



**JUDICIAL SYSTEM
MONITORING
PROGRAMME**

Sentencing and Domestic Violence: Suspending prison sentences with conditions

December 2017





JUDICIAL SYSTEM MONITORING PROGRAMME

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Sentencing and Domestic Violence: Suspending prison sentences with conditions

Executive Summary / Recommendations

Timor-Leste's district courts decide penalties for perpetrators of domestic violence in hundreds of cases each year. It is important that sentencing in those cases tries to achieve the objectives of protection, punishment, deterrence and rehabilitation, as this can contribute to reducing domestic violence in the community. Sentencing should try to punish the perpetrator in proportion to the crime, deter him from committing further crimes, and protect the victim. It should also deter others in the community from committing similar crimes.

JSMP's court monitoring statistics show that Timor-Leste's district courts apply a suspended prison sentence in a large proportion of criminal cases which proceed to sentencing, and particularly in domestic violence cases. In 2016, suspended prison sentences were applied in close to 50% of all criminal cases. In cases of domestic violence, the proportion is even higher – close to 80% received a suspended prison sentence in 2016.

In the past, JSMP has observed and expressed concerns in relation to the courts' use of suspended prison sentences in such a high proportion of cases, particularly in cases involving domestic violence. As there is usually no monitoring of perpetrators serving a suspended prison sentence, it can seem to perpetrators, victims of domestic violence and the general community, that the perpetrator is not being punished. Without additional obligations which relate to the crime, the perpetrator may not be deterred from committing further crimes in the future. The community also does not see that the crime committed is serious and deserving of punishment. It therefore could have the consequence of reducing the deterrent effect of the criminal justice system, for the individual perpetrator and other future perpetrators.

To improve the effectiveness of suspended prison sentences as a punishment and deterrent, the courts can use various provisions in the Penal Code which enable additional conditions to be applied with the suspended prison sentence. In 2013 and 2014, JSMP monitored just three cases in which the court applied one of these additional conditions to a suspended prison sentence. However, since 2015, the courts have been applying such additional conditions in more cases. In 2015, JSMP monitored 12 cases in which additional rules of conduct were imposed on suspended prison sentences, increasing to 49 cases in 2016. In 2016 this was still only 10% of domestic violence cases monitored by JSMP resulting in a suspended prison sentence. These trends are promising, but JSMP believes the courts could apply additional conditions or rules of conduct in more cases.

The Penal Code requires the courts to use non-custodial sentences where possible, and the legal framework for sentencing is set out in Section 3 of this report. Although Article 69 and Article 70 of the Penal Code provide for a range of conditions or rules of conduct to be imposed, JSMP's

monitoring shows that nearly all cases with additional conditions involve requiring the perpetrator to report to the court or police. In some cases, the court also awards civil compensation, but other conditions have been used in only a very few cases. Most cases order the perpetrator to report periodically to the court, but some cases have ordered reporting to the police instead. Periodic reporting to police as a condition of a sentence is not specifically described under the Penal Code. JSMP recommends courts instead order the perpetrator to report to a local authority as a better alternative option in some cases. Mechanisms for monitoring and reporting by local authorities will need to be developed to support the use of this condition.

Requiring a perpetrator serving a suspended prison sentence to report periodically to the court or another entity can serve important functions, including monitoring the person to make sure they do not commit further crimes and reminding the person of the consequences of his past actions so that he does not repeat them. Section 6 of the report considers the impact of these reporting conditions on perpetrators, victims and the community. However, the courts should also consider other orders which can address the effect of the crime on the victim, such as making a public apology or requiring the perpetrator to pay civil compensation to the victim. The courts should also be able to order that the perpetrator undergo medical treatment or rehabilitation, be monitored by social reintegration services, or order community service, as provided in the Penal Code. Judges report that they would like to be able to use these options, but this requires further development of health and social services in Timor-Leste. JSMP recommends that the Ministry of Justice and Ministry of Social Solidarity work together to improve services targeting perpetrator rehabilitation and monitoring, however not at the expense of services available to victims of crime.

This report also reviews the monitoring and enforcement of conditions on suspended prison sentences by the courts and other entities. The Dili and Baucau district courts have established systems for monitoring which appear to be working reasonably well, but monitoring of compliance by police or other entities is not so consistent. JSMP recommends that reporting to police is not used as a condition in the future, but that mechanisms are developed to enable monitoring by other local authorities. It is also important that there are consequences for any breach of conditions on a suspended prison sentence, so that perpetrators understand the sentence is serious, and court actors should receive training to ensure they understand the law in this regard.

JSMP makes the following recommendations:

1. JSMP recommends that judges and prosecutors receive training on the provisions of the Penal Code, Law Against Domestic Violence and Law on the Execution of Sentences regarding the application of conditions and rules of conduct to suspended prison sentences, so that they can consider applying conditions to more cases, particularly domestic violence cases.
2. JSMP recommends that the Ministry of Justice or the courts develop a sentencing guide for domestic violence cases which considers the use of suspended prison sentences, and the application of additional conditions or rules of conduct to suspended prison sentences.

3. JSMP recommends that the court award civil compensation in more cases of domestic violence. To assist with this:
 - a) Judges and prosecutors should receive training on considering whether civil compensation is appropriate in cases of domestic violence and on how to calculate appropriate amounts;
 - b) The Office of the Public Prosecutor should develop guides for prosecutors on seeking civil compensation in cases of domestic violence; and
 - c) Sentencing guides on domestic violence cases (as recommended above) should provide guidance on calculating civil compensation for victims.
4. JSMP recommends that the court does not make orders requiring periodic reporting to police for those serving a suspended prison sentence, as the law does not specifically permit such additional orders.
5. JSMP recommends that the court consider applying rules of conduct in more cases that require a person to appear before local authorities such as the suco chief. The Ministry of Justice should develop mechanisms to facilitate this, including training of local community authorities, and implementation of processes to ensure they are able to monitor and report effectively to the court.
6. JSMP recommends that the Ministry of Justice and the Ministry of Social Solidarity cooperate to:
 - a) Develop their capacity to undertake social reintegration planning for perpetrators serving suspended prison sentences;
 - b) Develop mechanisms for monitoring and reporting on the implementation of social reintegration plans for these perpetrators;
 - c) Develop a law to facilitate and regulate the making of orders for community service in substitution for a prison sentence; and
 - d) Support the development of programs and facilities that can provide rehabilitative treatment to perpetrators, and develop a law or regulations to facilitate the making of orders for such treatment.
7. JSMP recommends that the process for monitoring compliance with conditions and rules of conduct on suspended prison sentences is clarified, including the timeframe for reporting a non-compliance to the judge, and that court staff are provided with adequate training on the procedures for monitoring. JSMP also recommends that the court staff involved in monitoring of conditions in the Dili and Baucau district courts assist the Suai and Oecusse district courts to establish monitoring processes in those courts.
8. JSMP recommends that court actors, including judges, prosecutors and public defenders, receive training on processes for monitoring and the enforcement of conditions and rules of conduct, and the consequences of breaching those conditions.

1. Introduction

Since the introduction of the Law Against Domestic Violence (LADV) in 2010,¹ Timor-Leste has seen a dramatic increase in the number of domestic violence cases reaching the courts. Cases involving domestic violence make up the largest proportion of criminal cases tried in the four district courts, and close to half of all cases monitored by JSMP in 2016.²

JSMP's court monitoring statistics show that Timor-Leste's district courts apply a suspended prison sentence pursuant to Article 68 of the Penal Code in a large proportion of criminal cases which proceed to sentencing. In 2016, suspended prison sentences were applied in close to 50% of all criminal cases. In cases of domestic violence, the proportion is even higher – close to 80% of all domestic violence cases monitored by JSMP in 2016 resulted in a suspended prison sentence.

JSMP's 2013 report 'Law Against Domestic Violence: Obstacles to implementation three years on' (2013 LADV Report) observed that a majority of domestic violence cases tried in the district courts in the period July 2010-2013 resulted in suspended prison sentences.³ In JSMP's November 2015 report on 'The application of alternative sentences in cases of domestic violence at the Oecusse District Court' (2015 Alternative Sentences Report), JSMP reported this trend continuing in domestic violence cases across all district courts in 2014 and 2015, with courts imposing a suspended prison sentence in 60% of domestic violence cases monitored to final decision.⁴ In 2016, 69% of domestic violence cases monitored by JSMP to the final decision resulted in a suspended prison sentence, and a further 10% received a suspended sentence with additional conditions.

This trend can partly be explained by the preference given in the Penal Code for non-custodial sentences where the law provides for an alternative penalty, as explained in Section 3 of this report. As an alternative to imprisonment, the courts can suspend the execution of a prison sentence which is less than three years, for a period of between one and five years.⁵ During the period of suspension, a perpetrator cannot commit further crimes without risk of the suspension being revoked and having to complete the original sentence in prison.

JSMP's monitoring shows the courts prefer to use suspended prison sentences rather than other non-custodial options such as issuing a fine or ordering a perpetrator undertake community service. Fines are the next most common penalty, and are sometimes used in some jurisdictions more than others – for example, fines are often used in the Oecusse District Court, as discussed in JSMP's 2015

¹ Law Against Domestic Violence, Law No. 7/2010

² In 2016 JSMP monitored 941 criminal cases in the District Courts, of which 421 were cases of domestic violence. See 'Overview of the Justice Sector 2016', JSMP, available at <http://jsmp.tl/en/publikasaun-publications/annual-reports>

³ 'Law Against Domestic Violence: Obstacles to implementation three years on', JSMP, 2013 available at <http://jsmp.tl/en/publikasaun-publications/thematic-reports>

⁴ 'The application of alternative sentences in cases of domestic violence at the Oecusse District Court', JSMP, November 2015, available at <http://jsmp.tl/en/publikasaun-publications/thematic-reports>

⁵ Penal Code of the Democratic Republic of Timor Leste, Decree Law No. 19/2009, Article 68

Alternative Sentences Report. JSMP has not observed any cases since it began monitoring in which the court applied a sentence of community service.

