STATISTICAL REPORTING AND COURT FUNCTIONALITY**

Statistical reporting provides important management information necessary to understanding and improving district court functionality. For the district courts to be able to collect useful statistics on case management and delay reduction, they will need to collect more than they presently do; and they will need to modify how pending cases are to be counted.

### **Absconded Defendant Cases**

It was found that in a criminal case where a defendant cannot be found to answer a charge, the case will be counted indefinitely as a pending case. This obscures the significance of pending caseload counts in indicating the extent of case backlogs. It is likely a large percentage of pending cases are incapable of being processed by a court, regardless of how many judges may be available. In other countries, absconded defendant cases are treated as closed cases for the purpose of counting pending cases. This is because, for practical purposes, they have ceased to be cases the court is capable of processing to finality. Unless absconded defendant cases are at least separately counted, then it is difficult to persuasively use pending caseload counts as a justification for a claim that there are insufficient numbers of judges available.

#### **Recommendation 1 : Accounting for Absconded Defendant Cases**

For the purpose of developing improved statistical reporting in Oecusse and Baucau District Courts, monthly counts of pending cases in those courts should be divided into the categories of “active pending” and “inactive pending”. Generally, an active pending case is one where the case has been scheduled for a future hearing date or is expected to be scheduled for hearing as soon as the court has available time. Inactive cases are those where the court has ceased attempting to notify a defendant of a hearing, or where the court has indefinitely postponed the allocation of a future hearing date for reasons other than the lack of an available judge.

### **Mobile Courts**

Under a program funded by United Nations Development Program (UNDP), mobile courts have been trialed from Dili and Suai District Courts and have only just begun in Baucau. A mobile court is essentially a circuit court of the type used in Anglophone court systems (such as the US, UK, Canada and Australia). A circuit court judge will travel away from the judge’s normal base to other locations to hear cases. The mobile court concept has allowed visits of this kind in a range of mostly remote locations with the out-of-pocket costs being covered by UNDP. The use of mobile courts has been lauded as a means, not only of bringing justice closer to the community, but also as a way of addressing case backlogs. As Baucau experiments with using mobile courts, there will be opportunities for it to reduce its pending caseloads, especially if it proves that the current problem of evidently low productivity is due to the court’s inability to process cases that originate from a remote location.

It is likely that mobile courts will prove to be useful in Timor-Leste because of the still significant practical and financial barriers to establishing new permanent district courts. Caseloads in most areas still appear to be too small to justify establishing a permanent court presence. Mobile courts offer the option of extending services without the cost of new permanent court facilities. On the other hand, there are costs associated with sustaining each mobile court session, estimated by UNDP to be in the order of US\$2,500 to \$3,000 per scheduled sitting; and there is not yet an indication from UNDP as to whether it will be funding this initiative beyond the current fiscal year.

It is also uncertain whether, if mobile courts are eventually funded by the government, there will be sufficient capacity for regular mobile sittings in the future. Consequently, for as long as mobile courts continue to be funded by UNDP or other donors, there would be value in collecting statistics on the success of mobile courts in processing caseloads. In Baucau, in particular, there is an opportunity to evaluate whether mobile courts can contribute significantly to increasing judicial productivity at that centre, i.e. by increasing average case finalisations per available judge. There is also a corresponding opportunity to evaluate whether

mobile courts have a measurable impact on improved access to justice for rural victims and disputants, and whether the use of mobile courts can be correlated with increased in use of courts.

### **Recommendation 2: Statistics on Mobile Courts**

For the purpose of developing improved statistical reporting in Baucau District Court, monthly reporting of court statistics should include a special report on cases heard and finalized via a mobile court session and the general impact on caseloads arising from those districts. In addition, reports on mobile court sessions should also include information about meetings and other events in which mobile court judges participated that were aimed at increasing awareness of the role of the judiciary within the communities visited.

### **Ageing the caseload**

There is a need to collect information about the age of cases, i.e. the elapsed time since a case was first registered with the court – including pending cases at the end of each month and at the time each case is finalised. This can be done by calculating the number of days from the time a case is newly registered and dividing it by 7 to determine its age in calendar weeks. In Oecusse and Baucau, this can be done manually as each case is finalised. At present rates there will be fewer than 20 to 30 cases finalised each month at both centres, so that calculating the age in weeks of each will not be onerous, especially in Baucau, which already has the use of an electronic case management system. For pending cases, age can also be calculated manually in Oecusse, because the numbers are generally small; and by using the Integrated Information Management System in Baucau, where the numbers are greater.

### **Recommendation 3: Ageing Cases**

For the purpose of developing improved statistical reporting in Oecusse and Baucau District Courts, modify monthly statistical reports in those courts to include a list of the age in weeks of each case finalized in the month and the age of each case still pending.

### **Extent of Backlog**

The district courts statistical system treats pending cases as being synonymous with backlogged cases. But in many other countries there is a clear difference between those terms. In Anglophone systems a case is considered to be backlogged or delayed only when its age is older than an acceptable period of delay. A case newly registered a week ago, for example, would today be considered pending, but not delayed. In order to know whether a case is backlogged, however, it is necessary to define a period in which the age of a case is considered to be within an accepted norm. If it is older than that norm, it is considered delayed or backlogged. In Australia and the US, an accepted norm is determined by the adoption of what is called a timeliness standard. If a case is older than the standard and still pending, it is considered to be backlogged or delayed. Here is the definition of the Australian timeliness standard for courts that are functionally equivalent to the district courts of Timor-Leste:

- no more than 10 per cent of pending cases are to be more than 6 months old; and
- no pending cases are to be more than 12 months old.<sup>12</sup>

Australian courts, however, typically have very large caseloads, which is the reason why their timeliness standards allow more time for case finalisation than might be considered desirable. Taking into account present caseloads and capacities in Timor-Leste, the timeliness standard could be aimed at processing 90% of cases in 3 months and 100% of cases in 6 months.

