



JUDICIAL **SYSTEM** MONITORING PROGRAMME
PROGRAMA DE MONITORIZAÇÃO DO **SISTEMA** JUDICIAL

**Legal Protection for Victims of Gender Based Violence:
*Laws Do Not Yet Deliver Justice***

March 2011

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1) Introduction

The Victim Support Service (VSS) was established in April 2005 to improve access to justice for women and children who are victims of gender based violence. The VSS is a unit within the Judicial System Monitoring Program (JSMP) and currently employs six lawyers who assist clients from all 13 districts of Timor Leste in all four district courts.¹ Since its establishment the VSS has provided legal assistance to 826 victims of gender based violence, primarily victims of domestic violence, sexual violence and attempted rape. VSS staff provide legal advice and information to clients. VSS staff also accompany clients to the police station, prosecution service and to court. In addition VSS provides clients with practical assistance including food and transport.²

Since the establishment of VSS a range of laws have been enacted in Timor Leste that aim to protect the rights of victims of gender based violence and reduce the number of such crimes being committed. Timor Leste has also become a party to a number of international conventions which protect the rights of women and children in the context of gender based violence. This report aims to analyze the extent to which the current legal framework in Timor Leste is working to protect the rights of victims of gender based violence.

The report uses three case studies, taken from VSS's work, to illustrate the current obstacles facing victims when they try to use the formal legal system. These case studies relate to cases of incest, attempted murder and attempted rape. Through the use of these case studies, and based on VSS's broader experience providing assistance to victims of gender based violence, VSS will show that even though laws are now in place to protect the rights of victims of gender based violence, in reality these laws are not being implemented effectively and consequently the rights of victims are not yet being protected in practice.

The structure of this report is as follows:

- Section 2 summarizes the current legal framework which governs the protection of victims of gender based violence in Timor Leste;
- Section 3 examines three case studies of gender based violence that VSS has been involved in and the extent to which the rights of victims in these cases has been protected;
- Section 4 includes analysis of the current challenges which affect the implementation of laws protecting victims of gender based violence; and
- Section 5 contains conclusions and recommendations for the future.

2) The Current Legal Framework Governing Gender Based Violence

Timor Leste currently has a relatively comprehensive legal framework governing crimes of gender based violence and the protection of the rights of victims of gender based

¹ District courts operate in Dili, Baucau, Suai and Oecusse.

² VSS also engages in advocacy activities and participates in a range of working groups in order to improve the service provided to victims of gender based violence at a more strategic, systemic level.

violence. This framework includes victim's rights protected in the Constitution and under international conventions ratified by Timor Leste. It also includes a range of domestic laws including the Timorese Penal Code, Criminal Procedure Code, Law against Domestic Violence, Witness Protection Law and the Indonesian Penal Code. It is important to have an understanding of the role of each of these laws in order to understand the obstacles that face victims of gender based violence who seek to use the formal legal system.

a) The Constitution and International Law

The Democratic Republic of East Timor is a democratic, sovereign, independent and unitary State based on the rule of law, the will of the people and respect for the dignity of the human person.³ According to its Constitution all citizens of Timor Leste are equal before the law and have the same rights.⁴ This means that women and men have the same rights and duties in all areas of family, political, economic, social and cultural life.⁵ The Constitution also guarantees access to courts to all for the defense of legally protected rights and interests, irrespective of economic means.⁶ Relevantly for victims of gender based violence, the Constitution protects the right to life,⁷ the right to health,⁸ the right to personal freedom, security and integrity,⁹ and rights associated with their place of work.¹⁰ The Constitution places certain obligations on the State to guarantee the protection of these rights.¹¹

In December 2002, the National Parliament of Timor Leste ratified the Convention on the Elimination of all Forms of Discrimination Against Women (*CEDAW*).¹² According to the CEDAW Committee, gender based violence is a form of discrimination that seriously inhibits women's ability to enjoy rights and freedoms on a basis of equality with men.¹³ Timor Leste's obligations under this Convention to protect victims of gender based violence and guarantee their access to justice were highlighted by the CEDAW Committee in its 2009 Concluding Observations on Timor Leste.¹⁴

In December 2002 the National Parliament also ratified the Convention on the Rights of the Child (*CRC*),¹⁵ which places obligations on Timor Leste to provide special protection for children in the context of gender based violence.

³ RDTL Constitution, Article 1.1.

⁴ RDTL Constitution, Article 16.

⁵ RDTL Constitution, Article 17.

⁶ RDTL Constitution, Article 26.

⁷ RDTL Constitution, Article 29.

⁸ RDTL Constitution, Article 57.

⁹ RDTL Constitution, Article 30.

¹⁰ RDTL Constitution, Article 50.

¹¹ RDTL Constitution, Article 6.

¹² Parliamentary Resolution No. 11/2003

¹³ Committee on the Elimination of Discrimination against Women, General Recommendation No. 19 – Violence against Women,

¹⁴ Committee on the Elimination of Discrimination against Women, Concluding Observations: Timor Leste, No. CEDAW/C/TLS/CO/1, (7 August 2009).

¹⁵ Parliamentary Resolution No. 16/2003.

b) Timor Leste Penal Code

The Timor Leste Penal Code came into force in July 2009. It codifies acts considered to be crimes and sets the applicable penalties.¹⁶ The Penal Code comprises two books. Book I deals with general provisions and Book II deals with specific crimes. Book II sets out the elements of acts which are punishable under the criminal law. It codifies a range of crimes that can be used to prosecute cases of gender based violence. These include:

- Mistreatment of a disabled person, mistreatment of a spouse, and mistreatment of a minor (Articles 153-156);
- Simple offence against physical integrity (Article 145);
- Serious offence against physical integrity (Article 146);
- Sexual crimes including sexual coercion, rape, child prostitution, sexual abuse of a minor, sexual acts with an adolescent, and sexual abuse of a person incapable of resistance (Articles 171, 172, 175 and 177 – 179);
- Homicide and aggravated homicide (Articles 138-139);
- Termination of a pregnancy (Article 141); and
- Torture or other cruel, inhuman or degrading treatment (Article 167).

Under the Timor Leste Penal Code, crimes can be classified either as public crimes or semi-public crimes. Public crimes are crimes where criminal prosecution does not depend on a complaint being filed. Semi-public crimes are those where prosecution may only be initiated after the right to file complaint has been exercised.¹⁷ The crime of ‘simple offence against physical integrity’ is a crime that depends on a complaint being filed and is therefore a semi-public crime. Crimes such as ‘serious offence against physical integrity’, mistreatment of a spouse, homicide, sexual coercion and rape, do not require a complaint to be filed and are therefore considered to be public crimes.

Prior to the enactment of the Timorese Law Against Domestic Violence in 2010, crimes of gender based violence, if prosecuted at all, were usually prosecuted as a simple offence against physical integrity under article 145 of the Timor Leste Penal Code (or the equivalent crime contained in article 351 of the Indonesian Penal Code). This meant that gender based violence was widely considered to be semi-public crime. Other public crimes such as mistreatment of a spouse, mistreatment of a minor or a serious offence against physical integrity were rarely used in a gender-based violence context. This reflected community attitudes that gender based violence was a private matter best resolved at the community level. Because domestic violence was considered to be a crime upon complaint, cases registered with the public prosecution service could be withdrawn if the victim and suspect were able to reach an amicable settlement. This resulted in very minimal levels of prosecution of gender based violence cases.

