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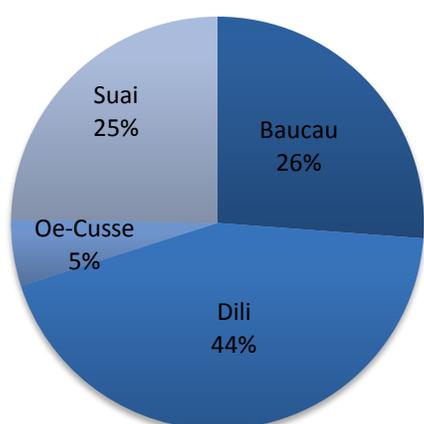
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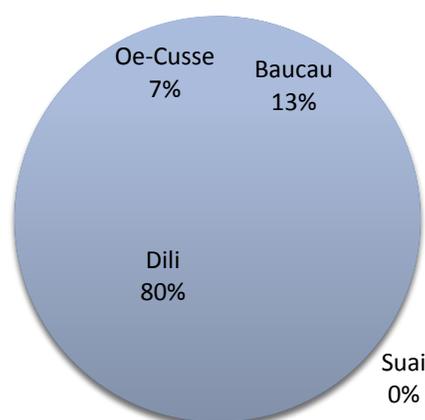
EXECUTIVE SUMMARY

2013 was a productive year in the courts, full of developments and achievements, including the adjudication of several important cases. Based on the cases it monitored, JSMP believes that the courts have continued to improve their institutional responsibility to ensure justice in the cases brought before them.

In 2013, JSMP monitored 496 cases, comprising 481 criminal cases and 15 civil cases, an increase of 13% from 2012. Criminal cases included crimes committed by government officials in exercising their functions such as corruption, misuse of authority and embezzlement, as well as homicide, rape, sexual abuse of minors, incest and crimes against humanity, with a range of sentences reflecting the severity of the crimes committed. For a full list of the types of cases monitored by JSMP in 2013, see Annex A – Statistics.



Criminal cases monitored by JSMP in 2013



Civil cases monitored by JSMP in 2013

JSMP has included in this report analysis of two important cases involving allegations of corruption against the former Secretary of State for Environmental Affairs and a civil servant working at the Ministry of Finance. JSMP has also included analysis of the “Hera Case” heard by the court in May and June 2013, which involved members of the Timor-Leste National Police (PNTL) and related to the results of the 2012 election. JSMP believes that the Hera Case was controversial because the offences occurred during unrest resulting from conflict between political parties and involved security officers. This ignited a fierce debate in the community between those that were for, and those that were against, the defendants. JSMP believes that this case also became tainted by political interests that potentially influenced and pressured court actors before, during and after the court process.

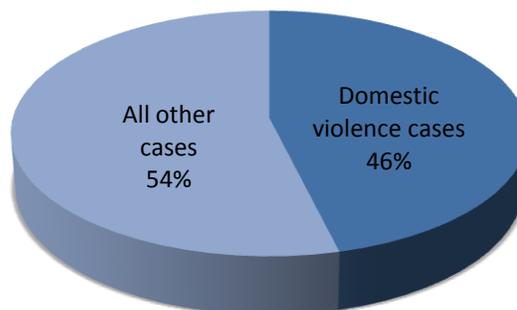
Beyond the permanent courts of Dili, Bacau, Suai and Oe-Cusse, JSMP also monitored the progress of Timor-Leste’s mobile courts, which continue to make a valuable contribution to improving access to justice. However, JSMP has also identified scope for improvement, having observed the court conduct open trials of cases involving sexual violence and minors in 2013.

The year 2013 has seen mixed results from the National Parliament. JSMP’s Parliamentary Watch Project has observed Parliament become more open to the views of civil society (for example, in relation to the draft Land Law Package), and approve several important new laws, including the law approving the 2013

State Budget, and the amendment to the law on *Money Laundering and the Financing of Terrorism* and related *Penal Code* provisions. However, Parliament was noticeably less productive than previous years. It passed fewer laws and did not reschedule the discussion and approval of pending draft laws beyond their time limit for debate. While this may be attributable in part to the ongoing challenges associated with using the Portuguese language and a lack of expert support staff, JSMP has observed that lateness and absenteeism amongst Members of Parliament (MPs), whether for official purposes such as study tours or otherwise, has also hampered Parliament's productivity.

Throughout 2013, JSMP continued to monitor the broader justice sector, including its annual budget allocation, infrastructure and other resources, the number of court actors (including judges, prosecutors, public defenders and clerks), training of court actors, the ongoing issue of language and interpreters, and remuneration.

JSMP has also included in this report a section analyzing the situation of gender equality in Timor-Leste. Of the 481 criminal cases JSMP monitored in 2013, 222 involved offences characterized as domestic violence, over 46% of all criminal cases monitored by JSMP. Simple offences against physical integrity constituted the majority of cases (188), followed by mistreatment of a spouse (28), serious offences against physical integrity (3) and aggravated homicide (3). Needless to say, domestic violence in Timor-Leste is an incredibly important issue. However, despite the passage of several years since the promulgation of the *Law Against Domestic Violence*, its implementation continues to be inadequate, with prosecutors incorrectly charging accused with offences carrying lighter penalties, and courts ordering suspended sentences and fines where terms of imprisonment would be more appropriate. In this report, JSMP focuses on gender-based violence in 2013, including recent achievements in the prosecution of domestic violence offences, statistics, and the ongoing inconsistent application of the *Penal Code*. However, in December 2013, JSMP also published the report *Law Against Domestic Violence: Obstacles to implementation three years on*, which provides a broader, more in-depth analysis of the LADV's implementation since July 2010.



Domestic violence cases as a proportion of all cases monitored by JSMP in 2013

For the first time, this report includes a new section on minors in the justice system. This section reports on JSMP's monitoring of the courts' progress in trying cases involving minors, trends in sentencing defendants convicted of sexually abusing minors and the growing number of incest cases being brought before the courts. It also identifies challenges that minors face in accessing justice.

JSMP hopes that the *Overview of the Justice Sector 2013* will inform the public about the current state of Timor-Leste's justice system, its recent achievements and the ongoing challenges it faces. Throughout this report, JSMP has provided analysis and recommendations relevant to many institutions in Timor-Leste. These recommendations include:

1. The National Parliament should immediately reschedule pending draft laws for consultation and debate, and develop a National Legislative Program to ensure legislative policies align with national priorities.

2. The National Parliament should increase the overall number of laws it debates and approves by ensuring meetings and plenary sessions start on time and with sufficient MPs to establish a quorum, and by applying sanctions based on the Internal Rules of the Parliament against MPs who do not adhere to working hours without justification.
3. As a matter of priority, the National Parliament should provide MPs with draft laws and explanatory materials in Tetum and recruit additional expert staff to support MPs in their consideration and debate of draft laws.
4. In accordance with the *Criminal Procedure Code*, in cases involving a sexual offence against a minor, the courts should – as a general rule – close proceedings to the public, and in cases characterized as sexual violence, the court should consider closing proceedings to the public where it would preserve the human dignity of the victim.
5. The Government should maintain its support of the LTC to ensure there are enough court actors to deal with public demands for justice.
6. The Government, agencies and non-government organizations supporting the LTC should develop training materials and textbooks to improve the quality and consistency of training delivered to court actors.
7. The Government, through the Ministry of Justice, should allocate sufficient funds to each of the judicial institutions for training to increase court actors' knowledge in high priority areas such as gender-based violence, fill gaps in current court actors' knowledge relating to children's cases, rules of evidence and the *Civil Code*, and specific fields such as transnational crime, corruption, drug crimes, human trafficking and money laundering.
8. The courts and the Ministry of Justice should prioritize the use of Tetum where Portuguese would ordinarily be used during court proceedings, and issue official documents such as written decisions in Tetum.
9. The courts should prioritize the recruitment of professional and quality translators and interpreters in the various languages spoken in Timor-Leste.
10. The National Parliament and the Ministry of Justice should allocate sufficient funding and human resources to improve the welfare of court actors through the recruitment of competent international prosecutors, and the provision of appropriate transportation and facilities, better security, and remuneration appropriate to court actors' duties and status.
11. The courts should develop sentencing guidelines to assist judges in determining the appropriate penalty in cases of domestic violence and making orders for civil compensation of victims. The guidelines should make clear that compensation orders cannot be substituted for criminal penalties (prison sentences and fines), and that payment of compensation to the victim should be prioritized over payment of fines to the State.
12. The Government should allocate sufficient resources to the Public Prosecution Service and the Timor-Leste National Police to ensure that all protection orders, provisional alimony orders, and sentences in domestic violence cases are effectively executed and monitored, including suspended sentences and payment of fines.

13. The Public Prosecution Service should develop legal guidelines on charging in domestic violence cases that clarify repeated violence is not a pre-requisite for charging an offender with mistreatment of a spouse under Article 154 of the *Penal Code*.

14. When developing legal guidelines on charging in domestic violence cases (recommended above), the Public Prosecution Service should ensure it includes clear guidance on how the use of weapons and other aggravating factors should be taken into account in determining appropriate charges.

15. Court actors should receive training in how to deal with cases involving children, both as victims and perpetrators, and the LTC should implement child-focused training and employ appropriate trainers to deliver this training as a priority.

16. All relevant institutions, including the National Parliament and the Minister of Justice, should prioritize the implementation of recommendations made in JSMP's 2012 report *Incest in Timor-Leste: An Unrecognized Crime* as a matter of urgency, and consider additional ways to prevent and detect incest such as community education and awareness-raising initiatives.

INTRODUCTION

JSMP was established on 28 April 2001 with the aim of monitoring the Indonesian Ad Hoc Tribunals on human rights violations and the Special Panels for Serious Crimes in Timor-Leste. During the last ten years, JSMP has continued to monitor the justice system in Timor-Leste and advocated to promote transparency and accountability, and to uphold the rule of law. JSMP's vision is a democratic society where justice and human rights are guaranteed for all

This *Overview of the Justice Sector Report* has been compiled to evaluate developments and challenges that have occurred in 2013 and provides a number of recommendations for future improvements.

In addition to its work monitoring the courts, National Parliament and the justice sector more broadly, JSMP has continued to provide legal education to the community and conduct advocacy on a number of issues including the crime of incest, the implementation of the *Law Against Domestic Violence* and the use of suspended sentences in cases of domestic violence according to the *Penal Code*.

This report is structured as follows:

Part 1– Important Developments in the Justice System in 2013

This section discusses JSMP's observations of interference in the judicial process, the work of the National Parliament in 2013, and JSMP's monitoring of cases involving corruption, the 'Hera Case' and Timor-Leste's mobile courts.

Part 2 – Challenges and Obstacles in the Justice Sector

This section assesses the challenges and obstacles that faced the justice sector in 2013, and includes an analysis of its budget allocation and the number of court actors, clerks and new staff, as well as a discussion of issues surrounding training, language and interpreters, infrastructure and resources.

Part 3– Gender Equality

This section focuses on the important issue of gender equality in Timor-Leste, and includes discussion of domestic violence cases, relevant statistics, progress and obstacles in the implementation of the *Law Against Domestic Violence*, and the inconsistent application of the *Penal Code*.

Part 4– Minors in the Justice System

This section considers developments relating to minors in the justice system, including analysis of cases involving sexual abuse of minors, challenges confronting minors in the justice system, and a discussion of the crime of incest.

The report ends with a conclusion providing a helpful summary of the report's findings, and recommendations for improving the justice system in the future. It also includes annexes containing statistics, and further information about cases monitored by JSMP and processed by the courts in 2013.

1. IMPORTANT DEVELOPMENTS IN THE JUSTICE SYSTEM IN 2013

1.1. Independence of the courts

In 2013, JSMP observed several incidents that should be avoided in the future to prevent creating a public perception that the courts have lost their independence, credibility and transparency. For example, in the corruption case involving Lucia Lobato, former Minister of Justice, the President of the Court of Appeal, Claudio de Jesus Ximenes, was accused of misuse of authority and interference in the decision relating to the application of *habeas corpus* submitted by the defense team to the Court of Appeal in January 2013. These allegations are particularly concerning because other claims had already been made against Claudio Ximenes in relation to his alleged involvement and communication with Lucia Lobato while during the initial court process.

With these allegations in the background, the public prosecutor filed a notice of appeal to the Court of Appeal submitting that Claudio Ximenes could not be considered neutral in his role as member of the panel considering the extraordinary appeal, because he was also a member of the panel that dealt with the habeas corpus application. Consequently, on 16 August 2013, the Court of Appeal sat as a panel of five judges and issued a decision to suspend Claudio Ximenes from the case.

JSMP believes that the allegations against Claudio Ximenes are very serious. However, they suddenly disappeared without any thorough investigation and conclusion, apart from his suspension from the case. This affects the credibility of the courts and the faith of the public in this institution, especially considering that the Court of Appeal is the highest legal institution in Timor-Leste. At the time, JSMP urged that an independent team be established in order to conduct an investigation into the allegations but unfortunately this has not occurred. Until now, there has been no explanation about the credibility of the allegations or the situation more generally. Further, on 10 February 2014, Claudio Ximenes submitted his formal resignation to President Tau Matan Ruak,¹ and is reported to have moved to Portugal.

In addition to these allegations, JSMP is concerned with political behavior that attempted to directly or indirectly influence the investigative process into certain cases and the independence of the courts. JSMP is particularly concerned about the current Prime Minister's reaction to a summons issued by the Anti-Corruption Commission (KAK) against the Minister of Finance, and his criticism of the court's decision in the case involving the former Minister of Justice, both broadcasted live by Timor Leste Radio and Television (RTTL) in mid-February 2013. JSMP believes that such interference distorts the principle of separation of powers and impacts the efforts of everyone working towards strengthening Timor-Leste's justice system, a system that is still being consolidated.

