

Battered women and self-defence in Timor-Leste



“Working to guarantee justice for everyone”

JSMP's vision

A democratic society that guarantees justice and human rights for all.

JSMP's mission

JSMP will work in a spirit of collaboration to improve and protect democracy, law, justice and human rights through:

- Monitoring
- Legal education, and
- Advocacy.

Judicial System Monitoring Programme, *Battered women and self-defence in Timor-Leste* (JSMP: Dili, 2017)

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Executive Summary

Research shows that most women in Timor-Leste have experienced some form of domestic violence in their lifetime. Court monitoring conducted by the Judicial System Monitoring Program (JSMP) also shows that domestic violence cases against women comprise a substantial majority of cases heard by the courts in Timor-Leste. However, in many cases where women have suffered repeated and long-term domestic violence and then acts to defend herself, there seems to be a reluctance to accept she was justified under the law of self-defence.

This report reveals a fundamental problem relating to the right of female defendants to defend themselves, because court actors fail to adequately use the various legal resources available. The two case studies discussed and analysed in this report highlight a serious problem, in the context of legitimate defence for female victims in cases of violence where they are defendants. This negatively impacts on the defendants' rights to obtain justice in their case and is detrimental to their right to a fair trial. These two cases provide just a small example of the serious problem that our judicial system is currently facing.

The principle of a 'fair trial' is an important concept in guaranteeing that everyone is given an adequate opportunity to defend their legitimate rights in accordance with the law. These principles include the presumption of innocence and the right to be given adequate time to prepare sufficient documents and evidence for one's defence. A fair trial also guarantees free communication between the defendant and her lawyer or public defender during detention and during the first judicial questioning, to assess the facts and evidence presented by the defendant and to hear from witnesses who have knowledge about the case. Article 34 of the Timor-Leste Constitution and Article 14 of the International Covenant on Civil and Political Rights ratified by Timor-Leste also guarantee these rights.

To guarantee a fair trial, a female defendant should at the very least be given adequate opportunity and time to properly prepare her defence. Cases of domestic violence and gender based violence are particularly complex, and therefore a comprehensive and sensitive approach is required to match the context of each case.

Therefore, this report highlights the need to provide ongoing training to judicial authorities and public defenders and lawyers, mainly on gender sensitivity, high quality defence and the psychological impact on women who experience repeated and long-term domestic violence, often referred to in other jurisdictions as 'battered woman syndrome'. JSMP believes that if justice sector actors do not understand the dangers faced by women living in violent relationships, and the effects of this long-term domestic violence, it is difficult for the justice system to properly deal with such cases. JSMP believes that the following recommendations will ensure just outcomes for female defendants who commit domestic violence in circumstances of legitimate self-defence:

1. The Government, through the Ministry of Justice and Legal Training Centre, must provide sufficient resourcing for court actors to be trained on the psychological impact of long-term and repeated domestic violence on women (battered woman syndrome), gender equality and gender sensitivity.

2. Public Defenders must carefully consider the evidence in each case and present all evidence that will assist their client. In particular, if a woman has killed, or attempted to kill their intimate partner in self-defence, the Public Defender must introduce all relevant evidence in support of their client's claim, including prior incidents of domestic violence where the client was the victim.
3. Every person detained by the police must be given independent legal advice within 72 hours. In claims of self-defence by women, injuries must be properly documented using the Timor-Leste Medical Forensic Protocol.
4. Courts must identify any mitigating circumstances (articles 55, 56 and 57 of the Penal Code) and apply these when sentencing the female defendant.
5. Courts must carefully assess self-defence claims made in domestic violence cases and determine if the requirements for the defence are fulfilled. Particular attention should be given to relevant evidence of previous incidents of domestic violence in the relationship.
6. The courts should develop sentencing guidelines in crimes involving battered women. The sentencing guidelines should contain subject matter raised in recommendations 4 and 5.

