Improving Access to Justice

1. **Timor-Leste’s Constitution establishes the independence of the courts and judiciary and a framework for safeguarding this independence.** In addition to courts and a prosecution service, the Constitution calls for two independent oversight bodies – the Superior Council for the Judiciary and the Superior Council for the Public Prosecution. The Constitution provides further safeguards to independence in that the President appoints both the Prosecutor General and the President of the Supreme Court. As stipulated by the Constitution, the Prosecutor General has been making annual reports to Parliament. The Ministry of Justice sets overall policy direction for the sector, runs the Judicial Training Center, has responsibilities for legislative research and drafting, and administers the prison and defense services.

2. **The Constitution further establishes a system of courts for the delivery of justice.** The courts envisioned by the Constitution include the Supreme Court of Justice and other judicial courts, the High Administrative, Tax and Audit Court, and Military Courts. The Constitution also provides for the possible establishment of Maritime Courts and Arbitration Courts. To date district courts in Dili, Baucau, Suai, and the Oecusse enclave, as well as the Court of Appeals, have been established. In line with transitional arrangements provided for in the Constitution, the Court of Appeals has assumed the functions of the Supreme Court, until there is sufficient national capacity to staff a supreme court. The Dili District Court previously included the Special Panel for Serious Crimes, but this body was dissolved on May 20, 2005 with the departure of UNMISET. Many of those indicted for serious crimes have not yet been prosecuted, but the recent detention of a number of indicted individuals who have recently returned to Timor-Leste indicates that the court will continue to hear such cases.

3. **Since the restoration of independence there has been progress in some areas of the justice system.** The Office of the Prosecutor General (OPG) and the Public Defense Service have developed basic personnel and case management systems. The courts and prosecution have begun producing statistics, which the Ministry of Justice (MoJ) plans to publish. Legal education campaigns carried out by the MoJ and civil society organizations have contributed to public understanding of the formal justice system, and the Ministry plans to publish a journal intended for a broad audience with updates on the justice system. Much effort has been devoted to the passage of essential legislation, such as the Organic Laws for the Ministry of Justice, the courts, the Office of the Prosecutor General, and the Statute of Judicial Magistrates which regulates judicial careers. Still remaining to be enacted is the Organic Law for the Public Defense.

4. **Despite these improvements, the justice system remains the weakest branch of Timor-Leste’s governance architecture.** The district courts in Baucau, Oecusse, and Suai function only sporadically. They are currently operating, but judges, prosecutors, and defenders are not in residence and depend on UNOTIL to travel to the courts for hearings. The OPG and, to a lesser extent, the courts, have developed formidable backlogs. As of December 2005, the prosecution service had a backlog of almost 3,000 cases, while as of October 2005, there were 474 cases awaiting trial in the district courts. Illegal detention remains a significant problem. The effectiveness of the justice system is
further hampered by the fact that laws and proceedings are not translated into languages understood by all court actors, including Timorese legal professionals, the majority of whom were trained in Indonesia. The Timorese judges, prosecutors, and public defenders appointed by the United Nations Transitional Administration in East Timor (UNTAET) had basic law degrees from Indonesian universities, but none had any substantial professional experience and received scant professional training prior to their appointments. While many carried out their duties with dedication, in some cases lack of experience and oversight led to professional infractions ranging from inconsistent attendance in court to allegations of corruption. All were disqualified in professional examinations in 2004-2005 and have been in full-time training since 2004.

5. The weaknesses of the justice system particularly affect civil cases. Between January and October 2005, only 17 civil cases were tried in all of the district courts, in contrast to 337 criminal cases. During the same period, the backlog for criminal cases awaiting trial was reduced by 29 percent, but the backlog for civil cases increased by 39 percent. In October 2005, the Court of Appeals had a backlog of 54 civil cases, compared to 4 criminal cases. The slow resolution of civil cases affects the confidence of both the community and the private sector in the justice system. The Doing Business Report for 2006 found that Timor-Leste scored poorly on enforcement of contracts, with an enforcement time averaging 990 days and costing USD 183 for every USD 100 recovered.

6. Currently the Timorese courts are operated entirely by international judges, prosecutors, and public defenders. Over 20 legal professionals from other lusophone countries, funded by UNOTIL, UNDP, or bilateral arrangements, have been recruited to fill the vacancies left by the disqualification of the Timorese legal professionals. The system is likely to remain dependent on international court actors until at least 2010, if not beyond. While critical posts were left unfilled during the initial transition from Timorese to international court personnel, planning across the sector aimed at eliminating these gaps has now improved. The Council on Coordination, a donor coordination body made up of the President of the Court of Appeals, the Prosecutor General, and the Minister of Justice, has worked with UNDP to create a funding mechanism and mobilize donor funds to cover the costs of international personnel. Funding for these positions will be a key element of international support to the justice sector for the foreseeable future.