1.2. The adjudication of cases involving corruption

In 2013, JSMP observed 12 cases involving crimes characterized as corruption that were tried by the courts. From these 12 cases, in three cases the offenders received prison sentences and were ordered to pay compensation to the State after being found guilty of committing the crime of corruption, in three other cases, the defendants were acquitted by the courts due to insufficient evidence of their involvement, two were suspended by the court because the loss suffered by the State was very small, one was settled with a fine because the defendant was willing to repay the money that had been

¹*The Independent*, 28 February 2014.

taken, and one is still being processed. JSMP was not present to monitor the two remaining cases when the final decisions were handed down. Most of the cases involved the crimes of misuse of authority, embezzlement, falsification of documents and other crimes (see Annex B for details including the articles violated).

JSMP has selected two cases that will be discussed in detail from the initial stages through to the final decision. The first case involved the Secretary of State for Environmental Affairs and the second case involved a Finance Officer at the Ministry of Finance. It is important to examine these two cases in this report because of the positions held by the defendants and the losses incurred as the result of the defendants' actions. In addition, the decisions reached in these cases reflect positively on the efforts and commitment of the State to eradicate corruption through the courts.

Case 1: Former Secretary of State for Environmental Affairs and staff

Legal facts

The Public Prosecutor alleged that in December 2010, the defendant Abilio de Jesus de Lima, Secretary of State for Environmental Affairs, ordered the defendant Ilda da Costa Be Loi, treasurer of the Secretary of State for Environmental Affairs, to prepare a Commitment and Payment Voucher (CPV) in order to take money from petty cash totaling US\$5,500 to organize a Christmas get-together.

After taking the money, the defendant Abilio Lima called the defendant Ilda da Costa Be Loi by telephone and asked her to bring the money to his place of residence. After she arrived at the home of the defendant Abilio de Lima, he took US\$200 for his personal use and requested the defendant Ilda da Costa Be Loi to prepare a report for this expenditure.

The defendant Abilio de Lima also gave US\$1,600 to the defendant Antonio Soares Carvalho, Chief of Staff of the Secretary of State for Environmental Affairs, to share with the permanent staff and those who were working as interns in the Office of the Secretary of State for Environmental Affairs. The defendant Antonio Soares Carvalho also received US\$400 from the defendant Abilio de Lima.

Charges of the Public Prosecutor

The public prosecutor charged the defendant Abilio de Lima with violating Articles 294 and 295 of the *Penal Code* relating to the crimes of active corruption and embezzlement, the defendant Ilda da Costa Be Loi was charged with violating Articles 292 and 304 of the *Penal Code* relating to the crime of passive corruption and falsification of documents, and the defendant Antonio Soares Carvalho was charged with Article 295 of the *Penal Code* relating to the crime of embezzlement.

Examination of evidence and witness testimony

During the trial the defendant Abilio de Lima rejected the charges of the Public Prosecutor and testified that, as the Secretary of State, he only gave guidance to his Chief of Staff, Antonio Soares Carvalho, to prepare a CPV to take money from petty cash. The defendant claimed he had no knowledge of the amount taken.

Abilio de Lima also testified that he called the defendant Ilda da Costa Be Loi by telephone and asked her to bring the money to his place of residence to be given to those who had requested assistance. The defendant claimed that previously, he had provided his own money to those requesting assistance from

him in his capacity as Secretary of State.

The defendant Antonio Soares Carvalho told the court that, as Chief of Staff, he was never told to spend any money. However, he testified that perhaps the Secretary of State told the finance section to fill out a CPV and he signed it after it was prepared.

Antonio Soares Carvalho also testified that he went together with Ilda da Costa Be Loi to take the money and after collecting it from the bank, the defendant Abilio de Lima called them by telephone and asked them to bring the money to his residence. After the money was given to the defendant Abilio de Lima, he took US\$200 and requested Ilda da Costa Be Loi to prepare an expenditure report although the activity was not carried out. In addition, Antonio Soares Carvalho testified that Abilio de Lima gave US\$400 to him without a clear reason and the remaining US\$ 1,600 was shared amongst the staff and interns.

The defendant Ilda da Costa Be Loi testified that the defendant Abilio de Jesus de Lima told her to prepare a CPV that was then signed by the Chief of Staff, who gave the authorization that was approved by the Vice Minister. After the money was taken from the bank, the defendant Abilio de Jesus de Lima called her by telephone and asked her to bring the money to his place of residence. After she arrived at his residence, the defendant took US\$200 and requested for her to prepare a report about the expenditure.

The defendant Ilda da Costa Be Loi then testified that the Christmas get-together did not take place because they divided up the money and did not give it to the Christmas get-together organizing committee. Initially, the defendant did not make a falsified expenditure report because she did not know how. However, she claimed the defendant Abilio De Lima threatened that he would remove her from her position, and she then reluctantly prepared the expenditure report.

Decision of the Court of First Instance²

Based on the evidence submitted by the witnesses, the court found the defendants guilty of committing the crimes of active corruption (Abilio de Lima), embezzlement (Abilio de Lima and Antonio Soares Carvalho), passive corruption and the falsification of documents (Ilda da Costa) in December 2010. The Dili District Court decided this case on 30 October 2013 and sentenced the defendant Abilio De Lima to five years imprisonment, and ordered him to pay compensation of US\$5,300 and court costs of US\$50.

The defendant Antonio de Carvalho was sentenced to three years and six months imprisonment, and ordered to pay compensation of US\$5,300 and court costs of US\$20.

The defendant Ilda da Costa Be Loi was sentenced to one year and three months jail, suspended for three years and six months, and ordered to pay court costs of US\$20.

²JSMP Press Release, *Dili District Court convicts three defendants for committing crimes in their capacity as civil servants*, 5 November 2013

Case 2: Finance Officer at the Ministry of Finance

Legal facts

The defendant Joaquim José Madeira da Cruz was working as a finance officer for a financial management capacity building program within the Ministry of Finance in 2010. This program received multilateral funding support from Australia, New Zealand, Norway and other donors. This program was implemented through cooperation with the World Bank. The money was used to support officials within the Ministry of Finance, mainly for scholarships, salaries for national and international advisors, and capacity building. However, the defendant Joaquim José Madeira da Cruz syphoned off money from the program into a private bank account at Mandiri Bank without the knowledge of the Ministry of Finance. This was only discovered when the Department of Tax informed the Ministry of Finance that the tax of international advisors had not been paid for eight months, starting from March 2012.

The other two defendants were Domingos Paixão da Cruz and Rosalina da Conceição Pinto, the wife of the defendant Joaquim José Madeira da Cruz. These defendants helped the defendant Joaquim José Madeira da Cruz take some of the money and buy a private car and construction materials to build a house in Lospalos. This single storey house was owned by the defendant Joaquim José Madeira da Cruz.

Charges of the Public Prosecutor

The public prosecutor charged the defendant Joaquim José Madeira da Cruz with violating Articles 295(1) and (3), 304(1) and (2) of the *Penal Code* relating to the crimes of embezzlement and aggravated forgery. The prosecutor charged the other defendants with violating Article 313(1)(a) of the *Penal Code* relating to the crime of money laundering, and *Law 17/2011 against Money Laundering*. In committing these acts, the defendants caused the State to lose US\$346,712.33.

Examination of evidence and defendant testimony

During the trial, the defendants exercised their right to remain silent based on Article 60(c) of the *Criminal Procedure Code*, which provides that a defendant may provide a statement, or not provide a statement, at any stage of the hearing.

Several witnesses from the Ministry of Finance testified that the Department of Tax advised them that tax had not been paid on the salaries of advisors, and that they then conducted an internal investigation that revealed the defendant Joaquim José Madeira da Cruz had been transferring money from the World Bank program to his personal account at Mandiri Bank. The witnesses also testified that, when they confronted the defendant Joaquim José Madeira da Cruz, he confessed to them that he had stolen the money.

Further witnesses, including three people who were sent out to buy the materials, testified that they took the materials to Lospalos, where they helped build the new home of the defendants. They also testified that the defendants paid their salaries by cheque, and that they collected their salaries at Mandiri Bank.

Further evidence was submitted to demonstrate that the defendant Joaquim José Madeira da Cruz earned US\$900 per month, and that the house in Lospalos and Pajero represented significant unexplained wealth.

Final recommendations

The public prosecutor stated that there was no doubt that the evidence revealed during the trial demonstrated that the defendants had diverted money that did not belong to them into their own personal bank accounts.

The public prosecutor submitted that the defendant Joaquim José Madeira da Cruz used some of the stolen US\$346,712.33 to build a house for himself in Lospalos, and to buy a car for the defendant Rosalina da Conceição Pinto, his wife, even though both defendants knew that the money was a proceeds of a crime that was extremely damaging to the State.

These facts were clear and well founded because they were ascertained from original documents from the Ministry of Finance and were corroborated by testimony given by witnesses employed by the Ministry of Finance, and three witnesses employed by the defendants.

The public prosecutor also submitted that, during the trial, the defendants did not produce any legitimate evidence explaining from where they obtained an amount of US\$346,712.33. Further, the defendant Rosalina da Conceição Pinto testified that the money came from the office of her husband, the defendant Joaquim José Madeira da Cruz.

Based on the facts revealed during the trial, the public prosecutor requested the court to sentence the defendant Joaquim José Madeira da Cruz to 10 years in prison, the defendant Domingos Paixão da Cruz to six years in prison and the defendant Rosalina da Conceição Pinto to five years in prison in accordance with their respective levels of involvement.

The public defender requested that the court hand down an appropriate sentence against the defendants, especially given Joaquim Madeira da Cruz and Rosalina da Conceição Pinto were husband and wife with five children. The public defender put forward that, if the court punished the defendants in accordance with the recommendations of the public prosecutor, this would negatively impact on their children because both of their parents would be imprisoned for a long period.

Decision of the Court of First Instance

After examining all of the facts relating to this case, on 26 July 2013 the Dili District Court settled the matter and sentenced the defendant Joaquim Madeira da Cruz to 11 years in prison, the defendant Domingos Paixão da Cruz to six years in prison, and the defendant Rosalina da Conceição Pinto to four years and six months in prison.

In addition to the prison sentence, the court also ordered the defendants to pay compensation of US\$346,713.33 to the State, and ordered the confiscation of the house built by the defendants in Lospalos and the Pajero vehicle that they purchased with the proceeds of the crime they committed.

The court handed down the sentences after evaluating the facts that were revealed during the trial and after the court found that all of the facts alleged by the public prosecutor were true.

Appeal and decision of the Court of Appeal

After the court handed down its decision in this case, the defendant submitted an appeal to the Court of Appeal, and the Court of Appeal confirmed the decision of the Court of First Instance. The appeal

process was concluded on 14 November 2013.

JSMP believes that this case is extremely important and highlights a very positive development in relation to the courts' consideration of corruption cases in 2013. In particular, the adjudication was impartial and the appeal process was quite swift in comparison with other cases. The Court of Appeal only needed approximately four months to examine this case and issue its decision.

1.3. The "Hera Case"

The court's adjudication and decision in the "Hera Case", a case of aggravated murder involving two members of the Timor-Leste National Police (PNTL) in Hera, was another positive development in 2013 because the court resisted outside influence in reaching its decision.

The two defendants were members of the Dili District PNTL and were stationed in Becora. The offences allegedly occurred on 16 July 2012 in Hera, Dili District. The court commenced hearing the case on 27 May 2013, continuing on 5 June 2013, and issued a decision on 25 June 2013.³

In his indictment, the public prosecutor stated that, on 15 July 2012, the CNRT Party National Conference at the Dili Convention Centre was broadcasted live by Timor-Leste Radio and Television (RTTL). This caused unrest in Dili, and Mota Ki'ik Sub-Village, Hera, Dili District, because several groups were unhappy with comments made at the National Conference.

On 16 July 2012, the PNTL ordered officers stationed at Becora Police Station who were on duty, including the two defendants, to take control of the unrest in Mota Ki'ik Sub-Village. Some youths, including the victims in this case, had allegedly blocked the main road, and were burning tyres, as well as stoning and searching public and private vehicles traveling on the road. When they arrived in Hera, the officers fired warning shots in the air in an attempt to control the situation. When they heard the shots, the youths dispersed.

At the time of the offence, the victim, a student at UNDIL, and his friend were running from the side of the road into their houses. The defendant Agostinho da Costa Cardoso pursued and arrested the victim, then hit him in the head with a helmet. The defendant then dragged the victim out of his house, punched and kicked him, and forced him into the police car. When he got into the car, the defendant Mariano da Silva shot the victim in the stomach with a pistol. The victim died of his injuries.

The public prosecutor charged the defendant Agostinho da Costa Cardoso with violating Article 145 of the *Penal Code* for committing simple offences against physical integrity, and the defendant Mariano da Silva with aggravated homicide pursuant to Articles 138 and 139 of the *Penal Code*.

The witness presented by the PNTL was with the defendants when they tried to take action to calm the situation, but did not see the defendant Mariano da Silva shoot the victim. However, he heard a shot at that time the victim was with the defendant Mariano da Silva. The other two witnesses presented by the public prosecutor stated that they saw the defendant Mariano shoot the victim with a pistol causing the victim to collapse inside the car.

³Refer to JSMP Case Summaries, May and June 2013, for more detail.

The Dili District Court found that the defendant Mariano da Silva Antonio had shot the victim when trying to take control of the situation in Hera, while the victim was getting into the police car to be taken to Dili following his arrest.

The court decided the matter and sentenced the defendant Mariano da Silva Antonio to 16 years imprisonment for committing the crime of aggravated murder. The defendant Agostinho da Costa Cardoso was acquitted from the charge of committing simple offences against physical integrity because the deceased victim's family did not make a complaint, which is necessary to prosecute this type of semi-public crime.⁴ That said, had the defendant Agostinho da Costa Cardoso been charged more appropriately with committing an aggravated serious offence against physical integrity (Articles 146 and 147) or even as an accomplice to homicide (articles 32 and 138), his prosecution would not have been reliant on a complaint and his involvement could have been subject to proper judicial scrutiny.

