



**JUDICIAL SYSTEM MONITORING PROGRAMME  
PROGRAMA MONITORIZASAUN SISTEMA JUDISIAL**

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Dili District  
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**JSMP AND ALFeLa CALL FOR CHANGES TO PENAL CODE  
TO BETTER PROTECT WOMEN AND CHILDREN**

JSMP and ALFeLa have identified a number of provisions in the Timor-Leste Penal Code that do not adequately protect women and children consistent with Timor-Leste's international and constitutional obligations. Together, they have developed a joint submission to the National Parliament recommending improvements to the Penal Code, including its provisions relating to sexual crimes against minors, sexual coercion and rape, and aggravating factors in sexual offences and physical assault. In the coming weeks, JSMP and ALFeLa will brief Members of Parliament on why this legal reform is so important, and how it can be implemented.

“Many women and children in Timor-Leste suffer physical and sexual violence, particularly within the home. Although government, civil society and international partners are working towards improving the protection of women and children in Timor-Leste across a range of sectors, JSMP and ALFeLa believe that strengthening Timor-Leste's criminal law is crucial to responding to this problem in an effective manner” said Luis de Oliveira Sampaio, Executive Director of JSMP.

The joint submission responds to the National Parliament's proposed amendment to the Penal Code to create a crime of incest, and to increase protection for minors aged between 14 and 17 by amending the crime of sexual abuse of a minor to ensure sexual intercourse and sexual acts with all minors aged under 17 are criminal.

JSMP and ALFeLa recommend a number of improvements to the proposed crime of incest, including that it should:

- be separate from the crime of rape to avoid confusion between the two crimes,
- include sexual intercourse and sexual acts which also cause harm to the victim,
- apply to uncles who rape or assault their nieces,
- have a higher penalty commensurate with sexual abuse of a minor, and
- only apply to offenders, not victims.

JSMP and ALFeLa also recommend that the National Parliament consider clarifying the crime of sexual abuse of a minor by providing an exception for minors aged 16 years who have consensual sexual relations with someone to whom they are legally married, or with someone who is close in age to themselves (for example, within 3 years of age). This would be consistent with the legal age for marriage under the Civil Code, which is 16 years with parental consent, and would prevent young people who

have reached the age of 16 from being punished for having consensual sexual relations with other young people.

Separately, JSMP and ALFeLa have found that Timor-Leste's crimes of rape and sexual coercion should be improved to enable the courts to more effectively convict and punish rapists and sex offenders. In the submission, JSMP and ALFeLa recommend that the National Parliament redefine these crimes as sexual intercourse or sexual acts without free consent, consistent with international best practice. These crimes should also include an express statement that no marriage or other relationship constitutes a defense to rape or sexual coercion to make it clear that Timor-Leste does not tolerate rape within marriage.

JSMP and ALFeLa also recommend that the Penal Code include a more consistent and broader range of aggravating factors for sexual offences, and use or threatened use of a weapon as an additional aggravating factor for physical assault crimes. This will enable the courts to impose suitable punishments for crimes which are more serious or cause greater harm.

JSMP and ALFeLa's proposed amendments to the Penal Code require corresponding amendments to the *Law Against Domestic Violence (LADV)* to ensure consistency between the two laws. These are outlined in the submission alongside a recommendation that the LADV be amended to include threats and property damage as forms of domestic violence, enabling these semi-public crimes to be treated as public crimes when committed in a family context.

The submission is being formally launched on 30 January 2015. Tetum and English versions, including a useful executive summary and a full list of recommendations, are available on JSMP's website here: <http://jsmp.tl/wp-content/uploads/2013/03/280115-JSMP-ALFeLa-Penal-Code-submission-FINAL-English.pdf>

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