

# 2015

## OVERVIEW OF THE JUSTICE SECTOR JSMP Annual Report



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## EXECUTIVE SUMMARY

In 2015, JSMP was pleased that the courts heard a number of the high-profile corruption cases that were delayed as a result of National Parliament's October 2014 resolutions to audit the justice sector and remove international advisors and actors from their positions. In particular, the Dili District Court commenced hearing the case against the former Minister of Finance and the Former Vice Minister of Health. JSMP appreciates the work of the courts as they have continued to hear cases characterized as corruption even though the trial process was suspended for nearly one year.

Although these major cases have been processed by the courts, many serious crimes, which must be heard by a panel of three judges including two international judges, are still pending. There has also been an ongoing and serious impact on the Judicial Training Centre (JTC), which was forced to suspend all training following the resolutions because most of its trainers were international advisors. The JTC did not training any new court actors or undertake any training throughout 2015, even though new applicants started testing in October 2014.

JSMP applauds the courts' position to publicly maintain that they will not adhere to the Government and Parliament resolutions, and for continuing to work hard and perform their functions independently. JSMP observed that the courts were very productive in 2015. The Dili District Court tried 1466 Cases in 2014, an increase from 1210 cases in 2014 and the Baucau District Court heard 600 cases, almost double the 311 cases heard in 2014. Both the the Suai and Oecusse District Courts had a reduction in the number of cases heard. Suai heard 167 in 2015 and 251 in 2014 and the Oecusse Court heard 253 cases in 2015 and 271 in 2014.

The volume of cases monitored by JSMP in 2015 increased by 20 per cent. During this period, JSMP was able to monitor 1166 cases, comprising 1138 criminal cases and 28 civil cases, an increase from 977 cases in 2014, comprising 951 criminal and 26 civil cases. Statistics relating to cases that JSMP monitored in 2015, and the number of cases heard by each of the courts is at Annex A.

There was also an increase in the number of mobile courts in 2015 compared to 2014. In 2015 JSMP was able to monitor 238 mobile court cases, which is almost 44 per cent more than the 163 cases monitored in 2014.

In addition to monitoring the district courts, JSMP also monitored the Court of Appeal. In 2015 the Court of appeal had a very full schedule. The Court registered 211 new cases comprising 160 criminal and 51 civil. There are also 23 criminal cases pending from 2014, and 14 civil cases.

JSMP notes that the budget allocated to the justice sector in 2015 was 20.98 per cent higher than the 2014 allocation. This is a significant increase from the previous year; between 2013 and 2014 the budget allocated to the justice sector increased by only 2.8 per cent.

Training of judges by the Court of Appeal was suspended in 2015 due to the lack of international trainers and expertise. Some limited training by other organizations continued. From 3-17 November 2015, Timor-Leste was honored with a visit from international judge, Dr. Phillip Rapoza, the former Coordinator of the Special Panels for Serious Crimes in Timor-Leste and the former President of the Court of Appeal in Massachusetts in the United States. In October 2015, Timorese judges participated in training about the Convention on the Elimination of Discrimination against Women (CEDAW) organized by UN Women. Judges also attended training about leadership, management and court administration, which was facilitated by a judge from the United States and organized by *Ba Distrito*.

In 2015, there was some positive progress regarding language, including the use of Tetum during the trial process. However, language continues to be a problem because written decisions are still in Portuguese and, as a result, the parties often still have difficulty understanding them. The quantity and quality of translators also continue to be obstacles. Translators have not studied law, and in some cases this has posed challenges when translating judicial terms during the trial process. Judges,

prosecutors and public defenders have had to intervene to explain judicial terms that the translator does not understand. This problem has occurred in all of the district courts, but especially in Oecusse where generally everyone speaks Baikenu and a translator is required in a large number of cases.

JSMP has dedicated a chapter in this report to the issue of gender equality. JSMP presents the results from its monitoring in cases involving gender based violence. In 2015, JSMP monitored 564 cases involving violence against women (including cases involving girls aged 0-16). 71 per cent of these cases were charged as simple assault under Article 145 of the Penal Code, 11 per cent were sexual offences, and 8 per cent involved sexual offences against minors (under 14 years old).

In 2015, JSMP monitored 434 cases characterized as domestic violence and 102 cases of sexual violence. JSMP analyses sentencing in domestic violence cases and the tendency for courts to impose suspended sentences and fines instead of prison sentences, while not providing additional orders such as requiring perpetrators to be monitored. This chapter ends with a discussion of the 2015 Committee on the Elimination of Discrimination Against Women (CEDAW Committee) process, wherein the Committee considered Timor-Leste's second and third reports on progress implementing CEDAW.

In 2015, JSMP monitored 80 cases involving children. Nearly 68 per cent of these cases involved sexual violence cases and most involved female victims (88%). JSMP observed that the courts achieved significant progress in 2015 in processing cases registered as violence against children. In particular, courts handed down serious penalties against defendants, in accordance with the seriousness of the crimes committed, and ordered perpetrators to pay compensation to victims. In addition, all cases of sexual violence involving children were closed to the public and media.

However, unfortunately there are still instances of courts not being sensitive to children's capacity, including asking child victims questions that are difficult that they are unable to understand. In addition, JSMP observed one case in 2015 where a child witness was forced to give evidence in front of the defendant, his mother, who was charged with the murder of his father.

In 2015, JSMP monitored 20 corruption cases, which is an increase on the 14 cases heard in 2014. These included a number of significant corruption cases, including the case of alleged corruption involving Joao Cancio, the former Minister of Education, where a decision was handed down. The Dili District Court also started hearing the case involving Emilia Pires and Madalena Hanjam, which is still ongoing. In this report JSMP outlines the legal facts, charges, presentation of evidence and a short analysis of this case so far.

In addition to observing the justice sector, in 2015 JSMP also continued to observe the National Parliament. This monitoring was conducted as it has been done in the past. With a focus on the Plenary and Commission A, which deals with justice and good governance. The National Parliament's productivity reduced in the area of legislative action. Out of the ten draft laws that the parliament approved, there was only one new law and the rest were amendments to existing laws. In the area of policies, the National Parliament approved 25 resolutions in 2015 compared with 14 resolutions approved in 2014. There are still many draft laws which have been pending for many years, including the Anti-Corruption law.

Based on the findings described above, JSMP's makes the following recommendations:

### **Judicial Independence**

1. Judicial institutions should continue to perform their functions independently and free from outside interference, in accordance with the Constitution.
2. The National Parliament and Government must continue to respect the independence of the judiciary by not interfering in the courts' decision making.

### **Justice Sector Reform Committee**

3. As well as harmonising Timor-Leste's national laws, the Committee for Legislative Reform of the Justice Sector should focus on ensuring these laws implement Timor-Leste's international legal obligations.

### **Resources in the Justice Sector**

4. The Government should provide the Public Defenders Office with its own budget separate from the Ministry of Justice to ensure it can meet its equipment and other needs more efficiently.
5. The Government must ensure the Judicial Training Centre recommences training immediately, and is provided with adequate resources to train additional legal students in the future, particularly the next two to three years.
6. The Ministry of Justice, Government and National Parliament should prioritize the draft law on remuneration for judicial actors. This law should provide more equitable pay and conditions for Public Defenders.

### **Training and coaching**

7. The Government should reestablish cooperation with those nations that have been partners in the justice sector so that the Court of Appeal can facilitate complementary training for judicial actors.
8. The Government should provide sufficient resources to the Judicial Training Centre (JTC) to commence 'train the trainer' sessions to train experienced Timorese judicial actors to become trainers at the JTC.

### **Mobile Courts**

9. The Government and National Parliament must provide sufficient resources to the District Courts to hold mobile courts in permanent facilities in each District, particularly to ensure that victims can wait separately from perpetrators.

### **Court of Appeal**

10. The Court of Appeal should consider publishing court schedules and updating its website to ensure decisions are up-to-date and made public as soon as possible after a trial.
11. The Court of Appeal should conduct more hearings and allow these processes to be accessed by court monitors to ensure they are transparent and open to public scrutiny.

### **Language**

12. Judges should communicate decisions in a way that can be understood by defendants and victims.
13. Public Prosecutors and Defenders must ensure their clients understand the court process and the decision in every case, which must include explaining the decision when the case is completed.
14. The Ministry of Justice should provide funding for translators to receive basic level training to enable them to understand legal terms used during trials, and judicial actors should take time before and during a trial to prepare the translator.

## **Gender Equality**

15. Public Prosecutors must charge perpetrators of sexual violence under the Law Against Domestic Violence (LADV), in addition to the Penal Code, when it involves incest or otherwise meets the definition of domestic violence provided in Article 2 of the LADV.
16. Courts should consider imposing additional or ancillary orders when substituting prison sentences with a suspended sentence or fine in domestic violence cases.
17. Courts should award civil compensation to victims in all sexual violence and domestic violence cases. Compensation should provide reparation for not only physical injuries, but also emotional distress and any loss of earnings as a result of the injuries inflicted by the perpetrator.
18. The Government must take immediate steps to respond to and implement the CEDAW Committee's recommendations, especially:
  - a. take measures to encourage women to report cases of domestic violence, and to ensure there is satisfactory prosecution and punishment of domestic violence; and
  - b. provide regular education sessions and capacity building so all branches of government understand CEDAW and the Committee's recommendations, and apply them in court decision, laws and policies.

## **Children in the Justice Sector**

19. The Ministry of Justice must provide training to police, prosecutors, defenders and judges on how to receive, monitor, investigate and prosecute complaints in a child-sensitive manner that respects the privacy of the victim.
20. The Government and National Parliament need to ensure the definition of a minor is consistent across all national legislation. As required by the Convention on the Rights of the Child the age of a minor should be 18.
21. The Government and National Parliament need to prioritize the draft law on Educational Guardianship of Minors in order to regulate and protect children between 12 and 16 years who are in conflict with the law, and also prioritize the special panel regime for minors between 16 and 21 years of age who are in conflict with the law and already have criminal responsibility.

## **Corruption cases**

22. In accordance with Article 113(1) of the Constitution of Timor-Leste, Ms Isabel Ximenes must immediately be suspended from her functions as Secretary of State for Arts and Culture. This automatically removes her immunity as a Government member, meaning the Dili District Court should hear the case against her without delay.

## **Parliament and Legislative Program**

23. National Parliament should adhere to and respect the working hours of the Plenary and Committees, which are set out in Lei No. 15/2009, so as to manage its time well, and in order to give timely attention to important legislative and policy issues.
24. In 2016 the National Parliament should prioritize and reschedule important laws which have been pending for many years, such as the draft Anti-Corruption law, and the draft law on Reparations and Institute of Public Memory.

# INTRODUCTION

JSMP was established on 28 April 2001 with the aim of monitoring the Ad Hoc tribunals relating to human rights violations and the Special Panels for Serious Crimes in Timor-Leste.

JSMP now exists as a Timorese led not-for-profit organization working to improve the judicial and legislative systems in Timor-Leste. Over the last 12 years, JSMP has continued to monitor the justice system in Timor-Leste and advocated to promote transparency and accountability, and strengthen the rule of law. JSMP's vision is a democratic society that ensures justice and human rights for all.

This *Overview of the Justice Sector Report* has been compiled from the results of JSMP's observations of the justice sector in 2015. It evaluates developments and challenges that have occurred in the justice sector and legislature in 2015, and provides a number of recommendations for future improvements.

In addition to its work monitoring the courts and National Parliament, JSMP has also continued to provide legal education to the community and conduct advocacy on a number of issues, including the crime of incest, the implementation of the Law Against Domestic Violence (LADV) and the application of suspended sentences in cases of domestic violence according to the Penal Code.

This report is set out as follows:

## **Section 1 - Status of the Justice Sector in 2015**

This section provides a snapshot of JSMP's monitoring statistics from all four District Courts, and the Court of Appeal in 2015. It discusses developments and challenges encountered by the justice sector in 2015, with a specific focus on the ongoing impact of the Government resolutions from October 2014, which resulted in all international court actors being expelled from Timor-Leste.

## **Section 2 - Gender Equality**

This section focuses on the important issue of gender equality in Timor-Leste, and includes a discussion and analysis of cases involving violence against women, with a specific focus on domestic and sexual violence cases. It also examines sentencing trends in these cases, and draws attention again to the tendency of courts to impose suspended sentences without additional orders in domestic violence cases. It also looks at the findings of the CEDAW Committee.

## **Section 3 - Children and the Justice Sector**

This section outlines children's access to justice and key developments in 2015. It considers the findings of the Committee on the Rights of the Child and highlights two of the major issues raised by that Committee: the inconsistent definition of a minor in Timor-Leste, and the lack of an effective juvenile justice system.

## **Section 4 - Corruption Cases**

The fourth section examines corruption cases from 2015, including the ongoing case involving Emilia Pires, the former Minister for Finance, and Madalena Hanjan, the former Vice-Minister for Health. It also looks at the pending case involving the current Minister for Arts and Culture, Ms Isabel Ximenes, and issues around parliamentary and government immunity.



## **Section 5 - Political and Legislative Developments**

This final section outlines the productivity of the National Parliament in 2015, including the total number of laws and resolutions produced by parliament during this period. It also examines the timing of Plenary sessions, and the attendance and punctuality of Members of Parliament for both Plenary and Committee A sessions.

This report ends with a summary of JSMP's recommendations for improving the justice sector. It also includes annexes containing statistics, and further information about all cases monitored by JSMP and processed by the courts in 2015.

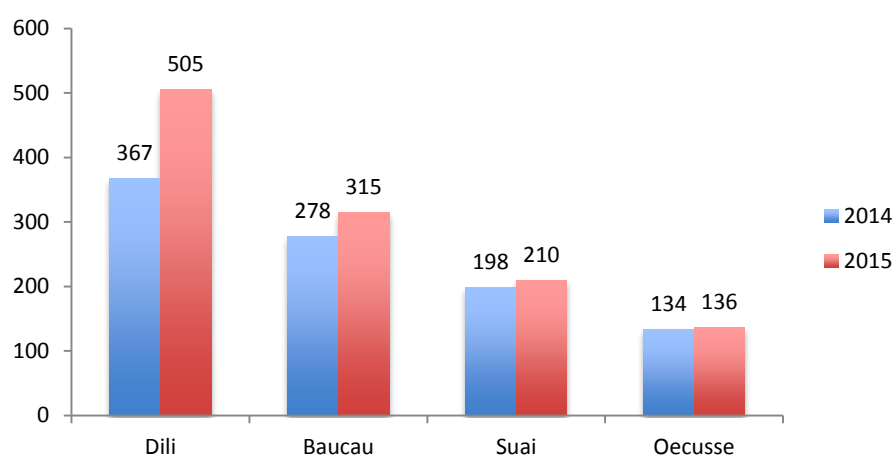
# 1. STATUS OF THE JUSTICE SECTOR IN 2015

## 1.1. Snapshot of monitoring statistics

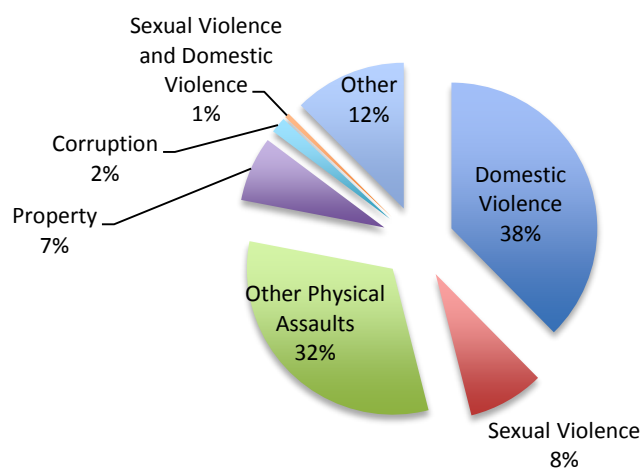
Table 1. Total number of cases monitored by JSMP

Case Type	2014	2015
Criminal	951	1138
Civil	26	28
Total	977	1166

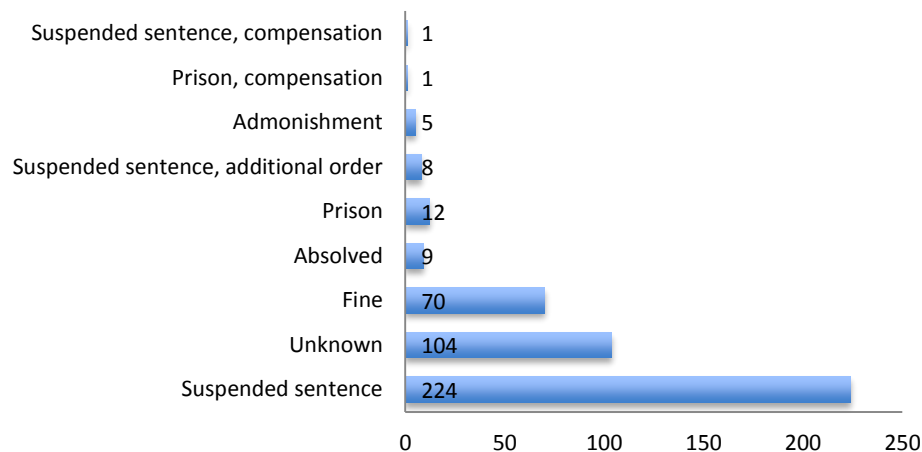
Graph 1. Number of cases monitored by JSMP in the District Courts 2014-2015



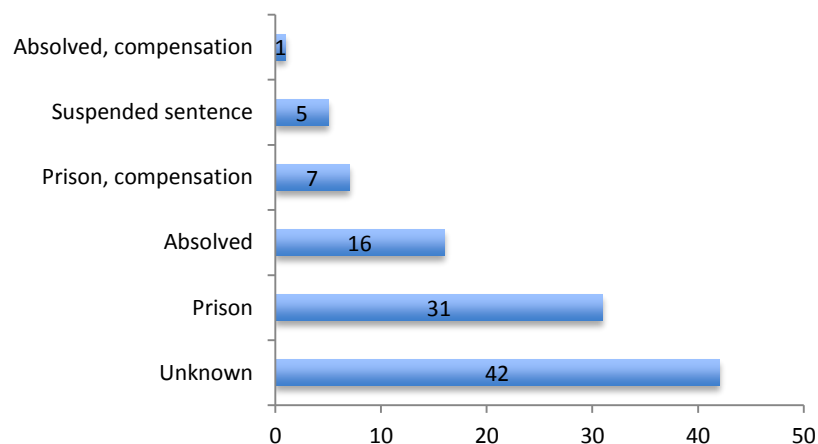
Graph 2. Types of cases monitored by JSMP



Graph 3. Sentencing trends in Domestic violence cases monitored by JSMP, 2015



Graph 4. Sentencing trends in sexual violence cases monitored by JSMP, 2015



## 1.2 Key Developments in the Justice Sector in 2015

### Ongoing impact of October 2014 resolutions

In October 2014, Timor-Leste was shocked when the National Parliament passed a number of resolutions to audit the justice sector and remove international advisors and actors from their positions. This resulted in five international judges, two prosecutors and one Anti-Corruption Commission investigator being expelled from Timor-Leste immediately. International advisors at the JTC did not have their contracts renewed, and departed Timor-Leste at the end of 2014.<sup>1</sup>

<sup>1</sup> For further information see JSMP's report, 'Dismissal of international officials and advisors in the Timor-Leste judicial sector' (December 2014), available at [http://jsmp.tl/wpcontent/uploads/2012/05/Report-dismissal-of-international-judicial-officialsFINAL\\_ENGLISH1.pdf](http://jsmp.tl/wpcontent/uploads/2012/05/Report-dismissal-of-international-judicial-officialsFINAL_ENGLISH1.pdf).

