



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

*Justice Update*

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**Protecting victims in the media: the legal obligations of all professionals**

On 14 September 2010 VSS from JSMP wrote a letter to the President of the Press Club, to express concern about the treatment of child victims of gender based violence (GBV), specifically child sexual assault. This Justice Update intends to support and augment the analysis contained in that letter, and to provide suggestions for best practices to protect individual rights, particularly in sensitive and controversial criminal cases.

As noted by VSS, on 20 July 2010 various news media reported on a child sexual abuse case from Atauro. Coverage included footage of the victim (a 5 year old girl) which blurred her face for a close up image but then as the camera zoomed out, showed her clearly, sitting in the children's ward of the hospital. Coverage also included an interview with the girl's father about what had happened. As VSS noted in their letter, this coverage violated both domestic and international law protecting victims', children's and defendants' rights.

Another story disseminated by radio on August 25 2010 reported a sexual abuse case, providing details of the victim's age, her relationship to the accused, the sub-district of the victim, and her location at the time. Such information together makes the victim very easily identifiable in her immediate community, so that even without including a name, her privacy has been violated. Both these stories are examples raising questions about how individual rights to privacy and confidentiality should be protected. JSMP believes that to ensure these rights are properly respected, many different actors have obligations to fulfil.

*Children's rights*

Article 18 of the Constitution offers children special protection from the family, community and the State including from discrimination and exploitation. Moreover, all fundamental rights are to be consistent with the Universal Declaration of Human Rights (UDHR) and Timor-Leste's international obligations through ratifying or acceding to international treaties. The UDHR guarantees a fair trial (article 10), the presumption of innocence (article 11), and protection from arbitrary interference with privacy, family, home and attacks against honour and reputation (article 12). Negative press coverage which assumes guilt, and identifies victims of attacks which could unfairly damage their reputation in their community, clearly breaches these articles of the UDHR.

The International Convention on the Rights of the Child, which Timor-Leste has ratified and is bound to comply with, requires the State to protect children's rights. In particular, under article 2(2), States are to take all appropriate measures to protect children against "all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members". Article 3(1) provides that all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration: this includes the media, medical/health professionals, lawyers, the police and civil society.

Particularly in cases of sexual assault within the family, publishing images of family members and/or victims and information which allows the identification of the family clearly violates the Convention. These crimes also have stigma within the community, so once identified, the victim may be ostracized for many years, including when looking for a husband/wife within his/her community.

### Defendants' rights

Understandably, the community wants to see serious and offensive crimes punished appropriately. However, in a democratic society governed by the rule of law, all parties must respect individual rights, including those of people charged with crimes, no matter how serious the crime is. Article 31.1 of the Constitution provides, "no one shall be subjected to trial, except in accordance with the law", and article 34.1 ensures "every individual is guaranteed the inviolable right of hearing and defence in criminal proceedings". Article 36 also protects every individual's "right to honour, good name and reputation, protection of his or her public image and privacy of his or her personal and family life".

By publishing images and/or stories that suggest or assume someone is guilty of crimes, the defendant is already being judged by the media, in contravention of at least these three articles of the Constitution. The presumption of innocence and right to a fair trial are cornerstones of a fair and democratic country. As a young nation with new institutions, for Timor-Leste it is especially important to protect the rights of those most vulnerable, and those most unpopular – this is the test of a true democracy.

### Obligations of the media

There is not yet a media law in Timor-Leste, but the media should still comply with minimal ethical standards which ensure fundamental human rights are respected. The Constitution guarantees freedom of the press and mass media (article 41), including access to information sources, editorial freedom, protection of independence (article 41.2). However, the media's unique role in disseminating facts to the entire population also gives rise to responsibilities about how to exercise these freedoms.

