

Women and justice in Timor-Leste

Maria Agnes Bere, Judicial System Monitoring Programme, Timor-Leste

Introduction

Women in Timor-Leste in particular face a vast number of obstacles when trying to access and obtain justice. This paper offers an overview of several recent Judicial System Monitoring Programme (JSMP) reports into Timorese women and justice.

Problems and obstacles

Findings from JSMP's March 2004 report *Women in the Formal Justice Sector* were based on a two-month period of observation, in late 2003, when the JSMP 'monitored the progress of all women-related cases before Dili District Court' (JSMP 2004:4). During that time, the majority of cases relating to women were either delayed or postponed. The report's main findings included:

- more than half (55 per cent) of all criminal hearings scheduled during the monitoring period were women-related cases. Most of these (78 per cent) related to sexual violence;
- the average time taken to process women-related cases before the Dili District Court during this monitoring period was 274 days;
- the vast majority (41 of 49) hearings of cases involving women scheduled or observed by JSMP were postponed. Only six per cent of all scheduled hearings in cases involving women related to the presentation of evidence;
- very little progress was achieved in cases involving women. Only 16 per cent of all of women-related cases actually proceeded to trial. In almost all cases that went to trial, no significant progress was achieved towards reaching a final decision;
- during the observation period, the court issued no final decisions in cases involving women;
- while a number of complaints of domestic violence were lodged during the period of observation, not one domestic violence case was scheduled for hearing; and
- during an interview with JSMP one Dili District Court judge demonstrated gender bias. Attitudes such as this are clearly detrimental to women whose cases need to be handled effectively and sensitively.

From the total number of cases observed, the main reasons for delays and postponements of hearings were that several or all of the court actors required to be present did not attend these hearings. These absences included failing to attend the court on the date set for the relevant hearing or arriving on time at the court but departing without waiting for the arrival of the other required parties who were running late, resulting in postponement.

Based on the problems identified above, JSMP in April 2004 established a Women's Justice Unit (WJU) in response to strong support shown to the JSMP report and other requests for information about women in the formal justice sector. The WJU continues to monitor cases and decisions involving women in each of the District Courts of Timor-

Leste, with the aim of creating transparency in relation to the treatment of women in the formal justice sector.

Based on observations made by the WJU some progress has been made by the courts in the processing of cases involving violence against women. This statement is based on the fact that almost every day there is a hearing of a matter concerning violence against women, particularly rape, and these hearings have culminated in the issuance of final decisions. Postponements continue to occur, however, usually due to the absence of the victim or the defendant.

Violence against women: The statistics

There is a large gap between the number of cases of violence against women that are filed with the police and the number that reach the courts. It should also be pointed out that acts of violence against women are seldom reported to police (JSMP 2005a:4).

In 2003, 361 cases involving violence against women were filed by the national police force (PNTL). In the first eight months of 2004, the national Vulnerable Person's Unit (VPU) recorded 300 cases of violence against women. These cases were separated into the categories of attempted rape, domestic violence, rape, sexual assault and sexual harassment. It is unclear what type of crimes are defined as sexual harassment.

Court records give an indication of the percentage of all cases that appeared before each court in Timor-Leste that involved sexual violence. These are given below. The records do not make it clear whether crimes involving domestic violence are included in these cases.

- | | |
|--------------------------|------|
| • Dili District Court | 23 % |
| • Oecusse District Court | 13 % |
| • Suai District Court | 13 % |
| • Baucau District Court | 28 % |

Unfortunately police statistics are not available as a percentage so comparative analysis is difficult. However, JSMP monitoring has shed light on the vast number of cases that do not reach the courts. It is worth reiterating that 361 cases of sexual and domestic violence were reported to the police in 2003; but in the ten months from April 2004 to February 2005 in which JSMP monitored court cases involving women victims, only eight decisions regarding crimes of this type were handed down.

The JSMP (2005a:13) identified the following reasons for this disparity:

- victims and their families withdrew their cases due primarily to economic dependency and also because of threats made by husbands;
- police and prosecutors sent victims of domestic violence back to their family to settle their case;
- police and prosecutors tried to conduct mediation to reconcile two parties;
- prosecutors transferred cases to police and ordered further investigation (with investigations remaining incomplete);
- lack of communication and transportation, prevented the processing of cases;
- lack of evidence; and
- ongoing problems with court administration and court management.