¹⁶ Law Approving the Penal Code, No. 19/2009.

¹⁷ Timor Leste Penal Code, Article 106.

c) *Law Against Domestic Violence*

The Law Against Domestic Violence came into force in July 2010.¹⁸ The objective of this law is to prevent domestic violence and provide protection and assistance to its victims in Timor Leste.¹⁹ The law contains a complex and broad definition of domestic violence, defining it in article 2 as:

any act or sequence of acts committed within a family context, with or without cohabitation, by a family member against any other member of that family, where there is a situation of ascendancy, notably physical or economic, in the family relationship, or by a person with regard to another person with whom the former has had an intimate relationship which resulted, or may result, in physical, sexual or psychological injuries or suffering, economic abuse, including threats such as intimidating acts, bodily harm, aggression, coercion, harassment, or deprivation of freedom.²⁰

The law goes on to say that domestic violence includes physical, sexual, psychological and economic violence.²¹

- ***Physical violence*** is any conduct that causes pain, illness or serious injury. This includes violent behavior such as slapping, punching, spitting, pulling hair, kicking, burning with cigarettes, punching/wounding with a weapon etc. Often this behavior will result in welts, bruises, smashed teeth and other scars.
- ***Sexual violence*** includes any conduct that coerces any person to witness, engage, or take part in an undesired sexual relation, even if within marriage, through intimidation, threat, coercion or use of force, or that limits or annuls the exercise of one's sexual and reproductive rights.
- ***Psychological or Emotional Violence*** includes any conduct that causes emotional harm and reduces self-esteem, aimed at degrading or controlling the actions, behaviour, beliefs and decisions of another person through threats, coercion, humiliation, manipulation, isolation, constant surveillance, systematic persecution, insults, blackmail, ridiculing, exploitation, restrictions to the right to move freely or by any other means that cause harm to the psychological well-being and to self-determination.
- ***Economic Violence*** includes any conduct that results in the retention, subtraction, partial or total destruction of personal effects, working instruments, impediment to work or outside the home, personal documents, assets, valuables and rights or economic resources, including those intended to meet personal needs and the needs of the household. Examples of this type of violence are refusing to pay alimony, or using up the money belonging to a spouse.

The Law Against Domestic Violence places an obligation on the State to ensure that the victims are provided with appropriate information to be able to protect their rights.²² It also places obligations on the Government to engage in programs to change public

¹⁸ Law Against Domestic Violence, Nu. 7/2010.

¹⁹ Law Against Domestic Violence, Nu. 7/2010, Article 1.

²⁰ Law Against Domestic Violence, Nu. 7/2010, Article 2(1).

²¹ Law Against Domestic Violence, Nu. 7/2010, Article 2(2).

²² Law Against Domestic Violence, Article 7.

opinion about domestic violence, develop training resources and undertake studies.²³ The law regulates institutional co-operation to combat domestic violence. It provides for the establishment of a network of safe houses for victims as well as other forms of assistance. The law also places obligations on doctors, nurses, police and other professionals when they are dealing with victims of domestic violence.²⁴

One of the most important aspects of the Law Against Domestic Violence is the way that it changes the application of criminal law in the context of domestic violence. Article 35 of Law Against Domestic Violence provides that the following crimes are to be considered crimes of domestic violence:

- the types of crime provided for in articles 153, 154, 155 and 156 of the Criminal Code;²⁵
- the types of unlawful conduct provided for in articles 138, 139, 141, 145, 146, 167, 171, 172, 175, 177, 178 and 179²⁶ whenever, in addition to fulfilling the typical elements of fact contained in the incriminating norm, any of the circumstances described in article 2 occur.

According to article 36 of the Law Against Domestic Violence, all crimes of domestic violence are considered to be public crimes. This means that their prosecution does not rely on a victim's complaint. Therefore, if for example a simple offence against physical integrity takes place in the context of domestic violence, it will be a public crime rather than a semi-public one.

Victims of gender based violence also have a right to legal assistance.²⁷ This includes a right to be accompanied in any proceedings by a lawyer or public defender. This lawyer is obligated:

- a) to provide legal counselling to victims of domestic violence;
- b) to report the occurrence of cases of violence to the police and the Public Prosecution Service whenever such reporting does not imply a breach of professional secrecy;
- c) to advise the victims, witnesses and family members on the progress being made in the judicial proceedings relating to cases of domestic violence;
- d) to monitor the way the cases of domestic violence are dealt with by the authorities and judicial operators, i.e., the police, the Public Prosecution Service and the Courts;
- e) to get in touch with relevant entities, bodies and community groups for the purpose of dealing with cases of domestic violence;
- f) to advise the victims on their access to other services that may be necessary;
- g) to facilitate access by the parties to information relating to specific cases under the terms

²³ Law Against Domestic Violence, Articles 8 – 12.

²⁴ Law Against Domestic Violence, Articles 20-24.

²⁵ These articles relate to the crimes of mistreatment of a disabled person, mistreatment of a spouse, mistreatment of a minor and aggravating factors for these crimes.

²⁶ These crimes relate to homicide, aggravated homicide, termination of a pregnancy, simple offences against physical integrity, serious offences against physical integrity, torture or other cruel, inhuman or degrading treatment, sexual coercion, rape, child prostitution, sexual abuse of a minor, sexual acts with an adolescent, and sexual abuse of a person incapable of resistance.

²⁷ The Law Against Domestic Violence, Article 25.

provided in this law and in other applicable legal provisions.²⁸

As will be shown later in this report, the Law Against Domestic Violence has the potential to greatly assist victims of gender based violence to protect their rights.

d) Timor Leste Criminal Procedure Code

The Timorese Criminal Procedure Code was promulgated in December 2005 and governs the conduct of all criminal trials in Timor Leste, including the enquiry, the process of gathering evidence and the status of victims of gender based violence as an ‘aggrieved party’ to criminal proceedings.²⁹ Importantly for cases of gender based violence, the Criminal Procedure Code, sets out the role of the police,³⁰ the Prosecutor³¹ and the Judge in the conduct of criminal trials. Under article 52 of the Criminal Procedure Code, when a police officer becomes aware that a crime has been committed they must prepare a ‘notification’ for the Prosecutor. The Prosecutor then has the responsibility to conduct the investigation and direct the police to obtain more evidence if required. Once there is sufficient evidence to support the crime, the Prosecutor must then issue an indictment.³² When the indictment is lodged with the court, the court will assess it and if it meets the necessary requirements, will admit the indictment and set a trial date.³³

e) The Witness Protection Law

In May 2009 the Timorese National Parliament passed the Law on the Protection of Witnesses.³⁴ The law is designed to protect witnesses, in civil or criminal proceedings, when their lives, physical or psychological integrity, freedom or assets of considerable value are jeopardized due to their contributing to ascertaining the proof of facts or to the discovery of the truth which constitute the object of the proceedings.³⁵ The law includes protection measures such as concealment of the witness’s identity³⁶ and special security measures.³⁷ In JSMP’s experience the law has not been regularly used to protect victims of gender-based violence or other family members who witness crimes.

f) The Indonesian Penal Code

Before promulgation of the Timor Leste Penal Code, the primary law governing gender based violence was the Indonesian Penal Code.³⁸ Under the Indonesian Penal Code gender based violence could be prosecuted as ‘maltreatment’, ‘pre-meditated maltreatment’, ‘serious maltreatment’, or ‘pre-meditated serious maltreatment.’³⁹ Under article 356 of the Indonesian Penal Code, where maltreatment was committed against the perpetrators parents, spouse or child, the punishment could be increased by one third.⁴⁰

²⁸ The Law Against Domestic Violence, Article 25.