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<sup>12</sup> While timeliness standards are used in Australia and other countries for measuring delay, they have no legal force and are not used for the purpose of evaluating individual judges.

**Recommendation 4: Pilot the use of a Timeliness Standard**

For the purpose of developing improved statistical reporting in Oecusse and Baucau District Courts, adopt the following timeliness standard, i.e. in calculating the proportion of pending cases in those courts that will be considered to be backlogged or delayed cases:

- no more than 10 per cent of active pending cases are to be more than 3 months old; and
- no active pending cases are to be more than 6 months old.

**Rates of Case Adjournment**

Feedback we were given in our interviews with court personnel indicated that the need for a court to adjourn a case hearing is uncommon. In other countries, high rates of case adjournments are a common cause of backlogs. In the knowledge that a district court judge is usually able to hear two cases a day where the cases relate to domestic violence (the dominant case type), it seems anomalous that there are significant pending caseloads, unless some cases are adjourned. We believe that over the period of a statistical study, there will be value in measuring the instances of case adjournments and the kinds of reasons given when an adjournment occurs.

**Recommendation 5: Measuring Rates of Case Adjournment**

For the purpose of developing improved statistical reporting in Oecusse and Baucau District Courts, include in monthly statistical reports a count of the number of instances where a case is adjourned and the reasons for the adjournment.

**Accounting for Available Judge Days**

Our analysis of caseloads of Oecusse and Baucau above reveals anomalous results when comparing the average rate of cases finalised per judge. We believe that the anomaly may be explained by uncertainty about how many judges have been available to dispose of cases. If a judge is absent from duty on leave or due to illness, the impact of the absence on case finalisation rates will not be discernable. To allow for these errors of interpretation, the monthly statistics submitted by each district court should count available judge days at the centre during the month.

An available judge day is a day on which a judge is on duty and available to hear a case, whether or not that judge actually had cases to hear on that day. If there are three judges on duty to hear cases on a day, then that day would be counted as three judge days. Days on which a judge took leave would not be counted. Using this methodology, judicial productivity of a court centre would be calculated by dividing the number of available judge days by the number of court calendar working days in the month. The result would be an average number of full time judges at the centre in the month. The number of cases finalised in the month would then be divided by the number of full time judges to produce an average number of cases finalised per judge. This kind of calculation would allow for the fact that despite the number of judges attached to a district court centre, their capacity to finalise cases may be much lower.

**Recommendation 6: Available Judge Days**

For the purpose of developing improved statistical reporting in Oecusse and Baucau District Courts, monthly statistical reports should include a count of actual available judge days in that month and the number of court working days in the month to allow calculation of the rate of average case finalizations per judge.

**Hearing Durations**

Interviews with court staff suggest that the duration of most case hearings typically take no more than half a day and that it is routine for each judge to schedule up to two hearings per day. When cases take longer, or are adjourned, however, it can delay other cases and increase workloads. We recommend that a statistical analysis of Oecusse and Baucau should include an attempt to identify instances where a hearing duration exceeds its scheduled duration, i.e. typically half a day or a day. This kind of data can help explain why some cases can take longer to process and it will also reveal how often hearing durations exceed expected durations.

**Recommendation 7: Duration of Hearings**

For the purpose of developing improved statistical reporting in Oecusse and Baucau District Courts, monthly statistical reports should include a count of case hearings in the month that exceed a duration of half a day and a separate count of hearings that could not be finished in a day.

**Case Outcomes**

Official court statistics do not reveal in any statistical sense the kinds of outcomes of cases when they are finalised. It is known from interviews and from JSMP reports, for example, that in most domestic violence cases the defendant confesses and that, correspondingly, acquittals are rare. We can also glean from the same sources that there is a range of penalties imposed in such cases, but that suspended sentences on conditions of good behaviour are by far the most common. Analysing features of case outcomes can assist courts in assessing the likely effect that rising caseloads of different kinds will have on a court's ability to process them. Thus capturing statistical information about case outcomes can help in the management of caseloads. It can also help identify the impact of court decisions in terms of rates of imprisonments and durations of prison sentences. We recommend that in connection with a statistical assessment of cases in Oecusse and Baucau, there should be collection of details of case outcomes including: whether there was a confession, whether the case was withdrawn or resulted in an acquittal; and the type of penalty imposed and its duration. An aim of studying case outcomes should include an assessment of the value of collecting similar information more systematically in future, such as by using computerised court case tracking systems to gather this information in all cases.

**Recommendation 8: Case Outcomes Statistics**

For the purpose of developing improved statistical reporting in Oecusse and Baucau District Courts, analyses of case processing should include statistical profiles of case outcomes, such as instances of confessions, acquittals and the types of penalties imposed.

**LAW AND PROCEDURAL ISSUES**

**Courtroom procedure**

The law and procedure inherited at the time of independence and during UN administration has essentially been modeled on that of the Portugal justice system. The system is nominally inquisitorial with judges sitting alone determining criminal cases where the maximum penalty that may be imposed is less than 5 years and civil cases where the maximum compensation allowable is below USD 5000. Criminal offenses where the maximum penalty exceeds five years and civil cases where the maximum allowable compensation exceeds USD 5000 are tried by a panel of 3 judges, known as collective courts. Unlike some European systems, the role of judge and prosecutor is distinct, with adjudicative processes for both criminal and civil cases being essentially similar to that of common law system courts.