Timor Lorosa'e Journalists' Association formulated a Code of Ethics for journalists in 1999, following a consultation period, to guide journalistic behaviour so that the individual rights are respect as the duty to inform is fulfilled. This Code contains a number of principles, which relevantly include:

- Do not hide important public information
- Use ethical methods in obtaining news, photographs and documents
- Respect confidentiality of sources, victims of sexual assaults, and alleged or convicted under-aged criminals
- Respect privacy, unless it disadvantages the public
- Avoid defamatory reporting

The duty to respect the confidentiality of victims of sexual assault means their identity is not regarded as 'important public information'; respecting their privacy does not disadvantage the public. While it is important the public knows the incident occurred, there is no public advantage in identifying the victim personally, or knowing the specific sub-district, combined with the age of the victim, his/her relationship to the defendant, and his/her current location. The confidentiality of victims of sexual assault is particularly important considering their vulnerability; similarly, assuming the guilt of an accused is defamatory and breaches their rights to maintain their good reputation until proven guilty in a court of law.

### Obligations of medical professionals and hospital

Medical professionals are in a position of trust, authority and confidence, which is even more important when their patients are children, or particularly vulnerable in other ways. Hospitals and their staff have a

duty to consider the best interests of their patients, respect their confidentiality and their wishes. In the case of children this is especially important, because they are not as able to protect their own interests. Moreover, the hospital has the legal capacity to restrict access to the grounds, the sections of the hospital, and individual wards, in order to protect their patients' privacy.

#### Obligations of the police

The obligations of police to enforce the law and protect people's rights mean they have a duty to prevent breaches of individual rights and privacy. The Vulnerable Persons Unit also has specific obligations towards victims of crimes to protect their interests, safety and privacy. Particularly under article 24 of the Law Against Domestic violence, the police have special duties towards victims of domestic violence, who are often also victims of sexual violence, as the above examples show.

To ensure other individuals and organizations comply with their legal obligations, the police must be especially careful to pursue investigations where breaches of rights occur, particularly of women and children. Without police enforcement, and prompt action to deter future invasions of privacy, it will be difficult to guarantee the protection of individual rights.

#### Obligations of civil society

It is important that civil society also respect these fundamental rights when critiquing news events, and actions of individuals and organisations. For example, in press releases or statements, civil society organizations should not assume the defendant is guilty of the crimes he/she is accused of, when there has not yet been a trial or a conviction – this violates the presumption of innocence and damages defendants' reputations without proof.

Civil society plays an important role in critiquing events and responses in Timor-Leste, but also in ensuring individual rights are respected. This includes the rights of defendants and victims who should not be identified nor subjected to further breaches of privacy.

#### Conclusions

JSMP is concerned that despite legal protections, individual rights are at risk of being violated because different actors are not complying with their obligations. Human rights are not just the responsibility of the state, but of all citizens and organizations. Actors involved in providing services to victims, dissemination of information, and enforcement of rights such as health professionals, civil society, media organizations and the police, need to be particularly careful to respect individual rights to privacy, confidentiality and reputation when considering how they engage with mass media.

#### Recommendations

Based on the above issues JSMP wishes to make recommendations and suggestions to various professionals who have specific duties and a need to consider how they communicate with the media.

- JSMP is concerned that the publication of images and interviews with victims or their family does not respect the principle of confidentiality of victims because the public can identify the victim. Particularly, in these situations, this makes victims more vulnerable to criminal behaviour and/or violence at the hands of the suspect or defendant.
- JSMP believes that, as a new nation in this millennium, the media in Timor Leste faces many varied limitations and challenges, however it is most important that all entities, particularly media institutions, which play an important role in public information and communication, place importance on human rights.

- Medical entities who give physical and psychological assistance to victims need to know that they cannot issue information in relation to victims' cases without authorization from the competent organ or without consent from the victim and the family.
- JSMP recommends the police protect and guarantee victims' rights and take the necessary action to protect victims and their confidentiality.

For further information please contact:

Luis de Oliveira Sampaio

Executive Director JSMP

Email: [luis@jsmp.minihub.org](mailto:luis@jsmp.minihub.org)

Landline: 3323883