1 Introduction

Research from Timor-Leste shows that three in five (59%) women aged 15-49 years, who have ever been in a relationship, have experienced some form of physical or sexual intimate partner violence, or both, by a male partner in their lifetime.¹ This means that the majority of women in Timor-Leste have experienced some form of domestic violence in their lifetime. Similar to the experience of women in other countries, Timorese women's experience of domestic violence is rarely a one-off incident. The same research from 2015 shows that four in five (81%) women who have experienced intimate partner violence have experienced this violence many times. Only 5% of women who have been physically or sexually abused by a partner have experienced this just once. Further, of women who have experienced physical domestic violence, 77% responded that the physical violence was 'severe'. Only 23% responded that the domestic violence was 'moderate'.² Globally, it is estimated that of all women who were victims of homicide in 2012, almost half were killed by their intimate partner or family members, that is as a result of domestic violence.³

Judicial System Monitoring Programme's (JSMP) court monitoring also shows that domestic violence cases against women comprise a substantial majority of cases heard by the courts in Timor-Leste. In 2016, JSMP monitored 416 domestic violence cases out of 941 total criminal cases monitored. The majority of domestic violence cases monitored by JSMP involve male defendants. Between January 2013 and June 2016, JSMP monitored 1,211 domestic violence cases involving a male defendant. During the same period, JSMP only monitored 102 domestic violence cases involving a female defendant. While JSMP has only chosen two case studies for this report in which legitimate self-defence by a female defendant was a provable defence, there are likely to be many other cases in which female defendants of domestic violence were acting in self-defence against her abusive intimate partner. However, the lack of introduction of relevant evidence regarding legitimate self-defence by the public defender makes it difficult to identify more cases.

In light of the high prevalence of domestic violence in Timor-Leste, JSMP believes that it is important for justice sector actors and the community to understand the psychological impact of long-term and repeated domestic violence on women, often referred to in other jurisdictions as 'battered woman syndrome'.⁴ Repeated and long-term domestic violence is also relevant to claims of legitimate self-defence by female victims who are charged with domestic violence. In this report, JSMP analyses two cases where evidence showed that the female defendant acted to protect herself from a violent intimate partner, but was found guilty of aggravated homicide. In both cases, JSMP believes that the female defendants were given inadequate legal representation and self-defence was not fully considered by the court. JSMP recognises that 'battered woman syndrome' is a new concept in Timor-Leste. However, the

¹ The Asia Foundation, *Understanding Violence against Women and Children in Timor-Leste: Findings from the Nabilan Baseline Study – Main Report* (The Asia Foundation: Dili, 2016) at 51.

² The Asia Foundation, above n1 at 52.

³ United Nations Office on Drugs and Crime, *Global Study on Homicide 2013* (UNODC: New York, 2014) at 14.

⁴ Lenore E.A. Walker, *The battered woman* (Springer Publishing Company, 3rd ed., 2009). Jacquelyn C. Campbell & Linda Lewandowski, 'Mental and physical health effects of intimate partner violence on women and children', (1997) 20(2) *Psychiatric Clinics of North America* 269.

concept of self-defence is well established in Timorese and Portuguese jurisprudence, and this defence is provided for in the Timor-Leste Penal Code.

The two case studies in this report highlight the need to better understand self-defence in the context of domestic violence. JSMP believes that if justice sector actors do not understand the dangers faced by women living in violent relationships, and the effects of long-term domestic violence, it is difficult for the justice system to properly deal with such cases. JSMP believes that the following recommendations will ensure just outcomes for female defendants who commit domestic violence in circumstances of legitimate self-defence:

1. The Government, through the Ministry of Justice and Legal Training Centre, must provide sufficient resourcing for court actors to be trained on the psychological impact of long-term and repeated domestic violence on women (battered woman syndrome), gender equality and gender sensitivity.
2. Public Defenders must carefully consider the evidence in each case and present all evidence that will assist their client. In particular, if a woman has killed, or attempted to kill their intimate partner in self-defence, the Public Defender must introduce all relevant evidence in support of their client's claim, including prior incidents of domestic violence where the client was the victim.
3. Every person detained by the police must be given independent legal advice within 72 hours. In claims of self-defence by women, injuries must be properly documented using the Timor-Leste Medical Forensic Protocol.
4. Courts must identify any mitigating circumstances (articles 55, 56 and 57 of the Penal Code) and apply these when sentencing the female defendant.
5. Courts must carefully assess self-defence claims made in domestic violence cases and determine if the requirements for the defence are fulfilled. Particular attention should be given to relevant evidence of previous incidents of domestic violence in the relationship.
6. The courts should develop sentencing guidelines in crimes involving battered women. The sentencing guidelines should contain subject matter raised in recommendations 4 and 5.

