



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

2014

**Overview of the Justice Sector**

JSMP Annual Report



EMBASSY OF FINLAND



The Asia Foundation



NORWEGIAN EMBASSY



## Table of Contents

<b>EXECUTIVE SUMMARY.....</b>	<b>3</b>
<b>INTRODUCTION .....</b>	<b>8</b>
<b>1. DEVELOPMENTS IN THE JUDICIAL SYSTEM.....</b>	<b>10</b>
<b>1.1. Independence of the Justice Sector .....</b>	<b>10</b>
1.1.1 Resolutions of the National Parliament and Government.....	10
1.1.2 Presidential Pardons .....	14
<b>1.2. Trials and sentencing in corruption cases .....</b>	<b>15</b>
1.2.1 Case of João Cancio Freitas and the National Director for Finance, Procurement, Logistics and Administration within the Ministry of Education - retrial .....	16
1.2.2 Case involving the PNTL Commander of Criminal Investigations, Calistro Gonzaga - retrial .....	17
<b>1.3. Mobile court .....</b>	<b>20</b>
<b>1.4. Court of Appeal.....</b>	<b>23</b>
<b>2. CHALLENGES AND OBSTACLES FACING THE JUSTICE SECTOR .....</b>	<b>24</b>
<b>2.1. Judicial Actors .....</b>	<b>24</b>
2.1.1 The impact of the Parliamentary and Government Resolutions.....	25
2.1.2 Training and Coaching.....	26
<b>2.2. Budget and Infrastructure in the Justice Sector .....</b>	<b>27</b>
<b>2.3. Language .....</b>	<b>28</b>
<b>2.4. Coordination between justice sector actors (police, prosecutors, judges, prisons).....</b>	<b>29</b>
<b>3. POLITICAL AND LEGISLATIVE DEVELOPMENTS .....</b>	<b>30</b>
<b>3.1. Legislative Program of the National Parliament.....</b>	<b>30</b>
3.1.1 Attendance of the members of parliament at the National Parliament in 2014 .....	30
3.1.2 Productivity of the National Parliament in 2014.....	31
<b>3.2. Problematic and Controversial Resolution .....</b>	<b>35</b>
<b>3.3. Media Law .....</b>	<b>36</b>
<b>3.4. Important Pending Draft Laws .....</b>	<b>37</b>
3.4.1 Draft Anti-Corruption Law.....	37
3.4.2 Law on Reparations for Victims and a Public Memorial Institute .....	38
3.4.3 Package of Land Laws.....	39
3.4.4 Draft Juvenile Justice Law .....	40
<b>4. GENDER EQUALITY .....</b>	<b>40</b>
<b>4.1. Cases of Gender Based Violence.....</b>	<b>40</b>
4.1.1 Statistics on Cases of Gender Based Violence.....	40
4.1.2 Sentences in cases of gender based violence .....	43
4.1.3 Compensation in cases of gender based violence .....	46
<b>4.2. Implementation of Witness Protection Law .....</b>	<b>47</b>
4.2.1 Demands for Protection.....	47
4.2.2 Challenges to implementation.....	47
<b>4.3. Amending the Penal Code to better protect women and children .....</b>	<b>48</b>

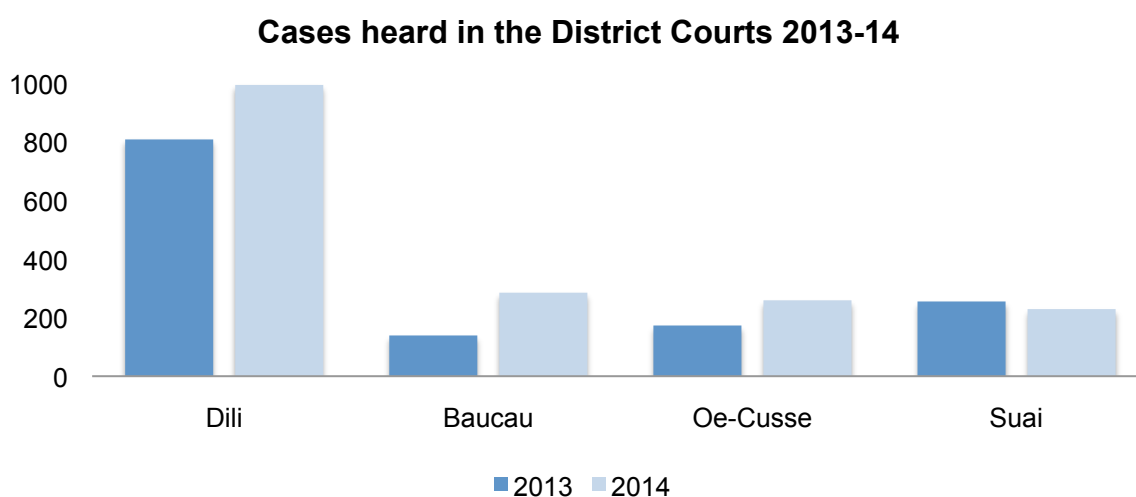
<b>5. CHILDREN IN THE JUSTICE SYSTEM .....</b>	<b>52</b>
<b>5.1. Children's Access to Justice .....</b>	<b>52</b>
<b>5.2. Progress in matters involving children in the formal justice system.....</b>	<b>52</b>
<b>5.3. Gaps in juvenile justice .....</b>	<b>53</b>
5.3.1 Draft Law on Juvenile Justice .....	54
<b>5.4. Statistics .....</b>	<b>56</b>
<b>ANNEXURE A – STATISTICS .....</b>	<b>58</b>
<b>A. Criminal cases monitored by JSMP in 2014.....</b>	<b>58</b>
<b>B. Civil cases monitored by JSMP in 2014 .....</b>	<b>61</b>
<b>C. Cases monitored by JSMP in 2014 by Court .....</b>	<b>62</b>
<b>D. Case statistics from all Courts (Court of Appeal and District Courts) in 2014.....</b>	<b>62</b>
<b>E. Case statistics from Court of Appeal for 2014 .....</b>	<b>62</b>
<b>F. Case statistics from Dili District Court for 2014 .....</b>	<b>63</b>
<b>G. Case statistics from Baucau District Court for 2014 .....</b>	<b>63</b>
<b>H. Case statistics from Oe-cusse District Court for 2014.....</b>	<b>64</b>
<b>I. Case statistics from Suai District Court for 2014 .....</b>	<b>64</b>
<b>ANNEXURE B – CORRUPTION CASES MONITORED BY JSMP IN 2014.....</b>	<b>66</b>

## EXECUTIVE SUMMARY

According to JSMP's general observations of the Timor-Leste judicial system, 2014 was historically important year because the professional capacity and independence of the justice sector faced a major test in the administration of justice in Timor-Leste. On 24 October 2014, the National Parliament issued Resolution No. 11/2014 to audit the judicial sector and terminate the contracts of international judges, prosecutors and advisors. In addition, the Government issued Resolution No. 29/2014 on the creation of a commission to audit the judicial sector and Resolution No. 32/2014 on the mandatory expulsion of international judges, prosecutors and advisors from Timor-Leste within 48 hours. These events, in addition to testing the capacity and independence of the justice sector, also undermined the principle of separation of powers enshrined in the RDTL Constitution.

JSMP applauds the position of the justice sector, and the courts in particular, for remaining resolute and independent in the performance of their duties, despite facing this major challenge. JSMP observed that the courts were very productive in 2014. The Dili District Court tried 994 cases in 2014, an increase from 808 cases in 2013 (+23%), the Baucau District Court tried 285 cases, an increase of 139 cases (+105%), and the Oecusse District court tried 259 cases, an increase of 173 cases (+49.7%). Only the Suai District Court had a reduction in the number of cases that were heard in 2014 (-10.2%).

The volume of cases monitored by JSMP in 2014 increased significantly. During this period JSMP was able to monitor 977 cases, comprising 951 criminal cases and 26 civil cases, an increase from 496 cases in 2013, comprising 481 criminal cases and 15 civil cases (+91.7%).



Statistics relating to cases which JSMP monitored in 2014, and the number of cases heard by the courts in 2014, can be seen at **Annexure A**.

There was also a significant increase in the total number of cases heard by the mobile courts in 2014 compared to 2013. In 2014, JSMP was able to monitor a total of 328 hearings by the mobile court.

In addition to monitoring the district courts, JSMP also monitored the Court of Appeal. In 2014 the Court of Appeal registered 194 cases comprising 159 criminal cases and 35 civil cases. Of the total number of criminal cases, 138 were decided and 34 cases remained pending. Of the total number of civil cases, 17 were decided and 18 remained pending.

Process	Pending from 2013	New cases in 2014	Decisions in 2014	Pending at the end of 2014
Criminal	13	159	138	34
Civil	0	35	17	18
<b>Total</b>	<b>13</b>	<b>194</b>	<b>155</b>	<b>52</b>

In 2014, JSMP also monitored a number of significant corruption cases which included a case involving the former Minister of Education, João Cancio Freitas and the National Director for Finance, Procurement, Logistics and Administration within the Ministry of Education. In addition, JSMP also observed a case involving the former Commander of the Timor-Leste National Police (PNTL), Calisto Gonzaga. In this report JSMP outlines the legal facts, charges, presentation of evidence, decisions and provides a detailed analysis of these cases.

JSMP also makes observations on the challenges and obstacles that exist in the justice sector. The biggest challenge in 2014 occurred when the judicial system suddenly lost the international judicial actors without a plan for transition, as a result of Parliamentary and Government resolutions. As a result, many cases had to be adjourned or retried, and the judicial system lost the experience that the international judicial actors were able to provide (especially in complex cases), trainers from the Legal Training Centre (LTC) were suspended and there was a negative impact on a cooperation program with Portugal and international aid programs such as UNDP. Despite this, the number of court actors increased from 217 in 2013 to 313 in 2014, specifically as a result of new trainees. However, JSMP still considers that there are not yet enough actors to provide and administer justice properly and effectively.

JSMP is also concerned that there was only a small 2.8% increase in funding provided to the justice sector in 2014, in comparison with 2013 which saw an increase of 48.3% from the previous year. JSMP also observed that there was good coordination between the judicial actors, but that the use of the Portuguese language, infrastructure and interference in the judicial sector were major obstacles to the functioning of the justice system.

In addition to observing the justice sector, in 2014 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 Committee A, which deals with justice issues and good governance. The productivity of National Parliament's law-making in 2014 decreased in comparison with other years. In 2014, the National Parliament passed just four laws, which all came from the government in the form of draft laws. According to JSMP monitoring, there are a number of important draft government and parliamentary laws which have been pending for several years. The National Parliament has not rescheduled these laws for discussion and approval, for instance, the draft Anti-Corruption Law, the Law on a Public Memorial Institute, Law on



Reparations, and so on. In this report, JSMP also analyses these and other draft laws that remain pending.

JSMP has also dedicated several chapters in this report to the issue of gender equality and children's issues. In relation to gender equality, JSMP presents the results from its monitoring of cases involving gender based violence. In 2014, JSMP monitored 465 cases characterized as domestic violence and 73 cases involving sexual violence. JSMP analyses sentences and compensation in cases of gender based violence and the application of the Law on Witness Protection. JSMP notes that, even though this law has entered into force, the Government has not yet established the conditions required for its implementation.

JSMP also discusses its joint submission with ALFeLa which identified a range of provisions in the Penal Code that fail to adequately protect women and children, and are inconsistent with Timor-Leste's obligations according to international law and the Constitution. JSMP summarises these provisions and makes recommendations on how to remedy/correct these shortcomings to better protect women and children.

Next, JSMP examines children's access to justice and progress in the formal justice system. Based on monitoring conducted by JSMP in 2014, there has been major progress in trials of cases involving minors. In cases involving minors, the courts have applied severe penalties in accordance with the gravity of the case and JSMP provides some case studies to highlight this progress. JSMP also analyses gaps in juvenile justice, and provides two cases studies which highlight problems that occur when juveniles are prosecuted, and explains why a juvenile justice law is necessary.

JSMP hopes that these general observations of the justice sector in 2014 can provide useful information for the general public and in particular, relevant State bodies and institutions, to contribute directly and indirectly to the functioning of the formal justice system. Therefore, in this report, JSMP not only presents the results of monitoring and analysis, but also provides some important and relevant recommendations that are directed towards the competent and relevant institutions for their consideration. Some of these recommendations are similar to those made in the observation of the justice sector in 2013 because there have been not yet been changes to the systems and services of these State bodies and institutions.

JSMP's recommendations are as follows:

## **1. Judicial independence**

- (i) Judicial institutions and sovereign organs should perform their roles in accordance with the Constitution and laws of Timor-Leste;
- (ii) The National Parliament and Government should show their commitment to judicial independence and reaffirm their respect for the courts to restore public confidence in the judiciary;
- (iii) The National Parliament and Government should ensure access to justice for the Timorese people through the appropriate allocation of resources to the justice sector.

## **2. Pardons**

The Government and National Parliament should develop a Proposed Law on Pardons which includes guidelines for when and how the President can exercise his competence to grant pardons to ensure it is exercised in an appropriate matter, particularly in cases of public interest.

## **3. Training of Judicial Actors**

- (i) The Government, through the Ministry of Justice, should immediately ensure that the Legal Training Centre (LTC) receives sufficient funds and resources, including trainers with experience, in order to ensure the quality training of new judicial actors can continue.
- (ii) Judicial institutions or the LTC should give opportunities to existing judicial actors to continue to receive training, particularly in areas like domestic violence, cases involving children and corruption cases.

## **4. Funding for the Justice Sector**

The Government and National Parliament should allocate sufficient funds to the courts, public prosecutor and public defender in order to improve their facilities and buy necessary equipment.

## **5. Translators in the courts**

The courts should employ additional professional translations to translate from local languages in the permanent and mobile courts.

## **6. Legislative program**

In 2015, Government and the National Parliament should develop a legislative program which gives priority to the Anti-corruption Law, laws on reparations to victims and public memorial institute, land laws and juvenile justice laws.

## **7. Suspended sentences**

- (i) Courts should give suspended prison sentences in accordance with the provisions of the Penal Code, in their decisions include grounds for the suspension, give a detailed explanation to the convicted person and victim about the suspension including the conditions and rules which apply, and revoke the suspension if the convicted person is again convicted of committing another crime or violating the rules or obligations which apply.
- (ii) Relevant authorities should create mechanisms to control convicted persons, particularly in cases of domestic violence, to ensure that convicted persons cannot continue to commit crimes in the period of suspension or violate conditions or obligations which apply.

## **8. Compensation**

Courts should consider ordering compensation to be paid by the convicted person in cases of gender based violence in addition to cases which involve property damage, theft, corruption and negligent homicide, because victims in cases of violence also deserve compensation to repair their suffering.



## **9. Law on the Protection of Witnesses**

The State should ensure conditions to implement the Law on the Protection of Witnesses which has not yet been implemented although it entered into force in 2009.

## **10. The Penal Code in relation to women and children**

National Parliament should consider and take action as outlined in JSMP and ALFeLa's submission on how to improve the Penal Code to better protect women and children, in particularly in relation to incest, crimes against minors, sexual coercion, rape and sexual and physical offences which involve aggravating factors.

## **11. Children's Access to Justice**

In order to respond to the findings of JSMP's report 'Children's Access to Formal Justice in Timor-Leste', relevant institutions must understand and document the children's rights situation in Timor-Leste, improve coordination between child protection actors, develop child justice related legislation and formalise the child protection system, increase specialisation and capacity in child justice and child protection services, establish monitoring mechanisms, assess traditional justice in the context of children's rights, and raise awareness of child justice matters and preventing juvenile delinquency.

## **12. Juvenile justice laws**

The Government and National Parliament need to accelerate 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 accelerate the special penal regime for young people between 16 and 21 years of age who are in conflict with the law and already have criminal responsibility.

## 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.

Addressing the need to consolidate and promote the formal justice system in Timor-Leste in order to enhance the administration of justice and to guarantee justice for all, JSMP expanded its role to monitoring all of the courts in Timor-Leste, including monitoring the National Parliament. In addition to monitoring, JSMP also conducts advocacy to promote transparency and accountability, and to strengthen the rule of law.

The objective of JSMP's monitoring of the justice sector and legislature and its related advocacy is to achieve its vision of establishing and promoting a democratic society that ensures justice and human rights for all.

This overview of the justice sector compiles the results of observations and evaluations of the developments and challenges that have emerged in the justice sector and legislature in 2014. This report includes a number of recommendations that are directed at relevant sovereign organs and competent institutions for their consideration in order to fix the justice system and the work of the legislature in the future.

In addition to carrying out monitoring at the courts and the National Parliament, JSMP has also continued to provide training on access to the formal justice system to leaders and community members in remote villages, secondary school students in the districts, and legal education to communities, and had conducted advocacy on a range of issues including the crime of incest, the implementation of the Law Against Domestic Violence, and the application of suspended prison sentences in cases of domestic violence in accordance with the Penal Code.

This report is set out as follows:

### **Section 1- Developments in the Justice System in 2014**

This section discusses the independence of the justice sector in relation to the intervention of the legislature and the executive in the form of Parliamentary Resolution No. 11/2014, and Government Resolutions No. 29/2014 and No. 32/2009. This section also discusses the trials of a corruption case involving the former Minister of Education, João Cancio Freitas, and the National Director of Finance, Procurement, Logistics and Administration within the Ministry of Education, as well as another important case involving the PNTL Commander of Criminal Investigations relating to the crime of abuse of power and kidnapping. In addition, this section outlines the results of JSMP monitoring conducted in the mobile courts and the Court of Appeal.

### **Section 2 - Challenges and Obstacles facing the Justice Sector**

This second section outlines the challenges that the justice sector encountered when the State of Timor-Leste, through Parliamentary Resolution No.11/2009, terminated the contracts of international advisors, judges and public defenders, including the impact of these resolutions on the trial process at the courts. This section also outlines other challenges such as funding, language, infrastructure and coordination between the judicial actors.

### **Section 3 - Political and Legislative Developments**

This third section outlines the productivity of the National Parliament in 2014, including the total number of laws and resolutions produced by the National Parliament during this one year period. Also, this section outlines important draft laws that the National Parliament has not

rescheduled for debate and approval in 2014. There is discussion also of existing laws and how their implementation continues to result in shortcomings and how they do not respond effectively to the needs of those seeking justice and will lead to social and economic injustice in the future, and therefore need to be amended. These important draft laws include the Anti-Corruption Law, Law on Reparations and a Public Memorial Institute and the Package of Land Laws.

#### **Section 4 – Gender Equality**

The fourth section outlines statistics, sentences and compensation in cases of gender based violence. In addition, this section also outlines the implementation of the Law on Witness Protection which includes demands for protection and challenges to implementation, as well as the joint submission from JSMP and ALFeLa on amending the Penal Code to better protect women and children.

#### **Section 5 - Children in the Formal Justice System**

Section five outlines children's access to justice, progress in the handling of juveniles in the formal justice system and gaps in juvenile justice, including discussion of draft laws on juvenile justice. In this section JSMP presents statistics on cases involving minors.

## 1. DEVELOPMENTS IN THE JUDICIAL SYSTEM

### 1.1. Independence of the Justice Sector

#### 1.1.1 Resolutions of the National Parliament and Government

On 24 October 2014, Timor-Leste was shocked by a resolution of the National Parliament, Resolution No. 11/2014, which called for an audit of the justice sector and Government Resolution No. 29/2014 to create a commission to audit the justice sector and to remove international officials and advisors from the justice system.<sup>1</sup> This resolution was approved by the National Parliament in an extraordinary plenary session that was secret as it was closed to the public. On 31 October 2014 the government approved Resolution No. 32/2014 to order the removal from Timor-Leste of international officers and advisors in the justice system within 48 hours.<sup>2</sup>

JSMP is very concerned about the effects of these resolutions on judicial independence in Timor-Leste and the ability of the justice system to function on a daily basis.

In response to these resolutions, on 30 October 2014, JSMP organized a press conference to remind and encourage the Government and National Parliament to respect the independence of the judiciary and the principle of separation of powers.<sup>3</sup> JSMP believes that the National Parliament or Government had no right to remove judicial officers through a resolution. This can only be done in accordance with the law. The arbitrary removal of judicial officers, whether international or national, threatens the rule of law and the rights of citizens to a fair trial in Timor-Leste.

#### ***How did this impact on the independence of the judiciary?***

The Constitution clearly states that the courts (Article 119) and judges (Article 121.2) are independent and subject only to the Constitution and the law. Therefore it is important to ensure that the courts and judges are able to make decisions in accordance with the law, even if these decisions do not favour the State.

To ensure the independence of judges, the Constitution also states that:

- a. Unless otherwise provided for by law, judges may not be transferred, suspended, retired or removed from office (Article 121.3).
- b. The Superior Council for the Judiciary has been established as a specific body and “organ of management and discipline of the judges of the courts and it is incumbent upon it to appoint, assign, transfer and promote the judges” (Article 128).