**The Use of Portuguese in Courtrooms.** The policy of using only Portuguese as the language of court records has had some impact on courtroom procedure. The oral language most commonly used in courts is Tetum, except where the judge is not a native speaker of Tetum (usually an international judge). While documents on the court record will almost exclusively be in Portuguese, in practice the judge will address counsel and witnesses in Tetum. What may be said in the courtroom in Tetum is recorded in official minutes

by a judicial officer appointed as note taker. That officer typically takes notes in his or her native language of Tetum, which he or she will later translate into Portuguese for the purpose of the official record. Likewise, a judge will announce a decision in court in Tetum, but then formally record the orders in Portuguese. Thus, while Portuguese has been a significant barrier for appointment as a judge, prosecutor or defender, it is less of a constraint to the workings of court personnel in the courtroom. It seems that court personnel, all of whom are trained in at least basic Portuguese, encounter few practical difficulties in this arrangement, although a general concern among staff is the need to improve their proficiencies in producing official court documents in Portuguese. What remains a problem is that often a defendant or witness speaks neither Tetum nor Portuguese, but only a local language. In both Oecusse and Baucau, local languages are widely used and Tetum is not understood in many communities. Consequently, the Oecusse and Baucau courts need to provide full time staff to interpret from a third language into Tetum during hearings. There is little budget for this and it is often not possible, which poses a significant obstacle to the delivery of fair and effective justice services.

## **THE IMPACT OF COURTS ON DETERRENCE AND RESOLUTION OF CRIME**

Based on information we have gathered via interviews and by examining court statistical reports, it seems that the judges and staff at both Oecusse and Baucau are readily able to administer cases filed in those courts. However, despite a lack of significant caseload management problems, there is good reason to doubt that courts have much impact on the ways that most crime and major civil disputes are resolved.

One factor giving rise to this doubt is that those we interviewed confirmed that the largest component of cases processed by the courts are domestic violence prosecutions which, under the Law Against Domestic Violence<sup>13</sup>, police are now compelled to report to the prosecutor, who in turn are compelled to refer to the courts where there is a case to answer. But for these kinds of cases, the caseloads at Oecusse and Baucau would probably be miniscule. This feature of current caseloads suggests that if other types of public crimes were also mandated to be referred to the courts that too would result in rising rates of new criminal cases in areas other than domestic violence. In the absence of such emphatic legislative directives, perhaps some public crimes are otherwise not being pursued by police and prosecutors with comparable vigour.

Available case statistics indicate a very conspicuous imbalance of domestic violence cases, as compared with other public crimes. There are no official records of the breakdown of court case types available, but there are figures produced by the Judicial System Monitoring Programme (JSMP), which deploys monitoring staff to attend courts and record details of case outcomes. It is likely that JSMP would be gathering data about most cases passing through the courts. In its 2014 report published last June, it offers data for all cases it monitored across Timor-Leste in 2013. These figures indicate that nationwide, 52% of criminal cases were in relation to domestic violence, 6% were in relation to sexual assault offences, 28% were for homicides and crimes against the person, and 14% for property and regulatory offences. In other words, domestic violence cases were more prevalent than all other criminal cases combined. For a country of up to 1.2 million people, there were very low rates of prosecutions for motor vehicle offences (such as speeding causing death), street assault offences, gun offences, drug offences or economic crimes. This raises a question of whether police are faithfully reporting serious public crimes to the prosecutor in cases where the law does not explicitly direct them to. While it is known that prosecutors are empowered to negotiate the resolution of minor infractions or misdemeanours without referring them to courts, this power does not extend to public crimes.

It was also suggested in some of our consultations that low volumes of cases in the courts reflect the fact that the population is small; that traditional justice practices deal with most serious disputes; and that economic

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<sup>13</sup> Law No. 7/2010

development is yet to give rise to disputes commonly associated with big cities, such as commercial litigation, financial crimes and crimes related to drugs, guns and trade in general. However, other countries with strong traditional justice practices and low levels of economic development do not usually benefit from low rates of serious crime. Arguably most other countries in comparable circumstances would suffer from generally high rates of violent crime because of high unemployment and other effects of low economic development.

A more probable explanation for the dearth of criminal cases may be that NPTL, the national police, are not formally processing reports of crimes and possibly not reporting arrests. It has been suggested in some of our discussions that some police resort to beating offenders or imposing other summary punishments in lieu of formally charging offenders. There is no data that we can find on actual rates of crime, however, that may be used to validate this hypothesis.

It may be that the courts have not had time to reflect on the question of whether their contribution to the maintenance of social peace and justice is having a significant impact, compared with traditional justice processes. With the exception of domestic violence cases, where the courts are now effectively mandated to supervise the resolution of those cases, the impact is evidently highly significant. But for other kinds of cases, there is an open question as to whether the courts have much impact at all. We believe that there is a knowledge gap that prevents reaching a settled conclusion on this question. If it proves to be true that all crimes that should properly be referred to the courts, are in fact being referred, then it can be said that the courts are fulfilling their proper role and probably serve as a deterrent to crime. On the other hand, should it be demonstrated that either unresolved crimes are not being reported to the police, or that the police are not acting on reports they receive, then it places in doubt the role of courts as keepers of peace and defenders of civil rights. Thus we propose that these alternatives need to be tested by the courts by undertaking a household survey of perceptions of crime.

A range of surveys have been conducted on justice systems in Timor-Leste which aim at assessing the contribution of traditional dispute resolution mechanisms and confidence in the formal justice system. But the results have been equivocal about actual rates of crime, indicating instead respondents' opinions on how effectively they expect a complaint is likely to be dealt with by the different institutions. We have not seen any data to date on respondents' experiences of actual crimes as victim's, or as members of a victim's family, and the processes actually pursued by police and others in those cases. Such questions in a survey are likely to reveal whether there is a gap either in the propensity of citizens to report crimes, or in the propensity of police to act upon them.

