



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

**STATISTICS ON CASES OF VIOLENCE AGAINST WOMEN IN  
TIMOR LESTE**

**Dili, Timor Leste  
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*The Judicial System Monitoring Programme (JSMP) was set up in early 2001 in Dili, East Timor. Through court monitoring, the provision of legal analysis and thematic reports on the development of the judicial system, JSMP aims to contribute to the ongoing evaluation and building of the justice system in East Timor. For further information see [www.jsmp.minihub.org](http://www.jsmp.minihub.org)*

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## 1. INTRODUCTION

In late 2004 the Women's Justice Unit (WJU) of JSMP conducted research and wrote a report entitled "Police Treatment of Women in Timor Leste". As part of this research, the WJU collected statistical data on violence against women in Timor Leste. The WJU initially planned to include this statistical data in the aforementioned report.<sup>1</sup> However, as there was a significant amount of statistical data obtained from the police service relating to violence against women, the WJU decided to prepare this statistical report separately.

Interviews conducted in 13 districts indicate that sexual assault and domestic violence against women is prevalent in the community.<sup>2</sup> However, most women are reluctant to report acts of violence against them. Also, the community is of the opinion that the settling of such cases through formal means will be time consuming and there also are economic factors to consider. The JSMP interviews indicate that most cases of violence against women, in particular domestic violence, are sent back to the family to be settled through traditional means or through mediation. Police officers usually only pursue a case when it results in serious injury.<sup>3</sup>

Despite the fact that relatively few acts of violence against women are actually reported to the police, it appears that of those reported to the police (361 cases in 2003) only a very small proportion ever reach a final decision in the district courts. Since JSMP began monitoring court cases involving women victims in early 2004, only eight decisions have been delivered. The main reasons for this dramatic drop in the number of cases through the formal justice process are: many victims withdraw their case after they have reported it to the police and; problems with court administration.

## 2. AIM OF THIS REPORT

JSMP's WJU decided to prepare a report detailing statistics on cases relating to violence against women because, through research for previous reports it appeared that there were dramatic drops in numbers of cases along each stage of the formal justice process.<sup>4</sup> Acts of violence against women were seldom reported to the police.<sup>5</sup> Of those that were reported it appeared that few are forwarded for prosecution. Fewer still continued to be prosecuted until there was a conclusion of the court case and an adjudication of guilt.

Through this report JSMP's WJU wishes to investigate whether there is indeed, such a decrease at each stage of the formal justice process, and, if so, why so many cases are dropping off along the way. We wish to investigate why, after a woman has gone through the difficult process of actually reporting a crime to the police, so often it appears that the case never reaches a conclusion in the courts.

JSMP hopes that the report's recommendations will be useful to those involved in maintaining statistical data in the formal justice system, as well as those working with the victims in these cases (in particular police, prosecutors and judges, as well as victim support groups).

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<sup>1</sup> See JSMP Report "Police Treatment of Women in Timor Leste "

<sup>2</sup> *ibid*

<sup>3</sup> *ibid*

<sup>4</sup> For the purpose of this report, the stages in the formal justice process are: reporting a crime to the police, the prosecutor filing an indictment in the case, the case commencing in the court, the court delivering a decision in the case.

<sup>5</sup> Much work needs to be done to try and increase trust in the formal justice process and improve women's status to enable women to report violence against them to this system and so that women victims feel confident in the ability of the formal justice system to deliver justice to them.

The information in this report is limited by the fact that at each stage of the formal justice process different categories of crimes are recorded by the various authorities: police, prosecutors, and courts. This has made it very difficult for JSMP to carry out a comprehensive statistical analysis of violence against women as recorded by the formal justice process. Moreover, the district courts do not possess comprehensive statistical data, and we were therefore unable to obtain any such data (except through the information gathered for JSMP's reports: "Case Flow and Management: a Statistical Analysis, 2003 – mid 2004", and "Women in the Formal Justice Sector"). Consequently this report only contains statistical data obtained from the police service, the prosecution unit, and information based on observations of the Dili District Court, as well as statistical data (in the form of percentages of total cases) from JSMP report's "Case Flow and Management: a Statistical Analysis, 2003 – mid 2004" and "Women in the Formal Justice Sector."

### 3. TOTAL NUMBER OF CASES OF VIOLENCE AGAINST WOMEN FOR EACH DISTRICT IN TIMOR LESTE

#### 3.1 POLICE RECORDS

This statistical data includes data from all 13 districts.