These provisions in the Constitution which guarantee the independence of the judiciary, together with the roles assigned to the Superior Council for the Judiciary to manage and discipline judges, show that only the Superior Council may terminate the employment of judges,

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<sup>1</sup> Resolution No. 11/2014 [http://www.jornal.gov.tl/public/docs/2014/serie\\_1/SERIE\\_I\\_NO\\_35\\_A.pdf](http://www.jornal.gov.tl/public/docs/2014/serie_1/SERIE_I_NO_35_A.pdf)

<sup>2</sup> Resolution No. 32/2014 [http://www.jornal.gov.tl/public/docs/2014/serie\\_1/SERIE\\_I\\_NO\\_36\\_A.pdf](http://www.jornal.gov.tl/public/docs/2014/serie_1/SERIE_I_NO_36_A.pdf)

<sup>3</sup> Refer to JSMP Press Release, 30 October 2014, “Parliament and Government must respect the independence of the judiciary and separation of powers” available at: <http://jsmp.tl/wp-content/uploads/2014/01/Parliament-and-Government-must-respect-the-independence-of-the-judiciary-and-separation-of-powers.pdf>

and not the Parliament or Government. The Superior Council can appoint international judges in accordance with Article 111 of the Statute of the Judicial Magistrates and also has the exclusive role of evaluating and suspending judges.

In addition, judges may only be dismissed on appropriate grounds and in accordance with the procedures provided for in the law. This was confirmed by the Court of Appeal in a previous case involving the Portuguese judge Ivo Rosa, in which the court declared that any dismissal that did not adhere to strict provisions of the applicable law would render “the exercise of judicial functions ... more vulnerable to a range of pressures and persecution, of a political nature.”

The Court of Appeal specifically declared that the constitutional guarantee of judicial independence applies equally to international judges as well as their national colleagues.

The Constitution does not clearly define which body has the competence to conduct an audit on the work of the courts. Nevertheless, the Superior Council has a specific constitutional mandate to control the work of the courts. This shows that an audit needs to be carried out by the Superior Council and not by the Government or Parliament.

The Constitution guarantees the independence of the judiciary which also means that any audit of the justice system will only comply with the Constitution when it is conducted in an independent manner, and not as a means to exert political pressure on the judiciary.

### ***Reaction and impact***

The President of the Court of Appeal issued a directive on 28 October 2014 to all of the judge administrators in the district courts and declared that these resolutions had no legal effect and therefore he asked the international judges and court officers to continue performing their functions.

The sudden removal of judicial actors and advisors will significantly disrupt the regular functioning of the courts and the development of the legal system in Timor-Leste.

JSMP observed that as a direct result of these resolutions the Dili, Baucau and Suai district courts needed to suspend, adjourn or retry cases that were being dealt with by the international judges or prosecutors. Between November and December 2014, JSMP observed that 12 cases at the Suai and Baucau district courts were suspended. In relation to the Dili District Court, JSMP did not obtain clear information about how many cases were suspended, but JSMP observed that in some of the complex cases the court suspended the trials as the result of this Parliamentary Resolution, which included corruption cases involving the former Minister of Education, the former Minister of Finance and former Vice Minister of Health.

In addition, these resolutions resulted in the suspension of training at the Legal Training Centre (LTC) because most of the trainers were international staff. The LTC is the body that trains judges in Timor-Leste, and it was not able to function, resulting in new applicants who had started testing in October 2014 having their entry process suspended and the outcome of this process is unknown. This will have serious consequences for judges, prosecutors, public defenders and lawyers in the future.

This resolution also created serious political-diplomatic tensions between the Government of Timor-Leste and Government of Portugal in the field of justice because many of the international judges and prosecutors were from Portugal. For this reason the Portuguese Minister of Justice immediately suspended cooperation between the Government of Portugal and Timor-Leste in the field of justice.

In addition, the resolutions gave rise to international criticism from important groups of magistrates, judges and lawyers. The International Union of Judges (IAJ) condemned the decision of the Government and Parliament of Timor-Leste and said that the resolutions constituted a “violation of the basic principles of judicial independence and the rule of law” and “a serious attack on the trust and legitimacy of justice in Timor-Leste”. The IAJ considered this situation on request from the Association of Portuguese Judges and their statement was supported by the Association of Brazilian Magistrates.<sup>4</sup>

The Judicial Conference of Australia (JCA) and Northern Territory Bar Association (in Darwin, Australia) also condemned the Government and Parliament’s interference in the independence of the judiciary,<sup>5</sup> and the JCA wrote to the President and Prime Minister of Timor-Leste to raise their concerns and call on them to support judicial independence in accordance with the Constitution.<sup>6</sup>

### ***Intervention by the Prime Minister***

JSMP was also concerned about the visit of the Prime Minister to the Dili District Court on 18 November 2014, without any official invite, to hold a one on one meeting with the judge administrator Duarte Tilman.<sup>7</sup> It was reported that in this meeting the Prime Minister expressed his respect for the court’s decisions and independence, but at the same time he handed over some documents relating to some cases that were being investigated. JSMP is concerned that this could be construed as improper interference in the courts.

JSMP also questions the political statements made by the Prime Minister against the decision of the Dili District Court in relation to the case of ConocoPhillips against the Government of Timor-Leste. According to the Prime Minister, the judges did not have the capacity to carry out in-depth analysis of cases involving taxation. The Prime Minister said that this would not have occurred if the judges gave careful consideration when issuing their decision, rather than issuing a careless decision.

At the same time the Prime Minister also issued a political statement questioning the work of the Public Prosecutor which represented the State although it did not have the capacity to fully understand contracts at the international level, especially contracts between the State of Timor-Leste and ConocoPhillips, and yet the Public Prosecutor insisted on exercising exclusive competence to represent State interests. The Prime Minister said that it was even worse that the Dili District Court issued a very irresponsible decision against the Timor-Leste Government in favour of or in defence of the MINZAS company. The Prime Minister believed that the court did not have the required capacity and conscience and integrity as judges, and the court was completely erroneous in its analysis. This statement was published in the Timor Post newspaper on 8 January 2014.

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<sup>4</sup> See website of the Association of Brazilian Magistrates: <http://novo.amb.com.br/?p=249>

<sup>5</sup> See website of the Northern Territory Bar Association: <http://ntba.asn.au/wp-content/uploads/Media-Release-the-Judiciary-in-Timor-Leste.pdf>

<sup>6</sup> See website of the Judicial Conference of Australia: <http://www.jca.asn.au/wp-content/uploads/2014/11/JCA-media-statement-2-re-Timor-Leste-27-Nov-2014.pdf>

<sup>7</sup> Refer to JSMP Press Release, 19 November 2014, “Visit of Prime Minister to Dili District Court could raise a range of questions” available at: [http://jsmp.tl/wp-content/uploads/2014/01/PR\\_Vizita-PM-ba-TDD-bele-hamosu-pergunta-oioin\\_ENGLISH-ET+SK-sujestaun\\_-2\\_.pdf](http://jsmp.tl/wp-content/uploads/2014/01/PR_Vizita-PM-ba-TDD-bele-hamosu-pergunta-oioin_ENGLISH-ET+SK-sujestaun_-2_.pdf)



JSMP is concerned with these statements because they strengthen the public perception that the Government has interfered with the court. Public perception is also an important part of judicial independence. In the Ivo Rosa case, the Court of Appeal emphasized the importance of public perception in strengthening judicial independence. It observed that “the circumstances and manner in which the decisions were made would allow the mass media to publish and suggest that the decisions issued by the appellant were politically motivated.”

These resolutions were presented as the Government’s response to some decisions that were unfavourable to the Government in relation to tax revenue or allegations relating to cases involving corruption. These grounds reflect political motivations. Because these grounds are politically motivated, this can strengthen public perception that these resolutions interfered with judicial independence. This supports the conclusion that these resolutions can be considered to have violated the constitutional principle of judicial independence.

JSMP is also concerned with the reaction of the Prime Minister Xanana Gusmão who wrote a letter addressed to the Chair of the National Parliament on 22 October 2014 to prevent members of Parliament from lifting the immunity of members of Government until their mandate expires in 2017.

JSMP believes that this intervention undermines the principle of separation of powers which is clearly stated in the RDTL Constitution and has negative impact on those working towards strengthening the justice system in Timor-Leste which is still fragile and under construction. In addition, JSMP is concerned that cases allegedly involving the former Vice Minister of Health and Minister of Finance have not been processed by the courts as the result of the letter. This behaviour will enable corrupt practices to flourish in Timor-Leste and the entire community will suffer.

JSMP observed that by the end of 2014 the courts had not scheduled a date to try this case. JSMP hopes that in early 2015 this case can be processed.

### **Recommendations**

In addition to the press conference mentioned above, on 22 December 2014 JSMP published a thematic report entitled *Dismissal of international officials and advisors in the Timor-Leste judicial sector, An analysis of the constitutionality, legality and impact of Parliamentary Resolution No. 11/2014 and Government Resolutions No. 29/2014 and 32/2014*.<sup>8</sup>

In this report, JSMP recommended five important points as follows:

- The Courts, Public Prosecutor, Public Defender and Anti-Corruption Commission continue to carry out their roles in accordance with the Constitution and the laws of Timor-Leste.
- The Parliament and Government restore public confidence in the judiciary by publicly declaring their commitment to judicial independence, and stating that the courts may make impartial decisions according to law, free from political interference.
- The Parliament and Government remove fears of threats or interference by reaffirming their respect for judges’ constitutional entitlement to security of tenure, and confirming judges’

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<sup>8</sup> JSMP Thematic Report, December 2014, *Dismissal of international officials and advisors in the Timor-Leste judicial sector, An analysis of the constitutionality, legality and impact of Parliamentary Resolution No. 11/2014 and Government Resolutions No. 29/2014 and 32/2014*, available at: <http://jsmp.tl/publikasaun-publications/thematic-reports>

prosecutors' and public defenders' respective Superior Councils are responsible for disciplinary matters, including dismissals.

- The Parliament and Government ensure continued access to justice for the Timorese people through the appropriate allocation of resources to the justice sector to enable the recruitment of capable and experienced judges, prosecutors and other judicial officers as soon as possible.
- Civil society shows their support for the independence of the courts and other judicial institutions, and encourages the Parliament and Government to take the actions recommended above.

**Recommendation 1:**

- Judicial institutions and sovereign organs should perform their roles in accordance with the Constitution and laws of Timor-Leste;
- The National Parliament and Government should show their commitment to judicial independence and reaffirm their respect for the courts to restore public confidence in the judiciary;
- The National Parliament and Government should ensure access to justice for the Timorese people through the appropriate allocation of resources to the justice sector.

### 1.1.2 Presidential Pardons

On 30 August 2014 the President of Timor-Leste exercised his competence in accordance with the Constitution to grant pardons to 5 prisoners who had been convicted by the courts for committing crimes including corruption and incest. Those granted pardons included the former Minister of Justice, Lucia Lobato, who was sentenced by the court to 5 years in prison for corruption but only served 18 months. This led to a controversial debate at all levels of society, that is likely to continue if there is no legislative mechanism to control this process in the future.

The President has the competency to grant pardons pursuant to Article 85(1) of the Constitution, and JSMP has no objection to the President exercising his competency through legal channels in a way that respects the other principles set out in the Constitution.

However, JSMP is concerned that pardons which are not well considered or are politically motivated have the potential to impact on the credibility and independence of the courts, the principle of separation of powers, the rule of law, human rights and other democratic values. It is important to have a law that provides guidance when granting pardons, and if possible, to limit this competency. This power needs to be exercised in an appropriate manner, especially for cases involving corruption and other cases of public interest involving sexual violence and incest.

JSMP recommends that the granting of pardons include an option to reduce the penalty gradually, rather than granting a full pardon, which has been the practice to date. This will strengthen people's confidence in judicial institutions and limit the public perception that the law only applies to the common people. On 17 and 19 September 2014 JSMP met with the President of the CNRT Bench Mr. Natalino dos Santos and Vice President of the FRETILIN Bench Mr. Fransisco Miranda Branco to discuss the issue of pardons. The President of the CNRT Bench expressed appreciation and support for JSMP's initiative to raise the issue of pardons for discussion with their benches. He stated that the CNRT Bench would consider

JSMP's view and conduct more detailed analysis when the Government presents a draft law on pardons to the National Parliament.

JSMP understands that CNRT and the other benches have wanted to draft a law, but they have encountered difficulties because there are no legal experts in Parliament to support their work.

The Vice President of the FRETILIN Bench stated that his bench believes that crimes of corruption, sexual violence or incest should not be pardoned. FRETILIN recognizes that the Constitution gives competency to the President to grant pardons to prisoners, but they believe that there should be an exception for cases involving the public interest.

JSMP has previously prepared a submission to the Ministry of Justice about pardons in 2010, which can be viewed on JSMP's website.<sup>9</sup> JSMP will continue to advocate on this important issue in 2015.

#### **Recommendation 2:**

The Government and National Parliament should develop a Draft Law on Pardons that provides guidelines on when and how the President can exercise his competency to ensure that the power is exercised in an appropriate manner, especially in cases of public interest.

## **1.2. Trials and sentencing in corruption cases**

In 2014 JSMP observed that the courts processed 14 cases involving crimes characterised as corruption.

The 14 cases tried by the courts all involved crimes characterized as corruption, but only one case involved a high level state authority. This is at odds with the public perception that there are many corruption cases allegedly involving high level authorities in Timor-Leste. The corruption case involving the Minister of Finance and Vice Minister of Health should have been tried in 2014 but because of a strong reaction from the Prime Minister, Xanana Gusmão, the case has been adjourned until now.

JSMP believes that the reaction of the Prime Minister towards cases involving corruption will allow corruption cases to flourish in this country, because people will have the perception that corruption has no impact and they can continue to commit corruption because they will be saved by high ranking people.

To minimize the crime of corruption in the future, all people should contribute to end this practice. This is not just the responsibility of one or two institutions. In particular, there needs to be a guarantee that institutions which are empowered by law are able to freely exercise their duties without the interference of political authorities.

When individuals or institutions try to minimize the independence and effective functioning of judicial institutions, they create the likelihood that the practice of corruption will increase in the future and also raise questions about the State's commitment to combat corruption.

JSMP is very concerned about attempts to influence the work of the justice sector because they violate the Constitutional principle of the separation of powers.

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<sup>9</sup> JSMP Report on pardons can be viewed at: [http://jsmp.tl/wp-content/uploads/2013/03/JSMPSubmissionindultubaMoJOct\\_t.pdf](http://jsmp.tl/wp-content/uploads/2013/03/JSMPSubmissionindultubaMoJOct_t.pdf)

The corruption cases observed by JSMP in 2014 are summarised in **Annexure B**.

### **1.2.1 Case of João Cancio Freitas and the National Director for Finance, Procurement, Logistics and Administration within the Ministry of Education - retrial**

In 2009, João Cancio Freitas assumed the position of Minister of Education and he and his National Director for Finance, Procurement, Logistics and Administration within the Ministry of Education were charged by the Public Prosecutor with the crime of economic involvement in business in relation to the acquisition of televisions for educational purposes in 2009.

#### ***Legal facts***

The Public Prosecutor alleged that in 2009, the two (2) defendants were suspected of directly intervening in a project relating to the installation of radios and televisions in the Ministry of Education when the first defendant assumed his role as the Minister of Education. The project was valued at US\$1,403,000 for the purchase of materials relating to the installation of televisions and radios in all sub-districts for Ministry of Education programs. However, these materials were second hand, did not have serial numbers and there was no transparency in the procurement process.<sup>10</sup>

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

The Public Prosecutor alleged that the two (2) defendants violated Article 299 of the Penal Code on economic involvement in business, which carries a penalty of 3 to 15 years in prison.

#### ***Examination of evidence during the trial***

During the trial the defendant João Cancio rejected the allegations of the Public Prosecutor that before the proposal was approved the defendant guaranteed the contract to an Australian company which won the tender for the project. The defendant stated that he did meet with this company in Australia before the proposal was initiated. However, this was at the comparative study phase.

Meanwhile the defendant TdC, who was the National Director who signed the *Cost of Goods Sold* (CPV), had before the proposal requested a payment for the project without verifying if the goods actually met the requirements of the contract.

The witness PA, who was the former Vice Minister of Education, and the majority of the department heads in Finance, Logistics and Procurement, stated that they did not have detailed knowledge of the project, because they were not closely involved in the entire process.

After hearing the statement of the defendants and witnesses the court stopped the trial process because the international judge who was a member of the panel of judges was required to immediately leave Timor-Leste pursuant to Parliamentary and Government resolutions.

This case has not yet been scheduled for a new trial as the direct result of the resolutions discussed above.

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<sup>10</sup> The Public Prosecutor's allegations are summarized in the JSMP Press Release, 6 October 2014, "Former Minister of Education tried by the Dili Court for allegedly committing the crime of economic involvement in business", [http://jsmp.tl/wp-content/uploads/2014/01/PrTribun%C3%A1IDiliHalaoJulgamentubaKcrimePartisipasaunEkonomiahisorueisMEJoaoCancio\\_ENGLISH.pdf](http://jsmp.tl/wp-content/uploads/2014/01/PrTribun%C3%A1IDiliHalaoJulgamentubaKcrimePartisipasaunEkonomiahisorueisMEJoaoCancio_ENGLISH.pdf)

### 1.2.2 Case involving the PNTL Commander of Criminal Investigations, Calistro Gonzaga - retrial

The PNTL Commander of Criminal Investigations, Calistro Gonzaga, was charged by the Public Prosecutor in 2012 with the crime of abuse of power and crime of failing to report in relation to four Indonesian citizens and one African who allegedly brought 6.5 kilograms of illegal drugs into Timor-Leste.

#### ***Legal facts<sup>11</sup>***

The Public Prosecutor alleged that on 20 October 2012 the defendant was the Commander of Criminal Investigations, and he arrested four Indonesian citizens and one African at the Central Hotel. They were suspected of bringing in 6.5 kilograms of illegal drugs into Timor-Leste although only 3.5 kilograms reached the Public Prosecutor and 3 kilograms went missing without justification.

After arresting the five suspects, the defendant did not immediately bring them to the Public Prosecutor to facilitate an investigation, but rather the defendant left the suspects to move around freely at the Central Hotel. Then on 23 October 2012 the defendant took the five suspects to the Nicolao Lobato Airport to send them back to Indonesia.

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

The Public Prosecutor charged the defendants with violating Article 297 of the Penal Code on the crime of abuse of power which carries a prison sentence of between 1 and 4 years, as well as Article 286 of the Penal Code which is punishable with the penalty that corresponds to the penalty for the unreported crime with its minimum and maximum limits decreased by two thirds.

#### ***Examination of evidence during the trial***

On 18 June 2014, at the trial the defendant told the court that before he sent the suspects to Indonesia the defendant was given an oral instruction by the Commander General of PNTL, Longuinhos Monteiro, to send the five suspects back to Indonesia because there was a Memorandum of Understanding between the Anti-Drug Agency and the Government of Timor-Leste, via the PNTL General Command. For this reason the defendant complied with the order and the instruction.

Based on the statement of the defendant during the trial, his lawyer requested that the court notify the Commander General of PNTL, Longuinhos Monteiro, and the Prime Minister Xanana Gusmão, so they could provide their testimony in court relating to the order and instruction given to the defendant on the grounds of national interest. However, the court did not consider this request.

On 12 July 2014, the Commander General of PNTL, via an interview with the *Diario Nasional* newspaper, stated that he was willing to respond in court at any time to provide justification in relation to this case. However, he added that there was no written notification from the court

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<sup>11</sup> The public prosecutor's allegations and the decision in this case are summarised in JSMP Press Release, 13 August 2014, "Court sentences former Commander of Criminal Investigations to 9 years in prison" [http://jsmp.tl/wp-content/uploads/2014/01/PrTribunal-Kodena-eis-komandante-investigasaun-ho-pena-tinan-9-prizaun\\_ENGLISH.pdf](http://jsmp.tl/wp-content/uploads/2014/01/PrTribunal-Kodena-eis-komandante-investigasaun-ho-pena-tinan-9-prizaun_ENGLISH.pdf)

addressed to him asking him to justify his position in relation to the order and verbal instruction claimed by the defendant.<sup>12</sup>

*“I can go there and respond at any time, but until now there has been no information about this, and there are rules that apply to this case, because each case is processed individually,”* said the Commander General to journalists after participating in a ceremony to launch a book at the municipal office in Fatuhada on the Electoral Process in Guinea Bissau, in Dili, Friday (11/07).

The witness Miguel de Jesus (PNTL officer) testified that on 20 October 2012 they arrested five foreigners at the Central Hotel in Bidau. The witnesses discovered that the five foreigners were bringing in drugs but permitted them to stay in their room at the Central Hotel and they were not allowed out for 3 days. On 23 October 2012 the witness and other PNTL officers took the five foreigners in a PNTL vehicle to the airport to send them back to Indonesia.

On 24 July 2014 testimony was heard from the witness Cerilio Jose Cristovão who was the Director of the National Intelligence Service. He testified that the National Intelligence Service received information that five foreigners were bringing drugs into Timor and therefore worked together with the PNTL Criminal Investigations Service to detect the commission of a crime affecting national security. This witness also stated that when these five citizens were arrested, he went to Central Hotel and saw the five foreigners there. In relation to some materials that were in bags at the scene of the crime, the witness testified that he did not see them, because he was standing some distance away and only the defendant Calistro Gonzaga opened the bags.

### ***Final recommendations***

On 24 July 2014 after hearing witness testimony the court proceeded to hear the final recommendations.

The Public Prosecutor recommended that the defendant be found guilty of committing the crime as charged by the Public Prosecutor. The Public Prosecutor believed that the defendant was involved in this case based on the testimony of witnesses during proceedings. Therefore the Public Prosecutor requested that the court impose a prison sentence of 8 years against the defendant.