#### **Recommendation 9: Household Survey of Perceptions of Crime**

As a means of assessing the impact of courts of justice on the deterrence of crime and the satisfactory resolution of complaints about crimes, the courts of Timor-Leste should undertake a household survey to ascertain whether there are gaps between the actual incidence of crimes and the reporting and their subsequent prosecution. This survey should be conducted with the active support of the national police and the Office of Prosecutions.

## **DOMESTIC VIOLENCE CASE OUTCOMES**

The legislative scheme introduced by the law against domestic violence includes the aim of ensuring that the criminal courts independently assess the guilt of those accused of domestic violence and that appropriate punishments are set and enforced. This aim seems to be generally fulfilled, as indicated in reports of JSMP. However, JSMP reports also reveal questions about the consistency of sentencing decisions, suggesting that the availability of different statutory offences of domestic violence, each carrying differing maximum penalties, makes it difficult to ensure consistency. JSMP reports also reveal high rates of domestic violence cases in which the defendant confesses. This gives rise to the question of whether the defendant who confesses has had adequate independent legal advice. Sometimes it may be that although a defendant admits

to domestic violence, there will be an issue about the severity or regularity of the violence, which can have an impact on the sentence that may be imposed. It is unclear whether these kinds of distinctions, which if disputed may benefit an accused offender, are considered by the public defender as possible case defences.

Our interviews with public defenders and others indicated that the workloads of the Office of Public Defender are large in all localities. Not only does the defender agree to represent almost all criminal defendants in court, a defender will also carry a caseload of disputes that are not the subject of court proceedings. These include civil disputes argued within the traditional justice system and misdemeanour criminal cases (i.e. private crimes), which a prosecutor is empowered to settle directly between the offender and the victim. In those cases, the prosecutor will notify the public defender of the case and allow the defender to participate in the negotiation process.

The result of this broad role of the public defender is that representing criminal defendants in court amounts to less than half of their overall caseloads. Defenders are so busy, we have been told, that they seldom have time to meet their clients before the hearing day in court. The implication of this is to raise doubt that public defenders have time to carefully assess the charges made in domestic violence cases or the validity of any confession the defendant is claimed to have made. If this is the pattern of representation generally provided for defendants, then it suggests there are few checks on the quality of a prosecutor's case. If a prosecutor elects to use an inappropriate charge and the defendant confesses to it, then the judge has little incentive to review the appropriateness of the charge. On the other hand, if the defendant refuses to confess to an inappropriate charge, the prosecutor is put to the burden of proving the charge or preferring other charges.

Other feedback received from the JSMP, which is the only available source of information about the outcomes of domestic violence cases, is that there is a concern that some court decisions are too lenient. The large majority of penalties imposed by courts in domestic violence cases involve releasing the offender on a suspended sentence, and only seldom involving compensation orders. In some cases, we were told, courts have punished second offenders who have breached their earlier release on good behaviour with a new order for release on good behaviour.

The adequacy of systems for prosecuting domestic violence cases is yet to be evaluated formally. Given that domestic violence cases now dominate court caseloads, especially in Oecusse and Baucau, it would be timely to consider how consistently the courts are processing them and whether court orders are significantly altering outcomes reached at the level of traditional justice. We understand that in almost every case where a defendant confesses, there is likely to have already been an earlier negotiated agreement reached between the offender and the victim's family via traditional justice processes. Thus we recommend that the courts evaluate case outcomes in criminal cases, including domestic violence, to validate expectations that courts apply consistency and adequacy in sentencing. This can be done by a one-off evaluation pilot exercise. It can also be advanced by altering case management systems in the court to record data about domestic violence case outcomes that can be used to undertake future evaluations.

**Recommendation 10: Evaluating Court Outcomes in Domestic Violence Cases**

- (a) The courts in Oecusse and Baucau should undertake an evaluation of case outcomes in domestic violence cases with a view to assessing the consistency and adequacy of court orders, having regard to the seriousness of the case and the nature of any agreement reached via traditional justice system processes.
- (b) Changes should be made to the design of computerized case management systems in courts (IIMS) to permit the system to collect data about case outcomes, such as penalties imposed, whether a defendant confessed to the case and whether the court penalty is given after a private agreement is reached between the offender and the victim.

## **TRAINING OF COURT PROFESSIONALS AND STAFF**

All staff we spoke to in Oecusse and Baucau indicated their desire to have better training. This suggests that although LTC provided adequate preparatory training, there is still a gap in meeting continuing training needs of staff as well as judges.

### **Continuing judicial education**

Although empowered to provide ongoing training for magistrates, lawyers and judicial officers, the LTC is primarily geared and funded toward giving pre-qualification training and facilitating the examination of candidates for entry level appointments. Its resources are of course limited and are prioritised for this primary role, with the result that training of serving judges, prosecutors, defenders and staff will seldom occur and then usually only with funding offered by donors. At present there is no program of annual judges' conferences, special topical seminars for judges, or processes for developing special publications for the guidance of serving judges. When these sorts of things have been done in Timor-Leste in the past, they have invariably been one-off events funded by donors. Clearly, at this stage of the development of the judiciary of Timor-Leste, there is a need to introduce and regularize systems for continuing judicial development.

Successful programs for continuing development of judges in other countries is almost always via institutional arrangements that distinguish judges from other office holders. The dominant model in Europe and in Anglophone countries is the concept of a judicial academy which is usually controlled by the judiciary and which limits its activities to developing judges, staff and prosecutors (where the prosecutor cadre is considered part of the judiciary), leaving the continuing education of other classes of lawyers to other institutions, such as ministries of justice.