Despite the failure of the prosecution to appropriately charge Agostinho da Costa Cardoso - an all too common occurrence - the court still deserves some acknowledgement for this case. JSMP suspects that the court actors involved received considerable unwanted attention and were subject to strong reactions from a number of Timor-Leste authorities, including the PNTL. However, the court overcame this outside influence, maintained its positions and ensured justice in relation to the primary perpetrator.

1.4. The National Parliament

Achievements

The National Parliament achieved some positive developments in the area of legislation, oversight and political decision-making in 2013. MPs were open to hearing the views of civil society, even though in the end the voices and aspirations of the people that were channeled through civil society were not always accommodated. Further, several MPs took the initiative on multiple occasions to invite JSMP to discuss certain issues, such as the results of a JSMP survey on the welfare of judicial actors, the JSMP report *Law Against Domestic Violence: Obstacles to Implementation Three Years On*, and attended events organized by JSMP. On several occasions, Committee A of the National Parliament also invited JSMP to observe discussions on the draft *Law against Money Laundering* which were held in Tibar-Liquicá in July 2013.

Challenges

The National Parliament is the organ of sovereignty of the Democratic Republic of Timor-Leste that represents all Timorese citizens and is vested with legislative, supervisory and political decision-making powers set out in Article 92 of the Timor-Leste Constitution. Politically speaking, this means that the fate of the Timorese community depends on how the MPs manage and utilize their authority effectively whilst performing their service.

However, in 2013 the National Parliament passed just five laws. In comparison, despite being busy with campaigns relating to two general elections in 2012, the National Parliament passed 10 laws in 2012,

⁴ Article 145(2) of the Penal Code provides that the prosecution of simple offences against physical integrity (causing harm to the body or health of another person) depends on the filing of a complaint.

and a total of 18 laws in 2011.⁵ This steady decline is disappointing given Timor-Leste needs a range of new laws to ensure justice for its people. While JSMP acknowledges that the National Parliament in Timor-Leste faces a unique set of challenges and constraints, it urges MPs to dedicate themselves to the debate and passage of more laws to continue building and strengthening Timor-Leste's legal framework.

Table 1.4.1: Draft laws passed in 2013

Name of draft law	Date of proposal	Date of approval	Date of entry into force	Vote		
				For	Against	Abstain
Law No. 02/2013, dated 1 March 2013, on the 2013 State Budget	18/12/2012	18/02/2013	28/02/2013	64	0	0
Law No. 3/III Parliamentary Authorization to legislate on Execution of Sentences and on Custodial and Non-Custodial Measures.	18/04/2013	21/05/2013	22/08/2013	36	0	0
Law No. 4/III Organic Law of the President	27/05/2013	29/10/2013	-	44	0	1
Amending Law No. 17/2011 on Money Laundering, and the Financing of Terrorism and Third Amendment to Articles 133 and 113 of the Penal Code	27/05/13	12/7/2013	06/08/2013	52	0	0
Amending Law No. 5/III (1a) Organic Law on Financial Inspection No. 9/2011, dated 17 August and Law on Managing State Finances No. 13/2009	17/06/2013	2/7/2013	23/07/2013	32	2	18

⁵ JSMP Parliamentary Watch Project Annual Report 2012, page 7.

Table 1.4.2: Resolutions passed in 2013

Name of resolution	Date of proposal	Date of approval	Vote		
			For	Against	Abstain
Resolution No.7/III (1 ^a) on removing the immunity of Francisco da Costa Burlaco from his position of Secretary of State for Institutional Strengthening		7/5/2013	55	3	2
Resolution No.10/III (1 ^a) on the inappropriate use of force by members of the PNTL		5/6/2013	45	0	1
Resolution No. 11/III on Financial Action Plan of the National Parliament 2014.		26/09/ 2013	53	0	0
Resolution No. 6/III/1 ^a on Recognizing the Importance of UN Assistance to Guinea-Bissau.	24/01/2013	28/01/2013	57	0	0
Election of two members to the Petroleum Fund Advisory Council		28/01/2013	58	3	2
Election of permanent and non-permanent members to the Superior Council of Judicial Magistrates		28/01/2013	50	4	8
Election of members of the National Electoral Commission (CNE).	18/03/2013	19/03/2013	42	6	4

Resolution No.8/III/1 ^a on Solidarity for the Sahrawi people to establish a Commission to Monitor the West Sahara Conflict	06/05/2013	06/05/2013	52	0	0
President's travel to Portugal, USA and Cuba.		04/09/2013	17	0	0

One of the main reasons behind the National Parliament's poor legislative performance was its failure to reschedule other important pending draft laws for discussion in 2013. JSMP urges the National Parliament to re-schedule pending draft laws that have passed the time limit for debate and conduct public consultation with the relevant parties so that these draft laws can be discussed and approved. The pending draft laws (listed below) and several other laws that have exceeded the time limit for discussion are still relevant to the lives of the people and are necessary to provide State institutions with the authority and legitimacy necessary to carry out their duties and functions.

In 2013, JSMP reported that some MPs did not treat their responsibility to debate some laws seriously, because the laws went against their political interests.⁶ For instance, some MPs strongly objected to the draft laws on a National Reparations Program and the Establishment of a Memorial Institution, and proposed amendments to these laws without any clear justification. JSMP reiterates its previous recommendation that the National Parliament establish a 'National Legislative Program' similar to other countries to ensure that legislative policies are in accordance with national priorities.

Table 1.4.3: Draft laws still pending or exceeding time limit for discussion in 2012/2013

Draft Law	Date of Proposal
Law No. 29/II on Proposed Amendment of Law 1/2007 on Pensions and other entitlements for MPs	13/02/2012
Draft law No.21/II on the Eradication of Corruption	08/11/2011
Draft Law No 18/II on Municipalities	18/02/2009
Draft Law No. 20/II on the Establishment of a Memorial Institution	16/06/2010
Draft Law No. 19/II on a National Reparations Program	16/06/2010

⁶JSMP Parliamentary Watch Project Annual Report 2012, page 6.

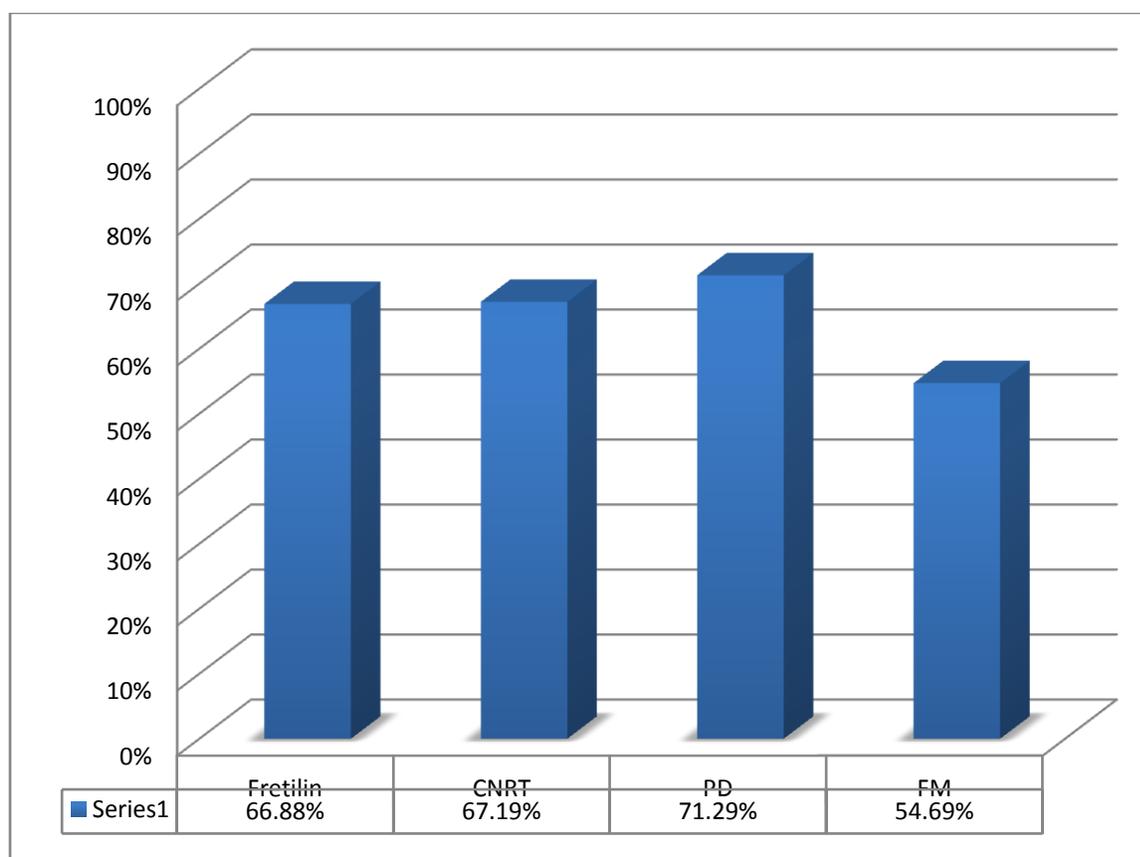
Draft Law No. 9 /II on Firearms	02/04/2008
Draft Law No. 19/II on Municipal Elections	18/02/2008

RECOMMENDATION 1

The National Parliament should immediately reschedule pending draft laws for consultation and debate so they can be approved, and develop a National Legislative Program to ensure legislative policies align with national priorities.

JSMP observed there to be several causes of the National Parliament’s low level of productivity in 2013, including the ongoing challenge of using the Portuguese language and lack of expert support staff. However, JSMP monitoring found that persistent lateness and absenteeism amongst MPs, whether for official purposes such as study tours or otherwise, continued to be a major factor preventing the National Parliament from performing to the best of its ability.

Chart 1.4.4: Average attendance by each party in plenary sessions in 2013



* Based on JSMP monitoring on 64 days in 2013.

Committee meetings and plenary sessions of the National Parliament often started late because the MPs were not disciplined in regard to working hours,⁷ and some were absent for whole days and longer periods of time. This made it difficult to establish a quorum to discuss draft laws and resulted in the postponement of legislative debate, seriously affecting the law-making process.

JSMP has previously observed that lateness and absenteeism continues to occur because the chair of the Parliament does not take firm action to sanction MPs violating the rules, which include a requirement that MPs provide a justification for every absence from a plenary session or committee meeting within five days of the absence.⁸

While JSMP understands that MPs often have other important commitments, the fulfillment of their legislative duties is crucial to the development of Timor-Leste's legal framework and must be made a priority.

RECOMMENDATION 2

The National Parliament should increase the overall number of laws it debates and approves by ensuring meetings and plenary sessions start on time and with sufficient MPs to establish a quorum, and by applying sanctions based on the Internal Rules of the Parliament against MPs who do not adhere to working hours without justification.

As mentioned above, JSMP observed that the use of the Portuguese language continued to prove problematic for the National Parliament in 2013. The National Parliament's plenary could not effectively execute its resolution mandating the use of Portuguese every Tuesday because the second deputy of the National Parliament, who leads the plenary session, and other MPs could not speak Portuguese.

Further, despite a limited understanding of Portuguese amongst MPs, JSMP observed that laws continue to be drafted solely in Portuguese. This prevented many MPs from properly understanding the laws proposed in 2013 and affected the quality of discussion and debate because they were not properly informed or felt afraid that they would misinterpret the draft laws. All draft laws should be written in Tetum, with simple explanations about what is contained in the law (like in other nations), so that MPs can fully participate in the law-making process.

JSMP also observed a continued lack of expert staff (such as national law graduates, engineers and economists) to support MPs, analyze the proposed state budget and the quality of projects that are being considered by the National Parliament.

RECOMMENDATION 3

As a matter of priority, the National Parliament should provide MPs with draft laws and explanatory materials in Tetum and recruit additional expert staff to support MPs in their consideration and debate of draft laws.

⁷ Article 46.2 of the Parliamentary Rules of Procedure provide that the normal working hours of Parliament are between 9:00am-12:30pm (morning session) and 3:00pm-6:00pm (afternoon session).

⁸ JSMP *Parliamentary Watch Project Annual Report 2012*, page 17.

1.5. The Land Law Package

In April 2013, members of Parliamentary Committee A provided an opportunity to civil society to make proposals in relation to the second draft Land Law Package. The first draft Land Law Package was previously vetoed by former President Jose Ramos-Horta on 20 March 2012 due to strong objections from civil society that there was insufficient consultation, and that the draft laws did not reflect the reality and context of Timor-Leste. Consultation was limited to a public explanation of the laws' objectives, general operation and benefits, and did not provide the necessary detail for the public to understand the law in its entirety and its impact. This resulted in confusion about how the period in which land was acquired (eg Portuguese or Indonesian) affected ownership rights.

When conducting consultation in relation to the second draft Land Law Package, the Ministry of Justice held discussions with civil society and suco chiefs, and distributed copies of the draft law (in Portuguese) on compact disc (CD) to the districts. JSMP received negative feedback from suco chiefs, who felt that distributing the draft laws in Portuguese – when many people in the districts do not speak this language), and on CD – when many people in the districts do not have access to computers and often experience electricity outages – was an inappropriate method of conducting consultation.

JSMP analyzed the draft laws and submitted proposals to both the National Parliament and the Government. The Land Law Package has three main components:

- 1) the Special Regime for the Determination of Ownership of Immovable Property,
- 2) the Expropriation Law, and
- 3) the Law for the Immoveable Property Fund.

JSMP's proposals highlighted several serious issues requiring examination and consideration before the laws are approved by the National Parliament and submitted to the President for promulgation, including that several articles do not reflect the reality of Timor-Leste society and are unjust. JSMP suggested several alternative articles that Parliament could examine and consider using to improve the draft laws, including Article 7 on state owned immovable property, Article 8 on collective legal entities, Article 9 on foreigners, Article 37 on previous ownership rights, Article 44 on previous ownership rights and statute of limitations, Article 52 on compulsory compensation and Article 56 on illegal occupation of State owned immovable property.