The defence argued that 8 years in prison would not be a fair penalty for the defendant. The defence stated that the defendant was a victim in this matter. The defendant was a PNTL officer and he had to comply with the instruction given by his superior. Therefore the defence stated that the five citizens were ordered to return to their country, not because that is what the defendant wanted or based on his own initiative, but because he received an order from his superior. Lastly the defence requested for the court to apply a fair and favourable penalty against the defendant.

### ***Decision from the Court of First Instance***

On 8 August 2014 the court read out its ruling in this case but before it announced its final decision the court amended the charge from the crime of abuse of power pursuant to Article 297 of the Penal Code to the crime of kidnapping pursuant to Article 160 of the Penal Code. This crime carries a penalty of 2 to 8 year in prison.

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<sup>12</sup> Diario Nacional, 12 July 2014, “Case of Calisto Gonzaga, Longuinhas is willing to respond in court”



The decision was read out by international judge, Julio Gantes, and stated that after evaluating the facts and the statements of the defendants, the court found that the actions of the defendants fulfilled the crime of kidnapping and the crime of failure to report. The court found that the defendant was involved in 6 different crimes including the failure to report for which the court sentenced the defendant to 4 years in prison, as well as 5 instances of the crime of kidnapping the 5 foreigners, for which the court sentenced the defendant to 3 years in prison for each instance. The court accumulated the 6 crimes and imposed a single penalty of 9 years in prison against the defendant.

The 9 year prison sentence was based on aggravating circumstances because the defendant was a police officer whose primary duty is to guarantee security and strengthen the rule of law in the nation, and he should have known that drugs offences are serious crimes. The five foreigners who were suspected of being involved in drug offences in 2012 should have been arrested and prosecuted in court. Nevertheless, the court also considered that the defendant was given an order by the Commander General of PNTL to release the five suspects, which was a mitigating circumstance which mitigates the penalty against the defendant.

### ***The position of the Public Prosecutor and request from the defence***

After hearing the final decision, the Public Prosecutor requested that the court immediately apply pre-trial detention against the defendant pursuant to Article 194 of the Criminal Procedure Code to ensure that the defendant does not flee Timor-Leste. The defence objected to this request because the defendant had cooperated well with the court. The defence guaranteed that the defendant would not abscond and avoid his responsibilities and would wait for the decision from the Court of Appeal because the defence also intended to lodge an appeal. Based on the request from the defence, the court applied Proof of Identity and Residence measures (TIR) against the defendant in accordance with Article 186 of the Criminal Procedure Code and also confiscated the defendant's passport to ensure that the defendant did not abscond from Timor-Leste.

### ***Appeal from the defence***

The defence lodged an appeal with the Court of Appeal against the decision of the court of first instance, because it did not consider the defendant's statement that he was instructed by his superiors to allow the five foreigners to go back to Indonesia. In addition, the court did not consider the request of the defence to present the defendant's superiors, namely the Commander General of PNTL and the Prime Minister Xanana Gusmão, so they could provide testimony to the court in relation to the order that they gave to the defendant to release the five foreigners.

### ***Decision from the Court of Appeal***

On 28 October 2014 the Court of Appeal issued a decision to annul the decision from the court of first instance (the Dili District Court) which had been appealed. This means that the decision of 9 years jail imposed by the Dili District Court against the defendant was no longer valid and a retrial was required because it was deemed necessary for the Dili Court to hear testimony from the PNTL Commander, Longuinhos Monteiro, and the Prime Minister, Xanana Gusmão, as the superiors of the defendant who at that time allegedly gave an instruction to the defendant to release the five citizens (statement made by the defence to the Timor Post Newspaper, 1 December 2014).

According to JSMP observations, in January 2015 the Dili District Court had not yet set a date to retry this case.

### **Commentary**

JSMP believes that this is a serious crime which is contrary to the function of PNTL to guarantee security and public order, uphold justice, provide protection, and serve the public in accordance with their duties and respect for human rights as provided for in the law. The defendant was a high ranking Commander in the PNTL who should have had a good understanding that his main responsibility was to combat crime including combatting organized crime, such as drug offences.

JSMP believes that it's important to ensure that all trials reflect the principle of "a fair trial" as a universal principle that applies in a democratic nation like Timor-Leste. JSMP agrees with the decision of the Court of Appeal to order a retrial in this case because it considers that the court of first instance should hear from the superiors of the defendant as they are important witnesses in this case.

The court of first instance did not provide an opportunity to the defendant to present an adequate defence and relevant witnesses because the court did not consider the request of the defendant to hear witness testimony from the Commander General of PNTL.<sup>13</sup> Article 60 of the Criminal Procedure Code on the defendant's rights states that the defendant has the right to a fair trial including the right to provide evidence and request any action deemed necessary for his defence.<sup>14</sup> Unfortunately in this case, the court did not consider the request of the defendant to notify those witnesses who had knowledge about this case.

JSMP hopes that when the retrial occurs the court will be able to notify the Commander General to ensure that there is a fair trial. This will also show that the judicial process has credibility and that rights and the truth can be upheld and the public can have faith in this process.

### **1.3. Mobile court**

The mobile court is a program to bring formal justice to the people in remote areas, the majority of whom are farmers. In these areas the roads are in poor condition, and people have limited transport and financial means, which makes it difficult for them to participate at the district courts to find the truth either as defendant, victim or witness.

Timor-Leste has only four district courts to deal with cases from 13 districts. This means that many people have to travel a long way to access the courts and often it is difficult and expensive.

The mobile court program is supported by UNDP through the Justice System Program.

JSMP believes that the mobile court initiative is a very positive step because this initiative is a concrete response to the challenges faced by the parties, because they don't have the means to travel to the court by themselves. The mobile court provides an alternative mechanism which

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<sup>13</sup> Refer to JSMP Press Release, 13 August 2014, "Court sentences former Commander of Criminal Investigations to 9 years in prison" available at [http://jsmp.tl/wp-content/uploads/2014/01/PrTribunal-Kodena-eis-komandante-investigasaun-ho-pena-tinan-9-prizaun\\_ENGLISH.pdf](http://jsmp.tl/wp-content/uploads/2014/01/PrTribunal-Kodena-eis-komandante-investigasaun-ho-pena-tinan-9-prizaun_ENGLISH.pdf)

<sup>14</sup> Refer to Article 60 (h) of the Criminal Procedure Code on the rights of the defendant.

is productive, as it brings justice to the public and encourages the public to use the formal justice sector as a more favourable way of resolving conflicts that occur in their communities.

The procedures of the mobile court are the same as those that apply for trials at the district courts. These trials also require judges, prosecutors and public defenders/private lawyers, including the assistance of judicial officers who have the duty to ensure that the parties attend court on the scheduled date and time. The main difference between trials at the district courts and the mobile court is the location where the trials take place.

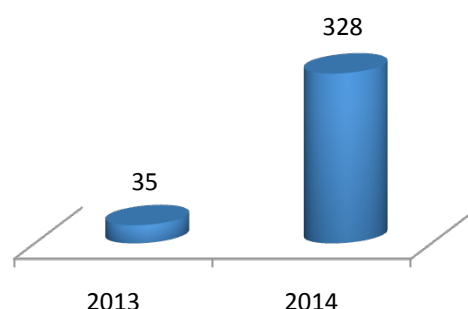
The mobile court was first implemented in 4 districts – Ainaro, Manufahi, Bobonaro and Covalima, which are considered as districts that are geographically large. Also, many people in these districts encounter the difficulties referred to above when they are seeking access to the district courts.

In February 2014 the Vice Minister of Justice told the public that between 2010 and 2013 the mobile court was able to process 280 cases and approximately 2000 or more people benefitted from this mobile court.<sup>15</sup> Between 2010-2013 the mobile court processed and tried 184 cases in four districts/remote areas, and approximately 2,000 or more people benefitted from the mobile court process.

Between 2013 and 2014 JSMP was able to monitor 363 cases in the mobile court. These cases do not represent all of the cases that were tried by the mobile court, as JSMP was unable to monitor all because of internal obstacles and commitments with other institutions.

**Table 1: Total number of mobile court cases monitored by JSMP in 2013 and 2014**

Year	Number
2013	35
2014	328
<b>Total</b>	<b>363</b>



As can be seen in the table above, in 2013 JSMP was able to monitor 35 cases from the mobile court, but in 2014 JSMP monitored a total of 328 cases, which is a significant increase. Although this does not reflect the total number of cases tried by the mobile court, it does show that in 2014 the district courts started to regularly conduct trials via the mobile court in rural areas.

Although the courts have developed an approach that brings justice to the communities in rural areas via the mobile court, JSMP is concerned with the volume of cases that are being tried within a short amount of time. For example between 24-26 September 2014 the Suai District

<sup>15</sup> Joint report from the United Nations Development Program Timor-Leste Country Program 2010-2013 presented by the Vice Minister of Justice on 16 February 2014 at Timor Plaza.

Court conducted the mobile court in Bobonaro District and managed to hear a total of 31 cases from the 47 cases that were scheduled to be heard.<sup>16</sup>

JSMP is concerned with the quality of these trials because 47 cases were scheduled to be heard in a three day period, and the court processed 31 cases. Some of these 31 cases involved serious crimes which need a process with sufficient time to ensure that good quality decisions can be handed down.

The mobile court program is a means to bring justice to communities in remote areas, but JSMP has observed that sometimes the mobile court was unable to do so because there were no interpreters who spoke the local languages, as occurred in Lautem District. Because of this the police had to provide interpretation. JSMP believes that even though the police can speak the local languages well, ideally a professional interpreter should be appointed to avoid a conflict of interest during proceedings.<sup>17</sup>

JSMP believes that the role of the police is to provide security, not interpretation. When a police officer acts as an interpreter in a case, he/she might be aiming to provide assistance to the parties so they can understand the trial process, however the parties involved in the case might think that the police officer is favouring the victim or the defendant. This is because the police officers are part of a judicial institution that is very close to the community and they receive complaints and also attend to cases during the first phase of investigations. When the police act as interpreters during the trial process it can confuse the public because they believe that the police can also be one of the parties that determines or decides the matter.

JSMP observed that so far the mobile courts have been conducted in the sub-district PNTL buildings, in the administration rooms, and in some public places located near the market, and the local PNTL provide security.

The mobile court in the districts, sub-districts and at the village level are always accompanied by the local police. This is a positive step showing that the judicial institutions of the police, Public Prosecution Service, Office of the Public Defender, private lawyers and the courts have good cooperation to ensure that the justice system is effective and brings justice to the people through the mobile court.

Even so, in some trials the police who are providing security fail to protect victims of sexual abuse from the public who are watching the trial because the police let them take photos, laugh and clap.<sup>18</sup> In these particular cases, apart from the police, the court has also failed to protect the victims because the court has the power to prohibit activities and movements which interrupt the court process.

Even though there are many challenges in implementing the mobile court, JSMP appreciates the mobile court initiative for reaching those areas where the parties are residing. This program has had a positive impact because it has made it easier for the parties, especially in relation to their financial circumstances and can reduce the number of pending cases.

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<sup>16</sup> JSMP Press Release, 08 October 2014, "Suai District Court conducts mobile court in Bobonaro District", <http://jsmp.tl/wp-content/uploads/2014/01/Tribun%C3%A1l-Distrit%C3%A1l-Suai-hala%E2%80%99o-Tribun%C3%A1l-Movel-ihá-Distritu-Bobonaro.pdf>

<sup>17</sup> JSMP Press Release, 30 September 2014, "Baucau District Court conducts mobile court in Lautem District for the first time".

<sup>18</sup> JSMP Press Release, 3 October 2013, "Victim of Sexual Assault dissatisfied with the mobile court trial that was open to the public".

Through the mobile court the participants who are observing the trial process can pass on information about what they see, hear and feel during the trial process in relation to the functioning of formal justice. In addition, the mobile court program can address the public perception that justice is expensive and only the rich can have access to the courts. This is because the mobile court comes to their place of residence and they don't have to spend a lot of money, time and energy to seek justice.

#### **1.4. Court of Appeal**

The Court of Appeal currently also functions as the Supreme Court of Justice which is the highest court in Timor-Leste.<sup>19</sup> If a party who is affected by the decision of a court at first instance feels dissatisfied with the decision of the court then the law provides an opportunity to lodge an appeal, in both civil and criminal matters, to the Court of Appeal.

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 send the matter back to the court of first instance that originally tried the matter for a retrial. This occurs if the Court of Appeal decides that some of the facts or evidence are erroneous and need to be supplemented.

The President of the Court of Appeal, Gulhermino da Silva, was sworn in by the President of the Republic Taur Matan Ruak on Monday 3 March 2014 and replaced the former President of the Court of Appeal, Claudio Ximenes, who resigned from this position.

The new President of the Court of Appeal, Gulhermino da Silva, highlighted an important point when he was elected as the President of the Court of Appeal, by promising that he would endeavour to continue the work that has been carried out during the last 10 years and that he will further reform the justice system. In particular, he will provide training to further improve the quality of the justice sector.

Based on JSMP monitoring in 2014 and a discussion with the President Court of Appeal on 9 February 2015 the Court of Appeal did not conduct any trial hearings in 2014 and only held deliberations on several cases, and several other cases were sent back to the court of first instance to conduct a retrial because the Court of Appeal considered that some of the facts were incomplete.

In 2014 the Court of Appeal registered 194 cases comprising 159 criminal cases and 35 civil cases. Also, there are 13 criminal cases pending from 2013. There are no pending civil cases.

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<sup>19</sup> Pursuant to Article 124 of the RDTL Constitution that states the Supreme Court of Justice as the highest court of law in Timor-Leste. However, it has not been established yet.

**Table 2: Total number of cases registered by the Court of Appeal in 2014**

Process	Pending from 2013	Commenced 2014	Decided 2014	Pending 2014
Crime	13	159	138	34
Civil	0	35	17	18
<b>Total</b>	<b>13</b>	<b>194</b>	<b>155</b>	<b>52</b>

From these 194 cases the Court of Appeal decided 155 cases, comprising 138 criminal cases and 17 civil cases. There were 52 pending cases from 2015, comprising 34 criminal cases and 18 civil cases.

The Table above shows that there were more pending cases in 2014 compared with 2013. In 2014 there were 52 pending cases, but in 2013 there were only 13 pending cases, which means an increase of 39 from 2013. JSMP recommends that in the future, efforts should be made to avoid an increase of pending cases like that which occurred during the last year, given that the volume of cases registered at the Court of Appeal was not high in comparison with the cases that were registered at the courts of first instance.

JSMP is also concerned that of the 155 cases decided by the Court of Appeal in 2014 not one case involved a hearing. JSMP is concerned that no cases involved a hearing because a hearing can give interested parties the opportunity to participate in and understand the court process. Hearings are also important for transparency of the judicial process. JSMP recommends that the Court of Appal considers conducting hearings in more cases in 2015.

## **2. CHALLENGES AND OBSTACLES FACING THE JUSTICE SECTOR**

### **2.1. Judicial Actors**

According to JSMP's monitoring, there were 165 judicial actors and officials in 2012 and 2013. JSMP observed that in 2013 the number of functionaries increased by an additional 52 people bringing the total of court actors and staff to 217. Even though these 52 people were probationary, this is a positive step in relation to human resources in the courts. In 2014 all of the courts combined had 54 administrative staff who worked to support the functioning of the justice sector.



**Table 3: Number of court actors in 2014**

Court Actors			Permanent	New	Total at end 2014
	2012	2013	2014		
<b>Judges</b>	31	36	28	12	40
<b>Prosecutors</b>	24	29	29	11	40
<b>Public Defenders</b>	22	26	26	10	36
<b>Justice Officials</b>	78	115	113	-	113
<b>Translators</b>	10	11	9	-	9
<b>Administrative Functionaries</b>	-	-	54	-	54
<b>Total</b>	<b>165</b>	<b>217</b>	<b>259</b>	<b>33</b>	<b>292</b>

In 2014 the Government swore in 33 judicial actors from the Fifth training course, comprising 12 judges, 11 prosecutors and 10 public defenders. This means that now there are 137 judicial actors working in the justice sector to uphold the rights of the community to obtain access to justice.

For example, the Suai District Court received a boost to its human resources with an additional prosecutor, which means now it has 3 public prosecutors. The public defenders in Suai were boosted by 3 private lawyers, which means now there are 5 defence lawyers.

### 2.1.1 The impact of the Parliamentary and Government Resolutions

At the start of 2014 the State continued its policy of conducting training at the Legal Training Centre (LTC) to increase human resources in the justice sector. The Ministry of Justice, through the LTC, recruited law graduates to compete for a place in the Sixth course, however with the issuance of Parliamentary Resolution No. 11/2014 and Government Resolution No. 29/2014, as discussed above regarding an audit of the justice sector and the termination of the contracts of international judges, prosecutors and international advisors, this recruitment was cancelled even though it had progressed to the second round.

These resolutions have had a major impact on the justice system because many cases are still being processed and the judicial actors need to conduct retrials.

JSMP is really concerned about the impact of these resolutions on human resources in the justice sector for the following reasons:

- The judicial system suddenly lost 7 judges, 2 prosecutors and an advisor to the Anti-Corruption Commission, without a transition plan. For this reason the judicial system has a shortage of human resources, but there are many cases that need to be processed.
- These resolutions resulted in the suspension of training at the LTC. This will cause delays for the new candidates and will have consequences for judges, prosecutors, public defenders and lawyers in the future.

- The cooperation program between the Community of Portuguese Speaking Countries (CPLP) such as Portugal, Brazil etc, as well as other international aid programs, may be hindered because the international community may believe that Timor-Leste does not need international support. This situation will have an impact on training and the development of the judicial actors in the future.

JSMP observes that the legal system in Timor-Leste is developing and faces a range of challenges. The courts need enough resources to enable them to work effectively. These resolutions have taken away important resources from a justice sector that is still fragile.

JSMP agrees with the policy to nationalize the trainers at the LTC to reduce the dependence on international trainers. However, this policy did not need to be implemented immediately without an effective plan, which is what has happened. Sufficient time is required to develop the Timorese judicial actors so they can be trainers of high quality. Although preparations are being made for national trainers, it is important for them to be accompanied by international support before the justice sector can stand alone or cease to rely on international actors.

### 2.1.2 Training and Coaching

As discussed above the President Court of Appeal, Gulhermino da Silva, intends to further reform and improve the justice system, and in particular will provide training to further improve the quality of the justice sector. He said:

*“There have been efforts to reform the justice system, in relation to human resources, and there has been good development during the last 10 years, but we need to further develop the sector. Reform is definitely necessary, and change is necessary to make further improvements, to improve the system we will need quality human resources.”*

The President of Court of Appeal said that the Court of Appeal will continue to increase the knowledge of the judges in terms of building their legal knowledge and language skills. The president said that for a number of years the courts have been working with the Portuguese courts so that judges from Timor-Leste can attend training in Portugal to increase their knowledge, especially in the legal field, because 2 years of training at the LTC is not sufficient to provide a judge with the experience required.

This regular training involves 2 judges every 6 months. The training covers both criminal and civil matters, without a specialization so that the judges can gain knowledge in all areas, with a specific focus on crimes that do not yet exist in Timor-Leste but are likely to occur in the future. This training can increase the judges’ knowledge of these crimes and when they get back to Timor-Leste they can apply the knowledge that they have learned.

JSMP is pleased with the court’s policy to continue increasing the knowledge of the judges in all areas, especially organized crimes that do not yet exist in Timor-Leste. This is a step towards strengthening the capacity of the judges so that they have enough knowledge to make a decision in ordinary cases, as well as future cases in Timor-Leste. However, JSMP remains concerned that the judges and the other judicial actors have so far had limited opportunities to increase their knowledge. JSMP again recommends that all judicial actors to have the opportunity to receive further training and coaching.

### Recommendation 3:

- The Government, through the Ministry of Justice, should immediately ensure that the LTC is able to obtain sufficient funding and resources, including experienced trainers, to ensure high quality training for new judicial actors can continue;
- Judicial institutions or the LTC should provide opportunities for existing judicial actors to continue receiving training, particularly in areas like domestic violence, cases involving children and cases involving corruption.

## 2.2. Budget and Infrastructure in the Justice Sector

In 2014, the Timor-Leste justice sector received funds totalling US\$ 29,055,000 which showed an increase from US\$ 28,251,000 in 2013. From these funds, the Ministry of Justice received US\$ 21,340,000, the courts received US\$ 4,087,000, and the Public Prosecution Service received US\$ 3,628,000. Other justice sector institutions received the amounts displayed in the Table below.

**Table 4: Funding for the justice sector in 2013 and 2014**

	Budget 2013 (US\$)	Budget 2014 (US\$)	% change
<b>Ministry of Justice, including:</b>	\$17,787,000	\$21,340,000	+20%
- Public Defender's Office	\$ 894,000	\$ 917,000	+2.6%
- Legal Training Centre	\$ 193,000	\$ 175,000	-9.3%
- Other *	\$16,700,000	\$20,248,000	+21.2%
<b>Courts, including:</b>	\$5,698,000	\$4,087,000	-28.3%
- Court of Appeal	\$ 2,852,000	\$ 3,498,000	+22.6%
- District Courts	\$ 2,846,000	\$ 551,000	-80.6%
<b>Public Prosecution Service</b>	\$4,766,000	\$3,628,000	-23.9%
<b>TOTAL BUDGET FOR JUSTICE SECTOR:</b>	<b>\$28,251,000</b>	<b>\$29,055,000</b>	<b>+2.8%</b>

\* The main beneficiaries of Ministry of Justice funding include the National Directorate of Registry and Notary Services, National Directorate of Prison Services and Social Reintegration, National Directorate of Administration and Finance and National Directorate of Land and Property and Cadastral Services, and others.