In its 2014 Overview of the Justice Sector, JSMP questioned the legality of these resolutions and concluded that they were unconstitutional.<sup>2</sup> At that time, JSMP expressed its concern about the effects of the resolutions on the independence of the judiciary in Timor-Leste and the ability of the justice system to function on a daily basis. JSMP observed a number of short-term affects on the justice sector, including courts having to suspend, adjourn or retry cases that were being dealt with by international judges and prosecutors.

In 2015, JSMP was pleased that the courts heard a number of the high-profile corruption cases that were delayed as a result of the resolutions. In particular, the Dili District Court heard the case against the former Minister of Education, João Cancio Freitas. The defendant was found guilty of economic involvement in business under Article 299 of the Penal Code, was sentenced to seven years in prison and ordered to pay a US\$500,000 fine. The Dili District Court also starting hearing the case against the former Minister of Finance and the Former Vice Minister of Health.<sup>3</sup> JSMP appreciates the work of the courts as they have continued to hear cases characterized as corruption even though the trial process was suspended for nearly one year.

Although these major cases have been processed by the courts, many serious crimes are still pending. "Serious crimes" refers to crimes committed in 1999, such as crimes against humanity. The law requires that these cases be heard by a panel of three judges, which must include two international judges.<sup>4</sup> However, without any international judges in Timor-Leste the serious crimes cases from 1999 that are still pending cannot be heard by the Dili District Court. Serious crimes are far more complex than normal criminal offences, and it is still unclear how these cases will be dealt with given the loss of technical assistance from international judges.

There has also been an ongoing and serious impact on the JTC, which was forced to suspend all training following the resolutions because most of its trainers were international advisors. The JTC has not been functioning to date, even though new applicants started testing in October 2014.

Until 2014, about 40 law students graduated from the JTC annually to become judges, prosecutors and defenders. Given the training centre has been closed for such a long period, JSMP is concerned this will lead to a shortfall of judicial actors in the future. JSMP understands that the JTC is currently seeking three new international trainers so it can recommence training, but this is still awaiting authorization from the Council of Ministers. JSMP urges the Government to take measures so the JTC can commence training immediately, to ensure there are enough judicial actors to effectively and efficiently deal with the caseload.

More broadly, JSMP is concerned about the ongoing impact of this interference by the Government on independence of the judiciary and the separation of powers in Timor-Leste. These two important principles are enshrined in the Constitution at Articles 119 (independence of courts) and 121 (independence of judges), and Article 69 (separation of powers). Independence of the judiciary ensures that people can be confident of fair treatment in the justice system and that the nation is governed in accordance with the rule of law. In a democratic state like Timor-Leste, with a young and developing justice sector, it is vitally important that these principles are upheld.<sup>5</sup>

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<sup>2</sup> JSMP report, '2014 Overview of the Justice Sector', (April 2015) pages 10-14, available at [http://jsmp.tl/wp-content/uploads/2012/05/OJS-2014\\_ENGLISH.pdf](http://jsmp.tl/wp-content/uploads/2012/05/OJS-2014_ENGLISH.pdf).

<sup>3</sup> See section 5.1 below for more information.

<sup>4</sup> UNTAET Regulation 2000/15 on the Establishment of Special Panels with Exclusive Jurisdiction over Serious Criminal Offences, section 22; as kept in force by the Criminal Procedure Code, Decree Law No.13/2005, article 3.

<sup>5</sup> In 2015, a seminar was held on Judicial Independence, which included speakers from the UN, JSMP and Judge Phillip Rapoza. These speeches are available at: <http://jsmp.tl/en/material-presentation/>.

JSMP welcomes the courts' position to publicly maintain that they will not adhere to the Government and Parliament resolutions.<sup>6</sup> JSMP encourages the courts to continue to maintain their independence and credibility. JSMP also calls on the Government to continue to respect the independence of the judiciary and to not interfere in the court process.

#### **Recommendations**

1. Judicial institutions should continue to perform their functions independently and free from outside interference, in accordance with the Constitution.
2. The National Parliament and Government must continue to respect the independence of the judiciary by not interfering in the courts' decision making.

### **Establishment of justice sector reform committee**

In 2015, the Government established a committee called the Committee for Legislative Reform of the Justice Sector. The President and members of this Committee were sworn in by the Prime Minister in December 2015.

The President said the Committee was 'based on the 2011-2030 Strategic Development Plan' which 'considers it essential to review and improve the legal instruments ensuring the protection of rights, liberties and guarantees, as well as access to the law, bringing the legislation closer to the democratic ideals and the citizens of Timor-Leste'.

JSMP hopes this committee can work independently and effectively to reform and harmonize Timor-Leste's laws. JSMP also encourages the Committee to focus on ensuring laws are consistent with Timor-Leste's international obligations, as outlined in the many international conventions it has signed – including, in particular, the Convention on Elimination of Discrimination Against Women (CEDAW), and the Convention on the Rights of the Child (CRC). As a state party to these treaties, the state of Timor-Leste has a legal obligation to implement their terms. This means the terms of each convention must be adopted and incorporated in national legislation and national policies. To date, this has not been done effectively, and JSMP therefore urges the Reform Committee to take this opportunity to harmonise Timor-Leste's laws within the national legislative framework, and also to bring them into line with Timor-Leste's obligations under international law.

#### **Recommendation**

3. As well as harmonising Timor-Leste's national laws, the Committee for Legislative Reform of the Justice Sector should focus on ensuring these laws implement Timor-Leste's international legal obligations.

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<sup>6</sup> see JSMP Press Release, 'Courts return to work after 2014 holidays' (January 2015) available at: <http://jsmp.tl/wp-content/uploads/2015/01/PR-feriadu-judisial-Jeff-proof-read-ENGLISH-SK-sujestaun.pdf>.

## 1.3 Resources in the justice sector

### Budget

Table 2. Funding for the Justice Sector in 2014 and 2015

	Budget 2014 (US\$)	Budget mid- year Law No. 4/2014	Budget 2015 (US\$)	% change
<b>Courts*</b>	\$4,087,000	\$4,028,000	\$5,610,000	+37.26%
-Court of Appeal	\$3,498,000	\$4,028,000	\$5,020,000	+44.37%
- District Courts	\$551,000		\$553,000	+0.36%
-Other	\$38,000		\$37,000	-2.63%
<b>Ministry of Justice</b>	\$21,340,000		\$26,278,000	+23.14%
-Public Defenders Office	\$917,000		\$1,562,000	+70.34%
-Legal Training Centre	\$175,000		\$177,000	+1.14%
-Other**	\$20,248,000		\$24,539,000	+21.19%
<b>Public Prosecution Service</b>	\$3,628,000	\$88,000	\$3,221,000	-11.22%
<b>TOTAL BUDGET FOR JUSTICE SECTOR</b>	\$29,055,000	\$4,116,000	\$35,109,000	+20.84%

\*The rest of this budget is passed onto the Superior Council of Magistrates.

\*\*The main beneficiaries of Ministry of Justice funding are the National Directorate of Registry and Notary Services, National Directorate of Prison Services and Social Reintegration, National Directorate of Administration and Finance, National Directorate of Land and Property and the Office of Inspection and Audit.

In mid-2014 the budgets for the Court of Appeal and the Public Prosecution Service were supplemented with additional money from the petroleum fund. This took the total budget for the Court of Appeal to \$8 115 000, but the Court was only able to execute 59.7 per cent of this budget, or \$4 838 877. While it is encouraging that the Government supplemented the Court's budget, it may have been more useful for this to occur at the start of the year so the Court could have planned and spent this money more effectively.

Not including this injection in mid-2014, the budget allocated to the justice sector in 2015 was 20.98 per cent higher than the initial 2014 allocation. This is a significant increase from the previous year; between 2013 and 2014 the budget allocated to the justice sector increased by only 2.8 per cent. In last year's Overview of the Justice Sector,<sup>7</sup> JSMP raised concerns at such a small increase, and is pleased the Government has responded by providing an adequate funding increase in 2015.

The Court of Appeal was also the main beneficiary of the 2015 budget increase, receiving nearly 44 per cent more money than in 2014. JSMP understands this money was used to design new Baucau and Dili court buildings, and rehabilitate offices in these districts. The Suai District Court was moved to a building previously occupied by the United Nations, and this building is currently being renovated. The

<sup>7</sup> JSMP report, above n 2, page 27.

Oecusse District court is also being renovated to build a house for security guards and a specific room to allow victims to privately consult with their lawyers and remain separated from the accused during a trial.

The Court of Appeal purchased computers, and cars for judges and for each of the courts. JSMP observed that the Dili, Baucau and Suai District Courts each received one additional car to support their activities, which include delivering court notifications, transporting relevant parties to attend mobile court trials and other operational matters. This is positive as all courts have had problems in the past delivering court notifications to parties, and often the parties were not present for hearings and this forced the judicial actors to continuously adjourn the trial process and this has increased the number of cases still pending for this year. While this can sometimes still be a problem, the addition of more cars will help to alleviate this.

In addition, it can be seen from the table above that the Court of Appeal, District Courts and Public Prosecution Service all have their own separate budgets. These organizations manage their own funds and are able to meet their needs quickly and efficiently. However, the Public Defender's Office is still part of the broader Ministry of Justice (MoJ) budget, meaning that it must write to the MoJ for all proposed expenditure, no matter how small. As there is no MoJ presence in the Districts, Public Defenders in these areas must write to the MoJ in Dili. This is a time consuming process that could be overcome by the Public Defenders having a separate budget. This would allow the Public Defenders Office to meet its needs, such as stationary and infrastructure, quicker and more efficiently.

#### Recommendation

4. The Government should provide the Public Defenders Office with its own budget separate from the Ministry of Justice to ensure it can meet its equipment and other needs more efficiently.

## Number of judicial actors

Table 3. Number of court actors in 2015

Year (end)	2013	2014	2015
Judges	36	40	34
Prosecutors	39	40	32
Public Defenders	26	40	30
Judicial Officers	115	113	113
Translators	11	9	12
Administrative Staff	-	54	77
<b>Total</b>	<b>227</b>	<b>293</b>	<b>298</b>

In 2015, steps were taken to address the Courts' lack of human resources. Thirty-two additional court actors consisting of 12 judges, ten prosecutors and ten public defenders were inducted in late December 2015. Three translators were recruited to provide language assistance at the courts and 23 additional administration staff were employed.

It is positive that the total number of court actors has increased from 293 in 2014 to 298 in 2015. This is particularly due to a rise in the number of administrative staff at the courts, and these additional human resources will enable the court to function more effectively.

It can be seen, however, that the total number of judges, prosecutors and defenders has decreased. At the end of 2015 there were 96, which is 24 less than the 120 judges, prosecutors and public

defenders at the end of 2014. This decrease in numbers is concerning, and JSMP has observed that the number of judicial actors in the districts is still limited, for example there was only one public defender at the Suai Court from January to August and this was not enough to deal with the trial of all cases. There were two public prosecutors and three judges.

This problem is likely to worsen in 2016 and beyond due to the closure of the JTC from October 2014 and throughout 2015. As described above, no new judges, prosecutors or defenders will graduate from the JTC until training commences, and JSMP is still unsure when this is likely to occur. Given there are usually around 40 graduates each year, this suspension of training will lead to a shortfall of judicial actors in the near future.

#### **Recommendation**

5. The Government must ensure that the Legal Training Centre recommences training immediately, and is provided with adequate resources to train additional legal students in the future, particularly the next two to three years.

### **Salaries of judicial actors**

Judges, Public Prosecutors and Public Defenders receive different levels of pay in Timor-Leste. However, everyone within each category receives the same level of pay regardless of experience or time served. The only exceptions are the President of the Court of Appeal, the Chief Justice of each District Court, and the Chief Prosecutor and Defender of each District Court, whose salaries are slightly higher than their colleagues.

This flat pay structure means that court actors who have much more experience receive the same salary as their newly inducted colleagues, despite being involved in more complex and high profile cases. JSMP believes this is undesirable because it removes the incentive for court actors to work hard, and to work on more difficult cases. It is crucial for Timor-Leste to build an experienced judicial sector, and it is therefore essential that court actors be incentivized to continue to develop, and to perform their roles to the highest standard.

To overcome this problem, a draft law on remuneration for court actors is being developed, and this process continued in 2015. JSMP understands this law will establish a fairer pay structure with grades based on experience. This draft law is still with the Ministry of Justice following ongoing discussions about appropriate pay levels. However, having regard to the impending shortage of court actors in Timor-Leste, JSMP urges the MoJ and all relevant parties to prioritize this law in 2016. This will not only ensure experienced judicial actors remain in the sector, but will also attract new people to these important roles.

JSMP is also concerned that public defenders' salaries are currently considerably lower than that of prosecutors and judges. This inequality is also manifested in other ways, such as defenders having to share computers and cars. There is a long standing perception in Timor-Leste that becoming a public defender is less prestigious than becoming a judge or prosecutor, and this perception is perpetuated by the current inequality in pay and facilities for defenders. The role of public defenders is key to ensuring all citizens are well represented and receive a fair trial. JSMP therefore recommends that the draft remuneration law provide public defenders with more equitable pay and conditions.

#### **Recommendation**

6. The Ministry of Justice, Government and National Parliament should prioritize the draft law on remuneration for judicial actors. This law should provide more equitable pay and conditions for Public Defenders.



## 1.4 Training and coaching

For several years Timorese judges have received complementary training provided by international trainers and judges, and four judges a year have received training in Portugal on various aspects of both civil and criminal law. JSMP previously reported the Court of Appeal's plan to continue to build upon this training in 2015 to improve the quality of the justice sector.<sup>8</sup>

Unfortunately, this plan was disrupted in 2015 because Timor-Leste still relies on other countries to provide this training, including Portugal and Mozambique, and international cooperation was stalled in 2015. Unfortunately, Timor-Leste's court actors do not yet have the level of experience required to act as trainers for national judges. As a result, when the international judges and trainers were expelled, all training ceased.

To reduce reliance on international trainers, JSMP recommends a focus on training the most experienced Timorese judicial actors to become trainers at the JTC. A 'train the trainer' program was due to commence in 2014, and judicial actors were even selected to attend this training, but it was suspended due to the October 2014 resolutions. This training should be re-commenced as a matter of priority.

### Recommendations

7. The Government should reestablish cooperation with those nations that have been partners in the justice sector so that the Court of Appeal can facilitate complementary training for judicial actors.
8. The Government should provide sufficient resources to the JTC to commence 'train the trainer' sessions to train experienced Timorese judicial actors to become trainers at the JTC.

### Other training

Between 3 and 17 November 2015, Timor-Leste was honored with a visit from international judge, Dr. Phillip Rapoza. Judge Rapoza is the former Coordinator of the Special Panels for Serious Crimes in Timor-Leste and the former President of the Court of Appeal in Massachusetts in the United States. Judge Rapoza was invited by The Asia Foundation as part of the Nabilan Program funded by the Australian Government.

During this visit Judge Rapoza was the keynote speaker at a national seminar attended by a number of Timor-Leste court actors. Judge Rapoza explained the importance of the separation of powers to maintaining rule of law and democracy. He stressed the importance of courts making decisions independently and without intervention from any party, including the legislative and executive branches of Government.

Judge Rapoza also provided training and engaged in discussions with judicial actors about good prosecution and sentencing practices in cases of violence against women. He highlighted ways the courts can manage these cases to obtain better results for women and children, and judicial independence, including making decisions publicly available and providing reasons for decisions. Judge Rapoza noted the ongoing challenges in these areas but praised the judges on their openness and willingness to discuss ways to overcome them.

In October 2015, Timorese judges also participated in training about the Convention on the Elimination of Discrimination against Women (CEDAW) organized by UN Women. The aim of this

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<sup>8</sup> JSMP report, above n 2, page 26.

training was to increase the knowledge of judges about CEDAW and make them aware of gender sensitivity when making decisions in cases involving women. The judges also attended training about leadership, management and court administration, which was facilitated by a judge from the United States of America and organized by *Ba Distrito*.