In the *2013 LADV Report* and in subsequent advocacy, JSMP has identified challenges to implementing the LADV so that it can be effective in combatting domestic violence. The LADV recognises certain offences of domestic violence as a public crime, so that they must be investigated and, unless there is insufficient evidence, brought to court. JSMP's court monitoring has shown that, since the LADV's enactment, more domestic violence cases are now reaching the courts. The role of the courts is to decide cases and sentence perpetrators in accordance with the Penal Code. When deciding on a sentence, the court must consider the purpose of the penalty and balance the following objectives:

- protecting society from the harmful consequences of crime;
- redressing the suffering of the victim;
- punishing the perpetrator for committing a crime;
- deterring the perpetrator from committing similar acts in the future;
- deterring others in the community from committing similar crimes; and
- facilitating the rehabilitation and reintegration of perpetrators into the community.

These objectives are relevant to all crimes, but each is also important in contributing to the goal of reducing domestic violence.

In the past, JSMP has observed and expressed concerns in relation to the courts' use of suspended prison sentences in such a high proportion of cases, particularly in cases involving domestic violence. Those concerns include:

- There are no monitoring mechanisms to ensure that a perpetrator fulfils his obligations when serving a suspended prison sentence, so the sentence may not be an effective punishment or deterrent;
- When suspended prison sentences are handed down against a perpetrator, no other obligations are imposed on the perpetrator during the period of suspension. This means the perpetrator may not feel he is being punished for his crime. As a result, the sentence does not deter the perpetrator from committing further crimes in the future, or encourage him to change his behaviour;
- When a suspended prison sentence is given without any other obligations, victims may not feel that the perpetrator has been appropriately punished and therefore they feel they have not received justice; and
- Suspended prison sentences can create a public perception that domestic violence is not a serious crime, because it appears that perpetrators are not punished in a significant way,

unlike other crimes which might mean they go to prison. This means others in the community are not deterred from committing similar crimes.⁶

JSMP has previously recommended that the courts think more carefully about imposing suspended prison sentences and make greater use of provisions in the Penal Code which enable additional orders or conditions to be imposed, so that:

- perpetrators feel a greater sense of accountability for their crimes;
- perpetrators' conduct during the suspension period is monitored;
- There are consequences if a perpetrator engages in further criminal behaviour during the suspension period;
- Sentences better acknowledge the impact of the crime on victims and victims feel a greater sense of justice; and
- The public perception that domestic violence is a serious crime is strengthened and people in the community are deterred from committing such crimes.

A key finding and recommendation from JSMP's *2013 LADV Report* was that courts should use the provisions in the Penal Code which enable additional conditions to be applied to suspended prison sentences.⁷ Since 2013, when that report was written, JSMP has observed a promising increase in the number of cases in which the courts have imposed additional conditions or rules of conduct together with a suspended prison sentence. This report further considers those trends and some of the challenges which remain and arise from the application of additional conditions to suspended sentences.

Scope of this report

This report examines trends in the use of suspended prison sentences by the Timor-Leste district courts in the past five years, particularly in relation to the application of additional conditions to those sentences. The report considers those trends in the context of domestic violence cases, which continue to make up the largest proportion of criminal cases before the district courts.⁸ It draws on data from JSMP's court monitoring between January 2013 and September 2017, case studies from JSMP's monitoring, and interviews conducted with justice sector actors and those who have been involved in domestic violence cases in the district courts.

JSMP monitors court proceedings daily in each of the four district courts through court monitors based in Dili, Baucau, Suai and Oecusse. Court monitors also travel to monitor mobile courts

⁶ See JSMP's *2013 LADV report*; JSMP Justice Update, 5 December 2013, 'Suspended sentences in cases of domestic violence according to the Penal Code of Timor-Leste', available at <http://jsmp.tl/en/justice-updates>; and 'Charging, Trials and Sentencing in Cases of Sexual Violence in Timor-Leste 2012-2015', JSMP, March 2016, at 31, available at <http://jsmp.tl/en/publikasaun-publications/thematic-reports>

⁷ 2013 LADV report, Recommendation 3

⁸ In JSMP, Overview of the Justice Sector 2016, JSMP reported monitoring 421 cases of domestic violence from a total of 941 criminal cases monitored.

conducted from time to time in other districts. JSMP court monitors attend hearings and record information regarding the allegations, evidence, submissions and final sentence. JSMP publishes summaries of cases monitored each month. JSMP monitors a substantial proportion of all criminal cases in the district courts, but does not monitor all cases. In 2016, 2461 criminal cases were heard to judgment in the district courts and JSMP monitored 940 criminal cases.⁹ In some cases, JSMP monitors part of a case but is unable to monitor the final sentencing. This report uses data relating to cases which were monitored to the final decision.

JSMP conducted interviews for this report with court actors, including judges from each of the district courts, court clerks at the Dili District Court and Baucau District Court, public prosecutors and public defenders. JSMP also interviewed lawyers working with victims of domestic violence, a victim and perpetrator who had experienced the criminal court system, and an officer from the Ministry of Social Solidarity (MSS).

⁹ Data from JSMP, Overview of the Justice Sector 2016

2. Data on sentencing trends for suspended prison sentences

2.1. Sentencing trends 2013-2017 – All criminal cases

The Penal Code provides several possible penalties for a defendant once it is established that he or she is guilty of an offence. These include a prison sentence (Article 66) or alternatives such as a suspension of the prison sentence (Article 68) or a fine (Article 67). These alternative penalties are discussed further in Section 3 of this report.

JSMP has observed that the most common penalty applied by the district courts is a suspended prison sentence. In 2016, 48% of cases monitored by JSMP to the final decision resulted in a suspended prison sentence. Of cases in which the defendant was not acquitted and received some form of penalty, 52% received a suspended prison sentence.¹⁰

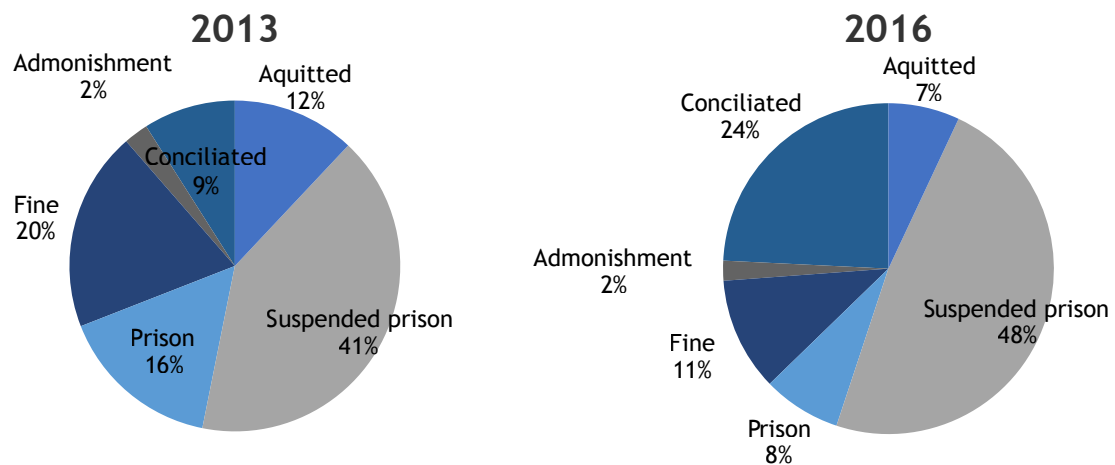
Table 1. Decisions in criminal cases monitored to final decision, 2013-2017¹¹

Decision	2013	2014	2015	2016	2017 (to 30 Sep)
Suspended prison sentence	132	230	298	348	280
Conciliated	30	83	178	212	138
Fine	61	149	170	96	64
Acquitted	40	52	48	61	33
Prison sentence	45	32	65	59	26
Suspended prison sentence with additional conditions	1	2	12	49	22
Admonishment	8	20	9	17	11
Suspended prison sentence and civil compensation	4	3	9	24	8
Prison sentence and civil compensation	8	4	8	6	4
Fine and civil compensation	4	4		1	
Prison sentence but exempted from punishment				2	
Total cases monitored to decision	333	579	797	875	586

¹⁰ Calculated based on total cases excluding cases where the defendant was acquitted.

¹¹ JSMP monitored many other cases in this period but was unable to monitor the final decision in all cases. These statistics reflect the cases that were monitored to the final decision. In some cases monitored, more than one defendant was tried at the same time – if defendants received different penalties, only one penalty was counted in this data.

Chart 1. Decisions in criminal cases monitored to final decision, 2013 and 2016



These charts simplify the data from Table 1 to show the types of decision given in cases monitored to the final decision by JSMP, using 2013 and 2016 as examples, and incorporating cases involving additional orders into the broader categories of suspended prison sentence, fine and prison sentence. This shows clearly that suspended prison sentences are the most common penalty applied in the district courts.

2.2. Sentencing trends 2013-2017 – Domestic violence cases

In domestic violence cases, there is an even greater preference for applying suspended prison sentences. JSMP observed in its *2013 LADV Report* that a majority of cases of domestic violence tried in the district courts resulted in suspended prison sentences pursuant to Article 68 of the Penal Code (52%, July 2010-June 2013) or fines pursuant to Article 67 of the Penal Code (24%, July 2010-June 2013).¹² JSMP's *2015 Alternative Sentences Report* reported this trend continued in the period March 2014 to September 2015, with courts imposing a suspended prison sentence in 60% of cases monitored to final decision and fines in 26% of cases.¹³