The budget allocated to the justice sector in 2014 increased by just 2.8% from the allocation in 2013, compared with a 48.3% increase between 2012 and 2013. However, in 2014 the Dili, Baucau and Oecusse courts processed more cases than previous years. The Dili District Court tried 994 cases in 2014, compared with 808 cases in 2013 (+23%), the Baucau District Court tried 285 cases, compared with 139 (+105%), and the Oecusse District Court tried 259 cases, compared with 173 (+49.7%). Only the Suai District Court tried less cases in 2014 (-10.2%). Therefore, JSMP is concerned that the funding for the justice sector in 2014 does not reflect the increasing number of cases. JSMP encourages the National Parliament to consider this when it allocates funding for the justice sector in 2016.

In 2013 JSMP questioned the issue of resources, equipment and facilities, through its thematic report on Access to Justice in Timor-Leste: Welfare of Judicial Actors and the Capacity of Legal

Institutions.<sup>20</sup> In that report JSMP recommended that human resources and facilities should be provided for judicial actors. JSMP observed that in 2014 some changes occurred.

For example, in August 2014 all of the district courts had a metal detector (GARET) installed at the front entrance. JSMP is pleased with the State's efforts to provide this equipment because in previous years some people entered courts carrying dangerous weapons. Therefore, the addition of a metal detector can protect the courts from potential threats towards the court itself and will enable judicial actors to work in safety.

The Baucau District Court had a police post installed on the court premises to provide security. The Baucau District Court has also received an increase in PNTL officers to provide security during working hours.

In September 2014, the Chief Administrators of the four district courts received new Pajero vehicles that are of high quality to support the work of the judges in rural areas. In addition, the administration also received another operational vehicle to complement an older vehicle, to support judicial officers when they issue summons to parties in rural areas.

Despite this, JSMP continues to observe some problems with facilities. For example, in Suai jurisdiction it is difficult to notify the parties, including defendants, victims and witnesses, because of limited vehicles. JSMP again recommends that the Government and National Parliament allocate sufficient funds to the courts, the Office of the Public Prosecutor and Office of the Public Defender, to improve facilities for the justice system.

#### **Recommendation 4:**

The Government and the National Parliament should allocate sufficient funds to the courts, the Public Prosecution Service and the Office of the Public Defender to improve their facilities and purchase necessary equipment.

### **2.3. Language**

In 2014 language continued to be an obstacle in the justice sector. Interpreters in all district courts faced obstacles interpreting Portuguese to Tetum, and Tetum to Portuguese, and to/from local languages, especially in relation to legal terminology, and the courts also faced the obstacle of a lack of interpreters for local languages.

For example, when the mobile court was conducted for the first time in Lautem District, between 22 – 26 September 2014, JSMP observed that when trials were taking place the issue of local languages was an obstacle for the parties, namely the defendants, victims, and witnesses as well as judicial actors. Although the court has interpreters, they did not have enough knowledge of local languages to provide interpreting from Fataluku to Tetum and Makalero to Tetum.

Due to a lack of qualified interpreters who can use the local languages, the police had to provide interpretation. JSMP believes that even though the police can speak the local languages well, it would be better to appoint professional interpreters to avoid a conflict of interest during proceedings.

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<sup>20</sup> Available at: [http://jsmp.tl/wp-content/uploads/2012/05/RelatorioBemEstarAutorJUDISIARIU\\_ENGLISH.pdf](http://jsmp.tl/wp-content/uploads/2012/05/RelatorioBemEstarAutorJUDISIARIU_ENGLISH.pdf)

JSMP recommends that in the future, when planning to organize mobile trials in this district, the court should think about preparing interpreters for these local languages.

JSMP continues to consider that language is an important aspect in any case because it has an important and direct link with the ability of the parties involved to properly understand their rights and the implications of court decisions against them. Even though JSMP has many times expressed concerns about this issue, there is no comprehensive approach to respond to this situation.

**Recommendation 5:**

The courts should find additional professional interpreters to translate to/from local languages in both the permanent and mobile courts.

## **2.4. Coordination between justice sector actors (police, prosecutors, judges, prisons)**

Justice actors include the police, prosecutors, judges and prison guards. For work in the justice sector to be effective, there is a need for good coordination between these justice actors.

When a crime occurs, the police are the agents closest to the community and the main actors who will deal with the case from the time of arrest and during the investigation. After the police complete their work the case file or results of the investigation will be handed over to the prosecutor to carry out thorough investigations to determine which articles (of the Penal Code or other law) are relevant to the case.

After investigations are complete the prosecutor will charge the defendant for violating particular article(s) and will send a notification to the court to wait for the date of the trial. The court will process the matter and decide whether to convict the defendant and impose an appropriate sentence. This will depend on the gravity of the case. Only the court can decide if a person is guilty or not. After a decision has been made for the convicted person to serve a prison sentence, then the last group of actors who deal with the convicted person are the prison officials.

Therefore, the working relationship outlined above will be effective when there is close coordination and cooperation between these four institutions.

JSMP has observed that to date cooperation between the police and the prisons has been effective and they often cooperate and coordinate with each other when they are performing their functions, especially when a case is being processed. For example: The police often transport the defendant, victim or witness to attend a trial even if they have to travel long distances. However, the police often face obstacles because of limited transport.

Meanwhile, the prisons comply with court notifications and notifications from the court for a defendant or convicted person to attend a trial process (including parole) even when they have to travel a considerable distance. There are only two prisons in Timor-Leste, namely Dili and Gleno. These distances do not make it impossible for the prison officials, or dampen their spirit, as agents who serve the nation and accompany the defendants to trial. JSMP has observed that often these parties return to prison on the same day. For this reason, we need to appreciate the work that the prison professionals are providing to the public.

When conducting the mobile court or inspecting a crime scene, the courts cooperate with the police so they can provide security in the field to avoid any unexpected problems from occurring.

These observations were noted during monitoring of the mobile courts and show that the judicial institutions, namely the police, Public Prosecution Service, Office of the Public Defender, private lawyers and the courts have engaged in good cooperation to ensure that the justice system is effective and they are able to bring justice to the people through the operation of the mobile court.

Nevertheless, JSMP has observed some challenges relating to the work and cooperation of these institutions, especially issues that impact on women and children. In relation to the police, as mentioned previously, JSMP is concerned that the police have failed to protect victims of sexual abuse from the public who are watching the trial, as members of the public have been taking photos, laughing and clapping.

Another issue that influences the long time it takes to process cases is that the police don't have sufficient knowledge when they are conducting investigations. Many cases take a long time to be investigated by the police and then they are submitted to the public prosecutor, but the public prosecutor has to send the cases back to the police because some information is missing. For this reason JSMP suggests that the State allocate funding to police institutions, in particular to the special investigations unit, to increase their knowledge when they are conducting investigations into cases, especially those crimes that involve women and children.

The Law Against Domestic Violence states that there are four ministries that work together to implement this law. These four ministries are the Ministry of Health, Ministry of Education, Ministry of Social Solidarity and the Secretary of State for the Promotion of Equality, but in terms of implementation these ministries lack cooperation and effective communication. JSMP recommends that lines of coordination be strengthened and for these types of cooperation to be institutionalized with active involvement, and standards adopted and implemented to ensure that the rights of women and children to access justice in accordance with the law.

### **3. POLITICAL AND LEGISLATIVE DEVELOPMENTS**

#### **3.1. Legislative Program of the National Parliament**

In 2014 JSMP, through its Parliamentary Watch Project (PWP), observed parliamentary productivity in terms of the legislative process, oversight and political decision making. In addition to observing productivity, JSMP also observed the attendance of the members of parliament in the plenary and Committee A of the National Parliament.

Like previous years, in 2014 JSMP again observed that the National Parliament did not give priority to rescheduling, discussing and approving a range of laws which JSMP believes are very important to the interests of Timor-Leste. These draft laws include the Anti-Corruption Law, Law on Reparations and a Public Memory Institute and the Package of Land Laws.

##### **3.1.1 Attendance of the members of parliament at the National Parliament in 2014**

According to JSMP's observations, the attendance of members of parliament has a significant impact on the productivity of the parliament. The ability of the plenary to facilitate discussion and decision making depends on the establishment of a "quorum", which means that there needs to

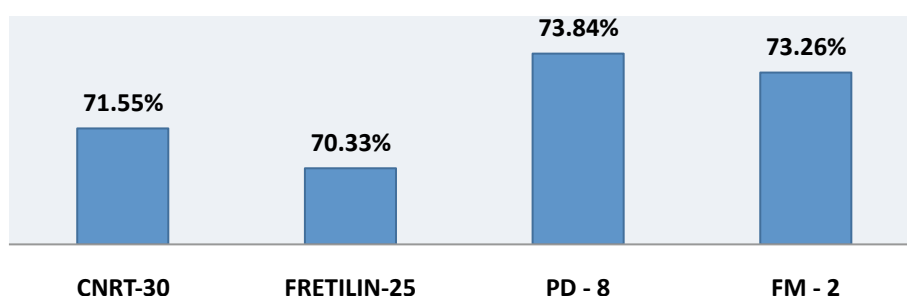


be at least one third of members present.<sup>21</sup> When an important political or legislative issue needs to be discussed and decided by the Parliament a quorum needs to be established, and if there are not enough members present, then the plenary will be suspended. This situation has a large impact on the productivity of the Parliament.

JSMP has observed that in previous years some members of parliament have not attended and did not observe the parliamentary rules of procedure which state that normal working hours of National Parliament are from 09:00am to 18:00pm.<sup>22</sup>

The graph below shows the breakdown of attendance by the parliamentary benches in plenary sessions during 2014, based on JSMP monitoring.

**Average attendance of each party in the plenary - January to December 2014**



In 2014 JSMP observed that the members of parliament continued to violate the working hours but the chair of the parliament did not issue any sanctions. In a national seminar organized by JSMP on the topic of “Democracy and Public Participation in the Law Making Process,” on 20 February 2014, at Delta Nova Dili, MP Adriano do Nascimento, the Vice President of the National Parliament, acknowledged this situation. However, he argued that some members of parliament do not attend work in accordance with the working hours because they have to attend to other activities outside the parliament, such as participating in national workshops and seminars. He also stated that the low attendance rate often means that a quorum cannot be established and discussions on important laws have to be suspended.

Although JSMP recognizes that members of parliament sometimes have to attend other important activities, JSMP believes that their attendance in the plenary, especially when voting takes place, is more important so that they can fulfil their duties in accordance with the Constitution. The public should question the commitment of members and the effectiveness of Parliament if this practice continues.

### 3.1.2 Productivity of the National Parliament in 2014

In 2014 the productivity of National Parliament decreased significantly in comparison with previous years. During the 2014 financial year National Parliament did not discuss, debate and approve any draft laws that came from the National Parliament itself. National Parliament only discussed, debated and approved 4 draft laws which all came from the government. The table below provides information about these draft laws:

<sup>21</sup> Subsection 1) Art. 47 Law No. 15/2009 Parliamentary Rules of Procedure  
[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>22</sup> Subsection 2) Art. 46 Law No. 15/2009 Parliamentary Rules of Procedure  
[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)



**Table 5: Laws approved by Parliament in 2014**

Law	Date of admission	Date of final approval	Date of promulgation	Votes		
				For	Against	Abstain
Proposed Law No. 9/III on Social Communication	22/10/2013	06/05/2014	13/11/2014	53	0	4
Proposed Law No. 2/2014 on the General State Budget 2014	25/10/2013	24/01/2014	03/02/2014	64	0	0
Proposed Law No. 3/2014 to Create a Special Administrative Region for Oe-Cusse Ambeno and Establish a Special Zone for Social Economic Market	30/04/2014	23/05/2014	16/06/2014	55	0	0
Law No.16/III/2015 on the General State Budget 2015	15/10/2014	19/12/2014	29/12/2014	65	0	0

In 2014 National Parliament also approved 16 resolutions, which is the same amount produced in 2013. The resolutions produced by the National Parliament are listed in the Table below:

**Table 6: Resolutions approved by Parliament in 2014**

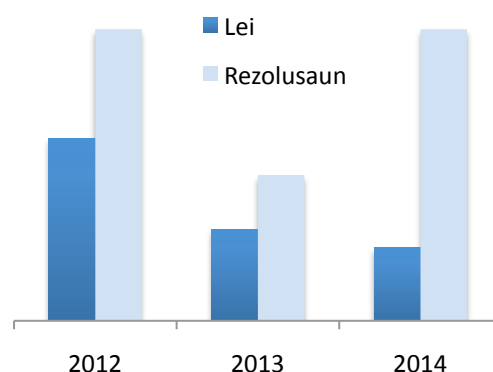
No.	Resolution	Date of Admission	Date of final approval	Votes		
				For	against	abstain
1	Resolution No. 1/2014 about the state budget 2012	11/12/2014	11/12/2014	60	0	2
2	Resolution No.2/2014 to approve the United Nations Convention Against the Illicit Traffic of Narcotic Drugs and Psychotropic Substances	11/6/2013	09/07/2014	47	0	0
3	Resolution No. 3/2014 to approve the United Nations Convention on the Elimination of the Financing of Terrorism	11/6/2013	09/07/2014	50	0	0
4	Resolution No. 4/2014 on refusal to accept attempts to cause instability and threats to the State	03/03/2014	03/03/2014	63	0	0
5	Resolution No. 5/2014 approving the Cooperation Agreement for Areas of Training for Humanitarian Assistance, Fight Against Natural Disasters between the Government of Timor-Leste and Government of Japan.	18/2/2014	04/03/2014	51	0	0
6	Resolution No. 6/2014 on an Agreement on visas and diplomatic passports between the Democratic Republic of Timor-Leste ho Republic of Indonesia.	14/3/2014	29/04/2014	47	0	2
7	Resolution No. 7/2014 on National Parliament's design of the Anti-Corruption Commission	15/07/2014	15/07/2014	44	12	0
8	Resolution No. 8/2014 on the confirmation of Deliberation No. 1/2014 on Parliamentary Assembly for Community of Portuguese Speaking Nations approving first amendment to Statute on Parliamentary Assembly for Community of Portuguese Speaking Nations and Deliberation No. 2/2014 approving first amendment to the Regime for the Parliamentary Assembly for Community of Portuguese Speaking Nations	15/07/2014	15/07/2014	52	0	0

No.	Resolution	Date of Admission	Date of final approval	Votes		
				For	against	abstain
9	Resolution No. 9/2014 on the Visit of the President of the Republic RDTL to Indonesia	17/10/2014	17/10/2014	35	0	0
10	Resolution No. 10/2014 condemning the publication of news articles about a declaration from the Prime Minister that Timor-Leste will integrate again with Indonesia	20/10/2014	20/10/2014	51	0	0
11	Resolution No. 11/2014 on the Necessity for an Audit of the Justice Sector	24/10/2014	24/10/2014	38	5	7
12	Resolution No. 12/2014 on support for the Government to create a special council to define maritime boundaries	24/10/2014	24/10/2014	50	0	0
13	Resolution No. 13/2014 on an Agreement between the Government of RDTL and the Government of the Republic of China on visas, official, diplomatic and work passports.	6/8/2014	14/10/2014	45	0	0
14	Resolution No. 14/2014 on the Ratification of the Constitution of the International Labour Organisation	10/9/2014	14/10/2014	46	0	0
15	Resolution No. 15/2014 to approve the National Parliament action plan for 2015 and make the first amendment to Resolution No. 2/2009, second amendment to Resolution No. 3/2009	01/10/2014	21/10/2014	45	0	6
16	Resolution No. 16/2014 on the Creation of the Eventual Commission to discuss and analyse the proposed OJE 2015	09/12/2014	09/12/2014	63	0	2

The table below shows a comparison between the productivity of National Parliament between 2012 and 2014. The productivity of National Parliament started to decrease in 2013 and continued in 2014.

**Table 7: Comparison of the productivity of National Parliament 2012 to 2014**

Year	Productivity	
	Laws	Resolutions
2012	10	16
2013	5	8
2014	4	16
<b>Total</b>	<b>18</b>	<b>39</b>



In addition to making laws and engaging in political decision making in the form of resolutions, in 2014 National Parliament through its plenary appointed the Anti-Corruption Commissioner and Ombudsman for Human Rights and Justice (PDHJ) in July and October respectively. National Parliament appointed Aderito Tilman as the new Anti-Corruption Commissioner and he

started work in July 2014. National Parliament also appointed Silverio Baptista Pinto as the new Ombudsman for Human Rights and Justice and he started his work in October 2014.

The table above shows that in 2014 National Parliament only approved 4 draft laws and 16 resolutions. Between July and August no laws were approved because the members of parliament were absent for two months due to the annual parliamentary recess. Between mid-November and mid-December no legislation was approved because the plenary was busy debating the 2015 State Budget.

In 2014 National Parliament did not reschedule any draft government or parliamentary laws which had been introduced in 2013 or before. There are a number of draft government and parliamentary laws which have not been given consideration by National Parliament for rescheduling, debate and approval. These draft laws are as follows:

**Table 8: Draft laws that are pending or have passed their due date 2012 to 2014**

Law	Date of admission
Draft Parliamentary Law No. 29/II, amending Law No. 1/2007 on lifetime pensions for members of parliament and other regulations in Law No. 7/2007 on statutory office holders	13/02/2012
Draft Parliamentary Law No. 21/II on Anti-Corruption	08/11/2011
Draft Government Law No. 18/II on Local Government	18/02/2009
Draft Parliamentary Law No. 20/II on a Public Memorial Institute	16/06/2010
Draft Parliamentary Law No. 19/II on a National Program for Reparations	16/06/2010
Draft Government Law No. 9/II on Weapons	02/04/2008
Draft Government Law No. 19/II on Municipal Elections	18/02/2008
Draft Government Law No. 6/II on Property Finance Fund	06/09/2013
Draft Government Law No. 7/III on Special Regime for Definition of Real Estate Title	06/09/2013
Draft Government Law No. 8/III on Expropriations	06/09/2013
Draft Government Law No. 13/III on Forestry	08/05/2014
Draft Government Law No. 14/III on General Census of Population and Housing	14/05/2014

JSMP is concerned about this level of productivity because according to the democratic system of Timor-Leste National Parliament is the sovereign organ with the main responsibility for making laws. If National Parliament is not very productive in terms of making laws, this will impact on the process of national development, particularly in relation to issues which need to be defined and regulated through a legal framework. JSMP encourages and recommends to the National Parliament to effectively use and manage its time to give priority to important laws for discussion and approval in 2015, especially those laws that remain pending such as the Draft Anti-Corruption Law, Draft Law on National Reparations, Draft Law on a Public Memorial Institute, Package of Land Laws and Juvenile Justice Law, which are discussed further below.

### 3.2. Problematic and Controversial Resolution

Of the resolutions approved by the National Parliament in 2014, the resolution that was most problematic and controversial was National Parliament Resolution No. 11/2014 regarding an audit of the justice sector, which is discussed earlier in this report.

As discussed earlier in this report, on 24 October 2014 the National Parliament approved this resolution through an extraordinary plenary session that was closed to the public. This resolution authorised the Government to audit the justice system in Timor-Leste and to immediately terminate the contracts of international judges, prosecutors, public defenders and advisors working in the justice sector.

This resolution and the other two resolutions from the Government, namely Resolution No. 29/2014 and No. 32/2014 on 24 and 31 October 2014, sparked discussion amongst the members of the National Parliament. For example, on 7 November 2014 the Vice President of the FRETILIN Bench, MP Francisco Miranda Branco, said that Parliament's resolution would not upset diplomatic relations between Portugal and Timor-Leste, because these countries have been friends in the past and now.

On 10 November 2014 the Prime Minister Xanana Gusmão held a meeting with the Portuguese Ambassador to Timor-Leste, Manuel de Jesus Gonsçaves, to talk about a new policy in the justice sector.

On 10 November 2014 the former President of the National Parliament, and the current President of the Fretilín Party, Francisco Guterres "LU-OLO", considered that the Parliament's and Government's resolutions were political decisions that did not adhere to the National Parliament Rules of Procedure because the procedure followed was not correct or just.

On 11 November 2014 the Deputy Prime Minister, Fernando Lasama de Araujo, said that Parliament's decision has higher authority because the Parliament can make laws and revoke laws.