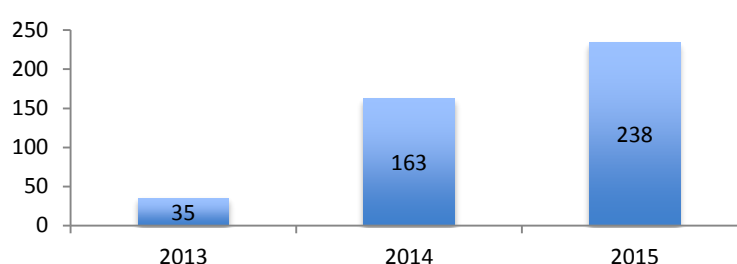
Given the importance of ongoing training to developing a young justice sector like Timor-Leste's, JSMP urges this training to continue and to expand in 2016.

## 1.5 Mobile Courts

JSMP continues to support the use of mobile court trials in Timor-Leste. These courts bring justice to the people who would otherwise be unable to attend court because they live in rural areas and do not have transport or cannot afford to travel. In addition, the regular presence of courts in rural areas indirectly introduces communities to the formal justice system, and enhances their knowledge of their legal rights. The regular presence of courts in rural areas therefore promotes access to justice in those areas where it is most lacking.

In 2015, JSMP monitored a total of 238 mobile court cases. This does not represent all of the cases tried by the mobile courts. JSMP was unable to monitor all cases due to limited resources and other commitments.

Graph 5: Total number of mobile court cases monitored by JSMP, 2013-2015<sup>9</sup>



As in previous years the mobile courts took place in three court jurisdictions, and each jurisdiction conducted mobile courts in three separate Districts. The Dili District Court covered the districts of Ermera, Liquica and Aileu; the Suai District Court covered Bobonaro, Manufahi and Ainaro; and the Baucau District Court covered Lautem, Viqueque and Manatuto. The Oecusse District Court does not have a mobile court because it only covers a single district. Table 4 below shows the number of mobile court cases monitored by each District Court.

Table 4: Total number of mobile court cases monitored by JSMP by jurisdiction, 2013-2015

Court	2013	2014	2015
Baucau	1	63	104
Dili	8	12	23
Oecusse	0	0	0
Suai	26	88	111
<b>Total</b>	<b>35</b>	<b>163</b>	<b>238</b>

<sup>9</sup> JSMP notes that in its report, '2014 Overview of the Justice Sector', (April 2015) page 21, JSMP said it had monitored 328 mobile courts in 2014. This figure was incorrect, and the actual amount was 163.

The data above shows that Suai and Baucau heard the most number of mobile court cases - and almost five times the number heard by the Dili District Court. This is because Baucau and Suai courts both had mobile court schedules that were set and disseminated six months in advance. As it was known when mobile courts would be held in each district, cases originating in those districts would wait to be heard by the mobile court instead of being heard in the permanent court.

In contrast, in 2015 the Dili District Court did not have a planned schedule, meaning that cases from the mobile court districts were set and heard at the permanent Dili court. When the Dili Court did conduct mobile courts it was at short notice, meaning it heard fewer cases because fewer had accumulated.

For example, on 18 February 2015 the Dili District Court conducted a mobile court in Liquica District and heard only one domestic violence case.<sup>10</sup> JSMP believes the travel costs and time associated with hearing one case in Liquica is not an efficient or effective use of the court's resources. JSMP discussed this matter with the Dili District Court in 2015, and the court has drafted a mobile court schedule for the whole of 2016. The Court must be commended for this action, which should mean that it hears more cases when it does conduct mobile courts, and people in the districts will not be required to travel into Dili.

Other mobile courts have heard a large number of cases, which JSMP has noted with concern in the past.<sup>11</sup> For example, from 25-27 February the Suai District Court tried a total of 47 cases in three days,<sup>12</sup> which means that the court heard 12 cases a day. While JSMP understands that case numbers can be high because they often involve the reading of decision in cases already heard, JSMP believes the courts need to be careful and give careful consideration when dealing with a large amount of cases. JSMP encourages the courts to have a clear and balanced timetable that considers the complexity of each case and the time required to deal with each case properly.

JSMP is also concerned about the lack of suitable locations for the mobile court to conduct trials. For example, in Liquica District the Dili District Court conducted a trial in the office of the Liquica District police station and the Maubara Sub-District PNTL station. Similarly, mobile courts in other districts have used police stations and District and Sub District administration offices to conduct trials. The mobile court uses a single meeting room to conduct trials and there are no facilities for defendants and victims to wait separately. This is particularly important in cases of domestic and sexual violence where contact with the defendant is likely to cause distress for the victim, and be intimidating. JSMP recommends that permanent facilities be established for each mobile court, which must include a room that enables victims to wait separately from defendants.

#### Recommendation

9. The Government and National Parliament must provide sufficient resources to the District Courts to hold mobile courts in permanent facilities in each District, particularly to ensure that victims can wait separately from perpetrators.

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<sup>10</sup> See JSMP Press Release, 'Tribunál Distritál Dili julga úniku kazu violénsia doméstika ida liu husi julgamentu movel iha Distritu Liquiça' (23 February 2015) available at: <http://jsmp.tl/wp-content/uploads/2015/01/Pr-Julgamentu-movel-ih-Distritu-Liqisa-1-2-2-.pdf>.

<sup>11</sup> JSMP report, above n 2, page 22.

<sup>12</sup> See JSMP Press Release, 'Tribunál Distritál Suai julga kazu violénsia doméstika 20 hosi kazu 47 ne'ebé julga liu hosi tribunál movél iha Distritu Bobonaro' (6 March 2015) available at: [http://jsmp.tl/wp-content/uploads/2015/01/PrTribunalDistritálSUAIJulgaKazuVD2ohusiKazu47WCJU\\_TETUM.pdf](http://jsmp.tl/wp-content/uploads/2015/01/PrTribunalDistritálSUAIJulgaKazuVD2ohusiKazu47WCJU_TETUM.pdf).

## 1.6 Court of Appeal

If a party who is affected by a decision handed down in a case in one of Timor-Leste's District Courts feels dissatisfied with that decision, they can appeal to the Court of Appeal. The Court of Appeal currently also carries out the functions of the Supreme Court of Justice, which is the highest court in Timor-Leste<sup>13</sup> but has not yet been established.

The Court of Appeal can employ two methods to reach its decision; it can choose to examine the proceedings through deliberations alone; or it can conduct a hearing at the Court of Appeal level, or it can send the matter back to the court of first instance that originally tried the case for a retrial. This occurs if the Court of Appeal sees that some of the facts or evidence are erroneous and need to be supplemented.

There are three judges at the Court of Appeal, comprising the President of the Court of Appeal Guelhermino da Silva, the National Judge Administrator for the Directorate of Human Resources, Deolindo Soares, the National Judge Administrator for the Directorate of Financial and Asset Management, Naterçia Gusmão. The president, Guelhermino da Silva, took his oath in 2014 and has a mandate of four years.

In 2015 the Court of appeal had a very full schedule. The Court registered 211 new cases comprising 160 criminal and 51 civil. There are also 23 criminal cases pending from 2014, and 14 civil cases. This is shown in Table 5 below.

Table 5: Total cases registered at the Court of Appeal in 2015

Proceedings	Pending from 2014	New cases in 2015	Decided in 2015	Pending 2015
Criminal	23	160	154	29
Civil	14	51	21	44
Total	37	211	175	73

The table shows that there is almost double the amount of cases pending in 2015 than in 2014. In 2014 there were 37 pending cases, but in 2015 there were 73. It is also worth noting that there were only 13 cases pending in 2013, which shows that the Court of Appeal is gradually falling behind with its workload. JSMP recommends that greater efforts be made to avoid a further increase in the number of cases pending in future years.

JSMP wants to commend the Court of Appeal for being responsive to requests for information. JSMP has observed that the Court of Appeal is not hindered by unnecessary bureaucracy, and when JSMP seeks information from the Court regarding cases, the Court responds within one or two days and provides all the requested information.

However, it remains problematic that information about the Court's operations is not easily accessible to the public. The Court does not print court schedules in advance, meaning the public is unable to keep informed about the cases being heard by the Court of Appeal. The public can only find out this information after the trial when deliberations have been completed, via the Court of Appeal's website. However, the website is not kept up-to-date, and the last decision was published in 2014. JSMP

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<sup>13</sup> According to Article 164 of the RDTL Constitution on the transitional competence of the Supreme Court of Justice

believes that this situation will continue to be a major obstacle to developing a transparent justice system, and recommends that the CoA consider printing court schedules and decisions.

In addition, despite regular visits to the Court of Appeal by JSMP court monitors, JSMP was unable to monitor any trials in that Court. In fact, the Court of Appeal held only one oral hearing for a case in 2015. JSMP feels that this is an important part of the criminal justice process that should be subject to monitoring and should be more transparent, and JSMP therefore asks the Court of Appeal to make proceedings open to the public. If the public is able to see and understand the Court of Appeal's processes and decisions it is likely to have increased confidence in the court's ability to make fair and reasonable decisions.

#### Recommendations

10. The Court of Appeal should consider publishing court schedules and updating its website to ensure decisions are up-to-date and made public as soon as possible after a trial.
11. The Court of Appeal should conduct more hearings and allow these processes to be accessed by court monitors to ensure they are transparent and open to public scrutiny.

## 1.7 Language

Language is crucial to delivering justice, and ensuring the legal process is fair and credible for all parties involved. Language also builds trust in the legal system and promotes access to justice; if people cannot understand the process or clearly express their rights, they are unlikely to be satisfied with the outcome or re-engage in the process.

In 2015, there was some positive progress regarding language, including the use of Tetun during the trial process. However, decisions continued to be written in Portuguese, and the quantity and quality of translators continued to be obstacles.

Since the international judges were expelled in October 2015, all of the judicial actors presiding over trials have been Timorese. As a consequence, in 2015 Tetun rather than Portuguese was used during the trial process in all district courts. JSMP has observed that this helped to overcome the issue reported in previous years of the parties not understanding the court proceedings.

However, language continues to be a problem because written decisions are still in Portuguese and, although courts have started reading out decisions in Tetun, the parties often still have difficulty understanding the sophisticated legal terms used by the courts. For this reason, it is important that judicial actors, especially public defenders/defence counsel clearly explain the court decisions to defendants and victims. However, based on JSMP's observations, in many cases this is not happening.

#### Case Study <sup>14</sup>

In February 2014, the Dili District Court found the defendant guilty of simple assault (Article 145 Penal Code) and domestic violence (Article 35 LADV). The Court imposed a one year prison sentence, suspended for two years against the Defendant. The decision also specified that the defendant must report to the police every month for two years in accordance with Article 70(g) of the Penal Code.

The court read out the decision in Tetun in the presence of the Defendant. A written notification of the decision was later provided to the Defendant in Portuguese.

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<sup>14</sup> Case number 0042/12.PDDIL.

Over the next five months, the defendant failed to report to the police as required by the sentence. His wife, who was in Indonesia for an extended period, reminded him of the requirement five months after the decision. He immediately went to the police but, because he had not abided by the requirement to report to the police, the public prosecutor asked the court to change the sentence to an effective prison sentence.

During that hearing in December 2015, the suspect said he did not report because he had not understood the decision. The Tetun used by the judge was 'judicial Tetun' that he could not understand, and he could not read the Portuguese decision. His defence also did not explain the decision to him.

The Court decided to extend the Defendant's suspended sentence for a further 2 years, including a requirement to report to the police every month.

In this case, because the perpetrator could not understand the decision he did not abide by its terms. This situation could have been prevented if the public defender clearly explained the sentence to the perpetrator. JSMP also recommends that decisions be communicated to Defendants in a manner that is easily understood by them, which may include written and spoken decisions in simple Tetun.

Three new translators were recruited in 2015 to provide language assistance at the courts. While this is a positive step, JSMP has observed that there are broader issues that arise from translators' lack of understanding of legal terminology. Translators have not studied law, and in some cases this can pose challenges when translating judicial terms during the trial process. Judges, prosecutors and public defenders have had to intervene to explain judicial terms that the translator does not understand. This problem has occurred in all of the district courts, but especially in Oecusse where generally everyone speaks Baikenu and a translator is required in a large number of cases.

Translators play an important role in the courtroom, and they can help the trial process to run effectively and fairly. JSMP recommends that in the future it is necessary to provide legal training to translators to improve their legal knowledge. JSMP also recommends more effective collaboration between the parties (judicial actors and translators) to prepare translators before they are involved in the trial process, particularly when translators are called upon for trials that have already commenced. These strategies will enable translators to understand judicial terms and trials will not have to be interrupted and the court can remain focused on the conduct of trials.

Even though every year JSMP raises its concerns about the issue of translators, to date there has been no comprehensive approach to respond to the circumstances in the courts.

#### **Recommendations:**

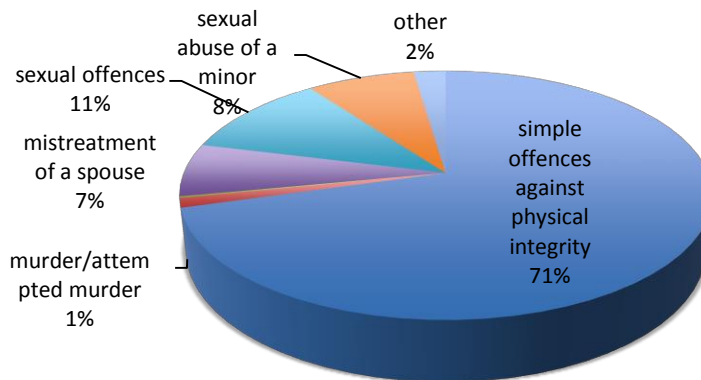
12. Judges should communicate decisions in a way that can be understood by defendants and victims.
13. Public Prosecutors and Defenders must ensure their clients understand the court process and the decision in every case, which must include explaining the decision when the case is completed.
14. The Ministry of Justice should provide funding for translators to receive basic level training to enable them to understand legal terms used during trials, and judicial actors should take time before and during a trial to prepare the translator.

## 2. GENDER EQUALITY

### 2.1 Cases of gender based violence

In 2015, JSMP monitored 564 cases involving violence against women (including cases involving girls aged 0-16). 71 per cent of these cases were charged as simple assault under Article 145 of the Penal Code, 11 per cent were sexual offences, and 8% involved sexual offences against minors (under 14 years old).

Graph 6: Chart of main gender based offences monitored by JSMP in 2015 (including girls aged 0-16)



### 2.2 Domestic Violence

#### Statistics of cases of domestic violence

In 2015, JSMP monitored 434 cases of domestic violence. Table 6 below provides further details on the nature of these cases. Cases characterized as domestic violence can involve both men and women as either defendants or victims; however, in 2015, the victim was female in 92 per cent of cases. Also, in 87 per cent of cases characterized as domestic violence the defendant and victim were husband and wife. The graphs below demonstrate this.

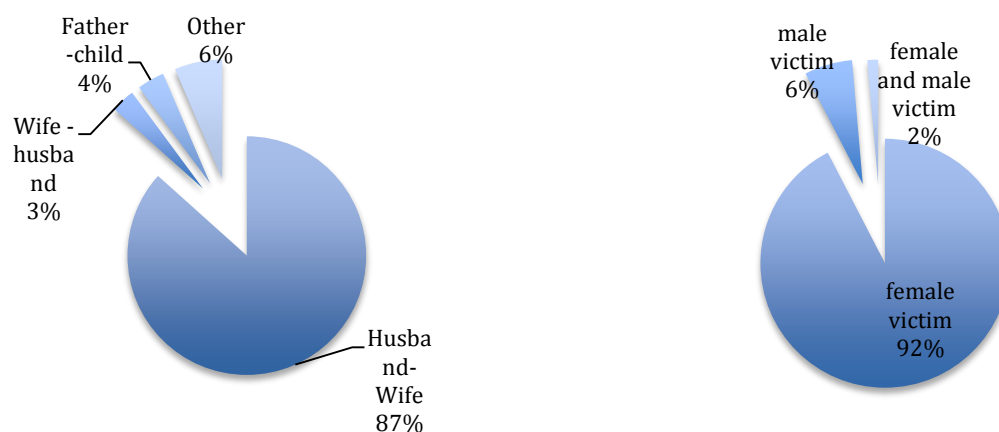
JSMP defines cases of domestic violence as those where the Defendant was charged using the LADV. This, however, is likely to underrepresent the number of domestic violence cases being processed through the courts as JSMP has noted that many incest cases are not being charged under the LADV in addition to the Penal Code. In 2015, only six cases of sexual violence were also charged in conjunction with the LADV. JSMP has identified many other cases – at least seven – that involved incest and where the Defendant should have also been charged under the LADV.

JSMP reminds court actors, particularly Public Prosecutors and Judges, that in accordance with Article 2(b)(2) of the LADV, sexual violence is also a form of domestic violence. Therefore, when there is a family relationship between the defendant and victim that satisfies the definition in Article 2 of the LADV, the Defendant should also be charged under the LADV.