¹² 2013 LADV Report at 17

¹³ 2015 Alternative Sentences Report at 11

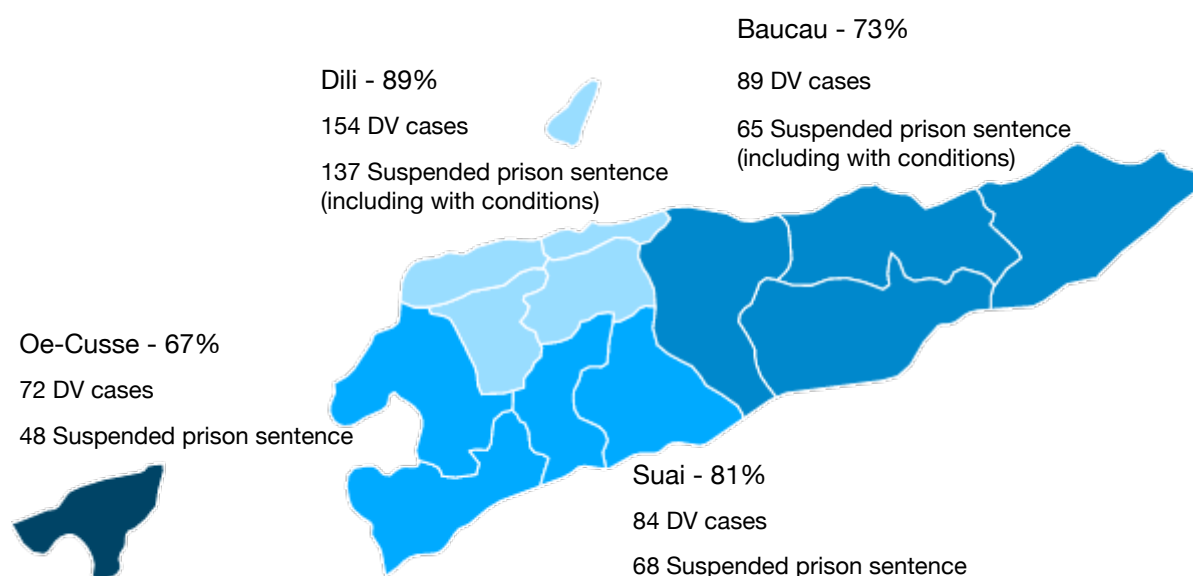
JSMP's court monitoring data from 2015 and 2016 shows that this trend continues, and suspended prison sentences are being applied in an even greater proportion of cases than in 2013. In 2016, 69% of domestic violence cases monitored by JSMP resulted in a suspended sentence without any additional orders, and a further 10% of cases involved a suspended sentence with conditions such as rules of conduct or the payment of civil compensation, as shown in the following table. This high proportion of suspended prison sentences is evident in all four jurisdictions, with Dili showing both the highest number of cases and the highest proportion resulting in a suspended prison sentence.

Table 2. Decisions in domestic violence cases monitored to final decision, 2015-2017¹⁴

Decision	2015	% of Total	2016	% of Total	2017 (to 30 Sep)	% of Total
Suspended prison sentence	223	67.6%	278	68.8%	218	76.5%
Fine	70	21.2%	46	11.4%	27	9.5%
Suspended prison sentence with additional conditions	8	2.4%	39	9.7%	18	6.3%
Prison sentence	12	3.6%	16	4.0%	6	2.1%
Admonishment	5	1.5%	11	2.7%	9	3.2%
Acquitted	9	2.7%	11	2.7%	4	1.4%
Suspended prison sentence and civil compensation	1	0.3%	2	0.5%	3	1.1%
Prison sentence and civil compensation	1	0.3%	1	0.2%	0	0%
Total cases monitored to decision	330		404		285	

¹⁴ JSMP defines cases of domestic violence as those where the defendant was charged using the Law Against Domestic Violence. This may under-represent the number of domestic violence cases as JSMP have observed some cases which are not charged under the LADV in addition to the Penal Code.

Chart 2. Percentage of total domestic violence cases monitored to final decision in 2016 resulting in suspended prison sentence by jurisdiction



2.3. Suspended sentences with additional conditions

2.3.1. Rules of conduct – Article 70(1)(g)¹⁵

JSMP's court monitoring shows that prior to 2015, suspended prison sentences were generally applied without any additional conditions. This means that once the perpetrator receives his sentence, he is released into the community without monitoring or other obligations. In 2013 and 2014, JSMP monitored just three cases in which additional rules of conduct were applied. In 2015, JSMP monitored 12 cases in which additional rules of conduct were imposed on suspended sentences, increasing to 49 cases in 2016.

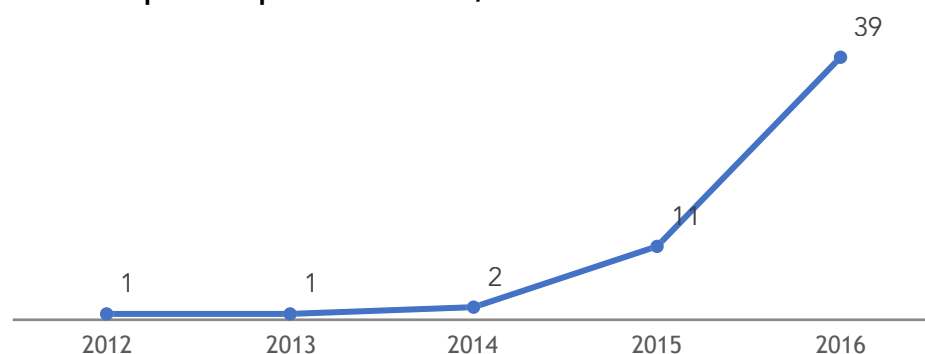
Table 4. Cases monitored with additional rules of conduct under Article 70(1)(g), 2013-2017

COURT	2013	2014	2015	2016	2017 (to 30 Sep)
Dili	1	2	10	43	15
Baucau	0	0	1	6	8
Suai	0	0	0	0	0
Oe-Cusse	0	0	0	0	0
Total	1	2	11	49	23

¹⁵ Article 70(1)(g) of the Penal Code provides that the court may require a person sentenced to a suspended prison sentence to periodically appear before a court, social reintegration officer or non-police entities.

These statistics show that in the past two years, the courts in Dili and Baucau have started to impose additional rules of conduct on people receiving suspended sentences in a growing number of cases. All of the cases involving rules of conduct in 2013, 2014 and 2015 were domestic violence cases. In 2016, 39 of 49 cases monitored involved domestic violence and, to 30 September 2017, 18 of 23 cases involved domestic violence. This upward trend in the use of rules of conduct for suspended prison sentences in domestic violence cases is shown in the graph below (excluding cases decided in 2017, as the full year's data is not yet available).

Chart 3. Domestic violence cases monitored with rules of conduct applied to a suspended prison sentence, 2012-2016



2.3.2. Civil compensation

Courts can also order the payment of civil compensation to victims in conjunction with any type of sentence. Under Article 69 of the Penal Code, a suspended prison sentence can be conditional on the payment of civil compensation. The table below shows the total number of cases monitored by JSMP in which civil compensation was awarded – this includes cases resulting in a prison sentence, a suspended prison sentence or a fine. The table also shows, shaded in blue, the number of cases (out of the total cases in which compensation was ordered) which were cases of domestic violence.

Table 5. Cases monitored with orders for civil compensation, 2013-2017

	2013	2014	2015	2016	2017 (to Sep)
Suspended prison sentence and civil compensation	4	3	10	26	9
Prison sentence and civil compensation	8	4	8	6	4
Fine and civil compensation	4	4		1	
Total	16	11	18	33	13
Cases (from the total above) involving domestic violence	2	2	3	4	2

These figures show that the courts do order civil compensation in some cases, but very rarely order civil compensation in domestic violence cases.

3. Legal Framework for Sentencing

3.1. Sentencing principles in the Penal Code

The Penal Code provides the framework for sentencing decisions. Once the court establishes that a person has committed an offence, the judge decides on a sentence according to the rules and principles set out in the Penal Code. The Annex to the Penal Code refers to the guiding principles of need, proportionality and suitability for applying any penalty or security measure, and the aims of protecting the legal interests essential to life in society and promoting the social reintegration of the offender.¹⁶ This indicates that the goals of sentencing include:

- Protecting society from criminal behaviour –perpetrators must be punished for committing crimes to show that the behaviour is wrong;
- Protecting the rights of victims – this can include choosing a penalty that ensures the security of the victim, as well as recognising the harm suffered by the victim by imposing a proportionate sentence;
- Deterring further offending by the perpetrator – the penalty must be sufficiently severe that the perpetrator realises the risk associated with reoffending is too high and does not repeat his behaviour;
- Deterring similar criminal behaviour by others in the community – the penalty must be sufficiently severe that the community in general sees that the perpetrator is being punished and this prevents other potential perpetrators from committing similar crimes; and
- Rehabilitation of the perpetrator – the penalty should assist the perpetrator to change his behaviour so he can contribute again to society.

The Penal Code provides for several alternatives to a prison sentence for less serious crimes. These alternatives include suspending execution of the prison sentence, substitution for a fine, or substitution for community service. Non-custodial sentences are preferred “whenever this adequately and sufficiently fulfils the purpose of the punishment and meets the requirements for reproofing and preventing crime”.¹⁷ When deciding on the penalty to be applied, pursuant to Article 51 of the Penal Code, judges must consider:

- the perpetrator’s guilt;
- the need for prevention of further crimes by the perpetrator and others;
- aggravating circumstances; and
- mitigating circumstances.

¹⁶ Penal Code, Annex

¹⁷ Penal Code, Article 62

JSMP's court monitoring suggests that the courts do follow the Penal Code's preference for non-custodial sentences. 48% of all cases monitored to a final decision in 2016 resulted in a suspended prison sentence and 11% in a fine, while only 8% resulted in an actual prison sentence.

3.2. Non-custodial sentences

3.2.1. Suspended prison sentences

Pursuant to Article 68 of the Penal Code, when the court decides to apply a prison sentence of less than three years, the court can suspend its execution for a period of between one and five years. Suspension means the offender does not go to prison and is released back into the community for the duration of the sentence.

When deciding to suspend a prison sentence, according to Article 68(2) of the Penal Code, the court must consider:

- the personality of the perpetrator;
- the circumstances under which the crime was committed;
- the previous behaviour and living conditions of the perpetrator; and
- most importantly, the perpetrator's likely conduct in the future.

3.2.2. Fines

Pursuant to Article 67 of the Penal Code, the court can substitute a prison sentence not exceeding 12 months with a fine, "whenever the requirement for preventing future crimes does not require that said prison sentence be served".¹⁸ A fine is an amount of money that a perpetrator must pay to the State. The court determines the amount of the fine based on the economic circumstances of the perpetrator.¹⁹ Currently, the minimum fine is US \$5.00 (five dollars) and the maximum fine is US \$72,000.00 (seventy two thousand dollars).

Before applying a fine in cases of domestic violence, the court also needs to consider Article 38 of the LADV. Article 38(1) provides that a fine can only be applied if the security of the victim is guaranteed, the perpetrator agrees to undergo treatment or follow-up from support services, and it would benefit the preservation of the family unit.