On 13 November 2014 the Prime Minister informed the President that he would send the Minister of Justice, Deonísio Babo, to Portugal to explain the resolution. Prior to this the President expressed his concern about the potential effect of these resolutions regarding the relationship with Portugal and the Community of Portuguese Speaking Countries.<sup>23</sup>

The Minister of Justice visited Portugal on 17 and 18 November 2014, and met with the Portuguese Minister of Justice and members of the Superior Council for the Judiciary as an effort or attempt to restore work cooperation. The Portuguese officials clearly expressed their disappointment in relation to the expulsion of the judicial actors.<sup>24</sup>

As stated previously, JSMP is concerned about these resolutions, especially their impact on the justice system. JSMP is also concerned that the procedures followed by the Parliament in passing the resolution were improper because the plenary session was closed to the public. Law No. 15/2009 on the National Parliament Rules of Procedure does not allow for a plenary

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<sup>23</sup> Refer to *Tempo Semanal*, 7 November 2014, "President of the Republic TMR indirectly requests for the Legislative and Executive to Respect the Independence of the State Organs" <http://www.temposemanal.com/politika/pr-tmr-indireitamente-husu-lejizlativa-ho-exekutivu-respeita-independencia-orgaun-estadu-sira>

<sup>24</sup> Government of Timor-Leste Press Release, "Minister of Justice concludes his visit to Portugal", 21 November 2014, <http://timor-leste.gov.tl/?p=10903&lang=tp>

session to be closed to the public.<sup>25</sup> This creates a problem in relation to the transparency of parliament.

In addition, as discussed above and also explained in JSMP's report on this issue,<sup>26</sup> in JSMP's view, the National Parliament does not have the constitutional authority to issue a resolution like this. This resolution violates the Constitution and violates the principle of separation of powers. JSMP calls on the National Parliament and new Government to respect the principle of separation of powers, and to carry out political decision making in accordance with the Constitution and the law.

### 3.3. Media Law

National Parliament approved the Law on Social Communication (Media Law) on 6 May 2014 and sent it to the President for promulgation. The President vetoed this law in accordance with his constitutional power and sent it to the Court of Appeal for a preventative appraisal on the constitutionality of the law.<sup>27</sup> This occurred because parliament received many submissions from civil society expressing their concerns about constitutional issues. In addition, journalists believed that the contents of this draft law did not reflect the reality or context of Timor-Leste.

The Court of Appeal appraised the law and concluded that Articles 20, 24 and 40 of the law were unconstitutional. On 27 October 2014 the National Parliament reopened debate to reconsider the law following the Court of Appeal's conclusion that those articles were unconstitutional.

During this debate National Parliament amended Articles 20 and Article 40, however the members of parliament maintained Article 24 that deals with foreign capital on the grounds that it guarantees the sovereignty of the State pursuant to Law No. 5/2005 on Foreign Investment. National Parliament reapproved this law with an absolute majority vote and sent it again to the President for promulgation.

Pursuant to Article 88.2 of the Constitution "if, within ninety days, the National Parliament confirms its vote by an absolute majority of its Members in full exercise of their functions, the President of the Republic shall promulgate the statute within eight days after receiving it". Finally, the President promulgated this law on 13 November 2014.<sup>28</sup>

The Media Law was a draft law initiated by the Government. The Council of Ministers approved it on 6 August 2013 and sent it to National Parliament. In early February 2014 National Parliament held a public consultation and asked for the public to participate in this process.

JSMP participated in this legislative process because it believes that freedom of expression, the press and the media is a fundamental principle and value of human rights enshrined in Article 19 of the Universal Declaration of Human Rights, Article 19 of the International Covenant on

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<sup>25</sup> Law No. 15/2009 on the National Parliament Rules of Procedure  
[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>26</sup> JSMP thematic report, December 2014, *Dismissal of international officials and advisors in the Timor-Leste judicial sector, An analysis of the constitutionality, legality and impact of Parliamentary Resolution No. 11/2014 and Government Resolutions No. 29/2014 and 32/2014*, available at:  
<http://jsmp.tl/publikasaun-publications/thematic-reports>

<sup>27</sup> Articles 85(e) and 149 of the RDTL Constitution

<sup>28</sup> Law No. 5/2014 on the Media: <http://www.jornal.gov.tl/?q=node/6488>

Civil and Political Rights and Articles 40 and 41 of the Timor-Leste Constitution. Therefore it is important to ensure that the State protects and promotes the exercise of these rights.

On 26 February 2014, JSMP gave a submission to the National Parliament regarding this draft law. In its submission JSMP concluded that after analysing this draft law several problems were identified, including the following:

- a) It was too basic and incomplete;
- b) It was not well structured;
- c) It did not adhere to norms;
- d) Many definitions were unclear and confusing;
- e) Many definitions were simply opinions or ideas, and not expressed in a legal form;
- f) In its current form it cannot be used to establish a sound juridical regime for the press in Timor-Leste.

JSMP proposed amendments to this draft law and presented a new structure to Committee A of National Parliament. Committee A considered the proposed new structure and asked JSMP to develop the content of this structure. In its second submission JSMP presented a new structure with complete definitions. The National Parliament considered this submission and took up some of the alternative articles proposed by JSMP to be included in the Media Law.<sup>29</sup>

Even though the National Parliament made amendments to this law before it was reapproved, journalists and civil society continue to claim that this law is not good for the rights and freedom of expression in Timor-Leste. JSMP will continue to monitor the implementation of this law.

### 3.4. Important Pending Draft Laws

In this section JSMP will present its observations on those important draft laws that are still pending or have passed their due date in 2014. In 2014 National Parliament did not manage its time very well so it could table these important draft laws for debate and approval. JSMP believes that these legal frameworks are extremely important to consolidate the justice system and for national development. JSMP provides observations on the following draft laws.

#### 3.4.1 Draft Anti-Corruption Law

In 2014 the draft Anti-Corruption Law was not rescheduled for debate by the National Parliament. This law is important to ensure that the State of Timor-Leste can comply with its desire and commitment to combat and prevent corruption.

Timor-Leste has ratified the International Convention Against Corruption (UNCAC)<sup>30</sup> and in 2009 National Parliament produced the Timor-Leste Penal Code which defines some crimes relating to corruption. Notwithstanding this, it is also necessary to have a specific law on the functions of the Anti-Corruption Commission (CAC) to be approved by National Parliament to complement the Penal Code and also to strengthen CAC and the courts so they can deal with corruption.

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<sup>29</sup> Refer to JSMP's submissions: <http://jsmp.tl/wp-content/uploads/2014/03/Submisaun-Lei-Imprensa-versaun-dahuluk.pdf> ( first version) no <http://jsmp.tl/wp-content/uploads/2014/03/Submisaun-versaun-daruak-Lei-Imprensa2.pdf> (second version) and annex: <http://jsmp.tl/wp-content/uploads/2014/03/Definisaun-Lei-Imprensa2.pdf>

<sup>30</sup> The International Convention Against Corruption:  
[http://www.unodc.org/documents/treaties/UNCAC/Publications/Convention/08-50026\\_E.pdf](http://www.unodc.org/documents/treaties/UNCAC/Publications/Convention/08-50026_E.pdf)



Before CAC was established in 2010, corruption was dealt with by the Ombudsman for Human Rights and Justice (PDHJ) in accordance with Article 23 of Law No. 7/2004. When CAC was established in 2010 pursuant to Law No. 8/2009,<sup>31</sup> CAC obtained the competence to conduct investigations into cases involving corruption.

The Public Prosecutor, with the support of the Global Organization of Parliamentarians Against Corruption (GOPAC) developed a draft Anti-Corruption Law and presented it to the Chair of the Parliament in October 2010. On 1 June 2011 Committee C of the National Parliament held a public hearing on the draft Anti-Corruption Law with the relevant institutions. The NGOs gave submissions to Committee C and this process is still pending. Since this process started, the draft law has not progressed and Committee C has not revised it or sent it to the plenary for discussion and approval.

JSMP considers that the Anti-Corruption Law is extremely important and necessary to prevent and combat corruption which is continuing to flourish. Based on monitoring carried out by JSMP in the courts in Timor-Leste, there has been an increase in cases involving corruption, especially those involving members of the government. 14 corruption cases were monitored by JSMP in 2014, and the Public Prosecution Service registered 76 cases in 2014.<sup>32</sup> For this reason, JSMP recommends that National Parliament, and Committee C in particular, reschedule the Anti-Corruption Law in 2015 and send it to the plenary for debate and approval. The Anti-Corruption Law can further empower CAC to investigate and prosecute those involved in corruption. In this way Timor-Leste can be successful in preventing and combating corruption which threatens Timor-Leste's future.

### **3.4.2 Law on Reparations for Victims and a Public Memorial Institute**

In 2014 the National Parliament did not reschedule two draft laws on Reparations for Victims and a Public Memorial Institute. JSMP believes that it is important to give consideration to issues related to justice for past crimes. Even though the State has provided subsidies to veterans who were the majority of victims, the issue of justice is not just one of money, but consideration also needs to be given to issues of medical treatment, education and memorialisation. Draft Law No.19/II on a National Reparations Program and Draft Law No.20/II on the Establishment of a Public Memory Institute are critical to this issue.

These two draft laws have been pending since 2010, after the Committee for Truth, Acceptance and Reconciliation (CAVR) issued a comprehensive report on past crimes named "CHEGA"<sup>33</sup> and the National Parliament started discussing two laws to create a government agency to oversee the implementation of recommendations from the CAVR and the CTF (Commission of Truth and Friendship) between Indonesia and Timor-Leste)<sup>34</sup> and also to define a reparations program for victims. These two draft laws were developed based on the results of work carried out by an NGO working group in October 2009.<sup>35</sup> In 2010, Committee A of National Parliament started holding consultations with NGOs and victims' groups. When Committee A submitted it to

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<sup>31</sup> Law No. 8/2009 Establishing the Anti-Corruption Commission: <http://jornal.gov.tl/?q=node/846>

<sup>32</sup> Prosecutor-General, Annual Update 2014, page 22

<sup>33</sup> CAVR Report "CHEGA": <http://www.cavr-timorleste.org/po/Relatorio%20Chega!.htm>

<sup>34</sup> CTF Report at: <http://www.cja.org/downloads/Per-Memorial-Ad-Spem-Final-Reeport-of-the-Commission-of-Truth-and-Friendship-IndonesiaTimor-Leste.pdf>

<sup>35</sup> Refer to the findings of the NGO Working Group at: <http://www.laohamutuk.org/Justice/Reparations/ConceptOct09En.pdf>



the plenary for discussion the plenary rejected this version and suspended discussion and voting on this law. In 2011 and 2012 the National Parliament again suspended discussion on these two draft laws.<sup>36</sup> From then until 2014 the National Parliament has not rescheduled these two draft laws for discussion in the plenary.

Based on JSMP's observations and analysis, National Parliament does not have the will to give consideration to the interests and rights of victims by discussing and approving these two important laws. National Parliament has continued to ignore the rights of victims by not giving maximum attention to these two draft laws. JSMP asks the members of the National Parliament to objectively put aside their party interests and individual interests and to give priority to the interests of the people, particularly victims, and reschedule these two draft laws for discussion in a plenary session in 2015, so that victims of past crimes can find justice.

### 3.4.3 Package of Land Laws

In 2014 the Council of Ministers approved the second version of the draft Package of Land Laws after the Ministry of Justice consulted the public in 2013 and sent them to the Chair of the National Parliament. This version is still pending in Parliament.

The Package of Land Laws is an important legal framework and is necessary to regulate the interests of all citizens and to provide solutions to complex land problems in Timor-Leste. The complexity of land issues requires the expertise of legislators and active participation of the public throughout the entire process to contribute to the making of a law that is fair and represents the aspirations and interests of the entire community.

Prior to this, on 20 March 2012, the second version of the Package of Land Laws was vetoed by the President of the Republic pursuant to his competence under the RDTL Constitution.<sup>37</sup> The reasons for the veto included objections by civil society because there was a lack of consultation, the draft law gave a lot of authority to the State to take land, and there was the possibility that conflicts of interests could arise, as well as other reasons that the law did not reflect the reality and context of Timor-Leste.

In early 2013 the Ministry of Justice amended the draft Package of Land Laws and reopened public consultation. JSMP developed a separate submission, in addition to the submission that was submitted via *Rede ba Rai*.<sup>38</sup> After public consultations were held in villages across Timor-Leste and submissions were received from individuals and civil society, finally the Ministry of Justice produced a new version of the Package of Land Laws.

The Ministry of Justice held public consultations in villages across Timor-Leste in order to have direct contact with the people, and the Ministry also distributed CDs of the new version of the draft Package of Land Laws. This mechanism was criticized and there was a strong reaction from the local authorities because many members of the community don't know what a computer is and some villages do not yet have electricity.

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<sup>36</sup> Refer to JSMP and Amnesty International Press Release dated 17 February 2011 at: <http://jsmp.tl/wp-content/uploads/2012/06/Timor-Leste-Parlamentu-Nasional-lakon-oportunidade-atu-fornese-justisa-ba-violasaun-sira-ih-pasadu-17-Feveiru-2011.pdf> and JSMP and Amnesty International Press Release dated 3 February 2012 at: <http://jsmp.tl/wp-content/uploads/2012/06/Parlamentu-Nasional-tenki-hapara-ignora-sira-nia-direitu-3-Feveiru-2012.pdf>

<sup>37</sup> Article 88.1 of the RDTL Constitution

<sup>38</sup> Refer to JSMP's Submission on the JSMP website: <http://jsmp.tl/en/publikasaun-publications/submissions/>

In addition to the Ministry of Justice hearing the people's thoughts first hand, submissions were given by local leaders, State institutions, local NGOs and some international institutions such as *Rede ba Rai*, *Rede Feto*, JSMP, the Timor-Leste Legal Institute and *the Asian Development Bank*.

Based on JSMP's observations and analysis, the revised versions that were approved by the Council of Ministers in 2014 and sent back to National Parliament did not involve a significant change to the content. The latest version made amendments to the numbering of articles, but not to the main content of some of the articles that the public considered to be incorrect, unjust or controversial.

JSMP observes that this updated version continues to give a lot of power to the State to arbitrarily take land and paves the way for the State to adopt behaviours and practices which could be worse than the colonial state. For this reason, JSMP recommends that National Parliament give sufficient time to the public to participate in this legislative process. In this way, the public can convey their opinions and suggestions to contribute to the development and making of a law that is just and is able to respond to everyone's interests.

#### 3.4.4 Draft Juvenile Justice Law

The law on juvenile justice is very important because Timor-Leste does not yet have a specific law that deals with minors under 16 years of age who are in conflict with the law or commit a crime and also does not have specific legislation to regulate and provide protection to young people aged 16 to 21 who are in conflict with the law and already have criminal responsibility. The draft laws on juvenile justice are further discussed in the section below about children in the justice system. JSMP hopes that the Government and the National Parliament can give priority to this law in 2015.

#### **Recommendation 6:**

In 2015 the Government and the National Parliament should develop a legislative program that gives priority to the Anti-Corruption Law, the two laws on Reparations for Victims and the Public Memory Institute, the Package of Land Laws and the Juvenile Justice Law.

## 4. GENDER EQUALITY

### 4.1. Cases of Gender Based Violence

#### 4.1.1 Statistics on Cases of Gender Based Violence

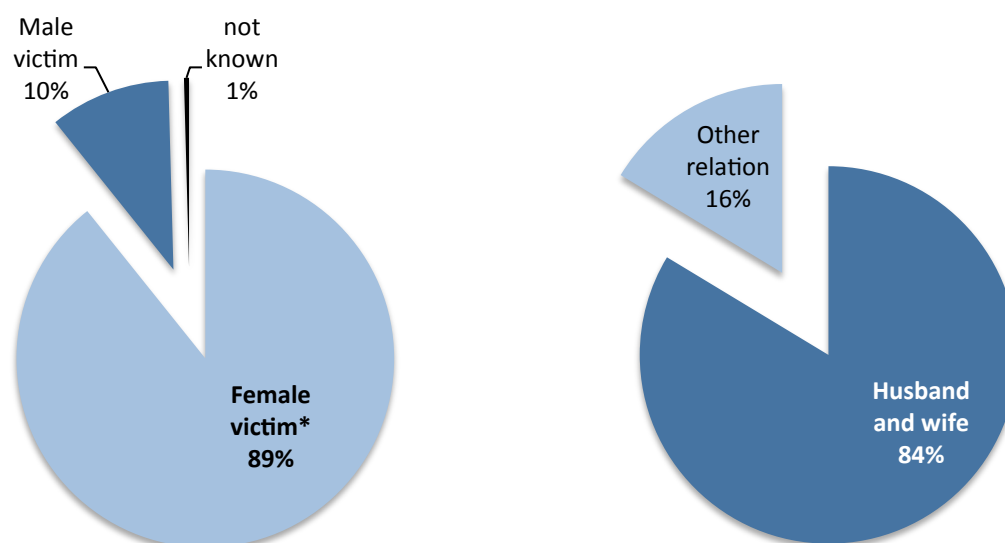
In 2014, JSMP through the Women's and Children's Justice Unit (WCJU) monitored and analysed cases involving gender based violence. JSMP's Legal Research Unit (LRU) also monitored gender based violence cases in all of the courts. In 2014 the WCJU and LRU monitored cases of gender based violence including cases characterized as domestic violence and also cases involving sexual violence. The Table below provides further details.

**Table 10: Cases characterized as domestic violence monitored by JSMP in 2014**

Case Type	Penal Code	Number
Simple offences against physical integrity characterised as domestic violence	Article 145	423
Mistreatment of a spouse characterised as domestic violence	Article 154	25
Serious offences against physical integrity characterised as domestic violence	Article 146	5
Mistreatment of a minor characterised as domestic violence	Article 155	2
Homicide characterised as domestic violence	Article 138	2
Termination of pregnancy characterised as domestic violence	Article 141	1
Mistreatment of a spouse, property damage characterised as domestic violence	Article 154, 258	1
Mistreatment of a spouse, termination of pregnancy characterised as domestic violence	Article 154, 141	1
Simple offences against physical integrity, property damage, threats, characterised as domestic violence	Article 145, 258, 157	1
Simple offences against physical integrity, failure to comply with obligation to provide alimony, characterised as domestic violence	Article 145, 225	1
Simple offences against physical integrity, mistreatment of a minor characterised as domestic violence	Article 145, 155	1
Aggravated homicide characterised as domestic violence	Article 139	1
Attempted aggravated homicide, simple offences against physical integrity characterised as domestic violence	Article 23, 139, 145	1
<b>Total domestic violence cases</b>		<b>465</b>

Cases characterized as domestic violence can involve both men and women as defendants and victims, but most cases involve men as defendants and women as victims. In most cases characterized as domestic violence, the defendant and the victim are husband and wife. The graphs below demonstrate this.

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



\*Some cases involved both male and female victims (for example, mothers and sons). Cases like this have been included in the statistics for female victims

**Table 11: Cases involving sexual violence monitored by JSMP in 2014**

Case Type	Penal Code	Number
Sexual abuse of a minor	Article 177	24
Rape	Article 172	18
Sexual coercion	Article 171	10
Rape characterised as incest	Article 172	3
Rape with aggravation	Article 172, 173	3
Sexual abuse of a minor characterised as incest	Article 177	2
Sexual acts with an adolescent	Article 178	2
Sexual abuse of a person incapable of resistance	Article 179	1
Sexual coercion, threats	Article 171, 157	1
Sexual coercion, disclosure of private information	Article 171, 183	1
Sexual coercion, rape	Article 171	1
Attempted sexual abuse of a minor	Article 23, 177	2
Attempted rape	Article 23, 172	1
Attempted rape, arson	Article 23, 172, 263	1

Case Type	Penal Code	Number
Attempted rape with aggravation	Article 23, 172, 173	1
Attempted rape with aggravation, property damage	Article 23, 172, 173, 258	1
Rape with aggravation characterised as incest	Article 172, 173	1
<b>Total sexual violence cases</b>		<b>73</b>

69 of these cases involved female victims, and only 3 cases involved male victims and in 2 cases the sex of the victim was unknown.

#### 4.1.2 Sentences in cases of gender based violence

The Penal Code sets out five types of sentences with varying degrees of severity. These are: prison sentences, fines, community service, admonishments and accessory penalties.

The Penal Code also set outs normative principles for penalties and measures according to fundamental principles of criminal law. These principles include the principle of legality (as one of the most fundamental principles in criminal law), the principle of non-retroactivity, principle of humanity, principle of proportionality and suitability as well as other principles.

The Penal Code defines optional preferences for penalties and security measures in Article 62. This Article states *“Whenever a sentence of deprivation of liberty and another penalty that does not involve deprivation of liberty are alternatively applicable, the court shall give preference to the latter, whenever the latter adequately and sufficiently fulfils the purpose of the penalty”*.

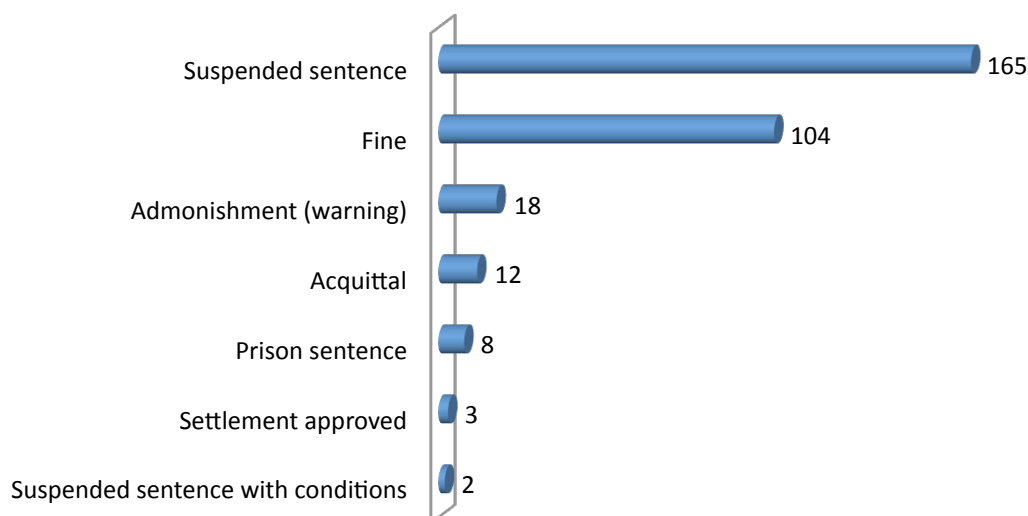
In practice this article allows the court to exercise its role freely according to its conviction and preference for selecting a more preferred penalty in any cases which come before the court, including cases of domestic violence.