2 What is battered woman syndrome?

Domestic violence has a serious impact on the physical and psychological health and well-being of women, both short and long term. Importantly, the psychological consequences of repeated and long-term domestic violence can be as serious as the physical injuries. The concept of 'battered woman syndrome' was developed to understand the psychological condition of women suffering physical, sexual or psychological abuse by her intimate partner over a prolonged period of time.⁵ International research shows that women who have suffered repeated and long-term domestic violence will experience depression and anxiety, low self-esteem, impaired social skills and higher levels of psychological distress.⁶

The 2015 research from Timor-Leste support this finding. The research shows that Timorese women who had experienced physical and/or sexual intimate partner violence (domestic violence) were significantly more likely to be at risk of disability, and to have mental health problems, including symptoms of depression and suicidal ideation.⁷ In terms of physical injury, Timorese research shows that of women who have been injured at least once in a domestic violence incident, 52% had been injured severely enough that they needed health care.⁸ Additionally, the research found that 55% of ever-partnered Timorese women (having ever been married or in an intimate relationship with a man or woman) had experienced some form of emotional violence. The most common form of emotional violence faced by women was threats of harm (40%) followed by intimidation or scaring (36%).⁹

The combined impact of the repeated and serious domestic violence, and psychological impact on women, makes it difficult for many women to believe that she can be free of domestic violence. A victim with 'battered woman syndrome' will generally feel that she cannot control what happens, due to the severity and unpredictability of the violence.¹⁰ Women in these types of violence relationships are in a constant and escalating state of violence and fear of their abusive intimate partner.¹¹ There is real danger that the next violence incident could endanger the life of the woman or her children. It is important to recognise this constant state of fear and violence as an essential contextual factor when a woman acts to defend herself when facing yet another violence incident.

However, in many cases where women have suffered repeated and long-term domestic violence and then acts to defend herself, there seems to be a reluctance to accept she was justified under the law of self-defence. In Case Study 1, self-defence was inadequately raised and not accepted by the court. In Case Study 2, self-defence was not raised at all by the public defender. In many such cases, self-defence is not accepted because of a lack of understanding of the full context in which the woman's offence occurred,

⁵ Walker, *The battered woman*, above n3.

⁶ Jacquelyn C. Campbell & Linda Lewandowski, 'Mental and physical health effects of intimate partner violence on women and children', (1997) 20(2) *Psychiatric Clinics of North America* 269.

⁷ The Asia Foundation, above n1 at 93.

⁸ The Asia Foundation, above n1 at 94.

⁹ The Asia Foundation, above n1 at 54.

¹⁰ Walker, *The battered woman*, above n3.

¹¹ Sarah M. Buel, 'Effective assistance of counsel for battered women defendants: a normative construct', (2003) 26 *Harvard Women's Law Journal* 217; Leader-Elliott I, 'Battered But Not Beaten: Women who kill in self defence' (1993) 15 *Sydney Law Review* 403, 430.

principally the history of domestic violence and the impact this has had on the female defendant. Also, as Case Study 1 in this report illustrates, there is often an underlying gendered assumption that women should not act in a violent manner.

JSMP believes that there is a significant need for all court actors and the community to have an increased understanding of the psychological and physical impacts that repeated and long-term domestic violence has on women. This is not only relevant in properly assessing claims of self-defence by women, but also in order to respond effectively with counselling, medical treatment, and legal aid.

3 Legal requirements of self-defence in Timor-Leste

The legal requirements of self-defence are set out in a number of articles in the Timorese Penal Code.¹² These articles give right to a defendant to claim that their actions were lawful and necessary for the purpose of protecting their own life or the lives of others. If found that the actions were legitimate self-defence, the defendant cannot be held criminally responsible.¹³

Article 44: Legitimate defence

An act constitutes legitimate defense when committed as the *necessary means* to repel an *imminent or present unlawful attack* on legally protected interests of the perpetrator or of a third party.¹⁴ [emphasis added]

The Portuguese Penal Code has an almost identical provision on legitimate self-defence:

Artigo 32º: Legítima defesa

Constitui legítima defesa o facto praticado como meio necessário para repelir a agressão actual e ilícita de interesses juridicamente protegidos do agente ou de terceiro.