#### Data on Violence against Women from the Vulnerable Person's Unit, National Investigations Division, PNTL (January - August 2004) <sup>6</sup>

Criminal Offence	Ai leu	Ai Naro	Bau Cau	Bobo Naro	Cova Lima	Dili	Er Me Ra	Lau Tem	Li Qui Ca	Mana Tu To	Ma Nu Fahi	Oe Cu Sse	Vi Que Que	Total
Attempted Rape	0	0	1	1	1	12	1	0	2	0	0	1	0	19
Domestic Violence	2	4	7	13	17	133	4	21	4	6	9	18	8	246
Rape	0	0	1	0	0	8	0	0	0	0	0	0	0	9
Sexual Assault	0	0	0	3	2	12	0	1	0	0	0	0	0	18
Sexual Harassment	0	2	1	2	0	2	0	0	1	0	0	0	0	8
Total	2	6	10	19	20	167	5	22	7	6	9	19	8	300

#### Statistical Data on Violence against Women from the PNTL 2003

Criminal Offence	Ai leu	Ai Naro	Bau Cau	Bobo Naro	Cova Lima	Dili	Er Me Ra	Lau Tem	Li Qui Ca	Mana Tu To	Ma Nu Fahi	Oe Cu Sse	Vi Que Que	Total
Attempted Rape	1	1	2	2	2	11	0	2	1	0	1	0	1	24
Domestic Violence	8	20	4	36	13	130	6	8	11	6	5	18	15	280
Rape	1	1	2	1	2	17	2	1	7	0	0	1	3	38
Sexual Assault	0	2	0	1	4	2	1	0	0	0	1	0	0	11
Sexual Harassment	0	0	0	1	0	6	0	0	1	0	0	0	0	8
Total	10	24	8	41	21	166	9	11	20	6	7	19	19	361

<sup>6</sup> Includes all 13 Districts, these statistics were obtained from the Dili National VPU

### 3.2 PROSECUTION RECORDS

#### Data on Violence against Women from the Office of the General Prosecutor (July 2003 - June 2004) <sup>7</sup>

Criminal Offence	Dili	Baucau	Suai	Total
Domestic Violence	111	86	4	201
Rape	43	46	26	115

### 3.3 COURT RECORDS

This data was obtained while JSMP was conducting research for the report “Case Flow and Management: a Statistical Analysis, 2003 – mid 2004”.<sup>8</sup> In that report, information was recorded on a percentage basis. The data includes acts of sexual violence against women that have been processed by each of the courts in Timor Leste. The crimes listed in JSMP’s report are based on the list of charges used by the District Courts. These categories are: sexual violence, murder, assault, attempted murder, theft, counterfeiting, vandalism, fraud, immigration, traffic offences, manslaughter, extortion, and religious offences. Domestic violence is not one of the charges listed. Such violence would presumably be included under the categories of assault, sexual violence, murder and attempted murder. However, since many other offences carried out under those categories of crimes do not involve domestic violence, we are unable to provide accurate data in this report on the percentages of cases of domestic violence before the courts in Timor Leste. Since JSMP only has data in the form of percentages of total cases from the district courts, and does not have equivalent data on the percentages represented by sexual and domestic violence of total cases reported to the police and filed by the prosecutor, the use of this data from the courts is of course limited.

#### Percentage of Cases of Sexual Violence against Women for each Court in Timor Leste (January 2003 - June 2004) <sup>9</sup>

Court	Criminal Offence	Percentage ( % )
Dili District Court	Sexual Violence	23%
Oecusse District Court	Sexual Violence	13%
Suai District Court	Sexual Violence	13%
Baucau District Court	Sexual Violence	28%

<sup>7</sup> Includes Dili, Baucau, Suai. There are no statistics for Oecusse. These statistics were obtained from the Office of the Prosecutor General. (Statistics from the Office of the Prosecutor General)

<sup>8</sup> See this report for details on the difficulties associated with gathering statistical data from the courts.

<sup>9</sup> Report “Analysis of Statistics for the Period January 2003 - June 2004 ”

Observations conducted over a two month period in 2003 for JSMP's report "Women in the Formal Justice Sector" found that there were regular postponements in 41 cases from a total of 49 cases scheduled for hearing. During JSMP's period of observation (29 September to 28 November 2003) only 8 cases were heard.<sup>10</sup> From these 8 cases that were heard, most of these hearings only related to the reading of the indictment, and in just 6% of these cases hearings were conducted to hear evidence.<sup>11</sup>

In 2003, JSMP's report "Women in the Formal Justice Sector" found that:

- A large portion (55%) of the total criminal cases heard by the Dili District Court during JSMP's observation period were cases involving women.
- 78% of cases involving women were sexual assault cases.
- Sexual assault cases that were processed during the observation period were categorized as "extremely serious", namely the criminal act of rape committed by numerous offenders; with aggravating circumstances, such as the offender using a weapon and/or the fact that the average age of the victims was 15, whereas the average age of the defendants was 32.
- There were no final decisions in the cases involving women during this observation period in 2003.<sup>12</sup>

### **Rarity of Final Decisions**

Since its establishment in April 2004, the Women's Justice Unit (WJU) of JSMP has observed trials in more than 50 cases of violence against women that have been heard by the Dili, Baucau, and Suai District Courts. Of the 50 cases observed, a final decision has been reached in approximately 8 cases, including domestic violence and sexual assault cases.<sup>13</sup>

## **4. REASONS FOR DECREASES IN NUMBERS OF CASES AT EACH STAGE OF THE FORMAL JUSTICE PROCESS**

### ***4.1 Reasons why there is a decrease in the total number of cases between the initial police investigation and processing by the prosecutor's office***

#### **Domestic Violence**

- Results from interviews conducted in 13 Districts indicate that the number of domestic violence cases reported to police remains high. However when police commence investigating these cases the victims and their families often withdraw their cases. The reasons for doing so include: economic dependency (because they need their husband's income to support the family); threats of further violence or divorce by her husband and his family; embarrassment (because of the damage it will do

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<sup>10</sup> See "Women in the Formal Justice Sector"

<sup>11</sup> See "Women in the Formal Justice Sector"

<sup>12</sup> JSMP Report "Women in the Formal Justice Sector"

<sup>13</sup> JSMP is unable to report how many final decisions have been reached with absolute certainty, because we have not yet been able to access all the final decisions rendered by international judges in the district courts since September 2004 (see JSMP press release of 25 January 2005 at [www.jsmp.minihub.org](http://www.jsmp.minihub.org)).

to their family's reputation); and sometimes because children ask for their father (the accused) who is being detained.

- In domestic violence cases PNTL officers often refer cases to adat (the traditional justice process), or send the case back to be settled by the family, or by the village or sub-village chief.<sup>14</sup>
- Police attempt mediation to reconcile the two parties, and where such attempts at mediation are successful the case is not processed any further, (the police often make the accused sign a written promise that he will not repeat his actions).<sup>15</sup>

### **Sexual Assault (for the purposes of this report sexual violence includes the crimes of rape, attempted rape and sexual assault)**

- Looking at the figures in 3.1 and 3.2 it seems that most cases of sexual assault seem to progress from the police to the Prosecutor's office. The same is shown in JSMP's report "Police Treatment of Women in Timor Leste" in which we found that PNTL officers in all districts said sexual assault is a crime and these cases have to be dealt with through the formal justice process, not adat.<sup>16</sup> In those cases which do not progress from the police to the prosecutor's office, the reasons is usually a lack of evidence - sometimes the police do not understand which evidence is required to effectively prosecute a crime against women and the prosecutor's office must return a case to the police for further investigation. That causes delay, which discourages the victim from continuing with her complaint.<sup>17</sup>
- Sometimes in Timor Leste it is not possible to process cases from the police to the prosecutor due to a lack of communications and transport, especially in sub-districts located some distance from the court.

## ***4.2 Reasons why there is a decrease in the total number of cases between the time a case is processed by the prosecutor and when it progresses to court***

### **Domestic Violence**

- The reasons for the drop off in cases from the Prosecution Unit to the Court are similar to the reasons for the drop off from the Police Service to the Prosecutor, in that the majority of the victims and their families approach the prosecutor to withdraw their case and request for there to be no further processing of their case. The majority of victims withdraw their case due to economic factors, (because they have many children, and their husband (the suspect) is the one who provides for the family) and also because of threats of further violence and divorce from the suspect and his family.<sup>18</sup>
- The lack of domestic violence prosecutions can be partially explained by the fact that, for instance, from January to August of 2003, out of 148 domestic violence cases reported to the Dili District

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<sup>14</sup> Results of interviews conducted in 13 districts for JSMP Report "Police Treatment of Women in Timor Leste"

<sup>15</sup> Interview with PNTL in District 7 for JSMP Report "Police Treatment of Women in Timor Leste"

<sup>16</sup> JSMP report "Police Treatment of Women in Timor Leste" pg. 12

<sup>17</sup> Interview with a Public Defender, 15 June 2004

<sup>18</sup> Interview with a Prosecutor 11 June 2004

VPU, 104 of the complaints were withdrawn by victims after receiving the public prosecutor's approval to withdraw.<sup>19</sup>