²⁹ Criminal Procedure Code, Articles 71 and 72.

³⁰ Criminal Procedure Code, Articles 52-57.

³¹ Criminal Procedure Code, Articles 48-51.

³² Criminal Procedure Code, Article 236.

³³ Criminal Procedure Code, Article 239, 240.

³⁴ Law on the Protection of Witnesses, Nu. 2/2009.

³⁵ Law on the Protection of Witnesses, Nu. 2/2009, Article 1.

³⁶ Law on the Protection of Witnesses, Nu. 2/2009, Article 4.

³⁷ Law on the Protection of Witnesses, Nu. 2/2009, Article 20.

³⁸ The Penal Code of Indonesia 1982.

³⁹ The Penal Code of Indonesia 1982, Articles 351, 353, 354 and 355 respectively.

⁴⁰ Penal Code of Indonesia 1982, Article 356.

The Indonesian Criminal Code also criminalises a range of sexual crimes, including against minors,⁴¹ as well as manslaughter and murder.⁴² These crimes could also be used to prosecute gender based violence

Like the Timor Leste Penal Code, the Indonesian Criminal Code distinguishes between public and semi-public crimes. Some crimes that are now public crimes under the Timor Leste Penal Code were previously semi-public crimes under the Indonesian Penal Code.

The Indonesian Penal Code continues to apply to some cases being tried in Timorese Courts. This is because article 3(3) of the Timor Leste Penal Code states that:

The law subsequent to the commission of the crime shall apply to previous conduct whenever the same proves to be more lenient to the perpetrator and, in the case of a final decision, if any benefit may still be obtained.

This means that for cases still being tried following the promulgation of the Timor Leste Penal Code in July 2009, but concerning events taking place prior to this date, the Timor Leste Penal Code can operate retrospectively, except where this would be detrimental to the defendant, in which case the Indonesian Criminal Code will be applied.⁴³

3) Case Studies on Gender Based Violence

In this section of the report, JSMP will analyse three cases of gender based violence in which VSS provided legal representation and assistance to victims. This analysis will highlight a number of the challenges that remain in implementing the current legal protections for victims of gender based violence and the obstacles that stand between victims and obtaining justice.

These case studies do not use real names of the victims. Some minor details in the cases have been changed to protect the identity of victims and their families.

a) Case Study 1 – Incest

i) Facts

Lia, the victim in this case, was 17 years old. She lived in a house with her mother, father and four younger siblings. Lia's mother suffered from a mental illness which impacted her ability to look after her children. She was also deaf in one ear. The family's one room house was surrounded by fields, without electricity and far from other houses. One night in May 2008 at approximately 8 pm, Lia was asleep in bed when she awoke to find her father lying on top of her and undressing her. She tried to yell but her father said that he would kill her if she tried to scream. Lia felt afraid because of this threat and therefore did not further resist the demands of her father who raped her. The other occupants of the house were asleep and did not wake up. Her father raped Lia another three times over the coming months.

One day in September 2008 Lia's mother noticed changes in Lia's body, as her stomach was becoming larger. Lia's mother asked Lia about this but Lia did not say anything and was in tears. At that time Lia's father was not home. Later that night

⁴¹ Penal Code of Indonesia 1982, Articles 285 – 294.

⁴² Penal Code of Indonesia 1982, Articles 338 - 340.

⁴³ Timore Leste Penal Code, Article 3.

her father came home in a drunken state. Lia's mother asked him about what had happened to Lia and he immediately began hitting his wife.

The next morning Lia, her younger siblings and her mother escaped to their neighbour's house. Their neighbour took them to see the Village Chief (*Xefi Suku*). On that day the community police were conducting a patrol in the village and the Village Chief immediately reported the matter to the police patrol. The police took Lia and her mother to the sub-district police station to take their statements.

That afternoon, the police from the sub-district police station contacted the Vulnerable Persons Unit (*VPU*) at the district police station and asked them to collect the Lia. After Lia was picked up, the VPU contacted VSS. A VSS lawyer attended the police station and brought Lia to a safe room (*fatin hakmatek*) at the local hospital so that Lia could undergo a medical examination.

Lia was found to be five months pregnant so the VSS lawyer and another staff member from an NGO that deals with women's and children's rights told Lia's mother and the Xefi Suku that it would be very difficult for Lia to return to her community. It was agreed that Lia would stay temporarily in a safe house (*uma mahon*) where she would be given protection.

ii) The Investigation

For some time the VSS lawyer explained the formal legal system to Lia and encouraged her to pursue the matter and finally the victim agreed to do so. About two months after VSS first began assisting Lia, the VSS lawyer contacted an international prosecutor to be updated about developments in the case. After that, the VSS lawyer accompanied the victim to meet the Prosecutor. However, the VSS lawyer was denied permission to enter the room while Lia was being interviewed.

After the interview, VSS asked what had happened. The Prosecutor stated that the victim did not want to pursue her case because she was afraid that her father would be detained and then there would be no-one to provide for her younger brothers and sisters, since her mother was too unwell to look after them.

In October 2008, VSS confirmed with the VPU that the Prosecutor had ordered that the suspect provide Proof of Identity and Residence, a procedural step required by article 186 of the Criminal Procedure Code which requires a suspect to inform police of his location at all times during the investigation process. However VSS believed that the investigation had been closed without prosecution because the victim did not want to proceed with the case.

Lia stayed in the safe house for a year and a half, where she gave birth to a baby girl. After this she returned to her community and she now says that she has good relations with her father. Lia has married and moved with her new husband to different district. Her father did not permit Lia to take her daughter with her when she got married so Lia's daughter is still living with her father.

In February 2011 Lia's father contacted VSS because he had received a notification to appear in court in relation to this case. VSS contacted Lia and brought her to Dili to give evidence. Between October 2008 and February 2011, Lia and her father had

not heard from the prosecution or the police and believed that the case had been closed.

iii) The Hearing and Decision

The trial of this case took place in February 2011 and was not open to the public.⁴⁴ VSS was not permitted to attend the trial, despite Article 25 of the Law Against Domestic Violence which guarantees the right to legal representation for victims of gender based violence in all proceedings. VSS staff waited outside the courtroom until the trial finished at 10 pm.