The Portuguese Supreme Court has considered legitimate self-defence in numerous cases, and in one case stated that the following requirements must be verified by the court:

- actual unlawful attack (*agressão actual e ilícita*); and
- defence was necessary and intended (*defesa necessária e com intenção defensiva*).¹⁵

In Portuguese jurisprudence, ‘imminent’ is defined as an action by the aggressor that occurs at the final moment of preparation before an attack.¹⁶ For example, if the aggressor is reaching for a weapon, an attack is ‘imminent’. ‘Present’ attack would be any action that has already commenced or is continuing to occur. For example, the aggressor is hitting a victim.

¹² Democratic Republic of Timor-Leste, Penal Code, Decree Law No. 19/2009 of 8 April 2009, Articles 44, 45, 48 and 49.

¹³ Timor-Leste Penal Code, Article 43.

¹⁴ Timor-Leste Penal Code, Article 44.

¹⁵ Acórdão do Supremo Tribunal de Justiça, Proc. n.º 1225/02 - 5.ª Secção,

¹⁶ Juarez Cirino dos Santos, *Criminal Law – General Part* (Lumen Juris, 2006), at 239-255.

The court must also determine whether the action was ‘necessary’ to protect the interest of the defendant or another person. Timorese courts have not examined the meaning of ‘necessary’ under Article 44. In other jurisdictions, this requirement usually requires an examination of whether the actions were ‘reasonable’.¹⁷ Under Portuguese jurisprudence, whether the actions were ‘necessary’ must be determined having regard to all circumstances, particularly the danger posed by the aggressor and his actions.

“A necessidade da defesa há-de apurar-se segundo a totalidade das circunstâncias em que ocorre a agressão e, em particular, com base na intensidade daquela, da perigosidade do agressor e da sua forma de agir.”¹⁸

Importantly, Portuguese jurisprudence also finds that even should a defendant act with ‘violent emotion’, legitimate self-defence may apply.

“Verificados os requisitos da legítima defesa é justificado o facto, pelo que, mesmo agindo o agente dominado por emoção violenta, não oferece dúvidas a aplicação do art. 32.º, do CP.”¹⁹

Where the court finds that the defendant’s defensive actions were excessive, or disproportionate, compared with what was reasonably necessary, it may apply Article 48 ‘Excess of legitimate defence’ of the Penal Code.

Article 48: Excess of legitimate defense

1. Means which, given their nature or extent of use, are excessive to those required for the defensive action taken by the perpetrator may result in special mitigation of the penalty that the crime would otherwise carry.
2. The perpetrator is not punishable if the excess of means used in legitimate defense are due to a *justifiable disturbance, fear or surprise*.²⁰ [emphasis added]

The Supreme Court of Justice in Portugal has held, in the event a defendant claims excess of legitimate defence, it is not just any ‘disturbance, fear or surprise’, which permits the court to not impose a penalty. Rather, the ‘disturbance, fear or surprise’ the defendant faces must be of such a nature that it justifies the defendant to have used excess means to defend themselves or others without having thought through their actions.²¹

¹⁷ Eric Colvin, ‘Ordinary and reasonable people: The design of objective tests of criminal responsibility’, (2001) 27 Monash University Law Review 197.

¹⁸ Acórdão do Supremo Tribunal de Justiça, Proc. n.º 1225/02 - 5.ª Secção

¹⁹ Acórdão do Supremo Tribunal de Justiça, Proc. n.º 365/02 - 5.ª Secção

²⁰ Timor-Leste Penal Code, Article 48.

²¹ Acórdão do Supremo Tribunal de Justiça, Proc. n.º 1225/02 - 5.ª Secção

4 Relevance of *battered woman syndrome* in claims of self-defence

Were the actions ‘necessary’?

Article 44 on ‘Legitimate self-defence’ and jurisprudence provides that the court must have regard to all circumstances, particularly the danger posed by the aggressor and his actions, when deciding whether a woman’s actions were ‘necessary’ to defend herself or her children. JSMP believes that the history of domestic violence against the woman is an essential factor in this consideration. Evidence of prior incidents of domestic violence that the woman has suffered, the severity and unpredictability of the violence, and ever-present fear that the woman or her children could be seriously harmed, are all relevant to determining whether the female defendant’s actions were ‘necessary’ or ‘reasonable’. Importantly, the court must view the actions of the female defendant not only objectively, but also from the viewpoint of the woman in the context of her life.