In whatever way the system might be structured in Timor-Leste, based on the most effective international practices, there will be a need for special arrangements for continuing educational needs of judges. If this need is to be met by the LTC, then there would be high value in it establishing a special curriculum or division dedicated to judicial training. Given that prosecutors are not part of the judicial career path in Timor-Leste, this special curriculum need only apply to judges and may be fostered under the auspices of the Superior Council of the Judiciary as a function that would be facilitative of the Council's interest in developing judges for promotion.

Our recommendation is that in order to stimulate the gradual development of a judicial academy in Timor-Leste, the Court of Appeal should initiate the establishment of a committee of three or four judges to be known as the Judicial Education Committee, who will act as an expert panel in advising on the development of continuing education programs for judges. Once established, that committee should be asked to propose a program of regular judges' conferences and a curriculum for scheduling seminars for judges on special legal topics.

We recommend that the committee should also be asked to act as an editorial expert panel to draft and publish a District Courts Judges' Benchbook, as has been done in many other countries. A Benchbook is a compilation of information about the law and recommended procedural practices offered by experienced judges for the benefit of judges who are newly appointed. It also offers advice about techniques for conducting hearings and making sentencing decisions. Judges in those countries that have developed Benchbook consider them to be invaluable guides, especially in the early phases of their careers.

### **Recommendation 11: Continuing Judicial Education and Development**

The Court of Appeal should initiate the establishment of a committee of judges to be known as the Judicial Education Committee, who will act as an expert panel in advising on the development of continuing education programs for serving judges. Once established, that committee should be asked to propose a program of regular judges' conferences and a curriculum for scheduling seminars for judges on special legal topics. The committee should also be asked to act as an editorial expert panel to draft and publish a District Court Judges' Benchbook.

### **Continuing Training and Development for Court Staff**

Our interviews with staff in Oecusse and Baucau revealed a range of needs for further training or support. These included judicial officers, who are responsible for case management, interpreters, and newly appointed information technology technicians. In Baucau, where the IIMS computer database is already in use, staff was keen for additional training to support them in using computers. There is also interest among judicial officers in both Baucau and Oecusse in continuing training in Portuguese and in criminal and civil procedure codes to supplement the initial training they received at the LTC.

To date there has been no systematic process applied to assess training needs of court staff in Oecusse and Baucau. A number of the staff at both courts have been appointed in only the last 12 months and have relocated from Dili. It is likely there are significant differences in background and individual needs. So it seems that the time is right to undertake an assessment and use the results to develop proposals for specific training programs. Our recommendation is that a training needs assessment be conducted within the two courts for all personnel, including the judges, as part of a range of pilot activities in those courts and as a guideline for developing the foundation for a long-term, continuing legal education professional development curriculum. We also suggest that two areas can be developed immediately as learning exercises that are likely to benefit court staff – in the use of email and in the use of the IIMS computer database.

**Using Official Email.** The first area is in the use of email as a tool for court administration. In neither court is official email used as a substitute for writing, printing and delivering paper memos. While court case documents generally cannot be validly sent using email, there is a whole range of communications and administrative correspondence that can be produced and sent by email instead of on paper. At present both Oecusse and Baucau has the technical capacity for all staff to communicate with each other by email and with the Court of Appeal in Dili. There is already a system of official email addresses available for all staff of the courts, although we are told by Court of Appeal IT staff that generally the system is not yet used. We recommend that a training program be designed and provided to staff in the two pilot centres aimed at trialling and evaluating the use of email as a tool of administrative communication for district courts.

**Continuing Integrated Information Management System Training.** Another factor that may impede understanding of the IIMS is the fact that the IIMS user manual, which is over 1,000 pages long, is available in Portuguese, but not in Tetum, further handicapping the ease with which court staff can have their skills in using the system reinforced. Our recommendation is that, rather than pursue the translation of a long document that may not be readily used by court staff, a simpler system be used to extend IIMS training to staff using the IIMS network itself. We propose that Baucau be used as a test centre for the development of computer based training modules that can be used by staff as self-directed learning tools for IIMS. Using standard features of Microsoft PowerPoint software, each module would be an animated instruction manual, and incorporating voice over instruction in Tetum, that would be available to access on any desktop computer in the court. This exercise will be used to develop a prototype methodology for the design of other computer based training modules that the Court of Appeal may use for future training programs. It can be expected, of course, that the completion of a training needs assessment of all staff in both courts can be used to identify the topical priorities for developing new self-directed learning products.

Feedback on the training provided to staff to date in the use of the IIMS computer database in Baucau indicated general levels of satisfaction and competency. However, staff admitted that they would still benefit from follow up training and for repeat training in certain areas of IIMS operation. One judicial officer admitted, for example, that although she knows how to type and print courtroom hearing minutes using word processing and attaching a copy to the court file, she did not know how to upload a soft copy of the minutes to the electronic IIMS case file.

### **Recommendation 12: Supporting Staff Training in Oecusse and Baucau**

- (i) A *training needs assessment* should be conducted within the two courts for all personnel, including judges, as part of a range of pilot activities in those courts, to identify the topical areas in which future training courses priorities can be focused.
- (ii) A training program be designed and provided to staff in the two pilot centers aimed at trialing and evaluating the *use of email* as a tool of administrative communication for district courts.
- (iii) Baucau District Court should be used as a test centre for the development of computer based training modules that can be used by staff as self-directed learning tools for the IIMS computer database. Each module, to be designed using standard features of Microsoft PowerPoint, would be an animated instruction manual with voice over instruction in Tetum that would be available to access on any desktop computer in the court.

## AUTOMATION

### Integrated Information Management System Development

As at mid 2014, the Court had succeeded in connecting and maintaining a network linking each of the district courts. Oecusse is now connected to the Court of Appeal network and PCs are available for the use of the judge and each judicial officer in the courthouse. There is access to the internet and basic word processing and spreadsheet software. The staff has had some training, but is yet to use the facilities they have for much more than word processing. Also, although each person at Oecusse District Court has the capacity to use email, very few do, chiefly because official communications with the Court of Appeal and other district courts continue to be by hand delivered, paper memoranda.