Suspension is a type of sentence that can be applied when a prison sentence is less than 3 years, pursuant to Article 68 of the Penal Code which states whenever the prison sentence applied does not exceed three years, the court may suspend execution for a period to be set between one and five years, to be counted from the time the final decision was rendered.

#### **Suspended sentences**

JSMP has continued to question suspended sentences because monitoring at all of the district courts has shown that the number of domestic violence cases is very high. In the majority of cases involving domestic violence the court applies a prison sentence with suspended execution. The courts also do not impose other obligations which the convicted person must comply with during the period of the suspension. For this reason convicted persons believe that when given a suspended sentence it means they are free from the penal process. This does not discourage the convicted persons from committing similar acts in the future.

**Graph: Decisions in cases of domestic violence which JSMP monitored in 2014**



Based on monitoring carried out by JSMP to date, the majority of cases tried in the district courts involve domestic violence. The majority of the decisions handed down by the courts in these cases were suspended sentences. However, in 2014 JSMP has observed that in some cases of domestic violence the courts have started applying additional obligations which the convicted person must comply with during the period of suspension, for example, requiring them to report to the police station twice a week.

JSMP believes that these sentences show a positive development in the courts' sentencing decisions in cases of domestic violence. Suspended sentences which do not include additional obligations apart from the conviction have almost no meaning and effect.

Another positive development was that the Public Prosecutor asked the courts to revoke the suspension of sentences against defendants who committed crimes during the period of suspension. The courts revoked the suspension and imposed the effective prison sentences against the defendants in two cases (in Dili and Oe-Cusse) which JSMP was able to monitor in 2014.

Article 73.2 of the Penal Code on revocation of a suspension states that suspension shall always be revoked if, during its period of duration, the convict commits a crime of intent for which the same is punishable with an effective prison sentence.

### ***Inconsistencies in suspensions of prison sentences***

Article 68.1 of the Penal Code states that whenever the prison sentence applied does not exceed three years, the court may suspend execution for a period to be set between one and five years, to be counted from the time the final decision was rendered. However, JSMP has observed that the courts do not consistently apply Article 68 of the Penal Code on suspended sentences in accordance with the minimum and maximum limits set out in the Penal Code. For example, in January 2014, JSMP monitored a case involving the crime of domestic violence. In this case the court sentenced the defendant to a prison term of four months, suspended for six months, however, pursuant to Article 68(1) of the Penal Code, the court can only suspend the penalty for a period between 1 and 5 years, not for a period less than 1 year.

JSMP hopes that the courts will consistently apply the provisions set out in the Penal Code and the applicable procedure to avoid inconsistencies in practice. This is important to ensure that everyone has confidence that the legal process is fair.

Based on JSMP monitoring to date, the court has not applied a suspended sentence against a defendant pursuant to Article 69 of the Penal Code on the condition that harm is redressed, for example:

- The convicted person makes or ensures reparation of the damage caused by the crime within a given time period;
- The convicted person makes a public apology to the victim; or
- The convicted person performs certain tasks in connection with the crime committed.

Also, Article 70 of the Penal Code about rules of conduct states that the convicted person may be subject to certain conditions during the duration of the suspension with a view to promoting the person's reintegration into society, such as:

- To not work in certain professions;
- To not visit certain places;
- To not reside in certain places or regions;
- To not accompany, allow to stay in the house, or entertain certain persons;
- To not belong to certain associations or take part in certain meetings; and
- To not have in the person's possession, certain objects that can potentially facilitate the commission of a crime;

JSMP believes that these penalties and measures which may be applied to suspended sentences can guarantee the defendant's reinsertion in society pursuant to Article 61 of the Penal Code which states the purpose of applying penalties and security measures is to protect legal interests essential to life in society and the perpetrator's reintegration into society.

The control or oversight of suspended prison sentences requires working together with the PNTL to create a social network for prevention. It is crucial to have effective monitoring of the convicted persons to make sure they comply with the suspended penalty, so that suspended sentences achieve the purposes of preventing domestic violence and promote changes in behaviour.

Although convicted persons are serving suspended sentences, the competent authorities are not overseeing these sentences and therefore victims and convicted persons do not understand the aim of suspending the penalty. This can have an effect on victims who will be reluctant to make a report to the police and defendants who might believe they have been freed from the legal process. Therefore, the convicted person and the victim need to be given a detailed explanation about the mechanism of suspending the prison sentence.

Suspended sentences can have an impact on the implementation of the Law Against Domestic Violence and on victims of domestic violence because it can create the public perception that the formal justice system does not take cases of domestic violence seriously, and will undermine the victim's interest in accessing the formal justice system. JSMP has observed that in reality the courts often give more consideration to the circumstances of the perpetrator than the physical and psychological suffering of the victims.

JSMP notes that communities, and defendants and victims in particular, do not have a good understanding of prison sentences which the court has suspended. Often the community, the defendant and the victim presume that a suspended sentence means that the defendant has



been acquitted. To prevent the community from misinterpreting that a suspended sentence means that the defendant has been acquitted by the court, JSMP makes the following recommendations:

- Suspended sentences must be applied in accordance with the provisions of the Penal Code to ensure consistent application according to the gravity of each crime and based on the minimum and maximum limits prescribed.
- The courts should provide grounds for their decision to apply a suspended sentence, namely, the personality of the perpetrator, the circumstances under which the crime was committed, previous behaviour and living conditions, and most importantly, the perpetrator's likely conduct in the future (Article 68.2).
- The court should ensure that a detailed explanation is given to the convicted person and the victim about the suspension as well as the obligations and rules that apply to the suspended sentence.
- The relevant authorities should create a mechanism to supervise the convicted person, especially in cases of domestic violence, to ensure that the convicted person does not continue to commit crimes during the period of suspension or violate the applicable obligations and duties.
- If, during the period of the suspension, the convicted person is tried and convicted of another crime or commits another crime of intent or fails to comply with the rules or obligations that have been imposed on him, and if it is not possible to alter the suspension or if a alteration is not sufficient, then the court should revoke the suspension.

**Recommendation 7:**

- The courts should apply suspended sentences pursuant to the provisions in the Penal Code, and their decisions should include the grounds for applying the suspension, and should provide a detailed explanation to the convicted person and the victim about the suspension together with the obligations and rules that apply to the sentence, and should revoke the suspension if the convicted person is convicted for committing another crime or violating the obligations or rules imposed against him.
- The relevant authorities should create a mechanism to supervise the convicted person, especially in cases of domestic violence, to ensure that the convicted person does not continue to commit crimes during the period of suspension or violates his obligations and duties.

#### **4.1.3 Compensation in cases of gender based violence**

The nature of a penalty or sanction can deter the convicted person from committing a crime in the future. The aim of a penalty is to change the mentality of the convicted person, his ability and goodwill to reintegrate into community life.

Compensation is a sanction that has a monetary and/or material value determined by the court against the convicted person, because he has harmed the other person.

The court orders compensation with the aim of repairing the harm to the victim, and it can also correct the behaviour of the convicted person. Compensation can also contribute to creating peace and harmony in the community between the perpetrator and aggrieved party.

Based on JSMP observations at the Dili Baucau, Suai and Oecusse District Courts, judges rarely impose compensation against a convicted person in cases involving gender based

violence. This is the case even when evidence proves that the victim has suffered harm. For example, when a victim has to spend money to buy medicine to treat his/her injuries or pain.

JSMP notes that normally the courts apply compensation in crimes involving financial loss, theft, corruption and manslaughter. Compensation should also be imposed against defendants in cases involving gender based violence, to redress the suffering of the victim. In most cases involving gender based violence, the courts impose prison sentences, fines, admonishments and suspended sentences.

Compensation for damaged/stolen goods and for financial loss/harm resulting from a crime should be obligatory and should be assessed by the court in accordance with the rules set out in the Civil Code. In cases of domestic violence, this compensation can be very powerful because it can respond to the economic dependence of the victim on the defendant and can provide a remedy for the victim. However, this compensation should not replace criminal penalties such as a prison sentence.

**Recommendation 8:**

The courts should consider ordering the convicted person to pay compensation to the victim in cases of gender based violence in addition to cases involving the crimes of financial loss, theft, corruption and manslaughter, because the victims of violence deserve compensation to redress their suffering.

## **4.2. Implementation of Witness Protection Law**

### **4.2.1 Demands for Protection**

Protection of witnesses is necessary to guarantee the rights and freedom of witnesses and to protect all the evidence directly relating to crimes until a matter is decided. Witness protection has two essential elements:

- 1) A person appearing as a victim needs to be given protection and treatment from the relevant institutions in accordance with their responsibilities and the requirements of each case. This protection is to ensure that the victim is protected in every way possible and preserves the evidence that is relevant and related to the crime, in order to ensure that an appropriate conviction can be obtained that reflects the gravity of the crime.
- 2) Witness protection is also important to help discover facts relevant to the case. Witnesses need to feel safe so they can give proper testimony without feeling fear as the result of threats or intimidation. Witness testimony can also ensure there is credible evidence to assist the court to hand down a fair decision.

Witness protection in criminal and civil matters is the duty of the State, and for this reason the National Parliament decreed Law No.2/2009 on Witness Protection which came into force on 26 June 2009.

### **4.2.2 Challenges to implementation**

The Witness Protection Law has not yet been implemented because the State has not created the conditions necessary to implement the law. Implementation requires equipment and instruments (for example, to protect witness identity during the trial process) which witnesses can use to protect their testimony and allow them to testify freely.

JSMP has noted that often witnesses provide testimony in court and they feel insecure because they are afraid. If a witness does not feel safe then it will not be possible to discover all the facts relating to an incident. There is a need to implement this law to ensure high standard witness testimony to ensure that the courts can determine appropriate penalties and sentences.

Implementation also requires awareness raising and introduction in the community, material resources and appropriate funding.

**Recommendation 9:**

The State needs to ensure the necessary conditions to implement the Law on Witness Protection which has not yet been implemented, even though it entered into force in 2009.

### 4.3. Amending the Penal Code to better protect women and children

In 2014, through their court monitoring and legal assistance to victims of gender-based violence, JSMP and ALFeLa identified a number of provisions in the Timor-Leste Penal Code that fail to adequately protect women and children consistent with Timor-Leste's international and constitutional obligations. JSMP and ALFeLa prepared a joint submission which identified these provisions and recommended to Parliament amendments that could be made to the Penal Code to fix these deficiencies. These recommendations fall into the following areas:

#### **Incest and sexual crimes against minors**

JSMP first called for the creation of a specific crime of incest in the Penal Code in 2012 in its report *Incest in Timor-Leste: An Unrecognised Crime*, having found that incest is a widespread problem in Timor-Leste and that the Penal Code affords only limited protection to victims, particularly those above the age of 14. In mid-2014, the National Parliament sought JSMP and ALFeLa's comments concerning its proposal to amend Article 172 (rape) of the Penal Code to include a new subsection on the crime of incest.

JSMP and ALFeLa commend Parliament for ensuring that the proposed crime of incest applies irrespective of the victim's consent, age, and whether or not violence or serious threats are used, as well as ensuring that incest is a public crime and is applicable to a range of family members, including step-relations. However, in JSMP and ALFeLa's view, there are a number of ways in which the National Parliament could improve the proposed draft, which are outlined in this submission. These include:

- separating the crime of incest from the crime of rape to avoid confusion between the two crimes, which are different in nature and require a different standard of proof;
- criminalising other incestuous sexual acts to recognise that incest is not limited to sexual intercourse and can include many other sexual acts that can cause harm to the victim;
- ensuring that the crime of incest covers the uncle-niece relationship;
- ensuring that the penalty for incest (both intercourse and other sexual acts) is consistent with the penalties for the crime of aggravated sexual abuse of a minor; and
- ensuring that only the perpetrator may be prosecuted by clarifying that the perpetrator must be in a position of family authority over the victim.

The National Parliament also sought JSMP and ALFeLa's comments in relation to its proposed changes to Article 177 (sexual abuse of a minor) and Article 178 (sexual acts with an

adolescent). The changes to Article 177 effectively increase the age of consent in Timor-Leste to 17 years, which means that minors aged 16 and under cannot lawfully consent to sexual acts, including intercourse.

While this change provides stronger protection to minors aged 14-17 by reducing the evidentiary requirements previously necessary to prosecute sexual abuse against minors in this age range, it also criminalises consensual sexual relations between and with minors aged 16 (those under 16 are not criminally liable).

JSMP and ALFeLa recommend that there should be some flexibility in the Penal Code to allow for such consensual relationships, particularly as the Civil Code permits minors aged 16 to marry with parental consent. This could be achieved by including a defence to the crime of sexual abuse of a minor in circumstances where the 'victim' is 16 years of age and the 'offender' is close in age to the victim (for example, within 3 years of age), or where the parties are legally married.

The proposed changes to Article 177 also mean that Article 178 is no longer necessary, as the amended Article 177 will cover acts previously covered by Article 178. Accordingly, JSMP and ALFeLa recommend the removal of Article 178 concurrent with the approval of changes to Article 177.

### **Sexual Coercion and Rape**

Separately, JSMP and ALFeLa have found that the Penal Code's provisions concerning sexual coercion (Article 171) and rape (Article 172) require significant reform to comply with international obligations and best practice.

Currently, these provisions require proof of force or threats to demonstrate lack of consent. In JSMP and ALFeLa's experience, this is often difficult for victims to prove, particularly when they have been raped or otherwise sexually abused in coercive circumstances not involving obvious force. Consequently, these provisions do not afford women, who are most often the victims of such crimes, adequate protection. International best practice suggests rape provisions should require proof:

- that the victim did not voluntarily agree by demonstrating that the defendant failed to ascertain that the victim was consenting; or
- that the act took place in certain coercive circumstances in which consent is presumed to be absent.

JSMP and ALFeLa believe that the latter approach, and a comprehensive (although non-exhaustive) list of coercive circumstances will provide prosecutors, public defenders and judges with a clear framework for the prosecution of rape and sexual coercion.

Broadening Articles 171 (sexual coercion) and 172 (rape) in this way means that they will also cover acts previously covered by Articles 179 (sexual abuse of a person incapable of resistance) and 180 (sexual fraud), resulting in more consistent evidentiary requirements and sentencing outcomes. Accordingly, JSMP and ALFeLa recommend the removal of Articles 179 and 180 from the Penal Code.

JSMP and ALFeLa have also considered the issue of marital rape. Although marital rape in Timor-Leste can be theoretically prosecuted in the same manner as rape by persons outside a marriage, JSMP and ALFeLa recommend specifically criminalising marital rape for compliance with international obligations and best practice, and to generate greater public awareness that

rape is a criminal offence both within and outside marriage. This will both deter perpetrators and encourage more victims to access the formal justice system and other support services.

### **Aggravating factors in sexual offences and physical assault**

Increasing a sentence based on the presence of aggravating factors is another way the law can better protect victims, serving as both a specific deterrent for reoffenders and a general deterrent for potential perpetrators within the community. JSMP and ALFeLa recommend amending the Penal Code to include a more consistent and broader range of aggravating factors to enable the courts to impose more suitable punishments for sexual crimes committed in aggravated circumstances. Recommended new factors include:

- physical and psychological injury to the victim;
- pregnancy resulting from the relevant acts;
- the involvement of multiple perpetrators;
- the use or threat of force;
- the presence or implied presence of a weapon; and
- a degree of planning prior to committing the acts.

To improve the consistency of existing aggravating factors, JSMP and ALFeLa recommend changes to the current Article 173, which is only applicable to sexual coercion and rape, and to Article 182, which is more broadly applicable to sexual crimes. These include:

- adding the aggravating factors relating to the abuse of a position of authority arising within educational, medical or corrective facilities and committing an offence upon an unconscious or incapable persons in Article 173 to Article 182;
- changes to resolve confusion arising from the similarities between the aggravating factor relating to abuse of familial relationship in Article 173(a) and existence of familial relationship in 182(1)(d);
- amending Article 182(1)(c) concerning transmission of the venereal disease, syphilis or HIV/AIDS so that it refers to a broader category of 'sexually transmitted infections' and to ensure that both infection of the victim or knowledge by the perpetrator that they carry such infection can be considered aggravating factors; and
- if JSMP and ALFeLa's recommended amendments are made to Article 177 on sexual abuse of a minor, removing Article 173(d) to avoid confusion.

In addition, in order to recognise the serious nature of crimes against the person which involve the use of weapon, as well as the additional threat and likelihood of serious injury in such crimes, JSMP and ALFeLa recommend that the use or threatened use of a weapon is incorporated as an aggravating factor in crimes against physical integrity.

### **Law Against Domestic Violence**

JSMP and ALFeLa have identified that the proposed amendments to the Penal Code outlined in this submission require amendments to the Law Against Domestic Violence (LADV) to ensure consistency between the two pieces of legislation. These include incorporating the new article criminalising incest in Article 35(a) and deleting references to Articles 178 (sexual acts with an adolescent) and 179 (sexual abuse of a person incapable of resistance) from Article 35(b).

JSMP and ALFeLa also recommend that Article 35 of the LADV be amended to include Articles 157 (threats), 258 (property damage), 259 (aggravated property damage) and 260 (property damage with use of violence) for consistency with the definition of domestic violence in Article 2 of the LADV, which includes both psychological violence (such as threats) and economic violence (for example, partial or total destruction of personal effects or other economic resources intended to meet personal and household needs).

Including these crimes in Article 35 of the LADV also has an important practical effect. Article 35 lists all crimes considered to be domestic violence, enabling otherwise semi-public crimes to be treated as public crimes when committed in a family context (pursuant to Article 36). Threats and property damage committed in a family context should not be dependent on the victim filing a complaint.

### **Failure to Report Crimes of Domestic Violence**

Finally, while this submission primarily focuses on legislative change to better protect women and children, JSMP and ALFeLa also wish to draw attention to failure to report crimes in accordance with the law. The Penal Code criminalises failure to report a public crime where a person is aware of such a crime, and has an obligation to report it.

These people include police officers, teachers employed by the Ministry of Education, doctors employed by the Ministry of Health and public servants such as social workers and Child Protection Officers employed by the Ministry of Social Solidarity.

JSMP and ALFeLa are not aware of any prosecutions of failure to report crimes of domestic violence, and urge the public prosecution to pursue these cases. Prosecuting police and public servants who fail to report crimes will encourage the reporting of public crimes, such as those of domestic violence, ultimately ensuring better protection for victims.

At the same time, JSMP and ALFeLa encourage the PNTL and government departments such as the Ministry of Social Solidarity, Ministry of Education and Ministry of Health to incorporate as part of their training the positive obligation for police officers and public servants to report public crimes in the event they learn that one has been committed.

For more information, see JSMP's website <http://jsmp.tl> for the full submission.<sup>39</sup>

### **Recommendation 10**

National Parliament should consider and take action as outlined in JSMP and ALFeLa's submission on how to improve the Penal Code to better protect women and children, in particularly in relation to incest, crimes against minors, sexual coercion, rape and sexual and physical offences which involve aggravating factors.

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<sup>39</sup> The complete submission is available at: <http://jsmp.tl/wp-content/uploads/2013/03/280115-JSMP-ALFeLa-Penal-Code-submission-FINAL-English.pdf>



## 5. CHILDREN IN THE JUSTICE SYSTEM

### 5.1. Children's Access to Justice

In April 2014, JSMP launched a report titled 'Children's Access to Formal Justice in Timor-Leste: A Status Report'. This report discusses the results of JSMP's research between March 2013 and April 2014 on the challenges which affect children's right to access formal justice in Timor-Leste. During this period, JSMP monitored approximately 50 court cases involving children, interviewed more than 70 key stakeholders and analysed the child justice related legal framework.

JSMP found that most criminal cases involving children that reach the courts concern crimes of sexual and physical violence against children. While cases relating to crimes of sexual and physical violence are the most common type heard by the courts, JSMP's research and other sources indicate that cases which reach the court are likely to represent only a small minority of actual crimes committed against children due to a lack of understanding of the formal justice system, a widespread tolerance of violence against children and a preference for traditional justice resolution mechanisms.

Issues such as insufficient and poorly qualified human resources, extensive gaps in legislation, unclear mandates in child protection, and a poor understanding and flawed application of the law have been identified as some of the main factors impeding the realisation of children's right to access the formal justice system. The combination of such factors, among others, means that minimum international standards on child justice are not being met in Timor-Leste.

Greater efforts to increase the quality, specialisation and availability of services provided to children in contact with the formal justice system are needed in order for Timor-Leste to fulfil children's rights and abide by minimum international standards.