7. The addition of 20 international legal professionals has brought significant improvements in the efficiency of the courts and prosecution. Among criminal cases in the Dili District Court, 242 were decided between January and October 2005, compared to 11 between January and December 2004. International prosecutors have completed an inventory of the prosecution backlog, revised the case assignment system, and accelerated the resolution of cases. Starting with a backlog in the Office of the Prosecutor General of almost 3,000 cases in September 2005, by January the backlog had been reduced to 2,730, with a net reduction each month for the first time since the

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1 UNTAET had executive, legislative, and judicial authority in Timor-Leste from October 1999 until the restoration of independence in May 2002.
2 Court of Appeals, Statistical Data, November 2005
creation of the justice system. International judges have also driven improvements in notification systems and the publication of case schedules.

8. **There has been significant progress in training Timorese legal professionals, which is a key priority for Government and the Judiciary.** Since mid-2004, 27 trainee judges, prosecutors, and public defenders have been in full-time training at the MoJ’s Judicial Training Center (JTC). Following the completion of the training course in mid-2006, the trainees who pass will undergo a year of practical training. Court clerks, court administrators, prosecution office clerks, and public defender assistants have also begun training. Some of the judges will proceed directly to specialized training in order to become judges for the Court of Appeals or the High Administrative, Tax and Audit Court. The MoJ’s JTC will continue to provide post-graduate, professional training, and is currently preparing for a new intake of trainees. The National University of Timor-Leste has recently started a faculty of law in cooperation with Portuguese and Brazilian institutions.

9. **Given the significant national and international resources invested in training, periodic external evaluations of the program will help ensure quality.** The training at the JTC is supported by a range of donors through UNDP’s Strengthening the Justice Sector Program, as well as bilaterally. The teaching is largely done by the international judges, prosecutors, and defenders serving in the court system. Language has been a challenge, particularly in the early stages of the training, as students who received their legal education in Indonesian must study law in Portuguese, while also learning Portuguese language. An evaluation of the training programs would help highlight effective practices while indicating areas for improvement.

10. **While training for Timorese legal professionals is critical, strengthening institutions and systems will be essential in order to make routine the improvements brought about by the international actors.** Much of the progress since 2002 has involved training and the passage of legislation, with less attention to the creation of well-functioning institutions. In this respect the independent oversight institutions play a key role. The Superior Council of Judicial Magistrates (SCJM) oversees judicial careers, including disciplinary actions, providing a mechanism to prevent judicial management from compromising judicial independence. The passage of the Statute of Judicial Magistrates, published in 2002, regulates judicial careers and lays the legal basis for the creation of the SCJM. The SCJM was established in June 2003, but has yet to function properly. It still lacks key staff, such as a judge inspector, judge evaluator, and secretariat staff headed by a judge secretary, who would be responsible for executing decisions of the SCJM. Meetings have been sporadic.

11. **The institutionalization of sound selection, evaluation, and disciplinary procedures for judges and other legal professionals is critical to ensuring independence and professionalism.** It is also necessary for fostering public confidence in the institutions of the justice sector. Making robust selection, evaluation, and disciplinary processes open to public scrutiny would play a key role. In this regard, the publication of deliberations of the SCJM is particularly important. The Statute of Judicial Magistrates stipulates that deliberations of the SCJM are to be published in the Gazette,
but this has been amended to require only certain decisions to be published. Resumption of the practice of publishing all deliberations will help ensure accountability and independence in the judiciary. The international personnel will have a crucial modeling and mentoring role in fostering high standards in the Timorese justice system, and should be subject to the same oversight, evaluation, and disciplinary processes as their Timorese colleagues. Finally, creating guidelines that facilitate public access to case decisions is fundamental to the transparency and independence of the system.

12. **The Superior Council for the Public Prosecution (SCPP) has yet to be created.** The publication of the Organic Law for the Public Prosecution in September 2005 laid the legal basis for the creation of the SCPP. The Prosecutor General then initiated the creation of the SCPP by soliciting the required nomination of members from Government, the President, Parliament, and members of the prosecution service. Like the SCJM, the Superior Council for the Public Prosecution will provide essential oversight, regulation, and discipline of careers in the prosecution service, and will clearly establish the professional independence of the prosecution service. Meanwhile, the Council on Coordination, originally established as a planning and donor coordination mechanism, is evolving into a policy-making body. While coordination is important, a careful balance will need to be maintained in order to ensure that it does not pre-empt the independence of the judiciary, prosecution, and MoJ. The timely establishment of the SCPP is central to strengthening the independence and professionalism of the prosecution service.