Table 6: Cases of domestic violence that were monitored by JSMP in 2015

Type of Case	Articles in the TLPC	Number of Cases
Simple assault - DV	Article 145 & LADV 35	374
Mistreatment of a spouse – DV	Article 154 & LADV 35	38
Simple assault, threats – DV	Articles 145, 157 & LADV 35	3
Mistreatment of a minor – DV	Article 155 & LADV 35	2
Simple assault, property damage DV	Articles 145, 258 & LADV 35	2
Attempted aggravated homicide – DV	Article 139 & LADV 35	2
Aggravated rape - DV	Article 172, 173 & LADV 35	2
Termination of pregnancy, manslaughter - DV	Articles 141, 140 & LADV 35	1
Mistreatment of a spouse, threats - DV	Articles 154, 157 & LADV 35	1
Mistreatment of a spouse, kidnapping - DV	Articles 154, 160 & LADV 35	1
Aggravated homicide - DV	Articles 139 & LADV 35	1
Homicide – DV	Article 138 & LADV 35	1
Attempted homicide - DV	Articles 23, 138 & LADV 35	1
Attempted homicide, aggravated homicide, and destruction, hiding or profaning of a corpse – DV	Articles 23, 138, 139, 224 & LADV 35	1
Simple assault, aggravated sexual acts with an adolescent - DV	Articles 145, 178, 182 & LADV 35	1
Aggravated sexual coercion, rape - DV	Articles 171, 172 & LADV 35	1
Sexual Coercion - DV	LADV 35	1
<b>Total cases monitored</b>		<b>434</b>

Graph 7: Cases characterized as domestic violence by sex of the victim and by the relationship between the defendant and victim





**Recommendation:**

15. Public Prosecutors must charge perpetrators of sexual violence under the LADV in addition to the Penal Code, when it involves incest or otherwise meets the definition of domestic violence provided in Article 2 of the LADV.

## Trends in sentencing in cases of domestic violence

Table 7: Decisions in cases of domestic violence monitored by JSMP in 2015

Type of Sentence	Number	%
Suspended sentence (Article 68)	223	51.4
Unknown	104	24
Fine (Article 67)	70	16.1
Acquitted	9	2.1
Prison sentence	12	2.8
Suspended sentence with condition (Article 69)	7	1.6
Admonishment (Article 82)	5	1.2
Suspended sentence (Article 68) with civil compensation	1	0.2
Other - Suspended sentence (Article 68), acquitted	1	0.2
Suspended sentence with requirements (Article 79)	0	0
Suspended sentence with monitoring (Article 71)	1	0.2
Prison sentence with civil compensation	1	0.2
<b>Total</b>	<b>434</b>	

In November 2015, JSMP released a report on 'The application of alternative sentences in cases of domestic violence at the Oecusse District court'. JSMP analyzed data from domestic violence cases across all district courts in 2014 and 2015, and found that courts are imposing suspended prison sentence or fines in most cases.<sup>15</sup> This trend can be seen from the data from cases in 2015, in which the courts imposed suspended sentences in 51.4 per cent of cases, and fines in 16.1 per cent of cases. Including only the cases JSMP monitored to decision, these figures increase to 67.6 and 21.2 per cent respectively.

The Penal Code provides principles that act as guidelines when the courts apply penalties. The Penal Code refers to principles of "need", "proportionality", "suitability" and "reinserting perpetrators in society".<sup>16</sup> According to Article 51(1) of the Penal Code, the measure of the penalty must consider the perpetrator's guilt and prevention requirements. The trial and sentencing process seeks to achieve a range of objectives that can be deduced from the text of the Penal Code, including:

- guaranteeing the security of the victim;
- imposing appropriate and proportional penalties against perpetrators;
- deterring perpetrators from committing similar acts in the future;
- deterring the community in general from criminal acts; and

<sup>15</sup> This same conclusion was found in JSMP's 2013 report 'The Law Against Domestic Violence: Three years of implementation and obstacles' (2013) available at: [http://jsmp.tl/wp-content/uploads/2012/05/Part\\_English.pdf](http://jsmp.tl/wp-content/uploads/2012/05/Part_English.pdf).

<sup>16</sup> Refer to the Annex of the Penal Code.

- facilitating the rehabilitation and reintegration of perpetrators into the community.

JSMP questions if fines are actually effective in achieving these objectives, without an additional order, such as requiring the defendant to attend counseling and receive follow-up support services for the victim pursuant to Article 38 of the LADV. This is a major concern that is also relevant to suspended sentences. The courts should consider additional or auxiliary orders when substituting prison sentences with a suspension or fine. Additional orders could include:

- requiring the convicted person to periodically appear before a court, social reintegration officer or non-police entity during the period of suspension;<sup>17</sup>
- requiring the convicted person to be monitored by social reinsertion services for the duration of the suspension, and needs to adhere to a social reinsertion plan;<sup>18</sup>
- requiring the convicted person to undergo treatment or follow-up support services for the victim;<sup>19</sup>
- prohibiting the convicted person from having contact with the victim for a maximum period of 3 years, if this is necessary to prevent repetition of violence;<sup>20</sup>
- ordering the convicted person to pay maintenance to the victim.<sup>21</sup>

These alternative sentences monitor the defendant to ensure he/ she does not reoffend. They can also ensure the security of the victim, which JSMP believes should be the most important factor when the court makes a decision in a case of domestic violence.

### Case Study

A husband slapped his wife, choked and kicked her. The prosecutor charged the defendant with simple offences against physical integrity pursuant to Article 145 of The Penal Code, which is punishable with a prison sentence of up to three years or a fine.

In court, the defendant confessed, and stated that he regretted his actions, and stated that they have four children and only early a small amount of money as farmers. The defendant also testified that he has reconciled with his wife. However, the victim testified that she is still afraid of the defendant and lives with her brother.

The court decided that the defendant was guilty of committing simple offences against physical integrity and imposed a prison sentence of one year, suspended for one year and six months. The court did not impose an additional order.<sup>22</sup>

The Oecusse Court heard this case in June 2015. JSMP believes that in cases like this, there is strong evidence that the victim is afraid for her safety. The court should have considered imposing one of the additional penalties above, such as prohibiting the defendant from having contact with the victim pursuant to Article 38(2) of the LADV.

In 2015, JSMP noted some positive progress in decisions handed down by the courts in cases of domestic violence. In the case below, in addition to imposing a suspended sentence, the court ordered the defendant to report to the police periodically in accordance with Article 71 of the Penal Code.

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<sup>17</sup> Article 70(1)(g) of the Penal Code.

<sup>18</sup> Article 71 of the Penal Code.

<sup>19</sup> Article 38(1) LADV.

<sup>20</sup> Article 38(2) LADV.

<sup>21</sup> Article 29 LADV.

<sup>22</sup> JSMP, "Summary of the trial process in Oecusse District Court" (June 2015); Case No 42/Krime/2015/TDO: <http://jsmp.tl/wp-content/uploads/2015/03/sk-Oe-Cusse-Junu-2015.pdf>.

### Case Study<sup>23</sup>

The public prosecutor alleged that the defendant took a piece of wood and struck the victim on the leg, causing an injury and swelling. This case occurred because victim called out to the defendant who was conversing with a woman in front of a shop.

The public prosecutor accused the defendant of violating Article 145 of the Penal Code on simple offences against physical integrity as well as Article 35 of the Law Against Domestic Violence.

In January 2015 the Dili District Court imposed a six-month prison sentence on the Defendant, suspended for 1 year and six months, and ordered him to periodically report to the police whilst serving the suspended sentence pursuant to Article 71.

JSMP congratulates the Dili District Court for this decision, because the court applied an additional condition on the convicted person during the period of suspension. This is important to preventing crimes of domestic violence in the community, because convicted persons will be made aware that a suspended prison sentence is a punitive measure and a way to monitor them to ensure they do not reoffend during the period of suspension. JSMP believes that if the court handed down such penalties in all cases of domestic violence, this would be a deterrent to perpetrators committing such crimes in the future.

### Recommendation:

16. Courts should consider imposing additional or auxiliary orders when substituting prison sentences with a suspended sentence or fine in domestic violence cases.

## 2.3 Sexual Violence

### Statistics on sexual violence cases

In 2015, JSMP monitored 102 cases of sexual violence. This accounts for 18 per cent of the 564 cases of violence against women, and nine per cent of all 1138 criminal cases monitored by JSMP in 2015. As said above, it can be seen that only six cases of sexual violence were charged in conjunction with the LADV, despite the fact that many others involved incest.

In 2015, there was some important progress regarding crimes involving sexual violence. In particular, JSMP wants to commend the courts for awarding compensation in an increased number of cases. Perpetrators of sexual violence were required to pay civil compensation to victims in eight cases in 2015, compared to three in 2014 and six in 2013. Compensation can provide a remedy for the victim and can cover financial costs associated with the violence, including medical costs and redress for emotional and psychological harm suffered. Compensation can also deter convicted persons from reoffending. JSMP therefore encourages the court to always consider the compensation as reparation for the victim's suffering.

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<sup>23</sup> Case No. 795/14.TDD. Refere to JSMP Press Release, 'The Court orders defendant to report periodically to the police whilst serving a suspended sentence in a case of domestic violence' (29 January 2015), available at <http://jsmp.tl/wp-content/uploads/2015/01/Tribunál-aplika-devér-aprezentasaun-periódika-iha-per%C3%ADodu-suspensaun-ba-kazu-violénsia-doméstika1.pdf>.

Table 8 – Snapshot of sexual violence cases monitored by JSMP, 2015 <sup>24</sup>

Type of case	Penal Code	Number of cases
Sexual abuse of a minor (with penetration)	Article 177 (1)	24
Sexual abuse of a minor - incest	Article 177 (1)	2
Sexual abuse of a minor (other sexual acts)	Article 177 (2)	5
Sexual abuse of a minor - incest	Article 177 (2)	1
Sexual abuse of a minor	Article 177 (1,2)	1
Sexual acts with an adolescent	Article 178	2
Rape	Article 172	21
Rape - incest	Article 172	1
Sexual coercion	Article 171	16
Sexual exhibitionism	Article 181	1
Sexual abuse of a minor (penetration), aggravation	Article 177(1),182/173	5
Sexual abuse of a minor (other sexual acts), aggravation - incest	Article 177(2),173	1
Sexual acts with an adolescent, aggravation	Article 178, 182	1
Sexual Coercion, aggravation	Article 171,173	1
Sexual Coercion, rape	Article 171,172	2
Sexual Coercion, aggravated rape - incest	Article 171,172,173	1
Rape, aggravation	Article 172,173	7
Rape, aggravation - incest	Article 172,173/182	5
Attempted Rape	Article 23,172	3
Attempted sexual abuse of a minor	Article 23,177	1
Attempted aggravated rape	Article 23,172, 173	1
<b>TOTAL</b>		<b>102</b>

In 2015, one case received the highest level of compensation in a case monitored by JSMP. In the case Study below the defendant was sentenced to 13 years in prison and also ordered to provide compensation to the victim totaling US\$3,000.00.

#### Case Study <sup>25</sup>

The 12-year-old female victim was walking along the road when the defendant stopped his motorbike and tried to pick her up. She refused, but he persisted until she eventually agreed to get on his bike. When they arrived at the victim's house the defendant followed her inside and sexually abused her.

During the trial the defendant completely confessed the facts charged against him and stated that this case has been resolved in accordance with Timorese culture and the defendant gave US\$2,000.00 to

<sup>24</sup> For full details of these cases, including all charges including in the indictment, see Annex 1.

<sup>25</sup> Case Number: 167/pen/2015/TDS, see JSMP Press Release, ..

the family of the victim. Even so, the court did not give this consideration because the money was given to the family of the victim.

For this reason the court decided that in addition to sentencing the defendant to 13 years in prison, the convicted person was also ordered by the court to pay compensation of US\$3,000.00 to the victim, which is separate from the money that he had already given to the family of the victim.

JSMP values this decision because the Suai District court ordered the defendant to pay compensation for the suffering of the victim, who was only 12 years old at the time of the offence. JSMP would also like to commend the court, and in particular the presiding judge for disregarding the customary settlement that was not actually given to the victim, but to her family. JSMP believes that this decision is a positive step forward in the way formal justice is currently being used to resolve cases.

JSMP hopes that the courts in other jurisdictions can also use this decision as a reference for cases of a similar nature in future decisions. Compensation should also be considered in domestic violence cases however, in 2015, it was awarded in only one case. JSMP believes that direct and separate compensation for victims is appropriate and fair for victims because they suffered trauma and psychological pressure. JSMP notes that only the Suai and Dili District Courts have ever awarded compensation to victims of sexual violence. JSMP encourages the other district courts to also consider the importance of this measure.

#### **Recommendation:**

17. The Courts should award civil compensation to victims in all sexual violence and domestic violence cases. Compensation should provide reparation for not only physical injuries, but also emotional distress and any loss of earnings as a result of the injuries inflicted by the perpetrator.

## **2.4 CEDAW reporting process**

On 11 and 12 November 2015, the Committee on the Elimination of Discrimination Against Women (CEDAW Committee) considered Timor-Leste's second and third reports on progress implementing the Convention of the Elimination of Discrimination Against Women (CEDAW). After receiving written and oral submissions from the Government of Timor-Leste and key civil society organizations, on 20 November the CEDAW Committee released its concluding observations and recommendations. These included observations on women and the justice sector, including ongoing obstacles to women's access to justice and the prevalence of gender-based violence in Timor-Leste, particularly domestic violence and sexual violence against girls.<sup>26</sup>

Timor-Leste became a party to CEDAW without reservation in 2003. CEDAW requires State Parties to take immediate action to eliminate all aspects of discrimination in women's lives. To implement its obligations under this treaty, Timor-Leste must adopt and apply CEDAW's principles in national legislation, national policies and national development plans. Along with all State Parties, Timor-Leste must also submit a report to the CEDAW Committee at least every four years outlining the measures that have been taken to implement the treaty, and any ongoing challenges.<sup>27</sup> The CEDAW Committee

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<sup>26</sup> Committee on the Elimination of Discrimination against Women, Concluding Observations: Timor-Leste, No. CEDAW/C/TLS/2-3, 20 November 2015. Also see JSMP Press Release, 'CEDAW Committee recommends Timor-Leste takes action to address violence against women and promote women's access to justice' (10 December 2015) available at [http://jsmp.tl/wp-content/uploads/2015/01/PrJSMPComiteCEDAWEstadoTimorLESTEImplementaRekomendasaun\\_ENGLISH.pdf](http://jsmp.tl/wp-content/uploads/2015/01/PrJSMPComiteCEDAWEstadoTimorLESTEImplementaRekomendasaun_ENGLISH.pdf)

<sup>27</sup> Article 18 of CEDAW.

considered Timor-Leste's first report in 2008. On this occasion, the second and third reports were considered together.

JSMP commends the Government of Timor-Leste for taking important steps forward in implementing CEDAW, and for responding to some of the CEDAW Committee's 2009 recommendations. In the time between reports the Government has implemented the Law Against Domestic Violence and passed a National Action Plan on Gender Based Violence 2012-2014.

Laws and policies such as these are essential to reducing violence against women in the community, but they can only be effective if they are properly implemented. JSMP has observed that, to date, there has been inadequate implementation and the impact on women's rights in practice has been minimal. This can be seen when comparing the Committee's 2009 recommendations with its recommendations from 2015. There are stark similarities between the two sets of observations, including the Committee recommending in both that a provision be introduced to specifically criminalize marital rape.<sup>28</sup> JSMP calls on the Government of Timor-Leste to carefully consider and respond to the CEDAW Committee's observations, to ensure the same challenges are not identified when the Committee considers Timor-Leste's next report in 2019.

In 2015, the Committee expressed its concern about obstacles to women's access to justice in Timor-Leste. The Committee noted the fact that women continue to largely access traditional justice mechanisms rather than the formal justice system. As JSMP has noted previously, traditional justice mechanisms often provide redress for the victim's family rather than the victim. The Committee also discussed the lack of an effective system of legal aid for women in Timor-Leste, and women not accessing the legal aid currently offered due to language barriers and low understanding of the legal system. It recommended the establishment of a legal aid system that women can access despite economic and other barriers.

The Committee expressed its concern at the high levels of domestic violence in Timor-Leste, particularly incest and sexual abuse of girls. It noted the ongoing low-levels of reporting of such crimes due to victims' fear of stigmatization or re-victimization and the general lack of awareness among the community of the criminal nature of domestic violence. The lenient sentences provided in domestic violence cases, the failure to issue protection orders and excessive use of mediation outside of the formal justice sector were also issues raised by the Committee.

JSMP welcomes the Committee's recommendations and urges the Government of Timor-Leste to consider these observations and take steps to implement them. CEDAW is a critical international human rights instrument that provides guidance to states on how to achieve gender equality. It is essential for the development of Timor-Leste and the advancement of women nationally that the Government takes concrete steps to implement the challenges and shortfalls identified by the Committee.

JSMP also commends the Government of Timor-Leste and civil society organizations that participated in the process, including JSMP, Women and Children's Legal Aid (ALFeLa) and Psychosocial Recovery & Development in East Timor (PRADET). The Committee's findings were the outcome of a highly rigorous process involving a written report provided by the government of Timor Leste and written 'shadow' reports from civil society organizations. In addition, on the 11<sup>th</sup> and 12<sup>th</sup> of November 2015 the Committee heard presentations from the Government and civil society organizations and held question and answer sessions with both groups.

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<sup>28</sup> See Committee on the Elimination of Discrimination against Women, Concluding Observations: Timor-Leste, No. CEDAW/C/TL/CO/1, (7 August 2009) and Committee on the Elimination of Discrimination against Women, Concluding Observations: Timor-Leste, No. CEDAW/C/TLS/2-3, 20 November 2015.

**Recommendation:**

18. Government take immediate steps to respond to and implement the CEDAW Committee's recommendations, especially:
  - a. take measures to encourage women to report cases of domestic violence, and to ensure there is satisfactory prosecution and punishment of domestic violence
  - b. provide regular education sessions and capacity building so all braches of government understand CEDAW and the Committee's recommendations, and apply them in court decision, laws and policies.

### 3. CHILDREN IN THE JUSTICE SYSTEM

#### 3.1 Cases involving Children

Timor-Leste has one of the youngest populations in the world, with nearly half of its people (41.1%) under 14.<sup>29</sup> The protection and promotion of children's rights, particularly enhancing access to justice for children and ending violence against children, is therefore fundamental to ensuring Timor-Leste's future development and stability.