VSS was told that in Court, Lia's father admitted that he had sex his daughter on three occasions but stated that she consented to this. Lia's father also admitted that he was the father of Lia's child. However, Lia gave evidence at the trial that her daughter was not her father's child but the child of someone else. VSS believes that Lia gave this false evidence because she was ashamed and did not want to endanger her new marriage. Lia's mother and younger brother chose not give evidence and could not be compelled to do so because of article 125 of the Criminal Procedure Code, which provides that close family cannot be compelled to give evidence against their family members. There was no DNA evidence in this case. However the Court received medical evidence from the doctor who examined Lia when she was five months pregnant and evidence from the police.

On 3 March 2011, the Court handed down its decision in this case, finding the defendant not guilty of rape as defined in article 285 of the Indonesian Penal Code.⁴⁵ The following are the facts that were found proven and unproven by the Court in this case:

- *Proven Facts:*
 - Between January and October 2008, late at night the defendant entered the room where Lia was sleeping with her mother;
 - The defendant was the father of Lia;
 - Lia was 17 years old at the time;
 - The defendant entered Lia's room and took off Lia's clothes;
 - The defendant took out his penis and penetrated Lia's vagina until he ejaculated sperm in Lia's vagina;

⁴⁴ Article 76 of the Criminal Procedure Code states that "In the case of a proceeding in connection with a sexual criminal offence against a person aged less than 18 years, the proceeding shall, as a rule of thumb, be devoid of its public character."

⁴⁵ The Indonesian Penal Code was applied by the Court in this case because the incident occurred in 2008 and the Timor Leste Penal Code only came into force in April 2009. The provisions of the Indonesian Penal Code were more favorable to the defendant in this case (Under the Timor Leste Penal Code the maximum penalty for sexual abuse of a minor is 20 years. Under the Indonesian Penal Code, the maximum penalty for committing an obscene act against ones underage child is 7 years). Therefore, in accordance with Article 3 of the Timorese Penal Code dealing with retrospectivity of the law, the Indonesian Penal Code was to be applied.

- The same night the defendant had sexual relations with the victim twice;
- He made his penis erect to penetrate the victims vagina and ejaculated inside her;
- The consequence of this sexual intercourse was that Lia became pregnant and gave birth to a baby boy;
- The defendant undertook these actions freely and with full understanding;
- Before committing this crime the defendant had never committed any other crime;
- The defendant was sorry for his behaviour;
- The defendant has seven children (four boys and three girls);
- The defendant is a farmer and does not receive a monthly income;
- Lia has now married another man.
- *Facts not proven:*
 - The defendant had sexual relations a third time with Lia in the kitchen;
 - Lia resisted the defendant;
 - Lia's vagina bled;
 - The defendant threatened to kill the victim if she said anything;
 - Before this time Lia had previously had sexual intercourse with any other men;
 - The defendant forced the victim to have sex;
 - Lia screamed when she was having sex.

The result of these proven and unproven facts was that the elements of the crime of rape in article 285 were not met as there was no evidence that the sex was non-consensual. The Court therefore had no choice but to absolve the defendant.

iv) Implementation of the Law

JSMP believes that the court's decision in this case show a range of serious problems with the way that gender based violence is treated in Timor Leste. JSMP is pleased that the Prosecutor continued to prosecute this case despite the victim's wishes otherwise. The crime alleged in this case was a public and therefore prosecution should not have depended on the victim's complaint. JSMP is also pleased with the work of the police in this case. Sub-district police quickly contacted VSS as well as a local women's NGO and took statements from the witnesses. The police also correctly notified the Prosecutor as required by the Criminal Procedure Code.

JSMP is, however, very concerned about the length of time which passed between the crimes being reported by the police to the Prosecutor and the file being first presented to the Court. Between the date of the rapes and the indictment being filed with the court a period of two years passed, where the file remained with the Prosecution service. JSMP believes that one reason for the delay was that the Prosecutors changed however, in JSMP's opinion this delay is unacceptable and contributed to the victim's unwillingness to provide accurate evidence in this case. JSMP is also concerned that the Prosecutors were not active in obtaining evidence in this case, which led to the victim giving false evidence and the witnesses choosing to remain silent.

JSMP recommends that cases of sexual assault should be given priority within the Prosecution service and the Courts. Such cases should be processed quickly in order to preserve evidence, guarantee the safety of children and minimize the harm to the victim. JSMP recommends that the Criminal Procedure Code should be amended to include strict deadlines in relation to the investigation and prosecution of cases of incest and sexual abuse of minors. Alternatively such measures could be included in the Law Against Domestic Violence.

JSMP is concerned that the unsatisfactory result in this case was partly because Lia's mother and younger brother chose to remain silent and were permitted to do this by article 125 of the Criminal Procedure Code.⁴⁶ JSMP believes that article 125 must be amended to give the court a discretion not to apply article 125 in cases of domestic violence and sexual assault, so that witnesses who are family members of the defendant can be compelled to give evidence.

JSMP also believes that this case illustrates the need for the Timor Leste Penal Code to include a specific crime of incest which criminalises all sexual relations between close family members (eg father and child, uncle/aunt and niece/nephew, sisters and brothers, grandparents and grandchildren), irrespective of the consent of the parties and the age of the participants. This would make it easier for courts to process crimes of incest and would make it clear that incest is not acceptable in Timorese communities in any circumstances.

JSMP is concerned for the welfare of Lia's younger siblings and her daughter in this case. JSMP believes that there should be an obligation placed on the police and other professionals to notify MSS, in particular the Child Protection Officer, when they are worried that a child is at risk of abuse. VSS believes that in this case, the isolation of the family home, the fact that the father has already raped one daughter on multiple occasions, the fact that the father was not ashamed or repentant about his actions, and the fact that the mother was unable to care for her children all combine to mean that Lia's siblings and daughter are at a high risk of sexual abuse and should not be living with their father.

⁴⁶ Article 122 of the Criminal Procedure Code states that witnesses who do not have a mental incapacity have an obligation to provide evidence to the court and may only refuse in cases stated by the law. However article 125 provides an exception to this, stating that a witness may refuse to give evidence if they are: progenitors, siblings, descendants, relatives up to the second degree, adopters, adoptees, or the spouse of the defendant.

JSMP is concerned that the victim's rights to legal assistance, as set out in article 25 of the Law Against Domestic Violence were violated. The right to legal assistance includes a right to be accompanied by a lawyer in any proceedings. Lia's lawyer was not permitted to accompany her in her interview with the International Prosecutor. VSS believes this is one of the reasons Lia decided she did not want prosecution of the case to continue. Lia's lawyer was also not permitted to attend the trial of her case. JSMP believes that judicial actors need to be educated on the rights of victims of gender based violence as provided for in the Law Against Domestic Violence. Courts should also develop guidelines on access to closed proceedings by the lawyers of victims of gender based violence.

b) Case Study 2 - Attempted Murder

i) Facts

Maria lived with her husband in a small village in remote Timor Leste. In December 2008, Maria went with some members of her husband's family to consult the local traditional doctor (*Matan Do'ok*) and asked him to read Maria's husband's future. They wanted to ask the traditional doctor about Maria's husband who had been depressed, and behaving strangely for a week or so. They thought he may be ill.

The Traditional Doctor said that Maria's husband was not sick but was under the influence of his sacred house (*Uma Adat*), and that the family should take him there to perform a ritual.