#### **Recommendation 11:**

In order to respond to the findings of JSMP's report 'Children's Access to Formal Justice in Timor-Leste', relevant institutions must understand and document the children's rights situation in Timor-Leste, improve coordination between child protection actors, develop child justice related legislation and formalise the child protection system, increase specialisation and capacity in child justice and child protection services, establish monitoring mechanisms, assess traditional justice in the context of children's rights, and raise awareness of child justice matters and preventing juvenile delinquency.

For further information, see JSMP's website <http://jsmp.tl> for the full report.<sup>40</sup>

### 5.2. Progress in matters involving children in the formal justice system

In 2014 JSMP observed significant progress in the processing of cases involving minors/children. In some crimes against minors the courts imposed the maximum penalty based on the gravity of the crime committed by the defendant with reference to the nature of the crime. The court should convict defendants according to the degree of severity and exercise sensitivity

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<sup>40</sup> The full report is available at: [http://jsmp.tl/wp-content/uploads/2012/05/RelatorioChildrens-Access-to-Formal-Justice-in-TL\\_ENGLISH.pdf](http://jsmp.tl/wp-content/uploads/2012/05/RelatorioChildrens-Access-to-Formal-Justice-in-TL_ENGLISH.pdf)



to protect minors and to specifically deter defendants from committing further crimes in the future. By imposing a maximum penalty against a defendant the court can also increase general prevention in the community. The protection of minors is the responsibility of the entire community, therefore everyone should protect minors from all forms of violence.

The following cases studies show progress:

### **1. Crime of sexual abuse against a minor**

The victim aged 13 was raped and threatened by her step-father. When the victim's mother went out and the victim and her younger siblings were left alone in the house the defendant summoned the victim into the bedroom, held her and forced her to lie on the bed and have sexual intercourse. After having sexual intercourse the defendant threatened the victim so she would not tell her mother. The defendant repeated the acts 2 days later and on five occasions over several months until the victim's mother caught the defendant having sexual intercourse with the victim. In this case the Public Prosecutor charged the defendant with violating Article 177(1) on sexual abuse of a minor as well as Article 182 (d) on aggravation (because the victim was the step-daughter of the defendant) together with Article 35 (b) of the Law Against Domestic Violence.

The court assessed the facts and proved that the defendant committed this crime. The court concluded the matter and sentenced the defendant to 14 years in prison.

### **2. Crime of Aggravated Rape**

The victim was aged 14 and was living in a remote area. In April 2008 she was raped by her uncle. Her uncle yelled out to her and the victim felt afraid and approached her uncle. In a loud voice he ordered the victim to lie on the bed and tied her hands and feet to the bed, removed her clothing and had sexual intercourse with her. In 2009 her uncle had sexual intercourse with her twice and used the same method to tie the arms and legs of the victim to the bed so he could have sexual intercourse with her.

The Public Prosecutor charged the defendant with Article 172 of the Penal Code on the crime of rape and Article 173 (d) of the Penal Code on aggravation (because the victim was the niece of the defendant).

The court evaluated the facts and convicted with a prison sentence of 12 years.

## **5.3. Gaps in juvenile justice**

The formal justice system in Timor-Leste has some gaps in its judicial framework in relation to securing convictions or appropriate treatment in cases involving children or young people as defendants. JSMP has observed that in some cases the courts have had to acquit defendants because of their age. Pursuant to Article 20 of the Penal Code, JSMP recognizes that minors do not have criminal responsibility if they are younger than 16 years of age, but Timor-Leste needs a legal framework to resolve cases involving children as defendants. This is a major weakness which can affect the behaviour of children in Timor-Leste, as can be seen in the following two cases studies:

## **1. Crime of simple offences against physical integrity**

The defendant, who was a minor (aged 15), kicked his step-mother on her side, punched her many times and used a piece of wood to hit her on the back. In this case the Public Prosecutor charged the defendant with Article 145 of the Penal Code on simple offences against physical integrity in conjunction with Article 35 of the Law Against Domestic Violence. During the trial the defendant confessed and regretted his behaviour. In the end the court acquitted the defendant after considering the fact that he was a minor.

## **2. Crime of sexual abuse of a minor**

The defendant was aged 16 and committed sexual abuse against the victim aged 13 in 2013. The defendant approached the victim, covered her mouth, choked her and threw her on the ground. Then the defendant got on top of the victim and forcibly undid her pants and had sexual intercourse with the victim, causing injury to her sexual organs. Before the case was tried, the families of the defendant and the victim resolved the matter in accordance with local culture and the defendant compensated the victim by giving her family 1 buffalo valued at \$600 and two *belak* (traditional form of payment) valued at \$200.

In this case the Public Prosecutor charged the defendant with violating Article 177(1) of the Penal Code on sexual abuse of a minor.

The court assessed the facts that were presented and convicted the defendant with a sentence of 10 years in prison. He was immediately sent to pre-trial detention pending an appeal from the defence. However, the defendant did not receive special treatment as a minor and was placed in prison with adults. In fact he should have been placed in a separate prison facility for juveniles, and should have been given specific treatment to help him correct his behaviour in the future, such as education and counselling.

### **5.3.1 Draft Law on Juvenile Justice**

A law on juvenile justice is necessary and important because there is a need for a legal framework to regulate procedures for children who are in conflict with the law, particularly because minors make up almost half of the population in Timor-Leste.

Timor-Leste ratified the International Convention on the Rights of the Child (CRC) in 2003. However, Timor-Leste has not yet incorporated these principles in domestic law, except for general provisions in Article 18 of the Timor-Leste Constitution on the protection of children. According to the population census in 2010, 41.4% of the population are aged 0-14 and together with those aged 15-16, young people make up nearly half of the population.

Since the restoration of independence in 2002 until now there has not been a specific law to deal with minors aged below 16 who are in conflict with the law or commit a crime. In addition, there is no appropriate mechanism to provide solutions and protection to these minors. There is also no specific legislation to regulate and provide protection to young people aged between 16 and 21 who are in conflict with the law who are and already have criminal responsibility.

JSMP has observed that police and judicial actors who deal with minors who are in conflict with the law approach cases involving minors based on their own experience, ideas or intuition, through customary mechanisms for mediation or they use the criminal procedure that applies to

adults.<sup>41</sup> The problem is that these measures are not set out in a legal framework and there is no supervision from the judicial authorities.

In 2009, UNICEF started a 5 year cooperation program with the Government of Timor-Leste. UNICEF, through its Child Protection Program, specifically the justice for children section, provided support to the Government through the Ministry of Justice, and through cooperation with the Ministry of Social Solidarity (MSS) and The National Commission on the Rights of the Child (KNDL) to develop and hold consultations on a draft law on Juvenile Justice and Children's Rights Code in 2010. In 2012 Timor-Leste adopted some of the recommendations from the Universal Periodic Review (UPR) report to the United National Human Rights Council (UNHRC) including recommendations to continue consulting with UNICEF and KNDL during the process of finalizing the draft law on juvenile justice to ensure that this law is clear and the procedures are truly appropriate and give consideration to the local context and provide adequate resources.

The draft law on juvenile justice had a name change when the Fifth government came into power in 2012. The name was changed from the Law on Juvenile Justice to the Law on Educational Guardianship of Children. This law aims to define the educative guardianship regime for minors aged between 12 and 16 who are in conflict with the law, to provide them with protection through mechanisms that prescribe specific education and facilitate community reintegration in a dignified and proper manner. In addition, the Government has also developed a draft Decree-Law on a special criminal regime for young people aged between 16 and 21. This Decree-Law would satisfy the requirement set out in Article 20.2 of the Penal Code.

The process of developing the law on juvenile justice started nearly five years ago and it has not yet been approved by the Council of Ministers so that it can be forwarded to the National Parliament. The consultation process is ongoing, including through national seminars. On 10 November 2014 KNDL with support from UNICEF organized a national seminar on the theme of "Protecting the Rights of Children in Conflict with the Law with Legislation".

This legislative process is not effective or efficient. The Government and the National Parliament need to fast-track the law on educative guardianship for children in order to regulate and protect children who are in conflict with the law. The reality shows that nearly half of the population in Timor-Leste are children aged between 0-16 and there are large number of children in conflict with law, although MSS and the Police do not register all cases. The Government also needs to expedite a special criminal regime for young people aged between 16 and 21, in order to avoid as much as possible the application of prison sentences and to replace this with appropriate criminal policy measures befitting the crimes committed. JSMP encourages the Government to prioritize this law in 2015.

**Recommendation 12:**

The Government and National Parliament need to expedite the draft Law on Educative Guardianship for Children in order to regulate and protect children aged between 12 and 16 who are in conflict with the law, and also expedite a special criminal regime for young people aged between 16 and 21 who are in conflict with the law and who have criminal responsibility.

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<sup>41</sup> Refer to "Children's Access to Formal Justice in Timor-Leste", JSMP thematic report 2014: [http://jsmp.tl/wp-content/uploads/2012/05/RelatoriuChildrens-Access-to-Formal-Justice-in-TL\\_ENGLISH.pdf](http://jsmp.tl/wp-content/uploads/2012/05/RelatoriuChildrens-Access-to-Formal-Justice-in-TL_ENGLISH.pdf)

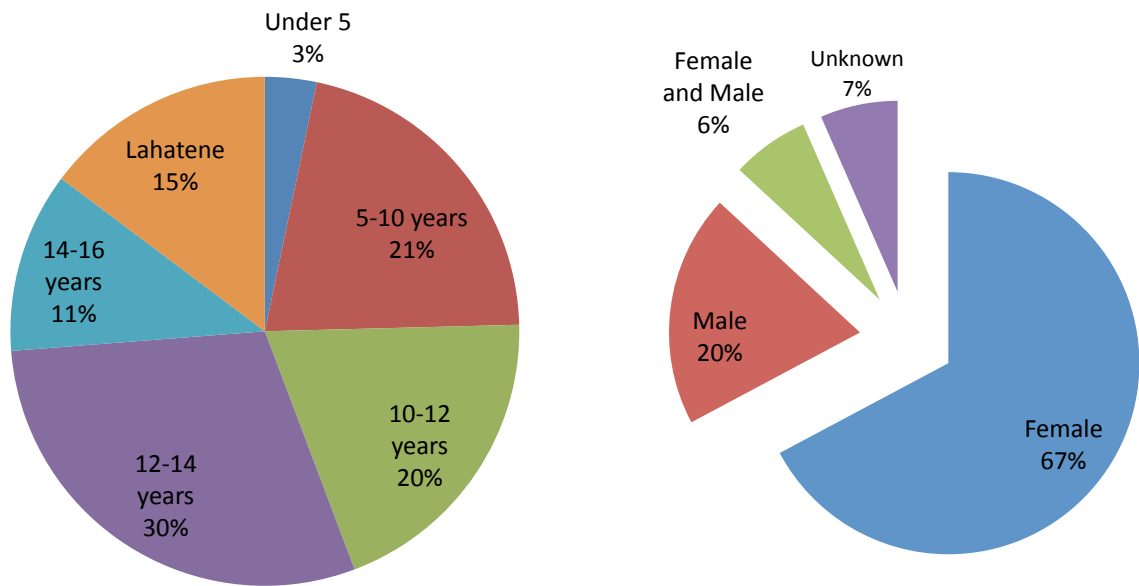
## 5.4. Statistics

In 2014 the majority of cases concerning children involved female victims (67%). 20% of cases involved male victims and 6% of cases involved both female and male victims. The biggest percentage of cases involved victims aged between 12 and 14 years (30%), followed by 5-10 year olds (21%) and 10 to 12 year olds (20%). 56% of total cases concerning children involved family members as a defendant. In many cases the defendant was the victim's father (25% of cases) or mother (15%), but many cases also involved defendants without a family relation with the child (31%).

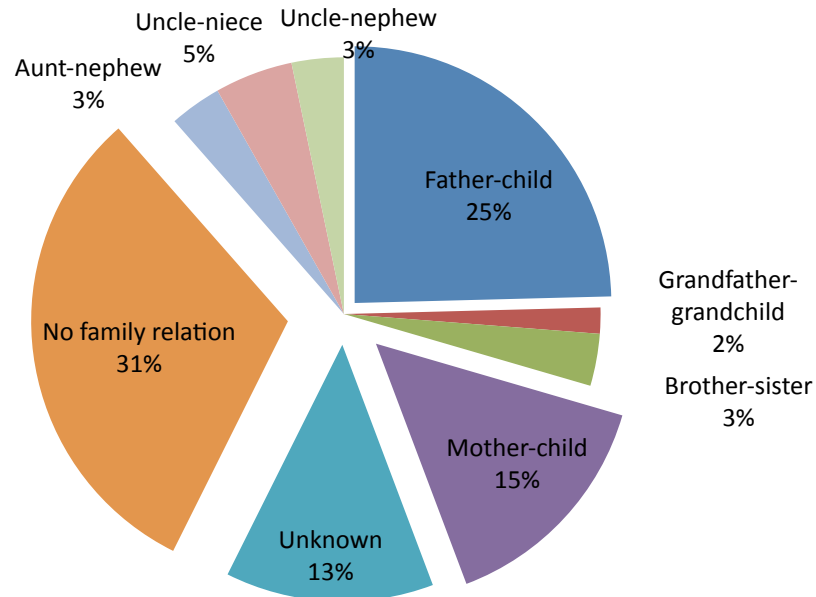
**Table 11: Cases monitored by JSMP which involved children (aged 0-16)**

Case Type	Penal Code	Number
Sexual abuse of a minor	Article 177	24
Attempted sexual abuse of a minor	Article 23, 177	1
Rape	Article 172	3
Aggravated rape	Article 172, 173	1
Attempted rape	Article 23, 172	1
Attempted rape, sexual abuse of a minor	Article 23, 172, 177	1
Sexual acts with an adolescent	Article 178	1
Infanticide	Article 142	3
Mistreatment of a minor	Article 155	3
Simple offences against physical integrity categorised as domestic violence	Article 145	12
Simple offences against physical integrity	Article 145	2
Serious offences against physical integrity categorised as domestic violence	Article 146	1
Serious offences against physical integrity	Article 146	1
Attempted aggravated homicide, simple offences against physical integrity	Article 23, 138, 145	1
Threats	Article 157	1
Failure to pay alimony	[Civil Code]	5
<b>Total</b>		<b>61</b>

**Graph: Cases monitored involving children by sex and age**



**Graph: Cases monitored involving children by relationship between victim and defendant**



## ANNEXURE A – STATISTICS

### A. Criminal cases monitored by JSMP in 2014

Case Type	Penal Code	Number
Simple offences against physical integrity characterised as domestic violence	Article 145	423
Simple offences against physical integrity	Article 145	142
Property damage	Article 258	27
Mistreatment of a spouse	Article 154	25
Driving without a licence	Article 207	25
Sexual abuse of a minor	Article 177	24
Aggravated larceny	Article 252	21
Serious offences against physical integrity	Article 146	18
Rape	Article 172	18
Aggravated property damage	Article 259	15
Manslaughter (negligent homicide)	Article 140	15
Aggravated homicide	Article 139	12
Threats	Article 157	12
Illegal gambling	Article 322	10
Homicide	Article 138	10
Sexual coercion	Article 171	10
Arson	Article 263	9
Crimes against flora and fauna	Article 217	7
Larceny	Article 251	6
Failure to comply with an obligation to provide alimony	Article 225	5
Serious offences against physical integrity characterised as domestic violence	Article 146	5
Manslaughter, driving without a licence	Article 140, 207	4
Exposure or abandonment	Article 143	3
Infanticide	Article 142	3
Rape with incest	Article 172	3
Rape with aggravation	Article 172, 173	3
Mistreatment of a minor characterised as domestic violence	Article 155	2
Sexual abuse of a minor with incest	Article 177	2
Sexual acts with an adolescent	Article 178	2

Case Type	Penal Code	Number
Threats, property damage	Article 157, 258	2
Aggravated fraud	Article 267	2
Falsification of documents	Article 303	2
Obstruction of a public authority	Article 243	3
Simple offences against physical integrity, property damage	Article 145, 258	2
Attempted homicide	Article 23, 138	2
Robbery	Article 253	2
Participation in a riot	Article 190	2
Homicide characterised as domestic violence	Article 138	2
Simple offences against physical integrity, property damage, threats	Article 145, 258, 157	2
Passive corruption for unlawful acts	Article 292	2
Abuse of power, falsification of documents – corruption	Article 297, 303	2
Embezzlement – corruption	Article 295	2
Aggravated abuse of confidence – corruption	Article 257	1
Economic participation – corruption	Article 299	1
Abuse of power – corruption	Article 297	1
Abuse of power, embezzlement – corruption	Article 297, 295	1
Aggravated fraud, aggravated computer fraud – corruption	Article 267, 269	1
Falsification of documents, passive corruption for lawful acts	Article 303, 293	1
Passive corruption for lawful acts, active corruption, economic participation	Article 299, 294	1
Abuse of confidence	Article 256	1
Aggravated abuse of confidence, falsification of documents	Article 257, 303	1
Abuse of confidence, falsification of documents	Article 256, 303	1
Kidnapping, failure to report	Article 160, 286	1
Sexual abuse of a person incapable of resistance	Article 179	1
Prohibited weapons	Article 211	1
Illegal import and export of goods or merchandise	Article 315	1
Aggravated fraud, falsification of documents	Article 267, 303	1
Fraud	Article 266	1
Property damage with use of violence	Article 260	1
Property damage, threats	Article 157, 258	1
Defamatory false information	Article 285	1
Disobeying an order to disperse	Article 193	1



Case Type	Penal Code	Number
Aggravated larceny, crimes against flora and fauna	Article 252, 217	1
Termination of pregnancy characterised as domestic violence	Article 141	1
Serious coercion	Article 159	1
Sexual coercion, threats	Article 171, 157	1
Sexual coercion, public disclosure of private information	Article 171, 183	1
Sexual coercion, rape	Article 171, 172	1
Dangerous driving	Article 209	1
Driving without a licence, driving under the influence of alcohol or psychotropic substances	Article 207, 208	1
Smuggling	Article 316	1
Failure to comply with an obligation to provide alimony, threats	Article 157, 225	1
Mistreatment of a spouse, property damage, characterised as domestic violence	Article 154, 258	1
Mistreatment of a spouse, termination of pregnancy, characterised as domestic violence	Article 154, 141	1
Negligent offences against physical integrity	Article 148	1
Simple offences against physical integrity, threats, kidnapping, property damage, larceny	Article 145, 157, 160, 258	1
Simple offences against physical integrity, aggravated property damage	Article 145, 259	1
Simple offences against physical integrity, property damage, threats, characterised as domestic violence	Article 145, 258, 157	1
Simple offences against physical integrity, driving without a licence	Article 145, 207	1
Simple offences against physical integrity, failure to comply with an obligation to provide alimony, characterised as domestic violence	Article 145, 225	1
Simple offences against physical integrity, mistreatment of a minor, characterised as domestic violence	Article 145, 155	1
Simple offences against physical integrity, obstruction of a public authority	Article 145, 243	1
Simple offences against physical integrity, rape, robbery, unlawful entry	Article 145, 172, 253, 185	1
Aggravated homicide characterised as domestic violence	Article 139	1
Manslaughter, negligent offences against physical integrity	Article 140, 148	1
Homicide, arson	Article 138, 263	1
Homicide, simple offences against physical integrity	Article 138	1
Circulation of counterfeit currency	Article 308	1
Embezzlement	Article 295	1
Unlawful electoral canvassing	Article 233	1

Case Type	Penal Code	Number
Aggravated receipt of stolen goods	Article 272	1
Kidnapping	Article 160	1
Attempted sexual abuse of a minor	Article 177	2
Attempted aggravated homicide, simple offences against physical integrity, characterised as domestic violence	Article 23, 139,145	1
Attempted homicide	Article 23, 138	1
Attempted rape	Article 23, 172	1
Attempted rape, arson	Article 23, 172, 263	1
Attempted rape with aggravation	Article 23, 172, 173	1
Attempted rape with aggravation, property damage	Article 23, 172, 173, 258	1
Disrespect for national symbols	Article 206	1
Usurpation of office, property damage	Article 195, 258	1
Rape with aggravation in the nature of incest	Article 172, 173	1
Drugs/anti-narcotics		1
Serious crimes against humanity 1999		1
<b>Total</b>		<b>951</b>

## B. Civil cases monitored by JSMP in 2014

Case Type	Number
Provision of alimony	12
Land dispute	7
Rent dispute	1
Divorce	1
Distribution of personal property to children (inheritance)	1
Parental power	1
Civil compensation	1
Land dispute about new development	1
Residential property	1
<b>Total</b>	<b>26</b>

### C. Cases monitored by JSMP in 2014 by Court

Court	Criminal cases	Civil cases
Baucau	273	5
Dili	352	15
Oe-cusse	134	0
Suai	192	6
<b>Total</b>	<b>951</b>	<b>26</b>

### D. Case statistics from all Courts (Court of Appeal and District Courts) in 2014

Criminal cases	Total
Pending from 2013	1596
New cases	2471
Judgments	1905
Total pending	2162

Civil cases	Total
Pending from 2013	626
New cases	422
Judgments	293
Total pending	755