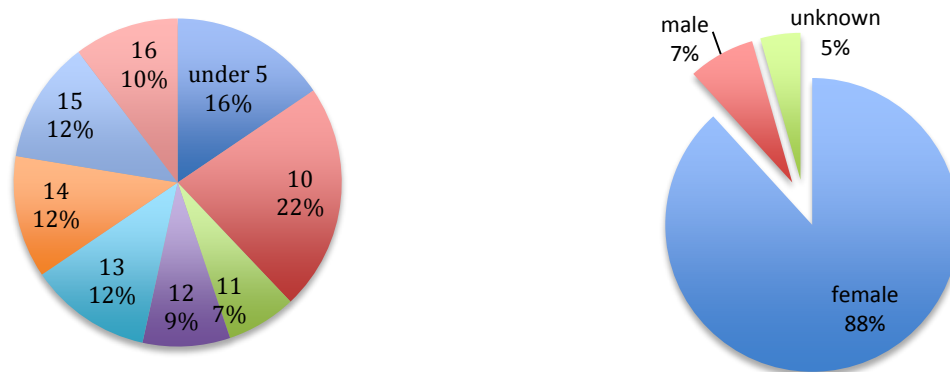
However, violence against children is prevalent in Timor-Leste. 2015 research undertaken by TAF found that 3 out of 4 women and men surveyed (72% of all women and 77% of all men) reported experiencing some form of physical or sexual abuse as a child.<sup>30</sup> Approximately 8 in 10 (82%) of all women and 80% of all men surveyed) reported that they experienced emotional abuse or neglect as a child).<sup>31</sup>

This report also found that adult men are more likely to perpetrate violence as an adult if they witnessed or experienced violence as a child. Looking forward, this means that addressing violence against children is key to ending violence against women in Timor-Leste. In particular, the perception that violence against children is an acceptable form of discipline, and that physical violence against boys is an educational measure, must change.

While violence against children can be physical, emotional or sexual abuse, or neglect, the majority of cases reaching the courts involve sexual violence. In 2015, nearly 68 per cent of cases involving children were sexual violence cases. Most involved female victims (88%); only seven per cent (7%) of cases involved male child victims, and the sex of the victim was unknown in five per cent (5%) of cases.

The biggest percentage of cases involved victims aged 13, 14 and 15, with 7 cases (or 12% of cases) for each. 41 per cent (41%) of total cases concerning children were perpetrated by a family member, including the victim's father (21%) or the victim's mother (9%). However, in 40 per cent (40%) of cases there was no family relationship between the victim and the defendant.

Graph 8. Criminal cases monitored involving children, based on gender and age



<sup>29</sup> National Statistics Directorate, *Timor-Leste Demographic and Health Survey 2009 – 2010* (December 2010), xxiii.

<sup>30</sup> The Asia Foundation, 'Health and life experiences baseline study' (2015) available at <http://asiafoundation.org/publications/>.

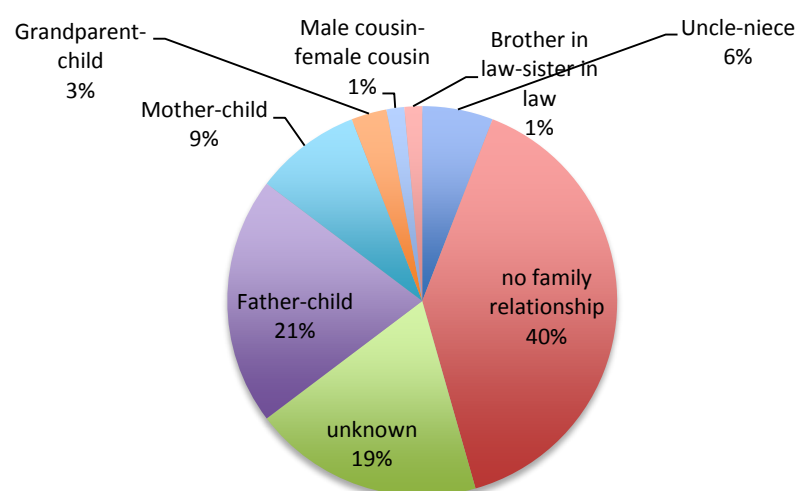
<sup>31</sup> Ibid.



Table 9. Cases monitored by JSMP involving children (aged 0-16)

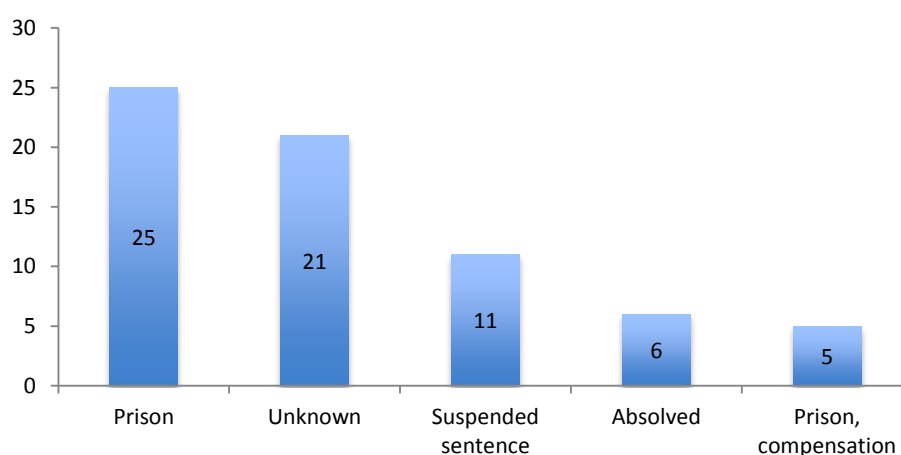
Type of Case	Article	Number
Sexual abuse of a minor (with penetration)	Article 177 (1)	22
Sexual abuse of a minor (with penetration) - Incest	Article 177(1)	2
Sexual abuse of a minor (with penetration), kidnapping	Article 177 (1),160	1
Sexual abuse of a minor (with penetration), simple assault	Article 177(1), 145	1
Sexual abuse of a minor (other sexual acts)	Article 177 (2)	5
Sexual abuse of a minor (other sexual acts) - incest	Article 177 (2)	1
Sexual abuse of a minor (with penetration, other sexual acts)	Article 177 (1)(2)	1
Simple offences against physical integrity - DV	Articles 145 & 35 LADV	6
Aggravated sexual abuse of a minor	Articles 177 (1), 182/173	5
Aggravated sexual abuse of a minor – DV- incest	Articles 177 (2), 173 & 35 LADV	1
Attempted sexual abuse of a minor	Articles 23, 177	1
Sexual coercion – DV - incest	Article 171 & 35 LADV	1
Aggravated sexual coercion	Articles 171, 173	1
Rape - incest	Article 172	1
Rape, trafficking in persons, aggravation	Article 172,163,164	1
Aggravated Rape	Articles 172, 173	3
Aggravated rape – DV - incest	Articles 172, 173, 182 & 35 LADV	2
Aggravated rape, termination of pregnancy, incest	Articles 172, 173, 141	1
Sexual coercion, aggravated rape – DV - incest	Articles 171, 172, 173 & 35 LADV	1
Sexual acts with an adolescent	Article 178	2
Infanticide	Article 142	3
Abandonment or exposure	Article 143	2
Mistreatment of a minor - DV	Articles 155 & 35 LADV	2
Simple offences, aggravated sexual acts with an adolescent – DV	Articles 145 & 35 LADV, 178, 182	1
Attempted aggravated homicide - DV	Article 139	1
Obligation of parental responsibility	Article 831 CPC	12
<b>Total</b>		<b>80</b>

Graph 9. Criminal cases monitored involving children based on the relationship between the victim and the defendant



### 3.2 Sentencing Trends in cases involving children

Graph 10. Sentencing trends in criminal cases involving children



The State has the obligation to protect children. This includes through creating a legal framework that applies severe penalties to perpetrators of violence against children. In 2015, JSMP monitoring showed that most of the courts have achieved significant progress in processing cases registered as violence against children. This progress is evident from the findings of the courts and the handing down of serious penalties against defendants, in accordance with the seriousness of the crimes committed by defendants, and ordering perpetrators to pay compensation to victims.

JSMP commends the court for recognizing the serious nature of sexual crimes against children, and the lasting impact this can have on young victims. JSMP has observed that prosecutors are introducing stronger evidence to support these cases, which is assisting judges in prosecuting and sentencing. JSMP commends the public prosecution service for this.

### Case Study <sup>32</sup>

The defendant committed the crime of sexual abuse of a minor against the victim who was 6 years old. The victim and her grandmother went to a clinic for a consultation. When the victim went to the toilet the defendant called out to the victim and with force grabbed the victim and took her to a small room and committed rape against the victim. The victim suffered an injury to her sexual organs, received four stitches and was in hospital for three days.

The defendant's behavior fulfilled the requirements for the crime set out in Article 177(1) of the Penal Code on the sexual abuse of a minor.

During the trial the defendant denied all of the facts alleged by the Public Prosecution Service. Even so, the victim continued to reinforce the facts set out in the indictment and documentary evidence such as a medical report issued by the hospital.

Based on this evidence the court sentenced the defendant to a 20 year prison sentence and ordered him to pay compensation of US\$2,000 to the victim.

JSMP values this decision to sentence the defendant with the maximum penalty and order him to pay compensation to the victim. The court recognized that the victim in this case was particularly vulnerable due to her very young age, and the severe injuries she sustained as a result of the rape.

Interestingly, in this case, as the victim was under 12 at the time of the offence the perpetrator should have also been charged with an aggravated crime under article 182(a), meaning the maximum sentence should have been increased by one third. JSMP encourages Public Prosecutors and Judges to carefully identify all aggravating factors, particular when crimes involve young victims. If a victim is under 12, under 182(a) this increases the maximum sentence by one third, meaning the maximum sentence on this case should have been the maximum prison applicable by law, which is 25 years.

## 3.3 Children and the Trial Process

When children are involved in the justice system as victims, witnesses or as a party, the court and judicial actors need to guarantee the use of child friendly measures that are appropriate for minors and must also consider the best interests of the child in every situation. This is because children have special rights and needs, such as security and proper guidance regarding their rights, which must be respected by the judicial authorities.

In this regard, JSMP has observed that in 2015 all cases involving sexual violence against children that JSMP monitored were closed to the public and the media. According to the Criminal Procedure Code, the courts may restrict the public character of the proceeding in connection with sexual violence involving children<sup>33</sup> and whenever it is considered necessary to protect a person's dignity.<sup>34</sup> JSMP is pleased that this provision is applied consistently across all courts, and encourages the courts to continue this practice.

There has also been some progress in trials before the mobile courts. In the past JSMP discovered that when the courts conducted a mobile trial they were not sensitive towards victims. For example, when

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<sup>32</sup> Refer to JSMP Press Release, 'Dili District Court sentences defendant to 20 years in prison for crime of rape against a minor (13 April 2015) available at: [http://jsmp.tl/wp-content/uploads/2015/01/PTribunalDILiAprikapenazoANUSbakazuabuzuseksual-baMENOR\\_TETUM2.pdf](http://jsmp.tl/wp-content/uploads/2015/01/PTribunalDILiAprikapenazoANUSbakazuabuzuseksual-baMENOR_TETUM2.pdf).

<sup>33</sup> Article 76(5) of the Criminal Procedure Code states that in criminal cases related to sexual violence where the victim is not yet 18 years of age, the hearing will be closed to the public.

<sup>34</sup> Article 76(1) of the Penal Code.

the mobile court went to Bobonaro District for a case involving rape on 25 September 2013, the trial was open to the public.<sup>35</sup>

JSMP is pleased that in 2015 all sexual violence cases involving children in mobile courts were also closed to the public. In addition, when the Suai District Court conducted a mobile court in Bobonaro District in February, JSMP observed that judges, prosecutors and public defenders did not wear a gown when judging cases involving children. JSMP consider that this is a good practice because it considers the needs of children in accordance with their capacity. JSMP encourages the court to continue these practices in 2016 and beyond.

However, unfortunately there are still instances of courts not being sensitive to children's capacity, including asking child victims questions that are difficult and that they are unable to understand.<sup>36</sup> Judicial actors need to be sensitive to the capacity of children involved in a trial and limit difficult/serious questions and ensure that the child is comfortable and understands the process.

In addition, JSMP observed one case in 2015 where a child witness was forced to give evidence in front of the defendant, his mother, who was charged with the murder of his father.

#### **Case Study<sup>37</sup>**

The Court found that the two defendants, a female and a male whom she had been in a relationship with, had conspired together to kill the woman's husband. The two defendants then hid the body.

During the trial the court called one of the woman's children, a 12 year old boy, as a witness. The boy was forced to give evidence in front of his mother in the courtroom.

The judges also did not remove their robes, which is what they normally do when taking testimony from a minor. On the contrary, all they did was ask the witness if he felt free to speak whilst they were wearing their black robes.

JSMP is very concerned with the court's lack of sensitivity in this case. JSMP believes that this situation should not have occurred, because in reality it placed psychological pressure on the witness who was a minor to speak about his mother's behavior in front of his mother and also in front of the public.

In this case, the Court could have avoided making the victim provide evidence in front of the perpetrator by using one of the many existing victim and child-friendly provisions in the Criminal Procedure Code for giving evidence:

- a judge can take pre-trial statements for future use where there are grounds for doing so, particularly in relation to victims of sexual violence (Article 230);
- the court can take statements from a witness in her/his home, if unable to appear at the hearing (Article 243);
- the court can remove the defendant from the courtroom if her/his presence could intimidate or inhibit the witness from giving testimony (Article 253); and
- the court can examine statements made to a judicial authority by the defendant, victim or witnesses during investigations (Article 266). For example, in cases involving child victims,

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<sup>35</sup> JSMP, 'Overview of Justice Sector 2014' (2014) at 22, available at: [www.jsmp.tl](http://www.jsmp.tl); See also JSMP Press Release, 'Victim of Sexual Assault dissatisfied with the mobile court trial that was open to the public' (3 October 2013), available at: [http://jsmp.tl/wp-content/uploads/2013/01/PrWJUJulgamentuMOVELTribunalSUAI-MALIAN\\_TETUM2.pdf](http://jsmp.tl/wp-content/uploads/2013/01/PrWJUJulgamentuMOVELTribunalSUAI-MALIAN_TETUM2.pdf).

<sup>36</sup> see JSMP Press Release, 'Presiza protesau ba testamuña menor sira iha julgamentu' (26 January 2016) available at: [http://jsmp.tl/wp-content/uploads/2015/01/PrWCJTribunalDILIJulgakazuhasoruMENOR\\_TETUM.pdf](http://jsmp.tl/wp-content/uploads/2015/01/PrWCJTribunalDILIJulgakazuhasoruMENOR_TETUM.pdf).

<sup>37</sup> Case Number 0036/15 PNSIC.

the court could examine the victim's statement given to the prosecutor instead of requiring the victim to re-testify in court.

JSMP notes that in a 2015 case of rape the victim, a Timorese women who was working overseas in Australia during the trial, was allowed to provide evidence via Skype.<sup>38</sup> JSMP congratulates the court for their practice in this case, but also call upon all courts in the future to utilize Skype and other similar methods of communication in cases involving child witnesses in the future.

**Recommendation:**

19. The Ministry of Justice must provide training to police, prosecutors, defenders and judges on how to receive, monitor, investigate and prosecute complaints in a child-sensitive manner that respects the privacy of the victim.

### 3.4 Convention of the Rights of the Child (CRC) reporting process

Under the Convention on the Rights of the Child (CRC) states must ensure there is adequate legislation in place to guarantee access to justice for children, meaning they have the ability to challenge a rights violation and get an effective remedy. Timor-Leste acceded to the CRC, and two of its three optional protocols,<sup>39</sup> in 2003. Similar to the requirements of CEDAW above at part (2.3?), under the CRC Timor-Leste is required to submit a periodic report to the CRC Committee every five years on the measures it has adopted to implement the Convention.<sup>40</sup> The Committee made its first concluding observations in February 2008.<sup>41</sup> It considered Timor-Leste's second and third reports in late 2015, and made some important concluding observations and recommendations.

Since the last periodic review, Timor-Leste's legal system has made some significant progress towards the protection of children's rights. This has included introducing the following laws:

- the Penal Code in 2009,<sup>42</sup> which criminalises a range of violations against children;<sup>43</sup>
- the Civil Code in 2011, which covers a wide range of issues that affect children's lives, including marriage, custody and guardianship, parentage, child support and alimony, and adoption;<sup>44</sup>
- the LADV in 2010, which establishes the legal framework for the prevention of domestic violence, the provision of services to victims and the prosecution of domestic violence crimes.<sup>45</sup> The law adopts a broad definition of domestic violence that covers violence against children in a domestic context;<sup>46</sup>
- the Witness Protection Law in May 2009, which provides a framework for protecting witnesses in court proceedings, including the family of witnesses.<sup>47</sup>

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<sup>38</sup> Case number 0069/15.DICMR.

<sup>39</sup> The First Optional Protocol on the Involvement of Children in Armed Conflict and the Second Optional Protocol on the Sale of Children, Child Prostitution and Pornography. Timor-Leste has not signed the Third Optional Protocol on a Communications Procedure.

<sup>40</sup> Article 44 Convention on the Rights of the Child

<sup>41</sup> Committee on the Rights of the Child, *Concluding Observations: Timor-Leste* (1 February 2008), UN Doc CRC/C/TLS/CO/1.

<sup>42</sup> Decree Law No. 19/2009, Approving the Penal Code (RDTL Penal Code).

<sup>43</sup> *Penal Code*, Art 145, 146, 171, 172, 138, 139, 142, 155, 177, 175 & 176.

<sup>44</sup> Democratic Republic of Timor-Leste, Law No. 10/2011, *Approving the Civil Code (RDTL Civil Code)*.