JSMP has observed that courts do apply fines in many cases of domestic violence, although it is not always clear that the prerequisites noted in Article 38(1) have been met. One problem with the requirement that a perpetrator undergo treatment or follow-up from support services is that specific treatment services for perpetrators of domestic violence do not yet exist in Timor-Leste. JSMP has observed in the past that a relatively high proportion of sentences given in the Oecusse District Court are fines (39% of domestic violence cases in the period March 2014 to September 2015), and

¹⁸ Penal Code, Article 67

¹⁹ Penal Code, Article 75

has discussed some of its concerns in relation to this form of penalty in its *2015 Alternative Sentencing Report*. For example, there is a concern that fines can cause financial difficulties for the victim and children in circumstances where many remain living with the perpetrator.²⁰ Recent court monitoring statistics suggest that the courts, including the Oecusse District Court, are using fines in fewer cases of domestic violence – in 2015, 21% of domestic violence cases monitored by JSMP in all district courts received a fine and in 2016, it was only 11%.

This report does not consider issues involving the use of fines further, but JSMP repeats its recommendation from its *2015 Alternative Sentencing Report* that courts consider the circumstances of the victim when deciding on a penalty.²¹

3.2.3. Community service

Article 79(1) of the Penal Code allows the court to substitute a prison sentence of up to one year with community service, consisting of providing services to a public agency or other entity of community interest.²² One hour of work substitutes for one day of prison, for up to 240 hours.²³ A sentence of community service requires the consent of the perpetrator.²⁴

While this is theoretically available as an alternative form of penalty, JSMP's court monitoring shows that it is not applied by the courts. JSMP has not monitored any cases in which an order for community service has been made.

3.3. Additional orders and conditions on suspended prison sentences

Under Articles 69, 70 and 71 of the Penal Code, the court can impose additional orders or rules of conduct on a suspended prison sentence, or subject the perpetrator to monitoring for the duration of the sentence. Article 104 of the Penal Code empowers the court to order the defendant to pay civil compensation to the victim in addition to the sentence. Further additional conditions are available in domestic violence cases under the LADV. These are explained in Section 3.3.4 below.

The court can make various other orders against perpetrators in particular circumstances, such as prohibiting a person from holding a public office, deporting foreign citizens convicted of a crime, prohibiting a person from driving a motor vehicle, and cancelling a permit to carry a weapon.²⁵ These specific types of orders are useful for specific types of offences like corruption or driving offences, but are not considered further in this report.

²⁰ 2015 Alternative Sentences Report at 16

²¹ 2015 Alternative Sentencing Report at 21

²² Article 78(1) of the Penal Code defines community service.

²³ Penal Code, Article 78(2)

²⁴ Penal Code, Article 79(2)

²⁵ These accessory penalties are provided in Articles 84 to 89 of the Penal Code.

3.3.1. Additional duties and rules of conduct

Article 69 of the Penal Code enables the court to condition the suspension of a prison sentence on performance by the perpetrator of certain “non-humiliating duties”. These conditions are intended to “redress harm caused by crime” and can include:²⁶

- a) to make or ensure reparation of the damage caused by the crime within a given deadline;
- b) to publicly apologise to the victim;
- c) to perform certain tasks in connection with the crime committed; or
- d) to provide a sum of money to the State or to a charity institution of importance to the reintegration of the convict.

Article 70(1) allows the court to impose certain rules of conduct which the person must follow for the duration of the suspended sentence. These are intended to promote the offender’s “reintegration into society” and can include requiring the offender:²⁷

- a) to not exercise certain professions;
- b) to not visit certain places;
- c) to not reside in certain places or regions;
- d) to not accompany, give abode or entertain certain persons;
- e) to not visit certain associations or take part in certain meetings;
- f) to not have in the person's possession, certain objects that can potentially facilitate the commission of crime;
- g) to periodically appear before a court, social reintegration officer or non-police entities.

Article 70(1)(g), which is the condition most used by the courts to date, allows for periodic reporting to a court, social reintegration officer or non-police entity. It does not provide for reporting to a police officer or police station. Reporting to police is only available as a restrictive measure prior to a case coming to trial pursuant to Article 191 of the Criminal Procedure Code.

With the person’s consent, under Article 70(2), the court can also order an offender undertake medical treatment or rehabilitation in an appropriate institution.

²⁶ Penal Code, Article 69(2)

²⁷ Penal Code, Article 70(1)

3.3.2. Monitoring and social reintegration

Article 71 provides a further mechanism for requiring monitoring by social reintegration services for the duration of the suspension period, subject to a “social reintegration plan”.

The Law on Execution of Sentences provides a process for this as follows:²⁸

- a) The judge asks the social reintegration services to prepare a social reintegration plan for the sentenced person;
- b) The social reintegration services should prepare the plan within 30 days, after hearing the perpetrator, and submit it to the court for consideration;
- c) The court adopts the plan for social integration, after hearing from the Public Prosecutor, and the social reintegration services are notified so that they can start the execution;
- d) The social reintegration services inform the court of the date of commencement of enforcement and forward information to the court periodically or when there is any circumstance which might call into question the terms of enforcement.

JSMP understands that social reintegration services are the responsibility of the Ministry of Justice through the National Directorate of Prison Services and Social Reintegration (*Direcção Nacional dos Serviços Prisionais e de Reinserção Social* or DNSPRS) and the Ministry of Social Solidarity (MSS). The DNSPRS was established by Ministerial direction in 2016, and has some responsibility for promoting and developing programs for social reintegration.²⁹

Social reintegration planning and monitoring is required by the Law on Execution of Sentences as part of a custodial prisoner’s return to the community on conditional release (parole) or after completing their sentence.³⁰ JSMP understands that social reintegration services do operate in a limited way in this context, provided by MSS and the Ministry of Justice’s DNSPRS. However, these services are not provided to perpetrators serving a suspended prison sentence.³¹

3.3.3. Order to pay civil compensation

The court can order a defendant to pay compensation to the victim for loss and damage resulting from a crime pursuant to Article 104(1) of the Penal Code. Suspension of a prison sentence may be made conditional on payment of this compensation under Article 69(2)(a) of the Penal Code. The court can calculate compensation by reference to rules in the Civil Code.³²

²⁸ Law on the Execution of Sentences, Decree Law 14/2014, Article 150

²⁹ Ministry of Justice of Timor-Leste, Ministerial Diploma No 1/2016, 13 January 2016, Organic Structure of the National Directorate for Prisoner Services and Social Integration

³⁰ Law on the Execution of Sentences, Article 122 and 129

³¹ Interview with MSS officer, 22 November 2017

³² Penal Code, Article 104(2)

JSMP's court monitoring indicates that civil compensation is only ordered in a small proportion of cases. In 2016, less than 6% of cases in which a suspended prison sentence was imposed also ordered the defendant to pay civil compensation.³³ Those cases typically involve property damage or serious physical injuries to the victim. Civil compensation is awarded in very few cases of domestic violence – in 2016, only 4 cases involving domestic violence made an order for civil compensation, from a total of 421 domestic violence cases monitored.

3.3.4. Special conditions in domestic violence cases

In addition to these sentencing measures available to the court in the Penal Code, the Law Against Domestic Violence provides for further orders that a court may make in cases of domestic violence. Under LADV Article 38(2), the court may order that a perpetrator be prohibited from contact with the victim for a maximum period of 3 years. The LADV also provides for the court to order a perpetrator to pay maintenance to the victim, in accordance with the provisions of Articles 29 to 32. The amount of maintenance can be determined by mutual agreement or by the court, having regard to the victim's needs and the perpetrator's income.

³³ Of cases monitored by JSMP in 2016, 24 involved civil compensation and a suspended sentence, from 421 cases in total which imposed a suspended sentence.

4. Suspended sentences with conditions in practice

4.1. What conditions are being used?

4.1.1. Periodic reporting to the court

Although Articles 69 and 70 provide for a range of conditions or rules of conduct to be imposed on a suspended prison sentence, JSMP's monitoring shows that nearly all cases monitored with additional conditions involve reporting to the court or police pursuant to Article 70.1(g). In some cases, the court also awards civil compensation, but other conditions have been used in only a very few cases.

CASE STUDY 1³⁴

In February 2016, the Dili District Court convicted and sentenced a defendant for the crime of mistreatment of a spouse under Article 154 of the Penal Code together with the LADV. In August 2014, the defendant argued with the victim over the killing of a pig and the defendant kicked a chair towards the victim, hitting her in the thigh. The defendant was also violent towards the victim on other occasions in 2009 and 2007. The Court sentenced the defendant to prison for 1 year and 6 months, suspended for 3 years, on the condition that the defendant present periodically to the Court each month during the period of suspension.

CASE STUDY 2³⁵

In April 2016, the Baucau District Court convicted and sentenced a defendant for the crime of simple offences against physical integrity (Article 145 of the Penal Code) characterised as domestic violence, committed against his wife, in Viqueque district. In July 2015, the defendant and the victim argued because the victim had not cooked food. The defendant verbally abused the victim and struck her twice to her ears, once to her left eye, and to her back. This resulted in the victim needing treatment at the hospital. At the trial, the defendant admitted all the accusations and promised not to commit further acts against his wife in the future. He said that he and his wife had reconciled and he regretted his behaviour. The court sentenced the defendant to prison for 8 months, suspended for 1 year, on the condition that he present periodically to the court once a month for 8 months.

³⁴ Case No. 0115/14.DIBCR

³⁵ Case No. 0006/14.BCPVN

Judges interviewed by JSMP for this report, who have imposed additional conditions on suspended prison sentences, all emphasised the educative function of additional conditions on the perpetrator and sometimes also the community, and gave this as their reason for imposing periodic reporting conditions. Many of the judges referred to cases of domestic violence as being appropriate for the use of this type of condition. One judge said that:

"I impose these additional obligations because some members of the community think that a perpetrator is free and that there are no consequences. For example, in a case of domestic violence a man struck his wife. If only a suspended sentence is imposed, the perpetrator thinks he is free and he doesn't understand the suspended sentence. However, I can impose an additional obligation, for example, a penalty of 1 year in prison suspended for 2 years and the obligation to periodically appear once a month for between 1 and 2 years. This tells the defendant that he has done wrong."³⁶

Another judge said:

"I have observed that in crimes characterised as domestic violence, the court almost always applies suspended sentences, but in practice it appears that although suspended sentences are applied to this crime (domestic violence) there is no significant reduction in the prevalence of this crime. These crimes continue to increase. Therefore I have decided that there needs to be some additional rules so that defendants feel that in the end their actions have more serious consequences. This will deter defendants from committing crimes and shows others that the consequences are serious."³⁷

Another judge referred to the need to monitor those on suspended prison sentences to ensure they do not commit further crimes:

"For crimes of domestic violence that occur in the home, even though the defendant and the victim have reconciled, for example they have reached an amicable agreement and are living together again, if we only impose a suspended sentence without monitoring there is the possibility that this crime could reoccur in the future."³⁸

As the judges have noted, a condition requiring a perpetrator serving a suspended prison sentence to report periodically to the court or another entity can serve the following functions:

- it imposes a serious penalty on the perpetrator but fulfils the aim of preferring non-custodial sentences;
- it ensures a perpetrator is monitored at least for the period during which they must report, so that the court can see the perpetrator is not repeating his behaviour;

³⁶ Judge, interviewed 3 October 2017

³⁷ Judge, interviewed 27 September 2017

³⁸ Judge, interviewed 28 September 2017

- it reminds an perpetrator of the sentence and consequences of his past actions, deterring him from repeating the behaviour; and
- it gives some further visibility to others in the community of the fact that a perpetrator is serving a suspended prison sentence, deterring others from criminal behaviour.