13. **The adoption of the Organic Law for the Public Defense will complete the framework for the regulation of public legal professionals.** Timor-Leste’s Constitution guarantees the right to defense. Although the defense service is under the MoJ, it will have its own organic law, currently being drafted, to regulate the service. The draft organic law contains provisions for the organization of the service, the nomination of a director, and the creation of a Superior Council for the Public Defense.

14. **The legal framework and accreditation standards for private lawyers remain to be created.** In addition to the lawyers in the public system, there are approximately 30 private lawyers working for law firms or legal aid organizations in Timor-Leste with no legal framework either for private lawyers or a bar association. Legal aid organizations have provided an indispensable service, particularly during the gaps in staffing in the public defense service brought about by training. Additionally legal aid organizations provide mediation services which parties in civil cases often use, given the costs and duration of court cases. However some lawyers and legal aid organizations are alleged to have poor professional standards, charging high rates for poor or non-existent service. A draft Advocate Statute which would create a bar association and a regulatory framework for lawyers was produced by the Lawyers Association of Timor-Leste and submitted to Parliament in 2004, but remains under consideration by a parliamentary committee. The next step would be to appeal for submissions from the public, practicing lawyers, and other professional groups before finalizing the statute. Reliable mechanisms of accreditation are also an issue, as a number of universities, in addition to the newly founded law faculty at the National University, are now offering law degrees.
15. Timor-Leste has drafted a new Penal Code, which might usefully be subject to review and perhaps amendment. Passed by the CoM as a decree law in December 2005, the law has yet to be promulgated by the President. The draft law criminalizes “Denial of Justice” by judges, which would allow for criminal charges to be brought against judges with respect to their decision-making, with sentences of up to eight years. This article has the potential to prejudice the independence of judges and is unnecessary, as the Statute of Judicial Magistrates adequately provides for the transparent discipline of misconduct and incompetence by judges. It is also runs counter to trends in most other civil law and lusophone countries. Additionally, several articles seem to violate the principle of proportionality between the seriousness of the offence and the severity of the sentence, with sentences of two to four years for relatively minor offenses, such as driving without a license, the disruption of a religious procession, the use of false weights and measures, breaking seals and marks, and disobedience of orders to disperse. The criminalization of such offences will also increase the burden on the already weak court system. Punishment may be more appropriately provided through civil penalties. Finally, the definition of torture in the draft code does not adequately conform to the Convention Against Torture, which Timor-Leste has ratified, and therefore may usefully be amended.

16. Despite some improvements, illegal detention is a continuing problem, making the creation of an improved case management system a matter of priority. As of September 2005, there were 67 suspects, out of a prison population of approximately 270, who had been detained longer than six months without warrant or trial. Even among those not in illegal detention, pre-trial detention can last for months. An UNOTIL task force on illegal detention has resolved 80 percent of these identified cases, but systematic changes in case management are required to prevent the problem recurring. The institutionalization of standard case management is essential to routinize communications between police, prosecution, courts, and prisons, and reduce the incidence of illegal detention.

17. Police understanding of the use of the 72-hour preventative detention has strengthened: the prosecution and the courts now need to follow suit. The first stage in illegal detention has been keeping suspects in preventative detention beyond the legal 72-hour limit within which a suspect must appear before a judge. Police adherence to this regulation has improved, but this progress has been undermined by the slowness of the prosecution and courts in bringing detainees to court. Conversely, the release of criminal suspects from preventative detention undermines the confidence of the community in the justice system and in police competence.

18. The challenges surrounding the justice system significantly constrain the ability of women to seek and receive justice. “Facilitate access to justice for women and develop the legal means to fight violence and other crimes perpetrated against women …” is a policy goal of the NDP (9.23). Cases of violence against women make up a large portion of court cases in Timor-Leste. For example a court monitoring report for October 2005 showed that of 26 cases heard, 14 (53 percent) involved violence against women. Yet when cases are resolved, the sentences are often light. Timor-Leste’s new

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3 JSMP Court Monitoring for the Month of October 2005
Penal Code reinforces this approach, with very light penalties for rape, with a basic penalty of two to ten years. These cases cannot be satisfactorily resolved in the traditional justice system, and the fact that cases of gender-based violence (GBV) are being brought to court at all constitutes an improvement over the Indonesian era. However, given that crimes such as rape and domestic violence tend to be under-reported to start with, light sentences and the slow resolution of cases involving GBV act as a further deterrent to female victims seeking justice.