JSMP also provided an in-depth explanation of its analysis and interpretation of the second Draft Land Law Package to help MPs to better understand the draft laws before discussing and approving them.

Key points from the JSMP proposal:

- ✓ The Land Law Package provides authority and a range of opportunities to the State to exercise control over land.
- ✓ These laws do not deal with the expropriation of assets by the State of Timor-Leste that formerly belonged to Portugal or Indonesia, as not all assets need to be expropriated by the State of Timor-Leste.
- ✓ JSMP notes that the government has not carried out its own in-depth examination of the Land Law Package to find out about the procedure and historical background relating to the expropriation of land formerly belonging to the Portuguese or Indonesian governments.
- ✓ Foreign companies are favored and given more opportunities than Portuguese and Indonesian nationals.
- ✓ The State has a large role to play in the expropriation of land or removing people from their own land;
- ✓ This could lead to the misuse of State powers, and unfair compensation;
- ✓ The State's reputation could be put at risk of negative public perception, especially if it causes direct impact through expropriation by ignoring cultural and sacred values that cannot be paid for with money and other things.

1.6. The Mobile Courts

The mobile courts are a creative approach taken by the district courts to bring justice closer to the people. Timor-Leste only has four district courts to handle cases from the country's 13 districts, which means many people must travel considerable distances to access the courts, which is often difficult and expensive.

Between 2010-2013, the mobile courts processed and tried 184 cases in four districts/remote areas, and approximately 2,000 or more people benefitted from the mobile court process.⁹ During 2013, the mobile courts heard 96 cases¹⁰ during a series of two to three day sessions, of which JSMP monitored a total of five.

JSMP is very happy to see that the courts are bringing justice closer to the people through the mobile court process. However, JSMP still urges the courts to ensure that mobile courts are conducted carefully and with sensitivity to ensure they do not undermine the legal interests of the parties involved in the cases.

In July 2013, JSMP expressed concern that the mobile courts were not well organized and coordinated, and this affected the interests of justice in cases involving crimes of sexual violence. JSMP reported that, in a case it monitored in June 2013 involving sexual violence tried by the Suai District Court in Maliana, Bobonaro District, the public was allowed into the courtroom.¹¹ JSMP believes that this situation resulted from poor communication between the court and the PNTL responsible for courtroom security.

In cases characterized as sexual violence, JSMP has observed that where the trial is open to the public, victims do not feel happy with the procedure because almost everyone knows about their case. This is especially so in cases involving minors. This approach and mechanism does not protect the dignity of the victim, and does not show sensitivity on the part of court actors in cases involving gender-based violence and minors. Nor is it consistent with the *Criminal Procedure Code* which provides that, in the cases involving a sexual offence against a minor, proceedings should generally be closed to the public.¹² The *Criminal Procedure Code* also permits the court to close proceedings to the public where it would preserve public morals and human dignity, such as in cases of sexual violence.¹³

In July 2013, following JSMP's reporting of the mobile court's open hearing of a sexual violence case in June, JSMP observed that a case concerning sexual coercion was closed to the public. In this case, conducted by the Suai District Court in Same, Manufahi District, the court ordered all present to leave the courtroom before the hearing commenced. At the time, JSMP commended the court for taking a

JSMP really values the mobile courts program because it is one way to bring justice closer to the people. However, when a mobile court is conducting trials, it must ensure that there is proper protection of the rights, confidentiality and safety of those involved in this process.

⁹ Joint report from the United Nations Development Program Timor-Leste Country Program 2010-2013 presented by the Vice Minister of Justice on 16 February 2014 at Timro Plaza.

¹⁰ UNDP, *Bringing Justice to the People*,

http://www.tl.undp.org/content/timor_lesste/en/home/ourwork/democraticgovernance/successstories/bringing-justice-to-the-people/

¹¹ JSMP Press Release, *Suai District Court conducts mobile court in Bobonaro District*, 3 July 2013

¹² Timor-Leste *Criminal Procedure Code*, Article 76(5)

¹³ Timor-Leste *Criminal Procedure Code*, Article 76(1)

positive step towards protecting the identity and privacy of victims in cases involving sexual violence.¹⁴

However, in September 2013, JSMP again observed mobile courts failing to close proceedings concerning cases of sexual violence to the public. In one particular case involving a teenage victim allegedly raped by her stepfather, the victim told JSMP that she was both pleased that her case was being heard but very sad and embarrassed that the proceedings were open to the public. She said that, because of the trial, people who had not previously known about her case, now knew what had happened to her. Further, the PNTL responsible for court security permitted photos and videotaping in the courtroom, compounding the potential flow and reach of information about the victim and her case. As a result of this, JSMP observed that the victim would face discrimination in society, and called on the court to respect and protect the rights of sexual violence victims,¹⁵ noting that whether or not a person can videotape in the courtroom is at the discretion of the court.¹⁶

RECOMMENDATION 4

In accordance with the *Criminal Procedure Code*, in cases involving a sexual offence against a minor, the courts should – as a general rule – close proceedings to the public, and in cases characterized as sexual violence, the court should consider closing proceedings to the public where it would preserve the human dignity of the victim.

¹⁴ JSMP Press Release, *Mobile court in Manufahi District shows positive step forward in terms of protecting victims of sexual violence*, 7 August 2013

¹⁵ JSMP Press Release, *Victims of sexual assault are not satisfied with the mobile court being open to the public*, 3 October 2013 (only available in Tetun).

¹⁶ Article 75(3) of the *Criminal Procedure Code* provides that 'the reproduction of briefs or of documents attached to the records, and the making of audio and/or video recordings in relation to proceedings, require prior authorization from the court.'

2. CHALLENGES AND OBSTACLES IN THE JUSTICE SECTOR

2.1. Budget for the judicial sector in 2012 and 2013

In 2013, the Timor-Leste justice sector received a large boost in funding, with its total allocation increasing from US\$19,050,000 in 2012 to \$28,251,000 in 2013. Within this total, the Ministry of Justice received a budget of US\$17,787,000, the courts received \$5,698,000 and the public prosecutor received \$4,766,000. Other justice sector institutions received the following amounts.

Table 2.1.1: Budget for the justice sector in 2012 and 2013

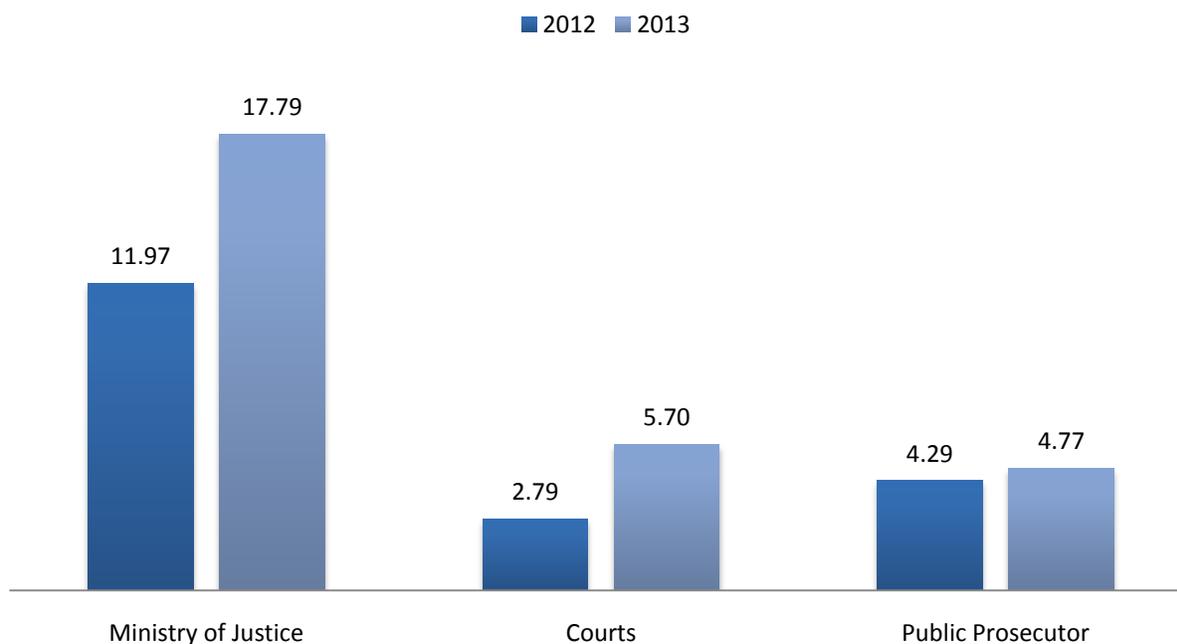
	2012 Budget (US\$)	2013 Budget (US\$)
Ministry of Justice, including:	\$11,970,000	\$17,787,000
- PublicDefenders Office	\$630,000	\$894,000
- LegalTraining Centre	\$170,000	\$193,000
- Other *	\$11,170,000	\$16,700,000
Thecourts, including:	\$2,790,000	\$5,698,000
- TheCourtofAppeal	\$2,360,000	\$2,852,000
- DistrictCourts	\$410,000	\$2,846,000
PublicProsecutor	\$4,290,000	\$4,766,000
TOTAL JUSTICE SECTOR BUDGET:	\$19,050,000	\$28,251,000

* Other main recipients of funding within the Ministry of Justice budget include the National Directorate of Registries and the Notary, the National Directorate of Prison Services and Social Reintegration, the National Directorate of Administration and Finance and the National Directorate of Land, Properties and Cadastral Services.

Graph 2.1.2: Comparison of budgets for the justice sector – 2012 and 2013 (millions)



Graph 2.1.3: Distribution of justice sector budget by institution – 2012 and 2013 (millions)



In 2013, JSMP expressed concern that, in 2012, the district courts continued to have very limited budgets, despite dealing with the majority of cases and conducting mobile courts.¹⁷ JSMP observed that, in comparison, the Court of Appeal had a much larger budget, despite its smaller caseload. JSMP is pleased to report that, in 2013, the budget allocated to the courts increased by 104%, compared to budget increases of 49% for the Ministry of Justice and 11% for the Public Prosecutor. This increase in the budget allocated to the courts is largely attributable to an increase in funding for the district courts, with their budget increasing from just \$410,000 in 2012 to \$2,846,000 in 2013 – a percentage increase of almost 600%. In comparison, the budget allocated to the Court of Appeal increased from \$2,360,000 to \$2,852,000 – a comparatively modest increase of 20%.

¹⁷ JSMP, *Overview of the Justice Sector 2012*, page 16.

2.2. Court actors, clerks and other staff

According to JSMP monitoring, there were 165 court actors in 2012.¹⁸ In 2013, JSMP observed that an additional 52 staff were employed, resulting in a new total of approximately 217. Although the new staff are still on probation, this is a significant improvement in the human resources of the courts.

Table 2.2.1: Number of permanent court actors in 2013

	Total court actors in 2012	New court actors in 2013	Total court actors in 2013
Judges	31	5	36
Prosecutors	24	5	29
Public Defenders	22	4	26
Court clerks / judicial officers	78	37	115
Interpreters/translators	10	1	11
Total	165	52	217

In 2013, 15 trainee court actors graduated from the LTC, comprising five judges (three women and two men), five prosecutors (one woman and four men), and five public defenders (all men). Sadly, one public defender has since passed away.

In May 2013, the trainee judges, prosecutors and public defenders were assigned to the Dili District Court, as their first location to carry out their functions. Between October and November 2013, a rotation took place and these trainee court actors were moved to the district courts of Suai, Baucau and Oe-Cusse and existing staff in the district courts were moved to the Dili District Court.

These new trainee court actors have improved Timor-Leste's justice sector by enhancing the courts' ability to respond to public demands for justice and alleviating concerns about the limited number of court actors. Previously, the demand for justice had exceeded court actors' ability to respond.

The year 2013 also saw the assignment of 37 trainee court clerks throughout the courts. JSMP believes that this is commendable because court clerks play an important role in arranging and managing the distribution of cases for judges, arrange hearings, and organize the execution of court decisions and orders.

In addition to trainee court actors and court clerks, JSMP has observed the assignment of a third interpreter to the Dili District Court, and more security guards and cleaners at each of the courts.

¹⁸ JSMP, *Overview of the Justice Sector 2012*, page 17.

RECOMMENDATIONS

The Government should maintain its support of the LTC to ensure there are enough court actors to deal with public demands for justice.

2.3. Training

The policy on training for court actors is one of the most important aspects in the development of the justice sector in Timor-Leste. In addition to ongoing training at the LTC, court actors have participated in other training both in Dili and overseas.

In 2013, four prosecutors attended training in Mozambique for a period of three months. This training aimed to increase the knowledge of prosecutors in the area of investigations to contribute towards strengthening the justice system now and in the future.¹⁹ The training focused on corruption, improving Portuguese language skills, human resource development, case management, as well as how to prepare to prosecute a case.

All prosecutors also attended training in Dili involving the National Department of Customs, the Public Prosecution Service, the Criminal Investigations Service and the Border Police. The aim of this training was to increase prosecutors' understanding of the role that these institutions play in combating drug crimes.

In November 2013, each district court appointed a court clerk to be section chief. These court clerks were then provided with the opportunity to attend three months of training in Portugal. This training focused on managing legal correspondence, the distribution of cases, preparing case summaries, justice official discipline and legal archiving, including which cases should be archived, how to organize and maintain archives, and how to search for cases once they have been archived.

In addition, other court clerks received training on the Integrated Information Management System (IIMS) with the support of the Australian Government through the Justice Sector Support Facility (JSSF). This system was created to help all levels of the justice system – from the police all the way to the courts - to record and use the same/standardized data throughout the justice process. The IIMS is an electronic computer system which allows each of the justice sector institutions (being the Office of the Prosecutor General (OPG), the Office of the Public Defender (OPD), the courts, prisons and the police (PNTL)) to better manage their information and to better coordinate the flow of information among and between each institution. By using a unique numbering system (NUC) to identify each incident/case, the IIMS is able to track individual cases as they progress through each institution throughout the entire criminal justice process.