However, a condition requiring periodic reporting may not be appropriate in all circumstances. For example, the perpetrator may live in such a remote place that the condition would impose a disproportionate penalty on him. To mitigate this, JSMP recommends that the court consider conditions that require a person to appear before local authorities, such as the suco chief, in cases where the perpetrator lives far from the district court. This will require training of local community authorities, and implementation of mechanisms to ensure they are able to monitor the perpetrator and report effectively to the court. The Law on Sucos already seems to provide a basis for the suco chief to perform this kind of monitoring role, as it includes in the role of suco chief competencies to:

- support initiatives to protect victims of domestic violence and eliminate incidents of domestic violence in the community;³⁹ and
- inform the National Police of Timor-Leste (PNTL) of facts that may constitute a crime.⁴⁰

A periodic reporting condition is also limited in its ability to provide deterrence to others in the broader community. While the perpetrator and his immediate family or friends may be aware that he must report to the court, others in the community will not necessarily know that he is doing this. Community knowledge may be improved if local authorities are more involved in the process, and can then educate others about the penalties they might receive if they commit similar crimes. Monitoring of domestic violence perpetrators serving suspended sentences by the local suco chief would fit within the competencies of a suco chief as set out in the Law on Sucos, and could also assist to deter others in the community from committing crimes.

Finally, a condition requiring a person to report periodically will not necessarily promote their rehabilitation. It may remind the person of their crime and punishment, but it might not encourage them to change their behaviour in a positive way. Counselling or rehabilitative treatment is more likely to achieve this, and JSMP makes recommendations about this below.

4.1.2. Periodic reporting to police

Most cases order the perpetrator to report periodically to the court, but some cases have ordered reporting to police instead. JSMP has monitored at least 10 cases in the period 2013-2017 which involved a condition requiring the perpetrator to report to the police.

The Penal Code provides for periodic reporting to a court, social reintegration officer or non-police entity,⁴¹ but does not provide for post-conviction reporting to police. Some judges interviewed by

³⁹ Article 23(n) of the Law on Sucos, Law No. 9/2016

⁴⁰ Article 23(o) of the Law on Sucos

⁴¹ Article 70(1)(g)

JSMP made this point, and said that they do not therefore make orders for reporting to police. One judge said:

“We need to differentiate between a penalty and a coercive measure. A coercive measure will order a perpetrator to appear before the police to ensure that he cannot abscond during an investigation, and a penalty is when a person has been sentenced and is waiting to be reintegrated into his former life.

In my decisions in those cases where I have imposed a suspended sentence with an additional obligation, I have never ordered a perpetrator to appear periodically before the police, because the law does not allow it.”⁴²

Despite this, JSMP’s court monitoring indicates that orders are made for perpetrators to report to local police. Many of those cases occurred in the earlier period from 2013 to 2015, so this may be explained as an error or misunderstanding of the law which has now been corrected. Nevertheless, this suggests a need for clarity and guides for judges in respect of the use of periodic reporting orders.

Some judges explained that perpetrators may live far from any of the district courts and therefore need to be able to report to a more local institution. At least one case required the perpetrator to report to the public prosecutor.⁴³ One judge said he had ordered reporting to the local suco chief in a case, but that there were no clear mechanisms for facilitating this, or monitoring that the perpetrator was complying, as it would depend on the system of that particular suco chief.⁴⁴ As discussed in section 4.1.1, JSMP recommends that the courts and the Ministry of Justice develop mechanisms to enable local authorities to perform this monitoring role.

4.1.3. Public apologies

JSMP has not observed many cases in which the court has ordered the defendant to make a public apology to the victim. JSMP’s court monitoring records only one case of domestic violence in which a court ordered a public apology in the period January 2013 to September 2017, although in many other cases it is noted in the defence’s arguments that the defendant has already apologised privately to the victim.

An exception to this was a recent case in the Dili District Court in which the court ordered the defendant to publicly apologise to his wife in a case of domestic violence.

⁴² Judge, interviewed 28 September 2017

⁴³ Case No. 151/PEN/15/TDS, discussed in Section 5.2.4 below

⁴⁴ Judge, interviewed 28 September 2017

CASE STUDY 3⁴⁵

In May 2017, the Dili District Court sentenced a defendant for the crime of simple offences against physical integrity committed against his wife. In September 2016, the defendant had struck his wife in the chest and stomach and hit her forehead with a shovel, causing her injuries and to fall to the ground. The Court convicted the defendant and sentenced him to 2 years in prison suspended for 4 years, with conditions that he present periodically to the Court each month for 2 years and also make a public apology to the victim. The defendant made his apology in the Court before the judge, prosecutor, defender, victim and observers. He said to the victim that he regretted his actions, asked for her forgiveness, and promised not to repeat his behaviour in the future.

One of the judges interviewed by JSMP commented that he thought a public apology was an effective way of ensuring the perpetrator reflected on his behaviour. He referred to a domestic violence case where he had applied an obligation on the perpetrator to make a public apology and said:

"After the decision in this case was rendered final, I notified the parties to appear before the court. In the courtroom I asked the defendant to apologise to his wife (the victim). This was beneficial, because when the defendant apologised he cried and his wife also cried. This shows that the defendant regretted his behaviour. We punish a person so he can regret his behaviour."⁴⁶

An apology to the victim provides a mechanism to both sanction the perpetrator and provide some recognition to the victim that she was wronged. Requiring a perpetrator to apologise in a public forum adds some impact to the apology by forcing the perpetrator to acknowledge his wrongdoing in front of others. JSMP observed in the above case study that the apology was given to the victim in the court room, in the presence of the judge, public prosecutor, public defender and the victim. While this formal setting may give a sense of importance, it is also removed from the perpetrator's community. If the apology were to be given in a public place within the perpetrator's community, there may be added impacts both in terms of shaming the perpetrator and educating the community about the wrongful nature of the behaviour.

JSMP recommends that the court consider ordering a public apology in more cases in the future, but that it also considers how an apology can be most effective in the circumstances of the case.

⁴⁵ Case No. 0025/16.DIBCR

⁴⁶ Judge, interviewed 3 October 2017

4.1.4. Civil Compensation

JSMP observes that civil compensation is ordered in some cases, but is rarely used in cases of domestic violence. The cases in which it has been awarded are typically serious offences of violence or sexual assault, or also involve property damage. Only 13 cases of domestic violence have involved civil compensation in the period January 2013 to September 2017. However, JSMP has observed in the past year that judges have started awarding civil compensation in a small number of domestic violence cases.

CASE STUDY 4⁴⁷

In July 2017, the Dili District Court convicted a defendant of the crime of mistreatment of a spouse and imposed a sentence of three years in prison suspended for five years, and ordered him to pay compensation of US\$800 to the victim. The case concerned an assault on the victim in September 2015 in which she was knocked to the ground and dragged along and required treatment in hospital for her injuries. The court also found that the defendant had assaulted the victim on other occasions in 2014, 2012 and 2010. The defendant and victim were living separately at the time of sentencing. In addition to the suspended prison sentence, the court ordered the defendant pay compensation of US\$800 to the victim to redress the financial expenditure of the victim who had to obtain treatment for her physical injuries and other relevant amounts relating to alimony for their three children.

One judge interviewed indicated that she believed civil compensation was not often appropriate in cases of domestic violence, explaining that:

"Compensation is applied on a case by case basis and I most often apply compensation in cases involving material damage. For example, cases involving property damage, normally I impose a suspended sentence with the condition that the perpetrator must pay for the damage, and if he does not pay within the prescribed time frame established by the court, then he will need to serve the prison sentence.

In cases of domestic violence I personally have not applied compensation because if we order the defendant to pay civil compensation, but the defendant and the victim end up reconciling, then this will cause more problems in their household because of their economic circumstances..."⁴⁸

⁴⁷ Case No. 0402/15.PDDIL, reported in JSMP Press Release 13 September 2017 available at <http://jsmp.tl/en/press-release-2017>

⁴⁸ Judge, interviewed 28 September 2017

As observed in JSMP's 2013 LADV Report, compensation can help to address economic dependency of the victim on the perpetrator and provides an immediate remedy for victims.⁴⁹ It can also serve as a deterrent to future crimes by perpetrators. Compensation can be provided not just for physical damage or injuries, but also for psychological injuries, emotional distress, loss of earnings or other non-material damage.⁵⁰ In the above case study there was evidence of the cost of treatment of the victim's injuries and other costs to the victim could also be identified, but it is also possible to award compensation in cases where the financial impact of the crime is not so clear.

JSMP believes that civil compensation could play a much greater role in the courts' sentencing in domestic violence cases. Public prosecutors and lawyers acting for victims should be encouraged to collect evidence in more cases regarding the costs of domestic violence to the victim. The case study above involved repeated physical abuse of the victim, but a single instance of domestic violence can also cause loss to a victim which could be compensated with an order for civil compensation. Even a small amount can provide financial autonomy to a victim and serve a significant symbolic purpose. Imposing compensation in conjunction with a suspended prison sentence can be an effective way of ensuring perpetrators feel the impact of the penalty and victims feel they are receiving justice.

JSMP hopes to see more decisions like the above case study from the district courts, and recommends that prosecutors and judges receive training on considering whether civil compensation is appropriate in cases of domestic violence, and on how to calculate appropriate amounts. Sentencing guides for domestic violence cases should also be developed which provide guidance on calculating civil compensation for victims.

4.1.5. Other possible conditions – treatment and social reintegration

To date, the courts have not often applied other conditions available under the Penal Code, such as ordering medical treatment or rehabilitation, community service or monitoring by social reintegration services.