<sup>45</sup> Law Against Domestic Violence (RDTL LADV).

<sup>46</sup> Law Against Domestic Violence, Arts 2 & 3.

<sup>47</sup> Law on the Protection of Witnesses.

It is recognised that these laws represent significant progress by the State in the implementation of its obligations under the CRC. However, while these developments are commendable, as highlighted by the CRC Committee, many challenges remain. With regards to children and the legal sector, of particular concern were the CRC Committee's recommendations on the definition of a minor in Timor-Leste, and the lack of an effective juvenile justice system.

## Definition of a child

The CRC Committee raised concerns that not all children under the age of 18 (the definition of a child under the CRC) are benefitting from the full protection of the Convention.<sup>48</sup> The Committee raised particular concerns about children under this age being able to enter into marriage, but its broad concerns about the lack of protection for children also extend to children's treatment under the Penal Code. In particular, children victims of sexual abuse over 14 being treated as adults, which was an issue raised by Civil Society Organizations in their submission to the CRC Committee.<sup>49</sup>

The Timor-Leste Civil Code sets the age of majority at 17.<sup>50</sup> However, currently a person is not criminally liable until they are 16,<sup>51</sup> but they are deemed to have the capacity to consent to sexual activities at merely 14.<sup>52</sup> In practice, this means that child victims over 14 are required to give evidence and undergo cross-examination about whether they consented to the sexual act, even in circumstances where there were significant age and power disparities between the perpetrator and victim.

The 2015 case below demonstrates the current shortcomings in the Penal Code. As the victim in this case was 14 she was deemed by the Court to have the capacity to consent to the sexual acts. However, the law fails to recognize that children are vulnerable to abuse particularly by people they trust. In the case above the defendant put pressure on the victim to engage in sexual relations, including by threatening to tell her family about their relationship. In this situation, JSMP considers that a 14 year old child does not have the emotional maturity or life experience to stand up to such pressure.

### Case Study<sup>53</sup>

The public prosecutor alleged that on 8 August 2014 the defendant sent a message via facebook to the victim to meet at a terminal, but the victim did not want to go out. Then on 9 August 2014 the defendant sent a threatening message that he would go to the victim's house and yell, if the victim still did not want to meet with the defendant. For this reason, the victim went and met the defendant and the defendant took the victim to his friend's house and had sexual intercourse with the victim.

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<sup>48</sup> Committee on the Rights of the Child, Concluding Observations on the combined second and third reports of Timor-Leste, CRC/C/TLS/CO/2-3, (30 October 2015).

<sup>49</sup> 'Timor-Leste Civil Society Alternative Report on the Combined Second and Third Periodic Reports of Timor-Leste to the United Nations Committee on the Rights of the Child' (December 2014), page 29, available at: [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/SessionDetails1.aspx?SessionID=828&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/SessionDetails1.aspx?SessionID=828&Lang=en). The submission was written by the Alola Foundation, Asosiasaun Hi'it Ema Re'es Timor (ASSERT), Ba Futuru, Casa Vida, Child Fund Timor-Leste, Timor-Leste NGO Forum (FONGTIL), Forum Tau Matan, Judicial System Monitoring Programme (JSMP), PLAN Timor-Leste, Timor-Leste Coalition for Education (TLCE), Timor-Leste Disability Association (TLGA), Women and Children's Legal Aid (Asisténsia Legál ba Feto no Labarik – ALFeLa) and Word Vision Timor-Leste

<sup>50</sup> Civil Code, Art. 126.

<sup>51</sup> Penal Code, Art. 20.

<sup>52</sup> Article 177 – sexual abuse of minor, under 14.

<sup>53</sup> JSMP Press Release, 'Insufficient Evidence – Dili District Court acquits defendant from crime of rape' (19 October 2015), available at [http://jsmp.tl/wp-content/uploads/2015/01/PRTribunalDILI-VS-desizaun-absolve\\_TETUM.pdf](http://jsmp.tl/wp-content/uploads/2015/01/PRTribunalDILI-VS-desizaun-absolve_TETUM.pdf).

After this, the defendant and the victim then had sexual intercourse 10 times at the home of the defendant's friend on different occasions.

The court did not have proof that when this crime occurred the victim was still a minor because the victim was already aged 14 and the victim had a relationship with the defendant. The court considered that the victim consented to the sexual relationship, and considered as evidence a facebook message where the victim asked the defendant to end the relationship with his wife.

This case shows that children below the age of 17 require special protection under the law. In line with the CRC's recommendations, the Penal Code should be amended so that sexual abuse of a minor covers sexual abuse of all children under 17, except where both parties to the sexual act are consenting minors. JSMP and ALFeLa recommended this in their submission to parliament, 'Improving the Penal Code to better protect women and children' (January 2015).

Further, provisions across a number of pieces of legislation also need to be reviewed to ensure consistency. Currently the age of majority is 17 (Civil Code Article 126); the age of criminal responsibility is 16 (Penal Code, Article 20); the age of marriage with parental consent is 16 (Civil Code, Article 1500); and proceedings should be closed to the public for persons aged under 18 (Criminal Procedure Code, Article 76(5)).

**Recommendation:**

20. The Government and National Parliament need to ensure the definition of a minor is consistent across all national legislation. As required by the Convention on the Rights of the Child the age of a minor should be 18.

## Juvenile justice

The CRC Committee highlighted the lack of information about the draft juvenile justice laws; the draft tutelary and education law for minors 12 to 16 years of age, and the draft law on a special penal regime for minors 16 to 21 years. Similarly, in its 2014 Overview of the Justice Sector, JSMP also recommended these draft laws be fast-tracked in 2015 to establish an effective legal framework to regulate and protect children in conflict with the law.<sup>54</sup> Unfortunately, in 2015 there was minimal progress in this regard. A working group of Government and civil society representatives was established to discuss the laws. However, they have not yet been approved by the Council of Ministers to be forwarded to National Parliament.

Having been raised by the CRC Committee as a priority issue impacting the lives of children in Timor-Leste, JSMP requests that the Government again prioritize these laws in 2016.

**Recommendation:**

21. The Government and National Parliament need to prioritize the draft law on Educational Guardianship of Minors in order to regulate and protect children between 12 and 16 years who are in conflict with the law, and also prioritize the special panel regime for minors between 16 and 21 years of age who are in conflict with the law and already have criminal responsibility.

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<sup>54</sup> JSMP report, '2014 Overview of the Justice Sector', (April 2015) pages 54-55, available at [http://jsmp.tl/wp-content/uploads/2012/05/OJS-2014\\_ENGLISH.pdf](http://jsmp.tl/wp-content/uploads/2012/05/OJS-2014_ENGLISH.pdf).

## 4. TRIALS OF CORRUPTION CASES

In its Overview of the Judicial Sector in 2014, JSMP reported that a number of corruption cases involving high-level authorities were not tried in 2014 as a result of the expulsion of international judges from Timor-Leste.<sup>55</sup>

JSMP is pleased that these cases commenced in 2015. This included the case of corruption involving Joao Cancio, the former Minister of Education, where a decision has been handed down, and the case involving Emilia Pires and Madalena Hanjam that is still ongoing. It is important for corruption cases against official and government members to be heard as it promotes the rule of law and shows the public that everyone is equal before the law and subject to the same rules. JSMP hopes that the other organs of sovereignty will enable the courts to continue to hear these cases without interference, and highlights the importance the courts carrying out their work independently.

In 2015, JSMP monitored 20 corruption cases, which is an increase on the 14 cases heard in 2014. From these 20 cases, several involved high level authorities: namely two former minister, one former vice minister, a director general and the former president of the National Parliament. Also, there were many cases involving directors and staff working in the ministries.

The total number of corruption cases tried in 2015 shows that the Anti-Corruption Commission (CAC) is working hard. JSMP observed that in the last few years the CAC has received a lot of training, both domestically and overseas, to increase their knowledge in the field of investigations. JSMP has also observed that the CAC and the Public Prosecution Service are cooperating and working closely together to investigate and pursue criminal charged against those who engage in corruption. It is important that training continues in order to develop the skills and expertise of the CAC.

### 4.1 Case involving Emilia Pires and Madelena Hanjan

In 2014, Emilia Pires, the former Minister for Finance, and Madalena Hanjan, the former Vice-Minister for Health, were charged with intentional mismanagement pursuant to Article 274 of the Penal Code and economic involvement in business pursuant to Article 299 of the Penal Code. The case was due to be heard in 2014; however, it was suspended due to the Government Resolutions expelling international court actors from Timor Leste. JSMP is pleased the case against these two defendants started in 2015 at the Dili District Court.

#### Legal Facts

In 2012 the defendant Madalena Hanjam sent a request to the Prime Minister to approve contingency funds to the Ministry of Health totaling US\$1.300 million. This was to purchase more than 80 adjustable and manual beds to be installed at the Guido Valdares National Hospital (HNGV) Hospital, on the grounds that the hospital was in a difficult situation because there was a lack of beds for patients. The adjustable beds were to be installed in the VIP section and the dialysis section.

The defendant Madalena Hanjan then sent another request asking Prime Minister Xanana Gusmao to conduct a single source procurement for the project to purchase beds from the husband of the defendant Emilia Pires, who resides in Australia.

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<sup>55</sup> put in reference to 2014 OJS.



Regarding the defendant Emilia Pires, the Public Prosecution Service alleged that in 2012, after PM Xanana approved the contingency funds for the request submitted by the defendant Madalena, the Ms Pires opened a bank account to allow her husband to access money in Australia to purchase these goods.

The Public Prosecution Service also alleged that the two defendants had another meeting to prepare the procurement process for the purchase of the aforementioned beds, including the selection of single source procurement.

### **Indictment of the Public Prosecutor**

In relation to the actions of the two defendants, the public prosecutor alleged that they violated Article 274 of the Penal Code on Intentional Mismanagement and Article 299 of the Penal Code on economic involvement in business. These crimes carry penalties of 1-4 years and 3-10 years respectively.

Both defendants rejected the accusations made against them.

### **Examination of evidence**

Between 5 and 29 October 2015, and on 19 November, 9 December and 11 December 2015, the Dili District Court conducted hearings to examine the testimony of witnesses in relation to this case. This case continued in January 2016, with the Court expected to hand-down a decision in the first half of 2016.

The Defence has called a large number of witnesses to date, which included many high level officials:

Ex-Prime Minister, Xanana Gusmao; Vice Director of ETDA, Jose Bareto; Ex President, Ramos Horta; Director General, Ministry of Finance, Jose Antonio Fatima Verdial; FRETILIN Party Secretary-General, Mari Alkatiri; Ex Secretary of State for Security, Francisco Guterres; Ex Minister of Health, Dr. Sergio Lobo.

### **JSMP comment**

As mentioned above, JSMP is pleased this case finally commenced in 2015 following a long delay.

JSMP commends the Defence for calling a number of witnesses to the court to present evidence in this case. Witnesses can provide important testimony that can help the court to accurately assess the culpability of the perpetrator. It is common in Timor-Leste for no witnesses to be called. JSMP surveyed 141 defendants from February to December 2015 across all four district courts and 121 reported that their Defence did not call any witnesses to support their case. It is therefore encouraging that this trend has not been followed in this case.

However, JSMP would like to remind the court that witnesses should only be called to provide evidence which are relevant to proving the elements of the offence. Public Prosecutors and Defenders have an obligation to ensure they only call relevant witnesses and it is the responsibility of judges to not allow irrelevant evidence that wastes the court's time. JSMP is concerned that many witnesses called in this case have provided evidence that is not relevant to proving the offences. For example, calling a number of high-level witnesses to comment on the Defendant's competence as a Minister, and to attest to the fact that the hospital was in need of beds, are not relevant to whether the Defendants adhered to the correct procurement process. JSMP calls on all court actors to address this issue in the future to ensure the court's time is used as effectively as possible.

JSMP also reminds the court, including judges, prosecutors and defenders, of the prohibition on asking questions that are suggestive and prompt the witness to answer in a particular way. Article 129(2) of the Criminal Procedure Code states that 'a witness shall not be asked any suggestive or impertinent questions, or any other questions that might undermine the spontaneity and sincerity in which answers are to be given'. Suggestive or 'leading' questions are undesirable as they result in false or

distorted information. As the trial continues, all court actors should take care to avoid such questioning.

## 4.2 Case involving Ms Isabel Ximenes

### Charges of the Public Prosecutor

The Public Prosecution Service accused Isabel Ximenes of committing three crimes, namely negligent mismanagement pursuant to Article 275, embezzlement pursuant to Article 295 and abuse of power pursuant to Article 297 of the Penal Code.

### Issue about immunity

The trial of the case involving Ms Ximenes should have commenced before the Dili District Court on 23 November 2015, however the Dili District Court adjourned the trial. The court said that because the defendant was the Secretary of State for Art and Culture the National Parliament needed to issue a resolution to suspend her immunity before the court could hear the case against her.

The Timor-Leste Constitution provides immunities to members of parliament under Article 94, and also to government members under Article 113. Article 94 provides protection to members of parliament from all legal proceedings in regard to acts that they have carried out while performing their parliamentary functions. Article 113 provides immunity to members of government which is more limited than for member of parliament:

#### *Article 113 (criminal liability of members of government)*

1. *Where a member of the Government is charged with a criminal offence punishable with a sentence of imprisonment for more than two years, he or she shall be suspended from his or her functions so that the proceedings can be pursued.*
2. *Where a member of the Government is charged with a criminal offence punishable with a sentence of imprisonment for a maximum of two years, the National Parliament shall decide whether or not that member of the Government shall be suspended so that the proceedings can be pursued.*

Article 113 places important limits on the scope of government immunities. Members of the government should be suspended when they are accused of a crime that is punishable with more than 2 years in prison (Article 113.1). The National Parliament has the authority to decide on the suspension or non-suspension of members or if they are charged with an offence punishable with maximum sentence of 2 years (Article 113.2).

It can be seen from the wording of Article 113 (1) that when a member of government commits a crime that carries a maximum sentence of 2 years or less, National Parliament has the discretion to decide whether or not to suspend the accused from their functions. In contrast, Article 113(2) does not have this discretion. A government member charged with a crime with a maximum penalty of over 2 years is automatically suspended from their functions, and thereby lose immunity. In cases like this, a resolution or plenary session of the parliament is not required.

In relation to the crimes allegedly committed by the defendant Isabel Ximenes, each crime is different. The crime of negligent mismanagement carries a maximum penalty of 1 year, embezzlement carries a penalty of 10 years and abuse of power carries a penalty of 4 years. These last two crimes carry a maximum sentence of greater than 2 years, which means that the defendant should automatically have been suspended from her functions as a minister, and lost her immunity so the case could be heard against her immediately.

JSMP had called on the Dili District Court to start the trial of this case without unnecessary delay. However, JMSP understands that the trial against Ms Ximenes has not yet begun. JSMP is concerned about this because it directly relates to upholding the rule of law in Timor-Leste. This principle is of significant importance, because it means that everyone, including the State and its elements, are held responsible in accordance with the law, and require equal treatment and an independent trial. Government members like Ms Ximenes must be equal before the law and not be granted immunity beyond the scope provided in the Constitution.

Ms Ximenes also continues in her role as Minister for Art and Culture. This is in direct conflict with the Constitution, which clearly states that she should be suspended from her functions.

JSMP will continue to monitor this case. In cases involving serious allegations against members of government, it is important to ensure that issues of immunity do not hamper trials against parliamentary and government members, who should be forced to promptly respond to the criminal charges.

**Recommendation:**

22. In accordance with Article 113(2) of the Constitution of Timor-Leste, Ms Isabel Ximenes must immediately be suspended from her functions as Secretary of State for Arts and Culture. This automatically removes her immunity as a Government member, meaning the Dili District Court should hear the case against her without delay.

## 5. POLITICAL AND LEGISLATIVE DEVELOPMENTS

### 5.1 National Parliament Legislative Program

The National Parliament is the organ that represents all Timorese citizens and is vested with legislative, supervisory and political decision making powers.<sup>56</sup> The National Parliament has primary competence to make laws on national and foreign policy.<sup>57</sup> Parliament can also authorize the government to draft laws on specific areas.<sup>58</sup>

The National Parliament is split into two sections: the Plenary and the Committees. Plenary sessions are meeting of all Members of Parliament (MPs), while Committees involve 7-12 MPs. There are currently nine committees, all with a different focus – from the economy through to foreign affairs and defence. After draft laws are introduced into Parliamentary Plenary they are referred to the relevant Committee for consideration. Committees give advice and make recommendations to the Plenary concerning the draft laws. The draft law will then return to the Plenary to be voted upon.

From 2012 until now, JSMP has monitored sessions of the Plenary and the meetings of Committee A, which has responsibility for Constitutional Affairs, Justice, Public Administration, Local Power and Anti-Corruption. This section outlines JSMP's observations of the third legislative session, which commenced in 15 September 2014 until 15 July 2015, and also the first part of the fourth legislative session from 15 September 2015 until 31 December 2015 (hereafter referred to as '2015').<sup>59</sup> The total number of plenary meetings during this period was 52 and there were 65 members of Parliament (CNRT = 30, Fretilín = 25, PD = 8 and FM = 2).

#### Meetings of the Plenary, Attendance and Punctuality

The ability of the Plenary to facilitate discussion and decision-making depends upon the establishment of a 'quorum'. This means that at least one third of members must be present to discuss and make a decision on an issue.<sup>60</sup> If a quorum cannot be established then the Plenary must be suspended. As a result, the attendance of MPs in Plenary session directly impacts the productivity of Parliament, and attendance is therefore vitally important.

The average attendance of members of parliament during the third legislative session, according to each Parliamentary Bench, is set out in graph 11 below. This graph shows that the average attendance was between 60 per cent (Frenti-Mudansa - FM) and almost 90 per cent (PD) (see Graph 11 below). The attendance of the both the CNRT and the PD increased by over 10 per cent of 2014 attendance, and JSMP commends the dedication of these MPs.