- Prosecutors sometimes return cases to the local justice system, police or family.<sup>20</sup>

## **Sexual Assault**

- The prosecutorial staff at the Dili District Court is minimal given the number of cases to be handled by the staff. The Prosecutor's Office is so over-burdened as to prevent it from interacting sufficiently with victims of crimes.
- Indonesian law, especially the Indonesian Criminal Code (KUHP) is outdated.<sup>21</sup> The Criminal Code is gender neutral and the prosecutions ability to prosecute gender based crimes – especially domestic violence and sexual assault – is limited by the narrow definitions of crimes in the code. (For example, prosecution of rape within marriage is not possible under the KUHP article on rape (Article 285).)
- The prosecution sometimes does not ask effective or clear questions of the victim, suspect, or witnesses before or during trial.<sup>22</sup> JSMP has observed the prosecution asking questions which in fact confused the victim and court proceedings generally.<sup>23</sup>

### ***4.3 Reasons why there is a decrease in the total number of cases between the time a case is processed by the court and until a final decision is made***

#### **Domestic Violence and Sexual Assault (reasons are the same for both)**

The average length that women related cases before the Court had been processed during (JSMP's monitoring period 29 September to 28 November 2003) was 274 days (in none of these cases had a final decision been delivered).<sup>24</sup> The length of these proceedings is not unusual for other types of cases too. The main reason for such lengthy proceedings can be attributed to problems with court administration (which were described in JSMP's reports "Dili District Court Final Report 2003", "Women in the Formal Justice Sector", and "Overview of the Courts in Timor Leste in 2004"). These include:

- Long delays and many postponements wear down a woman's determination to seek justice for her injuries and prevent progress towards the ultimate decision stage.<sup>25</sup>

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<sup>19</sup> "Women in the Formal Justice Sector" report page. 18

<sup>20</sup> Interview with a Prosecutor, 14 June 2004

<sup>21</sup> It is based on 1912 Dutch colonial law, see JSMP's report "An Analysis of a Sexual Assault Decision in Dili District Court", for further information. Also, interview with a Prosecutor 11 June 2004

<sup>22</sup> See JSMP's report on "An Analysis of a Sexual Assault Decision in Dili District Court"

<sup>23</sup> See JSMP's report "Women in the Formal Justice Sector" pg. 19

<sup>24</sup> "Women in the Formal Justice Sector" report pg. 27

<sup>25</sup> Progress in women-related cases during the monitoring period for the "Women in the Formal Justice Sector" report was almost always postponed or delayed. Few hearings actually proceeded, and of those that did proceed, most involved only the mechanical reading of the indictment. Delays before proceedings were the norm; indeed, the average delay before hearings was about 45 minutes. Ironically, delays before hearings that were ultimately merely postponed were the longest. In some cases, victims and court actors waited for up to two and a half hours only to learn that their

- Scheduling of cases is not communicated, so parties are often not assembled for the trial.
- The notice board at the court is rarely used by Court staff to communicate to the public when proceedings are scheduled. Interested parties must personally inquire of the case reporters in order to ascertain the scheduling of a case. When victims of sexual violence have to inquire personally of official court staff they may be intimidated, made emotionally anxious or embarrassed by the proceedings.
- Sometimes during regular working hours there are no court staff present in the office for up to two hours, often for no official reason. This means that nobody knows when cases will be scheduled.
- Interested parties can experience difficulties obtaining accurate information about the scheduling of a case because of erroneous entries made by court clerks in the case files. In addition, case file notes are frequently incomplete and inadequately or inaccurately reflect what occurred at the hearing.
- Some justice actors do not receive the letter informing them of their schedule time, nor are they contacted by the police to inform them of their trial date.

Since the employment of four international judges in the District Courts in September 2004 some cases have been progressing more efficiently through the courts. However, many of the problems with court administration identified above (including continuous postponements and delays) continue. Moreover, further problems have arisen, including:

- The international judges have taken over many cases which a Timorese judge had already commenced hearing. According to the rules for the conduct of criminal trials, a judge who takes part in the final decision must have attended every trial hearing in the court. Therefore, many trials need to be commenced again<sup>26</sup>. This has contributed to further delays in the court process.
- Information for the cases handled by the international judges is not on the same trial agenda as that held by the Timorese court clerks. The information about cases which are being handled by the international judges must be obtained from international clerks. The international clerks are not in daily attendance at the District Courts and their offices are currently not located in the District Courts (but in the Court of Appeal). It is thus very difficult for parties to a case to obtain information about their case.
- As the international judges do not speak Tetum or Indonesian or any of the local languages of Timor Leste it is very difficult for them to communicate with the Timorese Prosecutors and Defence lawyers, and with the accused, victims and witnesses to a case. Translators are required to translate every part of the process from Tetum to Portuguese and vice-versa. Such communication problems of course lead to further delays.
- On 25 January 2005 the President of the Court of Appeal announced that none of the twenty two Timorese judges had passed their evaluations. As a result they can no longer work in the courts. All cases in the district courts are being handled by the four international judges. Moreover, since 31 January 2005, most of the Timorese Public Prosecutors and Public Defenders are attending full time training at the Judicial Training Centre, and are no longer able to attend trials in the district courts. Given the reduction in judges, prosecutors and defence lawyers, it seems likely that there will be a decrease in the number of cases that can be heard in the courts.

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cases would not be proceeding at all. Not only did few women-related cases make any progress at all, the court issued no final decisions in any of the women-related cases.

Lack of compliance with court schedules is problematic in all Dili District Court cases (there are more hearings that are postponed than hearings that proceed according to schedule). The reason for postponement was generally the absence of one or more key justice actors. This includes both the failure: (1) to appear at Court at all on the day designated for the hearing, and (2) to appear at Court on time, since tardiness sometimes caused other actors to depart before the arrival of necessary parties who were late and the hearing has to be adjourned. "Women in the Formal Justice Sector" report pg. 23 and "Dili District Court Final Report 2003" at pg. 60

<sup>26</sup> Section 30.1 of UNTAET Regulation 2000/30 as amended by UNTAET Regulation 2001/25

The problems with court administration identified above, all partly explain why there is such a dramatic decrease in the number of cases filed by the prosecutor (316 from July 2003 to June 2004) and the number of decisions actually delivered by the court (in the ten months - from April 2004 to February 2005 - in which JSMP's WJU has been monitoring cases involving women victims only eight decisions have been handed down). Given the delays caused by such administrative problems, many women choose to withdraw from the process, and it seems that many cases simply stop moving through the courts for no explainable reason.

## **5. RECOMMENDATIONS**

Steps should be taken to prosecute crimes against women more vigorously, to compile better records of these cases, and to ensure better court administration so cases can progress more efficiently.

### **More Vigorous Prosecution**

- Training should be given to police, prosecutors and judges not to refer crimes of sexual and domestic violence back to the family or traditional justice.

### **Improved Record Keeping**

- The government should compile and publish statistics on the number of complaints of sexual and/or domestic violence made to police, the actions taken, the number of complaints referred for prosecution, and the final outcome of each complaint. These statistics should be compiled together in a central agency. The statistics gathered by each agency at each stage of the formal justice process should all be listed according to the same categories of crimes.

### **Improved Court Administration**

- Court administration and management should be improved as an urgent priority. In particular, human resources management training should be provided for whoever is supposed to be managing the court staff. Case management training should also be provided for all court actors, including, and especially, court clerks. Such training would help improve the efficiency of processing of cases through the courts, reduce the number of delays and postponements, and increase the rate of decision-making by the courts.

## 6. CONCLUSION

The statistics referred to in this report indicate that there is a consistent decrease in the number of cases of domestic violence in each of the districts from the time these cases are reported to police until a final decision is delivered in one of the district courts. This is due to the following reasons:

- The victim withdraws her case because of financial difficulties, and also because the victim is fearful of threats from her husband and his family.
- The police and prosecutors return cases to be settled by the family
- The police and prosecutors attempt mediation to reconcile the two parties
- The prosecutor refers the case back to the police to conduct further investigations (and these investigations are never completed)
- A lack of communications and transport in the districts, meaning that cases are unable to be processed to the prosecutor

The biggest drop in the number of cases appears to occur once a case reaches the court. Although a total of 361 cases of sexual and domestic violence were reported to the VPU in 2003, in the ten months (from April 2004 to February 2005) in which JSMP's WJU has been monitoring cases involving women victims, only eight decisions have been handed down in such cases. One of the main reasons for this huge drop in cases is, as discussed above, because many victims withdraw their cases. But another major reason is because of ongoing problems with court administration and court management in the district courts. Until such problems with court administration and court management are addressed, it appears that justice for women in Timor Leste will continue to be delayed. JSMP therefore calls on those responsible for court administration and court management to commence the process of resolving these problems as an urgent priority.

JSMP further hopes that JSMP's new Victim Support Service (due to commence in March) will be able to encourage women victims to continue in the formal justice process once they have reported a case to the police.