Since 2012, none of the cases monitored by JSMP has involved an order for medical treatment or rehabilitation, and only one involved an order for monitoring under Article 71 of the Penal Code in relation to social reintegration. That one case, decided in 2015 in a mobile court conducted by the Suai District Court, was a case of serious assault against the defendant's neighbour. The Court ordered that the defendant be monitored by the public prosecutor during the period of the suspended sentence. While the order was made under Article 71, this case did not appear to involve a 'social reintegration plan' or the involvement of social reintegration services.⁵¹

One reason why these alternative options are not applied is the lack of infrastructure in Timor-Leste to enable the making of such orders. For example, abuse of alcohol is often mentioned in cases as a

⁴⁹ 2013 LADV Report at 39

⁵⁰ Article 430.1 of the Civil Code, Law No. 10/2011, provides that "For the determination of compensation, regard must be had to non-material damage which, because of its seriousness, deserves the protection of the law."

⁵¹ Case No. 151/PEN/15/TDS

factor contributing to violent behaviour, and Article 70(2) enables the court to make orders directing a perpetrator to undergo medical treatment or rehabilitation. However, such services are not readily accessible in Timor-Leste, so that the making of an order under Article 70(2) is not often practical. JSMP is aware of one service operated by PRADET which offers alcohol and drug counselling,⁵² however this service is limited in the number of people who can attend and is only available in Dili.

One judge interviewed by JSMP said that she had made an order requiring rehabilitative treatment for alcohol in a case of domestic violence, but that the hospital did not communicate back to the court to confirm that the person had undergone the treatment as required.⁵³ She concluded that the order was therefore not effective. Even where services are available, the absence of established programs or procedures prevents orders for counselling or medical treatment from being implemented effectively.

Similarly, Timor-Leste does not yet have mechanisms in place to enable other forms of non-custodial sentence to be imposed, such as community service. Community service is an alternative form of penalty which can be a punishment for the perpetrator and, because the perpetrator is serving the penalty in a more public place, can show others in the community that crimes have consequences. One judge interviewed told JSMP of a case involving a nurse convicted of terminating a pregnancy, in which the court wanted to order community service, but the perpetrator did not consent to this (as required by the Penal Code) so it was not possible. The judge suggested both that the Penal Code needed strengthening to enable judges to effectively use the provisions, and that additional legislation was required. She said:

“The court believes that obligations such as community service are really good, however the National Parliament needs to draft another law to regulate the locations where community service can be performed and the hours so the court will then only need to implement the rules.”⁵⁴

The Penal Code also provides a regime in Article 71 to enable monitoring of a perpetrator by social reintegration services subject to a ‘social reintegration plan’. Social reintegration services are the responsibility of the Ministry of Justice’s DNSPRS and MSS. MSS currently provides social reintegration services to perpetrators who are being released from prison to serve some of their sentence in the community, including talking with their families before they are released to explain what will happen. MSS has two officers working in this service, and for each perpetrator they work with, MSS consults with a group of people including an officer from the Ministry of Justice, local authorities, PNTL-OPS (Village Police Officer), a church representative, a customary elder and a person close to the perpetrator. MSS provides these services only for perpetrators in prison, it does not provide any services for perpetrators serving a suspended prison sentence.⁵⁵ The Ministry of

⁵² PRADET (Psychosocial Recovery and Development in East Timor) is a national NGO which provides psychosocial services for people who are experiencing trauma, mental illness and other psychosocial problems.

⁵³ Judge, interviewed 20 September 2017

⁵⁴ Judge, interviewed 28 September 2017

⁵⁵ Interview with MSS officer, 22 November 2017

Justice provides reports to the court to decide if a perpetrator in prison needs to serve the other half of their penalty in prison or can be given a conditional release, and works together with MSS to facilitate the conditional release.⁵⁶

However, effective mechanisms to enable social reintegration planning for perpetrators serving suspended prison sentences are not yet established. Judges interviewed by JSMP noted that making orders for monitoring by social reintegration services was not feasible at the current time because of this. One judge interviewed explained that social reintegration services did follow up on perpetrators who had been in prison and released on conditions, but did not monitor those on suspended prison sentences, so that the court only finds out that a person serving a suspended sentence has committed another crime if new charges are brought by the public prosecutor.⁵⁷ Another judge said that:

“I have not yet applied such conditions because the social reinsertion service was just recently established and there needs to be good coordination and collaboration to implement what the law says regarding social reintegration. It may be possible in the future to apply these penalties, and we will be better able to monitor them.”⁵⁸

These alternative options for orders or conditions on a suspended prison sentence could provide more effective ways of achieving the objectives of deterring further crime and rehabilitating perpetrators than just requiring someone to report periodically to the court. Conditions requiring medical treatment or counselling and social reintegration plans can be adapted to the individual circumstances of the case and can try to address the causes of violent behaviour. This could be particularly useful in some cases of domestic violence where perpetrators need support to change their behaviour. JSMP believes that the courts should have the option of using these alternatives and hopes that the Ministry of Justice and MSS can work to develop services for social reintegration and infrastructure and programs for rehabilitative treatment.

4.2. How and where are conditions or rules of conduct being used?

JSMP's court monitoring shows that only the Dili and Baucau district courts are regularly applying conditions or additional duties to suspended prison sentences, and that the Suai and Oecusse district courts are not. JSMP has also observed that there are some judges at the Dili District Court who regularly apply additional conditions on suspended sentences, but others who do not at all. JSMP spoke both with judges who order additional conditions regularly and those who have not applied them at all.

⁵⁶ Interview with MSS officer, 22 November 2017

⁵⁷ Judge, interviewed 25 September 2017

⁵⁸ Judge, interviewed 27 September 2017

One judge who does routinely apply conditions on suspended sentences said that she thought conditions were appropriate in nearly every case. She said this was because:

“...we can never suspend a sentence and just allow the perpetrator to go free. The law states that we can impose a suspended sentence on a defendant but we also need to impose some obligations (duties). The defendant should actually go to prison but if he is not sent to prison then he needs to fulfil certain conditions so that he will not repeat his behaviour.”⁵⁹

One judge interviewed who had not applied additional conditions indicated that there were several explanations for why some judges or courts did not apply conditions on suspended sentences, including:⁶⁰

- the judge had not given sufficient thought to the possibility of imposing conditions and because of high workloads had not had time to think about it;
- the judge had not received training or mentoring which encouraged the use of additional conditions;
- monitoring processes for enforcement of conditions were not established and the judge was mindful of creating additional work for overstretched court staff;
- other institutions were not well established to facilitate the making of orders such as community service or social reintegration plans; and
- in relation to orders for payment of civil compensation, there was not often sufficient evidence presented to the court of loss suffered by the victim.

Another judge noted that although he had not applied conditions requiring periodic reporting to the court or another entity during the suspended sentence, he did sometimes order a perpetrator to pay civil compensation, or to give an apology to the victim. In relation to the question of conditions requiring periodic reporting, the judge considered that periodic reporting was appropriate during an investigation, but once someone had been sentenced it was not an appropriate penalty. He said:

“I personally believe that when a person has been convicted, for example he is given a suspended prison sentence of one year, it means that he has already been sentenced. A person is ordered to periodically appear before the court or the police during the investigative process.

If the investigation is complete and the matter has been brought to the court, then it is not necessary for the person to appear periodically. The purpose of making a person appear periodically is to keep this person in check during the investigative phase to facilitate the investigation.”⁶¹

⁵⁹ Judge, interviewed 20 September 2017

⁶⁰ Response from Judge, interviewed 27 September 2017

⁶¹ Judge, interviewed 7 November 2017

While judges will have different opinions on the circumstances in which different types of additional conditions are appropriate, the inconsistencies in application of conditions show that judges could benefit from training and mentoring on the relevant provisions, as well as sentencing guides which consider the use of additional conditions and rules of conduct. While it is encouraging that some judges are beginning to use rules of conduct to improve the effectiveness of suspended prison sentences, there are still a large majority of cases in which a suspended sentence is imposed with no conditions. JSMP has recommended sentencing guidelines be developed for domestic violence cases many times in the past, to help reduce inconsistent sentencing and ensure all relevant factors are considered.⁶² Developing guides for the courts on dealing with cases of domestic violence is also an ongoing commitment under Timor-Leste's National Action Plan on Gender-Based Violence.⁶³

JSMP's court monitoring indicates that it is usually judges rather than prosecutors who instigate additional conditions when applying a suspended prison sentence. One prosecutor interviewed said that they sometimes request measures such as periodic reporting in the pre-trial phase, but not in sentencing.⁶⁴ Another prosecutor said that she did sometimes request additional conditions such as periodic reporting for suspended sentences in cases of domestic violence.⁶⁵ As prosecutors play an important role in ensuring the court decides on an adequate sentence, they could be more proactive in recommending the use of additional conditions to suit the circumstances of the case. In particular, in relation to civil compensation, it is important that prosecutors provide enough evidence to the court about the harm suffered by the victim so that the court can decide on an amount of compensation. Prosecutors should receive training on obtaining this evidence so that they can make submissions to the court about civil compensation in more cases of domestic violence.

⁶² See, for example, 2013 LADV report at 36

⁶³ Timor-Leste's National Action Plan on Gender-Based Violence 2017-2021, Output 3.4, Focus Action 4.

⁶⁴ Prosecutor, interviewed 3 October 2017

⁶⁵ Prosecutor, interviewed 23 November 2017

5. Enforcement challenges

5.1. How is compliance with conditions monitored?

A suspended prison sentence may be revoked or modified if a perpetrator commits another crime or fails to comply with conditions during the period of suspension, in accordance with Articles 72 and 73 of the Penal Code. The Penal Code and the Criminal Procedure Code do not specify any processes for monitoring people serving suspended sentences, but some procedures are detailed in the Law on the Execution of Sentences.⁶⁶ JSMP has also spoken with court actors to try to understand what monitoring currently occurs.

In relation to suspended sentences which do not have any additional conditions such as reporting to the court, there does not appear to be any formal process for monitoring the perpetrator. If that person commits another crime, it will be the responsibility of the police and public prosecutor, if they are made aware of the crime, to investigate and bring the perpetrator before the court. The court's records should indicate that the person is serving a suspended sentence and, if convicted of the new crime, the suspension can be revoked or amended.⁶⁷ However, because there is no regular monitoring of the perpetrator, the police or the public prosecutor will not always know if the person has committed another crime. In domestic violence cases, this puts the burden on the victim to report the crime to the police, which may be difficult as many victims continue to live with the perpetrator.