Evidence of ‘battered woman syndrome’, the psychological consequences of repeated and long-term domestic violence, can assist a court to determine whether a woman’s actions in self-defence against her abusive intimate partner were necessary or reasonable. By having knowledge of ‘battered woman syndrome’, the court can better understand the position and mindset of the female defendant at the time she acted to defend herself. Particularly, the significant control exerted by the intimate partner against the woman makes it extremely difficult for her to simply leave the violent relationship. Also, men are usually physically larger and stronger than women, and this difference in size and strength between a woman and her intimate partner also makes it more likely that a woman will use a weapon to defend herself against an attack. While in other situations this may be considered unnecessary or disproportionate, in the context of the relationship it can be shown to be necessary. Case Study 1 below illustrates this.

Was the attack ‘imminent or present’?

Understanding ‘battered women syndrome’ also assists the court to comprehend the danger posed to the female defendant by the victim. Women who have suffered long-term and repeated domestic violence live in a constant and escalating state of violence and fear. Consequently, the woman is hyper-vigilant to her intimate partner’s actions or words, as it is these that signify the imminent or present danger of another violent attack.²² For instance, a woman will be alert to the fact that certain words and facial expressions from her intimate partner indicate an impending violent attack. Because of her hyper-vigilance, a woman is able to correctly perceive the seriousness of the situation, having experienced violence on repeated occasions in the past. For a woman living with long-term and repeated domestic violence, the risk of an attack is ever-present and real.²³

²² Walker, *The battered woman*, above n3. Lenore E.A. Walker, ‘Battered woman syndrome and self-defence’, (1992) 6(2) *Notre Dame Journal of Law, Ethics & Public Policy* 321.

²³ Sarah M. Buel, ‘Effective assistance of counsel for battered women defendants: a normative construct’, (2003) 26 *Harvard Women’s Law Journal* 217, at 274-280.

It is therefore important that the woman gives full evidence as to her thinking, feeling and actions within the context of her life, as well as the way the domestic violence has specifically impacted her state of mind. The presentation of the woman's testimony on the history of domestic violence perpetrated against her by her intimate partner is relevant as to whether the battered woman's actions were reasonable and necessary, and whether an attack was imminent or present. Evidence of the full history of domestic violence in the relationship allows the court to view the woman's actions through the viewpoint of the female defendant.

In many other jurisdictions, expert evidence is often used to explain 'battered woman syndrome'. The use of experts assists the court to make informed assessments of whether the woman's actions were reasonable given the impact of prior domestic violence. JSMP recognises that such expert evidence is not currently available in Timor-Leste, however general awareness among justice sector actors to the impact of repeated and long-term domestic violence on women is the first step to ensuring that all circumstances are properly considered in claims of self-defence by women.

5 Case Studies

The following are two case studies of Timorese women who clearly acted in self-defence when faced with situations where, due to domestic violence from their intimate partner, they feared for their lives.

In both case studies, despite a history of domestic violence by the intimate partner against the female defendant, there was a failure to properly examine whether the women acted in self-defence. In Case Study 1, self-defence was inadequately raised and not accepted by the court. In Case Study 2, self-defence was not raised at all by the public defender. These case studies show that there is need to improve understanding of the psychological impact of long-term and repeated domestic violence on women.

Case Study 1: Rosa's case²⁴

Rosa and her husband had lived together since 2008. Within in the first year of their marriage, her husband's attitude and behaviour towards Rosa changed. He began to abuse Rosa physically and emotionally. In one incident, he tried to strike Rosa with a machete but she managed to run away. On another occasion, Rosa was beaten so severely by her husband that her whole body was bruised.

Rosa made several complaints to local authorities, including the village chief who 'mediated' her complaint. She also sought help from her husband's superiors in the military, who beat her husband and made him write a letter promising to never beat his wife again. None of this stopped the violence.

One day in 2011, her husband started kicking Rosa while wearing his military boots. Rosa tried to stand up and leave, but her husband blocked her way and kicked her once more on the forehead, causing her to fall to the floor and lose consciousness.

²⁴ Names and places have been changed to protect the safety of the individuals involved.