### E. Case statistics from Court of Appeal for 2014

#### Criminal cases

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sept	Oct	Nov	Dec	Total
Pending from 2013	13	23	12	13	19	26	34	32	27	28	29	31	13
New cases	13	6	13	18	15	21	13	10	11	18	13	8	159
Judgments	3	17	12	12	8	13	15	15	10	17	11	5	138
Total pending	23	12	13	19	26	34	32	27	28	29	31	34	34

### Civil cases

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sept	Oct	Nov	Dec	Total
Pending from 2013	0	0	0	3	4	5	8	9	12	12	13	17	0
New cases	1	1	5	1	2	4	4	3	4	3	4	3	35
Judgments	1	1	2	0	1	1	3	0	4	2	0	2	17
Total pending	0	0	3	4	5	8	9	12	12	13	17	18	18

## F. Case statistics from Dili District Court for 2014

### Criminal cases

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sept	Oct	Nov	Dec	Total
Pending from 2013	939	963	1025	991	1009	990	1077	1096	1164	1218	1289	1300	939
New cases	52	108	66	115	85	169	172	87	171	196	101	70	1392
Judgments	28	46	100	97	104	82	153	19	117	125	90	33	994
Total pending	963	1025	991	1009	990	1077	1096	1164	1218	1289	1300	1337	1337

### Civil cases

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sept	Oct	Nov	Dec	Total
Pending from 2013	432	426	427	443	455	460	461	466	470	468	466	467	432
New cases	14	30	39	30	25	16	22	10	11	30	19	14	260
Judgments	20	29	23	18	20	15	17	6	13	32	18	5	216
Total pending	426	427	443	455	460	461	466	470	468	466	467	476	476

## G. Case statistics from Baucau District Court for 2014

### Criminal cases

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sept	Oct	Nov	Dec	Total
Pending from 2013	429	451	462	491	509	531	530	545	525	552	509	561	429
New cases	26	29	50	34	36	16	57	6	45	26	63	5	393
Judgments	4	18	21	16	14	17	42	26	18	69	11	29	285
Total pending	451	462	491	509	531	530	545	525	552	509	561	537	537

### Civil cases

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sept	Oct	Nov	Dec	Total
Pending from 2013	117	118	123	123	126	135	144	146	145	151	153	159	117
New cases	2	5	6	3	11	10	3	0	8	6	10	5	69
Judgments	1	0	6	0	2	1	1	1	2	4	4	4	26
Total pending	118	123	123	126	135	144	146	145	151	153	159	160	160

## H. Case statistics from Oe-cusse District Court for 2014

### Criminal cases

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sept	Oct	Nov	Dec	Total
Pending from 2013	19	34	46	47	27	44	53	40	29	47	41	30	19
New cases	15	19	28	24	21	33	20	3	33	44	12	2	254
Judgments	0	7	27	44	4	24	33	14	15	50	23	18	259
Total pending	34	46	47	27	44	53	40	29	47	41	30	14	14

### Civil cases

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sept	Oct	Nov	Dec	Total
Pending from 2013	15	17	16	16	14	14	13	14	15	15	20	20	15
New cases	2	3	0	2	1	0	1	1	1	5	0	0	16
Judgments	0	4	0	4	1	1	0	0	1	0	0	1	12
Total pending	17	16	16	14	14	13	14	15	15	20	20	19	19

## I. Case statistics from Suai District Court for 2014

### Criminal cases

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sept	Oct	Nov	Dec	Total
Pending from 2013	196	208	226	232	228	205	208	233	254	234	222	237	196
New cases	18	44	25	25	17	26	39	23	17	7	26	6	273
Judgments	6	26	19	29	40	23	14	2	37	19	11	3	229
Total pending	208	226	232	228	205	208	233	254	234	222	237	240	240

### Civil cases

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sept	Oct	Nov	Dec	Total
Pending from 2013	62	61	59	58	60	59	57	61	62	62	63	82	<b>62</b>
New cases	2	3	3	2	0	0	5	1	4	1	20	1	<b>42</b>
Judgments	3	5	4	0	1	2	1	0	4	0	1	1	<b>22</b>
Total pending	61	59	58	60	59	57	61	62	62	63	82	82	<b>82</b>

## ANNEXURE B – CORRUPTION CASES MONITORED BY JSMP IN 2014

Case type	Case No.	Defendant	Chronology	Decision
<b>Dili District Court</b>				
Abuse of power (article 297) Economic participation (article 299) Aggravated forgery (article 304)	699/2011/ TDD	<ul style="list-style-type: none"> <li>- Elio Fransisco da Costa</li> <li>- Ruben Joao Brass De Carvalho</li> </ul>	<p>The Public Prosecutor (PP) alleged that on 10 May 2010, the government implemented a project, Package of Development Decentralisation (PDD), in Dili District, to support community programs for water, schools, markets and roads. At that time the defendant EFdC acted as a focal point to control and facilitate the PDD project, working together with defendant RJBdC who was the ex-administrator of Dili District and also coordinator of this project. In the implementation phase the two defendants allegedly committed the crimes of abuse of power and falsification of documents in relation to this project.</p> <p>PP charged the defendants as follows:</p> <ul style="list-style-type: none"> <li>- EFdC with violating article 297 of the Penal Code on abuse of power and article 299(2) on economic participation.</li> <li>- RJBdC with violating article 304 of the Penal Code on aggravated forgery.</li> </ul>	<p>Defendant RJBdC was convicted and sentenced to prison for 3 years 6 months.</p> <p>JSMP did not monitor the sentencing of defendant EFdC and understands this defendant is appealing the decision.</p>
Aggravated fraud (article 267) Aggravated computer fraud (article 269)	28/C.Ord/ 2014/TDD	<ul style="list-style-type: none"> <li>- Aldo Fatima Pereira</li> <li>- Miquel Soares</li> <li>- Miquel do Santos</li> </ul>	<p>On 17 March 2014, Dili District Court continued the trial of case of aggravated fraud allegedly committed by the three defendants against the State of Timor-Leste in 2008 and 2009.</p> <p>The defendants were public functionaries in the Ministry of Education and Ministry of Finance and entered into MCF which was a contract for permanent functionaries in the Ministry of Education Baucau. In addition, they increased the MCF salary from US\$105.00 to US\$166.00 over 33 months which deprived the State of US\$5,644.</p> <p>PP alleged that the defendants' acts violated article 267 of the Penal Code on aggravated fraud and article 269 on</p>	<p>JSMP did not monitor the decision</p>



## Overview of the Timor-Leste Justice Sector 2014

Case type	Case No.	Defendant	Chronology	Decision
Embezzlement (article 295) Abuse of power (article 297) Aggravated forgery (article 304)	344/2014/ TDD	<ul style="list-style-type: none"> <li>- Marcos dos Santos</li> <li>- Agostu Martins</li> <li>- Jacinto de Deus</li> <li>- Afonso Soares</li> <li>- Natalino Auxiliadora.</li> </ul>	<p>aggravated computer fraud.</p> <p>PP alleged that in 2011 the defendants conspired to manipulate implementation of a project to install solar panels in order to move without approval solar panels which should have been installed in Raimerhei Suco and Ponilala Suco to Haupu Suco in Ermera District.</p> <p>In relation to the charge of falsification of documents, PP alleged that the defendant AM who was the project coordinator gave a false report to SEPE. In the report the defendant AM falsified information that the project installed solar panels in Raimerhei and Ponilala Sucos, shown by signatures from the defendants JdDM and AS as suco chiefs of these two sucos, in order to request payment of the remaining money which was about 40% of the value of the project. In addition the defendant NA as the head of provisioning at SEPE who considered this did not properly confirm the projects before signing, including to the defendant MdS who was the General Director of SEPE who allegedly knew that the report was false but proceeded to sign.</p> <p>PP charged the defendants:</p> <ul style="list-style-type: none"> <li>- MdS and AM with violating article 297 on abuse of power, article 304 on aggravated falsification and article 295 on embezzlement</li> <li>- JdDM, AS and NA with violating article 304 and article 295.</li> </ul>	<p>4 defendants were found to have committed the crimes of abuse of power and falsification of documents.</p> <p>The court convicted defendant:</p> <p>Markus dos Santos and defendant Agusto Martins with a sentence of 2 years' prison suspended for 4 years and to pay court costs of US\$ 80.00.</p> <p>Natalino Auxiliadora with a sentence of 2 years' prison suspended for 4 years and to pay court costs of US\$30.00</p> <p>Jacinto de Deus Maderia (Xefi Suku Ponilala) with a sentence of 1 year 2 months' prison suspended for 2 years.</p> <p>Afonso Soares (Xefi Suku Raimerhei) with sentence of 1 year 6 months' prison suspended for 2 years and to pay court costs of US\$20,00.</p>
Passive corruption (article 419 Indonesian Penal Code; article 292 TL Penal Code) Falsification of documents (article 263 Indonesian Penal Code, article 303 TL)	112/2007/ TDD	<ul style="list-style-type: none"> <li>- Arindo Fransisco Marcal</li> <li>- Maria Renata Caldas</li> </ul>	<p>PP alleged that in 2005, defendant AFM who was the Timor-Leste ambassador to Indonesia and defendant MRC who was the Second Secretary to the ambassador bought three cars through a company and used their privilege to avoid paying tax to the State of Indonesia under Decree Law No. 90/KMK/04/2012 and after the defendants' mandate finished they imported the cars to Timor for their personal use.</p> <p>PP charged the defendants with:</p>	<p>Arindo Fransisco Marcal: convicted of passive corruption and sentenced to 1 year prison suspended for 2 years</p> <p>Maria Renata Caldas: convicted of passive corruption and sentenced to 9 months' prison suspended for 2 years</p>

## Overview of the Timor-Leste Justice Sector 2014

Case type	Case No.	Defendant	Chronology	Decision
Penal Code)			<ul style="list-style-type: none"> <li>- article 419 of the Indonesian Penal Code on passive corruption with a penalty range of 5 years prison and article 292 of the Timor-Leste Penal Code with a penalty range of 3 to 15 years.</li> <li>- article 263 of the Indonesian Penal Code on falsification of documents and article 303 of the Timor-Leste Penal Code.</li> </ul>	The court acquitted the defendants of the charge of falsification of documents because the court found that under article 110(1)(c) the statute of limitations had already expired.
Abuse of confidence aggravated (article 257)	234/2014/ TDD	Arif Abdula Sagra	<p>On 15 October 2007, the defendant, who was the President of the Islamic Community in Timor-Leste, signed an MOU with the Ministry of Finance in order to receive a budget of US\$38,000.00 for the purpose of assisting the Muslim community in relation to health, education and water, but after the execution of the MOU the defendant submitted a report which did not comply with the MOU.</p> <p>PP charged the defendant under article 257 of the Penal Code on aggravated abuse of confidence.</p> <p>At the trial the defendant testified that on 7 November 2007 the Ministry of Finance offered money for the Islamic community of US\$38,000.00, following which the defendant used the budget to buy sarongs, pay professors, buy cloth, copy documents, and buy two laptops. These things were all from Indonesia. The defendant testified that he had not been to Mecca since 2007, the money which the defendant received had all been spent and a complete report provided to the Ministry of Finance but until now he had not received a response from them.</p>	JSMP did not monitor the decision
Passive corruption for unlawful act (article 292) Active corruption (article 294) Economic	362/ 14. TDD	<ul style="list-style-type: none"> <li>- João Batista Fernandes Alves</li> <li>- Domingos Cabral Henrique</li> <li>- Sugianto Kadi</li> </ul>	<p>The PP alleged that in 2005 the defendant JBFA who was the Secretary of State for Public Works and the defendant DCH who was the Director of Public Works, awarded a project to improve the gardens of the Palácio do Governu without selection documents to the company Timor Moris Foun, of which defendant SK was the director.</p> <p>In 2005, the defendant JBFA made an agreement with</p>	JSMP did not monitor the decision

Case type	Case No.	Defendant	Chronology	Decision
participation (article 299)			<p>defendant SK to supply materials for the construction project from Indonesia. Defendant SK made contact with some businesses from Surabaya named Duta Ria, Udan Mas, Atea Elektronik, Kuda Mas and Sentosa.</p> <p>After 2007, construction of the gardens of the Palacio do Governu finished and was handed over to the State. The State paid \$178,283.60 but defendant JBFA and DCH who were functionaries for public works paid only some of the money to Timor Moris Foun of which the defendant SK was a director because this company built the gardens not according to the design.</p> <p>The money which the two defendants did not give to Timor Moris Foun was to pay Kuda Mas US\$ 24,214.06 and Sentosa US\$ 50,229.55. Before this the defendant SK gave US\$ 37,703.18 to the two other defendants because they worked together.</p> <p>Defendant SK did not agree with the other two defendants' actions because they did not pay the rest of the money so he made a complaint to the Prime Minister, Xanana Gusmão.</p> <p>Despite this, after the process started, the PP also considered that SK committed the crime of active corruption because he gave money to the other two defendants.</p> <p>PP charged the defendants:</p> <ul style="list-style-type: none"> <li>- JBFA and DCH with violating article 292 of the Penal Code on passive corruption for unlawful acts and article 299 of the Penal Code on economic participation.</li> <li>- SK with violating article 294 on active corruption because he gave money to the other defendants.</li> </ul>	
Abuse of power (article 297) Economic participation (article	63/14/ TDD	<ul style="list-style-type: none"> <li>- Joao Cancio</li> <li>- Tarsizio</li> </ul>	<p>PP alleged that in 2009 the two defendants used their power as Minister of Education and National Director of Finance, Procurement, Logistics and Administration for the Ministry of Education and conspired to misappropriate</p>	Retrial ordered

Case type	Case No.	Defendant	Chronology	Decision
299)			<p>the state budget in relation to a project for the installation of radio and television in the Ministry of Education with a value of US\$1,403,000.00. Because these materials were second-hand, they did not reflect the value of the budget which was used, these items did not have serial numbers and there was no transparency in the procurement process. This project was cancelled and has not been completed.</p> <p>Defendant JC was alleged to have used his power as Minister for Education to have negotiations with the company that won the project (company from Australia) before the publication of the announcement for tender of the project. The defendant also used his competence to sign the Cost of Goods Sold (CPV), although there was not yet a request for payment for the project.</p> <p>In addition, it was considered that the defendant did not verify the quality of the materials before he signed the approval for the goods to be purchased.</p> <p>Defendant TdC, was alleged to have signed the CPV before the proposal and request for payment for the project without verifying if the projects satisfied the requirements of the contract.</p> <p>This defendant also presented a letter and final report to the defendant JC who was the Minister of Education to ask for his signature on 2 documents to show that the goods had been received and were of good quality. This letter used the logo of the department chief and was discovered by the Anti Corruption Commission (CAC).</p> <p>PP charged the defendants:</p> <ul style="list-style-type: none"> <li>- JC with violating article 297 of the Penal Code on abuse of power and article 299 on economic participation.</li> <li>- TdC with violating article 299 on economic participation.</li> </ul>	

## Overview of the Timor-Leste Justice Sector 2014

Case type	Case No.	Defendant	Chronology	Decision
Embezzlement (article 295)	768/14. TDD	Nelson Dos Santos	<p>PP alleged that in 2008 and 2009 the defendant assumed the role of Ambassador to the United States of America. At this time the defendant was suspected of using US\$35,500 from funds for embassy work to pay for his child's school. In addition, there was other money which the defendant did not declare which he used for a new apartment.</p> <p>PP charged the defendant with violating article 295 of the Penal Code on embezzlement.</p>	<p>Sentenced to prison for 2 years 6 months suspended for 3 years.</p> <p>Court costs of US\$50</p>
<b>Baucau District Court</b>				
Abuse of power (article 297) Embezzlement (article 295)	0485/2012/ TDB	Pedro Alexandre Guterres Pereira	<p>PP alleged that on 20 October 2009, the defendant who was the Regional Chief of Public Works Baucau, requisitioned from A1 Services materials including 2 truck tyres, 2 tyres, 2 air chambers for an excavator 2 with a value of US\$ 4,220.00.</p> <p>On 17 September 2010 the defendant authorized the witness NXF who was a driver to bring these items in a truck to sell at Express Distribution Service, Ltd (EDS), in Comoro Dili for US\$3,000.00. From this money the defendant gave US\$1,500 to the witness AdGF who was the Finance Administration Assistant at Baucau Regional Public Works to buy HVS, petrol, oil, food, water for local trips.</p> <p>On 23 September 2010, the defendant used the remaining US\$1500.00 to buy a Laptop HP Pavilion TX2000 from "Zeon Internacional" on Rua Mouzinho de Albuquerque Nú.09, Colmera - Dili. In addition, other goods including truck tyres, an air filter, tyres and air filter for an excavator, the defendant sold for US\$ 3,185.00, and this money the defendant used for private purposes. These acts deprived the state of approximately US\$ 4,685.00.</p> <p>PP charged the defendant with violating article 295 of the Penal Code on embezzlement and article 297 on abuse of power.</p>	<p>JSMP did not monitor the decision</p>

## Overview of the Timor-Leste Justice Sector 2014

Case type	Case No.	Defendant	Chronology	Decision
Abuse of power (article 297)	0002/2012/TDB	Aleixo Soares	<p>PP alleged that on 27/10/2011, the defendant made a public competition announcement for local development program PDL for five projects, one with Ref. RFQ PID/2007/MTT/2011/16.</p> <p>On 14/11/2011 an offer was made to tender, on 15/11/2011 an evaluation was conducted of tenderers and TETILAK CONSTRUCTION LD was selected as the preferred tenderer. On 16/11/2011 the results of the evaluation of the tender and the preferred tenderer obtained approval from the defendant. On 27/11/2011 the defendant used his power to sign a contract with Framedila LD and did not recognise the victims, and on 29/11/2011, the victim received a telephone call from the defendant's staff asking to meet with the defendant and at the meeting the defendant said to the victim that they must make changes to be successful in the tender.</p> <p>PP charged the defendant with violating article 297 on abuse of power.</p>	Adjourned to 2015
<b>Suai District Court</b>				
Passive corruption (article 292)	239/pen/2013/TDS	Antonio do Carmo	<p>PP alleged that on 20 May 2012 the defendant who was an aldeia chief, used UD\$ 320.00 from money for a program "bolsa de mãe", which was offered by the Ministry of Social Solidarity to interested people who were eligible including the 4 victims.</p> <p>PP alleged that before this the defendant as aldeia chief used his position to obtain benefits from work which he did to facilitate getting bolsa de mãe for the 4 victims, but the victims had to give money to him.</p> <p>PP charged the defendant with violating article 292 of the Penal Code on passive corruption.</p>	<p>Antonio do Carmo was convicted and sentenced to prison for 1 year suspended for 2 years for the crime of passive corruption.</p> <p>The court also ordered the defendant to pay court costs of US\$ 20.00.</p>
Passive corruption for unlawful acts (article 292)	185/pen/2012/TDS	<p>- Joaquin Goncalves</p> <p>- Grigorio P. da Silva</p> <p>- Joao B. Alves</p>	On 16 September 2014, the Suai District Court acquitted the defendants JG, GFdS, JBFA, LCC and NYH who were allegedly involved in a case of passive corruption against	Acquitted



## Overview of the Timor-Leste Justice Sector 2014

Case type	Case No.	Defendant	Chronology	Decision
		<ul style="list-style-type: none"> <li>- Lim CC</li> <li>- NG Yeohna</li> </ul>	<p>the State. The relevant events occurred on 21 July 2006 in Suai District.</p> <p>After the evaluation of the facts produced during the trial, the court concluded the case and acquitted the defendants because there was not sufficient evidence to convict them.</p>	
Embezzlement (article 295)	232/pen/2014/TDS	<ul style="list-style-type: none"> <li>- Fernando Magno</li> <li>- Vincente de Jesus Nunes</li> </ul>	<p>PP alleged that between 2004 and 2009 the defendants brought to the suco goods including 2 Honda motorbikes, 1 stamp, 1 venus satellite disk, 1 receiver, 2 typewriters, 1 table, 1 cabinet, 4 chairs which the State gave to keep in the Suco office. However, these things the defendants kept at the defendant FM's house and used for private purposes.</p> <p>PP charged the defendants with violating article 295 Penal Code on embezzlement.</p>	<p>Convicted the defendant FM with prison sentence of 1 year suspended for 2 years.</p> <p>Acquitted the defendant VdJN.</p>
<b>Oe-Cusse District Court</b>				
Embezzlement (article 295)	47/Crime/2014/TDO	<ul style="list-style-type: none"> <li>- Emelindo da Conceicao</li> <li>- Joao Baptista Amaral</li> </ul>	<p>PP alleged that on 13 May 2014, the defendant EC who was a Fire Service Logistics Functionary in Oe-Cusse District asked for money from the defendant JBA who was his superior to make a trip from Oe-Cusse to Dili. This trip to Dili was for the purpose of getting fire fighting equipment. When the defendant EC asked for this money, the defendant JBA responded that there was no money in petty case and the defendant JBA sent the defendant EC to sell two fire truck tyres. The defendant EC was able to sell the tyres for US\$320.00.</p> <p>PP charged the defendants with violating article 295 of the Penal Code on embezzlement.</p>	<p>Oe-Cusse District Court convicted the defendant EC with a prison sentence of 1 year suspended for 1 year.</p> <p>The court convicted the defendant JBA with a prison sentence of 1 year 6 months suspended for 1 year and to pay court costs of US\$40,00.</p>





## **JSMP's vision**

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

## **JSMP's mission**

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

- Monitoring
- Legal Education, and
- Advocacy.



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