In cases where conditions have been imposed on the suspended sentence, there is greater opportunity for monitoring of the perpetrator. Part IV of the Law of the Execution of Sentences regulates the execution of suspended sentences, and provides that the court is to determine any monitoring requirements for a suspended sentence, and the terms of any social reintegration support.⁶⁸ The law also requires any orders for periodic presentation to the court or another entity to be recorded in writing.⁶⁹ If the perpetrator is required to report to a non-court entity, that entity must be formally informed and must report back to the court if the person fails to report.⁷⁰ JSMP interviewed court actors to try to understand how this monitoring is currently operating in practice.

⁶⁶ Law on the Execution of Sentences, Decree Law 14/2014

⁶⁷ Penal Code, Articles 72 and 73

⁶⁸ Law on the Execution of Sentences, Article 148

⁶⁹ Law on the Execution of Sentences, Article 149(1)

⁷⁰ Law on the Execution of Sentences, Article 149(2)

5.1.1. Reporting to the Court

JSMP was informed through interviews with judges and court clerks from the Dili and Baucau District Courts that the process for monitoring compliance with conditions requiring a perpetrator to report periodically to the court is generally as follows in both the Dili and Baucau District Courts:⁷¹

The court maintains electronic and paper records of all sentences

The court clerks maintain a list of perpetrators who are subject to a condition to report periodically;

If a person is required to report periodically, the court creates a form which lists the dates and times they are required to report and gives a copy to the defendant, as well as registering it on the court's electronic system;

Each time the perpetrator reports to the court they sign a register;

The court clerks monitor the register and inform the judge if a person fails to report on their reporting date;

The judge then orders that a notice be sent to the person requiring them to attend before the judge;

The judge conducts a hearing at which the perpetrator has an opportunity to justify his non-compliance and the judge determines the appropriate penalty.

Court clerks reported that at the end of the period of suspension, a report is prepared for the judge confirming whether the perpetrator has complied with the conditions on their sentence. If they have complied, the judge will order that the sentence has been completed.

Judges and court clerks interviewed provided different responses regarding the time between a person's non-compliance and reporting that non-compliance to the judge. Some said if a person did not appear within 5 days of the required date it would be reported to the judge, others said it would be reported if they did not appear within a month.⁷² In the context of pre-trial restrictive measures which require periodic reporting, Article 191.3 of the Criminal Procedure Code provides that when a perpetrator, without reason, fails to comply with the reporting requirement imposed on them for five consecutive days, then their noncompliance is to be reported to the court. However, there is no corresponding provision for periodic reporting as a condition of a suspended sentence. This uncertainty about the timeframe for reporting non-compliance to the judge should be clarified, and the courts should ensure that court staff are monitoring compliance with conditions consistently.

⁷¹ Court clerks in each of the Dili and Baucau District Courts reported a similar process. The Suai and Oecusse District Courts have not yet needed to monitor compliance with periodic reporting conditions.

⁷² Interviews conducted with court clerks on 26 September 2017 and 27 September 2017

5.1.2. Reporting to Police or other entities

While the courts themselves seem to have established a procedure for monitoring compliance with conditions requiring reporting to the court, police and other entities do not seem to have such a clear process. JSMP understands from interviews with court clerks that the process for monitoring obligations to report to police is as follows:⁷³

- a) The court clerks communicate with the police post nearest to the perpetrator and tell the police that the perpetrator has an obligation to appear at that police post;
- b) The police should prepare a list so that when the perpetrator appears he must sign the list. But this is the responsibility of the police;
- c) The police should report back to the court about whether the perpetrator has appeared or not;
- d) The court clerk then provides information to the judge.

However, both court clerks and judges reported that police often did not report non-compliance with reporting conditions until a long time had passed since the non-compliance, or until a final report is provided at the end of the sentence period. Often, police do not provide a report until they are specifically requested to do so by the court. One court clerk suggested that these delays were a problem and the process for police monitoring of reporting conditions could be improved in this regard.⁷⁴

CASE STUDY 5⁷⁵

In 2013, the defendant was found guilty of a simple offence against physical integrity against his wife. The Dili District Court sentenced the defendant to 6 months in prison, suspended for 2 years. The sentence required the defendant to comply with a rule of conduct under Article 70.1(g). Specifically, the defendant had to report to police four times a month on a Friday for the duration of the sentence. The defendant failed to comply with the rule. He reported to the police just 7 times during the 2 year period.

Because of the defendant's non-compliance, the matter was brought back before the Court in May 2016. The Dili District Court found that the defendant had failed to comply with the rule of conduct attached to his suspended sentence. Consequently, the Court revoked the defendant's current suspended sentence in accordance with Article 73.1 and issued a new suspended sentence for the defendant to comply with for 1 year and 6 months. The Court again ordered that the defendant report to the police at 8am, every Friday, for the duration of the sentence.

The Court explained to the defendant that if he failed to comply with the condition imposed on him as part of the suspension of his prison sentence, then the defendant would be sent to prison.

⁷³ Interview with court clerk, 27 September 2017

⁷⁴ Interview with court clerk, 26 September 2017

⁷⁵ Case No. TDD 0037/12.DIDIL

This case study, together with the comments of court actors interviewed by JSMP, suggests that police are not reporting non-compliance to the court at the time it occurs. One court actor interviewed suggested that this was a reason why the court should only order periodic reporting to the court, not to the police, as they may be too busy to monitor effectively.⁷⁶

However, reporting to the court can be difficult for perpetrators in remote locations. A public defender interviewed highlighted problems for those who live in very isolated areas to be able to report:

“For example, my client lives in Quilekai-abu, which is very far. The court applied a prison sentence but it was suspended and the defendant was also required to appear periodically before the court, and as the public defender I felt that this was very difficult for him because he had to leave his family and work to appear at the Baucau Court.”⁷⁷

As an alternative to reporting periodically to the court, the law allows the court to order that a person report periodically to a social reintegration officer or a non-police entity. Judges interviewed noted the current lack of mechanisms for monitoring or reporting by other entities, such as the local suco authorities. One public defender suggested that monitoring could be improved and involve local authorities or social services:

“There needs to be a law that deals with monitoring those who have been given a suspended prison sentence with a duty to appear before the court or police, and there needs to be an independent body, or a team comprising people working in social services and local authorities to monitor those who have been given a suspended prison sentence.”⁷⁸

Given that the law does not actually provide for periodic reporting to police for those serving a suspended prison sentence, JSMP recommends that the court does not make orders in the future requiring reporting to police as a condition of a suspended sentence. However, as discussed earlier in this report, JSMP does recommend that the Ministry of Justice, with the involvement of the court and local authorities, create mechanisms for periodic reporting to other entities, such as local public prosecutors or suco authorities, and monitoring of people on suspended prison sentences by such entities.

5.2. Consequences of breach

If, during the period of suspension, a perpetrator commits another crime and is convicted by the court, or violates an additional order imposed by the court, then the court can revoke or amend the suspension.⁷⁹ The court has some discretion to decide the consequences of a breach of the conditions of the sentence, but the Penal Code provides that if the perpetrator is found guilty of

⁷⁶ Interview with court clerk, 26 September 2017

⁷⁷ Public defender, interviewed 27 September 2017

⁷⁸ Public defender, interviewed 26 September 2017

⁷⁹ Penal Code, Articles 72 and 73 and Law on Execution of Sentences, Article 151

committing a crime of intent which is punishable with a prison sentence, the court must revoke the original suspension.⁸⁰ This applies even if the court does not impose an effective prison sentence for the new crime. If a perpetrator committed another crime of domestic violence during the suspension period it would be a crime punishable with a prison sentence and therefore the previous suspension should be revoked. If the suspension is revoked, the perpetrator must serve the original prison sentence that was suspended, as well as the penalty imposed for the new crime committed.

In cases where the perpetrator has committed a less serious crime not punishable by a prison sentence, or has failed to comply with additional conditions on the sentence, the court can:⁸¹

- give a warning to the offender
- modify the terms of the suspension, for example, imposing periodic reporting conditions; or
- extend the suspension period by at least one year, or up to one half of the original sentence (although the total period of suspension cannot exceed 5 years).

In order to change any duties, extend the period of suspension, or revoke a suspension, Articles 338 and 339 of the Criminal Procedure Code require the court to conduct a hearing with the perpetrator and the public prosecutor, and collect proof relating to the circumstances. Judges and court clerks interviewed reported that there was a process for this to occur once the judge was notified of any breach of the conditions of the suspended sentence. They reported that it had occurred on several occasions and the judge had amended or revoked the suspended sentence.

CASE STUDY 6⁸²

One judge described a case of domestic violence in which the defendant was ordered to appear once a month before the Dili District Court for one year whilst serving a suspended sentence.

The defendant appeared during the first and second month but in the third month he did not appear. The court clerk informed the judge, who ordered notifications be sent to the Public Prosecution Service, Office of the Public Defender and the defendant.

The defendant came before the court and the judge asked him why he did not appear and he answered that he did not appear because he was handling a project in Viqueque. The judge asked if he would like to report to the Baucau District Court instead, but he agreed to keep appearing before the court in Dili.

The judge explained to him that if he did not comply with his obligation to appear periodically, then the court would have to modify his sentence or increase his suspended sentence. He agreed to continue appearing periodically and no further penalty was imposed.

⁸⁰ Penal Code, Article 73(2)

⁸¹ Penal Code, Article 72 and Law on Execution of Sentences, Article 151

⁸² Details given by Judge, interviewed 28 September 2017

CASE STUDY 7⁸³

Another judge described a case of domestic violence involving a simple offence against physical integrity where the defendant did not comply with the additional duties to appear periodically once a month. As a result of his failure to comply, the court held a hearing to hear his reasons. The defendant said that he did not comply because he did not understand the contents of the penalty. The court said this was not acceptable as at the time he was sentenced, an explanation was given in front of his legal representative. Then he gave another excuse that his father was sick so he went to Viqueque District.

The court decided to revoke the suspension pursuant to Article 72 of the Penal Code and imposed a heavier penalty, continuing the suspended prison sentence, but amending the previous additional duty of periodically appearing for once a month for the duration of 1 year to once a month for the duration of 2 years.