The group left early the next morning to walk to the sacred house. As usual, Maria's husband was carrying a machete. Maria's sisters-in-law were walking up ahead. Maria and her husband followed behind and out of sight.

After the group had crossed a bridge on the way to the sacred house, Maria's husband suddenly turned and struck Maria in the head with the machete. Maria immediately fell to the ground, however her husband continued his attack, slashing Maria's throat and neck twice and then slashing both of her legs. Finally, Maria's husband slashed both of her hands and her left hand was severed off.

By this stage Maria was unconscious and was taken to hospital. The doctor diagnosed the victim's condition as critical and she was treated in the intensive care unit of the hospital for 15 days.

While Maria was in hospital, the district VPU office called VSS and a VSS lawyer attended Maria in hospital. The VSS lawyer spoke to the VPU about this case and the VPU said that the case had been forwarded to the prosecutor's office. The VPU had taken a statement from the doctor and had obtained photographic evidence of the wounds to Maria's body.

After being discharged from the hospital Maria agreed to be referred to a safe house (*Uma Mahon*) to avoid any further violence from her husband. After careful consideration Maria chose to have the case settled through the formal justice system.

Approximately three months after the incident, a VSS lawyer accompanied Maria to meet with the Prosecutor assigned to her case. Maria and her lawyer brought the

severed hand, which had been preserved in a jar by the hospital, to the prosecutor to show as evidence. The prosecution unit completed the case file and forwarded the indictment to the Court with jurisdiction over this matter.

ii) The Hearing and Decision

In September 2009 the district court held the first hearing in the trial of this matter. The Prosecutor charged the defendant with the crime of attempted murder under articles 53 and 340 of the Indonesian Penal Code.⁴⁷

During the trial a range of evidence was provided to the court. This included the medical report of the doctor who attended to Maria in hospital. The victim and witnesses also provided evidence supporting the prosecutors case. The defendant provided a statement that he admitted to attacking the victim in the manner alleged by the prosecution and that he was now repentant.

The Court in this case decided that there was insufficient evidence to convict the defendant who was then fully acquitted. The court stated that the Prosecutor should have charged the defendant with ‘Serious Maltreatment’ under Article 354 of the Indonesian Penal Code. The Court stated that there was insufficient evidence to convict the defendant of attempted murder. The Court did not explain why this was the case.

Maria has now returned to her community and lives with her mother and daughter.

iii) Implementation of the Law

JSMP believes that the Court’s decision to acquit the defendant in this case was regrettable and incorrect. In JSMP’s opinion there was clearly enough evidence presented by the prosecutor to support the charges. This included strong medical evidence, supported by evidence of the victim, witnesses and the defendant himself. JSMP believes that the Court’s failure to convict in this case shows a lack of understanding of the nature of gender based violence and an assumption that crimes of gender based violence are not as important as other violent crimes. This decision sends an unfortunate message to victims that there is no point going through the difficulties of the formal justice system because in the end the perpetrator will be acquitted. It also sends a discouraging message to judicial actors such as the public prosecution service, that even when they work hard to present a strong case, they will not obtain a conviction.

JSMP believes that even if there was insufficient evidence to convict the defendant of attempted murder, the Court still should not have acquitted the defendant. Article 274 of the Criminal Procedure Code, provides that:

⁴⁷ Article 53 of the Indonesian Penal Code describes crimes of ‘attempt’ Article 338 criminalises manslaughter, and article 340 criminalises murder. The Indonesian Penal Code was applied in this case because the incident occurred in December 2008 and the Timor-Leste Penal Code only came into force in April 2009. The penalties under the Timor Leste code are heavier than those under the Indonesian Code and therefore the Defendant had the right to be tried under the Indonesian Code.

Where the court believes that the facts contained in the indictment must have a legal qualification different from the one stated therein ... the court shall report it to the public prosecutor and the defender, giving them, if requested, a deadline for preparing their procedural position.

This means that if the Court did not believe that the evidence supported the charge of attempted murder, it should have informed the Prosecutor and given him the opportunity to reformulate the indictment to include the charge of serious maltreatment. JSMP believes that the Court did not have the authority to simply acquit the defendant in these circumstances.

VSS lawyers have been told by some judicial actors that the reason for the acquittal in this case was due to an acrimonious relationship between one of the judges and the prosecutor. JSMP hopes that this is not the case. The Constitution clearly states that in performing their functions, judges are independent and owe obedience only to the Constitution, the law and to their own conscience.⁴⁸ In order to have a strong justice system, particularly in a country as small as Timor Leste, it is absolutely essential that judges are able to put aside any personal feelings they may have about other judicial actors and decide cases based purely on the law and the evidence.

JSMP believes that this case also highlights the need for Prosecutors to formulate their charges carefully. The Prosecutor in this case should have charged the defendant not only with attempted murder but also with the crimes of attempted manslaughter, serious offence against physical integrity and simple offence against physical integrity. This way, if the Prosecutor did not manage to prove the requirement of intent that was necessary for attempted murder, he may have still been able to prove a lesser crime.

iv) Appeal to the Court of Appeal

The Prosecutor, on behalf of the State, lodged an appeal with the Court of Appeal against the judge's decision to acquit the defendant in this case. This appeal was lodged within 15 days of the first decision as required by the Criminal Procedure Code. The Prosecution will argue on appeal that the court did not apply the law and assess the evidence correctly. The Prosecutor in this case has told JSMP that he has not yet received a response from the Court of Appeal about this case, despite over 18 months having passed since the appeal was lodged.

JSMP is very concerned about the long period that this appeal has been pending with the Court of Appeal. Cases that continue for an extended period of time prolong the uncertainty and trauma for the victim of gender based violence. They lead to a lack of confidence in the formal justice system and a reluctance to use the formal justice system to resolve problems in the future.

c) Case Study 3 - Attempted Rape

i) Facts

In February 2010 Angela went with her son to a lawyer's house to discuss representation for her husband in relation to his conviction and imprisonment in an unrelated criminal matter. When Angela arrived at her lawyers house and was

⁴⁸ Article 121 of the RDTL Constitution.

standing on the veranda, one of the lawyer's neighbours was there. He pushed Angela's son aside and grabbed Angela, dragging her to the back of the house, while kicking and punching her. Angela tried to scream but no one came to help her. She tried to escape by kicking at the wall of the house but the neighbour did not release her. He pulled her into a bedroom, threw her on to the bed and pulled off her trousers and underwear. The neighbour lay on top of Angela. He had his hand across her mouth so that she could not scream. He then put his mouth to Angela's vagina. He was just about to penetrate Angela with his penis when the lawyer entered the room and came to help Angela.

The police were called and attended the crime scene immediately. They arrested the perpetrator and took him to the police station. The police took Angela to the local VPU, where they called a local women's NGO and VSS. A VSS lawyer arranged for Angela to attend the local hospital to obtain a medical examination. The VSS lawyer also provided Angela with legal advice and Angela decided that she wanted to process this case in the formal legal system.

ii) The Hearing and Decision

The hearing in this case took place very quickly, with the first hearing being held in July 2010. The second hearing was scheduled for July also, but due to non-attendance of a witness, was deferred until August.