However, there is some indication of positive change. JSMP monitoring indicates almost half of the trials being heard in the district courts of Timor-Leste in mid 2005 involve cases of violence against women.

Judgement

Eleven decisions were issued by the district courts from June 2004 to March 2005 in cases involving women. The issuing of decisions by the courts in cases of violence against women and girls is a positive step forward for the justice sector in Timor-Leste. The fact that these cases reached a final decision is an improvement in the level of justice East Timorese women can expect.

Nevertheless, the decisions handed down by judges in cases of violence against women show that there are a number of ongoing deficiencies (JSMP 2005b:25):

- sentences for crimes of violence against women were too short and did not reflect the severity of the crimes committed;
- judges did not apply international standards in their decisions, as they are required to under the constitution;
- judges did not apply an appropriate level of reasoning in cases involving sexual assault; and
- judges were insensitive towards gender issues or lacked knowledge about the rights of minors.

The police and traditional justice

JSMP also conducted interviews with village heads and sub-village heads for a report into police treatment of women in Timor-Leste. These community leaders said while they were aware of the criminal nature of domestic violence and sexual assault, because the formal justice process is so slow that they generally chose to settle such cases through customary or traditional mechanisms.

This report also investigated allegations of gender discrimination against women by the PNTL. Part of this report's focus included investigation into the notion that 'police do not consider cases of domestic violence or sexual assault seriously; that police officers themselves are involved in cases of violence against women; and that sexual harassment of female police officers is occurring within the PNTL' (JSMP 2005c:5).

The report found many police officers do not consider domestic violence a crime worth putting through the formal justice process. Minor cases (where there is no bleeding or obvious physical injury) are usually referred back to the families or village officials to be dealt with through the traditional justice process. Even when the PNTL arrest the suspect, they use a 72 hour pre-hearing detention limit to give the victim time to ask to withdraw the case from the formal justice process.

The report also found few PNTL, government officials, or women's groups see this as a problem. Nor did any of the interviewees complain that PNTL were not investigating these cases properly. However, JSMP also found, 'given the cultural constraints a victim has to overcome before she reports domestic violence to the police this state of affairs is not acceptable' (2005c:15).

Interviewees offered a number of reasons for preferring *adat* (traditional law) to the formal justice system to deal with cases of domestic violence:

- traditional law is the law they respect;
- the formal justice process takes too long;
- victims think the formal justice system is a waste of time and gives more support to the suspect;
- *adat* is more effective and efficient; and,
- the court, to date almost always Dili District Court, is too far away.

Only one of the 38 people interviewed said they thought the formal justice system was better than the traditional justice system. This is 'because with *adat* the suspect can do the crime again' and '*adat* does not ask the victim her opinion on the decision' (op. cit.).

Conclusion

Under the terms of Timor-Leste's Constitution, and its obligations under a number of international treaties, women are guaranteed equality before and equal protection from the law. An essential first step to this is to ensure women are treated fairly by the police when they report a criminal act. Following this, they also require a fair judicial process. It is hoped that the JSMP's reports will help raise awareness and as a consequence improve women's access to justice in Timor-Leste.

References

- JSMP (Judicial System Monitoring Programme) 2004, *Women in the formal justice sector: Report on the Dili District Court*, <<http://www.jsmp.minihub.org/reports.htm>>, (accessed online 28 July 2005).
- JSMP 2005a, *Statistics on cases of violence against women in Timor-Leste*, <<http://www.jsmp.minihub.org/reports.htm>>, (accessed online 28 July 2005).
- JSMP 2005b, *Analysis of decisions in cases involving women and children Victims: June 2004-March 2005*, <<http://www.jsmp.minihub.org/reports.htm>>, (accessed online 28 July 2005).
- JSMP 2005c, *Police treatment of women in Timor-Leste*, <<http://www.jsmp.minihub.org/reports.htm>>, (accessed online 28 July 2005).