As Rosa regained consciousness she saw her husband approaching her again. Rosa was fearful for her life and thought that her husband was going to kill her. Rosa reached for anything she could to try and stop her husband. She grabbed a kitchen knife that she had used earlier to prepare medicine for their son. Rosa stood up and then stabbed her husband once in the chest as he was approaching her. Her husband fell, and as he fell, he tried to kick Rosa again.

Immediately, Rosa ran outside to find help, and called the police on her mobile phone. Rosa waited until the police arrived and was then taken into custody and detained at a police station.

Criminal Investigation

Rosa was initially detained at the police station for seven days. During this time, she was interrogated without legal representation, and did not receive medical treatment for the injuries from her husband's attack.

During the first judicial questioning, Rosa was represented by a State Public Defender. The Public Defender did not speak with Rosa, at any time before or after the questioning. At the request of the Prosecutor, the court ordered that Rosa be detained in preventive detention to await trial. The Public Defender neither opposed the application for preventative detention nor made any submissions about whether the requirements for detention under the Criminal Procedure Code were met.

In 2012, the Public Prosecutor issued the indictment order charging Rosa with aggravated homicide characterized as domestic violence pursuant to Articles 138 and 139(b) and (g) of the Penal Code and Articles 2 and 35(b) of the Law Against Domestic Violence.

Court proceedings

The first trial commenced in September 2012. Rosa met a new Public Defender for the first time on the morning of the trial. In November 2012, the District Court found Rosa guilty of aggravated homicide and sentenced her to 15-years imprisonment. When handing down their decision, one of the Judges told Rosa that she was receiving a 15-year prison sentence because she had taken the life of one of the nation's people, and that she had a "duty as a wife to protect her husband".

The District Court found that Rosa intended to kill her husband, and that there had never been any previous problem between them, despite Rosa's evidence of the domestic violence and further corroborating evidence from her sister-in-law. The District Court also did not take into account Rosa's evidence that she picked up the kitchen knife only after her husband had kicked her in the knees and the forehead, knocking her to the ground.

An appeal was lodged in December 2012 against this decision. In the application, Rosa's Public Defender requested the Court of Appeal to acquit Rosa on the grounds that her actions could be characterized as 'excess of legitimate defence' pursuant to article 48(2) of the Penal Code.

In February 2013, the Court of Appeal upheld the appeal, declared void the original decision and ordered a retrial. The Court of Appeal recognized that the decision at first instance never addressed

the crucial issue of whether Rosa had acted in self-defence, and found that there was insufficient evidence to support the decision at first instance.

The District Court retried the case, and in May 2013 the District Court again found Rosa guilty of aggravated homicide characterized as domestic violence pursuant to Articles 138 and 139(g) of the Penal Code and Articles 2 and 35(b) of the Law Against Domestic Violence. Rosa was again sentenced to 15 years' imprisonment. While the District Court found that the victim had kicked Rosa before she picked up the kitchen knife, the Court did not accept that Rosa had acted in self-defence. The assessment of evidence and reasoning in the second decision is in large part identical to that of the District Court at first instance, and one of the Judges who heard the first trial also heard the retrial. The only witnesses to give oral testimony at retrial were Rosa and her brother, who was not at home at the time of the incident.

On retrial, the District Court preferred the previous testimony of Rosa's nephew who had not witnessed the relevant actions. The District Court found that the nephew's testimony was "credible and convincing and removed truthfulness from the version presented by the defendant". The District Court did not explain why it considered this testimony more credible than that of Rosa. Notably, this witness did not attend the retrial to give oral testimony, nor was he subject to examination by the Public Defender.

Both the Public Prosecutor and Public Defender lodged applications for appeal against the retrial decision. In July 2013, the Court of Appeal published its decision, dismissing both applications to appeal and confirming the second conviction and 15-year prison sentence. The Court of Appeal found no errors in the Court's evaluation and assessment of the evidence. At this second appeal, the Court of Appeal did not hold a hearing or question Rosa about her evidence. The Court of Appeal found that R had not acted in self-defence.

Commentary on Case Study 1

Rosa's rights to a fair trial were denied in a number of ways. Initially, she was illegally detained in police detention for seven days, interviewed by the police without legal representation, and not given treatment for her injuries. Rosa's injuries from her husband's attack were also not documented properly through the Timor-Leste Medical Forensic Protocol. This crucial evidence would have supported her claim that she was acting to defend herself.