Despite this, quorums are often not met and many Plenary sessions need to be suspended. JSMP also noted that MPs often moved around during meetings of the Plenary and had their own private discussions. These practices also contributed directly on the productivity and quality of work of the Parliament.

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<sup>56</sup> Article 92 of the RDTL Constitution.

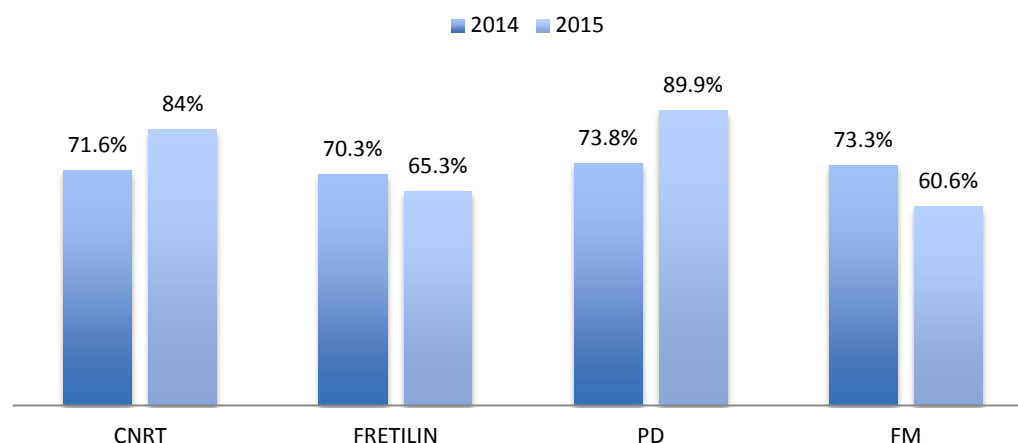
<sup>57</sup> Article 95(1) of the RDTL Constitution.

<sup>58</sup> Article 96 of the RDTL Constitution.

<sup>59</sup> Article 99.1 of the RDTL Constitution provides that each legislative sessions is one year and Article 45.1 of Law No. 15/2019 provides that this is 15 September one year to 14 September the next.

<sup>60</sup> Article 47(1) Law No. 15/2009 Parliamentary Rules of Procedure.

Graph 11: Average attendance for each party in the plenary: January – December 2014 compared with January - June 2015



JSMP also monitored the punctuality and discipline of MPs in the Plenary and Committee A. Pursuant to Law No. 15/2009, Plenary meetings take place on Mondays and Tuesdays between 9am-12:30pm, and 3-6pm.<sup>61</sup> However, JSMP observed that during the third legislative session, many MPs continued to disregard the time and did not arrive or depart according to the predetermined times. JSMP also noted that many of the plenary meetings started late at 10am or 11am, rather than 9am.

There is also a concerning practice of Plenary sessions not being heard in the afternoon. From January-June 2015, Plenary sessions were not held in the afternoon on 19 occasions, and Plenary sessions did not take place at all on two days. There were various reasons for this: often there was nothing for the Plenary to discuss in the afternoon because its business was completed in the morning, or quorums were not met so the session was suspended.

JSMP is extremely concerned with this practice because MPs are meant to represent the people and have an important role to play in drafting and passing laws. As can be seen from table 12 below, there are many important draft laws that have been stalled and could be rescheduled by the National Parliament. JSMP urges MPs to carry out their duties diligently, and to use their time more effectively.

#### **Recommendation:**

23. National Parliament should adhere to and respect the working hours of the Plenary and Committees, which are set out in Lei No. 15/2009, so as to manage its time well, and in order to give timely attention to important legislative and policy issues.

### **Productivity of the National Parliament in 2015**

In 2015, National Parliament discussed, debated and approved 10 draft laws. From these, seven were amendments, two related to the State Budget and there was only one new law. The new law was law No.1/2015 on the general population and housing census. This is a short law that consists of only 18 Articles<sup>62</sup> and only a minimal amount of time was required to develop, discuss and approve this law.

<sup>61</sup> Article 46 of Law No. 15/2009; [http://www.jornal.gov.tl/public/docs/2009/serie\\_1/serie1\\_no40.pdf](http://www.jornal.gov.tl/public/docs/2009/serie_1/serie1_no40.pdf).

<sup>62</sup> Available at: [http://www.jornal.gov.tl/public/docs/2015/serie\\_1/SERIE\\_1\\_NO\\_25.pdf](http://www.jornal.gov.tl/public/docs/2015/serie_1/SERIE_1_NO_25.pdf)

Table 10: Laws approved by National Parliament in the third legislative session (15 Sept-15 July 2015), and first part of fourth session (15 Sept-31 Dec 2015)

Draft Law	Committee	Date of Admission	Date of Final Approval	Vote		
				For	Against	Abstain
Draft Law No. 15/III First Amendment to Law No. 2/2014, 5 February (Law on the State Budget for 2015)	C		15/10/2014	33	0	19
Draft Law No. 16/III The State Budget for 2015	A, B, C, D, E, F, G		18/12/2014	65	0	0
Draft Law No. 18/III (3 <sup>a</sup> ) First Amendment to Law No. 6/2014 30 December "Approving the State Budget for 2015".	C		31/03/2015	65	0	0
Draft Law No. 19/III on the General Population and Housing Census	F		3/06/2015	*	*	*
Draft Law No. 21/III (3 <sup>a</sup> ) First Amendment to Law No. 3/2004 14 April on Political Parties	A		27/10/2015	44	0	6
Draft Law No. 22/III Second Amendment to Law No. 5/2006, 28 December (Electoral Administrative Bodies).	A		19/11/2015	32	12	9
Draft Law No. 24/III First Amendment to Law No. 11/2009, 7 October on Territorial Administration Division	A		13/7/2015	*	*	*
Draft Law N.º28/III First Amendment of Law No. 3/2009, 8 June on Community Leaders and their Election	A		13/7/2015	56	0	3
Draft Law No. 33/III The State Budget for 2016	A, B, C, D, E, F, G		18/12/2015	64	0	0
Draft Law No. 7/III/4 <sup>a</sup> Third Amendment to Law No. 11/2008, 30 July (Regulating the Private Practice of Law and the Training of Lawyers)	A		20/12/2015	*	*	*

\*National Parliament changed its database in 2015 and due to some initial problems this information was not available.

The Chair of the National Parliament also sent some draft laws to the Committees to continue carrying out public consultation and provide opinion papers to the Plenary for discussion and approval, including the draft law on human trafficking. In relation to the draft law on the Establishment of a Bar Association, Committee A prepared an opinion paper on 29 June 2015, but it has not yet been discussed and approved in the Plenary.<sup>63</sup>

During the third legislative session the National Parliament discussed and approved 25 draft resolutions. This is an increase from 2014, in which 16 resolutions were produced. The following table shows the resolutions approved by the National Parliament in 2015.<sup>64</sup>

**Table 11: Resolutions approved in the third legislative session (15 Sept-15 July 2015), and first part of fourth session (15 Sept-31 Dec 2015)**

Resolutions of the National Parliament	Published	Vote		
		For	Against	Abstain
No. 9/2014 - Resolution on Visit of the President of the Republic to the Republic of Indonesia	22/10/2014	35	0	0
No.10/2014 - Condemning the publication of printed news suggesting that the Prime-Minister had issued a declaration supporting the integration of TL in Indonesia	22/10/2014	51	0	0
No.11/2014 - The need to conduct an Audit of the Justice Sector	24/10/2014	38	5	7
No.12/2014 - On Support to the Government to establish a Special Council to provide definitive demarcation of the maritime borders	24/10/2014	50	0	0
No.13/2014 - Appointment of the Ombudsman for Human Rights and Justice by the National Parliament	29/10/2014	41	0	0
No.14/2014 - Approving the National Parliament's Action Plan and Budget for 2015 and the first amendment to the Resolution of the National Parliament No. 2/2009, 25 February, and the Second Amendment to National Parliament Resolution No. 3/2009, 25 February	05/11/2014	45	0	0
No.15/2014 - Constitution and Composition of the Ad Hoc Committee to monitor the Western Sahara Conflict	30/12/2014	41	0	0
No. 2/2015 - Approving the recommendations of the Ad Hoc Committee of Inquiry into the "Emergency Program of June 2013"	11/02/2015	*	*	*
No. 3/2015 - Visit of the President of the Republic to the Republic of Indonesia	15/04/2015	*	*	*
No. 4/2015 - Approving the State's General Accounts for 2013	06/05/2015	*	*	*

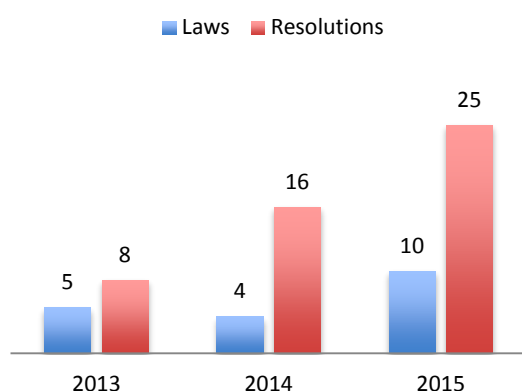
<sup>63</sup> Data obtained from technical support officer of the National Parliament.

<sup>64</sup> Refer to the State Gazette: <http://jurnal.gov.tl/?q=node/19>.

Resolutions of the National Parliament	Published	Vote		
		For	Against	Abstain
No. 5/2015 - Ratifying the Constitution of the International Labour Organization	13/05/2015	46	0	0
No. 6/2015 - Appointment of two members to the public service commission by the National Parliament	27/05/2015	*	*	*
No. 7/2015 - Appointing three representatives of the National Parliament to the Commission on Tribute, Registration and Supervision of Resources	10/06/2015	*	*	*
No.8/2015 - Regulating the editing and publication of the National Parliament's Journal	05/08/2015	41	0	1
No.9/2015 - Approving the Cooperation Agreement between the Portuguese Republic and the RDTL aimed at establishing Dili's Portuguese School	05/08/2015	37	9	2
No.10/2015 - Approving the Agreement between the Democratic Republic of Timor-Leste and the European Union regarding visa waiver for short stay	05/08/2015	42	0	0
No.11/2015 - Ratification, for accession, to Convention No. 111 of the International Labour Organization, concerning Discrimination in Respect of Employment and Occupation	05/08/2015	*	*	*
No.12/2015 - Ratification, for accession, to Convention No. 100 of the International Labour Organization, concerning Equal Remuneration for Men and Women for work of equal value	05/08/2015	*	*	*
No.13/2015 - Visit of the President of the Republic to the People's Republic of China and Japan	26/08/2015	*	*	*
No.14/2015 - Appointment of two Members of the National Parliament to the Commission on Tribute, Registration and Supervision of Resources	14/10/2015	*	*	*
No.15/2015 - Approving the Action Plan and the Budget of the National Parliament for 2016 and proceeding with the Third Amendment of National Parliament Resolution No. 3/2009, 25 February and the First Amendment to National Parliament Resolution No. 4/2009, 25 February	14/10/2015	43	0	0
No.16/2015 - Appointment of members of the National Parliament to the Superior Council of the Public Prosecution Service	21/10/2015	*	*	*
No.17/2015 - Appointment of members of the National Parliament to the Superior Council of the Office of the Public Defender	21/10/2015	*	*	*
No.18/2015 - Ratifying the Agreement between the Democratic Republic of Timor-Leste and the Holy See	11/11/2015	56	0	0
Nº. 19/2015 - Objectives of Sustainable Development	18/11/2015	44	0	3

\*National Parliament changed its database in 2015 and due to some initial problems this information was not available





JSMP measures the productivity of the Parliament based on the number of new laws and resolutions. This table shows a comparison between the productivity of National Parliament between 2013 and 2015. It can be seen that the productivity of the Parliament increased in comparison to previous legislative sessions.

There are also a number of draft Government and Parliamentary laws that were introduced in 2013 or before that have not been given consideration by the National Parliament for rescheduling, debate and approval. These draft laws are as follows:

Table 12: Draft Laws that are pending and those that have expired

Law	Date of admission
Draft Law No. 29/II, amending Law No. 1/2007 on the Lifelong Monthly Pension for members of parliament and other privileges and Law No. 7/2007 on the statute for the holders of positions in organs of sovereignty	13/02/2012
Draft Law No.21/II on the Anti-Corruption Law	08/11/2011
Draft Law No 18/II, Law on Local Government	18/02/2009
Project Law No.20/II on the Establishment of a Public Memory Institution	16/06/2010
Draft Law No.19/II on a National Reparations Program	16/06/2010
Draft Law No 9/II, on the Weapons Law	02/04/2008
Draft Law No. 19/II, Municipal Electoral Law	18/02/2008
Draft Law No. 6/II on a Real Estate Financial Fund	06/09/2013
Draft Law No. 7/III Special Regime on the Definition of Ownership of Real Estate	06/09/2013
Proposal No. 8/III Expropriation Law	06/09/2013
Proposal No. 13/III Law on Forest Management	08/05/2014

## 5.2 Important Pending Draft Laws

### Draft Anti-Corruption Law

The draft Anti-Corruption Law was developed by the Public Prosecution Service<sup>65</sup> and submitted to the Chair of the National Parliament on 26 October 2010. It was forwarded to Committees A and C for consideration on 10 February 2011 and, on 1 June, Committee C held a public discussion about this draft law. However, progress on the draft law stopped here, and it was pending until it expired during

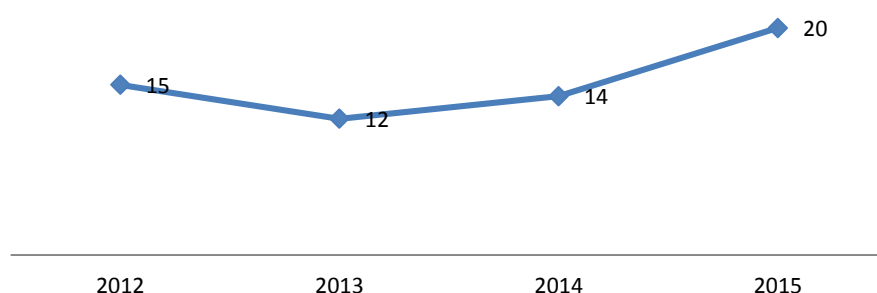
<sup>65</sup> Refer to: <http://www.laohamutuk.org/econ/corruption/11AnticorruptionLaw.html>

the second legislature. National Parliament did not resubmit this draft law during the third legislature, and has not done so to date.

In JSMP's view, this important law is necessary to strengthen State institutions that are mandated to combat corruption in Timor-Leste. Timor-Leste ratified the United Nations Convention Against Corruption (UNCAC) in 2008, established an Anti-Corruption Commission (CAC)<sup>66</sup> and enacted the Penal Code in 2009, which criminalizes some crimes of corruption.<sup>67</sup> However, these must be complemented by a specific law that defines the functions of the CAC and provides this organization, as well as the Courts, with the necessary powers to effectively investigate and prosecute corruption.

The necessity of this law is shown by the incidences of corruption, which is flourishing in this nation. Based on JSMP court monitoring activities, and as described further in section 5 below, the number of corruption cases has increased over the last three years. In 2015, JSMP monitored 20 corruption cases, which is almost a 50 per cent increase on the number of cases monitored in 2014. In addition, some of these cases have involved high-level Government officials.<sup>68</sup> The graph below provides statistics about the number of corruption cases monitored by JSMP between 2012 and 2015:

Graph 13: Total number of corruption case listed by JSMP between 2012-2015



JSMP recommends that National Parliament, and Committee C in particular, reschedule this law to be discussed and approved in 2016. Those involved in corruption in Timor-Leste must be brought to justice, and empowering the CAC to investigate and punish perpetrators will deter further acts of corruption in the future. In this way, Timor-Leste can prevent corruption and strengthen trust in its national institutions.

#### **Recommendation:**

24. In 2016 the National Parliament should prioritize and reschedule important laws which have been pending for many years, such as the draft Anti-Corruption law, and the draft law on Reparations and Institute of Public Memory.

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<sup>66</sup> Law No. 8/2009.

<sup>67</sup> Refer to Articles 192, 274, 275, 281, 287, 288, 290, 292-299, 314 and 319 of the Penal Code.