The prosecutor charged the defendant with the crime of attempted rape under articles 172, 23 and 24 of the Timor Leste Penal Code. Under the Timor Leste Penal Code, attempted crimes are punishable only in circumstances where they have a maximum penalty of three years or over.⁴⁹ The crime of attempted rape can be punished with between 5 and 15 years imprisonment.

The Court heard evidence from the victim, the defendant and the lawyer who was a witness. The defendant denied committing the crime. The Court also received the medical report from the doctor who had examined Angela. Based on this evidence the Court decided that the criminal act committed by the defendant had been proven and the court found the defendant guilty.

The Court sentenced the defendant to five years jail and ordered him to pay the victim compensation amounting to US\$500. Because this case occurred in 2010 the Timor-Leste Penal Code was applied.

iii) Implementation of the Law

JSMP is very pleased with the way that this case was processed by the police, the Prosecution service and the courts.

JSMP believes that the prosecution service performed very well, actively pursuing this case and fulfilling its obligations as set out in the Timor-Leste Criminal Procedure Code.⁵⁰ VSS believes that it is largely due to the effective work of the Prosecutor that this case was resolved satisfactorily. In this case the Prosecutor had a comprehensive understanding of the matter and from the outset handled the

⁴⁹ Timor Leste Penal Code, Article 24.

⁵⁰ Article 132 of the RDTL Constitution and Article 48 of the Timor-Leste Criminal Procedure Code.

investigation in a precise manner, with carefully drafted charges, which contributed to the court's final decision. The Prosecutor was sensitive to gender based violence issues and therefore in this case of attempted rape the victim obtained justice and the convicted person received a sentence proportional to his actions.

JSMP believes that the panel of judges handling this case demonstrated a very caring and understanding attitude towards the issue of gender based violence and accelerated the trial process because of this. Although the trial was delayed on two occasions due to the non-attendance of one of the parties, for the next hearing all of the parties complied with the written notifications issued by the local court. In general witnesses responded clearly and accurately to the questions they were asked. JSMP commends them on this as this is often not the case in trials of gender based violence in Timor Leste. JSMP especially commends the victim for providing honest and accurate testimony in what must have been extremely frightening and embarrassing circumstances.

JSMP believes that the decision handed down in this case of attempted rape was fair; and the victim in this case felt that she has obtained justice. This was because the perpetrator of the gender based violence was not only given a prison sentence, he was also ordered to pay compensation to the victim.

4) Obstacles to the Implementation of the Laws on Gender Based Violence

The case studies outlined in the previous section show how despite the existence of a range of legal protections for victims of gender based violence, victims still face substantial obstacles to achieving justice in the courts. This section of the report discusses a number of those obstacles in turn, with a view to making constructive recommendations for improving access to justice for victims of gender based violence.

a. Victims Lack Knowledge of the Formal Legal System

Many victims of gender based violence have insufficient knowledge about the formal legal system and the ways that this system can be used to obtain justice. Substantial amounts of confusion exist within communities about the role of police, the role of prosecutors, the roles of lawyers and the role of the courts. This lack of understanding leads to fear of formal legal processes and a feeling that it is better to stick with informal justice systems that are well known. Women in Timor Leste have much lower levels of education than men. This means they are even less likely than men to have knowledge about how to report a crime. Therefore many victims choose to remain silent and do not report their case to the authorities.

JSMP recommends that the Government must continue and extend education programs in relation to the laws relevant to gender based violence, and the formal legal system more generally.

b. Victims Lack Confidence in the formal legal process

Even when victims of gender based violence have knowledge about the law, many of them lack confidence in the capacity of the formal legal system to resolve their cases. For example in the first case study above, Lia was provided with information about the formal legal system by a VSS lawyer. However, after long delays and traumatic interactions with the legal sector, her faith in the legal process began to diminish. She

felt that her right to legal protection was not given much consideration by law enforcement authorities and that her life would be better able to move forward without the formal legal process. In order to encourage victims of gender based violence to use the formal legal system it is essential to show that tangible outcomes can be achieved through this process within a reasonable time frame. If this is not the case victims will continue to use traditional justice mechanisms.

To avoid victims of gender based violence losing confidence in the formal legal system, judicial actors, police, civil society and the Government must treat cases of gender based violence seriously and give priority to such cases within the legal system.

c. Victims Lack Community Support and Face Cultural Constraints

Even if victims of gender based violence have knowledge of the formal legal system and confidence in it, they may decide not to continue with formal legal action because of lack of community support and cultural constraints. Across Timor Leste a wide range of cultural norms and traditional laws exist that impose certain obligations on community members, and in particular women. Such traditional laws and cultural norms have many positive aspects, however in the context of gender based violence they often do not provide protection for the most vulnerable members of communities and are in conflict with Timor Leste's laws, as passed by its National Parliament. This leads to contradictions and causes confusion for victims who may wish to settle their case through the formal justice system.

Cultural factors can mean that victims do not necessarily get support from their communities or families or are pressured and threatened if they decide to use formal justice processes. For example in a number of VSS cases, the victim of gender based violence has been pressured to resolve her case through traditional processes. This has involved the perpetrator of the gender based violence being required to give a buffalo or goat to the grandfather, uncle or father of the victim. In VSS's experience, this resolution leads victims to feel victimized a second time as male members of their family benefit from their misfortune and have incentives to discourage the victim from using the formal legal system.

d. Victims are Economically Dependent

Most women in Timor Leste are economically dependent on their spouse or their parents, and this limits the range of options available to victims of gender based violence. A major concern for most victims of domestic violence when deciding whether to report their matter to the police is how they will sustain themselves and their children. For Lia, in the first case study above, the economic dependence of her and her siblings upon their father was a major factor in her deciding she did not want to pursue legal action. In cases of gender based violence, threats are often made by family members and the perpetrator that the victim will not be provided for if she takes a matter to the police. This situation must be resolved in order for victims of gender based violence to obtain justice.

In order to provide some economic independence to victims of gender based violence, JSMP believes that it is important for the provisions of the Law Against Domestic Violence that deal with alimony to be implemented and socialized effectively. These provisions state that where the victim is a spouse or close family member of the

perpetrator they are entitled to alimony if they can show they are in need.⁵¹ This alimony can be ordered provisionally by a judge at the request of the Public Prosecutor.⁵² This means that it is not necessary to wait until the final decision for alimony to be awarded. At present, JSMP is not aware of any cases where alimony has been awarded to a victim of gender based violence in accordance with these articles.

e. Geographical Barriers to Justice

Victims of gender based violence also face a range of logistical constraints in accessing formal justice procedures. Many victims of gender based violence live in geographically isolated parts of Timor Leste. This makes it difficult for victims to report cases to authorities, to participate in interviews and to attend court processes. Roads are bad and travelling can take a lot of time. Victims are aware that legal processes require money, effort and transport. This acts as a disincentive to use formal legal processes. In addition, often court schedules are unreliable and trials are regularly postponed for a number of reasons, for example the non-attendance of a perpetrator, victim, prosecutor, judge, lawyer or public defender. This increases the challenges for victims of gender based violence who wish to use formal processes.