Baucau is also connected to the network and desktop computers have been provided for the use of each judge and judicial officer. Users have access to the Internet, email services and, the IIMS case management system. So far Baucau is the only district court to be using this system, although the Dili District Court is now in the early stages of introducing it.

The IIMS is a general purpose case tracking system for the district courts. The system was developed in 2009 for the police and prosecutors using local and international experts. The Court of Appeal began to develop an independent version of the police and prosecutor system for use in district courts in 2012. It was developed as a basic case management system, offering a good case tracking capability. All data fields in IIMS are labelled in Tetum and English as well as Portuguese. Training materials provided by the Court of Appeal (excluding the IIMS User Manual) are also offered in Tetum as well as in Portuguese.

It appears that the staff at Baucau is using the IIMS satisfactorily in registering cases, allocating cases to judges, producing notifications for hearing, case scheduling, recording case outcomes, storing documents and case event information, and producing statistics. There are a few features of the system which do not yet work as intended. For example, there are difficulties in producing reports that distinguish archived cases from active cases and the system is not yet capable of counting cases allocated to each judge. As part of the introduction of the system to Baucau, all case records going back to 2002 are recorded in the system, although limited to basic descriptive information about cases already archived.

According to Court of Appeal staff we interviewed, the process of rolling out IIMS is not yet subject to firm timetables. Training has started for the benefit of staff at Dili District Court and present plans are that, once Dili adopts the system, it will be extended to the district courts in Oecusse, then Suai. IT administration staff of the Court of Appeal advise that the rollout of IIMS and associated hardware is proceeding using GoTL funds and without financial support from donors. It appears that the system has generally good prospects of being successfully installed in each district court and should contribute to improved productivity in the scheduling of cases and in providing management information. However, there is some doubt that the rollout program will be swift, given that non-critical faults in the software have already been reported and are yet to be remedied. It is not yet clear that the Court of Appeal will be able to secure sufficient funds in future to undertake regular software design changes in response to problems as they emerge.

The capacity of the courts to improve their effectiveness in case processing is dependent on their ability to use information technology, particularly in providing statistical information for better resource management. Elsewhere in this report we have proposed ways in which improved statistical information can be gathered using IIMS. But many of those improvements can only be achieved if programming changes are made to IIMS. The Court of Appeal needs to sustain its commitment to developing IIMS in these ways as a high priority because of the likely long term benefits such a commitment will bring.

**Recommendation 13: Sustaining IIMS Development and Use**

The Court of Appeal should give priority to the gradual improvement of IIMS software, both in terms of fixing faults detected during the rollout program and for the purpose of expanding its use in analyzing trends in caseloads and case outcomes.

**Online Information for Courts**

Our discussions with information technology staff of the Court of Appeal indicated that while they have understandably been focused on establishing the infrastructure for using information technology for court management, this has been confined to date to meeting basic needs. After completing the commissioning of a nationwide wide area network and extending IIMS to all courts, however, there will still be many goals to be pursued in order to utilise the full potential for using information technology in courts. It is too early to expect much of this potential to be achieved within the next five years. But it is likely that much could be achieved within ten years.

Courts in developed economies are now moving to a point where key business processes are administered purely by the use of computerised systems. This applies not only to case management systems, but also to almost all aspects of administration – financial systems, procurement, human resource management, even building management. This process has been advancing in tandem with relatively rapid change in the information policies of courts; that is, with policies aimed at giving the general public access to a wider range of court records and online services.

These trends have been made possible by the establishment within a court of a virtual private network and with public web portals. A virtual private network (VPN) is a networked website environment which is available only to authorised users within an organisation. A VPN provides security and confidentiality features to allow judges and court staff to use software for managing court finances, payroll, human resources, case management and other internal systems. The availability of a VPN has enabled courts to create electronic versions of court records for internal use, thus allowing any authorised user to access a court record without the need to find the paper file. It also allows court personnel to securely carry out most of their official activities without the need to use paper.

A public web portal differs from a VPN in that all of the information provided is available to any user of the Internet. Courts will usually have public web portals to provide information to promote the role of the courts and information about specific cases, e.g. by publishing court decisions. Usually the data available on a public web portal is extracted directly from the court's VPN for any category of information that the court deems appropriate for publication. The use of VPNs and public web portals is, of course, not unique to courts of justice, but is a basic feature of virtually all government agencies and private corporations in advanced economies. This approach to information management in government is widely described as “e-government”, and in the context of courts, this approach is sometimes referred to as “e-justice”.

While Timor-Leste courts have not yet reached the point of being able to effectively emulate these kinds of advances, they ought to start now to pursue similar directions. Our recommendation in this report concerning increased use of email as a management tool is an example of one step in that direction (see recommendation 12). There are also others that may be pursued, particularly given the expectation that the new Supreme Court will be established within the next few years. A new Supreme Court will almost certainly seek to adopt similar reforms in the use of technology that superior courts in other countries have already pursued. In particular, it is likely to want to establish a website containing information of use, not only to judges and court staff, but to the general public as well. It is also likely to want to be able to receive electronically

compiled performance reports from all the lower courts. And it will wish to advance the use of computers for administering basic services and functions of courts in general, including electronic case filing, video conferencing, storage and management of court hearing sound recordings and other court records.