<sup>68</sup> Case of corruption involving the former Minister of Justice Luicia Lobato, P. 4-7 OJS 2012; [http://jsmp.tl/wp-content/uploads/2013/04/OJS-2012\\_Final\\_Tetum\\_5-April-2013.pdf](http://jsmp.tl/wp-content/uploads/2013/04/OJS-2012_Final_Tetum_5-April-2013.pdf)

## Annex A – Statistics

Table A – Criminal cases monitored by JSMP

Type of Case	Penal Code	No. of cases
Simple offences against physical integrity - DV	Article 145 & LADV Article 35	374
Simple offences against physical integrity	Article 145	226
Driving without a license	Article 207	83
Property damage	Article 258	39
Mistreatment of a spouse - DV	Article 154 & LADV Article 35	38
Threats	Article 157	30
Sexual abuse of a minor	Article 177 (1)	22
Rape	Article 172	19
Aggravated property damage	Article 259	17
Homicide	Article 138	15
Sexual coercion	Article 171	14
Serious offences against physical integrity	Article 146	14
Manslaughter	Article 140	13
Aggravated larceny	Article 252	12
Attempted homicide	Articles 23, 138	10
Simple offences against physical integrity, threats	Article 145, 157	9
Failure to meet obligation to provide alimony	Article 225	8
Threats, property damage	Articles 157, 258	7
Aggravated fraud	Article 267	6
Aggravated rape	Articles 172, 173	6
Disobedience	Article 244	5
Illegal gambling	Article 322	5
Larceny	Article 251	5
Sexual abuse of a minor	Article 177 (2)	4

Type of Case	Penal Code	No. of cases
Aggravated sexual abuse against a minor	Articles 177 (1),182	4
Property damage with use of violence	Article 260	4
Simple offences against physical integrity, property damage	Articles 145, 258	4
Misappropriation of public assets - corruption	Article 296	4
Sexual abuse of a minor - Incest	Article 177 (1)	2
Abandonment or exposure	Article 143	3
Crimes against flora and fauna	Article 217	3
Infanticide	Article 142	3
Arson	Article 263	3
Smuggling	Article 316	3
Simple offences, threats - DV	Articles 145, 157 & LADV Article 35	3
Economic involvement in business - corruption	Article 299	3
Attempted rape	Articles 23,172	3
Aggravated rape – Incest	Articles 172, 173	2
Abuse of power - corruption	Article 297	2
Sexual acts with an adolescent	Article 178	2
Aggravated fraud, aggravated forgery	Articles 267, 304	2
Aggravated fraud, economic involvement in business, forgery of documents - corruption	Articles 267, 299, 303	2
Sexual coercion, rape	Articles 171, 172	2
Hazardous driving	Article 209	2
Mistreatment of a minor - DV	Article 155 & LADV Article 35	2
Negligent offences against physical integrity	Article 148	2
Simple offences against physical integrity, serious offences against physical integrity	Articles 145, 146	2
Simple offences against physical integrity - kidnapping	Articles 145, 160	2
Aggravated homicide	Article 139	2
Robbery	Article 253	2

Type of Case	Penal Code	No. of cases
Kidnapping	Article 160	2
Attempted aggravated homicide - DV	Article 139 & LADV Article 35	2
Habitual criminality	Article 54	1
Abuse of trust	Article 256	1
Abuse of trust - corruption	Article 256	1
Aggravated abuse of trust	Article 257	1
Aggravated abuse of trust - corruption	Article 257	1
Abuse of trust, embezzlement - corruption	Articles 256, 295	1
Abuse of power, tax fraud - corruption	Articles 297, 314	1
Abuse of power, economic involvement in business, forgery of documents - corruption	Articles 297, 299, 303	1
Abuse of power	Article 297	1
Sexual abuse of a minor	Article 177 (1,2)	1
Sexual abuse of a minor	Article 177 (2)	1
Sexual abuse of a minor - Incest	Article 177 (2)	1
Aggravated sexual abuse of a minor	Articles 177 (1),173	1
Aggravated sexual abuse against a minor – Incest – DV	Articles 177 (2),173 & LADV Article 35	1
Sexual abuse against a minor, kidnapping	Articles 177 (1), 160	1
Intentional mismanagement, economic involvement in business - corruption	Articles 274, 299	1
Threats and aggravated property damage	Articles 157, 259	1
Prohibited weapons	Article 211	1
Illegally importing or exporting goods or merchandise	Article 315	1
Aggravated fraud, forgery of documents or technical report	Articles 267, 303	1
Fraud	Article 266	1
Property damage, Arson	Articles 258, 263	1
Disobedience, usurpation of property	Articles 244, 261	1
Drugs	Article 81	1

Type of Case	Penal Code	No. of cases
Drugs	Article 82	1
Instigation	Article 31	1
Sexual exhibitionism	Article 181	1
Aggravated forgery- corruption	Article 304	1
Forgery of documents or technical report	Article 303	1
Aggravated larceny, aggravated property damage	Articles 252, 259	1
Aggravated larceny, forgery of documents	Articles 252, 303	1
Aggravated larceny, simple reception of stolen goods	Articles 252, 271	1
Arson, property damage, aggravated property damage, obstructing public authority	Articles 263, 258, 259, 243	1
Termination of pregnancy, manslaughter - DV	Articles 141, 140 & LADV Article 35	1
Aggravated sexual coercion	Articles 171, 173	1
Sexual coercion, aggravated larceny	Articles 171, 252	1
Sexual coercion – DV	Article 171 & PADV Article 35	1
Sexual coercion, aggravated rape – Incest – DV	Articles 171, 172, 173 & LADV Article 35	1
Driving without a license, disobedience	Article 207, 244	1
Driving without a license, forgery of documents	Articles 207, 303	1
Driving without a license, hazardous driving	Articles 207, 209	1
Driving without a license, negligent offences against physical integrity	Articles 207, 148	1
Crimes against humanity	Article 124	1
Mistreatment of a spouse, threats - DV	Articles 154, 157 & LADV Article 35	1
Mistreatment of a spouse, kidnapping - DV	Articles 154, 160 & LADV Article 35	1
Obstructing public authority	Article 243	1
Obstructing public authority, prohibited weapons, violation of the rule of law, criminal association, disobedience to an order of dispersal, abuse of public signals or uniform, homicide and attempt -	Articles 234, 211, 202, 188, 193, 194, 138, 23	1

Type of Case	Penal Code	No. of cases
Simple offences against physical integrity, property damage	Articles 146, 258	1
Negligent offences against physical integrity, driving without a license, manslaughter	Articles 148, 207, 140	1
Aggravated simple offences against physical integrity	Articles 145, 147	1
Simple offences against physical integrity, obstructing public authority	Articles 145, 243	1
Simple offences against physical integrity, threats, property damage	Articles 145, 157, 258	1
Simple offences against physical integrity, property damage with use of violence, arson	Articles 145, 260, 263	1
Simple offences against physical integrity, larceny	Articles 145, 252	1
Simple offences against physical integrity, rape, property damage	Articles 145, 172, 258	1
Reciprocal offences against physical integrity	Article 151	1
Simple offences, sexual abuse of a minor	Articles 145, 177	1
Simple offences, property damage DV	Article 145 & LADV	1
Simple offences, aggravated sexual acts with an adolescent - DV	Articles 145, 178, 182 & LADV Article 35	1
Simple offences, property damage - DV	Articles 145, 258, LADV	1
Aggravated homicide - DV	Articles 139 & LADV Article 35	1
Manslaughter, hazardous driving	Articles 140, 209	1
Manslaughter, driving without a license	Articles 140, 207	1
Homicide - DV	Articles 138 & LADV Article 35	1
Homicide, Destruction, theft, hiding or profaning of a corpse	Articles 138, 224	1
Circulation of counterfeit currency	Article 308	1
Misappropriation of public assets	Article 296	1
Misappropriation of public assets, forgery of documents or technical report - corruption	Articles 296, 303	1
Embezzlement - corruption	Article 295	1
Abduction	Article 161	1

Type of Case	Penal Code	No. of cases
Kidnapping, failure to report	Articles 160, 286	1
Attempted sexual abuse of a minor	Article 23,177	1
Attempted homicide - DV	Articles 23,138 & LADV Article 35	1
Attempted homicide, aggravated property damage, disobedience	Articles 23, 138, 259, 244	1
Attempted homicide, property damage	Articles 138, 258	1
Attempted homicide, aggravated homicide, and destruction, hiding or profaning of a corpse – DV	Articles 23, 138, 139, 224 & LADV 35	1
Attempted aggravated rape	Articles 23, 172, 173	1
Unlawful entry	Article 185	1
Unlawful entry, property damage with use of violence	Articles 185, 260	1
Rape - Incest	Article 172	1
Aggravated rape – Incest – DV	Articles 172, 173, 182 & LADV Article 35	1
Aggravated rape	Articles 172, 173	1
Aggravated rape – Incest - DV	Articles 172, 173 & LADV Article 35	1
Aggravated rape, termination of pregnancy - Incest	Articles 172, 172, 141	1
Rape, aggravated human trafficking	Articles 172, 163, 164	1
<b>Total cases</b>		<b>1138</b>



Table B. Civil cases monitored by JSMP in 2015

Case types	Number of cases
Obligation of parental responsibility (Article 831)	12
Land dispute	8
Breach of contract	2
Property claim	2
Condemnatory action	1
Divorce	1
Inventory (Article 858)	1
Writ of possession (Article 317)	1
<b>Total</b>	<b>28</b>

Table C. Cases monitored by JSMP in 2015, for each Court

Court	Criminal Cases	Civil Cases	Total
Baucau	311	4	315
Dili	495	10	505
Oecusse	134	2	136
Suai	198	12	210
<b>Total</b>	<b>1138</b>	<b>28</b>	<b>1166</b>

Table D. Case statistics from all Courts (Court of Appeal and District Courts)

Criminal cases	Total
Pending from 2014	2151
New cases	3096
Judgments	2406
Total pending	2640

Civil cases	Total
Pending from 2014	761
New cases	464
Judgments	315
<b>Total pending</b>	<b>900</b>

Table E. Case statistics from Court of Appeal for 2015

**Criminal Cases**

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total
Pending from 2014	23	20	18	20	21	18	27	43	46	36	42	30	23
New cases	5	10	13	9	15	25	23	4	10	24	14	8	160
Judgments	8	12	11	8	18	16	7	1	20	18	26	9	154
Total Pending	20	18	20	21	18	27	43	46	36	42	30	29	29

**Civil cases**

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total
Pending from 2014	14	11	21	19	25	26	29	35	36	35	39	44	14
New cases	1	12	0	8	4	3	9	1	3	4	5	1	51
Judgments	4	2	2	2	3	0	3	0	4	0	0	1	21
Total Pending	11	21	19	25	26	29	35	36	35	29	44	44	44

Table F. Case statistics from Dili District Court for 2014

**Criminal cases**

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total
Pending from 2014	1337	1471	1568	1646	1717	1832	1859	1968	1932	1894	1893	1880	1337
New cases	174	173	181	188	253	160	252	9	93	133	109	104	1829
Judgments	40	76	103	117	138	133	143	45	131	134	122	74	1256
Total Pending	1471	1568	1646	1717	1832	1859	1968	1932	1894	1893	1880	1910	1910

**Civil cases**

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total
Pending from 2014	476	479	476	487	499	502	514	529	528	531	535	537	476
New cases	9	9	39	34	28	26	42	3	14	41	15	20	280
Judgments	6	12	28	22	25	14	27	4	11	37	13	11	210
Total Pending	479	476	487	499	502	514	529	538	531	535	537	546	546

Table G. Case statistics from Baucau District Court for 2014

**Criminal cases**

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total
<b>Pending from 2014</b>	537	562	569	598	632	648	671	535	535	536	573	568	537
<b>New cases</b>	39	37	74	72	59	89	24	0	24	66	52	21	557
<b>Judgments</b>	14	30	45	38	43	66	160	0	23	29	56	51	555
<b>Total Pending</b>	562	569	598	632	648	671	535	535	536	573	568	538	538

**Civil cases**

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total
<b>Pending from 2014</b>	160	161	163	162	161	164	170	160	160	159	167	167	170
<b>New cases</b>	2	3	1	1	4	9	2	1	7	15	2	8	55
<b>Judgments</b>	1	1	2	2	1	3	12	1	8	7	2	5	45
<b>Total Pending</b>	161	163	162	161	164	170	160	160	159	167	167	170	170

Table H. Case statistics from Oecusse District Court for 2014

**Criminal cases**

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total
<b>Pending from 2014</b>	14	16	33	37	49	42	17	18	18	19	20	23	14
<b>New cases</b>	7	31	26	41	39	11	22	3	13	15	16	12	236
<b>Judgments</b>	5	14	22	29	46	36	21	3	12	14	13	19	234
<b>Total Pending</b>	16	33	37	49	42	17	18	18	19	20	23	16	16

**Civil cases**

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total
<b>Pending from 2014</b>	19	21	18	18	19	21	18	18	16	12	11	12	19
<b>New cases</b>	2	1	1	1	2	0	2	0	1	1	1	4	16
<b>Judgments</b>	0	4	1	0	0	3	2	2	5	2	0	0	19
<b>Total Pending</b>	21	18	18	19	21	18	18	16	12	11	12	16	16

Table I. Case statistics from Suai District Court for 2014

**Criminal cases**

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total
<b>Pending from 2014</b>	240	251	227	242	248	248	272	276	276	303	313	315	240
<b>New cases</b>	13	20	42	28	28	48	25	0	37	17	19	37	314
<b>Judgments</b>	2	44	27	22	28	24	21	0	10	7	17	5	207
<b>Total Pending</b>	251	227	242	248	248	272	276	276	303	313	315	147	147

**Civil cases**

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total
<b>Pending from 2014</b>	82	90	95	99	97	98	102	107	107	112	123	123	82
<b>New cases</b>	9	6	9	3	3	5	6	0	5	11	1	4	62
<b>Judgments</b>	1	1	5	5	2	1	1	0	0	0	1	3	20
<b>Total Pending</b>	90	95	99	97	98	102	107	107	112	123	123	124	124

## Annex B – Corruption cases monitored by JSMP to decision 2015

Type of case	Case No.	Defendant	Chronology	Decision
<b>Dili District Court</b>				
Economic involvement in business (Article 299)	0368/12.PDDIL - 63/14/TDDTIL	-Joao Cancio da Costa Freitas  -Tarcisio do Carmo	<p>The public prosecutor alleged that on 10 August 2009, the defendant JCdCF had an urgent need to install televisions and radios for educational purposes. These were to be used to provide intensive training to teachers during September 2009. The defendant therefore wrote a letter to the Prime Minister (PM) to propose that a limited procurement process be established to purchase equipment for the program. However, the program did not eventuate because the goods delivered by the company were used and were not acquired through normal procedures, with the Ministry Finance and the Ministry of Education overseeing this project.</p> <p>The actions of the defendants caused the State losses of U\$1,410,000.00. The estimated cost of this project was US\$ 2.000,000.00 from the Government's contingency fund.</p> <p>At the start of the process the defendant did not issue an order to the procurement section to initiate a competitive process, and did not consult other companies, only Larrakia Investments Pty. Ltd, from Darwin.</p>	<p>João Cancio Freitas: Prison sentence of 7 years and ordered to pay for the losses suffered by the State totaling US\$500,000.00 and court costs of US\$100.00. Tarcisio do Carmo: Prison sentence of 3 years six months, ordered to pay for the losses of the State totaling US\$200,000.00 and court costs of US\$50.00.</p>

<p>Aggravated Fraud (Article 267)</p> <p>Economic involvement in business (Article 299)</p> <p>Forgery of documents (Article 303)</p>	1049/12./PDDIL	<p>-Casilda da Silva Maria Lobato</p> <p>-Guilhermino da Silva</p> <p>-Luxi chung</p> <p>-Fransisco Antonio Soares dos Santos</p> <p>-Muisen da Costa Ximenes</p> <p>-Afonso Brites</p>	In 2007, it was alleged that the defendants conspired to benefit from a project to purchase two buses for the Ministry of Health valued at \$ 100,000.00 because these two vehicles should have been new, but they were second hand.	Acquitted
Misappropriation of public assets (Article 296)	366/13./TDDIL	<p>-Maria Paixao</p> <p>-August de Araujo</p>	The public prosecutor alleged that on 30 June 2012 the defendant AdA used a state vehicle with the police number plate MP. 8874 to conduct a campaign in Ermera, Liquica and Maliana Districts. In addition, the public prosecutor alleged that on 20 June 2012 the defendant MP used a state vehicle with the police number plate MP. 8860 to conduct a campaign at the large field in Dili ( <i>lapangan Pramuka</i> ).	Acquitted
Baucau District Court				
Misappropriation of public assets (Article 296)	0059/11.PDBAU	Armando Ximenes	On 28 November 2011 the defendant saw the witness PS use a motorcycle that previously he had used to attend a RDTL flag lowering ceremony in Baucau Vila Nova. Then the defendant approached the witness PS and asked for the key to the motorcycle and for the motorcycle to be	Prison sentence of 1 year, suspended for 2 years and ordered to pay court costs of US\$ 20.00. The court also asked the defendant/ convicted person

			<p>given to him. The defendant claimed that when he was in the position of administrator, the defendant used his own money to have the motorcycle serviced. Therefore the witness PS immediately gave the key and motorcycle to the defendant. In addition, the court also found that the defendant had not yet given the motorcycle back to the new Administrator of Baguia Post, and the motorcycle belongs to the State of Timor-Leste.</p>	<p>to give the motorcycle that he was using back to the State.</p>
<b>Suai District Court</b>				
<p>Abuse of power (Article 297)</p> <p>Economic involvement in business (Article 299)</p> <p>Forgery of documents (Article 303)</p>	148/Pen/14./TDS	<p>-Domingos dos Santos Cairo</p> <p>-Jose dos Santos Frietas</p>	<p>The public prosecutor alleged that in 2009, the defendants used money for a project to build a rural road in Cova Village to the border. For the first phase the defendants used money to construct this road, but the road was not finished and was in poor condition and therefore the defendants took out more money and told a company to backfill but this work was not completed. The remaining money was not used by the defendants and it was given back to the State.</p> <p>During the road rehabilitation process the defendant told the skilled laborers to work for longer than what was stated in the contract. The skilled laborers worked on Saturday, Sunday and holidays but they were not paid according to the days that they worked. Therefore the skilled laborers were not satisfied and made a complaint.</p>	<p>Prison sentence of 10 years and ordered to pay court costs of U\$ 200.00 and the other defendant received a prison sentence of 12 years and court costs of U\$ 150.00</p>

Abuse of trust (Article 256)	161/pen/2015TDS	Joao de Carvalho	In May 2012 the defendant sold a hand tractor totaling US\$1000 that the State had provided to a group of farmers in Raimea but in the end he got the money to help his child graduate from UNTL University	The court concluded this case and sentenced the defendant to 2 years in prison, suspended for 2 years and six months
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## **JSMP nia Misaun no Vizaun**

**Vizaun** Sosiadade demokrátiku ne'ebe garantia justisa no direitus umanus ba ema hotu

**Misaun** JSMP sei servisu ho espiritu kolaborativu hodi promove no proteje demokrasia, lei, justisa no direitu umanu liu husi:

- Monitorizasaun
- Edukasaun legál no
- Advokasia

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