JSMP believes that the Courts and the Government can do more to overcome geographical barriers to justice. This can include providing money for transport, operating mobile courts, providing training to local leaders (Xefi Sukus and other youth and women leaders) and increasing the outreach scope of VPUs.

f. Inadequate Human Resources of VPUs

JSMP/VSS acknowledges that VPU staff have been working hard to help victims across Timor Leste. However VSS is concerned that many police officers working in VPUs have a very limited understanding of the law in relation to the handling of cases involving gender based violence and often lack sensitivity towards victims of gender based violence. VSS suspects that this situation has arisen because there is a culture within VPUs of not taking gender based violence seriously, and that many VPU staff think that all they need to do is carry out their normal tasks. JSMP is concerned that a significant number of gender based violence cases are referred by the police in VPUs to be settled through traditional means, despite the fact that police do not have the legal authority to do this. VSS has also observed police officers in VPUs who blame and embarrass the victim and do not provide a secure and safe environment for victims to provide their statements. JSMP believes that training of police working in VPUs should not only include training about the law, but also training about issues of gender equality and gender sensitivity more generally.

JSMP believes that the limited number of police officers assigned to VPUs also affects the ability of victims of gender based violence to access the formal justice system. JSMP recommends that it is necessary to increase the total number of VPUs, because so far VPUs have only been established at the district level, while sub-districts have only ordinary investigative police officers. This affects the handling of cases involving gender based violence.

⁵¹ The Law Against Domestic Violence, Article 29.

⁵² The Law Against Domestic Violence, Article 32.

As part of the police administration system, staff are rotated through all police units including the VPUs. JSMP is concerned that this rotation system has a detrimental impact on the work carried out by VPU staff. JSMP regularly observes that duties are not handed over efficiently and this makes it difficult for new staff to carry out their work effectively. The rotation of staff in VPUs is also an impediment to police developing an adequate knowledge about the law related to gender based violence. In JSMP's experience, often by the time a police member has developed some understanding about crimes of domestic violence, they are rotated out of VPU.

JSMP believes that a rotation system can operate effectively and have benefits, for example it can allow a larger number of police officers to develop an understanding of gender based violence. However, if the rotation system is going to continue, it must ensure that any staff member assigned to a VPU is first given adequate training, in relation to the law and the nature of gender based violence. There also needs to be more efficient handover processes in place to ensure that cases can continue to be processed in a timely and efficient manner.

g. Inadequate Human Resources in the Prosecution Service

When providing legal assistance, VSS has observed that there are only a few prosecutors which means that the handling of cases is very slow and many cases are not being registered with the Court within the time frames set out in the Criminal Procedure Code. For example, there is only one Prosecutor allocated to the whole jurisdiction of the Suai District Court, which covers three districts of Maliana, Suai and Same. It is understandable that this prosecutor struggles to process all criminal cases that arise in those three districts. JSMP believes it is extremely important to increase the number of prosecutors so that cases of gender based violence can be processed within a reasonable time frame.

In addition to the limited number of prosecutors mentioned above, the rotation or replacement of prosecutors and judges also influences the legal process in relation to cases of gender based violence. Prosecutors are rotated regularly between Dili and the districts. This is largely because after a year or so living in the districts prosecutors no longer want to live so far from Dili. JSMP believes that prosecutors should not be rotated or substituted when they are still handling a case, especially when it is nearing completion, because the new prosecutor will not know about the history of the case and the trial process, and will find it difficult to present a final recommendation to the court. This problem leads to the unsatisfactory outcomes in Case Studies 1 and 2. JSMP recommends that there be a four year minimum length for prosecutor contracts, and that Prosecutors be required to work in a jurisdiction for at least this length of time. JSMP also recommends that Prosecutors develop more rigorous handover procedures for cases that are ongoing when they are leaving a position.

As well as rotation of Prosecutors, often a Prosecutor will be substituted for short periods, for example when a Prosecutor is on leave or undertaking training overseas. In VSS's experience these substitutions are highly problematic for the prosecution of cases as the substituted prosecutor usually does not understand the case and is not able to properly prosecute it in court.

In VSS's experience, Prosecutors are not playing an active role in the investigation of gender based violence cases. This is leading to badly drafted charges and poor outcomes for victims. It is also leading to inquiries that take a very long time. The Prosecutor has the responsibility to conduct the enquiry and take over the procedures it deems advisable to conduct directly in this phase.⁵³ The role of police is to assist the Prosecutor.⁵⁴ The time limit for conducting an inquiry where none of the defendants is in pre-trial detention is one year.⁵⁵ JSMP believes that Prosecutors need to be more active in directing the police throughout the enquiry process.

JSMP believes that as well as the need to increase the number of Prosecutors working to process gender based violence cases, there is also a need for specialist Prosecutors to handle cases involving crimes of this nature. This is important because gender based violence is not an ordinary issue or crime, and the resolution of these types of cases requires extra effort and specific measures.

In relation to accessing documents from the prosecution service in general, and checking cases registered by the VPU police in particular, VSS has found the administrative staff of the prosecution service to be very cooperative and this has made it easier for the VSS to check the progress of cases in which it is involved. JSMP commends the Prosecution service for this cooperation and for the effective implementation of its case management system.

h. Problems with Judges and the Courts

i) Judges have a Limited Understanding of Gender Based Violence

JSMP acknowledges that in some respects the performance of judges has been positive in relation to the processing of cases of gender based violence. For example in Case Study 3 outline above, the Court treated Angela, the victim, with respect and dignity, in a manner that should be commended. However JSMP believes that in many other cases, judges have not given cases of gender based violence the attention and consideration that they deserve. Maria's case is one such example. In VSS's experience, there is still a prevalent attitude amongst many judges that crimes of gender based violence are not as serious as other violent crimes.

VSS is also concerned that the number of judges is inadequate and impacts the quality of decisions being handed down in cases of gender based violence. Only a small number of judges have been assigned to each court and they are required to process a large number of cases. This certainly influences the examination of cases and how efficiently and quickly cases can be dealt with. Consequently these cases experience many delays.⁵⁶

In order to address these issues, JSMP recommends that the Courts increase the number of judges. Courts should also develop a training program, for existing judges and within the Judicial Training Centre, to provide legal actors with

⁵³ Criminal Procedure Code, Article 48(2)(b).

⁵⁴ Criminal Procedure Code, Article 52(2).

⁵⁵ Criminal Procedure Code, Article 232(3).

⁵⁶ Suai District Court and Oecusse District Court.

information about the law as it relates to crimes of gender based violence and the nature of gender based violence itself.

JSMP recommends that there should be specialist judges who hear cases of gender based violence. This is important because gender based violence is not an ordinary issue or crime, and the resolution of these types of cases requires extra effort and specific

JSMP also recommends that the Courts provide a separate waiting room for victims of gender based violence so that they do not have to wait out the front of the court with the perpetrator for their case to be called. JSMP believes that this is an extremely frightening experience for victims and that it gives the defendant an opportunity to threaten and intimidate the victim. JSMP believes that this impacts the quality of evidence provided to the court.

ii) Problems with International Judges

Since Timor Leste obtained its independence, many international judges have been recruited to help national judges develop the judicial system in this new nation. Their presence has brought significant changes and the Courts have been assisted by these international judges to handle the complex cases requiring resolution. However the presence of international judges has also complicated the handling of cases in the Courts. This is because when the contracts of international judges end, they return home without further consideration of the cases they were dealing with. This problem is exacerbated by the lack of handover notes in relation to their cases, which makes it hard for judges who take over these cases in the future.