Having the ability to count, track, and manage the number and types of cases in each institution enables them to better manage their resources, improve their internal processes, and ultimately better serve the public. Each institution continues to follow their existing manual paper system to process cases. IIMS was not designed to replace the manual paper system but as a tool to support that process and provide checks and balances to the manual paper system. IIMS gives the institutions the ability to collect and maintain accurate information regarding the cases they handle and produce statistical reports. The IIMS is a key tool in promoting and practicing transparency, accountability and efficiency in the delivery and administration of justice.

¹⁹ Interview with the Prosecutor General, Jose Ximenes, 5 September 2013

At the end of 2013, several court actors were nominated to attend ‘Train the Trainer’ (ToT) training at the LTC. This initiative was established to reduce the dependency on international instructors and represents a major breakthrough for Timor-Leste’s justice system by enabling more Timorese graduates to access to the LTC and, at the same time, demonstrating trust in experienced judicial actors to become trainers at the LTC.

Despite the success of the LTC, it still lacks training materials and textbooks. Given the ongoing support of the United Nations Development Program and the Government over the past ten years, this is disappointing. The LTC could improve the quality and consistency of its training by using relevant training materials and drawing on textbooks to which students could also refer when doing private study.

RECOMMENDATION 6

The Government, agencies and non-government organizations supporting the LTC should develop training materials and textbooks to improve the quality and consistency of training delivered to court actors.

In addition to the training provided by the LTC, JSMP believes that each of the judicial institutions should provide continuing professional education to its staff to improve their knowledge in high priority areas such as gender-based violence. Given none of the current court actors have received training at the LTC in the issues specific to children’s cases, rules of evidence and the *Civil Code*, justice institutions should also consider prioritizing training in these areas.

Subject to funding and other priorities, justice institutions might also like to consider conducting training in transnational crime, drug crimes, corruption, human trafficking and money laundering. Cases in these fields are usually complex and their modus operandi constantly evolve with changes in society and developments in information technology. Justice institutions must invest in training court actors to ensure their knowledge and skills remain up-to-date to handle such offences. This would also help court actors fulfill their duty to undertake continued training in accordance with Article 71 of *Law No 11-2008 on the Juridical Regime Governing the Private Legal Profession and Lawyers Training*.

RECOMMENDATION 7

The Government, through the Ministry of Justice, should allocate sufficient funds to each of the judicial institutions for training to increase court actors’ knowledge in high priority areas such as gender-based violence, to fill gaps in current court actors’ knowledge relating to children’s cases, rules of evidence and the *Civil Code*, and specific fields such as transnational crime, corruption, drug crimes, human trafficking and money laundering.

2.4. Language and interpreters

The Timor-Leste Constitution provides that the official languages of Timor-Leste are Tetum and Portuguese, while English and Indonesian are working languages that can be used in the civil service alongside the official languages as long as deemed necessary.

Portuguese was introduced as the language of court administration in 2004/2005 and, since then, its use has continued to be an obstacle in nearly all district courts. Interpreters have difficulty in interpreting from Portuguese to Tetum and vice versa, and to/from their mother language, especially when dealing

with legal terminology.

Language is one of the most important aspects in a case because it has a direct and important relationship with the ability of the parties involved to properly understand their rights and the implications of court decisions that impact on them. Although JSMP has often expressed its concern and raised this issue, there has not yet been an appropriate and comprehensive approach to deal with the situation.

In a case involving the misuse of authority and embezzlement monitored by JSMP at the Dili District Court on 18 June 2013, the judges had to provide interpretation because there were no interpreters during the hearing. In addition, on 12 September 2013, the Baucau District Court was forced to adjourn a trial in a case involving simple offences against physical integrity because there was no interpreter to provide interpretation into Makalero. In this case, the victim told JSMP that he was very upset because he had lost a considerable amount of time and spent lots of money on travel and food in order to attend the trial.²⁰

JSMP is concerned that people who live in remote areas work very hard to get to court, taking a lot of their time and money. When judges act as interpreters, or worse, a case must be adjourned because there is no one who can provide interpretation, these people rightly question the effectiveness of the formal justice system.

RECOMMENDATION 8

The courts and the Ministry of Justice should prioritize the use of Tetum where Portuguese would ordinarily be used during court proceedings and issue official documents such as written decisions in Tetum.

RECOMMENDATION 9

The courts should prioritize the recruitment of professional and quality translators and interpreters in the various languages spoken in Timor-Leste.

2.5. Infrastructure and resources

For a number of years, JSMP has observed extensive efforts to establish a strong, credible and independent justice system that is accessible to all people. JSMP admits that there has been undeniable progress in several areas. However, several aspects still need to be given maximum consideration by the Government and all components of the State.

Between July and September 2013, JSMP conducted a study to evaluate the institutional resources and capacities of each of the judicial institutions, and assess how they could improve their performance in fulfilling their responsibility to provide and ensure justice for the entire community of Timor-Leste.

This research assessed the available resources and institutional challenges at the courts, the Public

²⁰ JSMP Press Release, *Trial adjourned because no interpreter available for local dialect*, 13 September 2013

Prosecution Service and Office of the Public Defender, and how this affected the capacity and quality of work provided by these institutions.

This research indicated that problems relating to human resources, facilities (including transport), safety and security, and remuneration continue to be concerns for court actors. JSMP presented the results of this study to the public at a press conference on 8 November 2013²¹ and submitted a report to members of parliament for their consideration and evaluation during the debate on the 2014 State Budget.

Key findings of the report included:

- **Work load** continues to be a problem for all courts, affecting the quality of work and resulting in a growing number of pending cases. For example, each judge deals with approximately 70 cases per year, and each prosecutor handled 100 cases or more per year.²² This total does not include cases characterized as urgent and requiring expedited proceedings. JSMP has observed that this leaves little time for court actors to properly research complex cases, and to speak with clients before appearing in court, resulting in very brief charges and defense submissions.
- **Facilities**, including **transport**, are incredibly important to the work of court actors, both in terms of ensuring their productivity and safety. JSMP has observed that judges have now been driving the same vehicles for seven years, and during this time they have covered long distances in the districts to conduct mobile courts. JSMP believes this is unfair considering the conditions enjoyed by members of government and the National Parliament, whose vehicles are regularly replaced with new vehicles of a much high quality than those provide to judicial actors. Further, public defenders have continued to face serious problems in finding appropriate transport to facilitate their work and are using motorcycles.²³ However, the use of motorcycles poses a major risk for public defenders because there is a possibility that someone might ambush them in the street and threaten their life. In addition, JSMP has observed that several trainee public defenders have not yet been provided with computers and there is no ongoing maintenance of the existing facilities.
- By virtue of their roles, judges, prosecutors, public defenders and court clerks are exposed to the risk of threats and injury by disgruntled members of the community, and their **safety** could be improved in a number of ways. For instance, closed circuit television (CCTV) could be installed in

²¹ JSMP Press Conference, *The work load of judicial actors and the demands of the public do not correspond with their efforts and dedication: Human resources, facilities, transport, safety and welfare are still concerns for judicial actors*, 8 November 2013

²² This is a very small number compared to other jurisdictions around the world (where prosecutors are often responsible for over 100 cases per month), although for prosecutors in Timor-Leste perhaps other factors such as education, experience, initiative, training, and management of the prosecution office must be taken into account. New prosecutors need longer to research and prepare cases, while more experienced prosecutors need to mentor new prosecutors. JSMP has observed that in the Office of the Public Prosecutor in general there is a lack of thorough investigation into cases, poor quality indictments, incorrect charging of offences, and inadequate research into complex cases.

²³ Based on JSMP monitoring at the end of 2013, the Bacau, Suai and Oe-Cusse public defender offices each had just one car between two to three public defenders, and were using motorcycles either provided by donors such as JSSF) or private motorcycles.

the courts to deter threats against court actors and theft or sabotage of important documents during proceedings, court actors could be paid in a private, safe location rather than queuing at public banks to receive their salaries, and court clerks executing court decisions in the community could be better protected if accompanied by PNTL officers responsible for court security.

- There is a disparity in **remuneration** and other conditions (eg security, transport, drivers) between those working in the courts, which are defined as organs of sovereignty in Article 118 of the Timor-Leste Constitution, and other organs of sovereignty – such as the President, National Parliament and the Government/Executive. Their salaries are not commensurate with the volume of work with which they are entrusted and, further, there is no difference in salaries between those who are just starting their careers and experienced court actors.

JSMP urges the National Parliament to allocate sufficient funding to courts and the offices of the prosecutor and the public defender, to ensure that issues of work load, facilities (including transport), safety and remuneration do not affect the important work of the court actors. In particular, JSMP recommends that sufficient funding and human resources are allocated to:

- recruit competent international prosecutors to support and improve the quality of work of the office of the public prosecutor,
- provide proper transportation to court actors, particularly judges and public defenders,
- improve the safety of court actors by installing CCTV in courts, paying salaries in private and safe locations, and ensuring court clerks receive appropriate protection when executing court decisions in the community, and
- adjust the remuneration and other conditions of court actors so that their salaries are commensurate with their duties, and their status as staff of a sovereign organ.

RECOMMENDATION 10

The National Parliament and the Ministry of Justice should allocate sufficient funding and human resources to improve the welfare of court actors through the recruitment of competent international prosecutors and the provision of appropriate transportation and facilities, better security, and remuneration appropriate to court actors' duties and status.

3. GENDER EQUALITY

3.1. Trends in domestic violence cases

In 2013, domestic violence cases constituted 222 of the 481 criminal cases monitored by JSMP. Together, JSMP's Legal Research Unit (LRU) and Women's Justice Unit (WJU) monitored cases involving gender-based violence at the district courts of Dili, Baucau, Suai and Oe-Cusse. The results of this monitoring indicated that the number of cases involving gender-based violence remains high throughout all courts, particularly when compared to other types of offences.

Since the *Law Against Domestic Violence* (LADV) came into effect on 7 July 2010, JSMP has observed that just one case of domestic violence in the form of physical or mental mistreatment of a spouse has resulted in an effective prison sentence, with most cases resulting in suspended sentences, despite the *Penal Code* providing that such crimes are punishable by two to six years' imprisonment.²⁴ Many cases of domestic violence in the form of simple offences against physical integrity have also resulted in suspended sentences.

In 2013, JSMP observed that courts only handed down heavy penalties in cases of domestic violence where the victims nearly lost their lives, were killed, almost killed, lost a limb, or were incapacitated. For example, on 31 July 2013, the Dili District Court sentenced the defendant in a case of attempted aggravated murder to 8 years and 6 months in prison, on 4 December 2013, the Suai District Court sentenced the defendant in a case of attempted murder characterized as domestic violence to 12 years in prison,²⁵ and on 6 December 2013, the Oe-Cusse District Court, sitting at the Dili District Court, sentenced the defendant in a case of aggravated murder to 18 years in prison.

However, after efforts spanning several years, on 27 November 2013, the Dili District Court finally handed down an effective prison sentence to a defendant in a case involving the mistreatment of a spouse, with the defendant receiving a sentence of two years and six months in prison. In this case, the public prosecutor alleged that the defendant hit and threatened to kill his wife in 2001, 2007, 2008, 2009, 2010, and 2012. This violence was considered to be continuous so the prosecutor charged the defendant with violating Article 154 of the *Penal Code* for committing mistreatment against his wife, and Article 157 of the *Penal Code* for making threats, and characterized these offences as crimes of domestic violence pursuant to Article 35 of the LADV.²⁶

Based on JSMP monitoring in 2013, this was the first time that the court has sentenced a defendant in a case involving mistreatment against a spouse with an effective prison sentence. JSMP believes that this decision is a positive development in the application of the LADV.

JSMP hopes that this decision will be referenced in other cases involving the mistreatment of a spouse

²⁴ Article 154 of the Timor-Leste *Penal Code* provides that 'any person who inflicts physical or mental mistreatment or cruel treatment upon a spouse or person cohabiting with the perpetrator in a situation analogous to that of spouse is punishable with 2 to 6 years imprisonment, if no heavier penalty is applicable by force of another legal provision.'

²⁵ JSMP Press Release, *Suai District Court sentences defendant in case involving attempted murder characterized as domestic violence to 12 years in prison*, 5 December 2013

²⁶ JSMP Press Release, *Court sentences defendant in case of domestic violence to 2 years 6 months imprisonment: A positive step forward in applying the Law Against Domestic Violence*, 3 December 2013

or other forms of violence characterized as domestic violence, where the offence deserves an effective prison sentence in order to have a deterrent effect and prevent future incidents of domestic violence.

As mentioned above, on 12 December 2013, JSMP launched a report titled *The Law Against Domestic Violence: Three years of implementation and obstacles*. This report discusses the facts and the results of JSMP court monitoring between July 2010 and June 2013, the three-year period following the entry into force of the LADV. During this period, 352 cases of domestic violence were tried in the district courts of Dili, Baucau, Suai and Oe-Cusse.

71% of these cases were charged by the prosecution as simple offences against physical integrity pursuant to Article 145 of the *Penal Code*. In the majority of domestic violence cases, the prosecutor can choose between charging the perpetrator with a simple offence against physical integrity (up to three years imprisonment or a fine), serious offence against physical integrity (two to eight years imprisonment) or mistreatment of a spouse (two to six imprisonment, if no heavier penalty is applicable under another provision). All three offences require that the perpetrator intended to cause harm to another person.²⁷ While it is clear that Article 146 only applies in cases where the perpetrator had intended to cause serious physical harm to the victim, Articles 145 and 154 can cover acts causing a wider range of less serious injuries. Article 154 is also broader as it covers acts causing mental harm and cruel treatment.