During trial, Rosa was represented by four different Public Defenders, each of which she first met on the day of the hearings. The Public Defenders did not properly handover the case file, and they failed to dedicate sufficient time to properly prepare Rosa's self-defence claim, and to obtain her instructions. Subsequently, Rosa was not advised of her rights and so she did not have the opportunity to properly participate in, and present, her claim of legitimate self-defence under Article 44 of the Penal Code.

The Public Defenders also did not argue the most appropriate and relevant defence claim in line with the full facts of the Rosa's case. At no stage during any of the trials did the Public Defender representing Rosa lead evidence about the domestic violence perpetrated against Rosa. If at any stage of the proceedings, evidence had been introduced regarding the history of domestic violence in the relationship, and

'battered woman syndrome', this would have allowed the Court to better understand Rosa's actions. Particularly, the difference in power and size between Rosa and her husband explains the use of the knife as a necessary means to stop the attack, and makes credible Rosa's fear that her life was in danger. JSMP believes that from the facts of this case, it would have been possible for the Public Defender to prove to the Court that Rosa's actions were reasonable and necessary.

Furthermore, there were mitigating circumstances, which should have been raised during sentencing arguments. In particular, Article 55(2)(b) of the Penal Code applied, as Rosa's actions were the result of her belief that her husband's violence immediately prior to her act posed an immediate danger to her life. Also, Article 55(2)(c) applied as Rosa herself contacted the police '...before knowing of the existence of a criminal proceeding against her.' This could have led to a reduction in Rosa's sentence by the Court.

JSMP also questions the court's comment that Rosa had a "duty as a wife to protect her husband". Indeed, JSMP believes the victim also had a duty to protect the defendant and not commit domestic violence against her. This statement highlights an underlying gendered assumption that women should not act in a violent manner.

Case Study 2: Fatima's case

Fatima and her husband were married and had two young children. Fatima had suffered years of domestic violence at the hands of her husband. Regularly, these acts of violence towards Fatima came after discussions about their economic situation. Their income was quite small and so did not allow for sufficient food to be brought.

In March 2010, Fatima and her husband were discussing their economic situation when her husband became aggressive. He kicked Fatima twice in the back and threw two punches to her head. Fatima tried to get away by going into her son's bedroom. However, her husband followed her into the bedroom, grabbed Fatima by her hair and knocked her to the ground. Her husband then followed Fatima outside of the bedroom into kitchen. He again grabbed Fatima and this time tried to strike her with a machete. At the same time, he threatened Fatima by saying, "Now I will kill you and the children, no one will look for you."

Fatima was incredibly afraid that her husband was going to kill her and the children. So when her husband lost his grip of the machete and it fell to the ground, Fatima grabbed the machete to try and stop her husband from killing her. She struck her husband once in his back and once in his calf so to prevent him from hurting her. Her husband fell to the ground.

Fatima fled from the house as she thought her husband may call out for his relatives who lived nearby and so she continued to fear for her life. She hid the machete as Fatima thought her husband might still try to kill her with the weapon. After two hours of hiding outside, Fatima went directly to the police station and was detained.

The Prosecutor issued the indictment order charging Fatima with aggravated homicide pursuant to Articles 138 and 139(g) of the Penal Code.

Court proceedings

The District Court trial commenced in late 2010. In November 2010, the District Court found Fatima guilty of aggravated homicide and sentenced her to 15-years imprisonment.

The District Court found that Fatima had intended to kill her husband, and that by using the machete she knew that she would cause her husband's death, and wanted to do this.

The District Court did not accept Fatima's evidence that she had picked up the machete only after her husband had physically assaulted her and attempted to stab her with the machete. There was no consideration by the District Court as to whether Fatima had struck her husband with the machete as a necessary means to defend herself from further violence.

Fatima lodged an appeal against the District Court judgment. The basis of the appeal was that there were errors in assessing the evidence to reach the decision handed down at trial.