An example of one of VSS's cases where this happened concerns a case of sexual abuse against a minor. This case involved two different incidents of sexual abuse of a minor committed by one defendant. The first hearing was conducted by an international judge. However, before the second hearing took place, the international judge completed his mission and left Timor Leste. There was no handover regarding this matter and the national judge who took over the case was not familiar with the process because no notes were included in the case file. As a consequence, the Judge had to acquit the defendant in relation to the first incident.

JSMP believes that the Court needs to develop a better system for managing its international judges to ensure that their replacement does not negatively impact the cases that are in process.

iii) Administrative Systems in the Courts Need to be Improved

JSMP believes that the administration processes in the Courts are problematic and are creating difficulties for victims of gender based violence. In VSS's experience, most community members find it extremely difficult to access documents from the Courts in relation to their cases. This includes obtaining copies of the Courts final decisions. It is particularly difficult to access documents from the Dili District Court. This is not the case in the District Courts of Suai, Oecusse and Baucau where it is possible to access documents and check the progress of cases and court schedules by asking the registry section of the Court. The administrative system in

the courts contrasts with that of the prosecution service, where, in general, VSS has found the administrative staff to be very cooperative.

JSMP recommends that the Courts must improve their administrative processes so that victims can access information relevant to their cases and community members can understand how cases are being resolved.

i. Language Obstacles Creative Difficulties for Victims

JSMP is concerned that the dominant use of Portuguese in Timor Leste's courts is a significant obstacle to victims of gender based violence accessing justice. Although Article 13(1) of the Constitution states that there are two official languages of Timor Leste, Portuguese and Tetum, Portuguese is the only official way to communicate in the courts. Portuguese is the language in which trials are formally conducted, and notifications and final decisions are given.⁵⁷

Almost all victims of gender based violence in Timor Leste do not speak Portuguese. Many also do not speak Tetun. It is therefore essential that an effective and well resourced interpreting service is established in all courts. It is also important that interpreting services are available to other judicial actors including Prosecutors and police. Article 83 of the Timor Leste Criminal Procedure Code states that an interpreter must be provided when a party to a matter does not understand the language used during the trial. However, in reality there are only sometimes interpreters from Portuguese to Tetun and there are no court interpreters to local languages.

For victims of gender based violence, the trial process is even more frightening and traumatic when they do not understand what is happening. Therefore JSMP recommends that the Courts establish a comprehensive interpreting and translating service with interpreters for Portuguese, Tetun and local languages. Interpreters should be given training in the law and in ethics. JSMP also recommends that all court documents should be published in both official languages, Tetun and Portuguese.

5) Conclusions and Recommendations

In this report, JSMP has argued that despite a relatively comprehensive legal framework regulating the issue of gender based violence, victims have not yet been able to use this legal framework to obtain justice. There are a range of reasons for this. They include victims lack of knowledge about the formal justice system, their lack of confidence in the formal justice system, their economic dependence on their spouses and a lack of community support for victims of gender based violence. Other obstacles include geographical barriers to justice, inadequate human resources within the police, the prosecution service and the courts and language barriers.

JSMP believes that it is essential that these obstacles to justice for victims of gender based violence are overcome. To achieve this, JSMP makes the following recommendations:

- 1) The Government should conduct a broad and comprehensive public education program to ensure that community members, particularly community leaders,

⁵⁷ JSMP/VSS recognises that in reality trials are often conducted in the districts using Tetun since most Timorese lawyers and national judges do not speak Portuguese.

understand the new laws that regulate gender based violence and the formal legal system more broadly;

- 2) To avoid victims of gender based violence losing confidence in the formal legal system, judicial actors, police, civil society and the Government must treat cases of gender based violence seriously and give priority to such cases within the legal system. In sexual violence and incest cases there should be strict deadlines for various procedural steps;
- 3) All judicial actors, need to respect victims' rights to legal assistance and representation in all proceedings as provided for in Article 25 of the Law Against Domestic Violence;
- 4) There needs to be greater implementation of the provisions of the Law Against Domestic Violence that deal with alimony so that victims are not prevented from pursuing their case due to economic dependence on their spouse;
- 5) The National Parliament should amend article 125 of the Criminal Procedure Code to give courts a discretion to not apply this article to victims in cases of domestic violence and sexual assault, so that witnesses who are family members of the defendant can be compelled to give evidence.
- 6) The National Parliament should amend the Timor Leste Penal Code to include a crime of incest which criminalises all sexual relations between close family members (eg father and child, uncle/aunt and niece/nephew, sisters and brothers, grandparents and grandchildren), irrespective of the consent of the parties and age of the participants.
- 7) In cases where there are concerns that children are at risk of abuse, police and Judicial actors must notify MSS and in particular the Child Protection Officer so this can be investigated;
- 8) The Courts and the Government should do more to overcome geographical barriers to justice, including providing money for transport, operating mobile courts, providing training to local leaders and increasing the outreach scope of VPUs.
- 9) There needs to be a greater number of VPU officers and VPUs should be established at the sub-district level, not just the district level.
- 10) VPU officers require more training on the law and on gender sensitivity. This is particularly important for new officers when they are rotated into a VPU. The VPU also needs to strengthen handover procedures so that rotation of officers does not cause disruption to the investigation of cases of gender based violence.
- 11) The prosecution service needs to increase the number of prosecutors and provide adequate training to them so that they understand the nature of gender based violence crimes.
- 12) The prosecution Service should set a two year minimum contract for Prosecutors, and ensure that when Prosecutors rotate between district courts they provide adequate handover details. Substitution of prosecutors in complex cases should be avoided as much as possible.

- 13) Prosecutors need to be more active in directing the investigation into crimes of gender based violence, and take more care in formulating their accusations. This requires charging the defendant with all relevant crimes so that if one crime is not proven, other lesser crimes will be. It also requires the prosecution to develop stronger relationships with victims and other witnesses so that they feel comfortable giving their evidence to the court.
- 14) JSMP recommends that the Courts increase the number of judges. Courts should also develop a training program, for existing judges and within the Judicial Training Centre, to provide legal actors with information about the law as it relates to crimes of gender based violence and the nature of gender based violence itself.
- 15) Specialist judges and prosecutors should be allocated to deal with crimes of gender based violence. This would allow them to develop the skills necessary to process these specific types of cases.
- 16) Courts should provide a separate waiting room for victims of gender based violence so that they do not have to wait out the front of the court with the perpetrator for their case to be called.
- 17) Where appropriate, Courts should call experts such as medical doctors to explain their medical reports orally to the courts.
- 18) Courts need to improve their administrative processes so that victims can access information relevant to their cases and community members can understand how cases are being resolved.
- 19) Courts need to establish a comprehensive interpreting and translating service with interpreters for Portuguese, Tetun and local languages. Interpreters should be given training in the law and in interpreting ethics.
- 20) Courts need to publish all official documents such as decisions and notifications in both official languages, Tetun and Portuguese.