In JSMP's view, in cases of domestic violence within a marriage or de facto relationship where either article 145 or article 154 could apply, article 154 should be preferred. Article 154 is the more specific charge in most cases as it relates specifically to violence or mistreatment within such relationships and has a higher penalty range. It also better reflects the seriousness of violence perpetrated within a marriage or de facto relationship, and prosecutors should select a charge which offers the greatest maximum penalty. The only exception should be where it is absolutely clear that the crime was an isolated and anomalous incident. In all cases, the public prosecutor should thoroughly investigate any history of violence in the relationship before a final decision on the appropriate charge is made.

JSMP court monitoring statistics show that since the promulgation of the LADV, the courts have been suspending the execution of a prison sentence or substituting a prison sentence for a fine in the majority of cases where the defendant has been found guilty. Mischarging perpetrators with a simple offence against physical integrity when mistreatment of a spouse would be more appropriate, as discussed above, provides greater scope for suspended sentences, thus contributing to the trend that JSMP has observed. Where the court has handed down a prison sentence of less than three years, it may suspend the execution of the prison sentence for a period of between one and five years.²⁸ Further, where the court hands down a prison sentence of less than one year, the court can substitute the prison sentence for a fine to be paid to the State²⁹ or order the perpetrator to undertake community service.³⁰ Although, in cases of domestic violence, the court can issue a fine only if the security of the victim has been guaranteed, the perpetrator agrees to counseling or follow-up by victim support services, and the substitution for a fine is advantageous for maintaining the family unit.³¹ While the courts must always

²⁷ Article 15 of the *Penal Code* provides that a person acts with intent not only if he intends to commit the crime (that is, intends to cause physical harm to another person), but also if the defined criminal act is a necessary or possible consequence of his action, and he accepts this possibility.

²⁸ Article 51 of the *Penal Code*

²⁹ Article 67 of the *Penal Code*

³⁰ Article 79 of the *Penal Code*

³¹ Articles 38 of the LADV and 67 of the *Penal Code*.

give preference to a noncustodial sentence where the law provides for an alternative penalty, JSMP's report concludes that there must be a mechanism to monitor compliance with suspended sentences and fines if they are to have any deterrent value and promote behavioural change.

JSMP court monitoring has also found that the courts rarely order civil compensation be paid to victims of domestic violence. Between July 2010 and June 2013, JSMP only monitored five domestic violence cases where the court ordered that the perpetrator pay compensation to the victim. Its report found that, in cases of domestic violence, compensation can be particularly powerful as it could address economic dependency of the victim on the perpetrator and provide immediate remedy for victims. In all cases, civil compensation must be given priority over the payment of fines to the State and not be a substitute for criminal penalties, such as a prison sentence.

Further, JSMP has found that protection orders removing the suspected perpetrator from the family home during the investigation and trial phases are not being applied in domestic violence cases. This has serious implications for the safety of the victim, and often means that the victim is forced to live in a temporary shelter for many months while the case is being processed by the formal legal system. Protection orders are among the most effective legal remedies to protect women from domestic violence and should be actively pursued by the prosecutor, together with an order for provisional alimony under Article 32 of the LADV.³²

RECOMMENDATION 11

The courts should develop sentencing guidelines to assist judges in determining the appropriate penalty in cases of domestic violence and making orders for civil compensation of victims. The guidelines should make clear that compensation orders cannot be substituted for criminal penalties (prison sentences and fines), and that payment of compensation to the victim should be prioritized over payment of fines to the State.

RECOMMENDATION 12

The Government should allocate sufficient resources to the Public Prosecution Service and the Timor-Leste National Police to ensure that all protection orders, provisional alimony orders, and sentences in domestic violence cases are effectively executed and monitored, including suspended sentences and payment of fines.

3.2. Gender-based violence statistics

JSMP's WJU monitored 142 cases of gender-based violence in 2013 (outlined below), of which 130 related to offences that were also characterized as domestic violence. JSMP's LRU monitored the remaining 92 cases characterized as domestic violence, bringing the total to 222 of the 481 criminal cases monitored by JSMP in 2013. In percentage terms, domestic violence – in all its forms – represented over 90% of the gender-based violence cases monitored by WJU in 2013, and 46% of all cases monitored by JSMP. Simple offences against physical integrity (characterized as domestic violence) represented the vast majority of offences, constituting 73.5% of all gender-based violence cases monitored by WJU, while mistreatment of a spouse (also characterized as domestic violence) was the

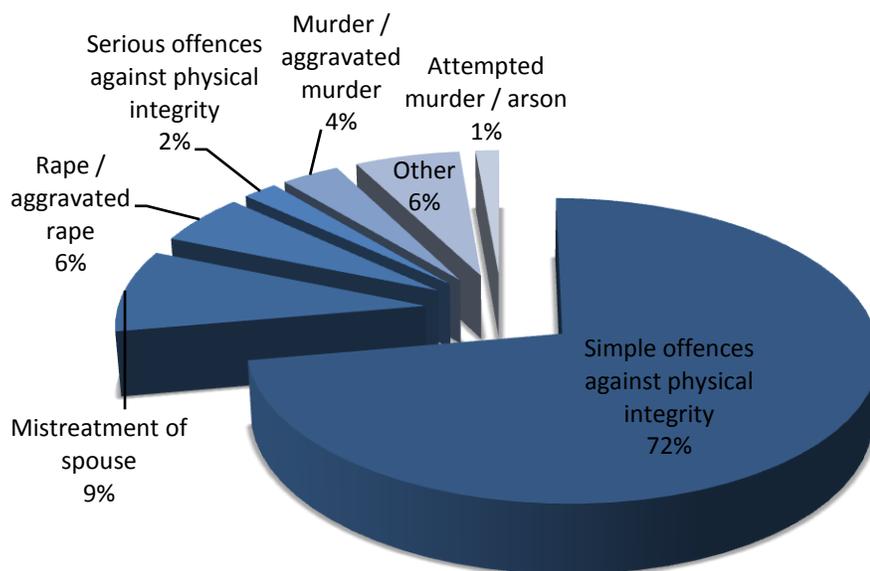
³² JSMP, *The Law Against Domestic Violence: Three years of implementation and obstacles*, 2013, pages 1-2

second largest category (9%).

3.2.1: Table of trials observed by WJU in 2013

Casetype	Characterized as domestic violence	Penal Code provision	Number of cases	Percentage of total
Simple offences against physical integrity	Yes	Article 145	104	73.5%
Mistreatment of a spouse	Yes	Article 154	13	9%
Rape	No	Article 172	6	4%
Serious offences against physical integrity	Yes	Article 146	3	2%
Aggravated murder	Yes	Article 139	3	2%
Murder	Yes	Article 138	2	1.5%
Aggravated rape	No	Articles 172 and 173	2	1.5%
Making threats	Yes	Article 157	1	0.5%
Sexual coercion	No	Article 171	1	0.5%
Mistreatment of a spouse and making threats	Yes	Articles 154 and 157	1	1.5%
Simple offences against physical integrity and aggravated murder	Yes	Articles 145 and 139	1	0.5%
Simple offences against physical integrity and property damage	Yes	Articles 145 and 258	1	0.5%
Attempted murder and arson	No	Articles 23, 138 and 263	1	1.5%
Attempted rape	No	Articles 172 and 23	1	0.5%
Rape, aggravation and sexual acts with an adolescent	No	Articles 172, 173 and 178	1	0.5%
Rape and defamatory false information	No	Articles 172 and 285	1	0.5%
TOTAL			142	100%

3.2.2: Chart of main gender-based offences prosecuted in 2013



3.3. Progress and obstacles in the implementation of the LADV

Before the promulgation of the LADV in 2010, the majority of domestic violence cases reported to the police were mediated informally within the family or community, or by the courts. This was due to a number of factors including police reportedly discouraging women from reporting ‘minor’ incidents of domestic violence and the public prosecutor granting permission to victims wishing to withdraw their cases. Such treatment of domestic violence cases by the police, the public prosecutor and the courts reinforced the perception that domestic violence was a minor ‘family problem’ rather than a crime. The LADV made all crimes of domestic violence a ‘public crime’, meaning that the victim does not have to personally file a complaint for the crime to be investigated and prosecuted.³³ In 2013, WJU observed a greater volume of domestic violence cases being processed by the courts, but many in the community remain unaware of the LADV and its significant changes to the law; further education and promotion of the LADV, particularly in the districts, is essential.

WJU has also observed that the courts have started to apply the decision of the Court of Appeal that Article 125 of the *Criminal Procedure Code*, which provides that a victim may choose not to give testimony against a defendant who is a relative, does not apply in cases involving domestic violence, and that the courts have started to prioritize cases of domestic violence over other cases for trial.

Yet, as discussed above, the majority of cases of domestic violence still result in suspended sentences and there is no mechanism to ensure that convicted persons fulfill their obligations whilst they are

³³Article 36 of the LADV

servicing their suspended sentences. Other obstacles to the effective prosecution of domestic violence cases include:

- the application of suspended sentences does not include any other obligation that must be fulfilled by the convicted person during their period of probation (for instance, an order to report to the police so that perpetrator can be monitored during the period of suspension, or in cases where gambling may have contributed to the violence, an order that they do not visit places of gambling),
- in some courts, separate waiting rooms are not available for victims and defendants which can influence a victim's ability to provide testimony comfortably and without psychological pressure, and in courts where separate waiting rooms are available, court actors are failing to make use of them,
- the consideration of facts and circumstances in cases of domestic violence tend to look at the mitigating circumstances for the defendant and ignore both the aggravating circumstances and the interests of the victim.³⁴

The tendency to apply suspended prison sentences in cases of domestic violence creates the public perception that domestic violence is not a serious and public crime. As a result, it is very difficult to differentiate between cases of domestic violence involving elements of simple offences against physical integrity, serious offences against physical integrity and the mistreatment of a spouse because all of these charges commonly result in suspended sentences or a fine.

3.4. Inconsistent application of the Penal Code

In most of the cases of domestic violence monitored by the WJU at the courts, it was evident that that prosecution charged the defendants with the crime of simple offences against physical integrity pursuant to Article 145 of the *Penal Code* rather than Article 154 of the Penal Code on the mistreatment of a spouse, which carries heavier penalties.

JSMP has observed that prosecutors and judges tend to hold a perception that Article 154 of the *Penal Code* can only be applied when there is evidence that mistreatment has been committed repeatedly, such as in the case heard by the Dili District Court in November 2013 described above. However, Article 154 does not contain an element regarding repeated acts of violence – it only requires evidence that the defendant inflicted serious physical or mental mistreatment, or cruel treatment, on a spouse or against his/her de facto. The public prosecutor should carefully consider if Article 154 or Article 145 of the Penal Code is more appropriate in a particular case. More detailed analysis can be found in JSMP's report on the *Law Against Domestic Violence: Three years of implementation and obstacles*.³⁵

RECOMMENDATION 13

The Public Prosecution Service should develop legal guidelines on charging in domestic violence cases that clarify repeated violence is not a pre-requisite for charging an offender with mistreatment of a spouse under Article 154 of the *Penal Code*.

JSMP has also observed that often there is a lack of consistency in the articles used and the application of penalties. In several cases, JSMP noted that even though some cases fulfilled the elements of Article

³⁴ For example, see Case Study 3 below.

³⁵ JSMP, *Law Against Domestic Violence: Three years of implementation and obstacles* (2013), section 4.2

154 of the *Penal Code* on the mistreatment of a spouse, the decision only resulted in a suspended prison sentence, despite the applicable penalty being between two and six years imprisonment.

Further, in several cases of domestic violence, defendants have used a knife, machete or spear to attack the victim, but were only prosecuted pursuant to Article 145 of the *Penal Code* regarding simple offences against physical integrity. Even where defendants have been charged with the mistreatment of a spouse, during the examination of evidence the article of the *Penal Code* with which the defendant was charged was amended, and the prison sentence handed down was suspended in its execution. JSMP is concerned that weapons such as knives, machetes, spears, or pieces of iron and wood used by defendants to attack victims are intended to cause serious injuries to the victim and possibly kill them. JSMP believes that public prosecutors and the courts must carefully and thoroughly examine the instruments or objects used by defendants to carry out their malicious intent and the final outcome of the crime that was committed.

In 2013, JSMP observed several cases where there was evidence that defendants committed crimes in public, against a heavily pregnant woman, caused victims to suffer bleeding and require treatment at hospital, used pieces of wood, struck victims on the head, broke objects on the victim's body, slammed a victim into a wall, and threw a spear at a victim.

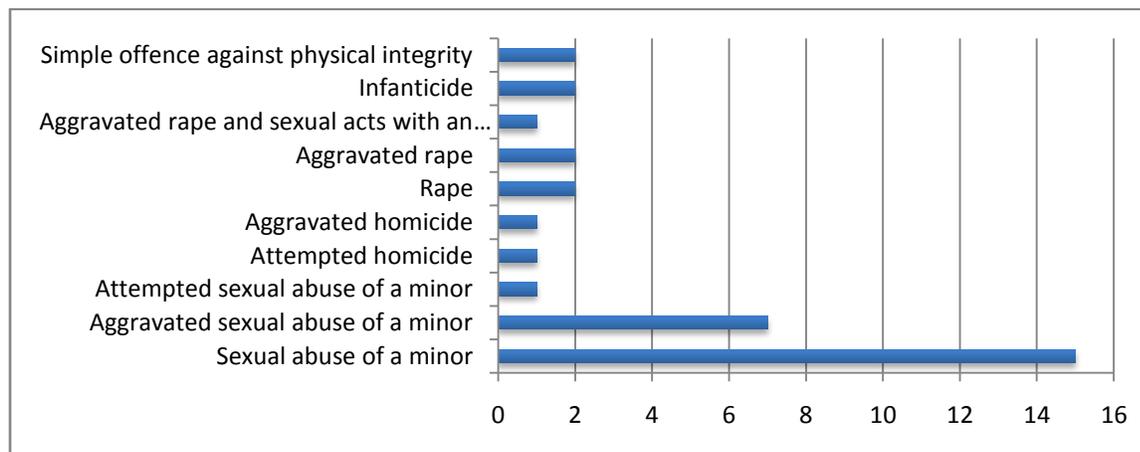
JSMP encourages judicial actors to carefully examine and evaluate the use of weapons and other aggravating factors relating to offences before determining the most appropriate charges and penalties. Ensuring that defendants receive appropriate charges and penalties where there is intent to cause serious injury to the victim, particularly with the use of weapons, will deter others from committing these crimes and send a message to the community that domestic violence is a serious crime according to the Timor-Leste *Penal Code*.