To those ends, we recommend that the Court of Appeal pursue the gradual development of its court networks and the IIMS to include an information portal component to be available respectively to court personnel; and also, in a limited form, to the public via a court information portal. Such a portal, if established today, might include links to all online versions of legislation of Timor-Leste, public reports about the court system, statistical reports of the courts that may be approved for public release, and decisions of the Court of Appeal that are approved for publication as matters of public interest. The internal VPN component of the portal may contain staff training materials, including materials published by the LTC, official memoranda on court management, and other information to assist in court administration.

**Recommendation 14: Online Information for Courts**

In developing information technology systems for district courts, the Court of Appeal should advance development of both an internal virtual private network (VPN) and a public web portal to facilitate the introduction of new technology in court administration; and as a means of using technology for development of its staff and providing information to the public.

**Sound Recording of Court Proceedings**

During our brief visit to the Dili District Court, we learned that there was a plan to experiment with the use of sound recording of court proceedings in that center. One courtroom is equipped with devices that can produce a cassette tape recording using microphones placed in the courtroom. We were told that the intention was to use the tape later to prepare transcript of what was said in court. It seems that although some hearings are recorded in this way, no steps have yet been taken to prepare transcript of cases. Evidently their plans are still under development and it was suggested to us that an effective way of producing transcript might be by using voice recognition software.

While sound recording is widely used in other court systems, it is rare for voice recognition software to be used, usually because available software is seldom useful in producing accurate transcript without a high level of human editing. Also, as the dominant oral language in court hearings is usually Tetum, it is unlikely there would be any existing software capable of recognising that language.

It is also rare for basic level trial courts to use sound recordings to produce transcript without increasing the cost and effort required compared with the system of recording minutes in handwriting. Minutes are typically summaries of what is said in court and can be readily typed afterwards by the person who prepares the handwritten minutes. When sound recording is used, however, the process of producing transcript will take much longer and is more prone to errors as transcript may be produced by a person who was not in court during the hearing. Thus while sound recording can be done with little human supervision, the production of transcript afterwards can require more effort compared with the current system of taking minutes.

Courts in other countries that use sound recording systems have overcome the problems associated with transcript production by simply reducing the instances in which it is necessary to produce a transcript. This is done by adopting rules requiring transcript to be produced only when there is an appeal, or when the judge asks for a transcript for special reasons, or when a party asks for a transcript and agrees to pay the cost of producing it – in all other instances, no transcript is produced, but the sound tape itself will be kept as the record (so that it is available for transcript production if needed in future). By adopting a system such as this, a court can reduce the effort required to record court proceedings, allowing staff in the courtroom to produce only highly summarised minutes of what occurred.

A risk for the Dili District Court is that, if it embarks on recording its courtroom proceedings, and then attempts to transcribe all that is said on the tapes, then it will be burdening itself with a very high additional workload and expense which may add little to the quality of case processing. A better approach is to develop

ways in which the sound recording itself can be treated as the official record of the proceedings so that, if there is ever a need to know what was said in court, it can be listened to, rather than read.

**Recommendation 15: Sound Recording of Courtroom Proceedings in District Courts**

It is recommended that, if district courts pursue the use of sound recording of courtroom proceedings, ways should be developed to avoid the need to produce transcript in most cases. Suggested guidelines for the use of sound recording may include:

- (a) Recordings should be used primarily as a means of producing summarized minutes of court proceedings, rather than verbatim transcripts (i.e. full text of what was said).
- (b) Verbatim transcripts should not be produced unless the decision in the case is the subject of an appeal in a criminal case and where the appeal court requires it.
- (c) Verbatim transcripts should not be produced in civil cases except at the request of a party to the case and then only when that party agrees to pay the cost of producing the transcript.
- (d) A verbatim transcript should not be issued until it has been checked for accuracy by a judicial officer and certified by the judge who presided in the case.

## **OUTREACH AND FACILITIES MANAGEMENT**

An important challenge for the Timor-Leste judiciary is the need to raise its profile in the eyes of the community and secure recognition of its role as the protector of the Constitution and the rights of citizens. A conventional means of doing this is through courthouse buildings, which serve not only as venues for the hearing of disputes, but also as symbols of the dignity and power of the judiciary as an instrument of the state in providing and enforcing justice. As well as this symbolic purpose, courthouses have a utilitarian purpose as service centres, where people who need to use the courts can do so with maximum convenience and comfort, in an environment that respects equality of all before the law.

Our visits to the courthouses at Oecusse and Baucau were aimed at interviewing the personnel of the courts, but also viewing the condition and utility of the court buildings themselves as symbols and as service centres. Here are some essential observations we made.

- Both buildings are old and of Indonesian design. Each has a single courtroom placed in the centre of the building and flanked by wings containing administrative offices. Each is also stepped at the front entrance and at other points, having no ramps suitable for wheelchairs.
- Oecusse is a double storey building with the upper levels providing office accommodation for the resident judge and visiting judges. As most of the time there is only a resident judge, facilities in Oecusse look spacious for the court's needs.
- Baucau is a single level building, but includes an adjacent double story annex for some judges' offices. In contrast to Oecusse, Baucau has four resident judges who have had to make use of government office accommodation across the road from the courthouse where there are also two additional courtrooms.
- Oecusse has no public signage at all, except at the front of the court building. It has no notice board, except for a freestanding board at the front steps, which is used only to display civil service job vacancy notices.
- Baucau has minimal public signage, but uses a whiteboard in its foyer to write information about court hearings. It too has a notice board which appears to be used only for civil service job vacancy notices. Within rooms that members of the public might visit for official purposes, such as the Central Office, there is no room for visitors to sit or stand in comfort. There appears to be no unused office space in Baucau.