19. **Improving access to justice for women calls for specific practical changes.** The new office building for the OPG will include a private interview room for cases of GBV. Consideration could also be given to recruiting a social worker and psychologist to assist victims and witnesses in such cases. More generally, the police, prosecution, and courts may wish to undertake a joint analysis of serious cases of GBV, which could then serve as the basis for measures to prioritize serious cases. Incorporating training on gender into JTC training would be useful, including training on handling GBV and other crimes affecting vulnerable groups.

20. **Better planning, budget execution, and administration will promote improved judicial services.** In FY2005, the courts assumed control of their own budgets from the MoJ, but budget execution was poor, at only 55 percent. Lack of articulation between planning and budget preparation, combined with lack of flexibility and a high degree of centralization in financial administration, hampers service delivery. The district courts face shortages of essential supplies and equipment, such as fuel for generators and vehicles, telephones, fax, and office supplies. Broken photocopy machines lead to case documents being taken out of court buildings to be photocopied in shops or at the offices of NGOs. Improving planning and budget preparation, the finance and administrative systems of the MOJ, courts, and prosecution service, as well as improving coordination with the MoPF, could lead to increased responsiveness. A continuing problem for both defense and prosecution remains the lack of funds to pay for transport, food, and accommodation for witnesses and victims from the districts for court appearances. Providing an imprest account for this purpose is a badly needed first step in improving access to justice and public perceptions of the justice system. In the future it would be desirable for these independent institutions to have statutory budgets that are approved directly by Parliament, or otherwise protected from sequestration.

21. **Customary justice mechanisms are widely used in many parts of the country, and access to the formal justice system is limited.** However there is no law or policy establishing a legal framework for linking customary practice to the formal justice system. Given the pressure on the court system, the MoJ may wish to develop a definition of jurisdiction with respect to customary and/or civil arbitration mechanisms. The creation of a hierarchy of dispute resolution mechanisms able to produce legally binding decisions could lead to many civil and minor criminal cases being resolved before reaching the formal court system. Among the conclusions of a National Dialogue on

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4 JSMP Court Monitoring for the Month of October 2005

By comparison driving without a license or disturbing a funeral procession are punishable by up to two years in prison, while certain forms of defamation can be punished with up to three years in prison.
justice held in March 2004 was the recommendation that the Government establish an independent commission to create conditions for the integration of customary law into the formal justice system, particularly for civil cases and minor crimes. Significant analytical work has already been undertaken in this area.\(^6\) The Land Law Program under the MoJ may provide some useful models for approaching these policy questions.

22. **Building on production of statistics by courts and prosecution, the MoJ may wish to consider developing basic performance indicators for the justice system.** Such indicators could include backlogs in prosecution and courts, time needed to process civil and criminal cases, resolution of cases involving women, total hours that court is in session, and number of cases remanded. Consideration could be given to developing simple means of measuring public perceptions of service delivery in the justice system. The production of gender-disaggregated statistics would be an important step in improving women’s access to justice, allowing women’s cases to be tracked through the system and ensuring their timely processing. Such indicators could be published in the Gazette or the planned quarterly bulletin from the MoJ.

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<th>Box 13: Suggested Actions</th>
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<td>• Complete standardized case management system</td>
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<td>• Regularly collect and publish statistics from the justice system</td>
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<td>• Make needed small capital investments in courts, including installation of phone and fax systems, and create imprest accounts to finance daily operations</td>
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<td>• Complete the staffing of the SCJM, including, if necessary, the appointment of international personnel to key positions; publish the deliberations of the SCJM in the Gazette</td>
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<td>• Nominate the Superior Council for the Public Prosecution; develop a performance evaluation system for prosecutors</td>
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<td>• Submit the Organic Law for Public Defenders, including a code of conduct and disciplinary procedures, to the Council of Ministers and Parliament; appoint a Director; develop a performance evaluation system for public defenders</td>
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<td>• Create summaries of laws in Tetum for broad distribution</td>
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<td>• Open private interview room for victims of gender-based violence in the Office of the Prosecutor General; recruit a social worker and psychologist to assist victims and witnesses in such cases</td>
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<td>• Develop plan for the sustainable function of all four district courts on location, particularly Suai and Oecusse</td>
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