RECOMMENDATION 14

When developing legal guidelines on charging in domestic violence cases (recommended above), the Public Prosecution Service should ensure it includes clear guidance on how the use of weapons and other aggravating factors should be taken into account in determining appropriate charges.

4. MINORS IN THE JUSTICE SYSTEM

JSMP monitored approximately 34 cases involving minors in 2013, in which the minors were overwhelmingly female and the victim of a crime. JSMP's new Child Justice Team was established in March 2013 and commenced the recording of more detailed information about cases involving minors. 29 cases were recorded by the CJT from March 2013, of which all but one involved the minor as a victim (the other as a witness), and in all but two cases, the minors were female.



4.1. Sexual abuse of minors and trends in sentencing

Throughout the courts in 2013, JSMP observed that many cases involving the sexual abuse of a minor resulted in defendants receiving heavy penalties. This was particularly so in cases of sexual abuse involving a family member, such as a father committing the offence against a child, where nearly all of the defendants received heavy penalties. However, JSMP has also observed the inconsistent application of penalties, with defendants in some cases receiving disappointingly light sentences given the nature of their offences.

JSMP believes that the shift towards heavier sentences, while not yet entirely consistent, is still a major development that should be lauded, because violence against children is a very serious offence that requires everyone's attention. However, appropriate sentencing is just one of many factors that contribute to the effective protection of children. During 2013, JSMP conducted in-depth research into the issue of children's access to the formal justice system in Timor-Leste, and will release its findings in a comprehensive report in 2014.

The first two case studies below illustrate positive developments in the sentencing of defendants involved in cases of incestuous sexual abuse against minors in 2013. The third case study, however, demonstrates that in some cases defendants continue to receive seriously inadequate sentences for crimes committed against minors.

Case study 1: Aggravated rape

On the evening of 28 July 2012, the 16 year old victim was asleep with her siblings on a bed made of bamboo and the victim's father (the defendant) entered the room, removed the victim's underwear, covered the victim's mouth, choked and placed his hand to her throat while raping her. On 26 December 2012, the defendant again forced the victim to have sexual intercourse with him.

The public prosecutor charged the defendant with aggravated sexual assault pursuant to Articles 172 and 173 of the Penal Code.

The court sentenced the defendant to 18 years in prison.

Case study 2: Sexual abuse of a minor

The victim had just turned 14 years old in September 2012 when her father (the defendant) began having sexual intercourse with her, on a regular basis of approximately once a week for a period of two years. The defendant fathered the victim's child.

The public prosecutor charged the defendant with sexual abuse of a minor pursuant to Article 177 of the *Penal Code* and sought the application of Article 35 of the *Penal Code* on joinder of crimes.

The court sentenced the defendant to 20 years in prison.

As these cases indicate, the court has begun taking a stronger stance in relation to the sentencing of clear cases of repeated incest. Such sentencing sends a strong message to the community that incest is not an acceptable practice and that the crime will be punished by long terms of imprisonment.

However, JSMP remains concerned about the likelihood that numerous cases of incest are not detected or brought to trial, and that this is a failure of the state to adequately protect children from sexual violence.

In contrast to the above, JSMP has also monitored cases where the sentences have been considerably reduced as a result of mitigating circumstances which should not have necessarily been taken into account, or applied to such a degree, resulting in sentences which do not appear to be commensurate with the crime committed.

Case study 3: Sexual abuse of a minor

The victim was a six-year old girl from a rural area an hour outside Dili and the defendant was her 19-year old cousin who lived with their grandparents. One afternoon, while the victim was playing at her grandparents' house, the defendant asked the victim into his room where he grabbed and sexually abused her.

Despite recognizing the seriousness of the crime committed against the victim and her very young age, the court sentenced the defendant to just three years in prison based on its determination there were extraordinarily mitigating circumstances. The court then suspended the execution of this shortened sentence also based on these extraordinarily mitigating circumstances, which included that a 'long period of time had gone by since the crime' (three years), during which the defendant had not reoffended. The court also weighed in defendant's favor the fact that he was a university student, was 'socially well inserted' and that the matter had already been settled informally within the family. Further, the court decided that 'no concrete damages' had been caused and therefore, that the victim was not entitled to any civil compensation. No security measures were applied to the defendant by the court, and he returned to the village unmonitored by any judicial authority.

It is difficult to comprehend how these mitigating circumstances warranted a suspended sentence (with no reporting or other obligations) when the 19 year old defendant had sexually abused a six year old girl, a crime ordinarily punishable by five to twenty years imprisonment depending on the nature of the

act.³⁶ While the *Penal Code* does provide that making reparations of damage caused or diminishing its effects before trial, and maintaining good conduct ‘long after’ the crime was committed are extraordinarily mitigating circumstances,³⁷ and permits the suspension of an extraordinarily mitigated penalty,³⁸ it is clear that these mitigating factors were not appropriately weighed against aggravating factors such as the fact that the victim was (considerably) less than 12 years of age at the time the act was committed.³⁹ Further, the court’s reasoning that ‘no concrete damages’ had been caused by the defendant’s sexual abuse of the six year old victim meant the defendant was not obliged to pay compensation for losses and damages resulting from his crime, as ordinarily required by the *Penal Code*; a disappointing outcome considering the circumstances of the case.

4.2. Challenges confronting minors accessing the justice system

Even though the courts have achieved some progress in the trials of crimes against minors, there are still challenges that minors face in accessing justice. One challenge is the lack of separate waiting rooms that can be used by victims and defendants while waiting for hearings commence, or a failure to appropriately use existing waiting rooms built for this purpose.

During 2013, JSMP observed that victims and defendants have had to sit and wait in the same waiting room. This situation can be psychologically distressing for any victim, but particularly minors, when sitting next to or facing the defendant. Also, as mentioned above, protection orders are not being used to remove suspected perpetrators from the family home and away from the affected minor before trial.

Further, JSMP has observed that the courts have been permitting defendants to cross-examine the testimony of victims who are still minors when the court is in doubt about the proof presented, and when the testimonies of the victim and the defendant conflict.⁴⁰ JSMP believes that, because of their age and psychological development, minors are very vulnerable. Therefore, it is important for the court to manage this process based on the circumstances and the minor’s psychological state. In particular, the courts should avoid permitting confrontational methods to obtain evidence in cases involving minors.

RECOMMENDATION 15

Court actors should receive training in how to deal with cases involving children, both as victims and perpetrators, and the LTC should implement child-focused training and employ appropriate trainers to deliver this training material as a priority.

³⁶ In ordinary cases without general or extraordinarily mitigating circumstances, Article 177 of the *Penal Code* provides that any person who practices vaginal, anal or oral coitus with a minor aged less than 14 years is punishable with 5 to 20 years imprisonment, and that any person who practices any act of sexual relief with a minor aged less than 14 years is punishable with 5 to 15 years imprisonment.

³⁷ Article 56(c) and (d) of the *Penal Code*

³⁸ Article 57(2) of the *Penal Code*

³⁹ Article 182 of the *Penal Code* provides that where such an aggravating factor is present, the ordinary penalty must be increased by one third.

⁴⁰ In one case in which this was permitted, the defendant was subsequently acquitted.

4.3. Incest cases on the increase

In 2013, JSMP observed at least six cases involving sexual violence against minors characterized as incest⁴¹ in the district courts of Dili, Baucau and Suai.

JSMP welcomes and values the significant progress achieved in the sentencing of defendants found guilty of incest. In most of these cases, the defendants received heavy penalties. The lightest sentence was four years in prison, the heaviest was 20 years in prison, and there was only one acquittal.

Even though JSMP acknowledges and values the efforts of the prosecution and the courts to ensure adequate penalties in these cases of incest, JSMP believes that incest is a social phenomenon that requires a collective response to prevent it occurring in the future.

Six cases of incest in one year show that this is a serious problem in our community, particularly as these cases reflect only those cases that have been detected, investigated and brought before the court. JSMP believes that many more cases of incest are occurring; however, a range of structural and cultural obstacles in the community prevent their discovery and prosecution.

JSMP has extensively researched the issue of incest in Timor-Leste and, in August 2012, published a report titled *Incest in Timor-Leste: An Unrecognized Crime*. This report presents JSMP's observations of various obstacles faced by victims of incest in the formal justice system and how the formal justice system currently processes these cases. The report recommends amending the *Penal Code* to incorporate a specific crime of incest, and strengthening existing provisions relating to sexual crimes in circumstances of dependency to deter perpetrators who abuse familial authority or exploit relationships of dependency. Other recommendations in the report include utilizing available protective and coercive measures to prevent further crime and protect victims, increasing resources for courts and prosecution services and introducing a case prioritization system to reduce delays in prosecution.

JSMP maintains the recommendations it made in its 2012 report and strongly urges all relevant institutions to prioritize their implementation as a matter of urgency. However, JSMP is also concerned that a legal response to this issue cannot alone deter perpetrators and restore the harm suffered by victims.

Therefore, JSMP also urges the National Parliament and the Minister of Justice to examine this social phenomenon and consider additional ways to prevent and detect incest. This could include educating children about their rights and how to seek help if they are victims of incest, and promoting community awareness that incest is not only an offence against the law, but the social, moral and religious values of Timor-Leste.

⁴¹Incest is commonly understood as sexual acts that take place between family members, excluding persons in a spousal relationship. In its 2012 report *Incest in Timor-Leste: An Unrecognised Crime*, JSMP advocated for a crime of incest defined as sexual acts that take place between an offender and his/her child or parent, grandchild or grandparent, brother or sister, half brother or sister, or step or legally adopted relation of a similar kind.

RECOMMENDATION 16

All relevant institutions, including the National Parliament and the Minister of Justice, should prioritize the implementation of recommendations made in JSMP's 2012 report *Incest in Timor-Leste: An Unrecognized Crime* as a matter of urgency, and consider additional ways to prevent and detect incest such as community education and awareness-raising initiatives.

CONCLUSION AND RECOMMENDATIONS

The justice sector continued to make important progress in 2013, despite facing continuing challenges largely associated with the lack of resources. While the National Parliament is to be commended for its increasing openness and willing to consult civil society, its productivity was hampered by lateness and absenteeism, the use of Portuguese language and lack of expert support.

Statistics collected by JSMP in 2013 indicate that gender-based and domestic violence continues to represent an overwhelming majority of all crimes brought before Timor-Leste's courts, nearly equaling all other crimes combined. Through its court monitoring, JSMP has also identified a pressing need to ensure new and existing court actors receive targeted training in handling cases relating to gender-based violence and children, guidelines to ensure appropriate charging and sentencing, and resources to ensure protection orders and sentences are effectively executed and monitored.

As stated previously, the aim of this report is to provide useful information to inform the public of the progress achieved and challenges faced by the Timor-Leste justice sector in 2013. Based on its monitoring and analysis, JSMP has made a number of observations, both good and bad, about the current state of Timor-Leste's justice sector. These observations include the following recommendations for improvement:

1. The National Parliament should immediately reschedule pending draft laws for consultation and debate, and develop a National Legislative Program to ensure legislative policies align with national priorities.
2. The National Parliament should increase the overall number of laws it debates and approves by ensuring meetings and plenary sessions start on time and with sufficient MPs to establish a quorum, and by applying sanctions based on the Internal Rules of the Parliament against MPs who do not adhere to working hours without justification.
3. As a matter of priority, the National Parliament should provide MPs with draft laws and explanatory materials in Tetum and recruit additional expert staff to support MPs in their consideration and debate of draft laws.
4. In accordance with the *Criminal Procedure Code*, in cases involving a sexual offence against a minor, the courts should – as a general rule – close proceedings to the public, and in cases characterized as sexual violence, the court should consider closing proceedings to the public where it would preserve the human dignity of the victim.
5. The Government should maintain its support of the LTC to ensure there are enough court actors to deal with public demands for justice.
6. The Government, agencies and non-government organizations supporting the LTC should develop training materials and textbooks to improve the quality and consistency of training delivered to court actors.
7. The Government, through the Ministry of Justice, should allocate sufficient funds to each of the judicial institutions for training to increase court actors' knowledge in high priority areas such as gender-based violence, fill gaps in current court actors' knowledge relating to children's cases, rules of evidence

and the *Civil Code*, and specific fields such as transnational crime, corruption, drug crimes, human trafficking and money laundering.

8. The courts and the Ministry of Justice should prioritize the use of Tetum where Portuguese would ordinarily be used during court proceedings, and issue official documents such as written decisions in Tetum.

9. The courts should prioritize the recruitment of professional and quality translators and interpreters in the various languages spoken in Timor-Leste.

10. The National Parliament and the Ministry of Justice should allocate sufficient funding and human resources to improve the welfare of court actors through the recruitment of competent international prosecutors and the provision of appropriate transportation and facilities, better security, and remuneration appropriate to court actors' duties and status.

11. The courts should develop sentencing guidelines to assist judges in determining the appropriate penalty in cases of domestic violence and making orders for civil compensation of victims. The guidelines should make clear that compensation orders cannot be substituted for criminal penalties (prison sentences and fines), and that payment of compensation to the victim should be prioritized over payment of fines to the State.

12. The Government should allocate sufficient resources to the Public Prosecution Service and the Timor-Leste National Police to ensure that all protection orders, provisional alimony orders, and sentences in domestic violence cases are effectively executed and monitored, including suspended sentences and payment of fines.