CASE STUDY 8⁸⁴

In June 2016, the Oecusse District Court revoked the suspension of a prison sentence for a defendant who committed a further crime of domestic violence during the period of suspension. The defendant was convicted in January 2016 of the crime of simple offences against physical integrity against his wife and was sentenced to 6 months in prison suspended for 1 year. In March 2016, the defendant hit his wife several times in the face, causing injury to her mouth, after he suspected her of having a relationship with another man. The public prosecutor recommended that the earlier suspension be revoked and the defendant receive an effective prison sentence. The Court convicted the defendant, revoked the suspension of the earlier sentence, and sentenced him to a total of 1 year in prison.

JSMP has observed a small number of cases, like case study 8 above, in which a suspended sentence was revoked because the perpetrator committed further crimes during the suspension period. As there is not usually any monitoring of those serving a suspended sentence, it is likely that further crimes are often not detected. In relation to the breach of additional conditions such as periodic reporting, judges reported that they had summoned perpetrators back to court to address their failure to appear as explained in case studies 6 and 7 above. However, JSMP does not yet have sufficient data to assess whether this process is operating properly or whether the penalties for breach are being applied effectively. If additional conditions are to serve their purpose of deterring future crime, it is important that there are significant consequences for a breach of those conditions.

⁸³ Details given by Judge, interviewed 20 September 2017

⁸⁴ Case No. 0047/16.OESIC

6. Impacts of additional conditions on perpetrators, victims and the community

Judges interviewed believed that applying additional conditions, such as an obligation to appear periodically to the court, could have significant impacts both on the perpetrator and on the community in deterring future crime.

“Additional conditions provide specific deterrence (against the perpetrator) and general deterrence (for the community). The perpetrator feels that there are serious consequences because he has to appear periodically. It also educates the community that these matters are serious. The community can see that the perpetrator has to regularly appear before the court.”⁸⁵

“I think that the additional rules imposed by the court, especially the obligation to appear periodically, have an effect because they can act as an ongoing reminder for perpetrators. If they commit another crime during the period of suspension we are able to monitor this as well as any future crimes they might commit.”⁸⁶

Public defenders were less sure of the impact, but did not suggest that conditions or rules of conduct should not be applied to suspended prison sentences. One public defender pointed out that there is currently no data to demonstrate whether suspended prison sentences accompanied by a rule of conduct to appear periodically to the court can reduce these crimes in the community, or prevent perpetrators from committing further crimes.⁸⁷

Although it is true that there is not yet enough data to make conclusions about the effect of applying conditions or rules of conduct on recidivism, JSMP has heard from individuals who have experienced this type of sentence that it can have a positive impact. JSMP has observed in the past that perpetrators and victims often do not understand what a suspended prison sentence means because it appears that the perpetrator goes free without any penalty.⁸⁸ Applying an additional condition like an obligation to attend court each month during the sentence can make a suspended prison sentence seem more like a penalty to both the perpetrator and the victim.

A lawyer from Women and Children’s Legal Aid (*Assistência Legal ba Feto no Labarik* or ALFeLa) who acts for victims of domestic violence commented:

“We think that sentences with rules of conduct have an impact on perpetrators, because they must present themselves each week or each month to the court. With this, perpetrators feel that they are being punished. We also have had some clients tell

⁸⁵ Judge, interviewed 5 October 2017

⁸⁶ Judge, interviewed 28 September 2017

⁸⁷ Public defender, interviewed 27 September 2017

⁸⁸ 2013 LADV report at 35-36

us that after the court's decision to give a suspended sentence with rules of conduct, the perpetrator has changed his behaviour."⁸⁹

One victim of domestic violence spoke about her husband's behaviour changing as a result of the court's sentence. He was sentenced to prison for 1 year, suspended for 4 years with rules of conduct obliging him to appear at court once a month for six months.

"... the court's decision has changed his behaviour. For example, in the past he always got drunk and when he was drunk he always committed crimes against me, but after the court's decision he did not want to drink alcohol anymore, because he believes that when he drinks alcohol he always causes problems."⁹⁰

JSMP also spoke to a perpetrator who explained that going to court and sitting before the judges made him feel that the matter was serious and showed him that his behaviour was wrong. He received a suspended prison sentence with rules of conduct requiring reporting to the court, and thought this was a serious penalty which caused him embarrassment and encouraged him to change his behaviour.⁹¹

These experiences indicate that applying conditions or rules of conduct to suspended prison sentences can have a positive impact on perpetrators and improve outcomes for victims. However, requiring a perpetrator to report to the court each month may not always be the most effective penalty, and to date the courts have not used other sentencing options in many cases. One judge acknowledged that the ability of these sentences to raise awareness in the community was limited, but could be improved if there was more social integration planning:

"...additional obligations can change community opinion, but not one hundred percent, namely that a person has been punished and now he has to appear before the court once a week or once a month... The Social Reinsertion Service has an important role in changing community opinion with a sound plan about what the perpetrator needs to do apart from appearing periodically."⁹²

As discussed above, JSMP recommends that the court consider using other conditions or rules of conduct in more cases, and that mechanisms are developed to allow the court to use more options like social reintegration plans in the future.

⁸⁹ Lawyer from Women and Children's Legal Aid (Asistência Legal ba Feto no Labarik or ALFeLa), interviewed 4 October 2017

⁹⁰ Interviewed 14 November 2017

⁹¹ Defendant, interviewed 14 November 2017

⁹² Judge, interviewed 28 September 2017

7. Conclusions and Recommendations

Suspended prison sentences are the most common form of penalty used by Timor-Leste's district courts in all criminal cases and in particular in domestic violence cases. The use of suspended prison sentences is consistent with the Penal Code's sentencing principles which prefer non-custodial sentences where possible. However, applying a suspended prison sentence without any monitoring or additional obligations may not achieve the sentencing objectives which are important to reduce crime and which can help to reduce domestic violence. A suspended prison sentence can seem to perpetrators, victims of domestic violence and the general community, that the perpetrator is not being punished. The perpetrator may not be deterred from committing further crimes in the future and the community may not understand the consequences of these crimes so that others are also not deterred from crime.

JSMP has advocated for the courts to apply conditions or rules of conduct to suspended prison sentences to improve their effectiveness, and is pleased to see that the courts are starting to do this in some domestic violence cases. Since 2013, JSMP has monitored 86 cases which applied a rule of conduct under Article 70(1)(g) of the Penal Code, 71 of which were cases of domestic violence. These cases have usually required the perpetrator to report periodically to the court or to police for some or all of the period of suspension. Applying this kind of extra condition to a suspended prison sentence can show perpetrators of domestic violence that they are being punished for their behaviour and deter them from repeating those crimes. It can also help to monitor that person during their sentence, and it can show others in the community that crimes will be punished. JSMP encourages the courts to use these additional conditions in more cases in the future.

However, periodic reporting to the court is only one type of condition that can be applied to a suspended prison sentence. It may not be appropriate in all cases. Reporting to another local authority might be a more effective mechanism in some cases, but requires mechanisms for monitoring and reporting to be developed. The Penal Code provides other options for suspended prison sentences, such as conditions requiring a person to undergo medical treatment or rehabilitation and provisions for monitoring of a person serving a suspended prison sentence in accordance with a social reintegration plan. However, for the courts to be able to use these options, infrastructure and services need to be developed.

For additional conditions or rules of conduct on a suspended prison sentence to be effective, they must be monitored and enforced. The courts have developed some good processes for doing this, but these could be improved. The courts also must ensure that when a person breaches the conditions on their sentence, there are consequences for that breach.

JSMP makes the following recommendations to assist the work of the courts in sentencing:

Applying conditions or rules of conduct to suspended prison sentences in more cases

1. JSMP recommends that judges and prosecutors receive training on the provisions of the Penal Code, Law Against Domestic Violence and Law on the Execution of Sentences regarding the application of conditions and rules of conduct to suspended prison sentences, so that they can consider applying conditions to more cases, particularly domestic violence cases.
2. JSMP recommends that the Ministry of Justice or the courts develop a sentencing guide for domestic violence cases which considers the use of suspended prison sentences, and the application of additional conditions or rules of conduct to suspended prison sentences.
3. JSMP recommends that the court award civil compensation in more cases of domestic violence. To assist with this:
 - a) Judges and prosecutors should receive training on considering whether civil compensation is appropriate in cases of domestic violence and on how to calculate appropriate amounts;
 - b) The Office of the Public Prosecutor should develop guides for prosecutors on seeking civil compensation in cases of domestic violence; and
 - c) Sentencing guides on domestic violence cases (as recommended above) should provide guidance on calculating civil compensation for victims.

More options for periodic reporting to local authorities

4. JSMP recommends that the court does not make orders requiring periodic reporting to police for those serving a suspended prison sentence, as the law does not specifically permit such additional orders.
5. JSMP recommends that the court consider applying rules of conduct in more cases that require a person to appear before local authorities such as the suco chief. The Ministry of Justice should develop mechanisms to facilitate this, including training of local community authorities, and implementation of processes to ensure they are able to monitor and report effectively to the court.

More options for conditions which the courts can apply to suspended prison sentences

6. JSMP recommends that the Ministry of Justice and the Ministry of Social Solidarity cooperate to:
 - a) Develop their capacity to undertake social reintegration planning for perpetrators serving suspended prison sentences;
 - b) Develop mechanisms for monitoring and reporting on the implementation of social reintegration plans for these perpetrators;

- c) Develop a law to facilitate and regulate the making of orders for community service in substitution for a prison sentence; and
- d) Support the development of programs and facilities that can provide rehabilitative treatment to perpetrators, and develop a law or regulations to facilitate the making of orders for such treatment.

Improved enforcement of conditions and rules of conduct

- 7. JSMP recommends that the process for monitoring compliance with conditions and rules of conduct on suspended prison sentences is clarified, including the timeframe for reporting a non-compliance to the judge, and that court staff are provided with adequate training on the procedures for monitoring. JSMP also recommends that the court staff involved in monitoring of conditions in the Dili and Baucau district courts assist the Suai and Oecusse district courts to establish monitoring processes in those courts.
- 8. JSMP recommends that court actors, including judges, prosecutors and public defenders, receive training on processes for monitoring and the enforcement of conditions and rules of conduct, and the consequences of breaching those conditions.

**Sentencing and Domestic Violence:
Suspending prison sentences with conditions**

JSMP, December 2017

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