In June 2011, the Court of Appeal upheld the appeal and granted a partial relief by reducing her sentence from 15 years to 13 years. The Court of Appeal held that the District Court should have given consideration to any general mitigating circumstances as outlined in Article 55 of the Penal Code. Specifically, the decision at first instance did not take into consideration that Fatima had never committed any other crime. In addition, the Court of Appeal considered it important to give weight to the fact that Fatima had partially confessed together with the information they received about Fatima's illiteracy, survival through subsistence farming and being the mother of two little children.

Commentary on Case Study 2

Based on the evidence, JSMP believes that the Public Defender could have raised a strong claim of legitimate self-defence. Based on JSMP monitoring, Fatima's Public Defender neither contested the indictment on the basis that Fatima had acted in self-defence, nor try to call any witnesses who could provide evidence as to the history of domestic violence in the relationship to support this claim. Fatima's Public Defender at appeal also did not lead evidence about the history of domestic violence perpetrated by Fatima's husband, which was clearly relevant to Fatima's state of mind at the time of the incident. Testimony from family members or neighbours who witnesses prior incidents of domestic violence would have verified Fatima's claim that she was in real fear for her life. It is also unclear if the police in this case attempted to collect any evidence regarding Fatima's injuries immediately after the incident, which could have also supported her claim of self-defence.

JSMP regards it as positive that the Court of Appeal recognised a number of general mitigating circumstances in this case and subsequently reduced the sentence from 15 to 13 years. Yet due to a failure by the Public Defender to provide a robust defence, the Court of Appeal did not have all the evidence before it to properly assess all the circumstances of this case and order a retrial to determine whether legitimate self-defence could have been proven.

6 Conclusion and Recommendations

Research shows that the majority of women in Timor-Leste will experience domestic violence many times by their intimate partner. Repeated and long-term domestic violence seriously impacts the psychological and physical health and well-being of the victim. A woman victim of domestic violence lives in a constant state of fear that the next violent incident could endanger her life or that of her children.

JSMP recognises that justice sector actors are strongly committed to addressing domestic violence and ensuring a fair trial for all parties. For example, the courts have recently started issuing additional monitoring obligations on domestic violence perpetrators as a measure to prevent domestic violence from reoccurring. This is a significant change and JSMP congratulates the courts for taking this important step. However, the two case studies presented in this report and international research shows that there needs to be better understanding of legitimate self-defence in cases where a woman has acted to defend herself from her abusive intimate partner.

As a first step, JSMP believes that there is a significant need for justice sector actors to better understand the severe impact that repeated and long-term domestic violence has on women. By having knowledge of 'battered woman syndrome', the court can better understand the position and mindset of the defendant at the time she acted in self-defence; and assist the court to comprehend the danger posed to the woman by her intimate partner. In particular, the Public Defender's Office must be aware of this defence and collect evidence of the full history of domestic violence and present this to the court. Women should be encouraged to provide testimony so that the court is able to view the woman's actions having regard to all relevant circumstances, including her state of mind at the time and the history of violence that she has suffered.

In claims of self-defence by women, injuries must be properly documented using the Timor-Leste Medical Forensic Protocol, which must then be presented to the court by the Public Defender.

Based on this report, JSMP makes the following recommendations to improve the treatment of and deliver just outcomes for female defendants whose committed domestic violence in circumstances of legitimate self-defence

1. The Government, through the Ministry of Justice and Legal Training Centre, must provide sufficient resourcing for court actors to be trained on the psychological impact of long-term and repeated domestic violence on women (battered woman syndrome), gender equality and gender sensitivity.
2. Public Defenders must carefully consider the evidence in each case and present all evidence that will assist their client. In particular, if a woman has killed, or attempted to kill their intimate partner in self-defence, the Public Defender must introduce all relevant evidence in support of their client's claim, including prior incidents of domestic violence where the client was the victim.
3. Every person detained by the police must be given independent legal advice within 72 hours. In claims of self-defence by women, injuries must be properly documented using the Timor-Leste Medical Forensic Protocol.

4. Courts must identify any mitigating circumstances (articles 55, 56 and 57 of the Penal Code) and apply these when sentencing the female defendant.
5. Courts must carefully assess self-defence claims made in domestic violence cases and determine if the requirements for the defence are fulfilled. Particular attention should be given to relevant evidence of previous incidents of domestic violence in the relationship.
6. The courts should develop sentencing guidelines in crimes involving battered women. The sentencing guidelines should contain subject matter raised in recommendations 4 and 5.