13. The Public Prosecution Service should develop legal guidelines on charging in domestic violence cases that clarify repeated violence is not a pre-requisite for charging an offender with mistreatment of a spouse under Article 154 of the *Penal Code*.

14. When developing legal guidelines on charging in domestic violence cases (recommended above), the Public Prosecution Service should ensure it includes clear guidance on how the use of weapons and other aggravating factors should be taken into account in determining appropriate charges.

15. Court actors should receive training in how to deal with cases involving children, both as victims and perpetrators, and the LTC should implement child-focused training and employ appropriate trainers to deliver this training as a priority.

16. All relevant institutions, including the National Parliament and the Minister of Justice, should prioritize the implementation of recommendations made in JSMP's 2012 report *Incest in Timor-Leste: An Unrecognized Crime* as a matter of urgency, and consider additional ways to prevent and detect incest such as community education and awareness-raising initiatives.

ANNEX A– STATISTICS

A. Criminal cases monitored by JSMP in 2013

Case type	Number	Penal Code Article
Simple offences against physical integrity (characterized as domestic violence)	188	145
Simple offences against physical integrity	48	145
Mistreatment of a spouse (characterized as domestic violence)	28	154
Sexual abuse of a minor	24	177
Rape	17	172
Corruption	12	Various
Serious offences against physical integrity	11	146
Property damage	11	258
Aggravated property damage	10	259
Homicide	10	138
Aggravated homicide	8	139
Manslaughter	7	140
Aggravated larceny	7	252
Threats	6	157
Aggravated appropriation through abuse of trust	5	257
Failure to fulfill an obligation to provide food assistance	5	225
Illegal gambling	4	322
Larceny	4	251
Infanticide	4	142
Aggravated rape	4	172,173
Aggravated fraud	3	267
Crimes against fauna or flora	3	217
Driving without a license	3	207
Serious offences against physical integrity (characterized as domestic violence)	3	146
Negligent offences against physical integrity	3	148
Simple offences against physical integrity and property damage	3	145,258
Attempted rape	3	23,172
Sexual acts with an adolescent	3	178
Aggravated homicide (characterized as domestic violence)	3	139
Aggravated forgery	2	304
Robbery	2	253
Arson	2	263
Sexual coercion	2	171
Drugs	2	Various
Forgery of documents or technical report	2	303
Appropriation through abuse of trust	1	256

Tax fraud	1	314
Threats, property damage, unlawful entry	1	157, 258, 185
Fraud	1	266
Defamatory false information	1	285
Disobedience	1	244
Aggravated larceny and aggravated reception of stolen goods	1	252,272
Aggravated larceny and simple reception of stolen goods	1	252,271
Attempted murder	1	23,138
Arson and property damage	1	263,258
Crimes against humanity	1	(UNTAET reg.)
Obstructing public authority	1	243
Aggravated homicide, simple offences against physical integrity, threats	1	139,145,157
Manslaughter and negligent offences against physical integrity	1	140,148
Manslaughter, serious offences against physical integrity	1	140,146
Homicide, threats	1	138, 157
Circulation of counterfeit currency	1	308
Profane an object or place of worship	1	223
Unlawful electoral canvassing	1	233
Kidnapping	1	160
Attempted sexual abuse of a minor	1	23,177
Attempted homicide	1	23,138
Attempted aggravated homicide	1	23,139
Attempted arson	1	23,263
Attempted rape and aggravated fraud	1	23,172,267
Traffic of influence	1	192
Unlawful entry	1	185
Rape and defamatory false information	1	172,285
Sexual abuse of a person incapable of resistance	1	179
TOTAL	481	-

B. Civil cases monitored by JSMP in 2013

Case type	Number
Child support dispute	6
Land dispute	6
House and land dispute	1
House rental dispute	1
Construction dispute	1
TOTAL	15

C. Cases monitored by JSMP in 2013 – by court

Court	Criminal cases	Civil cases
Baucau	126	2
Dili	211	12
Oe-Cusse	25	1
Suai	119	0
TOTAL	481	15

D. Case statistics from the Dili District Court – 2013

Criminal cases

Criminal cases	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total
Pending from 2012	1100	1065	1027	973	950	884	841	813	794	864	939	933	1100
New cases	18	26	28	33	58	49	66	29	99	125	64	52	647
Tried	53	64	82	56	124	92	94	48	29	50	70	46	808
Total pending	1065	1027	973	950	884	841	813	794	864	939	933	939	939

Civil cases (monthly break-down unavailable for 2013)

	Total
Pending from 2012	374
New cases	227
Tried	169
Total pending	432

E. Case statistics from the Bacau District Court – 2013

Criminal cases

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total
Pending from 2012	203	210	226	230	225	248	249	287	293	348	402	429	203
New cases	10	35	27	8	46	13	61	6	60	64	35	19	384
Tried	3	19	23	13	23	12	23	0	5	10	8	0	139
Total pending	210	226	230	225	248	249	287	293	348	402	429	448	448

Civil cases

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total
Pending from 2012	90	93	96	93	98	102	105	105	109	113	114	113	90
New cases	6	3	1	7	5	4	5	5	6	6	1	5	54
Tried	3	0	4	2	1	1	5	1	2	5	2	0	26
Total pending	93	96	93	98	102	105	105	109	113	114	113	118	118

F. Case statistics from the Oe-Cusse District Court – 2013

Criminal cases

Criminal cases	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total
Pending from 2012	72	67	40	56	58	51	33	18	23	18	13	22	72
New cases	1	2	18	13	9	4	27	17	18	2	9	0	120
Tried	6	29	2	11	16	22	42	12	23	7	0	3	173
Total pending	67	40	56	58	51	33	18	23	18	13	22	19	19

Civil cases

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total
Pending from 2012	19	19	18	16	15	13	12	11	16	15	15	15	19
New cases	1	1	1	1	1	1	0	5	1	1	0	0	13
Tried	1	2	3	2	3	2	1	0	2	1	0	0	17
Total pending	19	18	16	15	13	12	11	16	15	15	15	15	15

G. Case statistics from the Suai District Court – 2013

Criminal cases

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total
Pending from 2012	192	219	210	212	214	217	210	190	191	183	194	188	192
New cases	32	21	23	23	30	26	22	5	21	29	12	15	259
Tried	5	30	21	21	27	33	42	4	29	18	18	7	255
Total pending	219	210	212	214	217	210	190	191	183	194	188	196	196

Civil cases

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total
Pending from 2012	37	41	40	43	46	46	47	50	50	55	54	56	37
New cases	4	0	3	3	1	2	3	0	7	2	3	8	36
Tried	0	1	0	0	1	1	0	0	2	3	1	2	11
Total pending	41	40	43	46	46	47	50	50	55	54	56	62	62

ANNEX B – CORRUPTION CASES MONITORED BY JSMP IN 2013

Case Type	Case No.	Defendant(s)	Incident(s)	Decision	Court
Abuse of authority, falsification of documents and, mismanagement and participation in an economic crime	580/C.Ord/2011/TDD - No. 622/C.Ord/2011/TDD	The former Minister of Justice, Lucia Lobato, and Chief of Procurement, António de Araujo Freitas.	2008 and 2009	<p>On 22 January 2013, the Dili District Court executed its decision against the convicted person Lucia Lobato, the former Minister of Justice and the convicted person António de Araujo Freitas. The decision was executed after the Supreme Court through the Court of Appeal rejected the request for an extraordinary appeal on 18 January 2013 that had been previously submitted by the team of lawyers for the convicted person.</p> <p>The court sentenced the defendant Lucia Lobato to five years in prison and ordered her to pay compensation of US\$4,350 to be shared with the convicted person António Freitas who had previously been acquitted from all charges. However, the Court of Appeal then sentenced him to five years in prison and ordered him to pay compensation of US\$52,000.</p>	DDC
Aggravated fraud, embezzlement and misuse of authority.	536/C.Ord/2012/TDD	President and Secretary-General of the ASDT Party	2012	On 21 March 2013, the Dili District Court acquitted the defendants Gil da Costa Auxiliadora Alves and Henrique Carlos due to a lack of evidence to convict them in relation to the use of funds during the ASDT campaign in 2012.	DDC
Misuse of authority and tax fraud	024/C.Ord/2013/TDD	Director General of Finance, Francisco da Costa Soares “Borlako” (FdCSB) and Petroanus Marianus Manek (PMM), a businessman.	2009	<p>On 25 July 2013, the Dili District Court acquitted the defendant FdCSB because it was not proven that he committed an abuse of authority, and sentenced the defendant PMM to one year in prison. However, the court suspended the sentence for two years, and ordered him to pay court costs of US\$100.</p> <p>The court also ordered the defendant PMM to return money to the State totaling US\$22,500 as the result of falsifying the price of vehicles in relation to three trucks purchased by the defendant.</p> <p>On 30 January 2014, the Court of Appeal sentenced FdCSB to two years prison but suspended the sentence for three years.</p>	DDC

				The court also ordered him to pay court costs of US\$200.	
Crime of embezzlement, aggravated forgery and money laundering.	40/C.Ord/2013/TDD	JJMdC, finance officer in the Financial Management Capacity Building Program in the Office of the Minister of Finance, DPdC, the younger sibling of defendant JJMdC, and RdCP, the wife of the defendant JJMdC.	2010	On 26 July 2013 the Dili District Court sentenced the defendant Joaquim José Madeira da Cruz (JJMdC) to 11 years in prison, sentenced the defendant Domingos Paixão da Cruz (DPdC) to six years in prison and sentenced the defendant Rosalina da Conceição Pinto (RdCP) to four years in prison. The court also ordered the defendants to pay compensation of US\$346,713.33 to the State, and seized a home built by the defendants in Lospalos District and a Pajero vehicle that had been purchased by the defendants	DDC
Crime of embezzlement	93/pen/2013/TDS	LM, Village Chief	2006	On 21 October 2013, the Suai District Court sentenced the defendant LM to three years in prison, suspended for four years and ordered him to pay court costs of US\$50. The defendant agreed to return money totaling US\$5000 that belonged to the Ministry of Agriculture and Fisheries within five months.	SDC
Abuse of authority, falsification of documents, fraud and embezzlement.	204/C.Ord/2012/TDD	Director General in the Office of the Prime Minister and Finance, and an officer in the Office of the Prime Minister	2008 and 2009	The two defendants were acquitted because a lack of sufficient evidence to convict them.	DDC
Embezzlement, falsification of documents, active corruption and passive corruption for an unlawful act	680/C.Ord/2012/TDD	AL, former Secretary of State for Environmental Affairs, AdC, Chief of Staff, Secretary of State for Environmental Affairs, and IdCBL, treasurer.	2010	On 30 October 2013, the Dili District Court sentenced the defendant Abílio Lima to five years in prison and ordered him to pay compensation of US\$5,300 and court costs of US\$50. The defendant António de Carvalho was sentenced to three years six months in prison and ordered to pay compensation of US\$5,300 and court costs of US\$20. The defendant Ilda da Costa Be Loi was sentenced to one year and three months in prison, suspended for three years and six months, and ordered to pay court costs of	

				US\$20.	
Abuse of authority	362/C.Ord/2013/TDD	GSM, Sub-District Chief Hatulia, Ermera District	2012	On 11 December 2013, the Dili District Court acquitted the defendant Gustadio Soares Martins because the defendant was not found to have had the intent to obtain personal benefit from the rice that had been given by the Ministry of Social Solidarity to members of the community in Hatulia Village.	DDC
Embezzlement and misuse of authority	80 /C.ord/2013/TDO	JN, Director for the Ministry of Education in Oe-Cusse.	2012	On 3 December 2013, the Oe-Cusse District Court sentenced the defendant to one year and six months in prison, suspended for two years. The court also ordered the defendant to pay court costs of US\$40.	ODC
Misuse of authority	127/Crm.C/2013/TDB	MFS, an officer at the Ministry of Agriculture and Fisheries.	2012	In October 2013, the Baucau District Court ordered a retrial because court proceedings had exceeded the time limits provided in the Criminal Procedure Code. The retrial is expected to commence on 14 October 2014.	BDC
Embezzlement of public goods	630/C.Ord/2012/TDD	SdCA, Acting Director at the Ministry of Education.	2012	JSMP did not observe the decision in this case.	DDC
Crime of passive corruption	112/C.Ord/2007/TDD	AM, former Ambassador of Timor-Leste to Indonesia and MRCdJ, a consular official.	2007	Ongoing The defendants are suspected of committing the crime of passive corruption with the intent to import luxury vehicles from Indonesia.	DDC

ANNEX C– CASES INVOLVING MINORS MONITORED BY JSMP IN 2013

A. Cases involving children monitored by JSMP in 2013

Case type	Number	Penal Code Article
Sexual abuse of a minor	15	Article 177
Aggravated sexual abuse of a minor	7	Articles 177, 173(a), 182
Attempted sexual abuse of a minor	1	Article 177, 23
Attempted homicide	1	Articles 138, 23
Aggravated homicide	1	Article 139
Rape	2	Article 172
Aggravated rape	2	Articles 172, 173, 178, 173(b)
Aggravated rape and sexual acts with an adolescent	1	172, 173(b) and 178
Infanticide	2	Article 142
Simple offence against physical integrity	2	Article 145
TOTAL	34	-

B. Incest cases involving children monitored by JSMP in 2013

Case number	Case Type	Relationship between the defendant and the victim	Age of victim (years)	Sentence (years)
97/Crm.C/2013/TDB	Aggravated rape	Father and biological child	17	18
148/Crm.C/2012/TDB	Rape	Father and biological child	14	9.5
127/Crm.2008/TDS	Rape	Father and step-child	16	4
135/Crm.2013/TDDIL	Aggravated sexual abuse of a minor	Father and biological child	14	20
178/Crm.2012/TDDIL	Sexual abuse of a minor	Father and biological child	10	Acquitted
630/2012/TDDIL	Aggravated rape	Father and step-child	16	16