- Both courts lack an identified area for public inquiries and places for people likely to have special needs, such as witnesses who need to be separated from defendants attending hearings. The only designated public waiting areas in both courts are outside at the front of the court, or immediately outside the courtroom or inside the courtroom.
- Both buildings are generally in a poor state of maintenance. Oecusse clearly has a leaking roof, indicated by large ceiling staining above the central foyer. It also needs repainting, both inside and out. Each building, however, is clean and free of clutter.
- Oecusse has a large area of land both at the front of the courthouse and behind, allowing room for future expansion, such as additional wings. We were told that plans are advanced for a new courthouse to be built at Baucau, with work likely to start as soon as 2015.
- Both courts have air conditioning in courtrooms and in offices of judges and staff. Other areas of each building, however, are not air conditioned.
- Both buildings have installed networked computer systems that work.
- The courtrooms in each building are spacious, air conditioned and clean. Each has a ceremonial flag of Timor-Leste, but neither has a crest, insignia or coat of arms set behind the judge's bench as is common in courts in many other countries.

In general, both courthouses are designed and managed essentially to meet the minimal needs of judges and staff in processing court paperwork and conducting hearings. There is no evidence in either building of efforts to develop public services, such as inquiries and information desks, dedicated facilities for lawyers and their clients, or facilities for the comfort of vulnerable visitors, such as victims of domestic violence. The design shortcomings of the building themselves, put constraints on what might be done to improve them, but they do not prevent improvements altogether, even in the case of Baucau, where the building is expected to be vacated when the new courthouse is built. Here are examples of things that could be done to improve the functionality of each building, enhance service to the public and facilitate the promotion of the role and value of the judiciary. These ideas draw on practices that are widespread in courts in other parts of the world.

**Public Signage.** Each courthouse could benefit from the installation of signage for the information of visitors who are not familiar with the building, such as defendants, victims and witnesses. Signage ought to begin with a directory board immediately inside the front foyer which indicates the name of the court, the name of the judge administrator, the name of the judicial secretary and a listing of the room locations of different offices, such as the civil section/ criminal section, interpreters' offices, designated waiting areas, public toilets and places where general inquiries can be made.

**Court Notices and Notice Boards.** Each courthouse should display a whiteboard and an adjoining noticeboard. The whiteboard should be used on the day of a court hearing to indicate the case about to begin or the hearing in progress. The noticeboard should display the printed court list for the day, the following day and any other future days where a list can be produced. It may also be used to post other court documents, such as information about impending mobile courts or scheduled sittings of collective courts.

**The Languages of Documents and Signage.** In placing signage and notice boards, allowance should be made for the possibility that visitors may not be able to read Portuguese or Tetum. Both languages should be used and, if possible, local languages; and, for the sake of illiterate visitors, pictorial signage should be used wherever possible. Similarly, the court office should endeavour to produce brochures and forms for the use of court visitors to provide information about court procedures and the rights and facilities for court visitors, such as victims and witnesses.

**Waiting Areas.** Given that both Oecusse and Baucau have very high rates of domestic violence cases, each should have dedicated waiting areas that will ensure that defendants do not face victims or witnesses when they arrive at the courthouse. This can be done by redesignating vacant rooms for these kinds of special

purposes or, if there are no vacant rooms, even utilising places outside in the courthouse grounds where visitors can wait until required to enter the courtroom.

**Public Defenders and Prosecutors.** The courthouse should be available, as far as possible, for the use of public defenders and prosecutors that each can use to meet clients or witnesses in privacy. Rooms should be set aside for this purpose and those rooms should be sign posted so that visitors can more readily find the defender or prosecutor.

**Outreach Initiatives.** The judge administrator of the court should consider establishing a court user consultation group and a program of activities aimed at keeping the judiciary in contact with court users and promoting the role of courts and services they provide. A court user consultation group is a collection of representatives of the key stakeholders (prosecution, public defender, police and leaders of community groups) who regularly meet with the judge administrator. User group meetings are used to discuss practical problems affecting the use and management of the court building and the services provided to those who visit. The user group can also be used to develop and promote court outreach events, such as visits to the court by school groups, by conducting court open days and scheduling similar events in association with mobile court sessions.

An open day is a day on which the judiciary invites the public to attend the court building to learn about how the court works and to ask general questions about services available to those may become court users. Open days can also be used as media events to promote the courts, such as by judges participating in radio broadcast talk shows or speaking at church functions and other public events.

A role of a court user consultation group is to survey court users to ascertain public opinion about the court and draw out ideas for improving court services at the local level. Court user group members can draw from their own inquiries or associates and others they represent to identify issues of concern. They can also act as a group to introduce court user surveys and feedback schemes, an example of which we are proposing be introduced in Oecusse and Baucau on a pilot basis as a demonstration of the value of user surveying in general.

It seems clear from our assessment that the notion of using courthouse management as a driver of court outreach programs is still novel in Timor-Leste. Experience in other court systems indicates that the most effective way of ascertaining whether courthouses are adequately serving the needs of their users is to ask them, i.e. by undertaking a survey to find out. Thus we propose that the district courts in Oecusse and Baucau each undertake a survey to identify precisely how they may make improvements. The survey results should be used to develop a model for managing the court in terms of signage, uses of space, information services and outreach activities. One method of doing this is to administer a Courthouse Visitor Survey, which aims to interview court visitors on a designated day to obtain information about why they are visiting and whether they satisfactorily achieved their purpose in visiting. A survey is also useful for gauging visitor opinion about the adequacy of court facilities, such as waiting areas and public toilets.

**Recommendation 16: Developing a Model for Courthouse Management and Outreach**

As a means of developing a model for improved courthouse management and local outreach activities, the district courts at Oecusse and Baucau should undertake a Courthouse Visitor Survey. The results of the survey may be used to validate the need to make improvements to court building services and to support the development of other initiatives for outreach, such as the establishment of a court users' group, open day activities and special activities to be conducted in association with mobile court sessions.